

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

AI-YEE LIU,
A073-488-552,

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.:

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER,
ORDER TO SHOW CAUSE, AND STAY OF REMOVAL**

INTRODUCTION

A temporary restraining order issued by the United States District Court for the Eastern District of New York, Docket No: 25-cv-06842-SJB expires on December 19, 2025, at 5:00 p.m. Pacific Time. Unless this Court acts, Petitioner could be removed from the United States within hours.

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 based on an exclusion order entered in 1995, when she was only seventeen years old.

On December 2, 2025, Ms. Liu appeared for a scheduled adjustment of status interview at the USCIS Long Island Field Office. She attended pursuant to an approved I-130 petition filed by her adult United States citizen daughter, Angela Chen. At the conclusion of the interview, ICE officers entered the interview room and detained Ms. Liu. She was transported across the country to Arizona and has been held in detention ever since.

On December 17, 2025, USCIS issued a decision denying Ms. Liu's I-485 Application for Adjustment of Status. Critically, USCIS found that Ms. Liu was eligible for adjustment of status but exercised negative discretion based primarily on the very exclusion order under which she now faces removal. The denial was arbitrary and capricious because USCIS applied an improper legal standard, mislabeled eligibility factors as adverse discretionary factors, and failed to adequately consider the totality of favorable factors in her case.

Ms. Liu now faces imminent removal to China, a country she left as a minor in 1995 and where she has no remaining family or support. Her removal would permanently separate her from her three United States citizen children, ages 19, 20, and 21, who have known no life without their mother. A brief stay of removal will allow this Court to adjudicate Ms. Liu's habeas petition challenging both her detention and the legality of her removal, as well as her challenge to the arbitrary denial of her adjustment application.

FACTUAL BACKGROUND

A. Immigration History

Ai Yue Liu is a native and citizen of the People's Republic of China. She was born on June 23, 1978, in Fujian Province, China. On January 14, 1995, when she was approximately seventeen years old, Ms. Liu arrived in the United States at John F. Kennedy International Airport. Upon arrival, she was inspected by immigration officials and placed into exclusion proceedings as an arriving alien.

On March 7, 1995, Ms. Liu filed an application for asylum based on persecution for her Christian religious beliefs in China. Immigration Judge Jeffry S. Chase denied her asylum application and ordered her excluded on March 29, 1995. She appealed to the Board of Immigration Appeals, which dismissed her appeal on November 3, 1995, rendering the exclusion order administratively final. The exclusion order has never been executed. Ms. Liu has remained in the United States continuously since January 14, 1995.

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 fear of persecution under China's coercive population control policies. The BIA denied the Motion to Reopen as untimely filed. 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.

B. Family and Community Ties

On July 29, 1999, Ms. Liu married Shan Chun Chen in New York. The couple subsequently had three children, all of whom were born in the United States

and are United States citizens by birth: Angela Chen, age 21; Annie Chen, age 20; and Benson Chen, age 19.

Ms. Liu has been the primary caregiver for her children throughout their lives. She raised them in Great Neck, New York, where the family has resided. She has maintained stable employment throughout her time in the United States, has consistently paid federal, state, and local taxes, and has never received public benefits such as food stamps or welfare. Ms. Liu has no criminal history of any kind. She has never been arrested, charged with, or convicted of any crime.

C. The I-130 and I-485 Applications

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. Concurrently, Ms. Liu filed Form I-485, Application to Register Permanent Residence or Adjust Status. The I-485 application was assigned receipt number IOE0933096812.

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

D. The December 2, 2025 Interview and Detention

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. Ms. Liu appeared for the interview accompanied by her daughter Angela Chen and her attorney, Scott Strong.

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. 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. 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.

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. 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."

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.

E. The December 17, 2025 Denial

On December 17, 2025, USCIS issued a decision denying Ms. Liu's I-485 Application for Adjustment of Status. The denial notice stated that Ms. Liu is eligible for adjustment of status. USCIS found that Ms. Liu satisfied the statutory requirements for adjustment. However, USCIS exercised negative discretion and denied the application.

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).

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."

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. 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."

F. Current Status and Related Proceedings

Ms. Liu is currently detained at the Florence Service Processing Center in Florence, Arizona. She faces imminent removal to China pursuant to the 1995 exclusion order.

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. On December 12, 2025, Judge Sanket J. Bulsara ordered Plaintiffs to file an emergency motion addressing the Court's authority to enjoin removal. On December 15, 2025, Plaintiffs filed an Emergency Motion for Stay of Removal, and the Court granted a temporary restraining order.

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's 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."

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.

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.

