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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

KIMBERLYN YARTIZA MENJIVAR
AGUILAR,

Case No.: 25-4236

Petitioner,

**PETITION FOR WRIT OF
HABEAS CORPUS**

v.

SAMUEL J. OLSON, Field Office Director of
Enforcement and Removal Operations, St. Paul
Field Office, Immigration and Customs
Enforcement; KRISTI NOEM, in her official
capacity as Secretary of U.S. Department of
Homeland Security; PAMELA BONDI, in her
official capacity as U.S. Attorney General;
TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing
the Duties of the Director of U.S. Immigration
and Customs Enforcement; ERIC
TOLLEFSON, Kandiyohi County Jail Sheriff

Respondents.

INTRODUCTION

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2 1. This case is about a 21-year-old with Special Immigrant Juvenile Status (“SIJS”) who cannot be removed from the United States because she has a valid grant of Deferred Action. 3
4 Nevertheless, Respondents seek to detain her in contravention of federal law and the Constitution.

5 2. Kimberlyn Yartiza Menjivar Aguilar is currently 21 years old. Her most recent 6
7 residence prior to being detained was in Watertown, South Dakota. She resided there with her partner and her now seven-month-old baby. On September 30, 2025, Immigration and Customs 8
9 Enforcement (“ICE”) arrested Kimberlyn without a warrant while she was attending a routine fingerprinting appointment with USCIS at their Application Support Center (“ASC”) in St. Paul, 10
11 Minnesota. She was asked if she was still breastfeeding her six-month-old (at the time) infant. Kimberlyn, not aware of the weight of her answer, stated she was not, to which an officer signaled 12
13 to another office to come forward and proceeded to arrest and detain Kimberlyn. Kimberlyn was transferred to the Kandiyohi County Jail in Willmar, Minnesota, where she has remained detained 14
15 ever since.

16 3. Kimberlyn came to the United States from Honduras when she was 17 years old, after suffering [REDACTED] s. She was initially 17
18 detained by the Department of Homeland Security (“DHS”). Designated as an Unaccompanied Alien Child (“UAC”), and transferred to the custody of the Office of Refugee Resettlement 19
20 (“ORR”). ORR released her into the custody of her father, who at that time was residing in South Dakota.

21 4. Kimberlyn’s father took possession of all of Kimberlyn’s immigration documents. 22
23 Then, instead of enrolling her in school, he forced her to work to pay for an attorney for her immigration case that he never actually hired. Unbeknownst to her, Kimberlyn was scheduled to 24

1 appear in the Fort Snelling Immigration Court on October 12, 2022, but because her father failed
2 to take her or notify her, she failed to appear and was ordered removed *in absentia*.

3 5. On March 3, 2025, U.S. Citizenship and Immigration Services (“USCIS”) approved
4 Kimberlyn for SIJS after a Minnesota state juvenile court determined that it was not in Kimberlyn’s
5 best interests to return to Honduras. SIJS is a humanitarian immigration protection enshrined in
6 federal statute that is designed to afford certain immigrant children who have suffered parental
7 abuse, neglect, abandonment, or similar mistreatment the opportunity to remain safely and
8 permanently in the United States. However, because of a visa backlog, young people with SIJS
9 must wait—often years—before they are able to apply for a green card and gain lawful permanent
10 resident (“LPR”) status.

11 6. Under a USCIS policy designed to protect these vulnerable youth during this wait,
12 with the approval notice, USCIS also provided Kimberlyn with a four-year, renewable grant of
13 deferred action and accompanying employment authorization. This allowed her to start building a
14 stable life here in the United States without the threat of deportation while she waits to apply for
15 permanent residence. The ASC appointment where Kimberlyn was detained was part of the
16 process for obtaining her employment authorization document based on the deferred action USCIS
17 gave her.

18 7. While Kimberlyn has an order of removal *in absentia* from 2022, issued against
19 her without her knowledge, her grant of deferred action prevents ICE from deporting her.

20 8. Moreover, deporting Kimberlyn would completely undermine the purpose of the
21 SIJS statute. Through her grant of SIJS, Kimberlyn is on a path to permanent legal status, which
22 she must remain in the United States to access. Respondents’ efforts to block Kimberlyn from
23 accessing the protections Congress specifically enacted for the benefit of juveniles like her
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1 improperly subverts Congress' intent that she be permitted to adjust status and establish a stable
2 life in the United States.

