IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Walter Acuna Cruz, Petitioner v. Peter B. Berg, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department Homeland Security; Matthew Akerson, Captain of the Kandiyohi County Jail; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; and Pamela Bondi, Attorney General of the United States, in their official capacities. Respondents.	PETITION FOR WRIT OF HABEAS CORPUS CASE No: 0:25-cv-04376

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

COMES NOW, Walter Acuna Cruz ("Walter"), by and through undersigned counsel, petitioning this honorable Court for a writ of *habeas corpus* to right what can only be described as one of the most sensational failures of the immigration system, victimizing a special immigrant juvenile who is also a victim of crime, human trafficking survivor, and asylum seeker in the United States. Walter moves for his immediate release from his unlawful, unjustified, and inhumane detention.

JURISDICTION AND VENUE

This Court has jurisdiction to consider this Petition. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

A district court may grant a writ of *habeas corpus* to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305–07 (2001). To a limited extent, some statutory provisions constrain judicial review of immigration matters, such as 8 U.S.C. § 1252(g), which bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings. *See Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19 (2020); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–85 (1999) (noting there was "good reason" for Congress to proscribe judicial review of the Attorney General's "discrete acts of 'commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders,'" as they constituted "the initiation or prosecution of various stages in the deportation process.").

Walter is not challenging the implementation of 8 U.S.C. § 1225, nor is he seeking review of any discretionary decision of the Secretary of Homeland Security or the Attorney General, nor is he seeking this Court's review of a final order of removal.

Rather, he seeks relief on the basis that Respondents lack authority to detain him because his detention does not facilitate removal or prevent risk of flight given that he was granted Deferred Action on the basis of his SIJ status and the Respondents have no ability to execute removal as required pursuant to 8 U.S.C. § 1231(a). Deferred Action prevents removal even if one has a final order of removal, which was entered against him on October 14, 2025.

Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' continued detention of Walter up to today has adversely and severely affected Walter's liberty and freedom.

Walter is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the Kandiyohi County Jail in Wilmar, Minnesota, and is under the direct control of Respondents and their agents.

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

This Court, therefore, maintains jurisdiction to rule on this Petition.

Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Minnesota, the judicial district in which the Petitioner is currently in custody.

Venue is also properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies in the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Minnesota.

PARTIES

Walter is a native and citizen of Guatemala who was granted deferred action pursuant to his approved SIJ status on February 11, 2025. He is currently detained in Kandiyohi County Jail, Minnesota.

Peter B. Berg is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Minneapolis Field Office (MFO) and is the federal agent charged with overseeing all ICE detention centers in Minnesota. He is sued in his official capacity.

Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all IJs and the Board of Immigration Appeals (BIA). She is sued in her official capacity.

Matthew Akerson is named in his official capacity as the Captain of Kandiyohi County. As the Captain of Kandiyohi County, he is responsible for and has authority over detainees in the Kandiyohi County Jail.

Todd Lyons is named in his official capacity as the Acting Director for U.S. Immigration and Customs Enforcement. As the Senior Official performing the duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner.

FACTUAL ALLEGATIONS

Walter is Abused in His Home Country

Walter was born and raised in Guatemala, where his early childhood was defined by instability, lack of protection, and exposure to significant danger. Although Walter was

physically present in his parents' home during parts of his childhood, he was not cared for in any meaningful way and he suffered [redacted].

Compounding these dangers, Walter suffered from [redacted]. He was kicked out of his father's home with nowhere else to turn following a dispute about him accessing food, and he sold a piece of land that his grandmother gifted him to flee to the United States, where he intended to seek asylum, at just 15 years old, in January 2020.

Walter is Kidnapped by a Cartel in Mexico

On his way to the United States, Walter was [redacted].

He was able to be free of the cartel because his cousin, then residing in South Dakota, paid his ransom of $3,500. Walter's cousin then told Walter that he must come to work for him at his drywall company in order to pay off his ransom and organized his transport to South Dakota, forbidding him from going to the border to visit Customs and Border Protection to seek asylum. He entered the United States on March 20, 2020.

