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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Portland Division

N-S-, an adult,

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office
Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
Director of Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
MARKWAYNE MULLIN, Secretary of the
Department of Homeland Security ("DHS");
U.S. DEPARTMENT OF HOMELAND
SECURITY; and TODD BLANCHE, Acting
Attorney General of the United States,

Respondents.

Case No.

Agency No. AXXX-XXX-XXX

**PETITION FOR WRIT OF HABEAS
CORPUS**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Petitioner N-S- is a stateless person who was born in a Thai refugee camp to iu-Mien parents after his family fled Laos as refugees. He immigrated to the United States in 1990, when he was just ten years old. He adjusted status to a lawful permanent resident on January 8, 1993, effective September 20, 1991.

2. For twenty years, it is believed that Petitioner has been subject to a removal order that the United States never enforced. Neither Counsel nor Petitioner have a copy of the removal order. Based on the Executive Office for Immigration Review's (EOIR) online automated case database, there appears to be September 8, 2005 removal order. After an immigration judge ordered his removal, Petitioner N-S- was detained by U.S. Immigration and Customs Enforcement ("ICE") until his release on an Order of Supervision because his actual removal was not reasonably foreseeable.

3. Since his release from ICE custody in 2005, Petitioner N-S- has periodically checked in with ICE in accordance with his Order of Supervision.

4. Petitioner was scheduled to report for his next check in with ICE pursuant to the Order of Supervision in March 2027.

5. But in an intervening "CALL-IN LETTER," dated June 9, 2026, ICE requested that Mr. N-S- report to their office on June 23, 2026 at 9am. The letter states as the reason for the appointment is "For removal. Travel document from Laos has been issued. You will be provided opportunity for an informal interview. Your O/S is revoked." The CALL-IN LETTER does not attach a copy of the removal order or the travel document.

6. But revocation would be unlawful without a valid reason and providing Petitioner a meaningful opportunity to be heard prior to revocation. This is because Mr. N-S-' has multiple

grounds for challenging his removal: his pending U visa application and that intervening case law clarify that he is not removable for a conviction of an aggravated felony.

7. In 2024, Mr. N-S- filed an application for U-nonimmigrant status, a visa for crime victims, based on when he was the victim of a felony assault that left him hospitalized. On June 16, 2026, he filed a stay of removal request with ICE based on that pending U visa. Under the district court's nationwide order in *ICWC v. Noem*, the agency must apply the previously rescinded 2021 ICE Directive 11005.3 and 2011 ICE Policy Statement 10076.1 in adjudicating this request, and it must also obtain a determination of Mr. N-S-' prima facie eligibility for the U visa before removing him. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *47 (C.D. Cal. May 20, 2026) (hereinafter "*ICWC v. Noem*").

8. Mr. N-S- is also no longer removable as charged. The Department of Homeland Security filed a notice to appear in Mr. N-S- case on August 30, 2005 charging Mr. N-S- as removable pursuant to INA § 237(a)(2)(A)(iii), aggravated felony grounds, specifically INA § 101 (a)(43)(B) "an offense relating to the illicit trafficking in controlled substances." The basis for that charge is a September 27, 2002 conviction for delivery of a controlled substance, marijuana. Intervening case law has clarified that Oregon delivery of a controlled substance is not one for an aggravated felony. *See Cortes Maldonado v. Barr*, 978 F.3d 643 (9th Cir. 2020); *Sandoval v. Sessions*, 866 F.3d 986 (9th Cir. 2016). This means that at a minimum, Mr. N-S- is not removable as charged and is eligible for cancellation of removal for lawful permanent residents should his removal proceedings be reopened. He intends to file a motion to reopen on June 17, 2026 along with a stay of removal request before the immigration judge. He also intends to seek post conviction relief for his 2002 conviction as he was not advised of immigration consequences prior to his plea.

9. The 2005 Removal Order is thus unlawful, and executing the Order of Removal, after nearly twenty years and after clear and incontrovertible legal precedent of its unlawfulness would result in a “gross miscarriage of justice” and violate due process. *See Vega-Anguiano v. Barr*, 982 F.3d 542, 547–51 (9th Cir. 2019) (finding that executing an invalid removal order would result in a gross miscarriage of justice).

10. Given these impediments, Petitioner’s removal to Laos is not reasonably foreseeable. Moreover, under Respondents’ recent policies, Petitioner is at risk of removal not only to Laos, where he faces immediate arrest, but also to an unknown third country where he could face indefinite imprisonment or other harm.

11. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents’ attempts to detain, transfer, and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner’s transfer out of this district.

JURISDICTION

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

13. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

15. Venue is proper because Petitioner is in Respondents' custody in the District of Oregon pursuant to his Order of Supervision. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' custody. 28 U.S.C. § 1391(e).

16. Divisional venue is proper under Local Rule 3-2 because Petitioner resides in Portland, he reports to ICE, as required, in Portland, and a substantial part of the events or omissions giving rise to his claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

19. Petitioner is "in custody" for the purpose of § 2241 because he has been released by Respondents on an Order of Supervision and remains in their constructive custody. "[T]he Supreme Court has repeatedly held that the in-custody requirement [of 28 U.S.C. § 2241] is met where the Government restricts a petitioner's freedom of action or movement," including

through an immigration order of supervision. *See Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), *citing Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); see also, e.g., *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez v. Holder*, 454 F. App'x 769, 772-72 (11th Cir. 2011) (same).

PARTIES

20. Petitioner is forty-five years old and was born in Thailand. Petitioner is a resident of Portland, Oregon, and is present within the state of Oregon as of the time of the filing of this petition.¹

21. Respondent Julio Hernandez is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The Seattle Field Office’s area of responsibility includes Alaska, Oregon, and Washington. Respondent Hernandez is a legal custodian of Petitioner.

22. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

¹ Petitioner seeks leave to proceed anonymously because public identification creates a risk of retaliatory physical harm due to Petitioner’s status as an immigrant in the United States, and the nature of Petitioner’s claim is sensitive and highly personal. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The Ninth Circuit has identified several different situations in which parties have been permitted to proceed under a fictitious name, including “(1) when identification creates a risk of retaliatory physical or mental harm, . . . ; (2) when anonymity is necessary ‘to preserve privacy in a matter of sensitive and highly personal nature,’ . . . ; and (3) when the anonymous party is ‘compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.’” *Id.* (collecting cases; internal citations omitted). On the filing of this petition, the undersigned will promptly transmit the name and A# of the Petitioner to the Respondents.

23. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

24. Respondent Todd Blanche is the Acting Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

25. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

26. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

27. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

REMOVABILITY UNDER 8 U.S.C. § 1227(a)(2)(A)(iii)

28. The Department of Homeland Security filed a Notice to Appear (NTA) in Mr. N-S-' case on August 30, 2005 charging Mr. N-S- as removable pursuant to INA § 237(a)(2)(A)(iii), [8 U.S.C. § 1227(a)(2)(A)(iii),] aggravated felony grounds, specifically INA § 101 (a)(43)(B) "an offense relating to the illicit trafficking in controlled substances." The charge is based on the factual allegation that that Mr. N-S- was "on September 27, 2002, convicted in the Circuit Court of the State of Oregon for the County of Washington for the offense of Delivery of a Controlled Substance, to wit: Marijuana." The specific Oregon criminal code is not listed on the NTA and otherwise difficult to determine as the criminal conviction was since

set aside in October 2020. It is assumed that the Oregon statute at issue is ORS § 475.992 from 2002.

