IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALYSE SANCHEZ, *et al.*, ***Plaintiffs-Petitioners*** **v.** **ALEJANDRO MAYORKAS[1], *et al.*,** ***Defendants-Respondents.***	Civil No. 8:19-1728-GJH

BRIEF OF AMICUS CURIAE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' CROSS MOTION

The Immigration Reform Law Institute ("IRLI") hereby files this proposed brief of amicus curiae in support of Defendants-Respondents' Reply in Support of Motion for Summary Judgment and Opposition to Plaintiffs' Cross Motion.

[1] Alejandro Mayorkas, current Secretary of the Department of Homeland Security, was automatically substituted in for Kevin McAleenan. Fed. R. Civ. P. 25(d).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 103.3 of the United States District Court for the District of Maryland Local Rules, amicus curiae Immigration Reform Law Institute makes the following disclosures:

1) For non-governmental corporate parties please list all parent corporations: None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

DATED: October 18, 2022

Respectfully submitted,

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IDENTITY AND INTEREST OF AMICUS[2]

IRLI is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases on behalf of, and in the interests of, United States citizens, and also to assisting courts in understanding and accurately applying federal immigration law. For more than twenty years the Board of Immigration Appeals has solicited supplementary briefing, drafted by IRLI staff, from the Federation for American Immigration Reform, of which IRLI is a supporting organization. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of cases, including *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); *United States v. Texas*, 579 U.S. 547 (2016); *Save Jobs USA v. U.S. Dep't of Homeland Sec*., 942 F.3d 504 (D.C. Cir. 2019); *Ariz. Dream Act Coalition v.*

[2] Consistent with FED. R. APP. P. 29(a)(4)(E) and Local Rule 105.12(b), counsel for movant authored the motion and brief in whole, and no counsel for a party authored the motion or brief in whole or in part, nor did any person or entity, other than the movant or its counsel, make a monetary contribution to preparation or submission of the motion or brief. IRLI's brief also meets the formatting requirements of Local Rule 105.12(c).

Brewer, 855 F.3d 957 (9th Cir. 2017); *Washington All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 74 F. Supp. 3d 247 (D.D.C. 2014); *Matter of Silva-Trevino*, 26 I. & N. Dec. 826 (B.I.A. 2016); and *Matter of C-T-L-*, 25 I. & N. Dec. 341 (B.I.A. 2010).

SUMMARY OF ARGUMENT

Plaintiffs are aliens with final orders of removal who will be classified as inadmissible aliens once their final orders of removal are executed by their departure from the United States, making them ineligible to receive immigrant visas. The Immigration and Nationality Act ("INA") and its implementing regulations, however, provide that certain eligible inadmissible aliens may apply for discretionary waivers from the Secretary of the Department of Homeland Security ("DHS") making them eligible to apply for an unlawful presence waiver and, eventually, an immigrant visa. Plaintiffs challenge the authority of DHS to execute final orders of removal for aliens who either have applied for or intend to apply for this discretionary relief.

Plaintiffs' claims fail as a matter of law for several reasons. First, the plain language of the INA's waiver provisions and implementing regulations does not require a stay of removal for waiver applicants. The INA does, however, plainly call for and authorize the detention and removal of aliens with final orders of removal. 8 U.S.C. § 1231.

Second, the INA contains several jurisdiction stripping provisions that prevent certain challenges, including the claims at issue in this case. Congress placed clear limits on the authority of federal courts to review both the issuance and execution of final orders of removal and prohibited both district and appellate courts from entering class-wide injunctions in cases such as this.

Finally, Plaintiffs' due process claims must also fail. Discretionary relief, such as that at issue in this case, does not give rise to a cognizable liberty interest. Furthermore, jurisdiction is

not proper as these claims arise from DHS's decision, in its exercise of prosecutorial discretion, to execute a final order of removal. Therefore, this court should deny Plaintiffs' Cross Motion for Summary Judgment and grant Defendants' Motion for Summary Judgment.

ARGUMENT

I. THE IMMIGRATION AND NATIONALITY ACT DOES NOT REQUIRE A STAY OF REMOVAL FOR ALIENS PURSUING INADMISSIBILITY AND UNLAWFUL PRESENCE WAIVERS.

