IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Walter Acuna Cruz, Petitioner v. **David Easterwood**, Director of St. Paul Enforcement and Removal Operations, Immigration and Customs Enforcement; **Kristi Noem**, Secretary of the Department Homeland Security; **Mike Stasko**, Administrator of the Freeborn County Jail; **Todd Lyons**, Acting Director, U.S. Immigration and Customs Enforcement; **Pamela Bondi**, Attorney General of the United States; and, **Joseph Edlow**, Director, United States Citizenship and Immigration Services, in their official capacities. Respondents.	PETITION FOR WRIT OF HABEAS CORPUS CASE No: 0:26-cv-1393

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Over 598 days, Respondents have expended approximately $90,896 in public funds to detain a Special Immigrant Juvenile with deferred action and pending humanitarian applications. This Petition challenges the legality of Respondents' continued detention of Walter Acuna Cruz ("Walter"). Civil immigration detention must remain tethered to a lawful statutory basis and the limited purpose of effectuating removal; once removal is not significantly likely in the reasonably foreseeable future, continued custody is not authorized. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

2. Despite substantial record evidence triggering DHS's regulatory obligations to conduct foreseeability-based custody determinations, Respondents have failed to provide the required review and have continued detention by default. See 8 C.F.R. §§ 241.4(i)(7), 241.13. Respondents simultaneously refuse to facilitate the biometrics and adjudication steps necessary to advance those applications, thereby unlawfully prolonging detention and depriving Walter of meaningful process. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); 5 U.S.C. § 706(2)(A). All these issues compounded keep Walter in unlawful custody and this Court's intervention is required.

JURISDICTION AND VENUE

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

4. A district court may grant a writ of *habeas corpus* to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305–07 (2001). To a limited extent, some statutory provisions constrain judicial review of immigration matters, such as 8 U.S.C. § 1252(g), which bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings. *See Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19

(2020); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–85 (1999) (noting there was "good reason" for Congress to proscribe judicial review of the Attorney General's "discrete acts of 'commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders,'" as they constituted "the initiation or prosecution of various stages in the deportation process.").

5. Walter is not challenging the implementation of 8 U.S.C. § 1225, nor is he seeking review of any discretionary decision of the Secretary of Homeland Security or the Attorney General, nor is he seeking this Court's review of a final order of removal. Rather, he seeks relief on the basis that Respondents lack authority to detain him because his detention does not facilitate removal or prevent risk of flight given that he was granted Special Immigrant Juvenile (SIJ) status and, in addition, has Deferred Action (DA) valid to October 2028. The Respondents have no ability to execute removal as required pursuant to 8 U.S.C. § 1231(a). Both SIJ status and DA prevent removal even if one has a final order of removal, which was entered against him on October 14, 2025.

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

agency action." 5 U.S.C. § 702. Respondents' continued detention of Walter up to today has adversely and severely affected Walter's liberty, property and freedom.

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

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

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

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

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

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

PARTIES

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

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

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

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

17. Mike Stasko is named in his official capacity as the Administrator of Freeborn County Jail. As the Administrator of Freeborn County Jail, he is responsible for and has authority over detainees in the Freeborn County Jail. He is, therefore, Walter's direct custodian. He is sued in his official capacity.

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

19. Joseph Edlow is named in his official capacity as the Director of U.S. Citizenship and Immigration Service. As the Senior Official performing the duties of the Director of USCIS, he is responsible for the administration and enforcement of USCIS policies and immigration laws of the United States and is legally responsible for enacting policies that are violating the Petitioner's lawful rights to access T and U visa benefits.

FACTUAL ALLEGATIONS

Respondents Have Wasted $90,896 In Taxpayer Funds in Detaining Walter

20. Walter was detained on June 24, 2024. According to ICE, it costs $152 per day to detain an individual.[1] In total, 598 days have elapsed where Walter has remained detained. This means the Respondents have wasted $90,896 and rising in taxpayer funds on detaining a special immigrant juvenile who is also a victim of crime, trafficking survivor and an asylum seeker.

[1] U.S. Immigr. & Customs Enf't, Alternatives to Detention, ICE.gov (updated Jan. 7, 2026), archived at https://www.ice.gov/atd.

Walter Incorporates All Factual Allegations From Previous Actions

21. Walter herein incorporates the factual allegations previously presented in *Acuna Cruz v Berg, et al*, 0:25-cv-04720 (D. Minn. December 22, 2025) and *Acuna Cruz v. Berg et al,* 0:25-cv-04376 (D. Minn. November 19, 2025). *See* Exhibit A; Exhibit B. To sum for the Court:

22. Walter was born and raised in Guatemala, where his childhood was marked by severe neglect, instability, and profound abuse. Although he lived in his parents' home during portions of his upbringing, he was not protected or cared for in any meaningful way and suffered significant physical, sexual, and emotional abuse, either directly inflicted by his parents or occurring with their acquiescence and failure to protect. His mother was frequently absent and emotionally unavailable, and his father, an alcoholic, subjected him to violence, intimidation, and deprivation, including beatings with weapons, and the withholding of food and basic necessities. As a minor with no realistic prospect of safety, Walter fled Guatemala in January 2020 at only fifteen years old, intending to seek asylum in the United States. During his journey, he was kidnapped [redacted] and held captive for over two months while his captors demanded [redacted] He was released only after [redacted] paid approximately $3,500 for his freedom.

23. Upon entering the United States on March 20, 2020, Walter was not met with safety but instead was subjected to further exploitation and coercive control by the

[redacted] who paid the ransom. Walter was forced into prolonged labor, isolated from support systems, deprived of educational opportunities, and had substantial wages withheld under the guise of "repayment," far exceeding any legitimate debt. In late 2021, he escaped by fleeing in the middle of the night under the care of his brother and now guardian.

24. Thereafter, Walter continued to face instability and danger, including being threatened at gunpoint by an older man who was later arrested and deported, leaving ongoing fear of retaliation if Walter is returned to Guatemala. Following the death of his grandmother, his only meaningful source of emotional support, Walter experienced significant grief and emotional destabilization, which contributed to alcohol problems that led to his arrests, which he deeply regrets. ICE took Walter into custody in June 2024 and initiated removal proceedings despite his substantial equities and strong humanitarian claims.

25. Walter subsequently pursued multiple forms of relief, including Special Immigrant Juvenile Status (approved February 11, 2025, with Deferred Action), a pending T visa, a pending U visa, and asylum. Although the Immigration Judge initially terminated proceedings based on his SIJ approval and deferred action, the BIA reversed on appeal based on a factual error, and Walter ultimately received a final removal order in October 2025.