3 9. Kimberlyn's warrantless arrest violated her statutory and Fourth Amendment rights.
4 Because Kimberlyn cannot be removed, her ongoing detention—particularly without an
5 individualized review—serves no lawful purposes and runs afoul of the substantive and procedural
6 due process protections of the Fifth Amendment. Kimberlyn brings this habeas petition
7 challenging her unlawful arrest and detention. To be clear, this petition does not challenge
8 Respondents' ability to issue a removal order against Kimberlyn and does not challenge the
9 removal order; it strictly seeks to liberate Kimberlyn from detention on the basis that her arrest
10 was unlawful, her detention serves no lawful purpose, and her removal is not reasonably
11 foreseeable. "Freedom from imprisonment—from government custody, detention, or other forms
12 of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533
13 U.S. 678, 679 (2001).

14 **PARTIES**

15 10. Petitioner **Kimberlyn Yaritza Menjivar Aguilar** is a 21-year-old mother of a
16 seven-month-old U.S. citizen infant, who came to the United States at the age of 17 on her own.
17 She has an approved SIJS petition, she has been granted deferred action, and she has no criminal
18 history. Nonetheless, on September 30, 2025, ICE arrested Kimberlyn while she attending a
19 fingerprinting appointment scheduled by USCIS as part of her application for employment
20 authorization, a benefit of the deferred action conferred upon her. Kimberlyn is now detained at
21 Kandiyohi County Jail in Willmar, Minnesota. She is currently in the custody of Respondents.

1 11. Respondent **Samuel J. Olson** is the Director of the St. Paul Field Office of ICE's
2 Enforcement and Removal Operations division. As such, he is Kimberlyn's immediate custodian
3 and is responsible for Kimberlyn's detention and removal. He is named in his official capacity.

4 12. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security.
5 She is responsible for the implementation and enforcement of the Immigration and Nationality Act
6 (INA), and oversees ICE, which is responsible for Kimberlyn's detention. Ms. Noem has ultimate
7 custodial authority over Kimberlyn and is sued in her official capacity.

8 13. Respondent **Pamela Bondi** is Attorney General of the United States. As Attorney
9 General, Respondent Bondi oversees the immigration court system, including the immigration
10 judges who conduct bond hearings as her designees, and is responsible for the administration of
11 immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering
12 Kimberlyn's removal and bond proceedings, including the standards used in those proceedings,
13 and as such, she is Kimberlyn's legal custodian. She is sued in her official capacity.

14 14. Respondent **Todd Lyons** is sued in his official capacity as Acting Director of ICE,
15 and as such is the legal custodian of Kimberlyn.

16 15. Respondent **Eric Tollefson** is sued in his official capacity as Kandiyohi County
17 Sheriff. The Kandiyohi County Jail, where Kimberlyn is detained, is operated by the Kandiyohi
18 County Sheriff's Office, which has ultimate authority over the Jail. He is responsible for the
19 operations of the Kandiyohi County Jail and is the immediate physical custodian of Kimberlyn.

20 **JURISDICTION AND VENUE**

21 16. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
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1 corpus), 28 U.S.C. § 1331 (federal question), Art. I, § 9, cl. 2 of the United States Constitution (the
 2 Suspension Clause), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory
 3 Judgment Act).

4 17. Federal district courts have jurisdiction to hear habeas claims brought by
 5 noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–
 6 17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvyda*, 533
 7 U.S. at 687 (same); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (same).

8 18. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because
 9 Kimberlyn is detained within the District of Minnesota, her immediate physical custodian is
 10 located within this District, and a substantial part of the events giving rise to this petition occurred
 11 and continue to occur within this District.

12 **REQUIREMENTS OF 28 U.S.C. § 2243**

13 19. The Court must grant the petition for writ of habeas corpus or order Respondents
 14 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
 15 order to show cause is issued, the Respondents must file a return “within three days unless for
 16 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17 20. Habeas corpus is “perhaps the most important writ known to the constitutional
 18 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
 19 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
 20 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
 21 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
 22 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

23 **LEGAL FRAMEWORK**

24

1 **A. SIJS Provides a Pathway to Permanent Status for Certain Vulnerable Young People**

2 21. In 1990, Congress created SIJS to protect vulnerable immigrant children and
3 provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104
4 Stat. 4978 (1990) (amending various sections of the Immigration and Nationality Act (“INA”));
5 Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) (“This rule alleviates
6 hardships experienced by some dependents of United States juvenile courts by providing qualified
7 [noncitizens] with the opportunity to apply for special immigrant classification and lawful
8 permanent resident status, with [the] possibility of becoming citizens of the United States in the
9 future.”). Since 1990, Congress has amended the INA multiple times to expand the protections of
10 SIJS, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act, Pub.
11 L. 110-457, § 235(d), 122 Stat. 5044 (2008).

