UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25011-WILLIAMS

ELVIN DONALY GARCIA CASTILLO,

Petitioner,

v.

CHARLES PARRA, Assistant Field Office Director
Immigration and Customs Enforcement, *et. al.*

Respondents.
_____/

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR HABEAS CORPUS AND AMENDED EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Charles Parra, Assistant Director of Miami Field Office, *et. al.* ("Respondents"),[1] through the undersigned Assistant United States Attorney, and pursuant to this Court's Orders entered on October 31, 2025 [ECF Nos. 6, 9], respectfully file their combined response in opposition to Petitioner Elvin Donaly Garcia Castillo's ("Petitioner") Verified Habeas Petition ("Petition") [ECF No. 1] and to Petitioner's Amended Emergency Motion for Preliminary Habeas Petition and Amended Emergency Motion for Preliminary Injunction and/or Temporary Restraining Order

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Florida Soft-sided Facility South ("FSSFS") in Collier County. Collier County is located in the Middle District of Florida. *See* 28 U.S.C. § 89(b) ("The Middle District comprises the counties of . . . Collier[.]"). Pursuant to *Padilla,* Petitioner's immediate custodian is the Warden of the South Florida Detention Center. *See Rumsfeld v. Padilla*, 542 U.S. at 439. Accordingly, the proper Respondent in the instant case is the Warden of the Florida Soft-sided Facility South, and all other Respondents should be dismissed.

("TRO Motion") [ECF No. 8]. For the reasons set forth fully herein, Respondents respectfully request this Court to deny the Petition, deny the TRO Motion, and dismiss this matter in its entirety.

As a threshold issue, this matter should be dismissed for improper venue, or in the alternative, transferred to the Middle District of Florida, where Petitioner is currently detained at the South Florida Detention Center in Ochopee, Florida.

Should this Court find that venue is proper, this Court lacks jurisdiction under 8 U.S.C. § 1252 (g), because Petitioner's claims arise from Respondents' discretionary decision to execute Petitioner's valid reinstated prior order of removal.

Nonetheless, even if this Court were to find that it had jurisdiction, Immigration and Customs Enforcement's ("ICE") decision to detain and deport Petitioner despite his "deferred action status" is lawful under 8 U.S.C. § 1231(a)(5). Petitioner is subject to a valid reinstated order of removal. U.S. Citizenship and Immigration Services' ("USCIS") grant of "deferred action" does not preclude ICE from executing an outstanding removal order or detaining Petitioner while his removal is pending. Moreover, Petitioner has been detained since October 26, 2025, and thus the Petition is premature under *Zadvyvas v. Davis,* 533 U.S. 678 (2011).

And lastly, this Court should deny Petitioner's request for a TRO because it lacks jurisdiction under 8 U.S.C. §§ 1252 (g) and 1252(a)(2)(B)(ii) to enjoin Respondents from revoking Petitioner's deferred status, requesting expedited adjudication of his pending U-1 visa application, or detaining and deporting Petitioner.

Accordingly, Petitioner's habeas petition and TRO Motion should be denied.

I. BACKGROUND

A. Petitioner's immigration history

Petitioner, Elvin Garcia Castillo, (Petitioner), is a Honduran national who alleges that he entered the United States in or about 2004. [ECF No. 1, ¶ 43]. On or about January 18, 2010, the U.S. Customs and Border Protection (CBP) encountered Petitioner near the William M. Alsdorf marina in Pompano Beach, Florida. *See* Exh. A, *Form I-213, Record of Deportable/Inadmissible Alien, dated January 18, 2010.* Petitioner admitted to CBP that he had unlawfully entered the United States by crossing the U.S./Mexico border afoot without valid travel documents. Based on Petitioner's admission, CBP initiated removal proceedings, pursuant to section 240 of the Immigration and Nationality Act (INA), by filing a Notice to Appear (NTA), dated January 18, 2010, with the Immigration Court. *See* Exh. B, *NTA, dated January 18, 2010.* The NTA charged Petitioner with being removable under section 212(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.*

Thereafter, an Immigration Judge granted Petitioner voluntary departure pursuant to section 240B(a) of the INA. *See* Exh. C, *Order of the Immigration Judge dated December 21, 2010.* The Immigration Judge ordered that if Petitioner failed to depart by April 20, 2011, the voluntary departure order would automatically become an administratively final order of removal. *Id.* On April 18, 2011, Petitioner departed the United States pursuant to the voluntary departure order. *See* Exh. D, ¶11, *Declaration of Deportation Officer Ronald Andersson (DO Andersson).*

