

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 1:26-cv-20247-KMW

CARLOS ALBERTO DIONICIO CABRERA,  
Petitioner,

v.

TODD LYONS, Acting Director, U.S. Immigration  
and Customs Enforcement, *et al.*,  
Respondents.

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**RESPONSE TO ORDER TO SHOW CAUSE**

The Director of Miami Field Office, *et al.* (“Respondents”),<sup>1</sup> through the undersigned Assistant United States Attorney, and pursuant to this Court’s Order to Show Cause entered on January 15, 2026 (ECF No. 5), respectfully file their response in opposition to Petitioner Carlos Alberto Dionicio Cabrera’s (“Petitioner”) Petition for a Writ of Habeas Corpus (“Petition”). For the reasons set forth fully herein, Respondents request that the Court dismiss or deny the Petition.

**INTRODUCTION**

As a threshold issue, this matter can be transferred to the Middle District of Florida, where Petitioner is currently detained at the Florida Soft Side South Detention Center (FSSFS) in Ochopee, Florida. Petitioner was transferred to FSSFS on January 15, 2026 at 12:38pm, three hours before the Court entered its order to show cause ordering the Respondents to “not remove

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<sup>1</sup> A writ of habeas corpus must “be directed to the person having custody of the person detained.” 28 USC § 2243. In cases involving present physical confinement, “the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the South Florida Detention Center (“Alligator Alcatraz” or “SFDC”) in Collier County. Collier County is located in the Middle District of Florida. *See* 28 U.S.C. § 89(b) (“The Middle District comprises the counties of . . . Collier[.]”). Pursuant to *Padilla*, Petitioner’s immediate custodian is the Warden of the South Florida Detention Center. *See Rumsfeld v. Padilla*, 542 U.S. at 439. Accordingly, the proper Respondent in the instant case is the Warden of the South Florida Detention Center, and all other Respondents should be dismissed.

Petitioner from the Miramar Office until further order of the Court.” (ECF No. 5 at ¶ 8). The Miramar Office is a temporary and transitional holding facility designed to keep Respondents for transitory holding periods.

Should this Court find that venue is proper, this Court lacks jurisdiction under 8 U.S.C. § 1252 (g), because Petitioner’s claims arise from Respondents’ discretionary decision to execute Petitioner’s valid reinstated prior order of removal. Petitioner seeks extraordinary relief premised on the mistaken assumption that a discretionary grant of deferred action under the U-visa framework eliminates the United States Immigration and Customs Enforcement’s (“ICE”) statutory detention authority or creates a constitutionally protected right to remain at liberty. It does neither.

Petitioner is subject to a reinstated final order of removal and has been detained pursuant to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231(a)(5). His detention does not constitute a “revocation” of deferred action, nor does his detention or removal require formal termination of that discretionary benefit. Deferred action is not lawful status, does not invalidate a removal order, and does not divest ICE of authority to take custody where authorized by statute.

This Court lacks jurisdiction over Petitioner’s claims to the extent they challenge discretionary enforcement decisions, detention determinations, or seek to restrain execution of a removal order. Even if jurisdiction existed, the Petition fails on the merits because Petitioner identifies no statutory or constitutional violation.

### **LEGAL BACKGROUND**

The Court has jurisdiction to adjudicate the pending petition because the Southern District of Florida was the Petitioner’s immediate custodian at the time of the Petition’s filing. *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2722 (2004). “Section 2241(a)’s language limiting district courts to granting habeas relief “within their respective jurisdictions” requires “that the court issuing the writ have jurisdiction over the custodian,” *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 93 S.Ct. 1123, 93 S.Ct. 1123. Because Congress added the “respective jurisdictions” clause to prevent judges anywhere from issuing the Great Writ on behalf of applicants far distantly removed, *Carbo v. United States*, 364 U.S. 611, 617, 81 S.Ct. 3385 L.Ed.2d 329, the traditional rule has always been that habeas relief is issuable only in the district of confinement, *id.*, at 618, 81 S.Ct. 338. This commonsense reading is supported by other portions of the habeas statute, *e.g.*,

Section 2242, and by Federal Rule of Appellate Procedure 22(a).” *Padilla* at 2214. Nevertheless, transfer of a 2241 petition upon the relocation of a petitioner is permissible. *See Perez v. Breckon*, No. 9:17-cv-00353-JKS, 2019 WL 652410, at \*2 (N.D.N.Y. Dec. 15, 2019) and *Lemus-Pineda v. Whittaker*, 354 F.Supp. 3d 473, 475-76 (S.D.N.Y. 2018) (where the Court transferred a habeas petition to the district where Petitioner was being housed instead of dismissing).

