IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GLORIA REGINA GARCIA PARRA, ***Petitioner,*** **v.** **DAVID FAVRO, et al,** ***Respondents.***	**Civil Action No. 9:26-cv-000363-AMN** **PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITION**

INTRODUCTION

Petitioner, Gloria Regina Garcia Parra, is a citizen of Ecuador who has resided in the United States since April 1, 2009. Ms. Garcia Parra filed an I-360, "Petition for Amerasian, Widower, or Special Immigrant" seeking relief under the Violence Against Women Act ("VAWA") on or about June 23, 2025 with USCIS, alleging that her spouse has severely abused her. Along with that application, based on poor advice from her immigration lawyer, she also filed an I-485 Application for Adjustment of Status, even though she had an *in absentia* removal order from 2010 as a result of a lack of notice of her immigration court hearing. Rather than process her application for this victim-based benefit, the Respondents used the filing of this application as a catalyst for enforcement action, detaining her at her biometrics appointment at a USCIS office in the Albany, New York area. Now Petitioner's three youngest children, A[redacted] who is 15 years old, A[redacted], who is 11 years old, and J[redacted] who is 9 years old, are without their mother, and Respondents are seeking to deport Petitioner to Ecuador, a country where she has not resided in 17 years.

THE VIOLENCE AGAINST WOMEN ACT, IMMIGRATION ENFORCEMENT AGAINST APPLICANTS FOR VICTIM-BASED BENEFITS, AND CONGRESSIONAL INTENT

Enacted in 1994 and reauthorized twice in 2000 and 2005, VAWA was first conceived because Congress recognized that the noncitizen status of battered immigrants can make them particularly vulnerable to crimes of domestic violence, sexual assault, dating violence, and stalking. Therefore, Congress created a path for victims of domestic violence and abuse to independently petition for themselves, or self-petition, for immigrant classification. The purpose of the immigration amendments in VAWA was to give aliens who claim abuse by their U.S. citizen or LPR relative the opportunity to independently seek immigrant classification without the abuser's participation or knowledge. Allowing victims to self-petition means that they are no longer dependent on the abusive family member to obtain immigration status, thereby removing at least one barrier to ending the abuse. VAWA was last reauthorized under the Violence Against Women Reauthorization Act of 2022 (VAWA 2022). Indeed, it is in in the public interest to protect victims of domestic violence. *See Clairmont v. Sound Mental Health,* 632 F.3d 1091, 1104 (9th Cir. 2011).

Federal immigration enforcement officers used to behave in harmony with Congressional intent with respect to victim-based beneficiaries of immigration benefits, such as VAWA applicants.

ICE Directive 11005.3, which was issued on December 2, 2021, states that "The duty to protect and assist noncitizen crime victims is enshrined in, among other laws, the Violence Against Women Act (VAWA) and its reauthorizations and the Trafficking Victims Protection Act (TVPA) and its reauthorizations. Congress created victim-based immigration benefits to encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status. When victims have access to humanitarian protections, regardless of their immigration status, and can feel safe in coming forward, it strengthens the ability of local, state, and federal law enforcement agencies, including ICE, to detect, investigate, and prosecute crimes."

In that Biden-era directive, ICE stated that it would "exercise prosecutorial discretion in appropriate circumstances to facilitate access to justice and victim-based immigration benefits by noncitizen crime victims," citing the ICE Directive 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011). Therefore, states the directive, "absent exceptional circumstances, *ICE will refrain from taking civil enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits* (emphasis added). In addition, when necessary and appropriate, ICE will coordinate with U.S. Citizenship and Immigration Services (USCIS) to seek expedited adjudication of victim-based immigration applications and petitions."

