IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25011-WILLIAMS

ELVIN DONALY **GARCIA CASTILLO**,

Petitioner/Plaintiff,

v.

CHARLES **PARRA**, Assistant Field Office Director, *et* al.

Respondents/Defendants.
_____/

PETITIONER'S REPLY IN SUPPORT OF HIS AMENDED EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

COMES NOW Petitioner, Elvin Donaly Garcia Castillo, by and through undersigned counsel, and pursuant to this Court's Order entered on November 6. 2025 [ECF No. 13], respectfully files his reply in support of his Amended Emergency Motion for Preliminary Injunction and/or Temporary Restraining Order, [ECF No. 12]. For the reasons set forth, Petitioner requests that this Court hear Petitioner's petition for Habeas and grant the TRO Motion.

As set forth below, venue is proper in this District because the Miami Field Office exercises practical control over Petitioner's detention and removal. The Court has jurisdiction to review Petitioner's claims under 28 U.S.C. § 2241, and neither 8 U.S.C. § 1252(g) nor § 1252(a)(2)(B)(ii) bars judicial review of the legal and constitutional issues raised. Petitioner's request for injunctive relief is likewise not barred, as it seeks to preserve the status quo and not to compel discretionary immigration benefits.

Contrary to Respondents' argument, Petitioner does not challenge the validity of his reinstated removal order. Rather, he challenges the legality of his continued detention by

Immigration and Customs Enforcement ("ICE") following the February 2025 grant of deferred action and employment authorization by U.S. Citizenship and Immigration Services ("USCIS").

For the reasons set forth herein, and in light of the constitutional and statutory protections afforded to noncitizens subject to discretionary enforcement, Petitioner respectfully requests that this Court grant the relief sought in his Verified Petition and TRO Motion.

I. ARGUMENT

A. Venue is proper in the Southern District of Florida

Respondents argue that venue is improper in the Southern District of Florida because Petitioner is physically detained at the Florida Soft-Sided Facility South ("FSSFS") in Collier County, which lies within the Middle District of Florida. ECF No. 12. However, this argument overlooks the practical realities of immigration detention and the legal authority exercised by the Miami Field Office of Immigration and Customs Enforcement ("ICE"), which is located within this District.

In *Masingene v. Martin*, 424 F. Supp. 3d 1298 (S.D. Fla. 2020), this Court held that the proper respondent in an immigration habeas case was the Director of the ICE Field Office responsible for overseeing the contract facility where the petitioner was detained, not the warden of the facility. The court reasoned that the ICE Field Office Director exercised legal and practical control over the petitioner's detention and removal and was the official capable of responding to the habeas petition.

Similarly, in *Friends of the Everglades, Inc. v. Noem*, 1:25-cv-22896 (S.D. Fla. Aug. 21, 2025), this Court found that venue was proper in the Southern District of Florida for litigation involving the construction and operation of the FSSFS facility, despite its physical location in Collier County. This Court emphasized that the federal agencies responsible for the facility's oversight

and enforcement actions operated out of offices located within the Southern District, and that venue was appropriate where functional control was exercised.

Just as in *Masingene*, the Miami Field Office exercises direct authority over Petitioner's detention, custody decisions, and removal planning. 424 F. Supp. 3d at 1302-03 (quoting *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952 (S.N.D.Y. 2018) (holding that the proper respondent to plaintiff's habeas petition is the Director of the Miami Field Office for ICE, who is responsible for supervising federal immigrant detainees at a county detention center). The FSSFS facility is a contractor-operated facility that lacks independent authority to detain or respond to habeas claims, similar to the Baker County Detention Center. The ICE Miami Field Office, by contrast, is the entity responsible for coordinating with USCIS, executing removal orders, and making discretionary decisions regarding detention.

Accordingly, venue is proper in the Southern District of Florida under 28 U.S.C. § 2241 and § 1391(e), and the Miami Field Office Director is a proper respondent. Dismissing the petition or transferring it based solely on physical location would elevate form over substance and undermine the purpose of habeas review in immigration detention cases. Thus, this Court should retain jurisdiction over Petitioner's claim.

B. Petitioner's claims are not barred by 8 U.S.C. § 1252(g) or § 1252(a)(2)(B)(ii)

Respondents argue that this Court lacks jurisdiction to review Petitioner's claims under 8 U.S.C. § 1252(g) and § 1252(a)(2)(B)(ii). This argument mischaracterizes the nature of the relief sought and the scope of the statutory bars.

Petitioner does not challenge the validity of his reinstated removal order or seek to enjoin the execution of removal. Rather, Petitioner challenges the legality of his continued detention following the February 2025 grant of deferred action and employment authorization by Respondents. The

jurisdictional bar under § 1252(g) applies only to claims, "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." Petitioner's claims do not arise from any of those actions. Instead, they arise from Respondents' decision to detain him despite a prior discretionary grant of deferred action and the absence of any new adverse conduct.

