

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Nadia Sol Ileri UNZUETA Carrasco)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
U.S. CITIZENSHIP AND)	
IMMIGRATION SERVICES,)	Complaint
DEPARTMENT OF HOMELAND)	
SECURITY;)	
GREGORY A. RICHARDSON,)	
DIRECTOR, USCIS TEXAS)	
SERVICE CENTER;)	
USCIS OFFICER XM1058;)	
)	
Defendants.)	

Nature of the Action

1. This case involves an immigration program known as “Deferred Action for Childhood Arrivals,” or “DACA.”
2. DACA is designed for people like Ms. Unzueta Carrasco. She entered the United States with her family during her childhood, and has excelled in this country notwithstanding that she does not have permanent legal status here. Indeed, Defendants granted DACA to the Plaintiff in 2013, but denied “renewal” of DACA in 2015 after she continued to be outspoken in support of the rights of other noncitizens.
3. Defendants purported to label Ms. Unzueta Carrasco’s citations for civil disobedience (for which she was never convicted) as a “threat to public safety.” But binding agency precedent treats the “public safety” provisions as limited to acts which place large numbers of people at risk, because a broad interpretation of that phrase would render other sections of the immigration laws redundant. The obvious error of applying the

public safety ground to Ms. Unzueta Carrasco's case raises a reasonable inference that the denial was designed to punish her exercise of her political and associational behavior.

Jurisdiction and Venue

4. This Court has federal question jurisdiction over the legality of the deferred action denial pursuant to 28 U.S.C. § 1331 and the Constitution of the United States.
5. The Administrative Procedure Act ("APA") waives sovereign immunity in this context. 5 U.S.C. § 702.
6. This Court has original jurisdiction over a mandamus action to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff pursuant to 28 U.S.C. § 1361.
7. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.
8. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.
9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1)(c) because Plaintiff resides here and there is no real property at issue.

Parties

10. Plaintiff Nadia Sol Ileri UNZUETA Carrasco (Ms. Unzueta Carrasco) is a 29-year old citizen of Mexico, who graduated from high school and college in this country. She does not have permanent legal status in the United States of America. She was granted benefits under the DACA program from 2013-2015, but her application to renew DACA was denied. She resides in Chicago, Illinois.

11. Defendant U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”), is charged with exercising executive branch authority over immigration benefits, including applications under DACA. USCIS issued a DACA denial to the Plaintiff.
12. Gregory A. Richardson is the Director of the USCIS Texas Service Center, which had authority over Ms. Unzueta Carrasco’s DACA application. It was under his authority that Ms. Unzueta Carrasco’s DACA application was denied. He is sued in his official capacity, except as to count three, which requests, *inter alia*, nominal damages.
13. Officer XM1058 is the USCIS officer who adjudicated Ms. Unzueta Carrasco’s DACA application. His or her full legal identity is unknown. Officer XM1058 is sued in his or her official capacity, except as to count three, which requests, *inter alia*, nominal damages.

Legal Background

14. On June 15, 2012, President Obama and DHS Secretary Napolitano announced that the U.S. Department of Homeland Security (DHS) would designate certain undocumented noncitizens who came to the United States as children as low priorities for removal, and would (after suitable background checks) authorize those individuals to be employed in the U.S. Secretary Napolitano ordered various steps to be taken by DHS entities USCIS and U.S. Immigration and Customs Enforcement (“ICE”). In final form, these youth are granted a benefit called Deferred Action for Childhood Arrivals, or DACA.
15. DACA designates a noncitizen as a low priority for removal. DACA is typically granted by USCIS.
16. To be eligible under DACA, an applicant must fit the following criteria:

