Adam L. Crayk, (Utah 9443)
Marti L. Jones, (Utah 5733)
Jason E. Jensen, (Utah 18972)
STOWELL CRAYK, PLLC
4252 South 700 East
Millcreek, Utah 84107
Email: adam@lawscb.com
marti@lawscb.com
jason@lawscb.com
Telephone: (385) 549-1260
Facsimile: (801) 483-0705
***Attorneys for Petitioner, Pro Hac Vice***

Brett Parkinson
Parkinson Benson Potter (PBP Law)
617 S. 8TH Street, Suite B
US Bank Tower 633 West Fifth Street
26th and 28th Floors
Los Angeles, CA 90071
***Attorney for Petitioner***

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

---

| | |
|---|---|
| Cristian Ernesto AVALOS-Soriano<br>Petitioner,<br><br>v.<br><br>Jeremy CASEY, Warden, Imperial Regional Adult Detention Facility; Patrick DIVVER, San Diego Field Office Director, Enforcement and Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Joseph B. EDLOW, Director, USCIS; Ted H. KIM, Associate Director USCIS Asylum and International Operations; Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI, Attorney General of the United States<br><br>Respondents | PETITION FOR WRIT OF HABEAS CORPUS<br><br>Case No. '25CV3797 AGS MMP<br><br>Agency Case Number: [redacted] |

---

## I. INTRODUCTION

1. Petitioner, by and through the above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention in contravention of the laws and constitution of the United States.

2. Petitioner is represented by Utah attorneys Adam L. Crayk, Marti L. Jones, and Jason E. Jensen of Stowell Crayk, PLLC. Utah Counsel are licensed to practice in Utah and reside in Utah. They have each completed an application for pro hac vice admission in this matter.

3. Petitioner Cristian Ernesto Avalos Soriano ("Petitioner" or "Mr. Avalos Soriano") has an approved I-360 visa petition recognizing him as a Special Immigrant Juvenile (SIJS) (an individual under 21 abused, abandoned, or neglected by one or both parents) and granting him deferred action status. *Exhibit C; Exhibit D.*

4. He entered the U.S. on April 5, 2021, as a sixteen-year-old unaccompanied alien child ("UAC"). *Exhibit A.*

5. He is presently a young adult (just turned 21) detained by Immigration and Customs Enforcement ("ICE") at the Imperial Regional Adult Detention Facility in Calexico, California.

6. Petitioner was arrested solely based on an *in-absentia* removal order entered when Petitioner was a minor and after he, his father and his step-mother misread the Immigration Court public information portal. *Exhibits E, G, & H.*

7. Petitioner filed a Motion to Reopen the *in absentia* Order with the Immigration Court. Exhibits I & J. Due to transcription errors in the Attorney Entry of Appearance, the Immigration Court rejected the Motion to Reopen.

8. However, because the Electronic Record Off Proceedings was new, no one in his attorney's office realized that the filing had been rejected.

9. It took his attorney's office six months to realize that the Immigration Court had rejected the Motion to Reopen; the office refiled the original Motion without change, failing to recognize that the deadline for exceptional circumstances had passed.

10. Petitioner's appeal of the Immigration Judge's denial of that Motion to Reopen, filed based on ineffective assistance of counsel is presently pending at the Board of Immigration Appeals. *Exhibits L & M.*

11. Petitioner's detention is unlawful. The *in absentia* removal order against Petitioner is not legally executable because Petitioner is a member of a protected class and cannot be removed from the United States until USCIS adjudicates his asylum application, *see J.O.P. et al. v. U.S. Department of Homeland Security et al.*, No. 8:2019-cv-1944-SAG (D. Md. November 25, 2024); (*Exhibit R*).

12. Petitioner's pending asylum application falls within the exclusive jurisdiction of USCIS pursuant to the TVPRA, *Exhibit H*;

13. Petitioner's I-360 Petition for a Special Immigrant Juvenile visa has been approved. The Approval Notice granted him four years of Deferred Action Status, *Exhibit C.*

14. Respondents now purport to have arbitrarily and capriciously, without basis in law or fact, terminated that Deferred Action Status, with no notice to Petitioner or opportunity to be heard, violating due process, as well as the Federal Court's Order in *A.C.R. et al. v. Noem et al.*, No.1:25-cv-3962 (E.D.N.Y November 19, 2025). *Exhibit Q.*

15. Petitioner has no criminal history other than traffic-related offenses. *Exhibit O.*

16. This Court's habeas jurisdiction is clear. Petitioner seeks immediate release because his continued detention is statutorily unauthorized, constitutionally impermissible, and contrary to Congress's protective scheme for unaccompanied children and Special Immigrant Juveniles. *See* 8 U.S.C. § 1232 et. seq.; *J.O.P. et al. v. U.S. Department of Homeland Security et al, supra*; and *A.C.R. et al. v. Noem et al.*, No.1:25-cv-3962, 7-8 (E.D.N.Y November 19, 2025).