26. Despite his deferred action remaining in effect and ongoing litigation and administrative filings, ICE continues to detain Walter and at one point transferred him to Port Isabel Detention Center in Texas under harsh conditions, where he was significantly

injured, suffering severe head trauma, after fainting due to a severe influenza he caught whilst under the poor and overcrowded conditions in the jail. ICE then transferred Walter back to Minnesota, where he now remains detained.

Walter Rehabilitates in Custody

27. During his detention, Walter has undergone substantial rehabilitation and personal transformation. He has maintained sobriety, engaged in consistent physical fitness and structured daily routines, and pursued self-directed programming focused on accountability, emotional regulation, and reentry planning. He has actively worked through Alcoholics Anonymous materials despite the lack of formal AA programming in custody, and he is currently on Step Eight. He achieved this by seeking a sponsor to assist him through steps 1-4 and then found books and materials in the jail to assist him in continuing the program.

28. He has taken concrete steps toward accountability by contacting individuals he previously harmed and offering apologies, reflecting meaningful insight and remorse. He has also pursued counseling resources available in detention and strengthened his faith through daily prayer and reflection.

29. Walter has further demonstrated long-term stability through detailed post-release planning, including lawful employment goals tied to his deferred action and work authorization eligibility (a work authorization application has been received by the United States Citizenship and Immigration Service (USCIS)), continued outpatient alcohol programming, and residence with a stable family sponsor. He has spent his time

in custody learning to speak English now holds conversational proficiency in English. These efforts are not aspirational, they are documented, consistent, and corroborated by third-party support, including testimony from individuals who have personally observed his conduct and growth in custody. *See* Exhibits C; D.

Walter is Granted a Stay of Removal by This Court

30. Walter is currently protected by a stay of removal issued by this Court, which remains in effect and prohibits Respondents from removing him from the United States while the other *habeas* is pending. *See Acuna Cruz v Berg, et al*, 0:25-cv-04720 (D. Minn. December 22, 2025). Given the complex and intricate details of the *habeas* resolution is not likely to be fast. The Court issued the stay to preserve the *status quo* in light of the serious legal issues presented, including the risk of irreparable harm to Walter's immigration posture and his ability to obtain meaningful judicial review. *Id.* In its Order, the Court recognized that Walter faced imminent deportation despite his approved SIJS-based deferred action. *Acuna Cruz v Berg et al*, No. 25-cv-4720, ECF 15 at 7 (D. Minn. Dec. 22, 2025). The Court further found that maintaining the stay imposed no corresponding harm to Respondents and was necessary to prevent unlawful removal before adjudication of the pending motions. *Id.*

Walter Requests a Custody Review Which Has Remained Unanswered

31. Despite the existence of the Court's stay of removal and the substantial legal barriers to removal, Walter remains detained in post-order custody without a meaningful custody review determination. On January 19, 2026, February 9, 2026 and

February 11, 2026, through counsel, formally requested release pursuant *to Zadvydas v. Davis* and the regulatory custody review framework at 8 C.F.R. §§ 241.4 and 241.13, providing extensive evidence demonstrating that removal is not reasonably foreseeable and that he poses no danger or flight risk.

32. The request specifically cited Walter's approved SIJS and active deferred action, pending victim-based relief, and the ongoing federal injunction barring removal. Walter further submitted evidence of rehabilitation, community support, and a stable release plan, including housing and supervision arrangements. Nevertheless, ICE has failed to issue any timely custody determination or provide any written explanation for continued detention.

33. In addition, on January 14, 2026, the Respondents replied to Congressional inquiries stating that Walter would remain detained pending the outcome of his "Motion to Reopen". The currently pending action before the BIA is, in fact, an appeal of an Immigration Judge's decision on a Motion to Reopen.

The Respondents Refuse to Transport Walter for His U Visa Biometrics Appointment

34. Respondents have further obstructed Walter's ability to pursue his pending immigration relief by refusing to transport him to his scheduled biometrics appointment in connection with his pending U visa application. USCIS has issued a receipt notice confirming that Walter's Form I-918 petition remains pending. *See* Exhibit E. An appointment was then set for Walter to attend biometrics on January 27, 2026, and

requests were made for ICE to transport. *See* Exhibit F. ICE refused to respond directly to these inquiries, but on February 6, 2026, responded to Congressional inquiry that USCIS should share the biometrics data with ICE, thereby making transport unnecessary.

35. Another appointment is scheduled for February 17, 2026. *See* Exhibit G. If Walter doesn't attend, his U Visa application will be denied.

36. However, USCIS released a policy in December 2025 indicating that detainees would not be exempted from biometrics[2], and following requests made via both email and mail on January 19, 2026, to USCIS to reschedule the relevant appointment and to share biometrics data with ICE, USCIS refused on January 29, 2026, and indicated that Walter would need to appear for biometrics or his case would be denied, and that detainment is not an acceptable reason for a reschedule of the appointment.

37. Although Walter is in government custody and therefore wholly dependent on ICE for transport, Respondents have failed and refused to ensure his appearance for biometrics. Walter is now gravely at risk of denial of benefits he is eligible for.

Respondents Refuse to Expedite Walter's U Visa and T Visa Applications

38. On January 29, 2026, USCIS also addressed Walter's January 19, 2026 (among others) request to expedite his U Visa or T Visa applications on the basis of his detention, harm in home country and the continuing harm to his well-being as a victim of

[2] U.S. Citizenship & Immigr. Servs., USCIS Policy Manual, vol. 1, pt. C, ch. 2, Biometrics Collection (last updated Dec. 5, 2025), https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2

crime and trafficking being detained. USCIS vaguely stated that he did not meet the policy criteria for an expedite request of his U and T visa applications.

LEGAL FRAMEWORK

Exhaustion

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

Special Immigrant Juvenile Status

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

41. To be granted SIJS, youths like Walter must first "satisfy[] a set of rigorous, congressionally defined eligibility criteria." *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d

153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJS designation, as relevant here, are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

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

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

their country of origin would be contrary to their best interests. 8 U.S.C. § 1101(a)(27)(J)(iii).

44. SIJS may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth in question, who must be permitted the opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. *See* 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. *See* 8 C.F.R. § 205.2(c) & (d). Revocation of a SIJS petition may only be performed by a USCIS officer authorized to approve such petition in the first instance. *See* 8 C.F.R. § 205.2(a).

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

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

[the SIJS statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." 8 U.S.C. § 1227(c).

