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DETAINED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Haji FOFANA,
Fatoumatta TUNKARA.

Petitioners,

v.

Bruce SCOTT, Warden of Northwest ICE Processing Center; Drew BOSTOCK, Field Office Director, Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Joseph B. EDLOW, Director, U.S. Citizenship and Immigration Services; Jonathan WEEKS, Director Seattle Field Office, U.S. Citizenship and Immigration Services.

Respondents.

Case No.:

Agency File Number: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner Haji Fofana is a noncitizen who challenges his continued unlawful detention by Respondents Defendants U.S. Immigration and Customs Enforcement ("ICE") took Mr. Fofana is also statutorily eligible to adjust status to that of a lawful permanent resident based upon his *bona fide* marriage to Petitioner, Fatoumatta Tunkara, a United States citizen. Before

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Defendants U.S. Citizenship and Immigration Services ("USCIS") could adjudicate Petitioner Fatoumatta Tunkara's I-130 Petition for Alien Relative and Petitioner Haji Fofana's I-485 Application for Adjustment of Status, Defendants U.S. Immigration and Customs Enforcement ("ICE") took Mr. Fofana into immigration custody. Now, Petitioners' applications have been unlawfully delayed by Defendants USCIS and Petitioner Fofana is unlawfully detained.

2. Accordingly, Mr. Fofana petitions this Court to issue a Writ of Habeas Corpus, ordering Respondents to show cause within three days, providing reasons, if any, as to why Petitioner's detention is lawful. 28 U.S.C. § 2243. Mr. Fofana has been detained at the Northwest ICE Processing Center since May 23, 2025. His re-detention is unconstitutional because it is over 13 years, 7 months, and 23 days since his removal order became administratively final and because his removal is not reasonably foreseeable. To vindicate Petitioners' statutory and constitutional rights and to put an end to Mr. Fofana's continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and immediately order his release from unlawful detention.

3. Second, Mrs. Tunkara and Mr. Fofana bring this petition for a Writ of Mandamus to compel Respondents to adjudicate the I-130, Petition for Alien Relative, that has been pending with USCIS since May 13, 2024. Under the Administrative Procedure Act ("APA"), a federal agency must, "within a reasonable time" "proceed to conclude a matter presented to it." *See* 5 U.S.C. § 555(b). Courts are empowered by the APA to "compel agency action unlawfully withheld or unreasonably delayed." *Id.* This action seeks an order from this Honorable Court finding that Defendants have arbitrarily, unlawfully, and unreasonably delayed adjudicating Petitioners' I-130 and adjustment of status applications.

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II. JURISDICTION

4. This Honorable Court has subject matter jurisdiction over the present actions pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2) because Petitioners' claims arise under the laws of the United States, including 28 U.S.C. § 2241 (habeas corpus), Article I § 9, cl. 2 of the United States Constitution (Suspension Clause), 5 U.S.C. §§ 555 and 701, *et seq.* (Administrative Procedure Act or "APA"), 28 U.S.C. § 2201, (the Declaratory Judgment Act), and 8 U.S.C. § 1101, *et seq.* (Immigration and Nationality Act or "INA") (including 8 U.S.C. § 1255), and 28 U.S.C. §§1361 (Writ of Mandamus) and 1651 ("All Writs Act"), and the Due Process Clause of the Fifth Amendment to the Constitution to the United States.

III. VENUE

5. Venue is proper within the Western District of Washington under 28 U.S.C. § 1391(e)(1) because Petitioner Mrs. Tunkara resides within this judicial district and Petitioner Mr. Fofana is detained in civil immigration custody at Northwest ICE Processing Center in Tacoma, Washington.

IV. THE PARTIES

6. Petitioner Fatoumatta Tunkara is a naturalized U.S. citizen and resident of King County, Washington. She filed her I-130 Petition for Alien Relative for Mr. Fofana with USCIS on May 13, 2024.

7. Petitioner Haji Fofana is a citizen and national of Sierra Leone, and is currently detained at the NWIPC in Tacoma, Washington. He filed his I-485 application for adjustment of status with USCIS on May 13, 2024.

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8. Respondent Bruce Scott is employed by the private corporation The Geo Group, Inc., as Warden of the NWIPC, where Petitioner Fofana is detained. He has immediate physical custody of Mr. Fofana. He is sued in his official capacity

9. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bostock is Petitioner Fofana's immediate custodian and is responsible for his detention. He is sued in his official capacity.

10. Defendant Kristi Noem, Secretary of the U.S. Department of Homeland Security, is responsible for the administration and enforcement of immigration laws. She is sued in her official capacity.

11. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

12. Defendant Joseph B. Edlow is the Director of USCIS. USCIS is the agency within the DHS that is responsible for adjudicating Petitioners' pending benefit requests. He is sued in his official capacity.

13. Defendant Jonathan Weeks is the Field Office Director for the USCIS Seattle Field Office, the local USCIS field office responsible for the adjudication of Mrs. Tunkara's I-130 Petition and Mr. Fofana's I-485 Application for Adjustment of Status. He is sued in his official capacity.

14. Defendant Pamela Bondi, Attorney General of the United States, is the head of the U.S. Department of Justice and responsible for the administration and enforcement of immigration laws. She is sued in her official capacity.

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V. STATEMENT OF FACTS

15. Fatoumatta Tunkara is a naturalized U.S. citizen.

16. Haji Fofana is a citizen of Sierra Leone. He first entered the United States in March 2000. He was lawfully inspected and paroled into the United States on December 21, 2005, after returning on humanitarian advanced parole due to his pending asylum application before the Immigration Court.

17. On February 25, 2010, an Immigration Judge within the Executive Office for Immigration Review denied Mr. Fofana's application for asylum and related relief and ordered him removed to Sierra Leone. Mr. Fofana appealed that decision to the Board of Immigration Appeals. Mr. Fofana's removal order became administratively final on December 5, 2011, when the Board of Immigration Appeals dismissed his appeal.

18. On January 6, 2015, the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division at the time placed Mr. Fofana on an Order of Supervision because the agency had failed to effectuate his removal during the period prescribed by law. 8 U.S.C. § 1231(a)(3). The statutory period to enforce the final administrative order of removal expired on March 4, 2012, 90 days after his administrative order of removal became final. 8 U.S.C. § 1231(a)(1)(A)-(B). For over ten years, Mr. Fofana has complied with his Order of Supervision by presenting himself in person at all scheduled check-in appointments and never violating the terms of his Order of Supervision. In fact, Mr. Fofana has never been arrested or convicted of a crime anywhere in the world.

19. On February 8, 2019, Mr. Fofana married Mrs. Tunkara, and together they have three U.S. citizen children. Mr. Fofana has consistently supported his family, taken care of his

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wife and children, paid his taxes, and worked hard to be a contributing member of his community.

20. On May 23, 2024, Mrs. Tunkara filed an I-130 Petition for Alien Relative for Mr. Fofana, and Mr. Fofana concurrently filed an I-485 Application for Adjustment of Status with USCIS. Both the petition and the application remain pending.

21. Defendant USCIS has initial jurisdiction over Mr. Fofana's application for adjustment of status because he is an arriving alien who last entered the United States on parole pursuant to INA § 212(d)(5), despite being subject to an outstanding, unexecuted order of removal. With one limited exception, the 2006 regulations give USCIS sole jurisdiction over the adjustment of status applications of arriving noncitizens in removal proceedings. *See* 8 C.F.R. §§ 245.2(a)(1) (USCIS) and 1245.2(a)(1) (EOIR); *see also* 71 Fed. Reg. 27587 (explaining the agencies' motivation for replacing the former regulations with the interim regulations); *see also* USCIS Policy Manual Volume 7 Adjustment of Status, Chapter 3 Filing Instructions. Moreover, USCIS retains jurisdiction over Mr. Fofana's application for adjustment of status even where there is an outstanding, unexecuted administratively final order of removal. *Matter of Yauri*, 25 I&N Dec. 103, 106 (BIA 2009).

22. On February 20, 2025, Mrs. Tunkara and Mr. Fofana were scheduled for an interview on the pending applications. Petitioners appeared for their interview on March 20, 2025. After waiting over an hour and a half, Petitioners were told that the USCIS officer assigned to their case did not appear that day and that another officer would take over the case. After waiting for almost three hours, a USCIS officer told Petitioners and counsel that they did not know when Petitioners would be called for their interview. Due to the lengthy delay and the

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fact Mr. Tunkara was suffering from ongoing medical complications from an ankle break she sustained in December 2024, counsel asked if the interview could be rescheduled so long as Petitioners would not be prejudiced by the request. A USCIS officer assured counsel and Petitioners that they would not be prejudiced by rescheduling and cancelled the interview. The interview has not yet been rescheduled.

23. On May 23, 2025, Mr. Fofana was detained when he appeared for his scheduled check-in with ERO. He has been detained in the NWIPC in Tacoma, Washington, since that date. At no time prior to his detention did an Officer with ERO revoke the Order of Supervision or allege that Mr. Fofana violated any conditions of the Order of Supervision, which he has complied with for more than a decade. Mr. Fofana does not pose a danger to the community and is not a flight risk, as evidenced by his long-term compliance with his Order of Supervision, lack of criminal history, and deep ties to his community.

