IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VENTURA **ARROYO BORJA**,

Petitioner,

v.

DIRECTOR, U.S. Department of Homeland Security ("**DHS**") Immigration and Customs Enforcement ("**ICE**") Enforcement and Removal Operations ("**ERO**") **Miami Field Office**; **ACTING DIRECTOR**, **U.S. DHS ICE**; **SECRETARY**, **DHS**; and **U.S. ATTORNEY GENERAL**;

Respondents.
_____/

CASE NO.

JUDGE:

MAGISTRATE JUDGE

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Petitioner, VENTURA ARROYO BORJA, by and through undersigned counsel, and hereby brings this Petition and sues the Respondents and alleges as follows:

I. INTRODUCTION

1. The Petitioner is a citizen and national of Mexico. *See* Exh. 1 (Passport).

2. The Petitioner is in the Respondents' physical custody at the DHS ICE ERO Broward Transitional Center, an immigration detention center under the Respondents' and their agents' direct control within this district in Pompano Beach, Florida. *See id.*

3. The Petitioner respectfully requests *inter alia* that: (1) this Honorable Court issue an Order to Show Cause ("OSC") within three days pursuant to 28 U.S.C. § 2243; (2) declare that the Respondents have violated the Petitioner's Fifth Amendment Constitutional rights; (3) declare

that the Respondents have violated the APA; (4) grant a Writ of Habeas Corpus and order the Respondents to release her from custody; and (5) order other relief as described herein.

4. This action arises under the United States Constitution and the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, as the Petitioner challenges detention as a violation of: the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA and regulations thereunder; and the Administrative Procedure Act ("APA").

5. In addition, this Honorable Court has jurisdiction over this complaint under: 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); and APA, 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy), and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed).

6. This Honorable Court may grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

II. VENUE

7. Venue is proper in this district under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (plaintiff resides in this district and no real property is at issue).

8. The Petitioner is in the Respondents' physical custody within this district at the Broward Transitional Center, an immigration detention center under the direct control of the Respondents and their agents. *See* 28 U.S.C. § 2241(a) (providing for habeas petitions "within [courts'] respective jurisdictions"); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain

language of the habeas statute […] confirms the general rule that for core habeas petitions challenging physical confinement, jurisdiction lies in only one district: the district of confinement").

III. PARTIES

9. Petitioner VENTURA ARROYO BORJA is citizen and national of Mexico who is in the Respondents' physical custody; the Respondents have assigned her Alien Registration No. A[redacted]

10. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Director. In this official capacity, he is responsible for the ICE Field Office with administrative jurisdiction over the Petitioner and he is a legal custodian of the Petitioner.

11. The Petitioner brings a suit against the Respondent DHS ICE Acting Director. In this official capacity, he is a legal custodian of the Petitioner.

12. The Petitioner brings a suit against the Respondent DHS Secretary. In this official capacity, she is a legal custodian of the Petitioner.

13. The Petitioner brings a suit against the Respondent Attorney General of the U.S. Department of Justice. In this official capacity, she is responsible for the Executive Office for Immigration Review ("EOIR"), the agency that administers the immigration courts, which conduct custody redetermination (bond) hearings and removal proceedings. *See* 8 U.S.C. § 1103.

IV. CUSTODY

14. The Petitioner is in the Respondents' physical custody within this district at the Broward Transitional Center, an immigration detention center in Pompano Beach, Florida, under the direct control of the Respondents and their agents. *See* 28 U.S.C. § 2241(c) (civil habeas statute applies to individuals who are "in custody").

V. STATEMENT OF THE FACTS

15. The Petitioner was born on [redacted] in Mexico. *See* Exh. 1 (Passport).

16. On or about August 01, 2000, a supervisory immigration inspector for the Department of Justice legacy Immigration and Naturalization Service ("INS") at the Gateway to the Americas Port-of-Entry at Laredo, Texas, determined that the Petitioner was inadmissible to the U.S. pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and issued the Petitioner an Order of Removal pursuant to 8 U.S.C. § 1225(b)(1); the INS then returned the Petitioner to Mexico. *See* Exh. 2 (Notice and Order of Expedited Removal (Form I-860) and Notice to Alien Ordered Removed/Departure Verified (Form I-296) dated August 01, 2000).

