

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Domingo Mendoza Mendez,

Petitioner,

Civil No. 0:25-cv-02830 (LMP/ECW)

v.

Ryan Shea, in his official capacity as
the Freeborn County Sheriff; et al.,

Respondents.

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

The Court should deny Petitioner Domingo Mendoza Mendez's petition for a writ of habeas corpus seeking relief from his valid final order of removal. The "sole and exclusive means for judicial review" of immigration court proceedings is a petition for review in the court of appeals, and the Court lacks jurisdiction to adjudicate Petitioner's claim challenging the decision to execute his final order of removal. 8 U.S.C. § 1252(a)(5), (g). Petitioner unsuccessfully sought to reopen his immigration proceedings to avoid execution of his final order of removal. But instead of petitioning for review and seeking a stay of removal from the court of appeals, *see id.* § 1252(b)(3), he brought this action requesting relief from his final order of removal, exceeding the limitations on the Court's jurisdiction in § 1252(g).

What's more, even if the Court had jurisdiction, Petitioner's claim rests on a misinterpretation of the evidence and the law and must fail on the merits. Petitioner received a "bona fide determination" notice, which does not confer deferred action, as he suggests. And even if it had, he conflates "deferred action" with a stay of removal. Petitioner points to no statutory or regulatory authority supporting his misinterpretations.

The Court should dismiss this action, dissolve the TRO, and allow Petitioner's removal to proceed according to law.

BACKGROUND

I. Statutory and Regulatory Background

A. The U-Visa Program

Congress created the U visa program in 2000 to help crime victims by granting status to noncitizens who assist criminal investigations and prosecutions. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, § 1513(a)(2), 114 Stat. 1464, 1533-34 (Oct. 28, 2000) (codified at 8 U.S.C. §§ 1101(a)(15)(U), 1184(a)(1)). An individual is eligible for U-1 nonimmigrant status if he can show he: (1) has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime; (2) has credible or reliable information about the crime, and has been, is being, or is likely to be helpful to law enforcement in investigating or prosecuting the crime; and (3) is admissible to the United States or has had all grounds of inadmissibility waived. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If the United States Citizenship & Immigration Service approves the petitioner's U visa petition and the petitioner is in the United States, the petitioner will receive lawful U-1 nonimmigrant status and employment authorization for up to four years, renewable. *See* 8 U.S.C. § 1184(p)(6).

Congress later enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA"), Pub. L. 109-162, 119 Stat. 2960 (Jan

5, 2006). That statute directed the Secretary of the Department of Homeland Security to promulgate regulations that implemented, among other things, section 1513 of the VTVPA. Pub. L. 109-162, § 828, 119 Stat. 3066. DHS published an Interim Rule, effective October 17, 2007, giving USCIS sole jurisdiction over U visa petitions. *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14).

B. Applying for a U Visa

An individual seeking U nonimmigrant status submits a Form I-918 to USCIS. 8 C.F.R. §§ 214.14(c)(1), (f)(2). A petitioner may pursue a U visa, like any other visa, while he is outside the United States. *See* U.S. Citizenship & Immig. Servs., *Victims of Criminal Activity: U Nonimmigrant Status*, <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> (last visited July 18, 2025).

An approvable U visa petition is one that meets all the criteria to be granted U nonimmigrant status. The petitioner must submit a certification from a "Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity," and the certification must state the petitioner "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution." 8 U.S.C. § 1184(p)(1). The petitioner must also be

admissible to the United States or receive a waiver of all grounds of inadmissibility. *Id.* §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17, 214.1(a)(3)(i).

C. The U Visa Waitlist

Congress limited the program to just 10,000 available U visas per year. 8 U.S.C. § 1184(p)(2). Expecting that some applicants might need to wait for approval, Congress allowed the DHS Secretary to “grant work authorization” for noncitizens with “a pending, bona fide application” for a U visa. *Id.* § 1184(p)(6).

USCIS created a waiting list for eligible petitioners whose application is not granted “due solely to the cap” on the number of available U visas. 8 C.F.R. § 214.14(d)(2). “USCIS will grant deferred action or parole,” including work authorization, “to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list.” 8 C.F.R. § 214.14(d)(2).

