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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAIRO JOSE ESPINOZA CRUZ, Petitioner, v. **BRIAN ENGLISH**, Warden, Miami Correctional Facility; **KAMSING LEE,** of Indianapolis Field Office U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and **PAMELA JO BONDI,** Attorney General of the United States, in their official capacities, Respondents.	Case No. 3:25-cv-919 -CCB-SJF

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE ON PETITION FOR *WRIT OF HABEAS CORPUS*

Petitioner Jairo Jose Espinoza Cruz, by counsel, respectfully replies to the Respondents' Response to Petition for *Writ of Habeas Corpus*. DE #19. The Respondents argue that the court should deny the motion based on lack of subject matter jurisdiction under 8 U.S.C §1252(g), and

if jurisdiction is established deny the petition as Espinoza Cruz is lawfully detained under 8 U.S.C. § 1231(a)(6). The Petition argues that this Court has subject matter jurisdiction to hear Petitioner's statutory and constitutional claims and his continued detention is unlawful.

INTRODUCTION

Petitioner has filed a habeas petition under 28 U.S.C. §2241 challenging the legality of his detention. Petitioner is seeking his immediate release as his detention violates his due process. Petitioner has been granted a *bona fide* U immigrant visa determination and deferred action by USCIS on or around May 12, 2025, after issuance of his removal order. USCIS deemed Petitioner is a low priority for removal and no circumstances have changed to warrant reversal of this decision.

The Court has jurisdiction, as Petitioner is not requesting the Court to annul his removal order, but determine which agency has the correct interpretation between USCIS and ICE, having the incidental effect of preventing his removal. See *Fornalik v Perryman*, 223 F.3d 523, 529 (7th Cir. 2000)(holding § 1252(g) was not triggered just because petitioner filed a habeas petition). Petitioner's detention is unreasonable as he was granted by USCIS deferred action. Petitioner asks the Court to grant Petitioner's habeas petition. Petitioner asserts that this Court does have jurisdiction over the continued and indefinite detention of Petitioner pursuant to 28 U.S.C. §2241 and the Due Process Clause of the Fifth Amendment; and that this Court has jurisdiction to assess the appropriateness of execution of a removal order where a Petitioner has been granted deferred action pursuant to an application for U Nonimmigrant Status under 8 U.S.C. §1101(a)(15)(U) and 8 C.F.R. §214.14(d)(2) based on these statutory concerns, within the Administrative Procedure Act (APA), and fundamental due process concerns of the Fifth Amendment. Under *Loper Bright*

Enterprises v. Raimondo, 603 U.S. ___ (2024), the court not the agency, has the responsibility to determine the correct meaning of a statute and has authority to review constitutional questions.

LEGAL STANDARD

A petition for a *writ of habeas* challenges the legality or constitutionality of the government's detention of the petitioner. 28 U.S.C. §2241. The burden is on petitioner to show that detention is unlawful. *Walker v. Johnson*, 312 U.S. 275, 268 (1941).

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Petitioner, Mr. Espinoza Cruz, is a 32-year-old citizen of Nicaragua. He entered the United States at the age of 17 and has remained in the country continuously since that time. Mr. Espinoza Cruz was previously issued voluntary departure on or about September 28, 2017. Mr. Espinoza Cruz apparently appealed the denial of a motion to continue, thereby converting the voluntary departure order to a removal order. DE # 14-1. A motion to reopen or reconsider this denied Appeal was also denied by the Board of Immigration Appeals (BIA). *Id.* A motion to reopen is also currently pending before the BIA. See DE# 7-1.