12 22. To be granted SIJS, youths like Kimberlyn must first “satisfy[] a set of rigorous,
13 congressionally defined eligibility criteria.” *Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153, 163
14 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJS designation, as relevant
15 here, are noncitizen youth who are present in the United States; who have been declared dependent
16 on a state juvenile court; who cannot be reunified with one or more parents because of abuse,
17 neglect, or abandonment; and for whom it has been determined that it is not in their best interest
18 to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

19 23. Crucially, a noncitizen youth is eligible for SIJS only if he or she is “*present* in the
20 United States.” 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense
21 in light of the purpose of the SIJS statute. SIJS is predicated on a state court finding that the youth
22 cannot be safely reunited with parent(s), nor safely sent back to their country of origin. The design
23 of this program, then, “show[s] a congressional intent to assist a limited group of abused children
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1 to remain safely in the country with a means to apply for LPR status.” *Garcia v. Holder*, 659 F.3d
2 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

3 24. Youth can apply for SIJS upon receipt of a state court order finding they cannot be
4 safely reunited with parent(s) nor safely sent back to their country of origin. The application
5 process includes submitting a Form I-360 SIJS Petition to USCIS, along with the predicate state
6 court order and other supporting evidence. *See* 8 C.F.R. § 204.11(b). USCIS then considers the
7 application and supporting documentation to determine whether to exercise its statutory “consent
8 function” to approve the petition. *See* 8 U.S.C. § 1101(a)(27)(J)(iii). By exercising its statutory
9 consent function to grant SIJS, the agency recognizes the state court’s determinations, including
10 that the child’s return to their country of origin would be contrary to their best interests. 8 U.S.C.
11 § 1101(a)(27)(J)(iii).

12 25. SIJS may be revoked only for what the Secretary of Homeland Security deems
13 “good and sufficient cause.” 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations,
14 such revocation must be made upon notice to the youth in question, who must be permitted the
15 opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision.
16 *See* 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the
17 opportunity to appeal the decision. *See* 8 C.F.R. § 205.2(c) & (d). Revocation of a SIJS petition
18 may only be performed by a USCIS officer authorized to approve such petition in the first instance.
19 *See* 8 C.F.R. § 205.2(a).

20 26. The main benefit of SIJS—and indeed, its core purpose—is that it confers on
21 vulnerable young people like Kimberlyn the right to seek LPR status while remaining in the United
22 States, through a process called adjustment of status. *See* 8 U.S.C. 1255(h).

1 27. To facilitate this process, Congress removed numerous barriers to adjustment of
2 status for SIJS beneficiaries through amendments to the SIJS provisions in 1991 and again in 2008.
3 For example, SIJS youth are “deemed . . . to have been paroled into the United States” for the
4 purposes of adjustment of status. 8 U.S.C. § 1255(h)(1). Further, Congress exempted SIJS youth
5 from many common inadmissibility grounds and created a generous waiver of many of the
6 nonexempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2). And, Congress explicitly provided
7 that certain grounds for removal “shall not apply to a special immigrant described in section
8 1101(a)(27)(J) of this title [the SIJS statute] based upon circumstances that existed before the date
9 the [noncitizen] was provided such special immigrant status.” 8 U.S.C. § 1227(c).

10 28. Although SIJS renders youth eligible to apply for adjustment, they can only do so
11 when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual
12 limit on visas available to SIJS beneficiaries. 8 U.S.C. § 1153(b)(4). And since 2016, the number
13 of SIJS beneficiaries has surpassed the supply of available visas for most countries, leaving what
14 has been estimated to be more than 100,000 young people in a backlog, waiting to apply for a
15 green card.

16 29. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the
17 same vulnerable young people that the SIJS statute was designed to protect. The fact that no visa
18 is currently available because a numerical limit has been reached changes nothing about their
19 eligibility determination by USCIS, or Congress’s intent that they be afforded a pathway to LPR
20 status and, eventually, citizenship. These are the same individuals whom state courts have
21 determined cannot safely be reunited with their parent(s) or returned to their home country.

22 30. Taken together, the structure of the SIJS program—including the requirement that
23 recipients remain in the United States to move forward in the process, the grant of parole for the
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1 purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces
2 Congress’ intent that SIJS recipients remain safely in the United States until they can adjust to
3 become LPRs.

4 ***B. Deferred Action Gives Meaning to Congress’ Intent That SIJS Beneficiaries Be
Protected***

5 31. In March 2022, to address the SIJS visa backlog, USCIS announced that all young
6 people granted SIJS would also be considered for a discretionary grant of deferred action, meaning
7 that they would be protected from deportation while waiting for a visa to become available. In
8 enacting this policy, USCIS itself acknowledged that “Congress likely did not envision that SIJ
9 petitioners would have to wait years before a visa became available. . . .”² Persons granted deferred
10 action are shielded from deportation and are eligible to apply for employment authorization under
11 8 C.F.R. § 274a.12(c)(14).

