UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

Y.J.F.R. [redacted], Petitioner, vs. JASON WOOSLEY, *in his official capacity as Jailer of Grayson County Detention Center*; and SAMUEL OLSON, *Field Office Director for ICE Chicago Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*. Respondents.	CASE NO.: 4:25-cv-00142-DJH

PETITIONER'S RESPONSE TO GOVERNMENT'S SHOW CAUSE

I. INTRODUCTION

Petitioner Y.J.F.R. brings this action to challenge her ongoing and unlawful detention by U.S. Immigration and Customs Enforcement (ICE) at the Grayson County Detention Center, despite her status as a long-term resident, mother of three, and derivative beneficiary of a U visa, with Deferred Action granted by USCIS through January 2029. The amended complaint details that Petitioner has no criminal record, has consistently complied with all conditions of her release under an Order of Supervision (OSUP) for over a decade, and was abruptly re-detained by ICE at a routine check-in without any written notice, individualized assessment, or opportunity to contest the action. This re-detention occurred notwithstanding her valid Deferred Action and employment

authorization, both conferred as a result of her husband's U visa petition and her own status as a crime victim.

The complaint asserts several interrelated legal claims. First, it contends that Petitioner's continued detention is unlawful because, under the controlling precedent of *Fornalik v. Perryman*, 223 F.3d 523 (7th Cir. 2000), the grant of Deferred Action by USCIS is the last agency action and renders any prior removal order unenforceable for the duration of the Deferred Action period. Second, the complaint alleges that ICE's actions violated Petitioner's due process rights under the Fifth Amendment by revoking her OSUP and effectively rescinding her Deferred Action and employment authorization without notice or a meaningful opportunity to be heard, as required by both the Constitution and federal regulations. Third, the complaint challenges the rescission of ICE Directive 11005.3 (the "crime victim memo") and its replacement with ICE Policy Number 11005.4 as arbitrary and capricious under the Administrative Procedure Act (APA), arguing that the agency failed to provide a reasoned explanation or consider the reliance interests of noncitizen crime victims.

In sum, the amended complaint seeks declaratory and injunctive relief, including immediate release from detention, reinstatement of her OSUP and Deferred Action, and an order enjoining further unlawful detention or removal actions absent full compliance with due process and the APA. This response will demonstrate that the government's return to the order to show cause fails to address or rebut these core legal and factual claims, and that Petitioner is entitled to the relief sought.

II. JURISDICTION AND LEGAL AUTHORITY

The government's return to the order to show cause asserts that this Court lacks jurisdiction to review Petitioner's claims, contending that her detention is governed exclusively by 8 U.S.C. §

1231 as a result of a reinstated removal order, and that habeas relief is unavailable or limited in scope. These arguments are unavailing and contrary to both the statutory framework and controlling precedent.

In addition, federal courts have jurisdiction to review not only the lawfulness of detention and OSUP revocation, but also the threat of third-country removal, and to enjoin such removal where due process and statutory requirements have not been met. Courts have repeatedly held that the risk of third-country removal without meaningful notice and an opportunity to respond is not speculative, and that voluntary government promises not to attempt such removal unless and until a primary country denies a travel document request are insufficient to moot the claim or deprive the court of jurisdiction. See *ISA Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at 6–7 (W.D. Wash. Nov. 17, 2025) (ISA) (holding that the threat of third-country removal is concrete and imminent, and that injunctive relief is warranted to prevent removal absent due process); *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at 19–28 (W.D. Wash. Aug. 21, 2025) (same); *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (finding jurisdiction to enjoin third-country removal and to require compliance with due process and statutory protections). The risk of removal without due process is sufficient to confer jurisdiction and to warrant injunctive relief, regardless of government assurances to the contrary. These authorities make clear that the Court's jurisdiction encompasses not only the legality of detention and OSUP revocation, but also the procedures and protections required before any attempt at third-country removal.