G. Futile Attempts to Seek Administrative Stay of Removal

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.

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

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. 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.

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.

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

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.

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.

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.

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.

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.

These facts demonstrate that administrative remedies are futile and that ICE has made it impossible for Ms. Liu to effectively seek relief through administrative channels. *See McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (exhaustion not required where "administrative remedies are inadequate or not efficacious").

JURISDICTION AND VENUE

This Court has jurisdiction over this habeas corpus petition pursuant to 28 U.S.C. Section 2241, which grants federal district courts jurisdiction to entertain habeas corpus petitions by persons in custody in violation of the Constitution or laws of the United States.

This Court also 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.

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

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).

ARGUMENT

POINT I: THIS COURT HAS JURISDICTION TO REVIEW PETITIONER'S CLAIMS AND AUTHORITY TO STAY REMOVAL

A. The Statutory and Constitutional Framework for Habeas Jurisdiction

The Suspension Clause of the Constitution provides that "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." U.S. Const. art. I, Section 9, cl. 2. This constitutional guarantee ensures that individuals detained by the government have access to judicial review of the legality of their confinement. The Supreme Court has repeatedly emphasized that habeas corpus is a fundamental safeguard against unlawful custody. *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

Under 28 U.S.C. Section 2241(c)(3), federal courts have jurisdiction to grant habeas relief to persons "in custody in violation of the Constitution or laws or treaties of the United States." Ms. Liu is in custody at the Florence Service Processing Center. She contends that her continued detention and imminent removal

violate the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and the statutory and regulatory framework governing adjustment of status applications.

B. The All Writs Act Authorizes a Stay to Preserve Jurisdiction

The All Writs Act provides that federal courts may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. 28 U.S.C. Section 1651(a). This statute authorizes courts to issue orders necessary to preserve their ability to adjudicate matters properly before them. The Supreme Court has recognized that the All Writs Act authorizes courts to issue writs “necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.” *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32 (2002) (internal quotations omitted).

This Court has jurisdiction over Ms. Liu’s habeas petition pursuant to 28 U.S.C. Section 2241. If Ms. Liu is removed from the United States before this Court can adjudicate her habeas claims, those claims become moot. The Court’s habeas jurisdiction would be rendered meaningless. A stay of removal is therefore necessary to preserve this Court’s ability to grant effective relief.

C. Section 1252(g) Does Not Bar This Court’s Jurisdiction

The government may argue that 8 U.S.C. Section 1252(g) bars this Court from staying removal. That provision states that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” Section 1252(g) does not bar this action for two reasons.

First, the Supreme Court has interpreted Section 1252(g) narrowly. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999), the Court held that Section 1252(g) applies only to the three discrete actions it specifies: “commencing proceedings, adjudicating cases, and executing removal orders.” The statute “does not bar all claims relating in any way to deportation proceedings,” but rather is “directed at a particular evil: attempts to impose judicial constraints upon prosecutorial discretion” in those three enumerated areas.

Second, Ms. Liu’s claims do not arise from the discrete decision to execute a removal order. Her habeas petition challenges (1) the lawfulness of her continued detention, (2) the arbitrary and capricious denial of her adjustment application under the APA, and (3) procedural and constitutional violations in the adjudication of her case. These claims are collateral to the execution of the removal order and are not barred by Section 1252(g).

Courts have consistently held that Section 1252(g) does not bar habeas review of collateral claims. In *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 457-58 (S.D.N.Y. 2018), the court held that Section 1252(g) “prohibits judicial review of challenges to the discretionary decision whether to execute a removal order. But here, the habeas petition does not challenge the discrete decision to remove Petitioner. The question before the Court is not why the Secretary chose to execute the removal order. Rather, the question is whether the way Respondents acted accords with the Constitution and the laws of this country.”

Similarly, in *Calderon v. Sessions*, 330 F. Supp. 3d 944, 954-55 (S.D.N.Y. 2018), the court held that “the jurisdictional bar of Section 1252(g) applies only to ICE’s discretionary decisions in three enumerated categories. This section does not

bar all claims relating in any way to deportation proceedings, but rather serves to bar attempts to impose judicial constraints upon prosecutorial discretion pertaining to the three enumerated, discrete decisions.”

Here, Ms. Liu does not challenge ICE’s prosecutorial discretion to execute the removal order. She challenges (1) the legal validity of removing her while her challenge to the I-485 denial is pending, (2) the arbitrary and capricious nature of the discretionary denial, and (3) her continued detention. These are precisely the types of collateral claims that courts have held are not barred by Section 1252(g).

