

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

DIEGO ALBERTO HERNANDEZ GARCIA,

Petitioner,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY et al.,

Respondents.

Case No. 3:25-cv-00605

**RESPONSE TO THE RETURN OF
WRIT**

SUMMARY OF ARGUMENT¹

The Government knowingly detained Mr. Garcia while he had deferred action.² This detention was illegal. *Enriquez-Perdomo v. Newman*, 54 F.4th 855 (6th Cir. 2022)(finding removal order against woman with deferred action to be a non-executable order stating that since she was granted “affirmative relief from removal . . . her removal order is not subject to execution, and the [Government] did not have authority to arrest or detain her.”).

After unlawfully detaining Mr. Garcia, the Government unlawfully terminated Mr. Garcia’s deferred action as an act of “prosecutorial discretion” for the express purpose of deporting him. The termination of his deferred action in this manner was illegal. *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *7-8 (E.D.N.Y. Nov. 19, 2025)(rejecting Government’s argument that grant of deferred action associated with grant of SIJS [“SIJS-DA”] is simply an unreviewable exercise of prosecutorial discretion as a non-enforcement policy, explaining that *Regents [Dep’t of Homeland Sec. v. Regents of the Univ. of California]*, 591 U.S. 1

¹ For purposes of this Response to the Return of Writ only, Mr. Garcia adopts the “Factual Background” in the Return of Writ, and incorporates the same by reference. (Return of Writ, ECF 15 at 1-3, including fn.2).

² For purposes of this Response to the Return of Writ only, Mr. Garcia adopts the first paragraph of the “Legal and Statutory Background” regarding “Special Immigrant Juvenile Status and Deferred Action” in the Return of Writ, and incorporates the same by reference. (Return of Writ, ECF 15 at 3-4, § II.A. ¶ 1).

(2020)] foreclosed that argument, clarifying that both the DACA and the SIJS-DA programs are constructed adjudicatory processes, and stating that “[M]uch like DACA, SIJS-DA was ‘more than a non-enforcement policy’—it was a ‘program for conferring affirmative immigration relief.’”).

The government intends to deport Mr. Garcia without following prescribed procedures for first revoking his Special Immigrant Juvenile Status. This act is also illegal. See generally, *Osorio Martinez v. Att’y Gen.*, 893 F.3d 153 (3rd Cir. 2018)(finding the jurisdiction-stripping provision §1252 of the INA in violation of the suspension clause as applied to SIJ designees with expedited removal orders).

If the courts allow Immigration and Customs Enforcement (“ICE”) officers to unlawfully detain then *de facto* terminate special immigrant juvenile status (“SIJS”) through deportation, ICE can effectively and single-handedly end the special immigrant juvenile (“SIJ”) program prescribed by Congress without any judicial review of its actions. This Reply will outline the three most prominent constitutional violations in this case and why the Court should continue to hear this matter.

I. FIRST VIOLATION: DETENTION WHILE ON DEFERRED ACTION

On March 7, 2022, USCIS issued a Policy Alert on the subject of SIJ Classification and Deferred Action.³ Petitioner was a beneficiary of said policy. On May 12, 2022, USCIS issued an amended approval notice to Petitioner for Form I-360, said notice included a grant of deferred action with effective dates from May 13, 2022 to May 12, 2026. (Approval Notice, Doc. 1-1)

³ *Policy Alert PA-2022-10* (March 7, 2022) <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

The Government detained Mr. Garcia while he was in a valid deferred action period, and has raised 8 U.S.C. § 1252(g) as a jurisdictional bar to relief from detention on the premise that he has a removal order from 2016. This is in direct contravention to Sixth Circuit precedent. *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 862-66 (6th Cir. 2022)(finding removal order against woman with deferred action to be a non-executable order stating that since she was granted “affirmative relief from removal . . . her removal order is not subject to execution, and the [Government] did not have authority to arrest or detain her.”)