47. Although SIJS renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual limit on visas available to SIJS beneficiaries. 8 U.S.C. § 1153(b)(4). Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same vulnerable young people that the SIJS statute was designed to protect. The fact that no visa is currently available because a numerical limit has been reached changes nothing about their eligibility determination by USCIS, or Congress's intent that they be afforded a pathway to LPR status and, eventually, citizenship. These are the same individuals whom state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

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

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

Foreseeability of Removal When in SIJ Status or Holding Deferred Action

50. Federal courts have repeatedly granted habeas relief in cases where a noncitizen's removal is not reasonably foreseeable, particularly where the government's asserted justification for detention is premised on removal that cannot be executed within the foreseeable future. In *Zadvydas v. Davis*, the Supreme Court held that post-order detention under 8 U.S.C. § 1231(a)(6) is constitutionally limited and may not continue indefinitely once removal is no longer reasonably foreseeable. 533 U.S. 678, 699–701 (2001). Under the *Zadvydas* framework, after a presumptively reasonable period of detention, continued detention becomes unlawful if there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* Courts have continued to apply this framework to assess the legality of post-order detention and to grant habeas relief where the government cannot demonstrate a realistic path to removal.

51. Consistent with *Zadvydas*, numerous district courts have granted habeas petitions or ordered release where the petitioner demonstrated the existence of a legal or practical barrier to removal that rendered removal not reasonably foreseeable. For example, in *Primero v. Mattivelo*, the court granted relief where the petitioner had SIJS-related deferred action and the record showed no termination of that deferred action, concluding that the petitioner had demonstrated that removal was not reasonably foreseeable. 2025 WL 1899115, at *5. ("[W]here Petitioner has shown that USCIS granted him deferred action that will remain valid… in the absence of early termination and early termination has not occurred," removal was not reasonably foreseeable.).

52. Similarly, in *Guerra Leon v. Noem*, the court ordered release of a SIJS beneficiary subject to a final order of removal where deferred action remained in effect. ("[C]ourts have granted habeas relief where the government seeks to remove noncitizens whose deferred action status remains in effect. *See, e.g., Sepulveda*… (granting habeas relief to petitioner with deferred action status); *Guerra Leon v. Noem* (W.D. La. Oct. 30, 2025).".

53. Courts have also granted relief in comparable cases involving SIJS beneficiaries and other humanitarian deferred action recipients where removal could not be effectuated within the foreseeable future.

54. Courts have likewise granted habeas relief where deferred action or other immigration protections operated as a barrier to execution of a removal order, and where detention was premised on removal that could not occur absent further agency action. In *Sepulveda Ayala v. Bondi*, the court granted relief under the Zadvydas framework where the petitioner had a grant of deferred action and the government's asserted basis for detention depended on removal that could not proceed while deferred action remained in effect. 2025 WL 2209708, at *4. ("The Government's sole basis for detaining Sepulveda Ayala is that it may do so in order to remove him. … cf. *Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (1999) ('Detention by the INS can be lawful only in aid of deportation.'). For the reasons above, the Court finds that Sepulveda Ayala's deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain Sepulveda Ayala and that Sepulveda Ayala has met his burden on his habeas petition.").

55. Other courts have also recognized that where removal is prevented by an unexpired grant of deferred action, detention under § 1231 may raise significant foreseeability concerns under *Zadvydas*. *See*, e.g., *Forsah R-Z- v. Noem*, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026) (Ordering immediate release of SIJS beneficiary with final removal order and deferred action, reasoning that since he could not be removed given unexpired deferred action, his detention violated due process. Also prohibiting govt from "impos[ing] any additional restrictions on Petitioner, unless that is determined to be necessary at a future pre-deprivation/custody hearing" and permanently enjoining government "from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include, at a minimum, pre-deprivation notice describing the change of circumstances necessitating Petitioner's arrest and detention).

56. "As to deferred action, once such status is conferred, for humanitarian reasons, 'no action will thereafter be taken to proceed against an apparently deportable alien[.]' *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).

57. Courts have further issued injunctive relief and release orders in cases involving deferred action recipients, including those with victim-based or humanitarian protection, where removal was not reasonably foreseeable and detention was not supported by individualized findings sufficient to justify continued custody.

Victims of Crime and Trafficking

58. In 2021, an enforcement directive was issued continuing ICE's longstanding policy to "refrain from taking civil enforcement action against" individuals

"known to have a pending application" for "victim-based immigration benefits" unless there are "exceptional circumstances" such as national security concerns or a "risk of death, violence, or physical harm to any person." ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) at 1-2. If an application is pending, ICE will "defer decisions" on enforcement until final determinations are made on pending petitions or a negative determination is made on an interim adjudication like a BFD or wait-list determination. *Id.* at 2.

59. The 2021 Directive also reinstated a policy of requesting expedited adjudications for people in ICE custody. *Id.* at 9. "The fact that someone is a victim of crime and… may be eligible for victim-based benefits" it to be considered a "positive discretionary factor." *Id.* The Court should note that a subsequent 2025 memorandum was issued, irrelevant to this case because the conduct and failures relevant to this case took place before the updated Directive was issued.

Post-Order Detention

60. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal

period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6).

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

62. 8 C.F.R. § 241.4's custody review process has, over the years, been amended and (i)(7) was added to include a supplemental review procedure that ICE must initiate when "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

63. Under this procedure, ICE evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the

detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." *Id.* § 241.14(f).

64. In *Zadvydas v. Davis*, the Supreme Court held that to avoid offending the Due Process Clause, detention under that statute is limited to "a period reasonably necessary to bring about" the individual's removal from the United States. 533 U.S. 678, 689 (2001). While detention is presumptively reasonable for up to six months, *id.* at 701, reasonableness is measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal." *Id.* at 699. Accordingly, a noncitizen may challenge his detention prior to the six-month mark if he "can prove" that there is no significant likelihood of his removal in the reasonably foreseeable future. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d. 703, 706-07 (S.D. Tex. 2020). If "removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized by statute." *Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *4 (D. Mass. July 9, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *4 (W.D. Wash. July 24, 2025).

65. As discussed above, many courts have addressed the issue of reasonable foreseeability with regard to SIJs with and without DA. *Primero v. Mattivelo*, No. 1:25-cv-11442-IT, 2025 WL 1899115 (D. Mass. July 9, 2025); *Guerra Leon v. Noem*, No. 2:25-cv-01272 (W.D. La. Oct. 30, 2025); *Sepulveda Ayala v. Bondi*, No. 2:25-cv-01063-

JNW-TLF, 2025 WL 2209708 (W.D. Wash. Aug. 4, 2025); *Forsah R-Z- v. Noem*, No. 1:26-cv-00828-DJC-AC, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026); *Santiago v. Noem*, No. 1:25-cv-00510, 2025 WL 2792588 (D.N.H. May 12, 2025).

Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

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

67. Where a petitioner demonstrates that detention is unlawful under the Due Process Clause or federal law, including the Administrative Procedure Act, the Court may order release or other appropriate relief irrespective of whether the agency has performed a regulatory custody review.

68. Courts have repeatedly granted habeas relief based on constitutional violations independent of the detention statute invoked by the Government. In *Ferreira v. Lyons*, the court expressly rejected the Government's attempt to characterize the case as a statutory custody dispute under 8 U.S.C. § 1231, holding instead that the petition presented an independent constitutional challenge. The court explained: "Respondents' argument misses the mark. This case is not about Respondents' authority to detain under Section 1231.. Rather, Mr. Ferreira's claim is constitutional in nature." *Ferreira v. Lyons*, No. 25-cv-13809-MJJ, slip op. at 4 (D. Mass. Jan. 26, 2026).

69. The court granted the petition and entered injunctive relief on due process grounds alone. *Id.*

70. Likewise, where government action unlawfully deprives a detained noncitizen of access to statutory immigration procedures or prevents pursuit of available relief, habeas courts have authority to remedy the constitutional or legal violation by ordering release, requiring a hearing, or enjoining further detention or removal. See 28 U.S.C. § 2241(c)(3).

Administrative Procedure Act – 5 U.S.C. § 553

71. The Administrative Procedure Act ("APA") governs the manner in which federal agencies may adopt binding rules and policies. Under the APA, agencies must follow notice-and-comment rulemaking procedures when promulgating legislative rules. 5 U.S.C. § 553. Specifically, an agency must publish a notice of proposed rulemaking in the Federal Register, provide interested persons an opportunity to submit comments, and incorporate in the final rule a concise statement of its basis and purpose. 5 U.S.C. § 553(b)–(c).

72. The APA distinguishes between legislative rules, which have the force and effect of law, and interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice, which are exempt from notice-and-comment requirements. 5 U.S.C. § 553(b)(A). While agencies may issue interpretive rules or policy guidance without notice and comment, an agency may not circumvent the APA's procedural safeguards by labeling a substantive rule as "guidance" where it in fact imposes binding norms or alters rights and obligations. *See Perez v. Mortg. Bankers*

Ass'n, 575 U.S. 92, 96–97 (2015); *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–03 (1979).

73. Courts evaluate whether an agency action constitutes a legislative rule by examining whether the action effectively creates new law, imposes new rights or duties, or establishes a binding norm that constrains agency discretion or has a practical binding effect on regulated parties. *See Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 251–52 (D.C. Cir. 2014). Where a purported policy or guidance "genuinely leaves the agency and its decisionmakers free to exercise discretion," it may be treated as a general statement of policy. *Id.* at 251. However, if the agency action is binding in practice, either by mandating a particular outcome or by foreclosing individualized consideration, courts treat it as a legislative rule subject to § 553's rulemaking requirements. *See id.*; *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021–23 (D.C. Cir. 2000).

74. Even where a rule is characterized as "procedural," agencies may not use procedural mechanisms to accomplish substantive results. A rule that appears procedural on its face may nonetheless be legislative if it "encodes a substantive value judgment" or "substantially alters the rights or interests of regulated parties." *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994). Similarly, an agency may not adopt a procedural policy that effectively functions as a categorical bar to relief or that deprives individuals of meaningful access to an adjudicatory process without the safeguards required by the APA. *See Batterton v. Marshall*, 648 F.2d 694, 707–08 (D.C. Cir. 1980).

75. Where an agency fails to comply with the APA's notice-and-comment requirements in promulgating a legislative rule, the resulting agency action is unlawful and must be set aside. 5 U.S.C. § 706(2)(D).

Due Process

76. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976.) Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interests in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). As the Supreme Court recognized in *Zadvydas*, the government's only interests in post-order immigration detention are to (1) prevent flight risk, so a person can actually be removed, or (2) otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed, "preventing flight" is a "weak or nonexistent" justification. *Id.* at 690; *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). Detention for community safety, in turn, is only permissible "when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 691.

77. That dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected

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

APPLICATION

Exhaustion

78. Whilst exhaustion is not required, Walter did attempt to exhaust his administrative remedies by: (1) requesting custody review, which went unanswered in violation of 8 C.F.R. § 241.13(e); (2) requesting that USCIS and ICE data share biometrics, which both Respondents refused to do; and (3) bringing the Respondents' attention to his SIJ status with DA and its legal effect a minimum of 10 times. The Court's intervention is required at this juncture to compel the Respondents to comply with the law.

Detention is in Violation of the INA Because Removal is Not Reasonably Foreseeable

79. Walter's continued detention is unlawful because Respondents cannot meet the statutory and constitutional requirements for continued post-order custody under 8 U.S.C. § 1231(a)(6), and because Respondents have failed to conduct the custody determinations required by DHS's own regulations once substantial evidence establishes that removal is not reasonably foreseeable.

80. Under *Zadvydas v. Davis*, the Government's authority to detain a noncitizen beyond the removal period is limited to "a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. 678, 689 (2001). Beyond this period, detention becomes indefinite and in violation of the Constitution. *Id.* Detention is justified only insofar as it bears a reasonable relationship to its civil purpose, ensuring the noncitizen's presence at the moment of removal. *Id.* at 699. Where a petitioner provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to rebut that showing. *Id.* at 701. Absent such a showing, continued detention is not authorized. *Id.*

81. The question presented here is narrow and squarely within the traditional scope of habeas relief: whether Respondents may continue to detain Walter when they cannot establish a significant likelihood of removal in the reasonably foreseeable future and have failed to comply with the custody review process required by law. Critically, the Court does not have to find whether Walter is removable or not, just whether there is good reason to believe that there is no significant likelihood of removal.

82. Courts considering similar circumstances have granted habeas relief where SIJ status and deferred action and related legal barriers created substantial doubt as to the foreseeability of removal, and where the Government could not meet its burden to show removal would occur in the reasonably foreseeable future. *See Primero v. Mattivelo*, No. 1:25-cv-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (granting habeas relief where deferred action remained valid and termination had not occurred); *Sepulveda Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash.

Aug. 4, 2025) (granting habeas relief where deferred action prevented removal and the government lacked legal basis to detain); *Forsah R-Z- v. Noem*, No. 1:26-cv-00828-DJC-AC, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026) (ordering release of SIJS beneficiary with deferred action). These decisions do not require this Court to resolve the ultimate merits of removability; rather, they reflect the settled habeas principle that post-order detention cannot lawfully continue where removal is not reasonably foreseeable and where the Government cannot satisfy the procedural and substantive requirements governing continued custody.

