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; ~~Warden, Port Isabel Detention Center;~~ Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; and Pamela Bondi, Attorney General of the United States, in their official capacities. Respondents.	AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND APA CASE No: 0:25-cv-04720

PETITION FOR WRIT OF HABEAS CORPUS AND ADMINISTRATIVE PROCEDURE ACT

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.

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.

i. The Suspension Clause

Pursuant to Article I, Section 9, Clause 2 of the United States Constitution, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." *Habeas corpus* is "a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal." *Boumediene v. Bush*, 553 U.S. 723, 737, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008) (quoting Black's Law Dictionary 728 (8th ed. 2004)).

"The Clause protects the rights of the detained by a means consistent with the essential design of the Constitution. It ensures that, except during periods of formal suspension, the Judiciary will have a time tested device, the writ, to maintain the 'delicate balance of governance' that is itself the surest safeguard of liberty." *Boumediene*, 553 U.S. at 745, 128 S.Ct. 2229. Because of the Suspension Clause, the Constitution "unquestionably" requires some "judicial intervention in deportation cases." *INS v. St. Cyr*, 533 U.S. 289, 300, 121 S.Ct. 2271 (2001).

The Suspension Clause requires that habeas corpus remain available where a person is restrained by the federal government and no other meaningful judicial forum exists to test the legality of that restraint in time to prevent irreparable harm. *Boumediene v. Bush*, 553 U.S. 723, 745 (2008); *St. Cyr*, 533 U.S. at 300–01.

In assessing whether *habeas* review is constitutionally required, courts consider the nature of the restraint on liberty, the character of the legal interest at stake, and the adequacy of alternative avenues for judicial review. Where, as here, a noncitizen is in physical custody and subject to imminent removal that would irreversibly extinguish a congressionally created legal status, the absence of habeas review would raise serious Suspension Clause concerns.

Walter's grant of Deferred Action based on his Special Immigrant Juvenile Status (SIJS) reflects a statutory and executive determination that Congress intended SIJS recipients to be protected from removal while present in the United States. Removal in contravention of that determination would permanently deprive Walter of the benefits and protections Congress intended SIJS recipients to receive.

In evaluating the adequacy of alternative avenues for review, courts consider not only whether a theoretical mechanism for review exists, but whether that mechanism affords a realistic and timely opportunity to prevent the specific harm alleged. *Boumediene*, 553 U.S. at 771; *St. Cyr*, 533 U.S. at 300–01. Here, none of the statutory or administrative avenues available in the immigration system provides a meaningful

opportunity to test the legality of Respondents' conduct before the irreparable harm occurs.

A petition for review in the Court of Appeals is not an adequate substitute. Judicial review in that forum is limited to matters arising from the administrative removal proceedings and the record developed therein. Walter's claims do not arise from the immigration court's adjudication of removability or from the merits of any application adjudicated in those proceedings. Rather, they arise from Respondents' post-order executive conduct in disregarding an unrescinded grant of Deferred Action and seeking to effectuate removal notwithstanding that legal barrier. Moreover, review through a petition for review would not provide timely relief, as removal would likely occur before meaningful judicial consideration could be obtained, and post-removal review would not prevent the irreversible loss of the protections associated with Walter's Special Immigrant Juvenile Status.

Administrative remedies likewise do not provide an adequate alternative. Although Walter has sought relief before the Board of Immigration Appeals, the relief relevant to his present claims would depend on the Board's exercise of discretionary authority, including *sua sponte* reopening. Such discretionary mechanisms do not provide an enforceable judicial safeguard against the *de facto* revocation of his protected status through removal, and do not address the legality of Respondents' executive enforcement conduct independent of removal proceedings.

In addition, any relief available through reopening would depend entirely on the Board's discretionary authority and would not provide a judicially enforceable mechanism to prevent *de facto* revocation of Walter's Congressional protected SIJ status. Administrative reopening cannot address the legality of Respondents' present enforcement conduct or provide prospective relief against the disregard of an unrescinded grant of Deferred Action. At most, such proceedings could offer collateral and uncertain relief, insufficient to prevent the irreparable harm at issue here.

Nor would remedies available only after removal suffice. Once removed, Walter would no longer be present in the United States, and the protections afforded by his Special Immigrant Juvenile Status and Deferred Action would be effectively extinguished. An avenue of review that becomes available only after the injury has occurred cannot satisfy the Suspension Clause where the injury is immediate and irreparable. Walter also has been subject to real, demonstrable and credible threats from actors who were deported because they committed a crime against him in the United States and it would be very challenging to exercise post-removal relief if he is killed by those actors on return to Guatemala.

Finally, while the Administrative Procedure Act (APA) provides a cause of action to challenge unlawful agency conduct, an APA-only action would not provide an adequate substitute for *habeas* relief under these circumstances. Where a petitioner is in physical custody and faces imminent removal, habeas corpus remains the only mechanism capable of affording timely and effective relief from unlawful restraint.