29. In *Sandoval v. Sessions*, in 2017, after Mr. N-S-' removal proceedings, the Ninth Circuit concluded that "Oregon law permits conviction for delivery under this statute [ORS § 475.922] based on mere solicitation. Because the Controlled Substances Act does not punish soliciting delivery of controlled substances, § 475.992(1)(a) cannot be a categorical match to an aggravated felony under 8 U.S.C. § 1227(a)(2)(A)(iii). Further, because § 475.992(1)(a) is indivisible, the modified categorical approach does not apply." *Sandoval v. Sessions*, 866 F.3d 986, 988 (9th Cir. 2016).

30. In 2020, the Ninth Circuit further concluded that marijuana delivery under ORS § 475.860 does not meet the federal generic definition of "illicit trafficking of a controlled substance." *Cortes Maldonado v. Barr*, 978 F.3d 643, 645 (9th Cir. 2020). Again because the Oregon marijuana delivery statute covers solicitation, while the generic federal offense does not. *Cortes Maldonado*, 978 F.3d at 648–649.

31. Applying the categorical approach, this means that aggravated felony drug trafficking consequences cannot apply to ORS § 475.992. See *Decamps v. United States*, 570 U.S. 254, 257 (2013) (setting out the categorical approach); *Moncrieffe v. Holder*, 569 U.S. 184 (2013); *Cortes Maldonado*, 978 F.3d at 653; *Sandoval*, 866 F.3d at 988.

32. Given these intervening cases, Mr. N-S- is not removable as charged in the 2005 NTA.

REVOCATION OF ORDERS OF SUPERVISION

33. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are a

danger to the community or unlikely to appear for immigration court. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

34. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

35. Individuals with prior removal orders can be detained during the removal period but may be released from detention and confinement. 8 U.S.C. § 1231.

36. Individuals detained under 8 U.S.C. § 1231(a)(3) may be released, subject to terms of an order of supervision (“OSUP”).

37. For an individual released on an OSUP, revocation and return to custody is authorized upon following certain processes and an exercise of discretion by certain authorized officials making individualized findings. 8 C.F.R. § 241.4(l).

38. If a change of circumstances has made it such that the government believes there is a “significant likelihood” that the noncitizen “may be removed in the reasonably foreseeable future,” the custody review procedures must again be applied. *Id.*

39. If an authorized official seeks to revoke release on an OSUP, the noncitizen must promptly be notified of the reasons for revocation of release and be afforded an initial informal interview to respond to the reasons for revocation. 8 C.F.R. § 241.4(l). The revoking official may only exercise his or her discretion after a particularized finding is made. *Id.*

CREATION OF THE U VISA

40. In 1994, Congress passed the Violence against Women Act (“VAWA”) to address the widespread problem of noncitizens remaining in relationships with abusers who held the key to their eligibility for lawful immigration status in the United States. *See* Violent Crime Control

and Law Enforcement Act of 1994, Title IV, Pub. L. 103-322, 108 Stat. 1796 (September 13, 1994). “[T]he goal of the bill is to ‘permit[] battered immigrant women to leave their batterers without fearing deportation.’” *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103–395, at 25).

41. In 2000, with overwhelming bipartisan support, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (“VTVPA”), which reauthorized VAWA through the Violence Against Women Act of 2000 (“VAWA 2000”). The VTVPA dramatically expanded protections for immigrant survivors.

42. Through Title 5 of VAWA 2000 – the Battered Immigrant Women Protection Act of 2000 (“BIWPA”) – Congress created the U visa, providing a pathway to U.S. citizenship to noncitizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* BIWPA § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

43. A noncitizen is eligible for a U visa if (1) the petitioner “suffered substantial physical or mental abuse as a result of having been a victim of” certain explicitly identified types of crime; (2) the petitioner “possesses information concerning [the] criminal activity”; (3) the petitioner “has been helpful, is being helpful or is likely to be helpful” to government officials regarding the criminal activity; and (4) the crime occurred in the United States or violated U.S. law. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV). Children, spouses, and, for petitioners younger than 21, siblings and parents, may also receive U visas as derivative beneficiaries of the primary petitioner. 8 C.F.R. § 214.14(a)(10).

44. Among Congress’s stated purposes in creating the U visa were (1) “to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes. . . committed against

[noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States,” and (2) to “facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status.” BIWPA § 1513(a)(2).

45. As DHS has acknowledged, Congress—

created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding U.S. laws, fear of deportation, and cultural differences.²

46. Congress went further than simply creating the U visa. Congress additionally authorized DHS to waive virtually *any* ground of inadmissibility to U visa petitioners. *Id.* § 1513(e); 8 U.S.C. § 1182(d)(14).

47. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). Pub. L. No. 110-457, 122 Stat. 5044. The TVPRA added § 237(d) to the Immigration and Nationality Act (“INA”), which authorizes DHS to issue a stay of any removal order against a U or T visa petitioner if the petition “sets forth a prima facie case for approval.” 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant “shall not be removed.” 8 U.S.C. §§ 1227(d)(1)-(3).

² DHS, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, at 4, available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf> (last checked June 16, 2026).

48. Moreover, the TVPRA authorized employment for U visa petitioners who had “a pending, bona fide application” awaiting full adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)).

U VISA INTERIM BENEFITS: DEFERRED ACTION AND WORK AUTHORIZATION PURSUANT TO THE BONA FIDE DETERMINATION AND WAITING LIST PROCESSES

49. In 2007, DHS promulgated regulations setting forth the process for adjudicating U visa petitions. *See* Interim Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007). Because there is a statutory limit of 10,000 visas that may be conferred annually, 8 U.S.C. § 1184(p)(2), a significant, years-long backlog for U visa petitions exists. To address the backlogs, these DHS regulations created interim benefits for petitioners while they wait. The regulations require that crime victims who are not granted U visas “due solely to the cap . . . must be placed on a waiting list.” 8 C.F.R. § 214.14(d)(2). USCIS must “grant deferred action” to individuals placed on the waiting list until a U visa becomes available. *Id.* Wait-listed individuals are also eligible for work authorization. *Id.*

50. In 2021, as a means to implement the provision of 8 U.S.C. § 1184(p)(6) authorizing employment for bona fide U visa petitioners, USCIS created a formal Bona Fide Determination (“BFD”) process, which is reflected in the USCIS Policy Manual (“PM”).³

51. In the BFD process, rather than the full adjudication required for the waiting-list process, USCIS conducts a streamlined initial review of the petition to determine whether it is “bona fide.” PM, vol. 3, pt. C, ch. 4. The determination is “based on the petitioner’s compliance with initial evidence requirements and successful completion of background checks,” after which USCIS “considers any national security and public safety risks, as well as any other relevant

³ “The USCIS Policy Manual is the agency’s centralized online repository for USCIS’ immigration policies.” PM, available at <https://www.uscis.gov/policy-manual> (last checked June 16, 2026).

considerations,” in deciding whether to issue an EAD and deferred action. PM, vol. 3, pt. C, ch. 5. “If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action.” PM, vol. 3, pt. C, ch. 5.C.