83. Here, the record provides substantial reason to believe that Walter's removal is not reasonably foreseeable. Walter holds an approved SIJS petition and has been granted deferred action through October 2028. He has never been served with a notice terminating deferred action, nor has Respondents produced evidence that such deferred action has been lawfully revoked. Respondents would hold no "good and sufficient cause" to revoke Walter's petition, as no circumstances have changed since the approved it.

84. In addition, Walter is currently protected by a stay of removal issued by this Court, which independently prevents Respondents from executing removal while the related federal proceedings remain pending. *Acuna Cruz v Berg*, No. 0:25-cv-04720, ECF. 15 (D. Minn. Dec. 22, 2025). The matters addressed in that habeas are complex legal issues, and it is likely that the action will not be resolved quickly.

85. The existence of these legal and procedural barriers does not require this Court to conclusively determine that removal is impossible. It is sufficient that these

barriers provide "good reason to believe" removal is not significantly likely in the reasonably foreseeable future, thereby triggering Respondents' burden under *Zadvydas* and their regulatory obligations under 8 C.F.R. §§ 241.4 and 241.13. *Zadvydas*, 533 U.S. at 701. Indeed, DHS's own regulations anticipate this precise situation. ICE must initiate a supplemental custody review where "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7). The regulations further provide that where removal is not foreseeable, detention may continue only under narrow "special circumstances," subject to strict procedural safeguards. *See* 8 C.F.R. §§ 241.13, 241.14.

86. Despite the presence of substantial information establishing that removal is not reasonably foreseeable, Respondents have not carried their burden under *Zadvydas* and have failed to issue the custody determinations required by regulation. Walter has repeatedly requested custody review and release, including through counsel's formal written submissions. Yet Respondents have not provided a meaningful written determination addressing foreseeability, have not articulated any legally cognizable basis for continued detention, and have not initiated the supplemental foreseeability review process required under § 241.4(i)(7) and § 241.13. Continued detention without those determinations is inconsistent with the statutory limits recognized in *Zadvydas* and the regulatory framework DHS has adopted to implement those limits.

87. Accordingly, Walter's continued detention is unlawful. Respondents have not met their burden under *Zadvydas* to demonstrate a significant likelihood of removal

in the reasonably foreseeable future, and Respondents have failed to comply with the regulatory custody review framework that applies when removal is not foreseeable. The Court should therefore grant the Petition and order Walter's release under appropriate conditions of supervision consistent with *Zadvydas* and 8 C.F.R. §§ 241.4 and 241.13.

Walter's Detention is a Violation of the Fifth Amendment Due Process Clause

88. Even if Respondents possessed some baseline statutory authority to detain Walter under 8 U.S.C. § 1231(a)(6) (they do not), the Fifth Amendment requires that continued civil detention be accompanied by constitutionally adequate procedures that protect against erroneous deprivation of liberty. *See Zadvydas v. Davis*, 533 U.S. Once detention becomes prolonged or the justification for continued custody is no longer self-evident, due process requires meaningful procedural safeguards and an individualized determination sufficient to justify continued confinement. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

89. Here, Respondents have continued to detain Walter without providing any meaningful process to justify continued deprivation of liberty. In particular, Respondents have not provided a hearing or other adequate procedural mechanism through which Walter can challenge continued detention and through which Respondents must demonstrate a lawful basis for continued custody. Instead, detention has continued by default, without the constitutionally required process.

90. This failure is constitutionally significant because ICE's own detention framework contemplates that, once the record contains information indicating that

removal is not significantly likely in the reasonably foreseeable future, continued detention cannot proceed on autopilot and must instead be supported by heightened review procedures. *See* 8 C.F.R. § 241.4(i)(7). Those procedures exist for a reason: to prevent arbitrary continued confinement once the government's detention rationale becomes uncertain. Yet Respondents have not invoked or complied with those safeguards. Nor have Respondents sought detention under the narrow "special circumstances" regime in 8 C.F.R. § 241.14, which requires heightened procedural protections and individualized determinations before detention may continue under extraordinary authority.

91. Under *Mathews*, the constitutional deficiency is clear. Walter's private interest is his physical liberty, the most fundamental interest protected by due process. The risk of erroneous deprivation is substantial because, absent meaningful continued-deprivation review, detention is effectively indefinite and untested. And the probable value of additional safeguards is obvious: a prompt individualized review requiring Respondents to justify continued detention would directly reduce the risk of unconstitutional confinement. Finally, the Government's interest in administrative convenience cannot outweigh the requirement of constitutionally adequate process where an individual remains confined for civil purposes.

92. The Respondents have refused to undertake this assessment despite several requests, and during the period those requests were made, stated to Congress officials that Walter would remain detained "pending the outcome of his appeal", despite his appeal relating to a Motion to Reopen, which does not affect the custody statute which he is

detained under and preemptively decides his custody without regard to the factors to be considered under 8 C.F.R. §§ 241.4, 241.13, 241.14. This indicates the Respondents will not undertake the appropriate review in any manner, and immediate release is the only appropriate remedy.

93. Accordingly, Respondents' continued detention violates the Fifth Amendment's procedural due process protections, and habeas relief is warranted.

Walter's Detention is a Violation of the Administrative Procedure Act

94. ICE has deviated from ICE Directive 11005.3 in continuing to detain Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA. The Court's determination of an APA violation is standalone from the CFR custody review procedures and dispositive independently with regard to his release. The Court can order release outside of the custody review procedures on the matter of APA violations.

95. ICE has also demonstrated, through its continued pursuance of enforcement and removal activities against Walter, that it is unwilling and unable to follow its own policy or the law in regards to enforcement measures against individuals who are victims of crime, trafficking or SIJs.

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

The Respondents December 2025 Biometrics Policy Violates the Administrative Procedure Act

97. Respondents' continued detention of Walter is unlawful because it is premised on agency action that is arbitrary and capricious, contrary to law, and in excess of statutory authority, in violation of the Administrative Procedure Act ("APA"). 5 U.S.C. § 706(2)(A), (C). USCIS has issued a policy governing biometric services that creates an impossible procedural trap for detained noncitizens. Under the policy, USCIS will not collect biometrics from detained individuals in DHS or non-DHS custody, will not travel to detention facilities for biometrics collection, and will not approve requests to reschedule biometrics appointments on the basis of detention or incarceration. *See* USCIS Policy Manual, Vol. 1, Part C, Ch. 2, § B ("Persons in Custody") (Dec. 5, 2025). At the same time, USCIS requires attendance at biometrics appointments as a prerequisite to adjudicating immigration benefit requests and treats failure to appear as abandonment and denial absent timely rescheduling or a change of address. *Id.* § A.2.

