IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

TRUC BA TRINH,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-373-CDL-CHW**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

On October 21, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") in the U.S. District Court for the Northern District of Georgia. ECF No. 1. On October 22, 2025, he filed a Motion for Temporary Restraining Order ("TRO"). ECF No. 4. Both filings challenge Petitioner's detention following revocation of his order of supervision ("OSUP"). On November 10, 2025, the case was transferred to this Court. ECF No. 19. On November 12, 2025, the Court ordered Respondent to respond to the Petition and the Motion for TRO within three (3) days. ECF No. 23. For the reasons explained below, Petitioner's Motion for TRO should be denied.

BACKGROUND

Respondent has set forth the facts underlying Petitioner's detention in the contemporaneously-filed Response to the Petition. Respondent briefly summarizes portions of the facts and supporting evidence here. To the extent necessary, Respondent incorporates those

[1] Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] 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." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

portions of the Response to the Petition in full herein by reference.

Petitioner is a native and citizen of Vietnam who was admitted into the United States as a refugee on or about November 16, 1992. Knowles Decl. ¶ 6 & Ex. B. Following multiple criminal convictions, on July 7, 1991, an immigration judge ("IJ") ordered him removed to Vietnam pursuant to 8 U.S.C. § 1227(a)(2)(B)(i) based on his conviction of a controlled substance offense after admission. *Id.* ¶¶ 7-11 & Ex. G. On appeal, the BIA affirmed the removal order, rendering it final on December 13, 1999. *Id.* ¶ 12 & Ex. H; *see* 8 C.F.R. § 1241.1(a). On July 10, 2000, Petitioner was released from Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody pursuant to an OSUP. *Id.* ¶ 13 & Exs. I, J.

On October 17, 2025, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 14 & Ex. K. On October 27, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release, stating that the OSUP was revoked based on "changed circumstances," namely "that [Petitioner] can be expeditiously removed to the United States." *Id.* ¶ 15 & Ex. L. On the same day, ICE/ERO conducted an informal interview with Petitioner to afford him an opportunity to respond. Knowles Decl. ¶ 15 & Ex. M. Petitioner refused to cooperate during the interview or provide a statement. *Id.* ¶ 15 & Ex. M.

There is a significant likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. *Id.* ¶ 18. On November 21, 2020, the Department of Homeland Security ("DHS") and the Ministry of Public Security of the Socialist Republic of Vietnam entered into a Memorandum of Understanding ("MOU") that provides for the removal of Vietnam citizens who entered the United States prior to July 12, 1995. *Id.* ¶ 4 & Ex. A. As of September 11, 2025, in fiscal year 2025, ICE/ERO had removed 569 Vietnamese citizens to Vietnam, including those who—like Petitioner—entered the United States before July 12, 1995. *Id.* ¶ 5. Since February

2025, Vietnam has issued a travel document for removal in response to every travel document request submitted by ICE/ERO. *Id.* On average, ICE/ERO conducts two charter removal flights to Vietnam each month. Knowles Decl. ¶ 5. On or about October 28, 2025, ICE/ERO prepared a travel document request for Petitioner to submit to the Vietnamese government and is awaiting necessary translation of documents. *Id.* ¶ 16.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "Because a preliminary injunction is an extraordinary and drastic remedy, its grant is the exception rather than the rule, and [the movant] must clearly carry the burden of persuasion." *United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983) (internal quotations and citation omitted). The movant must establish the following four requisites: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury absent an injunction; (3) the threatened injury to the moving party outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Id.* at 1039. The latter two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "Failure to show any of the four factors is fatal[.]" *Am. Civ. Liberties Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009) (citations omitted).

"Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party[.]" *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976) (citations

omitted);[2] *see also Pinkston v. Univ. of S. Fla. Bd. of Trustees*, No. 8:15-cv-1724-T-33TBM, 2016 WL 11469181, at *2 (M.D. Fla. May 18, 2016) (recognizing that movant's motion for preliminary injunction sought "the ultimate case-dispositive determination" and that "[t]his type of preliminary injunctive relief is particularly disfavored").

