UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAIRO JOSE ESPINOZA CRUZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 3:25-cv-919-CCB-SJF
	)	
BRIAN ENGLISH, Warden, Miami Correctional Facility, *et al.*,	)	
	)	
	)	
Respondents.	)	
	)	

RESPONSE TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

This is a *habeas* case where the petitioner, Jairo Jose Espinoza Cruz ("Espinoza Cruz"), seeks a preliminary injunction enjoining Respondents from transferring him out of the Miami Correctional Facility during the case. The Court should deny his motion because it lacks subject matter jurisdiction under 8 U.S.C. § 1252(g). But even if the Court had jurisdiction, Espinoza Cruz has no likelihood of success on the merits and cannot show irreparable harm. Therefore, the Court should deny his request for injunctive relief.

INTRODUCTION

Espinoza Cruz is a Nicaraguan national who has never been legally admitted into this country and is subject to a final order of removal. Espinoza Cruz is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Miami Correctional Facility in Bunker Hill, Indiana.

Espinoza Cruz filed a petition for a *writ of habeas corpus* seeking his immediate release. At issue here, he also moved for a preliminary injunction to prevent his transfer from the Miami Detention Facility during this case. Espinoza Cruz argues his current detention is unlawful and that transferring him to a different facility would cause irreparable harm.

The Court should deny his motion for several reasons. First, the Court lacks jurisdiction because Espinoza Cruz's *habeas* petition and motion seek to challenge DHS decisions to execute his final removal order. Section 1252(g) bars judicial review of such decisions. Setting jurisdiction aside, his motion fails on the merits. Espinoza Cruz has been subject to post-final removal order detention for less than six months and his detention is presumptively reasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Espinoza Cruz cannot demonstrate that his detention violates due process and thus he cannot succeed on the merits of his *habeas* petition. Espinoza Cruz also fails to show that he is likely to suffer imminent, irreparable harm if a preliminary injunction is not granted. For these reasons, the Court should deny Espinoza Cruz's motion.

STATUTORY AND REGULATORY BACKGROUND

A. Detention under 8 U.S.C. § 1231

A removable alien may be detained during his removal proceedings and after he receives an order of removal. *See* 8 U.S.C. §§ 1225, 1226, 1231. Once an alien becomes subject to a final removal order, the authority for his detention shifts to section 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528-29 (2021).

Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal. 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following: (i) the date the order of removal becomes administratively final, (ii) if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order, or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

Under section 1231, the Attorney General is required to detain aliens throughout the 90-day "removal period." 8 U.S.C. § 1231(a)(1)-(2). After that time elapses, however, 8 U.S.C. § 1231(a)(6) provides certain aliens "may be detained" while efforts to complete removal continue. 8 U.S.C. § 1231(a)(2), (6); 8 C.F.R. § 241.4(a)(1), (4).

In *Zadvydas,* the Supreme Court interpreted section 1231(a)(6) to limit an alien's detention beyond the removal period to the period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678, 689 (2001). The *Zadvydas* Court held that a period of six months from the date the removal order becomes final is presumptively reasonable. *Id.* at 701. But the Supreme Court cautioned that the "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 695. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* In short, *Zadvydas*'s interpretation of section 1231(a)(6) protects against the indefinite detention of alien

in "removable-but-unremovable limbo[.]" *Jama v. ICE*, 543 U.S. 335, 347 (2005); *see Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022); *Zadvydas*, 533 U.S. at 70.

B. The U Visa Program

In October 2000, Congress created "U nonimmigrant status," for victims of qualifying crimes who cooperate with law enforcement in the investigation or prosecution of those crimes. *See* 8 U.S.C. § 1101(a)(15)(U). Congress limited the number of principal U visa grants to 10,000 each fiscal year. 8 U.S.C. § 1184(p)(2). Anticipating that petitioners would exceed the annual statutory cap, the United States Citizenship and Immigration Services ("USCIS") created a waiting list. *See* 8 C.F.R. § 214.14(d)(2); *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007). USCIS may grant an employment authorization document (EAD) and deferred action or parole to both a petitioner and their qualifying family members on the waiting list. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 214.14(d)(2).

