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 in their official capacities. Respondents.	WALTER'S RESPONSE TO GOV. OPP. CASE No: 26-cv-01393

WALTER'S RESPONSE TO GOV. OPP.

Respondents' Opposition confirms the central problem in this case: Walter remains detained not because removal is realistically or lawfully imminent, but because Respondents have chosen to ignore the governing statutory, regulatory, and constitutional limits on post-order detention. Rather than rebutting Walter's showing under *Zadvydas v. Davis*, 533 U.S. 678 (2001), Respondents rely on speculation about future agency action, mischaracterize the procedural record, and assert, without citation, that they are entitled

to delay mandatory custody review for months while Walter remains incarcerated. That is not what the INA permits, and it is not what due process tolerates.

Walter is a Special Immigrant Juvenile with an approved SIJS petition and an unrescinded grant of deferred action through October 2028. Respondents do not identify any manner in which removal is *lawfully* reasonably foreseeable. Instead, Respondents' position effectively reduces detention to a punitive holding pattern: Walter must remain confined indefinitely while Respondents disregard his SIJS and deferred action, while simultaneously denying him the procedural mechanisms required by regulation and obstructing his ability to comply with USCIS biometrics requirements. This Court should reject that approach and grant immediate relief.

I. Initial Matters.

There are a number of issues with the Respondents' claims that must be addressed as an initial matter, as they relate to the credibility and reliability of the statements made by the Respondents. Those issues are listed below:

1. Claim that "The Department notes that the Petition submitted by Walter's Counsel relies mainly on conclusory allegations and extraneous commentary." *See* Gov't' Opp'n' at 1. Walter has proffered significant evidence in each of his Petitions that verify his claims. Respondents point to no such "commentary" or "allegations" that are unsupported or that they disagree with.

2. Claim that "Walter fails to fully disclose" his criminal history. *Id.* at 2. Walter has repeatedly disclosed his criminal history in these, and all, proceedings. *See,* e.g. ECF 1 at 7.
3. Claim that there were four (4) bond hearings. *See* Gov't' Opp'n' at 3-5. Walter was afforded a single bond hearing, and the Immigration Judges refused to hear the subsequent *requests* for a bond hearing, finding that there was no 'changed circumstances' to do so.
4. Claim that "On November 26, Walter filed an untimely appeal of his removal order. On November 28, the BIA rejected and dismissed Walter's appeal." *Id* at 5. The BIA made no adjudicatory determination on this filing ("dismissal") because it was an erroneous upload to the BIA instead of the Immigration Court, and counsel affirmatively requested it be rejected from the docket as such.
5. The Respondents cite a "December 2023 date of his re-arrest", *Id* at 7, however, Walter was never arrested in December 2023, much less "re-arrest[ed]" by ICE. This raises significant concerns as to whether the Respondents are even reviewing the correct file or have the correct identity.
6. Claim that "In the meantime, the required custody reviews have been performed and the agency consistently concluded detention is warranted." *Id.* at 10. But the Respondents proffer no evidence of this, including in the attached statement by Officer William Robinson (ECF 12) and in fact later contradict this statement by saying that they have an additional 90 days to conduct a custody review. *See* Gov't' Opp'n' at 11.

The Court should consider these misrepresentations, as well as those addressed below, in determining the weight given to the arguments and representations of the Respondents. The parties do, however, agree that an evidentiary hearing is unnecessary.

In addition, it should be noted that in *Acuna Cruz v Berg, et al*, 0:25-cv-04720 (D. Minn., Dec 19, 2025), Respondents waived their right to address the substantive issues of SIJ status and other matters by failing to respond to them. Walter does, however, note that the Respondents only dedicate two (2) paragraphs to those issues in their response, *Id.* at 14-15, and still miss the mark (as addressed below), so the Court should decide what, if any, permissible weight those arguments should be given.

II. Removal is Not (Legally) Reasonably Foreseeable

Walter's detention is unlawful because Respondents are imprisoning him under § 1231(a)(6) even though lawful removal is not reasonably foreseeable, meaning detention is no longer authorized under *See Zadvydas v Davis,* 533 U.S. 678 (2001) at 699–701. Walter holds approved SIJS and an unrescinded grant of deferred action through October 2028, and his forced removal would operate as an unlawful *de facto* revocation of congressionally conferred protections without the notice and procedures mandated by statute and regulation. *See* 8 U.S.C. §§ 1101(a)(27)(J), 1155; 8 C.F.R. § 205.2; *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30, 2025). Because detention no longer serves its only permissible civil purpose, securing removal, continued confinement violates both the INA and the Due Process Clause. *Zadvydas*, 533 U.S. at 690, 699–701.

