UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Moussa Sanogo,

Petitioner,

v.

Todd Blanche, Acting Attorney General

Markwayne Mullin, Secretary, U.S. Department of Homeland Security;

Department of Homeland Security;

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement,

and,

Ryan Shea, Sheriff of Freeborn County,

Respondents.

0:26-cv-2274

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Moussa Sanogo, through Counsel, respectfully petitions this Court for a Writ of Habeas Corpus under 28 U.S.C. § 2241 to remedy his unlawful detention.

2. Respondents are detaining Petitioner, who is subject to a final order of removal dated September 22, 2021.

3. Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future.

4. Petitioner is a Special Immigrant Juvenile Status "(SIJS") beneficiary with deferred action.

5. Petitioner has a properly filed application for adjustment of status consistent with 8 U.S.C. 1255(h).

6. An individual applying for adjustment of status as a Special Immigrant Juvenile is considered paroled under the Immigration & Nationality Act.

7. The continued detention of Petitioner serves no legitimate purpose.

8. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention.

9. Pending the adjudication of his Petition, Petitioner seeks an order restraining Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside

of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration's ("ICE") St. Paul, Minnesota of the Office of Enforcement and Removal Operations in the State of Minnesota.

10. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hour notice prior to any removal or movement of him away from the State of Minnesota.

11. Petitioner requests that the Court order that, pending this Petition, Petitioner be provided due process prior to any removal to any allegedly safe third country in the form of an opportunity to assert a credible fear of that country and, should such a fear exist, receive a full merits hearing for withholding of removal and DCAT before an immigration judge, should such a third country be identified and such a credible fear exist.

JURISDICTION AND VENUE

12. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1101-1537.

13. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

14. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019).

15. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the Freeborn County Jail in Albert Lea, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

16. Petitioner is a citizen of Côte d'Ivoire. Prior to his detention, Petitioner was residing in Minnesota.

17. Petitioner is currently in custody at the Freeborn County Jail in Albert Lea, Minnesota, pursuant to a final order of removal.

18. Respondent Todd Blanche is being sued in his official capacity as the Acting Attorney General of the United States and the head of the Department of

Justice, which encompasses the Board of Immigration Appeals ("BIA") and the immigration judges through the Executive Office for Immigration Review ("EOIR"). Acting Attorney General Blanche shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Mullin. Acting Attorney General Blanche is a legal custodian of Petitioner.

19. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Mullin is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Petitioner's detention. As such, Respondent Mullin is a legal custodian of Petitioner.

20. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, including Petitioner. As such, DHS is a legal custodian of Petitioner.

21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, which oversees the detention of aliens in the United States. Mr. Lyons is sued in his official capacity. Defendant Lyons is

responsible for Petitioner's detention. As such, Respondent Lyons is a legal custodian of Petitioner.

22. Respondent Immigration and Customs Enforcement ("ICE") is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens. As such, ICE is a legal custodian of Petitioner.

23. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Acting Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111, and it is the field office with jurisdiction over Petitioner's detention in Minnesota. As such, Respondent Easterwood is a legal custodian of Petitioner.

24. Respondent Sheriff Ryan Shea is being sued in his official capacity as the Sheriff responsible for the Freeborn County Jail. Because Petitioner is detained in the Freeborn County Jail, Respondent Shea has immediate day-to-day control over Petitioner. As such, Respondent Shea is a legal custodian of Petitioner.

EXHAUSTION

25. A final order of removal has been entered against Petitioner.

26. There are no legal proceedings pending in any other federal court, state court, or administrative tribunal.

27. Notably, no statutory exhaustion requirement applies to Petitioner's claim of unlawful detention. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final removal order).

28. Prudential exhaustion is not required when to do so would be futile or "the administrative body ... has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

29. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day that Petitioner is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F, Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted

grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

30. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *McCarthy*, 503 U.S. at 147-48. Immigration agencies have no jurisdiction over constitutional challenges of the kind Petitioner raises here. *See, e.g.*, *Matter of C-*, 20 1. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *Matter of Akram*, 25 1. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 1. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 1. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M*, 201. & N. Dec. 327 (BIA 1991).

31. Because requiring Petitioner to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

32. In any event, Petitioner has indeed exhausted all remedies available to him.

33. Petitioner attempted to apply for a stay of removal (I-246) at the time of his detention. Respondent ICE refused to accept the application, citing a lack of appropriate staff to accept the application.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

34. Petitioner is a native of Côte d'Ivoire.

35. Petitioner entered the United States on March 30, 2021. Upon his entry, Respondents apprehended him and placed him in ICE custody.

36. Petitioner was ordered removed on September 22, 2021, while in ICE custody.

37. Respondents released Petitioner from ICE custody on December 9, 2021, under an Order of Supervision. *See* Exh. D.

38. Petitioner has resided in Duluth, Minnesota, since that time.

39. Petitioner has attended regular ICE check-ins since December 2021 and has never missed a check-in.

40. On August 16, 2022, the St. Louis County District Court granted an at-risk juvenile guardianship petition for Petitioner and appointed Sara Cedars and Melissa Cedars as his guardians. *See* Exh. F.

41. On September 8, 2022, Petitioner filed a Form I-360 Petition for Special Immigrant Juvenile Status with USCIS. *See* Exh. A.

42. On March 2, 2023, USCIS granted Petitioner's I-360 petition. *See id.*

43. On April 18, 2023, USCIS granted Petitioner deferred action based on his I-360 approval. *See id.*

44. Adjudication of Petitioner's SIJS petition deemed him paroled into the United States by operation of law, despite his removal order. *See* 8 C.F.R. § 245.1(a) ("A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purposes of applying the adjustment of status provisions of section 245(a) of the Act, to have been paroled into the United States, *regardless of the actual method of entry into the United States*.").

