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.

I. Respondents Fail to Show that Detention Beyond the Removal Period is Lawful

Respondents recite the statutory framework for post-removal-order detention under 8 U.S.C. § 1231(a)(6), noting that certain aliens "may be detained beyond the removal period" if they are determined to be "a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6); *see also* 8 C.F.R. § 241.4. *See*

ECF. No. 24 at 5–6. But Respondents never make the required application of that framework to Walter.

Section 1231(a)(6) does not authorize categorical or automatic detention. It permits continued detention only where the Government determines that the individual is either (1) a risk to the community or (2) unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). The implementing regulations likewise require an individualized custody determination. 8 C.F.R. § 241.4(d). Respondents do not assert, let alone demonstrate, that Walter is a present danger to the community. Nor do they argue that he is unlikely to comply with an order of removal if removal were lawfully executable. Their brief contains no factual findings, no custody-review determination, and no individualized analysis applying § 1231(a)(6) to him.

Nor could they. Walter is not subject to detention under § 241.4 as an inadmissible alien under INA § 212 thanks to his approved Special Immigrant Juvenile Status. Respondents' discussion of "inadmissible, criminal, and other aliens" under 8 C.F.R. § 241.4 is inapposite. *See* ECF 24 at 5–6. Walter is not currently inadmissible under § 212 in a manner that triggers the mandatory detention categories referenced in the regulation. The Government does not invoke 8 C.F.R. § 241.14 (special danger to the community), nor does it contend that he falls within any of the specially dangerous classifications contemplated by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Instead, Respondents simply assume detention authority continues because a removal order exists. That is not the law. Once the 90-day removal period has expired,

detention authority under § 1231(a)(6) must be justified by individualized findings that align with the statutory criteria. *See Zadvydas*, 533 U.S. at 699–701. Respondents simply recite the law but make no conclusions about such and, therefore, they fail to establish any statutory basis for continued detention. The absence of an individualized § 1231(a)(6) justification independently defeats detention authority.

II. The Government Has Still Not Shown Removal Is *Lawfully* Foreseeable

Despite multiple opportunities, the Respondents still have not addressed the legal questions underlying in the Petition. They only address *physical* and not *legal* ability to remove, fail to engage with Walter's SIJ status, fail to understand the continuing legal affects of DA even in spite of revocation, fail to articulate how even their purported physical ability to remove is anything more than contingent "maybes" and do not rebut the presumption in *Zadvydas* where Walter has shown his removal is not reasonably foreseeable.

The Respondents Only Address Physical Capacity to Remove

Respondents' foreseeability argument again addresses only whether DHS could physically effectuate removal at some future date. That is not the standard. Under *Zadvydas v. Davis*, continued detention is authorized only so long as removal is significantly likely in the reasonably foreseeable future, meaning lawful removal, not merely logistical removal. 533 U.S. 678, 699–701 (2001).

Throughout their Amended Response, Respondents repeatedly assert that removal will occur once litigation concludes or procedural barriers lift, but they never address how they are barred (or how they can conclude that they are not barred) from removal in light of Walter's approved Special Immigrant Juvenile Status ("SIJS"). *See* Fed. Respondents' Am. Resp. at 2 ("Once the stay of removal is lifted or lapses, DHS will then be able to expeditiously repatriate Walter to Guatemala."); *id.* at 9 ("ICE has shown that it is neither unwilling to remove, nor incapable of removing Walter to Guatemala once that becomes possible because the BIA denies his pending appeal (assuming it does)."); *id.* at 10 ("…should the pending appeal be dismissed, that accomplishing the removal to Guatemala should happen shortly thereafter."); *id.* at 10 ("Walter's continued detention serves a clear purpose and has an obvious endpoint: resolution of these proceedings and his appeal, and ultimate removal to Guatemala expeditiously thereafter.").