Although USCIS originally estimated that it would receive approximately 12,000 principal U visa petitions per year, *see* 72 Fed. Reg. at 53,033, the number of U visa petitions has far exceeded that estimate. The agency has received more than 20,000 principal petitions every year since 2012, including more than 30,000 per fiscal year from 2015 through 2018, and again in 2022, 2023, 2024, and the first two

quarters in 2025.[1] To accommodate the increasing number of U visa petitions and backlog of those awaiting placement on the waiting list or final adjudication, USCIS may, in its discretion, grant work authorizations to U visa petitioners after finding that they have pending, bona fide petitions and they do not pose a national security or public safety risk. 8 U.S.C. § 1184(p)(6). These are referred to as "bona fide determinations" or "BFDs." [2]

USCIS may also grant the U visa petitioner deferred action from removal. *See* 8 C.F.R. § 274a.12(c)(14). Deferred action is an act of administrative convenience that gives some cases lower priority for removal. *See id.*; USCIS Policy Alert No. PA-2021-13, "*Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners*," (June 14, 2021)[3]; USCIS Policy Manual, Volume 3, Part C, Chapter 5 – BFD Process. The petitioner then awaits the adjudication of the U visa petition.

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[1] *See* U.S. Citizenship and Immigration Services, *Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status ("I-918 Chart")*, https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2025_q2.xlsx (link opens Excel spreadsheet for downloading) (last accessed Aug. 27, 2025).

[2] Currently, USCIS adjudicates approximately 80% of such applications within 30.5 months. USCIS's case-processing times are available on the agency's public website. *See* https://egov.uscis.gov/processing-times (last accessed Aug. 27, 2025). This court may take judicial notice of these processing times. *See, e.g.*, *Lubega v. Mayorkas*, No. 23 C 17177, 2024 WL 4206425, at *2 (N.D. Ill. Sept. 11, 2024) (taking judicial notice of the case-processing times on the agency's website).

[3]https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf (last visited June 25, 2025).

C. Jurisdiction under 8 U.S.C. § 1252(g)

To streamline removal proceedings, Congress has restricted judicial review by removing federal courts' jurisdiction to hear certain immigration-related claims in certain forums. More specifically, section 1252(g) deprives all courts of "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," notwithstanding "any other provision of law (statutory or nonstatutory)" other than section 1252 itself.[4] 8 U.S.C. § 1252(g); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486–87 (1999) ("*AADC*") (noting § 1252(g) is "aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation" and that "that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings"); *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021) ("1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so.").

[4] Many provisions of the Immigration and Nationality Act ("INA") still refer to the Attorney General. In 2002, however, Congress transferred much of the INA's enforcement authority to the Secretary of Homeland Security. *See* 6 U.S.C. § 557; 8 U.S.C. § 1103; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019) ("Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.").

FACTUAL AND PROCEDURAL HISTORY

A. Petitioner's Removal Proceedings

Espinoza Cruz is a Nicaraguan citizen who entered the United States unlawfully in 2013. *See* Ex. 1 (redacted A-file) at 5. ICE arrested him at the southern border and charged him with removability under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. §§ 1182(a)(6)(A)(i), as "an alien present in the United States who has not been admitted or paroled." *Id.* Espinoza Cruz conceded he was inadmissible but asked for permission to leave the country voluntarily. In 2017, an immigration judge found Espinoza Cruz eligible for voluntary departure and gave him 60 days to leave the country. *See id.* at 8.

Espinoza Cruz appealed the IJ's decision. *Id.* at 11-13. In October 2018, the Board of Immigration Appeals denied his appeal and gave him a new 60-day period to voluntarily depart. *Id.* at 13. The Board noted that if he "fail[ed] to voluntarily depart" within that period, Espinoza Cruz "shall be removed." *Id.* ("In the event a respondent fails to voluntarily depart . . . the respondent shall be removed as provided by the Immigration Judge's order."). Espinoza Cruz never departed.[5]

B. Petitioner's U-Visa, Arrest, and Current Detention

In 2022, while he was subject to a final order of removal, Espinoza Cruz applied for U Nonimmigrant Status (U visa). DE # 7, p. 4. USCIS determined that Espinoza Cruz was BFD eligible but has not made a final adjudication on his U visa

[5] Espinoza Cruz later moved to reconsider the dismissal of his appeal which the BIA denied. He also moved to reopen his case, which the IJ denied.

due to annual statutory caps. *Id.* at 5.

