

District Judge Jamal N. Whitehead
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTURO SEPULVEDA AYALA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-01063-JNW-TLF

FEDERAL RESPONDENTS’
OPPOSITION TO PETITIONER’S
MOTION FOR A PRELIMINARY
INJUNCTION

Noted for Consideration:
July 7, 2025

I. INTRODUCTION

This Court should deny Petitioner Arturo Sepulveda Ayala’s Motion for a Preliminary Injunction and Stay of Removal. Dkt. No. 14 (“Mot.”). U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Ayala as he is subject to a valid reinstated order of removal and there are no bars to his removal outside of this litigation. Ayala incorrectly argues that U.S. Citizenship and Immigration Services’ (“USCIS”) grant of “deferred action” pursuant to the agency’s U visa bona fide determination process prevents ICE from removing him and acts as a *de facto* stay of removal. But deferred action in this context is not a stay of ICE’s statutory authority to execute his removal order. The law, regulations, and USCIS policy show that deferred action is distinct and separate from a stay of removal. To the contrary, deferred

1 action in this context is a USCIS policy that may lower priority of removal for some cases but
 2 does not displace or stay ICE’s discretionary authority to execute removal orders.

3 Furthermore, USCIS specifically informed Ayala in his bona fide determination approval
 4 notice, “Deferred action is an act of administrative convenience to the government which gives
 5 some cases lower priority for removal.” Dkt. No. 1-2, Notice of Action, Bona Fide
 6 Determination Notice, dated February 19, 2025. Thus, no ambiguity of the meaning of deferred
 7 action exists as it applies to Ayala pursuant to USCIS’s policy.

8 As a result, Ayala has not met his burden of making a clear showing that his detention or
 9 removal is unlawful necessitating the extraordinary remedy of a preliminary injunction. This
 10 Court should deny his request for release from detention and for a stay of removal.

11 II. BACKGROUND¹

12 Ayala is a Mexican citizen who last entered the United States in 2004. Pet., ¶¶ 1, 11. He
 13 filed a Form I-918, Petition for U Nonimmigrant Status, along with other applications, on
 14 November 15, 2022. *Id.*, ¶ 12. On February 2, 2025, after Ayala’s administrative stay of
 15 removal expired, ICE took Ayala into custody and issued a Reinstated Order of Removal. *Id.*,
 16 ¶ 16. ICE subsequently denied Ayala’s second request for an administrative stay of removal.
 17 Pet, ¶¶ 19, 20.

18 In 2021, USCIS published a Policy Manual update implementing a process which
 19 provides employment authorization and deferred action more efficiently to U visa petitioners and
 20 their qualifying family members with pending bona fide petitions who merit a favorable exercise
 21 of discretion. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5 (“BFD Chapter”), *available at*
 22 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on June 29, 2025).

23
 24 ¹ Federal Respondents respectfully refer this Court to background section of their Opposition to the Motion for
 Temporary Restraining Order for a description of U visas and the relevant detention statute. Dkt. No. 9, at 2-9.

The process, referred to as the bona fide determination process, is authorized under 8 U.S.C. § 1184(p)(6), which provides that “[t]he Secretary may grant work authorization to any alien who has a pending, bona fide application for [U] nonimmigrant status under section 1101(a)(15)(U) of this title.” To make a favorable bona fide determination, USCIS first determines whether a pending petition is bona fide (which means “made in good faith; without fraud or deceit”), and then in its discretion, determines whether the petitioner poses a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. *See* BFD Chapter.

On February 19, 2025, USCIS issued a favorable bona fide determination on Ayala’s Form I-918. *Id.*, ¶ 17. The notice informing Ayala of this favorable determination explained the meaning of deferred action:

At this time, the evidence demonstrates your petition for U nonimmigrant status is bona fide, and you warrant a favorable exercise of discretion to receive employment authorization and deferred action. Because USCIS has determined your petition is bona fide and you warrant a favorable exercise of discretion, you may be issued an employment authorization document and may be placed in deferred action. Deferred action is an act of administrative convenience to the government which gives some cases lower priority for removal.

Dkt. No. 1-2, Notice of Action, Bona Fide Determination Notice, dated February 19, 2025. Shortly thereafter, USCIS approved his Form I-765, giving him employment authorization and granting him deferred action. *Pet.*, ¶ 17; BFD Chapter. Ayala’s Form I-918 will be adjudicated when a nonimmigrant U visa becomes available consistent with the statutory cap. USCIS Policy Manual, Vol. 3, Part C, Ch. 7, available at <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7> (last visited June 29, 2025).

