IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

BRAYAN JOSUE LOPEZ SARMIENTO, *et al.*, *Petitioners*, v. KRISTI NOEM, *et al.*, *Respondents*.	Case No. 1:25-cv-1644 (AJT/WBP)

FEDERAL RESPONDENTS' RESPONSE TO PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER

INTRODUCTION

This case began with the filing of a Petition for a Writ of Habeas Corpus. Since then, this Court has determined that Petitioners' detention is governed by 8 U.S.C. § 1226(a) as opposed to Federal Respondents' position that 8 U.S.C. § 1225(b)(2) governs. Pursuant to this Court's order, each Petitioner was provided a standard bond hearing in front of an immigration judge. Petitioners then filed an Amended Complaint challenging several aspects of the government's authority to detain special immigrant juveniles ("SIJs") and unaccompanied minors, which importantly, are not at issue here. And just a few days after this Court extended Federal Respondents' time to respond to such claims, Petitioners sought a preliminary injunction and temporary restraining order on the *same* claims they brought in their Amended Complaint.

Specifically at issue here, Petitioners sought expedited briefing and relief on an emergency basis as to a single Petitioner, Axel Eduardo Martinez Ucles, asking this Court to order Petitioner's immediate release from detention based on his medical condition. *See* Doc. No. 30 at 1-2 ("Expedited briefing is justified here. Axel is suffering acute irreparable harm as a result of this unlawful detention because he suffers from a debilitating and undiagnosed gastrointestinal condition."). However, Petitioners then changed tack, arguing that emergency relief was warranted for "each Plaintiff-Petitioner or putative class" due to Federal Respondents purported failure "to provide them with the required pre-deprivation process before re[-]detaining them." Doc. No. 34. At the December 17, 2025 hearing, Petitioners again pressed these expansive claims, on an emergency basis, making no effort to distinguish Petitioner Ucles's claim from any of the other Petitioners (or potential class members). Petitioners' effort to transform an emergency motion as to a single Petitioner into class-wide Constitutional relief, sweeping orders of immediate

release, and the grafting of a novel detention procedure onto immigration courts is untenable and should be rejected.

This Court ordered Petitioners to address the following three issues: (1) what is legally required before the Government can revoke Petitioner Ucles deferred action; (2) the legal basis for requiring the Government to bear the burden of showing "changed circumstances" by clear and convincing evidence prior to Petitioner Ucles' detention; and (3) the proper remedy for this motion. Petitioners' arguments fall flat on each issue. First, Petitioners' claims are barred by the Immigration and Nationality Act ("INA"). Petitioners' deferred action claims are also barred by the Administrative Procedure Act ("APA"). Indeed, all claims focus on immigration agencies' prosecutorial discretion as to immigration enforcement. The Supreme Court has cautioned interference in such. As to the merits, Federal Respondents demonstrate that there are no legal impediments on U.S. Citizenship and Immigration Services' ("USCIS") discretionary ability to rescind deferred action. Petitioners cannot point to any statute, regulation, or case requiring such. And Petitioners also fail to provide any statutory, regulatory, or mandatory authority requiring the Government to provide a pre-deprivation hearing before an SIJ alien is detained.

Therefore, for the reasons stated below, the Federal Respondents respectfully respect this Court deny Petitioners' motion for a temporary restraining.

LEGAL BACKGROUND

A. Special Immigrant Juveniles ("SIJs")

The INA recognizes Special Immigrant Juveniles ("SIJs") as a class[1] of "special immigrants" present in the U.S. *See* 8 U.S.C. § 1101(a)(27)(J)(i)-(iii). To obtain SIJ status under

[1] Although 8 U.S.C. § 1101(a)(27)(J) refers to SIJ classification as SIJ "status," it does not provide immigration status. Rather, it provides a pathway to lawful permanent residence. Like individuals

this provision, an alien must: (1) be under 21 years of age at the time of filing a petition for SIJ status (*i.e.*, a Form I-360); (2) be unmarried at the time of filing and adjudication; (3) be physically present in the United States; (4) be subject to a qualifying juvenile court order; and (5) "[o]btain[] consent from the Secretary of Homeland Security to classification as a special immigrant juvenile." 8 C.F.R. § 204.11(b); *see id.* § 204.11(c)-(d).

There are two primary benefits of SIJ status. *First*, a SIJ alien may become eligible for adjustment of immigration status to that of legal permanent resident ("LPR")—a benefit within the federal government's *discretion* to confer. *See* 8 U.S.C. §§ 1255(a), (h). And when an SIJ alien seeks to *adjust status*, certain statutory grounds of inadmissibility are waivable in that context. See 8 U.S.C. § 1255(h). Second, if an SIJ is placed in removal proceeding and is charged as being deportable, certain waivers exists with respect to such *deportability*. *See* 8 U.S.C. §§ 1227(c); *Reyes v. Cissna*, 737 F. App'x 140, 142 (4th Cir. 2018). Regarding adjustment of status, an alien with SIJ status is "deemed . . . to have been *paroled* into the [U.S.]" 8 U.S.C. § 1255(h)(1) (emphasis added).

Congress, however, limited the number of immigrant visas annually available to aliens in the employment-based fourth preference category (E-4), which includes SIJs. *See* 8 U.S.C. § 1153(b)(4). Consequently, because there are more SIJs than available immigrant visas, SIJs must wait, sometimes for years, before an immigrant visa is available, which is determined by the SIJ's priority date (*i.e.*, the date when USCIS received their SIJ petition). *See* Dep't of State, December 2025 Visa Bulletin, Employment Based Preferences (Fourth)[2]. Although the priority dates have

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classified as immediate relatives of U.S. citizens, approval of the Form I-130 (for SIJs, Form I-360) simply allows the alien to apply for permanent residence once a visa becomes available.