8 U.S.C. § 1252(g) bars district courts from hearing challenges to the methods by which the Secretary of Homeland Security chooses to commence removal proceedings, adjudicate cases, or execute removal orders. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19 (2020). The *Enriquez-Perdomo* Court focused on the meaning of the statute’s phrase “execute removal orders.” *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022). It read “‘removal orders’ as referring to ‘executable’ removal orders—that is, existing and enforceable removal orders subject to execution.” *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) The Court reasoned that “Enriquez-Perdomo’s removal order was not subject to execution because she had DACA status when Defendants arrested her.” *Id.* The Court goes on to adopt the reasoning in *Regents* that DACA is not simply a non-enforcement policy, but rather an established adjudicative process for conferring affirmative immigration relief. *Id.* The court in *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *7-8 (E.D.N.Y. Nov. 19, 2025), adopted this reasoning as it relates to the SIJS-DA program. “The same logic applies here. . . Thus, much like DACA, SIJS-DA was ‘more than a non-enforcement policy’—it was a ‘program for conferring affirmative immigration relief.’” *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *7-8 (E.D.N.Y. Nov. 19, 2025)(citing *Dep’t of Homeland Sec.*

v. Regents of the Univ. of Calif., 591 U.S. 1, 18-19 (2020)). The *Enriquez-Perdomo* Court concludes, § 1252(g) does not preclude [her] claims because her removal order was not executable.” *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863-64 (6th Cir. 2022).

Mr. Garcia challenges the Government’s present authority to restrain and remove him based on his Deferred Action that he had at the time of his apprehension and that was subsequently terminated without due process through the unlawful exercise of prosecutorial discretion rather than adjudicative discretion. This challenge does not arise from the execution of a removal order, but from Respondents’ unlawful disregard of an existing legal barrier to removal, and therefore falls outside the jurisdictional bar of 8 U.S.C. § 1252(g). The Government seeks to take itself outside the scope of the *Enriquez-Perdomo* decision by having terminated Mr. Garcia’s deferred action as a matter of “discretion,” and this constitutes the Government’s second violation in this case.

II. SECOND VIOLATION: FAILING TO FOLLOW ADJUDICATIVE DISCRETIONARY PROCEDURES IN THE TERMINATION OF DEFERRED ACTION

A “discretionary” decision to terminate deferred action in the immigration context does not comport with layman’s terms and does not encompass any, all, and every exercise of unfettered decision-making, but rather, said discretionary decision-making is bound between the confines of the USCIS Policy Manual, the Administrative Procedures Act, and the court decisions construing said discretionary decision-making authority.

There are two forms of discretionary decision-making: prosecutorial and adjudicative. The Government has erroneously invoked the legal principle of prosecutorial discretion when adjudicative discretionary decision-making controls in this situation. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1 (2020)(“*Regents*”); *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *7-8 (E.D.N.Y. Nov. 19, 2025).

On June 6, 2025 USCIS issued a Policy Alert significant curtailing the SIJS-DA program previously announced in the 2022 Policy Alert. On November 19, 2025, that 2025 policy alert was stayed by the Court in *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *18 (E.D.N.Y. Nov. 19, 2025), and the stay at present remains in effect. “There are two broad types of discretion that may be exercised in the context of immigration law: prosecutorial (or enforcement) discretion and adjudicative discretion.” USCIS Policy Manual, Vol. 1, Pt. E, Ch. 8 § B.2. The Government’s legal position both in its Return of Writ and in its “Termination Notice” to Petitioner is that terminating deferred action to effectuate an order of removal is an act of prosecutorial discretion, rather than an act of adjudicative discretion.

The Petitioner’s Termination Notice dated December 11, 2025, states:

This letter serves as notification that [USCIS] has individually reviewed your case and exercised discretion to terminate your period of deferred action, which began on May 13, 2022, in connection with your approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant Juvenile (SIJ). USCIS approved your Form I-360, which granted you SIJ classification on February 14, 2019, and it remains approved. Deferred action is a discretionary determination, however to defer immigration enforcement action against an individual as⁴ [sic] an act of prosecutorial discretion. (Termination Notice, ECF 15-4, at 1).