## II. JURISDICTION

17. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause), and 5 U.S.C. § 702.

18. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq, 5 U.S.C. § 706 and the All-Writs Act, 28 U.S.C. § 1651.

## III. VENUE

19. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Southern California, the judicial district in which Petitioner is currently detained. Thus, a resident of Utah and an attorney who resides in Utah are forced to file this action in California solely because ICE moved the Petitioner from Utah to California.

20. Venue is proper in this Court because Petitioner is detained in this District and his immediate custodian—the Warden of the Imperial Regional Adult Detention Facility—is located here. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

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

## IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

23. Habeas corpus is "perhaps the most important writ known to the constitutional law… affording as it does a swift and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

## V. PARTIES

24. Petitioner Cristian Ernesto Avalos Soriano is a twenty-one-year-old citizen of El Salvador who has been in immigration detention since November 24, 2025. At the time of his arrest by ICE, Petitioner had a valid grant of deferred action status from USCIS. He is a member of the *J.O.P.* protected settlement class *(Exhibit R)* and his asylum application remains pending with USCIS. (Exhibit P).

25. Respondent Jeremy Casey is employed as Warden of the Imperial Regional Adult Detention Facility, where Petitioner is detained. Mr. Casey has immediate physical custody of Petitioner. He is sued in his official capacity.

26. Respondent Patrick Divver is the Acting Director of the San Diego Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Divver is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

27. Respondent Joseph B. Edlow is the Director of U.S. Citizenship and Immigration Services, the federal agency responsible for granting Petitioner Special Immigrant Juvenile Status and deferred action, the recent arbitrary and capricious termination of Petitioner's deferred action, and for adjudicating Petitioner's still-pending asylum application. He is sued in his official capacity.

28. Respondent Ted H. Kim is the Associate Director of the Refugee, Asylum and International Operations Directorate, over the U.S. Asylum Offices. He is sued in his official capacity.

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

30. Respondent Department of Homeland Security (DHS) is the principal federal department responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

31. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Justice Department, of which the Executive Office for Immigration Review (EOIR) and the immigration court system is a component agency. She is sued in her official capacity.

## VI. SUMMARY OF PRIOR PROCEEDINGS

### *A. Petitioner's Entry into the United States as an Unaccompanied Child*

32. Petitioner Cristian Ernesto Avalos Soriano ("Petitioner" or "Mr. Avalos Soriano") is an unmarried 21-year-old native and citizen of El Salvador.

33. In early 2021, at the age of 15, Petitioner decided to join his father and older brother in the United States. His father, Jose Dimas Avalos Alfaro ("Mr. Avalos" or "Father"), is a lawful permanent resident who, at the time of Cristian's arrival, resided at his Ogden, Utah home with his wife, Adriana G. Avalos ("Stepmother"), and two children.

34. Petitioner did not tell his father about his plan to come to the United States, and Mr. Avalos only found out about Petitioner's departure after Cristian's grandfather called to tell him.

35. In April 2021, Mr. Avalos was informed that Petitioner was in the custody of the Office of Refugee Resettlement ("ORR"). *See Exhibits A & G.*

36. Petitioner was released to Mr. Avalos pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") in May 2021. *See Exhibit A.* He came to live with Mr. Avalos and his wife (Petitioner's stepmother) in Ogden, Utah.

### *B. The Defective Notice to Appear and Resulting In Absentia Removal Order*

37. DHS issued a Notice to Appear ("NTA") on April 8, 2021. The NTA did not include the date or time at which Petitioner was to appear in immigration court. *See Exhibit B.*

38. The NTA alleged that Petitioner is subject to removal from the United States pursuant to INA § 212(a)(6)(A)(i) (codified at 8 U.S.C. § 1182(a)(6)(A)(i)), in that he is "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.*

39. Mr. Avalos, who had never had any dealings with immigration court, did not know when Petitioner's immigration court date would occur.