Respondents respectfully advise the Court that there is an appropriate respondent in the Middle District of Florida. That respondent would be the Warden of the FSSFS Detention Center. As such, the Court is at liberty to transfer this petition to the Middle District of Florida. The Respondents defer to the Court’s discretion on this subject.

In October 2000, Congress created the U nonimmigrant classification (colloquially “the U visa program”) as a part of the Victims of Trafficking and Violence Protection Act of 2000 (“VTVPA”), Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant status to certain victims of crime who cooperate with law enforcement in the investigation or prosecution of a qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U). 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). Anticipating a backlog due to this statutory cap, USCIS created a regulatory waiting list process. *See* 8 C.F.R. § 214.14(d)(2). “Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority.” *Id.*

Relevant here, in 2021, USCIS again sought to address the U visa backlog by implementing the U visa bona fide determination (“BFD”) policy through the preliminary evaluation of petitions and the provision of 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 January 15, 2026). The BFD process provides an opportunity for certain petitioners to receive employment authorization documents and deferred action. “‘Deferred action’ is an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States.” *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 January 15, 2026); *see also* 8 C.F.R. § 274a.12(c)(14). Thus, a grant of deferred action does not preclude ICE from executing an outstanding removal order or detaining a noncitizen while removal is pending. It does not provide a U-visa applicant with a stay of removal, nor does it confer any immigration status

upon the noncitizen. Indeed, the preamble to the 2007 rulemaking which created the U-visa regulations plainly states in pertinent part:

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 being made a lower priority for removal. Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). Deferred action does not confer any immigration status upon an alien.

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007). (emphasis added). Accordingly, pursuant to 8 C.F.R. 214.14 (c)(1)(ii), USCIS will continue to adjudicate a noncitizen's U-visa application even if he is outside the United States.

Preliminary injunctive relief—whether through a temporary restraining order or a preliminary injunction—is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). A preliminary injunction is warranted “only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). “A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the ‘burden of persuasion’ “ as to each of the four prerequisites. *Id.* (internal citation omitted).

### **FACTUAL BACKGROUND**

The petitioner, Carlos Alberto Dionicio Cabrera, (Petitioner) is a native and citizen of Guatemala who illegally entered the United States on or about March 22, 1993. *See* Exh. A, Order to Show Cause and Notice of Hearing, dated March 25, 1993. On or about March 25, 1993, legacy Immigration and Naturalization Service encountered Petitioner and issued an Order to Show Cause, charging petitioner with being present in the United States in violation of former section 241(a)(1)(B), in that he entered the United States without inspection. *See* Exh. A. On or about October 25, 1993, an Immigration Judge entered an order of deportation against Petitioner, and

Petitioner subsequently departed the United States on November 1, 1996, thereby self-deporting. *See* Exh. B, Order of the Immigration Judge, dated October 25, 1993, and Exh. C, Form I-213, Record of Deportable/Inadmissible Alien, dated February 18, 2008; *See* Exh. I, Declaration of Supervisory Detention and Deportation Officer Gunnar Pedersen; *see also* 8 C.F.R. § 241.7.

On February 18, 2008, Border Patrol agents, after responding to a report of people hiding in the area, encountered Petitioner in an abandoned house in Freer, Texas. *See* Exh. C. During the encounter, it was discovered that Petitioner had re-entered the United States by crossing the Rio Grande River into Hidalgo, Texas on or around February 14, 2008. *See* Exh. C. Petitioner's prior deportation order, dated October 23, 1993, was reinstated, and Petitioner was physically removed on February 29, 2008. *See* Exh. D, Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated February 18, 2008. *See also*, Exh. E, Form I-205, Warrant of Removal/Deportation, dated February 18, 2008.

Petitioner subsequently re-entered the United States at an unknown place on an unknown date. *See* Exh. F, Form I-213, Record of Deportable/Inadmissible Alien, dated June 19, 2014. On June 19, 2014, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) arrested Petitioner and reinstated the removal order, dated October 25, 1993. *See* Exh. F. *See also* Exh. G, Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated June 19, 2014. On that same day, Petitioner was released from ICE ERO custody on an Order of Supervision. *See* Exh. H, Form I-220B, Order of Supervision, dated June 19, 2014.

