

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NORLAND RIVERA-AMADOR,

Petitioner/Plaintiff,

Case No.: 3:25-cv-1460-WWB-SJH

v.

SCOTTY RHODEN, SHERIFF OF BAKER
COUNTY; KRISTI NOEM, SECRETARY
OF THE DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI, ATTORNEY
GENERAL OF THE U.S.; TODD M.
LYONS, ACTING DIRECTOR U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CONNIE NOLAN,
DIRECTOR OF USCIS VERMONT
SERVICE CENTER; AND U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES ("USCIS"),

Respondents/Defendants.

**RESPONSE IN OPPOSITION TO PETITIONER/PLAINTIFF'S EMERGENCY MOTION
FOR PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER**

Defendants, Kristi Noem in her official capacity as Secretary of the Department of Homeland Security; Pamela Bondi in her official capacity as Attorney General of the U.S.; Todd M. Lyons in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; Connie Nolan in her official capacity as Director of USCIS Vermont Service Center; and U.S. Citizenship and Immigration Services ("USCIS") (hereafter collectively the "Federal Respondents"), by and through the undersigned Assistant U.S. Attorney, respectfully request that the court deny Petitioner's Emergency Motion for Temporary

Restraining Order (“TRO”) and Stay of Removal (ECF 3, “TRO Mot.”). Rivera-Amador has not met his burden of making a clear showing that his detention or removal is unlawful necessitating the extraordinary remedy of a TRO. Federal Respondents also request that the Temporary Restraining Order entered December 4, 2025 (ECF 8) be vacated).

This court is barred from reviewing ICE’s decision to execute Rivera-Amador’s order of removal. 8 U.S.C. § 1252(g). Rivera-Amador incorrectly claims that his detention violates the Administrative Procedures Act (“APA”), Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment because he has been granted deferred action status. ICE’s detention of Rivera-Amador pending his removal is lawful pursuant to 8 U.S.C. § 1231(a). Accordingly, and for the reasons set forth below, Federal Respondents request that the Court deny the TRO Motion.

I. BACKGROUND

A. Petitioner

Rivera-Amador is a 46-year-old male, who is a national and citizen of Honduras. He entered the United States at an unknown place and on an unknown date, without inspection by U.S. Immigration Officers. At an immigration court hearing, he testified he entered the US on October 20, 1998 until March 2000 and re-entered in April 2000. Rivera-Amador was placed into removal proceedings with the service of a Notice to Appear (“NTA”) on March 25, 2009 and was charged with removability under INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I). See Ex. 1, Notice to Appear. On January 26, 2011, his application for cancellation of removal under INA § 240A(b) and voluntary departure under INA § 240B(b) were denied. Rivera-Amador was ordered removed by an immigration judge in Miami, Florida on January 26, 2011. See Ex. 2, Order of Removal.

On October 16, 2012, the Board of Immigration Appeals (BIA) dismissed his appeal. See Ex. 3, Dismissal.

On March 20, 2009, Rivera-Amador was convicted of Leaving the Scene of an Accident (more Than \$500 in property damage) and Driving Under the Influence with Property Damages. See Ex. 4, St. Lucie County Court Documents.

Rivera-Amador was first detained on March 25, 2009 surrounding an arrest. He was first detained following entry of his 2011 removal order on November 14, 2025. As of the date of this filing, the Rivera-Amador has been in custody for **24 days**. He is currently detained at the Baker County detention facility as of the filing of this response.

On August 10, 2017, the petitioner filed Form I-918A, Supplement A, Petition for Qualifying Family Member of U-1 Recipient with USCIS. On June 8, 2022, USCIS provided correspondence reflecting the petition is bona fide and may be placed in deferred action. See Ex. 5, USCIS Correspondence. On October 12, 2023, Form I-765, Application for Employment Authorization, was approved; effective until October 11, 2027.

B. Detention Authority

8 U.S.C. § 1231(a) governs the detention and release of noncitizens during and following their removal proceedings. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). Rivera-Amador is detained pursuant to § 1231(a)(2) and (a)(6).