Accordingly, construing the INA to foreclose habeas review under these circumstances would violate the Suspension Clause by eliminating the only effective mechanism through which Walter may challenge the legality of the government's restraint on his liberty.

ii. *Habeas Corpus* relief

It is true that petitioners invoking the writ of habeas corpus often seek relief from custody, but as the Fourth Circuit has explained, § 2241 "provides that habeas corpus relief can extend to several classes of persons, including those 'in custody under or by color of the authority of the United States' and those 'in custody in violation of the Constitution or laws or treaties of the United States.'" *D.B. v. Cardall*, 826 F.3d 721, 731 (4th Cir. 2016) (quoting 28 U.S.C. § 2241(c)(1), (3)).

A district court may grant a writ of *habeas corpus* to any person who demonstrates his liberty is being removed in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3); *see also St. Cyr*, 533 U.S. at 305–07. To a limited extent, some statutory provisions constrain judicial review of immigration matters, such as 8 U.S.C. §§ 1252(g) and 1252(b)(9).

The Supreme Court has similarly explained that § 2241, the statute invoked here, "implements the constitutional command that the writ of habeas corpus be made available … to test the legality of a given restraint on liberty." *Jones v. Cunningham*, 371 U.S. 236, 238, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963); see also *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

Walter asserts that his removal violates federal statutes and the Constitution. Because Walter is in federal custody and subject to imminent removal absent the Court's current extension of the Stay of Removal, and because that restraint on liberty includes government action that would irreversibly extinguish a congressionally created legal status, *habeas corpus* provides the appropriate procedural vehicle for relief. Walter does not seek review of the validity of his removal order or of immigration court proceedings. Rather, he challenges Respondents' present authority to effectuate removal in a manner that contravenes federal law and the Constitution by disregarding an unrescinded grant of Deferred Action based on his Special Immigrant Juvenile Status. *See Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 909 (W.D. Wash. 2025) (finding jurisdiction notwithstanding § 1252(g) because the petitioner's "claims arise from the Government's decision to grant him deferred action combined with ICE's subsequent refusal to honor that grant").

iii. Jurisdictional bars

8 U.S.C. § 1252(g) bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings, adjudicate cases, or execute removal orders. *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 does not challenge the validity of his final order of removal, nor does he seek judicial review of the Attorney General's discretionary decision to execute that order (because there has been no execution). He does not contest the determination that he is removable, the initiation of removal proceedings, or the merits of the underlying removal order. Rather, Walter challenges Respondents' present authority to effectuate his removal while an unrescinded grant of Deferred Action based on his Special Immigrant Juvenile Status remains in force. Removal under these circumstances would operate as a *de facto* revocation of his SIJS and Deferred Action, stripping him of congressionally conferred protections without process and in contravention of federal law and the Constitution.

He likewise does not seek review of any action taken in the course of removal proceedings, as he is appropriately doing so with the Board of Immigration Appeals (BIA or Board). Instead, Walter challenges Respondents' present authority to restrain and remove him in light of their own unrescinded grant of Deferred Action based on his Special Immigrant Juvenile Status. That grant of Deferred Action constitutes a binding executive determination that removal will not be pursued during its pendency. By detaining Walter and preparing to remove him without first rescinding Deferred Action through lawful process, Respondents are acting outside the scope of their statutory and constitutional authority. This challenge arises not from the execution of a removal order,

but from Respondents' unlawful disregard of an existing legal barrier to removal, and therefore falls outside the jurisdictional bar of 8 U.S.C. § 1252(g).

Importantly, Deferred Action remains unrevoked in this case and no circumstances exist that weren't known to the Respondents at the time of granting deferred action which would justify the termination of the Deferred Action grant even where proper notice and opportunity to respond was provided.

Per 8 U.S.C. § 1252(b)(9),

> "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by sections 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact."

Section 1252(b)(9) does not bar jurisdiction here because Walter's claims do not "arise from" removal proceedings within the meaning of the statute. Rather, his claims arise from Respondents' post-order executive conduct in disregarding an unrescinded grant of Deferred Action that independently bars removal. Resolution of these claims does not require review of the Notice to Appear, the conduct of removal proceedings, or the validity of the removal order, and the relief sought would not invalidate that order. Because channeling review through a petition for review would provide no meaningful opportunity to prevent the irreparable loss of Walter's SIJS-based protections, §

1252(b)(9) cannot be construed to foreclose habeas review consistent with the Suspension Clause.

What must be made clear is that the challenge is not that: 1. Walter was placed in removal proceedings; 2. The manner in which the government carried out the removal proceedings, any events that occurred during those proceedings, or the subject matter of the proceedings (there were many misgivings, the Court would be aware if this was the case); and neither does Walter challenge the discretionary decision to remove; he is challenging the legal authority to do so. If it were the case that Walter were challenging any of this, the Court would be faced with questions of the validity of the Notice to Appear, or the illegal actions of the Department of Homeland Security in Walter's proceedings, the procedural errors of the Immigration Judges, or with the errors in the removal order decision itself, but Walter does not ask the Court for a review of any of that, as is made clear in the Claims for Relief below.

