

Karen S. Monrreal
Law Offices of Karen S. Monrreal
601 S. Arlington Ave.
Reno, NV 89503
karen@monrreallaw.com
775.826.2380 o
775.826.2386 f

Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Bernabe GODINEZ HERNANDEZ

Petitioner-Plaintiff,

v.

Markwayne MULLIN, in his Official Capacity,
Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney
General of the United States;

Todd M. LYONS, Acting Director, Immigration and
Customs Enforcement, U.S. Department of Homeland
Security;

Jason KNIGHT, Salt Lake City Field Office Director
for Detention and Removal, U.S. Immigration and
Customs Enforcement, Department of Homeland
Security; and

Darin BALAAM, Sherriff, Washoe County Detention
Center.

Respondents-Defendants.

Agency No.

A 

**MOTION FOR
TEMPORARY
RESTRAINING
ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF EX
PARTE MOTION FOR
TEMPORARY
RESTRAINING
ORDER AND MOTION
FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner, Bernabe Godinez Hernandez, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order ("TRO") and Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents from continuing his unlawful detention and ordering his immediate release. If the Court deems oral argument necessary, Petitioner request to appear by video.

Dated this 27th day of March 2026

Respectfully submitted,

/s/ Karen Monrreal

Karen S. Monrreal, Esq.

Attorney for Mr. Godinez Hernandez

1 **I. INTRODUCTION**

2
3 Petitioner Bernabe Godinez Hernandez, Agency Number [REDACTED], by and through
4 his undersigned counsel, respectfully moves this Court for a Temporary Restraining Order to
5 immediately enjoin Respondents from continuing his unlawful detention and to secure his prompt
6 release. This request arises from a fundamental legal contradiction: the Department of Homeland
7 Security (“DHS”) has affirmatively granted Mr. Godinez Hernandez deferred action and
8 determined that his removal will not be pursued, yet U.S. Immigration and Customs Enforcement
9 (“ICE”) continues to detain him for the very purpose DHS has elected to abandon.
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11 Mr. Godinez Hernandez is a 41-year-old father of three minor U.S. citizen children and
12 the sole provider for his family. He has resided in the United States for over a decade and was
13 granted deferred action and employment authorization in 2023 based on his pending derivative U
14 visa petition. That grant placed him in a period of authorized stay and reflects the Government’s
15 formal decision to refrain from removing him.
16

17 Despite this determination, Mr. Godinez Hernandez was taken into ICE custody following
18 a minor, non-violent incident related to his employment and now remains detained without legal
19 justification. His continued confinement serves no legitimate immigration purpose because his
20 removal has already been deferred. Instead, his detention is arbitrary, punitive, and in violation
21 of both statutory limits and the Due Process Clause of the Fifth Amendment.
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23 Absent immediate judicial intervention, Mr. Godinez Hernandez will continue to suffer
24 irreparable harm through the loss of his liberty and separation from his family. His detention
25 destabilizes his household, depriving his U.S. citizen children of their primary caregiver and sole
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1 financial support. At the same time, Respondents face no cognizable harm from his release,
2 particularly given DHS's prior determination that he should not be removed.

3 This Motion presents a straightforward legal issue and a compelling case for emergency
4 relief. Because Mr. Godinez Hernandez is likely to succeed on the merits of his habeas claim,
5 faces ongoing irreparable harm, and because the balance of equities and public interest weigh
6 decisively in his favor, this Court should grant a Temporary Restraining Order and order his
7 immediate release.
8

9 **II. STATEMENT OF FACTS AND CASE**

10 Mr. Godinez Hernandez is a 41-year-old native and citizen of Guatemala who last
11 entered the United States on or about November 28, 2011, and has resided continuously in the
12 country since that time. He is currently in the custody of U.S. Immigration and Customs
13 Enforcement and is being held at the Washoe County Sheriff's Office pending removal.
14

15 Mr. Godinez Hernandez was previously ordered removed by an Immigration Judge on
16 July 13, 2011, and was physically removed from the United States on July 22, 2011. Later that
17 same year, he re-entered the United States without inspection in order to reunite with and
18 support his family. Since that time, he has established significant ties in the United States and
19 has remained in the country for over a decade.
20

