IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI OFFICE

Jose Antonio Vasquez Mejia, Petitioner, v. Richard K Jones, *in his official capacity* as Warden of the Butler County Correctional Complex; Robert Lynch, *in his official capacity* as Director of the ICE Detroit Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; David Venturella, *in his official capacity* as Acting Director of U.S. Immigration and Customs Enforcement; Markwayne Mullin, *in his official capacity* as Secretary of U.S. Department of Homeland Security; Todd Blanche, *in his official capacity* as Acting Attorney General of the United States; and Daren Margolin, *in his official capacity* as Director of Executive Office for Immigration Review; Respondents.	C/A No. 26-711 **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **A#** [redacted]

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Petitioner, Jose Antonio Vasquez Mejia, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and states as follows:

INTRODUCTION

1. Petitioner is a national and citizen of Honduras residing in Cincinnati, Ohio. He was previously removed in 2017, reentered without inspection in 2019 and has remained in the United States since that time. He is a civil immigration detainee who has been held in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Butler County Correctional Complex in Hamilton, Ohio, since May 13, 2026, when he appeared for a scheduled biometrics appointment. *See* Exhibit 1, ICE Detainee Locator.

2. Petitioner's counsel has twice submitted written requests to ICE Detroit Office seeking Petitioner's release from custody (*see* Exhibit 2, Emails to Detroit ERO Office), expressly invoking Petitioner's pending Petition for U Nonimmigrant Status (Form I-918), received by USCIS on July 9, 2026 (*see* Exhibit 4, Copy of the U Visa Petition), and the class certification and preliminary injunction entered in *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, ECF. No. 57 (C.D. Cal. May 20, 2026). *See* Exhibit 3, ICWC Order Excerpts (including cover pages, class definitions, and ordering provisions; the complete 97-page order is available on the public docket of the Central District of California, of which this Court may take judicial notice. Fed. R. Evid. 201(b)(2).). Respondents have neither granted those requests nor sought a prima facie determination from USCIS regarding the pending U visa petition before continuing Petitioner's detention.

3. Petitioner is a member of the "Pending Petition Class" preliminarily certified in *ICWC v. Noem* — all individuals with a pending U visa, T visa, or VAWA petition whom ICE detains or seeks to detain. See ICWC Order at 38, excerpted at Exhibit 3. To be clear at the outset: Petitioner does not ask this Court to police, enforce, or exercise contempt power over another court's injunction. Petitioner instead relies on the legal effect of that order: the ICWC court's nationwide stay under 5 U.S.C. § 705 suspended the operation of the 2025 Guidance and the Blind Removal Policy as to all class members, without geographic limitation. *Id.* at 94-96. A § 705 stay deprives the stayed agency action of legal force while it is in effect. Detention carried out pursuant to a policy that has been legally suspended is detention without valid legal authority — *ultra vires* — and whether Petitioner's current custody violates "the Constitution or laws … of the United States" is precisely the question this Court has independent jurisdiction to decide under 28 U.S.C. § 2241(c)(3).

4. To date, Respondents have not initiated removal proceedings under INA § 240, have not served Petitioner with a Notice to Appear, and, upon information and belief, have not served Petitioner with a Notice of Intent/Decision to Reinstate Prior Order (Form I-871). Nor have Respondents identified the statutory authority under which they contend Petitioner's continued detention is authorized.

5. Petitioner respectfully requests that this Court order Respondents to show cause why the writ should not issue, and, following review, order Petitioner's immediate release or, in the alternative, a new, constitutionally adequate bond hearing before an immigration judge, with express consideration of Petitioner's pending U-visa and the protections afforded by *ICWC v. Noem*. Petitioner also seeks an order requiring Respondents to request a prima

facie determination from USCIS regarding his pending U visa petition, and enjoining his removal pending that determination, consistent with 8 U.S.C. § 1227(d)(1).

CUSTODY

6. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Butler County Correctional Complex, located at 705 Hanover Street, Hamilton, OH 45011. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the INA, 8 U.S.C. § 1101 *et seq.*

8. 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.,* the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2).

