

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00891-MJD-DTS

JAIME ALBERTO DURAN BELTRAN,

Petitioner,

v.

SUPPLEMENTAL BRIEFING

DAVID EASTERWOOD, *et al.*,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEFING

INTRODUCTION

The Court should grant Mr. Duran Beltran's Petition for Writ of Habeas Corpus. Mr. Duran Beltran's case is both factually and legally distinguishable from *Domingo M.M. v. Shea*, No. 25-cv-2830 (D. Minn. Aug. 1, 2025), Dkt. No. 24.

BACKGROUND

I. Factual Background

As stated in the original petition for habeas corpus, this case is about a 44-year-old father of three with a pending U-visa application, who has been granted Deferred Action by U.S. Citizenship and Immigration Services (USCIS), and who therefore cannot be removed from the United States. Nevertheless, Respondents seek to detain him and remove him in contravention of federal law and the Constitution. For the sake of brevity, by reference Petitioner re-incorporates the factual recitation in his original petition, with the qualification discussed in length below that

he has not been served with a warrant for his arrest or a removal order confirming that he is being detained under 8 U.S.C. § 1231(a)(6).

II. Mr. Duran Beltran's Detention and Removal Proceedings

The government asserts that Mr. Duran Beltran is being detained under 8 U.S.C. § 1231(a)(6). *See* Respondents Reply Brief at p. 5. However, on January 31, 2026, one day after our original habeas corpus petition was filed, the Department of Homeland Security issued a Notice to Appear (NTA) to Mr. Beltran. *See* Exhibit A. The existence of this NTA was discovered when our office was informed by Mr. Duran Beltran's family that he had been scheduled for a Master Calendar Hearing on February 17, 2026. *See* Exhibit B. The NTA, dated January 31, 2025, places Mr. Duran Beltran in removal proceedings under INA § 240 (8 U.S.C. § 1229(a)), alleging that Mr. Duran Beltran is an "alien present in the United States who has not been admitted or paroled." *See* Exhibit A. The factual allegations listed in NTA do NOT indicate that he was processed under 8 USC 1229(a) for removal proceedings and do NOT allege that he was removed or provided with voluntary departure and returned to El Salvador. *Id.* Ultimately, DHS alleges that Mr. Duran Beltran is removable under INA § 212(a)(6)(A)(i) (alien present in the United States who has not been admitted or paroled) and under INA § 212(a)(7)(A)(i)(I) (an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the act...)" *Id.*

While our original Petition for Writ for Habeas Corpus indicated that Mr. Duran Beltran was processed for removal proceedings and removed, neither a warrant for his arrest nor an order for his removal have been produced through the course of these proceedings. Notably, statements made by Petitioner about removal proceedings at the time of his entry in 2015 were based on our

presumption as to the agency's actions at the time of his apprehension. *See* Petition for Writ of Habeas Corpus, Introduction #4, Factual Allegations #34. This information was based on our conversations with Mr. Duran Beltran, his application for a U-visa, and our understating of what occurred at this time of his initial entry. However, the initiation of removal proceedings under 8 U.S.C. § 1229(a) and the allegations made in the NTA indicate that he is in fact not being detained under 8 U.S.C. § 1231(a)(6).

Given this new information, Petitioner will address the factual and legal distinctions between the Petitioner's case and the case of *Domingo M.M. v. Shea* with this supplemental briefing.

ARGUMENT

- I. **DHS' initiation of Removal Proceedings under 8 U.S.C. § 1231(a)(6) differentiate this case from *Domingo M.M. v. Shea* and affirm that the court has jurisdiction to review Petitioner's detention under 8 U.S.C. § 1226(a).**
 - a. **Unlike in *Domingo M.M. v. Shea*, DHS has not provided evidence of a prior order of removal.**

Petitioner's case differs factually from that of *Domingo M.M. v. Shea*. Long before the events leading to the petitioner's detention in *Domingo M.M.*, the petitioner was placed in removal proceedings, granted Cancellation of Removal by an Immigration Judge, DHS appealed the Judge's grant to the BIA, who then vacated the Judge's decision, but granted the Petitioner voluntary departure in lieu of deportation on June 17, 2021. *Domingo M.M. v. Shea*, No. 25-cv-2830 (D. Minn. Aug. 1, 2025), Dkt. No. 24, p. 6. In that case, the Petitioner "chose not to voluntarily depart" or appeal the BIA reversal. *Id.* Instead, he applied for a U-visa and subsequently motioned to reopen his case before the BIA. *Id.* This motion was denied and the Petitioner similarly did not appeal. *Id.* at 7. After all these events, and despite his having been granted deferred action

and employment authorization through a Bona Fide Determination (BFD) on his U-visa application, ICE sought to execute the removal order in July of 2025. *Id.* at 8.