21 On February 6, 2018, Mr. Godinez Hernandez filed Form I-918, Supplement A, Petition
22 for Qualifying Family Member of a U-1 Nonimmigrant, with the Nebraska Service Center. His
23 spouse was the victim of a qualifying crime, and as her legally recognized husband, Mr.
24 Godinez Hernandez qualified as a derivative beneficiary under the U visa provisions.
25 Concurrently, he filed Form I-192, Application for Advance Permission to Enter as a
26 Nonimmigrant.
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1 On April 6, 2023, U.S. Citizenship and Immigration Services determined that Mr.
2 Godinez Hernandez's U visa petition was bona fide and granted him deferred action, along with
3 employment authorization, while he awaits the availability of a U visa under the statutory cap.
4 As a recipient of deferred action, Mr. Godinez Hernandez is considered lawfully present in the
5 United States for the duration of that grant and is not subject to removal during this period.
6

7 Notwithstanding this lawful status, ICE has continued to detain Mr. Godinez Hernandez.
8 His ongoing detention is inconsistent with the Immigration and Nationality Act and violates the
9 Due Process Clause of the Fifth Amendment.

10 Mr. Godinez Hernandez is married and serves as the sole financial provider for his
11 household. He is the father of three minor children, all under the age of 13, each of whom is a
12 United States citizen. His detention has imposed significant hardship on his family.
13

14 Importantly, the circumstances leading to Mr. Godinez Hernandez's detention do not
15 involve violent criminal conduct. At the time of his arrest, Mr. Godinez Hernandez was working
16 as a truck driver transporting fruit. He stopped after observing that a coworker driving ahead of
17 him had been pulled over by the Highway Patrol. Upon stopping to check on his coworker, it
18 was discovered that the coworker's driver's license had expired. Because Mr. Godinez
19 Hernandez was present and aware of the situation, he was arrested for alleged knowledge of the
20 coworker's expired license, which subsequently led to the placement of an ICE detainer.
21

22 However, Mr. Godinez Hernandez's placement in ICE custody is improper given his
23 grant of deferred action and lawful presence in the United States. His continued detention is
24 therefore unjustified and contrary to governing law and policy.
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26 **III. JURISDICTION**

27 This Court has jurisdiction to review Petitioners' TRO Application.
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1 Federal courts are courts of limited jurisdiction and may not proceed to the merits without
2 first confirming they have authority to decide the case. *Kokkonen v. Guardian Life Ins. Co. of*
3 *Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994).

4 **A. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(g)**

5 8 U.S.C. § 1252(g) statute states:

6 “...no court shall have jurisdiction to hear any cause or claim by or on behalf of
7 any alien arising from the decision or action by the Attorney General to
8 commence proceedings, adjudicate cases, or execute removal orders...”

9 However, the Supreme Court has explicitly interpreted § 1252(g) as a narrow
10 jurisdictional limitation. In *Jennings*, the Court reiterated that § 1252(g) applies only to the three
11 specific actions listed: the commencement of proceedings, adjudication of cases, and execution
12 of removal orders. *Jennings*, 583 U.S. at 293.

13 Section 1252(g) does not strip this Court of jurisdiction because Mr. Godinez
14 Hernandez’s claims do not arise from a discretionary decision to “commence proceedings,
15 adjudicate cases, or execute removal orders.” Rather, they arise from the Government’s
16 affirmative grant of deferred action and its subsequent failure to honor that determination.

17 The Supreme Court has made clear that § 1252(g) must be interpreted narrowly and
18 applies only to three discrete categories of prosecutorial discretion. It does not extend to all
19 claims that may tangentially relate to removal. Here, Mr. Godinez Hernandez does not challenge
20 the validity of his removal order, nor does he seek to restrain the Government’s discretion in
21 deciding whether to execute that order in the first instance. Instead, he challenges the legality of
22 his continued detention after DHS has already exercised its discretion in his favor by granting
23 deferred action.