Walter is Labor Trafficked by His Cousin and Walter Escapes in the Middle of the Night Through a Window

Once Walter arrived to live with his cousin, he was pressured to work long hours while having pay withheld, threatened, and controlled in ways that prevented him from leaving freely. He was isolated, rendered unable to go to school or do anything other than work, and kept in conditions where he had no independence and no ability to seek help. His cousin stated he would pay him $700 per week and continuously took $500 per week from his paycheck for a period of almost two (2) years, well and truly exceeding the ransom "debt" and any associated costs with trafficking Walter into the United States. Walter was banned from calling and speaking with his family in the United States under the guise that they were bad influences.

The exploitation escalated to the point where Walter feared for his safety because of the physical, emotional and financial abuse suffered on job sites by Walter at the hands of his cousin. In the middle of the night in late 2021, he made a desperate decision to flee. He climbed out through a window and escaped, picked up by his brother, Sylvain, who is now his guardian in Minnesota.

Walter is Threatened with a Deadly Weapon by His "Friend" Who is Later Deported

After escaping the trafficking situation, Walter attempted to rebuild his life and formed a friendship with an older man named Alan, someone he initially believed he could trust. That trust collapsed when Alan turned violent and chased Walter and his brother in their vehicle and pointed a gun at them in April 2024 after Alan and Sylvain argued over Alan's unsavory activities and his influence over Walter to drink alcohol. Alan had threatened Sylvain for several weeks prior to the gun incident. Police were notified, and Alan was later arrested and ultimately deported for this criminal activity. Walter and his brother testified against Alan in the criminal proceedings. Alan blames Walter and his brother for what happened and holds a grudge, and now awaits Walter or his brother's return to Guatemala.

Walter's Grandmother Dies and Walter is Arrested for DWI

Walter's grandmother, the single person who had ever provided him genuine emotional support, passed away shortly before these events. Her death triggered profound grief for Walter, who had been navigating trauma, trafficking, and abandonment with almost no family connection. During this period of emotional instability, Walter turned to alcohol and got into the wrong crowd with Alan, describing it as his only ability to drown out his thoughts, and made the mistake of driving under the influence in June 2023 and April 2024, before any deferred action was granted. At this time, he was 19 years old. He

was arrested for DWI twice, was convicted of one (1) of those offenses[1], which he has taken responsibility for and deeply regrets. This incident occurred during one of the most destabilizing periods of his early adulthood, while he was mourning the only loving family member he had ever known.

Walter is Placed in ICE Custody

Following the DWI arrest in late May 2024, ICE took custody of Walter and initiated removal proceedings against him on June 24, 2024. Despite his status as a Special Immigrant Juvenile (SIJ) beneficiary in process, Trafficking Victim (with a T Visa in progress) and asylum seeker, his lack of criminal history involving violence, and his strong community support, ICE opposed release.[2] Walter was enrolled in three (3) separate alcohol programs which would have given him 36 hours of alcohol programming before he would have been able to obtain health insurance through an employer to seek additional mental health support as recommended in his psychological evaluation with the work permit he is entitled to through his pending and approved visa applications.

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[1] The Court should note that a warrant was issued on the second case due to failure to appear after Walter's detention with ICE. Counsel wrote a letter to the court and the court lifted the bench warrant and assigned a court appointed attorney for the second matter; there have been discussions of a plea deal and an expression from criminal counsel of the intent to enter a plea in exchange for payment of fines. USCIS has been notified but inadmissibility does not change.

[2] The Court should also note a habeas was filed for Walter on a different subject matter.

Walter Applies for Special Immigrant Juvenile Status, T Visa, U Visa and Asylum

Following a Minnesota State Court order that Walter is an at-risk juvenile on October 2, 2024, an I-360 Petition for Amerasian, Widower, or Special Immigrant was filed with USCIS on October 4, 2024. It was subsequently approved on February 11, 2025 with Deferred Action. To wit, it was approved while he was in removal with all arrests, the conviction and punishment disclosed with the I-360.

