

DETAINED

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

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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

**REPLY IN SUPPORT OF
PRELIMINARY INJUNCTION AND
STAY OF REMOVAL**

NOTED FOR CONSIDERATION:
JULY 8, 2025

REPLY IN SUPPORT OF PRELIMINARY INJUNCTION AND STAY OF REMOVAL

I. Argument

A. The court has jurisdiction.

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1 “We have no more right to decline the exercise of jurisdiction which is given,
2 than to usurp that which is not given.”

3 —*Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (Justice John Marshall)

4 **1. The court has jurisdiction to grant a preliminary injunction.**

5 The Court has clear equitable power to issue a preliminary injunction, in order to
6 preserve the status quo pending a determination on the merits. FRCP 65. “[T]he
7 comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of
8 a clear and valid legislative command.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313
9 (1982).

10
11 **2. The court has jurisdiction to grant a writ of habeas corpus.**

12 The Court also has jurisdiction to grant a writ of habeas corpus. 28 U.S.C. § 2241; 28
13 U.S.C. § 1651. Mr. Sepulveda Ayala alleges that he is being detained contrary to law, which is
14 the essence of habeas corpus:

15 We do consider it uncontroversial, however, that the privilege of habeas corpus
16 entitles the prisoner to a meaningful opportunity to demonstrate that he is being
held pursuant to “the erroneous application or interpretation” of relevant law.

17 *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (quoting, *INS v. St. Cyr*, 533 U.S. 289, 301
18 (2001)). As the Court is well aware, the writ of habeas corpus protects against arbitrary
19 detention and is a cornerstone of American freedom. *See generally, Boumediene*, 553 U.S. at
20 739-746.

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1 In his habeas petition, Mr. Sepulveda Ayala alleges that he is being held pursuant to an
2 erroneous interpretation of “deferred action.” Petition, at 8-10. He raises no issue with the
3 validity of the removal order itself. Instead, he argues that the government is misinterpreting
4 the meaning of “deferred action” and that, under a correct interpretation, he can be neither
5 detained nor removed until the deferred action ends. *Id.* Tellingly, Mr. Sepulveda Ayala
6 sought relief in this Court not when he was first detained but only after he was granted
7 deferred action. As he became aware that the government was applying a new interpretation
8 of “deferred action” than previously, Mr. Sepulveda Ayala sought relief in this Court, first
9 through a writ of mandamus and now through a writ of habeas corpus.

10 The government argues that this Court lacks jurisdiction over habeas because Mr.
11 Sepulveda Ayala has a removal order. Response, at 5-6. If that were true, 8 U.S.C. § 1252(g)
12 would strip the Court not only of jurisdiction to review a removal order but also to review an
13 illegal detention. In order to strip jurisdiction to this extent, without violating the Suspension
14 Clause, U.S. Const., art I., sec. 9, the petitioner must have an “adequate and effective
15 substitute for habeas corpus.” *Boumediene*, 553 U.S. at 733. Mr. Sepulveda Ayala does not.
16 Even if he could challenge the removal order in this Court, that challenge would not address
17 the meaning of “deferred action.” It would address only the basis of the removal order. If he
18 had challenged the removal order when it was first issued, two decades ago, neither he nor the
19 reviewing court could not have known that a grant of deferred action would arrive in the
20 future, through a separate U visa process. And if he could somehow challenge the removal

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1 order now, the U visa process and the grant of deferred action would be extraneous to that
2 challenge. Mr. Sepulveda Ayala’s only means to challenge the basis of the detention and the
3 definition of “deferred action” is through this petition. If 8 U.S.C. § 1252(g) were read so
4 broadly as to deny the Court jurisdiction to decide whether Mr. Sepulveda Ayala is detained
5 pursuant to an erroneous legal interpretation of “deferred action,” it would violate the
6 Suspension Clause.