“Deferred action” is “an act of administrative convenience to the government that gives some cases lower priority” for removal. 8 C.F.R. § 274a.12(c)(14). In the preamble to the 2007 rulemaking, which created the U visa regulations in 8 C.F.R. § 214.14, stays of removal were distinguished from deferred action:

A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of [a noncitizen] who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. *Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the [noncitizen’s] case*

being made a lower priority for removal. Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). Deferred action does not confer any immigration status upon [a noncitizen].

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (emphasis added).

While deferred action does not provide immigrant or nonimmigrant status, an individual with deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3). "However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." *Id.*

D. Bona Fide Determination

USCIS established a procedure 2021, known as the "BFD" process, for identifying bona fide applications and providing employment authorization documents to pending U visa petitioners within the United States who merit a favorable exercise of discretion. *See* U.S. Citizenship & Immig. Servs. Policy Manual, Vol. 3, Part C, Ch. 5, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on July 18, 2025). "USCIS generally does not conduct waiting list adjudications for [noncitizens] to whom USCIS grants BFD EADs and deferred action," and the BFD process therefore operates as an to the alternative waiting list process allowing U visa applicants within the United States to obtain work authorization and deferred action without a full waiting list adjudication.

Id., Ch. 6, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6> (last visited July 18, 2025).

But the deferred action offered by the process does not begin with a bona fide determination—it is contemporaneous with the period of employment authorization. As the USCIS Policy Manual explains, “If USCIS grants the alien a Bona Fide Determination Employment Authorization Document (BFD EAD) as a result of the BFD process, USCIS then also exercises its discretion to grant that alien deferred action for the period of the BFD EAD.” *Id.*, Ch. 5, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on July 18, 2025). The BFD notice itself explains that the applicant’s “period of deferred action will begin on the date [the] employment authorization begins.” Pet. Ex. A at 2.

II. **Petitioner Domingo Mendoza Mendez’s Immigration Proceedings**

Petitioner Domingo Mendoza Mendez is a citizen and national of Mexico. Declaration of Deportation Officer Angela Minner (“Minner Decl.”) ¶ 4. He was first encountered by U.S. Border Patrol on January 18, 2000, and was granted Voluntary Return to Mexico. *Id.* He later re-entered the United States without inspection. *Id.*

A. Petitioner's Final Order of Removal

Petitioner was convicted in the Anoka County District Court in April 2005 for driving while impaired and sentenced to 30 days. *Id.* ¶ 5; Pet. ¶ 40. He was also convicted several times for driving without a valid license in 2006, 2009, and 2010. Minner Decl. ¶¶ 6-8.

U.S. Immigration & Customs Enforcement placed Petitioner in removal proceedings on August 24, 2018, issuing him a Notice to Appear, Form I-862. *Id.* ¶ 9, Ex. 1; Pet. ¶ 41, Exs. G, H. An immigration judge granted Cancellation of Removal under Section 240A(b)(1) to Petitioner on November 14, 2018, and the DHS appealed. Minner Decl. ¶ 10; Pet. ¶ 42, Ex. F. Petitioner was also allowed to post bond, which he did, and was released from ICE's custody. Minner Decl. ¶¶ 11-12.

The BIA overturned the immigration judge's decision in June 2021 but granted voluntary departure in lieu of a final order of removal. *Id.* ¶ 14, Ex. 3; Pet. ¶ 42, Ex. E. Petitioner failed to voluntarily depart within 60 days and therefore became subject to a final order of removal. Minner Decl., ¶ 14, Ex. 3 at 6; Pet. Ex. E.

B. Petitioner's Subsequent Attacks on the Final Order of Removal

Petitioner did not appeal the BIA's determination and instead sought to attack his final order of removal in other ways. He first filed an I-918 Application

for U Non-Immigrant Visa status with USCIS on July 15, 2021. Minner Decl. ¶ 15; Pet. ¶ 43. Then, the next month, he filed a motion to reopen his immigration proceedings, citing his newly pending U visa application and requesting the opportunity to apply for a continuance while he awaited a decision on the U visa. Minner Decl. ¶ 16, Ex. 4; Pet. ¶ 44.

