UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 26-CV-20247-KMW

CARLOS RAFAEL DIONICIO CABRERA,

Petitioner,

v.

TODD LYONS, Acting Director,
U.S. Immigration and Customs
Enforcement,
et al.,

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO THE ORDER TO SHOW CAUSE

This habeas petition presents a narrow legal question that derives from the Department of Homeland Security's affirmative grant of deferred action. Immigration and Customs Enforcement has detained Petitioner for purposes of removal even though DHS has already determined that removal will not be pursued notwithstanding the existence of a removal order. While that grant of deferred action is in effect, removal is not legally pursued and ICE lacks statutory authority under 8 U.S.C. § 1231 to detain Petitioner or to execute the removal order.

Petitioner does not challenge discretionary enforcement priorities or the decision whether to grant deferred action. He challenges custody undertaken in defiance of a binding DHS forbearance determination and governing law. Because ICE's detention exceeds statutory authority and alternatively lacks any lawful basis, the claim falls within the core of habeas jurisdiction under 28 U.S.C. § 2241. The Court should grant the Petition and order Petitioner's immediate release.

I. THIS COURT HAS SUBJECT MATTER JURISDICTION BECAUSE THIS CASE DERIVES FROM THE GRANT OF DEFERRED ACTION, NOT "EXECUTION" OF A REMOVAL ORDER

A. Habeas jurisdiction is proper under § 2241 and is not defeated by transfer

This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 to decide whether Petitioner's custody is lawful. Jurisdiction attached at filing and is not divested by a later transfer. *Ex parte Endo*, 323 U.S. 283, 304–07 (1944); *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).

Although a district court may permissively transfer a habeas petition following a post-filing relocation, transfer is not required where jurisdiction properly attached at filing and where the challenged custody decision originated within this District. See *Padilla*, 542 U.S. at 441; *Endo*, 323 U.S. at 304–07. Here, ICE's decision to disregard Petitioner's deferred action and initiate detention occurred in the Southern District of Florida, and transfer after filing of the habeas cannot be used to defeat or delay review.

B. § 1252(g) is narrow and inapplicable where the claim derives from deferred action

The government's argument that this Court lacks subject-matter jurisdiction under 8 U.S.C. § 1252(g) is misplaced. Properly construed, § 1252(g) does not strip jurisdiction here because Petitioner's claims do not arise from a discretionary decision to execute a removal order, but from ICE's lack of legal authority to detain or remove him while a valid grant of deferred action remains in effect. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *INS v. St. Cyr*, 533 U.S. 289, 298–300 (2001).

Section 1252(g) is "narrow" and applies only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno*, 525 U.S. at 482. The Supreme Court has cautioned against readings that would "sweep in any claim that can technically

be said to 'arise from'" those actions. *Jennings*, 583 U.S. at 294. Accordingly, the jurisdictional inquiry turns on the source of the claimed injury—the government action that gives rise to the claim—rather than whether the requested relief may incidentally affect removal. *Reno*, 525 U.S. at 482–83; *Arce v. United States*, 899 F.3d 796, 799–800 (9th Cir. 2018).

When the government affirmatively grants deferred action, removal may not lawfully proceed while that grant remains in effect. Deferred action is a recognized exercise of prosecutorial discretion by which the Executive decides not to pursue removal notwithstanding the existence of a removal order. *Reno*, 525 U.S. at 483–85 (describing deferred action as the Executive's decision "not to pursue removal at all"); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 9–10, 19 (2020) (describing deferred action as a forbearance of removal). Applying *Reno*, courts have held that while deferred action remains in effect, a removal order is not executable, and enforcement action taken notwithstanding that relief is unauthorized rather than a protected exercise of discretion. *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863–69 (2d Cir. 2022); *Espinoza-Sorto v. Agudelo*, 2025 U.S. Dist. LEXIS 212217, at *10–13 (S.D. Fla. Oct. 28, 2025); *Ayala v. Bondi*, 2025 U.S. Dist. LEXIS 142123, at *6–9 (W.D. Wash. July 24, 2025).

