UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

AI-YEE LIU, [redacted]

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

WARDEN, Florence Service Processing Center;

PAMELA BONDI, Attorney General of the United States,

Defendants.

Case No.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 8 U.S.C. § 2241 AND EMERGENCY ORDER TO SHOW CAUSE

Petitioner Ai Yue Liu, by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2241 and states as follows:

I. INTRODUCTION

1. Petitioner Ai Yue Liu is a 47-year-old mother of three United States citizen children who has lived continuously in the United States for nearly thirty years. She is currently detained at the Florence Service Processing Center in Florence, Arizona, and faces imminent removal to China.

2. Ms. Liu seeks habeas relief on the grounds that: (a) her removal would violate her rights under the Administrative Procedure Act because the denial of her adjustment of status application was arbitrary and capricious; (b) her removal would violate her due process rights; and (c) her continued detention pending this Court's adjudication of her claims is without adequate legal basis if removal is not imminent.

3. Concurrently with this Petition, Ms. Liu has filed an Emergency Motion for Temporary Restraining Order and Stay of Removal. Given the imminent threat of removal, Ms. Liu respectfully requests that this Court promptly adjudicate her claims.

II. PARTIES

4. Petitioner Ai Yue Liu is a native and citizen of the People's Republic of China. She is currently detained at the Florence Service Processing Center in Florence, Arizona. Her Alien Registration Number is 

5. Respondent Warden, Florence Service Processing Center is the individual with immediate physical custody of Petitioner. The Florence Service Processing Center is located at 3250 N. Pinal Parkway, Florence, Arizona 85132.

6. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component agency of the Department of Homeland Security responsible for immigration enforcement and the detention and removal of aliens from the United States.

7. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity.

8. Respondent Pam Bondi is the Attorney General of the United States. She is sued in her official capacity.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this habeas corpus petition pursuant to 28 U.S.C. Section 2241, which provides that federal district courts have jurisdiction to grant writs of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States."

10. This Court has jurisdiction pursuant to 28 U.S.C. Section 1331 (federal question jurisdiction) over Petitioner's claims arising under the Administrative Procedure Act, 5 U.S.C. Section 706.

11. Venue is proper in this District pursuant to 28 U.S.C. Section 2241(d) because Petitioner is detained within this judicial district at the Florence Service Processing Center in Florence, Arizona, which is located in the District of Arizona.

12. Respondent Warden, Florence Service Processing Center is Petitioner's immediate custodian and is amenable to service of process in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004).

IV. DEMAND FOR ORDER TO SHOW CAUSE PURSUANT TO 28 U.S.C. § 2243

13. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully demands that this Court forthwith issue an order directing Respondents to show cause why the writ of habeas corpus should not be granted.

14. Under 28 U.S.C. § 2243, "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

15. The statute mandates that "[t]he writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be

returned within three days unless for good cause additional time, not exceeding twenty days, is allowed."

16. Given the egregious nature of the statutory and constitutional violations presented herein, as well as the imminency of potential removal, deportation and/or exclusion Petitioner requests that this Court order Respondents to show cause within three (3) days why the writ should not be granted.

17. Upon return of the order to show cause, Petitioner requests that this Court set a hearing within five (5) days as required by 28 U.S.C. § 2243, at which Respondents shall be required to produce Ms. Liu given that this petition raises mixed questions of law and fact.

V. FACTUAL ALLEGATIONS

18. Petitioner Ai Yue Liu is a native and citizen of the People's Republic of China. She was born on [redacted] in Fujian Province, China.

19. On January 14, 1995, when she was approximately seventeen years old, Ms. Liu arrived in the United States at John F. Kennedy International Airport.

20. Upon arrival, Ms. Liu was inspected by immigration officials and placed into exclusion proceedings as an arriving alien without proper

documentation. She was charged as excludable under former INA Sections 212(a)(7)(A)(i)(I), 212(a)(7)(B)(i)(I), and 212(a)(7)(B)(i)(II).

21. On March 7, 1995, Ms. Liu filed Form I-589, Application for Asylum, based on [redacted]

22. On March 29, 1995, Immigration Judge Jeffry S. Chase denied Ms. Liu's asylum application and ordered her excluded from the United States.

23. Ms. Liu appealed to the Board of Immigration Appeals ("BIA"). On November 3, 1995, the BIA dismissed her appeal. The exclusion order became administratively final on that date.

24. The exclusion order has never been executed. Ms. Liu has remained in the United States continuously since January 14, 1995.

25. On November 1, 2005, Ms. Liu filed a Motion to Reopen with the BIA based on changed personal circumstances, specifically the birth of her United States citizen children and [redacted]

26. The BIA denied the Motion to Reopen as untimely filed.

27. Ms. Liu sought review of the BIA's denial in the United States Court of Appeals for the Second Circuit. On September 28, 2007, the Second Circuit denied the Petition for Review.

28. On July 29, 1999, Ms. Liu married Shan Chun Chen in New York.

29. Ms. Liu and her husband have three children, all of whom were born in the United States and are United States citizens by birth: Angela Chen, born in 2004 (age 21); Annie Chen, born in 2005 (age 20); and Benson Chen, born in 2006 (age 19).

30. Ms. Liu has been the primary caregiver for her three children throughout their lives. She raised them in Great Neck, New York, where the family has resided.

31. Ms. Liu has maintained stable employment throughout her time in the United States. She has consistently paid federal, state, and local taxes.