**POINT II: PETITIONER IS ENTITLED TO A
TEMPORARY RESTRAINING ORDER
STAYING REMOVAL**

To obtain a temporary restraining order, a movant must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in the movant’s favor; and (4) that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

A. Petitioner Is Likely to Succeed on the Merits

Ms. Liu is likely to succeed on the merits of her habeas petition for multiple independent reasons.

1. The I-485 Denial Was Arbitrary and Capricious

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). USCIS’s denial of Ms. Liu’s I-485 application was arbitrary and capricious because the agency: (a) mislabeled eligibility factors as adverse

discretionary factors; (b) failed to consider all relevant favorable factors; (c) engaged in internally inconsistent reasoning; and (d) failed to articulate a rational explanation for its decision.

(a) Mislabeling of Eligibility Factors as Adverse Discretionary Factors.

In *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 467 (S.D.N.Y. 2018), the court addressed USCIS's mislabeling of eligibility factors as adverse discretionary factors. The court explained that "USCIS labeled several factors as 'adverse' in contravention of the statutory scheme that Congress created for alien relatives of U.S. citizens." The Court 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.*

Here, USCIS's denial 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 these are the very circumstances that make an applicant eligible for adjustment under Section 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.

Moreover, 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. 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. 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.

(b) Failure to Consider All Relevant Factors. 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)).

The denial notice mentions only two favorable factors: Ms. Liu's three United States citizen children and her lack of contact with law enforcement. But the record contains substantial additional favorable evidence that USCIS failed to address: nearly thirty years of continuous residence in the United States; consistent

payment of taxes throughout her time in the United States; no receipt of public benefits; stable employment history; strong family and community ties; and sole caregiver for three children who are now young adults. By ignoring or downplaying these important positive equities, USCIS failed to consider the entire totality of circumstances. *See Arrington v. Daniels*, 516 F.3d 1106, 1112-13 (9th Cir. 2008).

(c) Internally Inconsistent Reasoning. USCIS's rationale was internally inconsistent: it penalized Ms. Liu for remaining in the United States after the 1995 exclusion order (treating her continued presence as a serious negative factor), yet simultaneously refused to credit the very family ties that developed due to her long residence (diminishing the weight of her U.S. family on the theory they were "after-acquired"). USCIS cannot have it both ways. If the agency treats Ms. Liu's post-1995 family and community ties as negligible because she was "not supposed to remain here," it is logically inconsistent to then heavily fault her for the fact that she did remain (and built a life here). This kind of internally inconsistent reasoning is arbitrary and capricious.

(d) Failure to Articulate a Rational Explanation. 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). 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).

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.

(e) The "33 Days to Voluntarily Depart" Language Is Legally

Incoherent. 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.

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.

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.

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.

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, 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.

2. The Denial Violated Due Process

The Fifth Amendment’s Due Process Clause requires that agency adjudications be fundamentally fair. 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*). The circumstances of Ms. Liu’s interview and the subsequent denial raise serious due process concerns on multiple independent grounds.

(a) Prejudgment and Lack of Neutral Adjudicator. 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. The Ninth Circuit has held that due process is violated where the adjudicator's conduct shows hostility or prejudice and undermines the fairness of the proceeding. *See Reyes-Melendez v. INS*, 342 F.3d 1001 (9th Cir. 2003). As the Ninth Circuit emphasized in *Sanchez-Cruz v. INS*, 255 F.3d 775, 780 (9th Cir. 2001), neutrality is among the most basic due process protections in immigration adjudications.

(b) Coordination with ICE / Use of Interview as Detention Trap. 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, combined with the officer's singular focus on negative factors, suggests that the interview was not conducted in good faith as a genuine adjudication but rather as a pretext to effectuate detention.

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. 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 the 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. The 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.

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)).

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. 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.*

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. 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).

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. 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.* at 565.

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.*

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.

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.

(c) Failure to Provide Meaningful Opportunity to Present and Rebut Evidence. 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). 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.

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).

(d) The Denial Was Pretextual. 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.

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.*

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.

3. Petitioner's Detention Violates the Statutory Framework

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 *Zadydas v. Davis*, 533 U.S. 678 (2001).

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).

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).

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.

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. However, Section 1231(a)(6) detention is subject to the constitutional constraints of *Zadvydas* and must be reasonably necessary to effectuate removal. 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.

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).

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).

B. Petitioner Will Suffer Irreparable Harm Absent a Stay

Ms. Liu faces imminent and irreparable harm absent emergency relief from this Court. Every day of unlawful detention constitutes irreparable injury to her fundamental liberty interests that cannot be adequately compensated through monetary damages. *See Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty that [the Due Process] Clause protects”).

