

District Judge Tana Lin
Chief Magistrate Judge Theresa L. Fricke

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

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| FELIPE AGUILAR GAMA, <p style="text-align: center;">v.</p> PAMELA BONDI, <i>et al.</i> , | | Case No. 2:25-cv-01925-TL-TLF FEDERAL RESPONDENTS' ¹ RETURN MEMORANDUM Noting Date: October 20, 2025 |
| Petitioner, Respondents. | | |

I. INTRODUCTION

This Court should deny Petitioner Felipe Aguilar Gama’s Petition for Writ of Habeas Corpus because U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Gama pursuant to 8 U.S.C. § 1231(a) pending his removal from the United States. Dkt. No. 1 (“Pet.”). Gama is subject to a valid reinstated order of removal. In the Petition, Gama incorrectly claims that he “is lawfully present in the United States and cannot be removed.” Pet., ¶ 4. He argues 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

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney’s Office.

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| FEDERAL RESPONDENTS’ RETURN MEMORANDUM [CASE NO. 2:25-cv-01925-TL-TLF] - 1 | UNITED STATES ATTORNEY 1201 PACIFIC AVE., STE. 700 TACOMA, WA 98402 (253) 428-3800 |
|---|---|

1 employment authorization pursuant to the bona fide determination (“BFD”) process for
2 qualifying family members of U-1 nonimmigrant status petitioners. Pet., ¶¶ 6, 22-27.

3 U.S. Citizenship and Immigration Services’ (“USCIS”) grant of deferred action and
4 employment authorization does not preclude ICE from executing an outstanding removal order
5 or detaining him while his removal is pending. Deferred action in this context is not a stay of
6 ICE’s statutory authority to execute his removal order. Deferred action as a result of the U visa
7 BFD process is a USCIS policy that may lower priority of removal for some cases but does not
8 displace or stay ICE’s discretionary authority to execute removal orders. Nor does deferred
9 action provide a noncitizen with legal status to be in the United States.

10 USCIS informed Gama of the meaning of deferred action in his BFD approval notice,
11 “Deferred action is an act of administrative convenience to the government which gives some
12 cases lower priority for removal.” Dkt. No. 1-3, BFD Notice, at ECF 7 of 8. Thus, no ambiguity
13 of the agency’s definition of deferred action exists as it applies to Gama’s grant of deferred
14 action via the U visa bona fide determination process. Furthermore, this Court is barred from
15 reviewing ICE’s decision to execute Gama’s reinstated order of removal. 8 U.S.C. § 1252(g).
16 *Velasco Gomez v. Scott*, No. 25-cv-522-JLR-BAT, 2025 WL 1726465, at *4 (W.D. Wash. June
17 20, 2025).

18 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
19 Federal Respondents do not believe that an evidentiary hearing is necessary.

20 II. BACKGROUND

21 A. Legal Background

22 The INA governs the detention and release of noncitizens during and following their
23 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). This includes
24 an expedited process for noncitizens who reenter the United States without authorization after

1 having already been removed. *See* 8 U.S.C. § 1231(a)(5) (reinstatement of removal orders).

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

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

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

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

Congress has conferred upon the U.S. Department of Homeland Security ("DHS")

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

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

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

1 effective October 17, 2007, giving USCIS sole jurisdiction over U visa petitions. New
2 Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed.
3 Reg. 53,014 (Sept. 17, 2007), *codified at* 8 C.F.R. § 214.14.

4 **C. The U Visa Program**

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

19 **1. 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

1 53033. Anticipating that the 10,000 annual statutory cap would be met within the first few fiscal
2 years of enactment, USCIS created a regulatory waiting list process. *See* 8 C.F.R. §
3 214.14(d)(2). If a U visa petition is determined to be approvable, but for the fact that a visa is
4 not available due to the statutory cap, the petitioner is placed on the waiting list. *See id.*, §
5 214.14(d)(2). This determination of eligibility in all respects but for the statutory cap includes
6 assessing whether it appears that any grounds of inadmissibility should be waived in the exercise
7 of discretion in the final adjudication when space is available under the cap. *See* USCIS Policy
8 Manual, Vol. 3, Part C, Ch. 6, *available at* [https://www.uscis.gov/policy-manual/volume-3-part-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6)
9 [c-chapter-6](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6) (last visited Oct. 9, 2025).²

