IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

D.A.G.H., Petitioner, v. LADEON FRANCIS, ICE ATLANTA FIELD DIRECTOR, *et al.*, Respondents.	Civil Action No. 1:26-cv-01126-ELR

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner D.A.G.H., proceeding under a pseudonym, filed this lawsuit seeking a writ of habeas corpus. He is a noncitizen—an "alien," in legal terminology. He admits that in 2017 he was ordered to be removed from this country and returned to El Salvador, although one must read the petition very carefully to pick up on this fact. That 2017 removal order remains in effect today.

After the removal order was issued, ICE did not force Petitioner's removal and instead released him under an order of supervision, commonly referred to as an "OSUP." ICE recently revoked his OSUP and returned him to custody with the intent of executing the long-outstanding order of removal.

D.A.G.H. quickly petitioned this Court for a writ of habeas corpus (Doc. 1 ("Pet")) and then filed a motion seeking a TRO/PI (*see* Doc. 8 ("Mot."); Doc 8-1 ("Br. ISO Mot.")). His motion advances six grounds for granting a preliminary injunction, but these boil down to two general arguments. (*See* Mot. at 8 ("Grounds for Relief").)

First, Petitioner argues that ICE did not follow the law in revoking his OSUP. He makes this claim in a variety of ways—as an action not authorized by law, as a violation of due process, as a violation of various statutes and regulations—but the common refrain is a failure to follow the law. Some of these arguments are beyond the Court's jurisdiction to hear. Just as importantly, all the arguments fail because ICE complied with the Constitution and all applicable statutes and regulations when detaining Petitioner.

Second, Petitioner claims without evidence that ICE will soon remove him to an undisclosed third country without first providing him with notice and proper procedure. As an initial matter, this claim cannot support a preliminary injunction because it does not appear in the petition. Setting that aside, Petitioner lacks standing to bring such a claim. To have standing, he would have to show that his removal to a third country is imminent and substantial, otherwise he is asking the Court for an unconstitutional advisory opinion. He cannot meet this standard. His claim is purely speculative. No one has told him that he is being

sent to a third country, and he has no basis to suggest that the agency will not follow the law even if that were to happen. Therefore, he lacks standing to bring this claim.

Because Petitioner is not likely to succeed on the merits of his claim, the Court should deny his motion.

FACTS

The facts here are drawn from the Petition as well as the Declaration of Emmanuel Stinson, acting Supervisory Detention and Deportation Officer with ICE, filed along with this brief.

Petitioner D.A.G.H. is a native and citizen of El Salvador. (Stinson Decl. ¶ 4.) In December 2012, he fraudulently attempted to enter the United States at the Paso Del Norte Port of Entry by presenting a valid I-551 Legal Permanent Resident Card bearing another individual's name and biographical information. (*Id.*) He was caught and promptly issued a notice to appear in immigration court. (*Id.* ¶ 5.) The notice charged him as inadmissible to the United States under Immigration and Nationality Act (INA) § 212(a)(7)(A)(i)(I).[1] (*Id.*) However, due to his age (he was a minor at the time), he was released and placed with a sponsor.

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[1] This section of the INA is codified at 8 U.S.C. § 1182. That statute will return later in this brief because aliens charged as inadmissible under § 1182 have fewer protections from detention.

(*Id.* ¶ 6.) His notice to appear was not forwarded to an immigration court for processing. (*Id.* ¶ 5.)

Five years later, in 2017, he was arrested in Athens–Clarke County for a probation violation. (*Id.* ¶ 7.) At the jail, ICE agents served him with a fresh notice to appear and took him into custody. (*Id.*)

After some brief proceedings in immigration court, D.A.G.H. admitted to the charge in his notice to appear. (*Id.* ¶¶ 8–10.) He raised no defenses to his removal from the United States. (*Id.* ¶ 10.) The immigration court accordingly ordered him removed back to El Salvador. (*Id.*)

As set forth in the petition, while he was in ICE custody, Petitioner applied for a U-visa, a type of visa available to crime victims and witnesses. (Pet. ¶¶ 1–2.) If granted, a U-visa would give him legal status to remain in the country. Petitioner admits, however, that his application has not yet been granted and remains pending today. (*Id.* ¶ 2.)[2] For the most part, the pending U-visa application is not relevant to the current preliminary-injunction motion. The visa