[2] Retrievable at: https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-december-2025.html (last accessed Dec. 24, 2025).

retrogressed the past three years due to a significant increase in SIJ petitions, Congress has not changed the adjustment-of-status process for SIJs or provided them any interim benefits.

An SIJ may have his classification revoked automatically if either of two events occurs before final adjustment to LPR status: (1) "[r]eunification of the [SIJ] beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under State law," or (2) "[a]dministrative or judicial proceedings determine that it is in the [SIJ] beneficiary's best interest to be returned to the country of nationality or last habitual residence of the [SIJ] beneficiary or of their parent(s)." 8 C.F.R. § 204.11(j)(1). Otherwise, USCIS may revoke SIJ status on notice "for good and sufficient cause" in compliance with 8 C.F.R. § 205.2. *Id.* § 204.11(j)(2). Thus, while SIJs may eventually apply to adjust status to that of an LPR, many are still subject to arrest, detention, and removal from the United States until their priority date is current. *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) ("SIJ designation does not strip the U.S. government of all removal powers."). No statute, regulation, or other authority *requires* USCIS to consider SIJs for so-called "deferred action," *see infra*, or employment authorization based on their SIJ classification.

B. Deferred Action

USCIS regulations[3] provide that deferred action is "an act of administrative convenience to the government that gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14); *see Casa De*

[3] In the context of Deferred Action for Childhood Arrivals ("DACA"), USCIS, "[d]eferred action is a *discretionary* determination to defer removal of an individual as an act of prosecutorial discretion." USCIS, Frequently Asked Questions (last updated Oct. 30, 2025)[3]; *see Case De Maryland*, 924 F.3d at 487 (quoting *Regents of the Univ. of Cal. v. DHS*, 908 F.3d 476, 487 (9th Cir. 2018), *rev'd in part, vacated in part*, 140 S. Ct. 1891 (2020)) (explaining that deferred action is "a decision by Executive Branch officials not to pursue deportation proceedings against an individual or class of individuals otherwise eligible for removal from this country.").

Maryland v. U.S. DHS, 924 F.3d 684, 708 n.1 (4th Cir. 2019) (Richardson, J., concurring in part and dissenting in part). USCIS has the right to terminate grants of deferred action as a matter of discretion. *See* USCIS Policy Manual, Vol. 6 ch. 4 Part G.2 (current as of Sep. 26, 2025)[4]. Prior to March 2022, SIJ aliens had to affirmatively apply for deferred action by submitting Form G-325a, along with a signed request and evidence supporting the request. See USCIS, Policy Manual, Vol. 1, Pt. H, Ch. 2 (last updated Dec. 22, 2025)[5]. If USCIS approved the deferred action request, the SIJ could apply for an employment authorization document ("EAD") under 8 C.F.R. § 274a.12(c)(14). *Id.* USCIS considered SIJ deferred action on a case-by-case basis, weighing all positive and negative factors. *Id.*

In March 2022, USCIS announced that it would begin automatically making deferred action determinations for aliens with SIJ classification who could not apply for adjustment of status solely because an immigrant visa number was not immediately available. *See* USCIS, Policy Alert PA-2022-10 (Mar. 7, 2022)[6]. USCIS explained that it was issuing an "internal policy clarification" that was based on its "interpretation" of its regulations and the INA. *Id.* It also explained that SIJs are "unlikely to be enforcement priorities" under the *then*-existing Immigration and Customs Enforcement ("ICE") Directive 11005.3, which absent exceptional circumstances deferred

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[4] Retrievable at: https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (last accessed Dec. 23, 2025).

[5] Retrievable at: https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2#footnote-28 (last accessed Dec. 23, 2025).

[6] Retrievable at: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf. (last accessed Dec. 23, 2025). However, on November 19, 2025, a single district judge issued a stay this policy. *See A.C.R. v. Noem*, --- F. Supp. 3d ---, 2025 WL 3228840 (E.D.N.Y. 2025).

immigration enforcement against SIJs.[7] *Id.* USCIS also explained that, consistent with its general deferred action process, USCIS would assess SIJs for deferred action on a case-by-case basis to determine whether a favorable exercise of discretion was warranted. *See id.* If USCIS determined, in its *discretion*, that the SIJ warranted favorable discretion, the SIJ would be provided with a notice conferring SIJ classification *and* deferred action. *See*, *e.g.*, Am. Pet., Exhibit C, SIJ Approval Notice. In such notice, the agency notes that the "deferred action will remain in effect . . . unless terminated earlier by USCIS." *Id.*

On June 5, 2025, USCIS announced that it would no longer "automatically consider" SIJs for deferred action. *See* USCIS Policy Alert PA-2025-07 (June 6, 2025)[8]. The announcement acknowledged that Congress likely did not envision that SIJs would have to wait years before becoming eligible to apply for lawful permanent resident status, but that despite knowledge of this wait, Congress also had not mandated any interim legal status or deferred action be provided to SIJs. *See id.* It also explained that the change "is necessary to more closely align agency policies and procedures with statutory requirements and authorities," *id.*, and that the Executive Branch had "determined [that] it [was] in the national and public interest to revert to the policy prior to March 7, 2022." *Id.* As an example, USCIS stated that rescinding the automatic grant of deferred action for SIJs adheres to Executive Order 14161, "Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats," (Jan. 20, 2025), which requires additional vetting procedures for aliens. *Id.*

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[7] This directive has been rescinded. ICE, Interim Guidance, on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, https://www.ice.gov/doclib/foia/policy/11005.4.pdf. (last accessed Dec. 23, 2025).

[8] Retrievable at: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf. (last accessed Dec. 23, 2025).