Following his removal order, on or around December 27, 2022, he applied for U nonimmigrant status ("U visa") as a principal, not as a derivative as Respondent's claim (DE#19 p 11), a form of immigration relief available to victims of certain qualifying crimes who have assisted or are willing to assist law enforcement under the Immigration and Nationality Act ("INA"). DE #7. The U.S. Citizenship and Immigration Services ("USCIS") has determined that Mr. Espinoza's U visa petition is prima facie approvable and issued a *bona fide* determination under 8 C.F.R. §214.14(d)(2) and work authorization under 8 U.S.C. §1184(p)(6). *Id.* A final adjudication cannot yet be made because no U visas are currently available for issuance due to annual statutory caps. *Id.* Mr. Espinoza Cruz is also eligible for a

waiver of inadmissibility in connection with his U visa application (form I-192 Advance Permission to Enter as Nonimmigrant is currently pending to waive inadmissibility, including Petitioner's removal order) pursuant to 8 C.F.R. §212.17. DE #7-3.

Mr. Espinoza has been detained for over four months. His detention arose from an argument with his domestic partner in late July 2025 that led to his arrest, however no criminal charges were ever filed by the State of Indiana which the government concedes DE # 14, 19 p. 8. The victim, his partner, also asserts no crime was committed and that she depends on Petitioner's support. DE #7-6 He currently has no pending criminal cases, and his record reflects that he poses no danger to the community and is not a flight risk. Petitioner also filed an I-246 Application for stay of removal on August 22, 2025, and to date, said Application for Stay of Removal has yet to be adjudicated by ICE. DE # 17-2.

Mr. Espinoza has deep family and community ties in the United States. He has three U.S. citizen children, including a newborn child born during his detention. His two-year-old child has been diagnosed with Ectodermal Dysplasia, a rare genetic disorder requiring speech and occupational therapy and constant parental care, see DE # 7-4. His partner, who recently gave birth, is struggling to care for both the newborn and their special-needs child without his support. DE #7-6. Prior to his arrest, Mr. Espinoza worked diligently, paid taxes, and served as the primary provider for his family, while his partner remained home to care for their children. His continued detention deprives his partner and U.S. citizen children of practical support, emotional support and financial stability.

Given these circumstances, the continued detention of Mr. Espinoza is arbitrary, capricious, and legally unjustifiable given that he has Deferred Action status. His release would not pose any risk to public safety and would serve the humanitarian purpose underlying the U

visa program. The United States Citizenship and Immigration Services has indicated when issuing Deferred Action and Bona Fide Determination on May 12, 2025, ***he is <u>not</u> a priority for removal.*** DE # 7-2. There have been no new facts or circumstances since USCIS issued Deferred Action to warrant removal.

ARGUMENT

A. The Court has jurisdiction.

While the Government points to 8 U.S.C. §1252(g) to assert that this Court has no subject matter jurisdiction due to the Petitioner's outstanding order of removal, the Government fails to overcome the statutory conflict between execution of a removal order by one arm of the Department of Homeland Security (DHS), namely ICE, just two months after another agency of DHS, namely USCIS, affirmatively issued Deferred Action protections under 8 C.F.R. §214.14(d)(2). Petitioner's detention and imminent removal contravene the protections that Petitioner was granted by USCIS through Deferred Action, representing a statutory conflict over which this Court does, in fact, have jurisdiction, which remains unrevoked. To support Respondent's assertion that this Court is deprived of jurisdiction due to 8 U.S.C. §1252(g), it points to *Reno v. Am.-Arab Anti-Discrimination Comm.,* 525 U.S. 471 (1999). While the Supreme Court held in that particular case that 1252(g) barred jurisdiction, it clarified that this section grants the Attorney General sole authority with respect to three discrete actions: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (*emphasis added, Id.* at 478). This suit is not predicated on DHS' enumerated authorities under 1252(g), rather it challenges the government's failure to acknowledge the discretionary relief afforded to Petitioner by way of Deferred Action. The heart of this suit is that ICE has refused to follow procedure in reviewing Mr. Espinoza Cruz's lawfully conferred Deferred Action status, not its inherent

authority to execute removal orders. Had Mr. Espinoza Cruz not been granted BFD and Deferred Action after the removal order, the Respondents arguments that his Court lacks authority to stay removal due to section 1252(g) may be persuasive, however the Respondents have not squared their arguments with the affirmative relief afforded by Deferred Action and its arbitrary and capricious taking of his liberty and property interests thereunder if the Respondents disregard these protections without due process.