Respondents contend that they will quickly remove Walter once his BIA appeal is over (as they say, because they assume preemptively that it will be denied). *See* Gov't' Opp'n at 12, but they do not address the Court's stay of removal and indicate they would simply continue with removal at the conclusion of the presumptively denied BIA Appeal of Motion to Reopen, in the same manner that Walter's SIJ status and deferred action are simply being ignored. *See Id* ("…once that becomes possible because the BIA denies his pending appeal (assuming it does)"). This alone is evidence that the Respondents believe the only thing preventing them from removing Walter is his pending BIA appeal, however, the BIA appeal does not prevent deportation at all. Importantly, Respondents may be able to physically remove Walter, as is the case with any person they detain and have control over, however, that does not mean the removal would be lawful.

The government cannot meet its return burden by asserting that it can physically remove Petitioner, where removal would require unlawful circumvention of SIJS protections and deferred action.

Walter does not ask the Court for a review of his removal order or otherwise, Walter is enforcing his statutory right to his adjudicated benefits and constitutional right to due process in the context of removal, not the legitimacy of the removal proceedings or any removal order. For that reason, this question is not barred.

i. *Zadvydas'* Rebuttable Presumption of Time.

The Court in *Zadvydas* found "… interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable,

continued detention is no longer authorized by statute. See 1 E. Coke, Institutes *70b *("Cessante ratione legis cessat ipse lex")* (the rationale of a legal rule no longer being applicable, that rule itself no longer applies)." *See Zadvydas,* 533 U.S. at 699.

In addition,

> "... the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no [700] longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. *See supra,* at 695 (citing 8 U. S. C. §§ 1231(a)(3), 1253 (1994 ed., Supp. V); 8 CFR § 241.5 (2001))."

As recognized in the Petition, the *Zadvydas* Court thought it "practically necessary to recognize some presumptively reasonable period of detention.". *See Id.* at 701. Said 'presumptively reasonable' period was deemed to be six (6) months, but for many reasons, this presumption can be rebutted and should be rebutted in this case.

The *Zadvydas* Court's language makes it evident that this was not a hard and fast rule. ("We realize that recognizing this necessary Executive leeway will often call for difficult judgments..." *Id.* at 700 and "The application of the "reasonable time" limitation is subject to federal-court review. The basic federal habeas statute grants the federal courts authority to determine whether post-removal-period detention is pursuant to statutory authority. In answering that question, the court must ask whether the detention exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's purpose of assuring the alien's presence

at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized." *Id.* at Syllabus).

Even assuming the Court had not expressly stated that the application of reasonable time is subject to judicial review, in the context of *Zadvydas*, the presumptive period made sense. The Court was asked to consider two (2) fact patterns, being *Zadvydas,* who was an alien with a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft, as well as flight from criminal and immigration proceedings, who the government attempted to remove (unsuccessfully) to four (4) different countries, and Kim Ho Ma, who was convicted of a gang related manslaughter, challenged his detention beyond the removal period after Cambodia refused to take him, because government found they were not satisfied that he would not be violent beyond the release period. *See Id.* at 686.

In these cases, there was nothing preventing or blocking the removal of the individuals in question, and thus the Court's reasoning in giving "leeway" (*Id.* at 700) to the government in a presumptively lawful period of detention of six (6) months was also in concert with the fact that the government could continue to make such efforts without affecting some other lawful statute.

Other Courts have considered this issue, finding that,

> "By delaying the burden shift until after the six-month period expires, the Supreme Court "limit[ed] the occasions"—but, crucially, did not *eliminate* the occasions—when courts will need to make the ultimate determination of whether a Walter is reasonably likely to be removed in the foreseeable future. The question of whether "continued" detention is authorized is a question that can be asked, and

> must be resolved, for detention under § 1231(a)(6) to be constitutional, regardless of whether the six-month period has ended."
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> *See Cruz-Medina v. Noem et al,* No. 1:2025cv01768 (D. Md. 2025) (emphasis in original).