⁴ Probably intended to say “is” instead of “as.”

However, the discretion described in the USCIS Policy Manual relates to adjudicative discretion, not prosecutorial discretion. USCIS Policy Manual, Vol. 1, Pt. E, Ch. 8 § B.2. The guidance regarding Termination of Deferred Action falls under the Chapter entitled, “Adjudications.” USCIS Policy Manual, Vol. 6, Pt. J, Ch. 4 “Adjudications.”

Therefore, according to the USCIS Policy Manual, whether to terminate a previous grant of deferred action is adjudicative discretion, requiring adherence to the USCIS Policy Manual Chapter regarding “Discretionary Analysis” in the Part involving “Adjudications.” See USCIS Policy Manual, Vol. 1, Pt. E, Ch. 8 and USCIS Policy Manual, Vol. 6, Pt. J, Ch. 4, § G.

The USCIS Policy Manual currently in effect and in effect at the time of Petitioner’s apprehension, detention, and termination of deferred action, has an entire Chapter dedicated to “Discretionary Analysis.” USCIS Policy Manual, Vol. 1 Part E, Ch. 8. The introduction to this Chapter clearly states, “[T]here are limitations on how the [USCIS] officer may exercise discretion; the officer may not exercise discretion arbitrarily, capriciously, or in reliance on biases or assumptions.” Further, “[t]o perform a discretionary analysis, officers must weigh all positive factors present in a particular case against any negative factors in the totality of the record. The analysis must be comprehensive, specific to the case, and based on all relevant facts known at the time of adjudication.” The USCIS Policy Manual states:

[T]he exercise of discretion cannot be arbitrary, inconsistent, or dependent on intangible or imagined circumstances. . . . [D]iscretion is defined as the ability or power to exercise sound judgment in decision-making. While the discretionary analysis gives the officer some autonomy in the way in which he or she decides a particular case after all applicable eligibility requirements are established, that autonomy may only be exercised within the confines of certain legal restrictions. These restrictions define the scope of the officer’s discretionary authority.

USCIS, Policy Manual, Vol. 1, Part E, Ch. 8.

Further, in Chapter 8, Subsection C. “Adjudicating Discretionary Benefits,” Subsection 1. “Basic Adjudication Steps,” Subheading, “Conducting Discretionary Analysis,” “The act of exercising discretion involves the weighing of positive and negative factors and considering the totality of the circumstances in the specific case. In the immigration context, the goal is to assess whether, based on the totality of the circumstances, the [noncitizen] warrants a favorable exercise of discretion.” (footnote omitted)

Here, the Government does not argue that it has engaged in the required adjudicative discretionary analysis mandated by the USCIS Policy Manual. By the Government’s own admission, it “terminated [Petitioner’s] deferred action to execute the removal order.” (Return of Writ, Doc. 15 at 1), as an act of “prosecutorial discretion.” (See Termination Letter, ECF 15-4)

Mr. Garcia’s deferred action should have been left to expire on its own terms as there were no changes in circumstances that warranted termination under the USCIS Policy Manual. “If USCIS previously granted deferred action to [a noncitizen] with SIJ classification in the exercise of discretion, the alien’s deferred action remains valid for the authorized period, unless terminated by USCIS, on a case-by-case basis, *as a matter of discretion*.” *Id.* (emphasis added) “USCIS reserves the right to terminate prior grants of deferred action . . . *as a matter of discretion*.” *Id.* (emphasis added) The discretion described in the USCIS Policy Manual relates to adjudicative discretion, not prosecutorial discretion. USCIS Policy Manual, Vol. 1, Pt. E, Ch. 8 § B.2. (“This chapter only discusses the exercise of adjudicative discretion.”) As such, the Government’s termination of deferred action for Mr. Garcia as an act of prosecutorial discretion was ultra vires and should be stayed pursuant to the authority found in the Administrative Procedures Act.

