IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSE ANTONIO VASQUEZ MEJIA, Petitioner, v. MATTHEW PUTRA, Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:26-cv-00711 District Judge Jeffery P. Hopkins Magistrate Judge Peter B. Silvain, Jr.

RETURN OF WRIT

Petitioner, Jose Antonio Vasquez Mejia, is lawfully detained pursuant to 8 U.S.C § 1231(a) and this Court cannot enjoin action taken to remove Petitioner from the United States. He is subject to an administratively final reinstated removal order. As such, this Court should deny and dismiss the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Petition, ECF 1.) Federal Respondents hereby submit this Return of Writ.

I. RELEVANT FACTUAL BACKGROUND

Petitioner, Jose Antonio Vasquez Mejia ("Petitioner" or "Vasquez Mejia"), brings this action as a Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under § 2241. (Petition, ECF 1, PageID 1-2.) Vasquez Mejia is a native and citizen of Honduras who entered the United States

without inspection sometime prior in 2006. (Petition, Doc. 1, PageID 11, ¶32; 2017 I-213, Record of Deportable/Inadmissible Alien, Ex. A, at 2.) He claims to have been removed in 2017, reentered on May 19, 2019, and has lived continuously in the United since then. (*Id.* at PageID 2, 11, ¶¶1, 32-34.) He has been in ICE custody since May 13, 2026. (*Id.* at PageID 2, 12, ¶¶1, 36.)

In his Petition, Petitioner claimed that he "has no criminal history other than a DUI record in 2017." (Petition, Doc. 1, PageID ¶46.)

On October 16, 2008, Petitioner was arrested for, inter alia, Driving While Intoxicated-1st Offense and later convicted of Driving While Ability Impaired by the Consumption of Alcohol on November 13, 2008 in Kings County Criminal Court in the State of New York. (2017 I-213, Ex. A, at 2-3; Criminal History, Ex. B, at 5, 9-10.)

On October 12, 2013, he was arrested for, inter alia, Driving While Intoxicated: Previous Conviction of Designated Offense Within 10 Years, and later convicted on April 17, 2015 of Driving While Intoxicated-1st Offense, in Richmond County Criminal Court in the State of New York. (2017 I-213, Ex. A, at 2-3; Criminal History, Ex. B, at 1, 7-8.)

On April 21, 2017, Petitioner was arrested and an arraigned for, inter alia, Driving While Intoxicated: Previous Conviction of Designated Offense Within 10 Years. (2017 I-213, Ex. A, at 3; Criminal History, Ex. B, at 5-7.)

On April 27, 2017, Petitioner was arrested by ICE officers in New York City for being present without admission or parole. (2017 I-213, Ex. A, at 2-3.)

On July 19, 2017, Petitioner was ordered removed by an Immigration Judge in

New York to Honduras. (2017 Removal Order, Ex. C.) Petitioner appealed his July 19, 2017 Removal Order, requesting cancellation of removal, but it was denied by the Board of Immigration Appeals (BIA). (BIA Appeal Dismissal, Ex. D.) On or about February 8, 2018, Petitioner was removed from the United States to Honduras via Alexandria, Louisiana. (2026 I-213, Ex. E, at 3.)

On November 13, 2018, a Form I-205 Warrant of Removal/Deportation was issued for Petitioner at Hildago, Texas, to be removed from the United States because he is subject to a final order of removal. (2018 Warrant of Removal, Ex. F.) This Warrant was executed on January 25, 2019, again removing Petitioner the United States to Honduras. (*Id.*)

On May 13, 2026, Petitioner was provided a Notice of Intent/Decision to Reinstate Prior Order, notifying him that ICE was reinstating his July 19, 2017 Removal Order, which he refused to sign. (Reinstated Removal Order, Ex. G.) His July 19, 2017 Removal Order was then reinstated. (*Id.*) Petitioner refused to answer questions and provide a sworn statement regarding the reinstatement of his removal order. (2026 Record of Sworn Statement, Ex. H, at 1-2.) He also refused to sign the Record of Sworn Statement, as well. (*Id.* at 2.)