[2] Petitioner asserts that his visa has been "approved provisionally" (Pet. ¶ 2) but that is not correct and the document he attaches does not say this. Rather, the attachment shows that his visa has not yet been finally adjudicated because no visas are available and could still be denied. (Pet., Ex. 2 at 1 (stating in the second paragraph that a visa will be issued when available "provided that petitioner remains admissible to the United States and otherwise eligible for U nonimmigrant status").)

application is featured heavily in the underlying petition, but it is barely mentioned in the motion.[3] Even if he is removed, D.A.G.H. can continue to pursue his visa application outside of the United States. (Stinson Decl. ¶ 11.)

After applying for a visa, D.A.G.H. requested a discretionary stay of removal, citing his pending application as one of the reasons he should be released. (*Id.* ¶ 12 & Ex. G.) ICE granted that request and released him from custody under an order of supervision, commonly called an "OSUP." (*Id.*) The OSUP required him to meet certain criteria, such as regular check ins. (*Id.*, Ex. H.) The release was supposed to last for six months. (*Id.* ¶ 12.)

The record does not reflect why D.A.G.H. was not returned to custody at the end of six months. This brief assumes that ICE exercised its discretion by allowing him to continue on release.

The stay of removal ended on February 26, 2026, when ICE detained D.A.G.H. during a scheduled check-in at the Atlanta ICE office with the purpose of finally executing the 2017 removal order. (*Id.* ¶ 13.) The same date, he was transferred to Stewart Detention Center in Lumpkin, Georgia, although this may

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[3] The petition contains ten counts for relief. The motion for TRO/PI contains six "grounds" for relief. Relevant here, the motion omits the counts related to the U-visa: unlawful recission of ICE Directive 11005.3 (Count 8), violation of deferred-action status (Count 9), and unlawful recission of deferred action (Count 10). (*See* Br. ISO Mot. at 6–7 (stating that the motion is based on Counts 1–7 from the petition).)

have occurred after the current lawsuit was filed. (*Id.*) He remains in ICE custody now. (*Id.*)

On March 5, ICE provided him with a Form 71-091, *Notification of Revocation of Release*. (*Id.* ¶ 14.) The same day, ICE conducted an informal interview with the Petitioner to afford him an opportunity to respond to the Revocation. (*Id.* ¶ 15.) In a handwritten letter, he argued in Spanish that he should not be detained because he still hoped that this visa application would be granted. (*Id.*, Ex. K.) The initial Revocation contained errors, caught by ICE after it was given, so ICE provided him with a revised notice earlier today, March 6. (*Id.* ¶ 14.) The revised notice explains that his release was revoked because ICE is ready to execute the removal order. (*Id.* ¶ 14 & Ex. J.) D.A.G.H. is scheduled for an informal interview on March 9, which will count as his opportunity to respond to the revised notice. (*Id.* ¶ 15.)[4]

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[4] The opportunity to respond to a revocation makes sense for revocations based on OSUP violations. In that case, due process arguably requires an opportunity to rebut the charge. But here, D.A.G.H. is not charged with violating his OSUP, and the revocation was made solely because ICE is now ready to execute the removal order. In that case, the opportunity to respond makes less sense and likely is not required under the relevant regulations (discussed below). Even so, some courts have held that the opportunity must be given in every case, so ICE provided D.A.G.H. with an opportunity to respond to his revocation out of an abundance of caution. After ICE realized the initial notice contained errors, ICE gave him a second opportunity.

ICE is currently in the process of scheduling D.A.G.H.'s return to El Salvador. El Salvador generally does not require travel documents for the return of Salvadorian citizens. (*Id.* ¶ 17.) El Salvador is open for international travel, and ICE is currently able to remove Salvadoran citizens. (*Id.*)

LEGAL BACKGROUND

There are several laws and regulations that apply to aliens—like Petitioner here—who have been ordered removed from the country by an immigration judge. Congress instructed in 8 U.S.C. § 1231(a)(1) that such aliens "shall" be removed from the country and further instructed in § 1231(a)(2) that such aliens "shall" be detained pending that removal. As a historical matter, however, many aliens in this situation are not removed for logistical, political, or financial reasons. In that event, the government releases the alien under certain conditions of supervision. *Id.* § 1231(a)(3). Not every alien must be released, however. The statute gives the government the option to continue to detain certain aliens, including those who are "determined to be a risk to the community" and those who are "inadmissible under section 1182 of this title."[5] As to these aliens, Congress theoretically placed no limit on their detention.