8 U.S.C. §1252(g) is not triggered solely because a habeas petition has the incidental effect of delaying or preventing removal, rather it applies when the claim directly challenges one of the three specified actions. Petitioner's claim here is similar to that in *Fornalik v Perryman*, 223 F.3d 523, 529 (7th Cir. 2000), where the petitioner's claim arose from the interaction (or lack of) between agencies' grant of deferred action and simultaneous attempt to execute a removal order. Other circuits interpreting § 1252(g) have come to a similar conclusion, see *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) (holding § 1252(g) did not strip jurisdiction over a habeas petition where the petitioner alleged her removal order could not be executed because she held Deferred Action Childhood Arrival status at the time of arrest and detention).

The Respondent points to *E.F.L. v. Prim,* 986 F.3d 959, 964-65 (7th Cir. 2021) to argue that section 1252(g) precludes this Court from exercising any jurisdiction as to DHS's authority to execute a removal order. In that case the petitioner was requesting a stay of her removal pending administrative relief in the form of a petition for protections under the Violence Against Women Act ("VAWA"). While an applicant may receive "prima facie" eligibility for the benefit sought through VAWA, VAWA does not offer Deferred Action protections by statute. By contrast, here Mr. Espinoza Cruz was granted affirmative protection of Deferred Action by statute, which is an exercise of discretion deeming him low priority for removal. This benefit created a reliance interest

that the Petitioner in *E.F.L.* did not have. Mr. Espinoza Cruz's continued detention and execution of the removal order represents an arbitrary and capricious action by the Government in violation of the APA, because he has not been afforded review of his BFD and Deferred Action designation. It is also a deprivation of due process because the protection from removal and employment authorization document (effectively) are being taken from him without notice and opportunity to respond.

Respondent's ask the Court to take guidance *Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607, where U nonimmigrant Petitioners had not yet been granted Deferred Action and the Ninth Circuit held that the district court lacked jurisdiction under § 1252(g) to enjoin removal of foreign nationals with final orders of removal and pending U Visa petitions. Here, by contrast, Petitioner does have a BFD and Deferred Action. Respondents also point to Rivas-*Melendrez v Napolitano*, 689 F.3d 732, 737-38 (7th Cir. 2012), where there was deemed to be no jurisdiction after the execution of a removal order of a habeas petition. Here, however, Mr. Espinoza Cruz has not yet been removed because the removal order has not been executed and he remains in Indiana, United States, this Court retains jurisdiction.

B. Petitioner's detention is unlawful

In the same vein, Respondents argue that Petitioner's continued detention is reasonable because he has not yet been detained for six months. *Zadvydas v. Davis*, 533 U.S. 678 (2001). This case discusses the 90-day detention time limit under 8 U.S.C. §1231(a)(1)(A). Once this required detention period elapses the Supreme Court held that continued detention up to six months is presumptively reasonable to bring about "the alien's removal from the United States". *Id.* at 689.

Section 1231, however, allows for supervised release of the noncitizen. *Id.* at 1231(a)(3)[1] Not only may this Court stay Mr. Espinoza Cruz's removal, but this Court may also order DHS to release him under order of supervision pending the outcome of this Court's determination of his statutory, APA and Fifth Amendment Due Process claims. Mr. Espinoza Cruz's continued detention is unreasonable given his Deferred Action and lack of flight or danger indicators.

Petitioner was detained by ICE on August 2, 2025, and transferred to Miami Correctional Facility in October 2025. A 90-day review should have taken place on October 31, 2025, however no review was conducted until well after 90 days of detention. The review was conducted on November 25, 2025, at the 115-day mark and when Mr. Espinoza Cruz was being transferred away from the Miami Correctional Facility to another detention facility outside of this Court's jurisdiction and well after this habeas petition was filed. The review was conducted given there is pending litigation. Further, Petitioner was not provided communication with his attorney or an interpreter to read the review document to him, nor was his counsel notified, procedural defects that violate due process. The ICE custody determination letter advising petitioner that he would remain in ICE custody was only issued because of litigation and was not provided to counsel until the Government's filing on December 1, 2025. DE #19-2.