C. The U Visa Program

Rivera-Amador's petition implicates the U-Visa program. To seek U nonimmigrant status, an individual submits a Form I-918. 8 C.F.R. §§ 214.14(c)(1), (f)(2). A qualifying family member of a U-1 recipient may also receive U nonimmigrant status. *Id.* The U

visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). This means that the number of noncitizens who may be issued U-1 nonimmigrant visas in any fiscal year shall not exceed 10,000. See *id.* Anticipating that the,000 annual statutory cap would be met within the first few fiscal years of enactment, USCIS created a regulatory waiting list process. See 8 C.F.R. § 214.14(d)(2). If a U visa petition is determined to be approvable, but for the fact that a visa is not available due to the statutory cap, the petitioner is placed on the waiting list. See *id.*, § 214.14(d)(2). This determination of eligibility in all respects but for the statutory cap includes assessing whether it appears that any grounds of inadmissibility should be waived in the exercise of discretion in the final adjudication when space is available under the cap. See USCIS Policy Manual, Vol. 3, Part C, Ch. 6, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6> (last visited December 5, 2025).

The regulations provide that, when USCIS places a petition on the waiting list, “USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U- 1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.” 8 C.F.R. § 214.14(d)(2). “Deferred action” is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited December 5, 2025).

D. Bona Fide Determination Process

In 2021, USCIS published a Policy Manual update implementing a process which provides employment authorization and deferred action more efficiently to U visa petitioners and their qualifying family members with pending bona fide petitions who merit a favorable exercise of discretion. See USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on December 5, 2025). The process, referred to as the BFD process, is authorized under 8 U.S.C. § 1184(p)(6), which provides that “[t]he Secretary may grant work authorization to any alien who has a pending, bona fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title.” As part of the BFD process, USCIS has the discretion to issue work authorization and grant deferred action to a noncitizen who establishes that their pending U visa petition is “bona fide” and warrants the agency’s exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on December 5, 2025).

By implementing this policy, USCIS sought to address the U visa backlog by preliminarily evaluating petitions and providing interim benefits as efficiently as possible. See USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on December 5, 2025). The BFD process provides an opportunity for certain petitioners to receive employment authorization documents (“EADs”) and deferred action for four years, renewable, if they receive a favorable BFD finding while their U visa petitions are pending. USCIS renders final decisions on U visa petitions when U visas become available based on the order the

principal petition was received, with the oldest filings receiving highest priority. 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited on December 5, 2025).

II. LEGAL STANDARD

“A TRO or preliminary injunction is appropriate where the movant demonstrates that: (a) there is a substantial likelihood of success on the merits; (b) the TRO or preliminary injunction is necessary to prevent irreparable injury; (c) the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and (d) the TRO or preliminary injunction would not be averse to the public interest. *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001). “The preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant ‘clearly carries the burden of persuasion’ as to the four prerequisites.” *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983). The burden to prove entitlement to a TRO is on the petitioner, and respondent bears no burden to prove that petitioner is not entitled to a TRO. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 443 (1974).

III. ARGUMENT

A. This Court lacks jurisdiction to halt the execution of a final order of removal.

Rivera-Amador bases this habeas case on the theory that ICE cannot remove him because of his deferred actions status. TRO Mot. at ¶3.¹ Fundamentally, no matter how

¹ Petitioner attempts to incorporate by reference his Petition for Writ of Habeas Corpus in to the TRO Motion. See TRO Mot. ¶1. The court should not consider the content of the

it is framed, Rivera-Amador's claim directly arises from the government's decision to execute his final removal order (Ex. 2). Congress has spoken clearly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court lacks jurisdiction to review ICE's decision to execute Rivera-Amador's order of removal.

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. See *Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly enacted Section 1252(g) that:

Except as provided in this section and notwithstanding any other provision of law, 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 Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. See REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

Except as provided in this section and notwithstanding any other provision of law, *(statutory or nonstatutory), including section 2241 of Title 28, or any other habeas*

Petition because the Local Rules prohibit incorporation by reference. See Local Rule 3.01(h).

corpus provision, and *sections 1361 and 1651 of such title*, 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) (2017) (emphasis added).

In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the “‘decision or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (original emphasis). With a final order of removal, any request for this court to enjoin Rivera-Amador’s removal falls directly within one of the discrete actions precluded from judicial review. *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9th Cir. 2019) (unpublished) (“The decision whether to remove aliens subject to valid removal orders who have applied for U-visas is entirely within the Attorney General’s discretion.”).

