UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Thomas B.-R.,	)	
	)	Civil Action No. 1:25-cv-175
Petitioner,	)	
	)	
v.	)	
	)	
Francisco Venegas, *et. al.*,	)	
	)	
Respondents.	)	
	)	

PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION TO MAINTAIN THE STATUS QUO OR CONSOLIDATION WITH A DECISION ON THE MERITS IN THE ALTERNATIVE UNDER FRCP 65(a)(2)

I. Introduction

Two unlawful actions do not validate a lawful deprivation of one's liberty. Petitioner, Thomas B.-R.-, seeks a preliminary injunction on his petition for a writ of habeas corpus or consolidation with this motion with a decision on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. An advance to a decision on the merits is warranted because, on September 22, 2025, Respondents filed a motion for summary judgment, Petitioner's A-file, and a Declaration of Deportation Officer Ruben R. Ramirez. Docket Entry ("D.E.") 10, Respondents Exhibits ("REX") 1 & 2. However, time is of the essence because Deportation Officer Ramirez stated that "On September 12, 2025, ERO requested Batista-Ramos's travel documents, and a removal date is scheduled no later than the end of October." REX 2, pg. 2 at ¶14. Prior to filing this motion, undersigned counsel conferred with the counsel for Respondents in accordance with Local Rule 7.1. On September 24, 2025, Respondents' counsel stated Respondents "would like to continue with their removal efforts as there is no stay in place from the Court."

Petitioner's removal would end his ability to adjust status as a Special Immigrant Juvenile, and thus terminate his eligibility for lawful permanent residency. 9 *Foreign Affairs Manual* 502.5-7(B). Because Petitioner is likely to prevail on the merits of his petition, the balance of equities weighs in Petitioner's favor, and the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm, this Court should, at a minimum, grant preliminary relief that orders Petitioner's immediate release and maintains the status quo until a final disposition on the merits. *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012).

Not only did Immigration and Customs Enforcement ("ICE"), arrest Petitioner in violation of his rights to due process under the Constitution's Fifth Amendment, ICE has coordinated with its sister agency, United States Citizenship and Immigration Services ("USCIS") to paper over the unconstitutional conduct by stripping Petitioner of "deferred action" during the course of these proceedings. REX 3. Respondents never provided Petitioner notice or opportunity to be heard prior to the termination of deferred action, including any explanation why it departed from its general policy that "aliens with current deferred action based on their SIJ classification will generally retain this deferred action, as well as retain their current employment authorization provided based on this deferred action, until the current validity periods expire." USCIS, Policy Alert PA-2025-07 (June 6, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferred Action.pdf; REX 3.

Respondents retaliatory conduct is not a lawful exercise of discretion, and it is not consistent with its own policy to the extent it acknowledges the general rule that USCIS will not terminate a deferred action issued prior to the new policy. *Id.* In its retaliation determination,

USCIS does not even address this issue or offer any specific reason for termination. *Id.* The pattern of conduct in this case toward a Special Immigrant Juvenile with no criminal history is an unfortunate effort to justify an unconstitutional detention. REX 2. Petitioner respectfully requests this Court to order his release from detention until such time as Respondents, Kristi Noem, in her official capacity as Secretary of United States Homeland Security, and Francisco Venegas, in his official capacity as Facility Administrator, El Valle Detention Facility, act in accordance with the law and procedure or the Court decides this case after the completion of briefing, whichever comes first.

II. Legal Background

Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001). District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, *St. Cyr*, 533 U.S. at 302.

The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)). "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.

Thomas B.-R.- is a Special Immigrant Juvenile which the Immigration and Nationality Act ("INA") defines as:

> an immigrant who is present in the United States--
> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status . . . .