That directive was rescinded and superseded by directive 11005.4, "Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits" which is undated but was reportedly issued on January 31, 2025 by "Acting Director" Caleb Vitello. That directive, purportedly in service to the January 20, 2025 Executive Order absurdly entitled "Protecting the American People Against Invasion," which stated that it is the policy of the United States to achieve the "total and efficient enforcement of [immigration] laws," stated that "1) ICE officers and agents should coordinate and deconflict internally, and with local, state, and other federal law enforcement, as appropriate, when determining whether to take civil immigration enforcement actions to ensure criminal investigative and other enforcement actions will not be compromised; 2) When encountering an alien who is the beneficiary of a victim-based immigration benefit, ICE officers and agents should consult with the Office of the Principal Legal Advisor (OPLA) through their Field Office Directors or Special Agents in Charge prior to conducting a civil enforcement action against such known beneficiaries, or against primary and derivative applicants or petitioners for such benefits, to ensure any such action is consistent with applicable legal limitations[1]; 3) When encountering an alien during a civil immigration enforcement action who is not known to be an approved beneficiary of victim-based immigration benefits or to have applied or petitioned for such benefits, ICE officers and agents are not required to affirmatively seek to identify indicia or evidence suggesting an alien is a victim of a crime or consider such evidence as a positive discretionary factor in determining whether to take civil immigration enforcement action; and 4) ICE will no longer routinely request expedited adjudications from USCIS. ICE officers and agents may continue to do so subject to a case-by-case determination that it is in ICE's best interests." Immigr. & Customs Enf't, Pol'y No. 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits,* available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf.

Essentially, for the Trump administration and the immigration enforcement authorities, it became open season on the most vulnerable members of society.

This is not the American way.

Respondents, in their voluminous answer to the Petition, do not address Petitioner's status as a victim of violence who has applied for a victim-based immigration benefit so that she can remain in this country as a mother to her three minor children and two adult children. They ask this Court to read various statutes in a vacuum and dismiss this Petition, allowing them to

[1] Nowhere in their answer to the Petition do Respondents address whether this directive was complied with.

accomplish their objective of denying Petitioner the opportunity to pursue the very immigration benefit that her status as a victim entitles her to under the Violence Against Women Act.

"Statutory construction is a holistic endeavor." *Smith v. United States*, 508 U.S. 223, 233, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993) (internal alterations omitted) (quoting *United Savs. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). "Just as a single word cannot be read in isolation, nor can a single provision of a statute." *Id.* Rather, "in expounding a statute, [courts] [are] not. . . guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Massachusetts v. Morash*, 490 U.S. 107, 115, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987)). To read the immigration laws as permitting a victim who has applied for protection under the Violence Against Women Act to be lured by the government to a federal building, only to be detained, imprisoned, and later deported, despite being a mother of three U.S. Citizen children, would be an absurd result.

As the Second Circuit has explained, the INA's "prevailing purpose" is to "implement the underlying intention of our immigration laws regarding the preservation of the family unit." *Nwozuzu v. Holder*, 726 F.3d 323, 332 (2d Cir. 2013) (quoting H.R. Rep. No. 82-1365 (1952), reprinted in 1952 U.S.C.C.A.N. 1653, 1680); *cf. I.N.S. v. Errico*, 385 U.S. 214, 220, 87 S.Ct. 473, 17 L.Ed.2d 318 (1966). The plain text of § 1231 does not address how Respondents' authority to detain interacts with a noncitizen's opportunity to pursue a victim-based immigration benefit, or to adjust his or her status. Nor do Respondents address the relationship between the INA's adjustment of status provisions, the VAWA provisions, and § 1231.

Respondents' arguments fail to give due consideration to the INA's comprehensive statutory scheme for victim-based immigration benefits and adjustment of status. The central question is: Did Respondents violate that statutory scheme when they invited Petitioner to a USCIS office in connection with her applications for an immigration benefit based upon her status as a victim of domestic abuse, but then, rather than process her biometrics for those applications, arrested and detained her so that they could deport her to Ecuador? Placed in proper statutory context, the answer to this question is yes.