9. Petitioner is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

10. Federal district courts retain habeas corpus jurisdiction under 28 U.S.C. § 2241 to hear noncitizens' challenges to the lawfulness and constitutionality of their physical detention. *See Zadvydas v. Davis,* 533 U.S. 678, 687 (2001) (confirming that 28 U.S.C. § 2241 "left

habeas untouched as the basic method for obtaining review of continued custody after a deportation order had become final").

11. The Suspension Clause of the United States Constitution, Article I, § 9, cl. 2, prohibits Congress from suspending the writ of habeas corpus except in cases of rebellion or invasion. Petitioner's right to seek habeas relief is constitutionally protected.

12. Nor is this action barred by 8 U.S.C. § 1226(e), which shields from review the Executive's "discretionary judgment" in individual custody determinations. Petitioner does not ask this Court to review, overrule, or second-guess any discretionary bond determination — no Immigration Judge has ever held any bond hearing or made any custody determination in Petitioner's immediate detention. Petitioner instead raises pure questions of law and constitutional challenges to the framework of his detention: whether any statute authorizes his custody at all, and whether the complete absence of an individualized hearing violates due process. The Supreme Court has squarely held that § 1226(e) does not bar such challenges. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (§ 1226(e) does not preclude habeas review of the statutory framework of detention or constitutional challenges to it); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (§ 1226(e) does not block review of "challenges [to] the statutory framework that permits [the noncitizen's] detention without bail").

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

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless 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.*

14. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and detained by Respondents.

VENUE

15. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Petitioner is detained at the Butler County Correctional Complex, 705 Hanover Street, Hamilton, Ohio, which is located in Butler County, OH. Butler County falls within the Cincinnati Division of the United States District Court for the Southern District of Ohio.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Administrative exhaustion is unnecessary as it would be futile. *See, e.g. Aguilar v. Lewis,* 50 F. Supp. 2d 539, 542-43 (E.D. Va. 1999) (excusing exhaustion as futile where pursuing an administrative appeal would not provide adequate or timely relief). The Immigration Judges and the Board of Immigration Appeals do not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

17. Petitioner has exhausted administrative remedies by—through counsel—emailing requests for release to the Detroit ERO Field Office overseeing the Butler County Correctional Complex. *See* Exhibit 2.

18. For these reasons, exhaustion of administrative remedies should be excused, and this Court should proceed directly to the merits of Petitioner's claims.

PARTIES

19. Petitioner is a citizen and national of Honduras who last entered the United States without inspection in 2019 and has resided in the United States since then. He is currently detained at the Butler County Correctional Complex, Hamilton, Ohio, within the custody of ICE, and is thus a proper petitioner under 28 U.S.C. § 2241. ICE has held him in custody since May 13, 2026.

20. Respondent Richard K Jones is the Warden of the Butler County Correctional Complex and Petitioner's immediate custodian, sued in his official capacity.

21. Respondent Robert Lynch is sued in his official capacity as the Director of the Detroit Field Office of Enforcement and Removal Operations ("ERO"), U.S. Immigration and Customs Enforcement. Butler County Correctional Complex is one of the detention facilities directly under supervision of the Detroit ERO Office. Respondent Lynch is a legal custodian of Petitioner and has authority to release Petitioner.

22. Respondent David J. Venturella is the Acting Director of ICE and is sued in his official capacity. He is a legal custodian of Petitioner because ICE has physical custody of Petitioner through a contract detention facility and is responsible for the enforcement decisions and policies challenged herein.

23. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security and is sued in his official capacity. He has ultimate legal authority over ICE and its enforcement and detention decisions.

24. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States.

25. Respondent Daren Margolin is sued in his official capacity as the Director of Executive Office for immigration Review.