ARGUMENT

Petitioner's Motion for TRO seeks (1) an order Petitioner's immediate release "during the pendency of this habeas action with restoration of his prior OSUP; (2) an injunction prohibiting Petitioner's transfer; and (3) an injunction staying Petitioner's removal from the United States. Mot. for TRO 5-6. These are the same forms of ultimate relief Petitioner requests in the Petition itself. *See* Pet. 39 (Prayer for Relief).

Petitioner's Motion for TRO should be denied for three reasons. ***First***, the Court lacks jurisdiction to enjoin Petitioner's transfer. ***Second***, the Court also lacks jurisdiction to enjoin Petitioner's removal. ***Third***, to the extent Petitioner seeks release from custody, Petitioner's Motion for TRO requests the same ultimate relief requested by the Petition, the Motion is not a proper form of preliminary injunctive relief in the first instance. ***Fourth***, in the alternative, Petitioner fails to satisfy the requirements for preliminary injunctive relief.

I. The Court lacks jurisdiction to enjoin Petitioner's transfer.

To the extent Petitioner requests a TRO enjoining ICE/ERO from transferring him to another detention facility, the Court lacks subject matter jurisdiction to do so under 8 U.S.C. § 1252(a)(2)(B)(ii) because the decision to transfer a non-citizen is committed to ICE/ERO's discretion by statute.

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[2] In *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981

A claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). This is because "[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Additionally, "[a] petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an . . . argument in constitutional garb." *Arias v. U.S. Att'y Gen.*, 482 F.3d 1281, 1284 (11th Cir. 2007) (internal quotations and citations omitted).

In the immigration context, 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")—limits federal courts' jurisdiction to review discretionary determinations made by ICE/ERO as follows:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *AADC*, 525 U.S. at 486 (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, "Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

By statue, ICE/ERO has the discretion to determine the "appropriate place[] of detention for [non-citizens] detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1).

Multiple courts of appeals have held that 8 U.S.C. § 1231(g)(1) affords ICE/ERO the "discretionary power to transfer [non-citizens] from one locale to another, as [ICE/ERO] deems appropriate[.]" *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (citations omitted); *see also Calla-Collado v. Att'y Gen. of U.S.*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-Zambrana v. Bd. of Imm. Appeals*, 44 F.3 1251, 1256 (4th Cir. 1995); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985). District courts in the Eleventh Circuit have recognized the same. *Golding v. DHS/ICE*, No. 4:19-cv-01160, 2019 WL 11720287, at *2 (N.D. Ala. Oct. 3, 2019); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990).

Because any transfer of Petitioner is a discretionary decision of ICE/ERO, § 1252(a)(2)(B)(ii) deprives the Court of jurisdiction to judicially review or enjoin that transfer. *See Van Dinh*, 197 F.3d at 433; *Golding*, 2019 WL 11720287, at *2; *Lway Mu v. Whitaker*, No. 6:18-cv-06924, 2019 WL 2373883, at *5 (W.D.N.Y. June 4, 2019). The Court therefore lacks jurisdiction to enjoin Petitioner's transfer and should deny the Motion for TRO to the extent Petitioner seeks such relief.

II. The Court lacks jurisdiction to enjoin Petitioner's removal.

To the extent Petitioner requests a TRO enjoining his removal, the Court also lacks jurisdiction over this claim for relief pursuant to 8 U.S.C. § 1252(b)(9) and (g).

In the immigration context, "[f]ollowing enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

Indeed, the Supreme Court has described § 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483 (1999). In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Additionally, 8 U.S.C. § 1252(g) provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . 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). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) provision applies "to three discrete actions

that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (emphasis in original). Section 1252(g) operates as "a 'discretion-protecting provision' designed to prevent the 'deconstruction, fragmentation, and hence prolongation of removal proceedings.'" *Camarena v. Director, Imm. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quoting *AADC*, 525 U.S. at 487).

