

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Case No. 0:26-cv-03566-KMM-LIB

JOSE ALBERTO CHIMAN DIAZ,

Petitioner,

v.

Todd Blanche, *et al.*,

Respondents.

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

Petitioner Jose Alberto Chiman Diaz ("Mr. Chiman Diaz") seeks release from detention by the U.S. Immigration and Customs Enforcement ("ICE"). Federal Respondents Todd Blanche, Markwayne Mullin, David Venturella, and David Easterwood (collectively, the "Federal Respondents") oppose Mr. Chiman Diaz's habeas relief, arguing that 1) Mr. Chiman Diaz is lawfully detained under 8 U.S.C. § 1231(a)(2)(A) pursuant to a removal order; 2) despite his valid deferred action, his detention violates neither procedural nor substantive due process; and 3) neither the *Immigration Center for Women and Children v. Noem* ("ICWC") order nor the *Accardi* doctrine entitles him to relief. Mr. Chiman Diaz demonstrates that his continued detention is unlawful because his removal is not reasonably foreseeable and because Federal Respondents have violated his rights under the Fifth Amendment's Due Process Clause. Alternatively, Mr. Chiman Diaz's detention violates the *ICWC* Order and the *Accardi* doctrine.

Mr. Chiman Diaz entered the United States on or about July 8, 2013, at a location near Laredo, Texas. Vandervart Decl. Ex. C (“I-213”). The U.S. Border Patrol issued him an expedited removal order on July 7, 2013, and he was returned to Mexico the following day, July 8, 2013. *Id.*; Vandervart Decl. Ex. E.¹ Mr. Chiman Diaz reentered the United States sometime before September 15, 2017. ECF No. 1 ¶ 15.

On August 5, 2026, Mr. Chiman Diaz was arrested in Meeker County, Minnesota, for driving without an ignition interlock device. Vandervart Decl. ¶ 9. The next day, the Meeker County Jail released him to Immigration and Customs Enforcement pursuant to a detainer, and ICE agents issued him Form I-871 to reinstate his 2013 removal order. Vandervart Decl. Ex. C; Vandervart Decl. ¶ 12. Federal Respondents now hold Mr. Chiman Diaz in mandatory detention under 8 U.S.C. § 1231(a)(2)(A) based on that reinstated order. ECF No. 6 at 3.

Mr. Chiman Diaz has a pending U Nonimmigrant Visa application. ECF No. 1 ¶ 25. Based on that pending application, United States Citizenship and Immigration Services (“USCIS”) granted Mr. Chiman Diaz deferred action and later approved a renewal of that deferred action on February 25, 2026, which remains valid until February 24, 2030. *Id.* ¶ 27-28. Federal Respondents have not provided any evidence that his deferred action was revoked or terminated.

Because Mr. Chiman Diaz’s deferred action remains valid and unrevoked, his

¹ Prior to Federal Respondents’ Response to the Petition for Writ of Habeas Corpus, Mr. Chiman Diaz did not know that he had a removal order or that it had been reinstated; as a result, his habeas petition made no reference to a removal order.

removal is not reasonably foreseeable, and his continued detention is therefore unlawful. And because Mr. Chiman Diaz was never afforded an individualized hearing at which he could raise his deferred action status, his detention also violates the Fifth Amendment's Due Process Clause. For these reasons, Habeas relief should be granted, and Mr. Chiman Diaz should be ordered released from custody.

JURISDICTION

This Court has jurisdiction to review whether Mr. Chiman Diaz is in "custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Section 1252(g) provides that, with limited exceptions, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter." 8 U.S.C. § 1252(g); *see also Silva v. United States*, 866 F.3d 938, 940 n.2 (8th Cir. 2017). The Supreme Court has repeatedly emphasized that this bar is "narrow" and reaches only "three discrete actions": (1) commencing proceedings, (2) adjudicating cases, or (3) executing removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("AADC"); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (AADC "did not interpret [the 'arising from' language] to sweep in any claim that can technically be said to 'arise from' the three listed actions").