40. Both Cristian and Stepmother attempted by telephone to verify the date of the hearing. *See Exhibits G & H.*

41. Petitioner's hearing was scheduled for May 31, 2022 at 2:30 p.m. He did not receive any written notice of the date of his hearing. He learned about it through the Immigration Court on-line case status portal. *See Exhibits G & H.*

42. On May 31, 2022, Mr. Avalos left the house with Petitioner at 11:00 a.m. to make sure they arrived at the courthouse early. *Id.*

43. Prior to this, Petitioner's Father and Stepmother had argued about who would take Petitioner to court, as Father wanted Stepmother to do so and Stepmother believed Father should be taking responsibility for getting his son to court. *Id.*

44. Mr. Avalos, who does not have good eyesight, had Petitioner enter the court address into the GPS. *Id.*

45. When they arrived at the address, they found that the building was boarded up, with no cars present. They saw piles of plaster and plastic, and the parking lot was newly paved. *Id.*

46. Mr. Avalos asked Petitioner to re-verify the address. Petitioner, who was 16 at the time and spoke very little English, checked the information and misread the information there to indicate that the hearing had been rescheduled for June 10th, 2022. In reality, the hearing had not been rescheduled. *Id.*

47. Believing the court date had been moved, Father drove Petitioner home. *Id.*

48. When they arrived home, Petitioner's stepmother asked how the hearing had gone. Father explained that they had gone to the address but that the building was under construction. *Id.*

49. Petitioner's stepmother then looked up the case online and saw that the website listed the hearing date as June 10th, reinforcing the mistaken belief that the hearing had been rescheduled. None of the family members realized that the date they were looking at was not a hearing date, but was instead the case filing date (listed as "Docket Date" on the EOIR Automated Case Portal) from the previous year. *See Exhibit E.*

50. A few days before June 10th, Petitioner and his family members checked again and discovered that the Immigration Judge had already issued an *in-absentia* removal order on May 31, 2022. *Id.*

51. Father and Stepmother were confused because they had believed the court date had been changed. *See Exhibits G & H.*

52. Stepmother called the immigration court hotline, learned which judge signed the order, and attempted to call the court directly but was told she needed to consult an attorney. *See Exhibit H.*

### *C. The Motion to Reopen and Pending Appeal at the BIA*

53. The family subsequently retained counsel, raising funds to hire a lawyer to file a motion to reopen. *See Exhibit I.*

54. On November 22, 2022 Petitioner's counsel reviewed and signed a Motion to Reopen, supporting Memorandum, and other documents to be filed with EOIR, arguing lack of notice and exceptional circumstances. *Id.*

55. Unfortunately, neither counsel nor the office staff noticed that in preparing the EOIR-28 (counsel's notice of appearance) the legal assistant inadvertently left off the final zero of counsel's EOIR number. *Id.*

56. Due to that error and others, the Immigration Court rejected the filing, on the grounds that there was no EOIR-28 accompanying the Motion to Reopen. *See Exhibit J.*

57. The Immigration Court printed the filing and mailed it with the Rejection Notice to an address where Petitioner had previously lived. This rejection notice was never received by counsel, Petitioner, or his family. *Exhibit L; Exhibit N.*

58. Petitioner's counsel did not learn of the rejection for nearly six months, until May 2023. The firm office staff promptly re-filed the Motion to Reopen, without change. At this point, the firm office staff was advised by the Immigration Court that counsel's EOIR number on the EOIR-28 was incorrect. *Exhibit J.*

59. That error was finally corrected and a valid EOIR-28 was filed, but the firm failed to modify the Motion to Reopen to reflect that it was outside the statutory deadline for a Motion to Reopen based on exceptional circumstances. *Exhibit L.*

60. On June 6, 2023, DHS filed a Reply Opposing the Motion to Reopen. When counsel attempted to access the government's Reply Opposing the Motion to Reopen, counsel was unable to access the Electronic Record of Proceedings ("EROP") on the government's system, despite being counsel of record.

61. Counsel and office staff attempted without success to resolve the issue with the Immigration Court and the EROP technical staff. On June 14th, counsel finally filed a paper ROP request, seeking a copy of the DHS Reply Opposing the Motion to Reopen. On June 21, 2023, counsel, on behalf of Petitioner, filed a Reply to DHS' opposition.

62. On June 27, 2023, the Immigration Judge denied Petitioner's Motion to Reopen on the basis that Petitioner was properly notified of his proceedings, and that he failed to demonstrate that his failure to appear was due to lack of notice of the hearing or other exceptional circumstances. *See Exhibit K.*

63. On July 12, 2023, counsel appealed the Immigration Judge's denial to the Board of Immigration Appeals ("BIA") on Petitioner's behalf. In support of the appeal, counsel filed a formal complaint for ineffective assistance of counsel against their own firm and themselves individually. *See Exhibits M & N.*

64. Petitioner's appeal of the IJ's denial of his Motion to Reopen was fully briefed and submitted to the BIA on August 24, 2023. The case remains pending at the BIA. *Exhibit O.*

