

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

**PETITIONER'S RESPONSE TO
MOTION TO DISMISS**

Noted for Consideration:
July 30, 2025

I. ARGUMENT

A. The court has jurisdiction.

In its Return and Motion to Dismiss, the government argues that the Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(g). Dkt. 19, at 5-7. It raised the same issue in litigating the preliminary injunction and the temporary restraining order. Dkt.

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1 15, at 5-7; Dkt. 9, at 11-13. Following full briefing and oral argument, the Court has
2 found that it has jurisdiction and has entered detailed Findings of Fact and Conclusions
3 of Law on the issue. Dkt. 18, at 6-13. Those Findings and Conclusions concern not only
4 the Court's jurisdiction to grant the restraining order and the injunction, but also, and
5 primarily, the Court's jurisdiction to hear the habeas petition itself.

6 That ruling is now the law of the case. "The law-of-the-case doctrine generally
7 provides that 'when a court decides upon a rule of law, that decision should continue to
8 govern the same issues in subsequent stages in the same case.'" *Askins v. United States*
9 *Dep't of Homeland Sec.*, 899 F.3d 1035, 1042 (2018) (quoting, *Musacchio v. United*
10 *States*, 577 U.S. 237 (2016), *Pepper v. United States*, 562 U.S. 476, 506 (2011)). *See*
11 *also, United States v. Lummi Nation*, 763 F.3d 1180, 1185 (2014). Jurisdiction is an
12 important issue, and it has been litigated and resolved.

13 If the Court finds that the issue is still open, Mr. Sepulveda Ayala incorporates by
14 reference his jurisdiction argument in the preliminary injunction litigation, specifically
15 Dkt. 16, at 1-8. He also relies on the Findings and Conclusions. Dkt. 18.

16
17 **B. Mr. Sepulveda is being detained without lawful authority.**

18 The government argues that it can detain and remove Mr. Sepulveda Ayala under 8
19 U.S.C. § 1231(a) because he has a removal order, which is not affected by deferred action. Dkt.

1 19, at 1. But to the contrary, deferred action denies the government the authority to detain or
2 remove for as long as deferred action is in effect.¹

3 The government argues that the definition of deferred action is in the notice of the BFD
4 and in “BFD Chapter, § 7,” which refers to 1 USCIS-PM C.5(C)(7). Dkt. 19, at 8, 10. Both
5 bases are incorrect.

6 As to the Policy Manual, the section the government relies on is in a part of the BFD
7 chapter setting out the adjudicative process. Dkt. 19, at 8. The section concerns petitioners
8 residing outside the United States, and it explains that those petitioners cannot receive deferred
9 action. It says, “Deferred action, as an exercise of prosecutorial discretion to make an alien a
10 lower priority for removal from the United States, is only applicable to aliens in the United
11 States.” 1 USCIS-PM C.5(C)(7). This reference to deferred action is not a definition, but rather
12 a descriptive subordinate clause explaining why petitioners need to be in the U.S. to receive
13 deferred action. The Court has considered this section specifically and has found no definition
14 of deferred action there. Dkt. 18, at 16, fn. 1.

15 As to the BFD notice, it is not a source of law. It is not a statute, regulation, or policy,
16 and it is not an administrative or judicial opinion. It has not been subjected to comment or
17 review by any body. If Mr. Sepulveda Ayala were asserting some sort of reliance interest, the
18

19 _____
20 ¹ Mr. Sepulveda Ayala does not seek to extend his “law of the case” argument to this issue.
21 Although jurisdiction has been established, all that has been established on the merits is that
he is likely to succeed, not that he actually has succeeded.

1 notice might become relevant, but he is not. He relies instead on his attorneys for legal advice,
2 not on the government and opposing party.

3 And even if the notice were a source of law, it would suffer similar defects as 1 USCIS-
4 PM C.5(C)(7). The notice nearly quotes 8 C.F.R. § 274a.12(c)(14), which sets out who may
5 apply for employment authorization. The regulation allows applications for, “Except as
6 provided for in paragraph (c)(33) of this section, an alien who has been granted deferred action,
7 an act of administrative convenience to the government that gives some cases lower priority, if
8 the alien establishes an economic necessity for employment.” *Id.* Here, too, deferred action is
9 not defined but only mentioned in a descriptive subordinate clause. Also, the regulation differs
10 from the Policy Manual, in that it refers to “administrative convenience” and generic “cases,”
11 not to the manual’s “prosecutorial discretion” and “removal.” But the regulation also differs
12 from the language in the notice, in two ways. First, the notice inserts the word “is,” effectively
13 elevating the clause from a descriptive modifier to an equation of terms. And second, the notice
14 changes “that” to “which,” transforming a restrictive clause into a nonrestrictive clause. These
15 fine points of language might matter if the notice were a source of law that purported to follow
16 a governing regulation, but it is not. Because it is not, the Court should not rely on the notice
17 for the definition of “deferred action.”

18 Ample sources define deferred action more broadly, and they include protection from
19 detention and removal. The clearest definition is in 1 USCIS-PM H.2(A)(4), which is in the
20 volume of general practices and procedures, in a chapter on “flexibilities.” It says, “Deferred

1 action is a form of prosecutorial discretion *to defer removal* action (deportation) against an
2 alien for a certain period of time. Aliens granted deferred action are considered to be in a
3 period of stay authorized under USCIS policy for the period deferred action is in
4 effect. However, deferred action is not a lawful immigration status and does not excuse any
5 past or future periods of unlawful presence.” *Id.* (emphasis added).