ARGUMENT

Petitioner seeks a temporary restraining order—"an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Such a request "involv[es] the exercise of a very far-reaching power to be granted only sparingly and in limited circumstances." *Sarsour v. Trump*, 245 F. Supp. 3d 719, 728 (E.D. Va. 2017) (Trenga, J.). To be eligible for a temporary restraining order, Petitioner must demonstrate each of the following factors by a "clear showing": (1) a likelihood of success on the merits; (2) irreparable harm in the absence of preliminary injunctive relief; (3) the balance of equities between the parties tips in favor of the party seeking such relief; and (4) the public interest favors equitable relief. *Winter*, 555 U.S. at 20, 22. The requirement for showing a clear likelihood of success on the merits "is far stricter than a requirement that the [petitioner] demonstrate only a grave or serious *question* for litigation." *Sarsour*, 245 F. Supp. 3d at 729 (alterations and quotation marks omitted) (emphasis in original).

I. Factor One: Petitioners are not likely to succeed on the merits.

Petitioners are not likely to succeed on the merits of its position here, and thus are not entitled to extraordinary relief in the form of a preliminary injunction.[9] This remains true after a consideration of the two issues on which this Court asked the parties to provide supplemental briefing.

A. This Court lacks jurisdiction to provide the relief Petitioner seeks.

In short, Petitioners ask this Court to require a hearing *before* a person granted SIJ status is detained and declare Petitioner's recission of his deferred action as unlawful. *See* Br. at 1. This

[9] This Court should exercise its discretion to convert Petitioners' motion to one for a preliminary injunction because Defendants have "had a fair opportunity to oppose it." *U.S. Dep't of Lab. v. Wolf Run Mining Co.*, 452 F.3d 275, 283 (4th Cir. 2006) ("[A] district court could properly consider a motion for a TRO as a request for a preliminary injunction, . . . focusing not on a specific time period but on whether the opposing party had a fair opportunity to oppose it.").

Court cannot do either. Any pre-deprivation hearing as articulated by the Petitioners and review of USCIS decisions rescinding an alien's deferred action are precluded from judicial review as such actions are expressly challenging how the government uses and utilizes its discretion in "adjudicating cases," and such challenge should be brough in a Petition for Review with the appropriate Court of Appeals *See* 8 U.S.C. §§ 1252(g), 1252(b)(9). Indeed, Petitioner's deferred action claims are further precluded from judicial review as they are actions that are "committed to agency discretion by law." 5 U.S.C. § 701(a)(2).

1. Petitioner's claims should be brought in a petition for review with the appropriate court of appeals.

The INA provides that, "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding* brought to remove an alien from the U.S. under this subchapter *shall* be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). "This section, known as the 'zipper' clause, consolidates review of matters *arising from* removal proceedings 'only in judicial review of a final order under this section,' and strips courts of habeas jurisdiction over such matters." *Afanwi v. Mukasey*, 526 F.3d 788, 796 (4th Cir. 2008), *vacated on other grounds*, 558 U.S. 801 (2009). In fact, "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec. U.S. DHS.*, 950 F.3d 177, 184 (3d Cir. 2020); *see Reno v. Am.-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'");

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section *shall* be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5) (emphasis added). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . .

Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of §§ (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain [him/her], which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction Petitioner's claims.

The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain [him/her] in the first place. *See, e.g.*, Br. at 1.

Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain [him/her] in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Because of this precedent, the Court should conclude that Petitioner must bring his claims as a challenge his detention in immigration court, not in federal district court. *See Johnson v. Whitehead*, 647 F.3d 120, 125 (4th Cir. 2011); *Massieu v. Reno*, 91 F.3d 416, 423 (3d Cir. 1996).

2. *Challenges to USCIS's discretionary decision to approve, grant, or revoke deferred action is insulated from judicial review pursuant the 8 U.S.C. § 1252(g).*

This Court cannot review USCIS's decision to rescind Petitioner's deferred action because Congress has barred district courts from expressly challenging how the government uses and utilizes its discretion in "adjudicating cases," and such challenge should be brough in a Petition for Review with the appropriate Court of Appeals *See* 8 U.S.C. §§ 1252(g), 1252(b)(9).

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] *adjudicate cases*, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id.* Though this section "does not sweep broadly," *Tazu v. Attorney General*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

The statute was "'directed against a particular evil: attempts to impose judicial constraints upon *prosecutorial discretion*,'" to protect "'no *deferred action*' decisions and similar

discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485) (emphasis added). That it exactly what is at issue here; Petitioner claims USCIS's decision to rescind his deferred action violates the Constitution, APA, INA, and the INA's implementing regulations. *See* Br. at 7-11. The Supreme Court explained that the motivation behind this jurisdiction-stripping statute was to prevent challenges to the Executive's decision to grant or withhold "Deferred Action." *AADC*, 525 U.S. at 483. The deferred action that the Supreme Court referred to in *AADC* is the same deferred action that the Petitioner seeks now: a decision to "decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation." *Id.* (citation omitted). Other courts have since held that Section 1252(g) bars courts from reviewing deferred action decisions. *See, e.g., Sanchez v. Gonzales*, 161 F. App'x 710 (9th Cir. 2006); *McCloskey v. Keisler*, 248 F. App'x 915, 917 (10th Cir. 2007). Section 1252(g) bars review here, too.

Indeed, the particular limitation at § 1252(g) exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483–84. In addition, through § 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review."). As the Supreme Court in *AADC* said:

> Section 1252(g) seems clearly designed to give some measure of protection to "no deferred action" decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed

Id. The government's decision that SIJs with deferred action are no longer categorically low-enforcement priorities, however, is not subject to review. *AADC*, 525 U.S. at 483.

Because decisions about who to prioritize (and not prioritize) for immigration enforcement arise from decisions to commence proceedings, *adjudicate* cases, and execute removal orders, Petitioners' challenge to the Government's enforcement priorities falls squarely within § 1252(g).