The irreparable harm is particularly acute given Ms. Liu’s nearly thirty years of presence in the United States, her complete integration into the community, and her role as the mother of three United States citizen children. At 47 years old, each day of detention separates her from her children, disrupts the stable life she built over three decades, and subjects her to the psychological trauma of indefinite detention and imminent removal.

First, removal would permanently extinguish her right to seek adjustment of status and would moot her pending I-290B motion to reopen the denial. Physical presence in the United States is a prerequisite to adjustment under 8 U.S.C. Section 1255. Once removed, Ms. Liu cannot seek adjustment. Unlike a denial that can be challenged or appealed, removal categorically eliminates any possibility of obtaining the benefit she seeks.

Second, removal would separate Ms. Liu from her three United States citizen children, ages 19, 20, and 21. These young adults have known no life without their mother. Angela Chen, who petitioned for her mother’s adjustment, would be

permanently separated from the parent she sought to sponsor for lawful status. Once removed, any legal remedies would be meaningless as Ms. Liu would be permanently separated from her family, her home of three decades, and any opportunity to pursue the adjustment application for which she is eligible.

Third, removal would sever Ms. Liu's ties to the United States after nearly thirty years of continuous presence. She has built her entire adult life in this country: her marriage, her children, her community. These connections cannot be restored by a subsequent legal proceeding. The harm is permanent and irreparable.

Fourth, Ms. Liu would face serious hardship if returned to China. She left China as a minor in 1995 and has no remaining family or support network there. She would be returning to a country she has not seen in thirty years, without resources, support, or community. She originally fled China due to persecution for her Christian religious beliefs, and while conditions may have changed, she has had no opportunity to investigate current conditions or present any claims for protection.

C. The Balance of Equities Favors Petitioner

The balance of hardships strongly favors Ms. Liu. The government will suffer no cognizable harm from maintaining the status quo while this habeas petition is resolved. Ms. Liu is already detained. Continuing her detention for a brief period while this Court adjudicates her claims imposes no additional burden on the government.

The government has no legitimate interest in removing an individual before she has had an opportunity to challenge an arbitrary denial of her adjustment application. The government has no legitimate interest in detaining or removing someone who USCIS itself found eligible for adjustment of status, who poses no

flight risk or danger, and who appeared voluntarily for her scheduled interview. The orderly administration of the immigration system requires that properly filed applications be adjudicated fairly and that individuals have a meaningful opportunity to seek judicial review of adverse decisions.

By contrast, the harm to Ms. Liu from removal is catastrophic and irreversible. She would lose all possibility of remaining with her family, challenging the denial, and obtaining the lawful status for which she applied. Ms. Liu poses no flight risk; she appeared voluntarily for her USCIS interview knowing full well that she had an old exclusion order. She poses no danger; she has no criminal history whatsoever. She has stable housing, deep community ties through her United States citizen children, and every incentive to pursue legal status through the pending I-290B motion.

D. The Public Interest Favors a Stay

The public interest strongly favors granting the requested relief. The public has a compelling interest in the orderly administration of the immigration system, including the adjudication of properly filed applications before removal is executed. Congress created the adjustment of status process to allow eligible individuals to obtain lawful permanent residence without leaving the country. That process is fundamentally undermined when applicants are removed before their applications are decided.

Recent reports reveal a disturbing pattern in which USCIS interviews, rather than serving as forums for adjudicating applications Congress authorized, have become mechanisms for effectuating arrests. In New York City on November 24, 2025, Allan Dabrio Marrero arrived with his United States citizen husband for a

green card interview at 26 Federal Plaza, only to be handcuffed and taken into ICE custody despite having no criminal record and having meticulously followed immigration rules. *See* Jasmine Garsd, *Brooklyn Man Detained by ICE at Green Card Interview*, CBS News (Dec. 2025), <https://www.cbsnews.com> (last accessed Dec. 14, 2025). USCIS officers approved his marriage as bona fide during the interview, confirming he was on track for a green card, yet he was detained on the spot. *See* Mazin Sidahmed, *A New York Marriage is Torn Apart by ICE*, Documented (Dec. 2025), <https://documentedny.com> (last accessed Dec. 14, 2025). His spouse described the experience as a nightmarish "bait-and-switch" that left his family devastated. *See id.*

