

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TOMAS EDUARDO NEVAREZ JURADO,

Petitioner,

v.

25-CV-00943-LJV

JOSEPH FREDEN, in his official capacity as Field Office
Director, Buffalo Field Office, U.S. Immigration and Customs
Enforcement, et al.

Respondents.

**MEMORANDUM OF LAW IN REPLY TO PETITIONER'S OPPOSITION AND IN
SUPPORT OF THE MOTION TO DISMISS**

Jurado argues in his opposition to the motion to dismiss that the government is reneging on promises it made to him “over years” while he was present in the United States with a pending order of removal against him. ECF No. 12 at pg. 9. But the government made no promises to Jurado (as opposed to the promise in *Ceesay* to allow for an orderly departure; no such promise was made here). Thus, this argument fails.

And, while Jurado does have a pending visa application and was granted deferred action, that is not a protection from removal—it is merely an advisement that his removal is a low priority. ECF No. 10-5 at pg. 6. Indeed, as Judge Geraci noted in *K.K. v. Garland*, because petitioner in that case was challenging the *act* of removal, the district court lacks jurisdiction to hear the claim:

Section 1252(g)'s jurisdictional bar applies here. The jurisdictional bar encompasses both the decision of “whether to execute a removal order” and the decision of “when to do it.” *Tazu v. Attorney General United States*, 975 F.3d 292, 297 (3d Cir. 2020). For this reason, Petitioner's claims that the execution of the removal order now—*i.e.*, while his visa applications are pending—violates various constitutional, statutory, and regulatory provisions, is a claim “arising from” the government's “decision” to “execute” a removal order, and

is thus subject to Section 1252(g)'s jurisdictional bar. This Court does not have jurisdiction to consider such claims.

No. 23-CV-6281-FPG, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025), appeal dismissed as moot sub nom. *K.K. v. Bondi*, No. 25-190, 2025 WL 1233307 (2d Cir. Apr. 8, 2025). This Court should hold similarly here.

Even if this Court were to find it has jurisdiction to review the claim, Jurado has been promised nothing besides the fact that he was a lower priority for removal than other aliens. But now his time for removal has come. There is nothing preventing his removal. He merely argues that he should be allowed to remain in the United States while the adjudication of his visa occurs. But there is no statute or regulation that requires this. Jurado can only rely on an amorphous due process argument, without specifying what process he is being deprived of. The mere fact that his removal is occurring faster than the adjudication of his visa process is not sufficient for this Court to step in and prevent the executive branch from carrying out an action it is wholly authorized to execute.

Two of the cases referred to by the Court do not offer Jurado any support. In *Espinoza-Sorto v. Agudelo*, the court noted the limited caselaw regarding deferred action, but then referred to it as an affirmative immigration benefit “that effectively makes it unlawful for a removal order to be executed.” No. 1:25-CV-23201-GAYLES, 2025 WL 3012786, at *5 (S.D. Fla. Oct. 28, 2025). This description of deferred action came from another case, *Sepulveda Ayala v. Bondi*, , which noted the Supreme Court’s description of deferred action as meaning “no action will thereafter be taken” to remove an alien, but also noted the Fifth Circuit’s distinction between a stay of removal and deferred action which is merely “the Government choosing to ‘refrain from (or, in administrative parlance, to defer in) executing an outstanding order of deportation.’” (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*,

525 U.S. 471, 484 (1999) (“AADC”) and *Ayala*, 794 F. Supp. 3d 901, 912 (W.D. Wash. 2025), respectively). Notably, the Supreme Court highlighted that deferred action is an “exercise in administrative discretion, developed without express statutory authorization.” *AADC*, 525 U.S. at 484. The government submits that these two cases, and those cited by them, got it wrong. Deferred action is merely a form of prosecutorial discretion that advises an alien their case is a low priority, not a non-priority, and not protection from removal. Thus, deferred action does not amount to a bar to removal nor does it require any further due process to an alien.

The third case referred to by this Court’s Order aligns with Judge Geraci’s order in *K.K. v. Garland*, in finding that an alien challenging his removal based on a grant of deferred action seeks to impermissibly raise an issue which district courts are barred from hearing under 8 U.S.C. § 1252(g). In *Velasco Gomez v. Scott*, the court noted that—much like Jurado here—the petitioner sought to challenge “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.” No. C25-0522JLR-BAT, 2025 WL 1726465, at *4 (W.D. Wash. June 20, 2025). The court correctly held that it lacked jurisdiction to hear the claim because 8 U.S.C. § 1252(g) expressly states that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any 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 chapter.” (boldface added). This Court should follow the same logic and find that it lacks jurisdiction to hear this action, and dismiss the Petition.

CONCLUSION

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

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