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9
10 UNITED STATES DISTRICT COURT
11
12 FOR THE DISTRICT OF NEVADA
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14 BERNABE GODINEZ HERNANDEZ,

15 Petitioner,

16 v.

17 Kristi NOEM, *Et al.*,

18 Respondents.
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Case No. 3:26-cv-00219-ART-
CSD

**PETITIONER'S REPLY TO
Federal Respondents' Response
to Petition for Writ of Habeas
Corpus, ECF No. 1 and Motion
for Temporary Restraining
Order, ECF No. 2**

1 **I. INTRODUCTION**

2 Petitioner Bernabe Godinez Hernandez respectfully submits this Reply in support of his
3 Petition for Writ of Habeas Corpus and in response to the Government's opposition. At its core,
4 this case presents a narrow but fundamental question: whether the Department of Homeland
5 Security may continue to detain an individual for the purpose of effectuating removal after it has
6 affirmatively exercised its discretion to defer that very removal. The Government's response
7 attempts to reframe this case as a routine challenge to detention under 8 U.S.C. § 1231 and as an
8 impermissible collateral attack on the execution of a removal order. That characterization is
9 incorrect. Petitioner does not challenge the validity of his prior removal order, nor does he seek
10 review of any decision to execute that order. Rather, he challenges the legal authority for his
11 present confinement in light of DHS's own discretionary determination that his removal will not
12 be pursued during the period of deferred action.
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14 The Government's jurisdictional arguments under 8 U.S.C. § 1252(b)(9) and § 1252(g) fail
15 because this action falls squarely within the traditional scope of habeas review: a challenge to
16 unlawful detention. The Supreme Court has made clear that such claims remain reviewable
17 where, as here, the petitioner does not seek review of a removal order but instead contests the
18 extent of the Government's detention authority. Likewise, the Government's reliance on § 1231
19 is misplaced. Detention under that provision is justified only to effectuate removal; where
20 removal has been affirmatively deferred, the statutory predicate for detention collapses. The
21 Government cannot simultaneously assert that it has chosen not to remove Petitioner while also
22 claiming authority to detain him for the purpose of carrying out that removal.
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24 Ultimately, this case is not about the timing of removal or the duration of detention—it is
25 about the absence of lawful authority to detain at all. By continuing to confine Petitioner despite
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1 its own decision to defer his removal, the Government has severed any meaningful connection
2 between detention and its permissible regulatory purpose, rendering that detention arbitrary and
3 in violation of the Due Process Clause. For these reasons, and as set forth more fully below, the
4 Petition should be granted and Petitioner should be immediately released.

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6 **II. STATEMENT OF RELEVANT FACTS**

7 Petitioner Bernabe Godinez Hernandez is a native and citizen of Guatemala who has resided
8 in the United States for more than a decade. Following his prior removal in 2011, he reentered
9 the United States later that same year and has remained continuously present since that time.
10 During this period, he established substantial ties to this country, including residing with his
11 spouse and three minor U.S. citizen children, all of whom depend on him for financial and
12 emotional support. His longstanding residence, family unity, and role as the sole provider
13 underscore the significant hardship his continued detention imposes.

14
15 On or about February 6, 2018, Petitioner filed a Form I-918, Supplement A, as a derivative
16 beneficiary of his spouse's U visa petition, along with a Form I-192. As part of the U visa
17 process, U.S. Citizenship and Immigration Services evaluated his application under the bona fide
18 determination framework. On April 6, 2023, USCIS determined that Petitioner's petition was
19 bona fide and, consistent with its policies governing such determinations, granted him
20 employment authorization and deferred action while he awaits the availability of a U visa under
21 the statutory cap. As a recipient of deferred action, Petitioner was placed in a period of
22 authorized stay and treated as lawfully present for the duration of that grant.

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25 Notwithstanding this determination, Petitioner was later taken into custody by Immigration
26 and Customs Enforcement following a minor, non-violent incident arising out of his employment
27 as a truck driver. The circumstances of that incident did not involve any allegation of violence or
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1 danger to the community. Nevertheless, ICE lodged a detainer and assumed custody of
2 Petitioner, placing him in immigration detention.