8 U.S.C. § 1101(a)(27)(J).

Under the applicable regulations, to be eligible for classification as an SIJ, an applicant must meet all of the following requirements:

> (1) Is under 21 years of age at the time of filing the petition;
> (2) Is unmarried at the time of filing and adjudication;
> (3) Is physically present in the United States;
> (4) Is the subject of a juvenile court order(s) that meets [specific requirements]; and
> (5) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile. For USCIS to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. USCIS may withhold consent if evidence materially conflicts with the eligibility requirements in paragraph (b) of this section such that the record reflects that the request for SIJ classification was not bona fide. USCIS approval of the petition constitutes the granting of consent.

8 C.F.R. § 204.11(b).

An SIJ classification may be revoked if the beneficiary is reunified with one or both parents by juvenile court order, or administrative or judicial proceedings determine that it is in the beneficiary's "best interest to be returned to the country of nationality or last habitual residence of the [individual] or of their parent(s)." *Id.* § 204.11(j). "USCIS may also revoke an approved petition for classification as a special immigrant juvenile for good and sufficient cause" following written notice to the individual explaining the reasons for the revocation. 8 C.F.R. § 204.11(j)(2); *see* 8 C.F.R. § 205.2. SIJs may seek an adjustment of status to "an alien lawfully admitted for permanent residence." *See* 8 U.S.C. § 1255(a), (h). If an SIJ departs the United States, his eligibility for adjustment of status ends. 9 *Foreign Affairs Manual* 502.5-7(B).

One of the requirements for an SIJ to obtain an adjustment of status is that an immigrant visa be immediately available at the time of filing the adjustment application. 8 U.S.C. § 1255(a). However, "[d]ue to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years[.]" USCIS, Policy Alert PA-2022-10 (Mar. 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferred Action.pdf. In light of this delay, USCIS's policy had been to consider granting deferred action on a case-by-case basis to SIJs who are ineligible to obtain adjustment of status solely due to unavailable immigrant visa numbers. *Id.* Recently, that policy changed, and currently "USCIS will no longer consider granting deferred action on a case-by-case basis to aliens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas." USCIS, Policy Alert PA-2025-07 (June 6, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferred Action.pdf. But despite the prospective policy change, "aliens with current deferred

action based on their SIJ classification will generally retain this deferred action, as well as retain their current employment authorization provided based on this deferred action, until the current validity periods expire." *Id.*

The Supreme Court described deferred action as meaning "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." 525 U.S. at 484 (*quoting* 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03 [2][h] (1998)). *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484, 119 S. Ct. 936 (1999) ("AADC"). *AADC* cited Fifth Circuit precedent to support this definition. *Id.* (*citing Johns v. Dep't of Justice*, 653 F.2d 884, 890-92 (5th Cir. 1981)). In *Johns*, the Fifth Circuit distinguished deferred action from a stay of removal, explaining that deferred action means the Government chooses to "refrain from (or, in administrative parlance, to defer in) executing an outstanding order of deportation." 653 F.2d at 890. The USCIS Policy Manual defines deferred action as "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." USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4), https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2 (last visited August 6, 2025).

III. Undisputed Facts

Petitioner is a dual national of Italy and Brazil. REX 1 at 14, 31-34, 40. Petitioner entered the United States on December 16, 2021, under the Visa Waiver Program ("VWP") using his Italian passport. Respondents' Exhibit ("REX) 1 at 14. Petitioner was authorized to remain in the United States until March 15, 2022, but violated that permission by overstaying without authorization. *Id.*; REX 2, pg. 1, ¶ 4.

On August 18, 2023, Petitioner's Form I-360, Petition for Amerasian Widow(er), or Special Immigrant, was approved and he received a Special Immigration Juvenile deferred action classification. REX 1 at 12. The Probate and Family Court for the Commonwealth of Massachusetts issued a Judgment of Dependency finding that Petitioner's mother has abandoned and neglected him since he was nine months of age, and that it was in his best interest not to return to Brazil. REX 1 at 34-35. Upon the approval of the SIJ petition, USCIS granted Mr. Batista Ramos deferred action for a period of four years. USCIS also granted Petitioner work authorization for the duration of his deferred action.