52. Petitioners granted a BFD EAD and deferred action are placed in the queue to wait for a U visa to become available as if they were on the U visa waiting list.

53. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5.

54. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) “if USCIS determines a national security or public safety concern is present,” (2) “if USCIS determines the BFD EAD and deferred action is no longer warranted,” (3) if “the Form I-918 Supplement B law enforcement certification is withdrawn” by the certifying agency, or (4) “USCIS determines the prior BFD EAD was issued in error.” *Id.*

55. For those deemed ineligible for a BFD EAD and deferred action, USCIS proceeds to a full adjudication of the petition and determines whether any applicable inadmissibility grounds are waivable. If the petition is approvable and a U visa is not available due solely to the annual cap, USCIS then places petitioners on the U visa waiting list and must confer deferred action until a U visa becomes available or a change in circumstances causes USCIS to remove the petitioner from the waiting list. PM, vol. 3, pt. C, ch. 4.

56. Because deferred action for those on the waiting list is mandatory by regulation, it can only be revoked due to a material change in eligibility for the U visa. *See* 8 C.F.R. § 214.14(d)(2)-(3).

57. Pursuant to USCIS policy, *only* USCIS may revoke deferred action conferred in connection with a U visa petition. PM vol. 3, pt. C, ch. 5.; 8 C.F.R. § 214.14(d)(2)-(3).

58. Once a U visa finally becomes available to someone with a BFD EAD or someone on the waiting list, USCIS will conduct another background check to screen for any new material facts affecting eligibility, and if none, approve the visa. PM, vol. 3, pt. C, ch. 7.A-B. The visa recipient is authorized to work incident to status and may apply for lawful permanent residence three years later. 8 C.F.R. § 274a.12(19)-(20); 8 C.F.R. § 245.24(b).

UNTIL 2025, DECADES OF AGENCY POLICY GUIDANCE PRESUMPTIVELY PROTECTED U VISA PETITIONERS FROM IMMIGRATION ENFORCEMENT

59. Consistent with Congress's intent to encourage noncitizen victims to report crime, for nearly two decades, DHS policies have generally required ICE to refrain from pursuing removal efforts against people with pending U visa petitions, like petitioner, absent serious public safety concerns.⁴ These include written policies issued in 2011 and 2021. *See* John Morton, ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) ("2011 Policy"), available at

⁴ *See* Memorandum from William J. Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *Prosecutorial Discretion* (Oct. 24, 2005), available at <https://www.aila.org/library/ice-prosecutorial-discretion-memo>; Memorandum from William Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *VAWA 2005 Amendments to the Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007), available at https://www.ice.gov/doclib/foia/policy/memoVAWA_2005_INA_Amendments_02.01.2007.pdf; Memorandum of David J. Venturella, Acting Director, Detention and Removal Operations, to Field Office Directors, *Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants*, (Sept. 24, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf; Memorandum from Peter S. Vincent, Principal Legal Advisor, to OPLA Attorneys, *Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal* (Sept. 25, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf; ICE Directive 11005.2, *Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners*, (Aug. 2, 2019), available at https://www.ice.gov/doclib/foia/policy/11005.2_StayRemovalReqRemProcUVisaPetitioners.pdf.

<https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (last checked June 15, 2026), and ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) (“2021 Directive”), available at https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf (last checked June 15, 2026).

60. As with prior DHS policy, the 2011 Policy reiterated that “[a]bsent special circumstances or aggravating factors,” it is generally “against ICE policy to initiate removal proceedings against” known victims of crime. 2011 Policy at 1. Notably, the 2011 Policy explains “that a flag now exists in” DHS systems “to identify those victims of domestic violence, trafficking, or other crimes who already have filed for . . . victim-based immigration relief.” 2011 Policy at 3.

61. The 2021 Directive continued ICE’s longstanding policy to “refrain from taking civil enforcement action against” individuals “known to have a pending application” for “victim-based immigration benefits,” “absent exceptional circumstances” such as national security or public safety concerns. 2021 Directive at 1-2, 9. If such an application was pending, ICE was to “defer” enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *Id.* at 2. Agents were to request expedited prima facie adjudications from USCIS for people in ICE custody, and eligibility “for victim-based immigration benefits . . . must be considered” a “positive discretionary factor.” *Id.* at 2, 9.

62. On January 30, 2025, ICE issued a policy directive that, for the first time in the agency’s history, authorized the routine detention and removal of noncitizen victims of crime who had petitioned for victim-based immigration benefits, such as the U visa. *See* ICE Policy Number 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving*

Current or Potential Beneficiaries of Victim-Based Immigration Benefits (Jan. 30, 2025) (“2025 Guidance”), available at <https://www.ice.gov/doclib/foia/policy/11005.4.pdf> (last checked June 16, 2026).

63. The 2025 Guidance became “effective immediately and remains in effect until superseded.” 2025 Guidance at 1. It explicitly “rescinded and superseded” the 2021 Directive and 2011 Policy, thereby reneging the government’s promise to protect noncitizen crime victims and greenlighting a deportation campaign that ignores their potential eligibility for relief.

64. Specifically, the 2025 Guidance requires, when ICE officers seek to detain or remove individuals with pending U visa petitions, that they (1) merely “coordinate and deconflict internally” and with law enforcement agencies “to ensure criminal investigative and other enforcement actions will not be compromised,” (2) “consult with” local ICE attorneys only “to ensure any such action is consistent with applicable legal limitations,” (3) need not consider a noncitizen being “a victim of a crime” as “a positive discretionary factor,” and (4) will not “routinely request expedited adjudications from USCIS,” but may do so only when “it is in ICE’s best interests.” 2025 Guidance at 2-3.

65. The 2025 Guidance marked an abrupt about-face from longstanding DHS practices, under which immigration agencies generally refrained from enforcement against crime victims absent serious adverse factors.

66. As a result of the 2025 Guidance, ICE now engages in an unlawful policy and practice under which it routinely detains and deports people who have U visa petitions pending before USCIS, who are awaiting deferred action determination, and who have filed a stay request with ICE. This policy, referred to herein and in *ICWC* as the Blind Removal Policy, unlawfully

violates the APA and 8 U.S.C. § 1227(d)(1) because it allows Respondents to deny a request for a final stay of removal without first prima facie adjudicating the U visa petition.

FACTUAL BACKGROUND

67. For well over twenty years, Petitioner N-S- has been living in the United States while supervised by ICE, maintaining consistent employment and without any criminal convictions within the last seventeen years.

PETITIONER'S ARRIVAL AND EARLY LIFE

68. Mr. N-S- is [REDACTED] His parents were born in Laos and fled prior to Mr. N-S-' birth because [REDACTED]
[REDACTED]
[REDACTED] after the United States lost the war. Mr. N-S- was born in a Thai refugee camp in September 1980. Together with his parents and siblings he entered the United States as a refugee on September 20, 1991, at age 11.

69. The family settled in Salem, Oregon, where Mr. N-S- grew up and attended elementary, middle and high school. He was granted lawful permanent resident status on January 8, 1993, retroactive to September 20, 1991. His parents and siblings have since become U.S. citizens.