24 That distinction is dispositive. Section 1252(g) is designed to shield the Government’s
25 discretionary decisions to deny relief—not to insulate unlawful conduct that disregards relief
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1 already granted. Mr. Godinez Hernandez's claim is not that the Government should have granted
2 him deferred action; it is that, having granted it, the Government cannot ignore its legal effect.
3 This type of claim falls outside the core concerns of § 1252(g), which targets interference with
4 prosecutorial decision-making, not the Government's failure to abide by its own determinations.

5 Applying the proper focus on the source of the injury confirms that jurisdiction exists.
6 Mr. Godinez Hernandez's detention is not challenged simply because a removal order exists, but
7 because DHS granted deferred action and thereby removed the legal basis for executing that
8 order. But for that grant of deferred action, Mr. Godinez Hernandez would have no claim. His
9 injury flows directly from the Government's inconsistent actions—conferring protection from
10 removal while simultaneously detaining him as if no such protection existed.
11

12 Additionally, where the Government has affirmatively deferred removal, the removal
13 order is no longer meaningfully “executable” during the period of deferred action. Detention
14 premised on executing a removal order that the Government has chosen not to carry out falls
15 outside the scope of § 1252(g), which presupposes an enforceable and operative removal
16 decision. In this context, Mr. Godinez Hernandez is not being detained to effectuate removal, but
17 in spite of the Government's decision not to remove him.
18

19 Finally, a broader reading of § 1252(g) would raise serious constitutional concerns. If
20 accepted, the Government's position would eliminate any judicial forum for individuals like Mr.
21 Godinez Hernandez to challenge the legality of their detention, even where that detention
22 contradicts an express grant of relief. Because habeas corpus provides the only meaningful
23 mechanism to test the legality of such confinement, interpreting § 1252(g) to bar jurisdiction
24 would implicate the Suspension Clause. Courts must avoid such a construction where, as here, a
25 narrower and more faithful reading of the statute is available.
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1 For these reasons, § 1252(g) does not divest this Court of jurisdiction over Mr. Godinez
2 Hernandez's habeas petition.

3 **IV. LEGAL STANDARD**

4 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
5 relief to prevent "immediate and irreparable injury." Fed R. Civ. P. 65(b). A preliminary
6 injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the
7 plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S.
8 Ct. 365, 172 L. Ed. 2d 249 (2008). To obtain a preliminary injunction, a plaintiff must establish
9 four elements: "(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer
10 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its
11 favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. &*
12 *Fin. Servs. Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (*citing Winter*,
13 555 U.S. at 20).

14 In the Ninth Circuit, a preliminary injunction may also issue under the "serious
15 questions" test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)
16 (affirming the continued viability of this doctrine post-Winter). According to this test, "serious
17 questions going to the merits and a balance of hardships that tips sharply towards the plaintiff
18 can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a
19 likelihood of irreparable injury, and that the injunction is in the public interest." *Id.* at 1135.
20 Courts in the Ninth Circuit evaluate "these factors on a sliding scale, such that a stronger
21 showing of one element may offset a weaker showing of another." *Recycle for Change v. City of*
22 *Oakland*, 856 F.3d 666, 669 (9th Cir. 2017).

23 **V. ARGUMENT**

Petitioners warrant a Temporary Restraining Order.

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioners is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. Petitioner will continue to suffer irreparable injury if he continues to be detained without due process.

A. Likelihood of Success on the Merits.

The first *Winter* factor requires Mr. Godinez Hernandez to demonstrate that he is likely to succeed on the merits of his underlying habeas claim. He satisfies that burden here.

District courts may grant habeas relief where a petitioner’s detention violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). Habeas corpus guarantees a “meaningful opportunity” to challenge detention based on an erroneous interpretation of law. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Mr. Godinez Hernandez’s claim presents precisely such a legal error.