The BIA denied the motion to reopen in June 2023. Minner Decl. ¶ 17; Pet. ¶ 44. The board concluded that Petitioner did not act diligently, pointing out that the crime on which his 2021 U visa application was based occurred in 2013 – more than eight years before applying. Minner Decl. Ex. 5 at 3. Petitioner did not appeal that order or seek a stay of removal from the Eighth Circuit. *See* 8 U.S.C. § 1252(b)(3)(B) (permitting the circuit court to stay removal pending a petition for review).

Petitioner next asked ICE, in November 2024, to stay his removal. *Id.* ¶ 18; Pet. ¶ 45. ICE denied the request for a stay of removal soon after. Minner Decl. ¶ 19; Pet. ¶ 45.

In the meantime, Petitioner was again convicted of driving while intoxicated in December 2024, this time in Hennepin County, and sentenced to 90 days. Minner Decl. ¶ 20; Pet. ¶ 40.

Soon after that conviction, USCIS issued a “bona fide determination” notice on Petitioner’s pending U visa application. Minner Decl. ¶ 21; Pet. ¶ 47, Exs. A, B.

According to the BFD notice, “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. . . . Your period of deferred action will begin on the date your employment authorization begins.” Pet. Ex. A at 2. Petitioner submitted his Form I-765, Application for Work Authorization, in June 2025. Pet. Ex. B. That application remains pending.

ICE arrested Petitioner on July 10, 2025, and he has been detained in ICE’s custody since, for the purpose of executing the final order of removal. Minner Decl. ¶ 23; Pet. ¶ 49.

ARGUMENT

I. The Court lacks jurisdiction to hear Petitioner’s claim arising from the government’s execution of his removal order under § 1252(g).

Judicial review of immigration matters is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (“[J]udicial deference to the Executive Branch is especially appropriate in the immigration context”); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over [noncitizens] is of a political character and therefore subject only to narrow judicial review.”). That is especially true of claims arising from noncitizens’ arrest, detention, and removal because Congress removed this courts’ power to adjudicate cases “arising from” those decisions and orders:

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

8 U.S.C. § 1252(g). The “sole and exclusive means for judicial review” of such decisions is by “a petition for review filed with an appropriate court of appeals.” *Id.* § 1252(a)(5).

The Supreme Court has explained that § 1252(g) divests the district courts of jurisdiction over “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence removal proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Eighth Circuit expounded on the scope of § 1252(g) in *Silva v. United States*: “A claim that is ‘connected directly and immediately’ to a decision to execute a removal order arises from that decision.” 866 F.3d 938, 940 (8th Cir. 2017) (quoting *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 943 (5th Cir. 1999)). “So long as the claim arises from a decision to execute a removal order, there is no jurisdiction.” *Id.*

Petitioner’s claim arises from the decision to execute his removal order, falling squarely within the plain text of § 1252(g)’s jurisdictional bar. His

contention that he is entitled to “deferred action” on his final order of removal plainly seeks a court order stopping the execution of his removal order. *See* Pet. ¶ 54 (alleging Petitioner “is at risk of being wrongfully removed from the United States”); Prop. Order ¶ 1, ECF No. 3 (proposing temporary restraining order preventing Respondents from “removing Petitioner from the United States during the pendency of these proceedings[.]”). The Court cannot, consistent with § 1252(g), order ICE to defer action on a valid order of removal.