Each of these statements concerns physical capacity. None addresses the critical legal issue in this case, for which Respondents have had multiple opportunities to respond to, being: how removal is reasonably foreseeable considering the legal barriers presented to them in 8 U.S.C. § 1101(a)(27)(J) which confers SIJS protection, including what statutory authority would permit DHS to execute removal without first complying with the governing revocation framework, or how, in the alternative, ICE is conferred with the authority to revoke that status, *see* 8 U.S.C. § 1155; 8 C.F.R. § 205.2, and how removal is foreseeable in light of Congress' intent to ensure that Walter stays in the United States to apply for adjustment of status. Respondents do not contend that SIJS has been revoked,

nor do they identify any lawful mechanism by which removal could proceed notwithstanding that status.

Respondents contend that "the granting of SIJS allows an alien to then apply for lawful permanent residency, but does not in and of itself grant permanent status. *See* 8 CFR § 204.11." *See* ECF 24 at 11. But 8 C.F.R. § 204.11 says no such thing. This provision relates to how an SIJ applicant is able to demonstrate eligibility for their adjustment of status, for which, as demonstrated by Walter, is the purpose of the status. This point does not serve as any type of rebuttal to Walter's argument that Congress intended for him to remain in the United States to adjust his status.

Even in the absence of a stay of removal from this Court, SIJS remains a statutory constraint on removal unless and until revoked pursuant to 8 U.S.C. § 1155 and 8 C.F.R. § 205.2. SIJS is a congressionally created protection designed to safeguard vulnerable juveniles and preserve their eligibility for adjustment. Absent lawful revocation in accordance with statute and regulation, removal would nullify that protection because Walter cannot achieve the intended purpose of the status, applying for adjustment of status. Respondents' cannot demonstrate that removal, as required under *Zadvydas*, is significantly likely in the reasonably foreseeable future despite their assertions.

Even Assuming Physical Ability to Remove Was the Test, the Respondents Still Fail to Meet Their Burden.

Even assuming *arguendo* that the relevant inquiry was limited to physical removability, Respondents still fail to meet their burden.

The only evidentiary submission addressing removal logistics is the Declaration of Deportation Officer William J. Robinson, dated February 14, 2026. *See* Declaration of William J. Robinson ¶¶ 45–46, ECF No. 12. That declaration does not describe any concrete steps currently underway to effectuate Walter's removal. It does not state that ICE has requested a travel document from Guatemalan authorities. It does not identify any communication with the Guatemalan consulate. It does not describe any scheduled flight, coordination with removal operations, or anticipated timeline for repatriation. Instead, the declaration merely states that Guatemala generally accepts its citizens when citizenship can be confirmed and asserts that "[i]f ACUNA CRUZ's stay of removal should lapse and the order of removal is still valid, ICE will be able to repatriate ACUNA CRUZ expeditiously to Guatemala." Robinson Decl. ¶ 46, ECF No. 12 (emphasis added).

Respondents Amended Response also does not identify a single concrete step currently being taken to effectuate Walter's removal. Instead the Brief relies entirely on conditional language, asserting that "once the stay of removal is lifted or lapses, DHS will then be able to expeditiously repatriate Walter," that removal will occur "once" the BIA denies the appeal, and that removal "*should* happen shortly thereafter." (emphasis added) ECF No. 24 at 2, 9–10. These statements describe what might occur at some future point; they do not demonstrate that removal is presently being pursued or that it is significantly likely in the reasonably foreseeable future. Speculative and contingent assertions are insufficient to justify continued detention.

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. This is also still an illusory and contingent, "maybe" as to removal, and not the concrete foreseeable removal that *Zadvydas* demands.

This is not evidence of removal efforts; it is a conditional and hypothetical set of statements.

This Court recently rejected precisely this type of conclusory showing. In *Aleixi A.-H. v. Easterwood*, Case No. 26-cv-1155 (D. Minn. Feb. 17, 2026), the Court held that when detention is premised on purported removal prospects, the Government bears the burden of demonstrating circumstances that make removal significantly likely in the reasonably foreseeable future. *Id.* at *2–3 (citing 8 C.F.R. § 241.13(i)(2)). There, the Government represented that it was "seeking a travel document to effect" removal, yet the Court found that such a bare assertion was "woefully short," because it provided no

information regarding the history of removal efforts or the reasonably foreseeable results of those efforts. *Id.* at *2 (internal quotation marks omitted).