10 The regulations provide that, when USCIS places a petition on the waiting list, “USCIS
11 will grant deferred action or parole to U-1 petitioners and qualifying family members while the
12 U-1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for
13 such petitioners and qualifying family members.” 8 C.F.R. § 214.14(d)(2). “Deferred action” is
14 an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R.
15 § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
16 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited Oct. 9, 2025).
17 While deferred action does not provide immigrant or nonimmigrant status, an individual granted
18 such deferred action does not accrue unlawful presence in the United States during the deferred
19 action period. 8 C.F.R. § 214.14(d)(3); *see also* *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d
20 1053, 1058-59 (9th Cir. 2014).

21 2. Bona Fide Determination (“BFD”) Process

22 In 2021, USCIS published a Policy Manual update implementing a process which

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24 ² 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 provides employment authorization and deferred action more efficiently to U visa petitioners and
2 their qualifying family members with pending bona fide petitions who merit a favorable exercise
3 of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
4 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on Oct. 9, 2025).
5 The process, referred to as the BFD process, is authorized under 8 U.S.C. § 1184(p)(6), which
6 provides that “[t]he Secretary may grant work authorization to any alien who has a pending, bona
7 fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title.” As part
8 of the BFD process, USCIS has the discretion to issue work authorization and grant deferred
9 action to a noncitizen who establishes that their pending U visa petition is “bona fide” and
10 warrants the agency’s exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol.
11 3, Part C, Ch. 5, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>
12 (last visited on Oct. 9, 2025).

13 By implementing this policy, USCIS sought to address the U visa backlog by
14 preliminarily evaluating petitions and providing interim benefits as efficiently as possible. *See*
15 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)
16 [manual/volume-3-part-c-chapter-5](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5) (last visited on Oct. 9, 2025). The BFD process provides an
17 opportunity for certain petitioners to receive employment authorization documents (“EADs”) and
18 deferred action for four years, renewable, if they receive a favorable BFD finding while their U
19 visa petitions are pending, consistent with the William Wilberforce Trafficking Victims
20 Reauthorization Act of 2008 (“TVPRA 2008”), Pub. L. 110-457 (Dec. 23, 2008), and the
21 Secretary’s authority over the administration and enforcement of the immigration laws. 8 U.S.C.
22 § 1103(a)(1), (a)(3). The TVPRA 2008 amended the conditions on U nonimmigrant status by
23 providing the Secretary with discretion to grant employment authorization to a noncitizen who
24 has a pending, bona fide petition for U nonimmigrant status. *See* USCIS Policy Manual Vol. 3

1 Part C Ch. 1, *available at* <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1> (last
2 visited on Oct. 9, 2025); TVPRA 2008, Pub. L. 110-457, sec. 201(c).

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

17 USCIS renders final decisions on U visa petitions when U visas become available based
18 on the order the principal petition was received, with the oldest filings receiving highest priority.
19 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at*
20 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited on Oct. 9, 2025).

21 **D. Factual Background**

22 Gama is a Mexican national who claims to have reentered the United States without
23 inspection after being removed in 2005. Pet., ¶¶ 1, 12; Lambert Decl., Ex. A, Notice and Order
24 of Expedited Removal; Ex. B, Notice to Alien Ordered Removed/ Departure Verification; Ex. C,

1 Form I-213.

2 Gama asserts that his wife applied for U Nonimmigrant Status in April of 2024. Pet.,
3 ¶ 13. In conjunction with her petition, he also filed for the same nonimmigrant status as his wife.
4 *Id.* On April 20, 2025, USCIS issued a BFD notice informing Gama that pursuant to a favorable
5 exercise of discretion that he had received employment authorization and deferred action. Dkt.
6 No. 1-3, BFD Notice, at ECF 7 of 8. The notice defines “deferred action” as “an act of
7 administrative convenience to the government which gives some cases lower priority for
8 removal.” *Id.* The notice does not state that the BFD stays his removal or prevents ICE from
9 removing him from the United States. *See id.* Gama is still awaiting a final decision on his U
10 visa petition (Form I-918A) as a U visa is not currently available due to the statutory cap. His
11 petition will be adjudicated when a nonimmigrant U visa becomes available consistent with the
12 statutory cap. USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at*
13 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited Oct. 9, 2025).