In July 2025, Espinoza Cruz was arrested for "Domestic Battery Committed in the Presence of a Child Less than 16 Years Old" and "Domestic Battery – Bodily Injury – Pregnant Woman." *See* Ex. 1 at 5. The victim did not press charges against him. *Id.* On August 2, 2025, ICE arrested Espinoza Cruz as "an alien present in the United States without admission or parole." *Id.* Espinoza Cruz was transferred to the Miami Correctional Facility in October 2025, and he remains there pending his removal from the country.

C. *Habeas* Petition and Motion for Preliminary Injunction

In November 2025, Espinoza Cruz filed a petition for a *writ of habeas corpus* alleging that his detention violates his Fifth Amendment due process rights.[6] *See* DE #7. Espinoza Cruz also moved for a preliminary injunction, asking the Court to enjoin Respondents from transferring him to a different facility during this case. DE # 8.

LEGAL STANDARD

A preliminary injunction is meant to preserve the status quo pending a final, legal determination on the merits of the case. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). A preliminary injunction is "never awarded as of right," *Munaf v. Geren*, 553 U.S. 674, 690 (2008), and "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden

[6] Espinoza Cruz also alleges that his detention violates the INA but does not specify which provision is allegedly violated.

of persuasion," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotations omitted). A movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Michigan v. U.S. Army Corps of Eng'rs*, 667 F.3d 765 (7th Cir. 2011).

ARGUMENT

I. PETITIONER'S MOTION SHOULD BE DENIED BECAUSE HE HAS NO LIKELIHOOD OF SUCCESS ON THE MERITS.

The party seeking a preliminary injunction must make a strong showing that he is likely to succeed on the merits." *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020). "[A] possibility of success is not enough. Neither is a 'better than negligible' chance." *Id.* Espinoza Cruz has no likelihood of success in his *habeas* case because this Court lacks subject matter jurisdiction, and he cannot show his detention is unlawful or unconstitutional.

A. This Court Lacks Subject Matter Jurisdiction

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders* against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id.* Though this section "does not sweep broadly," *Tazu v. Att'y Gen.*

United States, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by section 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

The Seventh Circuit's decision in *E.F.L.* is instructive regarding what constitutes "any" challenge to one of section 1252(g)'s three stages. In that case, the *habeas* petitioner sought injunctive relief to prevent her deportation pending administrative review of another petition for immigration relief (more specifically, a petition for relief under the Violence Against Women Act ("VAWA")). *E.F.L.*, 986 F.3d at 961–62. Although the *E.F.L.* petitioner's VAWA petition was still pending with USCIS, the court of appeals nonetheless held that section 1252(g) barred habeas jurisdiction because the "habeas petition falls directly in § 1252(g)'s path" as she "challenge[d] DHS's decision to execute her removal order while she seeks administrative relief." *Id.* at 964. *E.F.L.* explained that section "1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so." *Id.* at 965 (alteration in original).

Here, like *E.F.L.*, Espinoza Cruz asks the Court to enjoin DHS from executing a final order of removal while he awaits the final adjudication on his immigration status (his U visa). Espinoza Cruz does not challenge the validity of his underlying removal order, nor does he raise any valid legal argument to support his release from detention. *See infra*, section Ib. Rather, he suggests that no removal order should be

executed while his derivative U visa petition is pending. That challenge is plainly barred by section 1252(g). *See AADC*, 525 U.S. at 482; *see also Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (holding that district court lacked jurisdiction under § 1252(g) to enjoin removal of foreign nationals with final orders of removal and pending U Visa petitions); *Rivas-Melendrez v. Napolitano*, 689 F.3d 732, 737-38 (7th Cir. 2012) (holding that district court lacked jurisdiction under § 1252(g) to hear foreign national's challenge to execution of removal order after his removal).