Consistent with that framework, the courts in this district have held that § 1252(g) does not bar jurisdiction where a petitioner challenges detention or threatened removal despite an active grant of deferred action, because such claims arise from the government's grant of deferred action rather than from execution of a removal order. *Espinoza-Sorto*, 2025 U.S. Dist. LEXIS 212217, at *10–13. The court emphasized that § 1252(g) shields discretionary decisions whether to grant relief, not agency action that ignores relief already granted. *Id.*; see also *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Kurapati v. USCIS*, 775 F.3d 1255, 1262–63 (11th Cir. 2014).

Persuasive authority from other circuits reinforces the same rule. In *Ayala*, the court held jurisdiction proper because the petitioner's claims arose from the government's grant and subsequent disregard of deferred action—not from execution of the removal order—applying a straightforward causation analysis. 2025 U.S. Dist. LEXIS 142123, at *6–9; see *Arce*, 899 F.3d at 799–800. Additionally, in *Enriquez-Perdomo*, the Second Circuit held that § 1252(g) did not bar jurisdiction where ICE arrested and detained a noncitizen despite active deferred action, explaining that "execute removal orders" refers only to executable orders, and that deferred action renders a removal order non-executable for purposes of the statute. 54 F.4th at 863–69.

This understanding aligns with Eleventh Circuit precedent recognizing habeas jurisdiction where the government lacks legal authority to act, as opposed to exercising protected discretion. The Eleventh Circuit recognizes habeas jurisdiction to test whether the government has legal authority to detain. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367–68 (11th Cir. 2006). That principle governs here, where Petitioner challenges custody exceeding statutory bounds rather than discretionary enforcement.

Finally, a narrow reading of § 1252(g) is compelled by constitutional avoidance principles. Construing the statute to bar habeas review of detention undertaken in defiance of granted deferred action would raise serious Suspension Clause concerns by eliminating the only avenue to test the legality of custody. *St. Cyr*, 533 U.S. at 300–01; *Swain v. Pressley*, 430 U.S. 372, 381 (1977); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Courts therefore construe § 1252(g) to avoid that result where, as here, the claim challenges ultra vires detention rather than discretionary enforcement. *Reno*, 525 U.S. at 482; *Enriquez-Perdomo*, 54 F.4th at 863–69; *Ayala*, 2025 U.S. Dist. LEXIS 142123, at *6–9.

Accordingly, because Petitioner's claims arise from ICE's lack of legal authority to detain or remove him while deferred action remains in effect—and not from a discretionary decision to execute an executable removal order—§ 1252(g) does not strip this Court of jurisdiction. The Court therefore has subject-matter jurisdiction to adjudicate the habeas petition.

II. ICE LACKS AUTHORITY TO DETAIN PETITIONER OR EXECUTE THE REMOVAL ORDER WHILE DHS'S DEFERRED-ACTION DETERMINATION REMAINS IN EFFECT

Respondents contend that Petitioner's deferred action has no legal effect on ICE's authority to detain him or to execute the removal order. That position misstates the legal effect of deferred action and the limits of ICE's enforcement authority within DHS's statutory framework.

Deferred action is an affirmative exercise of prosecutorial discretion reflecting DHS's decision not to pursue removal. The Supreme Court has defined deferred action as "a decision not to pursue deportation at this time," recognizing it as a formal component of the removal scheme rather than informal inaction. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999). A decision not to pursue deportation necessarily suspends enforcement of the removal order during the period of deferral.

DHS's own guidance confirms this understanding. The USCIS Policy Manual defines deferred action as "an exercise of prosecutorial discretion to defer removal action against an individual," reflecting an operative determination that removal will not be carried out during the period of deferral, even though lawful status is not conferred. USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4), https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited January 21, 2026). ICE, as a component of DHS, may not act inconsistently with that determination unless and until DHS rescinds it.