32. Ms. Liu has never received public benefits such as food stamps or welfare.

33. Ms. Liu has no criminal history of any kind. She has never been arrested, charged with, or convicted of any crime.

34. Prior to her detention on December 2, 2025, Ms. Liu resided at [redacted]

35. On July 22, 2025, Angela Chen, as an adult United States citizen over the age of twenty-one, filed Form I-130, Petition for Alien Relative, on behalf of her mother under the immediate relative category (parent of a United States citizen).

36. Concurrently with the I-130 petition, Ms. Liu filed Form I-485, Application to Register Permanent Residence or Adjust Status. The I-485 application was assigned receipt number [redacted]

37. On December 2, 2025, USCIS approved the I-130 petition filed by Angela Chen on behalf of Ms. Liu.

38. As the beneficiary of an approved immediate relative petition, Ms. Liu had an immigrant visa immediately available to her, and she was eligible to apply for adjustment of status.

39. USCIS scheduled Ms. Liu's adjustment of status interview for December 2, 2025, at 1:15 p.m. at the USCIS Long Island Field Office in Holtsville, New York.

40. On December 2, 2025, Ms. Liu appeared for her scheduled adjustment of status interview at the USCIS Long Island Field Office in Holtsville, New York. She was accompanied by her daughter Angela Chen and her attorney, Scott Strong.

41. The interview lasted approximately 25 to 30 minutes. The USCIS interviewing officer focused almost exclusively on negative factors, specifically Ms. Liu's unlawful presence in the United States and her failure to depart after the 1995 exclusion order.

42. Upon information and belief, the officer asked no questions about Ms. Liu's contributions to her community, her role in her family, her lack of criminal history, or any other positive factors in her case.

43. Upon information and belief, when Ms. Liu's attorney attempted to raise favorable evidence, specifically that Ms. Liu had consistently paid taxes throughout her time in the United States, the officer dismissed this evidence, noting that Ms. Liu had been living "illegally" in the United States.

44. At the conclusion of the interview, as the officer was making copies of documents, there was a knock on the interview room door. ICE agents entered the room, displayed their badges, and stated that Ms. Liu had an outstanding removal order and they were taking her into custody.

45. Upon information and belief, as Angela Chen was being led out of the USCIS building, the interviewing officer looked at her and said: "Sorry about that."

46. Ms. Liu was transported from New York to the Florence Service Processing Center in Florence, Arizona, where she has been detained since December 2, 2025.

47. On December 11, 2025, counsel filed a Verified Complaint for Mandamus in the United States District Court for the Eastern District of New

York, Case No. 25-cv-06842-SJB, seeking to compel USCIS to adjudicate Ms. Liu's then-pending I-485 application.

48. On December 12, 2025, Judge Sanket J. Bulsara ordered Plaintiffs to file an emergency motion addressing the Court's authority to enjoin removal during the pendency of a mandamus application.

49. On December 15, 2025, Plaintiffs filed an Emergency Motion for Stay of Removal, and the Court granted a temporary restraining order enjoining Ms. Liu's removal.

50. On December 17, 2025, USCIS issued a decision denying Ms. Liu's I-485 Application for Adjustment of Status.

51. The denial notice stated that Ms. Liu is eligible for adjustment of status. USCIS found that Ms. Liu satisfied the statutory requirements for adjustment.

52. However, USCIS exercised negative discretion and denied the application.

53. The denial notice stated that Ms. Liu's familial relationships "were established while you were subject to a final order of exclusion. As such, the ties constitute after-acquired equities and are accorded diminished weight." The denial cited *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984).

54. The denial notice further stated that Ms. Liu's explanation for remaining in the United States, specifically that she "wanted to wait until my child turns 21 to apply for me," was "not a reasonable justification or valid excuse for failing to comply with the exclusion order."

55. The denial notice advised Ms. Liu that she may not appeal the decision but may file a Motion to Reopen or Motion to Reconsider using Form I-290B within 33 days.

56. The denial notice stated: "If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court."

57. On December 18, 2025, the Eastern District of New York held oral arguments where it was determined that the mandamus to compel adjudication of the I-485 was mooted by USCIS' December 17, 2025 decision. As a consequence, the Court issued the following Order: "ORDER: The temporary restraining order ('TRO') enjoining removal [8] is extended until 12/19/2025 at 5:00 P.M. (PT). At that time, unless the Court orders otherwise, the TRO will automatically expire, and the Court will direct this case to be closed as moot. So Ordered by Judge Sanket J. Bulsara on 12/18/2025."

58. The Eastern District of New York's indication that it will close the case as moot reflects that court's recognition that venue for habeas relief lies where the petitioner is detained, which is this District.

59. Ms. Liu's removal is therefore imminent. The TRO expires on December 19, 2025, at 5:00 p.m. Pacific Time. Unless this Court grants emergency relief, ICE will execute Ms. Liu's removal to China immediately upon expiration of the TRO.

60. Without intervention from this Court, Ms. Liu will be removed from the United States, permanently separated from her three United States citizen children.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

61. To the extent exhaustion of administrative remedies is required, Ms. Liu has exhausted or is excused from exhausting such remedies.

62. Ms. Liu's exclusion proceedings were administratively final as of November 3, 1995, when the BIA dismissed her appeal.

63. Ms. Liu filed a Motion to Reopen with the BIA, which was denied. She sought judicial review of that denial, which the Second Circuit denied on September 28, 2007.

64. Ms. Liu's I-485 application was denied on December 17, 2025. There is no appeal of that decision.

65. Ms. Liu's family has made extensive but futile efforts to seek an administrative stay of removal from ICE, which efforts have been thwarted by ICE's own bureaucratic dysfunction.