In March, Ayala commenced mandamus litigation, seeking an order compelling USCIS to issue a waiting list determination for his Form I-918 and adjudicate his Form I-192. *Ayala v. Noem*, No. 3:25-cv-5185-JNW (W.D. Wash). The following month, he filed an emergency motion for a temporary restraining order (“TRO”) seeking a stay of his removal and enjoining his transfer to another facility. *Id.*, Dkt. No. 6. On April 6, 2025, this Court issued the TRO

1 before the government had the opportunity to oppose the motion. Dkt. No. 9. The TRO
2 remained in effect until June 5, 2025, when this Court denied Ayala's motion for a preliminary
3 injunction staying his removal. Dkt. No. 23. The government has filed a motion to dismiss the
4 mandamus litigation. Dkt. No. 14.

5 Ayala filed this habeas litigation and a second TRO motion on June 6, 2025. Dkt. Nos. 1
6 & 2. He alleges that his detention violates the Immigration and Nationality Act and the Fifth
7 Amendment's Due Process Clause because he has been granted deferred action and issued
8 employment authorization pursuant to the bona fide determination process for U-1 nonimmigrant
9 status petitioners. Pet., ¶¶ 3-6. According to Ayala, deferred action means that he "cannot be
10 removed." *Id.*, at ¶ 4. This Court granted Ayala's TRO motion, staying his removal from the
11 United States or transfer to another facility during this litigation. Dkt No. 11, TRO. After
12 finding that it has jurisdiction at this stage of the litigation, this Court found "serious questions
13 going to the merits of Sepulveda Ayala's claims, as they relate to this inter-agency conflict
14 within the Department of Homeland Security and regulatory ambiguity about the meaning of
15 deferred action." TRO, at 1. The Court also found that Ayala demonstrated clear irreparable
16 harm without immediate intervention. *Id.*, at 2.

17 Respectfully, there is no interagency conflict concerning the meaning of deferred action.
18 As described below, the deferred action pursuant to USCIS's U visa bona fide determination
19 policy does not affect ICE's removal authority. In both USCIS's manual and in the notice to
20 grantees of interim benefits, USCIS plainly defines deferred action granted through the bona fide
21 determination process as an administrative convenience that gives some cases lower priority for
22 removal. Dkt. No. 1-2, Notice of Action, Bona Fide Determination Notice, dated February 19,
23 2025; BFD Chapter § 7 ("Deferred action, as an exercise of prosecutorial discretion to make an
24 alien a lower priority for removal from the United States, is only applicable to aliens in the

United States.”). Thus, this Court should find that Ayala has not made a clear showing that he is likely to succeed on the merits of his habeas claim.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is “substantially identical” to the standard for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

“A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984) (internal quotation omitted). Alternatively, a plaintiff can show that there are “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

IV. ARGUMENT

A. This Court lacks subject matter jurisdiction.

This case does not present a challenge to the revocation of immigration benefits, as Ayala’s deferred action never served as a stay of removal, so there is no benefit staying his removal to be revoked. Instead, Ayala’s habeas claim directly arises from the government’s decision to execute his valid removal order. But 8 U.S.C. § 1252(g) strips district courts of

1 subject matter jurisdiction over claims “arising from the decision or action by the Attorney
2 General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C.
3 § 1252(g). The Supreme Court has narrowly construed Section 1252(g) as arising directly from
4 the three enumerated actions, including the government’s decision or action to execute a removal
5 order. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”),* 525 U.S. 471,
6 473 (1999).

7 While Ayala may frame this case as a challenge to the purported revocation of his
8 deferred action, Ayala’s challenge directly arises from ICE’s decision to detain him and execute
9 his reinstated removal order. The fact that USCIS has granted deferred action pending the
10 adjudication of his U visa application does not change this analysis. *See* Pet., ¶¶ 34-36; *see also*
11 *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9th Cir. 2019) (unpublished) (“The
12 decision whether to remove aliens subject to valid removal orders who have applied for U-visas
13 is entirely within the Attorney General’s discretion.”).

14 When issuing the TRO, this Court found “at this stage that it has subject-matter
15 jurisdiction.” TRO, at 6. In doing so, this Court stated that Ayala “does not challenge his
16 removal timing but rather seeks to prevent revocation of benefits that USCIS affirmatively
17 granted him.” TRO, at 8. The government respectfully submits that the Court mis-framed the
18 question because it failed to properly interpret the meaning of “deferred action” under the U visa
19 bona fide determination process. Because deferred action here does not stay removal, ICE’s
20 decision to execute Ayala’s removal order was not a revocation of benefits, but ICE exercising
21 its discretion to make Ayala a priority.