Courts have recognized that a removal order may remain legally valid yet be temporarily unenforceable. The Sixth Circuit has held that government officials lack authority to execute a removal order that is not subject to execution, and that an intervening grant of deferred action renders a removal order unenforceable while deferred action remains in effect. *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 866–67 (6th Cir. 2022). Where a removal order is unenforceable, ICE lacks authority to treat it as operative for enforcement purposes. *Id.*

That principle applies equally to custody and execution. Detention authority under 8 U.S.C. § 1231 presupposes that removal is being pursued. Where DHS has affirmatively deferred removal, detention for the purpose of effectuating removal exceeds statutory authority. *Enriquez-Perdomo*, 54 F.4th at 866–67. Execution authority likewise presupposes an operative and enforceable order, which does not exist while deferred action remains in effect. *Id.*

District courts have applied this reasoning in the U-visa deferred-action context. In *Ayala v. Bondi*, the court held that a grant of deferred action reflects the Government's decision not to proceed with removal and renders continued detention and attempted execution unlawful absent rescission of the deferral. 794 F. Supp. 3d 901, 906–08 (W.D. Wash. 2025). Similarly, in *Espinoza-Sorto v. Agudelo*, the court concluded that ICE could not lawfully detain or remove a noncitizen while deferred action remained operative because DHS had not made the removal order enforceable. 2025 U.S. Dist. LEXIS 212217, at *16–18 (S.D. Fla. Oct. 28, 2025).

The structured nature of deferred action further confirms this conclusion. In the U-visa framework, DHS operates under defined statutory and regulatory criteria rather than unfettered ad hoc discretion. *Garcia v. U.S. Dep't of Homeland Sec.*, 25 F.4th 430, 444–46 (6th Cir. 2022). Where DHS grants deferred action through that framework, ICE may not silently disregard it and

proceed as though it does not exist. Authority to detain under 8 U.S.C. § 1231 or to execute removal resumes only if DHS formally rescinds deferred action. *Enriquez-Perdomo*, 54 F.4th at 866–67.

Respondents' reliance on the textual differences between the T-visa and U-visa regulatory schemes is misplaced. While the T-visa regulations expressly provide that a bona fide determination stays removal, the absence of parallel language in the U-visa regulations does not authorize ICE to detain or remove a noncitizen in defiance of an operative grant of deferred action. Deferred action has an established legal meaning independent of any particular visa program: it reflects the Executive's affirmative decision not to pursue removal notwithstanding the existence of a removal order. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–85 (1999); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 9–10 (2020).

The regulatory distinction reflects differences in statutory design, not an intent to authorize detention of U-visa recipients with deferred action. Where DHS has affirmatively granted deferred action under the U-visa framework, removal is not legally pursued unless and until that determination is rescinded. ICE may not rely on regulatory silence to override a binding DHS forbearance decision or to convert deferred action into a nullity. See *Espinoza-Sorto v. Agudelo*, 2025 U.S. Dist. LEXIS 212217, at *16–18 (S.D. Fla. Oct. 28, 2025); *Ayala v. Bondi*, 794 F. Supp. 3d 901, 906–08 (W.D. Wash. 2025).

Accordingly, because Petitioner's deferred action remains in effect, the removal order is not presently enforceable, and ICE lacks authority under 8 U.S.C. § 1231 to detain Petitioner or execute the removal order.

III. ICE'S RELIANCE ON ORDER OF SUPERVISION REVOCATION PROCEDURES DOES NOT SUPPLY AUTHORITY TO DETAIN PETITIONER

Respondents argue that Petitioner's detention is independently lawful because ICE revoked his Order of Supervision ("OSUP") pursuant to 8 C.F.R. § 241.4(l)(2), and that no notice or interview was required. That argument fails for three independent reasons.

A. OSUP Revocation Cannot Confer Authority Where Removal Is Not Legally Pursuable

As a threshold matter, ICE's reliance on OSUP revocation presupposes that DHS was lawfully pursuing removal. It was not. As set forth above, DHS had affirmatively granted Petitioner deferred action, rendering the removal order temporarily unenforceable unless and until that deferral is lawfully rescinded. Where removal is not legally pursuable, detention "to effectuate removal" exceeds statutory authority regardless of whether supervision is nominally revoked. *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 866–67 (6th Cir. 2022); *Ayala v. Bondi*, 794 F. Supp. 3d 901, 906–08 (W.D. Wash. 2025).