3 The Government now asserts that Petitioner is subject to reinstatement of his prior removal
4 order and is being detained pursuant to 8 U.S.C. § 1231 for the purpose of effectuating his
5 removal. At the same time, the Government disputes the existence or effect of Petitioner's
6 deferred action, despite acknowledging that he received a bona fide determination in connection
7 with his derivative U visa petition. This position creates a direct conflict between the
8 Government's asserted authority to detain Petitioner for removal and its prior discretionary
9 determination regarding his immigration status.
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11 As a result, Petitioner remains in ICE custody despite having been granted relief that, by
12 definition, reflects the Government's decision to defer his removal. His continued detention has
13 separated him from his family, deprived his household of its primary source of support, and
14 subjected him to confinement that is untethered from any legitimate immigration purpose. These
15 facts form the basis of Petitioner's claim that his detention is unlawful under both the
16 Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.
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18 III. ARGUMENT

19 a. **This Court has Jurisdiction over Petitioner's Habeas Claims**

20 i. Section 1252(g) Does Not Bar Jurisdiction

21 Respondents' reliance on 8 U.S.C. § 1252(g) is misplaced because Petitioner does not
22 challenge the validity of his removal order or the Government's decision to execute that order.
23 Instead, he challenges the lawfulness of his present detention in light of the Government's prior
24 discretionary decision to defer his removal. That distinction is dispositive.
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1 The Supreme Court has made clear that § 1252(g) is to be narrowly construed and applies
2 only to three discrete actions: “the decision or action to commence proceedings, adjudicate cases,
3 or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482
4 (1999). Courts analyzing whether § 1252(g) applies therefore examine whether “the alien’s well-
5 pleaded complaint is based on one of § 1252(g)’s three listed factors.” *Fornalik v. Perryman*, 223
6 F.3d 523, 529 (7th Cir. 2000).

7
8 Here, Petitioner’s claim does not arise from any of those three enumerated actions. Rather, as
9 in *Fornalik*, the “essential problem” stems from the interaction between two separate
10 governmental decisions: first, the agency’s determination placing Petitioner in deferred action
11 status, and second, ICE’s subsequent decision to detain him as though removal were being
12 actively pursued. *Id.* Petitioner’s claim is that DHS cannot lawfully detain him where it has
13 affirmatively chosen not to execute removal through deferred action. That claim is independent
14 of any decision to execute a removal order and therefore falls outside the narrow scope of §
15 1252(g).
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18 Critically, Petitioner’s claims do not “arise from” ICE’s decision to execute his removal
19 order. Instead, they arise from the Government’s own discretionary grant of deferred action
20 combined with its refusal to honor that determination by continuing to detain him. This is not a
21 challenge to the execution of removal, but to the legal authority to detain in the absence of a
22 valid removal purpose.
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24 Here, USCIS has already made its determination that Petitioner has filed a bona fide U visa
25 application and is eligible for deferred action. Petitioner is not seeking to delay removal based on
26 a pending application; he is seeking enforcement of an existing agency determination that, by its
27 nature, defers removal. Because his claim is collateral to and independent of any decision to
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1 execute a removal order, § 1252(g) does not deprive this Court of jurisdiction.

2 ii. Section 1252(b)(9) Does Not Bar Jurisdiction

3 Respondents likewise err in asserting that 8 U.S.C. § 1252(b)(9) strips this Court of
4 jurisdiction. The Supreme Court has expressly rejected such an expansive reading of the statute.
5 Section 1252(b)(9) does not bar habeas jurisdiction over claims that are independent of removal
6 proceedings, including challenges to detention.
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8 In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court held that § 1252(b)(9) does not
9 apply where noncitizens “are not asking for review of an order of removal” but instead challenge
10 “the extent of the Government’s detention authority.” That is precisely the case here. Petitioner
11 does not seek review of a removal order, does not interfere with removal proceedings, and does
12 not contest the Government’s authority to remove him at some future point. Rather, he
13 challenges only whether the Government presently has legal authority to detain him despite its
14 decision to defer his removal.
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16 The Ninth Circuit has similarly limited § 1252(b)(9) to claims that are “bound up in and an
17 inextricable part of the administrative process” of removal. *Martinez v. Clark*, 36 F.4th 1219 (9th
18 Cir. 2022). Where a claim is independent of that process—such as a challenge to the legality of
19 detention—it falls outside the statute’s jurisdictional bar. Petitioner’s claim is not intertwined
20 with removal proceedings; it is a standalone challenge to unlawful confinement.
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22 Moreover, Petitioner’s claim cannot be meaningfully reviewed through a petition for review
23 in the court of appeals, which is the exclusive avenue contemplated by § 1252(b)(9) for
24 challenges to removal orders. A petition for review cannot address the core issue presented here:
25 whether DHS may continue to detain an individual after affirmatively deciding to defer his
26 removal. Because Petitioner’s claim concerns detention authority rather than removal, it falls
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1 squarely within traditional habeas review.

