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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

JAIRO JOSE ESPINOZA CRUZ,)
)
Petitioner,)
)
v.)
)
BRIAN ENGLISH, Warden, Miami Correctional)
Facility; **KAMSING LEE**, of Indianapolis Field)
Office U.S. Immigration and Customs Enforcement;))
KRISTI NOEM, Secretary of the U.S. Department)
of Homeland Security; and **PAMELA JO BONDI**,)
Attorney General of the United States,)
in their official capacities,)
)
Respondents.)
)

Case No. 3:25-cv-919

**PETITIONER’S REPLY TO RESPONDENTS’ OBJECTION TO EMERGENCY TRO
AND PRELIMINARY INJUNCTION**

Petitioner Jairo Jose Espinoza Cruz, by counsel, respectfully replies to the Respondents’ Response to Petitioner’s Motion for Preliminary Injunction. DE #14. The Respondents argue that the preliminary injunction preventing Respondents and their agents from transferring him out of

Miami Correctional Facility during the pendency of this habeas proceeding should be denied based on lack of subject matter jurisdiction under 8 U.S.C. §1252(g). Prior to this Court issuing a ruling as to Petitioner's request for a preliminary injunction, **the Respondents have moved and/or allowed Petitioner to be moved outside of this Court's jurisdiction**; namely, Petitioner was moved in or near Adams County Correctional Center in Natchez, Mississippi, presumably in anticipation of immediate removal from the United States on or around November 26, 2025. Petitioner was moved again on or around November 29, 2025, however undersigned counsels are **unaware** of his current location. On November 30, 2025 Counsel for Respondents indicated that he requested Petitioner to remain in the U.S. pending action in this case, however he was unable to confirm Petitioner's whereabouts as of the filing of this pleading. The delay in filing of this reply is due, in part, to Counsel's inability to locate her client due to the Respondents' actions prior to the Court's ruling on the pending injunction. The request for a TRO and stay of removal is an emergency because Petitioner is subject to an order of removal, his removal is imminent, and **Respondents have already taken substantial steps to execute his removal thereby prematurely depriving this Court of jurisdiction.**

INTRODUCTION

Petitioner has filed a habeas petition under 28 U.S.C. §2241 challenging the legality of his detention. Respondents have *already* transferred him to another facility to at least three other facilities since this case was filed on November 7, 2025, which frustrates this Court's jurisdiction, impedes counsel's access to her client, and irreparably harms Petitioner's ability to pursue habeas relief.

Petitioner asserts that this Court does have jurisdiction over the continued and indefinite detention of Petitioner pursuant to 28 U.S.C. §2241 and the Due Process Clause of the Fifth

Amendment; and that this Court has jurisdiction to assess the appropriateness of execution of a removal order where a Petitioner has been granted deferred action pursuant to an application for U Nonimmigrant Status under 8 U.S.C. §1101(a)(15)(U) and 8 C.F.R. §214.14(d)(2) based on these statutory concerns, within the Administrative Procedure Act (APA), and fundamental due process concerns of the Fifth Amendment.

LEGAL STANDARD

Rule 65 authorizes the Court to issue a TRO and PI where the movement shows: the likelihood of success on the merits; likelihood of irreparable harm absent relief; that the balance of equities tips in his favor; and that the injunction is in the public interest. *Winter v Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, (2008); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Petitioner, Mr. Espinoza Cruz, is a 32-year-old citizen of Nicaragua. He entered the United States at the age of 17 and has remained in the country continuously since that time. Mr. Espinoza Cruz was previously issued voluntary departure on or about September 28, 2017. Mr. Espinoza Cruz apparently appealed the denial of a motion to continue, thereby converting the voluntary departure order to a removal order. DE # 14-1. A motion to reopen or reconsider this denied Appeal was also denied by the Board of Immigration Appeals (BIA). *Id.*

Following his removal order, on or around December 27, 2022 he applied for U nonimmigrant status (“U visa”), a form of immigration relief available to victims of certain qualifying crimes who have assisted or are willing to assist law enforcement under the Immigration and Nationality Act (“INA”). DE #7. The U.S. Citizenship and Immigration Services (“USCIS”) has determined that Mr. Espinoza’s U visa petition is prima facie approvable and issued a bona fide determination under 8 C.F.R. §214.14(d)(2) and work

authorization under 8 U.S.C. §1184(p)(6). *Id.* A final adjudication cannot yet be made because no U visas are currently available for issuance due to annual statutory caps. *Id.* Mr. Espinoza Cruz is also eligible for a waiver of inadmissibility in connection with his U visa application (form I-192 Advance Permission to Enter as Nonimmigrant is currently pending to waive inadmissibility, including Petitioner's removal order) pursuant to 8 C.F.R. §212.17. DE #7-3.

