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. 3:25-cv-00605 **FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner, DIEGO ALBERTO HERNANDEZ GARCIA (A#[redacted]), is a citizen of El Salvador who Respondents have detained at the ROGER D. WILSON DETENTION FACILITY in Knoxville, Tennessee. He was unlawfully detained because of the Respondents' failure to properly interpret and apply the Immigration and Nationality Act (INA). Because he has been unlawfully detained, he seeks relief from this Court that would allow him to challenge his unconstitutional detention.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the ROGER D. WILSON DETENTION FACILITY in Knoxville, Tennessee and is under the direct control of Respondents and their agents.
2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
3. This Court has jurisdiction under 28 U.S.C. §§ 2241(c)(1), (c)(3), and (c)(5) (habeas corpus), 28 U.S.C. §1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).
4. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
5. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. See *Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

6. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of Tennessee, the judicial district in which the Petitioner is currently in custody.
7. Venue is also properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies in the United States, and because a

substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Tennessee.

PARTIES

8. Petitioner is a citizen of El Salvador who arrived in the United States over ten (10) years ago. He has been in custody of the Department of Homeland Security (DHS) since December 11, 2025.
9. Respondent, SCOTT LADWIG, is the Acting Director of the New Orleans District Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Department of Homeland Security. As such, Mr. Ladwig is Petitioner's immediate custodian. He is named in his official capacity.
10. Respondent, TODD LYONS, is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of ICE in general. Mr. Lyons is a legal custodian of Petitioner.
11. Respondent, KRISTI NOEM, is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Ms. Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.
12. Respondent, PAMELA BONDI, is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.
13. Respondent, DEPARTMENT OF HOMELAND SECURITY (DHS), is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

14. Respondent, U.S. IMMIGRATION CUSTOMS ENFORCEMENT, is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

FACTUAL ALLEGATIONS

15. Petitioner, DIEGO ALBERTO HERNANDEZ GARCIA, is a 24-year-old native and citizen of El Salvador. He has resided continuously in the United States for over ten (10) years. Petitioner has no criminal history or arrests in the United States or abroad.[1]

16. Petitioner first entered the United States as a minor over ten (10) years ago without inspection. Since entering the United States, he has never left.

17. 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. (Removal Order, Doc. 8-1). Petitioner was fourteen (14) years old at the time of the removal order and a rider respondent in the case.

18. On February 14, 2019, Petitioner's Form I-360, seeking special immigrant juvenile classification was approved. On May 12, 2022, USCIS issued an amended approval notice to Petitioner for Form I-360 with deferred action. (Approval Notice, Doc. 1-1). 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 remained in effect until May 12, 2026.

19. Due to Petitioner's approved deferred action, he was eligible to apply for employment authorization. Petitioner's employment authorization was valid from August 23, 2023 until May 13, 2026.

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[1] Petitioner has had two minor traffic violations

20. On December 11, 2025, Petitioner was working construction at a job site off Hardin Valley Road in Knoxville, Tennessee.

21. Officers in a Dodge Charger, Cadillac Escalade, and other vehicles appeared at the construction site as Petitioner and other workers were gathering to eat lunch together. Officers got out of the vehicles and began apprehending workers indiscriminately. Petitioner was apprehended. The officer claimed that Petitioner was ordered removed and asked Petitioner if he had failed to attend any previous hearings. Petitioner said he never failed to attend a hearing and had his documents in order. Petitioner affirmatively invoked his right to counsel. An officer responded by saying that they did not have time for that "bullshit" and "all that crap." During the apprehension, Petitioner's counsel was mere minutes away.

22. Petitioner's sister-in-law saw a social media post about the encounter and then went to the construction site. She contacted Petitioner's counsel and informed her that Petitioner had been detained and taken to the Knoxville ICE Office at 324 Prosperity Drive, Knoxville, Tennessee 37923.

