

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Walter Acuna Cruz,)	
Petitioner)	EMERGENCY MOTION FOR TRO
)	AND PRELIMINARY INJUNCTION
v.)	
)	CASE No: 0:26-cv-01393-JWB-ECW
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 in their)	
official capacities.)	
Respondents.)	

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner Walter Acuna Cruz (“Walter”) respectfully moves this Court for an Emergency Temporary Restraining Order and Preliminary Injunction pursuant to Fed. R. Civ. P. 65. Walter is a twenty-two-year-old Special Immigrant Juvenile who has been granted deferred action through October 2028, is a victim of crime and trafficking survivor, and has pending humanitarian immigration relief including U and T visa applications. Nevertheless, Respondents continue to detain Walter in post-order custody

despite the absence of any lawful basis for continued detention, and despite the existence of a federal stay of removal entered by this Court.

This motion is urgent for several reasons, not least of which is that detention is no longer constitutional and is indefinite due to removal not being reasonably foreseeable. Respondents have ignored their obligations imposed by statute and regulations with regard to custody review, and because Walter is scheduled to appear for a USCIS biometrics appointment on February 17, 2026 which Respondents are refusing to transport him to or to share data for. Walter's U visa petition will be denied not on the merits, but solely because the Government has made compliance impossible if he does not attend the biometrics appointment. USCIS has also refused to reschedule biometrics based on detention, and ICE has refused to facilitate attendance. Thus, Respondents are actively preventing Walter from pursuing congressionally authorized victim-based immigration relief, while simultaneously using his unresolved immigration posture as justification for prolonged detention. This is an unconstitutional and unlawful "catch-22" that risks immediate, irreparable harm and requires emergency judicial intervention.

Walter therefore requests that this Court order his immediate release, and to provide emergency relief preserving his ability to pursue statutory relief while the Court adjudicates the merits of his habeas petition and APA claims.

FACTUAL BACKGROUND

Walter has now been detained for 598 days, resulting in the expenditure of at least \$90,896 in taxpayer funds based on ICE's published cost of detention. He remains

detained despite extensive evidence that removal is not reasonably foreseeable, that he is eligible for release under supervision, and that his continued confinement is not tied to any legitimate civil detention purpose.

Walter incorporates by reference the factual allegations in *Acuna Cruz v. Berg*, et al., 0:25-cv-04720 (D. Minn. Dec. 22, 2025) and *Acuna Cruz v. Berg*, et al., 0:25-cv-04376 (D. Minn. Nov. 19, 2025).

Walter is currently protected by a stay of removal issued by this Court, which remains in effect. In extending the stay, the Court found that Walter “faces imminent deportation despite being granted deferred action based on his Special Immigrant Juvenile Status (‘SIJS’) by U.S. Citizenship and Immigration Services (‘USCIS’), which would result in clear irreparable harm to Petitioner because he would lose his SIJ status and any meaningful opportunity for judicial review.” *See Acuna Cruz v. Berg*, et al., 0:25-cv-04720, ECF 15 (D. Minn. Dec. 22, 2025).

Despite that stay, ICE continues to detain Walter and has refused to conduct meaningful custody review under the applicable regulatory framework, despite repeated written requests.

Walter is scheduled for a USCIS biometrics appointment on February 17, 2026. If he does not appear, USCIS may deny his pending U visa petition. Respondents have already refused to transport Walter for biometrics and have taken the position that USCIS should “share” biometrics data with ICE instead. USCIS has rejected that approach and has also refused to treat detention as “good cause” for rescheduling.

Time is now critical. Without Court intervention by February 12, 2026, Walter will be unable to coordinate transportation, scheduling, or compliance measures needed to preserve his ability to attend the appointment.

LEGAL STANDARD

To obtain a temporary restraining order, a petitioner-plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)).

Under similar circumstances, courts within have granted petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2241 where, as here, the Department of Homeland Security was found to have been attempting a *de facto* revocation of the SIJ status. *See, e.g., Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025); *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30. 2025).