Federal district courts have broad jurisdiction to entertain habeas corpus petitions brought by individuals "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). This includes noncitizens challenging the lawfulness of their immigration

detention, as repeatedly affirmed by the Supreme Court and the Sixth Circuit. See, e.g., *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004); *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014). The government's assertion that habeas is limited to "simple release" is incorrect; the writ's equitable nature allows the Court to fashion appropriate relief to remedy unlawful detention, including declaratory and injunctive orders as necessary to restore the status quo ante and prevent future violations.

III. THE ENFORCEABILITY OF THE REMOVAL ORDER AND THE EFFECT OF DEFERRED ACTION

The government's return to the order to show cause asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1231 based on a reinstated removal order, and that her Deferred Action status is irrelevant to the enforceability of that order or the lawfulness of her detention. This position is contrary to both the facts of this case and controlling legal authority.

A. The "Last Agency Action" Doctrine and *Fornalik v. Perryman*

The central flaw in the government's argument is its failure to recognize that the grant of Deferred Action by USCIS after a bona fide U visa determination is the controlling, final agency action for purposes of removal and detention. In *Fornalik v. Perryman*, 223 F.3d 523 (7th Cir. 2000), the Seventh Circuit addressed a nearly identical situation: a noncitizen with a preexisting removal order was subsequently granted Deferred Action by the immigration agency. The court held unequivocally that "the last agency action supplants all prior ones," and that the grant of Deferred Action rendered the prior removal order unenforceable for the duration of the Deferred Action period. The court reversed the district court's judgment and remanded with instructions to

enforce the Deferred Action grant and prevent removal during its validity, even though the removal order remained on the books. *Fornalik*, 223 F.3d at 530–31.

The government's attempt to distinguish *Fornalik* is unavailing. Here, as in *Fornalik*, Petitioner's Deferred Action was granted with full knowledge of her prior removal order and immigration history. The grant of Deferred Action is not a collateral or discretionary benefit, but a formal agency determination that, for a specified period, Petitioner is not subject to removal and is entitled to remain in the United States. The government's own records confirm that Petitioner's Deferred Action is valid through January 2029, and that this status was conferred after a bona fide U visa determination as a derivative spouse.

B. Deferred Action Renders the Removal Order Unenforceable

The government's assertion that the mere existence of a removal order under § 1231 authorizes continued detention ignores the effect of subsequent agency action. Under the "last agency action" doctrine, the operative agency decision is the most recent one—here, the grant of Deferred Action. As the Seventh Circuit explained, "where (as in this case), the last office to act has full knowledge of actions taken by other branches of the same agency, it cannot simply issue a decision and expect its pronouncement to have no effect." *Fornalik*, 223 F.3d at 530. The removal order is unenforceable for the duration of the Deferred Action, and ICE lacks authority to detain or remove Petitioner on the basis of that order during this period.

This principle is not limited to the Seventh Circuit. The Supreme Court and other circuits have recognized that agency action conferring a benefit or status—such as Deferred Action—creates a binding legal effect that precludes contrary enforcement action absent lawful revocation with due process. See, e.g., *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S.

1, 20–24 (2020) (agency must consider reliance interests and provide a reasoned explanation before rescinding Deferred Action programs).

Moreover, courts have repeatedly held that ICE must strictly adhere to its own regulations and provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen. Recent federal decisions reinforce that ICE must strictly adhere to its own regulations and provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen, and that these procedural and substantive protections apply equally to the enforceability of removal orders in the context of Deferred Action or similar agency benefits. Courts have repeatedly invalidated agency action where these requirements were not met, finding that boilerplate or conclusory notices are insufficient, and that the absence of a meaningful interview or opportunity to respond renders revocation unlawful.

See *ISA Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *6–7 (W.D. Wash. Nov. 17, 2025); Nguyen v. Scott, No. 2:25-cv-01398, 2025 WL 2419288, at* 19–28 (W.D. Wash. Aug. 21, 2025); *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *4 (E.D. Cal. 2025); Roble v. Bondi, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at* 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at *3–4 (D. Minn. Sep. 3, 2025); Rokhfirooz v. Larose, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at* 3 (S.D. Cal. Sep. 15, 2025); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025); Sun v. Noem, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at* 2 (Sep. 30, 2025); *Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025). Collectively will be referred herein as OSUP Revocation Cases.