7 But 8 U.S.C. § 1252(g) does not reach so broadly. The Supreme Court has rejected an
8 argument that the statute applies to “all claims arising from deportation proceedings” and
9 instead limited it, by its text, to the Attorney General’s decisions to commence proceedings,
10 adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination*
11 *Comm.*, 525 U.S. 471, 482 (1999) (*AADC*). It justified this limitation precisely to allow for
12 deferred action:

13 There was good reason for Congress to focus special attention upon, and make
14 special provision for, judicial review of the Attorney General’s discrete acts of
15 “commenc[ing] proceedings, adjudicating cases, [and] execut[ing] removal
16 orders”—which represent the initiation or prosecution of various stages in the
17 deportation process. At each stage the Executive has discretion to abandon the
endeavor, and at the time IIRIRA was enacted the INS had been engaging in a
regular practice (which had come to be known as “deferred action”) of exercising
that discretion for humanitarian reasons or simply for its own convenience. As
one treatise describes it:

18 “To ameliorate a harsh and unjust outcome, the INS may decline to institute
19 proceedings, terminate proceedings, or decline to execute a final order of
20 deportation. This commendable exercise in administrative discretion, developed
without express statutory authorization, originally was known as nonpriority and
is now designated as deferred action. A case may be selected for deferred action

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1 treatment at any stage of the administrative process. Approval of deferred action
2 status means that, for the humanitarian reasons described below, no action will
3 thereafter be taken to proceed against an apparently deportable alien, even on
grounds normally regarded as aggravated." 6 C. Gordon, S. Mailman, & S. Yale-
Loehr, Immigration Law and Procedure § 72.03[2][h] (1998).

4 *AADC*, 525 U.S. at 483-484.

5 Recently, as the executive has tested the limits of its power, various district courts have
6 ruled on habeas jurisdiction where a removal order exists. The government cites to a recent
7 case in this district, *Velasco Gomez v. Scott*, No. 25-cv-522-JLR-BAT, 2025 WL 1726465
8 (W.D. Wash. June 20, 2025), and a February case in California, *Raghav v. Jaddou*, 2:25-cv-
9 00408, 2025 WL 373638, (E.D. Cal. Feb. 3, 2025). Response, at 7-8. Mr. Sepulveda Ayala's
10 counsel, having searched, has found no other cases supporting the government's position.

11 In *Velasco Gomez*, the petitioner had a removal order and deferred action awaiting a U
12 visa. Finding no cases that addressed deferred action through the bona fide determination
13 (BFD) process, that court relied on two other cases. The first was an unpublished decision,
14 *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9th Cir. 2019) , where a U visa was
15 pending but the petitioner did not have deferred action. The court "express[ed] no opinion"
16 about whether a subsequent placement on the waitlist, with its deferred action, would change
17 the outcome. *Velarde-Flores*, at 607. Because the case did not involve deferred action,
18 *Velarde-Flores* is factually distinct both from *Velasco Gomez* and from this case. *Velasco*
19 *Gomez* also relied on *Balogun v. Sessions*, 330 F. Supp. 3d 1211 (C.D. Cal. August 31, 2018),
20 where the petitioner had a pending U visa and sought a stay of removal. He did not contest the

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1 legality of the detention. *Balogun*, 330 F. Supp. at 1212. Because he did not, *Balogun* is also
2 distinct from both *Velasco Gomez* and this case. Because *Velasco Gomez* relied on cases that
3 were inapposite, it came to an incorrect conclusion about jurisdiction. Mr. Sepulveda Ayala
4 urges this Court to reject that case’s reasoning and its conclusion.

5 The government also relies on *Raghav v. Jaddou*, where the petitioner sought a stay of
6 removal. He had applied for a U visa but he did not have deferred action. The court found
7 that, under 8 U.S.C. § 1252(g), it lacked jurisdiction to stay removal. It did state that a BFD
8 would not prevent removal, but it did not analyze or even mention deferred action. Because
9 this case is factually distinct, Mr. Sepulveda Ayala urges this Court to not rely on it.