Courts have consistently held that § 1252(g) does not bar review of detention-related claims. *See Madu v. United States AG*, 470 F.3d 1362, 1368 (11th Cir. 2006) (stating 1252(g) bars courts from reviewing certain exercises of discretion by the attorney general, but it does not prevent courts from reviewing the legal or constitutional basis for those actions); *see also Espinoza-Sorto v. Agudelo*, No. 1:25-cv-23201, 2025 U.S. Dist. LEXIS 212217, at *9 (S.D. Fla. Oct. 28, 2025) (holding the court "does have jurisdiction to review whether [ICE] can legally detain and remove an alien with deferred action status").

C. Petitioner's continued detention is unlawful

Respondents further contend Petitioner has failed to show that his removal is not reasonably foreseeable and Petitioner's Deferred Action Status does not preclude his removal. ECF No. 12, p. 12-13. Respondents rely on the USCIS Policy Manual to explain the legal effect of deferred action on Petitioner's continued detention and removal process. *Id.* This is a red herring. *See Diaz v. USCIS*, 499 F. App'x 853, 855 (11th Cir. 2012) (explaining that field manuals and internal administrative guidance documents do not have the force or effect of law).

Instead, the Supreme Court confirmed in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) deferred action means "no action will thereafter be taken to proceed against an apparently deportable alien." This Court has also ruled deferred action status confers that no deportation will be taken against an alien who has it. *See Espinoza-Sorto v. Agudelo*, No. 1:25-cv-

23201, at *11-12 (S.D. Fla. Oct. 28, 2025) ("the government's grant of deferred action means that no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.") (quoting *Ayala*, 2025 U.S. Dist. LEXIS 142123 at *7) (internal quotations omitted); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 n. 2 (11th Cir. 2012) ("Deferred action status . . . amounts to, in practical application, a reprieve for deportable aliens. No action (i.e. no deportation) will be taken . . . against an alien having deferred action status.") (quoting Pasquini v. Morris, 700 F.2d 658, 661 (11th Cir. 1983)) (internal quotations omitted). Furthermore, Respondents misapply 8 C.F.R. § 214.14(c)(1)(ii), a provision that applies narrowly to individuals who have merely filed a U-visa petition. ECF 12, p. 13. This statute does not address the legal status or protections afforded to individuals who have already been placed on the U visa waiting list and granted deferred action under 8 C.F.R. § 214.14(d)(2).

Petitioner is not a mere filer. Respondent USCIS placed Petitioner on the U visa waiting list on February 12, 2025. ECF 1-3. This placement conferred him the benefit of deferred action status and an employment authorization document. ECF 1-3. Respondents issued him an Employment Authorization Document ("EAD") valid until February 11, 2029. *Id.* As the purpose of his detention is to effect removal, it follows that Petitioner also cannot be detained due to his deferred action status. *See Espinoza-Sorto*, No. 1:25-cv-23201, at *11-12; *see also Georgia Latino Alliance for Human Rights* 691 F.3d at 1258 n. 2. Thus, Petitioner's removal is not reasonably foreseeable as his deferred action status is arguably valid until 2029, making his continued detention unlawful as Respondents have no legal basis to detain him. *See Ayala*, No. 2:25-CV-01063-JNW-TLF, at *4 ("deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain [Ayala] and that [Ayala] has met his burden on his habeas petition.")

Respondents' assertion that Petitioner's Zadvydas claim is premature is without merit. Zadvydas requires a showing that removal is not reasonably foreseeable, but here, removal is legally impossible during Petitioner's active deferred action status, which remains valid until 2029. To require Petitioner to wait 180 days before challenging his detention would elevate form over substance and ignore the reality that there is no legal basis for his detention. Where removal cannot occur as a matter of law, continued detention is unlawful from the outset.

II. TRO MOTION

1. Substantial likelihood of success on the merits

The main purpose of a Temporary Restraining Order ("TRO") or a preliminary injunction is to preserve the status quo and protect the rights of the parties until a more complete hearing can be held. *See Robinson v. AG*, 957 F.3d 1171, 1178-79 (11th Cir. 2020) ("[t]he chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated.") (quoting *Ne. Fla. Ch. of Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1284 (11th Cir. 1990)). Out of the four elements, Plaintiff's likelihood of success on the merits is the most important factor. *See ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1294 (S.D. Fla. 2008).

Petitioner has a substantial likelihood of success on the merits. As explained above, his continued detention is unlawful because his deferred action status, valid until 2029, renders removal legally impossible. Courts have consistently held that deferred action prevents removal and, by extension, eliminates any lawful basis for detention. *See Espinoza-Sorto v. Agudelo*, No. 1:25-cv-23201, at *11-12 (S.D. Fla. Oct. 28, 2025); *Ayala v. DHS*, No. 2:25-CV-01063-JNW-TLF, at *4. Because Respondents cannot lawfully remove Petitioner, he is likely to prevail on his habeas claim.