The most important distinction between *Domingo M.M.* and the present case is the clarity surrounding the existence of the respective petitioners' orders for deportation. While in *Domingo M.M.* a removal order was issued after full deportation proceedings and an appeal to the Board of Immigration Appeals, in the present case, there remains a question about whether the Petitioner was in fact ordered removed. In his Petition, Mr. Duran Beltran affirms that he first attempted entry into the United States in July of 2015. He further affirms that he was initially detained by the Department of Homeland Security ("DHS") upon entry to the United States. Though the original petition states that he was "processed under 8 USC 1229(a) for removal proceedings" the actual procedural history of Mr. Duran Beltran's initial detention in 2015 is unknown, as DHS has not supplied a warrant for Mr. Duran Beltran's arrest nor has DHS supplied an order for removal.

Furthermore, the NTA that was issued one day after this petition was filed contains no argument or reference to a prior deportation order, thus further calling into question DHS' reliance on 8 U.S.C. § 1226(a) as the basis for continuing to detain Mr. Duran Beltran. Counsel's prior assertion that the petitioner was "processed under 8 USC 1229(a) for removal proceedings" was based on our conversations with Mr. Duran Beltran, his U-visa petition, the manner of his apprehension, and his return to El Salvador. This presumption should not be relied upon as a fact. If such an order exists, DHS should be compelled to provide it to this court. If an order for removal does not exist, Mr. Duran Beltran should be released immediately as his continued detention under 8 U.S.C. § 1226(a) is clearly without a basis in law or fact.

b. If Petitioner is not subject to a final order of removal, the jurisdiction stripping provisions of 8 U.S.C. § 1252(g) do not apply.

As indicated by DHS' NTA, the petitioner is now being charged with inadmissibility as an alien who entered the United States without inspection. Thus, if no removal order exists, the proper framework under which to analyze Mr. Duran Beltran's continued detention is under 8 U.S.C. § 1226(a), and the jurisdictional limitations of 8 U.S.C. § 1252(g) do not deprive this Court of jurisdiction.

The INA prescribes essentially three forms of detention for noncitizens in removal proceedings. First, noncitizens detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (providing that Immigration Judges may review custody determinations made by DHS), 1236.1(d) (providing the same). Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other recent arrivals who are deemed to be “seeking admission” to the United States under 8 U.S.C. § 1225(b)(2). Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

The detention provisions of the INA at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 of the INA was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

Following enactment of the IIRIRA, the U.S. Department of Justice's Executive Office for Immigration Review (“EOIR”) drafted new regulations explaining that, in general, individuals

who entered the United States without inspection were not considered detained pursuant to § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”)

In the decades that followed the enactment of the IIRIRA, most noncitizens who entered the United States without inspection and were thereafter detained and placed in standard removal proceedings were considered eligible to seek release on bond and also received bond hearings before an IJ unless their criminal history rendered them statutorily ineligible. This practice was consistent with many decades of prior practice, in which noncitizens who entered the United States, even without inspection, were entitled to a custody determination hearing before an IJ. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that 8 U.S.C. § 1226(a) simply “restates” the detention authority previously found at 8 U.S.C. § 1252(a)). For decades, noncitizens who have entered the United States without inspection and then resided long-term within the country have been deemed to be detained pursuant to § 1226 and have therefore been deemed entitled to bond hearings before IJs, absent a criminal history that would bar them from such a hearing.

In July 2025, however, ICE contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection should be considered to be “seeking admission” and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A). On September 5, 2025, the BIA issued a precedential decision adopting ICE’s

new interpretation of the detention provisions of the INA, departing from the plain language of the text of the INA, federal precedent, and long-standing regulations. *See Yajure Hurtado*, 29 I&N Dec. 216.

Respondents' new legal interpretation of the custody provisions of the INA is plainly contrary to the statutory framework of the INA and its implementing regulations. For decades, Respondents applied § 1226(a) to individuals similarly to Petitioner. Respondents' new policies regarding custody determinations are therefore not only contrary to law, but also arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). This new interpretation of the statutes was also adopted without following the procedural requirements of the APA. *See* 5 U.S.C. § 553.

In recent months, numerous federal courts have rejected Respondents' new interpretation of the custody statutes and have instead consistently found that § 1226—not § 1225(b)(2)—authorizes detention of noncitizens who entered without inspection and who were later apprehended in the interior of the country. *See e.g., Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025).

