IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Walter Acuna Cruz, Petitioner. v. David Easterwood, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department Homeland Security; Mike Stasko, Administrator of the Freeborn County Jail; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; Pamela Bondi, Attorney General of the United States, and Joseph Edlow, Director United States Citizenship and in their official capacities. Respondents.	MOTION FOR TRO AND PRELIMINARY INJUNCTION. CASE No: 26-cv-01393

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner Walter Acuna Cruz ("Walter") respectfully moves this Court for an Emergency Temporary Restraining Order and Preliminary Injunction pursuant to Fed. R. Civ. P. 65 to invalidate the February 19, 2026, termination of his Deferred Action. The timing of the termination and the lack of changed circumstances in Walter's case demonstrates that the action is clearly retaliatory in the name of this litigation and because Respondents wish to advance their own position in this litigation, being that

Walter is removable. These actions violate the First Amendment of the United States Constitution and the Fifth Amendment Due Process Clause.

Walter therefore requests that this Court order the invalidation of the termination, requiring the Respondents to make a showing of circumstances or facts they rely upon should they terminate Deferred Action in the future.

FACTUAL BACKGROUND

Walter was awarded Special Immigrant Juvenile Status and Deferred Action on February 11, 2025. *See* ECF 1-3. In his application, he disclosed all criminal matters to USCIS. He was granted Deferred Action and his Special Immigrant Juvenile Status (SIJs) was approved.

During litigation, Respondents have expressed their dissatisfaction for Walter pursuing his legal rights, as pointed out in Walter's response to the government's opposition. *See* ECF 13 at 16, footnote 1.[1] In litigation, the Respondents have advanced their position that neither ICE nor the Immigration Judge have or are choosing to exercise Deferred Action to Walter and that his removal is *physically* possible following the conclusion of these proceedings. *See* ECF. 11 at 15, 16. ("As Judge Provinzino recently explained, deferred action is merely an exercise of prosecutorial discretion. *Id.* at 5 n.5.

[1] "[1]The Respondents appear particularly phased by Walter's exercise of his rights. ("Since that time, Petitioner himself has caused his detention to be prolonged by filing multiple motions and appeals.", "To a significant extent the duration of Petitioner's detention is the result of his own litigation choices, such as several motions and appeals.", "Respondents also contend that Petitioner may prolong his own detention by continuing to pursue administrative relief." (Gov't Opp'n at 2, 4, 13.)). Since there are no other reasons for revocation of SIJ or DA, the only logical conclusion is that revocation would serve the purpose of retaliation against Walter for exercising his lawfully conferred rights to enforce his statutory and constitutional protections.""

Slip Op., *Domingo M.M. v. Shea, et al.,* No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24). Such discretion DHS refused to exercise in this case, and which the Immigration Judge also denied multiple times.").

Without any changed circumstances, on February 19, 2026, the Respondents terminated Walter's Deferred Action without any notice, opportunity to respond or any other procedural formalities. *See* Exhibit A. Such came after (1) Walter filed this habeas petition alleging that his DA and SIJ made his removal unforeseeable; (2) Walter pointed to many cases that supported the supposition that his DA (and his SIJ) made his removal unforeseeable; and (3) he made a Motion for Contempt against the Respondents.

LEGAL FRAMEWORK

Temporary Restraining Order

To obtain a temporary restraining order, a petitioner-plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland,* 637 F.2d 430 (5th Cir. 1981)).

First Amendment Rights

"As a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

See United States v. Alvarez, 567 U.S. 709, 716 (2012) (quoting *Ashcroft v. ACLU, 535 U.S. 564, 573 (2002))* Thus, "as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (citing Cr*awford-El v. Britton*, 523 U.S. 574, 592 (1998)).

This protection is not limited to the realm of criminal prosecutions but extends to all manner of governmental benefits or punishments. *Perry v. Spinderman*, 408 U.S. 593, 597 (1972) ("[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.").

To establish a First Amendment retaliation claim, a petitioner must show: (1) he engaged in protected activity; (2) the government took adverse action against him that would chill a person of ordinary firmness from continuing that activity; and (3) the protected activity was a substantial or motivating factor behind the adverse action. *See Nieves v. Bartlett*, 587 U.S. 391, 398 (2019); *Hartman v. Moore*, 547 U.S. 250, 259 (2006). Once a plaintiff makes that showing, the burden shifts to the government to demonstrate that it would have taken the same action absent the protected conduct. *Mt. Healthy City Sch. Dist. Bd. Of Educ. V. Doyle*, 429 U.S. 274, 287 (1977).

