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9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 Carlos ALVARADO,

13 Plaintiff,

14 v.

15 Kristi NOEM, Secretary, Department of
16 Homeland Security; Todd LYONS, in his
17 official capacity as Acting Director of U.S.
18 Immigration and Customs Enforcement; Pam
19 BOND, Attorney General of the United
20 States; Nancy GONZALEZ, Acting Director,
21 Bakersfield, ICE Field Office; and Ron
22 MURRAY, Warden, Mesa Verde ICE
23 Processing Center.

24 Respondents.

No. 1:25-CV-01959-DJC-CSK

PETITIONER'S REPLY TO
MOTION FOR PRELIMINARY
INJUNCTION

Hon. Daniel J. Calabretta

1 Petitioner hereby replies to Respondents' Opposition to this Court issuing a
2 preliminary injunction, after the Court has already ordered his release from custody.
3 ECF # 7, 8.

4 Respondents' only argument is that Petitioner can be detained because he can
5 be removed from the United States. That argument flies in the face of caselaw and
6 fails to acknowledge that deferred action status precludes the government from
7 removing Petitioner, even if he is subject to a final order of removal. The removal
8 grounds at 8 U.S.C. § 1231 do not apply when Petitioner cannot be removed from
9 the United States when he has deferred action status. Tolchin Dec. Exh. B.

10 "Approval of deferred action status means that, for...humanitarian
11 reasons[,]...no action will thereafter be taken to proceed against an apparently
12 deportable alien, even on grounds normally regarded as aggravated." *Reno v. Am.-*
13 *Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 484 (1999) (Scalia, J.)
14 (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law &*
15 *Procedure* § 72.03[2][h] (1998)). The Ninth Circuit has consistently held that
16 deferred action means the Government agency "takes no action 'to proceed against
17 an apparently deportable alien' based on a prescribed set of factors generally
18 related to humanitarian grounds." *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119
19 n.3 (9th Cir. 2001) (citation omitted); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp.
20 3d 795, 800 (D. Ariz. 2015) (defining deferred action, generally, as "a form of
21 prosecutorial discretion" by which the Secretary of Homeland Security "decide[s]
22 not to pursue the removal of a person unlawfully in the United States"). Even if
23 Petitioner has a removal order, he cannot be removed with deferred
24 action. *Rodriguez Hernandez*, 775 F. Supp. 3d at 823 ("[F]oreign nationals with
25 deferred action do not have immigrant or nonimmigrant status, but they do have
26 protection from removal for the period authorized by USCIS."); *De Sousa v. Dir. of*
27 *U.S. Citizenship & Immigr. Servs.*, 755 F. Supp. 3d 1266, 1268 (N.D. Cal.

2024) (noting that deferred action...protects [U Visa petitioners] against removal from the United States”).

Because the removal order cannot be executed, the provisions of 8 U.S.C. § 1231 do not apply. “[A]n ever-growing number of district courts across the country have concluded, that an unrevoked grant of deferred action prevents removal.” *Nevarez Jurado v. Noem*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8 (W.D.N.Y. Dec. 19, 2025). *See Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 912 (W.D. Wash. 2025); *Patel v. Hyde*, No. CV 25-12518-RGS, 2025 WL 3169875, at *2 (D. Mass. Nov. 12, 2025); *F.R.P. v. Wamsley*, 2025 WL 3037858, at *5-6 (D. Or. Oct. 30, 2025); *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *3 (S.D. Tex. June 5, 2025).

As such, an order preventing Petitioner from being detained while his deferred action is valid is warranted. *Gama v. Bondi*, No. 2:25-CV-01925-TL, 2025 WL 3559942, at *4 (W.D. Wash. Dec. 12, 2025); *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025). The Court should grant Petitioner’s motion for preliminary injunction.

Dated: January 5, 2026

Respectfully Submitted,

S/Stacy Tolchin

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