Under *Loper Bright v. Raimondo*, "the role of the reviewing court under the APA is . . . to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." 603 U.S. 369, 395 (2024). Applying *Loper Bright*, this Court should independently interpret the pertinent statutes and give no weight to the BIA's expansive and unprecedented

interpretation of § 1225(b)(2), as that interpretation conflicts with the plain text of the statute, is contrary to the regulations, and contravenes precedent on the question of jurisdiction for bond proceedings.

The detention provisions at issue in this case were enacted as part of the IIRIRA in 1996. Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. After the enactment of the IIRIRA, EOIR issued regulations clarifying that individuals who entered the country without inspection were not considered to be detained under § 1225, but rather under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

In 1997, after Congress amended the INA through the IIRIRA, EOIR and USCIS's predecessor agency, Immigration and Naturalization Services, issued an interim rule guiding interpretation and application of the IIRIRA. Specifically, under the heading "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

The overall statutory framework of the INA also clearly supports that § 1226 applies to individuals who have not been admitted and who entered without inspection. In 2025, Congress added new mandatory-detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified in relevant part at 8 U.S.C. § 1226(c)(1)(E)). By specifically referencing inadmissibility for entry without inspection as falling within 8 U.S.C. § 1182(6)(A), Congress clearly expressed its will that such

individuals are covered by § 1226(a) if they do not have the sort of criminal history identified in the Laken Riley Act. Accordingly, § 1226 plainly applies to noncitizens who entered without inspection and are later charged as inadmissible within the interior of the country, including those who never received admission or parole.

The Supreme Court has explained that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States,” and is generally imposed “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018). In contrast, § 1226 “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphasis added). Further, § 1225(b)(2) specifically applies only to those “seeking admission,” and the definitions provided at the implementing regulations state that an “[a]rriving alien” is one who is “coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2. The use of the present progressive tense would exclude noncitizens like Petitioner who are initially apprehended in the interior of the country almost five after they had entered the country, as they cannot reasonably be considered to be actively “seeking admission” or “coming . . . into the United States” after years spent building a life and raising a family within the interior of the country. *Id.*; see *Martinez v. Hyde*, 792 F. Supp. 3d (D. Mass. July 24, 2025) (citing the use of the present and present-progressive tenses to conclude that 8 U.S.C. § 1225(b)(2) does not apply to individuals apprehended in the interior); see also *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (interpreting the language “is arriving” in 8 U.S.C. § 235(b)(1)(A)(i) and concluding that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

Accordingly, assuming Petitioner is not subject to a final order and detention under 8 U.S.C. § 1231(a)(6), the mandatory detention provision of 8 U.S.C. § 1225(b)(2) similarly does not apply to Petitioner, who entered without inspection over ten years ago and who was detained recently well within the interior of the country. Considering his manner of entry and the timing and location of his arrest and detention, Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a). In these proceedings, Petitioner should be entitled to a bond hearing under 8 U.S.C. § 1226(a) and associated regulations. See 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f).

Petitioner has not been and will not be provided with a bond hearing as required by law without relief granted by this Court. In sum, if Petitioner is not subject to a removal order but rather is being charged with removability as an alien present in the United States who has not been inspected and admitted, Petitioner's ongoing detention is unlawful and he should be released immediately or at a minimum provided with a fair and impartial bond hearing to redetermine his custody status.

II. Even if Petitioner is subject to an order for removal, 8 U.S.C. 1252(g) does not deprive this Court of subject matter jurisdiction.

Judicial review of orders of removal is governed by 8 U.S.C. § 1252. The statute details the importance of deference to the immigration courts and instructs that no court may be used to undermine the system of review in place. This safeguard exists to ensure that tools such as the Great Writ are not used to question the factual determinations of an Immigration Judge, to devalue the discretion of the Attorney General or the Secretary of Homeland Security, or to second-guess the procedures in place at the border. This statute does not, however, deny this Court the jurisdiction to determine that Immigration and Customs Enforcement has used a broad interpretation to strip the USCIS of its power to defer removal action against individuals under its

purview and to allow ICE to render determinations of USCIS completely meaningless without check.

a. The jurisdiction-stripping provisions of 8 U.S.C. § 1252(g) apply to certain actions taken by the Secretary of Homeland Security, but not to all claims arising from deportation proceedings.