Here, Respondents provide even less. Unlike in *Aleixi*, Respondents do not even represent information on travel documents or other efforts. They do not identify any pending diplomatic coordination. They do not provide statistical or historical information regarding removal success rates to Guatemala. They do not offer a projected timeline. Instead, they simply assert that removal *should* occur expeditiously if the stay were lifted. Robinson Decl. ¶ 46, ECF No. 12. Respondents do not even give an overview of what their definition of "expeditiously" is.

Under *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), continued detention is permissible only where removal is significantly likely in the reasonably foreseeable future. A speculative statement that removal could occur at some future point if litigation concludes does not satisfy that burden. Nor does a generalized statement that the designated country "accepts its citizens." Robinson Decl. ¶ 45, ECF No. 12. Such assertions do not demonstrate that removal is presently being pursued, that it is practically imminent, or that any concrete steps have been taken to effectuate it.

Respondents repeatedly assert that removal will occur "once" litigation concludes. But defining an "endpoint" as the resolution of litigation is not evidence of removal preparation. It is merely a statement of intent contingent on future events. Under both *Zadvydas* and 8 C.F.R. § 241.13(i)(2), that is insufficient to justify continued detention.

Removal Not Reasonably Foreseeable with Special Immigrant Juvenile Status

As established in the Petition, Walter is an approved Special Immigrant Juvenile ("SIJ"). Pet., ECF No. 1 at 6–9; 1–3. Congress created Special Immigrant Juvenile Status to protect abused, neglected, and abandoned youth and to provide them a forward-looking pathway to lawful permanent residence. See 8 U.S.C. § 1101(a)(27)(J). To qualify, a state juvenile court must determine that reunification with one or both parents is not viable due to abuse, neglect, or abandonment and that it is not in the juvenile's best interest to return to the country of origin. *Id.* § 1101(a)(27)(J)(i)–(ii). The juvenile must then obtain federal consent through USCIS approval of an I-360 petition. *Id.* § 1101(a)(27)(J)(iii). When USCIS grants that petition, it necessarily accepted the state court's findings and exercised its statutory consent function.

SIJS is not a discretionary afterthought layered onto removal proceedings; it is an adjustment-forward humanitarian classification. Congress deemed SIJS beneficiaries "paroled" for purposes of adjustment of status and exempted them from numerous inadmissibility grounds to ensure they may pursue lawful permanent residence notwithstanding manner of entry or pre-status conduct. 8 U.S.C. § 1255(h)(1)–(2); *see* also 8 U.S.C. § 1227(c). The statutory structure requires continued physical presence in the United States so that the beneficiary may adjust status when a visa becomes available. 8 U.S.C. § 1255(h). Because SIJS is an adjustment-only category that cannot be processed through consular issuance abroad, removal would extinguish the pathway Congress created. *See* 22 C.F.R. § 42.11.

Congress further provided that an approved petition may be revoked only for "good and sufficient cause." 8 U.S.C. § 1155. DHS regulations require notice of intent to revoke, an opportunity to respond, a written decision explaining the specific grounds for revocation, and the right to appeal. 8 C.F.R. § 205.2(a), (b), (d). Revocation must be undertaken by a USCIS officer authorized to approve the petition in the first instance. *Id.* § 205.2(a). ICE enforcement officers possess no regulatory authority to nullify SIJS through execution of a removal order. Unless and until USCIS lawfully revokes the petition pursuant to 8 U.S.C. § 1155 and 8 C.F.R. § 205.2, the classification remains valid as a matter of law.