66. On December 3, 2025, one day after Ms. Liu's detention, her family consulted with attorney Gary Yerman from the Yerman Group regarding options for seeking her release. Attorney Yerman advised that the first step was to apply for a stay of removal with ICE using Form I-246.

67. By Friday, December 5, 2025, the family had gathered most of the documents required for the stay of removal application.

68. On December 4, 2025, while the family was gathering documents, counsel was notified that the New York ICE Field Office had informed them that Ms. Liu was being transferred to the Alexandria Staging Facility in Louisiana.

69. On the same day, counsel attempted to file the I-246 stay of removal application at the New York Field Office but was informed that the application must be submitted at the location where Ms. Liu was detained. The New York Field Office refused to accept the filing.

70. On the evening of December 5, 2025, the family received a phone call from Ms. Liu informing them that she had been flown to Arizona.

71. On December 6, 2025, counsel emailed the Arizona Field Office requesting information about whether they had jurisdiction over Ms. Liu's case.

72. On December 7, 2025, counsel received a response from the Arizona Field Office stating that Ms. Liu's case jurisdiction was still with the New York Field Office. The Arizona Field Office specifically stated: "Your client was not transferred to Arizona. NY still has case jurisdiction. Go through them for any decisions or information." This information was false; Ms. Liu was in fact detained in Arizona.

73. On December 8, 2025, counsel went to the New York Field Office at 26 Federal Plaza to submit the stay of removal documents. The New York Field Office rejected the documents, stating that Ms. Liu did not reside in their custody and they could not find her location using her A-number.

74. On December 9, 2025, counsel returned to 26 Federal Plaza to attempt again to submit the stay of removal documents. After continuous discussion with the supervisor and officers, the New York Field Office again refused to accept the application. The field office then stated that Ms. Liu was detained in Oakdale, Louisiana, and that the family needed to file with the Louisiana Field Office. This information was also false; Ms. Liu was detained in Florence, Arizona.

75. On December 10, 2025, the family traveled to the Louisiana Field Office at 181 James Drive West, St. Rose, Louisiana. The Louisiana Field Office informed them that Ms. Liu's docket was still with the New York Field Office and they could not process the application. The Louisiana Field Office stamped the documents as received at 11:25 AM and mailed them to the New York Field Office, stating they would arrive on December 12, 2025.

76. On December 11, 2025, when the family entered Ms. Liu's A-number into the ICE Detainee Locator System, it finally showed her location at Florence Service Processing Center in Arizona.

77. As of December 18, 2025, the family has received no response from the New York Field Office regarding the stay of removal application, despite their continual efforts over a period of two weeks.

78. These facts demonstrate that administrative remedies are futile. ICE has made it impossible for Ms. Liu to effectively seek a stay of removal through administrative channels by:

a. Providing contradictory information about which field office has jurisdiction over her case;

b. Providing apparent false information about her physical location;

c. Refusing to accept the stay of removal application at multiple field offices; and

d. Failing to respond to the application that was eventually submitted.

79. Where, as here, an agency makes it impossible to pursue administrative remedies, exhaustion is excused. *Seee McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (exhaustion not required where "inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it.").

VII. CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF FIFTH AMENDMENT DUE PROCESS RIGHTS

80. The Fifth Amendment's Due Process Clause provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

81. Due process requires that agency adjudications be fundamentally fair and that adjudicators not prejudge the outcome. The Ninth Circuit has recognized that USCIS benefit adjudications can trigger Fifth Amendment procedural protections and must satisfy the *Mathews v. Eldridge* balancing test when the adjudication turns on contested facts. *See Ching v. Mayorkas*, 725 F.3d

1149 (9th Cir. 2013) (holding plaintiffs had a protected interest in USCIS I-130 adjudication and that additional process was required under *Mathews*).

82. The circumstances of Ms. Liu's interview and the subsequent denial violated her due process rights. In short, USCIS' denial of her I-485 is not a legally valid denial as it was a predetermined but ex-post facto issued result for the purpose of defeating federal litigation rather than a full and fair adjudication on its merits.

83. The USCIS interviewing officer demonstrated prejudgment by focusing almost exclusively on negative factors and refusing to consider or give weight to favorable evidence. The officer's dismissal of Ms. Liu's tax payment history and failure to inquire about any positive factors suggests the outcome was predetermined.

84. The Ninth Circuit has held that due process is violated where the adjudicator's conduct shows hostility or prejudgment and undermines the fairness of the proceeding. *See Reyes-Melendez v. INS*, 342 F.3d 1001 (9th Cir. 2003). As the Ninth Circuit emphasized, neutrality is among the most basic due process protections in immigration adjudications. An adjudicator who refuses to engage with favorable equities and treats the outcome as foreordained violates these fundamental principles. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 780 (9th Cir.

2001) (Finding that an adjudicator's bias raises a colorable due process claim but denying the petition for review on other grounds).

85. Here, the USCIS officer's refusal to meaningfully consider Ms. Liu's favorable equities—her nearly thirty years of residence, tax payments, lack of criminal history, and role as mother to three U.S. citizen children—demonstrates the kind of prejudgment that violates due process. The officer asked no questions about positive factors and dismissively refused to credit Ms. Liu's tax payment history when counsel raised it.

86. Numerous other factors show an indicia of bias and predetermination, rather than good faith.

87. First, the timing of the decision – one day before oral arguments on a mandamus to compel, provides substantial indicia that the decision was prepared for the purpose of defeating federal litigation rather than good faith adjudication on the merits of the application.