In *Domingo M.M.*, the court reviewed the jurisdiction stripping provision of 8 U.S.C. § 1252(g), which states that, with exceptions, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” *Domingo M.M. v. Shea*, No. 25-cv-2830 (D. Minn. Aug. 1, 2025), Dkt. No. 24, p. 10. The court in *Domingo M.M.* stated that the limitation delineated in § 1252(g) “applies ‘notwithstanding any other provision of law,’ whether statutory or non-statutory, including the various ‘habeas corpus provision[s]’ of federal law.” *Id.* The Supreme Court has held that § 1252(g) applies to three actions that may be taken by the Secretary of Homeland Security: 1. the commencement of proceedings; 2. the adjudication of cases; and 3. the execution of removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)) [hereinafter *AADC*]. Importantly, in *AADC* the court affirmed that “[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.” *Id.* The court noted that § 1252(g) seemingly protects the government from challenges to some but not all discretionary determinations, including “‘no deferred action’ decisions”, or, otherwise stated, when the government chooses not to grant deferred action relief. *Id.* at 485. Though the concept of deferred action is examined in depth in this decision, the court in *AADC* did not hold that a direct challenge to the government’s failure to honor a valid grant of deferred action would be a bar to jurisdiction under § 1252(g).

In determining that the Petitioner's claim was subject to the provisions of § 1252(g), the court in *Domingo M.M.* relied on *Silva v. United States*, 866 F.3d 938 (8th Cir. 2017). In *Silva*, the Eighth Circuit considered § 1252(g) as well as the Supreme Court's holding in *AADC* and found a lack of jurisdiction over a case which sought compensation following the wrongful removal of Mr. Silva in violation of a stay of removal. *Id.* The removal order was executed in error while Mr. Silva was within a valid period of stay due to his pending appeal. *Id.* at 939. The Court held that, because the claims "arise from" the decision of the Department of Homeland Security to remove Mr. Silva, a district court could not hear the claims. *Id.* at 940. In arriving at this conclusion, the court relied on *Foster v. Townsley* and *Gupta v. McGahey* to determine that, though the decision to execute the removal order violated a stay of removal, the claim before the court, i.e., the wrongful removal, was directly and immediately tied to, and thus "arises from," that decision. *Id.*

The Court's reliance on *Foster* and *Gupta* illustrate that *Silva's* lack of jurisdiction was decided largely because of the federal relief that was sought, i.e., compensation for the wrongful actions of the government. In *Foster*, the petitioner had been removed to Jamaica in contravention of a stay of deportation and sought monetary damages for constitutional deprivations. *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001). In *Gupta*, the petitioner requested Bivens action against federal agents who detained him in order to commence removal proceedings and monetary damages in excess of \$10 million. *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013). Similar to *Foster* and *Gupta*, *Silva* sought compensation for harm that he alleged arose from an immigration action commenced against him.

In *Domingo M.M.*, the petitioner sought habeas relief because his detention was in contravention of a grant of deferred action. No. 25-cv-2830 (D. Minn. Aug. 1, 2025), Dkt. No. 24, p. 13. Unlike *Silva*, *Foster*, and *Gupta*, the petitioner was not seeking compensation for the

wrongful actions of the government. Nonetheless, in this context the Court found that his detention was a necessary step in the Government's execution of his final order of removal. Specifically, the Court held that "while [Domingo] Mendoza Mendez ostensibly 'does not seek a stay of his removal order,' ... ordering his release from detention as he requests would serve the same end." *Id.* at 15. The Court in *Domingo M.M.* relied on this reasoning to reject all efforts to distinguish the case of deferred action from cases involving stays of removal. *Id.* at 16-18.

b. There is no distinct action by the Secretary of Homeland Security when one entity within the Department of Homeland Security seeks to disarm another.

In deciding *Domingo M.M.*, this Court acknowledged an Eighth Circuit case which denotes an exception to § 1252(g) for "a habeas claim raising a pure question of law." *Id.* at 12; *Jama v. Immigr. & Naturalization Servs.*, 329 F.3d 630, 633 (8th Cir. 2003), *aff'd*, 543 U.S. 335 (2005). In *Jama*, the Eighth Circuit determined that the petitioner was not objecting to an action to execute his removal order but instead was challenging the Attorney General's statutory interpretation conferring authority to execute removal to Somalia without first confirming that Somalia would accept his return. *Id.* at 632.