And, "the point here is that any presumption that removal is reasonably foreseeable during the six-month period is just that, a presumption, one that can be rebutted upon a showing that removal is not reasonably foreseeable." *Id* at 15, ft note 5.

The Code of Federal Regulations also supports this argument. Pursuant to 8 C.F.R. §§ 241.13(d), (e), where a noncitizen asserts that there is no significant likelihood of their removal in the reasonably foreseeable future, at any time post order, that alien may request a review of their custody, and either within 10 business days of that request, or at the expiration of the removal period, such shall be responded to. This is conclusory that the *Zadvydas* Court, and the agency themselves, meant for the six (6) month presumption to be rebuttable.

ii. Walter Can Rebut the Presumption.

Walter can rebut the presumption and show that removal is not reasonably foreseeable. As is and was the point in *Acuna Cruz v Berg, et al*, 0:25-cv-04720 (D. Minn., Dec 19, 2025), if the government removes Walter, they affect a *de facto* revocation of his SIJ status where the statute requires the grantee to be present in the United States for adjustment. 8 U.S.C. § 1101(a)(27)(J). 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.

To effectuate the adjustment to lawful permanent resident of SIJ grantees, Congress provided two (2) protections. Firstly, an individual who is granted SIJ status is paroled for the purposes of adjustment of status. *See* INA 245(h)(1); 8 CFR 245.1(e)(3)(i). Secondly, 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).

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).

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).

Walter's SIJ status has not been revoked, and the Respondents proffer no testimony that it would or could be revoked.

Similarly, Walter has Deferred Action (remaining unrescinded by USCIS) until October 2028. *See Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025) (Finding "First, this Court concludes, as an ever-growing number of district courts across the country have concluded, that an unrevoked grant of deferred action prevents removal. *See Sepulveda Ayala*, 794 F. Supp.3d at 912-14; *B.D.A.A.*, 2025 WL 3484912, at *6; *Aguilar Gama*, 2025 WL 3559942, at *2-3; *Espinoza Cruz*, 2025 WL 3469811, at *3; *Patel*, 2025 WL 3169875, at *2; *Espinoza-Sorto*, 2025 WL 3012786, at *5; *Maldonado*, 2025 WL 1593133, at *2.9 Thus, because that protection means Nevarez Jurado's removal is not reasonably foreseeable, his continued detention under 28 U.S.C. § 1231 is improper.").

Considering the issue of Deferred Action in the context of foreseeability of removal, other Courts have found,

> "Like those given deferred action under DACA, Nevarez Jurado received an "affirmative immigration benefit." More specifically, he was given a four-year period of deferred action and an EAD as the result of a USCIS process that determined, among other things, that his petition for a U Visa was made in good faith, that he was not a risk to national security or public safety, and that he

> warranted a favorable exercise of discretion. *See B.D.A.A.*, 2025 WL 3484912, at *5 (describing U Visa BFD process). If, as the government argues, Nevarez Jurado's grant of deferred action was "merely a form of prosecutorial discretion that advise[d him that his] case [wa]s a low priority, not a non-priority, and not protect[ed] from removal," see Docket Item 15 at 3, the Court fails to see why USCIS would go through the trouble of making that determination and then notifying Nevarez Jurado of its decision.,.
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> Stated another way, if government prosecutors simply decided not to take immediate action to deport Nevarez Jurado while reserving their ability to change their minds whenever they wanted, why make explicit findings that he was not a risk and that he deserved favorable consideration? Why tell him? Why not simply defer now and take action to deport him whenever they chose to do so? Why tell Nevarez Jurado that his removal will be deferred for four years and thus encourage him to stay in this country? And why not at least tell him that staying here would carry a risk that they might change their minds willy nilly and arrest him—a risk about which he would undoubtedly be unaware?"
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> *See Nevarez Jurado v Freden, et al*, No. 25-CV-943-LJV, at 15 (W.D.N.Y. 2025).

The Respondents cite to U Visa regulations and the preamble for such with regard to proving their proposition that Deferred Action is at their discretion and they have refused to exercise that discretion. *See* Gov't' Opp'n' at 15. Whilst the U Visa isn't the benefit under which Walter has Deferred Action, Respondents' argument actually favors Walter. Firstly, it affirms that Deferred Action stops the deportation or removal of an alien temporarily (in this case, for four (4) years). It additionally confirms that the Deferred Action may be terminated at the discretion of *USCIS* (*Id.* quoting 8 C.F.R. § 214.14(d)(3), emphasis added). USCIS did, in fact, grant such Deferred Action.