ARGUMENT

I. Walter Is Likely to Succeed on the Merits

. Walter Is Likely to Prevail on His Claim That Continued Detention Violates 8

U.S.C. § 1231(a)(6) and *Zadvydas*

ICE is detaining Walter pursuant to 8 U.S.C. § 1231(a)(6), but the Supreme Court has made clear that post-order detention under that statute is constitutionally limited. *Zadvydas*, 533 U.S. at 689. Detention is permissible only for a period “reasonably necessary to bring about that alien’s removal from the United States,” and becomes unlawful once removal is no longer reasonably foreseeable. *Id.* at 699–701. 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.

Here, Walter has provided substantial evidence that removal is not reasonably foreseeable, including his approved SIJS petition, his grant of deferred action through October 2028, and the stay of removal issued by this Court. The Court has already recognized that Walter “faces imminent deportation despite being granted deferred action based on his Special Immigrant Juvenile Status (‘SIJS’) by U.S. Citizenship and Immigration Services (‘USCIS’), which would result in clear irreparable harm” because he would lose SIJ status and meaningful judicial review. *Acuna Cruz v. Berg*, No. 25-cv-4720, ECF 15 at 7 (D. Minn. Dec. 22, 2025).

Because ICE has failed to conduct the foreseeability and custody determinations required by DHS regulations once substantial evidence exists that removal is not significantly likely, Walter is also likely to succeed on his regulatory violation claims under 8 C.F.R. §§ 241.4 and 241.13. See 8 C.F.R. § 241.4(i)(7) (supplemental review required when record contains substantial reason to believe removal is not likely in the reasonably foreseeable future); 8 C.F.R. § 241.13 (procedures governing continued detention where removal is not foreseeable).

B. Walter Is Likely to Succeed on His Fifth Amendment Procedural Due Process Claim

The Fifth Amendment requires that civil detention be accompanied by constitutionally adequate procedures sufficient to guard against erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690–93. Procedural due process claims are evaluated under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Walter’s liberty interest is “fundamental,” and the Supreme Court has consistently recognized that freedom from physical restraint lies at the core of the Due Process Clause. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Moreover, noncitizens physically present in the United States are entitled to due process protections regardless of immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Here, Respondents have continued Walter’s detention without providing any meaningful individualized review or procedural safeguard that would justify continued

deprivation of liberty after prolonged detention and after substantial evidence demonstrates that removal is not foreseeable. Due process is violated where detention continues “by default” without meaningful process. See *Mathews*, 424 U.S. at 335; *Zadvydas*, 533 U.S. at 692.

C. Walter Is Likely to Succeed on His Due Process Claim Based on ICE’s Refusal to Facilitate Attendance at USCIS Biometrics

Respondents’ refusal to transport Walter to his USCIS biometrics appointment violates due process because it deprives him of a meaningful opportunity to pursue statutorily authorized immigration relief, while the Government simultaneously controls his physical liberty.

USCIS policy requires biometrics as a prerequisite to adjudication and permits denial for abandonment where a person fails to appear. See 8 C.F.R. § 103.2(b)(13)(ii). USCIS policy further provides that 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, Pt. C, Ch. 2, § B (Dec. 5, 2025).

Thus, DHS has created an impossible trap: Walter must attend biometrics to preserve his U visa petition, but he cannot attend because ICE refuses transport and USCIS refuses accommodations. A procedural framework that makes compliance impossible for a detained person, while simultaneously punishing noncompliance, creates an unacceptably high risk of erroneous deprivation. *Mathews*, 424 U.S. at 335.

Courts have repeatedly held that due process requires meaningful access to procedures where liberty interests are at stake. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (meaningful access required where government restricts liberty); *Boddie v. Connecticut*, 401 U.S. 371, 379–80 (1971) (government may not erect procedural barriers that foreclose meaningful opportunity to be heard).

