

The Honorable Brian A. Tsuchida

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Yency Elizabeth PALENCIA and Liliana
RAMIREZ MORENO,

Petitioners,

v.

Laura HERMOSILLO et al.,

Respondents.

Case No. 2:25-cv-2669-BAT

PETITIONERS' TRAVERSE

Note on Motion Calendar:
January 12, 2026

INTRODUCTION

Respondents aver that Petitioner Yency Elizabeth Palencia's claims are now moot because she has been released. However, this ignores controlling caselaw that release does not moot a habeas petition where a live controversy remains. Petitioner Palencia continues to be entitled to the injunctive and declaratory relief requested in the habeas petition to prevent unlawful detention in the near future. With respect to Petitioner Liliana Ramirez Moreno, Respondents contend that they had the right to re-detain Petitioner at their whim, notwithstanding the fact that she was granted deferred action based on her pending U visa application. Respondents point out that *after* she filed this habeas petition, the Department of Homeland Security (DHS) issued a notice of intent to deny her U visa application. That

subsequent development does not alter the fact that she has deferred action pending resolution of her U-visa and was arbitrarily re-detained without notice or a pre-deprivation hearing. Moreover, in addition to the U visa, Respondents do not contest that she is entitled to present her claims for protection to the immigration court, *before* Immigrations and Customs Enforcement (ICE) may execute any removal order. As such, ICE had no authority to remove her when she was abruptly re-detained without notice or any pre-deprivation hearing. Accordingly, Petitioner Ramirez should be immediately released.

ARGUMENT

I. As Courts Have Repeatedly Confirmed, 8 U.S.C. § 1252(g) Does Not Preclude Subject Matter Jurisdiction.

Respondents contend that 8 U.S.C. § 1252(g) bars this Court from reviewing the matter, citing to *Velasco Gomez v. Scott*, 2025 WL 1726465 (W.D. Wash. June 20, 2025). *See* Dkt. 7 at 9. However, as Respondents acknowledge, *id.*, courts in this District have since held that 1252(g) does not strip the court of jurisdiction, *see Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 908 (W.D. Wash. 2025); *Aguilar Gama v. Bondi*, No. 2:25-CV-01925-TL, 2025 WL 3559942, at *4 (W.D. Wash. Dec. 12, 2025). Moreover, “that is precisely what a growing number of district courts around the country have recently concluded in analogous cases.” *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *6 (W.D.N.Y. Dec. 19, 2025) (collecting decisions rejecting application of 1252(g) to habeas claims based on deferred action for U visa applicants).

Those decisions stem directly from the holding of *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482 (1999), where the Supreme Court cabined the scope of § 1252(g) to “three discrete actions”: the “‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” The subsection was “directed against a particular

1 evil: attempts to impose judicial constraints upon prosecutorial discretion.” *Id.* at 485 n.9; *see*
2 *also id.* at 485 (providing as an example of such prosecutorial discretion ““no deferred action’
3 decisions and similar discretionary determinations”). Indeed, the Court found it “implausible”
4 that “the mention of three discrete events along the road to deportation was a shorthand way of
5 referring to all claims arising from deportation proceedings.” *Id.* at 482. Subsequent Supreme
6 Court precedent has reaffirmed § 1252(g)’s narrow focus on discretionary decisions. *See, e.g.,*
7 *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (noting § 1252(g)
8 is “narrow”).

9 In this case, Petitioners are not challenging a discretionary action, but instead challenge
10 their unlawful re-detention without notice or a pre-deprivation hearing. They are not challenging
11 the execution of a removal order. Indeed, Respondents cannot execute either removal order
12 because Petitioners both have deferred action and may not be removed. In addition, Ms. Ramirez
13 is awaiting a reasonable fear interview. As Respondents have no discretion to violate the law,
14 § 1252(g) is not implicated. Instead, that provision is directed against “a particular evil: attempts
15 to impose judicial constraints upon prosecutorial discretion.” *AADC*, 525 U.S. at 485 n.9.