LEGAL BACKGROUND AND ARGUMENT

I. The Statutory Framework Governing Civil Immigration Detention

26. Congress has authorized only two statutory bases for the civil immigration detention of a noncitizen in the interior enforcement context: pre-hearing detention under 8 U.S.C. § 1226, triggered by commencement of removal proceedings through a Notice to Appear, 8 U.S.C. § 1229(a)(1); and post-order detention under 8 U.S.C. § 1231, triggered by an administratively final order of removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 293-97 (2018) (describing this two-part statutory detention scheme). These authorities are exhaustive; there is no residual detention power for the period before either is triggered. Detention resting on neither is unauthorized by statute and offends the Due Process Clause, which protects "[f]reedom from imprisonment" at its core. *Zadvydas v. Davis*, 533 U.S. 678, 690, 699 (2001).

II. Section 1231 Authority Over a Previously Removed Noncitizen Attaches Only Upon a Completed Reinstatement Determination

27. For a noncitizen who reentered after a prior removal, § 1231 authority is not automatic upon reentry. It attaches only when the Secretary "finds" the statutory predicates and reinstates the prior order under 8 U.S.C. § 1231(a)(5) — an affirmative administrative act, not a legal consequence that follows from reentry by operation of law. *See Fernandez Vargas v. Gonzales,* 548 U.S. 30, 35 (2006); *Galindo-Romero v. Holder*, 640 F.3d 873, 879 (9th Cir. 2011) (reinstatement is not "automatic"; the government must "follow certain procedures to obtain a reinstated removal order"); *Villa-Anguiano v. Holder*, 727 F.3d 873, 878 (9th Cir. 2013).

28. Those procedures, set out at 8 C.F.R. § 241.8, require an immigration officer to (1) obtain the prior removal order, (2) verify the noncitizen's identity, and (3) confirm illegal reentry, 8 C.F.R. § 241.8(a); then to give the noncitizen written notice of the determination and an opportunity to make a statement contesting it, which the officer must consider, id. § 241.8(b) — a determination documented on Form I-871. The regulation ties detention itself, not merely removal, to this framework: "[e]xecution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part." *Id.* § 241.8(f) (emphasis added). Post-order detention authority, and the custody-review protections of Part 241 that accompany it, thus do not attach until the reinstatement determination is complete.

III. Habeas Corpus Places the Burden on the Custodian to Certify the True Cause of Detention

29. Where, as here, no Notice to Appear has issued and no completed reinstatement determination has been disclosed despite counsel's diligent efforts, the detained person is

not required to disprove every conceivable basis for custody before seeking habeas relief. The writ itself compels disclosure: the custodian must make a return "certifying the true cause of the detention." 28 U.S.C. § 2243. The burden of justifying civil confinement rests with the government, not the detainee. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (the writ's "vital purpose" is a meaningful mechanism for testing the legality of executive detention); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). A contrary rule would let the government insulate potentially unlawful detention from review simply by declining to state its basis.

IV. The Nationwide Classwide Stay in by *Immigration Center for Women and Children v. Noem* Independently Protects Petitioner

30. Separately, Petitioner is protected by an existing federal court order. In *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS ECF No. 57 (C.D. Cal. May 20, 2026), *see* ICWC Order at 38 excerpted at Exhibit 3, the court certified under Rule 23(b)(2) a "Pending Petition Class" — "[a]ll individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement,"— and, finding the plaintiffs likely to succeed on their APA and 8 U.S.C. § 1227(d)(1) claims, stayed under 5 U.S.C. § 705 both ICE's January 2025 enforcement guidance (Policy No. 11005.4) and the "Blind Removal Policy" of disregarding pending victim-based petitions without first seeking a prima facie determination from USCIS. *Id.* at 68-74, 84-86, 95-96. The stay expressly extends to class members "without a geographical limitation." *Id.* at 94.

31. Because the class was certified under Rule 23(b)(2), membership is mandatory and automatic — no opt-in is required. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011). The order binds Respondents here: it runs against the Secretary of Homeland Security and ICE in their official capacities — the same offices sued in this action, *see Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985); Fed. R. Civ. P. 25(d) — and against their officers, agents, and employees with actual notice, Fed. R. Civ. P. 65(d)(2). Any noncitizen satisfying the Pending Petition Class definition is therefore entitled to the stay's protection as a matter of existing court order, not merely persuasive authority. As set forth below, Petitioner satisfies that definition.

