IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jorge Fernandez Gomez Petitioner v. **David Easterwood**, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; **Markwayne Mullin**, Sec'ty of the Dep. Homeland Security; **Mike Jambor**, Administrator of the Kandiyohi County Jail; **Todd Lyons**, Acting Director, U.S. Immigration and Customs Enforcement; **Todd Blanche**, Attorney General of the United States Respondents.	RESPONSE TO RESPONDENTS' TRAVERSE CASE No: 0:26-cv-02360

PETITIONER'S RESPONSE TO RESPONDENTS' TRAVERSE

Respondents' return tries to turn this case into an ordinary § 1225 custody dispute or a repeat of *Gomez I*. It is neither. *Gomez I* was a rushed emergency petition that challenged the Government's generalized § 1225/§ 1226 theory and was dismissed without prejudice; it did not decide whether ICE lawfully obtained custody, whether the I-200 preceded the seizure, whether the redacted serving officer had authority, whether Respondents complied with 8 U.S.C. § 1357, or whether USCIS-granted U-visa deferred action makes removal presently unavailable. The Petition should not transfer as there is no jurisdiction where it will go and there is no good reason to transfer the Petition, with the similarities being extremely limited and the Respondents' own actions demonstrating that the Petitions are not really "related".

Habeas asks whether custody is lawful now. Respondents have not shown that it is. Their own record describes a stop, field interview, transport, and processing, but does not show that any valid warrant was served before custody began or that officers made the individualized finding § 1357 requires: that Petitioner was likely to escape before a warrant could be obtained. A later-produced or later-served I-200 cannot retroactively authorize a seizure already completed, and § 1225 does not erase the statutory and Fourth Amendment limits on how the Government obtains custody in the first place.

Nor can Respondents justify detention by invoking future removal. Petitioner has active U-visa-based deferred action and valid employment authorization granted by USCIS, and Respondents have not shown that USCIS revoked either. Deferred action does not need to confer "status" to matter; the Supreme Court has described it as a decision that "no action will thereafter be taken to proceed against an apparently deportable alien," *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999), and later confirmed that "[t]he defining feature of deferred action is the decision to defer removal," *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020). ICE cannot revoke the USCIS protection it now asks this Court to ignore. Until USCIS terminates deferred action or the U-visa process otherwise concludes, Respondents have no lawful removal endpoint; detention therefore is not reasonably related to effectuating removal, but depends on speculative future agency action that may never occur. That is precisely the indefinite civil detention *Zadvydas* forbids. *See Zadvydas v. Davis*, 533 U.S. 678, 690, 699–701 (2001). The writ should issue.

I. Section 2244 Does Not Bar This Petition.

Respondents first argue that this petition is barred by 28 U.S.C. § 2244 because Petitioner previously filed "*Gomez I*". That argument fails at the threshold because the statute Respondents invoke does not apply to this form of custody.

Section 2244(a) provides that a federal court is not required to entertain a habeas application challenging "the detention of a person pursuant to a judgment of a court of the United States" where the legality of that detention has already been determined. 28 U.S.C. § 2244(a). Petitioner is not detained pursuant to a judgment of a federal court. He is detained by ICE in civil immigration custody during pending removal proceedings. The textual limitation matters. As the Ninth Circuit held in the immigration context, § 2244(a) does not apply where the petitioner "is not being held 'pursuant to a judgment of a court of the United States.'" *Barapind v. Reno*, 225 F.3d 1100, 1111 (9th Cir. 2000). The Tenth Circuit has made the same distinction, explaining that § 2244(a) "applies only to persons in custody 'pursuant to a judgment of a court of the United States,'" while "other types of petitioners may bring § 2241 habeas petitions, such as alien detainees." *Stanko v. Davis*, 617 F.3d 1262, 1269–70 (10th Cir. 2010).

Nor does § 2244(b)'s gatekeeping provision apply. That subsection governs a "second or successive habeas corpus application under section 2254." 28 U.S.C. § 2244(b)(1)–(3). Section 2254 applies to persons "in custody pursuant to the judgment of a

State court." 28 U.S.C. § 2254(a). Petitioner is not in state custody, is not challenging a state conviction, and does not proceed under § 2254. He proceeds under § 2241 because he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Section 2244(b)(3)(A)'s prior-authorization requirement therefore does not apply.