The plenary power of Congress over immigration is well established. *See, e.g., Fiallo v. Bell*, 430 U.S. 787, 792 (1977) ("Over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.") (citation and quotation marks omitted); *United States v. Valenzuela-Bernal*, 458 U.S. 858, 864 (1982) ("The power to regulate immigration—an attribute of sovereignty essential to the preservation of any nation—has been entrusted by the Constitution to the political branches of the Federal Government."); *Midi v. Holder*, 566 F.3d 132, 137 (4th Cir. 2009) ("Congress has plenary power over immigration and naturalization, and may permissibly set immigration criteria based on an alien's nationality, even though such distinctions would be suspect if applied to American citizens.") (citations and quotation marks omitted). Accordingly,

> [i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens. The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of its own citizenry.

Mathews v. Diaz, 426 U.S. 67, 79-80 (1976). Congress exercised this plenary authority to enact the Immigration and Nationality Act ("INA"), a comprehensive set of rules and procedures for the admission and expulsion of aliens.

Interpretation of the provisions of the INA, as "with any question of statutory interpretation, . . . begins with the plain language of the statute. It is well established that, when the statutory language is plain, we must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). *See also King v. Burwell*, 576 U.S. 473, 486 (2015) ("If the statutory language is plain, we must enforce it according to its terms."); *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (citation and quotation marks omitted); *Ardestani v. INS*, 502 U.S. 129 (1991) ("The starting point in statutory interpretation is the language [of the statute] itself."). Accordingly, "[w]here the language and purpose of the questioned statute is clear, courts, of course, follow the legislative direction in interpretation." *United States v. Pub. Utils. Com.*, 345 U.S. 295, 315 (1953).

The INA provides that aliens classified as inadmissible "are ineligible to receive visas and ineligible to be admitted to the United States." 8 U.S.C. § 1182(a). Among the categories of inadmissible aliens are those who have been previously removed from the United States. 8 U.S.C. § 1182(a)(9). Such aliens include "arriving aliens" who seek admission after they have already had their claims adjudicated, received a final order of removal, and either left the country or were removed. 8 U.S.C. § 1182(a)(9)(A). Congress also included aliens who are unlawfully present, that is, aliens who should have already departed or should have been previously removed, among the classes of inadmissible aliens. 8 U.S.C. § 1182(a)(9)(B)(ii) (construing unlawful presence as "alien[s] . . . present in the United States after the expiration of the period of stay authorized . . . or . . . present in the United States without being admitted or paroled").

The INA provides a pathway to citizenship to aliens who can satisfactorily establish a bona fide relationship to a United States citizen. *See, e.g., Roland v. United States Citizenship & Immigration Servs.*, 850 F.3d 625, 629 (4th Cir. 2017) ("The Immigration and Nationality Act ('INA') allows citizens via Form I-130 to petition for immediate relative status on behalf of their alien spouses so that the alien spouses may immigrate to the United States."). This pathway is also available to certain inadmissible and unlawfully present aliens with a bona fide relationship to a U.S. citizen. Eligibility to pursue this pathway, however, does not include a stay of the applicant's existing order of removal.

This pathway to citizenship begins with the citizen spouse's "first filling out a Form I-130, which establishes a qualifying relationship to a U.S. citizen." *Id.* at 560. *See also Castro v. Mayorkas*, No. 2:21-CV-00315-SAB, 2022 U.S. Dist. LEXIS 66858, at *1-4 (E.D. Wash. Apr. 11, 2022) (explaining that "the U.S. citizen or lawful resident [spouse] must file a petition with U.S. Citizenship and Immigration Services ("USCIS") known as a Form I-130 (Petition for Alien Relative.)"). The citizen spouse "must establish a qualifying relationship, including that the marriage is bona fide, by a preponderance of the evidence." *Chestnut v. Jaddou*, Civil Action No. 3:21-0497-MGL, 2022 U.S. Dist. LEXIS 162107, at *10 (D.S.C. Sep. 7, 2022). USCIS will then conduct an interview with both spouses; if a bona fide relationship is established, then the Form I-130 is granted and the alien may move forward to the next step in the process.