88. Second, ICE officers were waiting outside the interview room to detain Ms. Liu immediately upon the conclusion of the interview. The coordination between USCIS and ICE suggests that the interview was not conducted in good faith as a genuine adjudication but as a pretext to effectuate detention.

89. The use of the adjustment-of-status process as a bait-and-switch mechanism for detention has been recognized as legally problematic by courts across the country.

90. In *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451 (S.D.N.Y. 2018), Judge Torres confronted a factually analogous situation in which petitioner appeared for his I-485 adjustment interview, was questioned about his relationship with his U.S. citizen spouse, and was then arrested by ICE officers before being questioned on his adjustment petition. *Id.* at 455. On that same day, USCIS approved the I-130 petition but denied the I-485 application. *Id.* The Court found that the agency had committed reviewable legal error and held that the petitioner was likely to succeed on his claims.

91. The *You* Court squarely rejected the government's argument that it could deploy the adjustment process to facilitate detention. As Judge Torres explained: "By inviting Petitioner to interview for his green card and arresting him at his interview appointment, Respondents deployed § 1255 to effectuate the opposite of its intended outcome for aliens like Petitioner. Respondents used the adjustment of status scheme as a sword when it was intended to be used as a shield." *Id.* at 466.

92. Judge Torres further observed that "Congress did not intend its carefully considered adjustment of status process for a select group of aliens to

become a mechanism for 'gotcha' law enforcement." *Id.* Referring to such coordinated tactics between USCIS and ICE, the Court held: "These type of bait-and-switch tactics are not only a perversion of the statute, but also likely offensive to 'the concept of ordered liberty.'" *Id.* (quoting *Rochin v. California*, 342 U.S. 165, 169 (1952)).

93. In *Calderon v. Sessions*, 330 F. Supp. 3d 944 (S.D.N.Y. 2018), Judge Crotty similarly condemned the government's attempt to remove an undocumented immigrant who was in the midst of pursuing adjustment of status through his U.S. citizen spouse. The Court found that "by detaining and attempting to execute Petitioner's order of removal, Respondents have attempted to strip the Petitioner's right to engage in an immigration process made available to him. Yet Respondents have provided no explanation or justification." *Id.* at 958.

94. Judge Crotty emphasized that the government's conduct violated both the APA and the Due Process Clause: "Respondents show no concern for the rights of aliens that they themselves created. This unchecked exercise of power is exactly what the APA is designed to protect against." *Id.* The Court concluded that removing the petitioner while he was actively pursuing an adjustment application "is not in accordance with law" and constituted arbitrary and capricious agency action. *Id.*

95. In *De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400 (D.N.J. 2018), the Court confronted another instance where ICE agents entered the interview room and arrested the petitioner at the conclusion of his I-130 interview. The Court characterized the government's conduct as "exactly the arbitrary and capricious behavior our laws intend to prevent." *Id.* at 410.

96. The *Martinez* Court found that "DHS created a process for individuals in Mr. Martinez's exact position to apply for a waiver, and required, as part of that process, his attendance at an interview to confirm the bona fides of his marriage. Then, based on a purported 'new policy,' ICE agents used that interview to prevent Mr. Martinez from completing the waiver process." *Id.* at 410. The Court warned that "[i]f left unchecked, this 'new policy' would render the provisional waiver a nullity." *Id.*

97. The *Martinez* Court further held that "Respondent-Defendants' attempt to deport Mr. Martinez by arresting him during his I-130 interview constitutes a disregard for the rights that they, on behalf of DHS, created. To attempt to remove Mr. Martinez while he was availing himself of the provisional waiver process is 'arbitrary, capricious, an abuse of discretion, [and] not in accordance with law.'" *Id.* (quoting 5 U.S.C. § 706).

98. In *Lin v. Nielsen*, 377 F. Supp. 3d 556 (D. Md. 2019), the District of Maryland found that "Defendants effectively used the I-130 interview to lure

Lin to his arrest, preventing him from completing the provisional waiver process. Defendants have thus taken a rule that was promulgated for one purpose and used it for the opposite purpose." *Id.* at 564.

99. The *Lin* Court held that "[t]o allow removal under these circumstances would permit the government to erect an impenetrable barrier to completion of the provisional waiver process and, indeed, to use it as a trap for unsuspecting applicants." *Id.* The Court thus enjoined ICE from removing Mr. Lin pending further proceedings. *Id.* at 565.

100. In *Sanchez v. McAleenan*, 2020 WL 1911547 (D. Md. 2020), the same court applied *Lin* to a putative class of similarly situated individuals. The Court found that "Respondents effectively used the I-130 interview to lure Petitioners...to their arrests, preventing them from completing the provisional waiver process." *Id.* The Court held that "[t]his is precisely the type of arbitrary and capricious behavior the APA is designed to prevent." *Id.*

101. In *Jimenez v. Nielsen*, 334 F. Supp. 3d 370 (D. Mass. 2018), Judge Wolf denied the government's motion to dismiss claims brought by multiple petitioners who had been arrested at or deterred from attending their USCIS interviews. The Court found that "petitioners allege with adequate specificity a 'pattern' of arrests at the CIS offices, indicating that ICE has been 'systematically targeting' for arrest, detention, and removal individuals who were applying for

provisional waivers or launching that process at their I-130 interviews." *Id.* at 389-90.

102. These cases establish that when the government invites an applicant to an interview as part of an immigration benefits process it has created, the government may not then use that interview as a trap to effectuate detention and removal without meaningful adjudication of the pending application.