At most, Respondents' argument sounds in abuse of the writ or issue preclusion. But that does not help them. The Supreme Court has held that a prior habeas denial may be given controlling weight only where "the same ground presented in the subsequent application was determined adversely to the applicant on the prior application," the prior determination was "on the merits," and "the ends of justice would not be served by reaching the merits of the subsequent application." *Sanders v. United States*, 373 U.S. 1, 15 (1963). That standard is not met here. *Gomez I* decided whether Respondents could classify Petitioner under § 1225(b)(2)(A) rather than § 1226(a). It did not decide whether the I-200 was issued and served before Petitioner was seized, whether the redacted officer had authority to issue or execute it, whether Respondents complied with § 1357 and whether USCIS revoked Petitioner's deferred action, or whether continued detention is constitutional where removal cannot presently proceed.

Respondents therefore cannot convert *Gomez I* into a global adjudication of all future challenges to Petitioner's ongoing custody. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Petitioner remains in present executive custody. The question is whether that custody is lawful now, on the record and claims now before the Court.

II. Reassignment Is Discretionary and Should Not Be Used to Avoid the Merits.

Respondents ask this Court to treat this matter as related to *Gomez I* and reassign it to Judge Traynor. Resp. at 4–5. That request should be denied. To the extent Respondents seek any actual transfer to the District of North Dakota because Judge Traynor no longer sits in this District, such a transfer would be improper. This is a core habeas petition challenging present physical custody. Jurisdiction lies in the district of confinement. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("[F]or core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement."); *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (1973) (explaining that the writ acts upon the custodian who holds the petitioner). Petitioner is detained in Minnesota, his immediate custodian is in Minnesota, and the challenged custody is being carried out in Minnesota. North Dakota is not the district of confinement.

That is not theoretical. In *Brayam G. v. Easterwood*, this District initially transferred the habeas matter to the District of North Dakota for reassignment to Judge Traynor because it was "related", but the case had to be transferred back because "Judge Traynor, sitting in the District of North Dakota, lacks jurisdiction because Petitioner is detained in the District of Minnesota." *Brayam G. v. Easterwood*, No. 26-cv-1985

(KMM/SGE), Doc. 20 at 2 (D. Minn. Apr. 13, 2026). The same problem exists here. Respondents cannot obtain transfer to a district that lacks habeas jurisdiction over Petitioner's present custodian.

In addition, "[t]he decision of whether to transfer related cases between judges is a highly discretionary one." *Id.* at 2 n.1; *see also Caddy Prods., Inc. v. Greystone Int'l, Inc.*, No. 05-301 (JRT/FLN), 2005 WL 3216689, at *2 (D. Minn. Nov. 29, 2005) ("Ultimately, the decision whether to transfer a case is committed to the discretion of the district court."). Although *Caddy* addressed transfer under a different procedural mechanism, its fairness principles are instructive. Transfer is not automatic; it requires consideration of convenience, fairness, judicial economy, and the interests of justice. *See Terra Int'l, Inc. v. Miss. Chem. Corp.*, 119 F.3d 688, 691–92 (8th Cir. 1997). The moving party bears the burden of showing that transfer is warranted, and transfer should not be ordered where it merely shifts inconvenience or serves a strategic forum preference. *See Caddy*, 2005 WL 3216689, at *4–5.

Because the transfer would require a transfer of jurisdiction, such considerations are also implicated here. The convenience factors weigh against reassignment or transfer. Petitioner is detained in Minnesota. His immediate custodian is in Minnesota. The St. Paul ICE Field Office is in Minnesota. Petitioner's family, counsel, detention records, and the local custody decision are connected to this District. The officers whose actions are now at issue, those who stopped Petitioner, allegedly served the I-200, transported him, processed him, and generated the I-213, are tied to the enforcement operation in or near this District. Respondents identify no witness, document, custodian, or practical litigation need that would be better served by reassignment to Judge Traynor. At most, Respondents argue that reassignment would be more convenient because they already obtained a favorable ruling in *Gomez I*. That is not convenience. It is outcome preference.