Federal courts have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on *habeas*. 5 U.S.C. § 703 (providing that jurisdictional review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.

Here, Mr. Garcia is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS) because of the arbitrary and capricious action of ICE and U.S. Citizenship and Immigration Services (USCIS) of terminating Mr. Garcia’s Deferred Action without due process. Finally, after unlawfully detaining Mr. Garcia and then unlawfully terminating Mr. Garcia’s deferred action, the Government has sought to deport him without due regard to his SIJS.

III. THIRD VIOLATION: DE FACTO REVOCATION OF SIJS THROUGH DEPORTATION WITHOUT FOLLOWING MINIMAL DUE PROCESS REQUIREMENTS

Up to this point, this Response has only discussed Mr. Garcia’s deferred action and the legal problems with the Government’s conduct as it relates to his detention while on deferred action as well as the termination of his deferred action. While deferred action attached to having a grant of SIJS is in many ways similar to that of the deferred action granted as part of the Deferred Action for Childhood Arrivals (“DACA”) program, the key difference is that SIJS in itself is a

separate immigration benefit that by itself leads to a pathway to citizenship, whereas the DACA program has no underlying pathway to citizenship and is a stand-alone deferred action program.

The SIJS program itself presents a pathway for Mr. Garcia to obtain Lawful Permanent Residency and all the benefits attendant thereto. If Mr. Garcia were in El Salvador today, he would have lost his opportunity to adjust status to that of a Lawful Permanent Resident in the United States. In seeking to deport Mr. Garcia subsequent to his grant of SIJS, the Government did not provide Notice of Intent to Revoke Petitioner's SIJS, did not provide Mr. Garcia with an opportunity to provide evidence as to why his SIJS should not be revoked, and does not intend to provide Mr. Garcia with the opportunity to appeal any loss of SIJS. The Third Circuit has dealt with this issue.

In *Osorio-Martinez*, the Petitioners “take issue with ‘actions by the Government after the orders [of removal] issued,’ i.e. whether the Government can circumvent the processes required by statute and regulation to achieve *de facto* revocation of Petitioners’ SIJ status by effectuating their expedited removal.” *Osorio Martinez v. Att’y Gen.*, 893 F.3d 153, 165 (3rd Cir. 2018) The *Osorio-Martinez* Court concluded that this jurisdiction-stripping provision operates as an unconstitutional suspension of the writ of *habeas corpus*. *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 158 (3rd Cir. 2018). “By virtue of satisfying the eligibility criteria for SIJ status and being accorded by Congress the statutory and due process rights that derive from it, Petitioners here, . . . may enforce their rights under the Suspension Clause.” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 158 (3rd Cir. 2018).

Because SIJ status reflects Petitioners’ significant ties to this country and Congress’s determination that such aliens should be accorded important statutory and procedural protections, Petitioners are entitled to invoke the Suspension Clause and petition the federal courts for a writ of *habeas corpus*. We further conclude that because the expedited removal regime does not provide an adequate

substitute process, the INA's jurisdiction-stripping provisions effect an unconstitutional suspension of the writ as applied to Petitioners.

Osorio-Martinez v. Att'y Gen., 893 F.3d 153, 167 (3rd Cir. 2018). The requirements for SIJS “show a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status, and that, in effect, establish a successful applicant a ward of the United States with the approval of both state and federal authorities.” *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 168 (3rd Cir. 2018).

