

Magistrate Judge Brian A. Tsuchida

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

YENCY ELIZABETH PALENCIA et al.,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02669-BAT

FEDERAL RESPONDENTS'¹ RETURN
AND MOTION TO DISMISS THE
PETITION

Noting Date: January 12, 2026

I. INTRODUCTION

This Court should deny Petitioners Yency Palencia and Liliana Ramirez Moreno's Petition for a Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). Petitioner Palencia was released from immigration detention on December 31, 2025, making her requests moot. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Ramirez Moreno pursuant to 8 U.S.C. § 1231(a) as she is subject to a valid final order of removal. U.S. Citizenship and Immigration Services' ("USCIS") grant of "deferred action" pursuant to the agency's U visa bona fide determination process does not

¹ Respondent Bruce Scott is not a federal employee and not represented by undersigned counsel.

1 prevent ICE from removing Ramirez Moreno. USCIS has issued Notices of Intent to Deny Ramirez
2 Moreno's U Nonimmigrant Status Application and Application for Advance Permission to Enter as
3 Nonimmigrant. This Court is barred from reviewing ICE's decision to execute Ramirez Moreno's final
4 order of removal. 8 U.S.C. § 1252(g).

5 Petitioner Ramirez Moreno equates the application for lawful status, deferred action, and work
6 authorization with lawful status to remain in the United States. ¶¶ 3-4. Deferred action and work
7 authorization are not lawful status, and in this context are not a stay of ICE's statutory authority to
8 execute a removal order. Deferred action related to a U visa application is a USCIS policy that may
9 lower priority of removal for some cases but does not displace or stay ICE's discretionary authority to
10 execute removal orders. Furthermore, at any point USCIS may terminate deferred action if it
11 determines it is no longer warranted.

12 As Ramirez Moreno's detention comports with due process, Federal Respondents respectfully
13 request that the Court deny the Petition and grant this Motion to Dismiss.

14 II. BACKGROUND

15 A. Legal Background

16 The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens
17 during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527
18 (2021). This includes an expedited process for noncitizens who reenter the United States without
19 authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5) (reinstatement of removal
20 orders).

21 If the Attorney General finds that an alien has reentered the United States illegally after
22 having been removed or having departed voluntarily, under an order of removal, the
23 prior order of removal is reinstated from its original date and is not subject to being
reopened or reviewed, the alien is not eligible and may not apply for any relief under

1 this Act, and the alien shall be removed under the prior order at any time after the
2 reentry.

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

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

19 **B. Petitioner Yency Elizabeth Palencia.**

20 Petitioner Yency Elizabeth Palencia is a native and citizen of El Salvador and has previously
21 been ordered removed from the United States. Declaration of Deportation Officer Benjamin ("Decl.
22 Benjamin"), ¶ 12. She was taken into ICE custody on December 18, 2025, but then Palencia was
23

1 released from ICE custody on December 31, 2025, on another Order of Supervised Release. Decl.
2 Benjamin., ¶¶ 13-14.

3 **C. Petitioner Liliana Ramirez Moreno**

4 Petitioner Ramirez Moreno is a citizen of Honduras that was previously removed from the
5 United States on July 27, 2023. Decl. Benjamin., ¶ 4. She was barred from returning to the United
6 States for 10 years. Declaration of Jordan Steveson (“Decl. Steveson”), Exh. A, Warning to Alien
7 Ordered Removed.

8 Despite this bar, on October 23, 2023, Ramirez Moreno entered the United States again and
9 was apprehended by United States Customs and Border Protection. Decl. Benjamin., ¶ 5. Her prior
10 order of removal was reinstated. *Id.* Individuals with prior removal orders that reenter and are
11 inadmissible to the United States are subject to detention and removal at any time after reentry. 8
12 U.S.C. § 1231(a)(5)-(6). On October 27, 2023, Ramirez Moreno was released on an Order of
13 Supervision due to humanitarian and overcrowding issues. Decl. Benjamin., ¶ 6; Decl. Steveson, Exh.
14 B., Order of Supervision. The Order of Supervision expressly states that Ramirez Moreno is placed
15 on the Order of Supervision with a condition that she appear in person when requested “for
16 identification and for deportation or removal.” Decl. Steveson, Exh. B, Order of Supervision.

17 While out of custody, Ramirez Moreno filed a U visa application and was granted deferred
18 action following a bona fide determination by USCIS. Decl. Benjamin., ¶ 7.