16 II. Petitioner Palencia’s Habeas Petition is Not Moot.

17 Ms. Palencia’s release does not moot her claim seeking to enjoin her “re-detention
18 pending final adjudication of [her] U visa petitions absent written notice and a hearing prior to
19 re-detention where Respondents must prove by clear and convincing evidence that [] Petitioner is
20 a flight risk or danger to the community and that no alternatives to detention would mitigate
21 those risks.” Dkt. 1 at 17. Nor does her release moot the request for a declaratory ruling “that the
22 re-detention of Petitioners while their U visa petitions are pending final adjudication violates the
23 INA, the implementing regulations, and the Due Process Clause of the Fifth Amendment.” *Id.*

As the Supreme Court observed in *Nielsen v. Preap*, the claims of plaintiffs who were previously released on bond did not become moot “[u]nless th[e] preliminary [relief] was made permanent” because the plaintiffs still “faced the threat of re-arrest and mandatory detention.” 586 U.S. 392, 403 (2019) (plurality opinion). That same rational applies here. *See Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *4 (W.D. Wash. Oct. 10, 2025) (habeas petition not moot where released “Petitioners ‘face[d] the threat of re-arrest and mandatory detention’ under the same detention scheme this Court has already declared unlawful as applied to them”); *cf. Francois v. Wamsley*, No. C25-2122-RSM, 2025 WL 3496557, at *1 (W.D. Wash. Dec. 5, 2025) (granting final relief to Petitioners previously released on TRO). Similarly, a recent Report & Recommendation from the Court found the petitioner’s claim was not moot as “the Supreme Court has held that release does not moot a habeas petition because the ‘in custody’ requirement must be satisfied only at the time of filing.” *Quiva Palacio v. Hermosillo*, No. C25-1983-RSM-MLP, Dkt. 14 at 3 (W.D. Wash. December 22, 2025) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Because Petitioner Palencia continues to present unresolved claims, her release does not moot her habeas petition. She continues to seek an order ensuring that she is not re-detained unlawfully. Dkt. 1 at 17. Accordingly, her habeas petition is not moot.

III. Petitioner Ramirez is Entitled to Immediate Release.

Respondents argue that Ms. Ramirez was lawfully detained because she has a final order of removal and was released under an “Order of Supervision with a condition that she appear in person when requested ‘for identification and for deportation or removal.’” Dkt. 7 at 4 (citing Dkt. 9-2). Respondents’ arguments ignore that (1) she was released from custody *after* ICE issued the reinstatement order; (2) she subsequently became eligible for and filed a U visa

1 application, and was then granted, pursuant to binding regulations, deferred action status while
2 waiting for her U visa to be adjudicated; and (3) in addition, she is entitled to present her claims
3 for withholding of removal and protection under the Convention Against Torture. As such, she
4 cannot be currently removed to Honduras. Her re-detention is therefore arbitrary, as she stands in
5 the same posture as when she was previously released—but with the additional protection of
6 deferred action and pending claims for relief.

7 Respondents err in asserting that notwithstanding her deferred action, ICE remains
8 entitled to execute the prior reinstatement order. *See* Dkt. 7 at 10 (“The issue here is whether the
9 grant of deferred action precludes ICE from executing his [sic] reinstated removal order. It does
10 not.”). Yet Respondents ultimately acknowledge that “another district court in this District has
11 found that deferred action on a U visa application does preclude removal.” *Id.* at 11 (citing Order
12 Granting Writ of Habeas Corpus, *Sepulveda Ayala*, No. 2:25-cv-01063-JNW-TLF, 2025 WL
13 2209708, at *4 (W.D. Wash. Aug. 4, 2025)). Indeed, multiple courts in this District and around
14 the country have recently affirmed that Respondents have no authority to detain individuals for
15 removal who have been granted deferred action based on bona fide U visa applications because
16 “deferred action prevents recipients’ removal from the United States.” *Sepulveda Ayala*, 794 F.
17 Supp. 3d at 912. Thus, “the Government has no legal basis to detain” an individual with deferred
18 action status. *Sepulveda Ayala*, 2025 WL 2209708, at *4; *see also Aguilar Gama v. Bondi*, 2025
19 WL 3559942, at *4 (W.D. Wash. Dec. 12, 2025) (“Petitioner’s deferred action status prevents
20 removal. As such, Respondents have no legal basis to detain Petitioner.”); *B.D.A.A. v. Bostock*,
21 No. 6:25-CV-02062-AA, 2025 WL 3484912 (D. Or. Dec. 4, 2025); *Nevarez Jurado*, 2025 WL
22 3687264; *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3469811 (N.D. Ind.
23 Dec. 3, 2025); *Patel v. Hyde*, No. 25-12518-RGS, 2025 WL 3169875 (D. Mass. Nov. 12, 2025);

1 *Espinoza-Sorto v. Agudelo*, No. 1:25-cv-23201-GAYLES, 2025 WL 3012786 (S.D. Fla. Oct. 28,
2 2025); *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133 (S.D. Tex. June 5, 2025).