22 The government recognizes the existence of cases, unlike here, where the plaintiff does
23 challenge the revocation of immigration benefits, and that such challenges are not necessarily
24 barred by Section 1252(g). For example, the Supreme Court found that Section 1252(g) did not

1 bar the district court's jurisdiction for an action challenging a decision to revoke interim benefits
2 as arbitrary and capricious pursuant to the Administrative Procedure Act and infringement of the
3 equal protection guaranteed pursuant to due process. *Dep't of Homeland Sec. v. Regents of the*
4 *Univ. of California*, 140 S. Ct. 1891, 1903, 1907 (2020). The *Regents* plaintiffs' challenge was
5 materially different than the habeas claims here. While the plaintiffs in that case were potentially
6 subject to removal because of the rescission of a program, which had provided a deferred action
7 program with associated benefits, this was not the focus of the litigation – the legality of the
8 program's rescission itself was at issue. Here, however, ICE's decision to execute Ayala's
9 removal despite his grant of deferred action is the action challenged in the Petition, which
10 directly implicates Section 1252(g).

11 Recently, another court in this District found that it lacked subject matter jurisdiction to
12 review a similar habeas claim. *Velasco Gomez v. Scott*, No. 25-cv-522-JLR-BAT, 2025 WL
13 1726465, at *4 (W.D. Wash. June 20, 2025). In *Velasco Gomez*, the petitioner alleged that his
14 detention and pending removal violated the Due Process Clause of the Fifth Amendment to the
15 United States Constitution because USCIS had previously granted him deferred action. *Id.*, at
16 *3. Like here, the petitioner sought a preliminary injunction based on ICE's decision to “*per se*
17 revoke his grant of deferred action by detaining him and seeking to execute his removal.” *Id.*, at
18 *6. The court found that Section 1252(g) stripped the court of jurisdiction because the habeas
19 claims “arise directly from the agency's allegedly unconstitutional decision and action to detain
20 him and execute his valid removal order despite his deferred action status.” *Id.*, at *5. As a
21 result, the court denied the preliminary injunction and dismissed the habeas petition. *Id.*, *6.

22 Like in *Velasco Gomez*, this Court should find that it lacks subject matter jurisdiction and
23 deny the motion for a preliminary injunction.

B. Ayala is unlikely to succeed on the merits.

Even if this Court were to find that it has jurisdiction, Ayala cannot establish that he is likely to succeed on the merits of his claims. Contrary to his claims, Ayala's detention is lawful under 8 U.S.C. § 1231(a). Ayala does not challenge the validity of his reinstated order of removal. Although he has been granted deferred action through USCIS's bona fide determination policy, this agency policy does not stay his valid order of removal.

Because Ayala's grant of deferred action is a creation of agency policy, this Court should look to the agency for the policy's meaning. Most notably, Ayala's notice of his favorable bona fide determination does not state that his removal is stayed through deferred action; instead, it describes deferred action as an act of administrative convenience giving some cases lower priority for removal. Dkt. No. 1-2, Notice of Action, Bona Fide Determination Notice, dated February 19, 2025. This is consistent with the definition of "deferred action" in the chapter in USCIS's Policy Manual concerning U visa bona fide determinations. BFD Chapter, § 7.

A grant of BFD deferred action is not synonymous with a stay of removal. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) ("Plaintiff obtaining a BFD in his favor would not prevent his removal"); *see also* "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of deportation or removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred action and a stay of removal as distinct benefits). Yet an individual granted such deferred action does not accrue unlawful presence in the United States during the deferred action period. 8 C.F.R. § 214.14(d)(3).

Ayala has not presented any evidence that USCIS's policy specific to U visa bona fide determinations supports his interpretation that deferred action automatically stays his removal.

1 He cannot. There is no language in the USCIS Policy Manual that states that a grant of deferred
2 action through the U visa bona fide determination process stays or prevents removal. Indeed,
3 USCIS's Policy Manual indicates otherwise, noting that the granting of a bona fide
4 determination employment authorization establishes a prima facie case for approval such that
5 ICE can consider granting a discretionary stay of removal per 8 U.S.C. § 1227(d)(1). BFD
6 Chapter. If a grant of deferred action through the bona fide determination process constituted an
7 automatic stay of removal, this guidance would be superfluous.