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[5] *See* footnote 1, above. D.A.G.H. is charged with inadmissibility under this statute, so § 1231(a)(6) places no statutory limits on his detention.

The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that the Constitution places its own limit on the government's ability to hold an alien subject to an order of removal. The due process clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. The Court further stated that holding an alien for six months to effect a removal was presumptively reasonable, but after six months the alien can obtain release by providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Various regulations govern the process for releasing aliens from detention after the non-execution of an order of removal. In other words, these regulations implement the mandatory and discretional release provisions of § 1231(a)(3) and (a)(6). There are two main regulations: 8 C.F.R. § 241.14 governs the release of aliens who have provided "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.4 governs the release of various other types of aliens. Here, the second regulation, § 241.4, is

the one under which Petitioner was released in 2018 and thus the one that applies to this case.[6]

Aliens who are released may be subject to numerous conditions, which are set out in 8 C.F.R. § 241.5. The order imposing these conditions is referred to as an Order of Supervision, or OSUP. An alien who violates the terms of his OSUP may be returned to custody. *See* 8 C.F.R. § 241.4(*l*)(1) ("Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody.").

But aliens may also be returned to custody for other reasons too, including the determination that it is now "appropriate to enforce a removal order or to commence removal proceedings." *Id.* § 241.4(*l*)(2)(iii). This decision is explicitly committed to the discretion of the relevant agency official. *Id.*

And indeed, that is what happened here. ICE recently determined that it was now able to execute Petitioner's long-outstanding order of removal. Thus, ICE took custody of Petitioner and is preparing to remove him according to that order.

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[6] In his various filings, Petitioner cites many cases arising under 8 C.F.R. § 241.13, but the Court should take caution before citing to those cases. That regulation imposes additional procedural safeguards not found in § 241.4.

The law provides limited procedural protection to aliens whose supervised release under 8 C.F.R. § 241.4 is revoked (not counting, of course, the procedural protections that applied before the order of removal was entered in the first place). For those aliens who are accused of violating the conditions of their release, they are "notified of the reasons" for the revocation and are "afforded an initial informal interview promptly after his or her return to [] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.4(*l*)(1). As for those aliens who are not accused of violating their OSUP but who are returned to custody based on the decision of an agency official under § 241.4(*l*)(2), they arguably receive fewer protections. As to them, the regulation requires only a "normal review process" that commences "with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked." *Id.* § 241.4(*l*)(3). For (*l*)(2) revocations, the regulation does not clearly require the same prompt notification and initial interview required for those whose OSUP was revoked under § 241.4(*l*)(1). However, some courts have held that the initial-review procedure required by § 241.4(*l*)(1) should also apply to aliens revoked under § 241.4(*l*)(2). *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163–64 (W.D.N.Y. 2025) (collecting cases holding that an informal interview is required); *but see Barrios v. Ripa*, No. 1:25-CV-22644, 2025

WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (stating that "it does not appear that Petitioner was entitled notice or an informal interview" because that requirement appears only in § 241.4(*l*)(1) while Petitioner's release was revoked under § 241.4(*l*)(2)). Here, out of an abundance of caution, ICE provided Petitioner with the initial review required by § 241.4(*l*)(1), twice, so the Court does not need to decide whether that procedure was required.

ARGUMENT

Petitioner seeks a preliminary injunction enjoining his further detention. "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983). It should be granted only where: (1) the movant has a substantial likelihood of success on the merits, (2) the movant will suffer irreparable injury unless the injunction is issued, (3) the threatened injury to the movant outweighs the possible injury that the injunction may cause the opposing party, and (4) the injunction, if issued, would not disserve the public interest. *Horton v. City of Augustine, Fla.*, 272 F.3d 1318, 1326 (11th Cir. 2001).