The regulations governing supervision implement 8 U.S.C. § 1231(a)(3) and operate only within the bounds of lawful post-order detention authority. They do not authorize ICE to override an operative grant of deferred action by revoking supervision and proceeding as though removal were legally executable. While an affirmative grant of deferred action remains in effect, ICE lacks authority to detain for purposes of removal, regardless of supervision status. See *Espinoza-Sorto v. Agudelo*, 2025 U.S. Dist. LEXIS 212217, at *16–18 (S.D. Fla. Oct. 28, 2025).

Accordingly, even a procedurally proper OSUP revocation cannot supply detention authority where DHS has affirmatively deferred removal.

B. ICE's Invocation of § 241.4(l)(2) Confirms the Detention Was for the Purpose of Removal and Therefore Unlawful While Deferred Action Remained in Effect

Respondents rely on 8 C.F.R. § 241.4(l)(2)(iii), which permits revocation of supervision when it is appropriate to enforce a removal order or to commence removal proceedings. By its own terms, that provision presupposes that enforcement of the removal order is legally available.

Here, it was not. DHS had already exercised prosecutorial discretion to forbear from removal through an affirmative grant of deferred action. ICE's reliance on § 241.4(l)(2)(iii) therefore confirms that supervision was revoked, and detention imposed, for the purpose of enforcing the removal order. That reliance does not cure the defect. An agency may not invoke a regulation premised on enforceability to justify custody where enforceability has been suspended by a binding DHS determination. See *Enriquez-Perdomo*, 54 F.4th at 866–67.

Stated differently, § 241.4(l)(2) does not authorize ICE to deem removal "appropriate" in contravention of an operative DHS decision that removal will not be pursued. Where deferred action remains in effect, invocation of § 241.4(l)(2) confirms that the detention exceeded ICE's statutory authority.

C. ICE Failed to Follow Required Procedures for OSUP Revocation

Even assuming arguendo that ICE possessed baseline authority to pursue removal, which it did not—the Government's procedural argument is still incorrect. While § 241.4(l)(2) allows discretionary revocation of supervision, it does not eliminate all process. The supervision regulations must be read as a whole and in light of due process principles. Where, as here, revocation results in immediate physical detention and a dramatic deprivation of liberty, minimal procedural safeguards are required. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976).

Moreover, ICE's position that no notice or opportunity to respond is required collapses the distinction between § 241.4(l)(1) and § 241.4(l)(2) in a manner that would permit arbitrary detention without any contemporaneous explanation, record, or accountability. Nothing in the regulation authorizes ICE to effectuate de facto termination of deferred action and liberty interests through silent revocation followed by detention.

At minimum, where supervision revocation is predicated on enforcement of a removal order, ICE must identify a lawful basis for treating that order as executable. ICE did not and could not do so here because deferred action remained in effect.

D. OSUP Revocation Cannot Operate as an Implied Termination of Deferred Action

Respondents' position effectively treats revocation of supervision as eliminating the legal consequences of an operative grant of deferred action. That theory is contrary to law. Deferred action is a distinct DHS determination that carries legal effect and binds DHS components unless and until it is altered by DHS through appropriate action. ICE lacks authority to disregard or nullify that determination through supervision revocation or custody decisions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Kurapati v. USCIS*, 775 F.3d 1255, 1262–63 (11th Cir. 2014).

Here, Respondents acknowledge that Petitioner's deferred action was not revoked. That acknowledgment confirms the unlawfulness of the detention. While deferred action remained in effect, ICE could not lawfully treat the removal order as enforceable or detain Petitioner for the purpose of effectuating removal. Revocation of an Order of Supervision does not alter the legal consequences of an affirmative DHS forbearance determination and cannot supply authority that Congress has conditioned on lawful pursuit of removal.

IV. CONCLUSION

Because DHS affirmatively granted deferred action and that determination remains in effect, ICE lacked statutory authority under 8 U.S.C. § 1231 to detain Petitioner or to enforce the removal order. Petitioner's claims arise from ultra vires custody, not discretionary enforcement, and therefore fall within this Court's habeas jurisdiction under 28 U.S.C. § 2241. The Petition should be granted and Petitioner ordered released from custody.

Dated: January 21, 2026.

Respectfully submitted,

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