

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DIEGO ALBERTO HERNANDEZ GARCIA,)

Petitioner,)

v.)

UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY et al.,)

Respondents.)

Case No. 3:25-cv-605-DCLC-JEM

FEDERAL RESPONDENTS' REPLY IN SUPPORT OF RETURN OF WRIT

The sole issue properly before this Court is whether Petitioner's detention is lawful. It is. There is no dispute that Petitioner is subject to a final order of removal. There is no dispute that USCIS has terminated the deferred action ("DA") previously granted to Petitioner in 2022. And notwithstanding Petitioner's argument to the contrary, DA granted to an individual is wholly discretionary and can be revoked at any time. Accordingly, Petitioner is subject to removal and may be legally detained to effectuate his removal. If Petitioner's objective is to avoid removal, the proper means of doing so is to seek an adjustment of status by applying for an immigrant visa, and to seek a stay of removal through the administrative process—which Petitioner has suggested he intends to do. (ECF 11, Am. Pet. at ¶ 44).¹ *Habeas* relief is not available on the facts before this Court. The Petition should therefore be denied and dismissed.

Nothing in Petitioner's Response (ECF 23) to the Return of Writ compels a different result. In his Response, Petitioner asserts three arguments in addressing the Return of Writ. First,

¹ Additionally, Petitioner's counsel stated both in open court at the December 18, 2025 status conference and in subsequent communications with the undersigned that Petitioner planned to seek to reopen the removal proceedings against him and seek an adjustment of status.

Petitioner contends that ICE officers acted illegally in apprehending and initially detaining Petitioner while he was in a DA period because the DA rendered his 2016 final order of removal “non-executable.” (ECF 23 at PageID#434-436). Second, Petitioner argues that USCIS acted unlawfully when it terminated Petitioner’s DA period in the first hours after Petitioner was apprehended and initially detained. (*See generally id.* at 436-440). And finally, Petitioner raises a claim that is not made in the Petition and is not properly the subject of *habeas* relief: that Petitioner’s eventual removal from the United States would be a *de facto* revocation of Petitioner’s Special Immigrant – Juvenile (“SIJ”) status in violation of due process. (*Id.* at 440-447). This Reply addresses each argument in turn.

I. PETITIONER WAS LAWFULLY APPREHENDED AND DETAINED ON DECEMBER 11, 2025.

Notwithstanding Petitioner’s arguments to the contrary, DA does not preclude immigration enforcement action, including apprehension and detention of noncitizens who are subject to final orders of removal. Rather, DA simply puts recipients in a lower priority for removal. Both immigration regulations cited by the Petitioner in his Amended Petition make this clear. (*See* ECF 11 at ¶ 48, citing 8 C.F.R. §§ 274a.12(c)(14) and 236.21(c)(1)). Section 274a.12(c)(14) explains that DA is “an act of administrative convenience to the government that *gives some cases lower priority.*” (Emphasis added). Similarly, section 236.21, the Deferred Action for Childhood Arrivals (“DACA”) regulation cited by Petitioner—which does not apply to Petitioner but upon which he relies to support his argument—defines DA as follows:

Deferred action is an exercise of the Secretary's broad authority to establish national immigration enforcement policies and priorities under 6 U.S.C. 202(5) and section 103 of the Act. *It is 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. It furthers the administrability of the complex immigration system by permitting the Secretary to focus enforcement on higher priority targets.* This temporary forbearance from removal does not

confer any right or entitlement to remain in or reenter the United States. A grant of deferred action under this section *does not preclude* DHS from *commencing removal proceedings* at any time or prohibit DHS or any other Federal agency from *initiating* any criminal or *other enforcement action* at any time.

8 C.F.R. § 236.21(c)(1) (emphasis added).

The USCIS Policy Manual explains DA in similar terms. The general policy discussing flexibilities available to USCIS in addressing emergencies or unforeseen circumstances explains:

Deferred action is a form of *prosecutorial discretion to defer removal action (deportation)* against an alien for a certain period of time. Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect. However, deferred action is not a lawful immigration status and does not excuse any past or future periods of unlawful presence.

(1 USCIS-PM 11.2(A)(4)) (emphasis added).² And in the policy applicable to DA for Special Immigrant Juveniles as announced in the March 2022 Policy Alert cited by Petitioner (*see* Response to Return of Writ, ECF 23 at 434 n.3), USCIS reiterated that DA is “an act of *prosecutorial discretion* that defers proceedings to remove an alien from the United States for a certain period of time” and “*reserve[d] the right to terminate the grant of DA and revoke the related employment authorization at any time as a matter of discretion.*” Ex. A, 6 USCIS-PM J.4(G)(1), (4) (2022) (emphasis added).

Petitioner, relying heavily on the decision of the United States Court of Appeals for the Sixth Circuit in *Enriquez-Perdomo v. Newman*, 54 F.4th 855 (6th Cir. 2022), contends that ICE officers acted illegally in apprehending and detaining Petitioner when he was in a DA period on the theory that the DA approved for him in 2022 rendered his final order of removal “non-executable.” (*See generally* ECF 23 at 433-436). But *Enriquez-Perdomo* is inapposite.

