

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

DOMINGO MENDOZA MENDEZ,  
*Petitioner,*

v.

RYAN SHEA, in his official capacity as the Freeborn County Sheriff; PETER BERG, in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security,

*Respondents.*

Civil No. 25-cv-02830-LMP-ECW

**PETITIONER'S REPLY TO  
RESPONDENTS' ANSWER TO  
WRIT OF HABEAS CORPUS**

**ARGUMENT**

**I. § 1252(g) Does Not Bar the Court's Jurisdiction to Hear Petitioner's Claim**

The Court has jurisdiction to grant a writ of habeas corpus. 28 U.S.C. § 2241; 28 U.S.C. § 1651. Petitioner alleges that he is being detained contrary to law, which is the essence of habeas corpus:

We do consider it uncontroversial, however, that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to "the erroneous application or interpretation" of relevant law.

*Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)). As the Court is well aware, the writ of habeas corpus protects against

arbitrary detention and is a cornerstone of American freedom. *See generally*, *Boumediene*, 553 U.S. at 739-746.

In his habeas petition, Petitioner alleges that he is being held pursuant to an erroneous interpretation of “deferred action.” He raises no issue with the validity of the removal order itself. Petition, at 4 ¶ 11; 16-17 ¶ ¶ 1-8. Instead, he argues that the government is misinterpreting the meaning of “deferred action” and that, under a correct interpretation, he can be neither detained nor removed unless his deferred action is terminated or revoked. *Id.* at 14-15. Tellingly, Petitioner sought relief in this Court not when he exhausted his appeal rights or otherwise when his removal order became final but after he was taken into custody despite the recently issued to him, valid BFD notice by the USCIS.

Respondents argue that “Petitioner’s claim arises from the decision to execute his removal order, falling squarely within the plain text of § 1252(g)’s jurisdictional bar.” Response, at 11. If that were true, 8 U.S.C. § 1252(g) would strip the Court not only of jurisdiction to review a removal order but also to review an illegal detention. In order to strip jurisdiction to this extent, without violating the Suspension Clause, U.S. Const., art I., sec. 9, the petitioner must have an “adequate and effective substitute for habeas corpus.” *Boumediene*, 553 U.S. at 733. Petitioner does not. Even if he could challenge the removal order in this Court, that challenge would not address the meaning of “deferred action.” It would address only the basis of the removal order. If he had challenged the removal order when it was first issued, in 2023, neither he nor the reviewing court could have known that a grant of deferred action would arrive in the

future, through a separate U visa process. And if he could somehow challenge the removal order now, the U visa process and the grant of deferred action would be extraneous to that challenge. Petitioner's only means to challenge the basis of the detention and the definition of "deferred action" is through this petition. If 8 U.S.C. § 1252(g) were read so broadly as to deny the Court jurisdiction to decide whether Petitioner is detained pursuant to an erroneous legal interpretation of "deferred action," it would violate the Suspension Clause.

But 8 U.S.C. § 1252(g) does not reach so broadly. The Supreme Court has rejected an argument that the statute applies to "all claims arising from deportation proceedings" and instead limited it, by its text, to the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (*AADC*). It justified this limitation precisely to allow for deferred action:

There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicating cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process. At each stage the Executive has discretion to abandon the endeavor, and at the time IIRIRA was enacted the INS had been engaging in a regular practice (which had come to be known as "deferred action") of exercising that discretion for humanitarian reasons or simply for its own convenience. As one treatise describes it:

"To ameliorate a harsh and unjust outcome, the INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action. A case may be selected for deferred action treatment at any stage of the administrative process. Approval of deferred action status means that, for the humanitarian reasons

described below, no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and Procedure* § 72.03[2][h] (1998).

*AADC*, 525 U.S. at 483-484.

Respondents argue that "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" and cite various cases in support. However, these cases are inapposite to Petitioner's case.