12 32. Importantly, “USCIS has the sole authority to grant and terminate deferred action
13 for noncitizens with SIJS classification.”³ And, generally, USCIS may only terminate deferred
14 action “if the SIJ-classified individual was not eligible at the time of the initial grant of deferred
15 action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information.”
16 *Id.*

17 33. In June 2025, USCIS rescinded the SIJS deferred action policy, deciding to no
18 longer consider granting deferred action to SIJS youth waiting to apply for a green card. However,
19 this policy change has no impact on SIJS beneficiaries who already received deferred action. *See*
20 USCIS Policy Alert, PA-2025-07, “Special Immigrant Juvenile Classification and Deferred Action”
21 (June 6, 2025), available at: [20250606-SIJDeferredAction.pdf](#) (stating that noncitizen “with
22 current deferred action based on their SIJ classification will generally retain this deferred action . . .
23 until the current validity periods expire.”).

1 34. Deferred action is an act of prosecutorial discretion that defers efforts to deport a
2 noncitizen from the United States for a certain period of time. In the case of SIJS recipients
3 awaiting visas, USCIS granted deferred action for a period of four years. *See id.*

4 35. Deferred action does not confer lawful status and does not prevent an immigration
5 judge from issuing a removal order. However, unless and until terminated, a grant of deferred
6 action prevents immigration authorities from physically removing a noncitizen from the United
7 States. *See* USCIS Policy Manual, Vol. 6: Immigrants, Part J: Special Immigration Juveniles, Ch.
8 4: Adjudication; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999)
9 (“AADC”).

10 36. Once deferred action is granted, fundamental procedural due process protections
11 attach to the recipient, such as the right to notice and an opportunity to contest the revocation of
12 deferred action. *See Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *2 (S.D. Tex.
13 June 5, 2025) (finding that Petitioner was “likely to succeed on his Due Process claim” because he
14 was denied “notice, a hearing, or any opportunity to contest the revocation of his deferred action.”).

15 FACTUAL ALLEGATIONS

16 37. Kimberlyn was born in Honduras in November 2003. As a child in Honduras,
17 Kimberlyn lived in poverty. The family home consisted of two bedrooms, a kitchen, and a living
18 room. The bathroom was located outside of the home. Kimberlyn lived with both of her parents
19 until her father migrated to the United States when she was about 15 years old. Around that time,
20 Kimberlyn suffered harassment and threats by  gang members, threatening to harm her if
21 she did not join their gang and become their girlfriend. Those same gang members were known to
22 have harmed other girls for refusing to be their girlfriend or join them.

1 38. At the age of 17, Kimberlyn traveled to the United States with her younger brother,
2 who was also being threatened. Upon her entry and contact with border patrol officers, Kimberlyn
3 was classified as a UAC. Kimberlyn was released from DHS custody into her father's custody.

4 39. Kimberlyn's father took possession of all of Kimberlyn's immigration documents.
5 Then, instead of enrolling her in school, he forced her to work to pay for an attorney for her
6 immigration case. However, he never hired an attorney and kept the money for himself. He spent
7 at least some of the money on alcohol and at a later time was arrested driving under the influence
8 of alcohol. He was ultimately deported from the United States. He also failed to take any
9 responsibility for the immigration documents, including keeping track of when and where
10 Kimberlyn needed to appear in immigration court. Unbeknownst to her, Kimberlyn was scheduled
11 to appear in the Fort Snelling Immigration Court on October 12, 2022, but because her father failed
12 to take her or notify her, she failed to appear and was ordered removed *in absentia*.

13 40. Kimberlyn's father took possession of her immigration documents and said he
14 would hire her an attorney. Kimberlyn's father then forced Kimberlyn to start working and give
15 her income to him to pay for the attorney. Kimberlyn began to have other issues with her father as
16 she also noticed he had become or was an alcoholic. Despite not having her bearings in the United
17 States, the situation with her father got so bad that she moved out; her boyfriend's family took her
18 in. Kimberlyn found out that her boyfriend was using drugs and knew it was no longer safe for her
19 to live with him and his family either. For her own safety and health, she was forced to leave there
20 and went to stay with a friend in Kansas for a short period of time until receiving a call that she
21 had to return to South Dakota because her dad had been arrested. Kimberlyn returned to South
22 Dakota to help her brothers deal with her father's detention and ultimate removal from the United

1 States. It was not until later that Kimberlyn realized her father had not hired an attorney to help
2 her. Her father also never gave her any of her immigration documents.