On May 13, 2026, a Form I-205 Warrant of Removal/Deportation was issued for Petitioner at Blue Ash, Ohio, to be removed from the United States because he is subject to a final order of removal. (2026 Warrant of Removal, Ex. I.)

On May 20, 2026, the District Court for the Central District of California entered an order granting a motion for preliminary class certification in *Immigration*

Center for Women and Children v. Noem, No. 2:25-cv-9848, 2026 WL 2026 WL 1455004 (C.D. Cal. May 20, 2026). This preliminary class certification applies to, "All individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement." *Id.* at *3-*4. This preliminary injunction stayed the 2025 Guidance, De Facto Revocation Policy, and Blind Removal Policy. *Id.*

In order to become a member of the *ICWC* class, on July 6, 2026, Petitioner filed a U visa application, claiming he was a victim of fraud. (U Visa Application, Doc. 1-5.) The Petition was filed on July 22, 2026. (Petition, Doc. 1.)

On July 24, 2026, DHS concluded that Petitioner's Reasonable Fear claim was not credible.

On August 28, 2028, an Immigration Judge reviewed and affirmed DHS's negative Reasonable Fear determination concluding that the Petitioner had not established a reasonable possibility that he would be persecuted on a protected ground or be tortured in Honduras. (IJ Reasonable Fear Affirmation, Ex. __, at 3.)

On May 20, 2026, a district court in the Central District of California issued a nationwide preliminary injunction, certifying three classes of immigrant survivors in *Immigr. Ctr. for Women & Child. v. Noem ("ICWC")*, No. 2:25-cv-09848, 2026 WL 1455004 (C.D. Cal. May 20, 2026). (*Id.*)

Petitioner is claiming he is a member of one of the three nationwide classes of immigrant survivors in *ICWC*. (Petition, Doc. 1, PageID 3, ¶3.)

Petitioner claims that Petitioner has never been served with a Form I-871,

Notice of Intent/Decision to Reinstate Prior Order. (*See id.* at ¶4; Reinstated Removal Order, Ex. G, at 1.) However, Petitioner's Reinstated Removal Order was served upon him on May 13, 2026, when he was taken into ICE custody. (*Id.*)

Petitioner claims that he is detained without any legal basis, in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedures Act (APA), and must be immediately released. (Petition, Doc. 1, PageID 15-17, ¶¶48-53) (Count I).

Petitioner also claims that being a member of the *ICWC* preliminary class, after filing a U-visa application, entitles him to immediate release, because his detention "rests on the enforcement posture of the 2025 Guidance." (*Id.* at PageID 17-18, ¶¶54-56) (Count II).[1]

Petitioner further claims that his detention is in violation of 8 U.S.C. § 1227(d)(1) and the APA's "Blind Removal Policy," because ICE must request a prima facie determination on his U visa from USCIS prior to ICE effectuating his removal. (*Id.* at PageID 18-19, ¶¶57-59) (Count III).

Finally, Petitioner claims that his detention violates the Fifth Amendment of the United States Constitution because he is detained without bond. (*Id.* at PageID 19-20, ¶¶60-63) (Count IV).

Petitioner requests immediate release, or a new bond hearing before an immigration judge with "express consideration of Petitioner's pending U-visa and the

[1] The *ICWC* decision does not entitle someone to immediate release. It only requires ICE to follow the guidelines in ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) ("2021 Directive").

protections afforded by *ICWC v. Noem*." (Petition, Doc. 1, PageID 3, ¶5.) Petitioner also seeks an order requiring Respondents to request a prima facie determination from USCIS concerning his U-visa petition. (*Id.* at PageID 3-4, ¶5.) Petitioner seeks additional declaratory relief. (*Id.* at PageID 20-22, ¶¶(1)-(9).)

