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.	RESPONSE TO GOV. ON MOTION FOR TRO. CASE No: 26-cv-01393

RESPONSE TO GOVERNMENT ON MOTION FOR TRO

INTRODUCTION

Respondents do not dispute that on February 19, 2026, USCIS terminated Walter's previously granted Deferred Action without notice, without an opportunity to respond, and without any reason to do so. See ECF No. 26 at 4. Instead, Respondents contend that the termination renders this Motion moot and that Deferred Action is "solely" an exercise of prosecutorial discretion beyond constitutional constraint. *See* ECF No. 26 at 1, 3. Those arguments fail as a matter of law.

The record establishes that Petitioner received SIJS and a formal four-year grant of Deferred Action after full disclosure of his record. No new facts arose between the grant and the termination. The only intervening development was Petitioner's continued pursuit of habeas relief and judicial review. The termination therefore presents serious constitutional concerns under both the First and Fifth Amendments. Walter has demonstrated a likelihood of success on the merits and entitlement to immediate injunctive relief.

I. The Motion Is Not Moot Because This Court Retains Authority to Invalidate and Remedy the Unlawful Termination.

Respondents' assertion that this Motion is moot because USCIS has already terminated Petitioner's Deferred Action is legally incorrect. Even where agency action has already taken effect, a Court's intervention is not moot. Federal courts retain equitable authority to vacate unlawful agency action and restore the *status quo ante*. *See Ramirez Tesara v. Wamsley, N*o. 2:25-cv-01723-MJP-TLF, Order Granting Mot. for TRO at 9 (W.D. Wash. Sept. 12, 2025). This "refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy.'" *See Id.* at 10 *citing GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (*quoting Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir.1963)).

Respondents argue that because "Deferred Action has already been terminated," there is "nothing for the Court to restrain." ECF No. 26 at 1–2. That framing ignores the

relief actually sought. Petitioner seeks invalidation of the February 19, 2026 rescission and restoration of the last uncontested status he was in preceding this controversy. Courts addressing SIJ-based deferred action rescissions have expressly exercised authority to unwind such terminations and restore the prior status.

In *Sarmiento v. Perry*, the Eastern District of Virginia addressed materially similar circumstances. There, USCIS rescinded SIJ-based deferred action while the petitioner's SIJ status remained valid. 2026 WL 131917, at 7–8 (E.D. Va. Jan. 19, 2026). The court rejected the government's argument that rescission was insulated from review and held that termination of SIJ-based deferred action was reviewable under the APA. *Id.* at 7 (relying on *Regents* to conclude deferred action is "more than a non-enforcement policy" and constitutes affirmative immigration relief). The court further concluded that the rescission, which provided no explanation and precluded appeal, was likely arbitrary and capricious. *Id.* at 8.

Critically for mootness purposes, the court did not treat the rescission as foreclosing judicial relief. Instead, it ordered the petitioner's relief "to restore the *status quo*," *Id.* at 10. In doing so, the court necessarily exercised its authority to nullify the legal consequences of the rescission pending adjudication.

The reasoning of *Sarmiento* forecloses Respondents' mootness theory here. The fact that USCIS has already issued a termination notice does not deprive this Court of authority to determine whether that rescission was lawful and, if not, to vacate it and restore the *status quo ante*. The effect of allowing unlawful government action to proceed

simply because it is already done would be catastrophic and does not make sense in the context of enabling parties to pursue their legal rights.

Here, the sole intervening event is the summary termination of Deferred Action. That termination is the precise subject of this Motion. Because this Court may vacate the rescission and restore Petitioner's Deferred Action pending adjudication, effective relief remains available.

Accordingly, this motion is not moot.

II. Respondents Concede That Deferred Action Was Terminated Without Notice or Process but Ignore the Constitutional Issue.

Respondents' Opposition confirms the central constitutional defect in this case: Walter's Deferred Action was terminated without notice and without any opportunity to be heard. *See* ECF. No 26 at 1-2. That undisputed fact establishes a serious Fifth Amendment procedural due process violation under the framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and as applied in recent SIJS-related TRO decisions.

The Fifth Amendment protects "persons" within the United States from deprivation of liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). That protection applies fully to noncitizens, regardless of immigration status. *Id.* Courts have recognized that noncitizens in removal or detention contexts are entitled to notice and an opportunity to be heard "appropriate to the nature of

the case." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Here, the record is undisputed that no such process was afforded.

Walter argued that Deferred Action was terminated "without any notice, opportunity to respond or any other procedural formalities." ECF No. 26 at 4. Respondents expressly concede this point, stating: "This is not disputed." *Id.* Respondents further argue that "there is no regulation or law entitling Petitioner such notice and opportunity." *Id.*

That argument misunderstands the source of the right at issue. The requirement of due process does not depend upon whether a specific regulation mandates notice. The Constitution itself requires procedural safeguards when a protected liberty interest is implicated. *Mathews*, 424 U.S. at 333.