Zadvydas held a period of six months from the date of removal order becomes final is presumptively reasonable. *Id.* 533 U.S. 678, 701 (2001). It is unreasonable to continue detention

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[1] **Supervision after 90-day Period.** If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien-
(A) to appear before an immigration officer periodically for identification;
(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

when petitioner holds Deferred Action. Further the timing of the agency action should be weighed heavily by this Court, as USCIS granted Deferred Action after the removal order. As stated by Respondents, USCIS may grant U visa petitioner Deferred Action from removal that gives some cases lower priority from removal.[2] DE #19 p. 5. Given the substantial equities and harm to Petitioner if detention continues, as well as the lack of changed circumstances or formal determination otherwise by USCIS. Petitoner's Deferred Action should prevent ICE from executing the removal order.

C. Statutory and APA Claim

USCIS in granting Deferred Action has deemed Mr. Espinoza Cruz a low propriety for removal has determined that Petitioner is not a danger to the community nor a flight risk, not the petitioner deeming himself a low priority. Further, Petitioner's detention and execution of any removal order is at odds with USCIS' issuance of Deferred Action pursuant to 8 U.S.C. §1101(a)(15)(U) and 8 C.F.R. §214.14(d)(2), wherein USCIS warrants that Petitioner is not a priority for removal. USCIS has not rescinded or otherwise disturbed the finding of Deferred Action on behalf of Petitioner. Petitioner has not been charged with or convicted of any crimes justifying mandatory detention for criminal inadmissibility or deportability pursuant to 8 U.S.C. §1226(c). There have been no changed circumstances to justify change or revocation of deferred action. Petitioner has been afforded no notice of recission of Deferred Action, much less had an opportunity to respond or have a tribunal review the DHS' recission of Deferred Action. The Respondent (USCIS) has had nearly four months to issue notice of recission or review of its determination of Deferred Action, however it has failed to issue any notice disturbing the grant of "favorable exercise of discretion".

[2] https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf (last visited December 8, 2025).

ICE has also failed to adjudicate Petitioner's pending I-246 Application for Stay of Removal. But for the statutory cap on U Visas, Petitioner very well may have been in lawful U Nonimmigrant Status at the time of his detention. USCIS' issuance of a Bona Fide Determination (BFD) and Deferred Action may act as an administrative stay of removal and as it stands, this status remains unrevoked and in effect under governing regulations. DE #7-2. Courts in various Districts across the country have come to the same conclusion – that this an arbitrary and capricious statutory conflict resulting in a violation of the APA that is likely to result in Petitioner's success on the merits. See *Gomez v. Scott* 2025 U.S. Dist. LEXIS 81249, at *3 (W.D. Wash. Apr. 29, 2025); see also *Maldonado v. Noem, et al. (4:25-cv-02541),* DE #8. There is no reason to treat Deferred Action granted in connection with a *bona fide* determination for a U visa any different than that of the deferred action granted in connection with other provisions. See *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201-GAYLES, No. 1:25-cv-23201-GAYLES, 2025 WL 3012786, at *5 (S.D. Fla. Oct. 28, 2025)("Although the caselaw is limited, courts have held that a grant of deferred action is an affirmative immigration benefit that effectively makes it unlawful for a removal order to be executed while the alien has deferred action status.")(quoting marks omitted). As the Seventh Circuit has held, "the last agency action supplants all prior ones," *Fornalik*, 223 F.3d at 530, which means the USCIS's grant of Deferred Action supplants ICE's removal order against Petitioner. Mr. Espinoza Cruz's case is also different from *Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607, where petitioners had not yet received BFD or Deferred Action, as Mr. Espinoz Cruz's removal order predates his Deferred Action and BFD, thus the Deferred Action constitutes the most recent agency action.