USCIS's Policy Manual confirms that "good and sufficient cause" is tied to adjudicative defects, not mere enforcement preference. Revocation may occur only "on notice" for fraud or approval in error, consistent with 8 C.F.R. §§ 204.11(j)(2) and 205.2. *Id.* Nothing in the record suggests that any ground for automatic revocation or revocation on notice exists here. There is therefore no regulatory predicate for extinguishing Walter's SIJS absent compliance with the statutory framework. Nor do Respondents suggest that they have authority to extinguish the statutory benefits through ICE enforcement removal.

Federal courts have recognized the constitutional consequences of this structure. In *Xol-Maas v. Francis*, No. 26-CV-00025 (JAV), slip op. at 17–22 (S.D.N.Y. Feb. 18, 2026), the court held that executing a removal order against an approved SIJS beneficiary who had not yet been afforded the opportunity to pursue adjustment would "summarily

strip" the statutory protections Congress created and violate due process. The court emphasized that SIJS confers statutory rights, including eligibility to apply for adjustment and protection against revocation without process, and that removal prior to adjudication extinguishes those rights in a manner inconsistent with congressional intent. *Id.* at 19–21. The court found that the SIJ grantee had a due process right to pursue his adjustment of status. The court therefore granted habeas relief, ordered release from § 1231 detention, and enjoined removal until the beneficiary had been provided the opportunity to pursue adjustment. *Id.* at 21–22.

That reasoning reinforces the structural point here. Removal is unlawful while SIJS remains valid would function as a *de facto* revocation without compliance with 8 U.S.C. § 1155 or 8 C.F.R. § 205.2, and would extinguish the statutory right to seek adjustment conditioned on continued physical presence. 8 U.S.C. § 1255(h). Removal in this posture is not merely discretionary; it is legally constrained.

Consequently relevant to this habeas and Walter's detention, under *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), removal is, therefore, not foreseeable. The inquiry is not whether removal is physically possible, but whether lawful removal is significantly likely in the reasonably foreseeable future. *Id.* Where execution of removal would require either (1) prior revocation of SIJS through a formal adjudicatory process that has not begun, or (2) disregard of the statutory and regulatory framework Congress enacted, removal is unlawful, and therefore, not foreseeable. Under *Zadvydas*, detention cannot be

justified by hypothetical events that have not occurred and may never occur (such as the revocation of the petition, upon which there is no basis for). *Id.* at 701.

Federal courts applying *Zadvydas* have granted habeas relief where removal is barred by an independent legal obstacle, including SIJS-based protections or deferred action finding that removal is not reasonably foreseeable. *See*, e.g., *Primero v. Mattivelo*, 2025 WL 1899115, at *5; *Sepulveda Ayala v. Bondi*, 2025 WL 2209708, at *4; *Forsah R-Z- v. Noem*, 2026 WL 310069, at *3–4 (E.D. Cal. Feb. 5, 2026); Xol-Maas*, slip op. at 21–22.

Accordingly, Walter's SIJS is not merely an equitable consideration. It is a congressionally conferred statutory protection that constrains the foreseeability of removal. Absent lawful revocation pursuant to 8 U.S.C. § 1155 and 8 C.F.R. § 205.2, Respondents cannot demonstrate that lawful removal is significantly likely in the reasonably foreseeable future. Continued detention premised on speculative revocation is not authorized under *Zadvydas*.

Removal Not Reasonably Foreseeable with Deferred Action

Deferred Action and Special Immigrant Juvenile Status serve distinct statutory functions. SIJS is a congressionally created classification that confers eligibility to adjust status and carries defined statutory protections. 8 U.S.C. §§ 1101(a)(27)(J), 1255(h). Deferred Action, by contrast, is an exercise of prosecutorial discretion administered by USCIS that temporarily defers removal and authorizes employment. 8 C.F.R. § 274a.12(c)(14). The Government's Amended Response attempts to collapse these

concepts, suggesting that because deferred action has now been terminated, removal is automatically foreseeable. That argument is incorrect for two independent reasons.