3. Petitioners' APA claims are also barred from review as the decision to rescind Petitioners' Deferred Action is committed to agency discretion by law.

As Petitioner even concedes, *see* Br. at 13 (conceding deferred action is "expressly revocable at the Government's discretion"), the decision to grant, deny, or rescind deferred action is committed to USCIS's discretion. Therefore, because such decisions are "committed to agency discretion by law," this Court lacks jurisdiction to review such claims. *See* 5 U.S.C. § 701(a)(2).

"Agency action," such as the discretionary nature of deferred action, "is committed to the agency's discretion when no judicially manageable standards are available to assess how and when an agency should exercise its discretion such that a court would have 'no law to apply.'" *Pharm. Coal. For Patient Access v. United States*, 126 F.4th 947, 964 (4th Cir. 2025) (quoting *Heckler v. Chaney*, 470 U.S. 821, 830–31 (1985)). Following the Supreme Court's common-law approach to § 701(a)(2), the Fourth Circuit has found that an agency action is committed to agency discretion if such action passes the following two-part inquiry: (1) whether the kind of agency action at issue has been traditionally committed to agency discretion, and (2) whether the relevant statutory provisions intentionally limit the agency's discretion by setting guidelines or providing a limit. *See Holbrook v. Tennessee Valley Auth.*, 48 F.4th 282, 290 (4th Cir. 2022) (citing *Chaney*, 470 U.S. at 832) (cleaned up). Decisions involving deferred action pass such inquiry.

As an initial matter, the Fourth Circuit has advised that past practice should guide this legal inquiry. *See id.* Indeed, deferred action has always been a *discretionary* act of prosecutorial

discretion. *See AADC*, 525 U.S. at 483 (emphasis added). Nonetheless, the Fourth Circuit looks to three factors that assist them in determining whether agency decisions, such as USCIS decisions on deferred action, are traditionally committed to agency discretion. *See Pharm. Coal.*, 126 F.4th at 964. Normally, actions traditionally committed to agency discretion:

> (1) involve complicated interest-balancing of factors within the agency's expertise;
> (2) do not infringe on liberty or property interests; and
> (3) are actions traditionally not reviewable.

See Holbrook, 48 F.4th at 290 (citing *Cheney*, 470 U.S. at 831-32). These factors clearly support that decisions regarding deferred action are committed to agency discretion by law.

As for the first factor, which involves an interest-balancing of factors that are within the agency's expertise, the Supreme Court has made clear "that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)); *see Dep't of State v. Muñoz*, 602 U.S. 899, 906 (2024) (same). And the Supreme Court has further emphasized that "the Executive Branch [] retains discretion over whether to remove a[n] [alien] from the United States." *Texas*, 599 U.S. at 679 (citing *Arizona*, 567 U.S. at 396). Given that deferred action is "an act of administrative convenience to the government that gives some cases lower priority[,]" 8 C.F.R. § 274a.12(c)(14), and (as the Fourth Circuit found in the context of DACA), "is a decision by Executive Branch officials *not to pursue* deportation proceedings against an individual," *Casa de Maryland*, 924 F.3d at 487 (emphasis added), rescinding an alien's deferred action is, by its very nature, a decision "whether to remove a[n] [alien] from the United States" *Id.* Such discretionary decisions on how the government exercises its enforcement of immigration laws must be weighed accordingly.

Even if USCIS has made a bona fide determination and/or granted deferred action while an SIJ alien's application is pending, there is no legal prohibition that prevents ICE from enforcement actions. After all, deferred action is an act of administrative grace. *See, e.g.*, *Delgado-Chavez v. I.N.S.*, 765 F.2d 868, 869 (9th Cir. 1985) ("Compliance with the statutory requirements for suspension of deportation does not automatically entitle an alien to such relief—it is a matter of discretion and administrative grace."). The Supreme Court has also made that amply clear, calling "deferred action" a "commendable exercise in administrative discretion," but acknowledging that it is "developed without express statutory authorization." *AADC*, 525 U.S. at 484; *see also id.* (aptly observing that "[s]ince no generous act goes unpunished, . . . the INS's exercise of this discretion opened the door to litigation in instances where the INS chose not to exercise it"); *U.S. ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 77 (1957) (noting that "[s]uspension of deportation is a matter of discretion and of administrative grace").[10]

In their brief, Petitioners emphasize that USCIS's decision to rescind Petitioner's deferred action is post-hac rationalization, meaning USCIS only rescinded Petitioner's deferred action because ICE issued Petitioner a Notice to Appear ("NTA") and placed him in removal proceedings. *See* Br. 9. Petitioners provide *no evidence* supporting their claim. Indeed, such evidence is

[10] The relevant regulations and statutes similarly make this clear. *See, e.g.*, 8 C.F.R. § 274a.12(c)(14) (describing "granted deferred action" as "an act of administrative convenience to the government that gives some cases lower priority" for purposes of employment eligibility); *id.* § 214.14(c)(1)(ii) ("The filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order," unless the petitioner has "file[d] for a stay for removal . . . .") (emphasis added); *id.* § 214.204(b)(2)(i) (same as to T-visa) ("The filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to execute a final order of removal, although the applicant may request an administrative stay of removal . . . ."); 8 U.S.C. § 1227(d), 8 C.F.R. § 241.6(a) (contemplating "a request for an administrative stay of removal" on "Form I– 246, Stay of Removal," but vesting the discretion to immigration officials, and listing deferred action and stay of removal as distinct concepts); 8 U.S.C. § 1229a(c)(2) (making clear that "the alien has the burden of establishing" admissibility and lawful status).

necessary as "public officials enjoy a 'presumption of regularity' in the performance of their official duties." *Mestanek v. Jaddou*, 93 F.4th 164, 172 (4th Cir. 2024) (citing *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1368 (4th Cir. 1975)). Nor do Petitioners cogently explain why this temporal sequence is significant – if ICE places an alien with deferred action into removal proceedings, an Immigration Judge can dismiss those proceedings if it finds that USCIS has not revoked that deferred action. And even so, the decision to initiate removal proceedings can be from ICE *or* USCIS, meaning if one agency chooses to exercise their prosecutorial discretion one way, the other may then follow suit to support that exercise of discretion.