As described in the TRO Motion, the *Mathews* factors are met here. *See* ECF. No 23, at 8-10.

Recent federal decisions addressing SIJS-related deferred action underscore this concern. In *A.R. v. Noem*, the court held that a petitioner had shown serious questions going to the merits where deferred action was revoked without notice and opportunity to be heard, recognizing that deferred action relieves removal and therefore cannot be terminated without due process safeguards. *See A.R. v. Noem*, Case No. 5:25-cv-03565-

MEMF-PVC, Order at 9–10 (C.D. Cal. Jan. 26, 2026) (finding serious questions under *Mathews* where no pre-deprivation notice was provided).

Similarly, in *Nevarez Jurado v. Freden*, the court questioned how the government could "go through the trouble" of making explicit favorable determinations and notifying a recipient of deferred action only to revoke it without articulated cause, asking rhetorically why the government would not at least inform the recipient of the risk that it might "change their minds willy nilly." No. 25-CV-943-LJV, at 15 (W.D.N.Y. 2025). That reasoning applies directly here.

Third, Respondents identify no countervailing administrative burden that would have prevented notice or an opportunity to respond. They simply assert that no regulation required it. ECF No. 26 at 4. But under *Mathews*, the absence of a regulate on does not eliminate constitutional obligations. 424 U.S. at 333–35.

In sum, Respondents concede that Deferred Action was terminated without notice and without opportunity to be heard. ECF No. 26 at 4. Its termination directly impacts liberty interests recognized in *Zadvydas*. Under *Mathews*, the complete absence of pre-deprivation process in these circumstances raises, at minimum, serious constitutional questions and demonstrates a strong likelihood of success on the merits of Walter's claims.

III. Retroactive Reliance on the 2025 Policy Cannot Justify Termination of a Previously Granted Benefit.

Respondents rely heavily on the June 6, 2025, policy rescinding the 2022 SIJS Deferred Action guidance. *See* ECF No. 26 at 3–4. That reliance is legally insufficient because that policy does not apply to Walter, and it is also stayed at this juncture. *See* ECF No. 26 at 4.

Petitioner's SIJS and Deferred Action were granted on February 11, 2025, under the 2022 policy framework. *See* ECF No. 1-3. The 2022 policy expressly provided that USCIS would consider granting Deferred Action to SIJs unable to adjust solely due to visa unavailability in order to further congressional humanitarian intent. *See* ECF No. 28. The 2025 policy was not introduced until June 6, 2025. *Id.*

Respondents acknowledge that the implementation of the 2025 policy "is currently the subject of litigation" and was stayed in *A.C.R. v. Noem*. ECF No. 26 at 4. Even assuming *arguendo* that the 2025 policy were valid, Respondents cite no authority permitting retroactive application to undo previously granted Deferred Action. Agencies must provide a reasoned explanation when altering policies that create reliance interests. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,* 591 U.S. 1, at 30–31 (2020).

In *Nevarez Jurado v. Freden*, the court addressed the issue of reliance, observing,

> "the Court fails to see why USCIS would go through the trouble of making that determination and then notifying [the petitioner] of its decision… if government prosecutors simply decided not to take immediate action to deport [him] 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?"
>
> *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, at 15 (W.D.N.Y. 2025).

The court further questioned why the government would inform a recipient that removal would be deferred for a defined period, thereby encouraging reliance, only to later revoke that protection without articulated cause. *Id.*

That reasoning applies with full force here. USCIS granted Walter Deferred Action after reviewing his record and affirmatively communicating that his removal would be deferred. *See* ECF No. 1-3. Walter structured his conduct, litigation posture, and liberty expectations around that representation. Respondents now terminate that grant without identifying new facts, changed circumstances, fraud, or reasons for doing so except to state there is a removal order now, *see* ECF No. 26 at 3–4, which is contradictory to the purpose of Deferred Action (more below).

What remains, therefore, is an adjudicated grant issued under a valid policy framework, relied upon by its recipient, and rescinded without new facts, without articulated reasoning, and without process. Under *Regents* and *Nevarez Jurado*, such a reversal cannot be accomplished "willy nilly," nor can it be justified by reference to a later issued and presently enjoined policy. The termination is retroactive in effect, arbitrary in execution, and constitutionally infirm.

IV. The Record Supports a Substantial Likelihood of First Amendment Retaliation.

The timing and circumstances of the termination support an inference that it was motivated by Walter's protected litigation activity.