STATEMENT OF FACTS

32. Petitioner is a citizen and national of Honduras. He initially entered the United States without inspection in 2006 and resided in Ohio till July 2017.

33. In 2017, following a single arrest for driving under influence, ICE took Petitioner into custody and removed him to Honduras pursuant to the order of removal dated July 19, 2017.

34. On or about May 19, 2019, Petitioner re-entered the United States without inspection and never departed since that time.

35. Petitioner has a long-time partner, who is a United States citizen, and together they have a U.S. citizen daughter born in December 2025. The couple's daughter has a serious cardiac condition requiring medical attention and surgery.

36. On May 13, 2026, Petitioner appeared for a scheduled USCIS biometrics appointment for his I-765 Application for Employment Authorization. ICE took him into custody at the appointment. Currently Petitioner is detained at Butler County Correctional Complex in Hamilton, Ohio. *See* Exhibit 1, Detainee Locator

37. Respondents have not served Petitioner with a Notice to Appear, and Petitioner is not currently in removal proceedings before the Executive Office for Immigration Review.

38. Undersigned counsel has not been able to confirm whether Respondents have served or lodged a Form I-871 reinstating Petitioner's July 19, 2017 removal order under 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8. Counsel was retained by Petitioner's partner shortly after Petitioner's May 13, 2026 detention in the end of June 2026 and has not yet obtained Petitioner's complete immigration file. Counsel has requested the file from Respondents and, as of this filing, has received neither the file nor any statement of the legal basis for Petitioner's custody.

39. Through consultation, undersigned counsel noticed Petitioner's prima facie eligibility for U nonimmigrant status based upon circumstances happening to his U.S. Citizen partner, who is a victim of theft, fraud, extortion and blackmail. On July 9, 2026, USCIS received a Petition for U Nonimmigrant Status (Form I-918) filed on Petitioner's behalf. That petition remains pending. *See* Exhibit 4, Copy of the pending I-918 Petition.

40. Petitioner has, however, received a document entitled "Notice to Alien of File Custody Review," stating that his custody status will be reviewed on or about August 1, 2026. *See* Exhibit 5. That document reflects the post-order custody review ("POCR") process under 8 C.F.R. § 241.4 — a process applicable only to noncitizens detained under § 1231 post-

order authority, which in turn presupposes a completed reinstatement determination. *See* 8 C.F.R. § 241.8(f). Respondents are thus administering Petitioner's custody as though his 2017 removal order has been reinstated, yet they have never produced to Petitioner or his counsel the reinstatement determination that such custody presupposes.

41. On May 20, 2026, the U.S. District Court for the Central District of California preliminarily certified three nationwide classes in *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, ECF. No. 57 (C.D. Cal.), and granted in part Plaintiffs' motion for a preliminary injunction. As relevant here, the court certified a "Pending Petition Class," defined as "[a]ll individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement." *See* ICWC Order at 38, excerpted in Exhibit 3. The court also certified two other classes not relevant to the claims raised in this petition.

42. Petitioner is a member of the Pending Petition Class: he has a pending U visa petition (received by USCIS on July 9, 2026) and ICE currently detains him for civil immigration enforcement. This is the class membership on which this petition relies.

43. The ICWC court stayed, under 5 U.S.C. § 705, both the 2025 Guidance (the policy directing ICE to abandon its prior practice of refraining from enforcement against pending petitioners and seeking expedited USCIS adjudications) and the "Blind Removal Policy" (ICE's practice of denying or ignoring stay requests from U and T visa petitioners without first requesting a prima facie determination from USCIS), and held that the stays apply to the certified classes "without geographic limitation." *See* ICWC Order at 94-96, excepted in Exhibit 3. The practical effect is that ICE's prior 2011 Policy and 2021 Directive —

which generally required ICE to refrain from enforcement against pending petitioners absent exceptional circumstances and to seek expedited USCIS adjudications — are back in force.

