IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

Mayankkumar Ratilal Patel ([redacted]),

Petitioner,

v.

Warden, Ste. Genevieve County Detention Center,

Respondent.

C/A No.: 1:26-cv-079-MTS

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Respondent argues[1] deferred action does not provide Petitioner status and, therefore, his detention is lawful. Resp's Return at 10-11 [ECF No. 8]. But "Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4). And the U.S. Supreme Court further interprets deferred action to mean "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 484 (1999). Because there is no dispute that (1) Petitioner ("Mr. Patel") has deferred action; (2) U.S. Citizenship and Immigration Services ("USCIS") has taken no steps to rescind or revoke that benefit; and (3) Mr. Patel does not have a removal order, his detention is unlawful. For the reasons below, this Court should grant this habeas petition, order Mr. Patel to be released immediately.

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1 This habeas petition has nothing to do with *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) or *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). *See Victor G. v. Lyons*, No. 26-CV-119 (ECT/SGE), 2026 WL 127733, at *2 (D. Minn. Jan. 17, 2026) (granting habeas to U visa applicant with deferred action). This Court should, therefore, disregard the first ten pages of Respondent's Return as inapposite. Resp's Return at 1-10 [ECF No. 8].

I. This Court has jurisdiction to review Mr. Patel's challenges to his detention.

Respondent first argues that 8 U.S.C. § 1252(g) bars review because Mr. Patel's habeas "arise[s] from DHS's decision to commence proceedings against him, adjudicate his case, and execute his removal order (if ordered by the immigration court)." Resp's Return at 14. This argument fails. Section 1252(g)'s jurisdiction-stripping provisions are narrow and preclude review of only three discrete decisions: the "'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. Am.-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("AADC") (quoting 8 U.S.C. § 1252(g)). The Court rejected any reading of the statute that would cover "the universe of deportation claims," *id.*, and cautioned against interpreting it to "sweep in any claim that can technically be said to 'arise from'" these three actions. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).[2]

Here, Mr. Patel does not seek an order challenging the inititation of removal proceedings or stopping removal proceedings.[3] Pet'n at ¶¶ 67-72. Contrary to Respondent's characterizations, Resp's Return at 13 ("Petitioner is outright suggesting he is simply *not subject to removal proceedings at all.*"), Mr. Patel never once argues he is not subject to removal proceedings. He does not seek an order stopping removal proceedings or enjoining them; he seeks only his "immediate release." *Id.* at ¶ 69. Removal proceedings can continue while Mr. Patel is free. Petitioner alleges only that his *detention* during removal proceedings is unlawful because (1) he

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[2] Respondent also argues 8 U.S.C. § 1252(a)(5) precludes review because Mr. Patel's habeas is, "effectively," a challenge to a "removal order that could issue in the future." Resp's Return at 15-16. But Mr. Patel has no removal order. And there is no certainty that he will get a removal order. Because Mr. Patel has no removal order to challenge

[3] It should be noted that removal proceedings are futile here becusae (1) USCIS can and does grant U visas to noncitizens with removal orders and deportees, and (2) if Mr. Patel is removed, he is entitled to parole at a consulate abroad when he gets a "waiting list decision" as soon as he touches down. 8 C.F.R. § 214.14(d)(2). This is further evidence that removal proceedings here are pointless, rendering his detention equally senseless.

cannot be removed unless or until USCIS terminates his deferred action; (2) ICE violated its own regulations before detaining Mr. Patel; and (3) Due Process requires additional process in light of Mr. Patel's deferred action. "Courts have thus found that § 1252(g) does not prevent them from considering detention-related challenges brought by deferred action recipients[.]" *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025); *See Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 906 (W.D. Wash. 2025); *Ayala v. Albarran*, No. 5:26-CV-03092-BLF, 2026 WL 1179862, at *4 (N.D. Cal. Apr. 30, 2026); *Godinez Hernandez v. Mullin*, No. 3:26-CV-00219-ART-CSD, 2026 WL 937393, at *3 (D. Nev. Apr. 7, 2026); *Fugon v. Chestnut*, No. 1:26-CV-01841-DC-AC (HC), 2026 WL 878616, at *4 (E.D. Cal. Mar. 31, 2026); *Castillo v. Parra*, No. 25-25011-CV, 2025 WL 4092624, at *3 (S.D. Fla. Dec. 1, 2025); *Patel v. Hardin*, No. 2:25-cv-870, 2025 WL 3442706 (M.D. Fl. Dec. 1, 2025); *Maldonado v. Noem*, No. 4:25-cv-2541, 2025 WL 1593133 (S.D. Tex. Jun. 5, 2025); *Velasco Gomez v. Scott*, No. 2:25-cv-522, 2025 WL 1382855 (W.D. Wash. Apr. 29, 2025); *Cf. Velasco Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Inlago Tocagon v. Moniz*, —F. Supp. 3d—, 2025 WL 2778023 (D. Mass. Sep. 29, 2025); *Sarmiento v. Perry*, No. 1:25-cv-1644, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025); *See F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *5 (D. Or. Oct. 30, 2025); *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201, 2025 WL 3012786, at *6 (S.D. Fla. Oct. 28, 2025).