Respondents accuse Petitioner of judge-shopping, but the requested reassignment would itself produce the result Respondents prefer: transfer of a materially different habeas petition to one of the few judges in this District who accepted Respondents' § 1225 theory before the present record was developed. The Court should not treat Petitioner's effort to litigate unadjudicated grounds for release as improper forum shopping while accepting Respondents' request to select a prior favorable decisionmaker. In addition, the Respondents' accusations *sans* evidence only places them in the view of being angry litigators.

Petitioner filed this petition in the District where he is detained, where his custodian is located, and where the challenged enforcement and detention decisions are being carried out. That is the ordinary habeas forum. Respondents, by contrast, seek assignment to the judge who previously accepted their § 1225 theory on a narrower and materially different record. The Court should not reward that request where reassignment would not materially advance judicial economy and could risk repeating the jurisdictional error identified in *Brayam*.

In addition, the nature of the original petition further supports that the matters are not as inherently "related" as one would expect in requiring a transfer. The parties are largely similar, the underlying custody (though not many of the *relevant* facts) are similar, and the original petition mentions in passing that Petitioner has a U visa application pending with a work authorization/ deferred action. *See Gomez I Petition*. For all the below reasons, this is not enough similarity to justify the exercise of the Court's discretion in transferring the Petition.

But *Gomez I* was an emergency habeas petition. The order itself describes the claim as a challenge to the Government's shift from § 1226(a) to § 1225(b)(2)(A). Gomez I Order ¶ 1. The I-213 describes Petitioner's arrest as occurring during Operation Metro Surge, further compounding the emergency nature of the petition.[1] The first emergency habeas did not place the operative record and legal theories before the Court, and a civil detainee's liberty cannot be forfeited because prior counsel failed to develop independent grounds for relief. The Court denied relief in *Gomez I* on the custody-classification issue and dismissed the case without prejudice. *Id.* ¶¶ 10, 22. This petition presents different issues: whether the Government lawfully obtained custody; whether the I-200 was validly issued, served, and executed; whether Respondents complied with § 1357; whether deferred action remains operative; and whether detention has any lawful endpoint when removal cannot proceed. Those issues were not decided in *Gomez I*.

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[1] In sum, Operation Metro Surge involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody regardless of the constitutionality of their actions. *See*, e.g., Compl., *Tincher et. al. v. Noem*, No. 0:25-cv-04669. (D. Minn. 12/17/2025).

The Court in *Gomez I* also only considered whether "Petitioner's pending U-visa application and work authorization…" *Id.* ¶ 14 had any impact on his custody. We must assume the Court would not disregard controlling precedent from the Supreme Court and the general Eighth Circuit consensus that deferred action provides a protection for stay in the United States. *See David v. Immigration and Naturalization Service,* 548 F.2d 219 (8th Cir. 1977), *Vergel v. Immigration and Naturalization Service*, 536 F.2d 755 (8th Cir. 1976). Assuming this also means taking the judge at his word, that he was considering the pending U visa application and work authorization. He did not reach Deferred Action, and had he have done so, the precedent on the impact of the U Visa Deferred Action and it's relationship with custody (because ICE does not possess the authority to revoke his Deferred Action) would have been too overwhelming to ignore.

The Government's own response confirms the lack of overlap. Respondents do not merely say *Gomez I* controls. They submit new evidence, rely on a newly produced I-200, offer an alternative warrantless-arrest theory under § 1357, invoke § 287.3, and argue that deferred action has no effect on removal or detention. Those arguments would be unnecessary if *Gomez I* had already resolved substantially all of the issues in this case.

Nor do the interests of justice favor reassignment. Petitioner should not be penalized because prior counsel filed a generalized emergency petition that did not meaningfully address his actual circumstances. Habeas tests present custody. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention."). The writ exists as "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). Where a later petition presents materially different factual and legal grounds for relief, the Court should decide those grounds rather than treat the omissions of the first filing as a forfeiture of liberty.

