IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Fabel Antonio LEMUS CARDONA A/K/A Manry Estuardo ROQUE GIRON	*	
Petitioner,	*	
v.	*	Civil Action No. 8:26-cv-00606-DLB
Kristi Noem, *et al.*,	*	
Respondents.	*	

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ANSWER/MOTION TO DISMISS AMENDED PETITION; AND, OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Respondents, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(6) and 65, and this Court's February 17 and 26, 2026 Orders (ECF Nos. 8, 13), hereby answer and move to dismiss Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 9) and oppose Petitioner's Motion for Temporary Restraining Order (ECF No. 12), and state:

FACTUAL BACKGROUND

A. Petitioner is Subject to a Final Order of Removal.

Petitioner is a native and citizen of Guatemala who alleges that he entered the United States in or about 1987. ECF No. 9, ¶ 4. On June 29, 1994, he was convicted by the United States District Court of the Northern District of Texas for fraudulent use and possession of an alien registration card and was sentenced and serviced six months detention. *Id.* Later that year, on September 15, 1994, an Immigration Judge entered an Order of Removal and Petitioner was removed to Guatemala on October 7, 1994. *Id.*

Petitioner alleges that on February 24, 2000 he re-entered the United States on a B-2 Visa (Temporary Visitor for Pleasure/Tourism). *Id.* Petitioner alleges that on September 17, 2012, he

was convicted of a DWI in Montgomery County, Maryland, and "given probation before judgment." *Id.*

Petitioner alleges that on March 4, 2015, DHS issued him a "Notice to Appear" which asserted, among other things, that he "entered on a B-2 Visa on or about December 19, 2013 (later amended to February 24, 2000), and remained here beyond June 19, 2014 without authorization (later amended by DHS to August 23, 2000); and that he was convicted of possession of the alien registration card in Texas in June 1994." *Id.* In March 2015, Petitioner was arrested for illegal entry. *Id.*, ¶ 4 ("In about 2015, Petitioner was detained by ICE for a brief time and then released under an order of supervision"). On October 23, 2015, the District Court of Maryland sentenced Petitioner to serve six months imprisonment for "Re-entry of Alien Deported after Felony Conviction." *See USA v. Roque-Giron*, United States District Court for the District of Maryland, Case No. 8:15-cr-00170-GJH-1, Doc. No. 44 (Judgment in a Criminal Case), attached hereto as Exhibit A.[1]

On August 11, 2016, Petitioner filed an "application for cancellation of removal." ECF No. 9, ¶ 4. On March 13, 2020, an Immigration Judge denied Petitioner's application for cancellation of removal, and ordered his removal. *Id.*; *see also* Memorandum Decision and Order, attached hereto as Exhibit B (setting forth Petitioner's immigration history and concluding that "respondent is barred from relief for having been convicted of an offense described under INA § 237(a)(3)" (relating to fraud and misuse of visas, permits, and other entry documents)). Petitioner filed a motion to reopen, which was denied, and then appealed to the Board of Immigration Appeals. ECF No. 9, ¶ 4.

[1] This Court "routinely takes judicial notice of court filings as matters of public record." *Worsham v. Disc. Power, Inc.*, 2020 WL 5834246, at *1 n.1 (D. Md. Oct. 1, 2020) (citing Fed. R. Evid. 201(b)(2)).

In the meantime, on August 11, 2021, ICE issued to Petitioner an "Order of Supervision," which states that, on May 13, 2020, Petitioner had been "removed pursuant to proceedings commenced on or after April 1, 1997" but was released subject to "enrollment and successful participation in an Alternatives to Detention (ATD) program[,]" including "electronic monitoring and [] curfew[.]" ECF No. 9-8, p. 2. On June 6, 2022, the BIA dismissed Petitioner's appeal related to his cancellation of removal. ECF No. 9, ¶ 4; *see also* Exhibit B. In 2023 and 2025, Petitioner filed Petitions for U-Visas,[2] Forms I-918, with the United States Citizenship and Immigration Services ("USCIS"), which remain pending. ECF No. 9, ¶ 4.

On February 13, 2026, ICE arrested Petitioner because he is an inadmissible alien with a final order of removal. ICE served Petitioner with a "Warrant of Removal/Deportation" based on a "final order" by an "immigration judge in exclusion, deportation or removal proceedings" and charging him as removable under INA § 237(a)(1)(B) (deportable aliens present in violation of law- overstayed visa); § 237(a)(3)(B)(iii) ("[f]ailure to register and falsification of documents"; specifically, a "violation of, or an attempt or a conspiracy to violate, section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other entry documents)") and, § 237(a)(1)(A) ("any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable"). *See* Arrest Warrant, attached hereto as Exhibit C. Petitioner is ineligible for a bond hearing and does not seek one here. 8 U.S.C. § 1231(a)(2)(A); *Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021) (relying

[2] U Visas are granted to noncitizen victims of specific crimes who cooperate with United States authorities in reporting and investigating the crime. 8 C.F.R. § 214.14. A U-Visa applicant must be "generally 'admissible' or must obtain a discretionary waiver of inadmissibility from USCIS." *Gonzalez v. Cuccinelli*, 985 F.3d 357, 363 (4th Cir. 2021).

on 8 U.S.C. § 1231 and holding that detainees subject to final orders of removal "are not entitled to a bond hearing").