Respondent cites to a handful of recent habeas cases for support, but none control here because, in all of those cases, the petitioners either did not have deferred action or they had a final order of removal and sought to stop removal. *Velasco Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465, at *1 and *2 (W.D. Wash. June 20, 2025) (noting petitioner sought a stay of removal and he had been removed 3 times); *Miranda-Lopez v. ICE Orlando Field Officer*

Dir., No. 25-12007, 2026 WL 587997, at *1 (11th Cir. Mar. 3, 2026) ("Miranda-Lopez's petition alleged that the execution of her removal order violated her right to substantive due process."); *Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla. Dec. 19, 2025) ("Petitioner's argument is that Respondents can neither detain him under a final removal order, nor deport him under a final removal order while he has deferred action status."); *Patel v. Noem*, No. 25-CV-3167 (ECT/DJF), 2025 WL 2823561, at *1 (D. Minn. Sept. 12, 2025), report and recommendation adopted sub nom. Dipakkumar B. P. v. Noem, No. 25-CV-3167 (ECT/DJF), 2025 WL 2821375 (D. Minn. Oct. 3, 2025) ("On the day he entered, United States Customs and Border Patrol ("CBP") apprehended him and issued an expedited removal order."). Because Mr. Patel is not challenging a final removal order and he has deferred action, these cases are inapposite.

Respondent argues that *Silva v. United States*, 866 F.3d 938 (8th Cir. 2017) precludes jurisdiction because the *Silva* court held that § 1252(g) precluded review to consider Plaintiff's challenge her unlawful removal. Resp's Return at 14. First, *Silva* is distinguishable because the plaintiff in *Silva* was mistakenly removed from the United States while a stay of removal was in place, ICE returned her to the United States, and the plaintiff sued ICE for the mistaken removal under the Federal Tort Claims Act. *Id.* at 940. *Silva* has nothing to do with habeas. Second, *AADC* undermines Respondent's argument. In *AADC*, the Court held that § 1252(g) is directed against "a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *AADC*, 525 U.S. at 485 n.9, 119 S.Ct. 936. Section 1252(g), therefore, protects the government from challenges to "'no deferred action' decisions"—that is, when the government chooses not to grant deferred action relief. *Id.* at 485, 119 S.Ct. 936. But § 1252(g) does not preclude review of "failures to honor relief already granted" deferred action. *Sepulveda*, 794 F. Supp. 3d at 908.

This Court has jurisdiction because Mr. Patel does not challenge the decision to initiate removal proceedings, adjudicate them, or execute a removal order.

II. Mr. Patel's current detention is unlawful and unconstitutional.

On the merits of Mr. Patel's claim, Respondent argues Mr. Patel's claim is "dubious" because it "overlook[s] that Deferred Action [sic] signifies only a *reduced priority* for removal, not *immunity* from it." Resp's Return at 13. This argument fails for at least three reasons.

First, a court in this Circuit recently rejected this form argument by relying on Supreme Court precedent in AADC, stating:

> At bottom, it is difficult to square the government's conception of deferred action here—as an exercise of pure discretion that can shift on a dime—with the Supreme Court's past pronouncements on the topic. For example, in his partial concurrence in *Regents*, Justice Thomas described the effect of DACA's provision of deferred action as creating "a new category of aliens . . . exempt from statutory removal procedures," [*Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*,] 591 U.S. [1,] 54 [(2020), (Thomas, J., concurring in part and dissenting in part)] (emphasis added), while Chief Justice Roberts, writing for the Court, characterized the program as providing a "two-year forbearance of removal," *id.* at 9 (emphasis added). This understanding of deferred action in the context of [petitioner's] case makes sense—the government has exercised its discretion and set a time frame in which its decision applies. And agreeing with the government's argument in this case would result in a system where grants of deferred action would have no effect—not the system envisioned by Justice Scalia where "no action will . . . be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." See [*AADC*] 525 U.S. at 484 (citation and internal quotation marks omitted).

Victor G. v. Lyons, No. 26-CV-119 (ECT/SGE), 2026 WL 127733, at *2 (D. Minn. Jan. 17, 2026) (quoting *Nevarez Jurado v. Freden*, --- F. Supp. 3d ---, No. 25-CV-943, 2025 WL 3687264, at *9 (W.D.N.Y. Dec. 19, 2025)). It is worth noting that *AADC* cited to precedent from the U.S. Court of Appeals for the Fifth Circuit. *AADC,* 525 U.S. at 484 (citing *Johns v. Dep't of Justice*, 653 F.2d 884, 890–92 (5th Cir. 1981)). In *Johns*, the Fifth Circuit distinguished deferred action from a stay of removal, explaining that deferred action means the Government chooses to "refrain from (or, in administrative parlance, to defer in) executing an outstanding order of deportation." 653 F.2d at 890. Respondent does not address *AADC*.