A civil detainee's liberty should not turn on the omissions of an earlier emergency filing. The "Great Writ" exists to test present custody, and "the writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). Respondents should be required to justify the detention they continue to impose. Accordingly, any transfer to the District of North Dakota should be denied for lack of habeas jurisdiction. Any request for internal reassignment should also be denied because reassignment is discretionary, Gomez I did not adjudicate the present claims, and the interests of justice favor prompt adjudication by this Court of Petitioner's present detention.

III. Respondents Have Not Established That Petitioner Was Arrested Pursuant to a Valid Pre-Seizure Warrant.

Respondents argue that Petitioner's arrest claim fails because officers "in fact had a warrant." Resp. at 3. The record does not establish that.

The Government's declaration is not from the arresting officer, the alleged issuing officer, the alleged serving officer, or any officer who claims to have been present in Hudson. Deportation Officer Sabin states only that he reviewed records and that the attached I-200, I-213, and I-862 were maintained in the ordinary course of business.

Sabin Decl. ¶¶ 2–7. He does not say when the I-200 was issued, what time Petitioner was seized, whether the I-200 preceded the seizure, who served it, whether the serving officer had authority, or whether Petitioner received it before being transported for processing.

The I-200 itself does not answer those questions. It contains a date, but no time. The certificate of service states that service occurred in Hudson, Wisconsin, but the serving officer's name and signature are redacted. Doc. 8-1. Those redactions matter. The Government cannot rely on a redacted certificate to defeat a warrantless-arrest claim while withholding the information necessary to test whether the alleged serving officer existed, had authority, and actually served the document before Petitioner was seized.

Nor does the I-213 establish a valid pre-seizure warrant. The narrative states that officers were conducting a targeted field operation, initiated a vehicle stop, conducted a field interview, identified Petitioner, and transported him for processing. Doc. 8-2. That is a seizure. "[A] seizure occurs when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). And when officers move a person from the scene into custodial processing, the encounter is no longer a brief stop.

On this record, Respondents have not shown that the I-200 authorized the seizure before it occurred. A warrant that is issued, served, or disclosed only after the person has already been stopped, restrained, transported, and processed cannot retroactively supply lawful authority for the arrest as 8 U.S.C. § 1357(a)(2) authorizes an arrest *only* in the event that an individualized determination of risk of flight is made before a warrant can be obtained. In this case, there is no evidence that the I-200 was served as required before the arrest, and none of the government's evidence supports any conclusion except that Petitioner was transported before any paperwork, including the I-200 and I-213, was provided.

IV. If the Arrest Was Warrantless, Respondents Have Not Satisfied § 1357 or 8 C.F.R. § 287.8.

Respondents alternatively contend that, even if the arrest was warrantless, it was lawful under 8 U.S.C. § 1357(a)(2). That argument also fails.

Section 1357(a)(2) permits a warrantless civil immigration arrest only where the officer has reason to believe the person is in the United States in violation of law and "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). The regulation is equally mandatory: "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii). At the time of arrest, the officer also must, "as soon as it is practical and safe to do so," identify himself as an immigration officer authorized to execute an arrest and state that the person is under arrest and the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii).

The "likely to escape" requirement cannot be presumed from removability alone. If it could, the statutory limitation would do no work. Courts do not read statutes that way. "It is our duty to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). And the Supreme Court has cautioned that immigration-enforcement authority must be exercised within the "system Congress created," not outside it. *Arizona v. United States*, 567 U.S. 387, 408–09 (2012).

Respondents identify no individualized facts showing Petitioner was likely to escape before a warrant could be obtained. The facts known to the Government show the opposite. Petitioner had lived in the United States for decades, had U.S. citizen children, had no criminal history, possessed USCIS-issued employment authorization, and presented documentation reflecting deferred action. Those facts do not suggest imminent flight. They suggest open residence and reliance on the legal process. "Mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained." *Castañon Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 885 (N.D. Ill. 2020).