17. On or about February 23, 2024, a DHS ICE ERO deportation officer in Stuart, Florida, issued the Petitioner a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) noting that the Petitioner is "an alien subject to a prior order of deportation/exclusion/removal entered on August 1, 2000 at Laredo, TX." *See* Exh. 3 (Form I-871 and Certification of Reinstatement of Removal Order dated February 23, 2024, noting the Petitioner had reentered the U.S. on an unknown date and at an unknown place).

18. On or about the same day, the deportation officer provided the Petitioner with a Notice of Custody Determination (DHS Form I-286) indicating that the DHS ICE ERO would release the Petitioner on her own recognizance and the officer issued the Petitioner an Order of Supervision ("OSUP") (ICE Form I-220B) requiring that the Petitioner comply with certain conditions upon release. *See* Exh. 4 (DHS Form I-286) and Exh. 5 (OSUP).

19. On or about July 24, 2024, the Petitioner filed a Petition for U Nonimmigrant Status (Form I-918) and Application for Advance Permission to Enter As Nonimmigrant (Form I-192) with the DHS U.S. Citizenship and Immigration Services ("USCIS") requesting an expedited Bona Fide Determination ("BFD"). *See* Exh. 6 (USCIS Receipt Notices and filing cover letter).

20. On or about July 29, 2024, 157 days after reinstating the removal order, the Respondents detained the Petitioner at the Respondents' Broward Transitional Center in Pompano Beach, Florida. *See* Exh. 7 (USCIS Record of Determination/Reasonable Fear Worksheet (Form I-899) and DHS Notice of Referral to Immigration Judge (Form I-863) dated August 08, 2024).

21. On or about August 07, 2024, a USCIS Asylum Office interviewed the Petitioner and determined that she was credible and had a reasonable fear of torture in Mexico. *Id.*

22. Accordingly, on or about August 08, 2024, the Respondents referred the Petitioner to an Immigration Judge pursuant to 8 C.F.R. § 208.31(e) for withholding-of-removal-only proceedings pursuant to 8 C.F.R. § 208.16. *Id.*

23. On or about January 07, 2025, an Immigration Judge ("IJ") at the Broward Transitional Center Immigration Court granted the Petitioner's "application for Withholding of Removal, finding that she had met her burden of establishing a clear probability of persecution in Mexico on account of her domestic relationship with her husband." *See* Exh. 8 (IJ Order dated August 19, 2025).

24. The DHS appealed this decision, and the Board of Immigration Appeals ("BIA") remanded the case to the Immigration Court for further factfinding. *See id.*

25. On or about August 19, 2025, the IJ again ordered that the Petitioner's application for withholding of removal was granted. *See id.*

26. On or about September 02, 2025, the DHS appealed the IJ's decision. *See* Exh. 9 (BIA Filing Receipt for Appeal or Motion dated September 11, 2025).

VI. LEGAL BACKGROUND

A. Habeas Corpus Petition Rights

27. The right to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 provides "a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

28. Congress provided that district courts have the power to grant a writ of habeas corpus to a person who is in custody in violation of the Constitution or laws of the United States. *See* 28 U.S.C. § 2241(c)(3).

29. The Supreme Court has noted that habeas corpus review has historically played an important role in immigration cases:

> Before and after the enactment in 1875 of the first statute regulating immigration, 18 Stat. 477, [...] [habeas corpus] jurisdiction was regularly invoked on behalf of noncitizens, particularly in the immigration context. [...] In case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive interpretations of the immigration laws.

St. Cyr, 533 U.S. at 305-06.

30. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Id.* at 301.