On October 7, 2024, an I-914 Application for T Nonimmigrant Status and I-192 Application for Advance Permission to Enter as a Nonimmigrant was filed with USCIS. It remains pending.

On April 14, 2025, an I-918 Application for U Nonimmigrant Status and I-192 Application for Advance Permission to Enter as a Nonimmigrant was filed with USCIS. It remains pending.

The Immigration Judge Refuses to Overturn and Retake Pleadings Based on His Approved Special Immigrant Juvenile Status

On October 15, 2024, a Motion to Withdraw and Amend Pleadings was filed on the basis that Walter's SIJ status was approved, and the charge of removability, namely § 212(a)(6)(A)(i) was no longer applicable. The IJ denied this motion, calling it a "red herring".

Walter Succeeds in Terminating His Removal Proceedings After his SIJ Status is Approved

After significant motion work, on February 21, 2025, the Immigration Judge granted termination of the Removal Proceedings pursuant to 8 C.F.R. § 1003.18(d)(ii)(C) because he was granted DA by the USCIS on the basis of his approved SIJ designation. The IJ wrote an exegesis thoroughly considering the equities of the case, including the criminal history. DHS appealed, and Walter remained detained.

The BIA Reverses

Based on a factual error (finding that Walter was convicted of two (2) counts of DWI), the BIA found that the IJ should not have terminated the removal proceedings and found an error in the application of the IJ's discretion on that basis.

Walter Receives a Removal Order After Remand But Remains Detained

An Individual Hearing was scheduled for Walter, and the IJ denied asylum, withholding of removal and protection under the Convention Against Torture, and entered a final removal order on October 14, 2025. That Order became final on November 13, 2025. DA remains in place and the instant action follows.

LEGAL FRAMEWORK

Exhaustion

Administrative exhaustion is not required by the statute in the context of post-final-order detention. *See Darby v. Cisneros,* 509 U.S. 137, 146 (1993).

Special Immigrant Juvenile Status

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

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

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

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

SIJS may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth in question, who

must be permitted the opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. *See* 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. *See* 8 C.F.R. § 205.2(c) & (d). Revocation of a SIJS petition may only be performed by a USCIS officer authorized to approve such petition in the first instance. *See* 8 C.F.R. § 205.2(a).

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

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

Although SIJS renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual limit on visas available to SIJS beneficiaries. 8 U.S.C. § 1153(b)(4). Despite the

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

All these circumstances and protection taken together, evinces Congress' intent that SIJS recipients remain safely in the United States until they can adjust to become LPRs.

Victims of Crime and Trafficking

Congress expanded protections to survivors of serious crimes when it reauthorized the Violence Against Women Act ("VAWA") in 2000. Specifically, VAWA 2000 created U Nonimmigrant Status, commonly referred to as the U Visa, which provides for a path to citizenship for non-citizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* VAWA 2000, § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

Among Congress's stated purposes in creating the U visa were (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes… committed against [noncitizens], while offering protection to victims of such offenses in keeping

with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." *Id* § 1513(a)(2).

Congress –

> "created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking and other crimes due to a variety of factors, including, but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences."[3]

Underscoring the importance of encouraging noncitizen victims of crime to feel comfortable reporting crime and working with law enforcement authorities, Congress authorized DHS to waive virtually any ground of inadmissibility to U visa petitioners in the public interest. VAWA 2000 § 1513(e); 8 U.S.C. § 1182(d)(14). Even a noncitizen "who is the subject of a final order of removal, deportation, or exclusion is not precluded" from eligibility. 8 C.F.R. § 214.14(c)(1)(ii).

In the William Willberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5053 ("TVPRA"), Congress expanded the protections for noncitizens who had come forward to report crime. Most relevant to this action, the TVPRA added § 237(d) to the INA, which authorizes DHS to issue a stay of any removal order against a U or T visa petition if the petitioner "sets forth a prima facie

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[3] DHS, "U and T Visa Law Enforcement Resource Guide," p. 4, at https://www.dhs.gov/sites/default/files/publications/ U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. § 1227(d)(1)-(3).