In connection with her VAWA application on Form I-360, Petitioner also filed an I-485 Application for Adjustment of Status under 8 U.S.C. § 1255. Normally, adjustment of status under 8 U.S.C. § 1255(a) requires an applicant to have been "inspected and admitted or paroled". However, 8 U.S.C. § 1255(c) specifically excludes VAWA self-petitioners from the various bars to adjustment. This, in and of itself, shows that Congressional intent was to provide an open pathway for beneficiaries of the VAWA self-petition process to gain permanent residency. Unbeknownst to Petitioner, who obviously was provided bad advice by her immigration counsel at the time, she would not have been eligible for Adjustment of Status due to the removal order that was entered against her *in absentia*. She would have needed to pursue reopening and vacatur of that removal order prior to pursuing adjustment of status. However, approval of her I-360 self-petition under VAWA would have certainly given her ample grounds for the reopening and termination of immigration court proceedings so that she could then pursue adjustment.

However, Respondents did not merely reject her I-485 Application or advise her that she was ineligible to adjust at this time (given the outstanding removal order) and hold it in abeyance pending future action. Rather, they invited Petitioner to appear at a federal office and arrested her at that appointment. Thus, Respondents deployed § 1255 to effectuate the opposite of its intended outcome for noncitizens like Petitioner. Respondents used the adjustment of status scheme as a sword when it was intended to be used as a shield.

In *Xiu Qing You*, a case involving somewhat similar facts to the instant matter, Judge Torres of the Southern District of New York held that a stay of removal and release from custody pending the resolution of Petitioner's habeas petition was warranted to permit Petitioner to vindicate his rights and prevent irreparable injury. The Petitioner in *Xiu Qing You* was arrested at the USCIS office when he appeared to an I-485 appointment based on his marriage to a U.S. Citizen. Like the instant Petitioner, he had a removal order in place, but unlike Petitioner, Xiu Qing You was actually eligible to adjust status because he had been paroled into the United States. After analyzing the interplay between the adjustment of status statutes and the detention statutes, and taking into account the presumption of family unity in the INA, Judge Torres held that one "must assume that when drafting the INA, Congress did not intend an absurd or manifestly unjust result" *Xiu Qing You v. Nielsen,* 321 F. Supp. 3d 451, 466 (S.D.N.Y. 2018), citing *Lockhart v. Napolitano*, 573 F.3d 251, 260 (6th Cir. 2009). The *Xiu Qing You* Court went on to conclude "that Congress could not have intended its silence on the interplay between adjustment and removal to permit ICE to exploit the former in service of the latter. Accordingly, Petitioner has demonstrated that his arrest at USCIS's offices and his detention pursuant to that arrest likely violated the INA." *Id.*

In her analysis, Judge Torres opined that the Respondents' arrest and detention of Petitioner "upset[] the balance Congress created." *Succar v. Ashcroft*, 394 F.3d 8, 10 (1st Cir. 2005) ("overturning a regulation as "inconsistent" with "the language and structure" of the INA"). She went on to state that "[t]his Court rejects arrest and detention practices predicated on manipulating the laws that Congress has passed. Congress did not intend its carefully considered adjustment of status process for a select group of aliens to become a mechanism for 'gotcha' law enforcement. Nor could it, without raising serious constitutional concerns. These type of bait-and-switch tactics are not only a perversion of the statute, but also likely offensive to 'the concept of ordered liberty.'"), *Xiu Qing You*, 321 F.Supp 3d at 466, *citing Rochin v. California*, 342 U.S. 165, 169, 72 S.Ct. 205, 96 L.Ed. 183 (1952).