3 Respondents further argue that unlike deferred action granted to DACA or T visa
4 applicants, deferred action for U visa applicants does not “affect the executability of her removal
5 order or the legality of her detention as the deferred action or her bona fide determination does
6 not explicitly stay her removal like in other instances.” Dkt. 7 at 8. But this position has been
7 squarely rejected. *See, e.g., Sepulveda Ayala*, 794 F. Supp. 3d at 913 (“To the contrary, the term
8 deferred action has carried consistent meaning for decades as the Government’s ‘formal
9 determination not to remove a particular individual.’” (citation modified)).

10 Respondents also note that DHS issued a Notice of Intent to Deny (“NOID”) Ms.
11 Ramirez’s application for a U visa on January 5, 2026—almost three weeks *after* she was
12 arrested and two weeks *after* she filed her habeas petition. *See* Dkt. 7 at 4. The NOID itself
13 acknowledges that “the evidence demonstrated your [U visa application] was bona fide, a BFD
14 issuance” Dkt. 9-3 at 3. The NOID then references her re-detention: “On December 18,
15 2025, you were apprehended by Immigration and Customs Enforcement (ICE) Enforcement and
16 Removal Operations (ERO) after you appeared for a BI Incorporated appointment.” *Id.* As such,
17 the record demonstrates that her case is being revisited because she was unlawfully re-detained.¹
18 *Cf. Sepulveda Ayala*, 2025 WL 229708, at *4 (“[T]he timing of this notice [of intent to revoke
19

20
21 ¹ Notably, the NOID asserts that Ms. Ramirez failed to list on her original application the
22 applicable grounds of inadmissibility caused by her prior immigration violations. *See* Dkt. 9-3 at
23 3 (“You did not indicate on your form I-192 why you may be inadmissible to the United
States.”). That assertion is incorrect, as the original filing, including the addendum, disclosed
Ms. Ramirez’s immigration history and the applicable grounds of inadmissibility. Decl. of Alex
Askerov, Ex. A at 59, 67-68.

1 deferred action] reinforces concerns about the Government's shifting litigation positions . . . the
2 Government likely initiated revocation proceedings in response to this Court's preliminary
3 rulings rather than its own belief that deferred action was improvidently granted.”).

4 Moreover, the NOID instructs that “[a]dditional evidence is required to continue the
5 processing of your application,” Dkt. 9-3 at 3, and Respondents acknowledge that Ms. Ramirez
6 has the right to submit a response before a final adjudication is rendered. Dkt. 7 at 4–5; *cf.*
7 *Sepulveda Ayala*, 2025 WL 2290708, at *4 (noting that “deferred action remains in effect during
8 this process”). Deferred action therefore remains in effect, notwithstanding the NOID. The
9 impending deadlines to submit additional evidence for processing of her U visa application only
10 underscore the need for her immediate release to allow her to work with counsel to submit
11 appropriate documentation.

12 Finally, Ms. Ramirez's pending reasonable fear proceedings further demonstrate that ICE
13 had no authority to remove her when she was unlawfully re-detained. If found to have a
14 reasonable fear after her reasonable fear interview, she will be entitled to full proceedings before
15 the immigration court to apply for withholding of removal and protection under the Convention
16 Against Torture, and the right to an administrative appeal. 8 C.F.R. §§ 241.8(e), 208.31(c),
17 1208.31(e). And even if she is found not to have a reasonable fear, Ms. Ramirez is entitled to
18 seek review of that finding before the immigration court. *Id.* § 1208.31(g).

19 CONCLUSION

20 For all the foregoing reasons, Petitioners respectfully request that this Court grant a writ
21 of habeas corpus, and order Respondents to immediately release Petitioner Liliana Ramirez
22 Moreno and enjoin Respondents from re-detaining Petitioners unless they are first provided
23 notice and a hearing prior to re-detention where Respondents must prove by clear and convincing

1 evidence that Petitioners are a flight risk or danger to the community and that no alternatives to
2 detention would mitigate those risks.

3
4 Respectfully submitted this 12th day of January, 2026.

5 s/ Matt Adams

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7 *I certify that the foregoing contains 2,049 words,
8 in compliance with the Local Civil Rules.

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