In the same legislation as VAWA 2000, Congress expanded protections for survivors in yet another way – it passed the Trafficking Victims Protection Act of 2000 ("TVPA"), creating the T visa to provide an avenue to lawful permanent residence and U.S. citizenship for survivors of a "severe form of trafficking in persons," as well as their family members. Pub. L. No. 106-386, 114 Stat. 1464, 1475; 8 U.S.C. §§ 1101(a)(15)(T), 1255(1). "Severe form of trafficking in persons" means either sex trafficking or labor trafficking involving the use of "force, fraud, or coercion." 8 C.F.R. § 214.201.

In passing the TVPA, Congress made several express findings. It found that "trafficking in persons… is the largest manifestation of slavery today" and that "[a]pproximately 50,000 women and children are trafficked into the United States each year." 22 U.S.C. § 7101(b)(1). "Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked." 22 U.S.C. § 7101(b)(19). The TVPA was passed to remedy these ills.

Just like the U visa, USCIS has created a streamlined process for adjudicating T visa petitions. The petitioner must be a survivor of a severe form of trafficking in persons; be physically present in the United States or territories; have complied with any reasonable request for assistance by law enforcement unless exempted by minority or

trauma impact; and be someone who would suffer extreme hardship if removed. If there are any grounds of inadmissibility, a waiver must be sought. 8 U.S.C. § 1101(a)(15)(T); 8 C.F.R. § 214.202.

In 2021, an enforcement directive was issued continuing ICE's longstanding policy to "refrain from taking civil enforcement action against" individuals "known to have a pending application" for "victim-based immigration benefits" unless there are "exceptional circumstances" such as national security concerns or a "risk of death, violence, or physical harm to any person." ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) at 1-2. If an application is pending, ICE will "defer decisions" on enforcement until final determinations are made on pending petitions or a negative determination is made on an interim adjudication like a BFD or wait-list determination. *Id.* at 2. The 2021 Directive also reinstated a policy of requesting expedited adjudications for people in ICE custody. *Id.* at 9. "The fact that someone is a victim of crime and… may be eligible for victim-based benefits" it to be considered a "positive discretionary factor." *Id.* The Court should note that a subsequent 2025 memorandum was issued, irrelevant to this case because the conduct and failures relevant to this case took place before the updated Directive was issued.

Post-Order Detention

8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The

removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), id. § 241.4(c)(2), which must conduct a custody review before or at 180 days. Id. § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. Id. § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

8 C.F.R. § 241.4's custody review process has, over the years, been amended and (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [noncitizen] submits, or the record contains, information providing a

substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

In *Zadvydas v. Davis*, the Supreme Court held that to avoid offending the Due Process Clause, detention under that statute is limited to "a period reasonably necessary to bring about" the individual's removal from the United States. 533 U.S. 678, 689 (2001). While detention is presumptively reasonable for up to six months, *id.* at 701, reasonableness is measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal." Id. at 699. Accordingly, a noncitizen may challenge his detention prior to the six-month mark if he "can prove" that there is no significant likelihood of his removal in the reasonably foreseeable future. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d. 703, 706-07 (S.D. Tex. 2020). If "removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized by statute." *Primero v. Mattivelo*, No. 1:25-CV-

11442-IT, 2025 WL 1899115, at *4 (D. Mass. July 9, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *4 (W.D. Wash. July 24, 2025).

Therefore, even if an alien would meet one (1) or more of the high bars to continued detention despite unforeseeable removable, the challenge of continued detention even before this statutory 90 and 180 day review period is the only process that would give due dignity to the *Zadvydas'* Due Process requirements.

Administrative Procedure Act

Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

Due Process

The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976.) Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interests in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). As the Supreme Court recognized in *Zadvydas*, the government's only interests in post-order immigration detention are to (1) prevent flight risk, so a person can actually be removed, or (2)

otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed, "preventing flight" is a "weak or nonexistent" justification. *Id.* at 690; *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). Detention for community safety, in turn, is only permissible "when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 691.

That dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691. *See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].").