19 On December 18, 2025, when Ramirez Moreno reported for such an appearance as required
20 under the Order of Supervision, ICE detained Petitioner for removal to Honduras. Decl. Steveson,
21 Decl. Benjamin., ¶ 8.

22 On January 5, 2026, USCIS issued a Notice of Intent to Deny Ramirez Moreno’s application
23 for U visa. Decl. Benjamin., ¶ 9. She has until February 9, 2026, to respond. *Id.* On that same date,

1 USCIS issued a Notice of Intent to Deny Ramirez Morena's Application for Advance Permission to
2 Enter as Nonimmigrant. Decl. Steveson, Exh. C, Notice of Intent to Deny. She also has until February
3 9, 2026, to respond.

4 **C. The U Visa Process**

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

13 To seek U nonimmigrant status, an individual submits a Form I-918, Petition for U
14 Nonimmigrant Status. 8 C.F.R. §§ 214.14(c)(1), (f)(2). An approvable U visa petition is one that
15 meets all the criteria to be granted U nonimmigrant status. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(U)(i)(I);
16 8 C.F.R. § 214.14(b)(1). However, the U visa program has a statutory cap of 10,000 principal U-1
17 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). This means that the number of noncitizens
18 who may be issued U-1 nonimmigrant visas the United States in any fiscal year shall not exceed
19 10,000. *See id.* Anticipating that the 10,000 annual statutory cap would be met within the first few
20 fiscal years of enactment, USCIS created a regulatory waiting list process. *See* 8 C.F.R. §
21 214.14(d)(2). If a U visa petition is determined to be approvable, but for the fact that a visa is not
22 available due to the statutory cap, the petitioner is placed on the waiting list. *See id.* § 214.14(d)(2).

1 The regulations provide that, when USCIS places a petition on the waiting list, “USCIS will
2 grant deferred action or parole to U-1 petitioners and qualifying family members while the U- 1
3 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such
4 petitioners and qualifying family members.” 8 C.F.R. § 214.14(d)(2). “Deferred action” is an act of
5 administrative convenience that gives some cases lower priority for removal. 8 C.F.R. §
6 274a.12(c)(14).

7 In 2021, USCIS published a Policy Manual update implementing a process which provides
8 employment authorization and deferred action more efficiently to U visa petitioners and their
9 qualifying family members with pending bona fide petitions who merit a favorable exercise of
10 discretion. *See* 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)
11 [manual/volume-3-part-c-chapter-5](https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5) (last visited on January 5, 2025). The process, referred to as the
12 BFD process. Under the BFD process, USCIS has the discretion to grant deferral of removal and issue
13 work authorization to a noncitizen who establishes that their pending U visa petition is “bona fide”
14 and warrants the agency’s exercise of discretion. 8 U.S.C. § 1184(p)(6).

15 USCIS renders final decisions on U visa petitions when U visas become available based
16 on the order the principal petition was received, with the oldest filings receiving highest priority.
17 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at*
18 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited on January 5, 2025).

19 **III. ARGUMENT**

20 **A. Federal Respondents Move to Dismiss Petitioner Palencia because her claims are now**
21 **moot.**

22 On December 31, 2025, Palencia was released from ICE custody on an Order of Supervision.
23 Decl. Benjamin., ¶ 14. For a federal court to have jurisdiction, “an actual controversy must exist at all

1 stages of the litigation.” *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9th Cir.
2 2002). “For a habeas petition to continue to present a live controversy after the petitioner’s release or
3 deportation . . . there must be some remaining ‘collateral consequence’ that may be redressed by
4 success on the petition.” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). Here, Petitioner
5 Palencia’s habeas petition challenges her detention, and does not allege any collateral consequence
6 that can be addressed by this Court. Now that Palencia is no longer in custody due to her release, her
7 habeas petition is moot. *Abdala*, 488 F.3d at 1065 (describing habeas petitions that claim indefinite
8 detention as fully resolved and rendered moot by the petitioner’s release from custody); *Babak v. ICE*
9 *FOD*, 20-cv-212-RSM-BAT, 2020 WL 1976798, at *1 (W.D. Wash. Mar. 31, 2020) *R&R adopted by*
10 2020 WL 1974335, at *1 (W.D. Wash. Apr. 24, 2020) (dismissing habeas petition as moot after ICE
11 released petitioner on supervision).

12 Accordingly, Federal Respondents respectfully move to dismiss the habeas petition. *Foster v. Carson*,
13 346 F.3d 742, 745 (9th Cir. 2003) (court lacks jurisdiction to hear claims that are moot).