3 41. On October 29, 2024, the Seventh Judicial District of Minnesota Juvenile Court in
4 Stearns County found that Kimberlyn had been neglected and abandoned by both of her parents,
5 and that it was in her best interests to remain in the United States. The court deemed Kimberlyn
6 dependent upon the court, appointed Kimberlyn a guardian, and placed her under the custody of
7 that guardian. Based on these court findings, Kimberlyn applied for SIJS with USCIS. Around this
8 time is when Kimberlyn also learned that she had been ordered removed *in absentia* on October
9 12, 2022, for failing to appear for a hearing in immigration court that she did not know about.

10 42. On March 3, 2025, over two years after the *in absentia* removal order, USCIS¹
11 approved Kimberlyn's application for SIJS and concurrently granted her deferred action.
12 Kimberlyn received an I-797A Notice of Action, which stated: "USCIS has determined that you
13 warrant a favorable exercise of discretion to receive deferred action. As a result, you have been
14 placed in deferred action and you may be issued an employment authorization document." *See* Ex.
15 A, I-797A Notice of Action. The notice also stated: "Your grant of deferred action will remain in
16 effect for a period of four years from the date of this notice unless terminated earlier by USCIS."
17 *Id.* Therefore, Kimberlyn's deferred cation does not expire until March 3, 2029.

18 43. About one week after her SIJS petition was approved, Kimberlyn gave birth to her
19 son, a U.S. citizen.

20 44. Because of the visa backlog impacting SIJS beneficiaries, *see supra* ¶¶ 27-35 ,
21 Kimberlyn could not immediately apply to adjust her status to become an LPR after being
22 approved for SIJS, and instead was required to wait until a visa became available to her. Still, she

23 _____
24 ¹ USCIS is the sub-agency of the DHS with exclusive jurisdiction over SIJS petitions, including both granting and
revoking SIJ status. *See* 8 C.F.R. §§ 204.11

1 made plans for her future based on her grant of SIJS, her deferred action, and her ability to obtain
2 employment authorization to work lawfully. She had plans for supporting her child and being able
3 to provide for him and be with him as he grew up in the United States.

4 45. Kimberlyn proceeded to apply for employment authorization as her Form I-797A
5 stated she was eligible to do. As part of that application process, she was required to attend an
6 appointment at the St. Paul ASC location for fingerprinting on September 30, 2025. It was at that
7 appointment, where she followed USCIS and DHS procedure to lawfully obtain her employment
8 authorization that her I-797A Notice of Action stated she was eligible to pursue, when DHS
9 detained her instead of processing her fingerprints and employment authorization application.

10 46. Kimberlyn attended the September 30th ASC appointment with her then six-month-
11 old child and her partner. Upon confirming her identity, an agent brought her back to an office for
12 further questioning. An agent asked Kimberlyn if she was still breastfeeding her baby. Not
13 understanding the situation or complexity of the question and answer, Kimberlyn responded that
14 she was not. Upon hearing that answer, the agent, then motioned to another agent who then
15 proceeded to arrest Kimberlyn and take her away, leaving her partner and six-month-old baby
16 behind without answers.

17 47. After taking Kimberlyn into custody, ICE transferred her to the Kandiyohi County
18 Jail in Willmar, Minnesota, where she remains today. She has not been given any accommodation
19 as a mother weaning off breastfeeding from her baby. She has been forced to stay in one room
20 with other women and some days is not allowed out of that room at all.

21 48. On October 2, 2025, Kimberlyn filed a Motion to Reopen her immigration
22 proceedings and to rescind the *in absentia* removal order. On October 7, 2025, DHS filed an
23 Opposition. On October 20, 2025, the Immigration Judge (“IJ”) summarily agreed with DHS and
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1 denied the Motion to Reopen and Rescind without further analysis. On October 27, 2025,
2 Kimberlyn filed a request for a discretionary Stay of Removal with ICE, Enforcement and
3 Removal Operations (“ERO”). That request is still pending. On November 4, 2025, Kimberlyn
4 filed a Notice of Appeal of the IJ’s decision to the Board of Immigration Appeals (“BIA”).

5 **CLAIMS FOR RELIEF**

6 **CLAIM I**

7 **KIMBERLYN’S DETENTION DESPITE THE FACT THAT SHE CANNOT BE**
8 **REMOVED VIOLATES THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF**
9 **THE FIFTH AMENDMENT OF THE CONSTITUTION AND 8 U.S.C. § 1231(a)(6)**

10 49. Petitioner repeats and incorporates by reference each and every allegation
11 contained in the preceding paragraphs as if fully set forth herein.