### *D. Petitioner's Asylum Application Under USCIS Jurisdiction Per The TVPRA*

65. On November 4, 2022, Petitioner filed an I-589, Application for Asylum and for Withholding of Removal, with USCIS pursuant to the TVPRA. *See Exhibit F.*

66. On January 17, 2023, Petitioner was issued a Receipt Notice by USCIS for his asylum application, confirming the application "was received and is pending as of 11/04/2022," and stating explicitly: "You may remain in the U.S. until your asylum application is decided." *Id.*

### *E. Petitioner's Special Immigrant Juvenile Status and Deferred Action*

67. On January 17, 2023, Petitioner filed an I-360, Petition for Amerasian, Widower, or Special Immigrant, with USCIS, seeking Special Immigrant Juvenile ("SIJ") status. That application was approved on June 28, 2023. *See Exhibits D & C.*

68. Prominently displayed on the I-360 approval notice is a section titled "Grant of Deferred Action." This section states, in part: "USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action… Your grant of deferred action will remain in effect for a period of four years from the date of this notice unless terminated earlier by USCIS." *Exhibit C.*

### *F. Arrest and Detention by ICE*

69. Seventeen months after being granted deferred action, Petitioner was detained by immigration authorities on or about November 24, 2025. He was told that he was being detained because he had been ordered removed from the United States. No mention was made of his deferred action, pending asylum claim, or I-360 Approved Visa as a special immigrant juvenile.

70. On November 26, 2025, USCIS notified Petitioner that his period of deferred action was terminated, with no ability to reopen or reconsider the agency's decision. No further explanation or reasoning for the agency's decision was provided. Petitioner was not allowed an opportunity to be heard. *See Exhibit R.*

71. Notably, the termination notice specifically states that Petitioner's I-360 remains approved. *Id.*

72. Petitioner's asylum application is likewise still pending with USCIS. *See Exhibit F & Q.*

73. On information and belief, DHS now seeks to enforce the IJ's May 31, 2022 *in absentia* removal order and remove Petitioner from the United States despite the protections afforded to him by the TVPRA, the *J.O.P.* settlement, and his SIJ status.

74. The termination of Petitioner's period of deferred action by USCIS, without a change of circumstances or explanation, can only be considered punitive.

75. Petitioner is now detained in the Imperial Regional Adult Detention Facility in Calexico, California.

## VII. LEGAL FRAMEWORK

### A. PETITIONER'S REMOVAL WOULD VIOLATE THE *J.O.P.* SETTLEMENT AGREEMENT AND THE TVPRA

76. In 1996 Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

77. These detention regimes are found at 8 C.F.R. § 1225(b) (detention of applicants for admission and expedited removal); § 1226 (apprehension and detention of aliens); and § 1231(a)-(b) (detention and removal of aliens ordered removed).

78. None of the detention provisions under §1225 or §1226 apply to Petitioner. As someone who entered the U.S. as an unaccompanied child, Petitioner is subject to a different section of the law, one that includes the provisions of the TVPRA, as codified at 8 U.S.C. § 1232. *See R.D.T.M. v. Wofford*, No 1:25-cv-01141-KES-SKO, 2025 U.S. Dist. LEXIS 183995, 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025)("The detention of unaccompanied minor children is governed by the TVPRA, which does not mandate detention"). More particularly, Petitioner's detention and removal from the United States are controlled by the class settlement agreement of *J.O.P., et al. v. U.S. Department of Homeland Security*, et al., No. 8:2019-cv-1944-SAG (D. Md. November 25, 2024), discussed below.

79. The TVPRA mandates that "an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). If the unaccompanied child "reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary *shall* consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(B) (emphasis added).

80. UACs such as Petitioner, who have been released from immigration custody pursuant to the TVPRA are not applicants for admission, as defined in 8 U.S.C. § 1225(b), and have a reasonable expectation that they are entitled to retain their liberty under the TVPRA's protection. See *F.S.S.M. v. Wofford*, No. 1:25-cv-01518, 2025 U.S. Dist. LEXIS 254953, at *11-13 (E.D. Cal December 9, 2025)(Finding a UAC cannot simultaneously be subject to § 1225(b)(2) and the TVPRA "because their detention schemes are facially incompatible," and finding the petitioner has a protected liberty interest based on the government's prior representation he was released pursuant to the TVPRA and spent years relying on that representation).

81. Where Petitioner, for over four years, (from his release from DHS custody in May 2021 pursuant to the TVPRA until his recent detention), has enjoyed and relied upon the protections and liberty interest provided by the TVPRA, and where Petitioner has no criminal arrests or charges, and no criminal convictions, it is reasonable to continue to apply those same protections, despite Petitioner's 21st birthday on [redacted].