98. This policy is arbitrary and capricious because it imposes a mandatory procedural requirement while simultaneously foreclosing any mechanism by which detained applicants may comply. Where one arm of the Department of Homeland Security seeks to detain an individual, the other arm has effected policy that deprives otherwise eligible individuals from possible relief from removal by effectively ensuring the applications of those individuals will be denied. The policy operates to deny

adjudication of benefit requests not because of statutory ineligibility but because DHS detention makes compliance impossible. *See* 5 U.S.C. § 706(2)(A).

99. It is also contrary to law and in excess of statutory authority because the INA authorizes noncitizens, including SIJS recipients and individuals eligible for humanitarian relief, to seek immigration benefits and adjustment of status through congressionally created procedures. *See*, e.g., 8 U.S.C. §§ 1101(a)(27)(J), 1255(h). USCIS cannot lawfully adopt a categorical policy that effectively prevents detained individuals from pursuing benefits for which they are statutorily eligible to apply, thereby transforming detention status into a *de facto* substantive bar to relief without congressional authorization. *See* 5 U.S.C. § 706(2)(C).

100. Moreover, USCIS's policy is expressly "effective immediately" and applies to "requests pending or filed on or after" its publication date, despite the significant liberty interests at stake for detained individuals whose ability to pursue relief may directly affect the foreseeability of removal and the legality of continued detention. USCIS Policy Manual, Vol. 1, Part C, Ch. 2 (Policy Alert) (Dec. 5, 2025). This retroactive application to pending requests further underscores the arbitrary and capricious nature of the policy.

101. Respondents are detaining Walter while simultaneously enforcing and relying upon a policy that blocks him from completing a mandatory procedural step required to pursue immigration benefits and relief. They have expressed the intent to deny Walter's U Visa Application because he is unable to attend his biometrics

appointment, also due to Respondents from ICE refusing to transport him to his appointment.

102. The result is that Respondents perpetuate Walter's custody by denying him access to the adjudicatory process itself. Agency action that imposes a compliance requirement while foreclosing compliance is unlawful under the APA, and Respondents may not rely on such unlawful agency action to justify continued detention. Accordingly, Walter is entitled to habeas relief to remedy this situation and enable his attendance at his rescheduled biometrics appointment.

103. Here, Walter alleges independent constitutional and statutory violations, including unlawful agency action that prevents him from completing mandatory USCIS biometrics requirements while in DHS custody, thereby blocking him from pursuing immigration benefits and relief and prolonging detention without lawful justification. Because those violations independently render his continued detention unlawful, the Court may grant habeas relief, including release, independently of what the Court finds with regards to Walter's foreseeability of removal.

The Respondents' December 2025 Biometrics Policy is a Violation of His Due Process Rights

104. Where, as here, the government's actions deprive a detained individual of a meaningful opportunity to pursue statutorily available immigration benefits and relief, and thereby prolong or perpetuate detention, courts evaluate the adequacy of procedures under the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

105. The private interest at stake is Walter's physical liberty and his property interest in his immigration benefit. *Inland Empire–Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 JGB (SHKx), 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018); *J.L. v. Cissna*, 374 F. Supp. 3d 855, 869 (N.D. Cal. 2019); *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025).

106. Here, Walter remains detained while USCIS maintains a categorical policy refusing to collect biometrics from detained applicants and refusing to treat detention as a basis to reschedule biometrics appointments. That policy effectively prevents Walter from completing a mandatory step required to pursue immigration benefits and relief for which he is eligible to apply. If his U visa benefit is approved, the reopening and termination of his removal proceedings is mandatory per 8 C.F.R. 1003.18 and custody ends immediately. The consequence is not merely administrative inconvenience, it is continued incarceration where such could otherwise be remedied. Walter's liberty interest therefore weighs heavily in favor of robust procedural safeguards.

107. The second *Mathews* factor strongly favors Walter because the procedures currently employed create an extreme risk of erroneous deprivation. USCIS requires detained applicants to comply with biometrics procedures yet simultaneously adopts a categorical rule that USCIS will not collect biometrics in custody and will not approve rescheduling on the basis of detention. Under the policy, USCIS "does not grant requests to collect biometrics from aliens or other persons in custody" and "does not approve requests to reschedule a biometrics appointment for reason of detention or incarceration." USCIS Policy Manual, Vol. 1, Part C, Ch. 2, § B ("Persons in Custody") (Dec. 5, 2025).

USCIS further treats failure to appear for biometrics as abandonment and denial. *Id.* § A.2.

108. This system creates an inherently unreliable and constitutionally defective process because it imposes requirements that detained individuals cannot physically satisfy. The result is that benefit requests may be denied not on the merits and not due to statutory ineligibility, but due to a government-imposed barrier that prevents compliance. That is the essence of an erroneous deprivation.

109. Moreover, the value of additional safeguards is obvious and substantial. DHS could provide constitutionally adequate alternatives with minimal burden, including: (1) transporting detained applicants to an Application Support Center; (2) permitting USCIS personnel or contractors to collect biometrics at detention facilities; (3) authorizing ICE to collect biometrics for USCIS purposes; or (4) allowing biometrics reuse or other accommodations where appropriate. These safeguards would materially reduce the risk that detained applicants are denied access to adjudication and relief solely due to their custody status.

110. Where the government's own procedures create a "catch-22" that deprives a detained person of a meaningful opportunity to comply, the risk of erroneous deprivation is unacceptably high. Under *Mathews*, this factor weighs strongly in favor of finding a due process violation.

111. The third *Mathews* factor also favors Walter. While the government has a legitimate interest in efficient administration of immigration adjudications and detention operations, administrative convenience cannot justify procedures that categorically

deprive detained individuals of a meaningful opportunity to pursue benefits and relief. *Mathews* requires balancing the government's interest against the magnitude of the liberty deprivation and the risk of erroneous outcomes.

112. Here, USCIS's own policy acknowledges that its refusal to provide biometrics collection in custody is not grounded in statutory impossibility, but in the absence of an interagency agreement or operational arrangement. *See* USCIS Policy Manual, Vol. 1, Part C, Ch. 2, § B ("Persons in Custody") (Dec. 5, 2025) (noting "no current agreement between USCIS and ICE" for biometrics collection). That is not a compelling governmental interest, it is an internal administrative choice, whereby the Respondents previously shared data, and ICE Respondents still believe this is a possibility. Moreover, USCIS already provides mobile biometrics services in other contexts, demonstrating that biometrics collection outside an ASC is operationally feasible. *Id.* § B.