Respondents first cite *Lara-Saavedra v. Sessions*, No. 18-cv-2989 (MJD/LIB), 2019 WL 572656 at \*2 (D. Minn. Feb. 12, 2019). Response, at 12. In *Lara-Saavedra*, the pro se petitioner sought a temporary restraining order in order to stay the execution of his final order removal so he can 1) file a motion to reopen the final order of removal; and 2) await the adjudication of his U visa. *Id.* at 3. The Court found that it had no jurisdiction and denied his request, because the petitioner did not challenge "the Attorney General's interpretation of a statute or other legal question" but rather the execution of the removal order. *Id.* at 5-6. Here, Petitioner does not seek the Court to stay his removal in order to file a motion to reopen or await the adjudication of his U visa. Petitioner was granted a BFD deferred action and asks this court to interpret the term "deferred action" and decide whether it is a benefit that cannot be stripped from Petitioner without due process. This is a legal, nondiscretionary question, review of which § 1252(g) does not bar.

Respondents also rely on *Rodriguez-Sosa v. Whitaker*, No. 18-cv-3261 (PAM/KMM), 2018 WL 6727068 (D. Minn. Dec. 21, 2018) but this case is also of no

support to Respondents. Although *Rodriguez-Sosa* argued that the removal in her case was improper because she had deferred action pursuant to U visa, she sought a stay of the execution of her removal order in order to file an appeal to the Eighth Circuit. *Id.* at \*1-2. Without analyzing the term “deferred action,” the Court found no jurisdiction over the claims relying on *Balogun v. Sessions*, 330 F. Supp. 3d 1211 (C.D. Cal. August 31, 2018). In *Balogun*, the petitioner had a pending U visa and sought a stay of removal from ICE in order to await a decision on the U visa. *Id.* at \*4-5. He did not have deferred action and did not contest the legality of the detention. *Id.* at \*2. *Balogun* is therefore factually distinct from *Rodriguez-Sosa* and this case. Because *Rodriguez-Sosa* relied on a case that was inapposite, it came to an incorrect conclusion about jurisdiction and Petitioner urges this Court to reject that case’s reasoning and its conclusion.

In the next case cited by Respondents, *Madrid v. Miller*, No. 25-cv-3114, 2025 WL 1531712, \*2 (D. Neb. May 29, 2025), the petitioner did not hold a BFD; although deferred action was initially granted to him by the USCIS in 2014, it was terminated in 2019, years prior to his suit. *Id.* at \*1. Madrid applied for U visa around the same time that his removal order became final in 2023 and when he was taken into custody in 2025 on the outstanding removal order, he filed a suit requesting, among other requests, “that Defendants be ordered to determine the bona fide nature of his U-visa petition, issue him a Bona Fide Determination Notice, place him on the deferred action list, and place him on the U-visa wait list” *Id.* at \*1-2. He also filed a motion for TRO in order to await the outcome of his lawsuit. *Id.* at \*2. The Court denied the TRO finding, in part, no jurisdiction under 1252(g) to stay Petitioner’s removal while his U visa application is

pending. *Id.* at 5. *Madrid* is factually distinct from Petitioner’s case. Petitioner in this case does not seek a stay of his removal order so the USCIS can adjudicate his U visa petition. He asks this Court to determine the legal implications of his BFD deferred action, which is a non-directionary question of statutory and regulatory interpretation.

Respondents further rely on *Velasco Gomez v. Scott*, 2025 WL 1726465 (W.D. Wash. June 20, 2025) and argue it is similar to Petitioner’s case. Response, at 12-13. In *Velasco Gomez*, the petitioner had a removal order and deferred action awaiting a U visa. Finding no cases that addressed deferred action through the bona fide determination process, that court relied on two other cases. *Id.* at \*4. The first was an unpublished decision, *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9<sup>th</sup> Cir. 2019), where a U visa was pending but the petitioner did not have deferred action. *Id.* The court “express[ed] no opinion” about whether a subsequent placement on the waitlist, with its deferred action, would change the outcome. *Velarde-Flores*, at \*607. Because the case did not involve deferred action, *Velarde-Flores* is factually distinct both from *Velasco Gomez* and from this case. *Velasco Gomez* also relied on *Balogun*. As discussed *supra*, *Balogun* had a pending U visa, sought a stay of removal, also lacked deferred action, and did not contest the legality of the detention. *See Balogun, supra*. The petitioner’s case in *Balogun* is therefore distinct from both *Velasco Gomez* and this case. Because *Velasco Gomez* relied on cases that were inapposite, it did not properly analyze the jurisdictional question and should not be followed.