23. Counsel for Petitioner arrived at the Knoxville ICE office at approximately 2:30 PM EST. Counsel spoke with Officer Johnathan F. Barnes. Counsel explained that Petitioner was mistakenly apprehended earlier at a construction site. Counsel additionally explained that although Petitioner has a prior removal order from 2016, he was granted deferred action in 2022 as a result of his special immigrant juvenile classification. The deferred action protects him from removal from the United States for at least a specific period of time. For Petitioner, that period of time ends on May 12, 2026. Then counsel handed Officer Barnes

a copy of the amended approval notice with deferred action. Officer Barnes took the notice and went inside the ICE office.

24. Upon his return, Officer Barnes said that Petitioner would not be released. He said Office of Principal Legal Advisor ("OPLA") advised that Petitioner had a prior order of removal; therefore, Petitioner must remain detained. Officer Barnes had an unredacted copy of the Order of the Immigration Judge signed on September 8, 2016, which he handed to Counsel. [Document 8-1].

25. Counsel asked Officer Barnes who he spoke with at OPLA so she could contact the same person to discuss Petitioner's matter. Officer Barnes did not give Counsel a specific name but suggested that she contact the duty attorney in New Orleans.

26. Again, Counsel explained that after the removal order from 2016, Petitioner was granted special immigrant juvenile classification and later granted deferred action. Counsel referred to the notice and highlighted to Officer Barnes that deferred action lowers the priority for removal.

27. Officer Barnes responded that deferred action was granted by USCIS and not by EOIR[2], immigration judges, nor ICE. He stated that he does not work for USCIS and solely enforces the immigration judges' order.

28. Counsel noted that USCIS, EOIR, and ICE all fall under the Department of Homeland Security, to which Officer Barnes replied that the two agencies were at odds against each other.

29. Counsel asked whether ICE would respect any deferred action granted by USCIS. Officer Barnes responded that it would be a case-by-case basis. Counsel then explained that the

[2] Executive Office for Immigration Review ("EOIR").

order of removal was issued when Petitioner was only fourteen (14) years old; Petitioner graduated from [redacted] Petitioner has no criminal record as evidenced by the FBI Identity History Summary results (which she had in hand); Petitioner is a member of a local church; and Petitioner is trying to do everything "the right way."

30. Officer Barnes responded and said that Petitioner is going to Louisiana[3] and that his case can be resolved there.

31. Approximately at 2:50 PM EST, Counsel and Officer Barnes ended their conversation with Counsel telling Officer Barnes that she would be filing a habeas[4] and would also be seeking congressional help. Counsel then left the ICE office.

32. During the conversation between Officer Barnes and Counsel, Officer Barnes made no mention of any termination notice regarding Petitioner's deferred action. Even after Counsel asked for the basis of Petitioner's apprehension and detention, Officer Barnes exclusively justified Petitioner's apprehension and detention based on the order of removal from 2016.

33. On the same day, December 11, 2025, Undersigned Counsel filed the Petition for Writ of Habeas Corpus. Minutes later, on December 12, 2025, at 12:11 AM EST, Undersigned Counsel filed an Emergency Motion for Stay of Removal.

34. On December 12, 2025, at approximately 7:00 AM EST, Counsel arrived at the Roger D. Wilson Detention Facility to meet with Petitioner. Counsel met with Petitioner for approximately an hour and a half.

35. When Counsel was walking out of the facility, she asked Knox County Sheriff's Office ("KCSO") Officer Lane if the ICE officer was available for her to hand him some

[3] Referring to federal immigration detention centers.
[4] Implying a Petition for a Writ of Habeas Corpus.

documents, which included copies of the notices of electronic filing of the Petition and the Emergency Motion. Officer Lane responded and said that the ICE officer was not in yet, but that he would give the documents to the ICE officer. Counsel left the copies with Officer Lane and left the facility prior to 8:36 AM EST.

