

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Fabel Antonio LEMUS CARDONA

Petitioner,

No. **8:26-cv-00606-DLB**

v.

Kristi Noem, et. al

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF HIS AMENDED PETITION AND IN
OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Petitioner, by and through undersigned counsel, respectfully submits this Reply in
Support of His Amended Petition and in Opposition to Respondents' Motion to Dismiss.

I. This Court has Jurisdiction.

Respondents attempt to recharacterize this case as a challenge to the execution of a final order of removal barred by 8 U.S.C. § 1252(g). That framing is incorrect. As clearly stated in the Amended Petition (ECF No. 9), Petitioner does not challenge the validity of his removal order. He challenges his warrantless re-arrest and the revocation of his long-standing Order of Supervision without notice, without a hearing, and without any individualized determination that he posed a danger or flight risk. Further, he challenges Respondents' attempt/intent to remove him from the

U.S., while his bona fide U-Visa petitions are pending. This is a challenge to the legality of detention under 28 U.S.C. § 2241. Federal courts retain jurisdiction to review constitutional challenges to immigration detention, including post-final-order detention. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Nothing in § 1252(g) strips this Court of authority to determine whether the Constitution permits the Government to deprive Petitioner of liberty in this manner. Furthermore, Petitioner challenges, inter alia, Respondents' effective revocation of a deferred action program. As the Supreme Court has explained, challenges to the revocation of deferred action-type relief do not fall within the "narrow" jurisdictional bar of 8 U.S.C. § 1252(g). *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020), as quoted in *Oliveira, supra*.

Moreover, because Petitioner has two bona fide U-Visa petitions pending with USCIS, based on the VTVPA, and Congressional intent, Respondents should not remove him, nor should they detain him for the foreseeable future. He should be released.

Additionally, Respondents are violating Petitioner's due process rights because he is not receiving adequate medical care or sufficient and appropriate nutrition necessary to maintain his health. Under the Fifth Amendment's guarantee of substantive due process, Respondents are required to provide detainees with adequate medical care and reasonable conditions of confinement, including appropriate housing, medical treatment, and dietary provisions. (Petitioner's affidavit and his partner's affidavit, describing the conditions of his detention, including the lack of adequate medical care and appropriate dietary provisions, as well as the mistreatment he has experienced and the resulting impact on him and his family, creating severe health and financial hardship, are attached hereto and incorporated herein as Exhibit 10).

II. The Arbitrary Revocation of Supervised Release Violates Due Process.

For nearly five years, ICE permitted Petitioner to remain at liberty under an Order of Supervision. He complied with all reporting requirements, participated in Alternatives to Detention, and maintained a stable residence and deep family ties in Maryland. He appeared exactly as instructed for check-ins. On February 13, 2026, when he reported as required, ICE summarily re-detained him. He was given no prior written notice, no opportunity to respond, and no explanation as to why, after years of compliance, detention suddenly became necessary.

Respondents assert that 8 U.S.C. § 1231(a)(6) authorizes this re-detention. Statutory authority, however, does not eliminate constitutional limits. The Fifth Amendment prohibits arbitrary deprivations of liberty. Once the Government grants supervised release and allows an individual to remain at liberty for years in reliance on that status, a protected liberty interest arises. The Government cannot revoke that liberty without a meaningful process. At a minimum, due process requires notice and an opportunity to be heard before such a significant deprivation occurs. Respondents' position would permit ICE to re-detain any compliant noncitizen at any time, without explanation and without procedural safeguards. The Constitution does not permit such unreviewable power.

III. Petitioner's Pending U-Visa Petitions and Congressional Intent are Central to Due Process Analysis.

Respondents argue that filing a U-visa petition does not automatically stay removal under 8 C.F.R. § 214.14(c)(1)(ii). That regulation is not dispositive here. The issue is not whether a pending petition automatically halts removal; it is whether detaining a cooperating crime victim without process, while his statutorily authorized relief remains pending, is constitutionally permissible.