By contrast, several cases support Petitioner’s position. In *Mahdawi v. Trump*, 2:25-cv-389, 2025 U.S. Dist. LEXIS 84287, at 18 (D. Vt. Apr. 30, 2025), the

court ruled that 8 U.S.C. § 1252(g) does not apply in cases, like this one, that “do not seek to challenge the removal proceedings but are directed instead at administrative detention.” In *Mohammed H. v. Trump*, 2025 WL 1334847 (D. Minn. May 5, 2025) and *Aditya W.H. v. Trump*, 25-cv-1976, 2025 WL 1420131 (D. Minn. May 14, 2025), the petitioners were detained and placed in removal proceedings after their student visas were revoked. Both courts rejected the argument that 8 U.S.C. § 1252(g) barred jurisdiction. The court in *Mohammed H.* said that the Government’s “jurisdictional arguments misconstrue Petitioner’s habeas claims. Contrary to the Government’s framing, Petitioner does not seek to end his removal proceedings or vacate the underlying executive determinations. Rather, he simply seeks to end his allegedly unlawful confinement.” *Mohammed H.*, at \*3. The court in *Aditya W.H.* said, “Mr. H has filed a habeas petition seeking his release from custody, and the Court, at a minimum, has jurisdiction over that.” *Aditya W.H.*, at \*7.

In *E.D.Q.C. v. Warden, Stewart Det. Ctr*, 2025 WL 1575609 (M.D. Ga. June 3, 2025), a Venezuelan citizen with a removal order filed a habeas petition before he was transported to a prison in El Salvador. The court found that 8 U.S.C. § 1252(g) did not apply because the petitioner was challenging detention, not removal. Finally, in *Karki v. Jones*, 2025 WL 1638070 (S.D. Ohio June 9, 2025), the petitioners were stateless members of an ethnic group in Bhutan. They argued in habeas both for what the court called “removal-based claims,” seeking notice of the country of removal, and for “detention-based claims,” alleging the detention was prolonged because removal was not reasonably foreseeable. The court found that 8 U.S.C. § 1252(g) denied it

jurisdiction over the removal-based claims but left it with jurisdiction over the detention-based claims.

Still, Respondents insist that Petitioner's is challenging "decision to execute his removal order" and rely heavily on *Silva v. United States*, 866 F.3d 938 (8th Cir. 2017). Response at 13-15. The *Silva* Court found that it had no jurisdiction to consider Silva's suit involving the Federal Tort Claims Act and alleged constitutional violations of his rights in which he sought compensation for his wrongful removal resulting from the government's violation of the automatic stay provision that applies when a case is appealed to BIA appeals. *Silva*, 866 F.3d at 939. The *Silva* Court found that his suit arose from a decision to execute a removal and is therefore barred by 1252(g). *Id.* at 942.

Petitioner's case here is not controlled by *Silva*. *Silva* did not involve a writ of habeas corpus or deferred action or any agency-granted relief conferring a right to remain in the United States. Unlike the case in *Silva*, here Petitioner's case involves a writ of habeas corpus. In this case Petitioner challenges Respondents' construction of the regulations and their legal conclusions regarding the term "deferred action." The challenge here is not to the timing or manner of removal execution, but to ICE's acts outside of its lawful authority. There is no statutory mechanism to challenge the removal of someone with deferred action — so habeas remains the only available remedy allowing the Court to hear it.

Respondents also argue that because Petitioner's "arrest and detention 'arise from' the decision to execute his removal order" it is barred by 1252(g). Response, at

14-15. “Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.” — *Reno, 525 U.S. at 485 n.9*. Here, Petitioner is not challenging prosecutorial discretion but the legal basis for his arrest and detention in light of the affirmatively granted to him by the USCIS of the BFD deferred action. Petition, at 4 ¶ 11; 13 ¶ 52. His detention arises not from the removal order but from the government’s interpretation of “deferred action.” That is a legal question — not a discretionary one. The habeas petition challenges this interpretation, and it is the only means to do so.

In addition, by granting BFD deferred action, the government ceded its discretion to detain or remove Petitioner. But now, the government has effectively revoked its grant. Indeed, the Court has jurisdiction to review the revocation of immigration benefits. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Because Petitioner also challenges the effective revocation of the benefit of BFD deferred action, the Court has jurisdiction.