Section 1252(b)(9) deprives the Court of jurisdiction over Petitioner's request that the Court stay his removal. By seeking a stay of removal, Petitioner plainly challenges ICE/ERO's decision to seek his removal from the United States. In doing so, he seeks "[j]udicial review of [a] question[] of law and fact . . . arising from an[] action taken or proceeding brought to remove [a non-citizen] from the United States[.]" 8 U.S.C. § 1252(b)(9). Accordingly, courts lack jurisdiction to stay removal in a habeas proceeding. *Id.* ("[N]o court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision . . . to review such an order or such questions of law or fact."). This Court has routinely denied requests for stays of removal during habeas proceedings. *See, e.g., C.B.M. v. Warden, Stewart Det. Ctr.*, No. 4:19-cv-44-CDL, 2019 WL 5243067, at *1 (M.D. Ga. Aug. 30, 2019) ("The Court lacks jurisdiction to stay Petitioner's removal." (citation omitted)); *Watson v. Stone*, No. 4:13-cv-480-CDL, 2013 WL 6072894, at *2 (M.D. Ga. Nov. 18, 2013) (denying a non-citizen's motion to stay his removal and noting that § 1252(a)(5) "has consistently been interpreted by district courts faced with a motion to stay removal as stripping them of jurisdiction to provide such relief[]" (collecting cases)).

Further, § 1252(g) similarly bars jurisdiction. By requesting a stay of removal, Petitioner clearly seeks to challenge "the decision or action by the Attorney General to . . . execute [his] removal order[.]" 8 U.S.C. § 1252(g). The Eleventh Circuit has made clear that § 1252(g) deprives

the Court of jurisdiction to stay removal. In *Camarena v. Director, Immigration and Customs Enforcement*, 988 F.3d 1268 (11th Cir. 2021), two non-citizen subject to final orders of removal "filed . . . habeas petition[s] and . . . emergency motion[s] to halt the execution of [their] removal order[s]." 988 F.3d at 1270-71. The district courts denied their requests for stays of removal, finding they lacked subject matter jurisdiction. *Id.* The Eleventh Circuit affirmed on appeal, holding that the non-citizens' "claims [fell] squarely within § 1252(g)'s jurisdictional bar" because they challenged "the government's execution of [their] removal orders." *Id.* at 1272.

Like the non-citizens in *Camarena*, Petitioner is subject to a final order of removal and seeks a stay of his removal. In doing so, Petitioner challenges ICE/ERO's action to "execute [his] removal order[.]" 8 U.S.C. § 1252(g). As the Eleventh Circuit recognized in *Camarena*, such a challenge "fall[s] squarely within § 1252(g)'s jurisdictional bar[.]" *Camarena*, 988 F.3d at 1272. The Court, therefore, lacks subject matter jurisdiction over Petitioner's request that his removal be stayed, and his Motion for TRO should be denied to the extent he seeks such relief.

III. To the extent Petitioner seeks release from custody pending a ruling on the Petition, this is not a proper form of preliminary injunctive relief.

Petitioner requests an order for his immediate release from ICE/ERO custody pending a ruling on his Petition. Mot. for TRO 5-6. At the outset, Petitioner's motion should be denied because he simply requests the ultimate relief he already seeks through the Petition itself: release from immigration custody. His Motion for TRO is thus duplicative of the Petition itself and does not request a proper form of preliminary injunctive relief.

"The purpose of the preliminary injunction is to preserve the positions of the parties" until the court can enter a final decision on the merits of the case. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). The purpose is not to "grant[] most or all of the substantive relief requested in the" pleading. *Fernandez-Roque*

v. Smith, 671 F.2d 426, 429 (11th Cir. 1982) (citations omitted). "Thus only those injuries that cannot be redressed by the application of a judicial remedy *after* a hearing on the merits can properly justify a preliminary injunction." *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974) (emphasis added).