On April 10, 2012, Enforcement and Removal Operations (ERO) encountered Petitioner at the Broward County Jail after he was arrested for possession of cocaine, driving under the

influence, and driving without a valid driver's license. *See* Exh. E, *Form I-213, dated April 9, 2012*. On July 25, 2012, Petitioner was found guilty of driving under the influence, and he received a withhold of adjudication for possession of cocaine and operating without a valid driver's license. *See* Exh, F, *Disposition Order, Broward County Circuit Court, Case No., 12-005121-CF-10A, dated July 25, 2012.* [2] On August 16, 2012, Petitioner was convicted of driving under the influence once again, this time in St. Lucie County, Florida. *See* Exh. G, *Judgment, St. Lucie County, Case No., 12Ct-685172, dated August 16, 2012.* On August 20, 2012, DHS served Petitioner a Notice to Appear (NTA), dated April 9, 2012, charging Petitioner with inadmissibility under section 212(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and section 212(a)(7)(A)(i)(I) of the INA, as an alien who lacks valid entry documents. *See* Exh. H, *NTA, dated April 9, 2012.* On October 1, 2012, an Immigration Judge ordered Petitioner removed to Honduras. *See* Exh. I, *Order of the Immigration Judge dated October 9, 2012*. On October 22, 2012, DHS executed the removal order when Petitioner was physically removed to Honduras. *See* Exh. J, *Form I-205, Warrant of Removal/Deportation, dated October 1, 2012.*

On June 19, 2013, Petitioner illegally reentered the United States at or near Laredo, Texas. *See* Exh. K, *Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated June 21, 2013.* On June 21, 2013, CBP reinstated the prior removal order, dated October 1, 2012. *See id.* On July 18, 2013, Petitioner was once again physically removed to Honduras. *See* Exh. L, Form I-205, Warrant of Removal/Deportation, dated June 21, 2013. Petitioner unlawfully re-entered the

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[2] In 2022, Petitioner filed a post-conviction motion challenging his July 25, 2012, state conviction pursuant to *Padilla v Kentucky*, 559 U.S. 356 (2010) (holding that failing to advise defendant of the potential immigration consequences of a guilty plea constitutes ineffective assistance of counsel, in violation of the Sixth Amendment). Petitioner's motion was later denied by the state court.

United States sometime after June 2013 and on October 27, 2017, he was convicted of driving under the influence for a third time, in Miami-Dade County, Florida. *See* Exh. M, *Judgment, Miami Dade County Court, Case no. 3579XBR, dated October 30, 2017.*

Subsequently thereafter, on October 26, 2025, Petitioner was detained by ICE. *See* Exh. D, *Declaration of DO Andersson.* On that same day, ERO reinstated Petitioner's prior order of removal, dated June 21, 2013. *Id.* On October 27, 2025, Petitioner was booked at the Florida Soft-Sided Facility-South ("FSSFS"), located in Ochopee, Collier County, Florida.. *See* Exh. N, *Detention History*, and Exh. D, *Declaration of DO Andersson.* To date, Petitioner remains in ICE custody at the SFDC. *Id.*

B. Petitioner's U-nonimmigrant status

On December 2, 2022, Petitioner submitted a Form I-918, Petition for a U-Nonimmigrant status with U.S. Citizenship and Immigration Services ("USCIS"). [ECF no. 1-3]. On February 12, 2025, USCIS notified Petitioner that the statutory cap for U-nonimmigrant visas had been reached for the fiscal year and that his petition would be adjudicated when a U-nonimmigrant visa became available to him. *Id.* As a result, USCIS informed Petitioner that pursuant to a favorable exercise of discretion he had received employment authorization and deferred action. *Id.* USCIS further notified Petitioner that "[d]eferred action is an act of administrative convenience to the government which gives some cases lower priority for removal." *Id.*

C. U Visa and Deferred Action

In October 2000, Congress created the U-nonimmigrant classification ("the U-visa program") as a part of the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant status to certain victims of crime who cooperate with law enforcement in the investigation or prosecution of a qualifying crime. *See* 8

U.S.C. § 1101(a)(15)(U). The U-visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). Anticipating a backlog due to this statutory cap, USCIS created a regulatory waiting list process. *See* 8 C.F.R. § 214.14(d)(2). "Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority." *Id.*