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6) REMOVAL NOT REASONABLY FORESEEABLE

Here, the government cannot remove Walter for at least four (4) reasons. First, Walter has a valid grant of deferred action pursuant to his SIJ status, which precludes his removal. *See Primero*, 2025 WL 1899115, at *4 ("Respondents do not suggest that ICE routinely removes individuals with active grants of deferred action from the United States, or that Petitioner will be removed before his deferred action is terminated."). His grant of deferred action remains valid until October 4, 2028.

Second, Walter has a procedural due process right under the INA and DHS regulations not to have his SIJS or his deferred action revoked without notice and an opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. 8 U.S.C. § 1155; 8 C.F.R. § 205.2. Because the INA requires that a youth be present in the United States to have SIJS, 8 U.S.C. § 1101(a)(27)(J), forced removal from the United States would constitute a *de facto* revocation of SIJS. *See* 8 U.S.C. § 1101(a)(27)(J). Because this *de facto* revocation is another barrier to Walter's removal, his removal is not reasonably foreseeable and detention is unlawful.

Third, removing Walter (regardless of his deferred action grant) would contravene the very purpose of the SIJS statute. As discussed *supra*, the core purpose of SIJS protection is to provide beneficiaries like Walter with a means to adjust their status to become a lawful permanent resident from within the United States. Because physical presence in the United States is required to adjust status pursuant to SIJS, Walter must remain present in the United States to avail himself of that process. *See* 8 U.S.C. § 1101(a)(27)(J). Allowing Walter to be removed from the United States after he has already been granted SIJS would thus eviscerate Congress' goal in creating the status in the first place and Walter would be able to pursue separate and distinct action for any attempted removal. Because the government cannot remove him for these reasons, removal is not reasonably foreseeable and detention is unlawful.

Fourth, all of the factors of Walter's DWI arrests and any potential inadmissibility were disclosed to USCIS before they granted his DA, and no circumstances have changed

whereby revocation of DA would be appropriate or defendable. In fact, this would solely be in retaliation to Walter at this time and removing his DA in order to remove him would, again, be unlawful.

The relevant regulatory review that provides ICE 90 and 180 day review frameworks are moot because of these (5) reasons and any attempts to remove, assess or otherwise handle Walter's custody would be unlawful, allowing this review prior to the six (6) month period provided for reasonable custody under *Zadvydas*.[4]

Walter, therefore, "can prove" that there is no significant likelihood of his removal in the future, and the Court should order Walter's immediate release.

COUNT II: ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

ICE has deviated from ICE Directive 11005.3 in continuing to detain Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

ICE has also demonstrated, through its continued pursuance of enforcement and removal activities against Walter, that it is unwilling and unable to follow its own policy

[4] To wit, Walter has still been detained for 18 months, and the entrance of a removal order does not amend the length of custody, in fact, allowing ICE a loophole of this nature would open opportunity for ICE to take actions to switch Petitioners back and forth between different statuses of their removal proceedings in order to allow a reset of the clock, and indefinite detention.

or the law in regards to enforcement measures against individuals who are victims of crime, trafficking or SIJs.

Therefore, the only appropriate remedy is for the Court to order Walter's immediate release.

COUNT III: VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS RIGHTS

With respect to Walter's detention, ICE has not invoked the regulations governing these "special circumstances" determinations. *See* 8 C.F.R. § 241.14. Nor could they, as, even if his second conviction finalized and he had two (2) DWI convictions, Walter would not rise to the level of being "specially dangerous" synonymous to a terrorist.

Here, the government's inability to lawfully remove Walter eliminates any justification of flight risk, which the government could not show in any event, given Walter's minority, length of residence in the United States, his deep ties to his family in South Dakota, and his ability as an SIJS beneficiary, T Visa Applicant and U Visa Applicant to eventually adjust to lawful permanent resident status and then gain citizenship.

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause;

c. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

d. Order Petitioner's immediate release;

e. Grant any other further relief this Court deems just and proper.

DATED: November 19, 2025

Respectfully Submitted,

/s/ Hannah Brown
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