Here, the Respondents have a significant bar to removal, because the ICE Respondents unlawfully carry out a *de facto* revocation of his SIJ status and the Deferred Action grant, where only *USCIS* has that authority. *See Guerra Leon v. Noem*, No. 25-

01495 (W.D. La. Oct. 30. 2025); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025).

This proposition was supported in *Guerra Leon*, No. 25-01495, where the Court found,

> "Here, the government cannot remove Carlos from the United States for at least three reasons. First, Carlos has a valid grant of deferred action, which precludes his removal. *See Primero*, 2025 WL 1899115, at *4 ("Respondents do not suggest that ICE routinely removes individuals with active grants of deferred action from the United States, or that Walter will be removed before his deferred action is terminated."). His grant of deferred action remains valid until December 9, 2026. 49.
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> Second, Carlos has a procedural due process right under the INA and DHS regulations not to have his SIJS revoked without notice and an opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. 8 U.S.C. § 1155; 8 C.F.R. § 205.2. Because the INA requires that a youth be present in the United States to have SIJS, 8 U.S.C. § 1101(a)(27)(J), forced removal from the United States would constitute a *de facto* revocation of SIJS. See 8 U.S.C. § 1101(a)(27)(J). Therefore, removing Carlos from the United States (regardless of his deferred action grant) would be unlawful.
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> Third, removing Carlos (regardless of his deferred action grant) would contravene the very purpose of the SIJS statute. As discussed *supra*, the core purpose of SIJS protection is to provide beneficiaries like Carlos with a means to adjust their status to become a lawful permanent resident from within the United States… "

ICE also ignores, or fails to address, the fact that Walter now has a paroled status in the United States under INA § 245(h)(1) and how the inadmissibility they charged him with in the Notice to Appear (NTA) is now waived, and how this would render any removability foreseeable. In addition, they fail to address how pending relief (including the T Visa, applied for 16 months ago) will affect removability, even while Walter waits for his green card through SIJ status. Compounded, these issues make the chance of lawful removal tangential to non-existent.

Again, there is no doubt that the Respondents could physically effectuate an unlawful removal, however, the point of the inquiry is not to determine whether removal is physically possible. Where there are legal barriers to removal, the Court could not reasonably draw a conclusion that removal entailing unlawful revocation of conferred benefits could meet the burden of being "reasonably foreseeable" for the purpose of the *Zadvydas* tests. Therefore, considering the statutes, cases addressing these same matters, and the tests in *Zadvydas,* Walter has met his burden of showing that there is no significant likelihood of removal in the reasonably foreseeable future, as he is protected for at least three (3) years and then will be protected by lawful permanent resident status.

iii. The Government Has Not Met the Shifted Burden.

Since Walter meets his burden of showing that there is no significant likelihood of removal in the reasonably foreseeable future, the burden then shifts to the government and the Court must decide whether the government has "respond[ed] with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

The only manner in which removal would become lawful (and therefore, foreseeable) would be a rescindment of his conferred SIJ status and Deferred Action. Walter has disclosed all his matters of criminal history and inadmissibility in all of his applications for relief. There is no reason to believe, and nor do Respondents point to any reason to believe, that Walter's SIJ status or Deferred Action will or could be rescinded at any time for any reason.

In fact, Respondents fail to address this point and appear wholly confused about the matter. *See* Gov't' Opp'n' at 15 - 16 ("It is neither arbitrary, nor capricious for DHS to proceed with *removal proceedings* after Walter received a grant of deferred action; indeed the Immigration Judge and BIA rejected Walter's motions terminate for the same reason… Such discretion DHS refused to exercise in this case, and which the Immigration Judge also denied multiple times." (emphasis added)). The Respondents further assert that, "Walter incorrectly alleges that his pending SIJS application impedes Respondents' ability to detain and potentially remove him. It is telling that the Walter cites to no legal authority to support the same. See *id.*"

There are a number of issues with Respondents' statements: (1) Walter's argument is not that *removal proceedings* are arbitrary or capricious, but rather, that removal is not lawful in the face of stripping him of constitutionally and statutorily conferred and protected benefits; (2) The Immigration Judge terminated the removal proceedings on the basis of deferred action; (3) DHS did not refuse to exercise the discretion of Deferred Action, as Respondents admit (contradictorily) is undisputed (*see* Gov't' Opp'n' at 2); (4) Neither ICE, not the Immigration Judge, have the authority to decide on grants of Deferred Action or of the petitions themselves, for any of the benefits that Walter has applied for or been approved for (SIJ status, T Visa, U Visa); and (5) significant authority was cited in support of the argument that SIJ status and deferred action is a barrier to removal. *See* ECF. 1. at 13-22.