70. Mr. N-S- struggled during his teen years and early adult years. He got involved with the wrong crowd. He became a first time father at age 18.

71. At age 22, on September 27, 2002, Mr. N-A- was convicted of delivery of a delivery of marijuana and sentenced to 48 months prison. In that same case, Mr. N-A- was also convicted of possession of the controlled substance of marijuana, theft in the first degree of a

firearm, and endangering the welfare of a minor. Mr. N-A- participated in the Boot Camp Program and was released from custody early.

72. His only other criminal arrest was for a misdemeanor DUI in 2009 for which he successfully completed diversion.

73. The criminal convictions in the 2002 case were since set aside on October 20, 2020 pursuant to ORS § 137.225. The specific codes of conviction are not yet known as a request for the sealed file is pending, but the delivery conviction was likely pursuant to ORS § 475.992.

PETITIONER'S ORDER OF REMOVAL AND RELEASE FROM CUSTODY

74. The Department of Homeland Security filed a Notice to Appear (NTA) in Mr. N-S-' case on August 30, 2005 charging Mr. N-S- as removable pursuant to INA § 237(a)(2)(A)(iii), aggravated felony grounds, specifically INA § 101 (a)(43)(B) "an offense relating to the illicit trafficking in controlled substances." The factual allegation to support the charge was that Mr. N-S- was "on September 27, 2002, convicted in the Circuit Court of the State of Oregon for the County of Washington for the offense of Delivery of a Controlled Substance, to wit: Marijuana." The NTA also does not specify the Oregon code of conviction.

75. Petitioner was likely ordered removed on September 8, 2005 by an Immigration Judge in Tacoma, Washington. However, neither Counsel nor Mr. N-A- have a copy of the removal order. It is unknown which country the removal order is to as the NTA states that Mr. N-S- is a "native of Thailand and a citizen of Laos."

76. Upon information and belief, ICE released him from immigration custody on an Order of Supervision after several months because they could not deport him to either Laos or Thailand.

77. Since his release on supervision in 2005, Petitioner has diligently and substantially complied with all the terms of his release, including by regularly reporting to ICE.

78. Petitioner has also sought travel documents to Laos and Thailand. He was unable to obtain travel documents.

79. Petitioner is not a citizen or national of Laos, or of any country. According to Lao nationality law, he forfeited Laotian nationality, to the extent he ever acquired it from his parents, when he migrated to another country and resided in that country for more than seven years.⁵

80. Believing he is not a citizen of Laos or any other country and therefore has no travel documents authorizing his international travel, Petitioner has lived his life under an indefinite Order of Supervision because his removal could not be effectuated at any reasonably foreseeable time. With that understanding, he has built a productive and law-abiding life in his community in Oregon.

81. Mr. N-S- now has a U.S. citizen partner and three U.S. citizen children. His two youngest sons are aged 4 and 1 and a half. He is the sole financial provider for his children. He works hard as a welder and is known as “one of the top welders in the Portland and Vancouver area.” He is diagnosed with PTSD given the past deaths and harm he observed as a young child at the refugee camp. Both he and his partner have heightened medical needs, needs that would not be met in Laos. He is an important support for his U.S. citizen parents, assisting them with interpretation, helping them to attend medical appointments, fixing their roof, and assisting with

⁵ See Chapter 3, Art. 17(3) and Art. 20, Law on Lao Nationality, Lao People’s Democratic Republic, *available at* https://www.luangprabang-laos.com/IMG/pdf/lao_laws_11_law_on_lao_nationality.pdf.

car maintenance. He volunteers with [REDACTED] His friends and family note his generous nature and quick willingness to assist when they are in need.

82. Petitioner intends to file a motion to reopen with the Tacoma Immigration Court seeking to reopen his prior removal proceedings which, if granted, would return him to lawful permanent resident status for the pendency of removal proceedings. He intends to file that motion on the grounds that given the change in law he is not removable as charged, he is eligible for cancellation of removal for lawful permanent residents, and he is seeking asylum, withholding and protection under the Convention Against Torture (CAT) given his fear of removal to Laos.

83. Upon information and belief, Respondents have recently begun to arrest and detain refugees of Laotian heritage without notice during otherwise routine ICE reporting appointments or in the community.

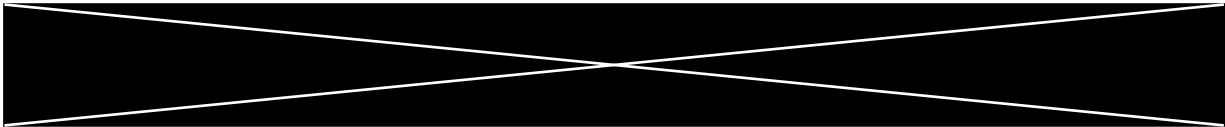
84. Respondents plan to revoke his Order of Supervision and re-detain and deport Petitioner to Laos at a scheduled check in on June 23, 2026. Mr. N-S- received the CALL-IN LETTER on June 11, 2026. The "CALL-IN LETTER" is dated June 9, 2026 and in it ICE requested that Mr. N-S- report to their office on June 23, 2026 at 9am. The letter states as the reason for the appointment is "For removal. Travel document from Laos has been issued. You will be provided opportunity for an informal interview. Your O/S is revoked." The CALL-IN LETTER does not attach a copy of the removal order or the travel document.

85. This re-detention will violate procedural and substantive due process because the revocation of his supervised release requires notice and a meaningful opportunity to be heard, and because it is unconstitutionally punitive and his removal is not reasonably foreseeable, *Zadvydas*, 533 at 689. Petitioner's re-detention would also violate ICE's own regulations

governing the revocation of release of supervision, 8 C.F.R. § 241.13(i). The re-detention will also violate the orders in *ICWC* requiring that ICE obtain a prima facie determination on Mr. N-S- U visa prior to removal.

BASIS FOR MR. N-S- U-VISA APPLICATION

86. On October 20, 2007, Mr. N-S- was the victim of felonious assault when he was



 He was helpful in the investigation of the crime when he answered questions related to the assault, allowed use of his medical records, testified at grand jury and trial for all 4 co-defendants, which resulted in two convictions.

87. On May 29, 2024, the Washington County District Attorney Office certified that Mr. N-S-' Form I-918B.

88. On November 26, 2024, Mr. N-S- submitted a complete U visa petition and request for waiver of grounds of inadmissibility, which remains pending with USCIS.

89. On June 16, 2026, Mr. N-S- request a stay of removal from the Department of Homeland Security given his pending U visa, medical needs, and invalidity of his removal order.

RESPONDENTS' DETENTION AND DEPORTATION POLICIES

90. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS

Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

91. In late May, Former Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.⁶

92. On May 28, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁷

93. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations must prioritize arrest numbers, regardless of the law.

REPATRIATION TO LAOS HISTORY

94. No repatriation agreement exists between Laos and the United States.

95. According to the United States government, “Laos has historically failed to accept back its removable nationals.”⁸ According to ICE’s Fiscal Year Annual Reports, not a single

⁶ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

⁷ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, FOX NEWS (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112> (last visited Aug. 24, 2025).