Mr. Espinoza has been detained for nearly four months. His detention arose from an argument with his domestic partner in late July 2025 that led to his arrest, however no criminal charges were ever filed by the State of Indiana. He currently has no pending criminal cases, and his record reflects that he poses no danger to the community and is not a flight risk. See attached *Exhibit 1* (criminal history chart). Petitioner also filed an I-246 Application for stay of removal on August 22, 2025. *Exhibit 2* (Receipt for filing of I-246). To date, said Application for Stay of Removal has yet to be adjudicated by ICE.

Mr. Espinoza has deep family and community ties in the United States. He has three U.S. citizen children, including a newborn child born during his detention. His two-year-old child has been diagnosed with Ectodermal Dysplasia, a rare genetic disorder requiring speech and occupational therapy and constant parental care, see DE # 7-4. His partner, who recently gave birth, is struggling to care for both the newborn and their special-needs child without his support. DE #7-6. Prior to his arrest, Mr. Espinoza worked diligently, paid taxes, and served as the primary provider for his family, while his partner remained home to care for their children. His continued detention deprives his partner and U.S. citizen children of practical support, emotional support and financial stability.

Given these circumstances, the continued detention of Mr. Espinoza is arbitrary, capricious, and legally unjustifiable. His release would not pose any risk to public safety and would serve

the humanitarian purpose underlying the U visa program. The United States Citizenship and Immigration Services has indicated when issuing Deferred Action and Bona Fide Determination on May 12, 2015 *he is not a priority for removal*. DE # 7-2. There have been no new facts or circumstances since USCIS issued Deferred Action to warrant removal.

ARGUMENT

Petitioner is likely to succeed on the merits.

Petitioner is likely to succeed on the merits as he has been detained without a review by ICE officer and has not yet been removed. Furthermore, Petitioner has been granted a bona fide U nonimmigrant visa determination and deferred action pursuant to 8 U.S.C. §1101(a)(15)(U) and 8 C.F.R. §214.14(d)(2), wherein USCIS warrants that Petitioner is not a priority for removal. USCIS has not rescinded or otherwise disturbed the finding of Deferred Action on behalf of Petitioner. Petitioner has not been charged with or convicted of any crimes justifying mandatory detention for criminal inadmissibility or deportability pursuant to 8 U.S.C. §1226(c). There have been no changed circumstances to justify change or revocation of deferred action.

While the Government points to 8 U.S.C. §1252(g) to assert that this Court has no jurisdiction due to the Petitioner's outstanding order of removal, the Government fails to overcome the statutory conflict between execution of a removal order by one arm of the Department of Homeland Security (DHS), namely ICE, just two months after another agency of DHS, namely USCIS, affirmatively issued Deferred Action protections under 8 C.F.R. §214.14(d)(2). Petitioner's detention and imminent removal contravene the protections that Petitioner was granted by USCIS through Deferred Action, representing a statutory conflict over which this Court does, in fact, have jurisdiction. To support its assertion that this Court is deprived of jurisdiction due to 8 U.S.C. §1252(g), it points to *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471

(1999). While the Supreme Court held in that particular case that 1252(g) barred jurisdiction, it clarified that this section grants the Attorney General sole authority with respect to three discrete actions: her “decision or action” to “*commence* proceedings, *adjudicate* cases, or *execute* removal orders.” (*emphasis added, Id.* at 478). This suit is not predicated on DHS’ enumerated authorities under 1252(g), rather it challenges the government’s failure to acknowledge the discretionary relief afforded to Petitioner by way of Deferred Action. The heart of this suit is that ICE has refused to follow procedure in reviewing Mr. Espinoza Cruz’s lawfully conferred Deferred Action status, not its inherent authority to execute removal orders. Had Mr. Espinoza Cruz not been granted BFD and Deferred Action, the Respondents arguments that his Court lacks authority to stay removal due to section 1252(g) may be persuasive, however the Respondents have not squared their arguments with the affirmative relief afforded by Deferred Action and its arbitrary and capricious taking of his liberty and property interests thereunder if the Respondents disregard these protections without due process. Phrased differently, this Court has authority to recognize viability of stays of removal and relief. If this Court finds that Petitioner was afforded protections and an automatic stay pursuant to his BFD and Deferred Action, they can find that the Respondent violated said stay without interfering with the ability of the government to execute removal orders under 1252(g).