Nor can Respondents cure the defect through post-arrest paperwork. The Eighth Circuit has rejected that type of bootstrapping. Evidence or custody flowing from an unlawful seizure remains tainted unless the Government shows that it was "sufficiently distinguishable to be purged of the primary taint." *United States v. Flores-Sandoval*, 422 F.3d 711, 714–15 (8th Cir. 2005). And "there is nothing about sitting in jail that sufficiently purges the primary taint of the illegal arrest." *Id.* at 715. Likewise, in United *States v. Guevara-Martinez*, the Eighth Circuit held that identity-related evidence may be suppressed when obtained by exploiting an unlawful arrest. 262 F.3d 751, 755–56 (8th Cir. 2001).

The I-213 does not describe a lawful pre-arrest warrant service followed by custody. It describes a stop, a field interview, transportation, and processing. By that point, Petitioner's liberty had already been restrained. A warrant issued, served, or disclosed only after that sequence cannot retroactively authorize the seizure. Nor can Respondents rely on § 1225 to erase the defect. Section 1225 may address detention following immigration processing, but it does not supply arrest authority and does not displace § 1357. Reading § 1225 to authorize warrantless interior arrests without satisfying § 1357 would render § 1357(a)(2)'s "likely to escape" requirement meaningless.

Petitioner challenges present executive custody as custody that began with, and continues to flow from, an arrest made in violation of the Constitution and laws of the United States. Section 2241 expressly reaches custody "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

V. Respondents Also Have Not Shown Compliance with 8 C.F.R. § 287.3.

Respondents also contend they complied with 8 C.F.R. § 287.3, which again, is only relevant if the individualized flight determination was, indeed, carried out. It was not, so the point is moot, but for the matter of addressing the law, Petitioner responds. That regulation requires that a person arrested without a warrant be examined by an officer other than the arresting officer unless no other qualified officer is readily available and taking the person before another officer would entail unnecessary delay. 8 C.F.R. § 287.3(a). It also requires notice of the reasons for arrest and the right to counsel at no expense to the Government. 8 C.F.R. § 287.3(c). And it requires a custody determination within 48 hours unless emergency or extraordinary circumstances exist. 8 C.F.R. § 287.3(d).

Respondents do not provide the declaration of the arresting officer. They do not provide the declaration of the examining officer. They do not identify who served the I-200. They do not provide timestamps showing when Petitioner was arrested, examined, served, advised of his rights, or given a custody determination. The later issuance of an NTA does not prove compliance with § 287.3(a), (c), or (d). A later custody order from the immigration court does not prove a 48-hour custody determination by the agency. And a redacted certificate of service does not establish that the required advisals were given by a properly authorized officer at the required time.

Respondents bear the burden of justifying detention in habeas. *See Maldonado v. Olson,* 795 F. Supp. 3d 1134, 1143 (D. Minn. 2025). They have not done so. Statements of Respondents' counsel does not rise to the level of evidence of compliance.

VI. *Avila* Does Not Resolve the Deferred-Action Problem.

Respondents' merits argument treats this as an ordinary § 1225 case. It is not. Petitioner does not merely argue that he is entitled to a bond hearing because § 1226(a), rather than § 1225(b)(2)(A), governs his custody. He argues that Respondents cannot presently remove him because USCIS granted him U-visa-based deferred action and has not revoked it, and this makes his detention unlawful because it is untethered to a statutory purpose. That is an independent and dispositive problem.

Civil immigration detention is lawful only so long as it remains reasonably related to a valid civil purpose. *Zadvydas* held that immigration detention must "bear[] a reasonable relation to the purpose for which the individual was committed," and that once removal is not reasonably foreseeable, continued detention is no longer authorized. *Zadvydas v. Davis*, 533 U.S. 678, 690, 699 (2001). The same principle controls here. Detention cannot be justified by removal if removal cannot lawfully proceed.

Respondents answer that deferred action "does not confer any immigration status." Resp. at 3 n.6. That is beside the point. Petitioner does not claim deferred action makes him admitted, adjusts his status, or resolves removability. The question is whether Respondents may detain him for the purpose of removal while USCIS's operative grant of deferred action remains active and unrevoked. Deferred action need not confer status to have legal effect. The Supreme Court has described deferred action as a decision that, for humanitarian reasons, "no action will thereafter be taken to proceed against an apparently deportable alien." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). The Supreme Court later reiterated that "[t]he defining feature of deferred action is the decision to defer removal (and to notify the affected alien of that decision)." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020).