103. Ms. Liu's case presents facts indistinguishable from those condemned in *You*, *Calderon*, *Martinez*, *Lin*, *Sanchez*, and *Jimenez*. She appeared for her I-485 interview in good faith, represented by counsel, prepared to demonstrate her eligibility for adjustment of status. She was never asked about positive equities or given an opportunity to present favorable evidence. ICE officers were waiting outside the interview room and detained her immediately upon its conclusion. The denial was issued after this lawsuit was filed and one day before oral argument on the motion to stay removal.

104. The *You* Court also addressed a critical legal issue present in Ms. Liu's case: USCIS's mislabeling of eligibility factors as adverse discretionary factors. As Judge Torres explained, "USCIS labeled several factors as 'adverse' in contravention of the statutory scheme that Congress created for alien relatives of U.S. citizens." *You*, 321 F. Supp. 3d at 467.

105. The Court in *You* held that "[l]abeling these facts as 'adverse' would not only collapse the eligibility and discretionary stages of the adjustment of status process, but also render the reasons an alien must seek relief the same reasons he is barred from relief. Surely, Congress did not intend these results." *Id.* The Court found that "USCIS's mislabeling of eligibility factors as 'adverse' factors at the discretionary stage are inconsistent with the text, structure, and history of the INA's statutory scheme for adjustment of status." *Id.*

106. Here, USCIS's denial of Ms. Liu's I-485 application similarly mislabels eligibility factors as adverse discretionary factors. The denial treats Ms. Liu's entry without inspection, her failure to depart after the exclusion order, and her unlawful presence as "adverse" discretionary factors. But as the *You* Court recognized, these are the very circumstances that make an applicant eligible for adjustment under § 1255 in the first place. They cannot simultaneously serve as the basis for a discretionary denial, or the adjustment of status remedy would be rendered meaningless for the class of aliens Congress intended to benefit.

107. Moreover, the denial was not the product of reasoned decision-making but was instead a litigation tactic designed to moot this Court's jurisdiction. The timing of the denial, issued after the filing of this lawsuit and one day before oral argument, combined with the coordination between USCIS

and ICE at the December 2, 2025 interview, demonstrates that the denial was pretextual.

108. As the Supreme Court held in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), a court may set aside agency action as pretextual when the stated justification is a contrived post-hoc rationalization that does not reflect the agency's actual reasoning. *Id.* at 2573-76. The Court explained that the reasoned explanation requirement of administrative law is "meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public." *Id.* at 2575-76. "Accepting contrived reasons would defeat the purpose of the enterprise." *Id.*

109. The denial of Ms. Liu's I-485 application fails this standard. The denial acknowledges only two favorable factors: her three U.S. citizen children and her lack of contact with law enforcement. It makes no mention of her nearly thirty years of residence in the United States, her consistent tax payments, her community ties, or her role as mother and caretaker. This omission is not accidental. The interviewing officer never asked about these factors because the outcome was predetermined. The interview was designed to facilitate detention, and the denial was designed to moot this litigation.

110. Based upon the foregoing authorities, Ms. Liu's detention pursuant to the December 2, 2025 interview and the subsequent denial of her I-485

application constitute arbitrary and capricious agency action in violation of the APA and violations of the Due Process Clause of the Fifth Amendment. The denial should be vacated as pretextual, and this Court should order USCIS to conduct a good-faith adjudication of Ms. Liu's I-485 application.

COUNT TWO: VIOLATION OF DUE PROCESS (FIFTH AMENDMENT) BY FAILING TO PROVIDE MEANINGFUL OPPORTUNITY TO PRESENT AND REBUT EVIDENCE.

111. Due process requires a full and fair hearing and a reasonable opportunity to present evidence. **See Colmenar v. INS**, 210 F.3d 967 (9th Cir. 2000). The USCIS officer's refusal to consider favorable evidence deprived Ms. Liu of a fair hearing.

112. Moreover, USCIS regulations require the agency to advise applicants of derogatory information unknown to them and provide an opportunity to rebut before an adverse decision. 8 C.F.R. Section 103.2(b)(16)(i). In *Ilyabaev v. Kane*, 847 F. Supp. 2d 1168 (D. Ariz. 2012), the court held that USCIS violated due process and its own regulation by failing to follow this notice-and-rebuttal requirement. The failure to disclose derogatory grounds and allow rebuttal deprives the applicant of a fair adjudication.

113. Here, Ms. Liu was not given a meaningful opportunity to address the negative factors the agency relied upon or to present evidence in rebuttal. The

interviewing officer focused exclusively on negative factors, refused to engage with favorable evidence when counsel attempted to present it, and rendered an outcome that appeared predetermined. This denial of meaningful participation violates the fundamental due process requirement that a party be allowed to rebut agency evidence. *See Zerezghi v. USCIS*, 955 F.3d 802 (9th Cir. 2020) (due process violated where agency relied on undisclosed evidence without meaningful chance to rebut); *Kaur v. Holder*, 561 F.3d 957 (9th Cir. 2009) (use of evidence without adequate opportunity for meaningful rebuttal is fundamentally unfair and violates due process).

114. Because the adjudication of Ms. Liu's I-485 application violated due process, this Court should vacate the denial and order a new adjudication before a different officer, with proper procedural protections including a neutral adjudicator, meaningful opportunity to present evidence, and assurance that the process will not be used as a detention mechanism.

