IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

LUIS ADAMES ZAMBRANO,

Petitioner,

v.

PAMELA BONDI, et al.,

Respondent.

Civil Action No. 1:25-CV-00260-H

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a writ of habeas corpus and seeks his release from immigration detention, claiming he is being held in violation of law. ECF 1. As explained herein, though, Petitioner is not entitled to release and his detention is lawful, and therefore his petition should be denied.

I. Background

Petitioner is a native and citizen of Colombia. He was admitted to the United States on May 6, 2019, as a nonimmigrant visitor for pleasure, with authorization to remain until November 5, 2019. App. p. 6. Petitioner remained in the United States beyond his authorized period without approval from the Department of Homeland Security (DHS). *Id.*

On October 28, 2022, Petitioner was arrested by the Libertyville, Illinois, Police Department and charged with driving on a suspended license. App. p. 3. On January 11, 2023, he entered a plea of nolle prosequi and was convicted of a reduced charge, receiving a sentence of six months' supervision. *Id.*

On October 31, 2025, Petitioner was encountered by a law enforcement officer participating in the 287(g) program on I-40 near Sallisaw, Oklahoma. App. p. 3. The officer

contacted the United States Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE-ERO) sub-office in Tulsa, Oklahoma, to initiate immigration checks. *Id.* These checks revealed that Petitioner does not have any approved petitions permitting lawful residence, admission, or presence in the United States. *Id.* He was subsequently transported to the Tulsa County Jail pending case processing and later transferred to the ICE-ERO office in Tulsa for further processing, and Petitioner is currently detained at the Bluebonnet Detention Facility in Anson, Texas, under the authority of 8 U.S.C. § 1226(a). *Id.*

On October 31, 2025, Petitioner was placed into immigration removal proceedings with the issuance of a Notice to Appear. App. p. 6. He is charged as removable from the United States pursuant to 8 U.S.C. § 1227(a)(1)(B) for remaining in the United States beyond the authorized period. *Id.* A custody redetermination hearing (i.e., a bond hearing) was held on November 13, 2025, at which the immigration judge denied Petitioner's request for release, citing a significant flight risk. App. p. 13. On November 21, 2025, Petitioner filed an appeal of the immigration judge's decision with the Board of Immigration Appeals. On December 8, 2025, the immigration judge orally denied his motion to terminate removal proceedings. App. p. 21. Petitioner's next scheduled appearance before the immigration judge is on January 6, 2026. App. p. 16.

In his petition filed in this Court, Petitioner argues that his wife was the victim of domestic battery between 2014 and 2019 (at the hands of a former partner); that his wife was certified by local law enforcement for a "U visa"; that his wife's U visa application has been filed with U.S. Citizenship and Immigration Services (USCIS) and remains pending; and that pending adjudication of the visa application, a "bona fide determination" was made such that Petitioner's wife and Petitioner received "deferred action" and employment authorization. *See*

ECF No. 1, ¶¶ 5–6. Petitioner's habeas petition argues that because of this "deferred action" grant, he should not be detained or removed from the United States absent lawful revocation of his "deferred action" grant. *See id.* at § VIII ("Relief Sought").

II. Argument and Authorities

A. The U Visa Program

In October 2000, Congress created the U nonimmigrant classification ("the U visa program") as a part of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant status to certain victims of crime who cooperate with law enforcement in the investigation or prosecution of a qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U). An individual is eligible for principal U-1 nonimmigrant status if the individual can show that she: (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 id.*; *see also* 8 U.S.C. § 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If USCIS approves a U visa application[1] and the applicant is in the United States, the applicant will receive lawful U-1 nonimmigrant status and employment authorization for up to four years. *See* 8 U.S.C. § 1184(p)(6). The applicant may also petition for certain qualifying relatives to join their petition. *See* 8 U.S.C. § 1101(a)(15)(U)(ii).

To seek U nonimmigrant status, an individual submits a Form I-918. 8 C.F.R. §§ 214.14(c)(1), (f)(2). An approvable U visa applicant must include a certification from a

[1] This brief will refer to the request for a U visa as an "application" (and the requestor as an "applicant") to avoid confusion with the references to "Petitioner" that refer to the habeas petitioner here.

"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 applicant "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 applicant and/or any derivative beneficiaries must also be admissible to the United States or merit a favorable exercise of discretion to waive all grounds of inadmissibility. *Id.* §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17, 214.1(a)(3)(i). For an inadmissible alien's Form I-918 to be approved, USCIS must approve a Form I-192 to waive all applicable grounds of inadmissibility in USCIS's discretion. 8 C.F.R. §§ 212.17(a), (b). USCIS renders final decisions on U visa applicants when U visas become available based on the order the principal applicant was received, with the oldest filings receiving highest priority. 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7 (accessed Dec. 14, 2025).