First, SIJS stands on its own. Even if Deferred Action had never been granted, SIJS would still impose the statutory and regulatory constraints outlined above. Termination of Deferred Action does not revoke SIJS, does not extinguish the adjustment pathway Congress created, and does not authorize ICE to bypass the revocation framework set forth in 8 U.S.C. § 1155 and 8 C.F.R. § 205.2. Thus, the foreseeability analysis under Zadvydas does not turn on the existence of Deferred Action. Lawful removal remains constrained so long as SIJS remains valid.

Second, the Government's position mischaracterizes the legal effect of Deferred Action in the detention context. While Deferred Action is an exercise of prosecutorial discretion, it is not meaningless. Courts addressing this issue have recognized that an unrevoked grant of Deferred Action renders removal not reasonably foreseeable for purposes of post-order detention. *See Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025); *Sepulveda Ayala v. Bondi*, 2025 WL 2209708, at *4. The rationale is straightforward: the Government cannot simultaneously represent that it will defer removal for a defined period and claim that removal is significantly likely in the reasonably foreseeable future.

Respondents argue that Deferred Action is merely prosecutorial discretion and may be terminated at any time. *See* ECF 24 at 12. But that assertion does not resolve the constitutional question before this Court. The *Zadvydas* inquiry is whether lawful

removal is significantly likely in the reasonably foreseeable future. 533 U.S. at 701. Removal premised on speculative future discretionary action, such as a termination that itself is being challenged as retaliatory and unlawful, cannot satisfy that standard.

Here, USCIS terminated Deferred Action only after this habeas litigation was well underway and after Walter asserted his statutory and constitutional rights. Respondents offer no non-retaliatory explanation for the timing of that termination, nor do they identify any statutory defect, fraud, or adjudicatory error that would justify it (as will be addressed further in Walter's response following this briefing). If the only mechanism by which removal becomes "foreseeable" is through discretionary termination of an existing protection immediately following litigation activity, that does not demonstrate foreseeability; it demonstrates contingency on future agency conduct that itself is subject to legal challenge.

Moreover, even accepting *arguendo* that Deferred Action may be terminated as a matter of discretion, that does not retroactively render removal foreseeable during the period in which the protection existed (including at the beginning of this litigation), nor does it eliminate the independent statutory barrier created by SIJS. The Government cannot cure a *Zadvydas* defect by first maintaining that removal is blocked by active protections and then unilaterally stripping those protections in response to litigation to advance their own position.

Finally, Deferred Action must be understood in context. It is granted following an adjudicative determination by USCIS that the recipient warrants favorable discretion and

does not pose a public safety threat. *See Nevarez Jurado*, 2025 WL 3687264, at *8–9. If removal were truly imminent and legally executable, there would be no reason to grant multi-year Deferred Action in the first place. The Respondents for USCIS' own prior action undermines the present assertion of Respondents for ICE and the two (2) branches of the same agency (DHS) are acting in complete dissonance with each other.

Accordingly, termination of Deferred Action does not restore lawful removal feasibility, does not eliminate the statutory protections attached to SIJS, and does not satisfy the Government's burden under Zadvydas. Continued detention cannot be justified on the theory that removal will become foreseeable only if and when discretionary protections are stripped—particularly where that stripping is itself under constitutional challenge.

Rebuttable Presumption and the Foreseeability of Removal

Walter herein incorporates all arguments made in his previous response (ECF No. 13 at 4-18).

Respondents attempt to avoid the statutory and constitutional analysis by emphasizing that only 99 days have elapsed since Walter's removal order became administratively final. *See* ECF 24 at 6, 7, 9. That argument misstates the role of the six-month benchmark under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court did not create a six-month detention entitlement for the Government. It articulated a rebuttable evidentiary presumption designed to limit indefinite detention and limit the times in which a Court would be required to distinguish what is reasonable, not to

authorize detention where removal is legally constrained from the outset. *Id.* at 701; ECF 13 at 7 citing *Cruz-Medina v. Noem et al,* No. 1:2025cv01768 (D. Md. 2025). The relevant inquiry remains whether removal is "significantly likely in the reasonably foreseeable future." *Id.*