These cases further establish that boilerplate or conclusory notices are insufficient, and that the absence of a meaningful interview or opportunity to respond renders revocation unlawful. The government must provide individualized evidence of a significant likelihood of removal in the reasonably foreseeable future before continued detention is lawful. The government's failure to provide such evidence, or to comply with the procedural safeguards required by regulation and due process, renders continued detention unlawful.

C. Detention Under § 1231 Is Unlawful When Removal Is Not Authorized

The government's reliance on § 1231 as the basis for mandatory detention is misplaced when the removal order is not currently enforceable. Section 1231 authorizes detention only "for the purpose of effecting removal." Where, as here, removal is not authorized due to a valid grant of Deferred Action, continued detention is not only unauthorized but also violates the statutory and constitutional limits on immigration detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001) (detention under § 1231 must be reasonably related to the purpose of removal and cannot be indefinite or arbitrary).

Moreover, the government's own return concedes that it has not located any notice of revocation of Petitioner's Deferred Action or employment authorization, nor has it provided any evidence that these benefits have been lawfully rescinded. Absent such revocation, the Deferred Action remains in effect, and the removal order is unenforceable.

D. The Zadvydas 90-Day Removal Period Does Not Reset Upon Each Re-Detention by DHS

The Immigration and Nationality Act (INA) provides that when a noncitizen is ordered removed, DHS is afforded a 90-day "removal period" during which the government must effectuate removal. See 8 U.S.C. § 1231(a)(1)(A). The statute specifies that the removal period

begins on the latest of three events: (1) the date the order of removal becomes administratively final; (2) if the order is judicially reviewed and a stay is issued, the date of the court's final order; or (3) if the noncitizen is detained or confined (except under an immigration process), the date of release from such detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

The 90-Day Removal Period Is a One-Time, Statutorily Defined Window

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), interpreted this statutory scheme to mean that the government has a presumptively reasonable period of 90 days to effectuate removal, after which continued detention is permissible only for a period reasonably necessary to secure removal, and not indefinitely. The "removal period" is a **singular, statutorily defined window** that begins upon the occurrence of the latest of the three triggering events and does not restart each time DHS detains or releases a noncitizen. See *Zadvydas*, 533 U.S. at 682–83, 701.

Courts have consistently held that the 90-day removal period is not reset by subsequent re-detentions or changes in custody status, unless one of the statutory triggering events occurs anew (such as a new final order of removal or release from non-immigration criminal custody). See, e.g., *Ngo v. INS*, 192 F.3d 390, 396–97 (3d Cir. 1999) (removal period does not restart upon re-detention unless a new triggering event under § 1231(a)(1)(B) occurs); *Sango-Dema v. District Director*, INS, 122 F. Supp. 2d 213, 216 (D. Mass. 2000) (same); *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *4 (E.D. Cal. 2025) (rejecting government's argument that the removal period restarts with each re-detention).

Policy and Practical Considerations

Allowing DHS to reset the 90-day removal period each time it re-detains a noncitizen would undermine the statutory language in8 U.S.C. § 1231 and constitutional protections recognized in *Zadvydas*. The Supreme Court was clear that indefinite detention is impermissible,

and that the government must act diligently to effectuate removal within the original removal period. See *Zadvydas*, 533 U.S. at 701. If the government could restart the clock at will, it would render the six-month presumptive limit on post-removal-order detention meaningless and would permit the very indefinite detention the Supreme Court condemned.

Application to Petitioner's Case

In this case, Petitioner's removal period began upon the latest of the statutory triggering events and has long since expired. The government's subsequent re-detention of Petitioner—absent a new final order of removal or release from non-immigration criminal custody—does not restart the 90-day removal period. The government's position to the contrary is unsupported by the statute, regulations, or case law, and would violate the due process principles articulated in *Zadvydas* and its progeny. Accordingly, the 90-day removal period under 8 U.S.C. § 1231(a)(1) is a one-time, statutorily defined period that does not reset with each re-detention by DHS. Any continued detention beyond this period must be justified under the standards set forth in *Zadvydas* and is subject to strict judicial scrutiny for reasonableness and constitutional compliance.