Petitioner's claims fail and the Petition must be denied.

II. LEGAL AND STATUTORY BACKGROUND

A. Removal Under 8 U.S.C. § 1231.

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: "Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within

a period of 90 days (in this section referred to as the 'removal period')." *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

"The removal period is defined as beginning on the latest of three events: (1) "[t]he date the order of removal becomes administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

"§ 1231(a)(3) allows for supervised release after the 90-day removal period expires '[i]f the alien does not leave or is not removed' during that time period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). "Continued detention under this provision creates the 'post-removal-period.'" *Id.* "[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. *See* § 1231(a)(3) (referring to 'an alien' who 'does not leave ... within the

removal period')." *Jimenez v. Cronen*, 317 F. Supp. 3d at 651. Thus, 8 U.S.C. § 1231 expressly anticipates revocation of supervision and detention beyond the 90-day removal period.

1. Reinstated Removal Orders.

§ 1231 detention provisions also apply to reinstated removal orders. *Guzman Chavez*, 594 U.S. at 538. Section 1231 (a)(5) provides, "If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry."

B. U Visas.

"[T]he U visa, which Congress created in 2000, provides a path to legal status for non-citizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes." *ICWC*, 2026 WL 1455004, at *3 (citing Battered Immigrant Women and Protection Act of 2000 ("BIWPA") § 1513(a)(2)(B), (b)). To be eligible for a U visa, "(1) the applicant must have 'suffered substantial physical or mental abuse as a result of having been a victim of' certain identified types of crimes; (2) the applicant 'possesses information concerning [the] criminal activity'; (3) the applicant 'has been helpful, is being helpful or is likely to be helpful' to government officials regarding the criminal activity; and (4) the crime occurred in the United States or violated U.S. law. *ICWC*, 2026 WL 1455004, at *3 (citing 8 U.S.C.

§ 1101(a)(15)(U)(i)(I)-(IV)). "There is a 10,000-visa annual cap on U visas for principal applicants, [], resulting in long waits for a visa to become available.) *Id.* (citing 8 U.S.C. § 1184(p)(2)).

Significantly, a U visa can provide waiver of inadmissibility if in the "Secretary of Homeland Security's discretion, . . . considers it to be in the public or national interest . . . ." 8 U.S.C. § 1182(d)(14) (waiver of inadmissibility for U visa petitioners); *ICWC*, 2026 WL 1455004, at *4 (citing § 1513(e); § 1182(d)(14)).

"U visa petitioners whom USCIS determines set forth a prima facie case for approval are eligible to request an administrative stay of removal from DHS; if granted, the stay remains in effect while the application is pending, during which time the applicant 'shall not be removed.'" *ICWC*, 2026 WL 1455004, at *4 (citing 8 U.S.C. § 1227(d)(1)-(3)).

"U visa applicants with a 'bona fide application' awaiting full adjudication by USCIS are also eligible for work authorization, which entails permission to remain in the United States and, therefore, deferred action." *Id.* (citing 8 U.S.C. § 1184(p)(6)).

"U visa petitioners may also receive deferred action by being placed on a waiting list." *Id.* (citing 8 C.F.R. § 214.14(d)(2)).

III. ARGUMENT

Petitioner seeks immediate release from detention (or a bond hearing) and an order requiring ICE to request USCIS a prima facie determination on his U visa application. (Petition, ECF 1, PageID 21.) Despite having a valid reinstated, administratively final order of removal, he argues his detention violates Due Process,

the APA, and the INA. (*Id.* at PageID 15-20, ¶¶48-53, 57-63.) He also claims he is a member of the preliminary class in *ICWC v. Noem*, 2026 WL 1455004. (*Id.* at PageID 17-8, ¶¶54-57.)

Petitioner is lawfully detained pending execution of an administratively final, reinstated removal order pursuant to 8 U.S.C. § 1231(a)(5). Moreover, his detention for less than one four months fails to state a claim under *Zadvydas v. Davis*. He is really asking this Court to delay and to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

Petitioner was taken into custody a week before the *ICWC v. Noem*, 2026 WL 1455004 decision was entered. Petitioner filed his U visa petition just over one month ago and two months after the *ICWC v. Noem*, 2026 WL 1455004 decision.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, Petitioner still fails to plead plausible claims for relief.

IV. THIS COURT LACKS JURISDICTION

A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252

In reality, Petitioner challenges his detention for the execution of his final order of removal. The Court lacks jurisdiction to hear a challenge to Petitioner's removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID

Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28,* or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.*; *see also Reno v. American-Arab Anti-Discrimination Comm. ("AADC"),* 525 U.S. 471, 482 (1999).

The Sixth Circuit, and including other Courts of Appeals, have consistently held that similar petitioners' challenges to removal are barred by § 1252(g). *Hamama v. Adducci,* 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings,* 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE,* 988 F.3d 1268, 1274 (11th Cir. 2021).

To the extent Petitioner is making a collateral attack on his underlying reinstated removal order, this Court lacks jurisdiction. *Moreno-Martinez v. Barr,* 932

F.3d 461 (6th Cir. 2019). Indeed, the Sixth Circuit has further explained that, "any challenge (collateral or otherwise) filed 30 days after the removal order is untimely and we have no jurisdictional basis to entertain the challenge. *Sanchez-Gonzalez v. Garland*, 4 F.4th 411, 414 (6th Cir. 2021) (citing *Moreno-Martinez*, 932 F.3d at 465).

B. Sections 1252(a)(5) and (b)(9) Bar Review of Petitioner's Claims.

This Court also lacks jurisdiction over Petitioner's claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> Judicial 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 United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . 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 . . . ."

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, at *5 (S.D. Ohio Jan. 3, 2017). In fact, the First

Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

V. PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL

A. Petitioner's Detention Complies With Due Process, the APA, and the INA.

Petitioner has a valid reinstated removal order and is inadmissible under 8 U.S.C. § 1182. There is no question that ICE has authority to detain Petitioner during the removal process. "Detention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). "Immigration authorities, as the Supreme Court has made clear, have considerable discretion over whom to arrest and remove." *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)).

The Supreme Court has long recognized that immigration-related decisions of executive branch officers, as in this case, afford due process in the absence of judicial review. "[A]s to 'foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). "Since then, the [Supreme] Court has

often reiterated this important rule." *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative").

In *Zadvydas v. Davis*, the Supreme Court interpreted Section 1231(a)(6), the provision that allows for detention beyond the removal period, to limit post-removal-period detention to a period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678, 689 (2001). The Court held that post-removal-order detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, if removal is no longer reasonably foreseeable, continued detention is not authorized by the statute. *Id.* at 699.

The burden is on the petitioner to show his removal is unlikely, as an alien may be detained beyond six months unless the "alien provides good reason to conclude there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future in a habeas corpus petition, the government must respond with evidence sufficient to rebut that showing. *Id.*

In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration detention is "assuring the alien's presence at removal" and concluded this purpose was not served by the continued detention of aliens whose removal was not

"reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas* because no country would accept the deportees or the United States lacked an extradition treaty with their receiving countries.

Detaining Petitioner to enforce his administratively final, reinstated removal order, does not violate the Fifth Amendment, the APA, or the INA. He is lawfully detained pending execution of his administratively final, reinstated removal order pursuant to 8 U.S.C. § 1231(a)(5). Indeed, Petitioner's reinstated removal order became final upon its reinstatement on May 15, 2026. 8 U.S.C. 1231(a)(1); (I-871, Notice and Decision to Reinstate Prior Removal Order, Ex. H.); *see also Guzman Chavez*, 594 U.S. at 534 ("Reinstated removal orders are administratively final.") (cleaned up); *Sanchez-Gonzalez v. Garland*, 4 F.4th 411, 414 (6th Cir. 2021) (explaining that final orders of removal are reinstated from the original date, not the date of reinstatement). Further, "a reinstated final order of removal is a final administrative decision that is not subject to review." *Cargill v. Healy*, No. 4:24-cv-1280, 2024 WL 247993, *4 (N.D. Ohio Jan. 21, 2025) (citing *Martinez v. Larose*, 968 F.3d 555. 563 (6th Cir. 2020)).

Moreover, his four month detention fails to state a claim under *Zadvydas v. Davis*. Since he was taken into ICE custody on May 13, 2026, his detention is within the six-month presumptively reasonable detention period under *Zadvydas*, 533 U.S. at 701. This period will not end until mid-November 2026. *Zadvydas* analysis only applies where there is a "danger of indefinite detention [with] no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22

F. Supp. 3d 839, 843 (N.D. Ohio 2014).

In similar, recent circumstances, other district courts in our Circuit have recognized that detention less than six months following reinstatement of a prior order of removal is lawful pursuant to *Zadvydas*. *See, e.g.*, *Abad v. Raycraft*, No. 1:26-cv-1288, 2026 WL 1481115 (May 27, 2026) (slip copy); *Barnada-Horta v. Raycraft*, No. 1:26-cv-1023, 2026 WL 1265521 (May 8, 2026) (slip copy); *Celilio v. Raycraft*, No. 1:26-cv-814, 2026 WL 1004422 (April 14, 2026) (slip copy).

Further, Petitioner cannot demonstrate a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

B. Petitioner's Filing of a U Visa Petition Does Not Foreclose § 1231 Detention Authority Or Halt Execution of a Reinstated Removal Order.

Petitioner claims that ICE cannot continue his detention because he (1) filed a U visa application; and (2) the nationwide injunction issued in the *ICWC* decision in the Central District of California. (Petition, Doc. 1; Motion for Preliminary Injunction, Doc. 9.)

As explained above, Petitioner's detention is lawful pursuant to 8 U.S.C. § 1231(a). Petitioner's pending U visa petition has no effect on the Federal Respondents ability to detain or remove Petitioner because he must request and receive a stay of removal pending adjudication of the U visa petition. *Id.* at *4 (citing 8 U.S.C. § 1227(d)(1)-(3)). In fact, 8 C.F.R. § 214.14(c) provides that "an alien who is the subject of a final order of removal, . . . is not precluded from filing a petition for U–1 nonimmigrant status directly with USCIS." However, "**[t]he filing of a petition**

for U–1 nonimmigrant status has no effect on ICE's authority to execute a final order, ... *Id.* (emphasis added).

Further, the *ICWC* decision does not entitle an alien to immediate release or prevent his removal. The decision only requires ICE to follow the guidelines in ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) ("2011 Policy") and ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims (*Dec. 2, 2021) ("2021 Directive").

Here, ICE did not take enforcement action against an alien who had a U visa application pending. ICE decided to enforce Petitioner's 2017 Removal Order *for the third time* prior to the ICWC decision and prior to Petitioner's U visa petition that was not received by USICS until July 9, 2026. (emphasis added).

As a result, the 2011 Policy and 2021 Directive do not prevent ICE from executing Petitioner's reinstated 2017 removal order. Indeed, the *ICWC* decision does not prevent ICE from removing Petitioner from the United States to Honduras. DHS maintains the discretion pursuant to 8 U.S.C. § 1182(d)(14) to waive inadmissibility for a U visa petition. DHS has not waived inadmissibility for Petitioner, nor has a stay of removal been granted.

Moreover, the timing of Petitioner's U visa petition demonstrates that he filed the U visa petition in a last-ditch attempt to stop from being removed from the United States for a third time. The U visa petition was not filed until July 9, 2026, after he was taken into custody on May 13, 2026 for execution of his reinstated removal order, the *ICWC* preliminary injunction entered on May 20, 2026, and the Petition was filed

on July 9, 2026. Moreover, the U visa petition alleges he paid thousands of dollars for the filing of "legitimate USCIS applications." (Wong Letter to USCIS, Doc. 1-5, PageID 80.) The allegations of fraud regarding the U visa petition confirm that Petitioner the benefit of applications were legitimate. Petitioner appeared at the USCIS Cincinnati Application Support Center for a biometrics appointment related to a pending application employment authorization application.

The supporting documentation for Petitioner's U visa application contains no credible evidence of immigration or financial fraud because it is almost entirely hearsay with no actual documentation. (*See* U Visa Petition, Doc. 1-5, Wong Letter to USCIS, PageID 79-81; Mt. Healthy Fraud Report, PageID 90-91 (requesting the filer provide all documentation and other evidence that may pertain to the case); 1st Grade Security Services LLC Investigative Report, PageID 94-108.)

Not only does the filing and evidence lack credibility, the "criminal activity", which is fraud, does not even constitute a qualifying crime for U visa eligibility. 8 CFR 214.14(a)(9) ("Qualifying crime or qualifying criminal activity includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above

mentioned crimes. The term "any similar activity" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities."). None of the crimes listed include any type of fraud or conversion or a similar activity. Put simply, Petitioner cannot make a prima facie case for his U visa petition.

Most importantly, however, Petitioner's U visa petition does not affect the ability of the Federal Respondents to execute Petitioner's reinstated removal order, and DHS maintains discretion over U visa petitions, the Petition must be denied, and Petitioner's Motion for Preliminary Injunction has no likelihood of success on the merits.

C. Petitioner's Motion for Temporary Injunction Has No Likelihood of Success and Must Be Denied.

For the same reasons that the Petition must be denied, Petitioner's Motion for Preliminary Injunction has no likelihood of success on the merits. The Court must consider four factors before issuing a preliminary injunction: (1) whether the plaintiff has a strong likelihood of success on the merits; (2) whether the plaintiff would suffer irreparable harm without the requested relief; (3) whether issuance of the temporary restraining order or preliminary injunction would cause substantial harm to others; and (4) whether the requested relief would serve the public interest. *Tumblebus Inc. v. Cranmer*, 399 F.3d 754, 760 (6th Cir. 2005). These factors are not rigid prerequisites. *Sandison v. Mich. High Sch. Athletic Assoc., Inc.*, 64 F.3d 1026, 1030 (6th Cir. 1995). Further, the issuance of a TRO, is an "extraordinary remedy." *Patio*

Enclosures, Inc. v. Herbst, 39 F. App'x 964, 967 (6th Cir. 2002); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Significantly, however, the likelihood of success is the most important factor. *O'Toole v. O'Connor*, 802 F.3d 783, 792 (6th Cir. 2015). In fact, "[p]reliminary injunctions in constitutional cases often turn on likelihood of success on the merits, usually making it unnecessary to dwell on the remaining three factors." *Refunjol v. Adducci*, 461 F. Supp. 3d 675, 696 (S.D. Ohio May 14, 2020) (citing *Roberts v. Neace*, No. 20-5465, 2020 WL 2316679, at *5 (6th Cir. May 9, 2020)). But "a finding that there is simply no likelihood of success on the merits is usually fatal." *Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000). That is the case here.

As discussed above, Petitioner has no likelihood of success on the merits. Petitioner has been removed twice before and has no entitlement to remain in the United States. Therefore, Petitioner's irreparable harm should not be given much weight, if any. The remaining factors, which merge when the government is a party, weigh in favor of the United States because it serves the public interest to removed aliens who refuse to comply with the immigration laws of the United States. Therefore, Motion for Preliminary Injunction and the Petition should be denied.

CONCLUSION

This Court lacks subject matter jurisdiction, Petitioner's detention is lawful, and the Petition should be denied and dismissed.

Respectfully submitted,

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