As for the second factor, Federal Respondents recognize that Petitioner has a liberty interest in his freedom from detention. *See Quispe v. Crawford*, 2025 WL 2783799, at *7 (E.D. Va. Sept. 29, 2025) (Trenga, J.) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). But in this current context, Petitioner must argue that he has a liberty interest *in his deferred action*, such that he is *entitled* to deferred action under statute and government policy. *See* Br. at 1. And Petitioner claims that aliens have "have a protected property interest that requires a fair process before the government may take that benefit away." Br. at 10 (quoting *Inland Empire—Immigrant Youth Collective v. Nielsen*, Case No. EDCV 17-2048, 2018 WL 4998230, at *19 (C.D. Cal. 2018)).

Petitioners' position is meritless. In order to create a constitutionally-protected liberty or property interest, the program at issue "must confer more than a mere expectation (even one supported by consistent government practice) of a benefit." *Smith v. Ashcroft*, 295 F.3d 425, 429 (4th Cir. 2002) (citing *Mallette v. Arlington County Employees' Supplemental Ret. Sys. II*, 91 F.3d 630, 635 (4th Cir.1996)). "There must be entitlement to the benefit as directed by statute." *Id.* Although Petitioners say there is statutory authority supporting their position, they fail to provide any. They even concede that the grant, denial, or recission of deferred action is committed to the

discretion of USCIS. *See* Br. at 13 (conceding deferred action is "expressly revocable at the Government's discretion"). Therefore, Petitioner has *no* liberty or property interest in deferred action. *See Appiah v. INS*, 202 F.3d 704, 709 (4th Cir. 2000) ("Because suspension of deportation is discretionary, it does not create a protectible liberty or property interest"); *see also id.* (holding that the discretionary *right* to suspension of deportation does not give rise to a liberty or property interest).

Finally, as to the last factor, decisions in the immigration context are largely immune from judicial review. *See* 8 U.S.C. § 1252. Indeed, Petitioners cannot point to any statute, regulation, case, or policy that allows for a district court to review decisions to grant, deny, or rescind deferred action. As explained, deferred action is an act of prosecutorial discretion, and such discretion is not reviewable by any Court. *See Sanchez*, 161 F. App'x 710; *McCloskey*, 248 F. App'x at 917. This Court should not be the first.

As for part two of the *Holbrook* inquiry, whether the relevant *statutory* provisions intentionally limit the agency's discretion by setting guidelines or providing a limit, there is no statutory authority for deferred action; it simply is "an act of administrative convenience to the government that gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14); *see Casa De Maryland*, 924 F.3d at 708 n.1. And even if this Court were to consider USCIS's new policy of rescinding deferred action of aliens with SIJ classification as providing a limit or guideline on the government's discretion, as Petitioners emphasize, see Br. at 8, such limit or guidelines are only in the context of *SIJs*. Indeed, the USCIS policy alert makes clear that aliens with "SIJ classification will *generally* retain [their] deferred action . . . until the current validity periods expire." USCIS, Policy Alert PA-2025-07. But all that this means is that USCIS is not going to revoke deferred action for SIJs *en masse*; even still, the policy alert clearly provides that *any*

particular SIJ alien could have their status revoked upon USCIS review, as deferred action plainly remains an act of prosecutorial discretion. *See id.* ("USCIS, within its discretion, may terminate deferred action and revoke any associated employment authorization prior to the end of the current validity period."). *See also supra* at 4-6.

Thus, USCIS's decisions regarding deferred action meet the two-part Holbrook inquiry, and thus such decisions are committed to agency discretion by law. *See* 5 U.S.C. § 701(a)(2).

B. Petitioner's Argument that the Due Process Clause Mandates a Pre-Detention Hearing Lacks Merit.

As to the Court's second question, "the legal basis for Petitioner-Plaintiffs' claim that the Government should bear the burden of showing 'changed circumstances' by clear and convincing evidence prior to Axel's re-detention," Dkt. 37 at 2, Petitioner argues that his "release[] from Government custody" and time spent living "openly" in the United States renders his detention without such a hearing in advance in violation of the Due Process Clause. Br. at 11-12. This claim fails, for the reasons stated below.

First, to the extent Petitioner's argument relies on his previous "release" from some ICE or criminal custody as entitling him to this novel pre-detention hearing at which the government bears the burden to show "changed circumstances," it is factually flawed at the outset, because Petitioner was never previously in ICE custody. Petitioner acknowledges that he arrived in the United States as an unaccompanied minor child, at which point he "was placed into the custody of the Office of Refugee Resettlement (ORR)," which is a component of the Department of Health and Human Services (HHS), and subsequently released to his mother's care. Br. at 4. Under the Trafficking Victims Protection Reauthorization Act (TVPRA), HHS (of which ORR is a sub-component) is responsible for "the care and custody of all unaccompanied alien *children*," 8 U.S.C. s 1232(b)(1) (emphasis added). Any child in ORR custody "shall be promptly placed in the least

restrictive setting that is in the best interest of the child." *Id.* § 1232(c)(2)(A). In making that placement determination, ORR "may consider danger to self, danger to the community, and risk of flight." *Id.* Thus, Petitioner's circumstances, where he was previously a minor child entrusted to the care of the ORR (because he could not simply be left on his own), are readily distinguishable from the cases Petitioner relies upon in which an individual's release from *ICE custody* or *criminal custody* created some sort of liberty interest. *See Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (parolee); *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) (probation); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody"); *Shen v. Larose*, 2025 WL 3552747, at *5 (S.D. Cal. Dec. 11 2025) ("because Petitioner was detained and then released from DHS custody on his own recognizance, he maintained a protected liberty interest in remaining out of custody"); *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969–70 (N.D. Cal., 2019) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of [ICE] custody on bond.").

