

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.*,

Respondents.

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

FEDERAL RESPONDENTS' RETURN
AND MOTION TO DISMISS THE
PETITION

Noted for Consideration:
July 30, 2025

I. INTRODUCTION

This Court should deny Petitioner Arturo Sepulveda Ayala's Petition for a Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Ayala pursuant to 8 U.S.C. § 1231(a) as he is subject to a valid reinstated order of removal. U.S. Citizenship and Immigration Services' ("USCIS") grant of "deferred action" pursuant to the agency's U visa bona fide determination process does not prevent ICE from removing Ayala. Furthermore, this Court is barred from reviewing ICE's decision to execute Ayala's reinstated order of removal. 8 U.S.C. § 1252(g).

In the Petition, Ayala asserts that his detention violates due process as he cannot be removed due to the grant of deferred action. Pet., ¶¶ 34-36. But deferred action in this context is

1 not a stay of ICE's statutory authority to execute his removal order. Deferred action in this
2 context is a USCIS policy that may lower priority of removal for some cases but does not
3 displace or stay ICE's discretionary authority to execute removal orders.

4 USCIS informed Ayala of the meaning of deferred action in his bona fide determination
5 approval notice, "Deferred action is an act of administrative convenience to the government
6 which gives some cases lower priority for removal." Dkt. No. 1-2, Notice of Action, Bona Fide
7 Determination Notice, dated February 19, 2025. Thus, no ambiguity of the agency's definition
8 of deferred action exists as it applies to Ayala's grant of deferred action via the U visa bona fide
9 determination process.

10 As Ayala's detention comports with due process, Federal Respondents respectfully
11 request that the Court deny the Petition and grant this Motion to Dismiss.

12 II. BACKGROUND¹

13 Ayala is a Mexican citizen who last entered the United States in 2004. Pet., ¶¶ 1, 11. He
14 filed a Form I-918, Petition for U Nonimmigrant Status, along with other applications, on
15 November 15, 2022. *Id.*, ¶ 12. On February 2, 2025, after Ayala's administrative stay of
16 removal expired, ICE took Ayala into custody and issued a Reinstated Order of Removal. *Id.*,
17 ¶ 16. ICE subsequently denied Ayala's second request for an administrative stay of removal.
18 Pet, ¶¶ 19, 20.

19 In 2021, USCIS published a Policy Manual update implementing a process which
20 provides employment authorization and deferred action more efficiently to U visa petitioners and
21 their qualifying family members with pending bona fide petitions who merit a favorable exercise
22 of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5 ("BFD Chapter"), *available at*

23
24 ¹ Federal Respondents respectfully refer this Court to background section of their Opposition to the Motion for
Temporary Restraining Order for a description of U visas and the relevant detention statute. Dkt. No. 9, at 2-9.

1 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on July 27, 2025).

2 The process, referred to as the bona fide determination process, is authorized under 8 U.S.C.
3 § 1184(p)(6), which provides that “[t]he Secretary may grant work authorization to any alien
4 who has a pending, bona fide application for [U] nonimmigrant status under section
5 1101(a)(15)(U) of this title.” To make a favorable bona fide determination, USCIS first
6 determines whether a pending petition is bona fide (which means “made in good faith; without
7 fraud or deceit”), and then in its discretion, determines whether the petitioner poses a risk to
8 national security or public safety, and otherwise merits a favorable exercise of discretion. *See*
9 BFD Chapter.

10 On February 19, 2025, USCIS issued a favorable bona fide determination on Ayala’s
11 Form I-918. *Id.*, ¶ 17. The notice informing Ayala of this favorable determination explained the
12 meaning of deferred action:

13 At this time, the evidence demonstrates your petition for U nonimmigrant status is bona fide, and you warrant a favorable exercise of discretion to receive
14 employment authorization and deferred action. Because USCIS has determined your petition is bona fide and you warrant a favorable exercise of discretion,
you may be issued an employment authorization document and may be placed in deferred action. Deferred action is an act of administrative convenience to
the government which gives some cases lower priority for removal.

15 Dkt. No. 1-2, Notice of Action, Bona Fide Determination Notice, dated February 19, 2025.
16 Shortly thereafter, USCIS approved his Form I-765, giving him employment authorization and
17 granting him deferred action. *Pet.*, ¶ 17; BFD Chapter. Ayala’s Form I-918 will be adjudicated
18 when a nonimmigrant U visa becomes available consistent with the statutory cap. USCIS Policy
19 Manual, Vol. 3, Part C, Ch. 7, *available at* [https://www.uscis.gov/policy-manual/volume-3-part-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7)
20 [c-chapter-7](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7) (last visited July 27, 2025).