Here, the status quo is Petitioner's detention in immigration custody—the same position he was in when he filed the Petition. Rather than using his motion for preliminary injunction to preserve the status quo to facilitate judicial review of his claims, Petitioner, instead, seeks to mandate that Respondent confer the ultimate relief he seeks in this case. And any analysis of the motion for preliminary injunction is necessarily an analysis of the ultimate issue since the Petition and motion seek the same relief on the same grounds. His detention is, therefore, not an "injur[y] that cannot be redressed by the application of a judicial remedy" on the merits of his ultimate claims. *Canal Auth.*, 489 F.2d at 573. In essence, Petitioner's Motion for TRO simply requests a more expeditious ruling on the Petition. For this reason, Petitioner's Motion for TRO does not request proper preliminary injunctive relief in the first instance and should be denied on this basis.

IV. Petitioner fails to satisfy the requirements for preliminary injunctive relief.

In the alternative, Petitioner fails to satisfy the requirements for preliminary injunctive relief. For the reasons more fully set forth in the Response to the Petition, Petitioner cannot show he is entitled to relief on any of his claims—let alone as substantial likelihood of success. Petitioner also fails to show a legally sufficient threat of irreparable harm for the purpose of a TRO since his claimed harm is premised entirely on the outcome of the Petition itself. Further, the balance of the equities weighs against issuance of a TRO: the Executive branch has plenary authority to enforce immigration laws, and the public has a fundamental interest in prompt removal. Petitioner is not entitled to a TRO if he fails clearly carry his burden as to one of these factors. *Am. Civ. Liberties*

Union of Fla., 557 F.3d at 1198. The Motion should be denied because he fails to satisfy any.

A. Petitioner fails to show a substantial likelihood of success on the merits.

The Court should deny Petitioner's Motion for TRO because he cannot show a substantial likelihood of success on the merits of any the claims raised in the Petition. Respondent has fully addressed those claims in the contemporaneously-filed Response to the Petition. Accordingly, Respondent summarizes the arguments as to each claim here. To the extent necessary, Respondent incorporates those portions of its Response to the Petition in full herein by reference. For five reasons, Petitioner's claims lack merit, and he fails to show a substantial likelihood of success.

First, 8 U.S.C. § 1231(a)(6) authorizes Petitioner's post-final order of removal detention, and that detention complies with due process. Petitioner raises three claims challenging his present post-final order of removal detention: (1) his detention violates due process pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is no significant likelihood of removal in the reasonably foreseeable future, Pet. ¶¶ 70-78; Mem. in Supp. of Motion for TRO 9-10; (2) his detention exceeds ICE/ERO's statutory authority for post-final order of removal detention under 8 U.S.C. § 1231(a)(6), Pet. ¶¶ 109-14; and (3) his detention is *ultra vires* because ICE/ERO lacks a statutory authority to detain him, Pet. ¶¶ 115-17; Mem. in Supp. of Mot. for TRO 8-9.

8 U.S.C. § 1231(a)(6) affords ICE/ERO the discretion to detain non-citizens post-final order of removal beyond 90 days. In *Zadvydas*, the Supreme Court held that under this provision, detention for six months is presumptively reasonable. 533 U.S. at 700. After six months, 8 U.S.C. § 1231(a)(6) continues to authorize detention unless "there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* at 701. Thus, "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, 1052 (11th Cir. 2002).

Petitioner cannot satisfy either element. As to the timing element, the "six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*." *Id.* Here, however, when Petitioner filed the Petition, he had been detained for only four days since he re-entered ICE/ERO custody. *See J.A.S. v. Warden, Stewart Detent. Center*, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8; *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136, R. & R. 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. As to the second element, Petitioner fails to show that there is no significant likelihood of removal in the reasonably foreseeable future. His claim is premised entirely on a 2008 bilateral agreement between the United States and Vietnam that previously prohibited removal of Vietnamese nationals who entered the United States before July 12, 1995. Pet. ¶¶ 4, 42, 76; Mem. in Supp. of Mot. for TRO 8. But in 2020, the two countries signed a Memorandum of Understanding ("MOU") permitting removal of those individuals. Knowles Decl. ¶ 4 & Ex. A. In fiscal year 2025 alone, ICE/ERO removed 569 Vietnamese nationals—including those who fall within the scope of the MOU—and the agency is presently requesting a travel document to remove Petitioner specifically. *Id.* ¶¶ 5, 16. Accordingly, Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*.