36. On that same day, December 12, 2025 at 1:21 PM EST, Undersigned Counsel received a copy of a document purporting to be a Termination Notice of Petitioner's deferred action allegedly issued on December 11, 2025.
37. The termination notice did not state any basis for terminating Petitioner's deferred action.
38. On December 12, 2025 at approximately 5:49 PM EST, Undersigned Counsel received notice of an order granting the Emergency Motion for Stay of Removal for Respondent.
39. Undersigned Counsel drove to the Roger D. Wilson Detention Facility, and arrived at 7:12 PM EST. Undersigned Counsel, approached KCSO Officer M. Huddleston at the front desk. and gave her a copy of the order granting Petitioner's immediate release. Officer Huddleston gave an ERO officer the copy of the order, who then took photos of the order and said that he sent them to his supervisor.
40. At 9:25 PM EST, another KCSO officer told Undersigned Counsel that ICE told him that they had talked to a U.S. Attorney and a judge, who said Petitioner would not be released that night. Counsel asked for the name of the attorney and judge, but no names were provided to her.
41. At 9:48 PM EST, Counsel requested to speak with Petitioner to explain the situation. Counsel gave KCSO Officer Huddleston her bar card. Officer Huddleston then told Counsel that she could not see her client because she was not in the pre-approved list to see immigration detainees. Counsel asked how she could get on the list and the criteria for

the list. Officer Huddleston responded that she would have to talk to her supervisor. Undersigned Counsel requested to speak with the supervisor. After approximately thirty minutes, Undersigned Counsel asked if the supervisor was coming to speak to her.

42. KCSO Lieutenant Howard approached Undersigned Counsel. Lieutenant Howard affirmed what Officer Huddleston stated about the list and emphasized that regardless, it was past visitation hours. Lieutenant Howard stated that Counsel would not be seeing her client and further expressed that Petitioner would not be released and would be transferred out of the facility. Undersigned Counsel left the facility at approximately 11:25 PM EST.

43. Respondents filed a Motion to Stay Release Pending Forthcoming Motion to Reconsider at 10:29 PM EST. An order granting Respondent's stay of Petitioner's release was issued on December 13, 2025 at 12:39 AM EST.

44. As of the October 2025 Visa Bulletin[5], published by the U.S. Department of State, Petitioner has an immigrant visa number immediately available to file the adjustment application with EOIR, the immigration court. Petitioner was in the process of filing a motion to reopen and an adjustment of status application seeking his lawful permanent residence through EOIR.

LEGAL FRAMEWORK

45. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—

[5] https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-october-2025.html

lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

46. Incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

47. Congress created the Special Immigrant Juvenile ("SIJ") 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).

48. 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").

49. In 2022, USCIS announced a deferred action program for individuals with SIJ. USCIS justified the SIJ deferred action policy on several grounds. Specifically, the agency found that:

> [i]n general, SIJs are unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility congress

> established, as well as ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, which states that *absent exceptional circumstances*, ICE defers enforcement actions against SIJs until they adjust status to that of an LPR. Therefore, the granting of deferred action to SIJs further conserves DHS resources by focusing on the enforcement of higher priority cases, such as noncitizens who pose a threat to national security, public safety, and border security.

USCIS, PA-2022-10, March 7, 2022 (emphasis added).

50. ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims states that "[e]xcept where exceptional circumstances exist. . .a noncitizen with a. . .petition who is subject to an administratively final removal order should generally be issued a stay of removal." ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, Section 5.4(a). Further, "[e]xceptional [c]ircumstances generally exist only in the following circumstances: (a) the noncitizen poses national security concerns; or (b) the noncitizen poses an articulable risk of death, violence, or physical harm to any person." *Id.* at Section 3.4.