Walter engaged in protected activity by filing habeas petitions and motions in federal court. *See BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002). Respondents have previously characterized Petitioner's filings as having "caused his detention to be prolonged by filing multiple motions and appeals." ECF No. 11 at 2. As mentioned in the TRO, The Respondents have been measurably displeased by Walter defending his rights. *See* ECF No. 22 at 2, ft. note 1.

Deferred Action was terminated on February 19, 2026, after Petitioner argued that SIJS and Deferred Action rendered removal unforeseeable and filed a motion for contempt. Despite the representations that it is "disingenuous" to include a mention of the matter of the contempt motion (*see* ECF No. 26 at 5, ft. note 2) because of supposed full knowledge that the Respondents had "facilitated the collection of Petitioner's biometrics" (*Id*), the mention of contempt was merely to mention the activities in the litigation that may or may not have contributed to the Respondents' behavior, and similarly, the citation to ECF 24 fairs no better as it was served *after* the Motion for Temporary Restraining Order, subject of this response. *See* ECF. No 22. The evidence of that facilitation (again, non-committal, *see* ECF. No 32 at 23) was only filed on February 24, 2025. *See* ECF. No 30. Making misrepresentations and false statements is a serious allegation and

Respondents would be well placed to avoid making accusations they cannot ascertain via evidence.

Respondents again identify no new criminal conduct, no fraud finding, and no intervening event beyond litigation posture. *See* ECF No. 26 at 5. Despite Respondents' assertion that the removal order was the "intervening change" relevant to the revocation is contradictory to the purpose of Deferred Action. To describe Deferred Action, Respondents cite preamble to the 2007 rulemaking which created the U-visa regulations in 8 C.F.R. § 214.14, which states that:

> A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. *Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal.* Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). *Deferred action does not confer any immigration status upon an alien.*
>
> *See* ECF No. 24 at 11; ECF No. 11 at 15.

Whilst, as previously identified by Walter, these are relevant to the U Visa and not SIJ, the preamble speaks generally regarding the benefit of Deferred Action and not necessarily specific to U Visa. This too is especially true where it cites 8 CFR 241.6 and the ICE/ DHS Detention and Deportation Officer's Field Manual which discusses general matters of administrative stays and discretion, as opposed to U Visa specific stays and discretion. To that end, the intent of the DA in the Respondents' own words is to "stop… the deportation or removal of an alien who has been ordered deported or removed from the United States…" *Id.* So, then, no sense can be made as to why USCIS would decide

to revoke Walter's Deferred Action in light of his removal order: the very thing that the DA exists to stop.

In addition, Walter's removal order was entered 134 days ago. This action was bought 13 days ago at the time of this filing and 7 days at the time of the termination. There is no reasonable explanation as to why, if USCIS wanted to terminate as a result of the removal order, they waited until 128 days after his removal order was entered. The question still remains why USCIS randomly decided on February 19, 2026, that Walter no longer was worthy of their discretion for Deferred Action. There is no answer as to why they would have been looking at his case, why they chose to wait so long to terminate, and what reason, other than this litigation, they would have had to terminate the Deferred Action.

Finally, as was expected (*See* ECF No. 22 at 1, 2, 8), and probably most tellingly, the Respondents quickly used the termination to advance their litigation position that removal is foreseeable. *See* ECF No. 24 at 11-12. In reality, Respondents had no other reason to terminate Walter's Deferred Action.

Under *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977), once protected conduct and temporal proximity are shown, the burden shifts to the government to demonstrate it would have taken the same action absent the protected activity. Respondents offer no declaration and no evidentiary showing satisfying that burden.

Even discretionary immigration benefits may not be revoked for unconstitutional reasons. *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998). The record supports a serious showing that termination was motivated by litigation conduct rather than changed circumstances.

V. The Remaining TRO Factors Favor Relief.

Loss of First Amendment freedoms constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Where the government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). It is always in the public interest to protect constitutional rights. *Phelps-Roper v. City of Manchester*, 545 F.3d 685, 690 (8th Cir. 2008).

Invalidating a retaliatory or arbitrary termination preserves the *status quo* and protects the integrity of judicial review. The public has no interest in unconstitutional executive action.

CONCLUSION

Respondents concede that Deferred Action was terminated without notice and without process. ECF No. 26 at 4. The termination raises serious constitutional concerns under the First and Fifth Amendments.

For these reasons, Walter respectfully requests that the Court grant the Motion for Temporary Restraining Order and invalidate the February 19, 2026, termination pending full adjudication on the merits.

Dated: February 24, 2026,

Respectfully Submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
Pro hac vice
SRR Law Group LLC
600 25th Avenue S, Ste 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com

Certificate of Service

I certify that on February 24, 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 24, 2026.

Respectfully Submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com
Attorney for Petitioner