Relevant here, in 2021, USCIS again sought to address the U visa backlog by implementing the U visa bona fide determination ("BFD") policy through the preliminary evaluation of petitions and the provision of interim benefits as efficiently as possible. See USCIS Policy Manual, Vol. 3, Part C, Ch. 5, available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on November 2, 2025). The BFD process provides an opportunity for certain petitioners to receive employment authorization documents and deferred action. "'Deferred action' is an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States." *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited November 2, 2025); *see also* 8 C.F.R. § 274a.12(c)(14). Thus, a grant of deferred action does not preclude ICE from executing an outstanding removal order or detaining a noncitizen while removal is pending. It does not provide a U-visa applicant with a stay of removal, nor does it confer any immigration status upon the noncitizen. Indeed, the preamble to the 2007 rulemaking which created the U-visa regulations plainly states in pertinent part:

> A **stay of deportation or removal** is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. **Deferred action** is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal. Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). Deferred action does not confer any immigration status upon an alien.

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007). (emphasis added). Accordingly, pursuant to 8 C.F.R. 214.14 (c)(1)(ii), USCIS will continue to adjudicate a noncitizen's U-visa application even if he is outside the United States.

II. ARGUMENT

Due to his imminent removal to Honduras, Petitioner commenced this habeas litigation by filing the instant habeas petition challenging the unlawfulness of his detention because of his "deferred status," and a motion for a temporary restraining order. *See generally* [ECF No. 1]. In the underlying Petition, Petitioner argues that his detention violates the Immigration and Nationality Act ("INA"), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("APA") because U.S. Citizenship and Immigration Services ("USCIS") granted him deferred action and issued employment authorization pursuant to the bona fide determination ("BFD") process for U-1 nonimmigrant status petitioners. [ECF No. 1 ¶4 p. 2]. As such, Petitioner seeks his release from Immigration Customs Enforcement ("ICE") custody, and a stay of his removal. *Id.* at ¶ 5 p. 3. As fully demonstrated below, Petitioner's habeas petition should be denied.

A. Venue is proper in the Middle District of Florida

Section 2441 allows "the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2441(a). The Supreme Court has interpreted the "within their respective jurisdiction language to mean that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443. (2004). Most recently, in *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (citing *Padilla*, 542 U.S. at 426, 443), the Supreme Court reinforced that even for habeas petitions filed by immigration

detainees, "jurisdiction lies in only one district: the district of confinement." Specifically, in *J.G.G*, the Supreme Court found that detainees in Texas improperly filed a putative class action challenging their detention in the District of Colombia. ("The detainees are confined in Texas, so venue is improper in the District of Columbia."). *Id. See, also Zhang v. United States*, 21-CV-81382-ALTMAN, 2021 U.S. Dist. LEXIS 162725, at *2-3 (S.D. Fla. Aug. 25, 2021) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Glades County Jail, in Glades County, Florida, because jurisdiction lies in the district of confinement); *Dolme v. Barr*, 20-CV-24106-Altman, 2020 U.S. Dist. LEXIS 197596, at *2-3 (S.D. Fla. Oct. 21, 2020) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Wakulla County Jail, in Wakulla County, in the Northern District of Florida, because jurisdiction lies in the district of confinement).

Accordingly, the federal habeas statute provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]." 28 U.S.C. § 2242; *see also id.* § 2243 ("the writ, or order to show cause shall be directed to the person having custody of the person detained.") As the *Padilla* Court held [t]his custodian, moreover, is the 'the person' with the ability to produce the prisoner's body before the habeas court." *Padilla*, 542 U.S. at 434. The Supreme Court further confirmed that "[i]n habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."...the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Padilla*, 542 U.S. at 435. *See also Id.* at 440, n.13("'[T]he proper respondent is the person responsible for maintaining—not authorizing—the custody of the prisoner.").

Although the Supreme Court expressly left open the question as to whether the immediate custodian rule applies in the context of immigration habeas proceedings, other courts have applied the rule in this context. *See e.g. Vaskanyan v. Janecka*, Case No. 25-CV-01475-MRA-AS, 2025 WL 2014208 at *16 (C.D. CA. June 25, 2025)(applying the immediate custodian rule); *see also Nken v. Napolitano*, 607 F.Supp.2d 149 (2009)(same); *but, see Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020) (holding that the proper respondent was the Director of the ICE Field Office responsible for overseeing the contract facility where the federal immigrant detainee was detained, rather than the Warden, who does not have the power to produce the petitioner in Court or answer the merits of the petition on behalf of the federal government).