Petitioner asserts he filed an application with the United States Citizenship and Immigration Services (USCIS) and, on March 2, 2020, the USCIS granted him deferred action status. (ECF No. 1 at ¶¶ 58-60).

On January 12, 2026, ICE ERO encountered and detained Petitioner during an enforcement operation. *See* Exh. J, Form I-213, Record of Deportable/Inadmissible Alien, dated January 12, 2026. On that same day, Petitioner was taken to the ICE ERO Miramar office for further processing and reinstatement of the prior removal order. *See* Exh. J, Exh. K, Form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated January 12, 2026. *See also*, Exh. L, Form I-205, Warrant of Removal/Deportation, dated January 12, 2026, and Exh. M, Form I-203, Order to Detain or Release Alien, dated January 12, 2026.

On January 15, 2026, at approximately 12:38 PM, prior to the Court entering the order staying transfer from the Miramar Office, Petitioner was transferred to the Florida Soft-Sided

Facility-South (FSSFS) located in Ochopee, Florida, where he remains detained. *See* Exh. I, Declaration of Supervisory Detention and Deportation Officer Gunnar Pedersen.

On January 18, 2026, ICE ERO served Petitioner with a Notice of Revocation of Release, notifying him of the reasons for revocation of his release. On January 19, 2026, ICE ERO served Mr. Jose L. Flores, counsel for Petitioner, with a Notice of Revocation of Release. On January 19, 2026, ICE ERO contacted Mr. Flores to schedule the informal interview of Petitioner.

### **ARGUMENT**

Due to his imminent removal to Guatemala, Petitioner commenced this habeas litigation by filing the instant habeas petition challenging the unlawfulness of his detention because of his “deferred status.” *See generally* [ECF No. 1]. In the underlying Petition, Petitioner argues that his detention violates the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the Due Process Clause of the Fifth Amendment, because U.S. Citizenship and Immigration Services (“USCIS”) granted him deferred action and issued employment authorization pursuant to the bona fide determination (“BFD”) process for U-1 nonimmigrant status petitioners. (ECF No. 1 at ¶¶ 6, 35-44). As such, Petitioner seeks his release from Immigration Customs Enforcement (“ICE”) custody, and a stay of his removal. *Id.* As fully demonstrated below, Petitioner’s habeas petition should be denied.

#### **I. This Court Lacks Subject Matter Jurisdiction Pursuant to 8 U.S.C. § 1252(g) to Review Petitioner’s Claims**

“Federal Courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). 8 U.S.C. § 1252(g) explicitly states that “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 . . . execute removal orders against any alien...” 8 U.S.C. § 1252(g) (emphasis added). The statutory provision plainly bars direct and indirect attacks on the execution of a removal order which is precisely the relief Petitioner requests here—that this Court stay his removal. Such direct attacks are barred under § 1252 (g) and clearly fall outside of this Court’s jurisdiction. *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“the statute’s words make that clear. One word in particular stands

out: ‘any.’ Section 1252(g) bars review over ‘any’ challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government’s ‘authority’ to execute their removal orders.”).

In this case, Petitioner seeks to have this Court grant injunctive relief staying his imminent removal while his U-visa application is pending. (ECF No. 1 at ¶ 23, Prayer for Relief, ¶ 8). However, Petitioner is subject to a reinstated order of removal order pursuant to 8 U.S.C. 1231(a)(5). *See*, Exh. K. Because his claim for relief directly arises from ICE’s decision to execute the valid order of removal, this Court lacks jurisdiction to intervene pursuant to 8 U.S.C. § 1252 (g). *See 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.”); *Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465, at \*5 (W.D. Wash. June 20, 2025) (holding that petitioner’s challenge to the Government’s “decision and action to detain him and execute his valid removal order despite his deferred action status” fell within the realm of § 1252(g).”); *but see Espinoza-Sorto v. Juan Agudelo*, Case No. 25-CV-23201-Gayles, 2025 WL 3012786 at \*5 (S.D. Fla. October 28, 2025) (district court concluded that it had jurisdiction to review “whether [ICE] can legally detain and remove an alien with deferred action status”). Therefore, this Court lacks jurisdiction to enjoin ICE’s execution of Petitioner’s removal order.