“SIJ status also reflects the determination of Congress to accord those abused, neglected, and abandoned children a legal relationship with the United States and to ensure they are not stripped of that opportunity to retain and deepen that relationship without due process.” *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 170 (3d Cir. 2018)(citing *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011)). “Congress also afforded these aliens a host of procedural rights designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process.” *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 171 (3d Cir. 2018)

The *Osorio-Martinez* Court explains the important regulatory safeguards protecting noncitizens with SIJS. “SIJ status, once granted, may not be revoked except ‘on notice,’ 8 C.F.R. § 205.2, and upon the Government’s compliance with a series of procedural safeguards: the Secretary of Homeland Security must find ‘good and sufficient cause’ for revocation; the agency must provide notice of intent to revoke; and the SIJ designee must be given the opportunity to present evidence opposing revocation.” *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 163-64 (3d Cir. 2018) (citing 8 U.S.C. § 1155; 8 C.F.R. § 205.2; see also 7 USCIS Policy Manual, pt. F, ch. 7). This remains the procedure today under the current statute, regulation, and relevant provisions

of the USCIS Policy Manual. 8 U.S.C. § 1155; 8 C.F.R. § 205.2; see also 7 USCIS Policy Manual, pt. F, ch. 7.

The USCIS Policy Manual at in effect at the time of Petitioner's apprehension and detention and currently, states as follows:

Revocation of Approved Petition

USCIS may revoke an approved SIJ petition upon notice as necessary for what it deems to be good and sufficient cause, such as, if the record contains evidence or information that materially conflicts with the evidence or information that was the basis for petitioner's eligibility for SIJ classification. USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approved petition.

USCIS Policy Manual Vol. 7, Pt. F, Ch. 7.

Revocation of these rights without cause, notice, or judicial review is precisely the consequence of removal. *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 172 (3d Cir. 2018). Once removed, Mr. Garcia would be unable to adjust status because doing so requires physical presence in the United States. *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 163-64 (3d Cir. 2018)(citing 8 U.S.C. § 1255(a)). Moreover, as with the Petitioners in *Osorio-Martinez*, Mr. Garcia's removal would be based on a ground of inadmissibility—lack of valid immigration documentation, see 8 U.S.C. § 1182(a)(7)(A)—from which he is expressly exempted by virtue of his SIJS, see 8 U.S.C. § 1255(h)(2)(A). *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 172 (3d Cir. 2018). (See also Return of Writ ECF 15-1 at 1, Mr. Garcia is charged under INA 212(a)(7)(A)(i)(I) [codified at 8 U.S.C. § 1182(a)(7)(A)]). The Court explained, “[i]n short, expedited removal would render SIJ status a nullity” and “implicate constitutional due process concerns.” *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 172 (3d Cir. 2018). The same is true for Mr. Garcia.

The Third Circuit recognized that “the due process afforded aliens stems from those statutory rights granted by Congress and the principle that ‘minimum due process rights attach to statutory rights.’” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 172 (3rd Cir. 2018)(quoting *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003)). “Moreover while the creation of statutory rights associated with a given immigration status falls exclusively within the purview of Congress, it bears mention that the Executive to this point has consistently respected those rights and allowed SIJ designees to remain in the United States pending adjustment of status.” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 172-73 (3rd Cir. 2018). “[I]t apparently has not, until recently, sought even standard removal, much less expedited removal of SIJ designees while their applications for adjustment of status were pending.” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 173 (3rd Cir. 2018).

“Petitioners are a hair’s breadth from being able to adjust their status, pending only the availability of immigrant visas and the approval of the Attorney General.” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 174 (3rd Cir. 2018)(citing 8 U.S.C. § 1255(a)). “This proximity to LPR status is significant because the lawful permanent resident is the quintessential example of an alien entitled to ‘broad constitutional protections.’” *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 174 (3rd Cir. 2018)(citing *Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016)). Mr. Garcia is similarly situated to the Petitioners.

“Nothing in our precedent suggests that the lack of lawful permanent resident status, potential inadmissibility, or the happenstance that visas are not currently available is dispositive in assessing an alien’s entitlement to habeas review. On the contrary, and undocumented alien who has continuously lived in the country for ‘several years’ is obviously not a lawful resident and is potentially inadmissible, yet in *Castro* we pointed out that such an alien ‘could very well’ succeed

in a constitutional attack on § 1252(e)(2). *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 175 (3rd Cir. 2018)(citing *Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 433, n.13 (3d Cir. 2016)).