45. Petitioner filed an application for adjustment of status along with his I-360 petition because the priority date in the Department of State's Visa Bulletin was current. *See* Exh. B.

46. Petitioner's priority date is September 8, 2022, and his priority date is current for April 2026. *See* Exh. C.

47. Petitioner is awaiting adjudication by USCIS of his application to adjust status.

48. Petitioner has no criminal history. *See* Exh. G.

49. No applicable inadmissibility impinging Petitioner's eligibility for adjustment of status.

50. On February 12, 2026, Respondents detained Petitioner at his routine ICE check-in.

51. That day, Respondents issued a Notice of Revocation of Release stating that Petitioner's release had been revoked pursuant to 8 C.F.R. 241.13(i) because (1) Petitioner had violated a condition of his release because he failed to apply for a travel document to "return to Vietnam," a country with which he has no affiliation, and (2) circumstances had changed such that there was a significant likelihood of removal in the reasonably foreseeable future because ICE was "seeking" a travel document to remove Petitioner to Ivory Coast.

52. On February 13, 2026, Petitioner filed a petition for writ of habeas corpus in the District of Minnesota. *Moussa S. v. Bondi et al.*, No. 26-cv-01408 (PJS/ECW), ECF No. 1 (D. Minn. Feb. 13, 2026).

53. On February 24, 2026, Magistrate Judge Cowan Wright recommended that the Court grant the petition, finding that ICE: 1) did not establish an OSUP violation; 2) made false statements when revoking Petitioner's OSUP; 3) created the justification for revoking Petitioner's OSUP after his arrest; and 4) violated regulations applicable to OSUP revocation. *See Moussa S. v. Bondi et al.*, No. 26-cv-01408 (PJS/ECW), ECF No. 12, at 8, 10–11 (D. Minn. Feb. 13, 2026).

54. On March 5, 2026, Chief Judge Schiltz granted Petitioner's petition, finding that Respondent ICE violated its own regulations when it revoked Petitioner's OSUP, and ordered his immediate release subject to the same conditions as

his prior release. *Moussa S. v. Bondi et al.*, No. 26-cv-01408 (PJS/ECW), ECF No. 16 (D. Minn. Feb. 13, 2026).

55. On March 6, 2026, Respondents released Petitioner on an order of supervision. *See* Exh. E.

56. Respondents sent Petitioner a call-in letter and demanded Petitioner appear. The letter only specified "removal." No other information was listed.

57. On April 16, 2026, Petitioner appeared at his scheduled ICE check-in.

58. Once again, Respondents again detained Petitioner.

59. Upon his detention, Petitioner's counsel attempted twice to submit a request for a stay of removal to the officers at ICE. *See* Decl. Lee Anne Mills.

60. The officers refused to receive Petitioner's request for a stay of removal because, purportedly, no supervisor was present to receive the request. *See id.*

61. Respondents have refused to allow Petitioner to file his request for a stay of removal.

62. The stay application contained evidence of Petitioner's SIJS deferred action grant, parolee status based on this pending 1255 application, and confirmation that he has no criminal record. Respondents thwarted Petitioner from submitting this documents.

63. Federal statutes and regulations required Respondents to follow certain procedures before they re-detained Petitioner.

64. Upon information and belief, Respondents did not comply with these laws prior to re-detaining Petitioner.

65. There is no indication that the official responsible for revoking Petitioner's order of supervision first referred the case to the ICE Executive Associate Director, made findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, or had been delegated authority to revoke an order of supervision.

66. Petitioner maintains that he has no reason to believe that there is a significant likelihood he will be removed in the reasonably foreseeable future.

67. At the time of Petitioner's arrest, up through the present, there is no indication that Respondent ICE has information that could reasonably lead it to believe changed circumstances exist that justify re-detention under 8 C.F.R. § 241.13(i).

68. At the time of re-detention, there is no indication that Respondent ICE had begun the steps of having Petitioner apply for a travel document from detention for Côte d'Ivoire nor some other allegedly safe third country.

69. Since Petitioner's re-detention, there is no indication that Respondents have taken timely meaningful steps to ensure Petitioner's removal from the United States in the reasonably foreseeable future.

70. Moreover, Petitioner's SIJS status with deferred action renders his removal unlikely in the reasonably foreseeable future.

71. Respondents have not notified Petitioner of the reasons for revocation of his release in accordance with 8 C.F.R. § 241.13(i)(3).

72. Respondents have not served Petitioner with notice that any DHS agency is seeking terminate the grant of deferred action from USCIS.

73. Respondents have not shown cause why the administrative decision granting him deferred action is not legally enforceable against Respondents' current action.

74. There is no indication that Petitioner has been interviewed in accordance with 8 C.F.R. § 241.13(i)(3).

75. Respondents have refused to allow Petitioner to file a request for a stay of removal or any documentation to contest the revocation of his release.

76. There is no indication that Respondents identified any material changes since Petitioner's release on March 6, 2026.

77. There is no indication that Respondents have secured travel documents necessary for Petitioner's removal from the United States to Côte d'Ivoire or to any other country.

78. Respondents have not informed Petitioner of any imminent removal to any country.

79. Petitioner holds Special Immigrant Juvenile Status with deferred action.

80. Petitioner's application for adjustment of status based on SIJS is pending before USCIS.

81. Petitioner is considered paroled into the United States for purposes of adjustment of status under section 1255(h).

82. Respondents' conduct evinces an unwillingness to recognize the Congressional grant of parole to individuals issued who are qualified as Special Immigrant Juveniles.

83. Respondents' detention further violates the Congress' intention protect Special Immigrant Juveniles because their status is predicated on a finding that it is their best interest *not* to return to their country.

84. Respondents have not provided any notice why it is not heeding the will of Congress and the determination of US Citizenship & Immigration Services.