14 **B. This Court lacks subject matter jurisdiction to preclude ICE from removing Ramirez**
15 **Moreno.**

16 Section 1252(g) strips district courts of subject matter jurisdiction over claims “arising from
17 the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute
18 removal orders.” 8 U.S.C. § 1252(g). The Supreme Court has narrowly construed Section 1252(g) as
19 arising directly from the three enumerated actions, including the government’s decision or action to
20 execute a removal order. *See Reno v. American-Arab Anti-Discrimination Committee (“AADAC”)*, 525
21 U.S. 471, 473 (1999). The fact that USCIS previously granted deferred action pending the
22 adjudication of her U visa application does not change this analysis because the deferred action granted
23 here does not stay Ramirez Moreno’s removal.

1 The government recognizes the existence of cases, unlike here, where the plaintiff does
2 challenge the revocation of immigration benefits, and that such challenges are not necessarily barred
3 by Section 1252(g). For example, the Supreme Court found that Section 1252(g) did not bar the
4 district court's jurisdiction for an action challenging a decision to revoke interim benefits as arbitrary
5 and capricious pursuant to the Administrative Procedure Act and infringement of the equal protection
6 guaranteed pursuant to due process. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140
7 S. Ct. 1891, 1903, 1907 (2020). The *Regents* plaintiffs' challenge was materially different than the
8 habeas claims here. While the plaintiffs in that case were *potentially* subject to removal because of
9 the rescission of a program, which had provided a deferred action program with associated benefits,
10 this was not the focus of the litigation – the legality of the program's rescission itself was at issue.
11 Here, however, ICE's decision to execute Ramirez Moreno's removal despite her grant of deferred
12 action is the action challenged in the Petition, which directly implicates Section 1252(g).

13 Furthermore, this Court should not rely on cases involving challenges concerning deferred
14 action under the context of Deferred Action for Childhood Arrivals ("DACA"). See e.g., *Enriquez-*
15 *Perdomo v. Newman*, 54 F.4th 855 (2d Cir. 2022). Under DACA, deferred action is defined "as a
16 form of enforcement discretion not to pursue the removal of certain aliens for a limited period in the
17 interest of ordering enforcement priorities" 8 C.F.R. § 236.21(c)(1). This definition does not
18 apply to the U visa bona fide determination policy. 8 C.F.R. § 236.21(a) ("This subpart does not apply
19 to or govern any other request for or grant of deferred action or any other DHS deferred action
20 policy."). Unlike in those cases, Ramirez Moreno's deferred action does not affect the executability
21 of her removal order or the legality of her detention as the deferred action or her bona fide
22 determination does not explicitly stay her removal like in other instances. See also 8 C.F.R. §§
23

1 214.205(c) & (g) (specifically providing that a T nonimmigrant application is
2 bona fide “automatically stays the execution of any final order of removal, deportation, or exclusion”).

3 Recently, another court in this District found that it lacked subject matter jurisdiction to review
4 a similar habeas claim. *Velasco Gomez v. Scott*, 2025 WL 1726465, at *4 (W.D. Wash. June 20, 2025).
5 In *Velasco Gomez*, the petitioner alleged that his detention and pending removal violated the Due
6 Process Clause of the Fifth Amendment to the United States Constitution because USCIS had
7 previously granted him deferred action. *Id.*, at *3. Like here, the petitioner sought a preliminary
8 injunction based on ICE’s decision to “*per se* revoke his grant of deferred action by detaining him and
9 seeking to execute his removal.” *Id.*, at *6. The court found that Section 1252(g) stripped the court
10 of jurisdiction because the habeas claims “arise directly from the agency’s allegedly unconstitutional
11 decision and action to detain him and execute his valid removal order despite his deferred action
12 status.” *Id.*, at *5. As a result, the court denied the preliminary injunction and dismissed the habeas
13 petition. *Id.*, *6.

14 Federal Respondents recognize that a different court in this District did find jurisdiction in a
15 case with deferred action and an intent to execute a removal order. *Ayala v. Bondi*, 2025 WL 2209708,
16 at *2 (W.D. Wash. Aug. 4, 2025). Federal Respondents believe that *Velasco Gomez* is the correct case,
17 and this Court should find that it lacks subject matter jurisdiction.