14 On September 15, 2025, ICE took Gama into custody, and he is currently in ICE
15 detention at the Northwest ICE Processing Center. Lambert Decl., Ex. C; Pet., ¶ 15. ICE
16 reinstated his 2005 removal order that same day. Lambert Decl., Ex. D, Notice of Intent/
17 Decision to Reinstate Prior Order; Lambert Decl., Ex. E, Warning to Alien Ordered Removed or
18 Deported.

19 Due to his imminent removal to Mexico, Gama commenced this habeas litigation on
20 October 3, 2025, by filing the habeas petition and a motion for a temporary restraining order.
21 Dkt. No. 2. In response, this Court issued an order enjoining ICE from removing Petitioner from
22 this jurisdiction and for the parties to meet and confer. Dkt. No. 3. The parties agreed to forgo
23 the temporary restraining order motion in favor of expedited briefing of the habeas petition for a
24 faster resolution of this matter. Dkt. No. 5. Furthermore, Federal Respondents agreed not to

1 remove Gama from the United States or transfer him to another facility until the Court reached a
2 decision on the petition. *Id.*

3 **III. ARGUMENT**

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

5 Gama bases this habeas case on the theory that deferred action he received as part of the
6 U visa BFD process defers his removal. Pet., ¶¶ 23-27. This claim directly arises from the
7 government's decision to execute his valid removal order. *Velasco Gomez*, 2025 WL 1726465,
8 at *4. Congress has spoken clearly, emphatically, and repeatedly, providing that "no court" has
9 jurisdiction over "any cause or claim" arising from the execution of removal orders,
10 "notwithstanding any other provision of law," whether "statutory or nonstatutory," including
11 habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court lacks
12 jurisdiction to review ICE's decision to execute Gama'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 Gama’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.* Gama cites to no statutory or
regulatory provision stating that USCIS’s grant of deferred action through the U visa BFD
process invalidates his order of removal. And while a court in this District found that it had

1 jurisdiction to review similar claims by a petitioner with deferred action, Federal Respondents
2 respectfully disagree with that decision. *Ayala v. Bondi*, No. 2:25-cv-01063-JNW, 2025 WL
3 2209708, at *2 (W.D. Wash. Aug. 4, 2025). Even with deferred action, Gama's I-918A petition
4 remains pending – meaning it has no effect on ICE's statutory authority to execute his removal
5 order. 8 C.F.R. § 214.14(c)(1)(ii). And as described below, deferred action is not a stay of
6 removal here.

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

11 **B. Deferred action granted through the BFD process does not preclude ICE from
12 executing a removal order.**

13 ICE may detain Gama pending the imminent execution of his reinstated order of removal.
14 Gama does not dispute that he has a valid reinstated order of removal. It is also undisputed that
15 USCIS has granted deferred action and employment authorization to him pursuant to the U visa
16 BFD process. The issue here is whether the grant of deferred action pursuant to an agency policy
17 precludes ICE from utilizing its statutory authority to execute his reinstated removal order. It
18 does not.

19 Because Gama's grant of deferred action is a creation of agency policy, this Court should
20 look to the agency for the policy's meaning. Most notably, Gama's notice of his favorable bona
21 fide determination does not state that his removal is stayed through deferred action; instead, it
22 describes deferred action as an act of administrative convenience giving some cases lower
23 priority for removal. Dkt. No. 1-3, BFD Notice, at ECF 7 of 8. This is consistent with the
24 definition of “deferred action” in the chapter in USCIS's Policy Manual concerning U visa bona

1 fide determinations. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, § 7, *available at*
2 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on Oct. 9, 2025).

3 A grant of U visa bona fide determination deferred action is not synonymous with a stay
4 of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb.
5 3, 2025) (“Plaintiff obtaining a BFD in his favor would not prevent his removal”); *see also* “New
6 Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status, 72 Fed.
7 Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining “deferred action” and “a stay of deportation or
8 removal” separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred
9 action and a stay of removal as distinct benefits). In contrast, an individual granted such deferred
10 action does not accrue unlawful presence in the United States during the deferred action period.
11 8 C.F.R. § 214.14(d)(3).