- Under the age of 31 as of June 15, 2012;
 - Came to the United States before reaching 16th birthday;
 - Have continuously resided in the United States from June 15, 2007, to the present;
 - Was physically present in the United States on June 15, 2012, and at the time of filing an application for DACA;
 - No lawful status on June 15, 2012;
 - Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
 - Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety; and
 - An applicant must be at least 15 years old to request DACA, unless she is in removal proceedings or has a final removal or voluntary departure order.
17. The DACA application process involves the filing of forms to USCIS, which obtains biometric information (i.e., fingerprints), reviews the paper submission, checks for any derogatory information, and generally makes a decision on the paper record.
 18. USCIS also receives significant application fees for DACA applications to cover the cost of adjudication.
 19. ICE is the primary immigration enforcement arm of DHS. ICE determines when and whether to place noncitizens into removal proceedings.
 20. USCIS is not authorized to initiate removal proceedings except in certain limited situations not applicable here (generally involving applicants for benefits who have statutory or regulatory rights to review by an Immigration Judge).
 21. A grant of DACA does not prevent ICE from instituting removal proceedings. Likewise, a denial of DACA does not require ICE to initiate removal proceedings. Indeed, in this case, USCIS denied DACA renewal, but ICE has not initiated removal proceedings against Ms. Unzueta Carrasco.

22. USCIS has clear rules for determining which DACA applicants are barred, including definitions for the relevant terms “felony” and “significant misdemeanor.”
23. USCIS itself has not defined the term “threat to ... public safety,” but the Board of Immigration Appeals has provided an authoritative interpretation of that term where it appears in the immigration statutes:

We construe the phrase “endangers the public safety” narrowly. It does not, in our view, cover typical single-victim crimes such as rape and murder, notwithstanding the seriousness of such offenses... The type of criminal activity that endangers “public safety” should be limited to actions that place a large segment of the general population at risk, rather than just a single victim. Stated another way, it is not meant to include “everyday” crimes, even serious ones like murder and rape, and even though the public safety--in the broadest sense--is implicated. We therefore hold that the phrase “criminal activity which endangers public safety” is limited to those situations where the public at large is endangered....

The respondent's crime squarely falls within the scope of section 237(a)(4)(A)(ii) because a helicopter crash over a large city like Philadelphia would put many lives at risk and would thus endanger the public safety.

Matter of Tavares Peralta, 26 I. & N. Dec. 171, 174 (BIA 2013).

24. By statute and regulation, the interpretations of the Board are binding on all DHS employees. 8 U.S.C. § 1103(g); 8 C.F.R. § 1003.1(g).

Factual Background

25. Ms. Unzueta Carrasco came to the United States in 1994 on a visitor’s visa, when she was six years old, and has not departed the United States since age seven.
26. After arrival in the U.S., Ms. Unzueta Carrasco learned English, learned to swim, learned piano, and pursued her studies in this country. She attended Whitney Young Magnet High School in Chicago from 2001-2005, graduating in 2005.
27. Ms. Unzueta Carrasco enrolled at the University of Illinois at Chicago (UIC), studying at the UIC Honors College from 2005-2009. The UIC Honors College is designed to foster a community of academic excellence, and provides access to faculty mentors who serve

as honors advisors. In 2009, Ms. Unzueta Carrasco graduated with a Bachelors of Arts degree, *summa cum laude* with college honors and with the highest distinctions in her department.

28. In 2006, while at college at the University of Illinois in Chicago, Ms. Unzueta Carrasco became involved with a college student group which advocated on behalf of immigrants' rights.
29. In 2009, Ms. Unzueta Carrasco visited New York City with friends. Spurred by the mild weather, the group decided to spend the night in a park. They were woken by police and given court citations; but charges were dismissed without a conviction.
30. In 2009, Ms. Unzueta Carrasco became involved with the Immigrant Youth Justice League (IYJL) in Chicago. IYJL is comprised of youth organizing in favor of immigrants' rights.
31. On July 20, 2010, as part of a national organized action to try to pass legislation called the Development, Relief, and Education for Alien Minors (DREAM) Act, designed to create a path to legal status for undocumented youth, a group of young people engaged in a protest in a congressional office building in Washington, DC. The protest was peaceful. The young people sat, wearing their graduation caps and gowns, in three different spaces in the office buildings at Congress. Ms. Unzueta Carrasco was with a group that sat in a circle in the lobby of the office buildings with a banner that read "Undocumented and Unafraid, DREAM Act Now," while other groups had "sit-ins" in the offices of Senators McCain and Reid, respectively. The individuals in Ms. Unzueta Carrasco's group (i.e., the students in the lobby) were "no papered," meaning the U.S. attorney declined to prosecute a criminal case against them.