Second, Petitioner's APA claims seeking judicial review of his OSUP revocation are not cognizable in this habeas proceeding because they concern an administrative determination that is collateral to ICE/ERO's statutory authority for Petitioner's post-final order of removal detention. Petitioner raises three such claims, and they all request that the Court judicially review ICE/ERO's discretionary determination to revoke his OSUP. Pet. ¶¶ 80-100, 110-14; Mem. in Supp. of Mot. for TRO 9-14. "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act

of 1789 to the present day." *Thuraissigiam*, 591 U.S. at 125 n.20. "Simply stated, habeas is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Habeas "cannot be utilized as a base for the review of a refusal to grant collateral administrative relief or as a springboard to adjudicate matters foreign to the question of the legality of custody." *Id.* at 936.

Here, Petitioner's claims seeking review of his OSUP revocation challenge only the procedures ICE/ERO employed in making that decision. Pet. ¶¶ 86-108, 118-22. But the procedures used to revoke of Petitioner's OSUP are collateral to the legality of Petitioner's detention pursuant to 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—and the claims seeking judicial review of the OSUP revocation are therefore not cognizable in habeas. *See Pierre*, 525 F.2d at 935-36. Further, as this Court has recognized, non-citizens may not bootstrap APA claims challenging collateral administrative determinations to habeas petitions. *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640, at *1-2 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018).

Third, the Court lacks subject matter jurisdiction over Petitioner's claims seeking judicial review of ICE/ERO's underlying decision to continue his post-final order of removal detention by revoking his OSUP. Petitioner raises one APA claim that seeks only judicial review of that decision, arguing the decision was made without sufficient consideration of the evidence. Pet. ¶¶ 96-108; Mem. in Supp. of Mot. for TRO 12-13. And two other claims in the Petition also include arguments challenging the decision. Pet. ¶¶ 84, 93.

The Court lacks jurisdiction over these claims under two provisions of 8 U.S.C. § 1252. Section 1252(g) bars judicial review of "the decision or action by [ICE/ERO] to commence proceedings, adjudicate cases, or execute removal orders[.]" ICE/ERO's decision and action to

arrest a non-citizen for the purpose of effectuating removal constitutes a "decision or action . . . to . . . execute removal orders" within the meaning of 8 U.S.C. § 1252(g). *See Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025).

Additionally, § 1252(a)(2)(B)(ii) deprives courts of subject matter jurisdiction to judicially review "any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]" Here, 8 U.S.C. § 1231(a)(6) "gives the Federal Government discretionary authority in specified circumstances to detain aliens who have been ordered removed from the United States." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 546 (2022) (internal quotations and citation omitted). Accordingly, § 1252(a)(2)(B)(ii) bars Petitioner's challenges to ICE/ERO's discretionary decision to re-detain him by revoking his OSUP because the decision to do so is committed to ICE/ERO's discretion by statute. *See Barrios*, 2025 WL 2280485, at *4. Moreover, § 1252(a)(2)(B)(ii) applies "not only the ultimate decision to approve or deny [a discretionary form of relief], but also *actions taken in the course of the decision-making process*[.]" *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1307 (11th Cir. 2025) (emphasis added). Thus, Petitioner cannot circumvent the jurisdictional bar by purporting to seek review of ICE/ERO's consideration of the evidence leading to the decision to revoke his OSUP.

Fourth, to the extent Petitioner claims his OSUP revocation is unlawful based on the lack of notice and an informal interview, those claims are moot because ICE/ERO has provided Petitioner written notice of the OSUP revocation, the reasons for the revocation, and an informal

interview to afford him an opportunity to be heard on those reasons. Pursuant to the Due Process Clause, the APA, and *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), Petitioner challenges his OSUP revocation on the ground that the revocation is invalid because he was not provided notice and interview. Pet. ¶¶ 79-95, 120-21; Mem. in Supp. of Mot. for TRO 10-11, 14.