E. The Government's Arguments Fail to Address the Controlling Legal Standard

The government's return does not address the "last agency action" doctrine or the binding effect of Deferred Action as articulated in *Fornalik* and subsequent cases. Instead, it relies on the existence of a removal order and the general framework of § 1231, without grappling with the legal effect of the Deferred Action grant. This omission is fatal to its position. The controlling legal standard is not whether a removal order exists, but whether it is currently enforceable in light of subsequent agency action. Here, it is not.

Moreover, recent federal decisions have made clear that ICE's failure to follow its own regulatory and due process requirements—such as providing individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond—renders agency action invalid and requires immediate relief.

Phan v. Becerra, *Roble v. Bondi*, *Sarail A. v. Bondi*, *Rokhfirooz v. Larose*, *Liu v. Carter*, *Sun v. Noem*, and *Balouch v. Bondi*, (previously cited)[1] confirm that the government must provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen, and that boilerplate or conclusory notices are insufficient. Furthermore, for certain populations, the process for procuring travel documents is "uncertain and protracted," and that the government must provide individualized evidence of a significant likelihood of removal in the reasonably foreseeable future before continued detention is lawful. The government's failure to provide such evidence, or to comply with the procedural safeguards required by regulation and due process, renders continued detention unlawful and compels immediate relief.

Because Petitioner's Deferred Action remains valid and has not been lawfully revoked, the prior removal order is unenforceable for the duration of the Deferred Action period. ICE's continued detention of Petitioner under § 1231 is therefore unlawful, and she is entitled to immediate release and restoration of her prior status. The government's arguments to the contrary should be rejected.

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[1] *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at 3–4 (D. Minn. Sep. 3, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at 2 (D. Kan. Jun. 17, 2025); *Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at 2 (Sep. 30, 2025); *Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025)

IV. PROCEDURAL VIOLATIONS AND DUE PROCESS VIOLATIONS

The government's return to the order to show cause fails to rebut the core procedural and due process violations at the heart of Petitioner's amended complaint. Instead, it relies on the existence of a removal order and the general framework of 8 U.S.C. § 1231, while ignoring the mandatory regulatory and constitutional requirements that govern the revocation of an Order of Supervision (OSUP) and the re-detention of a noncitizen in Petitioner's circumstances.

A. Regulatory Requirements for Revocation of OSUP

Federal regulations strictly govern the process by which ICE may revoke an OSUP and re-detain a noncitizen. Under 8 C.F.R. § 241.4(l)(2), ICE may revoke an order of supervision only upon an individualized determination, and must provide the noncitizen with written notice of the revocation and the specific reasons for the decision. In cases where release was previously granted because removal was not reasonably foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) further requires that ICE make a bona fide finding of changed circumstances indicating a significant likelihood of removal in the reasonably foreseeable future, and must promptly notify the noncitizen of the reasons for revocation and conduct an initial informal interview to allow the noncitizen to respond. These procedural safeguards are not discretionary; they are binding legal obligations, designed to protect the liberty interests of individuals who have been released from immigration detention.

Recent federal decisions have strictly enforced these requirements and repeatedly found that ICE's failure to provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before OSUP revocation or re-detention renders the agency's action unlawful. In *ISA Abubaka v. Bondi*,[2] the court held that ICE may not revoke supervised release or seek to remove a noncitizen to a third country without first providing

[2] No. C25-1889RSL, 2025 WL 3204369, at 6–7 (W.D. Wash. Nov. 17, 2025).

meaningful notice, individualized findings, and an opportunity to respond in reopened removal proceedings before an immigration judge, and that the risk of removal without due process is sufficient to confer jurisdiction and warrant injunctive relief. Similarly, in *Nguyen v. Scott*,[3] the court found that ICE's failure to provide individualized notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen violated both regulatory and constitutional requirements.