2 Accordingly, § 1252(b)(9) does not deprive this Court of jurisdiction, and Respondents'
3 argument to the contrary should be rejected.

4 **b. Petitioner's Detention Is Not Lawful Under 8 U.S.C. § 1231**

5 Respondents contend that Petitioner's detention is authorized under 8 U.S.C. § 1231 because
6 he is subject to a reinstated removal order and is within the removal period. That argument fails
7 because it ignores the fundamental limitation underlying § 1231: detention is permitted only for
8 the purpose of effectuating removal. Where the Government has affirmatively exercised its
9 discretion to defer removal, the statutory predicate for detention no longer exists.
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11 Section 1231 governs detention following a final order of removal and authorizes custody
12 during the "removal period" to ensure that the Government can carry out removal. However, the
13 Supreme Court has made clear that such detention is not without limits. In *Zadvydas v. Davis*,
14 533 U.S. 678, 689 (2001), the Court held that detention under § 1231 is permissible only for a
15 period "reasonably necessary to bring about that alien's removal." Thus, the legality of detention
16 under § 1231 is inseparable from the existence of a genuine and ongoing effort to remove the
17 individual.
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19 Here, that essential condition is absent. As set forth in the Petition, DHS, through USCIS,
20 determined that Petitioner's U visa petition was bona fide and granted him deferred action.
21 Deferred action is a formal exercise of prosecutorial discretion through which the Government
22 affirmatively decides to defer removal for a specified period. By definition, it reflects a
23 determination that removal will not be pursued during that time. As such, it eliminates the very
24 objective that § 1231 detention is designed to serve.
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1 Respondents attempt to avoid this conclusion by disputing whether deferred action was
2 granted. But even under their own account, they acknowledge that Petitioner received a bona fide
3 determination in connection with his derivative U visa petition. That determination is part of a
4 framework in which DHS evaluates eligibility for deferred action and exercises discretion based
5 on humanitarian and enforcement priorities. At minimum, this creates a material factual and
6 legal inconsistency that precludes reliance on § 1231 as a clear basis for detention. The
7 Government cannot simultaneously rely on a statutory scheme that contemplates deferred
8 removal while asserting authority to detain Petitioner for the purpose of effectuating that same
9 removal.
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11 Moreover, Respondents' position improperly treats § 1231 as authorizing detention in all
12 cases involving a final order of removal, regardless of whether removal is actually being
13 pursued. That reading is inconsistent with *Zadvydas*, which rejected the notion that § 1231
14 permits indefinite or purposeless detention. Where, as here, detention is untethered from a
15 realistic or intended removal objective, it exceeds the statute's permissible scope.
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17 The Government's reliance on the "presumptively reasonable" six-month period discussed in
18 *Zadvydas* is likewise misplaced. That presumption applies only where detention is undertaken
19 for the purpose of removal. It does not authorize detention where the Government has already
20 determined not to remove the individual during the relevant period. The issue here is not the
21 duration of detention, but the absence of legal authority to detain at all.
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23 In sum, because DHS has affirmatively exercised its discretion to defer Petitioner's removal,
24 there is no legitimate removal purpose supporting his detention. Without that purpose, § 1231
25 does not authorize continued confinement. Petitioner's detention is therefore unlawful under the
26 Immigration and Nationality Act and must cease.
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1 IV. CONCLUSION

2 For the foregoing reasons, Respondents' arguments fail as a matter of law. This Court retains
3 jurisdiction over Petitioner's habeas claims because he challenges the legality of his detention—
4 not the validity or execution of a removal order—and such claims fall squarely within the
5 traditional scope of habeas review. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court
6 of jurisdiction. Furthermore, Respondents have not established that Petitioner's detention is
7 lawful under 8 U.S.C. § 1231, as detention under that provision is permissible only where it
8 serves the purpose of effectuating removal. Here, the Government's own actions—specifically,
9 its determination placing Petitioner within the bona fide U visa framework and associated
10 discretionary protections—undermine any assertion that removal is being meaningfully pursued.
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13 By continuing to detain Petitioner despite the absence of a legitimate removal objective,
14 Respondents have exceeded their statutory authority and violated the Due Process Clause of the
15 Fifth Amendment. Petitioner's confinement is therefore unlawful.

16 Accordingly, Petitioner respectfully requests that this Court grant the Petition for Writ of
17 Habeas Corpus, order his immediate release from immigration custody, and grant such further
18 relief as the Court deems just and proper.
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20 Executed this 6th day of April 2026.

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24 Hernandez
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