10 By contrast, several cases support Mr. Sepulveda Ayala’s position. In *Mahdawi v.*
11 *Trump*, 2:25-cv-389, 2025 U.S. Dist. LEXIS 84287, at 18 (D. Vt. Apr. 30, 2025), the court
12 ruled that 8 U.S.C. § 1252(g) does not apply in cases, like this one, that “do not seek to
13 challenge the removal proceedings but are directed instead at administrative detention.” In
14 *Mohammed H. v. Trump*, 25-cv-1576, 2025 U.S. Dist. LEXIS 88471 (D. Minn. May 5, 2025)
15 and *Aditya W.H. v. Trump*, 25-cv-1976, 2025 U.S. Dist. LEXIS 94430 (D. Minn. May 14,
16 2025), the petitioners were detained and placed in removal proceedings after their student
17 visas were revoked. Both courts rejected the argument that 8 U.S.C. § 1252(g) barred
18 jurisdiction. The court in *Aditya W.H.* said, “Mr. H has filed a habeas petition seeking his
19 release from custody, and the Court, at a minimum, has jurisdiction over that.” *Aditya W.H.*, at
20 23. In *E.D.Q.C. v. Warden, Stewart Det. Ctr*, 4:25-cv-50, 2025 U.S. Dist. LEXIS 104781

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(M.D. Ga. June 3, 2025), a Venezuelan citizen with a removal order filed a habeas petition before he was transported to a prison in El Salvador. The court found that 8 U.S.C. § 1252(g) did not apply because the petitioner was challenging detention, not removal. Finally, in *Karki v. Jones*, 1:25-cv-281, 2025 U.S. Dist. LEXIS 109168 (S.D. Ohio June 9, 2025), the petitioners were stateless members of an ethnic group in Bhutan. They argued in habeas both for what the court called “removal-based claims,” seeking notice of the country of removal, and for “detention-based claims,” alleging the detention was prolonged because removal was not reasonably foreseeable. The court found that 8 U.S.C. § 1252(g) denied it jurisdiction over the removal-based claims but left it with jurisdiction over the detention-based claims.

In this case, the detention arises not from the removal order but from the government’s interpretation of “deferred action.” To borrow the language of torts, the removal order is a “but-for” cause of detention, because Mr. Sepulveda Ayala would not be detained without it. But the government’s new, and incorrect, interpretation of “deferred action” is an intervening cause of the detention. If the government interpreted “deferred action” correctly, Mr. Sepulveda would not be in custody or facing removal. The habeas petition challenges this interpretation, and it is the only means to do so.

3. The court has jurisdiction to review an effective revocation of deferred action.

By granting deferred action, the government ceded its discretion to detain or remove Mr. Sepulveda Ayala. But now, the government has effectively revoked its grant. In the Temporary

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1 Restraining Order, the Court framed the issue as a revocation of benefits. TRO, at 7. Although
2 the government does not agree with this characterization, it agrees that 8 U.S.C. § 1252(g) does
3 not necessarily strip the Court of jurisdiction over a claim of revocation. Response, at 6-7.
4 Indeed, the Court has jurisdiction to review the revocation of immigration benefits. *Dep't of*
5 *Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Because Mr. Sepulveda
6 Ayala challenges the effective revocation of the benefit of deferred action, the Court has
7 jurisdiction.

8
9 **B. Mr. Sepulveda Ayala is likely to succeed on the merits and meets the other**
10 **requirements for a preliminary injunction.**

11 The government argues Mr. Sepulveda Ayala is unlikely to succeed on the merits
12 because deferred action does not bar removal, stating in part that “this Court should look to the
13 agency for the policy’s meaning.” Response, at 8. That is difficult to do, because although the
14 meaning of “deferred action” has been clear throughout its decades of common usage, the
15 agency recently applied a new meaning, *sub silentio*, and rendered the term meaningless.

16 Instead, the Court should look to the one regulation that defines the term: 8 C.F.R.
17 236.21. If the Court finds that definition unclear, it is appropriate to flesh out the definition by
18 looking to the various regulations, policies, and cases that interpret it. Whatever definition is
19 applied, it certainly includes forbearance from removal. And if the meaning is not clear, all the

1 more reason to permit full briefing on the merits, which is possible only if the Court grants a
2 preliminary injunction. See, Motion for Preliminary Injunction, at 5-6.

3 As to the remaining requirements for a preliminary injunction, Mr. Sepulveda Ayala
4 relies on his prior arguments in his Motion for Preliminary Injunction.

5
6 I certify that this memorandum contains 2,013 words, in compliance with the Local Civil
7 Rules.

8 Dated this 3rd day of July, 2025.

9 /s/ Kelly Vomacka
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that today I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Respondents' counsel, Michelle Lambert.

Dated this 3rd day of July, 2025.

/s/ Kelly Vomacka

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**CERTIFICATE OF
SERVICE**

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