Other courts have reached the same conclusion, emphasizing that boilerplate or conclusory notices are insufficient, and that the absence of a meaningful interview or opportunity to respond renders revocation unlawful. See all previously cited cases. These cases confirm that the government must provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen, and that boilerplate or conclusory notices are insufficient.

In Petitioner's case, there is no evidence pertaining to any reason why her OSUP was suddenly revoked without any notice and opportunity to respond and by whom.

B. The Government's Failure to Comply with Procedural Requirements

The government's return concedes that it has not located any notice of revocation of Petitioner's OSUP, nor has it provided any evidence that Petitioner was given written notice, an individualized assessment, or an opportunity to contest the revocation prior to her re-detention. The record is clear that Petitioner was abruptly re-detained at a routine check-in, after more than a decade of full compliance with her OSUP, without any prior written notice, explanation, or individualized assessment. The government's own filings confirm that, as of the date of its response, no notice of revocation has been located or provided to Petitioner. This is not a mere

[3] No. 2:25-cv-01398, 2025 WL 2419288, at 19–28 (W.D. Wash. Aug. 21, 2025).

technical defect, but a fundamental violation of both the regulatory framework and the Due Process Clause.

Because the government failed to provide Petitioner with the required notice, individualized assessment, and opportunity to be heard before revoking her OSUP and re-detaining her, her continued detention is unlawful and violates both the Constitution and federal regulations. The appropriate remedy is immediate release and restoration of her prior status, as well as declaratory and injunctive relief to prevent further violations. In addition, the Court should enjoin Respondents from removing or seeking to remove Petitioner to any third country unless and until they provide full compliance with due process and statutory requirements—including meaningful notice and an opportunity to respond in reopened removal proceedings before an immigration judge, as required by the authorities above. In sum, the government's procedural arguments are unavailing, and its failure to comply with mandatory regulatory and constitutional requirements compels the Court to grant the relief sought in the amended complaint.

C. Case Law: Due Process Requires Notice and Opportunity to Be Heard

The Supreme Court and lower federal courts have repeatedly held that due process requires, at a minimum, notice and a meaningful opportunity to be heard before the government may deprive an individual of a significant liberty interest. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of OSUP revocation, this means that the government must provide the noncitizen with advance written notice of the reasons for revocation, a meaningful opportunity to contest the action before a neutral decisionmaker, and a bona fide individualized assessment of the facts and circumstances.

Recent federal decisions have enforced these requirements in the immigration context. In *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161–62 (W.D.N.Y. 2025), the court held that ICE's failure to provide notice and an opportunity to be heard before revoking an OSUP and re-detaining a noncitizen violated both the agency's own regulations and the Due Process Clause. Similarly, in *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *8–9 (S.D.N.Y. Aug. 26, 2025), the court ordered the immediate release of a habeas petitioner who had been re-detained without notice or explanation, finding that the failure to provide notice "thwarts [the noncitizen's] ability to contest the revocation" and constitutes a due process violation. Other courts have reached the same conclusion, emphasizing that revocation of liberty interests must comply with agency regulations, including notice and an opportunity to be heard, and that actions taken without proper authority are void.

Other courts have reached the same conclusion, emphasizing that boilerplate or conclusory notices are insufficient, and that the absence of a meaningful interview or opportunity to respond renders revocation unlawful. See *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at 4 (E.D. Cal. 2025) (granting immediate release where ICE failed to provide individualized notice or a meaningful interview); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at 3 (D. Minn. Aug. 25, 2025) (invalidating OSUP revocation for lack of specific, individualized reasons and meaningful opportunity to respond); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673, at 3–4 (D. Minn. Sep. 3, 2025) (same); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165, at 3 (S.D. Cal. Sep. 15, 2025) (same); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at 2 (D. Kan. Jun. 17, 2025) (same); *Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at 2 (Sep. 30, 2025) (same); *Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025) (same). These cases

confirm that the government must provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking an OSUP or detaining a noncitizen, and that boilerplate or conclusory notices are insufficient.