The six-month benchmark does not insulate the Government from judicial review where a petitioner demonstrates that removal is legally foreclosed, and therefore, that it is not reasonably foreseeable. Courts have recognized that the presumption may be rebutted before six months where removal is not realistically attainable. *See e.g., Cruz-Medina v. Noem*, No. 1:25-cv-01768, slip op. at 14–15 (D. Md. 2025) (explaining that the six-month period is not a categorical bar to relief and that continued detention must be justified in light of removal feasibility). Here, Walter has demonstrated that lawful removal would require either (1) revocation of SIJS in compliance with 8 U.S.C. § 1155 and 8 C.F.R. § 205.2, which has not occurred, or (2) disregard of statutory protections enacted by Congress. That showing is sufficient to demonstrate that removal is not reasonably foreseeable.

Once the 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 respond with evidence sufficient to rebut that showing. *Zadvydas*, 533 U.S. at 701. Respondents have not done so. They have not identified any lawful mechanism by which SIJS will be revoked. They have not initiated revocation proceedings. They have not demonstrated that Deferred Action was terminated for lawful,

non-retaliatory reasons that would restore removal feasibility. And they have not shown that removal may proceed notwithstanding the statutory structure described above.

Nor does the Government's assertion that Guatemala generally accepts its citizens satisfy its burden. The Declaration of Officer Robinson merely states that Guatemala accepts nationals with valid passports and that removal could occur expeditiously once it "becomes possible." Robinson Decl. ¶¶ 45–46, ECF No. 12. That statement addresses logistical capability, not legal authority. Whether Guatemala accepts its nationals is immaterial if DHS lacks lawful authority to remove in light of SIJS and the governing revocation framework. *Zadvydas* requires a showing that lawful removal is significantly likely, not that removal could be physically accomplished if statutory protections were ignored.

In short, Respondents have not rebutted the showing that removal is not reasonably foreseeable. They have identified no statutory pathway to lawful removal, no initiated revocation process, no concrete removal steps beyond conditional assertions, and no legal authority permitting execution of removal while SIJS remains valid. The Government has now had multiple opportunities to address these issues and has failed to do so. Under *Zadvydas*, where removal is not legally attainable in the reasonably foreseeable future, continued detention is no longer authorized by 8 U.S.C. § 1231(a)(6). 533 U.S. at 699–701.

Accordingly, the presumption, if applicable at all, has been rebutted, and the Government has failed to meet its shifted burden. Continued detention under these circumstances violates both the statute and the Due Process Clause.

III. Respondents do not Engage with Any Other Part of the Petition

Respondents' briefing repeatedly reframes the dispute as a narrow question of elapsed time and logistical feasibility. But the Petition raised multiple independent statutory, regulatory, and constitutional defects in Walter's continued detention and in other matters pertaining to Walter. Those arguments remain largely unanswered.

i. The Code of Federal Regulations Custody Reviews

First, Respondents do not meaningfully engage with the regulatory foreseeability framework governing post-order detention. The Petition invoked the mandatory review procedures set forth in 8 C.F.R. §§ 241.4(k), (i)(7) and 241.13, which require ICE to conduct a supplemental review both *before* the removal period is complete, *and* where information in the record indicates that removal is not significantly likely in the reasonably foreseeable future. Pet., ECF No. 1 at 14–18. The regulations place the burden on the Government to evaluate foreseeable removal and to issue a written determination. 8 C.F.R. § 241.13(i)(2). Similarly, when the request pertains to foreseeability, the request must be acknowledged in writing within 10 days of such a request. Yet Respondents do not identify any review, have not acknowledged Walter's request (made on January 19, 2026), do not provide any written determination under § 241.13, and do not contend that the "special circumstances" provisions of 8 C.F.R. § 241.14 are being invoked.