B. Procedural History.

Petitioner filed a Petition for Writ of Habeas Corpus (ECF No. 1), later amended (ECF No. 9) and Motion for Temporary Restraining Order (ECF No. 12). Petitioner seeks "immediate release" based on: alleged violations of the Due Process Clause (Count One); violations of the Fourth Amendment's prohibition against warrantless arrests (Count Two); violations of 28 U.S.C. § 1361 (Writ of Mandamus) (Count Three); and, violations of the Administrative Procedure Act (Count Four). Counts One, Three and Four appear to rely, at least in part, on Petitioner's pending U-Visa applications. ECF No. 9, ¶¶ 32, 41, 45.

LEGAL STANDARDS

A temporary restraining order is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To obtain a temporary restraining order, the movant must show that (1) "he is likely to succeed on the merits"[3]; (2) "he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Id.* at 20. The latter two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[3] The Amended Petition should be dismissed for failure to state a claim under Rule 12(b)(6) for the same reasons Plaintiff is unlikely to succeed on the merits.

ARGUMENT

A. Petitioner is Unlikely to Succeed on the Merits.

1. Petitioner's Detention is Authorized by Statute and Regulation and Does not Violate the Constitution (First Claim for Relief).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of individuals, like Petitioner, who are subject to final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days (the "removal period"). During the removal period, ICE "shall detain" the individual. 8 U.S.C. § 1231(a)(2). If the removal period expires, then ICE can either release the individual under an Order of Supervision, *id.*, at § 1231(a)(3), or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible under 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability under 8 U.S.C. § 1227; or (iii) those over whom immigration authorities have determined are a "risk to the community or unlikely to comply with the order of removal[.]" 8 U.S.C. § 1231(a)(6)(A). "[T]he statute's focus is" on "ensuring [] removal." *Bah v. Cangemi*, 489 F. Supp. 2d 905, 921 (D. Minn. 2007).

Petitioner is eligible for ICE detention because he has a final order of removal and is present in the country illegally. *See* 8 U.S.C. § 1227(a)(1)(B) ("Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable."). Though Petitioner alleges he is outside the 90-day removal period, Section 1231(a)(1)(B) defines the removal period as beginning as soon as immigration officials can lawfully remove an alien subject to a removal order. Once

lawful removal is possible, the statute directs immigration officials to act promptly and remove the individual subject to removal within 90 days.

Though Petitioner claims that he is entitled to release because he was detained without "prior notice or a hearing," ECF No. 9, ¶ 6, this Court recognizes that ICE is permitted to "re-detain a person in order to enforce a removal order." *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 381 (D. Md. 2025) (relying on 8 C.F.R. § 241.4(l)(2)(iii)); *see also Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process"). Further, the "remedy for a violation" of 8 C.F.R. § 241.4(l)(1) (requiring an "initial informal interview promptly after his or her return to [] custody") is not necessarily "release from detention." *Cruz Medina*, 794 F. Supp. 3d at 381; *but see, e.g., Santamaria Orellana v. Baker*, 2025 WL 2444087, at *8 (D. Md. Aug. 25, 2025).

Petitioner's pending U-Visa applications do not save his claims. Petitioner does not reference any legal authority to support his assertion that "DHS's practice has long been to defer execution of removal orders while bona fide U-visa petitions are pending[,]" nor could he since the "filing of a petition for U–1 nonimmigrant status **has no effect on ICE's authority to execute a final order**, although the alien may file a request for a stay of removal[.]" ECF No. 9, ¶¶ 17; 8 C.F.R. § 214.14(c)(1)(ii) (emphasis added). Further, *Palencia v. Hermosillo,* 2026 WL 125141, (W.D. Wash. Jan. 16, 2026), on which Petitioner relies, ECF No. 9, ¶ 27, concerns petitioners who "have been granted deferred action and employment authorization by USCIS through the U visa process[,]" and Petitioner does not allege that he has similarly "been granted deferred action[.]" *Id.* at *7. *Immigration Center for Women and Children, et al., v. Noem, et al.*, No. 2:25-cv-09848 (C.D. Cal. filed Oct. 14, 2025), on which Petitioner also relies, has no precedential value, as it is in the early stages of class-action litigation. ECF No. 9, ¶ 26.