Courts all over the country—in this district and elsewhere—have applied § 1252(g), refusing to restrain removals of U visa petitioners while their applications are pending. *E.g. Lara-Saavedra v. Sessions*, No. 18-cv-2989 (MJD/LIB), 2019 WL 572656 at *2 (D. Minn. Feb. 12, 2019) (applying § 1252(g) and denying petitioner’s motion for a TRO restraining his removal while his U visa application was pending); *Rodriguez-Sosa v. Whitaker*, No. 18-cv-3261 (PAM/KMM), 2018 WL 6727068, at *2 (D. Minn. Dec. 21, 2018) (applying § 1252(g) and denying motion for TRO against removal of petitioner with “deferred action” while on U visa waitlist); *Velasco Gomez v. Scott*, No. C25-0522, 2025 WL 1726465, at *4-5 (W.D. Wash. June 20, 2025) (applying § 1252(g) and denying motion for PI staying removal of petitioner with “deferred action” after receiving a bona fide decision employment authorization document); *Madrid v. Miller*, No. 25-cv-3114, 2025 WL 1531712, at *2 (D. Neb. May 29, 2025) (applying § 1252 and denying interim relief from removal

to U visa applicant with a bona fide determination). This case presents nearly identical circumstances to those the court confronted in *Velasco Gomez*. 2025 WL 1726465, at *5-*6. Like Petitioner, Mr. Velasco Gomez sought habeas relief and a preliminary injunction “challeng[ing] ICE’s decision to detain him and execute his final order of removal despite USCIS’s grant of deferred action pending the adjudication of his U-visa application.” *Id.* at *5. The petitioner asserted that § 1252(g) did not bar relief, but the court disagreed, concluding the “claims arise directly from the agency’s allegedly unconstitutional decision and action to detain him and execute his valid removal order despite his deferred action status.” *Id.* at *5. The Court should reach the same conclusion and dismiss the case for lack of jurisdiction.

Petitioner resists this conclusion. First, he maintains § 1252(g) must be read narrowly. Pet. ¶ 10 (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). But the Court need not determine § 1252(g)’s scope on a clean slate: the Eighth Circuit in *Silva* resolved questions about § 1252(g)’s scope and rejected arguments like Petitioner’s that would § 1252 to discretionary decisions. Section 1252(g) “makes no distinction between discretionary and nondiscretionary decisions. So long as the claim arises from a decision to execute a removal order, there is no jurisdiction.” *Silva*, 866 F.3d at 940. The *Silva* court affirmed a district court’s conclusion that it had no jurisdiction to restrain removal, even though “the execution of th[e] removal order

happened to be in violation of a stay[.]” *Id.* Petitioner makes a similar claim here, asserting his BFD notice amounts to a stay of removal, and he seeks a judgment preventing his removal. The Court is bound by *Silva* to conclude it has no jurisdiction under § 1252(g). *See id.*

And second, Petitioner attempts to characterize his claim as something other than a challenge to the execution of his removal order, asserting instead he is challenging “the unlawful conduct of DHS in unlawfully arresting, and detaining Petitioner contrary to his grant of deferred action under the U visa Program[.]” Pet. ¶ 11. That again runs afoul of the Eighth Circuit’s ruling in *Silva*. Section 1252(g) bars claims “arising from the decision or action” to “execute removal orders.” 8 U.S.C. § 1252(g). That jurisdictional prohibition, the Eighth Circuit explained, applies to any decision or action that is “connected directly and immediately” to the execution of a removal order. *Silva*, 866 F.3d at 940. That includes Petitioner’s arrest and detention for the purpose of executing the removal order.

Arresting and detaining a noncitizen for the purpose of executing a removal order is “connected directly and immediately” to executing the removal. The Supreme Court has recognized repeatedly that arresting and detaining an individual with a final order of removal is a necessary part of executing a removal order. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part

of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”). ICE arrested and detained Petitioner “for the purpose of executing the final order of removal,” Minner Decl. ¶ 23, and the arrest and detention are a necessary part of the removal. As such, Petitioner’s challenge to the arrest and detention “arise from” the decision to execute his removal order, and § 1252(g) applies. *Silva*, 866 F.3d at 940. Any other conclusion would allow clever petitioners to thwart their removals by challenging every incidental act necessary to bring it about, rendering § 1252(g) meaningless.

Petitioner cannot avoid the jurisdictional bar in § 1252(g). The Court should therefore dismiss the petition and dissolve the temporary restraining order.