B. Detention and Removal Under 8 U.S.C. § 1231

31. Section 1231 provides for detention and release of individuals with administratively final removal orders, including individuals granted withholding of removal and relief under the Convention Against Torture. 8 U.S.C. § 1231(a); *see also* 8 C.F.R. § 1241.1 (noting when a removal order becomes final); 8 C.F.R. § 241.4(b)(3) (individuals granted withholding of removal remain subject to detention).

32. Section 1231 provides that if "an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5).

33. This section provides that the DHS "shall detain the alien" and physically remove the alien from the United States within a 90-day "removal period." *Id.* § 1231(a)(1)(A), (2).

34. Despite the statutory 90-day deadline for removal, in certain circumstances the statute authorizes the DHS to detain an alien beyond the removal period, including where the alien is inadmissible or the DHS determines that the alien is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

35. Due to the "serious constitutional concerns" that would arise if § 1231 were interpreted to authorize "indefinite detention," however, the Supreme Court has "construe[d] the statute to contain an implicit 'reasonable time' limitation, the application of which is subject to federal-court review." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

36. "Freedom from imprisonment … lies at the heart of the liberty that [the Fifth Amendment's Due Process] Clause protects." *Id.* at 690.

37. The Supreme Court held specifically that § 1231 authorizes post-removal-period detention only for "a period reasonably necessary to bring about that alien's removal from the United States," and that such a period is presumptively six months. *Id.* at 689, 701.

38. After the six-month period, if "the alien 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" or release the detainee. *Id.* at 701; *see also* 8 C.F.R. § 241.13(a) ("special review procedures for those aliens" who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she

was ordered removed, or to a third country, in the reasonably foreseeable future"); *id.* § 241.4(d)(1) (providing for release under OSUP if detainee "would not pose a danger to the community … or a significant risk of flight").

39. "If no exception applies, an alien who is not removed within the 90-day removal period will be released subject to supervision." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (citing to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5).

40. The Supreme Court has held that 8 U.S.C. § 1231, and not § 1226, governs detention of individuals subject to a reinstated removal order. *Guzman Chavez*, 594 U.S. at 526.

41. Post-removal-detention begins 90 days after reinstatement of a prior removal order. *See Castaneda v. Perry*, 95 F.4th 750, 756 (4th Cir. 2024).

C. Due Process Constitutional Rights

42. The Due Process Clause of the Fifth Amendment provides that "[n]o person […] [shall be] deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

43. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

44. Immigration detention must always "bear […] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003).

45. "[T]he Due Process Clause [of the Fifth Amendment] applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693-94 (citing *Wong Wing v. U.S.*, 163 U.S. 228 (1896)).

46. "Detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process […] [and] the Due Process Clause does not require [the government] to

employ the least burdensome means to accomplish its goal," but civil detention of noncitizens is not without limits. *Demore*, 538 U.S. at 523, 528.

47. Specifically, civil immigration detention is constitutional only in "certain special and narrow nonpunitive circumstances" and it must "bear a reasonable relation to the purpose" of the detention. *Zadvydas*, 533 U.S. at 690 (citations, brackets, and quotations omitted).

48. "Rather than punishment, immigration detention must be motivated by the two valid regulatory goals that the government has previously argued motivate the statute: 'ensuring the appearance of aliens at future immigration proceedings and preventing damage to the community." *Ozturk v. Trump*, No. 25-CV-374, 2025 WL 1145250, at *20 (D. Vt. Apr. 18, 2025) (quoting *Zadvydas*, 533 U.S. at 690).

49. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him or the right to stay and live and work in the land of freedom").

50. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test that the Supreme Court set forth in *Mathews v. Elridge*, 424 U.S. 319, 335 (1976).

51. Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

52. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether the respondents have provided constitutionally sufficient process. *See id.* at 332-33.

53. In making this determination, the Court balances (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." *Id.* at 335.

D. U Nonimmigrant Status and Deferred Action

54. Congress created the U-nonimmigrant classification as part of the Victims of Trafficking and Violence Protection Act of 2000. In enacting this law, Congress recognized that the U-nonimmigrant status process would "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status" and "give law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions." *See* section 1513(a)(2)(B), Public Law No.: 106-386, 114 Stat. 1464.