The pattern extends well beyond New York. In San Diego, California, on November 12, 2025, at least two married couples completed their green card interviews only to have ICE agents enter the USCIS interview rooms and arrest the foreign spouse on the spot. *See* Artie Ojeda, *Families Detail ICE Arrests at San Diego Green Card Interviews*, NBC 7 San Diego (Nov. 21, 2025), <https://www.nbcsandiego.com> (last accessed Dec. 14, 2025). In one case, a German husband was led away in handcuffs; in another, a British wife holding the couple's six-month-old baby was taken by masked ICE agents. *See id.* Both had overstayed visas but had no criminal records, and their United States citizen partners believed they were following the law by pursuing marriage-based residency. *See id.*

In Los Angeles, a 39-year-old man named Taeha Hwang, who had lived in the United States since he was three months old, was detained by ICE during his interview at the downtown USCIS office on October 29, 2025. *See* Jade Hernandez, *Man Detained at LA Interview*, ABC7 Los Angeles (Dec. 3, 2025), <https://abc7.com>

(last accessed Dec. 14, 2025). His wife stated: "I was totally blindsided . . . you never think it's gonna be you." *Id.*

In Utah, on December 2, 2025, a soccer coach with an American wife and child arrived for a marriage interview "nicely dressed and feeling good," only to be led into a separate room where two ICE officers handcuffed him and took him away without warning. *See* Sonja Bosen, *ICE Arrests a Man at His Salt Lake City Green Card Interview*, KUER (Dec. 5, 2025), <https://www.kuer.org> (last accessed Dec. 14, 2025). His attorney noted that the client would eventually be released on bond and "end up exactly back where he started," meaning that after weeks of needless detention the man will resume his green card process. *See id.*

The public has a profound interest in agency accountability. When USCIS schedules and conducts an interview but then facilitates an arrest rather than rendering a decision on the pending application, the agency has failed to perform its statutory function. One immigration attorney in New York observed that under previous administrations, an applicant with a technical paperwork issue would typically be allowed to resolve it through established procedures, but under current practice, the USCIS interview has become a "hunting ground" for ICE. *See* Sidahmed, *supra*. Immigration attorneys in San Diego reported that the surge of interview arrests beginning in mid-November 2025 was something they "had never seen" before. *See* Ojeda, *supra*. Lawyers explain that visa overstays are typically forgiven during the adjustment of status process for spouses of citizens, making these arrests a sharp departure from established practice. *See id.*

The public also has an interest in maintaining confidence in governmental processes. The ACLU has characterized these tactics as "a cruel bait and switch" by

the administration. *See* Press Release, ACLU of New Jersey, *Court Stays Deportation of Father Arrested at Immigration Interview* (June 22, 2018), <https://www.aclu.org> (last accessed Dec. 14, 2025). In describing a similar first-term case, the ACLU of Massachusetts wrote: "In effect, the government's left hand beckoned her forward, and its right hand grabbed her." *Id.* When immigrants who are eligible for legal status now fear that engaging with USCIS for a required interview could lead to detention or deportation, the integrity of the immigration system Congress created is fundamentally compromised. One United States citizen whose husband was detained in San Diego stated: "I feel like we were tricked [W]e were trying to do everything by the book only to have our family torn apart." Ojeda, *supra*. Another spouse observed: "You see everything on the news . . . and you just never think that it's gonna be you." Hernandez, *supra*. Immigration advocates argue that using USCIS interviews as bait not only devastates families but also erodes trust in the lawful immigration system, scaring immigrants away from following the established legal process. *See* Press Release, ACLU of New Jersey, *supra*.

Ms. Liu's case exemplifies these concerns. She appeared for her scheduled USCIS interview on December 2, 2025, with an approved I-130 petition filed by her United States citizen daughter, seeking adjudication of her pending I-485 application. Rather than adjudicating that application, USCIS facilitated her detention by ICE. She now faces removal to China while her adjustment application remains unadjudicated. The public interest in orderly administration of congressionally created immigration benefits, in agency accountability for pending

applications, and in maintaining confidence in governmental processes all weigh heavily in favor of the requested relief.

CONCLUSION

For the foregoing reasons, Petitioner Ai Yue Liu respectfully requests that this Court:

1. Grant this Motion for Temporary Restraining Order and Stay of Removal;
2. Enter an order staying the removal of Petitioner Ai Yue Liu from the United States pending resolution of her Petition for Writ of Habeas Corpus;
3. Set an expedited briefing schedule for resolution of the habeas petition;
4. Schedule an expedited hearing on this Motion;
5. Award Petitioner her reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. Section 2412; and
6. 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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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2025, a copy of the foregoing Petitioner's Emergency Motion for Temporary Restraining Order, Order to Show Cause, and Stay of Removal was served upon the following via electronic mail and overnight delivery:

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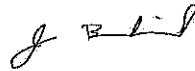
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Dated: New York, New York
December 19, 2025

Respectfully submitted,



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Esq.