

District Judge Jamal N. Whitehead
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTURO SEPULVEDA AYALA,

Petitioner,

v.

PAMELA BONDI, *et al.*,¹

Respondents.

Case No. 2:25-cv-01063-JNW-TLF

FEDERAL RESPONDENTS'²
OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL

Noted For Consideration:
June 6, 2025

I. INTRODUCTION

This Court should deny Petitioner Arturo Sepulveda Ayala's Emergency Motion for Temporary Restraining Order ("TRO") and Stay of Removal. Dkt. No. 2 ("TRO Mot."). Ayala has not met his burden of making a clear showing that his detention or removal is unlawful necessitating the extraordinary remedy of a TRO.

Ayala is subject to a valid reinstated order of removal and is currently in U.S. Immigration and Customs Enforcement ("ICE") detention at the Northwest ICE Processing

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Defendants substitute Seattle ICE Field Office Director Cammilla Wamsley for Nathalie Asher.

² Respondent Bruce Scott is not a Federal Respondent.

Center (“NWIPC”) pending removal. 8 U.S.C. § 1231(a). He has a Form I-918, Petition for U Nonimmigrant Status, pending with U.S. Citizenship and Immigration Services (“USCIS”). Dkt. No. 1, Pet., ¶ 12. While USCIS has granted him the interim benefits of deferred action and employment authorization while his petition remains pending, neither are a stay of ICE’s authority to execute his removal. Deferred action is an administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14). It does not provide a U visa applicant with a stay of removal. The filing of a U visa petition “has no effect on ICE’s authority to execute a final order . . .” 8 C.F.R. § 214.14(c)(1)(ii).

Ayala incorrectly claims that his detention violates the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment because he has been granted deferred action and issued employment authorization pursuant to the bona fide determination (“BFD”) process for U-1 nonimmigrant status petitioners. Pet., ¶¶ 3-6. However, ICE’s detention of Ayala pending his removal to Mexico is lawful pursuant to 8 U.S.C. § 1231(a). Furthermore, this Court is barred from reviewing ICE’s decision to execute Ayala’s reinstated order of removal. 8 U.S.C. § 1252(g).

Accordingly, Federal Respondents respectfully request that the Court deny the TRO motion.

II. BACKGROUND

A. Detention Authority

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). This includes an expedited process for noncitizens who reenter the United States without authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5) (reinstatement of removal orders).

1 If the Attorney General finds that an alien has reentered the United States illegally
2 after having been removed or having departed voluntarily, under an order of
3 removal, the prior order of removal is reinstated from its original date and is not
4 subject to being reopened or reviewed, the alien is not eligible and may not apply
5 for any relief under this Act, and the alien shall be removed under the prior order
6 at any time after the reentry.

7 *Id.*; see also 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order). While a
8 noncitizen may not seek most discretionary relief from the terms of the reinstated order, a
9 noncitizen may pursue and initiate reasonable fear proceedings to prevent his removal to the
10 country listed in the reinstated removal order. *Johnson*, 594 U.S. at 530-31. This is commenced
11 if the noncitizen expresses a fear of return to the country of removal.

12 First, the noncitizen's claim is referred to USCIS for an asylum officer to make a
13 reasonable fear determination. 8 C.F.R. § 208.31(b). The asylum officer interviews the
14 noncitizen about his claim and then issues a determination. 8 C.F.R. § 208.31(c). Next, if the
15 asylum officer determines that the noncitizen has not established a reasonable fear of persecution
16 or torture if removed to that country, the asylum officer informs the noncitizen in writing of the
17 decision. Upon the noncitizen's request, USCIS then refers the asylum officer's negative fear
18 decision for review by an Immigration Judge ("IJ"). 8 C.F.R. § 208.31(g); 8 C.F.R.
19 § 1208.31(g). If the IJ concurs with the asylum officer's negative fear determination, "the case
20 shall be returned to [Department of Homeland Security ("DHS")] for removal of the noncitizen.
21 No appeal shall lie from the [IJ's] decision." 8 C.F.R. § 1208.31(g)(1). Detention during this
22 process is pursuant to 8 U.S.C. § 1231(a). See *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33
(9th Cir. 2017).