With its *Domingo M.M.* decision, this Court additionally evaluated a factually case from the Western District of Washington, *Sepulveda Ayala v. Bondi*, No. 2:25-cv-1063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025). Ultimately, this Court held that *Ayala* would hold no weight in the Eighth Circuit if *Silva* would control analysis. *Id.* at 18-20. But the relief that Petitioner Duran Beltran seeks from this Court is legally distinct from that which was sought in *Silva* and its persuasive predecessors; instead, it is directly within the jurisdictional bounds set forth in Section 1252(g). Here, like in *Jama*, Petitioner requests review of the legal conclusion presented by the Department which is alleged to justify his immediate removal. While the Court determined that *Silva* would govern *Domingo M.M.*, *Jama* should govern here. The issue at hand

does not involve an action to execute the removal; instead, it seeks a determination as to whether or not Petitioner could be removed at all while his grant of deferred action by USCIS remains in place. In *Jama*, the court could not justify detention of the petitioner because a legal question remained as to whether DHS could in fact remove the Petitioner. The perplexing legal issue this Petitioner wishes the court to resolve is how one arm of DHS (USCIS) can confer deferred action, which seemingly prevents or postpones removal as an act of prosecutorial discretion, while simultaneously another arm of DHS (ICE) seeks to effectuate a removal order. When the Secretary of Homeland Security oversees both ICE and USCIS, it cannot be said that an action by ICE to strip USCIS of statutory authority constitutes an action by the Secretary who should speak for them both.

Whereas in *Silva*, *Foster*, and *Gupta*, parties asked the courts to compensate for past harm by finding an error in a decision of the Department of Homeland Security, Petitioner here requests that this Court prevent an injustice by determining a decision to defer action was made by USCIS and that this determination cannot be overwritten without notice through the actions of ICE. Here, the court should intervene to provide a check upon the actions of two disparate agencies; one who seeks to confer the benefit of deferred action to prevent removal and the other who seeks to enforce a removal order. This distinction is crucial to the conferral and revocation of deferred action in connection with the U-visa, as it is USCIS, and not ICE, that holds this authority. If Mr. Duran Beltran has been issued a final order of removal, he is not “subject to” this order until USCIS is given its proper authority to rescind his deferred action.

c. To conflate the grant of habeas corpus with the execution of a stay of removal results in an expansive reading of § 1252(g) invoking questions related to the Suspension Clause.

The expansive reading of § 1252(g) adopted in *Domingo M.M.* raises serious constitutional questions. Courts must interpret statutes to avoid raising serious constitutional questions when a

reasonable alternative interpretation exists. *Neal v. Bd. of Trustees of Cal. State Univs.*, 198 F.3d 763, 772 (9th Cir. 1999) (quoting *NLRB v. Cath. Bishop [*910] of Chicago*, 440 U.S. 490, 507, 99 S. Ct. 1313, 59 L. Ed. 2d 533 (1979) (Federal courts should decline to construe acts of Congress "in a manner that could in turn call upon the Court to resolve difficult and sensitive" constitutional questions.)). The interpretation adopted in *Domingo M.M.* involves questions related to the Suspension Clause, which states that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. 1, § 9, cl. 2. Congress has the authority to modify the right to seek Habeas, but it cannot do so in the absence of "a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention." *Swain v. Pressley*, 430 U.S. 372, 381, 97 S. Ct. 1224, 51 L. Ed. 2d 411 (1977); see *Aditya W. H. v. Trump*, Case No. 2:25-cv-374, 782 F. Supp. 3d 691, 2025 U.S. Dist. LEXIS 94430, 2025 WL 1420131, at *8 (D. Minn. May 14, 2025) (citing *Swain* with approval).

The court in *Domingo M.M.* improperly conflates the Petitioner's habeas claim, alleging unlawful detention based on ICE's failure to honor USCIS' grant of deferred action, with a sort of de facto request for a stay of removal. Making this unnecessary logical leap greatly disfavors a habeas petitioner in this context. Requests for removal stays are a separate process by which an alien may request that ICE postpone removal for a certain period. 8 C.F.R. § 241.6. While there were facts related to a separate stay of removal that the petitioner had applied for in *Domingo M.M.*, the present case does not involve any requests for a stay of removal. As such, the challenge here is not properly framed as an action arising from the government attempts to execute a removal order. Here, the petitioner challenges the government's failure to afford any weight to a USCIS grant of deferred action.

The limitations on judicial review set forth in 8 U.S.C. § 1252 support this Court's review of this matter. Section 1252(a)(2) serves the clear priority to bar courts from interfering with an established system of review, localizing power within the Executive Branch to oversee the grant and denial of immigration relief. However, if this power were to remain unchecked entirely, Subsection D would not have been written. Instead, Section 1252(a)(2) in its entirety asks that judiciaries such as this Court step in to course-correct when the decisions of the Executive Branch overstep the broad discretion they are given to exercise.

CONCLUSION

Here, Respondents seek to evade the judicial branch using a broad interpretation of Section 1252 so that the authorities of ICE might usurp the authorities of USCIS entirely, and no "appropriate appellate court" exists to review ICE's decision to override the conferral of deferred action.

DATED: February 17, 2026

Respectfully submitted,

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