55. U-nonimmigrant status provides temporary immigration benefits to certain victims of criminal activity who: (1) have suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; (2) have information regarding the criminal activity; and (3) assist government officials in the investigation and prosecution of such criminal activity. 8 U.S.C. § 1184(p)(2).

56. Additionally, the criminal activity must have violated U.S. law or occurred in the United States or its territories and possessions. 8 U.S.C. § 1101(a)(15)(U)(i).

57. A petitioner for U-nonimmigrant status must submit an application to USCIS with a certification from a law enforcement agency indicating that *inter alia* the petitioner is a victim of qualifying criminal activity and has been, is, or is likely to be helpful in the investigation or prosecution of the relevant criminal activity. 8 U.S.C. § 1184(o); 8 C.F.R. § 214.14(c)(2)(i). The alien also must submit biometric data and a personal statement. 8 C.F.R. § 214.14(c)(2)(ii)-(iii).

58. A final removal order does not strip USCIS of jurisdiction to adjudicate an I-918 Petition. 8 C.F.R. § 214.14(c)(1)(ii).

59. Pursuant to 8 U.S.C. § 1184(p)(2), USCIS may only issue 10,000 "U-visas" per year. *See also* 8 C.F.R. § 214.14(d)(1).

60. "[T]hat cap has been reached each year since 2009." *De Sousa v. Dir. Of U.S. Citizenship and Immigration Services*, 755 F. Supp. 3d 1266, 1268 (N.D. Cal. 2024).

61. In the recent decision in *De Sousa*, the Court explained how USCIS has addressed this problem as follows:

> In response, USCIS established a regulatory waiting list process. 8 C.F.R. §214.14(d)(2). If USCIS determines that a U visa is approvable but cannot be granted "due solely" to the 10,000-person cap, the petitioner "must be placed on [the] waiting list." *Id*. The wait time for issuance of a U visa is at least seven or eight years. USCIS prioritizes the U visa applications that have been pending the longest. 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7. As of October 2024, USCIS was issuing U visas only for petitions filed in or before November 2016. *See* https"//www.usics.gov/I918 (last visited November 5, 2024).
>
> But the waiting list has a backlog of its own. In 2020, for example, "the median processing time from receipt of a U visa petition until placement on the waiting list was 50.9 months." USCIS, Humanitarian Petitions: U Visa Process Timings, Fiscal Year 2021 Report to Congress (available at https://www.uscis.gov/sites/default/files/document/reports/USCIS-Humanitarian-Petitions.pdf). USCIS has been repeatedly sued for allegedly lengthy delays in its issuance of waiting list decisions. *See, e.g., Barrios Garcia v. U.S. Dep't of Homeland Sec.*, 25 F.4th 430, 452-54 (6th Cir. 2022); *Gonzalez v. Cuccinelli*, 985 F.3d 357, 374-76 (4th Cir. 2021).
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> Due to the "growing backlog awaiting placement on the waiting list," USCIS issued a Policy Alert creating an abbreviated, substitute process: a bona fide determination. […]. The USCIS Policy Manual sets forth the procedures for that process. USCIS "determines whether a petition is bona fide based on the petitioner's compliance with initial evidence requirements and successful completion of background checks." USCIS, Policy Manual, Vol. 3, Part C, Ch. 5 (available at https://www.usics.gov/policy-manual/volume-3-part-c-chapter-5). If a U visa petition is deemed bona fide, USCIS grants the petitioner "deferred action," along with work authorization. *Id*. "Deferred action" refers to an "exercise in administrative discretion" under which "no action will thereafter be taken to proceed" with the applicant's removal from the United States. [*Am.-Arab Anti-Discrimination Comm*., 525 U.S. at 484] (citation omitted). Petitioners who do not

> receive a bona fide determination are generally not considered for a waiting list decision. USCIS, Policy Manual, Vol. 3, Part C, Ch. 6.