85. The re-detention of Petitioner serves no legitimate purpose.

LEGAL FRAMEWORK

86. As the Constitution states, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." U.S. Const. art. I, § 9 cl. 2.

87. Such a writ is available to a person who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

88. The writ of habeas corpus is the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

89. Hence, "the very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure the miscarriages of justice within its reach are surfaced and corrected." *Id.*

90. "There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law." *Id.* at 291-22.

91. "The scope and flexibility of the writ – its capacity to real all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers." *Id.* at 291.

92. Petitioner's present detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241.

Removal Period

93. "[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period")." 8 U.S.C. § 1231(a)(1)(A).

94. The removal period begins on the latest of the following:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

95. An order of removal "shall become final upon the earlier of—

> (i) a determination by the Board of Immigration Appeals affirming such order; or
>
> (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

8 U.S.C. § 1011(a)(47).

96. As such, the "order of removal" became administratively final on September 22, 2021. Petitioner's removal period began on September 22, 2021, and completed on December 21, 2021.

97. Once a noncitizen is given a final removal order, 8 U.S.C. §1231(b)(2) governs the country to which that individual may be removed.

98. The very last country of removal on the list is "[a] country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii).

99. However, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

100. "[T]he prohibition on removal to a country where a noncitizen would face persecution or torture remains absolute. And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to that particular country." *Guzman Chavez v. Hott*, 940 F.3d 867, 879 (4th Cir. 2019) (citing *Kossov v. INS*, 132 F.3d 405, 409 (7th Cir. 1998)), rev'd on other grounds, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

101. The removal period may be extended beyond a period of 90 days if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his] departure," or otherwise fails to cooperate in the removal process. 8 U.S.C. § 1231(a)(1)(C).

Orders of Supervision

102. "If the alien does not leave or is not removed within the removal period, the alien, pending removal, <u>shall</u> be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

> (A) to appear before an immigration officer periodically for identification;
>
> (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
>
> (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
>
> (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

8 U.S.C. § 1231(a)(3).

Regulations for Revocation of Order of Supervision

103. Regulations permit the government to withdraw or otherwise revoke release only under specific circumstances. *See* 8 C.F.R. § 241.13(h)(4). Agencies like

ICE must follow their regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

104. "The regulations involved here do not merely facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (citing *United States v. Caceres*, 440 U.S. 741, 759, 760 (1979)).

105. Importantly, "the statutes at issue permit detention only while removal remains reasonably foreseeable." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1078 (9th Cir. 2006).

106. ICE may re-detain a noncitizen released on an Order of Supervision "in order to effect removal in the reasonably foreseeable future or where the alien refuses to comply with the conditions of release." 8 C.F.R. § 241.13(h)(4).

107. The regulation permitting re-detention in order to effect removal in the reasonably foreseeable future states that ICE may "return the alien to custody if, **<u>on account of changed circumstances</u>**, the Service determines that there **<u>is</u>** a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added).

108. "[T]he regulations at issue in this case place the burden on ICE to first establish changed circumstances that make removal significantly likely in the

reasonably foreseeable future." *Roble v. Bondi,* No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("it is the Service's burden to show a significant likelihood that the alien may be removed"). These circumstances must have changed ***before*** the Service re-detain. See 8 C.F.R. § 241.13(i)(3).

109. The determination as to whether a non-citizen like Petitioner can be re-detained must be based on "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (quoting 8 C.F.R. § 241.13(i)(2)); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *9 (S.D. Tex. Oct. 16, 2025) (citing *Roble v Bondi*, 2025 WL 2443453 at *4) (finding Government did not meet its burden of showing changed circumstances by "bare fact that ICE officials ... requested third-country removal assistance from ICE headquarters").

110. Once such a determination is made, the noncitizen must "be notified of the reasons for revocation of [their] release" and must be provided with "an initial informal interview...to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(1)(3).

111. "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.*

112. If a noncitizen is not released following the informal interview, "the provisions of [8 C.F.R. § 241.4] shall govern the alien's continued detention pending removal." 8 C.F.R. § 241.13(i)(2).

113. "[O]nce the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 699-700 (emphasis added).

114. The statutory period to remove does not toll or restart. Pursuant to § 1231, once an order becomes "final," the Attorney General has ninety days to affect the detainee's departure from the United States. *See* 8 U.S.C. § 1231(a)(1)(A); *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). In general, during this 90-day removal period, the detainee must remain detained. 8 U.S.C. § 1231(a)(2). The period is tolled and extended only if "the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

115. If Respondents cannot remove a person within that 90-day period, he may become eligible for supervised release until removal can be accomplished or DHS may continue to detain him for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689; *see also Clark v. Martinez*, 543 U.S. 371, 385 (2005); *Sanchez v. Noem*, No. 5:25-CV-00104, 2025 WL 3760317, at *7 (S.D. Tex. Nov. 14, 2025) (noting that there is no "controlling precedent or legal support to indicate that six months must have elapsed at the time of filing" and concluding that the six-month period is a rebuttable not preclusive presumption). *Villanueva v. Tate*, 801 F. Supp. 3d 689, 702 (S.D. Tex. 2025); *Garcia-Aleman v. Thompson*, 2025 WL 3534806, at *2 (W.D. Tex Nov. 24, 2025); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 722 (W.D. Wash. 2025) ("Surely, under the reasoning of *Zadvydas*, a series of releases and redetentions by the government results in an indefinite period of detention, albeit executed in successive six month intervals.'" (quoting *Chen v. Holder*, No. CV 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015)); *Sagastizado II*, 2025 WL 3760317 at *8 (the *Zadvydas* period of detention does not reset at the time a noncitizen is redetained); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025) ("*Zadvydas* contemplated only the situation in which a noncitizen was continuously detained from the issuance of the removal order

while efforts to execute the removal were ongoing . . . and did not directly address the situation presented here, where a noncitizen was not detained upon the issuance of the removal order, remained on release for over 17 years, and only then was subjected to post-removal order detention for the first time.").