The U-visa regulations confirm why Respondents' position is untenable. USCIS "will grant deferred action or parole" to qualifying U-visa waiting-list recipients and "may authorize employment." 8 C.F.R. § 214.14(d)(2). The same regulatory framework assigns termination of that protection to USCIS. 8 C.F.R. § 214.14(d)(3). ICE therefore cannot accomplish through arrest, detention, and removal what USCIS has not done through revocation. As this Court has recognized in materially similar deferred-action cases, "the Government has broad discretion to revoke a grant of deferred action," but "it nonetheless must actually revoke said grant before detaining and removing a noncitizen." *Jaime D.B. v. Easterwood*, No. 26-cv-891 (MJD/DTS), 2026 WL 578754, at *2 (D. Minn. Feb. 25, 2026), report and recommendation adopted, 2026 WL 592854 (D. Minn. Mar. 2, 2026).

The District of Minnesota has not treated U-visa deferred action as an irrelevant administrative footnote. It has repeatedly held the opposite. In *Juan M.*, ICE arrested a U-visa deferred-action recipient despite his valid work authorization and deferred-action grant, and the court ordered immediate release. *Juan M. v. Bondi*, No. 26-cv-266 (ECT/JFD), 2026 WL 129059 (D. Minn. Jan. 17, 2026). In *Victor G.*, the court held that where USCIS had granted a U-visa bona fide determination, deferred action, and work authorization, and the record did not show USCIS had revoked those protections, the petitioner remained protected from removal and was entitled to release. *Victor G. v. Lyons*, No. 26-cv-119 (ECT/SGE), 2026 WL 127733 (D. Minn. Jan. 17, 2026). In *Luis S.I.*, this Court again ordered relief for a noncitizen with active deferred action and no USCIS revocation. *Luis S.I. v. Easterwood*, No. 26-cv-533 (MJD/DTS), 2026 WL 253630 (D. Minn. Jan. 28, 2026). And in *Marcos L.*, the court explained that where "nothing in the record supports any argument that Respondents revoked [the petitioner's] employment authorization or terminated his deferred-action status," "there is no basis for his detention." *Marcos L. v. Noem*, No. 26-cv-676 (MJD/SGE) (D. Minn. Feb. 3, 2026).

Those cases are part of a much broader national consensus. In *Sepulveda Ayala*, the court held that "[t]he Government's sole basis for detaining Sepulveda Ayala is that it may do so in order to remove him," but because deferred action prevented removal, "the Government has no legal basis to detain." *Sepulveda Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025). In *Santiago*, the court stated the rule plainly: "Where an individual is protected from removal through deferred action, their detention serves no valid purpose." *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025). In *Nevarez Jurado*, the court rejected the Government's attempt to make deferred action meaningless, observing that if deferred action carried no protection from removal, the court could not understand "why USCIS would go through the trouble of making that determination and then notifying [the petitioner] of its decision." *Nevarez Jurado v. Freden*, No. 25-cv-943-LJV, 2025 WL 3687264, at *8 (W.D.N.Y. Dec. 19, 2025). And in *Loja Chogllo*, the court ordered release because "where a detainee's deferred action remains active, he is protected from removal, and there is no significant likelihood of his removal in the reasonably foreseeable future." *Loja Chogllo v. Warden*, No. 8:26-cv-54, 2026 WL 393137 (D. Neb. Feb. 11, 2026).