24. On May 27, 2025, undersigned counsel filed an I-246 Stay of Removal on Mr. Fofana's behalf and requested ICE conditionally release him so that he could attend his adjustment of status interview with his wife. Every few weeks counsel attempted to follow up with ICE about the pending I-246; each time, counsel was told that the I-246 was under review. On July 7, 2025 counsel was notified by an ERO-ICE Deportation Officer that it could not locate the I-246 submission and requested another copy. Counsel emailed an electronic copy of the I-246 submission to ERO on July 14, 2025, and a second physical copy of the I-246 submission was delivered on Wednesday, July 16, 2025. Respondents have failed to adjudicate Petitioner Fofana's application for a stay of removal, despite repeated requests by undersigned counsel.

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25. Ostensibly, Respondents are detaining Mr. Fofana pending the execution of his final removal order; however, until July 22, 2025, Mr. Fofana had not had any contact with Respondents regarding travel arrangements. Mr. Fofana has fully cooperated with Respondents in their efforts to remove him. Respondents, however, have not secured the necessary paperwork to remove Mr. Fofana.

26. Mr. Fofana's country of origin, Sierra Leone, has long refused to cooperate with U.S. authorities in processing travel documents for returning nationals. Over the past ten years, the U.S. Government has oscillated between deeming the country as fully "recalcitrant" or merely "at risk" of non-compliance. For instance, in September 2017, the first Trump administration imposed visa restrictions on Sierra Leone after it declared the country "recalcitrant" for refusing to accept the return of Sierra Leonan deportees. Again, in June 2025, the second Trump administration partially suspended the admission of Sierra Leone nationals citing the high overstay rate of nonimmigrants and the country's historical reluctance to accept back removable nationals.

27. Separately, while ICE has unlawfully prolonged Petitioner's detention, Defendant USCIS has failed to adjudicate Petitioner's I-130 petition and I-485 application within a reasonable time.

28. If USCIS does not reschedule Petitioners for an interview on their pending applications while Mr. Fofana is still in the U.S., Mr. Fofana will be removed and will have to remain outside of the United States for many years while Defendants USCIS adjudicate the I-130 Petition and additional waivers. Mr. Fofana's removal would cause Mrs. Tunkara and their three

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young, school-aged children irreparable harm. As previously mentioned Mrs. Tunkara was recently hospitalized for complications stemming from her ankle break.

29. Once removed, Mr. Fofana would only be able to return to the United States if Defendants USCIS approve the I-130 Petition, an I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal that would become necessary following his removal, an I-601 Waiver of Certain Grounds of Inadmissibility, and if the U.S. Department of State approved his immigrant visa application following multiple consular interviews. Based on current processing times, the preparation, submission, and adjudication of these various applications could take over ten years. This means that Mr. Fofana potentially faces a decades-long separation from his U.S. citizen wife and young children if his I-130 Petition and concurrently filed application for adjustment of status are not adjudicated while he is still in the U.S.

VI. LEGAL FRAMEWORK

A. Writ of Habeas Corpus

30. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner Fofana is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." 28 U.S.C. § 2243 (emphasis added).

31. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government

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custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

32. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious."). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

33. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during "the removal period," which is defined as the 90-day period beginning on "the latest" of either "[t]he date the order of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen]is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

34. The statute further provides that if the alien does not leave or the Government does not remove the alien within the 90-day removal period, "the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3)

35. Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's]

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removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

36. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

37. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

38. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is "no longer practically attainable, detention no longer 'bears [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* (quoting *Jackson v. Indiana*, 406

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U.S. 715, 738 (1972)). As for the second justification of protecting the community, "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas*, 533 U.S. at 690–91.

39. Thus, under *Zadvydas*, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700. If removal is reasonably foreseeable, "the habeas court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period." *Id.* at 700.

40. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that "Congress previously doubted the constitutionality of detention for more than six months" and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

B. Writ of Mandamus

41. A mandamus plaintiff must demonstrate that: "(1) his or her claim is 'clear and certain'" (2) the duty owed is 'ministerial and so plainly prescribed as to be free from doubt'; and (3) that no other adequate remedy is available." *Huang v. Mukasey*, 545 F.Supp.2d 1170 1172 (W.D. Wash. 2008) *quoting Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997); *Barrow v. Reich*, 13 F.3d 1270, 1374 (9th Cir. 1994).