Special Immigrant Juvenile Status and Deferred Action

116. Congress created the Special Immigrant Juvenile Status (SIJS) classification in 1990 to provide relief for noncitizen children living in the United States who have been abused, neglected, abandoned, or mistreated by a parent and for whom a state court has found it would not be in their best interest to be returned to their country of origin. *See* 8 U.S.C. § 1101(a)(27)(J); *Yeboah v. U.S. Dep't of Just.*, 345 F.3d 216, 221 (3d Cir. 2003) ("The SIJ provisions of the [Immigration and Nationality Act] were enacted in 1990 to protect abused, neglected, or abandoned children….[S]uch children may seek special status to remain in the United States.").

117. To be eligible for SIJS, an applicant must be (1) under 21 years old at the time the I-360 petition is filed; (2) unmarried; and (3) present in the United States. 8 C.F.R. § 204.11(b).

118. In addition, an applicant must obtain an order from a state juvenile court finding that:

> a) The applicant is dependent on the court or placed in the custody of, or legally committed to, a state agency or individual appointed by the court;
> b) The applicant cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar basis found under state law; and
> c) It is not in the applicant's best interest to return to his country of nationality or last habitual residence.

8 U.S.C. § 1101(a)(27)(J)(i)–(ii); 8 C.F.R. § 204.11(c)(1)–(2).

119. "After obtaining a state juvenile court's protection, SIJS applicants then file an application with [USCIS], which exercises delegated authority from the Secretary of [DHS] to grant or deny an SIJS application." *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *3 (D. Minn. Mar. 26, 2026).

120. "USCIS must ensure that 'the request for SIJ classification [is] bona fide,' i.e., 'the petitioner has established that "a primary reason" for his appearance in juvenile court was "to obtain relief from parental abuse, neglect, abandonment," or something similar.'" *Id.* (citing 8 C.F.R. § 204.11(b)(5)).

121. "Because the statutory scheme requires 'the approval of both state and federal authorities,' it effectively 'establish[es] a successful applicant as a ward of the United States.'" *Id.* (citing *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 168 (3d Cir. 2018)).

122. The INA "explicitly designates SIJ as a 'status' that affords its designees a host of legal rights and protections." *Osorio-Martinez*, 893 F.3d at 161

n.7 (citing 8 U.S.C. § 1101(a)(27)(J)(iii) (describing SIJ as a "status"); 8 C.F.R. § 204.11(b) (same); 8 U.S.C. § 1255(h) (listing rights); *see also Yeboah*, 345 F.3d at 221 (describing SIJS as a "special status to remain in the United States").

123. Congress extended certain protections against deportation to SIJS beneficiaries, stating that specific grounds for deportation "shall not apply to a special immigrant [juvenile] based upon circumstances that exist before the date the alien was provided such special immigrant status." IMMACT, Pub. L. No. 101-649, sec. 153(b), 104 Stat. at 5006 (codified at 8 U.S.C. § 1227(c)).

124. "Under this provision, while Special Immigrant Juveniles can be deported on certain grounds such as serious criminal convictions or threats they might pose to national security, they are not subject to deportation on other more typical grounds, such as having entered the country without inspection. Thus, *Congress exempted Special Immigrant Juveniles from deportability based on entry without inspection*." *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *2 (D. Minn. Mar. 26, 2026) (citing IMMACT, Pub. L. No. 101-649, sec. 153(b), 104 Stat. at 5006 (codified at 8 U.S.C. § 1227(c))) (emphasis added).

125. SIJS beneficiaries may apply for lawful permanent resident status through an adjustment of status application. 8 U.S.C. § 1153(b)(4); . 8 U.S.C. §

1255(h)(1). The existence of an administrative order of removal does not prohibit this action.

126. In the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), Congress provided that Special Immigrant Juveniles "shall be deemed, for purposes of [adjustment of status] to have been paroled into the United States" at the time of entry into the country. 8 U.S.C. § 1255(h)(1).

127. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), "Congress exempted SIJS beneficiaries from inadmissibility based on having entered the United States without admission or parole or at an unauthorized time or place, allowing SIJS beneficiaries once again to adjust status despite having entered the country without undergoing inspection." *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *3 (D. Minn. Mar. 26, 2026) (citing TVPRA, Pub. L. No. 110-457, sec. 235(d), 122 Stat. at 5079).

128. "Because of the requirement that SIJS applicants be present in the United States, they cannot seek SIJS through consular processing from outside the country." *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *3 (D. Minn. Mar. 26, 2026). That is, an SIJS beneficiary

cannot apply for an immigrant visa abroad but must adjust status from within the United States.

129. However, an SIJS-based application for adjustment of status may only be granted if a visa is available. *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *4 (D. Minn. Mar. 26, 2026). The visa category for SIJS recipients is employment-based fourth preference, or EB-4. *Id.*

130. "In 2022, due to the backlog in EB-4 visas, USCIS announced a deferred action program for persons with SIJS." *Id.* (citing USCIS, Policy Alert PA-2-22-10, Special Immigrant Juvenile Classification and Deferred Action (Mar. 7, 2022)).

131. Deferred action is "a form of enforcement discretion not to pursue the removal of certain aliens for a limited period in the interest of ordering enforcement priorities in light of limitations of available resources, taking into account humanitarian considerations and administrative convenience." 8 C.F.R. § 236.21(c).

132. Explaining the 2022 SIJS Deferred Action policy, USCIS stated,

> Due to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years, leaving this especially vulnerable population in limbo.
>
> . . .

> Deferred action and related employment authorization will help to protect SIJs who cannot apply for adjustment of status solely because they are waiting for a visa number to become available. This process furthers congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States.
>
> . . .
>
> [SIJS petitioners] have a reliance interest in being provided with employment authorization consistent with the congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years for a visa.
>
> . . .
>
> SIJs are unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility Congress established [in 8 C.F.R. § 245.1(e)(3)], as well as ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, which states that absent exceptional circumstances, ICE defers enforcement actions against SIJs until they adjust status to that of an LPR.