23 **B. Creation of the U Visa Program**

24 Congress has conferred upon the U.S. Department of Homeland Security ("DHS")
Secretary ("the Secretary") the authority to determine the admission conditions and processes for

1 nonimmigrants who are admitted to the United States for a temporary period and a particular,
2 limited purpose. 8 U.S.C. §§ 1101(a)(15), 1184(a)(1); *see also Elkins v. Moreno*, 435 U.S. 647,
3 663-66 (1978). In October 2000, Congress created the U nonimmigrant classification
4 (colloquially “the U visa program”) as a part of the Victims of Trafficking and Violence
5 Protection Act of 2000 (“VTVPA”), Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant
6 status to certain victims of crime who cooperate with law enforcement in the investigation or
7 prosecution of a qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U).

8 An individual is eligible for principal, U-1 nonimmigrant status if the individual can
9 show that he or she: (1) has suffered substantial physical or mental abuse as a result of having
10 been a victim of a qualifying crime; (2) has credible or reliable information about the crime, and
11 has been, is being, or is likely to be helpful to law enforcement in investigating or prosecuting
12 the crime; and (3) is admissible to the United States or has had all grounds of inadmissibility
13 waived. *See id.*; *see also* 8 U.S.C. § 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If
14 USCIS approves the petitioner’s U visa petition and the petitioner is in the United States, the
15 petitioner will receive lawful U-1 nonimmigrant status and employment authorization for up to
16 four years. *See* 8 U.S.C. § 1184(p)(6). The petitioner may also be able to petition for certain
17 qualifying relatives to accompany or follow to join them. *See* 8 U.S.C. § 1101(a)(15)(U)(ii).
18 After three years of continuous physical presence in U nonimmigrant status, a U nonimmigrant
19 may apply to adjust status to lawful permanent resident status. *See* 8 U.S.C. § 1255(m)(1).

20 On January 5, 2006, Congress enacted the Violence Against Women and Department of
21 Justice Reauthorization Act of 2005 (“VAWA”), Pub. L. 109-162, 119 Stat. 2960. That statute
22 directed the Secretary to promulgate regulations that implemented, among other things, section
23 1513 of the VTVPA. Pub. L. 109-162, § 828, 119 Stat. 3066. DHS published an Interim Rule,
24 effective October 17, 2007, giving USCIS sole jurisdiction over U visa petitions. New

1 Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed.
2 Reg. 53,014 (Sept. 17, 2007), *codified at* 8 C.F.R. § 214.14.

3 **C. The U Visa Program**

4 1. U Visa Requirements

5 To seek U nonimmigrant status, an individual submits a Form I-918. 8 C.F.R. §§
6 214.14(c)(1), (f)(2). An approvable U visa petition is one that meets all the criteria to be granted
7 U nonimmigrant status. Specifically, the petitioner will have "suffered substantial physical or
8 mental abuse as a result of having been a victim of" certain criminal activity. 8 U.S.C. §
9 1101(a)(15)(U)(i)(I); 8 C.F.R. § 214.14(b)(1). The petitioner must submit a certification from a
10 "Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or
11 local authority investigating criminal activity," and the certification must state the petitioner "has
12 been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution." 8
13 U.S.C. § 1184(p)(1). Additionally, to be eligible for U nonimmigrant status, the petitioner or
14 derivative must be admissible to the United States or merit a favorable exercise of discretion to
15 waive all grounds of inadmissibility. *Id.*, §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17,
16 214.1(a)(3)(i). For an inadmissible alien's Form I-918 to be approved, USCIS must approve a
17 Form I-192 to waive all applicable grounds of inadmissibility in USCIS's discretion. 8 C.F.R.
18 §§ 212.17(a), (b).

19 *i. Waitlist Process and U Visa Backlog*

20 The U visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per
21 year. 8 U.S.C. § 1184(p)(2)(A). This means that the number of noncitizens who may be issued
22 U-1 nonimmigrant visas in any fiscal year shall not exceed 10,000. *See id.* In the 2007 rule
23 promulgating the regulations governing U nonimmigrant classification, USCIS estimated it
24 would receive approximately 12,000 principal U visa petitions per year. *See* 72 Fed. Reg. at

53033. Anticipating that the 10,000 annual statutory cap would be met within the first few fiscal years of enactment, USCIS created a regulatory waiting list process. *See* 8 C.F.R. § 214.14(d)(2). If a U visa petition is determined to be approvable, but for the fact that a visa is not available due to the statutory cap, the petitioner is placed on the waiting list. *See id.*, § 214.14(d)(2). This determination of eligibility in all respects but for the statutory cap includes assessing whether it appears that any grounds of inadmissibility should be waived in the exercise of discretion in the final adjudication when space is available under the cap. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 6, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6> (last visited May 5, 2025).³

The regulations provide that, when USCIS places a petition on the waiting list, “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. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.” 8 C.F.R. § 214.14(d)(2). “Deferred action” is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited May 5, 2025)..