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C. Administrative Procedure Act

42. Under the Administrative Procedure Act ("APA"), a federal agency must, "within a reasonable time," "proceed to conclude a matter presented to it." *See* 5 U.S.C. § 555(b). Courts are empowered by the APA to "compel agency action unlawfully withheld or unreasonably delayed." *Id.*

VII. FIRST CAUSE OF ACTION
Violation of Fifth Amendment Right to Due Process

43. Petitioner re-alleges and incorporates by reference the paragraphs 1-42 above as though fully set forth herein.

44. 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.

45. Petitioner Fofana has been detained by Respondents for over two months. The entirety of his detention has taken place *after* his removal period ended.

46. Petitioner's removal order became administratively final on December 5, 2011. The removal period began on that day and thus elapsed on March 4, 2012.

47. Petitioner's detention is not likely to end in the reasonably foreseeable future because Respondents have not taken any steps toward effectuating his removal in the nearly 14 years since his removal order became final or in the last 10 years since he has been regularly reporting on an Order of Supervision. Additionally, Sierra Leone, Petitioner's country of origin, has historically refused to cooperate with U.S. authorities to produce travel documents and accept returning deportees. In fact, due to Sierra Leone's long history of noncompliance in accepting returning deportees, the current administration has imposed renewed visa sanctions on the country. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

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48. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

VIII. SECOND CAUSE OF ACTION
Violation of 8 U.S.C. § 1231(a)

49. Petitioner re-alleges and incorporates by reference the paragraphs above 1-42 as though fully set forth herein.

50. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

IX. THIRD CAUSE OF ACTION
Writ of Mandamus to compel officers and agencies of the United States to perform a duty owed to Petitioners

51. Petitioners reallege and incorporates by reference, as if fully set for the here, the allegations in paragraphs 1-42 above.

52. The INA and the regulations issued pursuant to it impose on Defendants a non-discretionary, ministerial duty to adjudicate I-130 petitions for classification as an immediate relative. INA § 204(a)(1)(A)(ii); *see also* 28 U.S.C. § 1361.

53. Here, because Defendants have failed to fulfill their duty to adjudicate the Petitioner's I-130 petition and I-485 application, Petitioners now seek a writ of mandamus to compel USCIS to adjudicate the I-130 petition and I-485 application. Petitioners have brought

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this action because they have a clear right to the relief requested and because Defendants have a clear duty pursuant to the INA to adjudicate Petitioners' I-130 petition and I-485 application, and there is no other adequate remedy available.

54. Petitioners have no alternative means to obtain adjudication of Mrs. Tunkara's I-130 Petition and Mr. Fofana's I-485 application for adjustment of status, as jurisdiction over both the petition and the adjustment of status application lies solely with USCIS. Their right to an issuance of a writ of mandamus is "clear and indisputable." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 289 (1988).

55. The Court's intervention is also appropriate because Defendants have failed to act.

X. FOURTH CAUSE OF ACTION
Administrative Procedure Act, 5 U.S.C. § 706(1): Agency Action Unreasonably Delayed

56. Petitioners reallege and incorporate by reference, as if fully set forth here, the allegations in paragraphs 1-42 above.

57. The Administrative Procedures Act requires agencies to "proceed to conclude a matter presented" to the agency "within a reasonable time." 5 U.S.C. § 555(b).

58. Here, Defendants have failed to adjudicate Petitioners' I-130 petition and I-485 application, which has been pending since May 13, 2024, within a reasonable time and this failure constitutes agency action "unreasonably delayed" within the meaning of 5 U.S.C. § 706(1) and denied Petitioners due process and equal protection of the laws guaranteed by the Fifth Amendment of the Constitution.

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59. Petitioners have brought this action because Petitioners have no other means to compel Defendants to act, and Petitioners have exhausted all available remedies.

60. Based on the foregoing, Petitioners are entitled to an order directing Defendants to adjudicate the I-130 petition and I-485 application in accordance with the APA.

XI. REQUEST FOR RELIEF

WHEREFORE, the Petitioners request that this Court grant the following relief:

1. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);
2. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner to allow im to continue his Order of Supervision;
3. Declare that Respondents and those acting under their authority have a duty to adjudicate Petitioner Mrs. Tunkara's I-130 Petition for Alien Relative;
4. Compel Respondents and those acting under their authority to immediately reschedule an interview on Petitioners' I-130 Petition and I-485 Application for Adjustment of Status;
5. Award attorneys' fees and costs to Petitioner under the Equal Access to Justice Act, and on any other basis justified under law, and;
6. Grant Plaintiff any further relief deemed proper by this court.

Respectfully submitted this 28th day of July 2025.

s/ Julia C. Hunter

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