Second, despite their telling protestations to the contrary, Petitioner's argument runs afoul of the reasoning of the Fourth Circuit's decision in *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2002). According to Petitioner, "nothing in *Miranda* suggests that the Government may rearrest and re-detain an individual who has lived freely in the community for years without first providing notice and a hearing." Br. at 13. Again, Petitioner has not been "re-arrested," *see supra*. But moreover, Petitioner ignores those parts of *Miranda* that do not help his case. For example, Petitioner conveniently argues that this Court can *ignore Miranda* and instead look to "the

Supreme Court's conditional-release jurisprudence," citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 488 (1972). Br. at 13. But *Miranda*, quoting *Morrissey*, expressly notes that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Miranda*, 34 F.4th at 359. And to that end, the Fourth Circuit in *Miranda* expressly declined to import due process requirements applicable to "the detention of citizens" to "the context of immigration removal proceedings." *Id.*; *see also id.* at 365 ("Aliens facing removal proceedings, although entitled to due process under the Constitution, are not entitled to the same process as citizens.").

Further, the Fourth Circuit in *Miranda*, although not opining on the specific question as phrased by Petitioner of the necessity of a pre-detention hearing for a certain undefined group of aliens, did hold that it is permissible under the Due Process Clause for aliens to bear the burden of demonstrating they are entitled to release on bond in removal proceedings. *Id.* at 363 (rejecting plaintiff's argument that "individualized assessments, where the government bears the burden of proof, are required"); *see also id.* ("If, in the criminal context, requiring citizens to bear the burden to show that they are not a danger to the community and a flight risk is not unconstitutional, it cannot be unconstitutional for the government to place a similar burden on an alien facing removal proceedings, especially considering the detention lasts only until removal."). The court in *Miranda* also noted that current bond procedures for individuals detained under 8 U.S.C. § 1226(a)—which per this Court's prior order is the statute governing Petitioner Ucles's detention—give aliens "the fundamental features of due process—notice and an opportunity to be heard." *Id.* at 362. Petitioners simply cannot square the emergency relief that they request here with the Fourth Circuit's approval of the bond process authorized under § 1226(a).

Finally, to the extent Petitioner seeks to pivot, and argue that re-detention and/or his SIJ and/or his deferred action status is *not* necessary to trigger this supposed due process right,

Petitioner's claim transforms into something breathtakingly broad. As Petitioner puts it, "where long-standing release into the community created a liberty interest at least as substantial as parole or probation, due process required notice and a hearing *before* Respondents revoked that liberty and re-detained him." Br. at 14. In other words, Petitioner is arguing, *on an emergency basis*, that all individuals who have lived in the community for some period of time are not only entitled to a bond hearing, but are entitled to a hearing before they are ever detained. As one District Court put it no more than a week ago, "Petitioner suggests that this court must borrow from the pretrial detention context . . . and craft a system where immigration judges are obligated to consider flight risk and danger to the community before imposing detention during the pendency of removal proceedings." *Rodriguez v. Olson*, 2025 WL 3672856, at *12 (N.D. Ill. Dec. 17, 2025). But "reading in such a requirement would contradict precedent and would constitute policymaking beyond the court's role," thus this Court should decline to do so. *Id.*

As the Supreme Court has instructed, "the role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices." *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982).

C. Nothing in the APA, INA, or its implementing regulations require the Government to demonstrate changed circumstances by clear and convincing evidence to detain a SIJ.

The "[Supreme] Court has declared that the Executive Branch [] retains discretion over whether to remove a[n] [alien] from the United States." *United States v. Texas*, 599 U.S. 670, 679 (2023) (citing *Arizona v. United States*, 567 U.S. 387, 396 (2012)). Deciding whether or not to

rescind deferred action[11] is a necessary determination to remove an alien from the United States. And because Petitioner points to no evidence to support their position, this Court should not grant immediate release.

In their response, the Petitioners argue that they are entitled to relief pursuant to the APA and *Accardi* doctrine because the Federal Respondents have not demonstrated any changed circumstances in its decision to detain Petitioner. *See* Br. at 16-18. Interestingly enough, although the *Accardi* Doctrine requires some violation of an agency *regulation*, Petitioners *fail* to point to *any provision* in the Federal Respondents' regulations and policy that *require* the government to demonstrate changed circumstances by clear and convincing evidence before detaining an alien with SIJ. *See id.* Indeed, Petitioner may be detained as he was issued a NTA and deemed *inadmissible* pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), *see* Am. Compl., Exhibit C, NTA (emphasis added). *See also* 8 U.S.C. §§ 1225(b)(2), 1226(a).[12]

To support their argument, Petitioners heavily rely on *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd*, 905 F.3d 1137 (9th Cir. 2018). *See* Br. at 16-17. As an initial matter, the petitioner in *Saravia* was a minor and in the custody of ORR. The Petitioner at issue here is *neither* a minor *nor* is he in ORR custody. He is twenty (20) years-old, which does not meet the definition of a minor in this context, *see* 8 C.F.R. § 236.3(b)(1) defining minor); *see also* 6

[11] In their brief, Petitioners contend that "DHS may only revoke SIJS by 'good and sufficient cause.'" Br. at 8 (quoting 8 U.S.C. § 1155) (citing 8 C.F.R. § 205.2). But DHS has not rescinded Petitioner's *SIJ* classification; it has only rescinded Petitioner's deferred action, to which no statute or regulations require DHS to meet a standard before rescinding an alien's deferred action. *See* Am. Compl., Exhibit C, Deferred Action Termination Notice (dated July 28, 2025).