While deferred action does not provide immigrant or nonimmigrant status, an individual granted such deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3); *see also* *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1058-59 (9th Cir. 2014). As a matter of policy, USCIS only considers deferred action, rather than parole, for individuals who are placed on the waiting list while inside the United

³ Federal Respondents ask this Court to take judicial notice of government websites cited in this motion. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 999 (9th Cir. 2010) (information on government websites is subject to judicial notice).

1 States. USCIS Policy Manual, Vol. 3, Part C, Ch. 4, *available at* [https://www.uscis.gov/policy-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4)
2 [manual/volume-3-part-c-chapter-4](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4) (last visited May 5, 2025).

3 *ii. Bona Fide Determination Process*

4 In 2021, USCIS published a Policy Manual update implementing a process which
5 provides employment authorization and deferred action more efficiently to U visa petitioners and
6 their qualifying family members with pending bona fide petitions who merit a favorable exercise
7 of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
8 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on May 5, 2025).

9 The process, referred to as the BFD process, is authorized under 8 U.S.C. § 1184(p)(6), which
10 provides that “[t]he Secretary may grant work authorization to any alien who has a pending, bona
11 fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title.” As part
12 of the BFD process, USCIS has the discretion to issue work authorization and grant deferred
13 action to a noncitizen who establishes that their pending U visa petition is “bona fide” and
14 warrants the agency’s exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol.
15 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>
16 (last visited on May 5, 2025).

17 By implementing this policy, USCIS sought to address the U visa backlog by
18 preliminarily evaluating petitions and providing interim benefits as efficiently as possible. *See*
19 USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* [https://www.uscis.gov/policy-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5)
20 [manual/volume-3-part-c-chapter-5](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5) (last visited on May 5, 2025). The BFD process provides an
21 opportunity for certain petitioners to receive employment authorization documents (“EADs”) and
22 deferred action for four years, renewable, if they receive a favorable BFD finding while their U
23 visa petitions are pending, consistent with the William Wilberforce Trafficking Victims
24 Reauthorization Act of 2008 (“TVPRA 2008”), Pub. L. 110-457 (Dec. 23, 2008), and the

1 Secretary's authority over the administration and enforcement of the immigration laws. 8 U.S.C.
2 § 1103(a)(1), (a)(3). The TVPRA 2008 amended the conditions on U nonimmigrant status by
3 providing the Secretary with discretion to grant employment authorization to a noncitizen who
4 has a pending, bona fide petition for U nonimmigrant status. *See* USCIS Policy Manual Vol. 3
5 Part C Ch. 1, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1> (last
6 visited on June 6, 2025); TVPRA 2008, Pub. L. 110-457, sec. 201(c).

7 To make a favorable BFD finding, USCIS first determines whether a pending petition is
8 bona fide (which means "made in good faith; without fraud or deceit"), and then in its discretion,
9 determines whether the petitioner poses a risk to national security or public safety, and otherwise
10 merits a favorable exercise of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5,
11 *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on
12 June 6, 2025). Alternatively, if for some reason a petitioner does not receive a BFD, only then
13 does USCIS initiate a waiting list adjudication for the principal petitioner and any qualifying
14 family members. USCIS Policy Manual Vol. 3, Part C, Ch. 6. If a petitioner is placed on the
15 waiting list, they receive EADs and deferred action *or* parole for four years, renewable, while
16 their U visa petitions are pending. 8 C.F.R. § 214.14(d)(2) (emphasis added); *see also* USCIS
17 Policy Manual, Vol. 3, Part C, Ch. 6, *available at* [https://www.uscis.gov/policy-manual/volume-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6)
18 [3-part-c-chapter-6](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6) (last visited on June 6, 2025).

