UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KRYSTIAN LOBODA (A[redacted])	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 26-cv-1318
KRISTI NOEM, Secretary, U.S Department of Homeland Security; and SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement,	)	
	)	
Respondents.	)	

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, KRYSTIAN LOBODA, by and through his own and proper person and through his attorney, NICOLE PROVAX, of KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Broadview Detention Center, located in Broadview, Illinois.

1. Petitioner is a native and citizen of Poland. He entered the United States without inspection in 2002 and has remained ever since.

2. Sometime after his entry, Petitioner was placed into removal proceedings and received voluntary departure by the Chicago Immigration Court in 2012. He did not depart from

the United States in the allotted time and the order automatically converted into a removal order.

3. Petitioner has been married to a US citizen for nine years and is the step-father for his wife's US citizen son.
4. In 2016, new regulations created a streamlined process for certain individuals – who has unlawfully entered the United States and were living with final orders of removal – to seek lawful permanent residency based on an employment petition. Petitioner availed himself of these regulations.
5. Petitioner is the beneficiary of an approved Form I-140, Petition for Alien Worker filed by an employer on his behalf. The petition was approved in April 2022.
6. In June 2025, Petitioner filed two provisional waivers – Form I-601A and Form I-212. Both are still pending with USCIS.
7. Petitioner's detention became unlawful on February 5, 2026 when he was unexpectedly taken into custody by ICE/ERO officials. Upon information and belief, ICE intends to remove Petitioner based on the outstanding removal order.
8. Petitioner's detention and intended removal violate and would violate the Immigration and Nationality Act and its regulations, the Administrative Procedures Act, and the U.S. Constitution's due process guarantee.
9. Petitioner is presently in ICE custody within the control of the Chicago ICE office at the Broadview Detention Center, located in Broadview, Illinois.
10. Petitioner respectfully asks this Court to issue an order directing Respondent's not to remove Petitioner from this jurisdiction, directing Petitioner's release and enjoin

Respondents' from removing him from the United States until he receives a decision on his waiver applications.

11. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

12. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

13. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

14. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which she is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

16. Venue is proper in the Northern District of Illinois because Petitioner is presently detained by Respondents within the control of the Chicago ICE office at the Broadview Detention Center, located in Broadview, Illinois which is located within the Northern District. 28 U.S.C. § 1391(b), (e)(1).

Parties

2. Petitioner KRYSTIAN LOBODA is a native and citizen of Poland. Petitioner is presently detained at the Broadview Detention Center, located in Broadview, Illinois.

17. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has broad authority over the operation and enforcement of the immigration laws.

18. Respondent SAMUEL OLSON is being sued in his official capacity only, as the Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office.

Factual and Procedural Background

19. Petitioner KRYSTIAN LOBODA is a native and citizen of Poland. He entered the United States in 2002 without inspection and has remained ever since.

20. Sometime after his entry in 2002, Petitioner was placed into removal proceedings before the Chicago Immigration Court.

21. On April 17, 2012, the Chicago Immigration Court granted Petitioner voluntary departure. *See* Ex. A. Petitioner was required to depart from the United States by August 15, 2012. Petitioner failed to depart and the order automatically converted to a removal order.

22. Petitioner has been married to a US citizen for the last nine years and is the step-father for his US citizen wife's child from a prior relationship.

23. On April 29, 2022, USCIS approved a Form I-140, Petition for Alien Worker, filed on Petitioner's behalf by [redacted]. *See* Ex. B.

24. On June 4, 2025, Petitioner filed two provisional waivers with USCIS – Form I-601A and Form I-212. *See* Ex. C. Both waivers are currently pending. The waivers are based upon extreme hardship to Petitioner's US citizen wife.

25. A noncitizen who enters the United States without inspection is ordinarily ineligible to "adjust" his status to that of a lawful permanent resident. Instead, the immigration laws generally require him to leave the United States and then seek to "immigrate" to the country.