This is not the only time that Respondents have failed to address this issue. They also waived such rights in *Acuna Cruz v Berg, et al*, 0:25-cv-04720 by failing to respond to the elements of the statute and the legal implications such have. With no evidence to the contrary, the Court must assume that the Respondents have no lawful basis or authority to rescind any grant of SIJ status or Deferred Action and similarly, have no response as to how removal is reasonably foreseeable (but for illegally conducting a *de facto* revocation of Walter's SIJ status and Deferred Action.

In addition, Respondents have been presented with the statutory, regulatory and case law findings regarding both SIJ status and Deferred Action on at least 10 other occasions. They still fail to meaningfully engage with that information, and will continue to ignore Walter's statutorily and constitutionally protected benefits to justify currently indefinite detention.

The Respondents further attempt to mislead the Court by citing the tests in *Ahmed v. Brott*, 2015 WL 1542131, *4 (D. Minn. March 17, 2015) as the applicable tests to determine Walter's likelihood of removal. However, Respondents fail to disclose that this case relates to a person who is *mandatorily detained* pursuant to 8 U.S.C. § 1226(c). Walter has never been mandatorily detained, and the question relevant to this case is his unlawful detention under 8 U.S.C. § 1231(a)(6). Even assuming this case was relevant, the Respondents contend through this case that "insurmountable barriers" making ICE incapable of removal would satisfy the test. In this case, it is an insurmountable barrier that ICE does not have the authority to revoke or rescind any of Walter's conferred

benefits, that Walter has additional pending benefits, and that he will become a lawful permanent resident in approximately three (3) years. Therefore, their argument, whilst misleading, is also unavailing.

This, similarly, leads to the conclusion that the only reason for any rescind of a grant of either the SIJ status or Deferred Action would be in retaliation to Walter for exercising his legal rights.[1]

To remove any doubt, reviewing this from the opposite perspective also provides the same conclusion. Assuming for the sake of the argument that the Court ruled that Walter should wait until 180 days had elapsed post-order before the Court would rule that his detention was unconstitutional per the presumption in *Zadvydas*, the circumstances would be the same as they are today, 601 days post initial detention. Walter would have SIJ status and deferred action until October 2028. He would remain in detention with no review of custody in violation of the Code of Federal Regulations (more on this later, contrary to the Respondents' claims), and the government would remain legally incapable of removal. Instead of continued detention allowing for removal, Walter's continued detention would solely be an opportunity for Respondents to attempt to unlawfully

[1] The Respondents appear particularly phased by Walter's exercise of his rights. ("Since that time, Petitioner himself has caused his detention to be prolonged by filing multiple motions and appeals.", "To a significant extent the duration of Petitioner's detention is the result of his own litigation choices, such as several motions and appeals.", "Respondents also contend that Petitioner may prolong his own detention by continuing to pursue administrative relief." (Gov't Opp'n at 2, 4, 13.)). Since there are no other reasons for revocation of SIJ or DA, the only logical conclusion is that revocation would serve the purpose of retaliation against Walter for exercising his lawfully conferred rights to enforce his statutory and constitutional protections.

revoke his SIJ status and Deferred Action or an opportunity for retaliation for Walter exercising his lawful rights.

The Respondents do not suggest, and neither does the evidence show, that Walter's criminal DUI matters would hold any baring on this determination. *See Zadvydas,* U.S. 553 at 691 ("preventive detention is constitutionally tolerable only when "limited to specially dangerous individuals and subject to strong procedural protections"). Respondents have also not attempted to invoke 8 C.F.R. § 241.4 on the same matter. Even if DUI related matters reached the level of "specially dangerous" individuals like murderers, sex offenders, etc., that are contemplated in *Zadvydas*, Walter has rehabilitated while in custody and demonstrates commitment to ensuring this continues outside of detention. *See* ECF 1 Exhs. Walter's criminal matters tie no reasonable relationship to his custody either.