Establishing the existence of a qualifying relationship enables an alien with a final order of removal to apply for an inadmissibility waiver. Congress authorized DHS to waive inadmissibility by granting eligible aliens permission to reapply for admission earlier than they otherwise would be able to do. 8 U.S.C. § 1182(a)(9)(A)(iii) (establishing an exception for inadmissible aliens "if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be

admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission."). The implementing regulation provides that

> [a]n alien whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

8 C.F.R. § 212.2(j) (the "Inadmissibility Waiver").

The INA also provides that an unlawful presence waiver may be granted to the eligible alien spouse or child of a U.S. citizen. The DHS Secretary

> has sole discretion to waive [unlawful presence] in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [DHS Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

8 U.S.C. § 1182(a)(9)(B)(v). The statute makes clear that "[n]o court shall have jurisdiction to review a decision or action by the [DHS Secretary] regarding a waiver under this clause." *Id*. The implementing regulations require that an alien with a final order of removal must first apply for and receive an Inadmissibility Waiver to be eligible for a Provisional Unlawful Presence Waiver. 8 C.F.R. § 212.7(e)(4)(iv) (providing that "an alien [who] is subject to an administratively final order of removal, deportation, or exclusion under any provision of law," is ineligible for an unlawful presence waiver "unless the alien has already filed and USCIS has already granted . . . an application for consent to reapply for admission under section 212(a)(9)(A)(iii) of the Act and 8 CFR 212.2(j)."). An alien who has both provisional waivers is then required to leave the United States to complete the consular process of obtaining a visa by attending an in-person interview

with a U.S. consular officer. 8 U.S.C. §1202; 22 C.F.R. §§ 42.61–62. If the alien's visa is granted, he or she may then present himself or herself for inspection at a port of entry where Customs and Border Protection may grant admission, making the alien a legal permanent resident. 8 U.S.C. §§ 1225, 1201. At no point during this process do the INA or the regulations call for a stay of the applicant's final order of removal.

The INA sets forth multiple classes of inadmissible aliens, all of which contain detailed subcategories of inadmissibility. 8 U.S.C. § 1182(a). Only certain classes of inadmissible aliens are eligible for an Inadmissibility Waiver, and some are excluded altogether. 8 U.S.C. § 1182(a)(2)(A)(i)(I) (conviction for a crime of moral turpitude requires a different Inadmissibility application form); 8 U.S.C. § 1182(a)(6)(B) (inadmissibility for failure to attend removal proceedings may not be waived). Furthermore, only certain grounds of inadmissibility make an alien eligible for a Provisional Unlawful Presence Waiver.

Indeed, the Provisional Unlawful Presence Waiver is narrow, as it is only available to those aliens who are inadmissible on unlawful presence grounds, that is, aliens who either accrued between 180-364 days of unlawful presence and "voluntarily departed . . . prior to the commencement of [removal] proceedings, and again seek[] admission within 3 years of the date of such alien's departure or removal," 8 U.S.C. § 1182(a)(9)(B)(i), or those "who ha[ve] been unlawfully present . . . for one year or more, and who again seek[] admission within 10 years of the date of such alien's departure or removal." 8 U.S.C. § 1182(a)(9)B)(ii). Thus, any other category of inadmissibility, such as health related grounds, criminal and related grounds, or public charge grounds, requires a different application for an inadmissibility waiver than the one described in Plaintiffs' Stateside Waiver Process, ECF No. 7-3 at 1. As Defendants have pointed out, "many class members are subject to inadmissibility grounds other than unlawful presence and

being subject to a removal order. Such other inadmissibility grounds cannot be waived through the Stateside Waiver Process, and some other inadmissibility grounds cannot be waived at all." ECF No. 72-1 at 5. *See also* 8 U.S.C. § 1182(h) (listing the grounds for waiver and including grounds that may not be waived).

The plain language of the INA is clear that applying for discretionary relief such as an inadmissibility or unlawful presence waiver does not interfere with DHS's removal authority. Indeed, DHS is not only empowered to detain and remove aliens with final orders of removal, but also is *required* to do so. 8 U.S.C. § 1231(a)(1)(A) ("[W]hen 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.')"); 8 U.S.C. § 1231(a)(2) ("During the removal period, the Attorney General *shall detain* the alien."). The INA also prohibits the release of certain criminal aliens, *id*., and limits the availability of inadmissibility waivers for certain criminal aliens. 8 U.S.C § 1182(h). Therefore, Defendants are legally authorized to remove class members with final orders of removal.