De Sousa, 755 F. Supp. 3d at 1269-70.

62. The USCIS Policy Manual notes that "[t]he evaluation performed by USCIS to determine whether a petition is bona fide and whether a petitioner receives a BFD [Employment Authorization Document ("EAD")] is a more complex evaluation than looking at the petition on its face alone." USCIS, Policy Manual, Vol. 3, Part C, Ch. 5

63. The USCIS Policy Manual further explains that "USCIS generally does not conduct waiting list adjudications for aliens who USCIS grants BFD EADs and deferred action to; these petitioners' next adjudicative step is final adjudication when space is available under the statutory cap." *Id.*

64. The regulations note, however, that "a petitioner may be removed from the waiting list, and the deferred action […] may be terminated at the discretion of USCIS." 8 C.F.R. § 214.14(d)(3).

E. Stay of Removal

65. The DHS may stay a final removal order against an alien to allow the alien to pursue relief or in light of practical or humanitarian considerations. *See* 8 C.F.R. § 241.6 (DHS stay of removal authority); 8 U.S.C. § 1231(c)(2) (providing for stay of removal for aliens found removable at port-of-entry); *see also* 8 U.S.C. § 1227(d)(1) ("If the [DHS Secretary] determines that an [I-918 Petition] sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under [8 U.S.C. § 1231(c)(2)] until" the Petition is approved or denied).

66. An alien who has been granted a stay of removal may be released from detention pursuant to "conditions [that the DHS Secretary] may prescribe." 8 U.S.C. § 1231(c)(3); *see also*

8 U.S.C. § 1231(a)(3) (after 90-day period, authorizing supervision under regulations subject to certain conditions); 8 C.F.R. § 241.1 (regulations regarding continued detention of inadmissible aliens beyond removal period); 8 C.F.R. § 241.5(a) (requirements for OSUP).

67. A stay of removal does not confer eligibility for work authorization, but an OSUP does confer such eligibility under certain circumstances. *See* 8 C.F.R. § 274a.12 (not listing stay of removal as basis for work authorization); *but see id.* at § 274.a.12(c)(18) (work authorization available with OSUP).

68. "Any alien [...] who has been released under an [OSUP] or other conditions of release who violates the conditions of release may be returned to custody." 8 C.F.R. § 241.4(l)(1).

69. "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

70. "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in [8 C.F.R. § 241.4]." *Id.* at § 241.4(l)(2).

71. "A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." *Id.*

72. "Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.*

73. Moreover, "[a]ny alien who has been released under an [OSUP] who violates any of the conditions of release may be returned to custody […]." *Id.* at § 241.13(i)(1)

74. "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* at § 241.13(i)(2).

75. "Upon revocation, the alien will be notified of the reasons for revocation of his or her release." *Id.* at § 241.13(i)(3).

76. "The service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

77. "The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.*

78. "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.*

F. The APA

79. Federal agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.

80. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

81. Under the APA, this Honorable Court has authorization to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).

82. An agency must "conclude a matter presented to it [...] within a reasonable time." 5 U.S.C. § 555(b).

83. "A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof." 5 U.S.C. § 702. Agency action includes the failure to act. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004).

VII. CLAIMS FOR RELIEF

COUNT I

RESPONDENTS HAVE VIOLATED THE PETITIONER'S DUE PROCESS RIGHTS

84. Petitioner ARROYO BORJA repeats and re-alleges paragraphs 1 through 83 as though fully set forth herein.

85. The Respondents have failed to provide the Petitioner with due process pursuant to the Fifth Amendment.

86. The Petitioner's prolonged mandatory detention has violated the Due Process Clause of the Fifth Amendment under the *Mathews* framework.

87. The Petitioner's post-removal-detention period began on or about February 23, 2024, the day that the Respondents reinstated her prior removal order. *See* Exh. 3.