In the same vein, Respondents argue that Petitioner’s continued detention is reasonable because he has not yet been detained for six months. *Zadvydas v. Davis*, 533 U.S. 678 (2001). This case discusses the 90-day detention time limit under 8 U.S.C. §1231(a)(1)(A). Once this required detention period elapses the Supreme Court held that continued detention up to six months is presumptively reasonable to bring about “the alien’s removal from the United States”. *Id.* at 689.

Section 1231, however allows for supervised release of the noncitizen. *Id.* at 1231(a)(3)¹ Not only may this Court stay Mr. Espinoza Cruz’s removal, this Court may order DHS to release him under order of supervision pending the outcome of this Court’s determination of his statutory, APA and Fifth Amendment Due Process claims.

In its response, the Government argues that deferred action protections fall under 8 C.F.R. §274a.12(c)(14) (see DE 14, p. 5), however this section of 8 C.F.R. refers to work authorization, not the explicit Deferred Action protections afforded pursuant to U Nonimmigrant status. While eligibility for work authorization is important and should also be considered a benefit worthy of protection under the Fifth Amendment Due Process Clause (i.e. property protections), Petitioner argues that his fundamental liberty interests are at stake, not just work authorization. His detention and execution of any removal order is at odds with USCIS’ issuance of Deferred Action. Petitioner has been afforded no notice of rescission of Deferred Action, much less had an opportunity to respond or have a tribunal review the DHS’ rescission of Deferred Action. The Respondent (USCIS) has had nearly four months to issue notice of rescission or review of its determination of Deferred Action, however it has failed to issue any notice disturbing the grant of “favorable exercise of discretion”. ICE has also failed to adjudicate Petitioner’s pending I-246 Application for Stay of Removal. But for the statutory cap on U Visas, Petitioner very well may have been in lawful U Nonimmigrant Status at the time of his detention. USCIS’ issuance of a Bona Fide

¹ **Supervision after 90-day Period.** If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien-

- (A) to appear before an immigration officer periodically for identification;
- (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

Determination (BFD) and Deferred Action may act as an administrative stay of removal and as it stands, this status remains unrevoked and in effect under governing regulations. DE #7-2. Courts in various Districts across the country have come to the same conclusion – that this an arbitrary and capricious statutory conflict resulting in a violation of the APA that is likely to result in Petitioner’s success on the merits. See *Gomez v. Scott* 2025 U.S. Dist. LEXIS 81249, at *3 (W.D. Wash. Apr. 29, 2025); see also *Maldonado v. Noem, et al.* (4:25-cv-02541), DE #8.

The Respondent points to *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) to argue that section 1252(g) precludes this Court from exercising any jurisdiction as to DHS’s authority to execute a removal order. In that case the petitioner was requesting a stay of her removal pending administrative relief in the form of a petition for protections under the Violence Against Women Act (“VAWA”). While an applicant may receive “prima facie” eligibility for the benefit sought through VAWA, VAWA does not offer Deferred Action protections by statute. By contrast, here Mr. Espinoza Cruz was granted affirmative protection of Deferred Action by statute, which is an exercise of discretion deeming him low priority for removal. This benefit created a reliance interest that the Petitioner in *E.F.L.* did not have. Mr. Espinoza Cruz’s continued detention and execution of the removal order represents an arbitrary and capricious action by the Government in violation of the APA, because he has not been afforded review of his BFD and Deferred Action designation.

Mr. Espinoza Cruz’s case has been deemed bona fide (“prima facie approvable”) and he is eligible for an administrative stay of removal pursuant to 8 U.S.C. §1227(d)(1). In addition to the grant of Deferred Action, Petitioner has applied for a Stay of Removal under 8 U.S.C. §1231(c)(2) (see *Exhibit 2*), however to date the Secretary of Homeland Security has not adjudicated such request. See *Raghav v. Jaddou*, No. 2:25-cv-00408-DJC-JDP, 2025 U.S. Dist. LEXIS 18889 at *4 (E.D. Cal. Feb. 3, 2025). Furthermore, his Deferred Action status remains undisturbed.