[12] This Court has already held that Petitioner is detained pursuant to 8 U.S.C. § 1226(a). *See* Doc. No. 26, Order. It is still Federal Respondents' position that § 1225(b)(2) governs Petitioner's detention but will continue with the understanding that Petitioner's detention is governed by § 1226(a). In any sense, Federal Respondents would be authorized to detain Petitioner under either § 1225(b)(2) or § 1226(a).

U.S.C. § 279(g)(2) (defining "unaccompanied minor children"), and he is in DHS custody, *see* Am. Compl. ¶ 15. Indeed, another jurist of this Court, in distinguishing *Saravia*, found that *Savaria* was decided narrowly and emphasized that it pertained to *only unaccompanied minors* were released on sponsor agreements. *See J.E.C.M. by & Through His Next Friend Saravia v. Lloyd*, 352 F. Supp. 3d 559, 577 n.8 (E.D. Va. 2018) (Brinkema, J.) (emphasis added).

Next, Petitioners claim that the Petitioner at issue here cannot be detained for being inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *See* Br. at 16. To support this claim, Petitioners previously cite to 8 U.S.C. § 1227(c), which provides a waiver for SIJ aliens who are deemed *deportable*. *See id.*; Br. at 4 ("SIJS beneficiaries are exempt from removability on the basis of unlawful presence, violations of nonimmigrant status or imposed conditions of entry, and inadmissibility at time of entry."). Petitioners' claim is a misstatement of the law; indeed, of the fundamental statutory language concerning the government's authority to remove aliens from the United States.

Under the INA, an alien may be removed from the United States for being inadmissible *or* deportable. 8 U.S.C. § 1229a(e)(2), Under § 1229a(e)(2), if an alien has not been admitted to the United States, he may be removable for being *inadmissible* pursuant to 8 U.S.C. § 1182; and if an alien has been admitted, he may be removable for being *deportable* pursuant to § 1227. *Id.* (emphasis added). Here, Petitioner has *not* been admitted. *See* 8 U.S.C. § 1101(a)(13)(A) (defining admission as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"); *see also* 8 U.S.C. § 1255(h)(1) (deeming an SIJ alien ". . . to have been paroled into the [U.S.]" for the purposes of adjustment of status). And the plain language of

§ 1227(c) only applies to aliens who are deemed deportable. *See* 8 U.S.C. § 1227(c) (waiving *deportability* grounds pursuant to § 1227(a) for SIJ aliens).[13]

Lastly, Petitioners claim that they are entitled to relief through the *Accardi* doctrine because the Federal Respondents failed to follow BIA precedent. *See* Br. at 17 (citing *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). To say the least, this is a perplexing argument. Following Petitioners logic, Petitioners would agree that Federal Respondents should follow *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (holding that detention of aliens in Petitioners' circumstances is governed by § 1225(b)(2) and not § 1226(a)), which would yield the conclusion that Petitioners should have never been brought this action in the first place. Certainly, this is not their position. Federal Respondents even concede this Court is bound to follow BIA precedent. Petitioners cannot have it both ways. In any sense, *Matter of Sugay* has no relevance to any entitlement to a *pre*-deprivation detention hearing as articulated by Petitioners. In *Sugay*, petitioner was granted bond, and the BIA held that such bond could not be revoked until a change in circumstances occurred. *See Sugay* at 639-40. However, here, Petitioner was *never* granted bond. Thus, *Sugay* is inapposite to Petitioner's case.

Therefore, Petitioners have failed to provide any statutory, regulatory, or policy provision requiring the Federal Respondents to demonstrate changed circumstances when detaining SIJ aliens.

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[13] Petitioners also cite to § 1255(h) to further support their claim that the Petitioner at issue here cannot be deemed inadmissible in removal proceedings. *See* Br. at 7-8. Again, Petitioners misstate the law. Section 1255(h) involves *adjusting* a SIJ alien to that of a lawful permanent resident. *See id.* The mere fact that Petitioner's inadmissibility ground for an immigration benefit may be waived does not negate the fact that Petitioner may be *charged* with being inadmissible.

II. Factor Two: Petitioner cannot show he will be irreparably harmed absent an injunction.

As iterated above, Petitioner has not established the likelihood of success on his claim. Accordingly, Petitioner has failed to establish any irreparable injury—especially when, as noted, Petitioner has received adequate due process.

The Supreme Court's "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis added). "Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* (emphasis added). Conclusory or speculative allegations do not establish a likelihood of irreparable harm. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991); *see also Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002) ("The plaintiff must make a clear showing of irreparable harm and the required irreparable harm must be neither remote nor speculative, but actual and imminent.").

Thus, in these circumstances, "the 'possibility' of harm is insufficient to warrant the extraordinary relief of a [preliminary injunction]." *See Dawson*, 2020 WL 1304557, at *3.

III. Factors Three and Four: The balance of equities and the public interest favor Federal Respondents.

Federal Respondents recognize there is a public interest in preventing aliens from being removed "to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But it is well-settled that the public interest in enforcement of United States immigration laws is significant. *Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws at the border is also weighty."); *United States v. Martinez-*

Fuerte, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing violation of United States law." (internal quotation marks omitted)). Indeed, "interest in prompt removal may be heightened by the circumstances as well—if, for example, the alien is particularly dangerous, or has substantially prolonged his stay[.]" *Nken*, 556 U.S. at 435. If this Court were to order the relief Petitioner seeks, such an interpretation "where Congress has not clearly set it forth would run counter to our customary policy of deference to the President in matters of foreign affairs[,]" which is solely under control of the Executive branch. *Jama v. ICE*, 543 U.S. 335, 348 (2005).