Numerous other Courts have agreed that such an absurd result cannot stand. Judge Guzman of the District of Massachusetts recently held that "using INA's adjustment-of-status procedure as a vehicle to lure applicants to federal facilities to conduct 'gotcha' law enforcement is not in accordance with the law." *Feitoza v. Noem,* No. 4:26-cv-40011-MRG (D. Mass. Jan. 30, 2026)*; see also Franco v. Meyer*, No. 1:25-CV-01620, 2025 WL 3280782, at *2 (E.D. Cal. Nov. 25, 2025) ("arresting [plaintiff] at his adjustment of status interview violates the INA"); *Caike Barbosa Leite Silva v. Kristi Noem et al.*, No. 2:25-CV-11867, 2025 WL 3764074, at *2 (C.D. Cal. Dec. 18, 2025) ("arresting or detaining [Plaintiff] under 8 U.S.C. § 1226(a) at his I-485 adjustment of status interview would be contrary to INA"); *Carla Maria Vargas Lisboa v. Kristi Noem.*, No. 5:26-cv-00208-SSS-DTB, ECF No. 11 at 10 (C.D. Cal. Jan. 19, 2026) (finding APA violation at TRO stage and "reject[ing] arrest and detention practices predicated on manipulating the laws that Congress has passed").

Moreover, other courts have found the same in the context of individuals pursuing applications for provisional waivers. *Sanchez v. McAleenan,* No. 19-cv-01728, 2024 WL 1256264, at *7 (D. Md. Mar. 25, 2024) ("The Court finds that by using the provisional waiver process to lure non-citizen spouses of U.S. citizens to Customs and Immigration Services facilities only to then arrest, detain, and eventually remove the applicants, Defendants have acted arbitrarily and nullified their own regulations in violation of Due Process, the APA, and the INA itself."); *De Jesus Martinez v. Nielsen,* 341 F. Supp. 3d 400, 410 (D. N.J. 2018) (same); *Wanrong Lin v. Nielsen,* 377 F. Supp. 3d 556, 564 (D. Md. 2019) (same).

PETITIONER'S *IN ABSENTIA* REMOVAL ORDER

Petitioner was ordered removed without due process by way of an *in absentia* order. She did not receive notice of that hearing in 2010. Petitioner is not asking this Court to overturn or otherwise disturb that removal order – indeed, she has hired immigration counsel to file a Motion to Reopen with the Chicago Immigration Court to seek that remedy. An administrative stay of removal automatically attaches upon the filing of a motion to reopen. See 8 CFR § 1003.23(b)(4)(iii)(C) ("The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.").

However, given the current administration's propensity to deport noncitizens even when a judicial stay is in place, Petitioner has no faith that the imminent filing of her Motion to Reopen will cause Respondents to respect the stay of deportation that is prescribed by that regulation. Therefore, while Petitioner does not ask this Court to directly ameliorate that removal order that was entered against her in violation of due process, Petitioner *does* ask this Court to enjoin Respondents from deporting her to Ecuador before she has an opportunity to seek amelioration of that injustice through the administrative process for doing so.

JURISDICTIONAL ARGUMENTS

With regard to the government Respondents' jurisdictional arguments, the Supreme "Court has characterized § 1252(g) as a 'discretion-protecting provision.'" *Ibarra-Perez v. United States,* 154 F.4th 989, 996 (2025) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC),* 525 U.S. 471, 487 (1999)). In *Zadvydas v. Davis,* 533 U.S. 678 (2001), which concerned a challenge to prolonged detention under 8 U.S.C. § 1231(a)(6), the Supreme Court found that of the "several statutory provisions that limit the circumstances in which judicial review of deportation decisions is available . . . none applies here" in part because the petitioners did "not seek review of the Attorney General's exercise of discretion; rather, they challenge the extent of the Attorney General's authority under the post-removal-period detention statute. And the extent of that authority is not a matter of discretion." *Zadvydas*, 533 U.S. at 687, 688. Courts have "distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152 (W.D.N.Y. 2025). Consistent with this context, "[s]ection 1252(g) is directed `against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.'" *Ozturk v. Hyde*, 136 F.4th 382, 396 (2d Cir. 2025) (quoting *AADC*, 525 U.S. at 485 n.9); *see also AADC*, 525 U.S. at 482 (section 1252(g) is not a "`zipper' clause that says `no judicial review in deportation cases unless this section provides judicial review'"). Its "bar on jurisdiction is `narrow'" and "cabined `to three discrete actions': a decision `to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Ozturk*, 136 F.4th at 396-97 (quoting *AADC*, 525 U.S. at 482); *see also AADC*, 525 U.S. at 482 ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.").