## **II. Petitioner’s Continued Detention Pending Removal is Lawful**

Assuming this Court had jurisdiction to review Petitioner’s claims, contrary to Petitioner’s argument, Petitioner’s detention is lawful pursuant to 8 U.S.C. § 1231. Petitioner is subject to a valid reinstated order of removal under 8 U.S.C. § 1231(a)(5). *See* Exh. K. More specifically, 8 U.S.C. § 1231(a)(5) provides that,

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

*See* 8 U.S.C. § 1231(a)(5). During the removal period, the Attorney General is required to detain the alien. 8 U.S.C. § 1231(a)(2)(A). Notably, 8 U.S.C. § 1231(a)(6) allows the government to

detain an alien ordered removed beyond the removal period if the individual, like Petitioner, is inadmissible under 8 U.S.C. § 1182.

The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), that an alien subject to a final removal order may be detained for “a period reasonably necessary to secure removal.” Such detention is “presumptively reasonable” for six months. *Id.* at 701. However, “[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months.” *Id.* Rather, an alien, such as Petitioner, “may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* “Therefore, in order to state a claim under *Zadvydas*[,] the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Where an alien cannot meet his burden of establishing that the evidence shows that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App’x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

If a petitioner has been detained fewer than six months, then the § 2241 petition should be dismissed as premature. *See Phadael v. Ripa*, No. 24-CV-22227-RKA, 2024 U.S. Dist. LEXIS 109481, 2024 WL 3088350, at \*3 (S.D. Fla. June 21, 2024) (Because the petitioner “filed his Petition . . . comfortably within both the six-month period of presumptive reasonableness under *Zadvydas* and the ninety-day mandatory detention period set by § 1231(a)(1), . . . his § 2241 petition must be dismissed as premature.”(emphasis in original); *Allotey v. Mia. Field Off. Dir., Immigr.*, 24-cv-24765-DPG, 2024 WL 5375519, (S.D. Fla. December 10, 2024) (denying habeas petition has premature under *Zadvydas* when petitioner had only been detained for eighteen days prior to filing the habeas petition).

In this case, Petitioner has been detained since January 12, 2026, thereby making the six-month *Zadvydas* analysis premature. Furthermore, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. Further, individuals like Petitioner who have previously been removed and are subject to a reinstated removal order “are not entitled to a bond hearing” for release. *Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021); *see also See Chavez-Barríos v. Ripa*, 1:25-cv-22644-GAYLES. As a result, even if Petitioner could demonstrate that he

has been held longer than an aggregate of six months, he is not entitled to a hearing for release. Thus, he is not entitled to habeas relief, and the Petition must be dismissed.

### **III. Petitioner's "Deferred Status" Does Not Preclude ICE From Executing a Removal Order**

Deferred action is "simply a decision not to pursue deportation at a particular time." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). It confers no lawful status, creates no entitlement to remain at liberty, and does not invalidate an existing removal order. Nothing in the INA or implementing regulations provides that deferred action categorically prohibits detention. Nor does deferred action require ICE to refrain from taking custody under § 1231 where a final order of removal exists.

Accordingly, Petitioner's argument that the deferred action grant he received from USCIS precludes his removal is without merit. As noted earlier, "deferred action" is not equivalent to a stay of removal. Indeed, Petitioner's notice of his favorable bona fide determination ("BFD") clearly notified Petitioner this his deferred action grant is an act of administrative convenience to the government which gives some cases lower priority for removal. This is consistent with the definition of "deferred action" in the chapter in USCIS's Policy Manual concerning U visa bona fide determinations. "Deferred action" is an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States." *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 January 15, 2026). Moreover, 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). USCIS's adjudication of a U-visa petition can continue even if someone is overseas. *See also* 8 C.F.R. § 214.14(c)(5)(i)(B). Therefore, Petitioner's argument fails, and it follows that ICE's discretionary decision to detain and remove him pursuant to the valid reinstated order of removal does not violate the Due Process Clause and the APA.

ICE is not bound by USCIS's deferred action determination for custody purposes. Petitioner's theory rests on the erroneous premise that USCIS's grant of deferred action eliminates ICE's independent enforcement authority. DHS components exercise distinct statutory functions. A discretionary forbearance decision by USCIS does not extinguish ICE's authority to detain an individual subject to a final order of removal. Deferred action may be modified, suspended, or

rendered inoperative by subsequent enforcement action without formal termination. No statute or regulation requires ICE to issue a notice of revocation of deferred action status before taking into custody. Another point of statutory interpretation to consider is the comparison of the U visa regulations with the T visa regulations. The T visa regulations explicitly state that a BFD automatically stays removal, while the U visa regulations are silent on this issue. *Compare* 8 CFR 214.205(g)(1) *with* 8 C.F.R. § 214.14(c)(1)(ii).