USCIS, Policy Alert PA-2-22-10, Special Immigrant Juvenile Classification and Deferred Action (Mar. 7, 2022), at 1-3.

133. Overall, SIJS "reflects the determination of Congress to accord ... abused, neglected, and abandoned children a legal relationship with the United States and to ensure they are not stripped of the opportunity to retain and deepen that relationship without due process." *Osorio-Martinez*, 893 F.3d at 170.

134. "The SIJS statutory scheme *protects Special Immigrant Juveniles from removal* by exempting them from various grounds of inadmissibility, and provides a pathway to LPR status." *Walter A. v. Easterwood et al.*, No. 26-

CV-1393 (SRN/LIB), 2026 WL 836428, at *19 (D. Minn. Mar. 26, 2026) (emphasis added).

135. "The statutory language and history of the SIJS statutory scheme demonstrates Congress's clear intent that **<u>Special Immigrant Juveniles are to remain in the United States pending their application for adjustment of status</u>**." *Id.* at *20 (emphasis added).

136. Here, although Petitioner is subject to a final order of removal, as a Special Immigrant Juvenile, he has been "deemed, for purposes of [adjustment of status] to have been paroled into the United States" at the time of entry into the country. 8 U.S.C. § 1255(h)(1).

137. In order to obtain SIJS, a St. Louis County district judge found that it was not in Petitioner's best interest to return to Côte d'Ivoire, and that it was in his best interest to remain in the United States with his guardians.

138. USCIS endorsed this finding by approving Petitioner's SIJS petition <u>*and granting him deferred action*</u>—all of which happened ***<u>after</u>*** the entry of Petitioner's final order of removal.

139. SIJ [S]tatus, once granted, may not be revoked except "on notice," 8 C.F.R. § 205.2, and upon the Government's compliance with a series of procedural safeguards: The Secretary of Homeland Security must find "good and sufficient cause" for revocation; the agency must provide notice of intent to

revoke; and the SIJ designee must be given the opportunity to present evidence opposing revocation. 8 U.S.C. § 1155; 8 C.F.R. § 205.2.

140. "Given this endorsement, it is perverse that 'the very federal Department that here attempts to remove [Petitioner] earlier acknowledged that he had shown a *bona fide* need to avoid re-exposure to parental abuse, neglect, and abandonment, and that it would not be in his best interest to return to [Côte d'Ivoire]." *Walter A. v. Easterwood et al.*, No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *20 (D. Minn. Mar. 26, 2026).

141. Petitioner acknowledges that *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429 (3d Cir. 2023) suggests that a person remains removable despite a SIJS designation. *Cortez-Amador*, however, focused on the standard that is applicable to determining whether a person is removable in removable proceedings. Courts have subsequently recognized the limited reach of *Cortez-Amador*, and also identified that *Cortez-Amador* did not reconcile Congress' intent and the regulations enforcing this intent when ruling. *See Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026 WL 91470 (D. Colo. Jan. 13, 2026)

142. Instead, what is clear is that "two legal principles emerge relevant to individuals with SIJ Status. First, the Government must provide them an opportunity to pursue adjustment of status, and the way in which the

Government seeks to remove them must adequately take stock of their SIJ Status. *See Osorio-Martinez*, 893 F.3d 153. Second, the Government may ultimately remove an individual with SIJ Status from the country, so long as it complies with the first principle." *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *4 (W.D. Pa. Oct. 23, 2025)

143. The Honorable Susan R. Nelson recently found that "the SIJS statutory protections, including the adjustment pathway to LPR status, parole for adjustment of status purposes, exemptions from inadmissibility, prior visa backlog protections based on deferred action, and safeguards preventing Special Immigrant Juveniles from being forced to contact their abusers demonstrate that **<u>SIJS beneficiaries are to remain in the United States until they are able to obtain adjudication on their adjustment of status applications</u>**." *Id.* (emphasis added).

144. This Court should join the court in *Walter A.* and numerous sister courts throughout the country and find that Petitioner, as an SIJS beneficiary, is to remain in the United States until his adjustment of status application is adjudicated. *See id.*; *see also Joshua M. v. Barr*, 439 F. Supp. 3d 632, 649 (E.D. Va. 2020) (finding that SIJS confers "significant benefits for young immigrants and certain protections against removal," including eligibility to obtain LPR status and eventually apply for citizenship); *Garcia Lanza v.*

Noem, --- F. Supp. 3d ---, No. 26-0029, 2026 WL 585130, at *5 (E.D.N.Y. Mar. 3, 2026) (finding that SIJS beneficiaries have the right to live and work in the United States pending further processes); *Xol-Maas v. Francis*, No. 26-CV-00025 (JAV), 2026 WL 457005, at *8 (S.D.N.Y. Feb. 18, 2026) ("Congress clearly contemplated that SIJ designees would remain in the United States while awaiting adjudication of their adjustment of status applications."); *Sarmiento v. Perry*, --- F. Supp. 3d ---, No. 1:25-cv-01644, 2026 WL 131917, at *1 (E.D. Va. Jan. 19, 2026) (finding SIJS conferred upon petitioner "the status of a parolee with inadmissibility waived as a ground for his detention or removal within the context of his challenges to his detention.").

145. Therefore, Petitioner's removal is not significantly likely in the reasonably foreseeable future, and his continued detention is unlawful.

Substantive Due Process

146. The Due Process Clause of the Fifth Amendment requires that "[n]o person shall… be deprived of liberty… without due process of law." U.S. Const. amend. 5.

147. It is well-established that the Fifth Amendment entitled aliens to due process of Law[.]" *Demore v. Kim*, 528 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

148. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

149. Other than punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (quotation marks omitted).

150. Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690.

151. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

152. Civil detention must remain "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690.

153. Constitutional limits on detention beyond the removal period are well established. "[W]here 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.'" *Id.* (alterations in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

154. Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Id.* at 690–91 ("But we have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.").

155. The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Id.* at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 699).

156. As the Supreme Court has explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690–92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

157. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of

detention" for noncitizens after a removal order. *Id.* at 700–01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

158. The presumption of reasonableness *is still rebuttable* prior to that period's expiration. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at *13 (S.D. Tex. Dec. 23, 2025).

159. *Zadvydas* applies to the circumstances of re-detention. *See, e.g.*, *Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18 (S.D. Tex. Dec. 23, 2025); *Momennia v. Bondi*, No. 5:25-cv-01067-J, Doc. No. 18, at 18 n8 (W.D. Okla. Oct. 15, 2025); *Qui v. Carter*, 2025 WL 2770502, at *4 (D. Kan. Sept. 26, 2025) (explaining, in re-detention case, that "petitioner's release is warranted under the Supreme Court's *Zadvydas* framework").

160. The removal period does not reset simply because a noncitizen is re-detained. "[T]here is no language in 8 U.S.C. § 1231 or in *Zadvydas* to support the contention that the presumption of reasonable detention resets at the time a noncitizen is re-detained after being released on an order of supervision." *Zhu*

v. Noem, No. 5:25-cv-00239, Doc. No. 18, at *13 (S.D. Tex. Dec. 23, 2025) (citing numerous cases).

161. The *Zadvydas* 180-day period runs from the date of the final order and does not reset or require time-in-custody. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at *13 (S.D. Tex. Dec. 23, 2025) ("Based on a plain reading of 8 U.S.C. § 1231(a)(1)(A) and the Supreme Court's reasoning in *Zadvydas*, Mrs. Zhu's six-month period of presumptively reasonable detention expired in April of 2009, six months after her removal order became administratively final. Therefore, Mrs. Zhu's current detention is not presumed to be reasonable."). Petitioner's *Zadvydas* 180-day period therefore ran long ago.

162. Moreover, here, the crux of the matter is that

> [Petitioner]'s unrevoked SIJS presents a constitutional barrier that renders his removal unlikely in the reasonably foreseeable future. His due process rights are vested in his SIJS, regardless of the presence or absence of deferred action. As a Special Immigrant Juvenile, [Petitioner]'s removal would be based on a ground for inadmissibility—being present in the United States without admission or parole, *see* 8 U.S.C. § 1182(a)(6)(A)—from which he is legally exempted by virtue of his SIJS. *See* 8 U.S.C. § 1255(h)(2)(A) (waiving 8 U.S.C. § 1182(a)(6)(A)); *see also Xol-Maas*, 2026 WL at *8 ("The fact that Petitioner's removal is predicated on a ground that the statute explicitly waives for SIJs, his inadmissibility, highlights the tension between Congressional intent and the executive branch's actions.").

Walter A. v. Easterwood et al., No. 26-CV-1393 (SRN/LIB), 2026 WL 836428, at *22 (D. Minn. Mar. 26, 2026).

163. Petitioner's "removal while possessing valid, unrevoked SIJS 'would render SIJ status a nullity.'" *Id.* (citing *Osorio-Martinez*, 893 F.3d at 172).

164. Because Petitioner has SIJS status with deferred action, his removal is not significantly likely in the reasonably foreseeable future, and his detention is unconstitutional.

165. "To be clear, an SIJ designee is not legally entitled to adjust status, as that is a discretionary determination which lies with the executive branch. *See Osorio-Martinez, 893 F.3d at 175*."

166. "Petitioner does, however, have due process rights in being afforded an opportunity to have his adjustment of status application adjudicated. Accordingly, Petitioner has established that his removal from the United States while he enjoys SIJ status but has yet to have the opportunity to apply for adjustment of status would violate due process. And because the Government cannot, consistent with the Constitution, effectuate Petitioner's removal in the near term, his continued detention pursuant to 8 U.S.C. § 1231(a) likewise violates his due process rights." *Xol-Maas v. Francis*, No. 26-CV-00025 (JAV), 2026 WL 457005, at *9 (S.D.N.Y. Feb. 18, 2026).

167. Numerous courts throughout the country agree. *See, e.g.*, *Forsah R-Z v. Noem*, No. 1:26-CV-00828-DJC-AC, 2026 WL 310069 (E.D. Cal. Feb. 5, 2026) (granting habeas petition of SIJS beneficiary with deferred action and

final removal order); *Guerra Leon v. Noem*, No. 3:25-01495 SEC P, 2025 WL 4113562, at *3–4 (W.D. La. Oct. 30, 2025) (same); *Primero v. Mattivelo*, No. 1:25- CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (same).

Procedural Due Process

168. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for its conduct infringing on protected interests 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (citing *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

169. "The protections afforded to children with SIJ status include an array of statutory and regulatory rights and safeguards, such as eligibility for application of adjustment of status to that of lawful permanent residents (LPR), exemption from various grounds of inadmissibility, and robust procedural protections to ensure their status is not revoked without good cause." *Osorio-Martinez*, 893 F.3d at 158.