D. Walter Is Likely to Succeed on His APA Claim

Under the Administrative Procedure Act, courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An agency acts arbitrarily and capriciously where it fails to consider important aspects of the problem, offers explanations contrary to the evidence, or adopts irrational policies. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Here, Respondents’ refusal to facilitate biometrics and refusal to expedite Walter’s victim-based applications, while continuing detention, is arbitrary and capricious because it defeats the purpose of the statutory humanitarian relief schemes and operates as a categorical bar to relief for detained individuals, despite Congress never authorizing detention as a disqualifying criterion. See 5 U.S.C. § 706(2)(A), (C).

Agency action that imposes mandatory compliance requirements while simultaneously foreclosing compliance is the definition of irrational decisionmaking. See *State Farm*, 463 U.S. at 43; *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22

(2016) (agency must provide reasoned explanation and cannot adopt unexplained policy shifts).

II. Walter Will Suffer Immediate and Irreparable Harm Absent Emergency Relief

The loss of liberty constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality) (loss of constitutional rights “unquestionably constitutes irreparable injury”); *Zadvydas*, 533 U.S. at 690 (civil detention implicates core liberty interests).

In addition, Walter faces imminent denial of his U visa petition if he is unable to attend biometrics on February 17, 2026. That denial would not be based on statutory ineligibility, but on a Government-created impossibility trap. The harm is irreparable because it forecloses meaningful access to congressionally created immigration relief and directly prolongs his detention. See *Winter*, 555 U.S. at 22 (irreparable harm must be likely, not speculative).

This Court has already recognized that removal would cause “clear irreparable harm” because Walter would lose SIJ protections and meaningful opportunity for judicial review. *Acuna Cruz v. Berg*, No. 25-cv-4720, ECF 15 at 7 (D. Minn. Dec. 22, 2025).

The same logic applies here: denial of victim-based relief due to Government obstruction constitutes irreparable harm because it materially alters Walter’s immigration posture and ability to obtain meaningful adjudication.

III. The Balance of Equities Strongly Favors Walter

The “public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.” See *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The balance of equities strongly favors Walter’s release because the harm to him from continued unlawful and unconstitutional detention that is now indefinite far outweighs any speculative burden on the government. Given Respondents’ extensive expenditure in keeping Walter detained (more than \$90,000), it is unlikely an argument of government burden would be substantiated, especially given that Alternatives to Detention is much less cost prohibitive.

Absent temporary injunctive relief, Petitioner faces immediate and irreparable harm in the form of deprivation of liberty and threatened denial of U visa benefits through policy that the Respondents created unlawfully. These harms are severe, irreversible, and cannot be remedied through later judicial or administrative action.

The public interest likewise favors injunctive relief. “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). The public also has a strong interest in ensuring that executive agencies act within the bounds of their lawful authority and honor congressionally enacted protections for vulnerable populations, including Special Immigrant Juveniles. See *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 171 (3d Cir. 2018).

Moreover, maintaining the *status quo* promotes judicial economy and orderly adjudication. “There is generally no public interest in the perpetuation of unlawful agency action,” and “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Because the equities overwhelmingly favor Walter and the public interest is served by preventing unlawful detention and preserving access to the adjudication of lawful benefits, this factor weighs decisively in favor of granting temporary injunctive relief.

REQUESTED RELIEF

Walter respectfully requests that this Court enter an Emergency Temporary Restraining Order requiring:

1. Respondents shall immediately release Walter by no later than February 12, 2026, to end the unconstitutional and indefinite detention and to ensure that Walter can attend his February 17, 2026 biometrics appointment for his U visa application;
2. Respondents shall be enjoined from taking any action that would cause denial of Walter’s pending U visa petition based on inability to attend biometrics while in custody;

3. Respondents shall not re-detain Walter without a pre-deprivation hearing with at least 10 days' notice of the hearing and of the factual allegations of changed circumstances warranting re-detention;
4. Respondents shall be ordered to file written confirmation by February 13, 2026, that Walter has been released.

Respectfully Submitted,

/s/ Hannah Brown
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