II. PLAINTIFFS' CLAIMS ARE BARRED BY 8 U.S.C. § 1252.

As the Fourth Circuit has recognized, "Congress possesses plenary power to restrict the jurisdiction of the federal courts over immigration decisions." *Mapoy v. Carroll*, 185 F.3d 224, 227 (4th Cir. 1999). The INA places explicit limits on the availability of judicial review related to final orders of removal. Congress provided that "a petition for review filed with an appropriate court of appeals . . . shall be the *sole and exclusive means* for judicial review of an order of removal entered or issued under any provision of this Act[.]" 8 U.S.C. § 1252(a)(5) (emphasis added). As the Ninth Circuit explained, "[t]he language of the statute is clear. The exclusive means to challenge an order of removal is the petition for review process." *Martinez v. Napolitano*, 704

F.3d 620, 622 (9th Cir. 2012). This Court has accepted the reasoning of the Ninth Circuit that "[w]hen a claim by an alien, *however it is framed*, challenges the procedure and substance of an agency determination that is inextricably linked to the order of removal, it is prohibited by section 1252(a)(5)." *Duncan v. Kavanaugh*, 439 F. Supp. 3d 579, 585 (D. Md. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)) (emphasis added). Because "[f]ederal courts only have the power that is authorized by Article III of the Constitution and the statutes enacted by Congress," a court without "subject matter-jurisdiction . . . must dismiss the case." *Lin v. Nielsen*, 377 F. Supp. 556, 561 (D. Md. 2019) (internal citation and quotation marks omitted).

Section 1252 also includes a "zipper clause" that provides "[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 United States under this title shall be available *only* in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). As the Supreme Court has explained, "[s]ection 1252(b)(9) is not restricted to challenges of removal orders. The text refers to review of *all* questions of law and fact arising from removal, not just removal orders." *Jennings v. Rodriguez*, 138 S. Ct. 830, 855 (2018) (emphasis original). Indeed, "interpreting § 1252(b)(9) as governing only removal orders . . . reads 'or such questions of law or fact' out of the statute. It also renders superfluous §1252(a)(5), which already specifies that the review made available under §1252(a)(1) 'shall be the sole and exclusive means for judicial review of *an order of removal*.'" *Id.* Indeed, "Section 1252(b)(9) is . . . breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings." *J. E. F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (citing *Aguila v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007)).

Accordingly, these provisions bar this court from reviewing Plaintiffs' claims that they are entitled to a stay of their final orders of removal. Plaintiffs allege that the INA, applicable regulations, and the due process clause prohibit ICE from executing valid final orders of removal. ECF 72-1 at 14. Such claims undoubtedly raise fact and law issues that arise from an "action taken . . . to remove" aliens from the country and as such this court is stripped of jurisdiction. *J.E.F.M.*, 837 F.3d at 1031 ("Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—rising from *any* removal-related activity can be reviewed *only* through the PFR process.") (emphasis original). Indeed, as the Supreme Court noted, § 1252(b)(9) would likely bar claims "asking for review of an order of removal;" claims "challenging the decision to detain them in the first place or to seek removal; and" claims "challenging any part of the process by which their removability will be determined." *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). Jurisdiction thus "depends on whether [Plaintiffs' claims] [are] independent of removal proceedings." *Duncan v. Kavanaugh*, 493 F. Supp. 3d 579, 283 (D. Md. 2020). A request to stay a final order of removal undoubtedly falls into the categories listed in *Jennings* and thus is not independent of removal proceedings.

Even if the Court finds that §§ 1252(a)(5) and (b)(9) do not preclude jurisdiction, two other provisions of the INA restrict the jurisdiction and relief available. In fact, Congress limited both the availability of injunctive relief related to final orders of removal and the jurisdiction of federal courts regarding the execution of removal orders. First, the INA clearly establishes that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II [8 U.S.C. §§ 1221 et seq.]." 8 U.S.C. § 1252(f)(1). The Supreme Court recently confirmed the plain language of this provision, explaining that "§1252(f)(1) generally prohibits lower courts from entering injunctions that order federal

officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Garland v. Gonzalez*, 142 S. Ct. 2057, 2065 (2022). This undoubtedly includes Defendants' actions to execute class members' removal orders.

Garland reinforces the plain meaning of the INA that injunctions to prevent removal, such as the one granted by this Court to class members, ECF No. 28 at 11, may only be granted by the Supreme Court. Furthermore, injunctions related to "the removal of any alien pursuant to a final order under this section[,]" are not available "unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." 8 U.S.C. § 1252(f)(2). As explained, Plaintiffs cannot satisfy this burden because the INA does not preclude removal of aliens pursuing the Stateside Waiver application process. Accordingly, this Court does not have jurisdiction to enjoin the removal of such aliens.