COUNT THREE: DETENTION VIOLATES 8 U.S.C. SECTION 1231 AND CANNOT BE JUSTIFIED UNDER THE STATUTORY FRAMEWORK

115. The statutory framework governing detention after a removal order establishes distinct temporal periods with different detention authorities. As the Ninth Circuit explained in *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011),

the statute creates a 90-day "removal period" during which detention is mandatory under 8 U.S.C. Section 1231(a)(2). After the removal period expires, any continued detention must be authorized under 8 U.S.C. Section 1231(a)(6) and is subject to the constitutional constraints established in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

116. Under 8 U.S.C. Section 1231(a)(1)(B)(i), the 90-day removal period began when Ms. Liu's exclusion order became administratively final on November 3, 1995. That period expired on February 1, 1996. Once this period passed without removal, the statute provides that "the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. Section 1231(a)(3).

117. Orders of supervision under Section 1231(a)(3) are an express statutory feature commonly used for individuals with old orders living in the community.

118. For nearly thirty years after the removal period expired, Ms. Liu was not detained. She lived openly in the community, raised three United States citizen children, paid taxes, maintained employment, and complied with all laws. The government did not seek to detain her or execute her removal during this period, effectively treating her as subject to the supervision regime of Section 1231(a)(3) rather than the mandatory detention regime of Section 1231(a)(2).

119. Because the 90-day removal period expired nearly thirty years ago, ICE cannot justify Ms. Liu's present detention under the mandatory detention authority of 8 U.S.C. Section 1231(a)(2). That authority is tied exclusively to the 90-day removal period; once that period expires, mandatory detention authority lapses. **See Diouf**, 634 F.3d at 1086 (explaining that mandatory detention applies only during the removal period).

120. As Judge Rochon explained in *Zhu v. Genalo*, No. 1:25-cv-06523 (S.D.N.Y. Aug. 26, 2025), ICE cannot circumvent these temporal limits through strategic delays in arrest. In *Zhu*, the court confronted nearly identical circumstances: a foreign national with a decades-old removal order who had been living in the community. The court held that detention commenced decades after the removal period expired could not be justified under the mandatory detention regime.

121. Any present detention of Ms. Liu must be justified, if at all, under 8 U.S.C. Section 1231(a)(6), which permits discretionary detention "beyond the removal period" of certain aliens who are inadmissible or removable on specified grounds. However, Section 1231(a)(6) detention is subject to the constitutional constraints of *Zadvydas* and must be reasonably necessary to effectuate removal.

122. The Ninth Circuit applies the *Zadvydas* standard by asking whether there is "no significant likelihood of removal in the reasonably foreseeable

future." *See Lema v. INS*, 341 F.3d 853 (9th Cir. 2003). The thirty-year delay between the expiration of Ms. Liu's removal period and her present detention, combined with the decades during which she lived in the community without any attempt to detain or remove her, is powerful evidence that detention now is not "reasonably necessary" to effect removal.

123. Ms. Liu has no criminal history whatsoever. She poses no flight risk; she appeared voluntarily for her USCIS interview knowing she had an outstanding exclusion order. She poses no danger to the community. The government cannot point to any of the factors that typically justify discretionary detention under Section 1231(a)(6).

124. Importantly, Ms. Liu appeared voluntarily for her scheduled interview, cooperated with authorities, and has not engaged in any conduct that would toll the removal period under 8 U.S.C. Section 1231(a)(1)(C). The government cannot invoke tolling or obstruction to justify her detention.

125. Moreover, te December 17, 2025 I-485 denial letter contains language advising Ms. Liu that she has "33 days to voluntarily depart the United States" or "removal proceedings may be initiated." This language is legally incoherent and reveals fundamental confusion within the government about the basis for Ms. Liu's detention and proposed removal.

126. If the government is executing the 1995 exclusion order, there are no "removal proceedings" to be "initiated"—those proceedings concluded thirty years ago. The statutory framework of 8 U.S.C. Section 1231 applies to the execution of existing final orders, not the commencement of new proceedings. The reference to initiating removal proceedings suggests that USCIS may be operating under the misapprehension that Ms. Liu is subject to a new removal proceeding rather than an ancient, dormant exclusion order.

127. Similarly, the offer of "33 days to voluntarily depart" is incompatible with execution of a thirty-year-old exclusion order. Voluntary departure is a form of relief from removal that must be requested and granted in removal proceedings. *See* 8 U.S.C. Section 1229c. It is not available to someone who is already subject to a final order of exclusion. The inclusion of this language suggests that the government is confused about whether it is executing an old order or processing a new removal.

128. This confusion is compounded by the government's simultaneous actions: while the denial letter advises Ms. Liu she has 33 days to depart, ICE detained her on the same day and scheduled her for imminent removal. The government cannot coherently claim authority to execute a thirty-year-old exclusion order while its own denial letter suggests that removal proceedings have not yet begun and that Ms. Liu has over a month to voluntarily depart.

129. This incoherence undermines the legitimacy of the government's claimed authority to detain and remove Ms. Liu. An agency that cannot articulate a consistent legal basis for its actions has not engaged in reasoned decision-making and cannot satisfy its burden to justify detention under either Section 1231(a)(2) or Section 1231(a)(6).

130. Ms. Liu's current detention, which commenced on December 2, 2025, nearly thirty years after her 90-day removal period expired on February 1, 1996, violates the statutory framework of 8 U.S.C. Section 1231 and cannot be justified under either Section 1231(a)(2) or Section 1231(a)(6).