44. Since Petitioner's May 13, 2026 detention, in July 2026, undersigned counsel has submitted two written requests to the ICE Detroit Field Office seeking Petitioner's release from custody. *See* Exhibit 2. Both requests expressly invoked Petitioner's pending U visa petition and the ICWC Order. *Id.* On information and belief, Respondents have not granted either request, have not formally denied either request with a reasoned basis, and have not requested or obtained a prima facie determination from USCIS regarding Petitioner's pending U visa petition.

45. Petitioner remains in ICE custody as of the filing of this petition, separated from his U.S. Citizen partner and infant daughter during a period in which his daughter requires cardiac surgery and ongoing medical care.

46. Petitioner has no criminal history other than the DUI record in 2017. Petitioner presents no danger to the community, and the record — including Petitioner's longstanding residence in the United States, his U.S. citizen partner and infant daughter, and his pending applications for humanitarian relief — establishes strong ties rebutting any presumption of flight risk.

47. Respondents Mullin and Venturella are the same institutional Defendants, in the same official capacities, subject to the ICWC Order, and they and their officers and agents — including those responsible for Petitioner's custody — remain bound by it. Fed. R. Civ. P. 65(d)(2). On information and belief, Respondents' continued detention of Petitioner

without honoring his requests for release or requesting a prima facie determination from USCIS violates the ICWC Order as applied to him.

CLAIMS FOR RELIEF

COUNT I

Respondents Have Not Disclosed the Legal Basis for Petitioner's Detention — Fifth Amendment Due Process; Ultra Vires Agency Action

48. Petitioner re-alleges and incorporates by reference each of the foregoing paragraphs.

49. Petitioner is detained under neither of the two statutory authorities Congress has provided. He has not been served with a Notice to Appear, so § 1226 does not apply on its face. And Respondents have never produced a completed reinstatement determination — the administrative act that alone triggers § 1231 authority over a previously removed noncitizen. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8; *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 n.4 (2006). Respondents have detained Petitioner for approximately two months without identifying, to Petitioner or his counsel, any charging document or statutory predicate for his custody.

50. Respondents' own conduct confirms the problem. The "Notice to Alien of File Custody Review" scheduling a custody review for on or about August 1, 2026 shows that Respondents are administering Petitioner's custody under the post-order review procedures of 8 C.F.R. § 241.4 — procedures that apply only to § 1231 detainees and that presuppose a completed reinstatement determination. *See* 8 C.F.R. § 241.8(f). Either that determination exists and Respondents must produce it, together with proof that Petitioner received the written notice and opportunity to contest required by § 241.8(b), or it does not exist and Respondents are applying post-order custody procedures to a person with no final,

executable order — detention that is ultra vires and unauthorized by any statute. Either way, the writ requires Respondents to "certify[] the true cause of the detention," 28 U.S.C. § 2243, and the burden of justifying civil confinement rests with them, not with Petitioner. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

51. Detention without disclosed legal process violates the Due Process Clause of the Fifth Amendment, which requires the government to identify a valid legal basis before depriving a person of physical liberty. *Zadvydas*, 533 U.S. at 690; *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

52. Nor can Respondents defend Petitioner's detention by asserting that his removal is imminent and his custody therefore brief. To the extent Respondents claim valid § 1231 authority and imminent removal, that removal is legally barred: the nationwide § 705 stay in *ICWC* suspends the policies under which Respondents would disregard Petitioner's pending U visa petition, and 8 U.S.C. § 1227(d)(1) makes a USCIS prima facie determination — which Respondents have never requested — a nondiscretionary prerequisite to any decision on protection from removal. Because these legal impediments prevent Respondents from lawfully executing any removal, Petitioner's removal is not "significantly likely in the reasonably foreseeable future," and continued § 1231 detention loses its justification. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001) (detention is authorized only for the period reasonably necessary to accomplish removal). Respondents cannot have it both ways: either removal is legally blocked (and *Zadvydas* requires release or supervision), or no valid § 1231 authority exists at all (and Petitioner's detention is *ultra vires* as set forth above). On either horn, his continued detention is unlawful.