“[T]he filing of a [U-visa application] has no effect on ICE’s authority to execute a final order.” 8 C.F.R. § 214.14(c)(1)(ii)). Rivera-Amador cites to no statutory or legal authority that USCIS’s grant of deferred action through the U visa BFD process invalidates his order of removal. Even with deferred action, Rivera-Amador’s I-918 petition remains pending – meaning it has no effect on ICE’s statutory authority to execute his removal order. And as described below, deferred action is not a stay of removal.

In *Camerena v. Direct, Immigration and Customs Enforcement*, 988 F. 3d 1268, 1273-74) (11th Cir. 2021), the court recognized the narrow applicability of Section 1252(g)’s jurisdictional bar but explained that in determining Section 1252(g)’s reach, the focus should be on the action challenged. *Camerena*, 988 F.3d at 1272. There, the court ultimately found that no matter how petitioners characterized their claims—as challenges to the government’s discretionary decisions or to the government’s authority to make

those decisions—Section 1252(g)'s jurisdictional bar applied because what they ultimately sought was to halt the execution of their removal orders. *Id.* The facts in *Camerena* parallel the facts here. As in *Camerena*, Rivera-Amador has framed his challenge as an attack on ICE's authority to enforce his final order of removal. No matter how he frames the challenge, this court lacks jurisdiction to enjoin ICE's execution of Rivera-Amador removal order. *Id.* ("In short, no matter how [petitioners] characterize their claims, they amount to an attack on the government's execution of their removal orders. That runs afoul of §1252(g) . . ."). See also *Rosmeri Adaluz Miranda-Lopez v. Kimberly Deal, et al.*, 6:25-cv-01015- CEM-LHP, Jun. 11, 2025, ECF 5 (order dismissing habeas petition where petitioner had deferred action status under U Visa program for lack of subject matter jurisdiction).

B. Rivera-Amador is unlikely to succeed on the merits.

Even if this court were to find that it has jurisdiction, Rivera-Amador cannot establish that he has a substantial likelihood of success on the merits. This is generally the most important of the factors and while it does not require a showing of certain success, it does require a showing of likely or probable success. See *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005). Rivera-Amador is detained pursuant to a final order of removal. Thus, his detention is lawful under 8 U.S.C. § 1231(a). He has failed to provide any legal basis for his release from detention. Rivera-Amador's detention since November 14, 2025 is statutorily lawful and he is unlikely to succeed on his claim that his ongoing detention violates due process because he has deferred action status.

1. Rivera-Amador's detention is lawful.

Rivera-Amador was detained on November 14, 2025—just 24 days ago. He appears to argue he could only be detained for a period of 90 days in 2013 under 8 U.S.C. §1231(a)(3) given the date of his removal order (ECF 1, ¶¶54-55). Essentially, he asserts that if he was not detained with 90 days in 2013, he could not be detained at all. That is not correct and defies common sense. The reasonable period of detention begins **at detention**. While that time may be coterminous with the beginning of the removal period, 8 U.S.C. § 1231(a), those dates need not necessarily be the same.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C. § 1231(a) permits the government to detain an alien during the 90-day removal period in § 1231(a)(1) and for an additional 90 days in order to effect the alien's removal from the United States. *Zadvydas*, 533 U.S. at 701. See *Clark v. Martinez*, 543 U.S. 371, 125 S. Ct 716 (2005). Further, "six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (citing *Zadvydas*, 533 U.S. at 701). Thus, under *Zadvydas* and *Clark*, the government has at least six months, the 90-day removal period plus an additional 90 days, to effectuate an alien's removal upon detention which began in this case on November 14, 2025.

Although *Zadvydas* held that detention of six months is presumptively reasonable, the Supreme Court hastened to add that the six-month presumption did not mean that every alien not removed in this timeframe must be released after six months. *Zadvydas*, 533 U.S. at 701. The Supreme Court explained, "[t]o the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of

removal in the reasonably foreseeable future.” *Id.* Further, the Eleventh Circuit concluded that “in order to state a claim under *Zadvydas* the alien must *not only* 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) (emphasis added). Therefore, the burden is on Rivera-Amador to demonstrate: (1) post-removal order detention over six months; and (2) good reason to believe that there was no significant likelihood of removal in foreseeable future. *Id.* Given that Rivera-Amador recently notified the court that his removal was imminent (ECF 7) he cannot meet his burden.