82. In addition to the protection he has been provided by the TVPRA, Petitioner is also a class member of the *J.O.P.* settlement, *supra*. His class membership entitles him to specific protections from removal from the United States which the government has apparently chosen to ignore.

83. A *J.O.P.* class member is defined by the settlement as any immigrant who (1) was determined to be an Unaccompanied Alien Child; (2) filed an asylum application that was pending with USCIS; (3) on the date he filed his asylum application with USCIS, was 18 years of age or older, or had a parent or legal guardian in the United States who is

available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits. *J.O.P.*, at 2.

84. Petitioner meets each criterion for class membership. He (1) was identified as a UAC when he entered the United States in 2021, (2) filed his asylum application with USCIS, (3) was in the physical custody of his father at the time of filing, and (4) still waits for USCIS to adjudicate his asylum application.

85. Pursuant to the J.O.P. settlement agreement, "USCIS will exercise Initial Jurisdiction over Class Members' asylum application in accordance with the terms of this Settlement Agreement and adjudicate them on the merits, and USCIS will hold such applications exempt from the One-Year Deadline." *J.O.P.*, at 6. (Exhibit R).

86. The *J.O.P.* agreement further states:

> "*With respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement*. In order to comply with this provision, ICE Enforcement and Removal Operations (ERO), the agency responsible for executing removal orders, will make an entry indicating there is a stay in its system of records for all identified Class Members, including Class Members identified by USCIS. This alert will not be removed from any individual case until such time as USCIS indicates it is appropriate to remove it."

*Id.*, at 8-9, (emphasis added); attached as *Exhibit R.*

87. The idea that DHS, through ICE-ERO, is prohibited from removing Petitioner while his asylum claim is pending is further supported by the language found on his asylum application Receipt Notice, which affirmatively states, "You may remain in the U.S. until your asylum application is decided."

88. Petitioner's recent detention by ICE-ERO is alarming and unlawful for two reasons: either (1) ICE-ERO has failed to comply with its obligations and/or internal procedures, established by the J.O.P. settlement, to indicate the stay of removal to which Petitioner is entitled while his asylum application remains pending with USCIS; or (2) ICE-ERO was fully aware of the stay preventing Petitioner's removal from the United States and detained him anyway, despite the lack any foreseeability of removal in the near future.

89. Regardless of Respondents' intentions, Petitioner's continued detention and any efforts to remove him from the United States directly violate the principles and requirements established by the class action settlement *J.O.P. v. DHS*, the TVPRA, *Zadvydas v. Davis*, and the Fifth Amendment to the U.S. Constitution.

90. That is the case because Respondents' authority to detain a noncitizen is limited to the circumstances in which removal is reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. at 699-701 (2001). Where removal cannot occur in the reasonably foreseeable future, continued detention violates the Fifth Amendment and exceeds statutory authority. *Id.*

### B. PETITIONER'S DETENTION VIOLATES THE SPECIAL IMMIGRANT JUVENILE PROTECTIONS CREATED BY CONGRESS

91. In addition to the protections found under the TVPRA, Petitioner has also been recognized by USCIS as a Special Immigrant Juvenile ("SIJ").

92. Congress defines an SIJ as an immigrant present in the United States as an individual under age 21:

> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status…"

8 U.S.C. § 1101(a)(27)(J). Requirements to qualify as an SIJ are established at 8 C.F.R. § 204.11.

93. SIJs are eligible for lawful permanent resident ("LPR") status, but only if an immigrant visa is "immediately available" at the time of filing the adjustment of status application. 8 U.S.C. § 1153(b)(4). The immigrant visa category for SIJS is the employment-based fourth preference category ("EB-4 visa").

94. Petitioner was recognized as an SIJ by USCIS on June 28, 2023, when the agency granted his I-360 application. In accordance with 8 C.F.R. § 1255(h), Petitioner is deemed to have been paroled into the United States for the purposes of eligibility to adjust his status to that of an alien admitted for legal permanent residency, as outlined in 8 C.F.R. § 1255(a).

95. The United States Court of Appeals for the Ninth Circuit has provided a detailed analysis of Special Immigrant Juvenile recognition and the benefits it confers, stating:

> "SIJS-parolees are a narrow class of juvenile aliens who must meet heightened eligibility requirements to apply to be classified as a Special Immigrant Juvenile, and SIJS-based parole affords particular benefits… set by Congress. These include the permission to reside in the country pending the outcome of their adjustment of status application, employment authorization, [and] exemption from certain inadmissibility grounds applicable to other aliens… These special eligibility requirements and benefits show a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status… Congress's extension of certain protections to… SIJS parolees gives [that] narrow group[] of aliens strong claims to remain in this country."