113. In any event, the government's interest in administrative efficiency cannot outweigh the fundamental liberty interest at stake or justify a policy that forecloses compliance and prolongs detention. The government may not detain a person while simultaneously blocking access to the procedural mechanisms necessary to pursue relief, particularly where DHS itself controls both detention and the adjudicatory process. Under *Mathews*, the government's asserted interest does not justify the sweeping categorical denial of biometrics accommodations for detained applicants.

114. The Respondents here, having wasted more than $95,000 and rising on detaining Walter, cannot argue that the burden of ensuring the data is collected by some

means which would likely lead to Walter's release, is greater than continuing to detain Walter and waste more taxpayer funds on his detention.

115. Balancing the *Mathews* factors confirms that Respondents' policy and resulting continued detention violate procedural due process. Walter's liberty interest is at its apex; the risk of erroneous deprivation created by the policy is substantial because it renders compliance impossible; and the government's administrative interest is insufficient to justify a categorical barrier that forecloses access to adjudication and perpetuates detention. *Mathews*, 424 U.S. at 335.

116. Accordingly, Respondents' continued detention of Walter under these circumstances violates the Due Process Clause of the Fifth Amendment. The appropriate remedy is habeas relief, including immediate release under reasonable conditions of supervision, or in the alternative, an order requiring Respondents to implement constitutionally adequate procedures that allow Walter to complete biometrics requirements and pursue adjudication of his pending benefit requests without unlawful deprivation of liberty.

The Respondents' December 2025 Biometrics Policy is A Violation of the Notice and Rulemaking Procedures

117. USCIS's biometrics policy is unlawful not merely because it is burdensome, but because it functions as a categorical substantive bar to immigration benefits for detained applicants, despite Congress never authorizing detention status as a disqualifying criterion for eligibility to apply.

118. Because the Respondents are refusing to collect biometrics from Walter because he is an "alien or other person in custody", they have effectively imposed him as an ineligible applicant for his U visa benefit, simply because he is detained, but no such ineligibility appears in the Immigration and Nationality Act (INA). Agencies may not adopt procedural rules that operate as substantive eligibility restrictions absent clear congressional authorization.

119. A procedural requirement that can never be satisfied by a particular class of applicants is not truly procedural; it is a *de facto* substantive disqualification. Here, USCIS has effectively declared that detention or incarceration is a categorical bar to pursuing immigration benefits requiring biometrics, even where the detained applicant has a pending petition or application over which USCIS has jurisdiction. Nothing in the INA authorizes USCIS to create such a disqualifying category, and nothing in the INA authorizes DHS to detain individuals while simultaneously preventing them from satisfying prerequisites to pursue statutory relief.

120. Further, USCIS adopted this categorical exclusion through policy guidance rather than through the notice-and-comment rulemaking required when agencies promulgate legislative rules. 5 U.S.C. § 553. Although USCIS labels the policy as procedural guidance, its practical effect is to determine substantive outcomes by foreclosing adjudication entirely for detained applicants. Rules that "effect a substantive change in existing law or policy" or impose binding norms must be promulgated through notice-and-comment procedures. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96–97 (2015); *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–03 (1979). Because USCIS's policy

operates as a categorical disqualification for detained applicants and dictates the outcome of their benefit requests through an impossibility trap, it is a legislative rule masquerading as guidance.

121. For these reasons, USCIS's biometrics policy is unlawful under the APA and contrary to the INA. Respondents may not lawfully prolong Walter's detention through reliance on a policy that blocks him from completing required procedural steps necessary to pursue immigration benefits. The Court should grant habeas relief and order Walter's release.

The Respondents' Refusal to Transport Walter to His Biometrics Appointment is a Violation of His Due Process Rights

122. Where Respondents' direct actions or inactions, including a refusal to transport to a mandatory biometrics appointment, result in threatened deprivation of the property interest in the immigration benefit, a detained noncitizen must be provided a workable means to complete that requirement. Denying access to that requirement under circumstances where the Government itself controls the detainee's custody undermines the very opportunity to pursue statutory relief and constitutes a denial of meaningful process.

123. Here, the two (2) barriers preventing Walter from attending his USCIS-scheduled biometrics appointment are Respondents' unlawful detention of him and Respondents' refusal to transport him. Respondents have admitted there is no interagency agreement under which ICE transports detained individuals for USCIS biometrics

collection. USCIS Policy Manual, Vol. 1, Pt. C, Ch. 2, § B ("Persons in Custody") (Dec. 5, 2025). Thus, DHS has created a trap: Walter is required to attend an ASC biometrics appointment as a mandatory step in pursuing relief, but he cannot attend because Respondents refuse to provide transport, and USCIS will not collect biometrics in custody. This procedural dead-end traps Walter in detention with no meaningful way to advance his case or pursue relief.

124. The *risk of erroneous deprivation* is high because the Government's procedural architecture, mandatory biometrics tied to adjudication, combined with no feasible means to satisfy that requirement while in custody, virtually ensures wrongful prolongation of detention and erroneous denial of access to relief. The *value of additional safeguards*, e.g., transport for biometrics, mobile biometrics collection in custody, or an accommodation that treats detention as good cause to reschedule, is obvious; it would eliminate the procedural obstruction and allow adjudication to proceed. Finally, the *Government's interests* in administrative convenience and cost savings do not outweigh Walter's fundamental liberty interest when the Government's own custody is the sole reason he cannot attend a required procedural event. These discretionary interests cannot justify an internal policy choice that effectively denies access to adjudication and prolongs detention.

125. This conclusion is consistent with well-established principles. A detained individual cannot be deprived of a meaningful opportunity to pursue statutorily authorized relief due to government action that makes required compliance impossible. *See Ferreira v. Lyons*, No. 25-cv-13809-MJJ, slip op. at 4 (D. Mass. Jan. 26, 2026)

(granting habeas on due process grounds and rejecting the notion that detention authority alone shields unconstitutional procedures).

126. Respondents' refusal to transport Walter to his biometrics appointment, combined with USCIS's refusal to collect biometrics in custody, denies him meaningful access to the adjudicatory process necessary to pursue immigration relief. This procedural obstruction has a direct and material impact on the legality and duration of his detention and therefore violates the Fifth Amendment. The Court should grant the Petition and order Walter's release under appropriate conditions of supervision, or, in the alternative, order Respondents to provide constitutionally adequate mechanisms for Walter to complete biometrics while in custody.