These claims are moot—and Petitioner therefore cannot show a substantial likelihood of success—because on October 27, 2025, ICE/ERO provided Petitioner with a written Notice of Revocation of Release stating the reason for his OSUP revocation. Knowles Decl. ¶ 15 & Ex. L. Namely, ICE/ERO exercised its discretion to revoke Petitioner's OSUP based on "changed circumstances in [his] case," specifically a finding that he "can be expeditiously removed from the United States pursuant to his outstanding order of removal[.]" Knowles Decl. Ex. L. On the same day, ICE/ERO conducted an informal interview with Petitioner to permit him to respond to these reasons. Knowles Decl. ¶ 15 & Ex. M. He refused to cooperate and declined to make a statement. *Id.* ¶ 15 & Ex. M. Because Petitioner has been afforded both procedures, his claims that the OSUP revocation is unlawful in the *absence* of these procedures "no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). Accordingly, the claims are moot and subject to dismissal "because mootness is jurisdictional." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (citation omitted).

Fifth, ICE/ERO complied with 8 C.F.R. § 241.4(l) in revoking Petitioner's OSUP. Petitioner claims ICE/ERO violated that regulation on three grounds: (1) the ICE/ERO officer who revoked his OSUP lacked authority to do so, Pet. ¶¶ 82, 90-91; (2) ICE/ERO failed to provide notice of the reasons for revoking his OSUP, *id.* ¶¶ 82-83, 85, 92-94; and (3) ICE/ERO failed to afford him an interview to contest his OSUP revocation, *id.* ¶ 82-83, 85, 94.

As to the first ground, Petitioner admits that ICE/ERO may delegate the authority to revoke an OSUP. Pet. ¶¶ 38, 55, 91, 107; *see* 8 C.F.R. § 241.4(c). ICE/ERO has delegated that authority to, *inter alia*, SDDOs. Ex. N, ERO Delegation Order. Here, an SDDO with the ICE/ERO Atlanta Field Office signed Petitioner's Notice of Revocation of Release. Knowles Decl. ¶ 15 & Ex. L. As to the second ground, 8 C.F.R. § 241.4(l)(2)(iii) affords ICE/ERO the discretion to revoke an OSUP when "[i]t is appropriate to enforce a removal order[.]" *See* Pet. ¶ 54 (citing the same). That is the precise ground for revocation of Petitioner's OSUP here, as ICE/ERO determined that "can be expeditiously removed from the United States pursuant to his outstanding order of removal[.]" Knowles Decl. Ex. L. As to the third ground, 8 C.F.R. § 241.4(l)(1) provides for written notice and an informal interview "*promptly after [the alien's] return to [ICE/ERO] custody*[.]" Petitioner was provided both a written notice and interview just six days after he arrived at Stewart Detention Center. Knowles Decl. ¶ 15 & Exs. L, M. Because all of Petitioner's claims are either subject to dismissal or otherwise lack merit, he cannot show a substantial likelihood of success to warrant a TRO.

B. Petitioner fails to show a substantial threat of irreparable harm.

Petitioner fails to establish a substantial threat of irreparable injury necessary for the issuance of a TRO. *See Am. Civ. Liberties Union of Fla.*, 557 F.3d at 1198 ("Failure to show any of the four [TRO] factors is fatal . . . ." (citation omitted)).

An irreparable injury "must be neither remote nor speculative, but actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citations omitted). Here, Petitioner's claimed injury is his "unlawful physical detention," and he asserts that "each day of confinement compounds the deprivation of liberty." Mem. in Supp. of Mot. for TRO 14. Additionally, he raises additional harms that are "collateral" to his detention—specifically, "family separation and

inability to work." *Id.* at 15.

As Petitioner recognizes, "only those injuries that cannot be redressed by the application of a judicial remedy *after* a hearing on the merits can properly justify a preliminary injunction." *Canal Auth.*, 489 F.2d at 573 (5th Cir. 1974) (emphasis added); *see* Mem. in Supp. of Mot. for TRO 15-16. As a result, in analyzing a motion for preliminary injunction, "the harm considered by the district court is necessarily confined to that which might occur in the interval between ruling on the preliminary injunction and [ruling] on the merits." *Lambert*, 695 at 540. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974).