21 In March, Ayala commenced mandamus litigation, seeking an order compelling USCIS
22 to issue a waiting list determination for his Form I-918 and adjudicate his Form I-192. *Ayala v.*
23 *Noem*, No. 3:25-cv-5185-JNW (W.D. Wash). The following month, he filed an emergency
24 motion for a temporary restraining order (“TRO”) seeking a stay of his removal and enjoining

1 his transfer to another facility. *Id.*, Dkt. No. 6. On April 6, 2025, this Court issued the TRO
2 before the government had the opportunity to oppose the motion. Dkt. No. 9. The TRO
3 remained in effect until June 5, 2025, when this Court denied Ayala's motion for a preliminary
4 injunction staying his removal. Dkt. No. 23. The government has filed a motion to dismiss the
5 mandamus litigation. Dkt. No. 14.

6 Ayala filed this habeas litigation and a second TRO motion on June 6, 2025. Dkt. Nos. 1
7 & 2. He alleges that his detention violates the Immigration and Nationality Act and the Fifth
8 Amendment's Due Process Clause because he has been granted deferred action and issued
9 employment authorization pursuant to the bona fide determination process for U-1 nonimmigrant
10 status petitioners. Pet., ¶¶ 3-6. According to Ayala, deferred action means that he "cannot be
11 removed." *Id.*, at ¶ 4. This Court granted Ayala's TRO motion, staying his removal from the
12 United States or transfer to another facility during this litigation. Dkt No. 11, TRO.

13 On July 24, 2025, this Court granted Ayala's Motion for a Preliminary Injunction and
14 enjoined ICE from removing Ayala from the United States or transferring him to a different ICE
15 facility. Dkt. No. 18, Order. The Court found that it had subject matter jurisdiction as the
16 habeas claim arises from the Government's grant of deferred action. *Id.*, at 6-10. The Court then
17 interpreted USCIS's use of "deferred action" in its bona fide determination policy to mean that
18 Ayala cannot be removed. *Id.*, at 14-20.

19 Yet USCIS's definition of deferred action pursuant to its U visa bona fide determination
20 policy is not "a post-hoc rationalization" for the purposes of Ayala's removal or this litigation.
21 In both USCIS's manual and in the notice to grantees of interim benefits, USCIS defines
22 deferred action granted through the bona fide determination process as an administrative
23 convenience that gives some cases lower priority for removal. Dkt. No. 1-2, Notice of Action,
24 Bona Fide Determination Notice, dated February 19, 2025; BFD Chapter § 7 ("Deferred action,

1 as an exercise of prosecutorial discretion to make an alien a lower priority for removal from the
2 United States, is only applicable to aliens in the United States.”). Thus, this Court should find
3 that ICE’s detention of Ayala is lawful and deny the Petition.

4 III. ARGUMENT

5 A. This Court lacks subject matter jurisdiction.

6 Federal Respondents respectfully disagree with this Court’s analysis that the claims in
7 this matter “arise from the Government’s decision to grant [Ayala] deferred action combined
8 with ICE’s subsequent refusal to honor that grant.” Order, at 9. Ayala’s habeas claim directly
9 arises from the government’s decision to execute his valid removal order. *See Velasco Gomez v.*
10 *Scott*, No. 25-cv-522-JLR-BAT, 2025 WL 1726465, at *4 (W.D. Wash. June 20, 2025).
11 Section 1252(g) strips district courts of subject matter jurisdiction over claims “arising from the
12 decision or action by the Attorney General to commence proceedings, adjudicate cases, or
13 execute removal orders.” 8 U.S.C. § 1252(g). The Supreme Court has narrowly construed
14 Section 1252(g) as arising directly from the three enumerated actions, including the
15 government’s decision or action to execute a removal order. *See Reno v. American-Arab Anti-*
16 *Discrimination Committee* (“AADC”), 525 U.S. 471, 473 (1999). The fact that USCIS has
17 granted deferred action pending the adjudication of his U visa application does not change this
18 analysis because the deferred action granted here does not stay Ayala’s removal.