Therefore, the Respondents cannot meet their burden of rebutting the showing that there is no significant likelihood of removal in the reasonably foreseeable future.

The matters relating to Walter's SIJ Status and Deferred Action grant, therefore, set Walter's case aside from *Zadvydas*, in so far as Walter has specific protection from removal and removal is not reasonably foreseeable because it would create an unlawful revocation of statutorily and constitutionally protected benefits. As found by the other courts cited in the same context (namely, the SIJ and DA context), detention is therefore "unreasonable and no longer authorized". *See Zadvydas*, 553 U.S. at Syllabus.

In the opinion, the *Zadvydas* Court did not assert a timeline for a reasonable time determination when finding that a habeas court must "… measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal… Where detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed." *See Zadvydas* at 690, 699.

Therefore, Walter's detention is not reasonably foreseeable and he is able to rebut the presumptive period found in *Zadvydas*, the government cannot meet their burden, and this Court must rule removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute and order his immediate release as the erroneous deprivation of an alien's liberty, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Accordingly, this factor weighs in favor of injunctive relief.

III. Failure to Undertake the Required Custody Reviews – Counts II and III of the Petition.

Respondents do not meaningfully respond to Counts II and III of the Petition, which allege violations of DHS's mandatory post-order custody review regulations. *See* 8 C.F.R. §§ 241.4, 241.13; ECF. 1 at 47-48. Rather than rebut Walter's allegations that ICE has failed to conduct the required custody determinations, Respondents simply assert, in conclusory fashion, that they have another 90 days to complete review, without citing any

regulatory authority establishing such a blanket extension. *See* Resp. Opp. at 11. This assertion is legally incorrect and ignores the controlling regulatory framework.

Under 8 C.F.R. § 241.4, ICE is required to conduct custody reviews at defined intervals and to release a noncitizen under appropriate conditions where continued detention is not justified. 8 C.F.R. § 241.4(c), (k). Moreover, where, as here, "the alien submits, or the record contains, information providing a substantial reason to believe that removal… is not significantly likely in the reasonably foreseeable future," ICE must initiate a supplemental custody review under 8 C.F.R. § 241.4(i)(7), which expressly incorporates the procedures set forth in 8 C.F.R. § 241.13. Respondents' Opposition provides no evidence that any review under § 241.4(i)(7) or § 241.13 has occurred, no written determination, no notice of decision, no record of service, and no explanation of how Respondents reached any foreseeability conclusion. *See* 8 C.F.R. § 241.13(e).

In fact, despite Respondents' representations to Walter through Congressional liaisons that they would undertake this custody review on February 11, 2026, they have failed to do so, failed to provide the written notice required, fail to provide any response as to when that will occur, and have also already made a predetermination on the matter whereby the represented to Congressional liaisons that Walter would remain detained pending the outcome of his BIA Appeal (a fact that Respondents do not dispute). The BIA appeal is not a relevant consideration to the factors outlined in the Code of Federal Regulations, and the outcome is predetermined, thereby rendering the custody review futile, even if Respondents immediately meet their obligations to undertake the review.

Because of these violations of the Code of Federal Regulations, the consequent lack of Due Process afforded to Walter in continuing the deprivation of liberty, and the Respondents' failure to appropriately address these violations, Walter's custody is independently unlawful on these grounds.

IV. Respondents Fail to Address the Biometric Deadlock and Its Impact on Custody.

Respondents' Opposition does not meaningfully rebut Walter's showing that DHS's handling of Walter's mandatory biometrics appointment has created an unlawful procedural trap that imperils his access to statutory relief and further undermines the legality of his continued post-order detention by keeping him from adjudication of the very benefits that would mandate the end of his detention. *See* 8 C.F.R. §1003.13.

On January 19, 2026, counsel timely requested that USCIS reschedule Walter's January 27 biometrics appointment or, in the alternative, authorize the sharing of biometrics data with ICE so that ICE could collect them in custody. Those requests were expressly rejected by USCIS, which stated that it does not provide accommodation for detention status, and that Walter must appear in person to avoid denial of his pending U visa petition. USCIS reaffirmed that detention is not a basis to excuse attendance or to reschedule absent good cause under the narrow criteria in its policy manual.