While Petitioner acknowledges these limitations on the harms redressable through a TRO, he argues that the Petition cannot "remedy [his] imminent unlawful detention[.]" Mem. in Supp. of Mot. for TRO 16. But Petitioner's argument *presumes* that his detention is "unlawful" in the first instance. Yet, for the reasons explained above, his detention is not unlawful in the first instance. Indeed, it will not be "unlawful" unless the Court grants the Petition on one of his claims. In this way, Petitioner's claim of an irreparable injury is simply circular: it flows only from the underlying claims in the Petition itself. Put differently, as Petitioner frames the argument, he cannot show *any* irreparable injury because his detention is not "unlawful" absent a favorable ruling on the merits of one of his claims. But because the relevant harm for TRO purposes "is necessarily confined to that which might occur in the interval *between ruling on the preliminary injunction and [ruling] on the merits*," *Lambert*, 695 at 540, Petitioner fails to make the required showing here.

Additionally, Petitioner argues that his continued detention establishes a substantial threat of irreparable harm for the purpose of a TRO because no amount of monetary damages are a sufficient remedy. *Id.* But this argument makes little sense and ignores the fundamental purpose of habeas corpus. Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "Its sole function is to grant relief from unlawful imprisonment[.]" *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Indeed, federal court "has no other power" in a habeas proceeding, as "it can act only on the body of the petitioner." *Fay v. Noia*, 372 U.S. 391, 431 (1963) (citation omitted), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). Thus, as the Supreme Court recently recognized, relief other than "simple release" is not available in a habeas action. *See Thuraissigiam*, 591 U.S. at 119. The very purpose of the Petition is to secure his release from custody, so "adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation[.]" *Sampson*, 415 U.S. at 90.

Again, Petitioner's Motion for TRO is really nothing more than a request for a more expeditious ruling on the Petition itself. But given that he fails to show any harm which will necessarily occur prior to a ruling on the Petition, he has not established a substantial threat of irreparable harm necessary for issuance of a TRO. Accordingly, the Motion for TRO should be denied. *See Am. Civ. Liberties Union of Fla.*, 557 F.3d at 1198 ("Failure to show any of the four [TRO] factors is fatal . . . ." (citation omitted)).

C. The balance of equities and the public interest weigh against an injunction.

Finally, the balance of equities and the public interest weigh decisively against issuance of a TRO. These two factors "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. The government has plenary authority to enforce the country's immigration laws, and the public has a fundamental interest in the prompt removal of non-citizens found to have violated

those laws.

Petitioner cannot dispute that the government has a fundamental interest in enforcement of the country's immigration laws. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952). "[O]ver no conceivable subject is the legislative power of Congress more complete[.]" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citation omitted). For these reasons, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases). "And Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest, so vital that it has tried to cabin judicial review of immigration enforcement." *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022) (citations omitted).

As relevant here, this plenary interest extends enforcement of removal orders—like Petitioner's—specifically. As the Supreme Court has recognized, "[t]here is always a public interest in prompt execution of removal orders[.]" *Nken*, 556 U.S. at 436. Petitioner's request for immediate release and a stay of removal would result in the extension of "ongoing violation[s] of United States law" through delay and fragmentation of the enforcement of the immigration laws. *AADC*, 525 U.S. at 491. Congress, however, specifically amended the INA specifically to *prevent* such delay and fragmentation. *See AADC*, 525 U.S. at 487 ("[8 U.S.C. § 1252(g)] is specifically

directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings."). The public has a strong interest in enforcement of these laws, and "[t]he contention that a violation must be allowed to continue because it has been improperly selected is not powerfully appealing." *Id.* Given the government and the public's strong interests in enforcement of the immigration laws and removal orders superficially, the Court should find that the balance of equities weigh against preliminary injunctive relief.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that Petitioner's Motion for TRO be denied.

Respectfully submitted, this 17th day of November, 2025.

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