*Garcia v. Holder*, 659 F.3d 1261, 1270-1272 (9th Cir. 2011)(emphasis added).

96. Congress has also provided procedural safeguards for SIJ recipients which are "designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process." *Osorio-Martinez v. AG United States*, 893 F.3d 153, 171 (3rd Cir. 2018). *See* 8 U.S.C. § 1155 (Revocation of approval of a petition requires "good and sufficient cause"); 8 C.F.R. § 205.2 (Revocation of approval of a petition requires "notice of intent" and "notice of revocation." Petitioner must be given opportunity to offer evidence in opposition to revocation, and may appeal the decision).

97. Removal of Petitioner from the United States would effectively revoke the statutory rights provided by Congress through Petitioner's SIJ approval, to wit: Petitioner would be unable to adjust status to that of a legal permanent resident while in the United States, 8 U.S.C. § 1255(a), Special Immigrant Juvenile visas are not available to applicants who have been removed, and Petitioner would be barred from reentry in any status for a period of 10 years, 8 U.S.C. § 1229a(b)(7).

98. Petitioner's removal from the United States would necessarily stem from the *in-absentia* removal order entered against him by the Immigration Judge. That order found Petitioner was removable solely pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as charged on the NTA.

99. But, despite the *in-absentia* order finding otherwise, as a recognized Special Immigrant Juvenile, Petitioner is specifically exempted from being found inadmissible under § 1182(a)(6). This exemption is clearly stated in 8 U.S.C. § 1255(h)(2) ("In determining the alien's admissibility as an immigrant, paragraphs…(6)(A)...of section 1182(a) of this title shall not apply)". Because Petitioner cannot presently be found inadmissible under §1182(a)(6), there is no valid basis supporting the Immigration Judge's order of removal.

100. The government's current apparent intention to remove Petitioner from the United States ignores congressional intent in creating both the Special Immigrant Juvenile visa and the TVPRA, would render his grant of SIJS and its accompanying protections null, and violates his right to due process. All of these legal failures and omissions support a grant of habeas relief.

### C. PETITIONER'S DETENTION VIOLATES DUE PROCESS

101. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

102. The fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person… of… liberty… without due process of law." U.S. Const. amend. V.

103. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadyvdas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

104. "Freedom from imprisonment–from government custody, detention, or other forms of physical restraint–lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

105. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

106. Due process also requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

107. In 2022, USCIS noted that the EB-4 visa category faced "ongoing visa number unavailability," which caused "the protection that Congress intended to afford SIJs through adjustment of status [to be] often delayed for years, leaving this especially vulnerable population in limbo." USCIS Policy Alert PA 2022-10, Special Immigrant Juvenile Classification and Deferred Action, p.1, published March 7, 2022 ("2022 Policy Alert").

108. To "help to protect SIJs who cannot apply for adjustment of status solely because they are waiting for a visa number to become available," USCIS updated its policy guidance and began to consider granting deferred action ("SIJS-DA") "on a case-by-case basis to noncitizens classified as SIJs" who did not have visas immediately available due to the backlog in this visa classification. *Id.*

109. USCIS recognized that "Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available, since for many years after implementation of the program, SIJs did have visas immediately available… [Granting] [d]eferred action and related employment authorization… furthers congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States." *Id.*

110. Also of important note, USCIS found that "approved SIJ petitioners have a reliance interest in being provided with employment authorization consistent with congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years before a visa is available." Id., at 4.

111. When Petitioner was approved for SIJ on June 28, 2023, he was also granted SIJS-DA. His approval notice stated, in part: "USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action… Deferred action is an act of administrative convenience to the government which gives some cases lower priority for removal from the United States for a specified period of time. Your grant of deferred

action will remain in effect for a period of four years from the date of this notice unless terminated earlier by USCIS." *See* Exhibit A.

112. In April 2025, USCIS began issuing SIJ approvals without deferred action grants included, though no official policy change was announced. See A.C.R. et al. v. Noem et al., No.1:25-cv-3962, 7-8 (E.D.N.Y November 19, 2025)("The government has not disputed that, between April and June 2025, it did not consider SIJS recipients for deferred action").

113. When USCIS finally issued an official policy alert, USCIS Policy Alert PA-2025-07, Special Immigrant Juvenile Classification and Deferred Action, published June 6, 2025 ("2025 Policy Alert"), the agency announced that it was "eliminat[ing] automatic consideration of deferred action (and related employment authorization) for aliens classified as [SIJs] who are ineligible to apply for adjustment of status to [LPR] status due to visa unavailability." 2025 Policy Alert, at 1.