Second, the INA insulates the decisions of immigration authorities to execute or refrain from executing a final order of removal. It provides that "no court shall have jurisdiction to hear *any* cause or claim by or on behalf of an 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." 8 U.S.C. § 1252(g). Because Plaintiffs' challenge "ICE's decision to execute [an alien's] removal order before he has had an opportunity to complete the provisional waiver process[,] [their] claims thus arise from ICE's decision to execute his removal order and are barred by § 1252(g)." *Jatta v. Clark*, No. C19-2086-BJR-MAT, 2020 U.S. Dist. LEXIS 229276, at *32 (W.D. Wash. July 17, 2020). Indeed, despite this Court's holding to the contrary, the Fourth Circuit does not "engage in the fiction that petitioners are not challenging the execution of their removal orders by seeking to stay the removal order." *Ashqar v. Hott*, No. 1:19-cv-0716, 2019 U.S. Dist. LEXIS 110983, at *11 (E.D. Va. June 5, 2019). *See also Mapoy v. Carroll*, 185 F.3d

224, 230 (4th Cir. 1999) ("Congress could hardly have been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252.").

These jurisdiction limiting provisions present a clear bar to this court's ability to grant Plaintiffs' requested relief. As a result, Plaintiffs' Cross Motion for Summary Judgment should be denied.

III. THERE IS NO DUE PROCESS VIOLATION BECAUSE THERE IS NO LIBERTY INTEREST IN DISCRETIONARY RELIEF.

The Supreme Court has explained that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976). Procedural due process analysis

> requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., 424 U.S. at 335. *See also Maldonado-Guzman v. Sessions*, 715 F. App'x 277, 284 (4th Cir. 2017) ("When evaluating due process claims, we consider (1) whether there is a property or liberty interest at stake, and (2) whether a process unconstitutionally deprived someone of that interest.").

Accordingly, the first thing a reviewing court must do is determine whether such a liberty or property interest exists. *Id.* A protected liberty interest can be created by statute that "confer[s] more than a mere expectation (even one supported by consistent government practice) of a benefit. There must be *entitlement* to the benefit as directed by statute, and the statute must act to limit

meaningfully the discretion of the decisionmakers." *Smith v. Ashcroft*, 295 F.3d 425, 429-30 (4th Cir. 2002) (internal citations omitted) (emphasis in original). If Plaintiffs cannot establish more than the "mere expectation," then they have not established the existence of a protected liberty interest.

Indeed, the Fourth Circuit has "[o]n many occasions . . . held that discretionary statutory 'rights' do not create liberty or property interests protected by the Due Process Clause. For instance, the discretionary right to suspension of deportation does not give rise to a liberty or property interest protected by the Due Process Clause." *Smith v. Ashcroft*, 295 F.3d 425, 430 (4th Cir. 2002). *See also United States v. Herrera-Pagoada*, 14 F.4th 311, 320 (4th Cir. 2021) ("An agency's denial of, or failure to consider, an alien's application for discretionary relief therefore doesn't violate his due process rights."); *Maldonado-Guzman v. Sessions*, 715 F. App'x 277, 284 (4th Cir. 2017) ("Statutes that only provide discretionary relief, therefore, do not create a property or liberty interest subject to the Due Process Clause."); *Cruzaldovinos v. Holder*, 539 F. App'x 225, 227 (4th Cir. 2013) ("It is well established in this circuit that an alien cannot predicate a due process claim on alleged infirmities in the adjudication of an application for discretionary relief."); *Kodjo v. Mukasey*, 269 F. App'x 262, 263 (4th Cir. 2008) (finding no "colorable due process violation" because the relief sought—cancellation of removal—was discretionary). Accordingly, discretionary relief, such as the waivers at issue in this case, do not give rise to a protected liberty interest.

This Court should deny Plaintiffs' due process claims because they cannot survive the first step of *Mathews* analysis. The INA and the relevant implementing regulations contain clear and precise language that establishes the discretionary nature of inadmissibility and unlawful presence waivers, which as a result do not give rise to a protected liberty interest.

CONCLUSION

For the foregoing reasons, Plaintiffs' Cross Motion for Summary Judgment should be denied and Defendants' Motion for Summary Judgment should be granted.

Dated: October 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2022, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

_/s/ Gina M. D'Andrea_____