6 Several regulations make sense only in the context of a broader definition. For example,
7 when a U visa is granted, a removal order is deemed canceled by operation of law. 8 C.F.R. §
8 214.14(c)(5)(i). If a person could be removed while in deferred action, their future would
9 depend on a race between ICE trying to remove them and USCIS trying to cancel the removal
10 order, by granting the visa. This is not a rational way to make either a removal decision or a
11 visa decision. As another example, a person does not accrue unlawful presence while in
12 deferred action. 8 C.F.R. § 214.14(d)(3). This makes sense only if the person is present in the
13 U.S. and not removed. And as a third example, a person with deferred action can get
14 employment authorization. 8 C.F.R. § 274a.12(c)(14). Again, this makes sense only if the
15 person is in the U.S. and not removed.

16 Caselaw also supports a broader definition of deferred action. As the petition sets out,
17 the leading case is *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999)
18 (*AADC*); Dkt. 1, at 8. *AADC* says, “To ameliorate a harsh and unjust outcome, the INS may
19 decline to institute proceedings, terminate proceedings, or *decline to execute a final order of*
20 *deportation.*” *AADC*, 525 U.S. at 484 (emphasis added). Mr. Sepulveda Ayala also relies on

several cases, which the Court has identified, setting out that deferred action includes temporary relief from removal. *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001); *Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010); *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 958 (9th Cir. 2017) (dissent); *Alvarez Leal v. Lynch*, 673 F. App'x 630, 632 (9th Cir. 2017) (Pregerson, J., dissenting); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015); *Medina v. U.S. Dep't of Homeland Sec.*, 804 F. Supp. 3d 1224, 1228 (W.D. Wash. 2019); *De Sousa v. Dir. of U.S. Citizenship and Immigr. Servs.*, 755 F. Supp. 3d 1266, 1268 (N.D. Cal. 2024).

The government relies in part on *Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638 (E.D. Cal. Feb. 3, 2025). Dkt. 19, at 8. But its reliance is misplaced, for several reasons. First, Raghav did not have a BFD or, by implication, deferred action. *Raghav*, at 1. Therefore, it is so factually distinct from the instant case as to be irrelevant. The instant case turns on the meaning of a term that was not even at issue in *Raghav*. Second, the government cites *Raghav* for the proposition that “Plaintiff obtaining a BFD in his favor would not prevent his removal.” Dkt. 19, at 8. This phrase is *dicta*, because it opines about an issue that was not before the court. The phrase itself is conditional and refers to hypothetical situation. And third, the case is not controlling authority. This Court should not rely on *dicta* in a case that is not controlling and is factually distinct.

The government argues that deferred action cannot constitute a stay of removal because that would render 8 U.S.C. 1227(d)(1) superfluous. Dkt. 19, at 8-9. Mr. Sepulveda is not

1 seeking an administrative stay of removal. He tried and failed. He is seeking habeas relief
2 from a detention that rests on an incorrect definition of “deferred action.” In other words, he is
3 seeking to enforce the deferred action that he has, not to acquire an administrative stay that
4 has already been denied. An administrative stay is not the only form of relief available to him,
5 as the next paragraph of the same statute makes clear. 8 U.S.C. 1227(d)(2).

6 Finally, the government argues that, in his petition, Mr. Sepulveda Ayala claimed lawful
7 presence in the U.S.. Dkt. 19, at 9-10, citing Dkt. 1, at 2. Counsel agrees that she used the
8 phrase “lawfully present” inaccurately in the petition, intending a colloquial meaning and not a
9 technical one. The government’s point is well taken. But the regulations defining the two terms
10 further point up that deferred action refers to people who, rather than being subject to imminent
11 removal, are integrating into life in the U.S. See, 6 C.F.R. § 37.3 (for national security under
12 REAL ID, defines “lawful status” to include people with deferred action); 45 C.F.R. § 155.20
13 (for Affordable Care Act, defines “lawfully present” to include people with deferred action); 8
14 C.F.R. § 1.3(a)(4)(vi) (for Social Security, defines “alien who is lawfully present in the United
15 States” to include people with deferred action). This regulatory scheme further shows that
16 deferred action defers the action of removal and its attendant detention.

17 18 **II. CONCLUSION**

19 Mr. Sepulveda Ayala has been in custody for nearly six months. Since mid-February, the
20 government has lacked legal authority to detain him, having willingly granted him deferred

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1 action. But rather than release him, it has instead threatened him with deportation, prevented
2 him from attending his daughter's wedding, deprived him of AA meetings, separated him from
3 his family, and controlled his day-to-day activities, all because it insists on a definition of
4 "deferred action" that is at once novel and false. Mr. Sepulveda Ayala asks this Court to grant
5 the relief in his petition, including immediate release.

6
7 I certify that this memorandum contains 1,800 words, in compliance with the Local Civil
8 Rules.

9 Dated this 30th day of July, 2025.

10 /s/ Kelly Vomacka

11 Kelly Vomacka, WSBA #20090

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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 30th day of July, 2025.

/s/ Kelly Vomacka

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**CERTIFICATE OF
SERVICE**

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