114. The elimination of the SIJS-DA automatic consideration policy did not strip prior SIJS-DA recipients of their deferred action status or their previously granted work authorization, if any. Id., at 2. However, the 2025 Policy Alert does preclude SIJS-DA recipients from applying for initial work authorization, and existing validity periods of SIJS-DA and work authorization cannot be renewed once expired. Id.

115. The 2025 Policy Alert made no mention of any reliance or statutory interests of the SIJS-DA recipients. Id., *see A.C.R. et al. v. Noem et al.*, at 9.

116. In *A.C.R. et al. v. Noem et al.*, the federal district court found that USCIS's rescission of SIJS-DA was likely "arbitrary [and] capricious," 5 U.S.C. § 706, because "USCIS failed to consider reliance interests and reasonably obvious alternatives here…" A.C.R., at 29-30. *See also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020) (providing clear analysis of deferred action, the ability of a court to review a similarly situated termination of a deferred action program to SIJS-DA, and finding the termination of that deferred action program was arbitrary and capricious); *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007) (Due process requires that government action be rational and non-arbitrary).

117. After a thorough review and discussion, the A.C.R. court ultimately stayed the rescission of SIJS-DA and ordered the government to "conduct deferred-action and employment authorization adjudications pursuant to the 2022 Policy Alert, pending promulgation of a valid rescission policy or further order from this Court." *A.C.R.*, at 44-45.

118. Like the plaintiffs in *A.C.R.*, Petitioner's deferred action was arbitrarily and capriciously terminated. The agency's decision, taken without any clear rationale, consideration for other alternatives, or opportunity for Petitioner to contest the termination, deprives Petitioner of the protections and privileges on which he has relied since he was granted SIJS-DA more than two years ago.

119. In addition to the violation of Petitioner's reliance interests, his procedural due process rights were also violated through the termination of his SIJS-DA. The procedural deficits are evaluated based on the three part test established by *Mathews v. Eldridge*, 424 U.S.

319, 335 (1976)((1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest that the additional or substitute procedural requirement would entail).

120. Concerning the first *Mathews* factor, Petitioner's private interest is one of the strongest: "Petitioner's liberty interest in remaining free from government restraint is of the highest constitutional import." *Zavala v. Ridge*, 310 F.Supp.2d 1071, 1076 (D. N.D. Cal. 2004). As explained above, Petitioner cannot be removed from the United States until USCIS adjudicates his asylum claim because Petitioner is a *J.O.P.* class member. Thus, Petitioner's detention serves no legitimate purpose for removal and is strictly a punitive action by Respondents.

121. Likewise, deprivation of SIJS-DA drastically impacts his reliance and liberty interests in the protection, lower priority for removal, and employment opportunities afforded to him by his SIJS-DA. Petitioner has been out of custody since 2021 and established substantial connections to the United States since that time. Petitioner had been granted SIJS-DA until June 2027. Petitioner's SIJS-DA had served as an additional safeguard against both punitive detention such as he currently suffers, and from the unlawful risk of removal from the United States while his asylum claim remains pending.

122. "The length of time Petitioner has been in the United States and had expected to remain through deferred action, as well as his connection to his local community, create a powerful interest for Petitioner in his continued liberty." *F.S.S.M. v. Wofford*, No. 1:25-cv-01518 at *16-17 (citing *Doe. v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025)). Petitioner is a long-time resident of the United States who expected to remain through his SIJS-DA through at least June 2027. His father is a Legal Permanent Resident, and Petitioner first came to the United States seeking to reunite with him. Their relationship remains strong. The first *Mathews* factor weighs in favor of Petitioner.

123. The second *Mathews* factor, the risk of erroneous deprivation, also supports Petitioner. "The risk of an erroneous deprivation of Petitioner's liberty interest is high where he has received virtually no procedural safeguards such as a bond or custody redetermination hearing. *F.S.S.M.*, at *17.

124. Petitioner was given no notice, explanation, or opportunity to be heard when USCIS terminated his SIJV-DA. Perhaps most alarming is that USCIS only terminated Petitioner's SIJS-DA *after* he was already detained by ICE, a scenario which should have been all but impossible given the safeguards already afforded to Petitioner by the TVPRA, his *J.O.P.* class membership, and his SIJS-DA itself.

125. Despite Petitioner's various protections, the government appears content to hold Petitioner until he either agrees to removal or until the unknown date on which his UAC asylum application will be adjudicated. Given that these protections mean that Petitioner cannot be processed for removal, the sole purpose of detention is punitive. *See Zadvydas*, 533 U.S. at 690 (Civil detention violates due process outside of "certain special and narrow nonpunitive circumstances").

126. If the government is allowed to pursue its current course, Petitioner faces a very real threat of continued deprivation of procedural safeguards and his liberty. The second *Mathews* factor is satisfied.