53. Petitioner is entitled to immediate release. In the alternative, he is entitled to disclosure of the basis for his detention and an individualized bond hearing at which the government bears the burden of justifying continued custody.

COUNT II

Violation of the ICWC v. Noem Class-Wide Preliminary Injunction—Petitioner's Membership in the Certified Pending Petition Class

54. Petitioner re-alleges and incorporates by reference each of the foregoing paragraphs

55. Petitioner is a member of the Pending Petition Class certified in *ICWC v. Noem*. Because the class was certified under Rule 23(b)(2), his membership is automatic, and he is entitled to the benefit of the classwide § 705 stay — which extends nationwide, without geographic limitation — as a matter of existing court order. *See* ICWC Order at 94-96, excerpted in Exhibit 3; *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011). That order binds Respondents: it runs against the Secretary of Homeland Security and ICE in the same official capacities in which they are sued here, *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985); Fed. R. Civ. P. 25(d), and against their officers, agents, and employees with actual notice, Fed. R. Civ. P. 65(d)(2).

56. Petitioner does not ask this Court to enforce the *ICWC* court's order through contempt or supervisory power — the objection that might attend a request to police another court's injunction has no application here. Petitioner instead relies on that order's legal effect: a § 705 stay suspends the legal force of the stayed agency action while it remains in effect; agency action that has been stayed cannot supply legal authority for anything. To the extent Respondents' detention of Petitioner rests on the enforcement posture of the 2025 Guidance — detaining a pending U visa petitioner without regard to his petition and

without seeking a prima facie determination from USCIS — it rests on a policy with no current legal existence. Detention pursuant to legally suspended authority is *ultra vires* and unlawful, and that question lies within this Court's independent habeas jurisdiction under 28 U.S.C. § 2241(c)(3), no different from any other habeas claim that the legal predicate for detention is absent. The restored 2011 Policy and 2021 Directive, which the § 705 stay revived by suspending their rescission, *see* ICWC Order at 95 excerpted in Exhibit 3, required ICE to refrain from enforcement against pending petitioners absent exceptional circumstances; Respondents have identified no such circumstances here. Petitioner is entitled to release or, at minimum, an order that Respondents may not continue detaining him in reliance on the stayed policies and must apply the restored prior policies, including by requesting a prima facie determination from USCIS. In the alternative, because Respondents were not individually named in ICWC, Petitioner brings the independent claims below.

COUNT III

Violation of 8 U.S.C. § 1227(d)(1) and the Administrative Procedure Act — the "Blind Removal Policy"

57. Petitioner re-alleges and incorporates by reference each of the foregoing paragraphs.

58. Under 8 U.S.C. § 1227(d)(1), a USCIS prima facie determination on a pending U visa petition is a nondiscretionary prerequisite to any decision on protection from removal; only the ultimate grant of a stay is discretionary. *See* ICWC Order at 85-86, excerpted in Exhibit 3, (citing *Jimenez v. Dep't of Homeland Sec.*, 2022 WL 19410308, at *3 (C.D. Cal. Nov. 14, 2022)). The ICWC court found ICE's contrary practice — disregarding

pending petitions without first requesting a prima facie determination — likely unlawful under § 1227(d)(1) and the APA, 5 U.S.C. § 706(2)(A), (C). *Id.* at 84-86.

59. Counsel twice requested Petitioner's release, invoking his pending U visa petition and the ICWC Order; whether or not those requests could also have been captioned as formal stay requests under 8 C.F.R. § 241.6(a), they put Respondents on notice of the same facts. On information and belief, Respondents have neither requested nor obtained a prima facie determination from USCIS — and they have less justification for that failure than in ICWC itself, since no final removal order is being executed against Petitioner. Respondents' continued detention of Petitioner, and any effort to remove him, without first obtaining a prima facie determination violates § 1227(d)(1) and the APA. Petitioner is entitled to an order directing Respondents to request that determination and enjoining his removal, and continued detention without a bond hearing, pending it.