19 The government recognizes the existence of cases, unlike here, where the plaintiff does
20 challenge the revocation of immigration benefits, and that such challenges are not necessarily
21 barred by Section 1252(g). For example, the Supreme Court found that Section 1252(g) did not
22 bar the district court’s jurisdiction for an action challenging a decision to revoke interim benefits
23 as arbitrary and capricious pursuant to the Administrative Procedure Act and infringement of the
24 equal protection guaranteed pursuant to due process. *Dep’t of Homeland Sec. v. Regents of the*

1 *Univ. of California*, 140 S. Ct. 1891, 1903, 1907 (2020). The *Regents* plaintiffs’ challenge was
2 materially different than the habeas claims here. While the plaintiffs in that case were *potentially*
3 subject to removal because of the rescission of a program, which had provided a deferred action
4 program with associated benefits, this was not the focus of the litigation – the legality of the
5 program’s rescission itself was at issue. Here, however, ICE’s decision to execute Ayala’s
6 removal despite his grant of deferred action is the action challenged in the Petition, which
7 directly implicates Section 1252(g).

8 Furthermore, this Court should not rely on cases involving challenges concerning
9 deferred action under the context of Deferred Action for Childhood Arrivals (“DACA”). *See*
10 *e.g.*, *Enriquez-Perdomo v. Newman*, 54 F.4th 855 (2d Cir. 2022). Under DACA, deferred action
11 is defined “as a form of enforcement discretion not to pursue the removal of certain aliens for a
12 limited period in the interest of ordering enforcement priorities . . .” 8 C.F.R. § 236.21(c)(1).
13 This definition does not apply to the U visa bona fide determination policy. 8 C.F.R. § 236.21(a)
14 (“This subpart does not apply to or govern any other request for or grant of deferred action or
15 any other DHS deferred action policy.”). Unlike in those cases, Ayala’s deferred action does not
16 affect the executability of his removal order or the legality of his detention as the deferred action
17 or his bona fide determination does not explicitly stay his removal like in other instances. *See*
18 *also* 8 C.F.R. §§ 214.205(c) & (g) (specifically providing that a determination that a T
19 nonimmigrant application is bona fide “automatically stays the execution of any final order of
20 removal, deportation, or exclusion”).

21 The Ninth Circuit’s decision in *Arce* is also inapposite to the jurisdictional issue here.
22 *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018). In *Arce*, the Government removed an alien
23 in violation of the Court’s order staying his removal. *Id.*, at 798-99. After being returned to the
24 United States, the alien filed a lawsuit under the Federal Tort Claims Act (“FTCA”) for false

1 arrest and imprisonment, intentional infliction of emotional distress, and negligence. *Id.*, at 799.
2 The Government argued that the Court lacked jurisdiction under Section 1252(g) because the
3 jurisdiction-stripping language extends to any action taken in connection with a removal order.
4 *Id.* The Court found that it had jurisdiction because the FTCA claims did not arise from the
5 execution of the removal order, but from the violation of the court's order. *Id.*, at 800. Here,
6 there has been no violation of a court order or affirmative immigration benefit staying Ayala's
7 removal. This Court lacks jurisdiction because the claims arise directly from ICE's decision to
8 execute Ayala's removal order.

9 Recently, another court in this District found that it lacked subject matter jurisdiction to
10 review a similar habeas claim. *Velasco Gomez*, 2025 WL 1726465, at *4. In *Velasco Gomez*,
11 the petitioner alleged that his detention and pending removal violated the Due Process Clause of
12 the Fifth Amendment to the United States Constitution because USCIS had previously granted
13 him deferred action. *Id.*, at *3. Like here, the petitioner sought a preliminary injunction based
14 on ICE's decision to "*per se* revoke his grant of deferred action by detaining him and seeking to
15 execute his removal." *Id.*, at *6. The court found that Section 1252(g) stripped the court of
16 jurisdiction because the habeas claims "arise directly from the agency's allegedly
17 unconstitutional decision and action to detain him and execute his valid removal order despite his
18 deferred action status." *Id.*, at *5. As a result, the court denied the preliminary injunction and
19 dismissed the habeas petition. *Id.*, *6.

20 Like in *Velasco Gomez*, this Court should find that it lacks subject matter jurisdiction.

21 **B. Deferred action granted through the U visa bona fide determination process does**
22 **not preclude ICE from executing an outstanding removal order.**

23 ICE may detain Ayala pending the execution of his reinstated order of removal. Ayala
24 does not dispute that he is subject to a reinstated order of removal. It is also undisputed that

1 USCIS has granted deferred action and employment authorization to him pursuant to the U visa
2 bona fide determination process. The issue here is whether the grant of deferred action precludes
3 ICE from executing his reinstated removal order. It does not.