The Respondents' Refusal to Expedite Walter's T and U Visa Applications is a Violation of the Administrative Procedure Act

127. Respondents' refusal to expedite Walter's applications is arbitrary and capricious for several reasons. First, Respondents have pointed to no legitimate rationale for failing to follow the express policy directives contained in *Directive 11005.3*, and have not explained why the victim-centered factors were not considered or weighed in his custody and enforcement decisions. The APA does not permit an agency to ignore its own relevant policy directives without explanation. See *State Farm*, 463 U.S. at 42–43. Second, by failing to expedite adjudication or take steps to advance Walter's applications while he remains detained, Respondents have deprived Walter of the opportunity to

obtain relief to which he may be statutorily entitled, an outcome that is the direct opposite of the policy's stated purpose of maximizing access to relief for noncitizen crime victims.

128. Third, there is no evidence that Respondents have engaged in individualized consideration of the relevant factors identified in the Directive. ICE's own policy contemplates that an individual's victim-based benefit applications, family/community ties, history of compliance, and humanitarian circumstances should be weighed positively in custody and enforcement decisions. *Directive 11005.3* at 1–2, 9. Yet Respondents have offered no explanation for why these considerations did not compel expedition or other appropriate action to advance Walter's applications.

129. Fourth, any suggestion that Respondents are constrained by resource limitations or adjudicatory delays ignores the express language of the Directive, which instructs ICE to seek expedited adjudications and to defer enforcement where applications are pending. *Id.* at 2, 9. A policy cannot be applied in a way that nullifies its own central text under the guise of administrative convenience; doing so renders the policy meaningless and defies reasoned decision-making. See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 232 (2016) (agency must give reasons for its interpretation and not adopt an interpretation contrary to its text).

130. Finally, Respondents' refusal to expedite Walter's applications, and their continued detention of him in the absence of any meaningful effort to advance potential relief, is particularly arbitrary where the failure to act has already been formally recognized as contrary to policy by ICE itself. Respondents cannot sustain a position that is at odds with their own guidance without at least articulating a reasoned basis for doing

so. "Agency action must be upheld… only on the basis articulated by the agency itself." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 50.

131. Because Respondents' refusal to expedite Walter's T/U applications departs from governing policy without reasoned explanation, and because that refusal has materially prolonged his detention and obstructed his ability to pursue relief, Respondents' conduct is arbitrary and capricious under the APA. Habeas relief is therefore appropriate.

CLAIMS

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

132. Petitioner herein incorporates the foregoing allegations.

133. Because the Respondents are holding Petitioner in custody in violation of 8 U.S.C. § 1231(a)(6) as described above due to a lack of foreseeability of removal, thereby making detention indefinite, Respondents are in violation of the INA and Petitioner must be immediately released to remedy the matter.

COUNT II: VIOLATION OF THE CODE OF FEDERAL REGULATIONS, 8 C.F.R. §§ 241.4, 241.13 NO CUSTODY REVIEW UNDERTAKEN AS REQUIRED

134. Petitioner herein incorporates the foregoing allegations.

135. Because the Respondents have failed to respond to the custody review regarding the foreseeability of Petitioner's removability and the associated determinations

that must then be made, Petitioner's continued unlawful detention is a direct result of these failures to follow the federal regulations, and Petitioner must be immediately released to remedy the matter.

COUNT III: FIFTH AMENDMENT CONSTITUTIONAL VIOLATION CONTINUED DETENTION WITHOUT MEANINGFUL CONTINUED-DEPRIVATION PROCESS

136. Petitioner herein incorporates the foregoing allegations.

137. Even if Respondents possessed a baseline authority to continue to detain Petitioner, they have failed to provide the adequate Constitutionally protected pre-deprivation or pre continued deprivation hearings as provided for in 8 C.F.R. §§ 241.4, 241.14, in violation of the Fifth Amendment. Petitioner must be immediately released to remedy the matter.

COUNT IV: VIOLATION OF 5 U.S.C. § 706(2)(A) DECEMBER 2025 BIOMETRICS POLICY ENSURES PETITIONER DETAINED BY OTHER DHS BRANCH CANNOT BE APPROVED FOR U VISA BENEFIT

138. Petitioner herein incorporates the foregoing allegations.

139. USCIS requires biometrics for adjudication and treats failure to appear as abandonment, while simultaneously adopting a categorical "persons in custody" rule that makes compliance impossible; that internal inconsistency is arbitrary and capricious agency action. Because this policy also ensures that Petitioner remains in custody, Petitioner must be immediately released to remedy the violation.

COUNT V: VIOLATION OF 5 U.S.C. § 706(2)(C) DECEMBER 2025 BIOMETRICS POLICY IN EXCESS OF STATUTORY AUTHORITY

140. Petitioner herein incorporates the foregoing allegations.

141. By enacting a policy that results in detention status operating as a categorical practical disqualification from pursuing benefits that Congress made available to eligible applicants, USCIS exceeded statutory authority and the policy ensures that Petitioner remains in custody. Petitioner must be immediately released to remedy this violation.

COUNT VI: VIOLATION OF 5 U.S.C. §§ 553, 706(2)(D) UNLAWFUL LEGISLATIVE RULE ADOPTED WITHOUT NOTICE-AND-COMMENT

142. Petitioner herein incorporates the foregoing allegations.

143. Because the December 2025 Biometrics Policy creates a class of ineligibility for a benefit without passing either Congress or the Notice and Comment rulemaking requirements, the policy is in violation of the Administrative Procedure Act. The policy ensures that Petitioner remains in custody and Petitioner must be immediately released to remedy this violation.

COUNT VII: FIFTH AMENDMENT CONSTITUTION VIOLATION DEPRIVATION OF MEANINGFUL OPPORTUNITY TO PURSUE BENEFIT

144. Petitioner herein incorporates the foregoing allegations.

145. Because ICE refuses to transport Petitioner to his biometrics appointment, therefore further foreclosing his opportunity to pursue his U Visa application, ICE denies meaningful process to protect his liberty and property interests (ability to pursue benefits), and unlawfully prolongs detention as evaluated under *Mathews* tests. Petitioner must be immediately released to remedy this violation.

COUNT VIII: VIOLATION OF 5 U.S.C. § 706(2)(A) VICTIM CENTERED MEMORANDUM POLICIES NOT FOLLOWED

146. Petitioner herein incorporates the foregoing allegations.

147. Respondents' continued custody of Petitioner and their refusal to expedite pending T/U adjudications departs from ICE Directive 11005.3 without reasoned explanation and fails to consider required factors. Such action is therefore arbitrary and capricious, unlawfully prolongs Petitioner's detention, and Petitioner must be immediately released to remedy this violation.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause within three (3) days as to why the writ should not issue;

c. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5

U.S.C. §§ 706(2)(A), 706(2)(C), 706(2)(D) 553; and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

d. Order Petitioner's immediate release;

e. Order the payment of EAJA fees; and

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

DATED: February 12, 2026

Respectfully Submitted,

/s/ Hannah Brown
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