26. In turn, immigrating to the United States is possible only if he obtains a waiver of any applicable grounds of "inadmissibility," including provisions that render noncitizens inadmissible if they have previously lived unlawfully in the United States, or departed the United States under a prior order of removal. *See* 8 U.S.C. § 1182(a)(9).

27. Recognizing the need for family unity during the potentially lengthy process of applying for waivers of inadmissibility, regulations allow noncitizens who entered the United States without inspection to apply for *provisional* waivers of inadmissibility while still living with their families in United States. See 8 C.F.R. §§ 212.2(j) & 212.7(e). The regulations are designed to allow these noncitizens to await the results of those applications in the United States, and travel abroad for a consular interview *after* obtaining approvals of the required waivers. *See* Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule, 78 Fed. Reg. 536, 536 (Jan. 3, 2013).

28. These regulations enable noncitizens who are ineligible to adjust their status in the United States, but who qualify for waivers of inadmissibility, to avoid lengthy separations from their

families while seeking lawful status. *See id.* at 536, 574; Ex. D (printout from www.uscis.gov).

29. Under these laws and regulations, Petitioner undertook a process of the following five steps.

30. First, Petitioner's employer filed a Form I-140 Alien Worker Petition on his behalf, which was approved in April 2022. *See* Ex. B.

31. Second, to overcome the ground of inadmissibility that would bar Petitioner from applying for readmission within 10 years of departing the country after an order of removal, Petitioner would need to obtain the Attorney General's "consent[]" to his application for readmission. *See* 8 U.S.C. § 1182(a)(9)(A)(ii), (iii). To do so, Petitioner filed an I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. See 8 C.F.R. § 212(j); Ex. C.

32. Third, to overcome the 10-year bar on admission to the United States for individuals who have lived in the country unlawfully for more than one year, he filed an I-601A, Application for Provisional Unlawful Presence Waiver. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II); 8 U.S.C. § 1182(a)(9)(B)(v); Ex. C. This application was filed based on the "extreme hardship" that Petitioner's U.S. citizen spouse would face in his absence.

33. Fourth, should the I-212 and I-601A waivers be approved, Petitioner would then have to depart the United States to complete his application for an immigrant visa abroad, with an interview at the U.S. consulate.

34. Fifth, if approved, Petitioner would be permitted to return to the United States with his immigrant visa. Upon admission to the United States, Petitioner would become a lawful permanent resident.

35. Petitioner was detained during the provisional waiver process on February 5, 2026.

36. Upon information and belief, his detention and intended removal is founded on nothing other than the 2012 removal order – which he was attempting to address through the provisional waiver process.

37. Petitioner poses no danger or flight risk.

38. Petitioner's abrupt detention separates him from his US citizen wife and step-child and prohibits him from being able to provide for them.

39. Without intervention of this Court, Petitioner may be removed from the United States without the opportunity to continue applying for permanent residence by way of the provisional waiver regulations. Alternatively, Petitioner will continue to be detained while pursuing immigration relief.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

40. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

41. Other than as 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." *Zadvydas* v. *Davis*, 533 U.S. 678, 690 (2001) (quotations omitted). 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. In the immigration context,

those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

42. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon* v. *Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring her appearance or protecting the community. *Zadvydas*, 533 U.S. at 699.

43. Because Petitioner was detained without any determination that he poses a danger or flight risk, and because he in fact poses no danger or flight risk, his detention violates due process.

44. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

45. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

46. Interpreted in light of the Constitution, the Immigration and Nationality Act (INA) and its applicable regulations did not permit Petitioner's abrupt detention while he was engaged in the process of attempting to regularize his immigration status and without any determination that he poses a danger or flight risk. The INA makes detention mandatory only during the "removal period"—a 90-day period that began when Petitioner's order of removal became

final, and has long since expired. 8 U.S.C. § 1231(a)(1). After the 90-day period, detention is permissible only in certain circumstances, upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. See 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

47. Petitioner's detention four years after he began the process of applying for his permanent resident status through his employer—without any notice, opportunity to present argument or evidence, or individualized determination that he poses a danger and flight risk, and based on nothing more than the outstanding order of removal that he was seeking to address—violates the INA and its regulations.