12 Gama has not presented any evidence that USCIS’s policy specific to U visa bona fide
13 determinations supports his interpretation that deferred action automatically stays his removal.
14 He cannot. There is no language in the USCIS Policy Manual that states that a grant of deferred
15 action through the U visa bona fide determination process stays or prevents removal. Indeed,
16 USCIS’s Policy Manual indicates otherwise, noting that the granting of a bona fide
17 determination employment authorization establishes a prima facie case for approval such that
18 ICE can consider granting a discretionary stay of removal per 8 U.S.C. § 1227(d)(1). USCIS
19 Policy Manual, Vol. 3, Part C, Ch. 5, *available at* [https://www.uscis.gov/policy-manual/volume-](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5)
20 [3-part-c-chapter-5](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5) (last visited on Oct. 9, 2025). If a grant of deferred action through the bona
21 fide determination process constituted an automatic stay of removal, this guidance would be
22 superfluous.

23 Gama relies on sources that fail to support his position that deferred action as part of the
24 U visa bona fide determination policy is the Department of Homeland Security’s agreement to

1 stay removal. For instance, he relies on a case decided decades before the U visa bona fide
2 determination policy was instituted that relates to deferred action through a different policy.
3 Pet., ¶ 23 (citing *AADC*).³ Gama also relies on a non-relevant volume and section of the
4 USCIS Policy Manual concerning “Emergencies or Unforeseen Circumstances.” *Id.* (citing 1
5 USCIS-PM H.2(A)(4)). This is in a separate volume of the policy manual from the volume and
6 chapter relating to U visas. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at*
7 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on Oct. 9, 2025).
8 The relevant chapter of the USCIS Policy Manual concerning U visa BFDs does not refer to or
9 adopt the same definition of deferred action. In the same fashion, he cites to “DACA Frequently
10 Asked Questions,” which is not pertinent to U visas. *Id.*

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 or the USCIS Policy Manual if deferred action pursuant to the U visa process stayed
20 removal. *See* generally 8 C.F.R. § 214.14.

21 To further dispute ICE’s lawful ability to execute his removal order, Gama asserts that he
22 is “lawfully present” in the United States. Pet., ¶¶ 4, 23. However, his assertion conflates the

23 ³ For this same reason, this Court should not rely on cases where deferred action is being discussed or described in
24 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).

1 distinction between “unlawful status” and “unlawful presence.” Gama is not currently accruing
2 unlawful presence because of his grant of deferred action. *See* 8 C.F.R. § 214.14(d)(3). While
3 the concepts of being in unlawful immigration status and the accrual of unlawful presence
4 (“period of stay not authorized”) are related, they are not the same. *See* 8 U.S.C.
5 §§ 1182(a)(9)(B) & (a)(9)(C)(i)(I). For instance, a person must be present in an unlawful status
6 to accrue unlawful presence. In contrast, a person may not have lawful status to remain in the
7 United States but not accrue unlawful presence while his U visa petition is pending. 8 C.F.R.
8 § 214.14(d)(3). But deferred action does not provide a noncitizen with legal status to be in the
9 United States. This distinction is supported by Gama’s citations to regulations treating people
10 with deferred action related to other statutes as having lawful status for specific purposes. *Pet.*,
11 ¶ 23.

12 USCIS’s grant of deferred action through the U visa BFD process has no bearing on the
13 validity of Gama’s reinstated removal order. There is no statutory, regulatory, or policy
14 language that supports Gama’s mistaken position that deferred action obtained through the U
15 visa BFD process stays or prohibits his removal. “Deferred action is an act of administrative
16 convenience to the government which gives some cases lower priority for removal.” Dkt. No. 1-
17 3, BFD Notice, at ECF 7 of 8. It is within ICE’s discretion to enforce a removal order despite
18 the grant of deferred action. The Supreme Court has made it clear that “an agency’s decision not
19 to prosecute or enforce, whether through civil or criminal process, is a decision generally
20 committed to an agency’s absolute discretion.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

21 USCIS has defined deferred action in the agency’s policy concerning the U visa bona fide
22 determination process in its Policy Manual and in the notice provided to Gama. Deferred action
23 does not stay the execution of a valid order of removal. As a result, Gama cannot demonstrate
24 that he is being detained in violation of the Constitution or laws of the United States.

1 **CONCLUSION**

2 For the foregoing reasons, this Court should deny Gama's habeas petition.

3
4 DATED this 9th day of October, 2025.

5 Respectfully submitted,

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14 I certify that this memorandum contains 4,760
15 words, in compliance with the Local Civil Rules.