On May 26, 2025, Petitioner was "arrested in Milford, Massachusetts for remaining in the United States beyond March 15, 2022, without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security, in violation of 237(a)(1)(B)." REX 2, pg. 2, ¶ 6. ICE stopped Mr. Batista Ramos without a warrant and without reasonable suspicion of a crime or civil immigration violation. REX 2 at 58-59. The officers did not disclose the basis for stopping, arresting, or detaining Mr. Batista Ramos. *Id.*

ICE commenced removal proceedings against Mr. Batista Ramos, but an immigration judge granted the government's motion to terminate the proceedings because Mr. Batista Ramos was a VWP overstay. REX 1 at 42-45. On June 18, 2025, ICE moved Mr. Batista Ramos from a detention facility in Plymouth, Massachusetts, to the El Valle Detention Facility, where he remains in custody. REX 2, pg. 2, ¶3.

Petitioner filed a Petition for Writ of Habeas Corpus, on August 7, 2025. D.E. 1. Petitioner contests the lawfulness of his detention despite having "received deferred action on August 17, 2023, upon the approval of his immigrant petition as a Special Immigrant Juvenile ("SIJ"), Form I-360." Docket Entry ("D.E.") 1, pg. 1. 39. On August 29, 2025, Batista-Ramos

was served with the VWP Notice of Intent to issue a Final Administrative Removal Order. REX 2, pg. 2 ¶11. On September 4, 2025, the Final Administrative Removal Order was signed and finalized as a final removal order due to visa waiver violator. *Id.* at ¶12. The next day, USCIS terminated Petitioner's Deferred Action without any notice and opportunity to be heard. *Id.* at ¶13.

Under USCIS's most recent policy, "aliens with current ***deferred action*** based on their SIJ classification will generally retain this ***deferred action***, as well as retain their current employment authorization provided based on this ***deferred action***, until the current validity periods expire." USCIS, Policy Alert PA-2025-07 (June 6, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferred Action.pdf; REX 3. The termination notice was never provided to Petitioner or counsel until September 22, 2025, and does not explain why USCIS chose to not follow its general retention policy for those SIJs with deferred action. REX 4. Officer Ramirez states "[o]n September 12, 2025, ERO requested Batista-Ramos's travel documents, and a removal date is scheduled no later than the end of October." REX 2, pg. 2 at ¶14.

IV. Standard Of Review

To obtain injunctive relief, Petitioner must establish: (1) a substantial likelihood her cause will succeed on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) the threatened injury outweighs the threatened harm the injunction may do to the opposing party, and (4) granting the injunction will not disserve the public interest. *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981).

V. Federal Rule 65(a)(2)

Rule 65(a)(2) provides:

> *Consolidating the Hearing with the Trial on the Merits*. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

Fed. R. Civ. P. 65(a)(2).

VI. Argument

A. Petitioner Is Likely To Prevail On The Merits

Petitioner is likely to prevail on the merits of his due process claim. D.E. 1 ¶¶ 50-76. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "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 [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner's initial arrest and continued deprivation of his liberty in detention violates his Fifth Amendment rights for at least three related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690). Whereas here, the government granted deferred action to the detainee, the initial detention was never reasonably related to its purpose – he was never a flight risk because he had work authorization and a path to permanent residency. Second, the Due Process Clause requires that any deprivation of Mr. Batista Ramos's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless

the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens"). Petitioner's initial imprisonment does not satisfy that rigorous standard as he did not commit any crime and was granted deferred action. Respondents' retaliation toward Petitioner for filing this writ of habeas corpus only demonstrates that Respondents have no interest in protecting and preserving his liberty. REX 2, 3. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting). Detaining Mr. Batista Ramos while knowing he was granted deferred action and then terminating deferred action without affording him notice and an opportunity to be heard represents a paradigm example of arbitrary, capricious, and repugnant behavior. REX 2, 3. USCIS could not even offer a single reason why it chose to terminate the deferred action. *Id.*