Petitioner's request should be denied because he has not proven a likelihood of success on the merits. That factor is the most important, and if he is unable to establish it then this Court need not consider the remaining factors.

Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002).

Petitioner's motion offers six "grounds" why his motion should be granted. The first five grounds all pursue the idea that his current detention is illegal. He makes the following arguments:

A. The agency acted beyond its statutory authority in detaining him. (This is Ground for Relief #1 from the motion.)

B. He has not received protections required by the due process clause. (Ground for Relief #2.)

C. He has not been afforded certain procedures required by statute or regulation. (Grounds #3, #4, and #5.)

This brief will show, below in Argument § 1, that Petitioner's current detention is consistent with the law and that he received all the protections that the law requires. What is more, some of his arguments here raise issues that are beyond this Court's jurisdiction to hear.

The remaining ground for relief in the motion (Ground #6) argues, without evidence, that ICE will soon remove Petitioner to an undisclosed third country without first providing him with any procedural protection. This brief will show, below in Argument § 2, that no preliminary injunction can be issued on this basis because the petition lacks a claim for relief matching this argument. Setting that aside, Petitioner lacks standing to raise this argument because he offers no evidence that he is about to be injured.

1. Petitioner cannot show a likelihood of success on his improper-detention claims because he received all procedural protections that he is owed, and some of his arguments—even if they had merit—would be outside this Court's jurisdiction to review.

A. The relevant regulation is not *ultra vires.*

Petitioner first argues that the relevant regulation, 8 C.F.R. § 241.4(l)(2), is invalid because it exceeds the agency's statutory authorization found in 8 U.S.C. § 1231. This argument fails because the statute explicitly says that inadmissible aliens subject to a final order of removal, like Petitioner, "shall" be detained during the removal period and "may" be detained thereafter. *Id.* § 1231(a)(2), (a)(6). The regulation that implements this language (8 C.F.R. § 241.4) is well within this statutory boundary.

Petitioner cites a single case for the idea that the regulation is *ultra vires* and beyond the scope of 8 U.S.C. § 1231(a)(6). (Mot. at 8 (citing *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018).) The discussion in that case, however, is explicitly dicta. *You*, 321 F. Supp. 3d at 463 ("Even assuming *arguendo* that ...."). Also, the argument in that case would not apply here. The judge in *You* suggested that the petitioner in that case was outside the bounds of 8 U.S.C. § 1231(a)(6) because he was not a danger to his community and presumably did not meet the other criteria in that paragraph. The facts are different here because Petitioner is clearly within the bounds of § 1231(a)(6) in that he was charged with

inadmissibility "under section 1182 of this title." Therefore, the argument in *You* does not work in the current case.[7]

B. Petitioner received the procedural and substantive protections to which he is entitled under the Due Process clause.

Petitioner next argues that he did not receive procedural and substantive protections required by the due process clause of the Fifth Amendment. Procedurally, he says that he is entitled to advance notice, an opportunity to be heard, and a neutral decisionmaker. Substantively, he says that theories of substantive due process prevent his confinement because he complied with his OSUP, because he was granted U-visa-based deferred action, and because ICE has no realistic prospect of removing him.

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[7] In his original, overlength motion for a preliminary injunction (Doc. 2), Petitioner argued that the wrong agency official signed his revocation. He did not support this argument with facts. Indeed, he did not know at the time which official had signed his revocation. He cut that argument from his revised motion (Doc. 8).

The exhibits submitted today show that the appropriate official signed the revocation. The regulation allows "district directors" to make the decision, and the decision here was made by a Field Office Director, an equivalent position. *See* 8 C.F.R. § 241.4(*l*)(2) (district directors allowed); 8 C.F.R. § 1.2 (equivalent position); *see also Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *3 n.11 (S.D. Fla. Aug. 8, 2025) (so stating). Even if the wrong official had signed the revocation, the best remedy would be to simply give the agency a chance to correct the paperwork. *See* Order at 2–3, *T.C.T. v. Warden*, No. 4:25-cv-373-CDL-CHW (M.D. Ga. Feb. 23, 2026) (adopting this approach).