19 USCIS renders final decisions on U visa petitions when U visas become available based
20 on the order the principal petition was received, with the oldest filings receiving highest priority.
21 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at*
22 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited on June 6, 2025).

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1 **D. Form I-192**

2 The INA allows a noncitizen to obtain a waiver of inadmissibility and temporarily be
 3 admitted to the United States. *See* 8 U.S.C. §§ 1182(d)(3)(A), (d)(14). A noncitizen may be
 4 “admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted
 5 into the United States temporarily as a nonimmigrant at the discretion of the Attorney General.”
 6 *Id.* A noncitizen seeking such a temporary waiver may fill out a Form I-192, Application for
 7 Advance Permission to Enter as a Non-Immigrant. 8 C.F.R. § 212.17(a); USCIS, Instructions for
 8 Application for Advance Permission to Enter as Nonimmigrant (Form I-192), *available at*
 9 <https://www.uscis.gov/sites/default/files/document/forms/i-192instr.pdf> (last visited June 6,
 10 2025). The Secretary has discretion over whether to approve a waiver application. 6 U.S.C.
 11 § 557; 8 U.S.C. §§ 1182(d)(3)(A)(ii), (d)(14).

12 **E. Factual Background**

13 Ayala is a Mexican citizen who last entered the United States in 2004. Pet., ¶¶ 1, 11. He
 14 filed a Form I-918, Form I-192, and I-765 on November 15, 2022. *Id.*, ¶ 12. On February 2,
 15 2025, after Ayala’s administrative stay of removal expired, ICE took Sepulveda Ayala into
 16 custody and issued a Reinstated Order of Removal. *Id.*, ¶ 16. ICE has since denied Ayala’s
 17 second request for an administrative stay of removal. Pet, ¶¶ 19, 20. On February 19, 2025,
 18 USCIS issued a favorable BFD finding on Sepulveda Ayala’s Form I-918, and shortly thereafter,
 19 USCIS approved his Form I-765, giving him employment authorization and granting him
 20 deferred action. *Id.*, ¶ 17; USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
 21 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on June 6, 2025).
 22 Sepulveda Ayala’s Form I-918 will be adjudicated when a nonimmigrant U visa becomes
 23 available consistent with the statutory cap. USCIS Policy Manual, Vol. 3, Part C, Ch. 7,
 24

1 available at <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited June 6,
2 2025). As part of the adjudication process, USCIS will adjudicate his Form I-192 at that time.

3 In March, Ayala commenced mandamus litigation in this District, seeking an order
4 compelling USCIS to issue a waiting list determination for his Form I-918 and adjudicate his
5 Form I-192. *Ayala v. Noem*, No. 3:25-cv-5185-JNW (W.D. Wash). The following month, he
6 filed an emergency TRO motion seeking a stay of his removal and enjoining his transfer to
7 another facility. *Id.*, Dkt. No. 6. On April 6, 2025, this Court issued the TRO before the
8 government had the opportunity to oppose the motion. Dkt. No. 9. The TRO remained in effect
9 until June 5, 2025, when this Court denied Ayala's motion for a preliminary injunction staying
10 his removal. Dkt. No. 23. The government has filed a motion to dismiss the litigation. Dkt. No.
11 14.

12 III. LEGAL STANDARD

13 The standard for issuing a temporary restraining order is "substantially identical" to the
14 standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
15 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is
16 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
17 *showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
18 (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555
19 U.S. 7, 22 (2008).

20 "A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed
21 on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3)
22 the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Martin v.*
23 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984) (internal quotation
24 omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits

1 and the balance of hardships tips sharply towards [plaintiff], as long as the second and third
 2 *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.
 3 2017) (internal quotation omitted).

4 IV. ARGUMENT

5 A. This Court lacks jurisdiction to halt the execution of a valid order of removal.

6 Ayala bases this habeas case on the theory that “deferred action defers removal” in this
 7 instance. Pet., ¶¶ 31-36. This claim directly arises from the government’s decision to execute
 8 his valid removal order. Congress has spoken clearly, emphatically, and repeatedly, providing
 9 that “no court” has jurisdiction over “any cause or claim” arising from the execution of removal
 10 orders, “notwithstanding any other provision of law,” whether “statutory or nonstatutory,”
 11 including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court
 12 lacks jurisdiction to review ICE’s decision to execute Ayala’s reinstated order of removal.