II. Petitioner’s claim fails on the merits.

Even if the Court had jurisdiction, Petitioner’s theory is unsupported by the facts or the law and must fail on the merits. His petition relies on two false premises: first, that a bona fide determination gives rise to immediate “deferred action”; and second, that deferred action renders him unremovable. Both contentions are belied by the plain text of the regulations and the facts of this case.

A. Petitioner's BFD notice does not confer deferred action, which begins only once his (still pending) work authorization begins.

Petitioner's claim fails on its face because he is not in deferred action status, as he claims. Rather, deferred action status begins only when his employment authorization begins. And Petitioner's employment authorization has not yet begun. He is therefore not in a period of deferred action.

Petitioner's BFD notice spells this out: "Your period of deferred action will begin on the date your employment authorization begins. . . . This notice does not constitute valid U nonimmigrant status or employment authorization, and may not be used to demonstrate legal immigration or employment status." Pet. Ex. A at 2. This is consistent with the USCIS Policy Manual, which explains that deferred action status exists "for the period of the BFD EAD" –the employment authorization document. 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 on July 18, 2025). Petitioner has no employment authorization, and the deferred action status that would come with such authorization has not begun.

A district court in Texas recently addressed this precise issue in an illegal-reentry prosecution. *United States v. Davila-Hernandez*, --- F.Supp.3d ----, 2025 WL 1909582, at *1 (S.D. Tex. July 8, 2025). The defendant moved to dismiss the criminal complaint against him, arguing that USCIS's bona fide determination notice authorized his legal presence in the United States and defeated probable cause. *Id.*

The court rejected that assertion, concluding “the issuance of a BFD, alone, does not confer some sort of lawful status to be or remain in the United States. The very BFD correspondence relied on by Defendant disclaims the conferral of status and only invites him to request formal authorization.” *Id.* at *3. Petitioner’s claim fails for the same reason.

Petitioner cannot support a core premise his claim – that he has been granted deferred action. The BFD notice he relies on invites him to apply for an employment authorization document, but that document has not been issued, and the period of deferred action that goes along with it has not begun.

B. Deferred action does not stay execution of a final order of removal.

Petitioner’s merits argument next goes awry by conflating “deferred action” with a stay of removal. The regulations and the case law show the two benefits are different. Even if Petitioner had deferred action status, that status would not supersede his final order of removal.

“Deferred action” is not a stay of removal. It is “a form of prosecutorial discretion whereby the Department of Homeland Security declines to pursue the removal of a person unlawfully present in the United States.” *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 967 (9th Cir. 2017) (amended op.); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). The regulations similarly define deferred action as “an act of administrative convenience to the government

that gives some cases lower priority” for removal. 8 C.F.R. § 274a.12(c)(14); *see also* 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (same).

The INA’s text shows that Congress considered “deferred action” a benefit distinct from a stay of removal. As the Ninth Circuit explained in *Arizona Dream Act Coalition*, “For example, . . . 8 U.S.C. § 1227(d)(2) allows a noncitizen who has been denied an administrative stay of removal to apply for deferred action.” 855 F.3d at 967. The regulations make clear that “a petition for U-1 nonimmigrant status” – bona fide or not – “has no effect on ICE’s authority to execute a final order, although the [noncitizen] may file a request for a stay of removal[.]” 8 C.F.R. § 214.14(c)(1)(ii). And while deferred action does not equate to lawful status, an individual with deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3). “However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.” *Id.*

At least one court recently agreed that a grant of BFD deferred action is not synonymous with a stay of removal. *Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025). In that undue-delay case, the district court denied the plaintiff’s motion for a TRO restraining his removal because the plaintiff was unlikely to succeed in showing that the allegedly delayed bona fide

determination would prevent his removal. *Id.* (“Plaintiff obtaining a BFD in his favor would not prevent his removal.”). This case requires the same result.

Petitioner’s BFD notice, even if it had equated to deferred action status, would not prevent his removal. His claim challenging his arrest, detention, and removal on that basis must therefore be dismissed.

CONCLUSION

The Court should deny the petition for writ of habeas corpus, dissolve the TRO, and dismiss the action with prejudice.

Dated: July 18, 2025

Respectfully submitted,

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