Any attempt to challenge his detention during DHS's execution of removal is equally barred. Section 1252(g) bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"). Here, Espinoza Cruz's petition seeks his immediate release from DHS custody, arguing that he is not a danger to the community nor a flight risk. This falls squarely within ICE's discretion and is barred under section 1252(g). *See, e.g., Albarran v. Wong*, 157 F.Supp.3d 779, 784–85 (N.D. Ill. 2016), *appeal dismissed* (7th Cir. Apr. 13, 2016) (the court lacked jurisdiction to hear challenges to discretionary denials of requests for stay of removal, rescission of reinstatement order, and release on order of supervision); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain

plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *see also Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) ("an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g)) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)). Accordingly, the Court lacks subject matter over both Espinoza's motion and his *habeas* petition.

B. Petitioner's Detention Does Not Violate Due Process

Jurisdiction aside, Espinoza Cruz fails to show that his detention is unconstitutional. The Supreme Court has held that the detention of an alien who is subject to a final order of removal is presumptively reasonable pursuant to section 1231(a)(6) for at least six months. *See Zadvydas*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005) (applying the holding in *Zadvydas* to aliens "ordered removed who [are] inadmissible under [§] 1182"). *Zadvydas* largely, if not entirely, forecloses due process challenges to section 1231 detention apart from the framework it established." *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) ("*Zadvydas* standard is due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation.")

Here, Espinoza Cruz is subject to a final order of removal and has been in DHS custody since August 2, 2025. *See* Ex. 1. Espinoza Cruz's post-final order detention has lasted less than six months and is thus presumptively reasonable under

Zadvydas. Moreover, Espinoza Cruz does not show that he faces indefinite detention or that there is no significant likelihood of his removal. Accordingly, Espinoza Cruz's detention does not violate due process and he is unlikely to succeed on the merits of his *habeas* petition.

II. PETITIONER'S MOTION SHOULD BE DENIED BECAUSE HE HAS NOT DEMONSTRATED IRREPARABLE HARM.

Espinoza Cruz has not shown that he is likely to suffer imminent, irreparable harm. A party seeking a preliminary injunction must demonstrate clearly, and through specific factual allegations, that immediate and irreparable injury will result to them absent the order. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983) (citations omitted). Only if the movant meets their burden of showing both a likelihood of success on the merits and an imminent risk of irreparable harm will courts then engage in further analysis. *See Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). "[T]he degree of proof required for 'irreparable harm' is 'high,' and that a failure to surmount it provides 'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.'" *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019) (citation omitted).

Here, Espinoza Cruz alleges that he will suffer irreparable harm because "deportation would forcibly separate [him] from his U.S. family." DE # 8 at 2. But Espinoza Cruz's alleged "irreparable harm" arises from his impending deportation, not his detention at Miami Correctional Facility. Thus, Espinoza Cruz fails to

demonstrate any irreparable harm beyond the typical hardship experienced by someone removed from an executed final order of removal.

Espinoza Cruz argues that DHS, unless enjoined, may transfer him outside of this Court's jurisdiction and his injuries would not be adequately addressed. DE # 8 at 5. He is wrong. First, section 1252(g) deprives *all* district courts from reviewing decisions by DHS to execute removal orders. Transferring him to a different facility does not change the outcome of his petition. Additionally, Espinoza Cruz's transfer to a different facility may be necessary to execute his removal from the country. In this sense,Espinoza Cruz's motion, at its core, is a collateral challenge to his deportation. And this court lacks subject matter jurisdiction to review orders of removal. *See Demore v. Kim*, 538 U.S. 510, 517 (2003). Accordingly, Espinoza Cruz fails to demonstrate any irreparable harm. The Court should deny his motion.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR RESPONDENTS.

With respect to the balancing of the equities and public interest, it is undisputed that Espinoza Cruz did not voluntary depart from this country and continued living here after he was already ordered removed. Espinoza Cruz received due process during his removal proceedings and appeal. Espinoza Cruz is subject to post-final order removal, which entitles the government to detain him. Espinoza Cruz has not shown that his continued detention (the status quo) will cause him irreparable harm. To the extent that he faces any hardship, it related to his removal from the country, not his transfer to a different detention facility. The government

and the public at large's interest in the timely enforcement of the immigration laws vastly outweigh any perceived harm. The Court should therefore deny the motion.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Motion and dismiss this case for lack of jurisdiction.

Respectfully submitted,

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