Petitioner filed a habeas petition in this District on October 30, 2025. However, at the time of filing, Petitioner was detained and continues to be detained at the FSSFS located in Ochopee, Florida, in Collier Country, Florida. Collier County lies within the jurisdiction of the Middle District of Florida. *See* 28 U.S.C. § 89(b) (explaining the counties, which includes Collier County, that comprise the Middle District of Florida). Thus, because jurisdiction lies in the district of Petitioner's confinement, Respondents respectfully request that this habeas petition be dismissed for lack of jurisdiction, or in the alternative, transferred to the Middle District of Florida where Petitioner is currently detained pursuant to *Padilla*, 542 U.S. 426, 443 (2004). Furthermore, the proper Respondent in the instant case is the Warden of the FSSFS, and therefore, all other Respondents should be dismissed.

B. This Court lacks subject matter jurisdiction pursuant to 8 U.S.C. § 1252(g) to review Petitioner's claims

"Federal Courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). 8 U.S.C. § 1252(g)

explicitly states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to . . . execute removal orders against any alien*…" 8 U.S.C.§ 1252(g) (emphasis added). The statutory provision plainly bars direct and indirect attacks on the execution of a removal order which is precisely the relief Petitioner requests here—that this Court stay his removal. Such direct attacks are barred under § 1252 (g) and clearly fall outside of this Court's jurisdiction. *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

In this case, Petitioner seeks to have this Court "grant temporary and permanent injunctive relief staying his imminent removal," while his U-visa application is pending. [ECF No. 1, p. 13]. However, Petitioner is subject to a reinstated order of removal order pursuant to 8 U.S.C. 1231(a)(5). *See,* Exh. K. Because his claim for relief directly arises from ICE's decision to now execute the valid order of removal, this Court lacks jurisdiction to intervene pursuant to 8 U.S.C. § 1252 (g). *See Velarde-Flores v. Whitaker, 750 Fed. Appx. 606, 607 (9th Cir. 2019) (unpublished)* ("The decision whether to remove aliens subject to valid removal orders who have applied for U-visas is entirely within the Attorney General's discretion."*); Gomez v. Scott,* No. C25-0522JLR-BAT, 2025 WL 1726465, at *5 (W.D. Wash. June 20, 2025) (holding that petitioner's challenge to the Government's "decision and action to detain him and execute his valid removal order despite his deferred action status" fell within the realm of § 1252(g)."); *But see Espinoza-Sorto v. Juan Agudelo*, Case No. 25-CV-23201-Gayles, 2025 WL 3012786 at *5 (S.D. Fla. October 28, 2025) (district court concluded that it had jurisdiction to review "whether [ICE] can legally detain and

remove an alien with deferred action status"). Therefore, this Court lacks jurisdiction to enjoin ICE's execution of Petitioner's removal order.

C. Petitioner's continued detention pending removal is lawful

Assuming this Court had jurisdiction to review Petitioner's claims, contrary to Petitioner's argument, Petitioner's detention is lawful pursuant to 8 U.S.C. § 1231. [ECF No. 53, p. 11]. Petitioner is subject to a valid reinstated order of removal under 8 U.S.C. § 1231(a)(5). *See* Exh. K. More specifically, 8 U.S.C. § 1231(a)(5) provides that,

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

See 8 U.S.C. § 1231(a)(5). During the removal period, the Attorney General is required to detain the alien. 8 U.S.C. § 1231(a)(2)(A). Notably, 8 U.S.C. § 1231(a)(6) allows the government to detain an alien ordered removed beyond the removal period if the individual, like Petitioner, is inadmissible under 8 U.S.C. § 1182.

The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), that an alien subject to a final removal order may be detained for "a period reasonably necessary to secure removal." Such detention is "presumptively reasonable" for six months. *Id.* at 701. However, "[t]his 6–month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* Rather, an alien, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* "Therefore, in order to state a claim under *Zadvydas*[,] the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Where an alien cannot meet his

burden of establishing that the evidence shows that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

If a petitioner has been detained fewer than six months, then the § 2241 petition should be dismissed as premature. *See Phadael v. Ripa*, No. 24-CV-22227-RKA, 2024 U.S. Dist. LEXIS 109481, 2024 WL 3088350, at *3 (S.D. Fla. June 21, 2024) (Because the petitioner "filed his Petition . . . comfortably within both the six-month period of presumptive reasonableness under *Zadvydas* and the ninety-day mandatory detention period set by § 1231(a)(1), . . . his § 2241 petition must be dismissed as premature."(emphasis in original); *Allotey v. Mia. Field Off. Dir., Immigr*, 24-cv-24765-DPG, 2024 WL 5375519, , *5 (S.D. Fla. December 10, 2024) (denying habeas petition has premature under *Zadvydas* when petitioner had only been detained for eighteen days prior to filing the habeas petition).