The government's return does not dispute that Petitioner received no written notice, individualized assessment, or opportunity to respond prior to her re-detention. Instead, it relies on the existence of a removal order and the general authority to detain under § 1231. This is insufficient. The regulatory and constitutional requirements for revoking an OSUP and re-detaining a noncitizen are independent of the existence of a removal order. The government's failure to comply with these requirements renders Petitioner's detention unlawful, regardless of the underlying removal order.

D. Remedy

Because the government failed to provide Petitioner with the required notice, individualized assessment, and opportunity to be heard before revoking her OSUP and re-detaining her, her continued detention is unlawful and violates both the Constitution and federal regulations. The appropriate remedy is immediate release and restoration of her prior status, as well as declaratory and injunctive relief to prevent further violations. In addition, and consistent with the holdings in *ISA Abubaka v. Bondi* and *Nguyen v. Scott*, the Court should specifically enjoin Respondents from removing or seeking to remove Petitioner to any third country unless and until they provide full compliance with due process and statutory requirements—including meaningful, individualized written notice, a bona fide finding of changed circumstances, and an opportunity to respond in reopened removal proceedings before an immigration judge. These procedural protections are not satisfied by generic or voluntary government assurances, and courts have found

that the risk of third-country removal without due process is concrete and imminent, warranting injunctive relief.

The necessity of such relief is underscored by the irreparable harm Petitioner faces from continued unlawful detention and the threat of removal without due process. The deprivation of constitutional rights, including liberty and procedural due process, "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The public interest and the balance of equities strongly favor the issuance of injunctive relief to prevent further unlawful detention and to ensure that any removal proceedings comply with the Constitution and federal law.

In sum, the government's procedural arguments are unavailing, and its failure to comply with mandatory regulatory and constitutional requirements compels the Court to grant the relief sought in the amended complaint, including immediate release, restoration of OSUP and Deferred Action, and an injunction against any removal to a third country absent full compliance with due process and statutory protections.

V. THE UNLAWFUL RESCISSION OF ICE POLICY AND THE DE FACTO REVOCATION OF BENEFITS

The government's return fails to address the core administrative and constitutional defects in ICE's rescission of Directive 11005.3 and the resulting deprivation of Petitioner's Deferred Action and employment authorization. Instead, it relies on the existence of a new policy (ICE Policy Number 11005.4) and the general authority to enforce removal orders, without grappling with the requirements of the Administrative Procedure Act (APA) and the Due Process Clause.

A. The APA and the Arbitrary Rescission of ICE Directive 11005.3

Under the APA, agency actions must be set aside if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When rescinding a prior policy, an agency must provide a reasoned explanation for its action and address any legitimate reliance interests engendered by the prior policy. The Supreme Court in *Regents*, 591 U.S. 1, 20-23 (2020), made clear that an agency's failure to consider alternatives or reliance interests renders its action arbitrary and capricious. Judicial review is limited to the grounds invoked by the agency at the time of action; post hoc rationalizations are not permitted.

Here, ICE rescinded Directive 11005.3—a policy that required the agency to refrain from taking civil immigration enforcement action against individuals with pending victim-based immigration benefits, such as U visa petitioners—by issuing Policy Number 11005.4. The new policy cited only the January 20, 2025, Executive Order "Protecting the American People Against Invasion" as justification for a sweeping change in enforcement priorities, but failed to provide any substantive rationale for abandoning the victim-centered approach or to address the reliance interests of noncitizen crime victims and their families. This lack of reasoned explanation and failure to consider reliance interests is precisely the type of arbitrary and capricious agency action the APA prohibits. *Regents*, 591 U.S. at 20–24, 28–34; *Michigan v. EPA*, 576 U.S. 743, 750 (2015).

Recent federal decisions reinforce that ICE's failure to follow its own procedures and provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond is not a harmless error but a violation that invalidates agency action. Courts have repeatedly held that strict adherence to regulatory and constitutional requirements is mandatory, and that agency action taken in violation of these requirements is unlawful and must be set aside. See the above-cited cases. These cases confirm that ICE's failure

to comply with its own rules and to provide the procedural protections required by law is not a mere technicality, but a fundamental defect that requires the agency's action to be set aside.