To conclude as Rivera-Amador suggests—that he could only be detained under §1231 for 90 days in 2013—flies in the face of the INA itself and controlling interpretation of this issue. For these claims, the “basic question” is “whether the detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Court “used the words ‘detain’ and ‘custody’ to refer exclusively to physical confinement and restraint.” *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. If, as here, a removable person gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during

removal period because “it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody”); *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 1895479 (S.D. Fla. 2025) (finding *Zadvydas* period did not begin until date of detention despite date of removal order)².

2. Deferred action status does not prevent Rivera-Amador’s detention or removal.

Deferred action is an administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14). It does not provide a U visa applicant with a stay of removal. The filing of a U visa petition “has no effect on ICE’s authority to execute a final order . . .” 8 C.F.R. § 214.14(c)(1)(ii). In order to obtain a stay of removal, a U visa petitioner with a final order of removal must file a request for stay of removal which has not occurred here. *Id.* A grant of BFD deferred action is not synonymous with a stay of removal, deferred action simply placed Rivera-Amador at a lower priority. See “New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining “deferred action” and “a stay of deportation or removal” separately and distinctly in the U visa context)³; 8 U.S.C. §

² See also *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

³ “A stay of deportation or removal is an administrative decision **to stop temporarily the deportation or removal of an alien who has been ordered deported or removed** from the United States. See 8 CFR 241.6; 8 CFR 1241.6. Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien’s case

1227(d)(2) (listing deferred action and a stay of removal as distinct); *Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) (“Plaintiff obtaining a BFD in his favor would not prevent his removal”). Deferred action is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14) (describing deferred action as an administrative convenience giving cases lower priority); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, §7 *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on December 5, 2025). Deferred action status does not operate as a stay of removal or preclude removal where a final order of removal exists.

Rivera-Amador asks this Court to infer a stay based on various regulatory and policy provisions, but there is no language in the statute or regulations that state that a grant of deferred action through the U visa BFD process warrants a stay of removal. Indeed, USCIS’s Policy Manual indicates otherwise, noting that the granting of a BFD EAD establishes a *prima facie* case for approval such that ICE can consider granting a discretionary stay of removal per 8 U.S.C. § 1227(d)(1). USCIS Policy Manual, Vol. 3, Part C, Ch.5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited December 4, 2025). If a grant of deferred action through the U BFD process constituted a stay of removal, this guidance would be superfluous.

In comparison, the regulations related to T visas contain the specific language providing for a stay of removal that is lacking from U visa regulations. Like with U visa petitions, “[t]he filing of an Application for T Nonimmigrant Status has no effect on DHS

being made a **lower priority for removal.**” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 FR 53014-01 (emphasis added).

authority or discretion to execute a final order of removal, although the applicant may request an administrative stay of removal” pursuant to 8 C.F.R. § 241.6(a). 8 C.F.R. § 214.204(b)(2)(ii). But unlike the U visa regulations, a bona fide determination on a T visa application automatically stays removal, “and the stay will remain in effect until a final decision is made on the Application for T Nonimmigrant Status.” *Id.*, § 214.204(b)(2)(iii). This difference demonstrates that language could have and would have been included in the U visa regulations if the BFD process, including a grant of deferred action, stayed removal—but that language was not included for U visas. See generally 8 C.F.R. § 214.14.

An administrative convenience cannot be construed as a substantive right that can be asserted by an alien to stay or prevent removal where a valid and final removal order is in place. As mentioned previously, the filing of a U visa petition “has no effect on ICE’s authority to execute a final order . . .” 8 C.F.R. § 214.14(c)(1)(ii). In *Lennon v. Immigration and Naturalization Service*, 527 F.2d 187 (2d Cir. 1975) the Second Circuit described non-priority status as “in effect, an informal administrative stay of deportation” but went on to state that a deportation order may be “executed at any time.” *Id.* at 191, n.7. See also *Zacharakis v. Howerton*, 517 F. Supp. 1026, 1028 (S.D. Fla. 1981) (citing *Lennon* and finding that regulations at the time conferred no substantive right on aliens to seek inclusion in the deferred action category.); *Siverts v. Craig*, 602 F. Supp. 50, 53 (D. Haw. 1985) (describing the grant of deferred action status as “clearly for the INS’s convenience and benefit, *not* the alien’s”) (emphasis original).