## **II. Petitioner Is Likely to Succeed on the Merits**

Respondents’ argument that the U visa BFD does not confer deferred action until the grant of an employment authorization is without merit.

### **A. Petitioner’s BFD Notice Confers Deferred Action**

Respondents contend that Petitioner’s bona fide determination (BFD) notice from USCIS does not confer deferred action because his employment authorization document (EAD) remains pending. Response, at 16. In support of its flawed argument, Respondents cherry pick the language from the BFD notice Petitioner submitted in

Exhibit A and state that his “deferred action will begin on the date of your employment authorization begins . . .” *Id.* Tellingly, Respondents do not cite to the statute and regulation - 8 U.S.C. § 1184(p)(6) and 8 C.F.R. § 274.a.12(c)(14) - both of which are also provided in the BFD notice and both of which make clear that the BFD notice confers deferred action. Section 8 of the United States Code 1184(p)(6) in relevant part states that “[t]he Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.” 8 U.S.C. § 1184(p)(6). More revealing, the language found in 8 C.F.R. § 274.a.12(c)(14), lists categories of noncitizens “who must apply for employment authorization” which includes “*an alien who has been granted deferred action . . .*” 8 C.F.R. § 274.a.12(c)(14) (emphasis added). Respondents fail to mention that the BFD notice explicitly instructs, “[i]n order to receive employment authorization, please complete and file the Form I-765 [an application for employment authorization] *under 8 CFR. 274a.12(c)(14) . . .*” which is a category for “an alien who *has been granted deferred action.*” 8 C.F.R. § 274.a.12(c)(14) (emphasis added); Exhibit A; *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. at 10 (describing 8 CFR § 274a.12(c)(14) (2012) as “permitting work authorization for *deferred action recipients* who establish ‘economic necessity’”) (emphasis added).

Respondents do not dispute the clear language of statute and regulation, instead they cite a USCIS policy, which according to Respondents “explains that deferred action status exists ‘for the period of the BFD EAD’ - the employment authorization documents.” Response, at 16. But “interpretations contained in policy statements,

agency manuals, and enforcement guidelines, all . . . lack the force of law.” *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). Respondents conclude that “Petitioner has no employment authorization, and the deferred action status that would come with such authorization has not begun.” But one cannot apply for an employment authorization until one first receives deferred action. The correct procedural order of the benefits, in the context of deferred action under the Deferred Action for Childhood Arrivals (“DACA”) is laid out in *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.* where the Court summarized: “by virtue of receiving deferred action . . . DACA recipients may request work authorization . . .” 591 U.S. 1 at 18.

Finally, Respondents cite a case concerning criminal prosecution under 8 U.S.C. § 1326 for illegal reentry, *United States v. Davila-Hernandez*, 2025 WL 1909582, (S.D. Tex. July 8, 2025). In *Davila-Hernandez*, the issue was whether a noncitizen reentered the United States illegally after a previous deportation. *Id.* at \*1. The defendant argued that the BFD notice allowed him to lawfully remain in the United States. *Id.* The government, pointing to the USCIS Policy Manual, argued that the BFD itself does not provide legal status and if it did, it did not serve as a permission to reenter the United States. *Id.* at \*2-3. Relying on the USCIS policy, the Court agreed that “the issuance of a BFD, alone, does not confer some sort of lawful status to be or remain in the United States . . . and only invites him to request formal authorization . . .” *Id.* at \*3.

*Davila-Hernandez* does not apply to Petitioner’s because it involved a criminal prosecution of an illegal reentry, not a habeas challenge to ICE’s unlawful detention. *Davila-Hernandez* did not consider the applicable law but only the policy as posted on

the USCIS website, which as pointed out *supra*, lacks the force of law. The court's summary of the policy "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" clearly conflicts with 8 C.F.R. § 274.a.12(c)(14) and the BFD notice itself, which directs BFD recipients to apply for a work authorization under the category of "an alien who has been granted deferred action." 8 C.F.R. § 274.a.12(c)(14); *Davila-Hernandez* at \*2; Exhibit A. *Davila Hernandez* did not interpret the term "deferred action" or analyze the statutes and regulations that define it and as such its logic does not apply to Petitioner's case.