⁸ President Donald Trump, Proclamation: *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National security and Public Safety Threats*, June 4, 2025, <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>.

person was deported to Laos in FY 2024, and only was deported in FY 2023.⁹ In FY 2013, ten people were deported to Laos, and in 2012, fourteen were deported. There are an estimated nearly 5,000 individuals in the United States with removal orders to Laos that the U.S. government has been unable to execute.

96. In June 2025, the U.S. placed a partial travel ban on Laos and cut off visas for certain Laotian individuals, citing visa overstays and failure to cooperate with U.S. deportation efforts.

97. In response, the Laos government slowly began issuing travel documents to permit the removal of some individuals ordered removed to Laos. Upon information and belief, the document issued is a “laissez-passer”, valid for only 90 days, that allows a single entry to the country but does not restore any citizenship or residency rights.

98. Upon information and belief, since October 2025, there has been about one ICE deportation flight per month that stops in Laos. Laos restricts the number of people it will receive at one time. Upon arrival, the government of Laos forcibly confines all U.S. deportees on a Laos military base for a mandatory period and only releases them if they have a sponsor in Laos, such as a family member, able to house and support them. U.S. deportees are treated as stateless persons under Laos nationality law because they are considered to have forfeited their Laos nationality, to the extent they ever acquired it.

99. Upon information and belief, ICE is currently detaining hundreds of individuals with old removal orders to Laos, having re-detained them in recent months.

⁹ Numbers in prior years were also very low: five in FY 2022, zero in FY 2021, eleven in FY 2020, and five in FY 2019. U.S. Immigration and Customs Enforcement, U.S. Dep’t of Homeland Sec., *Annual Report Fiscal Year 2024* (2024), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

100. Upon information and belief, Laos is limiting the number of individuals it accepts each month because of their policy of mandatorily detaining people on arrival and managing their movement once in the country. Thus, there are likely far too many individuals with removal orders to Laos detained at this time to be removed in the reasonably foreseeable future given the limitations on the numbers that can be removed per month.

101. On December 16, 2025, President Trump upgraded the partial travel ban it had already imposed on Laos to a full travel ban because of Laos' "fail[ure] to accept back its removable nationals."¹⁰ Laos was one of two countries (the other being Sierra Leone) for whom the U.S. government upgraded its sanctions to a full ban.¹¹

102. In short, President Trump declared by Presidential proclamation that removal to Laos was not significantly likely in the reasonably foreseeable future. Rather, the Government concluded that effectuating removals to Laos is still so unlikely that Laos deserved enhanced and extreme sanctions.

ICE'S THIRD COUNTRY REMOVAL POLICY

103. On July 9, 2025 ICE released a memo instructing staff that ICE may deport a person to a third country not designated on the removal order without providing any notice or an opportunity to be heard if the State Department confirms that it has received diplomatic

¹⁰ Fact Sheet: President Donald J. Trump Further Restricts and Limits the Entry of Foreign Nationals to Protect the Security of the United States, The White House, Dec. 16, 2025, <https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-further-restricts-and-limits-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/>; President Donald J. Trump, Proclamation: Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States, Dec. 16, 2025, <https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/>.

¹¹ Fact Sheet: President Donald J. Trump Further Restricts and Limits the Entry of Foreign Nationals to Protect the Security of the United States, The White House, Dec. 16, 2025, <https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-further-restricts-and-limits-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/>.

assurances that individuals will not be persecuted or tortured. *Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025)*, July 9, 2025, available at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf>. There is no mention of assurances that a person will not be arbitrarily or indefinitely imprisoned, however. *Id.*

104. If no diplomatic assurances are received, officers are instructed to serve on the individual a Notice of Removal (“Notice”) that includes the intended country of removal. *Id.* It tells officers not to ask whether the individual is afraid of removal to that country and states that officers should “generally wait at least 24 hours following service of the [Notice] before effectuating removal.” *Id.* The memo states that “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the [Notice] as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal.” *Id.*

105. The memo states that if the noncitizen “does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the [Notice] within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” If the noncitizen “does affirmatively state a fear if removed to the country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration Services (“USCIS”) to screen for eligibility for withholding of removal and protection under the Convention Against Torture (“CAT”). *Id.* (emphases in original). “USCIS will generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed, but if it determines that they have met the standard, then ICE may reopen removal proceedings “for the

sole purpose of determining eligibility for [withholding of removal protection] and CAT ... [or] designate another country for removal.” *Id.*

106. This policy has been the subject of ongoing litigation. On February 25, 2026, the district court of Massachusetts granted summary judgment, final judgment, and declaratory relief to a nationwide class of persons with final removal orders, setting aside the third-country removal policy. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026). The order is currently stayed. *Id.*

PUNITIVE BANISHMENT TO THIRD COUNTRIES

107. Since January 2025, Respondents have implemented a policy and practice of removing individuals to third countries, without first following the procedures in the INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

108. Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.¹² Since then, ICE has carried out highly publicized third country deportations to South Sudan, Eswatini, Rwanda, Uganda, and Ghana.

109. The Administration’s third country removal scheme is designed to punish and deter. In an official video, President Donald Trump stated, “[I]f illegal aliens choose to remain in America, they’re remaining illegally, and they will face severe consequences,” such as

¹² Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s Mass Deportations*, N.Y. Times, June 25, 2025.

“significant jail time, ... garnishment of all wages, imprisonment and incarceration, and *sudden deportation in a place and manner solely of our discretion.*”¹³ In January, President Trump announced a plan to detain immigrants at the Guantanamo Bay Prison in Cuba because “it’s a tough place to get out” and “we don’t want them coming back.”¹⁴

110. Later, Secretary of State Marco Rubio announced that El Salvador had agreed to “accept for deportation any illegal alien in the [U.S.] who is a criminal”¹⁵ with the explicit understanding that “[President Bukele] will put them in his jails.”¹⁶ Former DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have somewhere to send the worst of the worst and someone to partner with. And we’d like to continue that partnership because it’s been *a powerful message of consequences.*”¹⁷ President Trump recently spoke about the deterrent effect of the El Salvador banishments: “[W]e bring people there and ... they don’t get out.”¹⁸ DHS agreed, posting, “Illegal aliens are turning back because they know ... they will ultimately leave in handcuffs.”¹⁹

¹³ Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> (last visited July 24, 2025).

¹⁴ Benedict Garman & Matt Murphy, *Migrant Tents Removed From Guantanamo Bay, Satellite Images Show*, BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o>.

¹⁵ Stefano Pozzebon et al, *El Salvador Offers to House Violent US Criminals and Deportees of any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

¹⁶ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

¹⁷ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> (last visited July 24, 2025).

¹⁸ Roll Call, *White House Press Conference: Press Conference: Donald Trump Hosts a Press Conference at the White House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> (last visited July 24, 2025).

¹⁹ Homeland Security (@DHSgov), X (June 24, 2025, at 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520>.

111. In April, Secretary of State Rubio stated that the administration is “working with other countries ... to send [them] some of the most despicable human beings ... and the further away from America, the better, so they can’t come back.”²⁰ Former Secretary Noem has publicly threatened noncitizens with criminal convictions to “leave America” or “be fined nearly \$1,000 per day, imprisoned, and deported.”²¹ She stated, “President Trump and I have a clear message to those in our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you down, arrest you, and deport you.”²²

112. The Administration has negotiated with countries to have U.S. deportees imprisoned in prisons, camps, or other facilities. In February 2025, Panama and Costa Rica took in hundreds of deportees from African and Central Asian countries and imprisoned them in hotels, a jungle camp, and a detention center.²³ In Panama, officials confiscated cell phones,

²⁰ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7, 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

²¹ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025), <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

²² *Id.* (italics omitted).