These two due-process arguments are both made in a single paragraph, comprised of just one long sentence. (Mot. at 7–8.) The motion contains no citations here, and the accompanying memorandum of law simply incorporates a twenty-one-page chunk of the underlying petition "by reference." (Br. ISO Mot. at 6–7.) In fact, the bulk of the motion proceeds this way, with very little argument beyond incorporating the petition. Respondents will answer the argument as best they can, but it is difficult to both fill in an argument and respond to it.

As to the procedural argument, Petitioner does not explain why he must receive advance notice, and he does not explain why a neutral decisionmaker is required or why an agency official does not qualify. He does not review the factors from *Matthews v. Eldridge*, 424 U.S. 319 (1976). Even if he had fleshed out these arguments, they are not likely to succeed. The first *Matthews* factor looks to the nature of the plaintiff's interest at stake. Although Petitioner would say that his liberty is at stake, he lost the right to remain in this country years ago, in 2017, when his removal order was entered. Therefore, the only plausible interest he has at stake is in the government continuing to refrain from executing that order. But that is not an interest protected by the due process clause. One cannot have an interest in the executive branch refraining from taking a discretionary act. *See Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). As for

the second factor, the risk of error with the existing procedure, Petitioner does not assert any error at all. He was correctly identified as the person subject to the 2017 order of removal. Finally, the third factor, the government's interest, including the burden imposed by additional procedures, also does not favor him. He does not explain why the outcome might have been different if, say, he had received pre-custody notice nor why that extra burden is required.

Turning to substantive due process, Petitioner must show that ICE is holding him despite good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Continuing to detain someone in that circumstance would violate substantive due process, as recognized in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).[8] But he offers the Court only conclusory reasons to think that he cannot be removed. He says that he was complying with his OSUP, but he cites no support for the idea that an alien cannot be removed so long as they are complying with their OSUP. His OSUP was approved to last only six months, in any event. He next argues that he was granted U-visa-based deferred action, implicitly suggesting that this prevents his removal. Again, he cites nothing to support this claim, and it is not correct. At

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[8] As Petitioner implicitly recognizes, *Zadvydas* permits detention under substantive due process if there *is* a significant likelihood of removal in the reasonably foreseeable future.

best, internal agency guidance used to instruct officers not to remove petitioners with a pending U-visa, but this was a matter of discretion, and the relevant guidance was rescinded last year in any event. (*See* Pet. ¶ 88 (noting that previous guidance has been rescinded).) Finally, he concludes that there is "no realistic prospect of removal" (Mot. at 9), but he does not say why. That might be true if, say, El Salvador was refusing to accept removed aliens, but the Stinson Declaration confirms that aliens are currently being removed to El Salvador.[9]

C. ICE complied with the relevant statutes and regulations.

Petitioner's next three arguments all advance some version of the claim that ICE is not following the law by detaining him for removal. He argues that ICE failed to follow the requirements of the INA and its implementing regulations (Mot. at 9 (Ground #3)); that ICE violated the APA in various ways, including by disregarding the statutory text (*Id.* (Ground #4)), and that ICE violated the *Accardi* doctrine by failing to follow its own regulations (*Id.* at 8–9

[9] Although the argument does not appear in his motion, the petition argues that *Zadvydas* requires his release because he was already detained for six months in 2017–2018, after his initial order of removal. This argument is not correct. *Zadvydas* merely looks at whether there is a realistic prospect of removal at the current time. *Zadvydas* is not "a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past." *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018).

(Ground #5)). Once again, each argument is largely conclusory, with few citations and no explanation.[10]

To prevail on this argument, Petitioner will need to show (1) that he was entitled to some type of custody review and (2) that ICE did not provide this review. He needs to win on both arguments to prove a legal violation. But on both points, he is unlikely to succeed.

Start with the statutory text, 8 U.S.C. § 1231. As discussed above, this statute permits the permanent detention of an alien like Petitioner. *Id.* § 1231(a)(6). Of course, this authority is subject to the substantive due process limits set out in *Zadvydas*, but those were addressed in the previous argument concerning Petitioner's constitutional claims. The current argument raises purely statutory claims. Focusing solely on the statute, it provides him with no protection from detention; indeed, the statute simply says that an alien in Petitioner's circumstance "may" be detained. *Id.* He cannot demonstrate that his detention violates this statute. The statute establishes no procedure for the

[10] In a long footnote (Mot. at 10 n.2), the motion cites a string of cases decided under 8 U.S.C. § 241.13(i)(2), a regulation that requires the government to show "changed circumstances" supporting the determination that an alien not previously removable now can be removed. But this requirement applies only to aliens released "under this section," *id.*, and so does not apply to Petitioner, who was not released under this regulation. Instead, 8 C.F.R. § 241.4 is the regulation that applies here.

government to follow when exercising its discretion. Any such procedural protection must come from regulation, not statute.