4 Because Ayala's grant of deferred action is a creation of agency policy, this Court should
5 look to the agency for the policy's meaning. Most notably, Ayala's notice of his favorable bona
6 fide determination does not state that his removal is stayed through deferred action; instead, it
7 describes deferred action as an act of administrative convenience giving some cases lower
8 priority for removal. Dkt. No. 1-2, Notice of Action, Bona Fide Determination Notice, dated
9 February 19, 2025. This is consistent with the definition of "deferred action" in the chapter in
10 USCIS's Policy Manual concerning U visa bona fide determinations. BFD Chapter, § 7.

11 A grant of U visa bona fide determination deferred action is not synonymous with a stay
12 of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb.
13 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); *see also* "New
14 Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 Fed.
15 Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of deportation or
16 removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred
17 action and a stay of removal as distinct benefits). Yet an individual granted such deferred action
18 does not accrue unlawful presence in the United States during the deferred action period. 8
19 C.F.R. § 214.14(d)(3).

20 Ayala has not presented any evidence that USCIS's policy specific to U visa bona fide
21 determinations supports his interpretation that deferred action automatically stays his removal.
22 He cannot. There is no language in the USCIS Policy Manual that states that a grant of deferred
23 action through the U visa bona fide determination process stays or prevents removal. Indeed,
24 USCIS's Policy Manual indicates otherwise, noting that the granting of a bona fide

determination employment authorization establishes a prima facie case for approval such that ICE can consider granting a discretionary stay of removal per 8 U.S.C. § 1227(d)(1). BFD Chapter. If a grant of deferred action through the bona fide determination process constituted an automatic stay of removal, this guidance would be superfluous.

Ayala fails to include any direct legal support for his proposition that deferred action as part of the U visa bona fide determination policy is the Department of Homeland Security's agreement to stay removal. Instead, Ayala relies on the "historic" definition deferred action rather than the specific definition provided to him in his notice. Pet., ¶ 31. Ayala relies on a case decided decades before the U visa bona fide determination policy was instituted that relates to deferred action through a different policy. *Id.* (citing *AADC*).² Further, Ayala relies on a non-relevant volume and section of the USCIS Policy Manual concerning "Emergencies or Unforeseen Circumstances." *Id.* (citing 1 USCIS-PM H.2(A)(4)). This is in a separate volume of the policy manual from the volume and chapter relating to U visas. *See* BFD Chapter. The BFD Chapter does not refer to or adopt the same definition of deferred action. In the same fashion, he cites to "DACA Frequently Asked Questions," which is not pertinent to U visas. *Id.*

To further dispute ICE's lawful ability to execute his removal order, Ayala asserts that he is "lawfully present" in the United States. Pet., ¶ 4. He is correct that he is not currently accruing unlawful presence because of his grant of deferred action. *See* 8 C.F.R. § 214.14(d)(3). However, his assertion conflates the distinction between "unlawful status" and "unlawful presence." While the concepts of being in unlawful immigration status and the accrual of unlawful presence ("period of stay not authorized") are related, they are not the same. *See* 8

² For this same reason, this Court should not rely on cases where deferred action is being discussed or described in other contexts, but where the precise question of whether deferred action stays removal was not before the Court. *See, e.g., Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015); *Lee v. Holder*, 599 F.3d 973, 974 (9th Cir. 2010).

U.S.C. §§ 1182(a)(9)(B) & (a)(9)(C)(i)(I). For instance, a person must be present in an unlawful status to accrue unlawful presence. In contrast, a person may not have lawful status to remain in the United States but not accrue unlawful presence while his U visa petition is pending. 8 C.F.R. § 214.14(d)(3). But deferred action does not provide a noncitizen with legal status to be in the United States. This distinction is supported by Ayala's citations to regulations treating people with deferred action as having lawful status for specific purposes. Pet., ¶ 31.

USCIS has defined deferred action in the agency's policy concerning the U visa bona fide determination process in its Policy Manual (BFD Chapter, § 7) and in the notice provided to Ayala. Deferred action does not stay Ayala's removal. As a result, Ayala cannot demonstrate that he is being detained in violation of the Constitution or laws of the United States.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition and dismiss this litigation in its entirety.

DATED on this 28th day of July, 2025.

Respectfully submitted,

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I certify that this memorandum contains 2,928 words, in compliance with the Local Civil Rules.

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

UNITED STATES DISTRICT COURT FOR THE
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ORDER GRANTING MOTION TO
DISMISS

[PROPOSED]

The Court, having reviewed the pleadings and materials in this case, it is hereby
ORDERED that:

Federal Respondents' Motion to Dismiss is GRANTED.

Dated this _____ day of _____, 2025.

JAMAL N. WHITEHEAD
United States District Judge

Recommended for entry this _____ of _____, 2025.

THERESA L. FRICKE
United States Chief Magistrate Judge

Presented by:

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