**B. Respondents Misinterpret the Legal Effect and Force of Deferred Action**

Respondents argue that deferred action is not the same as stay of removal and suggest that because Petitioner does not have a stay of removal, Respondents are authorized to remove him. Response, at 17-19. Respondents misconstrue Petitioner's argument. *See Mohammed H.*, at \*3, *supra*. Petitioner did not argue that deferred action is a stay of removal. Petition, *generally*. Petitioner argued that Respondents acted unlawfully because they failed to give legal effect and force to the USCIS' affirmative grant of BFD deferred action, which authorized his presence in the United States and deferred his departure. Respondents ignore Petitioner's argument and cite to 8 U.S.C. § 1227(d)(2), which states that a noncitizen with a denied administrative stay of removal can apply for deferred action." Response, at 18. But Petitioner has already received deferred action from the USCIS so 8 U.S.C. § 1227(d)(2) is irrelevant. Respondents

further cite 8 C.F.R. § 214.14(c)(1)(ii), which states in relevant part “the filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal.” 8 C.F.R. § 214.14(c)(1)(ii). But this regulation is also irrelevant to Petitioner’s case because he does not argue that Respondents do not have the authority to remove him because he filed a U visa or because the filing of U visa constitutes a stay of his removal. What Petitioner argues is that the BFD deferred action authorized his presence in the United States and Respondents failed to abide by the legal force and effect it carries. Petition, at 13 ¶ . Petitioner notes that 8 C.F.R. § 214.14(c)(1)(ii) addresses the effect the *filing* of a U visa has on the execution of a final order of removal. The regulation does not address the legal effect the *BFD notice*, issued after the initial U visa filing, may have on a final order of removal. Respondents’ interpretation of the regulation as suggesting that BFD notice has no legal effect on the final order of removal is inaccurate and should not be followed. *See* Response, at 18 (““a petition for U-1 nonimmigrant status’—*bona fide or not*—’has no effect on ICE’s authority to execute a final order . . .”) (emphasis added).

Respondents only briefly focus on the actual issue at hand - the meaning of deferred action - and argue that deferred action would not “supersede his final order of removal.” Response, at 17. But deferred action does not act to supersede the final order of removal; it acts as to defer of removal for a period of time. Courts have defined deferred action as “. . . no formal immigration status; it is simply a commitment not to deport.” *Arizona Dream Act Coalition v. Brewer*, 855 F. 3d 957, 958 (9th Cir. 2017). The Supreme Court recognized in *Dep't of Homeland Sec. v. Regents of the Univ. of Cal*, that a grant of

deferred action creates enforceable legal interests, including protection from removal. 591 U.S. 1 at 27 (“The defining feature of deferred action is the decision to *defer removal* . . .” (emphasis added)).

The Ninth Circuit in *Arizona Dream Act Coalition* further reasoned, “. . .deferred action is a form of relief grounded in the INA . . .” 855 F. 3d at 968-7 (“DACA recipients have a temporary reprieve — deferred action — that is provided for by the INA . . .”).

Still, Respondents insist on its misconstrued argument that “BFD deferred action is not synonymous with a stay of removal” and rely on *Raghav v. Jaddou No. 2:25-cv-00408, 2025 WL 373638 (E.D. Cal. Feb. 3, 2025)*. Response at 18-9. In *Raghav*, the petitioner sought a stay of removal. The petitioner in that case had applied for a U visa but he did not have deferred action. The court found that, under 8 U.S.C. § 1252(g), it lacked jurisdiction to stay removal. It did state that a BFD would not prevent removal, but it did not analyze or even mention deferred action. Petitioner here does not seek a stay of removal and has a BFD deferred action. As such, *Raghav* is factually distinct and this Court should not rely on it.

Respondents agree that deferred action may be terminated at the discretion of the USCIS. Response, at 18. In this case the USCIS granted Petitioner BFD deferred action and has not revoked it or otherwise terminated it. As such Respondents do not have the authority to strip Petitioner from the benefit without due process.

### CONCLUSION

WHEREFORE, the Court should assume jurisdiction over the matter; find that Respondents’ failure to recognize and give full weight to a lawfully issued BFD deferred

action grant by USCIS is in violation of the APA and the INA; further find that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14, *et al.*; grant the petition for writ of habeas corpus; award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and grant any further relief this Court deems just and proper.

Dated: July 24, 2025

Respectfully submitted,

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