²³ The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal ‘Black Hole,’* CBC News (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers Deported by the U.S. Are Stuck in Panama and Unable to Return Home*, All Things Considered, NPR (May 5, 2025), <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

denying deportees access to their attorneys.²⁴ Deportees were “guarded like prisoners,” sleeping in structures made from plastic sheets and having toilet access only when escorted.²⁵

113. In March 2025, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT.²⁶ El Salvador’s justice minister stated that the only way out of CECOT is in a coffin.²⁷

114. In May 2025, ICE attempted to deport individuals from Vietnam, Laos, the Philippines, and Mexico to Libya.²⁸ The aircraft sat on the runway for hours until the individuals were returned to a detention center after a court ordered the men not to be deported.²⁹

115. On July 4, 2025, ICE deported eight men, including one Laotian man, to South Sudan.³⁰ The government of South Sudan euphemistically said in a statement that the deportees

²⁴ Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained in Remote Jungle Camp*, N.Y. Times (Feb. 19, 2025), <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock>.

²⁵ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86>.

²⁶ See, e.g., Wong, *supra* note 1; Michael Rios, *What We Know About the El Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*, CNN (Mar. 17, 2025).

²⁷ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025), <https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/>.

²⁸ Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya*, May 9, 2025, <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>.

²⁹ *Id.*

³⁰ Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*, July 4, 2025, <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

were “under the care of the relevant authorities.”³¹ As of September 7, 2025, six of the eight men remained in South Sudanese custody.³²

116. On July 15, 2025 ICE deported five men to Eswatini, including one Laotian man. DHS referred to the men as “so uniquely barbaric that their home countries refused to take them back.”³³ Eswatini government officials have said the men are imprisoned in solitary confinement and that the U.S. is paying for the costs of their imprisonment.³⁴ An Eswatini government official estimated the men would be held for about 12 months.³⁵

117. In mid-August 2025, ICE deported seven individuals to Rwanda.³⁶ Rwanda also reported reaching an agreement with the United States to receive up to 250 deportees.³⁷

118. In September 2025, ICE deported as many as 28 individuals to Ghana, at least 14 of whom had won protection against removal in immigration court. In court filings, five of these individuals alleged that ICE abruptly put them on a plane in the middle of the night, straightjacketed them, and did not tell them where they were being flown until they were already

³¹ Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to Distant Countries*, N.Y. Times, July 13, 2025, <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; see also Press Statement, Republic of South Sudan, *Official Statement on the Arrival of Third-Country Nationals and South Sudanese Deported from the United States of America to South Sudan*, July 8, 2025, <https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/>.

³² Isa Cardona, *South Sudan repatriates Mexican man deported from US*, CNN, Sept. 7, 2025, <https://www.cnn.com/2025/09/06/americas/mexican-south-sudan-returns-latam-intl>.

³³ Tricia McLaughlin (@TriciaOhio), X (July 15, 2025), <https://x.com/TriciaOhio/status/1945274627976200206>.

³⁴ Nimi Princewill et al., *‘Not Trump’s Dumping Ground’: Outrage Over Arrival of Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025), <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>; Rachel Savage et al., *Eswatini opposition attacks US deal as ‘human trafficking disguised as deportation’*, The Guardian, Jul. 23, 2025, <https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>.

³⁵ Savage et al., *supra* note 29.

³⁶ Daphne Psalidakis et al., *Rwanda received migrants deported from US earlier this month*, Reuters, Aug. 28, 2025, <https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/>.

³⁷ *Id.*

in flight. *D.A. v. Noem*, 800 F. Supp. 3d 43, 45 (D.D.C. 2025). In Ghana, they were held in an open-air detention facility surrounded by armed military guards. *Id.* Now, Ghana has reportedly expelled eight to ten of these individuals to Togo without their passports.³⁸

119. A United States Senate Foreign Relations Committee, Minority Report, from February 2026, “At What Cost? Inside the Trump Administration’s Secret Deportation Deals,” examines the costly and transactional role that third country removals is playing in U.S. foreign policy, with the U.S. government making “questionable deals” with “corrupt and unstable foreign governments” without any transparency or oversight, including around the treatment of deportees.³⁹ The report concludes that “[d]eportation is being used as a bargaining chip. U.S. diplomacy is being conducted through secret case payments and quiet concessions. . . speed and deterrence are being prioritized over due process and respect for human rights.”⁴⁰

CLAIMS FOR RELIEF

COUNT ONE

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act, and Federal Regulations
Not in Accordance with Law, In Excess of Statutory Authority, Abuse of Discretion
Unlawful Detention**

120. Petitioner restates and realleges all paragraphs as if fully set forth here.

³⁸ *West Africans deported from US to Ghana ‘dumped without documents in Togo,’* The Guardian, Sept. 29, 2025, <https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-ice-ghana-togo>.

³⁹ U.S. Committee on Foreign Relations, Minority, U.S. Senate, *At What Cost? Inside the Trump Administration’s Secret Deportation Deals*, at 1 (Feb. 13, 2026), [https://www.foreign.senate.gov/imo/media/doc/\(FINAL%20-%20web\)%20At%20What%20Cost%20-%20Inside%20the%20Trump%20Administration%27s%20Secret%20Deportation%20Deals_SFRC%20Minority%20Report_Feb%202.pdf](https://www.foreign.senate.gov/imo/media/doc/(FINAL%20-%20web)%20At%20What%20Cost%20-%20Inside%20the%20Trump%20Administration%27s%20Secret%20Deportation%20Deals_SFRC%20Minority%20Report_Feb%202.pdf).

⁴⁰ *Id.* at 2.

121. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

122. 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)).

123. The INA provides that Respondents may, as they did in Petitioner’s case, release an individual, who is subject to a removal order, to supervision if appropriate or statutorily required. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(a). Any person released under such circumstances “shall be released pursuant to an order of supervision.” 8 C.F.R. § 241.5(a).

124. Specified ICE officials may revoke supervised release “in the exercise of discretion,” but this requires formal processes and findings. 8 C.F.R. § 241.4(l)(1)-(2).

125. The language of 8 C.F.R. § 241.4(l) specifically limits the power of anyone who is not the Executive Associate Director to revoke release. For example, it provides that “[a] district director may also revoke release of a [noncitizen] when”—and only when—in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” Thus, before a district director can revoke release, the district director must make certain findings. Those findings have not been made here.

126. A noncitizen’s release may be revoked “in the exercise of discretion” when, in the opinion of the revoking official, “[t]he purposes of release have been served,” the noncitizen

“violates any condition of release;” revocation “is appropriate to enforce a removal order or to commence removal proceedings against [the noncitizen],” or “[t]he conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2).

127. The language of 8 C.F.R. § 241.4(l)(1) also requires that upon revocation of release, a noncitizen “will be notified of the reasons for revocation” of release and “be afforded an initial informal interview promptly after his or her return to [] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.”