13 In the exercise of its constitutional power to define federal court jurisdiction, in 1996,
 14 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”),
 15 which repealed the existing scheme for judicial review of final orders of deportation and replaced
 16 it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee*
 17 (“*AADC*”), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress
 18 provided in the newly-enacted Section 1252(g) that:

19 Except as provided in this section and notwithstanding any other provision of law,
 20 no court shall have jurisdiction to hear any cause or claim by or on behalf of any
 21 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.

22 8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to
 23 clarify that the statute’s proscription against jurisdiction does in fact apply to habeas and
 24 mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11

1 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now
2 provides that:

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

9 8 U.S.C. § 1252(g) (2017) (emphasis added).

10 In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three
11 discrete actions that DHS may take: the “‘decision or action’ to ‘commence proceedings,
12 *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (original emphasis). With a valid
13 reinstated order of removal, any request for this Court to enjoin Ayala’s removal falls directly
14 within one of the discrete actions precluded from judicial review. *Velarde-Flores v. Whitaker*,
15 750 Fed. Appx. 606, 607 (9th Cir. 2019) (unpublished) (“The decision whether to remove aliens
16 subject to valid removal orders who have applied for U-visas is entirely within the Attorney
17 General’s discretion.”). “However narrowly construed, section 1252(g) still protects a
18 meaningful set of immigration enforcement decisions that represent ‘the initiation or prosecution
19 of various stages in the deportation process.’” *Balogun v. Sessions*, 330 F. Supp. 3d 1211, 1214
20 (C.D. Cal. 2018) (quoting *AADC*, 525 U.S. at 483).

21 “While USCIS has sole authority to grant U-visas, *see* 8 C.F.R. § 214.14(c)(1), ‘the filing
22 of a [U-visa application] has no effect on ICE’s authority to execute a final order.’” *Balogun*,
23 330 F. Supp. 3d at 1214 (quoting 8 C.F.R. § 214.14(c)(1)(ii)). This is the reason that U visa
24 applicants must separately ask ICE to issue a stay of removal. *Id.* Ayala cites to no statutory or
legal authority that USCIS’s grant of deferred action through the U visa BFD process invalidates
his order of removal. Even with deferred action, Ayala’s I-918 petition remains pending –

1 meaning it has no effect on ICE's statutory authority to execute his removal order. And as
2 described below, deferred action is not a stay of removal here.

3 Accordingly, this Court lacks jurisdiction to enjoin ICE's execution of Ayala's removal
4 order. *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) ("No matter how Matias frames it,
5 his challenge is to the Attorney General's exercise of his discretion to execute Matias's removal
6 order, which we have no jurisdiction to review.").

7 **B. Ayala is unlikely to succeed on the merits.**

8 Even if this Court were to find that it has jurisdiction, Ayala cannot establish that he is
9 likely to succeed on the merits of his claims. First, Ayala is unlikely to succeed on his claim that
10 his ongoing detention violates due process because he has been granted deferred action. Ayala is
11 detained pursuant to a valid reinstated order of removal. Thus, his detention is lawful under 8
12 U.S.C. § 1231(a). He has failed to provide any legal basis for his release from detention.
13 Furthermore, his detention has been lengthened due to the stay of removal that he sought in his
14 other mandamus case.

15 Second, Ayala's pending Form I-918 does not preclude his removal from the United
16 States. 8 C.F.R. § 214.14(c)(1)(ii). A grant of BFD deferred action is not synonymous with a
17 stay of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal.
18 Feb. 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); *see also*
19 "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status,
20 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of
21 deportation or removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2)
22 (listing deferred action and a stay of removal as distinct benefits). Deferred action is an act of
23 administrative convenience that gives some cases lower priority for removal. 8 C.F.R. §
24

1 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
2 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on June 6, 2025).