The U visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). Anticipating that the 10,000 annual statutory cap would be met within the first few fiscal years of enactment, USCIS created a regulatory waiting list process. *See* 8 C.F.R. § 214.14(d)(2). If a U visa application appears to be otherwise approvable but a visa is not available due to the statutory cap, the applicant is placed on the waiting list. *See id.* § 214.14(d)(2). This determination of eligibility includes assessing whether it appears that any grounds of inadmissibility should be waived in the exercise of discretion in the final adjudication. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 6, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (accessed Dec. 14, 2025).

B. A grant of deferred action for a U visa applicant with a "bona fide determination" is an act of administrative convenience.

The regulations provide that when USCIS places an application on the waiting list,

"USCIS will grant deferred action or parole to U-1 [applicants] and qualifying family members while the U-1 [applicants] are on the waiting list," and that "USCIS, in its discretion, may authorize employment for such [applicants] and qualifying family members." 8 C.F.R. § 214.14(d)(2). The agency refers to the procedure by which certain U-visa applicants already in the United States may receive benefits while they wait for a visa to become available as the "bona fide determination" (or BFD) policy. *Velasco Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465, at *1 (W.D. Wash. June 20, 2025). A bona fide determination in the applicant's favor can result in a grant of employment authorization as well as "deferred action," which is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); *see also* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, § 7 *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025) (noting that "[d]eferred action [is] an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States"); *Velasco Gomez v. Scott*, at *1. Deferred action has also been described as "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." *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 967 (9th Cir. 2017); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("AADC") (acknowledging the Executive's long history of "engaging in a regular practice . . . of exercising [its] discretion [to grant deferred action] for humanitarian reasons or simply for its own convenience").

As such, deferred action does not provide immigrant or nonimmigrant status. 8 C.F.R. § 214.14(d)(3); *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1058–59 (9th Cir. 2014) (stating that deferred action "is a period of stay authorized by the Attorney General."); *United States v. Davila-Hernandez*, 790 F. Supp. 3d 579, 582 (S.D. Tex. 2025) ("agree[ing] with

the Government's reading of the relevant policy documents that the issuance of a BFD, alone, does not confer some sort of lawful status to be or remain in the United States"). As a matter of policy, USCIS only considers deferred action, rather than parole, for U visa applicants who are placed on the waiting list while inside the United States. USCIS Policy Manual, Vol. 3, Part C, Ch. 4, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4 (accessed Dec. 14, 2025). In 2021, USCIS published a Policy Manual update implementing a process which provides employment authorization and deferred action more efficiently to U visa petitioners and their qualifying family members with pending bona fide petitions who merit a favorable exercise of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025). The process (the bona fide determination process), is authorized under 8 U.S.C. § 1184(p)(6), which provides that "[t]he Secretary may grant work authorization to any alien who has a pending, bona fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title." As part of the bona fide determination process, USCIS has the discretion to issue work authorization and grant deferred action to a noncitizen who establishes that their pending U visa application is "bona fide" and warrants the agency's exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025).

By implementing this policy, USCIS sought to address the U visa backlog by preliminarily evaluating applications and providing interim benefits as efficiently as possible. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025). To make a favorable bona fide determination finding, USCIS first determines whether a pending application is bona fide.

meaning "made in good faith; without fraud or deceit", and then in its discretion, determines whether the applicant poses a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025). Alternatively, if for some reason an applicant does not receive a bona fide determination, only then does USCIS initiate a waiting list adjudication for the principal applicant and any qualifying family members. *See* USCIS Policy Manual Vol. 3, Part C, Ch. 6, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (accessed Dec. 14, 2025). If an applicant is placed on the waiting list, she receives employment authorization and deferred action *or* parole for four years, renewable, while her U visa application is pending. 8 C.F.R. § 214.14(d)(2) (emphasis added); *see also* USCIS Policy Manual, Vol. 3, Part C, Ch. 6, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (accessed Dec. 14, 2025)).

C. Petitioner is not entitled to relief.

Petitioner asserts that his detention for removal proceedings despite the grant of deferred action in connection with his wife's U visa application violates his due process rights or the APA, but these arguments are unsupported by law. A grant of deferred action arising from a bona fide determination in connection with a U visa application is not synonymous with a stay of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); *see also* "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of deportation or removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred action and a stay of removal as distinct benefits). Rather, deferred action is an act of

administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025). Additionally, the Supreme Court has made it clear that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). And importantly, there is no protected property interest in discretionary decisions. *See Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th Cir. 2013) ("a benefit is not a protected entitlement if government officials may grant or deny it in their discretion" (citation omitted)); *see also Fatty v. Nielsen*, No. C17-1535-MJP, 2018 WL 3491278, at *2 n.1 (W.D. Wash. July 20, 2018) ("The Court concurs with the Report and Recommendation's finding that Mr. Fatty does not have a protected property interest in his T visa or its adjudication."). Petitioner offers no basis to analyze any alleged due process violation.