The U-visa cases are especially damaging to Respondents' position. In *B.D.A.A.*, the court held that the Government violated due process by detaining a U-visa bona fide determination recipient without prior notice and hearing because the detention "nullified

Petitioner's bona fide U visa determination and its attendant benefits, including Petitioner's work authorization and deferred action status." *B.D.A.A. v. Bostock*, No. 6:25-cv-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025). The court further noted that the facts suggested "the ICE officers made no flight assessment, as the INA requires," and that the warrantless arrest and detention deprived the petitioner of the benefits of deferred action. *Id.* In Espinoza Cruz, the court held that USCIS's U-visa bona fide determination and deferred-action grant "takes precedence" and may be enforced to prevent removal. *Espinoza Cruz v. English*, No. 3:25-cv-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025). In *Espinoza-Sorto*, the court held that "a grant of 'deferred action' is an 'affirmative immigration benefit' that effectively makes it unlawful for a removal order to be executed while the alien has deferred action status," and that the court had jurisdiction to determine whether the Government could detain and remove a person despite that protection. *Espinoza-Sorto v. Agudelo*, No. 25-23201, 2025 WL 3012786, at *5 (S.D. Fla. Oct. 28, 2025).

Other courts have reached the same conclusion across deferred-action contexts. Primero held that where USCIS granted deferred action and no early termination had occurred, "there is no significant likelihood of [petitioner's] removal in the reasonably foreseeable future." *Primero v. Mattivelo*, No. 1:25-cv-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025). *Forsah R-Z-* ordered immediate release of a deferred-action recipient because removal could not lawfully proceed while the grant remained in effect. *Forsah R-Z- v. Noem*, No. 1:26-cv-00828-DJC-AC, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026). Sanchez Alfaro held that a person with unexpired deferred action and work authorization "could not lawfully be arrested and detained by ICE, particularly in absence of changed circumstances and without notice or opportunity to be heard," and observed that revocation appeared to reside with USCIS, "not ICE." *Sanchez Alfaro v. Mullin*, No. 26-cv-0766 (GRB), 2026 WL 734348, at *4 (E.D.N.Y. Mar. 16, 2026). *Godinez Hernandez* put the point most simply: "A person with a valid grant of deferred action cannot be removed." *Godinez Hernandez v. Mullin*, No. 3:26-cv-00219-ART-CSD, 2026 WL 937393, at *1 (D. Nev. Apr. 7, 2026).

This body of authority defeats Respondents' effort to dismiss deferred action as irrelevant. It is true that deferred action is discretionary. It is true that deferred action may be revoked. But those truths do not help Respondents because USCIS has not revoked Petitioner's deferred action. The Government cannot defend present detention by pointing to a revocation that has not happened. "The Government has no legitimate interest in refusing to abide by its own regulations." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954). Nor may one component of DHS nullify through detention what another component of DHS has affirmatively granted through the U-visa process.

Avila does not answer this issue. Avila addresses whether certain noncitizens may be classified under § 1225(b)(2)(A). It does not hold that § 1225 authorizes detention following an unlawful arrest. It does not hold that § 1225 displaces § 1357. It does not hold that ICE may ignore USCIS-granted deferred action. It does not hold that ICE may treat deferred action as revoked when USCIS has not revoked it. And it does not hold that detention remains constitutional where removal depends on speculative future agency action that has not occurred.

Respondents therefore have no present endpoint for Petitioner's detention. They say detention ends when removal proceedings end. But that answer collapses on contact with the deferred-action grant. If removal proceedings end in a removal order, Respondents still cannot lawfully execute that order unless USCIS first terminates deferred action or otherwise removes the protection it granted. That may happen later, or it may not. It has not happened now. Habeas asks whether custody is lawful now. On the present record, Petitioner has active, unrevoked U-visa-based deferred action, valid employment authorization, no final removal order, no criminal history, and no individualized finding of danger or flight risk. Detention in those circumstances is not reasonably related to removal, does not serve a valid civil purpose, and violates the Constitution and laws of the United States.

VII. Conclusion.

This petition is not barred by § 2244. It is not resolved by *Gomez I.* It is not answered by Avila. Respondents have not established that the I-200 preceded the seizure, that it was validly served, that the redacted officer was authorized, that § 1357 was satisfied, that § 287.3 was followed, that USCIS revoked deferred action, or that removal is significantly likely in the reasonably foreseeable future. The writ should issue because Respondents have not carried their burden to justify Petitioner's ongoing civil detention.

Respectfully Submitted,

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Certificate of Service

I certify that on May 4, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully Submitted,

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