Mr. Godinez Hernandez’s continued detention turns on a pure question of law: the meaning and legal effect of deferred action. Respondents assert authority to detain him under 8 U.S.C. § 1231(a) on the premise that his removal will be executed. But that premise cannot be reconciled with DHS’s affirmative decision to grant Mr. Godinez Hernandez deferred action through the bona fide U visa process. By granting deferred action, the Government has already

1 determined that it will refrain from executing his removal. That determination eliminates the legal
2 basis for detention tied to effectuating removal.

3 This interpretation is firmly grounded in Supreme Court and circuit authority. The
4 Supreme Court has explained that deferred action means that “no action will thereafter be taken
5 to proceed against an apparently deportable alien.” *Reno v. American-Arab Anti-Discrimination*
6 *Committee*, 525 U.S. 471, 484 (1999). Similarly, the Fifth Circuit has recognized that deferred
7 action reflects the Government’s decision to “refrain from...executing an outstanding order of
8 deportation.” *Johns v. Dep’t of Justice*, 653 F.2d 884, 890 (5th Cir. 1981). These authorities make
9 clear that deferred action is not merely symbolic—it is a substantive decision not to carry out
10 removal.
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12 The Ninth Circuit has repeatedly adopted this understanding. It has explained that deferred
13 action reflects a decision to take “no action ‘to proceed against an apparently deportable alien.’”
14 *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001). Courts within the Ninth
15 Circuit have likewise recognized that deferred action is a form of prosecutorial discretion through
16 which the Government “decide[s] not to pursue the removal” of an individual. *Ariz. Dream Act*
17 *Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015).
18

19 Critically, courts have also confirmed that deferred action protects recipients from
20 removal in practice, particularly in the U visa context. *See Lee v. Holder*, 599 F.3d 973, 974–75
21 (9th Cir. 2010) (recognizing that deferred action for U visa applicants prevents removal while
22 they await visa availability); *De Sousa v. Dir. of USCIS*, 755 F. Supp. 3d 1266, 1268 (N.D. Cal.
23 2024) (holding that deferred action “protects [noncitizens] against removal” during the statutory
24 waiting period). As another court explained, deferred action represents the Government’s “formal
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1 determination not to remove a particular individual.” *Alvarez Leal v. Lynch*, 673 F. App’x 630,
2 632 (9th Cir. 2017) (Pregerson, J., dissenting).

3 Agency policy confirms the same understanding. The USCIS Policy Manual defines
4 deferred action as “a form of prosecutorial discretion to defer removal action (deportation)” and
5 provides that individuals granted deferred action are considered to be in a “period of stay
6 authorized” for its duration. USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4). This policy
7 reflects the Government’s own recognition that deferred action carries legal consequences,
8 including protection from removal.
9

10 In light of this authority, Respondents’ position—that they may continue detaining Mr.
11 Godinez Hernandez to effectuate removal despite granting deferred action—cannot be sustained.
12 Detention under § 1231(a) is justified only insofar as it serves the purpose of removal. Where, as
13 here, the Government has affirmatively decided not to proceed with removal, detention loses its
14 statutory foundation.
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16 Nor can Respondents avoid this conclusion by characterizing deferred action as merely a
17 matter of “lower priority.” As courts have recognized, prioritization is the practical consequence
18 of the Government’s underlying decision not to proceed with removal. It does not diminish the
19 legal effect of that decision. Accepting Respondents’ position would render deferred action
20 meaningless—allowing the Government to promise that it will not remove an individual while
21 simultaneously detaining him as if removal were imminent.
22

23 Finally, Respondents’ position raises serious constitutional concerns. Deferred action
24 confers concrete benefits, including lawful presence and employment authorization. Once
25 granted, such benefits cannot be disregarded in a manner that results in arbitrary detention. As the
26 Supreme Court has cautioned, habeas corpus protects against “arbitrary imprisonment without
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1 law.” *Boumediene*, 553 U.S. at 785. Detaining Mr. Godinez Hernandez despite an active grant of
2 deferred action falls squarely within that prohibition.