3 Ayala asks this Court to infer such a stay based on various regulatory and policy
4 provisions, but there is no language in the statute or regulations that state that a grant of deferred
5 action through the U visa BFD process stays removal. Indeed, USCIS's Policy Manual indicates
6 otherwise, noting that the granting of a BFD EAD establishes a *prima facie* case for approval
7 such that ICE can consider granting a discretionary stay of removal per 8 U.S.C. § 1227(d)(1).
8 USCIS Policy Manual, Vol. 3, Part C, Ch.5, *available at* [https://www.uscis.gov/policy-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5)
9 [manual/volume-3-part-c-chapter-5](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5) (last visited May 23, 2025). If a grant of deferred action
10 through the U BFD process constituted a stay of removal, this guidance would be superfluous.

11 In comparison, the regulations related to T visas contain the specific language lacking
12 here. Like with U visa petitions, “[t]he filing of an Application for T Nonimmigrant Status has
13 no effect on DHS authority or discretion to execute a final order of removal, although the
14 applicant may request an administrative stay of removal” pursuant to 8 C.F.R. § 241.6(a). 8
15 C.F.R. § 214.204(b)(2)(ii). But unlike the U visa regulations, a bona fide determination on a T
16 visa application automatically stays removal, “and the stay will remain in effect until a final
17 decision is made on the Application for T Nonimmigrant Status.” *Id.*, § 214.204(b)(2)(iii). This
18 demonstrates that specific language could have and would have been included in the U visa
19 regulations if the BFD process, including a grant of deferred action, stayed removal. *See*
20 generally 8 C.F.R. § 214.14.

21 Ayala fails to include any direct legal support for his proposition that deferred action is
22 DHS's agreement to stay removal. He cites to the correct chapter of USCIS's policy manual
23 concerning the BFD process, however nothing in this chapter supports the assertion that “[i]f
24 DHS/USCIS grants the U petitioner a BFD EAD, DHS/USCIS has then also exercised its

1 discretion to grant him deferred action and for his removal (deportation) to be stayed for the
2 period of the BFD EAD.” Pet., ¶ 30. In fact, that chapter specifically defines “[d]eferred action,
3 as an exercise of prosecutorial discretion to make an alien a lower priority for removal from the
4 United States.” <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited
5 May 23, 2025).

6 Ayala relies on a non-relevant volume and section of the USCIS Policy Manual
7 concerning “Emergencies or Unforeseen Circumstances.” Pet., ¶ 31 (citing 1 USCIS-PM
8 H.2(A)(4)). This is in a separate volume of the policy manual from the volume and chapter
9 relating to U visas. See USCIS Policy Manual, Vol. 3, Part C, available at
10 <https://www.uscis.gov/policy-manual/volume-3-part-c> (last visited June 6, 2025). In the same
11 fashion, he cites to “DACA Frequently Asked Questions,” which is not pertinent to U visas.
12 Finally, Ayala cannot rely on a treatise cited by the Supreme Court in 1999. Pet., ¶ 31 (citing
13 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999)). This treatise was
14 written prior to the creation of the U nonimmigrant classification in 2000 and well before the
15 BFD policy in 2021. See 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and*
16 *Procedure* § 72.03 [2][h] (1998).

17 Furthermore, ICE has explicitly denied Ayala’s request for an administrative stay of his
18 removal. ICE reviewed Ayala’s application for an administrative stay in accordance with 8
19 U.S.C. § 1227(d)(1). Lambert Decl., Ex. A. Section 1227(d)(1) provides that the DHS Secretary
20 may grant a noncitizen an administrative stay of a final order of removal under 8 U.S.C.
21 § 1231(c)(2). In turn, Section 1231(c)(2) allows for a stay of removal when “(i) immediate
22 removal is not practicable or proper; or (ii) the alien is needed to testify in the prosecution of a
23 person for a violation of a law of the United States or any State.” 8 U.S.C. § 1231(c)(2).

1 After reviewing Ayala's application and supporting documents, ICE found that the
2 totality of the circumstances does not support a favorable exercise of discretion. Lambert Decl.,
3 Ex. A; *see also Raghav*, 2025 WL 373638, at *2 (citing *Jiminez v. Dep't of Homeland Sec.*, No.
4 2:22-cv-967, 2022 WL 19410308, at *3 (C.D. Cal. Nov. 14, 2022)). Consistent with the USCIS
5 policy guidance cited above, the BFD EAD grant fulfills DHS's prima facie review of Ayala's
6 Form I-918 under 8 U.S.C. § 1227(d)(1). Lambert Decl., Ex. A.