At one juncture, Respondents asserted that the required custody reviews have been undertaken (*See* ECF 11 at 10), but when questioned about this, those assertions have disappeared from the subsequent response and instead replaced by other assertions that they have 90 additional days to conduct these reviews. *See* ECF 24 at 8. Despite their representations that a custody review would be undertaken on February 11, 2026, no custody review has progressed, and the Respondents also provide no indication as to when they will comply with the Regulations. There is no rebuttal of the Petition's claim that ICE has failed to follow its own mandatory custody review procedures, and as such Respondents have waived their response rights and they must be found to have contravened the CFR.

ii. Due Process Claim

The Petition demonstrates that continued detention, coupled with Respondents' failure to conduct required custody reviews and to facilitate adjudication of pending relief, violates the Due Process Clause under the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Pet., ECF No. 1 at 48.

Specifically, the Petition makes a showing that Respondents' conduct deprives Walter of meaningful process to pursue congressionally authorized immigration relief and prolongs detention without adequate procedural safeguards. *Id.* Respondents do not reply to the *Mathews* balancing test. They do not address the private liberty and property interests at stake, the risk of erroneous deprivation through the current procedures, or the

value of additional safeguards as contended by Walter. Nor do they explain why failing to conduct required regulatory reviews satisfies constitutional due process.

The absence of any substantive response to the *Mathews* claim leaves Count IV unanswered and Respondents have waived their right to respond to this claim. The Court must therefore find in favor of Walter.

iii. Administrative Procedure Act Claims – Arbitrary and Capricious

Additionally, Respondents violated 5 U.S.C. § 706(2)(A) by departing from ICE's Victim-Centered Enforcement Directive without reasoned explanation, including by failing to consider required humanitarian factors and to seek expedited adjudication of pending T/U benefits. Pet., ECF No. 1 ¶¶ 146–147.

The Directive requires individualized consideration of victim-based benefit applications and humanitarian circumstances. *Id.*; see also Directive 11005.3 at 1–2, 9. Respondents do not address the Directive's text, do not dispute its applicability, and do not provide a reasoned explanation for departure from its requirements. Such failure is also prolonging detention where termination of removal proceedings would be mandatory in the event of the approval of the T and U visa.

Under *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 42–43 (1983), an agency must provide a reasoned explanation when it departs from governing policy. Respondents have provided none except a generalized statement from USCIS that Walter does not meet the requirements of an expedite.

The APA requires that courts "hold unlawful and set aside agency action" that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). The Respondents departed from governing standards without reasoned explanation and failed to consider required factors. Pet., ECF No. 1 ¶¶ 128–131.

Respondents' briefing does not engage with the APA standard. It does not address why the Respondents departed from policy. It does not offer a reasoned explanation for refusing to facilitate adjudication steps while maintaining detention. Nor does it confront the elephant in the room that detention is being prolonged through agency inaction. That omission leaves Count V unrebutted and Respondents have waived their right to respond to this claim. The Court must therefore find in favor of Walter.

iv. Administrative Procedure Act Claim – Notice and Rulemaking

The Respondents' reliance on binding norms or enforcement practices that effectively alter rights and obligations and create a class of ineligible aliens for benefits, namely "detainees", without notice-and-comment rulemaking, violates the APA's procedural requirements. *See* 5 U.S.C. § 553; Pet., ECF No. 1 ¶¶ 71–72.

The APA distinguishes between legislative rules, which require notice and comment, and interpretive guidance. 5 U.S.C. § 553(b); *see Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96–97 (2015). The Respondents are applying detention policies in a manner that has binding effect without complying with APA safeguards. Pet., ECF No. 1 ¶¶ 71–72.

This was indeed seen in real time when Walter was transported to his biometrics appointment on February 17, 2026, and USCIS advised they could not take his biometrics due to him being detained. There is no plausible dispute here that a category of ineligible aliens for benefits was created through this policy and through Respondents' simultaneous refusals to transport detainees to biometrics appointments, and that it bypasses the required notice and comment requirements of the APA. Respondents' response does not address § 553 at all. They neither dispute the characterization of the challenged conduct nor defend compliance with rulemaking procedures.