2. Irreparable injury will be suffered

The APA provides that "to the extent necessary to prevent irreparable injury," the Court may issue "all necessary and appropriate process . . . to preserve status or rights pending" these proceedings. 5 U.S.C. § 705. The factors used by courts for a request to stay agency action "substantially overlap with the factors governing preliminary injunctions." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019); *Nken v. Holder*, 556 U.S. 418, 428 (2009) (describing a stay as "halting or postponing" operation of an action or "temporarily divesting an order of enforceability"). Moreover, "[i]t is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Contrary to Respondents' argument, this Court has authority to enjoin Respondents pursuant to 5 U.S.C. § 705. Petitioner requests this Court to enjoin Respondents from revoking his deferred action and requesting expedite adjudication of his U visa to preserve the status quo pending his Habeas petition. *Id*; *see also* 8 U.S.C.S. § 1252 (a)(2)(D) ("[n]othing in subparagraph (B) . . . which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court . . . .") Petitioner faces immediate and irreparable harm absent a stay of agency action. Every day of unlawful detention constitutes a deprivation of liberty which is irreparable injury. *See Nken*, 556 U.S. at 428. Here, Respondents' detention of Petitioner directly contravenes his deferred action status and employment authorization, stripping him of the protections conferred by USCIS and undermining his ability to work and support his family. These injuries are ongoing and cannot be remedied after the fact. The release of Petitioner from his unlawful continued detention would stop these irreparable injuries, thus the habeas petition does provide the relief Petitioner seeks.

3. Last two factors

Assessing the last two factors, threatened injury outweighs damages on opposing party and weighing the public interest, merge when the government is the opposing party. *Nken*, 556 U.S. at 435.

Petitioner faces ongoing unlawful detention, a severe deprivation of liberty that cannot be undone. In contrast, Respondents suffer no cognizable harm from maintaining the status quo because they lack legal authority to remove Petitioner while his deferred action status remains valid until 2029. Preserving Petitioner's liberty does not strip Respondents of legitimate discretion; rather, it prevents them from acting contrary to law. The government's generalized interest in enforcing immigration laws does not justify detention where removal is legally impossible. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (recognizing that courts weigh equities when considering stays). Here, the equities overwhelmingly favor Petitioner because the alternative is continued unlawful confinement.

Granting a TRO serves, not undermines, the public interest. The public has a strong interest in ensuring that government agencies comply with the law and respect constitutional and statutory rights. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (recognizing public interest in lawful administration). Respondents argue that enforcement of removal orders furthers the public interest, but that principle presumes a lawful removal process. Where removal is legally barred by deferred action, detention does not advance enforcement but perpetuates an unlawful act. Maintaining the status quo until the Court resolves the merits promotes confidence in the rule of law and prevents irreparable harm without impairing legitimate government interests.

Lastly, Respondents' reliance on *Espinoza-Sorto* is misplaced. They argue that, if the Court issues a preliminary injunction, Petitioner should remain in ICE custody pending adjudication of his U-visa application. However, Respondents omit a critical fact: the Court in *Espinoza-Sorto* declined to order release because of the petitioner's alleged association with MS-13, a transnational criminal organization. Petitioner has no such history.

Respondents point to Petitioner's prior criminal record as proof he will not comply with future orders, but this is a conclusory and unsupported assertion. Petitioner disclosed his full criminal history when filing Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, in conjunction with his U-Visa application seeking a waiver of any inadmissibility grounds applicable. Exhibit 14-1. Under INA § 212(d)(14), U nonimmigrant applicants may apply for a waiver of any inadmissibility ground except those in INA § 212(a)(3)(E) [participants in Nazi persecutions, genocide, torture, or extrajudicial killing]. The INA authorizes USCIS to grant an inadmissibility waiver for U nonimmigrants when a waiver would be in the "public or national interest." *Id.* In light of full disclosure, Respondents granted Petitioner deferred action and issued employment authorization valid until 2029. Moreover, Petitioner has had no law enforcement encounters for over eight years, hardly evidence of flight risk or danger. Mere speculation cannot serve as basis for continued detention. *See Yee S. v. Bondi*, No. 25-CV-2782 (D. Minn. Oct. 9, 2025) (court granted habeas relief, ordering the plaintiff's release where ICE failed to show any legitimate changed circumstances to justify re-detention).

III. CONCLUSION

For the reasons stated above, Petitioner's respectfully requests that the Court grant the requested relief and issue a Temporary Restraining Order to prevent further unlawful detention.

Respectfully submitted this 7th day of November 2025,

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CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on November 7, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

By: **/s/ Alexandra Friz-Garcia**
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