Mr. Chiman Diaz's claims fall outside all three categories. He does not challenge the commencement of proceedings: his removal order was reinstated under 8 U.S.C. § 1231(a)(5) based on his 2013 removal; an event that occurred long ago. He does not seek

“adjudication” of any pending immigration matter, and he does not challenge the validity or reinstatement of his removal order itself; a challenge that, in any event, is reserved exclusively to the courts of appeals. 8 U.S.C. § 1252(a)(5); *see also* 8 U.S.C. § 1231(a)(5) (reinstated orders “not subject to being reopened or reviewed”). Nor does he seek review of the “execution” of that order: Mr. Chiman Diaz has not yet been removed pursuant to the reinstated removal order, and Respondents have not provided any evidence that his removal has been scheduled or attempted. This distinguishes *Silva*, where the government had already executed the removal order at issue, in violation of a stay, and the petitioner’s claim for damages was “connected directly and immediately” to that completed act of execution. *Silva*, 866 F.3d at 940. Like the petitioner in *Walter A. v. Easterwood*, who “has not been removed, nor will ICE be removing him in the reasonably foreseeable future,” No. 26-cv-1393, ECF No. 53 at 40 (D. Minn. Mar. 26, 2026), Mr. Chiman Diaz’s claims do not attach to any actual or imminent act of execution.

Even if Mr. Chiman Diaz’s claims could be characterized as arising from one of the three actions identified in § 1252(g), the Eighth Circuit has “carved out an exception to § 1252(g) for a habeas claim raising a pure question of law.” *Silva*, 866 F.3d at 941 (discussing *Jama v. Immigr. & Naturalization Serv.*, 329 F.3d 630, 632–33 (8th Cir. 2003), *aff’d* on other grounds, 543 U.S. 335 (2005)). That exception applies here. Three purely legal questions are presented: (1) whether Respondents may lawfully detain Mr. Chiman Diaz notwithstanding his unrevoked, currently valid grant of deferred action; (2) whether Petitioner’s continued detention, without an individualized hearing addressing his deferred-action status, violates the Due Process Clause of the Fifth Amendment; and

(3) whether Respondents' continued detention violates the *ICWC* Order and the *Accardi* doctrine. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954). None of these questions requires the Court to exercise, reweigh, or compel any discretionary decision. Accordingly, this Court has jurisdiction, and 8 U.S.C. § 1252(g) does not divest the Court of jurisdiction over Mr. Chiman Diaz's claims.

ARGUMENT

Mr. Chiman Diaz continued detention is unlawful. A district court may grant a writ of habeas corpus when an individual demonstrates that his or her detention violates the laws or Constitution 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 (2008) (quoting *INS v. St. Cyr*, 553 U.S. 289, 302 (2001)). Mr. Chiman Diaz demonstrates his continued detention is unlawful because his removal is not reasonably foreseeable and because Federal Respondent's violated Mr. Chiman Diaz's rights under the Fifth Amendment's Due Process Clause. Alternatively, Petitioner is entitled to relief under the *ICWC* Order and the *Accardi* Doctrine.

I. Petitioner's unrevoked grant of deferred action prevents removal, making his continued detention under 8 U.S.C. 1231 unlawful.

The government exercised its discretion to defer Mr. Chiman Diaz's removal until February 24, 2030, and is protected from removal. Federal Respondents do not dispute the deferred action grant or that it remains unrevoked. Federal Respondents also fail to cite any evidence or authority establishing that Mr. Chiman Diaz's removal remains

reasonably foreseeable notwithstanding his unrevoked deferred action. Rather, Respondents claim that deferred action is nothing more than an exercise of “prosecutorial discretion” that confers no substantive rights or privileges. *See* ECF No. 6 at 7.

Courts have “consistently held that deferred action means the Government agency ‘takes no action to proceed against an apparently deportable [noncitizen] based on a prescribed set of factors generally related to humanitarian grounds,’” an interpretation that “finds strong support in Supreme Court precedent, circuit authority, and USCIS policy.” *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7-8 (W.D. Wash. July 24, 2025) (collecting cases) (citations omitted). The Supreme Court has already described what a grant of deferred action means: it means “no action will thereafter be taken to proceed against an apparently deportable [non-citizen], even on grounds normally regarded as aggravated.” *AADC*, 525 U.S. at 484. USCIS’s own Policy Manual confirms this understanding, defining deferred action as “a decision [by DHS] to exercise prosecutorial discretion to not pursue removal action or deportation against a person for a limited period.” USCIS Policy Manual, Vol. 1, Part I, Ch. 2, <https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2> (last visited Aug. 15, 2026). In other words, by USCIS’s own current account, removal of a deferred action recipient will not be pursued for the duration of the grant.