Sections 1252(b)(9) and 1252(g) are narrow jurisdiction-channeling provisions and do not operate as a blanket bar to review of unlawful executive action. As the Supreme Court has made clear, these provisions apply only to claims arising from lawful discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. They do not preclude judicial review where a petitioner alleges that the government has acted ultra vires, in violation of federal law, or in a manner that independently contravenes the Constitution. To hold otherwise would foreclose any

forum for review of unlawful custody and removal, raising serious due process and Suspension Clause concerns.

Courts assessing jurisdiction over immigration habeas petitions must identify the nature of the claim presented. As the Court explained in *Joshua M. v. Barr*, *habeas* jurisdiction exists where a petitioner challenges the government's present authority to restrain liberty and where no alternative judicial forum provides a meaningful opportunity for timely review. 439 F. Supp. 3d 632, 650-54 (N.D. Cal. 2020). The dispositive inquiry is not whether the claim relates in some abstract sense to removal, but whether it seeks to halt or unwind a final order of removal, or instead challenges ongoing executive action that is independent of removal proceedings themselves.

Walter's claims fall squarely within the category recognized in *Joshua M.* He does not seek review of his removal order, the conduct of immigration court proceedings, or the discretionary judgments made therein. Rather, he challenges Respondents' present authority to detain and remove him in light of their own unrescinded grant of Deferred Action based on his Special Immigrant Juvenile Status. That challenge is legal, forward-looking, and directed at ongoing restraint on liberty, not at the merits or execution of a removal order.

By contrast, the Eighth Circuit decisions on which Chief Judge Schiltz rightly questioned, (*Silva v. United States*) (*see Acuna Cruz v. Berg,* No. 25-CV-4376, slip op. at 3–4 (D. Minn. Nov. 26, 2025)) arose in materially different procedural and constitutional postures. *Silva* involved a post-removal damages action seeking compensation for the

mistaken execution of an otherwise valid removal order. The plaintiff in *Silva* was not in custody, did not seek release, and did not raise a Suspension Clause concern regarding the elimination of *habeas* review, nor did his action extinguish a right that required his presence in the United States.

The Eighth Circuit expressly addressed whether § 1252(g) barred damages claims "arising from" the execution of a removal order; it did not consider whether *habeas* relief must remain available where a person is presently restrained of liberty and alleges that the government lacks statutory authority to carry out actions which would constitute the *de facto* revocation of lawfully granted juvenile status. Again, these provisions are narrow and do not preclude review where a petitioner alleges independent contravention of law or Constitution, otherwise the effect is complete foreclosure of unlawful removal and custody, raising serious due process and Suspension Clause concerns.

That distinction is critical. Where, as here, a petitioner is in physical custody and alleges that detention is *ultra vires* because the government itself has deferred removal, *habeas corpus* lies at the core of the constitutional protection guaranteed by the Suspension Clause. *See St. Cyr*, 533 U.S. at 300-01 (2001); *Boumediene v. Bush*, 553 U.S. 723, 745 (2008). Construing § 1252(g) or § 1252(b)(9) to foreclose habeas review in such circumstances would eliminate any meaningful judicial forum capable of preventing irreparable harm, raising the very constitutional concerns that *Joshua M.* and Supreme Court precedent require courts to avoid.

Although this case involves ongoing physical custody, Walter does not challenge the length or conditions of detention. Rather, custody is relevant solely because it constitutes the restraint on liberty that triggers *habeas* jurisdiction where the government's authority to act is contested. That is: his removal would be an unlawful revocation of his status, he is being detained pending his removal, and this the only relevance of custody at this juncture.

Even if §§ 1252(b)(9) or (g) were construed to reach Walter's claims, such a construction would be unconstitutional because it would eliminate the only effective mechanism to prevent the irreversible destruction of a congressionally conferred status.

Accordingly, this case is governed not by post-execution damages jurisprudence, but by the established principle that habeas corpus remains available to test the legality of ongoing restraint where the government's authority to detain is contested and no alternative avenue of review can provide timely or effective relief.

iv. Other Courts Have Handled This Issue Pertaining to Deferred Action and Other Special Immigrants

There is a plethora of Courts that have handled the matter of the restriction of liberty of SIJ grantees or other special immigrants with deferred action in the *habeas* context very recently. *See Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025); *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30. 2025); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025); *Maldonado v. Noem*, No. 25-CV-2541, 2025

WL 1593133 (S.D.Tex. June 5, 2025); *Gamez Lira v. Noem*, No. 1:25-CV-00855-WJ-KK, 2025 WL 2581710, at *2–3 (D.N.M. Sept. 5, 2025) ; *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025); *Lopez Sarmiento v. Perry*, No. 25-01644, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025); *Godinez-Lopez v. Ladwig*, No. 25-2962, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Patel v. Almodovar*, No. 25-15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Del Cid Del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); and *Aguilar Merino v. Ripa*, No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

In *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30. 2025), the Court deferred to the jurisdictional arguments presented in *Hasan v. Crawford*, 2025 WL 2682255, at *3 (E.D. Va. Sept. 19, 2025). The *Hasan* Court found,