Respondent's argue that Espinoza Cruz provides no evidence supporting that his removal will be delayed because USCIS issued the BFD and Deferred Action. However, the notice issues

in May 12, 2025, by USCIS is an affirmative benefit. DE# 9-2. Petitioner was moved multiple times while this action was pending from out of the Court's jurisdiction and returned to Indiana. Petitioner's movement was because the Deferred Action had been disregarded.

D. Constitutional Claim

Finally, Mr. Espinoza Cruz's he is likely to successfully show a violation of the Fifth Amendment Due Process Clause. This Clause protects individuals in removal proceedings. *Delgado v. Holder*, 674 F.3d 759 (7th Cir. 2012) (citing *Reno v. Flores,* 507 U.S. 292, 306 (1993); also holding that 8 U.S.C. §1252(a)(2)(D) allows courts to review constitutional claims or questions of law). Noncitizens facing removal should be afforded notice and a meaningful opportunity to be heard prior to removal. *Id.* In Mr. Espinoza Cruz's case, ICE detained and has taken substantial steps to execute a removal order against Petitioner without offering him notice, a hearing or meaningful opportunity to assess his *lawful* grant of deferred action on his potential removal in contrast to the Petitioner in *Delgado v. Holder*, 674 F.3d 759 (7th Cir. 2012). The Supreme Court has already recognized that similar language governing the DACA program constitutes a "program for conferring affirmative immigration relief." *Dep't of Homeland Sec. v Regents of the Univ. of California*, 591 U.S. 1, 10, 18 (2020)(ICE was instructed to "exercise prosecutorial discretion on an individual basis by deferring action for a period of two years). Likewise, the Court in *Reno v Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) explained that a grant of deferred action means that, for stated humanitarian reasons, the government will not take steps to remove an otherwise deportable noncitizen "even on grounds regarded as aggravated." (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03 [2][h](1998)). This grant of Deferred Action renders Mr. Espinoza Cruz presumptively ineligible for removal. The Respondents in their reply do not square or even attempt

to explain this inconsistency. If Mr. Espinoza Cruz is summarily removed, USCIS's grant of Deferred Action is rendered meaningless. The liberty interests and benefits of Deferred Action would be unlawfully taken without due process.

Deportation would forcibly separate Petitioner from his U.S. citizen family, a harm courts have consistently deemed irreparable. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Removal would also render moot Petitioner's deferred action and work authorization, with no concrete avenue for reinstatement if he prevails in this action and indefinite separation from his family. This Court would be deprived of jurisdiction to analyze the Government's arbitrary and capricious actions under the APA, and the Fifth Amendment due process violations. Petitioner's family would face severe financial and emotional hardship, leaving the mother of his children alone to care and provide for a United States citizen newborn and a United States citizen two-year old with a genetic disorder. Finally, the purpose of the U Nonimmigrant visa is to allow victims of violent crimes protections and the ability to remain in the U.S. while law enforcement agencies pursue justice against their attackers.[3] While the U Nonimmigrant petition will survive despite Petitioner's removal, the government will lose its victim and star witness, which frustrates the congressional intent of this avenue of relief, and jeopardizes ongoing criminal investigations.

The public interest likewise supports habeas relief here. The purpose of U Nonimmigrant status is to ensure appropriate and effective prosecution of violent crimes in our community. If Respondents are allowed to remove Mr. Espinoza Cruz, local law enforcement agencies will lose their victim and star witness, which frustrates the congressional intent of this avenue of relief, and

[3] The Victims of Trafficking and Violence Protection Act "was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes." https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status. Last accessed 11/30/2025.

jeopardizes ongoing criminal investigations. Public interest of U victims remaining in the United States.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Order his release from ICE detention;
2. Stay removal pending deferred action and pending u nonimmigrant petition; and
3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: December 8, 2025

VERIFICATION

I represent Petitioner, Jairo Jose Espinoza Cruz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Reply to Respondents' Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this _8th__ day of __December__, 2025.

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