In this case, Petitioner has been detained since October 26, 2025, thereby making the six-month *Zadvydas* analysis premature. However, to the extent that Petitioner argues that his prior detention should count toward the total time of detention for this *Zadvydas* analysis, courts have held that the six-month *Zadvydas* presumptively reasonable detention period restarts when a Petitioner is released for a lengthy period and then re-detained. *See Barrios v. Ripa,* Case No. 25-cv-22644-Gayles, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) (rejecting petitioner's argument to count his detention in the aggregate based on prior detentions, noting that "any subsequent period of detention, even one day, would raise constitutional concerns" and "adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General-effectuating removals" citing to 8 U.S.C. § 1252(g)); *see also Meskini v. Att'y Gen. of United States,* No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga.

Mar. 14, 2018)(noting a "strong argument exists" the removal period did not begin until the petitioner, who had previously been in ICE custody before serving a prison sentence, was returned to ICE custody). Therefore, the Petition is premature under *Zadvydas*. Furthermore, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. Thus, he is not entitled to habeas relief, and the Petition must be dismissed.

D. Petitioner's "deferred status" does not preclude ICE from executing a removal order

Accordingly, Petitioner's argument that the deferred action grant he received from USCIS precludes his removal is without merit. As noted earlier, "deferred action" is not equivalent to a stay of removal. Indeed, Petitioner's notice of his favorable bona fide determination clearly notified Petitioner this his deferred action grant "is an act of administrative convenience to the government which gives some cases lower priority for removal." *See* [ECF no. 1-3]. This is consistent with the definition of "deferred action" in the chapter in USCIS's Policy Manual concerning U visa bona fide determinations. "Deferred action" is an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States." *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited November 2, 2025.) Moreover, the filing of a U-visa petition "has no effect on ICE's authority to execute a final order . . .." 8 C.F.R. § 214.14(c)(1)(ii). USCIS's adjudication of a U-visa petition can continue even if someone is overseas. *See also* 8 C.F.R. § 214.14(c)(5)(i)(B). Therefore, Petitioner's argument fails, and it follows that ICE's discretionary decision to detain and remove him pursuant to the valid reinstated order of removal does not violate the Due Process Clause and the APA.

In sum, this Court should find that Petitioner's detention is lawful pursuant to the Fifth Amendment, the APA and dismiss this habeas claim in its entirety.

III. TRO MOTION

In order to obtain the extraordinary remedy of a preliminary injunction, a plaintiff must prove: "(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). Because a preliminary injunction is "an extraordinary and drastic remedy," it should not be granted unless the plaintiff "clearly carries the burden of persuasion as to the four prerequisites." *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (citation and internal quotations marks omitted).

1. No Substantial Likelihood of Success on the Merits

In his TRO motion, Petitioner requests the Court enjoin Respondents from detaining and deporting him while he is the beneficiary of a grant of deferred action, enjoin Respondents from requesting expedited adjudication of Petitioners U-visa petition while this habeas petition is pending, and enjoin Respondents from revoking his deferred status and employment authorization. *See* ECF no. 8, p. 5]. 8 U.S.C. § 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General" *See* § 1252(a)(2)(B)(ii).

Accordingly, as stated earlier this Court does not have jurisdiction under 8 U.S.C. § 1252(g) to enjoin ICE from removing Petitioner to Honduras pursuant to a valid order of removal. Congress has spoken clearly that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence

proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). *See also Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order— and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders."). § 1252(g) plainly bars direct attacks on the legality of the removal order.

Next, for the reasons outlined above, Petitioner's detention is lawful, despite his "deferred status." Petitioner is being detained to affect his removal pursuant to a valid reinstated order of removal. *See* Exh. K. Furthermore, the Supreme Court has emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (emphasis added). The Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and, in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Additionally, as previously stated herein, Petitioner has been detained since October 26, 2025, as a result any *Zadvydas* claim is premature.