IV. Petitioner Has Not Demonstrated He is Entitled to Immediate Release or an Injunction Against Re-Detention

Petitioner claims he is entitled to immediate release and an injunction precluding his detention without ICE "first demonstrating, by clear and convincing evidence, changed circumstances indicating that he is a flight risk or a danger to the community," for five reasons. Br. at 18-27. Each will be addressed below. As a threshold matter, however, it is worth noting that Petitioner's argument, taken to its logical extreme, is that federal district courts are *compelled* to order immediate release of immigration detainees where they were detained without Petitioner's demanded pre-detention hearing. The Court should not entertain this sweeping argument, particularly on an emergency basis and in which the Immigration Judge has ruled that Petitioner poses a flight risk.

Turning to Petitioner's individual arguments, *first* and *second*, Petitioner argues that only "immediate release" can remedy the purported violation of his due process rights, and that immediate release is appropriate because it would "restore the status quo." Br. at 19-21. But the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See Demore*, 538 U.S. at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Moreover, nowhere does Petitioner explain why the remedy is not to grant Petitioner the very hearing he claims the Constitution demands. In addition, much of the case law that Petitioner relies upon is distinguishable. For example, Petitioner points to *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166 (W.D. Wash. 2025), Br. at 19 n. 3, but that case is not about detention at all, and indeed does not contain the quote that Petitioner attributes to it. And Petitioner's citation to the exhaustion principle set forth in *Farrokhi v. USINS*, 900 F.2d 697 (4th Cir. 1990), Br. at 21, a case involving a petition for review directly to the federal Circuit Court of Appeals from the BIA, is utterly irrelevant here.

Next, Petitioner argues that his medical condition warrants immediate release. Br. at 21-23. As stated in the Federal Respondents' prior brief on Petitioner's motion for a temporary restraining order, *see* Dkt. 33 at 2, habeas relief cannot be premised upon a medical condition, especially when the detention facility has the means to treat that condition in a constitutionally-satisfactory manner. *See, e.g., Aslanturk v. Hott*, 459 F. Supp. 3d 681, 699 (E.D. Va. 2020); *Toure v. Hott*, 458 F. Supp. 3d 387, 401-04 (E.D. Va. 2020). Indeed, Petitioner's questions of medical judgment by the Federal Respondents' health officials are not subject to judicial review, and allegations of mistreatment or nontreatment must reach a constitutional dimension in order to present a colorable claim. *Hirons v. Director*, 351 F.2d 613 (4th Cir.1965); *see also Shields v.*

Kunkel, 442 F.3d 409 (9th Cir.1971). "[A]nd even if Petitioner's allegations of faulty medical care demonstrated a constitutional violation, [P]etitioner would still not be entitled to release from custody." *Stone v. Johnson*, 2005 WL 2045349, at *3 (E.D. Va. Aug. 25, 2005). "Rather, the appropriate remedy would be to enjoin any unconstitutional practices." *Id.* (citing *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973)). Therefore, this Court should reject Petitioner's request for immediate release based on his medical condition.

Fourth, Petitioner argues the balance of the equities and public interest favor his immediate release. Br. at 23-25. In doing so, Petitioner discounts the government's valid interest in detention as part of removal proceedings. *Miranda*, 34 F.4th at 364-65. Moreover, at bottom, this argument is nothing more than Petitioner's creative attempt to sidestep the jurisdictional bar of 8 U.S.C. § 1226(e), which precludes this Court's jurisdiction to review the substance of the IJ's bond decision, and collaterally attack the IJ's determination that Petitioner's conduct renders him a flight risk. Petitioner argues that "the immigration judge denied bond solely on the ground that Axel was a flight risk, relying on three alleged failures to appear in state court proceedings," but "the bond record itself demonstrates that those incidents do not support any inference—much less clear and convincing evidence—of intentional flight." Br. at 24. But Petitioner may not obtain this second bite at the apple, much less in the form of the extraordinary relief of a TRO, particularly where Petitioner acknowledges he may but has not yet appealed the IJ's bond determination to the BIA. Br. at 20. The case Petitioner relies upon is readily distinguishable. In *Pinchi*, the government did "not claim that any material circumstances have changed that would warrant reassessment of Ms. Garro Pinchi's risk of flight or dangerousness." 792 F. Supp. 3d at 1036. But here, the IJ determined Petitioner's three failures to appear rendered him a flight risk. Br. at 20. Petitioner also does not explain how ORR's determination to release him to the care of his mother has any bearing on the

government's interest in detaining him now, when he is an adult in removal proceedings with a history of failure to appear in criminal proceedings.

Finally, Petitioner argues the Court should "enjoin the Government from re-detaining him unless it bears the burden of showing changed circumstances demonstrating that he is a flight risk or dangerous, by clear and convincing evidence." Br. at 26-27. Petitioner's proposed injunction seeks to graft a novel procedure, from the criminal system, onto Congress's bond procedures for aliens. As noted *supra,* the Supreme Court has instructed that this is improper: "the role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices." *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982).[14]

* * *

Considering the *Winter* factors, as well as Petitioners' arguments, Petitioners have not shown that the Petitioner at issue would be successful on the merits, suffer irreparable harm, or that the balance of equities and public interest favor him. Therefore, this Court should subsequently deny Petitioner's motion for a temporary restraining order requiring Petitioner's immediate release.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request the Court decline to issue a temporary restraining order and deny Petitioner's request for immediate release.

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[14] It is worth noting that to the extent Petitioners seek this injunction on a class-wide basis, the Fourth Circuit has held that 8 U.S.C. § 1252(f)(1) is a jurisdictional bar to such relief. *Miranda*, 34 F.4th at 357 ("[Section] 1252(f)(1) expressly precludes 'jurisdiction or authority to enjoin or restrain' provisions of the immigration laws, including § 1226(a), on a class-wide basis.").

Dated: December 24, 2025

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