COUNT FOUR: ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. SECTION 706(2)(A))

131. The Administrative Procedure Act requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. Section 706(2)(A).

132. USCIS's denial of Ms. Liu's I-485 application was arbitrary and capricious

133. As discussed above, agency regulations and guidelines, as well as well-established case-law mandate that USCIS consider the totality of favorable

factors in the record, including Ms. Liu's nearly thirty years of continuous residence, her consistent payment of taxes, her lack of receipt of public benefits, her stable employment history, her strong family and community ties, and her role as the sole caregiver for three children who are now young adults

134. An agency acts arbitrarily and abuses its discretion if it fails to consider important aspects of the case or relevant factors in the record. In *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991), the Ninth Circuit held that the Board abuses its discretion if it fails to "'show proper consideration of all factors when weighing equities and denying relief.'" (quoting *Mattis v. INS*, 774 F.2d 965, 968 (9th Cir. 1985) (agency must show it considered all relevant factors in denying relief). The Ninth Circuit has emphasized that a failure to "consider all the relevant evidence" or to adequately weigh important favorable factors constitutes an arbitrary and capricious decision.

135. Here, USCIS's denial did not meaningfully account for multiple favorable factors in Ms. Liu's case—including nearly 30 years of continuous residence, a consistent work and tax-paying history, lack of public benefits usage, strong family and community ties, and her role as sole caregiver to three U.S. citizen children. By ignoring or downplaying these important positive equities, USCIS failed to consider the entire totality of circumstances and renders

the decision arbitrary and capricious. *See e.g. Arrington v. Daniels*, 516 F.3d 1106, 1112-13 (9th Cir. 2008).

136. Even assuming USCIS purported to deny Petitioner's adjustment application on the merits, the denial constitutes reviewable legal error. USCIS's application of an improper factor to deny adjustment of status is not an exercise of discretion but rather "not in accordance with law" and subject to judicial review. *You*, 321 F. Supp. 3d at 467.

137. In *You*, the court explained that while it "cannot review USCIS's 'factor-balancing,'" the court "retains jurisdiction to determine whether USCIS committed legal error." 321 F. Supp. 3d at 467 (citing *Adebola v. Barr*, 723 F. App'x 44 (2d Cir. 2018)). Specifically, courts retain jurisdiction to review claims that the agency "labeled as 'adverse' whatever facts it pleases." *Id.* at 468. As the Ninth Circuit has held, "[t]he inclusion of an improper factor in reaching a discretionary decision is grounds for remand." *Jen Hung Ng v. I.N.S.*, 804 F.2d 534, 540 (9th Cir. 1986).

138. In *You*, the court found legal error where USCIS treated facts bearing on eligibility for adjustment of status as adverse discretionary factors. The agency had considered the petitioner's entry "without any documentation," unauthorized employment, denial of asylum, and unlawful presence after his removal order became final to be "adverse" factors. 321 F. Supp. 3d at 467. The

court held that because "these facts, where applicable, bear on an alien's eligibility for adjustment of status" under 8 U.S.C. § 1255(c), "they do not appear to be proper factors at the discretionary stage, especially where Congress specifically created an exception to these bars to eligibility for immediate relatives of citizens." *Id.*

139. The court explained that "[l]abeling these facts as 'adverse' would not only collapse the eligibility and discretionary stages of the adjustment of status process, but also render the reasons an alien must seek relief the same reasons he is barred from relief." *You*, 321 F. Supp. 3d at 467. The court observed that "Congress did not intend these results" and that "USCIS's mislabeling of eligibility factors as 'adverse' factors at the discretionary stage are inconsistent with the text, structure, and history of the INA's statutory scheme for adjustment of status." *Id.*

140. Further, treating Petitioner's Presence in the United States as a Negative Discretionary Factor Would Nullify an Act of Congress

141. Petitioner's case presents an even more egregious version of the legal error identified in *You*. If USCIS treated Petitioner's continued physical presence in the United States after her 1995 exclusion order as a negative discretionary factor, that determination would be not merely legal error but would effectively nullify an act of Congress.

142. Congress has specifically provided that an exclusion order does not bar adjustment of status. Under 8 U.S.C. § 1255(a), a noncitizen may apply for adjustment if she has been "inspected and admitted or paroled into the United States." An exclusion order, unlike a removal order under 8 U.S.C. § 1182(a)(9)(A), does not create a statutory bar to adjustment. By permitting adjustment for individuals with outstanding exclusion orders, Congress necessarily contemplated that such individuals would be physically present in the United States at the time of their adjustment application.

143. Logically, every individual who seeks adjustment of status while subject to an exclusion order must be physically present in the United States. That is the very nature of an exclusion order: the individual entered the country but was ordered excluded. If such an individual were not in the United States, she would have no need to seek adjustment of status. Physical presence in the United States after an exclusion order is therefore not merely a common characteristic of adjustment applicants with exclusion orders; it is a definitional prerequisite.

144. If USCIS may treat continued presence in the United States after an exclusion order as a negative discretionary factor, that factor would apply categorically to every single adjustment applicant with an exclusion order. The agency would have created a discretionary ground for denial that applies universally to a class of applicants whom Congress has determined are eligible to

seek adjustment. This would transform Congress's permissive scheme into a categorical bar through the guise of discretion.

145. Such a result is precisely what the *You* court warned against. Labeling eligibility-related facts as adverse discretionary factors "would not only collapse the eligibility and discretionary stages of the adjustment of status process, but also render the reasons an alien must seek relief the same reasons he is barred from relief." 321 F. Supp. 3d at 467. Applied here: the reason Petitioner must seek adjustment (she was excluded and remained in the United States) would become the reason adjustment is denied. Congress could not have intended such an absurd outcome.