8 Ayala fails to include any direct legal support for his proposition that deferred action as
9 part of the U visa bona fide determination policy is the Department of Homeland Security's
10 agreement to stay removal. Mot., at 5 ("Ayala relies on the USCIS Policy Manual, USCIS
11 Frequently Asked Questions, various regulations, and Supreme Court precedent."). Instead,
12 Ayala relies on a non-relevant volume and section of the USCIS Policy Manual concerning
13 "Emergencies or Unforeseen Circumstances." Mot., at 5 n.1 (citing 1 USCIS-PM H.2(A)(4)).
14 This is in a separate volume of the policy manual from the volume and chapter relating to U
15 visas. See BFD Chapter. In the same fashion, he cites to "DACA Frequently Asked Questions,"
16 which is not pertinent to U visas. Mot., at 5 n.1. Finally, Ayala cannot rely on a treatise cited by
17 the Supreme Court in 1999. Mot., at 5 n.1 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*,
18 525 U.S. 471, 483-84 (1999)). This treatise was written prior to the creation of the U
19 nonimmigrant classification in 2000 and well before USCIS created the bona fide determination
20 policy in 2021. See 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and*
21 *Procedure* § 72.03 [2][h] (1998).

22 To further dispute ICE's lawful ability to execute his removal order, Ayala asserts that he
23 is "lawfully present" in the United States. Pet., ¶ 4. He is correct that he is not currently
24 accruing unlawful presence because of his grant of deferred action. See 8 C.F.R. § 214.14(d)(3).

1 However, his assertion conflates the distinction between “unlawful status” and “unlawful
 2 presence.” While the concepts of being in unlawful immigration status and the accrual of
 3 unlawful presence (“period of stay not authorized”) are related, they are not the same. *See* 8
 4 U.S.C. §§ 1182(a)(9)(B) & (a)(9)(C)(i)(I). For instance, a person must be present in an unlawful
 5 status to accrue unlawful presence. In contrast, a person may not have lawful status to remain in
 6 the United States but not accrue unlawful presence while his U visa petition is pending. 8 C.F.R.
 7 § 214.14(d)(3). But deferred action does not provide a noncitizen with legal status to be in the
 8 United States. This distinction is supported by Ayala’s citations to regulations treating people
 9 with deferred action as having lawful status for specific purposes. *Pet.*, ¶ 31; *Mot.*, at 5 n.1.

10 USCIS has plainly defined deferred action in the agency’s policy concerning the U visa
 11 bona fide determination process in its Policy Manual and in the notice provided to Ayala.
 12 Deferred action does not stay Ayala’s removal. As a result, Ayala cannot demonstrate that he is
 13 being detained in violation of the Constitution or laws of the United States.

14 **C. Ayala has not shown irreparable harm.**

15 Ayala has not demonstrated that he will suffer irreparable injury absent the injunctive
 16 relief he seeks. To do so, he must demonstrate “immediate threatened injury.” *Caribbean*
 17 *Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission*
 18 *v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a
 19 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. “Issuing a
 20 preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the
 21 Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only
 22 be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at
 23 22.

1 If Ayala is removed, he will still be eligible for a U visa when the statutory cap allows
2 and if he is found eligible for a final grant. He also claims that if this were to occur after removal
3 that he would be subject to “additional hurdles.” Mot., at 6. There is no dispute that, if
4 removed, Ayala would be separated from his family. But this is the same issues facing all
5 deportees. “Although removal is a serious burden for many aliens, it is not categorically
6 irreparable.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

7 **D. The balance of the equities and public interests favor the Government.**

8 Finally, the balance of equities and the public interest weigh decisively against Ayala’s
9 request for preliminary injunctive relief. Unlike some other requests for preliminary injunctive
10 relief where the constitutionality of a statute or regulation may be in question, here Ayala asks
11 this Court to enjoin the enforcement of an unquestionably lawful and final removal order. It is
12 well settled that the public interest in enforcement of United States’ immigration laws is
13 significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s*
14 *House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has
15 recognized that the public interest in enforcement of the immigration laws is significant.”) (citing
16 cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in
17 prompt execution of removal orders).

18 Accordingly, this Court should deny his request for preliminary injunctive relief.

19 **CONCLUSION**

20 For the foregoing reasons, this Court should deny Ayala’s motion for preliminary
21 injunction.

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1 DATED this 30th day of June, 2025.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 3,274*
17 *words, in compliance with the Local Civil*
18 *Rules.*