Further, Courts in this circuit have held that Section 1252(g) does not bar challenges to ICE's legal authority over a removal order. *See Torres-Jurado v. Biden*, 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) ("The Supreme Court has cautioned against reading [section 1252(g)] with `uncritical literalism.'" (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018))); *see also Nevarez Jurado v. Freden*, No. 25-CV-943-LJV (W.D.N.Y. Dec. 19, 2025) ("[w]hat all that means is that this Court cannot second-guess the wisdom of the executive branch's exercise of its discretion, but it can entertain a challenge to the process the executive branch follows during the removal process."); *S.N.C. v. Sessions,* No. 18 Civ. 7680, 2018 WL 6175902, at *5 (S.D.N.Y. Nov. 26, 2018); *Calderon v. Sessions,* 330 F. Supp. 3d 944, 954-55 (S.D.N.Y. 2018); *Xiu Qing You,* 321 F. Supp. at 457-58. Defendants cannot remove Petitioner in any manner they please. *See Ragbir v. Sessions,* No. 18 Civ. 236, 2018 WL 623557, at *2 (S.D.N.Y. Jan. 29, 2018) (permitting a challenge to the "manner in which deportation was and is to be effected"), *vacated on other grounds by Ragbir v. Barr,* 2019 WL 6826008 (2d Cir. July 30, 2019). Courts can review "how" Defendants exercise their discretion because such a claim does not ask "why the Secretary chose to execute the removal order" but rather "whether the way [Defendants] acted accords with the Constitution and the laws of this country." *Xiu Qing Yu,* 321 F. Supp. 3d at 457. "While the first question challenges ICE's discretion to execute a removal order, the second question asks whether the Constitution or other law deprives ICE of power over the removal order." *S.N.C.,* 2018 WL 6175902, at *5; *see Fatty v. Nielsen,* No. 17 Civ. 1535, 2018 WL 3491278, at *2 (W.D. Wash. July 20, 2018) (permitting Plaintiff's "collateral legal and constitutional challenges" to the removal process).

Sections 1252(a)(5) and (b)(9) were intended to "channel judicial review over *final orders of removal* to the courts of appeals," and not to "foreclose *all* judicial review of agency actions." *J.E.F.M. v. Lynch,* 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis added in part). Accordingly, claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *Id.* Thus, "an immigrant c[an] challenge his [prolonged] administrative detention by filing a petition for a writ of habeas corpus in district court, notwithstanding § 1252(b)(9)." Id. (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th

Cir. 2006)). On the other hand, claims that "are bound up in and an inextricable part of the administrative process" fall within the scope of § 1252(b)(9) and must be raised through the PFR process. *J.E.F.M.*, 837 F.3d at 1033.

In *Xiu Qing You*, the petitioner, who was subject to a final removal order, was arrested at his I-485 interview and was informed he would be deported. *Xiu Qing You v. Nielsen*, 321 F. Supp. 3d 451, 455-456 (S.D.N.Y. 2018). *Id.* at 455-456. The petitioner then filed a petition alleging his arrest and detention was unlawful and sought a stay of removal pending adjudication of his habeas petition. *Id.* at 456. The court determined Section 1252 did not strip the Court of jurisdiction to act on the petition and to stay removal, reasoning that the petition did "not challenge the discrete decision to remove" but instead challenged the "manner" by which the Government decided to execute removal. *Id.* at 457-60 ("Respondents are empowered to remove Petitioner at their discretion. But they cannot do so in any manner they please.").

CONCLUSION

For the reasons stated above, Petitioner should be ordered immediately released from immigration custody and Respondents should be enjoined from detaining or deporting her pending resolution of her motion to reopen by the Executive Office for Immigration Review (including any Petition for Review to a Circuit Court of Appeals) as well as the adjudication of her VAWA self-petition.

Dated: March 13, 2026

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