Finally, Mr. Espinoza Cruz's request for a TRO and injunction should be granted because he is likely to successfully show a violation of the Fifth Amendment Due Process Clause. This Clause protects individuals in removal proceedings. *Delgado v. Holder*, 674 F.3d 759 (7th Cir. 2012) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993); also holding that 8 U.S.C. §1252(a)(2)(D) allows courts to review constitutional claims or questions of law). Noncitizens facing removal should be afforded notice and a meaningful opportunity to be heard prior to removal. *Id.* In Mr. Espinoza Cruz's case, ICE detained and has taken substantial steps to execute a removal order against Petitioner without offering him notice, a hearing or meaningful opportunity to assess his *lawful* grant of deferred action on his potential removal in contrast to the Petitioner in *Delgado*. This grant of Deferred Action renders him presumptively ineligible for removal. The Respondents in their reply do not square or even attempt to explain this inconsistency. If Mr. Espinoza Cruz is summarily removed, USCIS's grant of deferred action is rendered meaningless. The liberty interests and benefits of Deferred Action would be unlawfully taken without due process.

Petitioner faces irreparable harm absent relief

Petitioner will suffer irreparable harm. Deportation would forcibly separate Petitioner from his U.S. citizen family, a harm courts have consistently deemed irreparable. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Removal would also render moot Petitioner's deferred action and work authorization, with no concrete avenue for reinstatement if he prevails in this action and indefinite separation from his family. This Court would be deprived of jurisdiction to analyze the Government's arbitrary and capricious actions under the APA, and the Fifth Amendment due process violations. Petitioner's family would face severe financial and emotional hardship, leaving the mother of his children alone to care and provide for a newborn and a two-year old with a genetic disorder. Finally, the purpose of the U Nonimmigrant visa is to allow victims of violent

crimes protections and the ability to remain in the U.S. while law enforcement agencies pursue justice against their attackers.² While the U Nonimmigrant petition will survive despite Petitioner's removal, the government will lose its victim and star witness, which frustrates the congressional intent of this avenue of relief, and jeopardizes ongoing criminal investigations.

The balance of equities favors Petitioner and the public interest supports relief.

The equities weigh decisively in Petitioner's favor. Without an injunction, he will continue to suffer unlawful detention and faces the additional risk of being transferred to another facility, which would impede his access to counsel and interfere with this Court's ability to adjudicate his habeas petition. The Respondents *have already transferred Petitioner without awaiting adjudication of this action by this Court*. Petitioner has already suffered harm from being transferred across the country to at least three different detention facilities. These harms are significant, irreparable, and cannot be remedied once they occur. In contrast, Respondents will experience no meaningful hardship from maintaining Petitioner at the Miami Correctional Facility or other similar facility located within the Northern District of Indiana during the pendency of this action. Courts routinely recognize that the government has no valid interest in enforcing unlawful detention practices or in transferring a detainee in a manner that obstructs judicial review.

The public interest likewise supports injunctive relief. It is served when federal detention authority is exercised within the bounds set by Congress and when constitutional safeguards are respected. Permitting DHS to transfer Petitioner while his habeas petition remains pending would

² The Victims of Trafficking and Violence Protection Act "was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes." <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>. Last accessed 11/30/2025.

undermine both principles by hindering judicial review and limiting his access to counsel. Preserving the status quo ensures that Petitioner can meaningfully pursue relief before this Court and that his detention remains consistent with federal law.

Finally, as stated above – the purpose of U Nonimmigrant status is to ensure appropriate and effective prosecution of violent crimes in our community. If Respondents are allowed to remove Mr. Espinoza Cruz, local law enforcement agencies will lose their victim and star witness, which frustrates the congressional intent of this avenue of relief, and jeopardizes ongoing criminal investigations. For all of these reasons, the public interest strongly favors entry of an injunction.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue an immediate temporary restraining order requiring the Respondents to return the Petitioner Jairo Jose Espinoza Cruz to the Northern District of Indiana;
2. Issue an immediate temporary restraining order enjoining Respondents, their agents, and all persons acting in concert with them from transferring Petitioner Jairo Jose Espinoza Cruz out of the Northern District of Indiana during the pendency of this case;
3. Convert the TRO to a preliminary injunction after appropriate briefing and hearing;
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Katie Rosenberger

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Dated: November 30, 2025

VERIFICATION

I represent Petitioner, Jairo Jose Espinoza Cruz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Reply to Respondents' Objection to Emergency TRO and Preliminary Injunction are true and correct to the best of my knowledge.

Dated this 30th day of November, 2025.

s/Katie Rosenberger

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