127. The third *Mathews* factor, the government's interest in maintaining the "current" procedure, post-revocation of Petitioner's SIJS-DA, is incredibly low. The sole interest of the government is in spending all the resources Congress has granted it to detain all immigrants, regardless of lack of danger, regardless of ties to the U.S., regardless of length of stay, and regardless of the requirements of constitutional due process.

128. Under *J.O.P.*, his removal order is not enforceable while his asylum application is pending with USCIS. See *J.O.P.*, at 8 ("With respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this agreement").

129. Even if Petitioner's asylum application is ultimately denied, he has still been recognized to be a Special Immigrant Juvenile, and he will be eligible to adjust his status as soon as a visa is available to him. Petitioner's Special Immigrant Juvenile Deferred Action had protected him from removal, and the consequent loss of the legal protection Congress intended him to have as a special immigrant juvenile.

130. By contrast, revocation of Petitioner's SIJS-DA does nothing to further an enforceable government interest because Petitioner is not currently removable. Detention only strips Petitioner of his liberty, houses him at taxpayer expense, and ultimately aims to circumvent the benefits Congress intended Petitioner to receive as an SIJ.

131. The government's interest in revoking Petitioner's SIJS-DA does not outweigh Petitioner's liberty interest and risk of erroneous deprivation. See *F.S.S.M.*, at *18. "Respondents are not harmed by their sworn duty to follow the law." *Id.*, at *21. The third *Mathews* factor favors Petitioner.

132. Each part of the *Mathews* test supports Petitioner's claim that the revocation of his SIJS-DA and his ongoing detention violated Petitioner's due process rights.

133. Petitioner's continued detention, with no discernable end in sight, constitutes actual prejudice.

134. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his continued detention on the basis of Defendants' actions, memos, and decisions.

135. Immigration detention should not be used as a punishment or coercion tactic and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas* at 690.

136. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from ICE custody, and that his SIJS-DA be reinstated.

## VI. CLAIMS FOR RELIEF

### COUNT I
### Violation of the *J.O.P.* Settlement

137. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.

138. Respondents are prohibited from removing Petitioner from the United States while his asylum application is pending with USCIS because Petitioner is a *J.O.P.* class member.

139. Petitioner's ongoing and indefinite detention violates the regulations and the *J.O.P.* settlement, without consideration of public safety or risk of flight.

### COUNT II
### Violation of Congressional Protections for SIJs

140. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.

Congress specifically designed certain safeguards for individuals identified as Special Immigrant Juveniles, as established at 8 U.S.C. § 1101(a)(27)(J), 8 C.F.R. § 204.11, and 8 U.S.C. § 1255(h)(2).

141. Petitioner's ongoing and indefinite detention, whose ultimate goal is the removal of Petitioner from the United States, defies Congressional protections for SIJs and strips Petitioner of any and all benefit he could enjoy by virtue of his SIJ designation.

### COUNT III
### Violation of Fifth Amendment Right to Due Process of Law

142. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

143. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

144. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

145. The Ninth Circuit has also held that "[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]" *Gonzalez v United States Immigr. & Customs Enf't.* 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

146. Petitioner has a fundamental interest in liberty and being free from official restraint.

147. The Government's continued detention of Petitioner is a clear violation of his constitutional right to due process under the law.

148. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

149. Respondents' continued detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

150. There is no credible argument that this Petitioner cannot be safely released back to his family and community.

151. For these reasons, continued detention of this Petitioner violates the Due Process Clause of the Fifth Amendment.

## VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter.

b. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval.

c. Issue an immediate Order to Respondents to Show Cause regarding any constitutional or statutory justification for why this Petitioner is detained.

d. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner from ICE custody.

e. Alternatively, order Petitioner's release under the least restrictive conditions of supervision, including parole or an order of recognizance.

f. Declare that the Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment and frameworks of the TVPRA and SIJ-related statutes.

g. Declare that the revocation of Petitioner's SIJS-DA violates his due process rights under *Mathews v. Eldridge*.

h. Enjoin DHS and EOIR from executing the *in-absentia* removal order while Petitioner's asylum application, SIJ status, and BIA appeal of his Motion to Reopen that removal order remain pending.

i. Order Respondents to reinstate Petitioner's deferred action pending final adjudication of his asylum and SIJ-related relief.

j. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 28 U.S.C. §2412, and on any other basis justified under the law; and

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

RESPECTFULLY SUBMITTED this 26th day of December, 2025.

PARKINSON BENSON POTTER

/s/ Brett Parkinson
Attorney for Petitioner

STOWELL CRAYK, PLLC

/s/ Marti L. Jones
Attorney for Petitioner