128. On information and belief, Petitioner complied with the conditions of his release on an OSUP; indeed, he has been reporting to ICE as directed for years. No facts or circumstances changed for Petitioner that would alter Respondents’ assessment of his risk of flight or his danger to the community. He has no criminal history since 2009. ICE has not provided him with a copy of his travel document or the 2005 removal order. The June 9, 2026 CALL-IN LETTER provides no procedure for response to the reasons for revocation. The CALL-IN LETTER makes no findings by the district director as required by 8 C.F.R. § 241.4(l).

129. Regardless of Petitioner’s prior removal order, Respondents’ imminent plan to terminate Petitioner’s supervised release and detain him without following proper procedures will violate the INA and federal regulations. *See Doua Yang v. Scott*, No. 2:26-cv-00469-JNW, ECF 22 at # (W.D. Wa. Mar. 6, 2026) (granting release as a remedy for failure to follow the OSUP revocation of release procedures); *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267 at *9-*12 (Aug. 21, 2025) (granting habeas after finding ICE violated 8 C.F.R. § 241.4(l) when the wrong official revoked release and provided neither timely notice nor an informal interview); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17

(W.D.N.Y. May 2, 2025) (ICE violated 8 C.F.R. § 241.4(l) by not affording petitioner an informal interview or an opportunity to respond to the reasons for revocation); *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (noting that notwithstanding ICE’s discretion to execute a removal order, ICE “cannot remove” a noncitizen—even one subject to a final removal order—“in any manner [it] please[s]”); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) (“[W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged deportation proceeding is invalid and a remand to the agency is required”—even in the absence of a showing of prejudice.).

130. Respondents’ conduct is not in accordance with law and is in excess of statutory authority in violation of the APA.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

131. Petitioner restates and realleges all paragraphs as if fully set forth here.

132. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

133. Procedural due process requires notice prior to re-detention, a copy of the removal order, and a copy of the travel document. *Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1244–1251 (C.D. Cal. 2020). The United States District Court for the Central District of California in *Chhoeun* addressed the question of “whether the Constitution requires notice before an immigrant who is subject to a final removal order, but has been released despite that removal order (often for years or decades) and committed no further crimes, may be re-detained for purposes of removal.” *Nak Kim Chhoeun*, 442 F. Supp. 3d at 1244. The Court concluded that such notice was required to the class of Cambodians with final removal orders released from detention who have been living and working in the United States for years. *Nak Kim Chhoeun*, 442 F. Supp. 3d at 1241, 1251. In those circumstances, ICE is required to provide 14 days written notice prior to re-detention, along with relevant documents from the immigration file so that the non-citizen can assess options for a motion to reopen. *Chhoeun Settlement* in Case No. 8:17-CV-01898-JWH-GJS at *3–*4 available at https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Programs/Immigrant-Rights/Chhoeun-Settlement_Court-Approved-Agreement_260428_IR.pdf

134. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

135. While the government may detain individuals under 8 U.S.C. § 1231(a) and revoke custody decisions under 8 C.F.R. § 241.4(l), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

136. Here, Respondents have chosen to revoke Petitioner’s release without sufficient written notice and without copies of his immigration documents and without providing a pre-detention opportunity to respond. As such, his release is revoked in violation of due process.

137. Because no individualized determination for revocation has been made and because Petitioner has not been afforded an opportunity to respond to the reasons for revocation, Respondents' anticipated revocation of Petitioner's release will violate his right to procedural due process.

COUNT THREE
Violation of Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture Implementing Regulations, and the Administrative Procedures Act
Third Country Removal

138. The allegations in the above paragraphs are realleged and incorporated herein.

139. The Fifth Amendment, the INA, the Convention Against Torture, and implementing regulations require that Respondents provide Petitioner with meaningful notice and opportunity to respond to any attempt to remove him to a third country not designated in his order of removal. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' third-country removal policy violates the law and Petitioner's rights by allowing ICE agents to remove individuals to third countries that have provided diplomatic assurances without any notice or process at all. Where a country has not provided diplomatic assurances, the policy requires only gravely insufficient notice and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

140. Prior to being detained for removal to any third country, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026) (order currently stayed). As Petitioner does not have a copy of his removal order, it is unknown if that order directs removal to Laos or Thailand.

COUNT FOUR
Violation of APA 5 U.S.C. § 706(2)(A)
Petitioner's Detention Will Not Be in Accordance with Law because It Violates the
ICWC PI ORDER

141. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

142. Under the APA, courts “shall . . . hold unlawful and set aside agency action . . . found to be . . . not in accordance with law.” 5 U.S.C. § 706(2)(A).

143. Respondents’ CALL-IN LETTER announcing intent to detain Petitioner constitutes final agency action under the APA. 5 U.S.C. §§ 551(c)(10) & (13), 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

144. In *ICWC*, the court concluded that plaintiffs were likely to succeed on their claim that the Blind Removal Policy is arbitrary and capricious and not in accordance with law under the APA. *ICWC* PI Order at *84.

145. As a result, the court stayed the Blind Removal Policy, “because it allows Defendants to deny a U visa or T visa petitioner’s request for an administrative stay of a final order of removal without first prima facie adjudicating the U visa and T visa petition, whereas the statute requires Defendants to under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas.” *Id.* at *84, *96.

146. The stay applies in favor to members of the Stay of Removal Class, which includes Petitioner. *Id.*

147. Respondents intend to detain and remove Petitioner pursuant to the stayed Blind Removal Policy.

148. Accordingly, Respondents’ detention of Petitioner is not in accordance with law in violation of the APA, as it directly contravenes the § 705 relief issued in the *ICWC* PI Order.

COUNT FIVE
Violation of Fifth Amendment of United States Constitution
Detaining Pending Petition Class Members and Stay of Removal Class Members Violates
Substantive Due Process

149. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

150. Because “[a]rbitrary civil detention is not a feature of our American government,” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil confinement is only permissible “in certain special and narrow non-punitive circumstances,” where a “special justification” asserted by the government “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (cleaned up).

151. Immigration detention only comports with due process when it furthers the government’s goals of “ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Id.* (cleaned up). The only two accepted justifications for keeping someone in civil immigration detention are insufficient as applied to Petitioner.

152. “The first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility.” *Id.* at 679.

153. Here, deportation is a “remote possibility” as ICE is required to seek adjudication of his deferred action status prior to denying his stay of removal request and removing Mr. N-S-. Deferred action is likely to be granted given lack of recent criminal history and that Petitioner meets all requirements for deferred action. *Id.* “Where an individual is protected from removal through deferred action, their detention serves no valid purpose.” *Santiago v. Noem*, Case No. EP-25-CV-361-KC, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025). *See Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025) (“deferred

action prevents recipients' removal from the United States"). Moreover, recent case law clarifications provide that Mr. N-S- is no longer removable as charged, further rendering the 2005 removal order unenforceable and his motion to reopen likely to be granted.