> Section 1252(g) has a narrow reach. In *Reno v. American-Arab Anti-Discrimination Committee*, the Supreme Court explained that § 1252(g)'s jurisdictional bar applies only to the commencement of removal proceedings, adjudication of removal proceedings, and execution of removal orders. 525 U.S. 471, 482 (1999). The Court found it "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* The Court has since reaffirmed this narrow construction, explaining that the Reno Court "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." *Jennings*, 583 U.S. at 294. The Court then clarified that it instead reads the statutory "language to refer to just those three specific actions themselves."
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> ...
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> His claim is not tied to a decision to commence removal proceedings because Hasan received his NTA—the document that initiates removal proceedings—ten months ago. *See Maldonado v. Olson*, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (finding that a habeas petition does not challenge the commencement of removal proceedings where "such proceedings were commenced long ago")

> ...
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> Instead, Hasan contends that his continued detention pursuant to the automatic stay regulation violates his due process rights under the Fifth Amendment. Because Hasan's custody proceedings are "independent of, and collateral to, the removal process," *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025), § 1252(g) does not serve as a jurisdictional bar. Accordingly, the Court finds that it possesses jurisdiction to entertain Hasan's Petition to the extent he challenges the constitutionality of his detention.

Id.

In *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025), the Court goes in to exceptional detail, finding that collateral and ancillary consequences of the actions or decisions to commence removal proceedings, adjudicate cases or execute removal orders are not jurisdictionally barred by 8 U.S.C. 1252(b)(9), (g) or (a)(5). ("... the Supreme Court has "not interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999))." and "the legal questions of whether mandatory detention without a bond hearing was proper were "too remote from [removal actions] to fall within the scope of § 1252(b)(9)." Id. In 2019, a plurality of the Supreme Court again found that § 1252(b)(9) did not strip it of jurisdiction to hear a group of immigrants' challenges to their mandatory detention under 8 U.S.C. § 1226(c). See *Nielsen v. Preap*, 586 U.S. 392, 402 (2019).").

In *Del Cid Del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025), the Court again cites *Reno* which "... rejected the "unexamined assumption that §

1252(g) covers the universe of deportation claims – that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review'" and again reiterates that only very narrowly are the three (3) decisions or actions (commence, adjudicate, execute order) in removal are jurisdictional bars.

These cases all further support the argument that this Court holds jurisdiction to hear Walter's claim whereby he challenges Respondents' lack of present legal authority to remove him while an unrescinded grant of Deferred Action based on his Special Immigrant Juvenile Status remains in force. Removal under these circumstances would operate as a de facto revocation of his SIJS and Deferred Action, resulting in the loss of congressionally conferred protections without lawful process. Under settled precedent, such a claim is not jurisdictionally barred and is properly heard in habeas.

v. Administrative Procedure Act

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 Port Isabel Detention Center, Texas, 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*.

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

vi. Venue

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 has primarily been in custody.

In *Braden,* 410 U.S., the Court found,

> The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody. *Wales v. Whitney,* 114 U. S. 564, 114 U. S. 574 (1885). In the classic statement:
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> "The important fact to be observed in regard to the mode of procedure upon this writ is that it is directed to, and served upon, not the person confined, but his jailer. It does not reach the former except through the latter. The officer or person who serves it does not unbar the prison doors and set the prisoner free, but the court relieves him by compelling the oppressor to release his constraint. The whole force of the writ is spent upon the respondent."
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> *In the Matter of Jackson,* 15 Mich. 417, 439-440 (1867), quoted with approval in *Ex parte Endo,* 323 U. S. 283, 323 U. S. 306 (1944). *See also Ahrens v. Clark,* 335 U.S. at 335 U. S. 196-197 (Rutledge, J., dissenting).

> Read literally, the language of § 2241(a) requires nothing more than that the court issuing the writ have jurisdiction over the custodian. So long as the custodian can be reached by service of process, the court can issue a writ "within its jurisdiction" requiring that the prisoner be brought before the court for a hearing on his claim, or requiring that he be released outright from custody, even if the prisoner himself is confined outside the court's territorial jurisdiction.

The Court has the availability to reach the Respondents by service of process, and given that a substantial part of the events or omissions giving rise to the claims occurred in Minnesota, this district makes the most sense for the action.

Here, the challenged restraint originated in Minnesota and remains under the authority of Minnesota-based officials. Peter B. Berg, the Field Office Director of ICE Enforcement and Removal Operations for the Minneapolis Field Office, is the official responsible for the enforcement decisions giving rise to this Petition, including Walter's prolonged detention, the disregard of his unrescinded grant of Deferred Action, and the initiation of transfer and removal efforts. Those decisions were made by, and continue to be controlled by, ICE officials within this District. In addition, Respondents directed Walter's Stay of Removal application to the St. Paul Enforcement and Removal Operations Office, representing that this was the ICE office with jurisdiction over Walter.

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. Walter was detained in Kandiyohi County Jail in Minnesota for approximately seventeen months. His SIJS predicate order was issued by a Minnesota

state court. His SIJS petition was filed and adjudicated while he was detained in Minnesota. His removal proceedings were terminated by an Immigration Judge sitting in Minnesota based on that SIJS approval. The government's alleged unlawful conduct, continuing to detain and seek removal notwithstanding an unrescinded grant of Deferred Action, was first implemented and carried out in Minnesota.