170. These procedural protections include "at least minimal due process rights." *Id.* at 173.

171. "In habeas actions involving SIJS beneficiaries, federal district courts have found that SIJS beneficiaries who have not had the opportunity to adjust status cannot be lawfully removed." *Walter A. v. Easterwood et al.*, No. 26-CV-1393

(SRN/LIB), 2026 WL 836428, at *21 (D. Minn. Mar. 26, 2026) (citing *Xol-Maas*, 2026 WL 457005, at *9 ("To be clear, an SIJ designee is not legally entitled to adjust status, as that is a discretionary determination which lies with the executive branch," but "Petitioner does, however, have due process rights in being afforded an opportunity to have his adjustment of status application adjudicated."); *Sarmiento*, 2026 WL 131917, at *6 (granting preliminary injunctive relief and ordering immediate release of petitioner with approved SIJS based on due process, and noting that "SIJ status operates to confer upon him the status of a parolee with inadmissibility waived as a ground for his detention or removal within the context of his challenges to his detention."); *Del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150, at *4 (W.D. Pa. Oct. 23, 2025) ("Two legal principles emerge relevant to individuals with SIJ Status. First, the Government must provide them an opportunity to pursue adjustment of status, and the way in which the Government seeks to remove them must adequately take stock of their SIJ Status. Second, the Government may ultimately remove an individual with SIJ Status from the country, so long as it complies with the first principle.") (citations omitted)).

172. In determining whether due process has been violated, the Court should weigh (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest,

and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

173. As to the first *Mathews v. Eldridge*, 424 U.S. 319 (1976) factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F. Supp. 2d at 1076; *see also Ashley*, 288 F. Supp. 2d at 670–71 ("[F]reedom from confinement is a liberty interest of the 'highest constitutional import.'") (quoting *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y. 1996)). "[B]eing free from physical detention is 'the most elemental of liberty interests.'" *Günaydın v. Trump*, 784 F.Supp.3d 1175, 1187 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004)).

174. In assessing the first factor, "courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Id.* (first citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (involving noncitizen detainee held "alongside criminal inmates" at a county jail); and then citing *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020) (observing noncitizen was

"not detained" but, rather, was incarcerated in conditions identical to those imposed on criminal defendants after being convicted of "violent felonies and other serious crimes")). Petitioner is being held in ICE custody, which houses civil immigration detainees, pre-trial criminal arrestees, and incarcerated prisoners serving criminal sentences. "He is experiencing all the deprivations of incarceration, including loss of contact with friends and family…lack of privacy, and, most fundamentally, the lack of freedom of movement." *Id.*

175. As to the second *Mathews v. Eldridge* factor, this Court must look at the risk that current procedures will cause an erroneous deprivation of a private interest, and the extent to which that risk could be reduced by additional safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

176. To safeguard against erroneous deprivations of liberty, the statute provides for release on an order of supervision. 8 U.S.C. § 1231(a)(3). Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. 8 C.F.R. § 241.13(i). Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention.

177. There have been no changes to the facts or any materially changed circumstances that justify Petitioner's detention now.

178. Petitioner holds SIJS with deferred action, which post-dates his removal order.

179. Respondents' re-detention of Petitioner is arbitrary.

180. There is a high risk that Respondents' current procedures cause an erroneous deprivation of a private interest.

181. This erroneous deprivation could have been avoided by additional safeguards such as proper notice and an opportunity to be heard.

182. The second *Mathews v. Eldridge* factor is met.

183. As to the third *Mathews v. Eldridge* factor, when the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous and for whom there is no significant likelihood of removal in the reasonably foreseeable future. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to

respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

184. To prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). Petitioner has certainly shown actual prejudice here, where he is facing continued detention as a result of his deprivation of due process.

185. Respondents detained Petitioner by revoking his Order of Supervision in violation of statute, regulations, his constitutional rights, and the APA. His detention is unlawful.

REMEDY

186. Respondents' detention of Petitioner under 8 U.S.C. § 1231 violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

187. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Nicaraguana*, 406 U.S. 715, 738 (1972)).

188. Petitioner seeks immediate release under an order of supervision or other conditions as set by the Court.

189. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

190. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release.").

191. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy,"

Schlup v. Delo, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g.*, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

CAUSE OF ACTION

COUNT I

Statutory Violation of 8 U.S.C. § 1231

192. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

193. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231.

194. The 90-day "removal period" has expired, Petitioner still has not been removed, his removal is in no way foreseeable, and yet Petitioner continues to remain in detention.

195. Petitioner has complied with the mandate of 8 U.S.C. § 1231(a)(3) since his release.

196. Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

197. The Ninth Circuit held in *Nadarajah v. Gonzales*, 443 F.3d 1069, 1078 (9th Cir. 2006), that ICE's continued detention of someone like Petitioner under such circumstances is unlawful.

COUNT II

Violation of the APA – Failure to Comply with Regulatory Mandate & *Accardi* Doctrine

198. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

199. Under the applicable regulation, "[u]pon revocation, the alien will be notified of the reasons for revocation of his [] release." 8 C.F.R. § 241.13(i)(3).

200. One such reason may be that, on account of changed circumstances, there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). Another reason is where the noncitizen violates the conditions of release. *Id.* § 241.13(i)(1).

201. Respondents have not alleged that any changes justify the withdrawal of release relating to either removal in the reasonably foreseeable future or any refusal to comply with the conditions of his release.

202. Respondents have not complied with 8 C.F.R. § 241.13(h)(i)(4) as they have not provided a reason, consistent with the regulation, for the withdrawal of his release.

203. The burden to establish circumstances that make removal significantly likely in the reasonably foreseeable future belongs to Respondents. *See* 8 C.F.R. § 241.13(i)(2); *Zadvydas*, 533 U.S. at 699-700.

204. If ICE can demonstrate that because of a change of circumstances, there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, then procedures in 8 C.F.R. § 241.4 apply.

205. Additionally, the regulation also allows for re-detention if it "is appropriate to enforce a removal order." 8 C.F.R. § 241.4(l)(2)(iii). Not just one can do this when there is no specific violation of the conditions of release. In the absence of a violation, only designated, high-level ICE officials are authorized to revoke an OSUP for the purpose of effectuating removal. This person is the Executive Associate Commissioner. 8 C.F.R. § 241.4(l)(2).

206. Respondents did not notify Petitioner that they have secured the necessary travel authorization for removal to Côte d'Ivoire.