51. Per the U.S. Citizenship and Immigration Services ("USCIS") Policy Manual, USCIS may terminate prior grants of deferred action. USCIS Policy Manual, Vol. 6, Part J, Chapter 4. The policy manual states that deferred action could be terminated prior to the end of the current validity period if USCIS determines that "the favorable exercise of discretion is no longer warranted." *Id.*

52. 8 U.S.C. § 1252(g) provides that "notwithstanding any other provision of law (statutory or nonstatutory). . .no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this

chapter. The Sixth Circuit has already held in *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 867 (6th Cir. 2022) that a removal order "rendered unenforceable by a grant of DACA" created a non-executable removal order and was thus outside the scope of § 1252(g)'s jurisdiction stripping provision. See also *Enriquez-Perdomo v. Newman*, 149 F.4th 623 (6th Cir. 2025). The Sixth Circuit considered the term 'removal orders' in § 1252(g) in context alongside the preceding word 'execute,' and read 'removal orders' as referring to executable removal orders, meaning existing and enforceable removal orders subject to execution. *Id.* at 863. One's removal order is not subject to execution if that person had deferred action when arrested and detained. See *id.* Therefore, "[b]y definition, when a removal order is not subject to execution, government officials have no authority, discretionary or otherwise, to execute it." *Id.* at 865.

53. The Administrative Procedure Act ("APA") "requires agencies to engage in reasoned decisionmaking and directs that agency actions be set aside if they are arbitrary and capricious." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 3 (2020) (citing 5 U.S.C. § 706(2)(A)). Under the APA's "narrow standard of review for determining whether agency actions are arbitrary and capricious, a court is not to substitute its judgment for that of the agency, and a court assesses only whether the action on a consideration of the relevant factors and whether there has been a clear error of judgment." *Id.*

54. The INA provision, "barring judicial review of claims arising from actions or proceedings brought to remove an alien, does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, or the decision to seek removal, or the

process by which removability will be determined." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citing 8 U.S.C. § 1252(b)(9)).

55. "When an agency changes course, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account, and it would be arbitrary and capricious to ignore such matters." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020).

56. "To state a First Amendment claim for retaliation, a plaintiff must establish that: 1) he engaged in protected conduct; 2) he suffered an adverse action which would deter a person of ordinary firmness from continuing to engage in the protected conduct; and 3) the adverse action was motivated at least in part by the protected conduct." *Allen v. Stepp*, 27 F. App'x 521, 523 (6th Cir. 2001).

CLAIM FOR RELIEF

57. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

58. While USCIS exercised prosecutorial discretion by granting deferred action, once a noncitizen receives deferred action, it is a shield against an execution of a removal order during the time that it remains effective. Unless deferred action is terminated, deferred action prevents immigration authorities from physically removing a noncitizen from the United States.

59. Nonetheless, the New Orleans ICE Field Office has a practice of executing removal orders against those with deferred action.

60. 8 U.S.C. § 1252(g) does not bar the relief requested by the Petitioner because: (a) at the time of his apprehension he had deferred action; or (b) alternatively, if the Petitioner's

deferred action had been terminated prior to his apprehension, then such termination was arbitrary and capricious because there was no basis.

61. The retaliatory termination of Petitioner's deferred action after he exercised his legal right to defend himself in court by filing a habeas is impermissible under the First Amendment to the United States Constitution.

62. The execution of Petitioner's order of removal violates his protection under deferred action that he received with his special immigration juvenile classification.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
3. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
4. Issue a writ of Habeas Corpus ordering the Respondents to release Petitioner from custody and hold a hearing if warranted;
5. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;
6. Declare that Mr. Hernandez Garcia's detention is unconstitutional and unlawful, as it violates his deferred action under his special immigrant juvenile classification and violates the Fifth Amendment guarantee of due process;
7. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with the law;

8. Declare that Respondents' retaliatory conduct violates the First Amendment to the United States Constitution;

9. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

10. Grant such other further relief as the Court deems just and proper.

DATED: December 15, 2025

/s/ Rachel Bonano
Rachel L. Bonano
BPR# 030458
10700 Virginia Pine Way, Suite 203
Knoxville, TN 37932
T: (865) 282-5309
F: (865) 251-5383
rbonano@bonanolaw.com