Mr. Chiman Diaz has clearly demonstrated that USCIS granted him deferred action that remains valid until February 24, 2030, and that he is protected from removal because that deferred action has not been revoked. This is significant because Federal Respondents claim that Mr. Chiman Diaz is being held under 8 U.S.C. § 1231. That

provision provides that when a noncitizen “is ordered removed, the Attorney General shall remove the [noncitizen] from the United States within a period of 90 days,” 8 U.S.C. § 1231(a)(1)(A), following the latest of three potential events, here, the date the removal order became administratively final.²

Although the detention of a removable noncitizen is authorized to continue beyond that 90-day period, that detention is limited to “a period reasonably necessary to bring about” the noncitizen’s removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because Mr. Chiman Diaz’s unrevoked grant of deferred action does not expire until February 2030, he “has shown that there is no significant likelihood of his removal in the reasonably foreseeable future.” See *Nevarez Jurado v. Freden*, No. 1:25-cv-00943-LJV, Docket Item 17, at 21 (W.D.N.Y. Dec. 19, 2025) (holding that detention of a noncitizen with a reinstated removal order and with an unrevoked grant of deferred action was improper because there was no significant likelihood of removal in the reasonably foreseeable future) (citing *Primero v. Mattivelo*, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (detention of noncitizen with deferred action valid until 2026 was improper because “there is no significant likelihood of his removal in the reasonably foreseeable future”); *Asghar v. Swearingen*, Case No. 2:25-cv-306, Docket Item 18, at 8-

² Under 8 U.S.C. § 1231(a)(1)(B), the removal period begins on the latest of three dates: (i) the date the order of removal becomes administratively final; (ii) if the order is judicially reviewed and a court enters a stay, the date of the court’s final order; or (iii) if the noncitizen is detained or confined for a reason other than the immigration process, the date of release from that confinement. Neither (ii) nor (iii) applies here: there is no judicial stay, and Mr. Chiman Diaz was not in any non-immigration custody when his removal order became final. That leaves (i), the date the order became administratively final.

11 (S.D. Ind. Aug. 22, 2025) (concluding that “there [wa]s no basis for the Court to find that removal is imminent” when the petitioner had been granted deferred action in 2025 despite a removal order that had become administratively final in 2021)).

Federal Respondents claim that Mr. Chiman Diaz is still subject to mandatory detention for the first 90 days after a removal order is issued, that he cannot make a showing under *Zadvydas* until that period runs, and that he “has failed to establish any facts to suggest” he has been held anywhere close to the six-month bound of presumptive reasonableness. *See* ECF. No. 6 at 9-10. However, Federal Respondents still have not shown that Mr. Chiman Diaz’s removal is significantly likely to occur in the reasonably foreseeable future, whether during the 90-day statutory period or from any later date, because Mr. Chiman Diaz holds valid deferred action until February 2030. Thus, Mr. Chiman Diaz detention is unlawful.

Moreover, Mr. Chiman Diaz does not even need to make that six-month showing, because Respondents incorrectly identified when the removal period began under 8 U.S.C. § 1231(a)(1)(B). Respondents appear to believe the 90-day period started on August 6, 2026; the date he was most recently taken into ICE custody and the date his removal order was reinstated. ECF. No. 6 at 9-10. It did not. In this case, under 8 U.S.C. § 1231(a)(1)(B), the removal period began on the date the order of removal became administratively final. Here, that date is when the original removal order was executed: July 8, 2013.

Federal Respondents conclude, without argument, that the order became administratively final on August 6, 2026. In a case presenting the identical question, the

government itself conceded “that for purposes of calculating the starting point of the removal period, the date his removal order became administratively final is the date of his original removal order . . . more than twenty years ago.” *Nevarez Jurado*, No. 1:25-cv-00943-LJV, at 21 n.11 (recording the government’s concession, though resolving the petition on other grounds).

Furthermore, the government’s conclusion is contrary to *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), in which the Supreme Court explained that an old prior removal order was “administratively final” because each respondent “had the opportunity to seek review in the BIA after the initial removal order was entered,” and because reinstatement under 8 U.S.C. § 1231(a)(5) forecloses any new opportunity for review. *Id.* at 534–35. As a result, “there is nothing left for the BIA to do with respect to the removal order other than to execute it.” *Id.* Indeed, the Supreme Court noted that the respondents in *Johnson v. Guzman Chavez* did not contest that their prior removal orders had “long been ‘administratively final.’” *Id.* at 534.