48. The INA does not condemn individuals who live in the United States unlawfully and under final orders of removal to permanent separation from their U.S. citizen spouses and children. Instead, it allows these individuals, if otherwise eligible, to leave the U.S. temporarily and return as lawful permanent residents—if they are granted waivers of applicable inadmissibility grounds under 8 U.S.C. § 1182(a). Specifically, § 1182(a)(9)(A)(iii) allows an individual who departed under an order of removal to avoid a 10-year bar on admission by obtaining the "consent[]" of the Attorney General. And § 1182(a)(9)(B)(v) allows an individual who lived in the United States unlawfully for more than a year to avoid a similar 10-year bar by demonstrating that a denial of admission would cause "extreme hardship" to a U.S. citizen spouse or parent.

49. Recognizing that requiring a noncitizen to await the adjudication of these waivers overseas would create precisely the "extreme hardship" that the waiver of unlawful presence is designed to avoid, the Department of Homeland Security's regulations interpret the INA to permit an individual who requires waivers under 8 U.S.C. § 1182(a)(9)(A)(iii) and (B)(v) to

obtain conditional, advance approval of these waivers before he departs the U.S. to complete the immigrant visa process. *See* 8 C.F.R. §§ 212.2(j) & 212.7(e); Expansion of Provisional Unlawful Presence Waivers of Inadmissibility; Final Rule, 81 Fed. Reg. 50244, 50245 (July 29, 2016).

50. These regulations thus allow an otherwise eligible individual who is sponsored by an employer—and who lives in the United States unlawfully and with a final order of removal—to prove his eligibility for required waivers, depart the country briefly to complete processing of an immigrant visa application at a U.S. consulate, and then return to the United States to rejoin his family as a lawful permanent resident.

51. Petitioner was abruptly detained on February 5, 2026. Respondents' efforts to remove Petitioner without allowing him to follow these provisional waiver procedures violates the INA and applicable regulations.

THIRD CAUSE OF ACTION

Violation of the Administrative Procedures Act

52. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

53. The Administrative Procedures Act (APA) forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang* v. *Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

54. Petitioner's detention and any efforts to remove Petitioner under the facts alleged here, including facts showing that he was detained while availing himself of the provisional waiver process created under the INA, are and would be arbitrary and capricious under the APA.

55. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. *See* 5 U.S.C. § 553. The Department of Homeland Security followed these rulemaking procedures to establish the provisional waiver process for the unlawful presence waiver, *see* 78 Fed. Reg. 536, and to expand the availability of that waiver to noncitizens living with final orders of removal, *see* 81 Fed. Reg. 50244.

56. ICE's sudden decision to prohibit some noncitizens with final orders of removal from pursuing the process created by these regulations—a prohibition accomplished in this case by detaining and attempting to remove Petitioner in the midst of his efforts to legalize his status—improperly alters these substantive rules without notice-and-comment rulemaking, in violation of the APA.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act and Administrative Procedures Act;

C. Order Respondents not to transfer Petitioner outside of Illinois, Indiana, or Wisconsin during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order the immediate release of Petitioner;

E. Enjoin Respondents from removing Petitioner from the United States until he has had the opportunity to apply for and receive decisions on his waivers of inadmissibility under 8 U.S.C. § 1182(a)(9) as part of the provisional process made available to him by 8 C.F.R. § 212.7(e);

F. Award reasonable attorneys' fees and costs for this action; and

G. Grant such further relief as the Court deems just and proper.

Dated: February 5, 2026

Respectfully Submitted,

/s/ Nicole Provax

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