Filing litigation, pursuing habeas relief, and seeking judicial review are quintessential protected First Amendment activities. *See BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002) (recognizing the right to petition the government through litigation); *Bill Johnson's Rests., Inc. v. NLRB*, 461 U.S. 731, 741 (1983). The government may not penalize an individual for invoking judicial process, even where the benefit at issue is discretionary. *Perry*, 408 U.S. at 597.

Critically, retaliatory revocation of discretionary immigration benefits violates the First Amendment where the revocation is motivated by protected activity rather than legitimate agency grounds. *See Crawford-El v. Britton*, 523 U.S. 574, 592 (1998) (government officials may not take adverse action in retaliation for constitutionally protected conduct). Even where the government retains discretion, that discretion may not be exercised for unconstitutional reasons. *See id.; see also Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) (government discretion does not insulate retaliatory conduct).

Temporal proximity between protected conduct and adverse action may support an inference of retaliatory motive, particularly where no intervening change in circumstances exists. *See Nieves*, 587 U.S. at 399; *Mt. Healthy*, 429 U.S. at 287. Where an agency reverses course without new evidence, changed facts, or articulated reasoning, such conduct strongly supports an inference of retaliatory animus.

Furthermore, the First Amendment prohibits not only direct punishment, but also indirect coercion designed to deter the exercise of constitutional rights. *See Perry*, 408

U.S. at 597. A governmental act that strips an individual of immigration protection in response to litigation constitutes precisely the kind of unconstitutional condition the First Amendment forbids.

Accordingly, even where Deferred Action is discretionary, it may not be terminated for the purpose of undermining a litigant's position in pending federal court proceedings. The Constitution forbids the government from manipulating immigration discretion to retaliate against an individual for seeking judicial review.

Fifth Amendment Rights

The Fifth Amendment provides that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. The Due Process Clause applies to all "persons" within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Due process imposes both procedural and substantive limitations on executive action. Procedurally, when the government deprives an individual of a protected liberty or property interest, it must provide notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The required process depends on balancing: (1) the private interest affected; (2) the risk of erroneous deprivation through existing procedures and the probable value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens. *Id.* at 335.

Moreover, when agency action effectively nullifies a statutory protection without following the procedures Congress required, such action violates due process. *See* 8 C.F.R. § 205.2 (requiring notice and opportunity to respond before revocation of an approved petition). Where the practical effect of government conduct is to deprive a noncitizen of an immigration protection without adherence to those safeguards, the deprivation is constitutionally infirm.

Courts have found that Deferred Action is *not* merely just an act of prosecutorial discretion, but a benefit that incurred a decision for its conferment,

> "… the Court fails to see why USCIS would go through the trouble of making that determination and then notifying Nevarez Jurado of its decision.,.
>
> Stated another way, if government prosecutors simply decided not to take immediate action to deport Nevarez Jurado while reserving their ability to change their minds whenever they wanted, why make explicit findings that he was not a risk and that he deserved favorable consideration? Why tell him? Why not simply defer now and take action to deport him whenever they chose to do so? Why tell Nevarez Jurado that his removal will be deferred for four years and thus encourage him to stay in this country? And why not at least tell him that staying here would carry a risk that they might change their minds willy nilly and arrest him—a risk about which he would undoubtedly be unaware?"
>
> *See Nevarez Jurado v Freden, et al*, No. 25-CV-943-LJV, at 15 (W.D.N.Y. 2025).

Accordingly, even where Deferred Action is discretionary, its termination must comport with basic procedural fairness and may not be executed arbitrarily, without notice, without explanation, and without an opportunity to respond, particularly where such termination directly impacts ongoing liberty interests and pending statutory immigration protections.

APPLICATION

III. Walter Is Likely to Succeed on the Merits

The record establishes a substantial likelihood of success on both the First and Fifth Amendment issues.

First, Walter engaged in constitutionally protected activity. He filed habeas petitions, sought judicial review, challenged unlawful detention, and asserted his statutory immigration protections. Petitioning the federal courts for relief is quintessential protected conduct under the First Amendment. BE & K Constr. Co., 536 U.S. at 524–25.

Second, the February 19, 2026, termination of Deferred Action constitutes adverse action sufficient to deter a person of ordinary firmness from exercising constitutional rights. *See* Perry, 408 U.S. at 597 (government may not deny a benefit because of protected speech). Revoking Deferred Action during ongoing federal litigation is not a minor administrative act, it is a severe deprivation done purposefully to advance the Respondents' position.

Third, the temporal proximity and absence of changed circumstances strongly support retaliatory motive. Walter disclosed all criminal history in his original filings. USCIS granted SIJS and Deferred Action with full knowledge of those facts. No new conduct occurred. No new evidence arose. No explanation was provided. The termination occurred only after extensive habeas litigation and immediately after Respondents advanced arguments that removal was reasonably foreseeable. Where an agency reverses

course without new facts and without articulated reasoning, an inference of retaliatory animus is appropriate. *See Nieves*, 587 U.S. at 399; Mt. Healthy, 429 U.S. at 287.