Similarly, Mr. Chiman Diaz’s July 8, 2013, removal order has long been administratively final and is “not subject to being reopened or reviewed” under 8 U.S.C. § 1231(a)(5). Applying 8 U.S.C. § 1231(a)(1)(B)(i) to the July 8, 2013 removal order, the statutory 90-day removal period expired in October 2013, and the additional 90 days comprising *Zadvydas*’s presumptively reasonable six-month detention period expired in early 2014. Because that period has long passed, and because Mr. Chiman Diaz holds valid deferred action through February 2030, he has demonstrated that there is “no

significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. For all these reasons, Mr. Chiman Diaz’s detention is improper.

II. Petitioner’s detention without an individualized hearing on his deferred action violates the Fifth Amendment’s Due Process Clause.

Mr. Chiman Diaz’s ongoing detention violates his right to due process. “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.” *Mathews 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). Indeed, “[i]t is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993).

Federal Respondents claim that deferred action offers no special rights or privileges, and that because Mr. Chiman Diaz is subject to a removal order, he is not owed any kind of bond hearing or similar relief. ECF No. 6 at 7-8. Thus, Federal Respondents essentially claim that they may detain a deferred action recipient without a pre-detention hearing or individualized determination. Several courts have disagreed and have held that the government may not detain a deferred action recipient without a pre-detention hearing or individualized determination. *F.R.P. v. Wamsley*, 2025 WL 3037858, at *3-6 (D. Or. Oct. 30, 2025) (collecting cases).

Courts have applied the balancing test set out in *Mathews* to determine whether an individual with an unrevoked grant of deferred action received sufficient procedure under the Fifth Amendment's Due Process Clause. *See, e.g., F.R.P.*, 2025 WL 3037858, at *3; *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *10 (W.D. Tex. Oct. 2, 2025); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *5-6 (D. Or. Dec. 4, 2025); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 528- 29 (2004) ("The ordinary mechanism that we use . . . for determining the procedures that are necessary to ensure that a citizen is not deprived of life, liberty, or property, without due process of law is the test that we articulated in *Mathews v. Eldridge*." (citations and internal quotation marks omitted)).

The *Mathews* balancing test weighs three factors: (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Here, the *Mathews* balancing test demonstrates that Mr. Chiman Diaz's detention violates his due process rights.

The private interests at stake are profound. First, Petitioner's liberty is at stake. There is no question that freedom from government imprisonment is a significant private interest that "lies at the heart of the liberty that" Due Process protects. *Zadvydas*, 533 U.S. at 690. Moreover, Petitioner's employment authorization, together with other benefits, is

vital to Petitioner's livelihood, but is now at risk due to ICE's de facto revocation of deferred action. *See* 8 C.F.R. § 274a.12(c)(14). Where "continued possession" of benefits has "become essential in the pursuit of a livelihood," and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without [] procedural due process." *Bell v. Burson*, 402 U.S. 535, 539 (1971). In addition, Petitioner's "private interest in avoiding removal or detention pending removal is great." *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *41 (C.D. Cal. May 20, 2026) ("ICWC PI Order"). Petitioner, because of deferred action, has been able to live and work freely without fear of detention or removal, provide for his family, start his own business, and employ and pay his workers. The first *Mathews* factor thus weighs in Mr. Chiman Diaz's favor.

Second, "the risk of an erroneous deprivation of" these interests "through the procedures used" is extremely high, compared to "the probable value" of a pre-deprivation process where Respondents have provided no process at all before engaging in immigration enforcement that effectively revoked Petitioner's deferred action. *Mathews*, 424 U.S. at 335. "[T]he practice of automatic termination" of deferred action "creates an unacceptably high risk of erroneous deprivation." *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) (emphasis added). Federal Respondents detained Mr. Chiman Diaz without a hearing on the effect his deferred action has on his potential removal,³ and

³ Federal Respondents submit a Notice of Intent/Decision to Reinstate Prior Order, Vandervaart Decl. Ex. D, which only indicates that ICE provided notice that Mr. Chiman Diaz was

under 8 U.S.C. § 1231(a)(5), Mr. Chiman Diaz cannot seek any relief to challenge his removal order. Thus, the second Mathews factor weighs in favor of Mr. Chiman Diaz, since his deferred action remains unrevoked and affirmatively prevents his removal and because he has not received any opportunity to present his deferred action argument.