Third, Walter's transfer to Texas does not defeat venue. A post-filing transfer of custody does not divest a court of jurisdiction or venue where the petition was properly filed and where the transfer appears calculated to frustrate judicial review. *Braden*, 410 U.S. at 493–500; see also *Ex parte Endo*, 323 U.S. 283, 306 (1944). Courts have repeatedly cautioned against permitting venue manipulation through detainee transfers, particularly where the petitioner seeks review of ongoing executive conduct rather than conditions of confinement alone.

Finally, Minnesota is the most appropriate forum for adjudication of this Petition. Walter's counsel is located here; the administrative record and decisionmakers relevant to the SIJS grant and Deferred Action are centered here; and Minnesota is where Walter's lawful presence, community ties, and access to counsel were established. Transfer would not serve the interests of justice and would impose unnecessary burdens on the Court and the parties, while rewarding conduct that undermines meaningful judicial review.

Accordingly, venue properly lies in this District.

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~~ Freeborn 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.

~~The Warden of Port Isabel Texas Detention Center is responsible for and has authority over detainees in the Port Isabel Detention Center. They are sued in their official capacity.~~

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] at the hands, or at the acquiescence, of his parents. His mother struggled with her own instability and was frequently absent, distracted, or emotionally unavailable. His father was an alcoholic who became abusive after discovering that his mother was unfaithful, [redacted]

Compounding these dangers, Walter suffered from [redacted] that his parents were unable to prevent or protect him from. 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. He entered the United States on March 20, 2020.

Walter is Placed in ICE Custody

Following a 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.[1] 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.

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,

[1] The Court should also note a habeas was filed for Walter on a different subject matter on two (2) occasions.

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.

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.

A Separate and Distinct Habeas Was Filed

A *habeas corpus* petition was filed challenging the post-removal-order detention of Walter on the basis that his removal is not reasonably foreseeable. This Court denies that petition on the basis that his detention is mandatory in the first 90 days post-order, but grants an emergency stay of removal to give Walter a chance to file the instant action. *See Acuna Cruz v. Berg,* No. 25-CV-4376.

Several Important Actions Are Taken and ICE Ignores the Deferred Action/ SIJ Grant

As soon as the separate *habeas* petition was filed, the Respondents started making arrangements for transfer to other jurisdictions in the United States in preparation of removal. Counsel was informed that Walter's removal was imminent by government counsel. Immediately, Congress, Senators and the Governor in Minnesota were contacted and such offices liaised with ICE, whose representatives confirmed that they were unperturbed by the SIJ status or Deferred Action, and told Senator Tina Smith's Office that Walter would need to pursue his status from Guatemala. Senator Smith's Office

responded with excerpts from the Foreign Affairs Manual and statutory provisions but ICE continues to ignore this grant.

Similarly, a Stay of Removal was filed with ICE, and it currently remains pending with ICE despite the obvious unlawfulness of removal.

A Motion to Reopen was filed with the Immigration Court citing the issues regarding DHS' ability to uphold the charges of removability given his SIJ status, IJ errors, and other constitutional and legal violations throughout his process, along with evidence of new harm and threats in Guatemala, but the Court issued a decision just a few short sentences long denying the Motion to Reopen and failing to address any of the issues.

An appeal of the Motion to Reopen was filed with the BIA and remains pending.

Walter Was Transferred to Port Isabel, Texas

In an attempt to effectuate removal, ICE transferred Walter to the Port Isabel, Texas, Detention Center where he is suffering in extremely poor conditions. He is forced to sleep without a bed in a room with approximately 25 other individuals, where he has been sleeping next to a lavatory. He has become seriously ill two (2) times since arriving just a few weeks ago, and as a result on December 17, 2025, Walter fainted and hit his head, causing memory loss and subsequent confusion and suffering. Walter also has limited access to counsel, where the only facilities available for accessible phone calls and video calls with legal counsel are through paid services that are monitored.

Walter's mental health, which he has worked extensively on maintaining through exercise, learning English and other positive activities including religious activities during his time in Kandiyohi County Jail has been impacted significantly while he has been in Port Isabel.

The instant action follows.

LEGAL FRAMEWORK

Exhaustion

Exhaustion is not relevant here where no other vehicle can be used to review the legality of removal in this context.

Suspension Clause

The Suspension Clause of the United States Constitution provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Clause guarantees that individuals restrained by the Executive have access to a judicial forum to challenge the legality of that restraint. *St. Cyr*, 533 U.S. at 300–01.

Although Congress may channel or limit judicial review of immigration matters, it may not eliminate habeas corpus without providing an "adequate and effective substitute." *Id.* at 314; *Boumediene*, 553 U.S. at 771. Where statutory jurisdiction-stripping provisions are construed to foreclose all meaningful review of executive

detention or removal, serious Suspension Clause concerns arise. *St. Cyr*, 533 U.S. at 305; *Boumediene*, 553 U.S. at 771.