Because ICE or DHS changed its policy in contradiction to the previous policy, it was required to provide a more detailed and thorough explanation for the change, especially given the significant reliance interests at stake. DHS failed to meet that standard here. Accordingly, ICE Policy Number 11005.4 should be declared a legal nullity as it was issued in violation of the APA, and the prior directive—ICE Directive 11005.3—should be reinstated. Under the prior directive, Petitioner should not be detained or removed while her U visa Deferred Action is valid and her visa petition is pending.

Even assuming ICE Policy Number 11005.4 is valid, ICE failed to follow its own procedures in Petitioner's case. The policy requires ICE officers to coordinate internally and consult with the Office of the Principal Legal Advisor (OPLA) before taking civil enforcement action against beneficiaries of victim-based immigration benefits. There is no indication that ICE considered Petitioner's crime-victim status, her pending U visa application, or her grant of Deferred Action when detaining her in July 2025 to enforce the prior removal order. This failure to follow internal procedures is itself a violation of the APA, which requires agencies to observe their own rules and procedures. See 5 U.S.C. § 706(2)(D). Recent federal decisions have repeatedly held that ICE's failure to follow its own regulatory and procedural requirements—including providing individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond—renders agency action invalid and requires restoration of the status quo ante. See above-cited cases which confirm that such procedural violations are not harmless errors, but fundamental defects that require judicial intervention and restoration of the affected benefits.

B. De Facto Revocation of Deferred Action and Employment Authorization: Due Process Violations

ICE's actions have resulted in a de facto revocation of Petitioner's Deferred Action and employment authorization, depriving her of a liberty and/or property interest without due process of law. In the Sixth Circuit, procedural due process requires the government to provide notice and a meaningful opportunity to be heard before depriving an individual of a significant liberty or property interest. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014); *Paterek v. Vill. of Armada, Michigan*, 801 F.3d 630, 649 (6th Cir. 2015). The same procedural and due process requirements that apply to OSUP revocation apply equally to the deprivation of Deferred Action and employment authorization. Courts have repeatedly found that failure to provide individualized notice and a meaningful opportunity to respond before depriving a noncitizen of such benefits renders the deprivation unlawful and requires restoration of the status quo ante. See above-cited OSUP revocation cases. These are not mere technicalities, but fundamental violations of due process and the APA that require judicial intervention to restore Petitioner's protected interests.

While Deferred Action and employment authorization are discretionary benefits at the grant stage, once conferred, they create tangible benefits and a reasonable expectation of continued enjoyment for the duration of the grant, absent lawful revocation. The Sixth Circuit recognizes that when the government confers a benefit or status, it may not arbitrarily rescind it without affording the recipient notice and an opportunity to be heard. See *Mertik v. Blalock*, 983 F.2d 1353, 1367 (6th Cir. 1993) (recognizing a liberty interest in government-conferred benefits and the right to procedural due process before deprivation); *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006).

Here, ICE's actions in detaining Petitioner and effectively revoking her Deferred Action and employment authorization—without prior notice or a meaningful opportunity to contest the deprivation—violate the Due Process Clause of the Fifth Amendment as interpreted by the Sixth Circuit. Such deprivations are constitutionally infirm and require judicial intervention to restore Petitioner's protected interests.

Federal courts across the country have repeatedly held that ICE's failure to provide individualized, written notice, a bona fide finding of changed circumstances, and a meaningful opportunity to respond before revoking Deferred Action, employment authorization, or an OSUP is not a harmless error, but a fundamental violation that invalidates agency action and requires immediate relief. See above-mention OSUP Revocation Cases.

