

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

DIEGO ALBERTO HERNANDEZ GARCIA,

Petitioner,

v.

Scott LADWIG, Field Office Director of
Enforcement and Removal Operations, NEW
ORLEANS Field Office, Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; PAUL
COOPER, Warden of ROGER D. WILSON
DETENTION FACILITY, and TODD LYONS,
Director of Immigration and Customs
Enforcement.

Respondents.

Case No.

PETITION FOR EMERGENCY MOTION FOR A STAY OF REMOVAL

Now comes the Petitioner, Diego Alberto Hernandez Garcia, by and through counsel, and respectfully moves this Honorable Court for an emergency stay of removal from the United States of America.

BACKGROUND

Petitioner is a resident of Tennessee and was arrested by Immigration and Customs Enforcement (ICE) on December, 11, 2025. At the time of his arrest, his address is 

██████████ He was working at a construction site when he was arrested. He was then detained in Knox County, Tennessee by ICE.

Petitioner was born on ██████████, and is a national of El Salvador. He has been residing in the United States for over ten (10) years. His A Number is ██████████. On September 8, 2016, Petitioner's application for asylum, withholding of removal, and Convention Against Torture Act was denied and Petitioner was ordered removed from the United States to El Salvador. Petitioner was fourteen (14) years old at the time of the removal order and was a rider respondent in the case.

On February 14, 2019, Petitioner's Form I-360, seeking special juvenile classification was approved. On May 12, 2022, USCIS issued an amended approval notice to Petitioner for Form I-360 with deferred action. The grant of deferred action is effective for a period of four (4) years from the date of the notice. Therefore, Petitioner's deferred action remains in effect until May 12, 2026. Petitioner has a visa number available.

A STAY IS AVAILABLE FROM THE COURT

This Honorable Court has the authority to grant an emergency stay of removal using the standard laid down *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1761 (2009); *accord*, *Benjani v. INS*, 271 F.3d 670, 687-88 (6th Cir. 2001). When considering such a Motion for Stay which is a form of application for injunctive relief, the traditional four-part test for such equitable relief is persuasive. The four factors to be weighed and balanced are (1) the Petitioner's likelihood of success on the merits, (2) irreparable harm to the Petitioner absent a stay, (3) the potential harm to Petitioner outweigh any potential harm to the United States (and any other interested parties), and (4) the public interest. In *Nken*, the United States Supreme Court affirmed that the authority of the

lower courts to stay an order of removal under the traditional criteria governing stays. Such criteria remain fully intact and is not affected by the statutory provision governing injunctions. The traditional factors are balanced when a greater showing of irreparable harm in the absence of a stay is made, and a lesser showing of the likelihood of success on the merits is necessary to support a stay.

BALANCING THE FOUR FACTORS FOR THE GRANTING OF STAY

A. Petitioner's Likelihood of Success on the Merits

On February 14, 2019, Petitioner's Form I-360, seeking special juvenile classification was approved. On May 12, 2022, USCIS issued an amended approval notice to Petitioner for Form I-360 with deferred action. The grant of deferred action is effective for a period of four (4) years from the date of the notice. Therefore, Petitioner's deferred action remains in effect until May 12, 2026. Under special immigrant juvenile classification, the Petitioner has employment authorization and may lawfully work.

Congress created the SIJS classification in 1990. The classification provides "immigration relief for foreign-born children living in the United States who have been abused, neglected, abandoned, or similarly mistreated by a parent" and for whom a state or administrative court has determined it would not be in their best interest to be returned to their home country or prior country of residence. See 8 U.S.C. § 1101(a)(27)(J).

Deferred action is "an act of administrative convenience to the government that gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14); see also 8 C.F.R. § 236.21(c)(1) (defining deferred action as "a form of enforcement discretion not to pursue the removal of certain aliens for a limited period in the interest of ordering enforcement priorities in light of limitations on available

resources, taking into account humanitarian considerations and administrative convenience”). The arrest, detention, and effort to remove Petitioner who has been granted deferred action violates Due Process.

B. Irreparable Harm Would Befall the Petitioner if the Stay is Not Granted

The issue of “irreparable harm” is multifaceted. From the constitutional perspective, any violation of a right protected under the United States Constitution requires careful consideration and latitude when it comes to “irreparable harm.” The United States has been Petitioner’s home for over ten (10) years. He is an integral part of the community. He graduated from [REDACTED] [REDACTED] is an active member of a local church; and he is a business owner. If he were to be removed to El Salvador, Petitioner would be returning to a country that he barely remembers. Although he has a removal order, Petitioner has strived to obtain lawful status through an established lawful pathway.

C. The Potential Harm to the Petitioner Outweighs Other Parties

The Respondents are the United States government through its heads of Departments who seek to enforce the immigration laws and regulations of the United States. There is no assertion that Petitioner is a national security risk to the United States of America nor is he a dangerous criminal. To repeat, Petitioner has no criminal record and has never engaged in criminal activity. Unless the Respondents can show otherwise, the harm of to the government is *de minimus*. When stacked against the deprivation of Petitioner’s lawful rights through instant arrest and detention by Respondents, the equities as if measured for the granting of injunctive relief, and the Petitioner already having demonstrated a probability of success on the merits and a probability of irreparable injury, weigh in completely in favor of the granting of a Stay.

D. The Granting of the Stay Would Serve the Public Interest

The interest of the Respondent in enforcing the removal of Petitioner is substantially countered by the policy of affording latitude under deferred action via special immigration juvenile classification is in effect for the Petitioner through May 12, 2026. The public interest in providing deferred action to those classified as special immigrant juveniles require a stay. A stay in the context of habeas corpus provides the Petitioner to have an administrative record since his arrival as a minor to be delivered to this Court and to provide him the opportunity to exercise fully and fairly any and all relief from removal that his facts and the law will afford him.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully prays for the issuance of a Stay within this Petition for Habeas Corpus and for an Order for a true, accurate and complete Administrative Record to be delivered with his person.

Respectfully submitted,

/s/ Rachel L. Bonano

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has electronically on all counsel of record on this 12th day of December, 2025.

/s/ Rachel L. Bonano

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