ICE, for its part, has steadfastly refused to arrange transport, and in congressional correspondence has advised that USCIS data sharing should obviate the need for transport, despite USCIS's refusal to do so. Despite being on notice that USCIS has

refused this request, Respondents still refuse to transport Walter to his biometrics appointment. Respondents' Opposition does not meaningfully engage these facts; it attempts to brush aside the issue, calling it a "red herring". *See* Gov't' Opp'n' at 16.

Respondents further claim, "Walter explains that such biometrics appointment is required for a pending U-visa. But Walter fails to disclose is that he applied for the same while detained on April 18, 2025; and, as recited above, it was Walter's own criminal history that led to his current detention." *Id.* This is irrelevant. It appears that Respondents are suggesting that because Walter applied for his U visa while in custody and that he has a minor criminal history, that withholding access to his biometrics appointment would be justified as some form of punishment.

The timing of the U visa application does not negate the need to attend the appointment to facilitate adjudication. Walter's U Visa application required a government agency to declare and sign, through USCIS Form I-918B, that Walter is *prima facie* eligible for his U visa by certifying that he was helpful in a criminal investigation and that he possesses knowledge of a qualifying crime. Such takes time.

Even if his criminal history or the timing of his application mattered, Walter's alcohol related issues (and subsequent criminal history) also stem from the trauma caused by his childhood abuse, trafficking, his identity as a victim of crime and from the persecution he suffered and would suffer if returned to Guatemala. He also submitted evidence of his rehabilitation to both the Court in this petition (*See* ECF 1 Exhibits) and to Respondents in his request for custody review.

Respondents state, "Further, should Walter ultimately be removed, he can still apply for and receive a U-visa while abroad and then consular process to legally enter the United States. See https://travel.state.gov/content/travel/en/us-visas/other-visacategories/visas-for-victims-of-criminal-activity.html. If the Court is inclined to grant any relief, then such temporary relief should be to facilitate a biometrics appointment, not release from custody." *See* Gov't' Opp'n' at 16.

Respondents' suggestion that Walter may simply pursue his U visa "from abroad" if removed is both legally and practically defective, and it underscores the arbitrariness of their position. First, the Government cannot justify continued detention by pointing to an alternative pathway that depends on Walter first being unlawfully removed in violation of his existing protections. Respondents' "apply from abroad" argument therefore presupposes the very conduct that is prohibited by law and Court order: removal. Alternatively, Respondents box Walter into a corner requiring him to remove himself in order to receive an adjudication of his U Visa benefit. The message is clear: self-deport, lose your SIJ status and wait outside the U.S. to be adjudicated for a different benefit instead. This is not a legitimate basis to excuse DHS's refusal to follow the governing custody review framework or to prolong detention indefinitely. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

Respondents' "apply from abroad" theory is also factually disconnected from the record because USCIS has already confirmed that Walter's pending U visa processing requires compliance with biometrics instructions and that detention is not an acceptable

basis for accommodation and, necessarily, failure to attend biometrics will result in denial of the U Visa Petition. None of these are facts that are disputed by the Respondents.

Thus, Respondents' position amounts to an admission that DHS intends to maintain custody while simultaneously preventing Walter from complying with mandatory requirements necessary to pursue victim-based relief, and that they will not act unless ordered by the Court to do so ("If the Court is inclined to grant any relief, then such temporary relief should be to facilitate a biometrics appointment…" *See* Gov't' Opp'n' at 16.). That is precisely the kind of procedural trap that is arbitrary, capricious, and inconsistent with the Due Process Clause, and it further confirms that continued detention is unreasonable and unlawful. *See* 5 U.S.C. § 706(2)(A); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Respondents' contention that any relief should be limited to "facilitating biometrics" improperly attempts to narrow the scope of habeas jurisdiction. The Petition challenges unlawful custody and prolonged detention, not merely a transportation dispute. The Court is not required to issue only partial relief that leaves Walter incarcerated while Respondents continue to violate the regulatory scheme and constitutional limits. In addition, the Respondents remarks, behavior, unresponsiveness and flippant response to this issue leaves troubling questions as to whether they would comply with any order to facilitate the biometrics appointment, or simply refuse because they feel he should be punished for his criminal history and application date through his

U Visa application. *See* Gov't' Opp'n' at 16. It appears that Respondents' ultimate goal is denial of the U Visa application.