Further review of authority related to deferred action defeats Petitioner's contention that it protects him from removal or being detained. In the 2007 rulemaking which created the U visa regulations, stays of removal were distinguished from deferred action as follows:

> A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien 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 alien'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 an alien.

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007). Similarly, the USCIS Policy Manual describes the use of deferred action in the BFD context:

> Once USCIS has determined a petition is bona fide, USCIS determines whether the petitioner poses a risk to national security or public safety by reviewing the results of background checks, and considers other relevant discretionary factors. USCIS then determines whether to exercise its discretion to issue a BFD EAD and grant deferred action to a petitioner.

USCIC Policy Manual, Volume 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (accessed Dec. 14, 2025). The Policy Manual also defines deferred action similarly to the 2007 rule: "an exercise of prosecutorial discretion to make an alien a lower priority for removal from the United States." *Id.* Additionally, "USCIS reserves the right to revoke the BFD EAD and terminate the grant of deferred action at any time if it determines the BFD EAD or favorable exercise of discretion are no longer warranted, or the prior BFD EAD and deferred action were granted in error." *Id.* This framework shows that deferred action does not by itself constitute a stay of removal or preclude a recipient from being placed in removal proceedings, and Petitioner has not otherwise presented authority stating that a grant of BFD-related deferred action precludes ICE from exercising its statutory authority to detain him or remove him.

To the contrary, when a similar request by the recipient of BRD-related deferred action argued that his removal proceedings were required to be dismissed in favor of his application for a U visa, a court in the Southern District of California recently explained that "Petitioner has pointed to no authority indicating that this Court may dismiss his removal proceedings, nor could he in light of [8 U.S.C.] § 1252(g)," and that "to the extent Petitioner requests an order staying his removal proceedings pending adjudication of his U-visa petition, several courts in the Ninth Circuit have held such claims similarly barred." *N.A. v. LaRose*, No. 3:25-CV-03028-RBM-DEB, 2025 WL 3512412, at *3 (S.D. Cal. Dec. 8, 2025). Additionally, with respect to the *N.A.* petitioner's challenge to his detention, the court found only that the detention was subject to 8

U.S.C. § 1226 rather than 8 U.S.C. § 1225, such that the petitioner was entitled to a bond hearing in immigration court, and the court explained that "[t]o the extent that Petitioner requests to be immediately released from custody without a bond hearing," he was not entitled to that relief. *See id.* at *4–*6, *7. The same is true here and, in fact, Petitioner has already received a bond hearing in immigration court, as noted above. Therefore, there is no further relief he might be entitled to in this Court.

To sum up, first, deferred action is a discretionary form of relief granted by DHS. It does not confer lawful status or provide a formal legal right to remain in the United States. It simply means that, for the time being, DHS has decided not to pursue removal of the individual. Second, even with deferred action, DHS retains the authority to initiate or continue removal proceedings. In practice, individuals with a bona fide U visa determination and deferred action are generally considered lower enforcement priorities, but this is not an absolute protection from removal proceedings. Third, while deferred action typically results in release from detention, there are circumstances, such as criminal history, national security concerns, or other enforcement priorities, where an individual may remain in or be placed in immigration detention, even after a bona fide determination and grant of deferred action. A bona fide determination does not grant immunity from removal proceedings or detention, and Petitioner cites to no such authority. Instead, each case is subject to DHS discretion and enforcement priorities.

Moreover, to the extent that Petitioner seeks a stay of removal, this Court lacks subject matter jurisdiction. 8 U.S.C. § 1252(a)(2)(B)(ii). A stay of removal pending a decision on an application for a U visa is provided for in 8 C.F.R. § 214.14(c)(1)(ii), which provides that "[t]he 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).

Accordingly, district courts have rejected arguments to stay or delay removals pending an application for a U Visa or other form of relief. *See e.g.*, *Mohumud v. Joyce*, No. EP-18-CV-00102-DCG, 2018 WL 1547848 (W.D. Tex. Mar. 29, 2018) ("[T]he REAL ID Act stripped this Court of jurisdiction to decide Petitioner's request for a stay of removal and TRO," and "this prohibition also strips the Court of jurisdiction to hear Petitioner's claims under the APA and the Declaratory Judgment Act."); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-0564-RBF, 2018 WL 3097029, at *3 (W.D. Tex. June 22, 2018).

III. Conclusion

Petitioner's habeas petition should be denied.

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CERTIFICATE OF SERVICE

On December 14, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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