Some district courts have viewed deferred action as precluding removal but this court should not reach the same conclusion. In the court’s order (ECF 6), the court

specifically cited two district court decisions that dealt with deferred action status, *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201-GAYLES, 2025 WL 3012786 (S.D. Fla. Oct. 28, 2025) and *Sepulveda Ayala v. Bondi*, 794 F.Supp.3d 901, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, (W.D. Wash. July 24, 2025). The court should not follow *Espinoza-Sorto* or *Ayala* because both decisions incorrectly decided the issue of jurisdiction⁴ and do not provide a reasonable legal basis to support the contention that deferred action status prevents removal.

In *Ayala*, the court made the bold statement that the petitioner's view of deferred action "[f]inds strong support in Supreme Court precedent, circuit authority, and USCIS policy." *Id.* at *9. However, upon closer scrutiny, that is not the case. *Ayala* begins by citing *AADC* which did not hold that deferred action precludes or stays removal at all—*AADC* merely described deferred action by citing a treatise and referencing *Johns v. Dep't of Justice*, 653 F.2d 883 (5th Cir. 1981) for a similar description of deferred action. Neither *AADC* nor *Johns* held that deferred action stays or precludes removal and did not address that issue at all.

The court in *Ayala* went on to cite 9th Circuit decisions for the contention that "deferred action prevents recipients' removal from the United States." *Id.* at *7. In reviewing those cases, it does not appear any of the authority the court cited supports the

⁴ On the issue of jurisdiction, *Ayala* and *Espinoza-Sorto*, determined that the claims arose from the government's grant of deferred action rather than execution of a removal order. The decisions conflict with the Eleventh Circuit's reasoning in *Camerena* that "[i]n short, no matter how [petitioners] characterize their claims, they amount to an attack on the government's execution of their removal orders. That runs afoul of §1252(g) . . ." *Id.* at 1273-74. Furthermore, the court in *Espinoza-Sorto* acknowledged another court arrived at a different conclusion on jurisdiction. *Id.* at n.11 citing *Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465 at *5 (W.D. Wash. Jun. 20, 2025).

contention that deferred action prevents or stays removal. In *Lee v. Hoder*, 599 F. 3d 973 (9th Cir. 2010), the court denied review of a petition for habeas corpus due to a lack of jurisdiction and did not hold that deferred action prevents removal. Likewise, *Barahona-Gomez v. Reno*, 236 F. 3d 1115 (9th Cir. 2001) did not hold that deferred action status prevents removal; deferred action was merely described in a footnote. *Id.* at n.3.

The court in *Ayala* then cites two dissents for support of its contention that circuit authority supported petitioner's argument, citing to dissents in *Arizona Dream Act Coalition v. Brewer*, 855 F. 3d 957, 958 (9th Cir. 2017) and *Alvarez Leal v. Lynch*, 673 F. App'x 630 (9th Cir. 2017). However, those dissents do not argue that deferred action precludes removal, they merely describe deferred action in dicta. Likewise, the district court decisions that *Ayala* relies upon provide no support. In *DeSousa v. Director of USCIS*, 755 F. Supp.3d 1266, 1268 (N.D. Cal. 2024) the district court mentions, in dicta, that deferred action "protects" against removal without ever finding that it prevents removal as a matter of law—going on to find the petitioners lacked standing in a dispute about USCIS failing to give them waitlist determinations and advanced parole. In *Medina v. DHS*, 408 F. Supp.3d 1224, 1228 (W.D. Wash. 2019) the district court, in dicta, describes deferred action under DACA, as a "conditional promise" that the government will not seek removal. Neither *DeSousa* nor *Medina* concern the issue of whether deferred action precludes removal. In sum, the most *Ayala* does is cite to passing descriptions of deferred action in other cases without finding a single case that held deferred action stays or prevents removal of someone with deferred action status.