VI. CONCLUSION AND RELIEF SOUGHT

For the reasons set forth above, Petitioner respectfully submits that the government's return to the order to show cause fails to rebut the core legal and factual claims established in the amended complaint. The record demonstrates that Petitioner's continued detention is unlawful: (1) her removal order is unenforceable for the duration of her valid Deferred Action, as established by the "last agency action" doctrine and the persuasive reasoning of *Fornalik v. Perryman*, 223 F.3d 523 (7th Cir. 2000); (2) ICE's revocation of her Order of Supervision and subsequent re-detention were effected without the notice, individualized assessment, or opportunity to be heard required by both the Due Process Clause and binding federal regulations; (3) the rescission of ICE Directive 11005.3 and the de facto revocation of Deferred Action and employment authorization were arbitrary, capricious, and in violation of the Administrative Procedure Act and the Constitution, as articulated in *Regents*, 591 U.S. 1 (2020), and controlling Sixth Circuit precedent; and (4) ICE's failure to comply with the procedural and substantive requirements for OSUP revocation and third-

country removal, as established by a growing body of federal case law, renders its actions unlawful and compels immediate judicial relief.

Petitioner has established that she is neither a danger nor a flight risk, has complied with all conditions of release for over a decade, and is entitled to the continued protection of her Deferred Action and employment authorization. The government's failure to follow mandatory procedures and to respect the legal effect of Deferred Action has resulted in ongoing and irreparable harm to Petitioner and her family. The deprivation of constitutional rights, including liberty and procedural due process, "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The public interest and the balance of equities strongly favor the issuance of injunctive relief to prevent further unlawful detention and to ensure that any removal proceedings comply with the Constitution and federal law.

Accordingly, Petitioner respectfully requests that the Court:

(1) Grant the writ of habeas corpus and order her immediate release from ICE custody;

(2) Reinstate her Order of Supervision and Deferred Action, along with employment authorization, under the same or substantially similar conditions as previously imposed;

(3) Declare that the rescission of ICE Directive 11005.3 and the promulgation of ICE Policy Number 11005.4 were arbitrary, capricious, and unlawful under the APA, and require Respondents to comply with the prior directive unless and until lawfully rescinded;

(4) Enjoin Respondents from any future revocation of Petitioner's OSUP, Deferred Action, or employment authorization absent full compliance with all regulatory and constitutional requirements, including notice, individualized assessment, and a meaningful opportunity to be heard;

(5) Enjoin Respondents from removing or seeking to remove Petitioner to any third country unless and until they provide full compliance with due process and statutory requirements—including meaningful, individualized written notice, a bona fide finding of changed circumstances, and an opportunity to respond in reopened removal proceedings before an immigration judge, as required by recent federal decisions such as ISA Abubaka v. Bondi, Nguyen v. Scott, and Aden v. Nielsen;

(6) Award such other and further relief as the Court deems just and proper to effectuate its order and prevent future violations of Petitioner's rights.

(7) Petitioner further requests expedited consideration of this matter, as the balance of equities and the public interest strongly favor immediate judicial intervention to remedy the ongoing constitutional and statutory violations and to prevent further irreparable harm.

(8) Grant the writ of habeas corpus and order her immediate release from ICE custody;

(9) Reinstate her Order of Supervision and Deferred Action, along with employment authorization, under the same or substantially similar conditions as previously imposed;

(10) Declare that the rescission of ICE Directive 11005.3 and the promulgation of ICE Policy Number 11005.4 were arbitrary, capricious, and unlawful under the APA, and require Respondents to comply with the prior directive unless and until lawfully rescinded;

(11) Enjoin Respondents from any future revocation of Petitioner's OSUP, Deferred Action, or employment authorization absent full compliance with all regulatory and constitutional requirements, including notice, individualized assessment, and a meaningful opportunity to be heard;

(12) Award such other and further relief as the Court deems just and proper to effectuate its order and prevent future violations of Petitioner's rights.

The deprivation of constitutional rights, including liberty and procedural due process, "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The public interest and the balance of equities strongly favor granting of relief to Petitioner to prevent further unlawful detention and to ensure that any removal proceedings comply with the Constitution and federal law.

Petitioner further requests expedited consideration of this matter, as the balance of equities and the public interest strongly favor immediate judicial intervention to remedy the ongoing constitutional and statutory violations and to prevent further irreparable harm.

Respectfully submitted this 20th Day of November, 2025.

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CERTIFICATE OF SERVICE

I certify that on November 20, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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