There is no question that the Government did not provide Mr. Garcia with any of the required procedures safeguards as in the USCIS Policy Manual or as laid out in *Osorio-Martinez*. The Government instead cites *U.S. v. Granados-Alvarado*, 350 F.Supp.3d 355 (D. Md. 2018), for the proposition that SIJS does not strip the Government of all removal powers, but that proposition was dicta and not relevant to the case of Mr. Garcia. The *Granados-Alvarado* Court does not analyze the legal issues present in this case.

Mr. Granados-Alvarado had been indicted for “being an illegal alien in possession of a firearm,” and his defense counsel moved to dismiss the indictment on the basis that he was not an “illegal alien” for purposes of the relevant criminal statute due to his SIJS. *U.S. v. Granados-Alvarado*, 350 F.Supp.3d 355, 356-57 (D. Md. 2018). The Court concluded “that Granados-Alvarado’s SIJ status does not place him outside the ambit of the federal alien-in-possession-of-a-firearm statute, 18 U.S.C. § 922(g)(5), . . .” and “that the rule of lenity does not apply under these circumstances.” *U.S. v. Granados-Alvarado*, 350 F.Supp.3d 355, 357 (D. Md. 2018). The Court applied “some degree of deference” to the U.S. Bureau of Alcohol, Tobacco, and Firearms’ (“ATF”) regulatory definition of “illegally or unlawfully in the United States,” explaining that the “Court is not bound by it, but cannot simply sweep the regulation aside.” *U.S. v. Granados-Alvarado*, 350 F.Supp.3d 355, 359-60 (D. Md. 2018).

The *Granados-Alvarado* court, does not discuss substantive due process due to non-citizens with SIJS as part of its opinion except to the extent that it distinguishes Mr. Granados-Alvarado’s criminal case. Mr. Granados-Alvarado’s counsel attempted to analogize to *Osorio-*

Martinez v. Attorney General of the United States of America, 893 F.3d 153 (3d Cir. 2018), but the Court distinguished the case without criticizing the reasoning in *Osorio-Martinez*, as follows:

Osorio-Martinez considered whether the [Immigration and Nationality Act] violated the U.S. Constitution's Suspension Clause, U.S. Const. Art. I, § 9, cl. 2, in stripping federal courts of jurisdiction to review SIJ designees' challenges to orders for their expedited removal from the United States. The Third Circuit held the SIJ designees were entitled to invoke the Suspension Clause because their SIJ status 'reflects [their] significant ties to this country and Congress's determination that such [non-citizens] should be accorded important statutory and procedural protections.' Critically, when the Government sought to emphasize 'what it perceive[d] as the gulf between a lawful permanent resident and a SIJ designee,' the Third Circuit dismissed the point as 'neither here nor there.' These facts, the court explained, did not bear on the question at issue—namely, whether the [noncitizens] were entitled to habeas review. Here, by contrast, where the question is whether Granados-Alvarado was 'illegally or unlawfully in the United States' at the time of his arrest, the 'gulf' is not at all beside the point.

U.S. v. Granados-Alvarado, 350 F.Supp.3d 355, 365-66 (D. Md. 2018)(citing *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166-67, 175 (3d Cir. 2018)).

The *Granados-Alvarado* court, cites a Michigan case which decided the rule of lenity on the same legal issue in favor of the non-citizen who had been granted SIJS. *U.S. v. Granados-Alvarados*, 350 F.Supp.3d 355, 365 (D. Md. 2018)(citing *U.S. v. Santiago-Hernandez*, 113 F.Supp.3d 966 (W.D. Mich. 2015)). In *Santiago-Hernandez*, this U.S. Federal Court for the Western District of Michigan, explained, "In this case, it is the Defendant's SI-J status that moved him from the category of illegal alien without parole status, to a person in parole status, at least for purposes of requesting adjustment. . . . And this, in turn, has the impact of putting Defendant in a special parole status. . . . As a person 'paroled into the United States,' Defendant cannot be treated as an 'alien . . . illegally or unlawfully in the United States' under 18 U.S.C. § 922(g)(5)(A), because ATF regulations under that statute exclude aliens on 'parole status' from the statutory