This Court is also not permitted to interfere with Petitioner's removal proceedings notwithstanding his alleged U-Visa applications. *See* 8 U.S.C. § 1252(g) (providing that "no court shall have jurisdiction to hear any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien"). To the extent Petitioner requests an order staying his removal pending USCIS's adjudication of his U-visa applications, several courts have held that such claims are barred. *See, e.g., N.A. v. LaRose*, 2025 WL 3512412, at *3 (S.D. Cal. Dec. 8, 2025); *Velasco Gomez v. Scott*, 2025 WL 1726465, at *4 (W.D. Wash. June 20, 2025) (collecting cases); *Velarde-Flores v. Whitaker*, 750 F. App'x 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," so petitions to halt "the government's decision to execute valid orders of removal . . . fall[ ] within the statutory jurisdictional bar").

On the merits, U-visas are available only to aliens who are admissible to the United States or who have been granted a waiver of inadmissibility by the USCIS. 8 C.F.R. §§ 212.17(a), 214.1(a)(3)(f) (2012). Petitioner does not allege that he fits either category. Petitioner is unlikely to succeed on his first cause of action. His Motion should be denied, and his Petition should be dismissed.

2. Petitioner is Unlikely to Succeed on his Remaining Claims and the Same Should be Dismissed.

This Court has previously rejected Petitioner's "Second Claim for Relief," "Violation of the Fourth Amendment of the U.S. Constitution" based on an alleged warrantless arrest. ECF No. 9, ¶¶ 38-39; *Chavez de Vasquez v. Baker*, 2025 WL 3713773, at *1 (D. Md. Dec. 23, 2025). As in *Chavez de Vazquez*, Petitioner "reported to [his] required check-in appointment at the ICE office" and he was validly "served with [a] warrant and arrested." *Id.*; *see also* Exhibit C.

Chavez de Vasquez also made clear that *Escobar Molina et al. v. DHS*, 2025 WL 3465518 (D.D.C. Dec. 2, 2025), on which Petitioner relies, ECF No. 9, ¶ 39, "is distinguishable both on its facts and in its legal posture" because "[t]hat case was brought on behalf of a class of citizens who were subjected to unanticipated 'field arrests' during the immigration crackdown in Washington, D.C. The members of the class described in the opinion were stopped in public places and arrested." *Chavez de Vasquez,* 2025 WL 3713773 at *1. In contrast here, and as in *Chavez de Vasquez*, Petitioner cannot "establish as a factual matter that [his] arrest was [similarly] 'warrantless'" because "the issuance of the warrant was essentially contemporaneous with [him] being taken into custody." *Id.*[4]

Petitioner's "Fourth Cause of Action,"[5] which purports to arise under the APA, ECF No. 9, ¶¶ 43-46, is likewise unlikely to succeed because the APA only extends judicial review to final agency action for which "there is no other adequate remedy in court." 5 U.S.C. § 704. Claims that "necessarily imply the invalidity of [] confinement" fall "within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (internal citations omitted); *see also id.* at 674 ("given 5 U.S.C. § 704, which states that claims under the

[4] This Court also noted that courts that have recently adopted the "warrantless arrest" theory as a basis for habeas relief "have done so in the context of class actions challenging" state or district-wide agency action pursuant to the APA, "not in individual habeas petitions." As in *Chavez de Vazquez*, Petitioner's "removal proceedings [are] underway," so "habeas review challenging [his] arrest is not cognizable." *Id.*

[5] Petitioner's "Third Claim for Relief," which purports to seek relief under 28 U.S.C. § 1361, Writ of Mandamus, ECF No. 9, ¶¶ 40-42, is similarly unlikely to succeed first, because it is a remedy, not a stand-alone cause of action; and, second, because it relies on the same facts as his other claims and is therefore deficient for the same reasons. *See, e.g., Griffin v. Lee Cnty. Bd. of Educ.*, 2019 WL 1338896, at *6 (M.D. Ala. Mar. 25, 2019); *Hartman v. Borough*, 2022 WL 2513043, at *5 (M.D. Pa. July 6, 2022) ("Injunctive relief and a writ of mandamus are two separate forms of relief available under federal law. A plaintiff may request injunctive relief as a remedy, but not as a separate cause of action; if a plaintiff does so, it can be dismissed").

APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here") (Kavanaugh, J. concurring); *Garibay-Robledo v. Noem*, 2026 WL 81679, at *10 (N.D. Tex. Jan. 9, 2026) ("Because [Petitioner] requests habeas relief as the remedy for his APA claim, he unwittingly admits that there is, in fact, an adequate remedy outside of the APA"). Petitioner is unlikely to succeed on his fourth claim, and the same should be dismissed.

B. The Remaining TRO Factors.

Respondents will provide additional briefing on the remaining TRO factors upon request from the Court.

CONCLUSION

WHEREFORE, Respondents request that the Court DENY Petitioner's Motion for Temporary Restraining Order and DISMISS his Petition.

Respectfully submitted,

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