

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MOWAFAK SHAHLA,

Petitioner,

v.

Case No. 3:25-cv-01404-MMH-SJH

SCOTTY RHODEN, in his official capacity as Warden, Baker County Detention Center; **GARRETT RIPA**, in his official capacity as Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**; in her official capacity as Secretary of the U.S. Department of Homeland Security, **PAMELA BONDI**, in her official capacity as Attorney General of the United States,

Respondents.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY
MOTION FOR TEMPORARY RESTRAINING
ORDER AND STAY OF REMOVAL**

Respondents, Garrett Ripa, Kristi Noem, and Pamela Bondi, by and through undersigned counsel, hereby respond in opposition to Plaintiff's Emergency Motion for Temporary Restraining Order and Stay of Removal ("Emergency Motion") (Doc. 3). While the Court has granted a preliminary injunction on November 19, 2025 (Doc. 8), the Court has not yet ruled upon

Petitioners request to stay removal pending the adjudication of his Petition for Writ of Habeas Corpus (Doc. 1). Respondents argue that Petitioner has not alleged facts sufficient to satisfy the four factors necessary to enter a stay; thus, the Court should deny Petitioner's request.

PROCEDURAL BACKGROUND

Petitioner, Mowafak Shahla, is subject to a valid final order of removal entered on December 1, 2014. Under the INA, once an alien has been ordered removed, ICE has 90 days to remove her—this is known as the “removal period.” 8 U.S.C. § 1231(a)(1). An alien cannot generally be detained past the removal period and instead “shall be released pursuant to an order of supervision” should the removal period elapse without the order being executed. 8 U.S.C. § 1231(a)(3); 8 C.F.R. §§ 241.4(a), 241.5(a). As such, ICE released Petitioner under the terms of an Order of Supervision. In November 2025, ICE made a determination of changed circumstances and revoked Petitioner's Order of Supervision because there is a significant likelihood that Petitioner can be removed from the United States within the foreseeable future. As a result, on or about November 12, 2025, Petitioner was detained by ICE and has been held at the Baker County Detention Center awaiting execution of his removal order.

Petitioner filed a Petition for Writ of Habeas Corpus on November 18, 2025, (Doc. 2) as well as an Emergency Motion and Stay of Removal on the same date. The Court granted in part Petitioner's Emergency Motion and entered a preliminary injunction on November 19, 2025.

MEMORANDUM OF LAW

While there is an overlap in the legal standard for issuing a preliminary injunction and issuing a stay, the U.S. Supreme Court has enumerated four factors to be considered when contemplating a potential stay. In particular, the Court must consider:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009). Of these factors, the first and second considerations are the most critical. *Id.* Only once the Petitioner has satisfied the first two factors should the Court evaluate that last two factors. *Id.* at 435. And when the government is the opposing party, the last two factors are merged. *Id.*

ARGUMENT

I. Petitioner Establish a Likelihood of Success on His Claims

Similar to the standard in an injunction, if a petitioner cannot demonstrate a substantial likelihood of success on the merits, the court should end its inquiry. *Nken* at 434; *Keister vs. Stuart Bell, et al.*, 879 F.3d 1282, 1288. Here, it is highly unlikely that the Petitioner can succeed in demonstrating a likelihood of success on the merits. Petitioner has not been granted deferred action status by the United States Citizenship and Immigration Service (“USCIS”), and the United States Immigration and Enforcement (“ICE”) revoked Order of Supervision (“OSUP”) in accordance with the code of federal regulations.

A. Petitioner has presented no evidence indicating that he has been granted deferred status.

Petitioner contends that he was granted employment authorization and deferred action status by USCIS on March 22, 2022, which he alleges bars his removal. Doc. 3 at ¶ 4, pg. 4; Doc. 2-2. However, USCIS did not grant Petitioner employment authorization and deferred action status on March 22, 2022, it merely informed Petitioner that the evidence demonstrated that his petition for U nonimmigrant status is bona fide and informed him of his eligibility to “submit a Form I-765, Application for Employment Authorization” with USCIS. Doc. 2-2. Thus, contrary to Petitioner’s assertion,

USCIS did not grant him employment action and deferred action status on March 22, 2022, it merely determined that Petitioner's U-visa petition was "bona fide." *Id.*

Pursuant to 8 U.S.C. § 1184(p)(6), "[t]he Secretary [of USCIS] may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title."

Where a petitioner has filed a Form I-918 but has not filed an accompanying application for employment authorization," USCIS issues a notice indicating that the petitioner has received a [bona fide determination ("BFD")] and may receive a BFD [employment authorization determination ("EAD")]. To obtain an EAD, the petitioner must file a Form I-765 after receiving this notice.

*Volume 3, Part C, Chapter 5 – Bona Fide Determination Process, C. Adjudicative Process, 2. Previously Filed Form I-765 for Bona Fide Determination Process, USCIS POLICY MANUAL, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited December 2, 2025).*¹ Thus, while USCIS issued Petitioner a BFD on March 22, 2022, it did not issue an employment authorization and deferred action. Accordingly, Petitioner's constitutional claims, premised on ICE's purported due process violations is erroneous as a

¹Courts may take judicial notice at any stage of a proceeding of facts that are "not subject to reasonable dispute," because they are "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)–(d); *see also Thomas v. Sec'y, Fla. Dep't of Corr.*, 644 F. App'x 887, 888 (11th Cir. 2016).

matter of law. Deferred action is a benefit USCIS *may* grant in its discretion, and only after a decision on a petitioner's application for employment authorization has been made, and Petitioner has presented no evidence that such an application was made or approved.