Lastly, the government's interest in continuing to detain Mr. Chiman Diaz is slight. Federal Respondents claim that their purpose in detaining Mr. Chiman Diaz is to remove him pursuant to his prior removal order and to protect public safety. However, that interest "is weak or nonexistent where removal seems a remote possibility at best." *See Santiago*, 2025 WL 2792588, at *12 (quoting *Zadvydas*, 533 U.S. at 690-91); *see also id.* ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose."). Furthermore, when USCIS granted a renewal of Mr. Chiman Diaz's deferred action on February 25, 2026, it determined that he did not pose a risk to national security or public safety. Thus, USCIS has already determined that Mr. Chiman Diaz is not a risk to public safety, and his continued detention does not serve to protect public safety. In evaluating all factors, Mr. Chiman Diaz has established that his ongoing detention violates his rights under the Fifth Amendment's Due Process Clause.

subject to a removal order. Federal Respondents have not provided any evidence that Mr. Chiman Diaz was given an individualized determination or a pre-detention hearing that addressed his deferred action. Rather, Federal Respondents do not acknowledge Mr. Chiman Diaz's deferred action in either the Vandervaat Declaration or any exhibits submitted with it. In Vandervaat Decl. Ex. C ("I-213"), the Department of Homeland Security's ("DHS") results show that Mr. Chiman Diaz has no pending applications or petitions for benefits before DHS, or that queries in DHS databases do not return any pending applications or petitions. Yet, in that same form, DHS marks the "Alien" number as 206010802, a number directly tied to Mr. Chiman Diaz's U-Visa application, deferred action, and employment authorization document. Federal Respondents only acknowledge Mr. Chiman Diaz's deferred action in their Response to the Petition for Writ of Habeas Corpus.

III. Alternatively, Petitioner is entitled to relief under the *ICWC* Order and the *Accardi* Doctrine

The Court need not reach either issue to grant relief, given Petitioner's independent showing under due process and *Zadvydas*, but should the Court reach them, both support granting relief as well.

Federal Respondents do not contest Mr. Chiman Diaz's class membership in the *ICWC* class action. Rather, Respondents argue that Mr. Chiman Diaz cannot avail himself of relief under *ICWC* even as a class member. First, Federal Respondents argue that, because deferred action is understood to be an act of prosecutorial discretion, there is no basis under *United States v. Lee*, 274 F.3d 485, 492–93 (8th Cir. 2001) on which ICE may legally be required to release Mr. Chiman Diaz. Second, Federal Respondents argue that 8 U.S.C. § 1252(f)(1) stripped the *ICWC* court of authority to enter the injunction.

Because deferred action is individualized, affirmative, and implicates due process interests, it falls outside the narrow category of unreviewable prosecutorial discretion *Lee* addressed. The 2011 and 2021 policies which the *ICWC* order preserved accordingly remain enforceable against ICE. Respondents detained Mr. Chiman Diaz without any notice or individualized assessment of his deferred action, in direct violation of those policies. Federal Respondents have also not provided an "exceptional circumstance" pursuant to ICE Directive 11005.3 to detain Mr. Chiman Diaz.

Furthermore, section 1252(f)(1) did not strip the *ICWC* court of authority to enter its order, because a stay under APA section 705 is not an injunction. An injunction is a judicial order that directs a party's conduct, while a stay merely suspends the operation of

the challenged agency action and restores the status quo that existed before it. *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025); *National TPS Alliance v. Noem*, 166 F.4th 739, 761 (9th Cir. 2026). By staying ICE's 2025 rescission, the *ICWC* order did no more than restore the 2011 and 2021 policies that governed before that rescission, the same kind of relief those courts held falls outside section 1252(f)(1)'s bar.

For these reasons, should the Court reach Respondents' *ICWC* and *Accardi* arguments, Mr. Chiman Diaz is entitled to relief under either theory as well.

CONCLUSION

For the reasons stated above, Mr. Chiman Diaz Petition for Writ of Habeas Corpus should be granted, and Mr. Chiman Diaz should be released immediately.

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Respectfully submitted,

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