prohibition. . . . The most natural way to read this labyrinth of statutes and regulations together is to conclude that a person like Defendant who finds a pathway to parole status cannot violate 18 U.S.C. § 922(g)(5)(A) by possessing a firearm while on parole status.” *U.S. v. Santiago-Hernandez*, 113 F.Supp.3d 966, 968-69 (W.D. Mich. 2015).⁵

CONCLUSION

Pursuant to Article I, Section 9, Clause 2 of the United States Constitution, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. Suspension Clause concerns arise when a noncitizen is in physical custody and subject to imminent removal and the absence of a *habeas* review would irreversibly extinguish a congressionally-created legal status. *Habeas corpus* is “a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.” *Boumediene v. Bush*, 553 U.S. 723, 737 (2008) (quoting Black’s Law Dictionary 728 (8th ed. 2004)); see also *Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 166 (3d Cir. 2018). Accordingly, as laid out extensive detail in *Osorio-Martinez*, construing the INA to foreclose *habeas* review under these circumstances would violate the Suspension Clause by eliminating the only effective mechanism through which Mr. Garcia may challenge the legality of the government’s restraint on his liberty and Respondents’ conduct before the irreparable harm occurs.

The Suspension Clause requires that *habeas corpus* remain available where a person is restrained by the federal government and no other meaningful judicial forum exists to test the legality of that restraint in time to prevent irreparable harm. *Boumediene v. Bush*, 553 U.S. 723,

⁵ The Government in *Santiago-Hernandez* initially appealed to the U.S. Court of Appeals for the Sixth Circuit, but then voluntarily dismissed its appeal for reasons not explained in the record.

745 (2008); *St. Cyr*, 533 U.S. at 300–01. Here, the Government has unlawfully without due process of law, detained and threatened to imminently and without due process deport Mr. Garcia.

While the Administrative Procedure Act (“APA”) provides a cause of action to challenge unlawful agency conduct, 5 U.S.C. § 702, an APA-only action would not provide an adequate substitute for *habeas* relief under these circumstances. Where a petitioner is in physical custody and faces imminent removal, *habeas corpus* remains the only mechanism capable of affording timely and effective relief from unlawful restraint. Construing the INA to foreclose *habeas* review under these circumstances would violate the Suspension Clause by eliminating the only effective mechanism through which Mr. Garcia may challenge the legality of the government’s restraint on his liberty and the Government’s conduct before the irreparable harm occurs.

A district court may grant a writ of *habeas corpus* to any person who demonstrates he is in custody or his liberty is being removed in violation of the Constitution or the laws of the United States. 28 U.S.C. § 2241(c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305-07 (2001). This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*

Mr. Garcia challenges his continued restraint on liberty that triggers habeas jurisdiction as the Government’s authority to act is contested. *Habeas corpus* remains available to test the legality of ongoing restraint where the government’s authority to detain is contested and no alternative avenue of review can provide timely or effective relief.

The Due Process clause protects persons from being deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Matthews v. Diaz*, 426 U.S. 67, 77 (1976). “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the [Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976). “The essence of due process is the requirement that a person in jeopardy of serious loss” receive “notice” and “opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333, 348-49 (citations omitted).

Mr. Garcia respectfully requests that his claims be heard.

DATED: January 05, 2026

/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

CERTIFICATE OF SERVICE

I hereby certify that on January 05, 2026, I electronically filed the foregoing with the clerk of the court by using CM/ECF system, which I will send a notice of electronic filing to counsel for the Petitioner.

/s/ Rachel Bonano

Rachel L. Bonano
Counsel for Petitioner