Turning from statute to regulation, the relevant regulation states that an alien's release may be revoked when, in the discretion of certain agency officials, the revocation "is appropriate to enforce a removal order or to commence removal proceedings against an alien." 8 C.F.R. 241.4(*l*)(2)(iii). Because this is explicitly a discretionary decision, Petitioner cannot challenge it in district court because 8 U.S.C. § 1252(a)(2)(B) shields discretionary decision like this from judicial review.[11] Even if a court could review that decision, it is essentially an exercise of prosecutorial judgment—the decision of whether to execute an order or not—exactly the type of decision that deserves deference.

Finally, the regulation prescribes few limitations on when and how the agency can issue such a revocation. As noted above, some courts have held that the notice and interview requirements from 8 C.F.R. § 241.4(*l*)(1) apply even to revocations performed under § 241.4(*l*)(2), but that is far from clear. Even if those

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[11] Section 1252(a)(2)(B) prevents judicial review of discretionary decisions made under the same "subchapter." This would include decision made under 8 U.S.C. § 1231(a)(6), which is part of the same subchapter and which gives discretion to decide whether to detain someone like Petitioner. This bar on judicial review therefore extends to discretionary decisions made under 8 C.F.R. § 241.4(l)(2), which simply implements and channels the discretion permitted by 8 U.S.C. § 1231(a)(6).

requirements do apply, ICE complied with them. 8 C.F.R. 241.4(*l*)(1) states that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole" and "afforded an initial informal interview promptly … to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." Petitioner was, in fact, recently afforded these protections.

Petitioner may argue that his interview should have occurred earlier, closer to his initial detention or even before it. Even if that were correct—and again it is far from clear that the interview was even required—the remedy would be to provide him with the interview, not to release him outright. *See Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. 2025) (declining to order release based on an alleged failure to provide an interview). Also, because the one interview has now taken place, and a second is scheduled to occur, no relief remains to be given, and the argument is moot. His argument "no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju v. Vega*, 32 F.4th 1102, 1106–07 (11th Cir. 2022) (internal quotations and citation omitted). Any purported injury resulting from the absence of these procedures has ceased, so no injunction is necessary to remedy them in the future. *See Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018).

2. Petitioner cannot show a likelihood of success on his third-country-removal claims because that argument is not part of the petition and is speculative in any event.

Petitioner next argues that the Court should issue an injunction blocking his removal to a third country unless the agency first provides him with certain procedural protection. He admits that this is a distinct argument, made "[s]eparate and apart from his OSUP and detention claims." (Mot. at 17.) This distinct argument should be rejected for two reasons:

First, this argument is not included in the petition. The petition contains ten counts for relief, and none of them address this issue. The phrase "third country" appears only once in the petition, in an unrelated parenthetical. (Pet. ¶ 58.) Because this argument is not part of the petition, it cannot serve as a basis for a preliminary injunction. "[I]t is well established that a court may not grant a preliminary injunction when the issues raised in the motion for a preliminary injunction are entirely different from those raised in the complaint." *Lee v. Lindsay*, No. 06–1824, 2007 WL 1120562, at *1 (M.D. Pa. Apr.13, 2007) (citing *Stewart v. U.S. I.N.S.*, 762 F.2d 193, 198–99 (2d Cir.1985)); *see also Adams v. Freedom Forge Corp.*, 204 F.3d 475, 489–90 (3d Cir. 2000) (alleged harm "is therefore insufficiently related to the complaint and does not deserve the benefits of protective measures that a preliminary injunction affords"); *Devose v. Herrington*,

42 F.3d 470, 471 (8th Cir. 1994) (although assertions in motion might support additional claims, they cannot provide the basis for a preliminary injunction).[12]