Turning to statutory authority cited in *Ayala*, the court rejected the notion that 8 U.S.C. §1227(d)(2) draws a distinction between deferred action and stay of removal so

they must mean different things. The court argued that §1227(d)(2) supports the contention that deferred action precludes removal because it provides that a party who is not granted an administrative stay can seek a stay of removal, deferred action, or continuance or abeyance of removal proceedings. *Id.* at 913. The court in *Ayala* construed this provision to mean that deferred action cannot mean only “lower priority” but that it must equate to a bar on removal, lest the statute be rendered “merely an illusion.” *Id.* at 914. The court’s reading of §1227(d) asks too much of that provision, a statute concerning administrative stays, and should not be construed to codify that deferred action is the same as a stay of removal or operates to prevent removal.

The court in *Ayala* goes on to construe deferred action as a direct personal benefit to its recipients (at 914). However, deferred action is an administrative convenience for the benefit of the agency and interpreting deferred action status as conferring a personal benefit is contrary to Eleventh Circuit precedent, specifically *Pasquini*, where the Eleventh Circuit held that deferred action policy conferred no substantive rights. *Id.* at 663.⁵

Turning to *Espinoza-Soto*, the court concluded that “[R]espondents affirmed they would take no action to remove him while [deferred action status] was in effect.” *Id.* at *6. However, in arriving at that conclusion, the court did not cite a single circuit court decision holding that deferred action status stays or prevents removal—merely to dicta and footnotes describing deferred action generally. The only Eleventh Circuit citation was to a footnote from *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.

⁵ Following the district court’s order on the preliminary injunction, the same court granted petitioner’s writ of habeas corpus on August 4, 2025. *Ayala v. Bondi*, 2025 WL 2209708 (W.D. Wash. Aug. 4, 2025). The court did not provide any additional significant legal analysis in that subsequent order on the issue of deferred action status, only incorporating its prior analysis. *Id.* at *3.

3d 1250, n. 2 (11th Cir. 2012) which cited to dicta from *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983) (holding that internal INS policy of deferred action conferred no substantive right). *Pasquini* did not hold that deferred action status prevents removal but was merely describing deferred action status in passing. As mentioned previously, the court's reliance on *AADC* is of no help because *AADC* did not hold that deferred action status prevents removal.

In sum, deferred action status does not operate as a stay of removal and does not preclude removal where a valid and final removal order is in place. While such status may have made Rivera-Amador a lower priority for removal, it is not a bar to removal. Rivera-Amador's removal order may be carried out and he may be detained in conjunction with that order despite having deferred action status. Consequently, Rivera-Amador has not demonstrated that he is likely to succeed on the merits of his claim and the TRO Motion should be denied.

C. Rivera-Amador has not shown irreparable harm.

Rivera-Amador has not demonstrated that he will suffer irreparable harm absent the injunctive relief he seeks. "A showing of irreparable harm is 'the *sine qua non* of injunctive relief.'" *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990). Merely showing a "possibility" of irreparable harm is insufficient. See *Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. "Although removal is a serious burden for many aliens, it is not categorically

irreparable.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Rivera-Amador has not made such a showing here. “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm . . .” *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

Apart from removal, the only other evidence alleging harm was submitted via the affidavit of Rivera-Amador’s attorney, asserting vaguely that Rivera-Amador would be separated from family and his “two U.S. citizen children” (ECF 3, Aff. Of Friz-Garcia, ¶15) while his U-visa status is pending approval. The vague averments of counsel’s affidavit, without more, fail to make an adequate showing of irreparable harm to Rivera-Amador if he is removed pursuant to a final removal order. Rivera-Amador has failed to demonstrate irreparable harm.

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

Finally, the balance of equities and the public interest weigh decisively against Rivera-Amador’s request for preliminary injunctive relief. Unlike some other requests for preliminary injunctive relief where the constitutionality of a statute or regulation may be in question, here Rivera-Amador asks this Court to enjoin the enforcement of an unquestionably lawful and final removal order. It is well settled that the public interest in enforcement of United States’ immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also*

Nken v. Holder, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders").

IV. CONCLUSION

Rivera-Amador has failed to meet his high burden, the Motion for Temporary Restraining Order (ECF 3) should be denied, and the Temporary Restraining Order entered on December 4, 2025 (ECF 8) should be vacated.

Respectfully submitted on December 2, 2025.

Respectfully submitted,

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