207. Respondents did not notify Petitioner that they have designated an alternative country of removal consistent with 8 C.F.R. § 1240.12(d) and secured the necessary travel authorization for removal to a third country.

208. Respondents cannot prove that Petitioner's removal is reasonably foreseeable or imminent, so Petitioner's ongoing detention is therefore unreasonable and a violation of 8 C.F.R. § 241.13.

209. Respondents have not complied with their regulations. *See, e.g.*, *Gurung v. Warden, S. Texas Ice Processing Ctr.*, No. SA-25-CA-01614-XR, 2026 WL 93145, at *8 (W.D. Tex. Jan. 6, 2026) (granted habeas where ICE failed to follow their own regulations in revoking the petitioner's Order of Supervision); *Sarail A. v. Bondi*, No. 25-cv-2144 (ECT/JFD), ECF No. 9 at *5 (D. Minn. June 17, 2025) (recommending habeas relief when ICE similarly provided a notice that only parroted the regulatory text); *Mahamed Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025) (granting habeas relief when ICE failed to provide notice of the changed circumstances that related particularly to Respondent).

210. Respondents cannot prove that Petitioner's removal is reasonably foreseeable or imminent, and they have not pointed to a refusal to comply with the terms of his release, so Petitioner's ongoing detention is therefore unreasonable and a violation of 8 C.F.R. § 241.13.

211. Respondents have not complied with 8 C.F.R. § 205.2. Petitioner is still considered a Special Immigrant Juvenile. He accordingly enjoy all benefits and privileges of this status. His detention is an unauthorized effort to revoke this status without notice or any semblance of process.

212. Respondents are engaged in a pattern of post-hoc reasoning after detaining a person, which is violative of the regulations.

213. Respondent failed to provide any meaningful opportunity to produce any documents. Petitioner's counsel attempted to submit a request for stay of removal twice at the moment that Respondents detained Petitioner, but Respondents refused to accept the application.

214. Respondents' failure also violates the mandate of *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

215. Respondents must observe the rules, regulations or procedures which it has established. *Accardi,* 347 U.S.

216. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See id.*

217. Under *Accardi*, Respondents' revocation of the order of supervision should be set aside for violating agency procedures, rules, or instructions.

COUNT III

Violation of the APA – Arbitrary and Capricious

218. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

219. Under the APA, a court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be .. . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

220. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

221. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

222. Respondents failed to articulate the facts that formed a basis for their decision to revoke Petitioner's Order of Supervision in violation of the APA, let alone any rational connection between the facts found and the decision made.

223. Respondents' action is therefore arbitrary and capricious.

224. Respondents' action violates the APA.

COUNT IV

Violation of the Fifth Amendment – Substantive Due Process

225. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

226. The Due Process Clause of the Fifth Amendment protects against arbitrary detention by the executive branch. *Zadvydas*, 533 U.S. at 699.

227. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.

228. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

229. Civil immigration detention cannot be punitive in nature. *See Zadvydas*, 533 U.S. at 694; *Wong Wing*, 163 U.S. at 238.

230. To the extent the Government relies on a purported final order of removal from 2021, Petitioner's 90-day removal period and 180-day *Zadvydas* presumptively reasonable period would have expired no later than 2022.

231. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have long since passed.

232. In the meantime, Petitioner has been granted Special Immigrant Juvenile Status—which means he has been paroled into the United States—and deferred action.

233. Petitioner's SIJS with deferred action renders his removal unlikely in the reasonably foreseeable future.

234. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Zadvydas*, 533 U.S. at 699.

235. "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

236. Courts in Minnesota have found no significant likelihood of removal

> (1) where the detainee is stateless and no country will accept [him or her]; (2) where the detainee's country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee's native country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.

Ahmed v. Brott, 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015).

237. There is no indication that Côte d'Ivoire has issued a travel document.

238. No other country has issued a travel document.

239. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite and arbitrary detention of Petitioner when Respondents are not significantly likely to remove Petitioner in the reasonably foreseeable future.

240. Petitioner has already been detained in excess of the removal period, and Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

241. This is a violation of the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 701; *Nadarajah,* 443 F.3d at 1084.

242. Continued detention violates the Fifth Amendment and Petitioner's writ of habeas corpus must issue.

COUNT V

Violation of the Fifth Amendment – Procedural Due Process

243. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

244. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

245. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and

accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

246. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained.

247. Respondents violated Petitioner's Due Process rights by violating their statute and regulations.

248. Petitioner's sudden and continuing detention, with no prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Petitioner from the State of Minnesota during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
4. Issue an order requiring that Petitioner be provided due process prior to any removal to any allegedly safe third country in the form of an opportunity to assert a credible fear of that country, should such a fear exist, followed by a

full merits hearing for asylum, withholding of removal, and DCAT before an immigration judge, should such a third country be identified while this petition is pending.

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C., chapter 153 related to habeas actions.

6. Order Respondents to show cause for their continued detention of Petitioner within three days or another reasonable time period the Court determines is appropriate pursuant to 28 U.S.C. § 2243.

7. Grant the writ of habeas corpus.

8. Order Petitioner's release from custody under an order of supervision or other condition as set by the Court and consistent with 8 U.S.C. § 1231.

9. Declare that Respondents' action is arbitrary and capricious in violation of the Administrative Procedures Act.

10. Declare that Respondents failed to comply with the regulatory mandates in violation of the Administrative Procedures Act.

11. Declare that Petitioner's detention beyond the 6-month period violates the Due Process Clause of the Fifth Amendment where travel arrangements have not been made.

12. Award his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law.

13. Grant all further relief this Court deems just and proper.

DATED: April 16, 2026

Respectfully submitted,

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Attorneys for Petitioner

Verification by Someone Acting on
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I and others working under my supervision have discussed with the Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ Gabriela Anderson Date: April 16, 2026