Congress enacted the Victims of Trafficking and Violence Protection Act to encourage victims of serious crimes to cooperate with law enforcement by offering immigration protections. For years, DHS and ICE implemented this mandate through guidance and memoranda recognizing that individuals with pending or bona fide U-visa petitions generally should not be removed while their petitions are adjudicated. ICE policy historically reflected the understanding that removal or detention of cooperating victims undermines public safety and congressional objectives. Petitioner falls squarely within the class Congress sought to protect. He is a victim of aggravated assault (twice) who cooperated with law enforcement and has two pending bona fide U-visa petitions. The Respondents' attempt to disregard that statutory framework in the detention context ignores the broader congressional scheme.¹

IV. Petitioner Has Filed a Waiver of Inadmissibility and is Actively Pursuing Statutory Relief.

Respondents contend that Petitioner is ineligible for U-visa relief because he has not obtained a waiver of inadmissibility. That argument is now moot. Petitioner has filed Form I-192 with USCIS seeking a waiver of inadmissibility pursuant to 8 U.S.C. § 1182(d)(3). (See Exhibit 11). The statute expressly permits discretionary waivers in U-visa cases. Petitioner is pursuing every step required by law to perfect his eligibility. Removal or continued detention before USCIS adjudicates that waiver would effectively extinguish the relief Congress made available.

¹ U.S. Immigration & Customs Enft, Memorandum from Peter S. Vincent, Principal Legal Advisor, to ICE Chief Counsel et al., *Guidance Regarding U Nonimmigrant Status (U Visa) Petitioners in Removal Proceedings or with Final Orders of Deportation or Removal* (Sept. 25, 2009), https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf; U.S. Immigration & Customs Enft, Directive 11005.1, *Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-Visa) Applicants* (Sept. 24, 2009), https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u-visa_applicants.pdf.

V. Respondents Cannot Rely on USCIS Processing Delays to Justify Detention.

Respondents emphasize that Petitioner has not yet been granted deferred action, as if that is his fault. In fact, as the Court noted in *Oliveira v. Edlow*, 2025 U.S. Dist. LEXIS 251364, at *2 n.3 (D. Mass. Dec. 30, 2025), in circumstances similar to Petitioner's, Congress anticipated a brief time for USCIS to determine interim relief, not many months or years. That argument ignores the practical reality of U-visa adjudications. USCIS processing times span years due to statutory caps and significant backlogs. Bona fide determinations and deferred action are routinely granted only after prolonged delay. But for these systemic delays, which are entirely outside Petitioner's control, he would likely already have received deferred action consistent with longstanding DHS practice.

VI. ICE's Unexplained Reversal of Course is Arbitrary and Capricious

ICE previously determined that supervised release was appropriate. For years, it allowed Petitioner to live and work in the community under monitoring. Respondents now offer no individualized explanation for why supervised release was revoked, no finding that Petitioner became dangerous, and no showing that alternatives to detention were inadequate. An agency may not simply reverse course in a manner that disregards reliance interests and liberty without providing a reasoned explanation. Such action raises serious concerns under both the Due Process Clause and the Administrative Procedure Act. Last year ICE rescinded its previous policy and announced a new policy in violation of the APA and Due Process.² Now, Petitioner respectfully requests that this Honorable Court preliminarily enjoin ICE from applying its 2025 policy to Petitioner Lemus. Importantly, similar to the Petitioners in *Oliveira, supra*, Petitioner Lemus is

² U.S. Immigr. & Customs Enft, Directive 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits at 2 (quoting Protecting the American People Against Invasion, Exec. Order No. 14159, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025)), <https://www.ice.gov/doclib/foia/policy/11005.4.pdf> [<https://perma.cc/ET7M-HPQX>].

challenging Respondents' "effective 'revocation [of] a deferred action program,' which the Supreme Court has held does not fall within the 'narrow' scope of section 1252(g)." *Oliveira, supra*, (quoting *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020)).

VII. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' Motion to Dismiss and grant the relief Petitioner requested in the Amended Petition and Amended Motion for Temporary Restraining Order.

Dated: March 3, 2026

/s/ Ronald D. Richey
Ronald D. Richey, Esq.
MD Bar# 0906240005
Law Office of Ronald D. Richey
19785 Crystal Rock Dr., Ste. 307
Germantown, MD 20874
T: (301) 738-2338
info@immigrationlawrichey.com
Attorney for Petitioner