In *Boumediene*, the Supreme Court articulated a functional, multi-factor framework to determine whether the Suspension Clause requires habeas review in a particular context. Courts applying the Suspension Clause consider: the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; the nature of the site where apprehension and detention took place; and the practical obstacles inherent in resolving the detainee's entitlement to the writ. *Boumediene*, 553 U.S. at 766.

District courts, including in the immigration context, have applied these factors to determine whether barring habeas jurisdiction would amount to an unconstitutional suspension of the writ. See, e.g., *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 168–71 (3d Cir. 2018).

Although the Suspension Clause does not extend exclusively to U.S. citizens, the Supreme Court has recognized that noncitizens who have developed substantial connections to the United States may invoke constitutional protections, including habeas corpus. *Boumediene*, 553 U.S. at 766; *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990).

Courts evaluating this factor consider whether the individual has a legally recognized status, statutory protections, or a substantial relationship with the United States. In *Joshua M.*, the court emphasized that Special Immigrant Juvenile (SIJ) status

reflects Congress's determination to create a protected legal relationship between certain vulnerable noncitizen children and the United States, accompanied by statutory and procedural safeguards. Because SIJ status entails eligibility for permanent residence and requires physical presence in the United States, it constitutes a significant liberty or property interest for Suspension Clause purposes. *See Osorio-Martinez*, 893 F.3d at 168–70.

The second *Boumediene* factor examines whether the individual is detained within the sovereign territory of the United States and subject to traditional executive detention. Detention within the United States, particularly by domestic law-enforcement or immigration authorities, falls squarely within the "core" of habeas corpus. *Boumediene*, 553 U.S. at 766; *St. Cyr*, 533 U.S. at 301.

Where a petitioner is physically detained in the United States by ICE, this factor weighs strongly in favor of Suspension Clause protection. *Joshua M.* recognized that immigration detention within the United States presents none of the extraterritorial or wartime concerns that have historically limited habeas review.

The third *Boumediene* factor considers whether there are practical barriers that would prevent courts from adjudicating habeas claims, such as logistical difficulties, national security concerns, or the unavailability of evidence. *Boumediene*, 553 U.S. at 766.

In the immigration context, courts have consistently held that routine administrative burdens or the "incremental expenditure of resources" associated with

habeas proceedings do not constitute sufficient practical obstacles to justify suspension of the writ. *Id.* at 769; *Joshua M.*, 439 F.Supp.3d 632 (2020).

Critically, where removal would moot a petitioner's claims and permanently extinguish statutory protections, such as SIJ status or Deferred Action, courts have found that denying habeas review would leave the petitioner without any meaningful forum to challenge unlawful executive action. In such circumstances, alternative remedies such as petitions for review are not adequate substitutes for habeas, because they cannot prevent the irreversible harm caused by removal. *St. Cyr*, 533 U.S. at 314; *Joshua M.*, 439 F.Supp.3d 632 (2020).

Courts therefore construe those provisions narrowly to preserve habeas jurisdiction over claims that challenge ultra vires or unconstitutional executive action. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

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. For these reasons, the government has a policy of issuing the SIJ

grantee Deferred Action for a period of four (4) years in anticipation of the time it will take the grantee to obtain permanent residency.

The Department of State and Related Agencies Appropriations Act, 1998 changed the definition of a Special Immigrant Juvenile and divested consular officers of the authority to issue SIJ visas. Due to this change, since November 26, 1997, SIJ has been an adjustment-only category as reflected in 22 CFR 42.11. This means that a removed noncitizen with SIJ status loses their status as of their deportation.

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.

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).

To that end, "[t]he APA requires that all 'rules' be issued through a statutorily prescribed notice-and-comment process." *Children's Hosp. of the King's Daughters, Inc. v. Azar,* 896 F.3d 615, 619 (4th Cir. 2018) (citing 5 U.S.C. § 553(a)–(c)).

The APA's notice and comment requirements apply only to "legislative" or "substantive" rules. *Lincoln v. Vigil*, 508 U.S. 182, 196, 113 S.Ct. 2024, 124 L.Ed.2d 101 (1993) (citing 5 U.S.C. § 553(b)). The notice and comment procedures do not govern: (i)

interpretative rules; (ii) general statements of policy; or, (iii) rules of agency organization, procedure, or practice. *Id.* (citing 5 U.S.C. § 553(b)). Failure to comply with the APA's notice and comment procedures renders a "legislative" or "substantive" rule invalid. *See Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1341 n.9 (4th Cir. 1995) (explaining that if the Attorney General promulgates a substantive interim rule "it would have been invalid from the date of its issuance for failure to comply with the notice [and comment] requirements under 5 U.S.C. § 553").

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 … may be eligible for victim-based benefits" is 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.

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.).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The essence of due process is the requirement that a person in jeopardy of serious loss" receive "notice" and "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333, 348-49 (citations omitted).

Under *Mathews*, 424 U.S, courts balance (1) the private interest affected, (2) the risk of erroneous deprivation and the probable value of additional safeguards, and (3) the Government's interest and burdens of additional procedures.