32. On August 19, 2011, there was a hearing in Chicago regarding federal immigration programs that asked local law enforcement to use “detainers” to hold non-citizens while they were taken into immigration custody. Ms. Unzueta Carrasco attended the meeting and participated in a “walk-out” from the hearing, after which she was one of many protesters who sat down on the street. Members of the group, including Ms. Unzueta Carrasco, were later arrested and charged with obstruction of traffic. The group members were ultimately found not guilty because they were not actually blocking traffic.
33. In 2012, Ms. Unzueta Carrasco participated in a national campaign protesting the record number of deportations under the Obama Administration. It was called the “No Papers, No Fear - Ride for Justice.” On September 4, 2012, Ms. Unzueta Carrasco and others engaged in a sit-in outside the Democratic National Convention in North Carolina. The group members stationed themselves in an intersection and held up signs that said “undocumented.” The group members were subsequently arrested. They were charged with a traffic ordinance violation for impeding traffic. The charges were dropped, and did not result in a conviction.
34. On May 31, 2013, Ms. Unzueta Carrasco participated in one more demonstration, on the occasion of a visit by President Obama to Chicago. Ms. Unzueta Carrasco had volunteered for his senatorial campaign while in high school, and was disappointed at the high number of deportations under his Administration, including many people whom she knew. Ms. Unzueta Carrasco and a group of individuals blocked Michigan Avenue, connected to each other and sitting in a circle. They were arrested and charged. The charges were dismissed, and did not result in a conviction.

* * *

35. After receiving work authorization pursuant to her initial DACA grant, Ms. Unzueta Carrasco began work at After School Matters, an organization that offers job training opportunities for students across Chicago. Her work involved a garden and landscaping program for inner-city youth.
36. Ms. Unzueta Carrasco was also an active volunteer from 2014-2015 with Growing Solutions, an urban farm where she worked with people with autism.
37. Aside from her civil disobedience arrests, there are no negative factors in Mr. Unzueta Carrasco's history, nor has USCIS alleged that any other negative factors exist.

Procedural History

38. Ms. Unzueta Carrasco filed her initial application for DACA on February 7, 2013. At that point, she had been arrested three times for immigration-related civil disobedience. She disclosed the fact of her past arrests on her application, and provided detailed explanations for them.
39. USCIS approved Ms. Unzueta Carrasco's initial DACA application on March 20, 2013.
40. Ms. Unzueta Carrasco filed an application to renew her DACA status on December 21, 2014. On August 19, 2015, USCIS denied the application. The only basis given for the initial denial was: "[y]ou have not established that you merit a favorable exercise of discretion." The denial informed Ms. Unzueta Carrasco that it was "unreviewable," and that she could not "file an appeal or motion to reopen/reconsider this decision."
41. On November 30, 2015, Ms. Unzueta Carrasco sent a written request to the USCIS Ombudsman, requesting intervention in her case.

42. On March 30, 2016, in response to the inquiry with the USCIS Ombudsman, Ms. Unzueta Carrasco was provided further (and different) reasons for the denial of DACA renewal:

Ms. Unzueta was arrested on May 29, 2013, after her initial DACA grant, which was March 20, 2013. She was charged with civil disobedience, resisting arrest, obstruction of traffic, and reckless conduct. Additionally, USCIS records shows that she engaged in civil disobedience in Oct. 2009, July 2010, Aug. 2011, and Sept. 2012. Ms. Unzueta's case raised public safety concerns and it was determined deferred action wasn't appropriate in this case.

Taking this response to constitute the final Agency reasoning, the Agency has denied DACA renewal on one basis. It finds that Ms. Unzueta Carrasco's arrests, which the Agency acknowledges are civil disobedience-related, raise "public safety concerns."