154. Should Mr. N-S- receive deferred action, he necessarily must pass background checks and be vetted for national security and public safety risks. "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by . . . alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

155. Accordingly, because Petitioner's detention is not justified by flight risk or danger concerns, it bears no reasonable relation to a legitimate government purpose, and thus violates Petitioner's substantive due process rights.⁴¹

COUNT SIX

Violation of APA 5 U.S.C. § 706(2)(A)

Mr. N-S- Removal Pursuant to the Blind Removal Policy Violates 8 U.S.C. § 1227(d)(1)

156. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

157. 8 U.S.C. § 1227(d)(1) states—

⁴¹ A growing number of courts agree that detention and removal of individuals in deferred action status violates due process. *See, e.g., Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025); *Maldonado v. Noem*, No. 25-CV-2541, 2025 WL 1593133 (S.D. Tex. June 5, 2025); *Espinoza-Sorto v. Agudelo*, No. 25-23201, 25 WL 3012786 (S.D. Fla. Oct. 28, 2025); *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Ore. Oct. 30, 2025); *Patel v. Hyde*, No. 25-12518, 2025 WL 3169875 (D. Mass. Nov. 12, 2025); *Cruz Zafra v. Noem*, No. 25-00541, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025); *Aguilar Gama v. Bondi*, 25-01925, 2025 WL 3559942 (W.D. Wash. Dec. 12, 2025); *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025); *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171, at *1 (E.D. Cal. Dec. 21, 2025); *Mauricio Leon v. Noem*, Case 5:25-cv-02582-FMO-RAO, * 5-6 (C.D. Cal. October 10, 2025).

If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 1101(a)(15) of this title filed for an [non-citizen] in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal.

158. Thus, under 8 U.S.C. § 1227(d)(1), when a person with a pending U or T visa petition requests a stay of a removal order, Respondents must determine whether the pending petition demonstrates prima facie eligibility.

159. Looking to the plain language of the Statute, it is clear that the Statute establishes the prima facie determination as a pre-condition to the Secretary granting or denying an administrative stay of removal.” *Jimenez v. Dep’t of Homeland Sec.*, Case No. 222—CV—00967—SSS—JPRX, 2022 WL 19410308, at *3 (CD. Cal. Nov. 14, 2022). Thus, because the “Secretary’s prima facie determination is a non-discretionary pre—requisite to the action described in the second segment,” only “following the prima facie determination, [does] the Secretary [have] the discretion to grant or deny a request for an administrative stay.” *Id.* (citing 8 U.S.C. § 1227(d)(1)).

160. The Blind Removal Policy is reviewable under the APA because it constitutes “final agency action for which there is no other adequate remedy in a Court.” 5 U.S.C. § 704.

161. Respondents intend to remove Mr. N-S- who has requested a stay without first seeking or obtaining a prima facie determination from USCIS as required by 8 U.S.C. § 1227(d)(1).

COUNT SEVEN

Accardi Doctrine

Petitioner’s Detention Violates the PM, Regulations, and Longstanding Policy and Practice

162. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

163. The Supreme Court has long recognized that government agencies are required to follow their own procedures. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Courts have regularly applied this principle to the immigration context. *See, e.g., Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004). The *Accardi* doctrine extends beyond just “regulations” to include, e.g., “internal operating procedures,” “handbook[s],” “policy statements,” and other evidence of an agency’s “usual practice.” *Id.*

164. As a result of the district court’s order in *ICWC v. Noem*, the previously rescinded guidance memos issued in 2021, ICE Directive 11005.3,⁴² and 2011, ICE Policy Statement 10076.1,⁴³ are now reinstated for members of the Pending Petition Class such as Mr. N-S-. *ICWC v. Noem* at *47 (“the Court hereby STAYS the 2025 Guidance, including its rescission of prior policies.”).

165. Under ICE Policy Statement 10076.1, it is generally “against ICE policy to initiate removal proceedings against an individual known to be the immediate victim . . . [of] a crime.” ICE Policy Statement 10076.1 at 1. In the case of crime victims like Mr. N-S-, “[i]n the absence of” “national security concerns” or “serious criminal history,” “exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate.” *Id.* at 2. Under ICE Directive 11005.3, “absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits.” ICE Directive 11005.3 at 2.

⁴² ICE Directive 11005.3: *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021).

⁴³ ICE Policy Statement 10076.1: *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011).

166. ICE Directive 11005.3 directs ICE to “exercise prosecutorial discretion in appropriate circumstances to facilitate access to justice and victim-based benefits by noncitizen crime victims.” ICE Directive 11005.3 at 1.

167. ICE policy explicitly directs that ICE should grant Mr. N-S-’ a stay of removal: “a noncitizen with a pending victim-based application or petition who is subject to an administratively final removal order should generally be issued a stay of removal.” ICE Directive 11005.3 ¶ 5.4.

168. Here, Respondents intend to detain and remove Mr. N-S- is in violation of their own policies in in violation of the *Accardi* Doctrine. *ICWC* PI Order at *40.

COUNT EIGHT

28 U.S.C. § 2241 — Unlawful Detention

The Change in Law Strips Respondents of Authority to Detain Mr. N-S- for Removal

169. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

170. This count challenges the lawfulness of Mr. N-S-’, not the validity of his order of deportation. Even if § 1252 applied to Mr. N-S- in full, this Court retains § 2241 jurisdiction over a challenge to the authority under which Respondents assert custody. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Section 1252(b)(9) channels only challenges that seek “review of an order of removal” or contest “the decision to detain [a noncitizen] in the first place”; it “cannot be read so broadly as to encompass every dispute” connected to removal. *Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018). A claim that intervening case law has extinguished Respondents’ authority to detain Mr. N-S- for deportation contests the basis of his custody, not the removal order, and falls outside § 1252’s channeling provisions. *Cf. Reno v. Am.-Arab Anti-*

Discrimination Comm., 525 U.S. 471 (1999) (§ 1252(g) confined to three discrete executive decisions).

171. The Ninth Circuit decisions in *Maldonado v. Barr*, 978 F.3d 643 (9th Cir. 2020), and *Sandoval v. Sessions*, 866 F.3d 986 (9th Cir. 2016), constitute a change in law that render Mr. N-S-' 2002 conviction for delivery of marijuana not an aggravated felony. An aggravated felony illicit trafficking conviction is the basis for his NTA and presumably his removal order.

172. Because the change in law extinguished Respondents' authority to detain Mr. N-S- for deportation, his detention is unlawful and the appropriate remedy is immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's re-detention without an individualized determination violates the INA and the Due Process Clause of the Fifth Amendment;
- (4) Enjoin Respondents from detaining Petitioner at his upcoming report date with ICE;
- (5) Enjoin Respondents from detaining Petitioner at any other time without reasonable advance notice, a hearing before a neutral decisionmaker, and a showing that detention is necessary to secure his imminent removal;
- (6) Enjoin Respondents from detaining Petitioner for removal or seeking to remove Petitioner to a third country without notice and meaningful

opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

- (7) Enjoin Respondents from detaining Petitioner for removal or seeking to remove Petitioner without first receiving a deferred action determination from USCIS and considering his stay of removal request based on his pending U visa application;
- (8) Declare that the change in law renders Mr. N-S-' removal order invalid and extinguished Respondents' authority to detain or remove him on the basis of a conviction that does not carry aggravated felony consequences, and that any such related detention is unlawful;
- (9) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (10) Order parties to proceed in this action maintaining Petitioner's anonymity, using only N-S-' as their name, and redacting or removing all personally identifying information;
- (11) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (12) Grant any further relief this Court deems just and proper.

Dated: June 16, 2026.

/s/ Nancy Alexander

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