When USCIS issued formal grants of deferred action in conjunction with the approval of the SIJ petition, after "a standardized review process" based on objective criteria, "the result of these adjudications—DHS's decision to grant deferred action...—[wa]s an affirmative act of approval" that "confer[red] affirmative immigration relief." *Regents*, 591 U.S. at 3. "[E]ven absent a claim of entitlement to an important benefit, once [deferred action] is conferred, recipients have a protected property interest that requires a fair process before the government may take that benefit away." *Inland Empire—Immigrant Youth Collective v. Nielsen*, Case No. EDCV 17-2048, 2018 WL

4998230, at *19 (C.D. Cal. Apr. 19, 2018) ("Inland Empire III") (internal quotation marks omitted).

In addition, an SIJ grantee has a vested liberty interest in preventing their removal as, in accordance with the plain language of the SIJ statute, physical presence in the United States is a condition of SIJ Status, SIJ Status is nullified once he is removed. Removal of any SIJ grantee would trigger additional immigration violations that would make it impossible" to maintain SIJ designation and pursue adjustment of status.

"Freedom from imprisonment—from government custody, detention, or *other forms of physical restraint*—lies at the heart of the liberty that Clause protects." (emphasis added) *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, "it is beyond dispute that" a person with deferred action "has a protected interest..." *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (holding VAWA petitioner with deferred action was likely to succeed on merits of claim that his detention violated due process).

Where "continued possession" of benefits has "become essential in the pursuit of a livelihood," and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without [] procedural due process." *Bell v. Burson*, 402 U.S. 535, 539 (1971).

Regarding "the risk of an erroneous deprivation of" these interests "through the procedures used", the Court must make a comparison to "the probable value" of Plaintiffs' proposed "procedural safeguards" of a pre-deprivation process. *Mathews*, 424

U.S. at 335. "[T]he practice of automatic termination creates an unacceptably high risk of erroneous deprivation." *Inland Empire III*, 2018 WL 4998230, at *19 (emphasis added).

Finally, the Court must consider "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,".

ARGUMENT

I. The Suspension Clause

As to the first factor, his citizenship and status, although Walter is not a citizen, he has received a special immigration status in accordance with the SIJ statutes. Walter's SIJ status includes statutory and constitutional protections. As the Third Circuit has explained, "That is because… (1) [Walter has] satisfied rigorous eligibility criteria for SIJ status, denoting [him] as [a] ward of the state with obvious implications for [his] relationship to the United States; (2) Congress accorded [such] children a range of statutory and procedural protections that establish a substantial legal relationship with the United States; (3) with [his] eligibility for application for permanent residence assured and [his] application awaiting only the availability of [a] visa … and the approval of the Attorney General, [Walter has] more than 'beg[un] to develop the ties that go with permanent residence,' and (4) … SIJ designees' connection to the United States is consistent with the exercise of Congress's plenary power." *Osorio-Martinez*, 893 F.3d at 168; *see also J.L. v. Cissna*, 374 F. Supp. 3d 855, 869 (N.D. Cal. 2019) ("Plaintiffs have plausibly alleged that they have a protected property interest in SIJ status.").

Here, Walter alleges that he has developed ties to the United States, having lived here for five years without incident. Apart from his DUI infractions following the death of his grandmother and following grave trauma, he has no criminal history. His connections, bolstered through his SIJ status, are sufficient to establish Walter within the "class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990). His brother is his legal guardian. Additionally, his SIJ status inherently recognizes that he is a ward of the United States with the approval of both state and federal authorities. His SIJ status puts this case in a unique procedural posture given the Congressional protections provided to young immigrants through the enactment of the SIJ statutes.

As to the second factor, the nature and the site of his apprehension and detention, Walter was detained in the United States for the DUI traffic matters. As to the third factor, practical obstacles to resolving the writ, there are no serious practical obstacles to permitting habeas corpus proceedings. Walter readily meets the three *Boumediene* factors. Consequently, Walter is entitled to constitutional protections, including those provided by the Suspension Clause.

Where, as here, habeas is the only mechanism capable of preventing the irreversible destruction of a congressionally conferred status, the Suspension Clause requires that the writ remain available.

Turning to the matter of alternatives, as discussed, there are no other vehicles that Walter may use currently to protect himself from the *de facto* revocation of his SIJ status. *See supra* Jurisdiction.

2. Due Process

Unlike many other removal cases, Walter has received a special legal status, namely Special Immigrant Juvenile status, in accordance with federal statutes. This SIJ status reflects Congress's determination "to accord those abused, neglected, and abandoned children a legal relationship with the United States and to ensure they are not stripped of the opportunity to retain and deepen that relationship without due process." *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 170 (3d Cir. 2018). As discussed in *Osorio-Martinez*, Congress afforded these juvenile immigrants a host of procedural rights designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process. See also *D.B.*, 826 F.3d at 741–43 (discussing due process considerations raised in the immigration detention context when the government deprives a person of a protected liberty or property interest without adequate notice and a hearing).

Because SIJ status may constitute a protected liberty or property interest, and 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, Walter raises at minimum a meritorious procedural due process claim.