The combined effect of the standoff between USCIS and ICE is a government-created "catch-22": Walter is required to complete biometrics to pursue relief, but Respondents' own actions and policies make compliance impossible. An agency may not impose a mandatory procedural requirement while foreclosing any workable means of compliance, and then rely on the resulting noncompliance as justification for continued detention or denial of benefits. *See* 5 U.S.C. § 706(2)(A), (C). In addition, they may not circumvent the Notice and Comment period required to make a class of aliens inadmissible for a benefit (in this case, detainees). *See* 5 U.S.C. § 553.

Respondents' refusal to facilitate Walter's biometrics appointment is arbitrary and capricious because it fails to consider an important aspect of the problem: DHS itself controls Walter's physical custody and has made compliance with USCIS biometrics requirements impossible. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Respondents cannot rationally maintain that Walter must comply with biometrics requirements while simultaneously denying any mechanism by which he can appear at the scheduled appointment. This is not reasoned decision making; it is agency action untethered from the statutory purpose of the immigration benefit framework and the detention statute.

Because Walter cannot complete the biometrics required to advance his pending petitions while detained, a circumstance created entirely by agency policy and

interagency non-cooperation, Walter's detention is further extended by the conduct of the Respondents whereby the U Visa would necessarily end his detention, and it further confirms that his detention is not reasonably related to the civil purpose of effectuating removal and is unlawful. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

Therefore, Respondents' conduct violates due process because it deprives Walter of any meaningful opportunity to pursue statutory relief while detained. Where the Government itself controls an individual's confinement, due process requires a workable mechanism for the detainee to access required adjudicatory procedures that directly bear on the legality and duration of detention. Respondents' refusal to facilitate biometrics effectively prevents Walter from pursuing victim-based immigration relief and unlawfully prolongs detention through procedural obstruction rather than lawful statutory authority. The Court can (and should) issue relief in the form of release on this standalone basis.

V. The Other Matters in the Petition.

Respondents do not respond to the other claims in the Petition and have noted that the response received on February 14, 2026, is the response to both the Petition and the Motion, and, therefore, Respondents waive their right to respond to any other matters outlined in the Petition. Following the issuance of the TRO, the Court should consider Walter's submissions alone.

VI. The Requirements for a TRO are Met.

Temporary restraining orders are governed by Federal Rule of Civil Procedure 65. A plaintiff seeking emergency injunctive relief must demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm absent relief; (3) that the balance of equities favors relief; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Here, all factors strongly support immediate injunctive relief. Walter has demonstrated a substantial likelihood of success on the merits of his habeas claims for all the reasons discussed above.

Walter also faces immediate and irreparable harm, absent emergency relief. Continued unlawful detention constitutes irreparable injury as a matter of law. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In addition, Walter faces imminent harm to his statutory and constitutional rights because he has been scheduled for a USCIS biometrics appointment on February 17, 2026, an appointment required for adjudication of his pending U visa and related immigration relief. Respondents have refused to facilitate transportation and have taken the position that Walter must remain detained despite the fact that detention makes compliance impossible. USCIS also refuses cooperation. Without immediate relief, Walter faces denial of pending immigration benefits solely due to his incarceration in government custody, resulting in permanent harm to his ability to pursue congressionally authorized relief.

The balance of equities weighs decisively in Walter's favor. Respondents suffer no cognizable harm from complying with federal law and the Constitution, particularly where supervision and monitoring mechanisms exist to mitigate any concerns. *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5. By contrast, Walter continues to suffer the profound deprivation of liberty associated with prolonged civil detention, and his ability to pursue pending immigration benefits is being actively obstructed by Respondents' refusal to comply with required procedures.

Finally, the public interest supports issuance of a TRO. The public has a strong interest in ensuring that government agencies comply with the Constitution, the Immigration and Nationality Act, and their own regulations. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (recognizing public interest in lawful execution of immigration laws). The public also has a strong interest in preventing wasteful and indefinite detention where removal is not reasonably foreseeable and where release under supervision is available. ICE itself acknowledges that alternatives to detention are far less costly than continued incarceration. Moreover, enforcing compliance with statutory procedures and constitutional safeguards promotes confidence in the rule of law and prevents the arbitrary deprivation of liberty.

For these reasons, Walter has met his burden under *Winter*, and the Court should issue a Temporary Restraining Order requiring Respondents to immediately release Walter under appropriate conditions of supervision (deemed only by the Court).

Dated: February 15, 2026,

Respectfully Submitted,

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Certificate of Service

I certify that on February 15, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 15, 2026.

Respectfully Submitted,

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