COUNT IV

Fifth Amendment Due Process Violation— Continued Detention Without Adequate Bond Process

60. Petitioner re-alleges and incorporates by reference each of the foregoing paragraphs.

61. Even if some statutory detention authority applies, continued civil detention without an individualized hearing before a neutral decisionmaker violates due process where detention has continued for a significant period without any assessment of flight risk or danger. *See Zadvydas*, 533 U.S. at 690-91 (civil detention requires a special justification outweighing the individual's liberty interest). The balance of interests here is one-sided: Petitioner has resided in southern Ohio for extended period of time. He has a U.S. citizen partner and infant daughter who requires cardiac surgery, and has no criminal history

apart from a single 2017 DUI; Respondents have detained him for two months without a Notice to Appear, without disclosing any reinstatement determination, and without acting on two requests for release grounded in a pending U visa petition — while the government's interest in detention without any hearing is minimal, given the administrative review mechanisms it already maintains.

62. On this record, Petitioner's continued detention is not reasonably related to any legitimate governmental purpose and violates the Due Process Clause of the Fifth Amendment.

63. Should this Court decline to order Petitioner's immediate release, Petitioner requests, in the alternative, an expedited bond hearing before an Immigration Judge at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community, with consideration of his ability to pay, alternatives to detention, his pending U visa petition, and the ICWC Order. This request does not ask the Court to review or overrule any Immigration Judge's discretionary bond determination — none exists, because Petitioner has never received any bond hearing or individualized custody determination of any kind with regards to his detention. Ordering a first hearing where the government has provided none is a classic habeas remedy for the constitutional violation alleged in this Count, not review of agency discretion, and § 1226(e) poses no bar. *See Demore*, 538 U.S. at 516-17; *Jennings*, 583 U.S. at 295.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order Respondents to show cause, within a time set by the Court, why the writ should not issue, and to disclose in their return the specific statutory and factual basis for Petitioner's detention, including whether and when any reinstatement determination under 8 U.S.C. § 1231(a)(5) was completed and served, with supporting documentation;

(3) Declare that Petitioner's continued detention absent a disclosed, valid statutory or regulatory predicate violates 8 U.S.C. §§ 1226 and 1231, and the Due Process Clause of the Fifth Amendment;

(4) Declare that Petitioner is a member of the Pending Petition Class certified in *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, ECF No. 57 (C.D. Cal. May 20, 2026), and that his continued detention pursuant to the policies stayed in that action is without legal authority

(5) Order Petitioner's immediate release from custody, with or without appropriate conditions of supervision;

(6) In the alternative, order Respondents to provide Petitioner an expedited and constitutionally adequate bond hearing before an Immigration Judge within a specified, expedited time period, at which the immigration judge must consider Petitioner's pending U-visa application and the *ICWC v. Noem* injunction;

(7) Enjoin Respondents from removing Petitioner from the United States, and from continuing his detention without a bond hearing, pending USCIS's prima facie determination and this Court's resolution of this petition;

(8) Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(9) Grant such other and further relief as this Court deems just and proper.

Dated July 16, 2026

Respectfully submitted,

/s /Margaret W. Wong
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Attorney for the Petitioner

VERIFICATION

I represent the Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this Sixteenth day of July, 2026

Respectfully submitted,

/s /Margaret W. Wong
Margaret W. Wong, Esq.
Margaret W. Wong & Associates LLC
3150 Chester Ave.
Cleveland, Ohio 44114
(216) 566-9908
(216) 566-1125 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2026, a true and correct copy of the foregoing Writ of Habeas Corpus Petition was served via the Court's CM/ECF system, as required by 28 U.S.C. § 2243 and the Federal Rules of Civil Procedure.

Respectfully submitted,

/s /Margaret W. Wong
Margaret W. Wong, Esq.
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Attorney for the Petitioner