146. As multiple courts have recognized, the adjustment of status scheme "reflect[s] Congress's careful balancing of the country's security needs against the national interests Congress wished to advance through adjustment of status proceedings." *Succar v. Ashcroft*, 394 F.3d 8, 10 (1st Cir. 2005). Those national interests include family unity. *See You*, 321 F. Supp. 3d at 465 (noting that the INA's "prevailing purpose" is to "implement[] the underlying intention of our immigration laws regarding the preservation of the family unit" (quoting *Nwozuzu v. Holder*, 726 F.3d 323, 332 (2d Cir. 2013))). USCIS's approach here does not merely upset the balance Congress created; it obliterates it.

147. Indeed, treating physical presence as a categorical negative factor for exclusion-order adjustment applicants would be tantamount to agency nullification of the statute. An agency "may not 'depart from a prior policy sub silentio or simply disregard rules that are still on the books.'" *Lin*, 377 F. Supp. 3d at 564 (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). Here, the agency would be doing something even more radical: using discretion to negate a congressionally authorized pathway to adjustment.

148. Under foundational administrative law principles, an agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted). The Ninth Circuit applies this standard strictly: agency action is lawful only if it rests on a consideration of the relevant factors and if the agency's reasoning demonstrates that the facts and evidence were fairly assessed in reaching the decision. *See Arrington v. Daniels*, 516 F.3d 1106, 1112-13 (9th Cir. 2008) (to survive APA review, agency must examine relevant data and articulate a satisfactory explanation for its action, demonstrating a rational connection to the facts).

149. Here, USCIS's denial letter failed to articulate why the acknowledged positive factors in Ms. Liu's case were outweighed by the

negatives, nor did it provide a reasoned explanation reconciling its inconsistent treatment of her equities. There is no clear, rational narrative in the denial explaining how USCIS balanced nearly three decades of equities against the single adverse factor of a long-ago exclusion order. An agency's bare conclusion, without a "satisfactory explanation" tying the facts to the outcome, is arbitrary and capricious. Because USCIS did not provide a reasoned explanation demonstrating a rational connection between Ms. Liu's facts and the denial, the decision violates the APA's requirements for reasoned decision-making.

150. Further, the December 17, 2025 denial letter concludes with language advising Ms. Liu that she has "33 days to voluntarily depart the United States" or "removal proceedings may be initiated." This language is legally nonsensical given the procedural posture of Ms. Liu's case and demonstrates that the denial was not the product of reasoned decision-making.

151. First, Ms. Liu is already subject to a final exclusion order from 1995. There are no "removal proceedings" to be "initiated"—her removal proceedings concluded thirty years ago. The government cannot threaten to commence proceedings that have already concluded. This fundamental legal error in the denial notice reveals that USCIS did not understand the basic procedural posture of Ms. Liu's case.

152. Second, the notion that Ms. Liu has "33 days to voluntarily depart" is irreconcilable with the government's simultaneous actions. On the same day the denial was issued, ICE detained Ms. Liu at the Florence Service Processing Center and scheduled her for imminent removal. The government cannot coherently advise an applicant to "voluntarily depart within 33 days" while simultaneously detaining her and preparing to forcibly remove her within days.

153. Third, the "33 days" language appears to be boilerplate from a standard denial form that has no application to Ms. Liu's circumstances. The inclusion of inapplicable boilerplate in a discretionary denial suggests that USCIS did not engage in individualized, reasoned decision-making but instead processed Ms. Liu's application mechanically without regard to the specific facts and procedural history of her case.

154. The District Court for the Eastern District of New York took note of this incoherent language in its December 18, 2025 Order extending the temporary restraining order in this matter, observing the tension between USCIS advising Ms. Liu she has 33 days to depart while ICE simultaneously detains her for imminent removal. This contradiction further demonstrates that the denial was arbitrary and not the product of reasoned agency decision-making. An agency that issues a decision containing legally impossible directives and

internally contradictory instructions has not engaged in the rational, deliberate analysis that the APA requires.

155. Because the denial was arbitrary and capricious for the reasons stated above, this Court should hold the action unlawful, vacate the denial, and remand the matter to USCIS for a new, lawfully proper discretionary adjudication on Ms. Liu's adjustment application, with full and fair consideration of all factors. *See* 5 U.S.C. Section 706(2)(A).

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner Ai Yue Liu respectfully requests that this Court:

a. **Issue a Writ of Habeas Corpus** ordering Respondents to show cause why Petitioner should not be granted the relief requested herein;

b. **Stay the removal of Petitioner** from the United States pending resolution of this Petition and her Motion to Reopen/Reconsider (Form I-290B) with USCIS;

c. **Vacate and set aside** USCIS's December 17, 2025 denial of Petitioner's I-485 Application for Adjustment of Status as arbitrary and capricious in violation of the Administrative Procedure Act;

d. **Remand** Petitioner's I-485 application to USCIS for proper adjudication consistent with this Court's order;

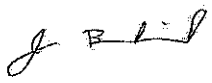
e. **Order Respondents to release Petitioner from custody** or, in the alternative, order that Petitioner be provided a bond hearing before an Immigration Judge;

f. **Award Petitioner her reasonable attorneys' fees and costs** pursuant to the Equal Access to Justice Act, 28 U.S.C. Section 2412;

g. **Grant such other and further relief** as this Court deems just and proper.

Dated: New York, New York
December 19, 2025

Respectfully submitted,



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ATTORNEY VERIFICATION

I, Joshua E. Bardavid, authorized representative of Plaintiffs, affirm under penalty of perjury that:

The statement of facts contained in this Complaint is true to my knowledge, except as to those matters that are stated in it on my information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
December 19, 2025

Respectfully submitted,

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