B. ICE Properly Revoked Petitioner's Order of Supervision ("OSUP")

Petitioner acknowledges that he is subject to a final removal order. Thus, he is subject to the provisions of 8 U.S.C. § 1231. Under the INA, once an alien has been ordered removed, ICE has 90 days to remove her—this is known as the “removal period.” 8 U.S.C. § 1231(a)(1). An alien cannot generally be detained past the removal period and instead “shall be released pursuant to an order of supervision” should the removal period elapse without the order being executed. 8 U.S.C. § 1231(a)(3); 8 C.F.R. §§ 241.4(a), 241.5(a).

However, ICE also has the authority to revoke an order of supervision on several independent grounds, including a change in circumstances such that ICE “determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). When an revocation is issued ICE is required to notify the immigrant of the reasons

for revocation of their release—which ICE did here. *See* Exhibit 1 – Notice of Revocation of Release.

In its November 12, 2025, Notice of Revocation of Release, ICE informed Petitioner that his OSUP was revoked because “ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you.” *Id.* ICE also advised Petitioner that he would “promptly be afforded an informal interview” at which Petitioner would be “given an opportunity to respond to the reasons for the revocation.” *Id.* Thus, ICE has followed all appropriate regulations in revoking Petitioner’s OSUP because there is a substantial likelihood that he will be removed in the foreseeable future, and other than his own conclusory statements, Petitioner has not presented any evidence to that his removal is not likely in the foreseeable future. Thus, Petitioner has failed to establish a likelihood of success on the merits and the Court should deny his Emergency Motion.

II. Petitioner has not demonstrated that he would suffer irreparable harm if his Emergency Motion is denied.

Petitioner argues that he would be at serious risk of suffering a medical emergency if he were removed from the United States due to his cardiovascular disease. However, Petitioner presented no facts nor evidence to support his contention that his removal from the United States would result in a medical emergency. Petitioner’s claims are merely speculative.

As to Petitioner's current medical treatment, Petitioner has received continuous medical care since he entered the Baker County Detention Center. *See* Exhibit 22: Petitioner's Full Medical Records. Petitioner was initially screened upon entry into the Baker County Detention Center, a medical intake screening was performed and his current medical conditions were notated. Exh. 2 at pg. 1. Medications to treat Petitioner's medical condition were prescribed, filled, and administered. *See* Exh. 2 at pgs. 58-69.

Petitioner additionally states that he would face separation from his family and incur difficulties in the processing of his U-visa. However, USCIS will still be able to process Petitioner's application, and federal regulations specifically state that pending U-visa applications "ha[ve] no effect on ICE's authority to execute a final order." 8 C.F.R. § 214.4(c)(ii); Doc. 3 at pg. 6. Additionally, the Supreme Court has cautioned that "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable. *Nken* at 435. Nor is the mere "possibility of irreparable injury" sufficient to satisfy this factor. *Id.* Petitioner further alleges that the adjudication of his U-visa petition is imminent; however, the evidence provided does not support that supposition either.

Congress capped the number of principal U-Visas available each year at 10,000. 8 U.S.C. § 1184(p)(2)(A); 8 C.F.R. § 214.14(d)(1). And

although USCIS originally estimated it would receive approximately 12,000 principal U-Visa petitions per year, the actual number of U-Visa petitions received has far exceeded that estimate consistently. *See New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53,033. Consequently, through the end of fiscal year 2024, over 396,960 principal and derivative U petitions were pending with USCIS. *See* USCIS, Number of Form I-918, Petition for U Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, Fiscal Years 2009-2024 (“I-918 Chart”), https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2024_q4.xlsx (last accessed Jan. 28, 2025). However, USCIS follows its published processing priorities in adjudicating U visa petitions and, thus, adheres to a rule of reason. Current data does not support Petitioner’s contention that the adjudication of his U-visa petition is “imminent.”

III. The balance of equities and public interests favor the Government

Unlike other requests for injunctive relief or stays pending appeals where the constitutionality of a statute or regulation may be in question here, Petitioner asks the Court to enjoin the enforcement of a valid and lawful final order of removal. “There is always a public interest in prompt execution of removal orders.” *Nken* at 435. The Supreme Court has stated that the consequence of delaying a deportation proceeding is to “permit and prolong a

continuing violation of United States law.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 490 (1999). Further, “[w]hile the consequences of deportation may assuredly be grave, they are not imposed as a punishment, [. . .] in all cases, deportation is necessary in order to bring to an end *an ongoing violation* of United States law.” *Id.* at 491 (emphasis in original).

CONCLUSION

Based on the foregoing, the Court should deny Petitioner’s Emergency Motion and Stay of Removal because he has failed to satisfy the four factors necessary to grant him relief.

Dated: December 2, 2025

Respectfully submitted,

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