88. The Respondents have detained the Petitioner for 415 days, since on or about July 29, 2024. *See* Exh. 7.

89. Here, the Petitioner's interest is substantial, as freedom from physical restraint is an interest that "lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

90. The Respondents have failed to provide the Petitioner with sufficient due process. *See Mathews*, 424 U.S. at 335.

91. The first *Mathews* factor, the private interest affected, weighs in the Petitioner's favor as the detention has become prolonged. *See Velasco Lopez v. Decker,* 978 F.3d 842, 855 (2d Cir. 2020) ("While the Government's interest may have initially outweighed short-term deprivation of [the petitioner's] liberty interests, that balance shifted once his imprisonment became unduly prolonged").

92. The second *Mathews* factor, risk of erroneous deprivation of such private interest through the procedures use, and the probable value, if any, of additional or substitute procedural safeguards, also weighs in the Petitioner's favor. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004) (in second *Matthews* factor analysis, primary interest is not that of the Respondents but the interest of the detainee).

93. The third *Mathews* factor, the government's interests, also strongly favors the Petitioner because the government's interest in detaining the Petitioner without a bond hearing is weak because her continued detention does not align with the fundamental purposes of detention of mitigating flight risk or preventing danger to the community. *See Zadvydas*, 533 U.S. at 690.

94. Moreover, the prolonged mandatory detention violates 8 U.S.C. § 1231(a)(6) under *Zadvydas* because the Petitioner's removal is not reasonably foreseeable because of her pending I-918 Application and the IJ's grants of withholding of removal notwithstanding the Respondents' appeals of the IJ orders. *See* Exh. 6; Exh. 8; *see also De Sousa*, 755 F. Supp. 3d at 1269-70 (discussion of U-nonimmigrant status and BFD deferred action); *Quezada-Martinez v. Moniz*, 722 F.Supp.3d 7, 12 (D. Mass 2024) (finding no significant likelihood of removal when "removal does

not hinge only on a single pending action before the BIA, but rather on the outcome of several lengthy remand and appeal proceedings […]").

COUNT II

APA VIOLATION

95. Petitioner ARROYO BORJA repeats and re-alleges paragraphs 1 through 83 as though fully set forth herein.

96. Under the APA, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. § 704.

97. The reviewing court "shall […] hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A).

98. Assuming *arguendo* that the Respondents' basis for re-detaining the Petitioner is 8 U.S.C. § 1231, the detention is unlawful.

99. 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory period "shall be subject to supervision," and the Petitioner was complying with an OSUP beyond 90 days from the reinstatement of the removal order when the Respondents detained her.

100. Assuming *arguendo* that the Respondents have revoked the Petitioner's OSUP, the revocation occurred without notice or an opportunity to be heard in violation of 8 C.F.R. §§ 241.4(l) and 241.13(i).

VIII. RELIEF REQUESTED

WHEREFORE, Petitioner ARROYO BORJA prays that this Honorable Court grant the following relief:

1. Accept jurisdiction over this action.

2. Issue an Order to Show Cause pursuant to 8 U.S.C. § 2243 directing the Respondents to file a return in three days of the Order directing the Respondents to show cause why the Court should not grant a Writ of Habeas Corpus.

3. Issue a Writ of Habeas Corpus requiring the Respondents to produce the Petitioner.

4. Declare that the Respondents' detention of the Petitioner violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

5. Declare that the Respondents have violated the APA.

6. Grant temporary and permanent injunctive relief requiring the Respondents to release the Petitioner from custody.

7. Award Petitioner ARROYO BORJA reasonable costs and attorney fees for bringing this action.

8. Grant such further relief as Petitioner ARROYO BORJA may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted this 17th day of September, 2025,

By: **/s/ Andrew W. Clopman**
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VERIFICATION

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner's attorneys and I have discussed the facts within this Petition with the Gina Fraga, Esq., the Petitioner's counsel in removal proceedings before the Respondents and in I-918 proceedings before USCIS. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Respectfully submitted this 17th day of September, 2025,

By: **/s/ Andrew W. Clopman**

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