12 50. Because Kimberlyn’s removal is not reasonably foreseeable and there is no other
13 justification for her detention, her detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor
14 related to any legitimate government interests, in violation of the substantive due process
15 protections of the Fifth Amendment.

16 51. Because Kimberlyn was issued an *in absentia* removal order, she is detained under
17 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens with final removal orders.

18 52. In *Zadvydas v. Davis*, the Supreme Court held that to avoid offending the Due
19 Process Clause, detention under that statute is limited to “a period reasonably necessary to bring
20 about” the individual’s removal from the United States. 533 U.S. 678, 689 (2001). While detention
21 is presumptively reasonable for up to six months, *id.* at 701, reasonableness is measured “primarily
22 in terms of the statute’s basic purpose, namely, assuring the [noncitizen’s] presence at the moment
23 of removal.” *Id.* at 699. Accordingly, a noncitizen may challenge her detention prior to the six
24 month mark if she “can prove” that there is no significant likelihood of her removal in the

1 reasonably foreseeable future. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL
2 1750346, at *5 (D.N.J. June 24, 2025); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d.
3 703, 706-07 (S.D. Tex. 2020). If “removal is not reasonably foreseeable, continued detention is
4 unreasonable and no longer authorized by statute.” *Primero v. Mattivelo*, No. 1:25-CV-11442-IT,
5 2025 WL 1899115, at *4 (D. Mass. July 9, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-
6 CV-01063-JNW-TLF, 2025 WL 2084400, at *4 (W.D. Wash. July 24, 2025).

7 53. Here, the government cannot remove Kimberlyn from the United States for at least
8 three reasons. First, Kimberlyn has a valid grant of deferred action, which precludes her removal.
9 *See Primero*, 2025 WL 1899115, at *4 (“Respondents do not suggest that ICE routinely removes
10 individuals with active grants of deferred action from the United States, or that Petitioner will be
11 removed before her deferred action is terminated.”). Kimberlyn’s grant of deferred action remains
12 valid until March 3, 2029.

13 54. Second, Kimberlyn has a procedural due process right under the INA and DHS
14 regulations not to have her SIJS revoked without notice and an opportunity to submit evidence in
15 opposition to the revocation and to appeal an adverse decision. 8 U.S.C. § 1155; 8 C.F.R. § 205.2.
16 Because the INA requires that a youth be present in the United States to have SIJS, 8 U.S.C. §
17 1101(a)(27)(J), forced removal from the United States would constitute a *de facto* revocation of
18 SIJS. *See* 8 U.S.C. § 1101(a)(27)(J). Therefore, removing Kimberlyn from the United States
19 (regardless of her deferred action grant) would be unlawful.

20 55. Third, removing Kimberlyn (regardless of her deferred action grant) would
21 contravene the very purpose of the SIJS statute. As discussed *supra*, the core purpose of SIJS
22 protection is to provide beneficiaries like Kimberlyn with a means to adjust their status to become
23 a lawful permanent resident from within the United States. Because physical presence in the United
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1 States is required to adjust status pursuant to SIJS, Kimberlyn must remain present in the United
2 States to avail herself of that process. *See* 8 U.S.C. § 1101(a)(27)(J). Allowing Kimberlyn to be
3 removed from the United States after she has already been granted SIJS would thus eviscerate
4 Congress' goal in creating the status in the first place.

5 56. For all the foregoing reasons, the government cannot lawfully remove Kimberlyn
6 from the United States. Therefore, there is no significant likelihood of her removal in the
7 reasonably foreseeable future and her detention violates 8 U.S.C.(a)(6). *See Primero*, 2025 WL
8 1899115, at *4 (granting habeas petition for young person with SIJS deferred action); *Ayala v.*
9 *Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025)
10 (granting habeas petition for a noncitizen with another category of deferred action); *Chuol P.M. v.*
11 *Garland*, No. 21-cv-1746, 2022 WL 2442600 (D. Minn. Jan. 7, 2022) (granting habeas for a
12 noncitizen detained pursuant to § 1231(a) by re-affirming *Zadvydas* and that the government could
13 not show that the respondent would be removed in the reasonably foreseeable future).