43. Prior to the final denial notice, USCIS's reasons for denying the renewal request were never stated to Ms. Unzueta Carrasco. This effectively prevented her from drawing the Agency's attention to its own case law, which the Agency ignored or declined to apply.

44. Because of Defendants' denial, Ms. Unzueta Carrasco has been without legal authorization to work or the ability to travel. Thus, when Ms. Unzueta Carrasco's grandmother passed away during the winter, and then her grandfather only weeks later, she was unable to obtain permission to travel to Mexico for either funeral.

CLAIMS FOR RELIEF

First Claim for Relief – Agency Error of Law

45. The allegations contained in paragraphs 1 through 44 are repeated and realleged as if fully set forth herein.

46. There is a strong presumption in favor of the reviewability of administrative decisions for, at minimum, errors of law. *See INS v. St. Cyr*, 533 U.S. 289, 298 (2001); *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 498 (1991). The Administrative Procedure

Act generally permits federal courts to review agency actions and to reverse decisions which are not in accordance with law.

47. A USCIS decision denying DACA renewal does not arise from or relate to a decision or action to commence removal proceedings. The denial does not require or signify that ICE institute removal proceedings, nor has ICE instituted removal proceedings in this case.
48. To the extent that the executive branch's decision was based on legal interpretations inconsistent with the statute governing visas and admissibility, that denial was in excess of the executive's legal authority.
49. Defendants' finding that Ms. Unzueta Carrasco's civil disobedience arrests triggered "public safety" concerns was erroneous as a matter of law.
50. Published agency precedent construes "public safety" narrowly, because any other reading would leave no work for other immigration provisions: "[t]he type of criminal activity that endangers 'public safety' should be limited to actions that place a large segment of the general population at risk, rather than just a single victim." *Matter of Tavares Peralta*, 26 I. & N. Dec. 171, 174 (BIA 2013); *see also* Memorandum, John Morton, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," Pol. No. 10072.1 at 2 n.1 (Mar. 2, 2011) (public safety exception "is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.").
51. The Agency decision denying DACA renewal to Ms. Unzueta Carrasco does not discuss or distinguish this authority.

52. Agency failure to apply the proper legal standard to a question presents an error of law, even as to matters which are ultimately discretionary. “Legal questions include ... claims that the BIA misread its own precedent or applied the wrong legal standard.” *Cruz-Moyaho v. Holder*, 703 F.3d 991, 997 (7th Cir. 2012) (citations omitted); *see also Rosiles-Camarena v. Holder*, 735 F.3d 534, 536 (7th Cir. 2013); *Avila-Ramirez v. Holder*, 764 F. 3d 717, 724 (7th Cir. 2014).
53. Where “the agency fail[s] to follow its binding precedent..., which it d[oes] not cite,” courts generally remand to the agency to permit reconsideration of the matter, cured of legal error. *Avila-Ramirez*, 764 F. 3d at 724.
54. To the extent that the Court finds any ambiguity in the Agency decision which affects the Court’s ability to undertake judicial review, it has authority to remand to the agency for additional explanation, *see Cuellar-Lopez v. Gonzales*, 427 F.3d 492, 496 (7th Cir. 2005).

Second Claim for Relief – Denial Not In Good Faith

55. The allegations contained in paragraphs 1-54 are repeated and realleged as if fully set forth herein.
56. A denial of immigration benefits is not denied for “bona fide” reasons when the decision maker does not act in good faith. *See Kerry v. Din*, 135 S. Ct. 2128, 2141(2015) (Kennedy, J., concurring); *Bustamante v. Mukasey*, 531 F.3d 10591, 1062 (9th Cir. 2008).
57. The Defendants’ actions below were not in good faith.
58. The Defendants granted DACA to Ms. Unzueta Carrasco after various acts of civil disobedience. After one last such act, an act not resulting in any criminal conviction, it summarily denied DACA renewal.