Furthermore, the relief sought by Petitioner, namely, to enjoin ICE from detaining and removing him while his U-visa application is pending, is relief that is unavailable in habeas. Such relief is not a challenge to the legality of Petitioner's detention. The traditional function of the writ is to seek one's release from unlawful detention. *Department of Homeland Security v. Thuraissigiam*, 140 S.Ct. 1959, 1969 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). As the Supreme Court has held, relief other than "simple release" is not available in a habeas action. *See Thuraissigiam,* 140 S.Ct. at 1970-71 (Claims so far outside the core of habeas

may not be pursued through habeas.") (internal quotations and citations omitted). Therefore, for these reasons, Petitioner's habeas claim is not likely to succeed on the merits.

2. Irreparable Injury Will Not Be Suffered

Petitioner cannot prove irreparable harm will occur if the injunction is not issued. As explained above, USCIS can continue to adjudicate Petitioner's U-visa application even after his removal to Honduras. Furthermore, there is no indication that USCIS intends to take any action to remove Petitioner from the U-visa petition waiting list while he waits for a visa to become available to him. And finally, Petitioner would not be irreparably injured by denying a stay when these habeas proceedings cannot provide the relief that Petitioner seeks. Therefore, Petitioner has not shown irreparable harm.

3. Petitioner Cannot Show Threatened Injury Outweighs Whatever Damages the Proposed Injunction May Cause the Opposing Party.

Third, the threatened injury to Petitioner does not outweigh the damage the injunction will cause Respondents. An injunction precluding Respondents from removing Petitioner would deprive Respondents of their statutory discretionary ability to execute his removal order. The government's interests in maintaining the existing removal procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Petitioner's request for a stay would result in the extension of "ongoing violation[s] of United States law" through delay and fragmentation of the enforcement of the immigration laws. *Reno v. American-Arab Anti-Discrimination Committee, 525* U.S. 471, 491 (1999).

4. If Issued, the Injunction Would be Adverse to the Public Interest

An issuance of an injunction preventing Respondents from executing the removal order would be adverse to the public interest because enforcing federal immigration law furthers the public's interest. *See Garcia v. Martin*, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order "is commensurate with the public's interest in enforcing federal law."). "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (alterations in original); *see Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("The Government's interest in efficient administration of the immigration laws . . . is weighty."). Detention following entry of a final removal order remedies this risk by "increasing the chance that, if ordered removed, the alien[] will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003).

Finally, and particularly important here, the government has a vital interest in protecting public safety. *See id.* at 518-19. Petitioner is a flight risk by virtue of the fact that he has entered the country illegally multiple times and is a danger to the community given the fact that he has been convicted of multiple DUIs. Petitioner's conduct certainly shows that he is unlikely to comply with future orders unless within ICE custody. And therefore, should this court find that a preliminary injunction prohibiting Respondents from removing Petitioner while he has deferred action is warranted, then Respondents respectfully request this Court to order that Petitioner remain in ICE custody pending the adjudication of his U-visa application. *See Espinoza-Sorto* No. 25-CV-23201-Gayles, 2025 WL 3012786 at *6 (S.D. Fla. October 28, 2025) (holding that

Respondents could not remove Petitioner while he was under deferred status but could nonetheless detain Petitioner pending adjudication of his U-visa application).

IV. CONCLUSION

For the foregoing reasons set forth above, the Court should deny the Petition, deny the Motion for TRO, and dismiss this case.

Dated: November 5, 2025.

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Chantel Doakes Shelton
Chantel Doakes Shelton
Assistant United States Attorney

EXHIBIT LIST
Case 25-cv-25011-WILLIAMS

Exhibit A: Form I-213, Record of Deportable/Inadmissible Alien, dated January 18, 2010.

Exhibit B: NTA, dated January 18, 2010.

Exhibit C: Order of the Immigration Judge dated December 21, 2010.

Exhibit D: Declaration of Deportation Officer Ronald Andersson (DO Andersson).

Exhibit E: Form I-213, dated April 9, 2012.

Exhibit F: Disposition Order, Broward County Circuit Court, Case No., 12-005121-CF-10A, dated July 25, 2012.

Exhibit G: Judgment, St. Lucie County, Case No., 12Ct-685172, dated August 16, 2012.

Exhibit H: NTA, dated April 9, 2012.

Exhibit I: Order of the Immigration Judge dated October 9, 2012.

Exhibit J: Form I-205, Warrant of Removal/Deportation, dated October 1, 2012.

Exhibit K: Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated June 21, 2013.

Exhibit L: Form I-205, Warrant of Removal/Deportation, dated June 21, 2013.

Exhibit M: Judgment, Miami Dade County Court, Case no. 3579XBR, dated October 30, 2017.

Exhibit N: Detention History.