14 57. For the same reasons, Kimberlyn's detention violates her substantive due process
15 rights under the Fifth Amendment. The Supreme Court has long recognized that noncitizens
16 physically present in the United States are entitled to due process protections, regardless of their
17 immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976.)
18 Substantive due process requires that there be a reasonable relation between an individual's
19 detention and the government's purported interests in that detention. *See Jackson v. Indiana*, 406
20 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). As the Supreme Court
21 recognized in *Zadvydas*, the government's only interests in post-order immigration detention are
22 to (1) prevent flight risk, so a person can actually be removed, or (2) otherwise ensure the safety
23 of the community. *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed,

24

1 “preventing flight” is a “weak or nonexistent” justification. *Id.* at 690; *cf. Phan v. Reno*, 56 F. Supp.
 2 2d 1149, 1156 (W.D. Wash. 1999) (“Detention by the INS can be lawful only in aid of
 3 deportation.”). Detention for community safety, in turn, is only permissible “when limited to
 4 specially dangerous individuals and subject to strong procedural protections.” *Id.* at 691.

5 58. Here, the government’s inability to lawfully remove Kimberlyn eliminates any
 6 justification of flight risk, which the government could not show in any event, given Kimberlyn’s
 7 deep ties to her family and community, including the care of her U.S. citizen infant, time in the
 8 United States, and her ability as an SIJS beneficiary to eventually adjust to lawful permanent
 9 resident status and then gain citizenship. And Kimberlyn’s lack of any criminal record obviously
 10 eliminates any possible justification of danger.

11 59. Accordingly, because Kimberlyn’s removal is not reasonably foreseeable and there
 12 is no other justification for her detention, her detention is neither authorized by 8 U.S.C. §
 13 1231(a)(6) nor related to any legitimate government interests. Therefore, her detention violates the
 14 substantive due process protections of the Fifth Amendment.

15 **CLAIM II**

16 **KIMBERLYN’S DETENTION WITHOUT NOTICE AND AN OPPORTUNITY TO**
 17 **RESPOND VIOLATES THE PROCEDURAL DUE PROCESS PROTECTIONS OF THE**
FIFTH AMENDMENT OF THE CONSTITUTION

18 60. Petitioner repeats and incorporates by reference each allegation contained in the
 19 preceding paragraphs as if fully set forth herein.

20 61. The procedural due process guarantee of the Fifth Amendment requires that
 21 individuals be provided notice and an opportunity to be heard before being deprived of liberty or
 22 property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “Freedom from
 23
 24

1 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
2 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 62. In contrast to other habeas petitioners challenging their detention under 8 U.S.C. §
4 1231(a)(6), Kimberlyn “has been afforded no review of [her] detention.” *Primero*, 2025 WL
5 1899115, at *5. “To the contrary, Respondents have made no suggestion that there has been any
6 review of Petitioner’s record to determine that her detention was warranted to ensure her removal.”
7 *Id.* (internal quotations omitted). Instead, Petitioner’s detention in this case was the result of a
8 humanitarian-blind enforcement action.

9 63. Under the familiar *Eldridge* Due Process test, then, the government’s decision to
10 arrest Kimberlyn without any notice or an opportunity to respond, and continue to detain her
11 without any opportunity to meaningfully challenge that detention, clearly violates her procedural
12 due process rights.

13 64. First, Kimberlyn has a substantial, legally protectable liberty interest, created by
14 her reliance on her SIJS and deferred action, at stake.

15 65. Second, the risk of erroneously depriving Kimberlyn of that interest is severe. At
16 twenty-one years old, a new mother, she is separated from her infant of now seven months and she
17 is missing work, falling behind on helping support her home and child. Despite her best efforts to
18 finally find stability after years of being taken advantage of and victimized in Honduras and in the
19 United States, she he has been thrown into sudden instability once again. She is being separated
20 from her infant, which harms not only her, but her infant in a time of crucial infant development.
21 Kimberlyn has been afforded absolutely no process, let alone constitutionally sufficient process,
22 prior to or since this deprivation, making the value of additional process high. *See Eldridge*, 424
23 U.S. at 343.

1 66. Third, the government’s interest in detaining Kimberlyn is minimal. Kimberlyn
 2 cannot be deported and does not present any flight risk or danger: she has a U.S. citizen child, she
 3 is firmly settled in South Dakota, she has a stable job that she attends regularly, she has an attorney,
 4 and she has absolutely no criminal history. Meanwhile, additional process would entail little to no
 5 burden on the government. *See Eldridge*, 424 U.S. at 347.

6 67. Kimberlyn’s continued detention without an opportunity to be heard violates her
 7 procedural due process rights under the Fifth Amendment of the Constitution.

8 **CLAIM III**

9 **KIMBERLYN’S ARREST AND DETENTION VIOLATE THE FOURTH AMENDMENT
 OF THE CONSTITUTION AND 8 U.S.C. § 1357(a)(2)**

10 68. Petitioner repeats and incorporates by reference each and every allegation
 11 contained in the preceding paragraphs as if fully set forth herein.