² Available at <https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2> (last accessed Jan. 11, 2016).

The court in *Enriquez-Perdomo* addressed not a petition for *habeas corpus*, but rather a *Bivens* complaint filed against ICE officers. *See generally Enriquez-Perdomo*, 54 F.4th 855 (6th Cir. 2022). The plaintiff, Riccy Enriquez-Perdomo, was a noncitizen who had previously been ordered removed from the United States, but then subsequently received approval for DA under the DACA program. *Id.* at 858. One day when the plaintiff visited the ICE office in Louisville, Kentucky, she was taken into custody and detained despite her DACA status. *Id.* at 858-59. She was detained for eight days, during which the Department of Homeland Security never terminated her DACA status. *Id.* After confirming that the plaintiff had active DACA status, ICE released the plaintiff from custody. *See Enriquez-Perdomo v. Newman*, No. 3:18-CV-549-CRS, 2020 WL 6704578 at *2 (W.D. Ky. Nov. 13, 2020), *aff'd in part, vacated in part, and remanded by Enriquez-Perdomo v. Newman*, 54 F.4th 855 (6th Cir. 2022).

While detained, Enriquez-Perdomo petitioned for habeas relief, but her petition was denied as moot because she was released before the judge could rule on her request. *See Enriquez-Perdomo v. Sessions*, No. 17-147-DLB-CJS, 2018 WL 934854, at *2 (E.D. Ky. Feb. 16, 2018). Subsequently, she brought several *Bivens* claims against the ICE officers involved in her detention and arrest, alleging unconstitutional arrest and imprisonment under the Fourth Amendment; unconstitutional pretrial detention under the Fourth Amendment; unconstitutional retaliation under the First Amendment; violation of due process under the Fifth Amendment; and violation of equal protection under the Fifth Amendment. *Enriquez Perdomo*, 54 F.4th at 859. The district court dismissed the plaintiff's claims, concluding that it was deprived of jurisdiction by 8 U.S.C. § 1252(g), which states, in relevant part, that “no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by the Attorney General to . . . execute removal orders against any alien under this chapter.” *Id.* at 860. The district court reasoned that

her claims stemmed from the enforcement of a valid removal order, stripping it of jurisdiction under § 1252(g). *Id.* at 860-61.

On appeal, the Sixth Circuit Court of Appeals vacated the district court's order of dismissal, in part, and remanded to the district court. *Id.* at 870. The court reasoned that Enriquez-Perdomo's DACA status granted her "affirmative relief" from removal and—critically—that "[a]lthough the government was free to terminate that relief, it did not" *Id.* at 863 (emphasis added). Consequently, the court concluded that "Enriquez-Perdomo's arrest and detention despite that relief were unauthorized," and § 1252(g) did not preclude her claims "because her removal order was not executable." *Id.* at 863-64, 867.

The facts presented in the case at bar are significantly distinguishable. In *Enriquez-Perdomo*, the government arrested the plaintiff and detained her for eight days without ever terminating her DACA status. Here, in sharp contrast, Mr. Hernandez-Garcia's DA status was terminated very soon after his apprehension—within mere hours at most. (*See* Return of Writ, ECF 15 at PageID#96 n.2).³

Accordingly, this Court should not extend the *Enriquez-Perdomo* court's holding and reasoning to the facts in this case. DA is not an impediment to detention—particularly when the DA is promptly terminated as a matter of agency discretion. Since the Petition before the Court

³ During the December 18, 2025 hearing before this Court, the undersigned counsel confirmed and clarified that the Notice of Termination of Mr. Hernandez-Garcia's DA status was issued on December 11, 2025, after Mr. Hernandez-Garcia was apprehended but before the close of business on that day. To further clarify: To the best of the undersigned's knowledge, information and belief after reasonable inquiry, the Notice of Termination was issued at or about 4:36 p.m. Eastern Standard Time (EST), December 11, 2025. According to the Amended Petition, counsel for Petitioner had a copy of the Notice of Termination in hand by December 12, 2025, at 1:21 p.m. EST. (ECF 11 at ¶ 36.).

arises from actions taken to execute a valid removal order, this action should be dismissed for lack of subject matter jurisdiction.

II. USCIS LAWFULLY EXERCISED ITS DISCRETION TO TERMINATE DEFERRED ACTION, AND 8 U.S.C. § 1252(g) DIVESTS THE COURT OF JURISDICTION TO HEAR A CHALLENGE TO THE TERMINATION.

Petitioner cites two cases, *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1 (2020), and *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840 (E.D.N.Y. Nov. 19, 2025), for the proposition that granting DA to an individual confers “affirmative relief” from removal, *see* (ECF 23 at 435-436), and consequently that courts may review agency decisions terminating DA under the Administrative Procedures Act, *see* (ECF 23 at 436-440). Petitioner’s reliance on both cases is misplaced.