Removal would cause Walter to lose his SIJ status and the benefits that flow from it because, once removed, he would no longer satisfy the statutory requirement that he be "an immigrant who is present in the United States." 8 U.S.C. § 1101(a)(27)(J). Stripping Walter of his SIJ status without "good and sufficient cause" would contravene the core purpose of the SIJ statutory scheme: to provide protection and a pathway to permanent residence for a defined class of vulnerable immigrant children. These considerations further weigh in favor of success on Walter's due process claim.

Nor does Walter's circumstances demonstrate how he could regain his SIJ status once removed. Because the SIJ statutes require physical presence in the United States, removal would defeat the plain language of the statutory framework. And if Walter were to lose his SIJ status upon removal, he would be unable to pursue adjustment of status to lawful permanent residence, as such relief requires physical presence within the United States. 8 U.S.C. § 1255(a).

3. Administrative Procedure Act

ICE's sudden decision to prohibit some abused noncitizen youth from realizing the protections that Congress specifically enacted for them by detaining, attempting to remove Walter in the midst of his efforts to legalize his immigration status, and to render him statutorily ineligible for a form of relief he is currently eligible for, improperly alters the substantive rules and law without notice-and-comment rulemaking, in violation of the APA.

In addition, these actions are a *de facto* revocation of the SIJ status without the appropriate notice and opportunity to respond which is arbitrary, capricious and not in accordance with the law.

Finally, it is peculiar that the DHS grants Walter relief pursuant to the SIJ statutes while another agency within DHS, Immigration and Customs Enforcement, simultaneously pursues removal, and worse so, in contravention of the ICE Directive 11005.3. These seemingly opposing positions within the Executive Branch and the Respondents' wholesale ignorance of their own policies is a clear indication that their actions are arbitrary, capricious, and without accordance of law.

CLAIMS FOR RELIEF

CLAIM I: VIOLATION OF DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

Petitioner herein incorporates the foregoing allegations.

Removal with an approved Special Immigrant Juvenile status constitutes a *de facto* revocation of Walter's congressionally protected status, without proper notice and opportunity to respond, in violation of Walter's Due Process Rights.

CLAIM II: VIOLATION OF THE SUSPENSION CLAUSE, ARTICLE 1, SECTION 9, CLAUSE 2 OF THE U.S. CONSTITUTION

Petitioner herein incorporates the foregoing allegations.

DHS is in the process of detaining and deporting Walter in a way that permanently extinguishes his congressionally granted SIJS without any meaningful judicial or agency review, leaving no adequate substitute for the writ, therefore violating the Suspension Clause.

CLAIM III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, § 5 U.S.C. § 553

Petitioner herein incorporates the foregoing allegations.

ICE's sudden decision to prohibit some abused noncitizen youth from realizing the protections that Congress specifically enacted for them by detaining, attempting to remove Walter in the midst of his efforts to legalize his immigration status, and to render him statutorily ineligible for a form of relief he is currently eligible for, improperly alters the substantive rules and law without notice-and-comment rulemaking, in violation of the APA.

CLAIM IV: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, § 5 U.S.C. § 706(2)(A)

Petitioner herein incorporates the foregoing allegations.

Respondent's *de facto* revocation of Walter's SIJ status by removing him without good and sufficient cause, without notice and opportunity to respond, and in place of a USCIS officer is arbitrary, capricious, and not in accordance with the law.

CLAIM V: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, § 5 U.S.C. § 706(2)(A)

Petitioner herein incorporates the foregoing allegations.

Respondent's conflicting actions against Walter (namely, one branch of the DHS issuing deferred action, and the other branch undertaking wholesale ignorance of that deferred action) is arbitrary and capricious.

CLAIM VI: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, § 5 U.S.C. § 706(2)(A)

Petitioner herein incorporates the foregoing allegations.

Respondents deviating from longstanding Directives not to take action against special immigrants, victims and trafficking survivors by choosing to remove a SIJ who is also a victim of crime and trafficking, is arbitrary and capricious.

CLAIM VII: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1155.

Petitioner herein incorporates the foregoing allegations.

Respondent's *de facto* revocation of Walter's SIJ status by removing him without good and sufficient cause, without notice and opportunity to respond, and in place of a USCIS officer is a violation of the Immigration and Nationality Act. 8 U.S.C. § 1155.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause;

c. Order that Walter be transferred back to Minnesota for access to his attorney and to participate in this proceeding and that he is to not to be transferred out of Minnesota until the conclusion of these proceedings;

d. Declare that Petitioner's removal violates the Immigration and Nationality Act, 8 U.S.C. § 1155; the Administrative Procedure Act § 553; the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); the Suspension Clause of Article 1 of the U.S. Constitution; and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

e. Order that Respondents undertake the required post-order custody determination by no later than February 11, 2026, provide a report to the Court, and, if they allege Walter should remain lawfully detained, show cause as to why;

f. Stay Walter's Removal from the United States until 14 days after all Court actions, BIA actions, and appeal options have been exhausted;

g. Award him costs and attorney fees under the Equal Access to Justice Act;

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

[signature block to follow]

DATED: ~~December 19~~ January 26, 2025

Respectfully Submitted,

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