12 69. The Fourth Amendment protects “[t]he right of the people to be secure in their
 13 persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme
 14 Court has consistently recognized that immigration arrests and detentions are “seizures” within the
 15 meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984)
 16 (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to
 17 the “seizure” of the person).

18 70. As a general matter, the Fourth Amendment requires that all arrests entail a neutral,
 19 judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That
 20 neutral, judicial determination can occur either before the arrest, in the form of a warrant, or
 21 promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest
 22 and detention of a person, including of a noncitizen, absent a neutral, judicial determination of
 23 probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside*
 24

1 *v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention,
2 which includes weekends, unless there is a bona fide emergency or other extraordinary
3 circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

4 71. Congress enacted a strong preference that immigration arrests be based on warrants.
5 *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents
6 with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an
7 officer must have “reason to believe” the person is violating the immigration laws and that the
8 person “is likely to escape before a warrant can be obtained.” *Id.* Federal regulations track the strict
9 limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

10 72. Here, at the moment of seizure, Kimberlyn (a) had been granted SIJS and deferred
11 action, both of which were in valid status, and (b) was attending an ASC appointment scheduled
12 by USCIS, a branch of DHS. Agents were aware well in advance of that appointment and would
13 have had time to obtain any necessary documentation, including a warrant, prior to the
14 appointment. Agents were clearly waiting for Kimberlyn at the ASC appointment, showing that
15 they knew ahead of time she would be there and prepared for her to be there for the purposes of
16 detaining her. It was through their own lack of due process that they did not obtain a warrant prior
17 to having contact with her at her appointment.

18 73. Therefore, no officer could hold a reasonable belief that Kimberlyn was both
19 present in violation of the immigration laws and that she was likely to escape before a warrant
20 could be obtained. *See* 8 U.S.C. § 1357(a)(2).

21 74. Without a statutory basis to arrest, the Government is required under the Fourth
22 Amendment to secure a prompt judicial probable cause determination to continue holding
23 Kimberlyn. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Kimberlyn received no
24

1 such judicial determination, yet her detention continued well beyond 48 hours, rendering it
2 presumptively unconstitutional.

3 75. The Government cannot salvage this seizure by invoking generalized immigration
4 enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and
5 demands individualized justification for both the arrest and the extended detention. *See United*
6 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Here,
7 Kimberlyn is a twenty-one-year-old with valid SIJS and deferred action, who was attending her
8 USCIS scheduled ASC appointment with her partner and infant. Agents arrested and detained
9 Kimberlyn when she responded that she was not breastfeeding her infant, a deeply personal and
10 subjective question and answer.

11 76. Kimberlyn's warrantless arrest occurred in violation of the clear, narrow
12 circumstances permitted by statute. There has been no finding of probable cause or other
13 determination by a neutral magistrate that would cure this infirmity; her arrest lacked any legal
14 basis and there continues to be no legal basis for her detention. Therefore, her arrest and ensuing
15 detention constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment
16 and 8 U.S.C. § 1357(a)(2).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner prays that this Court:

- 19 A. Assume jurisdiction over this matter;
- 20 B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file
21 a return within three (3) days absent good cause for a short extension;
- 22 C. Temporarily prohibit Petitioner's transfer outside the District of Minnesota during the
23 pendency of this action;
- 24

- 1 D. Declare that Petitioner’s arrest and continued detention violate 8 U.S.C. § 1231(a)(6)
2 and the Fourth and Fifth Amendment of the U.S. Constitution;
- 3 E. Grant the writ of habeas corpus and order Petitioner’s immediate release from ICE
4 custody;
- 5 F. In the alternative, order an immediate, constitutionally adequate individualized custody
6 determination at which the government bears the burden to justify continued detention
7 and the Court considers less restrictive alternatives to detention;
- 8 G. In the alternative, grant bail pending the conclusion of the habeas review; *see, e.g.*,
9 *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, WL 1118718 (W.D. Tex. Apr. 28,
10 2004) (granting bail where the applicant does not pose a risk of flight or danger, and
11 finding that such relief is necessary to “give effect to the requested habeas relief”);
12 *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001); and
- 13 H. Grant such other and further relief as law and justice require.
- 14
15

16 DATED: November 5, 2025

Respectfully submitted,

17 /s/ Kelly Kristine Clark
18 Kelly Kristine Clark
19 Heinz Law, PLLC
20 2206 Eagan Woods Dr., Ste 120
21 Eagan, MN 55121
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VERIFICATION PURSUANT TO 27 U.S.C. § 2242

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I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, and on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: November 5, 2025

/s/ Kelly Kristine Clark
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