Second, and in any event, Petitioner's argument that he might be removed to a third country is currently speculative. Petitioner admits as much in his motion, always using the word "if" to describe this outcome. (*E.g.*, Mot. at 5 "Petitioner contends that *if* DHS designates any third country for his removal, due process requires ....") (emphasis added).) But he has offered no reason to think this is going to happen. For example, he does not claim that anyone at ICE suggested that he might be removed to a third country. He does not explain why he cannot be removed to his native country of El Salvador. He asks this Court, essentially, to issue an advisory opinion. But Courts are limited to deciding actual cases and controversies by Article III. This limitation prevents them from issuing injunctions to avoid future harms unless the "risk of harm is sufficiently imminent and substantial." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 415 (2021). Petitioner has offered no evidence that the harm he seeks to avoid has even been threatened, much less that the risk is sufficiently imminent and substantial to

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[12] This is not to suggest that the Court cannot act to preserve its jurisdiction. The All Writs Act allows that. Rather, this brief is merely arguing that the specific relief Petitioner requests in connection with preventing a third-country removal is beyond the scope of the complaint.

authorize judicial intervention. Therefore, no injunction should be issued on this basis.

SCOPE OF THE INJUNCTION AND SECURITY

Petitioner's motion concludes by describing the injunction he wants the Court to issue. Some of the requested relief, however, is inappropriate.[13]

He first asks the Court to enjoin his removal from the country as a jurisdiction-preservation matter. Of course the All Writs Act permits this, but only if he demonstrates a likelihood of success on his underlying petition, which he has not done. He also asks the Court to enjoin his removal until after his U-visa is adjudicated, but as discussed above he has not explained why his visa application bars his removal. That argument appears in his petition but not in his motion for a preliminary injunction, so it should not be included in any injunction the Court may issue. In any event, staying his removal until his visa is adjudicated is not necessary to preserve jurisdiction. He can continue to pursue his visa from outside the United States.

Moving on, he asks that he be released from custody during the pendency of this action and that the Court order his OSUP restored. If he were to be

[13] Of course, no injunction is appropriate unless the movant demonstrates a likelihood of success on the merits, but those arguments were addressed above so this section focuses merely on the match between the claim and the relief.

released, then yes, ICE would like his OSUP put back in place. The parties appear to agree on this (even though ICE maintains its argument that his detention is proper and that his release should not be ordered).

Petitioner next asks the Court to order ICE not to modify Petitioner's OSUP, in the event he is released, unless the agency does so in accordance with law. This request is not justified by anything in the motion, and a general injunction to "follow the law" is not appropriate, particularly when there has been no argument that ICE has or will modify his OSUP. Generally, the Eleventh Circuit disfavors "follow-the-law" injunctions and has held that these injunctions are unenforceable. *See Burton v. City of Belle Glade*, 178 F.3d 1175, 1200–01 (11th Cir. 1999).

Finally, Petitioner asks the Court to order that if ICE seeks to revoke (or even "materially modify") his release while this action is pending then Petitioner must be given written notice of the reasons for the change and an opportunity to respond. As for modifying his OSUP, he provides no reason to think this would happen nor any authority suggesting that the Court could or should get involved in that discretionary process. As for providing notice of the reasons for his revocation, ICE already did that and does not need to be enjoined to do it again in the future.

Finally, if Petitioner is released from custody under a preliminary injunction, he must post a security bond under Federal Rule of Civil Procedure 65. His release will prevent ICE from executing a lawfully entered and long outstanding removal order. Rule 65 says that the court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Here, he should have to post a $5,000 bond as security, to be foreclosed on only if the injunction is later lifted and he does not report back to custody.

CONCLUSION

The Court should deny Petitioner's motion for a preliminary injunction in full. ICE properly detained him to execute a lawful order of removal, as permitted by the Constitution, by statute, and by regulation. His other argument that he may be removed to a third country without process has no basis in fact as is not properly part of this case in any event.

Respectfully submitted,

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Counsel for the Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1(D), that the above memorandum was prepared in 13-point, Book Antiqua font.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed using the Court's CM/ECF system, which will provide notice to all counsel of record.

This 18th day of December, 2025.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE