

CASE NO.: 26-_____

SUPREME COURT OF THE UNITED STATES

ROSMERI ADALUZ MIRANDA-LOPEZ,
Petitioner,

vs.

ICE ORLANDO FIELD OFFICE
DIRECTOR,
Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Where a U-Visa applicant has been granted a favorable “Bona-Fide Determination” by USCIS, do courts have jurisdiction to review ICE’s subsequent detention and deportation or does 8 U.S.C. § 1252(g) bar judicial review?

LIST OF PARTIES

Petitioner Rosmeri Adaluz Miranda-Lopez, a natural person and citizen of Florida, was a plaintiff and appellant below.

Respondent ICE Orlando Field Director, an agent of a federal administrative agency in his official capacity, was a defendant and appellee below.

STATEMENT OF RELATED CASES

Esvin Juarez-Lopez v. Angel Garite, Assistant Field Office Director, et. al., No. 3:25-cv-00202, United States District Court for the Western District of Texas. Voluntarily Dismissed on June 9, 2025.

Miranda-Lopez v. Dean, No. 6:25-cv-01015-CEM-LHP, United States District Court for the Middle District of Florida. Judgment entered June 11, 2025.

Rosmeri Miranda-Lopez v. ICE Orlando Field Officer Director, No. 25-12007, United States Court of Appeals for the Eleventh Circuit. Judgment entered March 3, 2026.

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IN THE SUPREME COURT OF THE UNITED
STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of
certiorari issue to review the judgment below.

OPINIONS BELOW

Miranda-Lopez initially filed a Petition for Writ
of Habeas Corpus in the United States District Court
for the Middle District of Florida. That opinion is
reported as *Miranda-Lopez v. Dean*, No. 6:25-cv-01015
(M.D. Fla. June 11, 2025).

The decision by the Eleventh Circuit Court of
Appeals is reported as *Rosmeri Miranda-Lopez v. ICE
Orlando Field Officer Director*, No. 25-12007, 2026
U.S. App. LEXIS 6226 (11th Cir. Mar. 3, 2026). The
appellate court granted Petitioner's Petition for
Rehearing and subsequently affirmed its prior
decision.

Trial Court: *Miranda-Lopez v. Dean*, No. 6:25-cv-01015-CEM-LHP, United States District Court for the Middle District of Florida. Judgment entered June 11, 2025.

Appellate Court: *Rosmeri Miranda-Lopez v. ICE Orlando Field Officer Director*, No. 25-12007, United States Court of Appeals for the Eleventh Circuit. Judgment entered March 3, 2026.

JURISDICTIONAL STATEMENT

On March 3, 2026, the appellate court affirmed dismissal of Ms. Miranda-Lopez's claim for lack of subject matter jurisdiction. Petitioner therefore invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for a Writ of Certiorari within ninety (90) days of the Eleventh Circuit Court of Appeals Order.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: “No person shall...be deprived of life, liberty, or property, without due process of law.

Section One of the Fourteenth Amendment to the United States Constitution provides in relevant part: “No State shall...deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATUTORY PROVISION INVOLVED

Section 1252, Subsection g, Title 8 of the U.S. Code provides:

(g) Exclusive jurisdiction. Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section

2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], 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 Act.

STATEMENT OF THE CASE

Petitioner, Rosmeri Adaluz Miranda-Lopez, seeks review of the U.S. District Court for the Middle District of Florida's dismissal of her Emergency Petition for a Writ of Habeas Corpus, Emergency Motion to Stay Deportation, and Amended Emergency Motion to Stay Deportation for lack of subject matter jurisdiction. [DC D.E. 5].

On May 30, 2025, U.S. Immigration and Customs Enforcement ("ICE") placed Petitioner on an

ankle monitor and ordered her to surrender for removal on June 12, 2025. [DC D.E. 3 at 1]. Shortly thereafter, on June 7, 2025, Petitioner's husband was deported. [DC DE 3 at 2]. On June 9, 2025, Petitioner, through counsel, filed an Emergency Petition for a Writ of Habeas Corpus, along with an Emergency Motion to Stay Deportation and an Amended Emergency Motion to Stay Deportation. [R. D.E. 1-3]. In these filings, Petitioner argued 1) USCIS's Bona Fide Determination Notice received on December 20, 2024, created a vested liberty interest and conferred deferred action protections, and 2) ICE failed to comply with administrative procedures and deported Petitioner in violation of her substantive due process rights. [R. DE 3 at 3]. On June 11, 2025, the District Court dismissed the case for lack of subject matter jurisdiction. [DC D.E. 5].

Petitioner is a Guatemalan citizen who entered the United States without inspection and has resided in Florida since 2001. She lived in the United States for more than twenty-four years, during which she and her family built a successful business became homeowners, and raised four children between the ages of nine and twenty-one. [R. DE 3 at 2]. In 2003, Petitioner and her husband, Esvin Juarez-Lopez, received removal orders. Both complied with the requirements to appear under the Orders of Supervision and reported to ICE as directed since then. Years later, Petitioner's husband was the victim of a serious assault, qualifying Petitioner for a U-Visa as derivative beneficiaries under Category 14.¹ [R. DE

¹ See Immigration and Nationality Act (INA) § 101(a)(15)(U) (establishing U nonimmigrant status for victims of certain crimes who have suffered substantial physical or mental abuse

3 at 2]. Petitioner and her husband submitted their U-Visa applications, and both received Bona Fide Determinations, which, although not granting the visa itself due to the statutory cap of 10,000 per year, conferred significant protections. Pursuant to those determinations, Petitioner filed her application for employment authorization (EAD) on February 5, 2025, and awaited adjudication.² [R. DE 3 at 2].

and are helpful to law enforcement in the investigation or prosecution of such crimes).

² See USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5 (June 14, 2021), <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (“The BFD process provides an opportunity for certain petitioners to receive BFD EADs and deferred action while their petitions are pending”); USCIS Memorandum, *Policy Alert: Victims of Crime* (June 14, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf> (“USCIS... will

Despite these determinations, on May 30, 2025, ICE placed Petitioner on an ankle monitor and scheduled her surrender for removal on June 12, 2025, with removal to follow as early as June 14, 2025. [R. DE 3 at 1].

On June 9, 2025, Ms. Miranda-Lopez filed her Petition for Writ of Habeas Corpus in the District Court for the Middle District of Florida. That initial filing preserved the federal question raised herein. On June 11, 2025, District Court Judge Carlos Mendoza dismissed the matter for lack of subject matter jurisdiction. [DC D.E. 5]. That same day, Ms. Miranda-Lopez filed her notice of appeal. [App. D.E. 1]. On June 13, 2025, the Eleventh Circuit Court of Appeals denied her Emergency Motion to Stay

issue BFD EADs and deferred action for 4 years to petitioners... if USCIS deems their petition bona fide.”).

Deportation and denied further request for relief based on the Court's decision in *Camarena v. Director, Immigration & Customs Enforcement*, 988 F. 3d 1268 (11th Cir. 2021). [App. D.E. 10]. On July 11, 2025, Ms. Miranda-Lopez filed a Motion for Rehearing on the issue of subject matter jurisdiction. [App. D.E. 12]. The Eleventh Circuit Court of Appeals invited both parties to submit briefs, which were submitted on September 23, 2025, and October 21, 2025, respectively. [App. D.E. 22, 25, 29]. On March 3, 2026, the Eleventh Circuit Court of Appeals affirmed its decision and entered a judgment dismissing the case for lack of subject matter jurisdiction. [App. D.E. 34. 35]. Essentially, the Eleventh Circuit concluded that Ms. Miranda-Lopez's petition "challenges the decision to execute a removal order" because one form of relief she requested was a stay of removal. [App. D.E. 34, p. 3-4]. The appellate court did not address the legal

effect of the Bona Fide Determination Notice, reasoning that because neither the agency nor Congress have explicitly created an “exception” to 8 U.S.C. § 1252(g). This argument plainly fails to reconcile the material inconsistencies created by the appellate court’s own interpretation. As discussed further below, courts across this country have rejected this interpretation, thus yielding incompatible results across jurisdictions. For these reasons, as discussed further below, a Writ of Certiorari is appropriate in this case.

BASIS FOR WRIT OF CERTIORARI

Rosmeri Miranda-Lopez, a beneficiary of her husband’s U-Visa application, respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgment of the United States Circuit Court of Appeals in and for the Eleventh Circuit. First, the Eleventh Circuit Court of Appeals has entered a

decision in this matter that conflicts with decisions of other circuit courts, such as the Ninth and Sixth Circuit Courts of Appeals, on an important federal question that has not been settled by this Court. Additionally, district courts across the country are confronting this same question and reaching irreconcilable conclusions and disparate results as discussed further herein. Consequently, Ms. Miranda-Lopez seeks review by the United States Supreme Court to determine this important question of public importance.

STANDARD OF REVIEW

The Middle District of Florida's determination that it lacked subject matter jurisdiction over a habeas petition seeking release and an emergency to stay deportation is a question of law, as it concerns an alleged violation of due process, thus triggering the de novo review standard of appellate courts.

Pillow v. Betchel Constr., 201 F.3d 1348, 1351 (11th Cir. 2000) (“We review the dismissal of an action for lack of subject matter jurisdiction de novo.”).

SUMMARY OF THE ARGUMENT

In response to the District Court’s dismissal of Petitioner’s Habeas Corpus Petition for lack of subject matter jurisdiction, Petitioner argues that her claim does not “arise from” execution of an order of removal; it arises from USCIS’s Bona Fide Determination Notice to Petitioner and the rights and guarantees that vested pursuant thereto. Resultantly, her claim is not barred by 8 U.S.C. § 1252(g)’s jurisdictional limitation and is subject to judicial review.

REASONS FOR GRANTING THE PETITION

I. Legal Framework

As an initial matter, this Honorable Court should apply “the general rule to resolve any ambiguities in a jurisdiction-stripping statute in favor

of the narrower interpretation.” *Arce v. United States*, 899 F. 3d 796, 801 (9th Cir. 2018). With respect to 8 U.S.C. § 1252(g), appellate courts have narrowly applied the statute “only to three discrete actions that the Attorney General may take”: commencing proceedings, adjudicating cases, or executing removal orders. *Ibarra-Perez v. United States*, 2025 U.S. App. LEXIS 22089 *1, *16-18 (9th Cir. Aug. 27, 2025). Indeed, rather than generally sweep any claim that is *technically* or *tangentially* related to any of these listed actions, the Supreme Court has referred specifically to cases involving those three distinct circumstances alone. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).³ Other courts have distinguished the

³ The Supreme Court provided the following examples of actions that fall under the statute: decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is

legislative intent of the statute—to “impose judicial constraints on prosecutorial discretion”—from cases that raise “purely legal questions” and “do not challenge the Attorney General’s discretionary authority.” *United States v. Housepian*, 359 F. 3d 1144, 1155 (9th Cir. 2004); *see also Derrick v. Sec’y, U.S. Dep’t of Homeland Sec.*, 616 Fed. Appx. 958 (11th Cir. 2015); *INS v. St. Cyr*, 533 U.S. 289, 308 (2001) (preserving habeas review over pure questions of law and constitutional claims).⁴

the product of the adjudication, and to refuse reconsideration of that order. The agency action challenged here presents a distinction with significance.

⁴ Courts consistently recognize that due process, even in the immigration context, is a matter of law, as reflected in the de novo standard of review. *Gomez-Velazco v. Sessions*, 879 F.3d 989, 992 (11th Cir. 2018); *Ali v. U.S. Att’y Gen.*, 443 F.3d 804, 808 (11th Cir. 2006). Constitutional due process protections in

Furthermore, the Supreme Court has emphasized that administrative authorities must exercise meticulous care to ensure that the procedures for deportation provide due process of law. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945). Even when the Attorney General exercises discretion in immigration matters, due process remains a compulsory constitutional guarantee, and courts retain jurisdiction to enforce it. *Fernandez-Bernal v. U.S. Att’y Gen.*, 257 F.3d 1304, 1311 n.8 (11th Cir. 2001). Moreover, even when the Attorney General will later exercise discretion, that relationship does not bar a court’s jurisdiction to consider “underlying legal cases for those discretionary decisions and actions” even if

removal proceedings cannot be overridden by jurisdiction-stripping provisions of immigration law. *Singh v. Gonzales*, 499 F.3d 969, 974 (9th Cir. 2007).

they are causally and/or temporally intertwined.

Bowrin v. INS, 194 F. 3d 483, 488 (4th Cir. 1999).

II. Appellant’s Habeas Corpus Petition Was Based Upon Administrative Conduct, Not the Exercise of the Attorney General’s Discretion

The issue before the Middle District of Florida (“District Court”) involved a violation of due process in a habeas corpus context—not the initiation, adjudication, or execution of removal. The Supreme Court is clear that administrative actions that, in form or substance, preclude a detainee’s right to obtain judicial review are due process violations. *See United States v. Mendoza-Lopez*, 481 U.S. 828, 838 (1987).

As argued further herein, §1252(g) bars discretionary determinations of relief, but it does not bar a court from reviewing an agency’s violation of relief *after* discretion has been exercised. *Arce*, 899 F. 3d at 801. Ms. Miranda-Lopez’s claims “arise from”

USCIC's grant of an affirmative immigration benefit and ICE's subsequent violation of the rights and guarantees that flow therefrom. Discretion had already been favorably exercised by way of the Bona Fide Determination letter. Therefore, ICE's detention and expedited removal of Ms. Miranda-Lopez were legally questionable and are subject to judicial review. *See generally Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 LEXIS 244310 *1 (W.D. Wash. July 24, 2025). To characterize Ms. Miranda-Lopez's detention as execution of a removal order is to essentially nullify USCIS's policies involving deferred action.

The Eleventh Circuit has expressly recognized this distinction, finding that while challenges to the removal order itself fall within the jurisdiction-stripping provisions of § 1252(g), habeas review of detention and related constitutional concerns remains available in federal courts. *Al Najjar v. Ashcroft*, 273

F.3d 1330, 1339 (11th Cir. 2001). Likewise, in *Madu*, the Eleventh Circuit reaffirmed that habeas petitions may proceed where they do not directly attack the validity of the removal order under § 1252 but instead it raises collateral due process or detention-related claims. *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362 (11th Cir. 2006). Petitioner’s claim arises not from discretionary government action but from ICE’s stampede over USCIS’s favorable exercise of discretion and the mandatory benefits conferred therefrom. This claim does not question whether removal should occur; it challenges whether ICE’s actions violated Ms. Miranda-Lopez’s substantive due process rights.

To the extent that the United States Supreme Court has interpreted § 1252(g)’s jurisdictional limitation, it has rejected the all-encompassing interpretation now accepted by the Eleventh Circuit

Court of Appeals and called it “implausible.” *See Reno v. American-Arab Anti Discrimination Comm.*, 525 U.S. 471, 482 (1999). When faced with a similar question, the Ninth Circuit Court of Appeals found that “placement on a waitlist for a U-visa *can* entitle an applicant to deferred action.” *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9th Cir. 2019); *see also Arce*, 899 F.d at 796. Unlike the detainee in that case, Ms. Miranda-Lopez and her husband were both placed on a waitlist and were therefore entitled deferred action on their removal orders. The Ninth Circuit Court of Appeals has also found that deferred action pursuant to U-visa applicants prevents removal. *Lee v. Holder*, 855 F.3d 957 (9th Cir. 2017). The First Circuit Court of Appeals, Fifth Circuit Court of Appeals, and Sixth Circuit Court of Appeals have adopted similar interpretations. *See Bunthoeun Kong v. United States*, 62 F.4th 608 (1st Cir. 2023); *Enriquez-*

Perdomo v. Newman, 54 F.4th 855 (6th Cir. 2022); *Kale v. United States INS*, 2002 U.S. App. LEXIS 29129 *1 (5th Cir. 2002). Differently, the Seventh Circuit Court of Appeals expressly avoided answering this question. *See E.F.L. V. Prim*, 986 F.3d 959, 965-6 (7th Cir. 2021) (challenging DHS’s execution of a removal order while the detainee sought administrative relief without challenging the legality of the removal order or subsequent detention).

Additionally, many district courts are facing this same question with respect to favorable bona-fide determinations for U-visa applicants and their holdings directly conflict with the Eleventh Circuit Court of Appeals’ holding in this case. *See Fugon v. Chestnut*, 2026 U.S. Dist. LEXIS 70337, 2026 WL 878616 (E.D. Cal. Mar. 20, 2026); *Victor G. v. Lyons*, 2026 U.S. Dist. LEXIS 9549 (D. Minn. Jan. 17, 2026); *Jurado v. Freden*, 813 F. Supp.3d 376 (W.D.N.Y. Dec.

19, 2025); *B.D.A.A. v. Bostock*, No. 6:25-cv-02062-AA, 2025 U.S. Dist. LEXIS 250425, 2025 WL 3484912 (D. Ore. Dec. 4, 2025); *Ayala v. Bondi*, 794 F. Supp.3d 901 (W.D. Wash. July 24, 2025); *De SoUSA v. Dir. of U.S. Citizenship and Immigr. Servs.*, 755 F. Supp. 3d 1266 (N.D. Cal. 2024); *Guerra-Castaneda v. United States*, 656 F. Supp. 3d 356 (D. Mass. Feb. 16, 2023); *Alegria-Zamora v. U.S. Dep't of Homeland Sec.*, No. 18-2102-DDC-GLR, 2018 U.S. Dist. LEXIS 34851, 2018 WL 1138280 (D. Kan. Mar. 2, 2018); *Medina v. U.S. Dep't of Homeland Sec.*, No. C17-0218RSM, 2017 U.S. Dist. LEXIS 185367, 2017 WL 5176720 (W.D. Wash. Nov. 8, 2017).

In cases where the government had not granted bona-fide determinations, courts have found § 1252(g) bars the exercise of jurisdiction. *See Pulido v. Cuccinelli*, 497 F. Supp. 3d 79 (D.S.C. 2020); *Palacios-Bernal v. Barr*, No. 5:19-cv-1963, 2019 U.S. Dist.

LEXIS 182818, 2019 WL 5394019 (C.D. Cal. Oct. 22, 2019); *Catholic Charities CYO v. Chertoff*, 622 F. Supp. 2d 865 (N.D. Cal. 2008). Those cases are inapposite.

The Ninth Court of Appeals has aptly defined the parameters of the exercise of jurisdiction in cases where legal questions implicate or involve administrative action. *United States v. Housepian*, 359 F. 3d 1144, 1155 (9th Cir. 2004) (“The district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority.”). By dismissing her claim for lack of jurisdiction, the District Court effectively insulated ICE from judicial oversight at the precise moment due process protections were most critical

and despite discretion that had already been exercised in her favor. That ruling cannot stand. Habeas corpus has historically functioned to ensure that government action does not trample fundamental constitutional rights, particularly when liberty interests are at stake.

The Petitioner does not seek to invalidate the removal order itself. Instead, the claim asserts that the process by which the order was carried out violated the petitioner's constitutional right to due process. Such claims fall squarely within the historic core of habeas review. Ms. Miranda-Lopez relied on her U-Visa protections and filed her EAD application in February 2025. Yet, and even though a liberty interest vested in December 2024, ICE placed her on an ankle monitor, ordered her to surrender for deportation, and removed her from the United States just 48 hours after her detention. All of this occurred

after she had received a favorable Bona-Fide Determination notice.

III. The Statute's Plain Language Supports Petitioner's Position

This Court should consider the language of the statute that empowers USCIS to grant U-Visas. *See* 8 C.F.R. § 214.14. Subsection (2)(d)(2) of that statute specifically outlines the process of U-Visa designation, acknowledging that there is an annual cap of those visas and requiring that eligible petitioners be placed on a waiting list subject to approval. Most importantly, this subsection guarantees that USCIS “*will* grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.” *See* 8 C.F.R. §214.14 (2)(d)(2). It is clear from the plain language of the statute that deferred action is not discretionary and that it vests at the time a petitioner is placed on

the waitlist. Here, the December 2024 Bona Fide Determination letter provides that guarantee.

Looking further at the statutory language, Section 1252(g) only refers to *executable* removal orders, “that is, existing and enforceable removal orders subject to execution.” *Enriquez-Perdomo v. Newman*, 54 F. 4th 855, 863 (6th Cir. 2022). In *Enriquez-Perdomo*, the Sixth Circuit Court of Appeals concluded that a removal order is “not subject to execution because [petitioner] had deferred action pursuant to DACA.” *Id.* Moreover, the Sixth Circuit reasoned that DACA “is not a mere non-enforcement policy; it is a clear and efficient process for identifying individuals who me[e]t the enumerated criteria that established an adjudicative process for conferring affirmative immigration relief.” *Id.* USCIS had the authority to terminate that relief, and it did not. Therefore, the legal question before this Court is

whether ICE’s arrest and detention, despite USCIS’s conferral of an administrative benefit, was unauthorized.

In *Ibarra-Perez*, ICE officials removed Ibarra-Perez to Mexico without notice and an opportunity to be heard on his fear-based claims regarding the last-minute country of removal designation. *Ibarra-Perez*, 2025 U.S. App. at *18-19. The Ninth Circuit Court of Appeals emphatically concluded that § 1252(g) does not bar “challenges to unlawful practices merely because they are in some fashion connected to removal orders” if they do not arise from the Attorney General’s actions. *Id.* at *20. Ms. Miranda-Lopez’s claims arise from ICE’s unconstitutional practices and policies.⁵ *See also Canal A Media Holding, LLC v.*

⁵ “Although the constitutional violations ultimately may have led to the plaintiffs’ erroneous deportation, the resulting

United States Citizenship & Immigration Servs., 964 F. 3d 1250, 1257-58 (11th Cir. 2020) (“When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged. Because the I-129 denial ‘is not a decision to “commencing proceedings,” much less to “adjudicate” a case or “execute” a removal order,’ the plaintiffs’ challenge to it is not barred.”).

Similarly, in *Barahona-Gomez*, the certified class there sought a stay pending resolution of their constitutional claims. *Barahona-Gomez v. Reno*, 167 F. 3d 1228, 1234 (9th Cir. 1999). Their claims stemmed from the BIA’s and IJ’s directives to halt consideration of applications for suspension of deportation. *Id.* Rather than categorize these administrative actions

removal orders were simply a consequence of the violations, not the basis of the claims.” (quoting *Walter v. Reno*, 145 F. 3d 1032, 1052 (9th Cir. 1998).

as discretionary acts, the Ninth Circuit distinguished claims arising from “general collateral challenges to unconstitutional practices and policies used by the agency.” *Id.*

The Eleventh Circuit Court of Appeals has drawn the same lines. In *Morales*, DHS terminated the plaintiff’s DACA status. *Morales v. Acting Sec’y, United States Dep’t of Homeland Sec.*, No. 21-10835, 2022 U.S. App. LEXIS 564 *1, *13 (11th Cir. Jan 7, 2022). This Court reasoned that “revoking a deferred action program with associated benefits” did not invoke § 1252(g). While it is true that a pending application does not confer a liberty interest, the Bona Fide Determination letter and Ms. Miranda-Lopez’s placement on the U-Visa waitlist did. *See generally Velarde-Flores v. Whitaker*, 750 F. App’x 606, 607 (9th Cir. 2019). The Bona Fide Determination Notice here, like DACA, is not merely a non-enforcement policy; it

is an administrative process for crime victims and their families to seek temporary relief and confers associated benefits such as employment authorization.

Consequently, because Ms. Miranda-Lopez challenges not the removal order itself, but the unconstitutional way it was executed by ICE in disregard of her Bona Fide Determination protections, her habeas petition lies at the core of what district courts are empowered to review. The district court erred in dismissing her case for lack of jurisdiction, and this Court should reverse and remand for further proceedings on the merits.

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courts are empowered to review. The district court erred in dismissing her case for lack of jurisdiction, and this Court should reverse and remand for further proceedings on the merits.

IV. Although The Statutory Language Is Unambiguous, The Legislative Intent is Also Informative and Supports Petitioner's Claim

Congress enacted 8 U.S.C. § 1252(g) to limit judicial review over the Executive's discretionary decisions to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). In other words, courts may not entertain suits that directly challenge the government's decision to initiate, process, or carry out deportation proceedings.

In *Derrick*, the plaintiff challenged the agency's failure to issue a notice to appear, which denied him the procedural remedy to renew his previously denied application for adjustment of status. *Derrick*, 616 Fed.

App'x at 959. In that case, this Court held that § 1252(g)'s "enumerated discrete acts...were those that the government had been engaging in as regular practice and for which it had the discretion to abandon its endeavors on such grounds as humanitarianism and its own convenience." *Id.* at 960. Accordingly, while USCIS had discretion to abandon its grant of affirmative administrative relief, ICE did not have discretionary authority to abandon an endeavor and a procedure that was not theirs. Importantly, when Congress created the Department of Homeland Security, it explicitly prohibited DHS from "reorganiz[ing] functions or organizational units" of ICE, Customs and Border Protection ("CBP"), and USCIS to avoid conflicts of interest between the adjudicatory and enforcement bodies within DHS. *See* Homeland Security Act 2002, 6 U.S.C §291 (471)(b). It

is clear, then, that the legislative intent of the statute was to prohibit the exact conduct at issue herein.

The jurisdictional bar is not absolute: it does not displace habeas corpus review of constitutional claims, especially those that arise from violating a favorable exercise of discretion in violation of due process, rather than the order of removal. The legal, logical, and material inconsistency presented by ICE's removal *after* USCIS's granting of a Bona-Fide Determination is at issue here. Accordingly, the central action in question is whether Ms. Miranda-Lopez's favorable Bona-Fide Determination entitled her to constitutional protections, including deferred action, and vested constitutional rights and guarantees preventing her detention and subsequent deportation.

V. Conclusion

Ms. Miranda-Lopez's claim arises from ICE's decision to intervene in and disrupt USCIS's authority

in its administrative processes. That usurpation of authority resulted in a violation of Ms. Miranda-Lopez's vested liberty interest and, accordingly, her substantive due process rights. Because her claim arises from *that* decision, and not the *execution* of an order of removal, her claims are not barred by 8 U.S.C. § 1252(g) and the case should be remanded for proceedings on the merits.

Respectfully submitted,

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