Second, Respondent's characterization of deferred action is undermined by USCIS policy. Under a 2009 memo, USCIS determined that deferred action holders do not accrue unlawful presence. USCIS, Consolidation of Guidance Concerning Unlawful Presence at 42 (May 6, 2009).[4] This means deferred action holders do not accrue unlawful presence while they have deferred action and, consequently, they are in a period of stay authorized by USCIS *policy*. USCIS confirmed this consideration in its Policy Manual, which defines deferred action as "a form of prosecutorial discretion to defer removal action (deportation) against an alien for a certain period of time. Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4).[5] Respondent ignores this policy.

USCIS's generous policy toward victims of crime is likely why U.S. Immigration and Customs Enforcement ("ICE") policy requires it to confer with USCIS before taking any actions against a U visa applicant. Under ICE's own policy, it is required to consult with its Office of Principal Legal Advisor before detaining and deporting a U visa applicant:

> When encountering an alien who is the beneficiary of a victim-based immigration benefit, ICE officers and agents should consult with the Office of the Principal Legal Advisor (OPLA) through their Field Office Directors or Special Agents in Charge *prior to conducting a civil enforcement* action against such known beneficiaries, or against primary and derivative applicants or petitioners for such benefits, to ensure any such action is consistent with applicable legal limitations.

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[4] Available at https://www.uscis.gov/sites/default/files/document/memos/revision_redesign_AFM.PDF (last visited May 5, 2026).

[5] Available at https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited May 5, 2026).

ICE Policy 11005.4 at 2 (emphasis added).[6] Respondent ignores Mr. Patel's argument that it violated its own policy because it has no colorable claim that it adhered to its own policies. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (requiring agencies to follow their own policies).

Finally, USCIS's procedural protections for U visa applicants with deferred action undermined Respondent's argument that revocation of deferred action is purely discretionary. USCIS's policy related to *bona fide* determinations ("BFD") states clearly that, U visa applicants with BFDs, are considered "prima facie" approvable:

> Where USCIS issues a BFD EAD to a petitioner, the petitioner is also considered to have established a prima facie case for approval within the meaning of INA 237(d)(1). The term "prima facie" refers to a petition appearing sufficient on its face.
>
> The evaluation performed by USCIS to determine whether a petition is bona fide and whether a petitioner receives a BFD EAD is a more complex evaluation than looking at the petition on its face alone. The BFD process satisfies the prima facie standard that U.S. Immigration and Customs Enforcement (ICE) previously requested in specific circumstances since the steps taken to determine whether a petition is bona fide and a petitioner receives a BFD EAD rely on the initial evidence submitted with a petition for U nonimmigrant status, as well as the results of background checks.

USCIS Policy Manual, Vol. 3, Part C, Ch 5 § (C)(4).[7] In turn, INA 237(d)(1)—codified at 8 U.S.C. § 1227(d)(1)—precludes removal:

> (d) Administrative stay
>
> > (1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 1101(a)(15) of this title filed for an alien in the United States sets forth a *prima facie* case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 1231(c)(2) of this title until-

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[6] Available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf (last visited April 17, 2026).

[7] Available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited May 5, 2026).

> (A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or
> (B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.
>
> (2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws of the United States.
>
> (3) *During any period in which the administrative stay of removal is in effect, the alien shall not be removed.*
>
> (4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.

Id. (emphasis added). USCIS policy says BFD holders with deferred action qualify for an administrative stay under § 1227(d)(1), which in turn precludes removal. Finally, the BFD policy also relies on the process at 8 C.F.R. § 274a.14(b) to revoke deferred action:

> At any point during the validity period, USCIS has the right to revoke employment authorization or terminate deferred action if USCIS determines a national security or public safety concern is present, if USCIS determines the BFD EAD and deferred action is no longer warranted, the Form I-918 Supplement B law enforcement certification is withdrawn, or USCIS determines the prior BFD EAD was issued in error. [8 C.F.R. § 274a.14(b)].

USCIS Policy Manual, Vol. 3, Part C, Ch 5 § (C)(6). And § 274a.14(b)(2) requires a notice of intent to revoke to be issued before a work authorization is revoked and, therefore, for deferred action to be revoked for BFD holders. USCIS Policy Manual, Vol. 3, Part C, Ch 5 § (C)(6). Thus, revoking deferred action has a process; it is not absolutely discretionary as Respondents claim.

Deferred action is more than mere deprioritization for removal. It is a benefit that USCIS issues to victims of crime who assist the police and deserve it. As such, ICE requires itself to confer with USCIS before it takes action to remove a BFD holder with deferred action. But ICE ignored its own policies and, now, claims deferred action means nothing, in contravention of Supreme Court precedent, USCIS regulations and policy, and ICE's own policies. Respondent's incorrect characterization of deferred action for BFD holders is the premise for its merits arguments. As such, Respondent's merits arguments all fail.

CONCLUSION

For these reasons, his Court should grant this habeas petition, order Mr. Patel to be released immediately, and set a briefing schedule for Mr. Patel's request for reasonable attorney's fees under the Equal Access to Justice Act.

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Respectfully submitted,

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