7 To further dispute ICE's lawful ability to execute his removal order, Ayala asserts that he
8 is "lawfully present" in the United States. Pet., ¶ 4. He is correct that he is not currently
9 accruing unlawful presence because of his grant of deferred action. *See* 8 C.F.R. § 214.14(d)(3).
10 However, his assertion conflates the distinction between "unlawful status" and "unlawful
11 presence." While the concepts of being in unlawful immigration status and the accrual of
12 unlawful presence ("period of stay not authorized") are related, they are not the same. *See* 8
13 U.S.C. §§ 1182(a)(9)(B) & (a)(9)(C)(i)(I). For instance, a person must be present in an unlawful
14 status to accrue unlawful presence. In contrast, a person may not have lawful status to remain in
15 the United States but not accrue unlawful presence while his U visa application is pending. 8
16 C.F.R. § 214.14(d)(3). But deferred action does not provide a noncitizen with legal status to be
17 in the United States. This distinction is supported by Ayala's citations to regulations treating
18 people with deferred action as having lawful status for specific purposes. Pet., ¶ 31. These
19 regulations demonstrate that deferred action does not provide lawful status for all purposes. And
20 even if deferred action constituted "lawful status," no authority indicates it would nullify his
21 removal order, and individuals in lawful status can be and are subject to removal in certain
22 circumstances. 8 U.S.C. § 1227(a) ("Any alien (including an alien crewman) in and admitted to
23 the United States shall, upon the order of the Attorney General, be removed if the alien is within
24 one or more of the following classes of deportable aliens.").

1 Accordingly, Ayala is unlikely to succeed on the merits of his claims.

2 **C. Ayala has not shown irreparable harm.**

3 Ayala has not demonstrated that he will suffer irreparable injury absent the injunctive
4 relief he seeks. To do so, he must demonstrate “immediate threatened injury.” *Caribbean*
5 *Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission*
6 *v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a
7 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. “Issuing a
8 preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the
9 Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only
10 be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at
11 22.

12 Ayala asserts that his removal or transfer out of NWIPC would cause irreparable harm.
13 TRO Mot., ¶¶ 14-20. However, as established above, his pending U visa petition “has no effect
14 on ICE’s authority to execute a final order . . .” 8 C.F.R. § 214.14(c)(1)(ii). And if his is
15 removed, he will still be eligible for a U visa when the statutory cap allows and if he is found
16 eligible for a final grant. He claims that if this were to occur after removal that he would be
17 subject to “additional hurdles.” TRO Mot., at 19. “Although removal is a serious burden for
18 many aliens, it is not categorically irreparable.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

19 “The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential
20 for prevailing on a [preliminary injunction].” *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D.
21 Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir.
22 1988)). Sepulveda Ayala has not made such a showing here.

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1 **D. The balance of the equities and public interests favor the Government.**

2 Finally, the balance of equities and the public interest weigh decisively against Ayala's
3 request for preliminary injunctive relief. Unlike some other requests for preliminary injunctive
4 relief where the constitutionality of a statute or regulation may be in question, here Ayala asks
5 this Court to enjoin the enforcement of an unquestionably lawful and final removal order. It is
6 well settled that the public interest in enforcement of United States' immigration laws is
7 significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's*
8 *House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has
9 recognized that the public interest in enforcement of the immigration laws is significant.") (citing
10 cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in
11 prompt execution of removal orders).

12 Accordingly, this Court should deny his Motion.

13 **CONCLUSION**

14 For the foregoing reasons, this Court should deny Petitioner's TRO Motion.

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1 DATED this 6th day of June, 2025.

2 Respectfully submitted,

3 TEAL LUTHY MILLER
4 Acting United States Attorney

5 s/ Michelle R. Lambert
6 MICHELLE R. LAMBERT, NYS #4666657
7 Assistant United States Attorney
8 United States Attorney's Office
9 Western District of Washington
10 1201 Pacific Ave., Ste. 700
11 Tacoma, WA 98402
12 Phone: (253) 428-3824
13 Fax: (253) 428-3826
14 Email: michelle.lambert@usdoj.gov

15 *Attorneys for Federal Respondents*

16 *I certify that this memorandum contains 5,344*
17 *words, in compliance with the Local Civil Rules.*