18 **C. Deferred action granted through the U visa bona fide determination process does not**
19 **preclude ICE from executing an outstanding removal order.**

20 Ramirez Moreno filed this habeas litigation on December 23, 2025. Dkt. No. 1. She alleges
21 that her detention and planned removal violates the Administrative Procedures Act and the Fifth
22 Amendment’s Due Process Clause because she has been granted deferred action, she has been placed
23 on the U visa wait list and issued employment authorization pursuant to the bona fide determination

1 process for U-1 nonimmigrant status petitioners. Pet., ¶¶ 66-79. According to Ramirez Moreno,
2 deferred action “provides protection from removal” and ultimately that ICE’s actions are contrary to
3 the statutory U visa scheme and Ramirez Moreno has the right to remain in the United States until
4 final adjudication of the U visa application. *Id.* at ¶¶ 74, 79. Deferred action does not stay removal.
5 In both USCIS’s manual and in the notice to grantees of interim benefits, USCIS defines deferred
6 action granted through the bona fide determination process as an administrative convenience that gives
7 some cases lower priority for removal. BFD Chapter § 7 (“Deferred action, as an exercise of
8 prosecutorial discretion to make an alien a lower priority for removal from the United States, is only
9 applicable to aliens in the United States.”). USCIS is also denying Ramirez Moreno’s application for
10 advance permission to be in the United States. Decl. Steveson, Exh. C, Notices of Intent to Deny.

11 Ramirez Moreno already had due process prior to the removal order and she was warned that
12 she was inadmissible to the United States for 10 years. Steveson Decl., Exh. A, Warning to Alien
13 Ordered Removed. Although she was temporarily released on an Order of Supervision, that order
14 explicitly made clear that the order was temporary, discretionary, and she could be required to report
15 for removal. Steveson Decl., Exh. B, Order of Supervision. The Court should find that it does not have
16 jurisdiction to preclude ICE’s execution of a final order of removal. In the alternative, the Court
17 should find that ICE’s detention of Ramirez Moreno is lawful and deny the Petition.

18 ICE may detain Ramirez Moreno pending the execution of her reinstated order of removal.
19 Ramirez Moreno does not dispute that she is subject to a reinstated order of removal. It is undisputed
20 that USCIS has granted deferred action and employment authorization to her pursuant to the U visa
21 bona fide determination process. The issue here is whether the grant of deferred action precludes ICE
22 from executing his reinstated removal order. It does not.

1 Because Ramirez Moreno's grant of deferred action is a creation of agency policy, this Court
2 should look to the agency for the policy's meaning. Deferred gives action gives some cases lower
3 priority for removal. BFD Chapter, § 7.

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

12 Ramirez Moreno has not presented any evidence that USCIS's policy specific to U visa bona
13 fide determinations supports her interpretation that deferred action automatically stays her removal.
14 She 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, USCIS's
16 Policy Manual indicates otherwise, noting that the granting of a bona fide determination employment
17 authorization establishes a prima facie case for approval such that ICE can consider granting a
18 discretionary stay of removal per 8 U.S.C. § 1227(d)(1). BFD Chapter. If a grant of deferred action
19 through the bona fide determination process constituted an automatic stay of removal, this guidance
20 would be superfluous.

21 Federal Respondents also recognize that another district court in this District has found that deferred
22 action on a U visa application does preclude removal. *Ayala*, 2025 WL 2209708 at *4. Federal
23 Respondents respectfully disagree.

1 USCIS has defined deferred action in the agency's policy concerning the U visa bona fide
2 determination process in its Policy Manual (BFD Chapter, § 7). Deferred action does not stay Ramirez
3 Moreno's removal. As a result, Ramirez Moreno cannot demonstrate that she is being detained in
4 violation of the Constitution or laws of the United States.

5 **CONCLUSION**

6 For the foregoing reasons, this Court should deny the Petition and dismiss this litigation in its
7 entirety.

8 DATED this 6th day of January, 2026.

9 Respectfully submitted,

10 CHARLES NEIL FLOYD
11 Acting United States Attorney

12 s/ Jordan C. Steveson
13 JORDAN C. STEVESON, WA #40636
14 Special Assistant United States Attorney
15 United States Attorney's Office
16 1201 Pacific Avenue, Suite 700
17 Tacoma, WA 98402
18 Phone: 253-428-3802
19 Email: jordan.steveson@usdoj.gov
20 *Attorneys for Federal Respondents*

21 *I certify that this memorandum contains 3326 words, in*
22 *compliance with the Local Civil Rules.*
23