3 For these reasons, Mr. Godinez Hernandez has demonstrated a strong likelihood of
4 success on the merits. His detention rests on a legal theory that conflicts with Supreme Court
5 precedent, Ninth Circuit authority, and the Government’s own policies. Accordingly, he is likely
6 to prevail on his claim that his continued detention is unlawful.
7

8 **B. Irreparable Harm**

9 Mr. Godinez Hernandez will suffer irreparable and imminent harm absent preliminary
10 injunctive relief. The *Winter* factor regarding irreparable harm tips sharply in his favor.
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12 Mr. Godinez Hernandez is 41 years old and has lived in the United States for most of his
13 life. He has resided here continuously for over a decade, and his immediate family—including
14 his spouse and children,—reside here as well. Deportation would separate him from his family,
15 disrupt long-standing familial relationships, and impose profound emotional and practical
16 burdens that cannot be undone.
17

18 Removal would also directly frustrate the benefits the Government has already granted
19 him through deferred action and related work authorization. These benefits represent concrete
20 legal entitlements; if Mr. Godinez Hernandez is removed, he will be deprived of lawful
21 employment, lawful presence, and access to the protections associated with deferred action. Such
22 deprivation constitutes harm that is inherently irreparable because monetary damages or later
23 remedies cannot restore the opportunity to reside and work in the United States lawfully during
24 the period of deferred action. See *Boumediene v. Bush*, 553 U.S. 723, 785 (2008) (emphasizing
25 that arbitrary detention without law is harm that cannot be undone).
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1 For these reasons, the irreparable harm factor strongly supports granting preliminary relief
2 to prevent removal while the Court resolves the merits of his habeas petition.

3 **C. Balance of the Equities and Public Interest**

4 The final two *Winter* factors—balancing the equities and considering the public interest—
5 merge when the Government is a party. *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1141
6 (9th Cir. 2020). These factors strongly favor Mr. Godinez Hernandez.

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8 A preliminary injunction would impose little to no prejudice on the Government. The
9 Government has already granted Mr. Godinez Hernandez deferred action and associated work
10 authorization benefits. Enjoining his removal would therefore alter nothing in the Government's
11 ability to enforce immigration laws in general or to exercise prosecutorial discretion elsewhere.

12
13 By contrast, Mr. Godinez Hernandez would face irreparable and life-altering harm absent
14 an injunction. Deportation would separate him from his spouse, children, and grandchildren,
15 disrupt decades-long family and community ties, and strip him of the concrete benefits conferred
16 by deferred action, including lawful presence and work authorization. Courts have repeatedly
17 recognized that avoiding arbitrary detention and preventing deprivation of conferred legal
18 benefits serves a compelling public interest. *See Boumediene v. Bush*, 553 U.S. 723, 785 (2008);
19 *Medina v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 1224, 1228 (W.D. Wash. 2019).

20
21 The public interest is thus clearly served by ensuring the Government honors the legal
22 protections it has already granted and does not detain or remove individuals without a lawful
23 basis. On the equities, the scales tip decisively in favor of Mr. Godinez Hernandez, supporting
24 preliminary injunctive relief.

25 **VI. CONCLUSION**

26
27 For the foregoing reasons, Mr. Godinez Hernandez has demonstrated that he is entitled to
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1 emergency relief. He has demonstrated: (1) a strong likelihood of success on the merits of his
2 habeas petition, (2) that he will suffer irreparable harm absent immediate relief, and (3) that the
3 balance of equities and the public interest overwhelmingly favor preliminary injunctive relief.

4 Accordingly, Mr. Godinez Hernandez respectfully requests that this Court grant a
5 Temporary Restraining Order and preliminary injunction preventing his removal and ensuring
6 that his deferred action and associated benefits, including work authorization, are honored while
7 this case is pending.
8

9 Accordingly, Petitioners respectfully request that this Court grant his Application for a
10 Temporary Restraining Order, order his immediate release from custody, enjoin Respondents
11 from removing or transferring them outside the District of Nevada, and grant such further relief
12 as the Court deems just and proper.
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14 Dated this 27th day of March 2026
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16 Respectfully submitted,
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Karen S. Monrreal, Esq.
19 Attorney for Petitioner Mr. Godinez
20 Hernandez
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