#### **IV. Petitioner Has No Due Process Right to Release.**

To establish a due process violation, Petitioner must identify a constitutionally protected liberty interest. He cannot do so. Deferred action is expressly discretionary and revocable at any time. Courts have consistently held that discretionary benefits do not give rise to protected liberty or property interests. *See Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). Similarly, an order of supervision does not create an entitlement to remain free from detention. The INA expressly authorizes re-detention. 8 U.S.C. § 1231(a)(6).

Petitioner's reliance on *Accardi* is misplaced, as *Accardi* also does not apply. (ECF 1 at ¶ 73). Absent a binding rule limiting agency discretion, *Accardi* provides no basis for relief.

#### **V. The APA Does Not Waive Immunity for These Claims**

The Administrative Procedure Act does not apply where agency action is committed to discretion by law or where another statute precludes judicial review. 5 U.S.C. §§ 701(a)(1)–(2). Immigration enforcement and custody determinations are paradigmatic examples of discretionary action insulated from APA review. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion. *United States v. Batchelder*, 442 U.S. 114, 123–124, 99 S.Ct. 2198, 2203–2204, 60 L.Ed.2d 755 (1979); *United States v. Nixon*, 418 U.S. 683, 693, 94 S.Ct. 3090, 3100, 41 L.Ed.2d 1039 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182, 87 S.Ct. 903, 912, 17 L.Ed.2d 842 (1967); *Confiscation Cases*, 7 Wall. 454, 19 L.Ed. 196 (1869)). The Supreme Court highlighted in *Heckler* the multiple reasons for general unsuitability for judicial review, including agency expertise, agency allocation of resources, and likelihood of success. *Id.* at 831-832.

Moreover, Petitioner fails to identify any “final agency action” subject to review. ICE’s decision to detain Petitioner is an interim enforcement action, not a reviewable final determination under the APA.

#### **VI. Petitioner Cannot Establish a Likelihood of Success on the Merits of Any Claim**

Petitioner has not shown a substantial likelihood of success on the merits of his claim that his detention is unlawful because Respondents violated their OSUP revocation procedures. Petitioner alleges that Respondents failed to comply with 8 C.F.R. § 241.13. (ECF 1 at ¶ 52). Petitioner was not entitled to notice or an informal interview under § 241.4. Respondents revoked Petitioner’s OSUP to effectuate his removal pursuant to § 241.4(l)(2). Notice and interview requirements are only referenced in § 241.4(l)(1)—the OSUP revocation provision based on an alien’s violation of his conditions of release—and not § 241.4(l)(2)—the OSUP revocation provision based on the discretion of a qualified official to enforce a removal order or to commence removal proceedings. *See Chavez-Barrrios v. Ripa*, 1:25-cv-22644-GAYLES. Per § 241.4(l)(2), the district director may:

revoke release of an alien when, in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(l)(2). The regulation permits the government extraordinarily broad discretion to revoke an OSUP; and that discretion is expressly not limited to circumstances where an alien violates the conditions of his OSUP. Further, the regulation does not compel the government to demonstrate what facts or factors, if any, it based its decision to revoke under subsections (i), (iii), or (iv); nor does the regulation (or any other authority) require the government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

#### **VII. Habeas Jurisdiction Does Not Extend to Discretionary Detention Decisions**

While habeas jurisdiction exists to challenge detention that is unauthorized by statute, it does not extend to second-guessing discretionary custody determinations authorized by Congress. *See Demore v. Kim*, 538 U.S. 510, 523 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Here, Petitioner does not plausibly allege that ICE lacks statutory authority to detain him under § 1231. Instead, he asserts that deferred action and an order of supervision categorically prohibit detention. That contention is legally incorrect and insufficient to invoke habeas relief. Similarly, the Court lacks authority to enjoin removal or restrain ICE's enforcement actions. 8 U.S.C. § 1252(f)(1) prohibits district courts from enjoining the operation of the INA except as to individual removal orders through proper channels. Petitioner's request for a stay of removal and prospective injunctive relief must therefore be denied. Petitioner seeks to transform discretionary prosecutorial forbearance into a judicially enforceable shield against detention and removal. Congress has not authorized such relief, and the Constitution does not require it.

### **CONCLUSION**

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that on January 19<sup>th</sup>, 2026, I uploaded the attached document to the Court's PACER system.

By: /s/ John Ghannam  
John Ghannam  
Assistant United States Attorney