59. The Defendants were also inconsistent as to their reasons for denial, first stating DACA renewal was denied in the exercise of discretion, then that Ms. Unzueta Carrasco was a threat to public safety.
60. The Defendants have adjudication procedures in place allowing them to send an applicant a “Request for Evidence” or a “Notice of Intent to Deny” where the Agency has doubts about whether an applicant is eligible for a remedy, or should be granted that remedy. 8 C.F.R. § 103.2(b)(8). These procedures give an applicant notice and an opportunity to convince the Agency to approve the request. Defendants chose not to employ those procedures here.
61. An application can be denied without any further notices or requests where “the record evidence establishes ineligibility.” 8 C.F.R. § 103.2(b)(8)(i). But civil disobedience arrests plainly do not establish ineligibility, as shown by the fact that the Agency approved Ms. Unzueta Carrasco’s initial DACA application.
62. The Agency’s decision to summarily deny relief suggest prejudgment of the case and a fixed intention to punish individuals like Ms. Unzueta Carrasco who have engaged in peaceful civil disobedience targeted at the immigration enforcement regime.
63. The Defendants and their agents do not in fact harbor a good faith belief that Ms. Unzueta Carrasco is a threat to public safety as that term is understood in this legal context.

Third Claim for Relief – First Amendment Violation

64. The allegations contained in paragraphs 1-63 are repeated and realleged as if fully set forth herein.

65. Noncitizens present within the United States have rights to free expression. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945); *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975); *see also Citizens United v. FEC*, 558 U.S. 310, 340 (2010) (declining to apportion free expression rights depending on identity of speaker).
66. The adjudication of DACA applications occurs in a politicized context in which USCIS adjudicators are represented by a labor union which has spoken publicly against the DACA program. *See Texas v. U.S.*, 809 F. 3d 134, 172-73 (5th Cir. 2015).
67. The Defendants have declined to adopt any form of appellate review, effectively delegating unreviewable power to agents who harbor political animus against the DACA program and against individuals like Ms. Unzueta Carrasco in particular.
68. The Defendants' denial of DACA renewal effectively punishes Ms. Unzueta Carrasco for political statements and actions.
69. The reason(s) given by the Defendants for the DACA renewal denial was or were pretextual.
70. First, the Agency inexplicably departed from published agency precedent governing the term "public safety" in the immigration laws.
71. Second, the Agency gave varying, inconsistent reasons for its denial. Not only is the Agency's denial inconsistent with its prior DACA approval, but it has given two entirely different reasons for why it denied DACA renewal.
72. Third, the Agency afforded Ms. Unzueta Carrasco no opportunity to respond to these points.

73. The act by Defendants and their agents of labeling acts of peaceful civil disobedience as threats to “public safety” is, on information and belief, designed to burden political expression.
74. The Agency’s actions are not mere selective prosecution of Ms. Unzueta Carrasco triggered by her exercise of free expression rights, which might be non-cognizable. *Cf. Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 489-92 (1999). Here, the express and sole basis for the Agency’s adverse decision was its discussion of her “civil disobedience,” such that political character of her speech is directly and intentionally targeted (notwithstanding precedential Agency case law precluding that type of activity from triggering the public safety provisions).
75. Defendants’ assault on Plaintiff’s speech is content- and viewpoint-based.
76. Defendants’ true purpose for denying Plaintiff’s application for DACA renewal was to suppress the viewpoint expressed by Plaintiff’s expressive activities.
77. As a direct and proximate result of Defendants’ acts, Plaintiff has suffered irreparable harm, including the loss of her constitutional rights, entitling her to declaratory and injunctive relief, and to nominal damages.

Prayer for Relief

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- (a) declare that the Defendants erred as a matter of law in treating Ms. Unzueta Carrasco’s actions as raising public safety concerns;
- (b) declare that the Defendants actions below were not in good faith;
- (c) grant declaratory and injunctive relief to remedy the Defendants’ violation of the Plaintiff’s rights under the First Amendment;

- (d) award nominal damages to the Plaintiff;
- (e) remand this matter to the Defendants for further proceedings consistent with court order; and
- (f) grant such other relief as the Court may deem just and proper.

Dated: May 25, 2016

Respectfully Submitted:

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