Neither *Regents* nor *A.C.R.* involved a challenge to a discrete decision to revoke or terminate DA previously granted to an individual. Instead, each involved a programmatic challenge under the APA to an agency decision to fully rescind a DA policy (DACA in *Regents* and DA for SIJs in *A.C.R.*). *See Regents*, 591 U.S. 1 (2020); *A.C.R.*, 2025 WL 3228840. Indeed, the opinions in both *Regents* and *A.C.R.* acknowledge that the relief conferred by an individual, discretionary decision to grant DA is limited and is revocable at any time in the discretion of the agency. *See Regents*, 591 U.S. at 17-18, 30-31 (citing *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985)) (acknowledging that an agency’s decision not to institute enforcement proceedings in individual cases is committed to the absolute discretion of the agency, but concluding nevertheless that reliance interests engendered by DACA program must be considered and weighed against competing policy concerns when agency sought to rescind DACA program as a whole); *id.* at 61 (Thomas, J., dissenting) (“As a general matter, deferred action creates no rights—it exists at the government’s discretion and can be revoked at any time.”); *A.C.R.*, 2025 WL 3228840 at *7 (acknowledging that 5 U.S.C. § 701(a)(2), the APA provision prohibiting a court from reviewing

agency action that is committed to agency discretion by law, “implicates deferred action as the ‘decision not to prosecute or enforce’ a statutory regulation or violation is one that is ‘generally committed to an agency’s absolute discretion.’”) (citing *Heckler v. Chaney*, 470 U.S. at 831). *See also Enriquez-Perdomo*, 54 F.4th at 863 (acknowledging that “the government was free to terminate” DACA relief previously granted to plaintiff, but finding that since it never did, removal order was not executable).

USCIS’s termination of Petitioner’s DA is precisely the kind of individual enforcement determination that is committed to the absolute discretion of the agency consistent with *Heckler v. Chaney*, 470 U.S. at 831. And the United States Supreme Court long ago held that 8 U.S.C. § 1252(g) divests courts of jurisdiction to review a “no deferred action” decision. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 485-487 (1999).

Accordingly, the Court should find that it lacks jurisdiction to hear Petitioner’s challenge to the decision of USCIS terminating his period of DA.

III. PETITIONER’S CLAIM THAT REMOVAL WOULD RESULT IN *DE FACTO* REVOCATION OF SIJS WITHOUT DUE PROCESS IS WITHOUT MERIT AND IS NOT PROPERLY THE SUBJECT OF HABEAS RELIEF.

In his Response to the Return of Writ, Petitioner for the first time asserts a claim that his removal from the United States would result in the *de facto* revocation of his SIJ status in violation of his due process rights. (ECF 23 at 440-447). Petitioner did not assert this claim in either his original Petition or the Amended Petition. (*See generally* ECF 1 and ECF 11). Nor could he properly do so because such a claim is not properly the subject of habeas relief. “Generally, *habeas corpus* relief is available to [detainees] seeking relief from unlawful [detention] or custody.” *Jones v. Williams*, No. 3:21-cv-01350, 2022 WL 2666610 at *2 (N.D. Ohio 2022) (citing *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004)). “Section 2241 is not available, however, to review

questions unrelated to the *cause* of detention.” *Id.* at *3 (emphasis added) (citing *Martin*, 391 F.3d at 714).

Nevertheless, to the extent that SIJS confers *any* due process interest on Petitioner—which Federal Respondents do not concede—that interest would encompass only SIJS benefits themselves. Thus, the non-binding case on which Petitioner primarily relies for this argument (ECF 23 at 441-445), *Osorio-Martinez v. Attorney General*, held only that the SIJS recipients there had a sufficient interest in that status justifying invocation of the Suspension Clause to assert habeas claims challenging their *expedited removal proceedings*, which proceedings effectively revoked the benefits conferred by SIJS. *See* 893 F.3d 153, 170-74 (3d Cir. 2018). Here, Petitioner is not in expedited removal proceedings, and his present detention does not effectively revoke any SIJS benefit; on the contrary, Petitioner admits that he is currently pursuing exactly the adjustment-of-status process that SIJS affords him. *E.g.*, Am. Pet. (ECF 11 at ¶ 44); *see supra* at n.1. SIJS is thus a red herring as concerns Petitioner’s putative liberty interest here.

CONCLUSION

For all the foregoing reasons, and for the reasons stated in Respondents’ Return of Writ (ECF 15), the Court should deny and dismiss the Amended Petition for Writ of Habeas Corpus (ECF 11).

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Respectfully submitted,

FRANCIS M. HAMILTON III
United States Attorney

By: /s/ Robert C. McConkey III
Robert C. McConkey III (BPR # 018118)
Ben D. Cunningham (BPR # 030122)
Assistant United States Attorneys
800 Market Street, Suite 211
Knoxville, TN 37902
(865) 545-4167
Robert.McConkey@usdoj.gov
Ben.Cunningham@usdoj.gov
Counsel for Respondents