The government cannot meet its burden under *Mt. Healthy* to demonstrate that it would have terminated Deferred Action absent the protected activity because nothing in the record changed between the grant and the revocation. The only changed variable was Walter's continued assertion of his legal rights in federal court.

The Fifth Amendment violation is equally clear.

Walter possesses a protected liberty interest in avoiding arbitrary detention and removal. *Zadvydas*, 533 U.S. at 690–93. He also possesses a legally cognizable interest in the statutory immigration protections conferred upon him, including SIJS and the Deferred Action granted in connection with that determination. When USCIS confers Deferred Action after reviewing an applicant's full record and making affirmative findings, it is not acting casually. As recognized in *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, at 15 (W.D.N.Y. 2025), the government does not "go through the trouble" of making explicit favorable determinations and notifying a recipient if the benefit is meant to be revoked "willy nilly."

Yet here, Deferred Action was terminated without prior notice, without explanation, without identification of "good and sufficient cause," and without any opportunity to respond. See 8 C.F.R. § 205.2 (requiring notice and opportunity to respond before revocation of approved petitions). Although Deferred Action is discretionary, its

termination cannot be arbitrary, retaliatory, or procedurally deficient. *See Mathews*, 424 U.S. at 333.

Under Mathews, the private interest is immense: continued liberty and protection from removal. The risk of erroneous deprivation is extraordinarily high where no process was afforded whatsoever. The government's burden in providing notice or articulating a basis for termination is minimal. The balance overwhelmingly favors additional procedural safeguards.

Most importantly, nothing has changed that would warrant termination. The same facts existed at the time Deferred Action was granted. The only new development is this litigation. Terminating Deferred Action in response to judicial review constitutes arbitrary executive action that cannot withstand constitutional scrutiny.

Accordingly, Walter has demonstrated a strong likelihood of success on the merits of both his First Amendment retaliation claim and his Fifth Amendment due process claim.

II. Walter Will Suffer Irreparable Harm Absent Immediate Relief

The irreparable harm here is immediate, ongoing, and constitutional in nature.

First, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Where government action chills protected petitioning activity through retaliation, irreparable harm is presumed. *Id.* The retaliatory termination of Deferred Action sends a

clear message: continued litigation will be met with punitive executive action. That constitutional injury cannot be undone after the fact.

Second, post hoc judicial review cannot adequately remedy the harm. If Deferred Action is being manipulated to influence pending litigation, the chilling effect occurs now. If removal occurs, the statutory injury occurs now. If detention is prolonged based on the termination, the liberty loss occurs now. None of these harms are compensable through damages.

The irreparable harm requirement is therefore satisfied independently on constitutional grounds, liberty grounds, and statutory protection grounds.

III. The Balance of Equities and Public Interest Favor Relief

Where the government is the opposing party, the balance of equities and public interest merge. *See Nken*, 556 U.S. at 435. The equities strongly favor Walter.

He received SIJS and Deferred Action after full disclosure of his record. No new facts have emerged. No new conduct occurred. The government's sole change in posture coincides with active federal litigation. Invalidating a retaliatory termination simply preserves the *status quo* ante it does not confer new benefits.

By contrast, denying relief permits executive retaliation against protected litigation activity and allows the government to manipulate discretionary immigration tools to alter federal court proceedings. The public has no interest in unconstitutional action. *See*

Phelps-Roper, 545 F.3d at 690 ("It is always in the public interest to protect constitutional rights.").

Additionally, the requested relief imposes minimal burden on the government. It merely requires Respondents to revert a termination that was issued without changed circumstances and without process, pending adjudication on the merits. It does not grant lawful permanent residence. It does not prevent future termination for legitimate reasons. It simply prevents retaliatory or arbitrary revocation.

The public interest is not served by allowing executive agencies to revoke immigration protections in response to litigation. The integrity of the judicial process depends on litigants being able to seek relief without fear of punishment.

Accordingly, the balance of equities and the public interest weigh decisively in favor of granting a temporary restraining order.

CONCLUSION

For all of the reasons included herein, Walter respectfully requests that this Court invalidate the termination of his Deferred Action, reinstate the *status quo* by doing so, and order that Respondents provide a lawful basis for any future revocation in line with the First and Fifth Amendments of the United States Constitution.

Dated: February 20, 2026,

Respectfully Submitted,

[signature to follow]

/s/ Stacey R. Rogers
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Certificate of Service

I certify that on February 20, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 20, 2026.

Respectfully Submitted,

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