In sum, Respondents have treated this case as if it presents only a single *Zadvydas* foreseeability question. It does not. The Petition pleads multiple independent statutory, regulatory, constitutional, and APA violations. With the exception of Count I, and even there only partially, Respondents have failed to substantively engage with the remaining claims.

That failure is significant. Where a petitioner alleges independent legal violations of federal statutes, regulations, and constitutional guarantees, and the Government does not rebut those allegations with evidence or legal argument, habeas relief remains appropriate under 28 U.S.C. § 2241(c)(3).

IV. Contempt

On the matter of the Motion for Contempt, Walter's response was going to be that he is concerned that Respondents make representations that their later attempts to collect paper fingerprints and mail them to USCIS with no evidence of such mailing, or that the

biometrics were applied to the case, is insufficient to demonstrate that he suffered no harm as a result of the noncompliance of the Respondents.

Walter had earlier requested the affidavit proffered by the Respondents on February 24, 2026. *See* ECF. 30. Walter still holds some concerns regarding the non-committal language of the affidavit, which neither confirms that the fingerprints were satisfactory, have currently been applied to the relevant cases, nor that the issue is remedied. *Id.* at ¶ 9 ("USCIS will employ its normal processes and procedures to review the fingerprints and consider them, and background checks based upon them, in the adjudication of Petitioner's filings.). To that end, Walter will look to the Court for the appropriate finding on the Motion for Contempt, noting however, that the effect of delays in Walter's cases and in detrimentally relying on the representations of the Respondents in regard to his biometrics appointment being facilitated as opposed to his release to facilitate are prolonged detention and that Respondents should not have willy nilly assured the Court of relief they could not have delivered.

V. Evidentiary Hearing

Walter agrees with the Court that an evidentiary hearing is necessary and is prepared to present on the required issues at the hearing on February 27, 2026.

CONCLUSION

For the foregoing reasons, Respondents have not carried their burden to justify continued detention under 8 U.S.C. § 1231(a)(6). Respondents recite the governing

statutory and regulatory framework, but they make no individualized findings that Walter is a danger to the community or unlikely to comply with removal, as required for detention beyond the removal period. See 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d); ECF No. 24 at 5–6. Nor do they invoke any "special circumstances" basis under 8 C.F.R. § 241.14. Absent the individualized determinations required by statute and regulation, continued detention is unlawful.

Respondents likewise have not shown that lawful removal is significantly likely in the reasonably foreseeable future, as *Zadvydas* requires. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). Their briefing again rests on contingent assertions that removal will occur "once" litigation concludes, without addressing the independent statutory constraints arising from Walter's approved Special Immigrant Juvenile Status, the revocation framework that would have to be satisfied before removal could proceed, or any concrete efforts presently underway to effectuate removal. *See* ECF No. 24 at 2, 9–12; Robinson Decl. ¶¶ 45–46, ECF No. 12. Conditional intent is not evidence of foreseeable removal, and Respondents have now had multiple opportunities to rebut Walter's showing and have failed to do so. *Zadvydas*, 533 U.S. at 701.

In addition, Respondents have largely declined to engage with the Petition's independent claims alleging violations of the mandatory custody review regulations, due process, and the Administrative Procedure Act, including unlawful departures from victim-centered enforcement policy and reliance on practices that operate as binding norms without required rulemaking. *See* Pet., ECF No. 1 at 47–49; 8 C.F.R. §§

241.4(i)(7), 241.13; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); 5 U.S.C. §§ 553, 706(2)(A). Those unrebutted claims provide additional and independent grounds for habeas relief under 28 U.S.C. § 2241(c)(3).

Accordingly, Walter respectfully requests that the Court grant the Petition and order his immediate release under appropriate conditions of supervision, and grant such other and further relief as the Court deems just and proper.

Dated: February 24, 2026,

Respectfully Submitted,

[signature to follow]
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Certificate of Service

I certify that on February 24, 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 24, 2026.

Respectfully Submitted,

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