Respondents failed to provide Petitioner with a meaningful opportunity to contest his detention, and he was blindsided by the decision of USCIS to terminate his deferred action without any notice or opportunity to be heard. REX 2-3. Respondents have provided no indication that there has been any review of Petitioner's record to determine that his detention was warranted to begin with or that the general policy of allowing protected children to maintain deferred action should not be followed. Respondents had no legitimate basis to stop and detain Petitioner and have repeatedly acted as if he has no rights to due process. Respondents did not offer Mr. Batista Ramos a meaningful opportunity to be heard, nor did they provide a legitimate basis for depriving him of his liberty. REX 2, 4. Under the circumstances presented, Petitioner has shown a likelihood of showing multiple violations of his rights to due process.

B. Irreparable Harm

Petitioner has established a substantial threat of irreparable injury to justify injunctive

relief. REX 2, pg. 2 ¶6. Deportation Officer Ramirez states "[o]n September 12, 2025, ERO requested Batista-Ramos's travel documents, and a removal date is scheduled no later than the end of October." REX 2, pg. 2 at ¶14. Under Fifth Circuit precedent, irreparable injury is "harm for which there is no adequate remedy at law." *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). In the absence of relief, Respondents unconstitutional deprivation of Petitioner's liberty, will become irreparable, because his opportunity to use his approved immigrant visa will end upon his removal; at a minimum Respondents should have provided notice to Petitioner prior to the termination of deferred action and should not use termination as an end around of this court's jurisdiction or a way to try and cure constitutional violations. Respondents offer nothing to show that they considered Petitioners deferred action at the time of his arrest and detention. They stumbled upon him at a gas station and "got another one." Respondents' retaliatory termination of Petitioner's deferred action without notice and an opportunity to be heard *after the commencement of this case* will go unchecked should Respondents follow through with its intent to remove Petitioner. REX 2, pg. 2 ¶4. Under the circumstances, this Court should find Petitioner will suffer irreparable harm absent interim relief.

C. Balance of the Equities

Petitioner has shown the threatened injury, the deprivation of her rights protected by the Constitution, outweighs the injury to Respondents if the Court orders temporary relief. The Court should find that the granting of injunctive relief will only require Respondents to grant Petitioner a meaningful opportunity to pursue this petition and challenge the retaliatory actions of Respondents in violation of its own policy. The Petitioner's threatened injury, his continued detention and removal in violation of his Fifth Amendment rights, far outweighs any burden to

Respondents. It is "of highest public importance that federal agencies follow the law." *R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, 65 F.4th 182, 195 (5th Cir. 2023).

D. Security

"The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Further, it is within the Court's discretion "to require no security at all." *Corrigan Dispatch Company v. Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978). Having considered the record and based on a finding that Respondents' have unlawfully deprived Petitioner of his liberty and any opportunity to contest the termination of his deferred action, this Court should not require Petitioner to post security.

VII. Conclusion

This Court should grant Petitioner's motion for a preliminary injunction or, in the alternative, advance the case, issue a decision on the merits in favor of Petitioner, and deny Respondents' motion for summary judgment.

September 24, 2025

Respectfully submitted,

/s/ Jesse M. Bless
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CERTIFICATE OF COMPLIANCE WITH LR 7.1

Undersigned counsel, Jesse M. Bless, hereby certifies that I emailed, Lance Duke, counsel for Respondents, on September 23, 2025 seeking the position of Respondents on this motion for preliminary relief. On September 24, 2025, counsel for Respondents stated Respondent "would like to continue with their removal efforts as there is no stay in place from the Court."

CERTIFICATE OF SERVICE

I certify that on September 24, 2025, a copy of the foregoing motion was served upon Respondents through the Court's CM/ECF system. A courtesy copy was also emailed to Counsel for Respondents, Lance Duke.

Respectfully submitted

/s/ Jesse M. Bless
JESSE M. BLESS