THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Juventino AJANEL SICA, Petitioner, v. Jerry Greene, *in his official capacity* as Sheriff of Mahoning County, Ohio and as Warden/Administrator of Mahoning County Jail; 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 Respondents.	C/A No. 4:26-cv-1803 **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, Juventino AJANEL SICA, 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 Guatemala residing in Salem, Ohio. He last entered the United States in 2008 without inspection and has remained in the United States since that time, with his wife and U.S. citizen children. He is a civil immigration detainee who has been held in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Mahoning County Jail in Youngstown, Ohio, since June 27, 2026. *See* Exhibit 1, Inmate Search.

2. Petitioner is in removal proceedings before the Cleveland Immigration Court, where his application for cancellation of removal for certain nonpermanent residents under INA § 240A(b), 8 U.S.C. § 1229b(b), remains pending; his individual merits hearing is scheduled for August 20, 2026. Separately, on January 3, 2023, a Petition for U Nonimmigrant Status (Form I-918) was filed with USCIS on Petitioner's behalf, based on his having been the victim of an aggravated robbery on June 22, 2020. On March 14, 2025, USCIS issued a Bona Fide Determination on that petition — an affirmative agency adjudication that the petition is bona fide, made only after USCIS confirms a properly filed petition, a law enforcement certification, and completed biometrics and background checks. The petition remains pending. *See* Exhibits 2 (I-918 Petition Receipt Notice) and 3 (Bona Fide Determination Notice). In the same notice, USCIS further determined that "the evidence demonstrates [Petitioner's] petition for U nonimmigrant status is bona fide,

and [he] warrant[s] a favorable exercise of discretion to receive employment authorization and deferred action." Exhibit 3.

3. Petitioner is a member of the "Pending Petition Class" preliminarily certified in *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) ("ICWC Order") — all individuals with a pending U visa, T visa, or VAWA petition whom ICE detains or seeks to detain. *See* Exhibit 4 at 38. Exhibit 4, 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).). 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. *See* Exhibit 4 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. ICE took Petitioner into custody following his June 27, 2026 arrest on charges of operating a vehicle under the influence ("OVI") and obstruction. Those charges remain pending, contested, and unadjudicated: Petitioner was not the operator of the vehicle at issue, and criminal defense counsel anticipates that on or before the next hearing,

scheduled for August 3, 2026, the charges will either be dismissed or resolved by amendment to a single count of disorderly conduct, a fourth-degree misdemeanor under Ohio Rev. Code § 2917.11. Petitioner has not been convicted of any offense arising from that arrest and is presumed innocent. Respondents nevertheless continue to detain him — notwithstanding USCIS's existing determinations that his U visa petition is bona fide and that he warrants a favorable exercise of discretion to receive employment authorization and deferred action, and during the very weeks in which he must prepare for the individual hearing at which an Immigration Judge will adjudicate his application for cancellation of removal — in the enforcement posture of policies whose operation has been legally suspended, and without applying the restored policies that required ICE to refrain from enforcement against pending petitioners absent exceptional circumstances.

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 prompt, constitutionally adequate bond hearing before an immigration judge, with express consideration of Petitioner's pending, adjudicated-bona-fide U visa petition and the legal effect of the *ICWC* § 705 stay. Petitioner also seeks an order declaring that Respondents may not continue his detention in reliance on the stayed policies, and enjoining his removal pending resolution of this petition.

CUSTODY

6. Petitioner is currently in custody of U.S. Immigration and Customs Enforcement ("ICE") at the Mahoning County Jail, located at 110 Fifth Avenue, Youngstown, OH 44503. 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 held any bond hearing or made any individualized custody determination with respect to Petitioner's current detention. Petitioner instead raises pure questions of law and constitutional challenges to the framework of his detention: whether his custody rests on legally operative authority 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 Mahoning County Jail, 110 Fifth Avenue, Youngstown, Ohio, which is located in Mahoning County, OH. Mahoning County falls within the jurisdiction of United States District Court for the Northern 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. Undersigned counsel has submitted written requests to the ICE Detroit Field Office seeking Petitioner's release from custody, expressly invoking Petitioner's pending U visa petition, USCIS's Bona Fide Determination and favorable exercise of discretion determination, and the *ICWC* Order. *See* Exhibit 5, Email to ICE. Respondents have neither granted those requests nor provided any reasoned response.

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 Guatemala who last entered the United States without inspection in 2008 and has resided in the United States since then. He is currently detained at the Mahoning County Jail, Youngstown, 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 June 27, 2026.

20. Respondent Jerry Greene is the Sheriff of Mahoning County, Ohio, and the warden/administrator of the Mahoning County Jail, and is 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.

LEGAL BACKGROUND AND ARGUMENT

I. The Statutory Framework Governing Civil Immigration Detention Under 8 U.S.C. § 1226(a)

25. 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*, 583 U.S. at 288–90 (describing this two-part statutory detention scheme). Petitioner is in ongoing removal proceedings under INA § 240 with no final order of removal; his detention is therefore governed by § 1226(a), which confers discretionary — not mandatory — authority: the Secretary "may" detain a noncitizen pending a decision on removability, and "may release" him on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2).

26. Section 1226(a) confers discretionary — not mandatory — detention authority: the Secretary "may" detain a noncitizen pending a decision on removability, and "may release" him on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). Petitioner is not subject to mandatory detention under § 1226(c): he has no conviction for any offense enumerated in that provision, and the sole charge underlying his June 27, 2026 arrest remains pending, contested, and unadjudicated. Because "[f]reedom from imprisonment . . . lies at the heart of the liberty" the Due Process Clause protects, any exercise of § 1226(a) authority must rest on an individualized determination that detention serves its only permissible purposes — ensuring appearance at proceedings and protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

27. Petitioner is not subject to mandatory detention under § 1226(c), and no pending or anticipated disposition of his criminal case could make him so. The crime-based grounds § 1226(c) incorporates — including the inadmissibility ground for crimes involving moral turpitude, 8 U.S.C. § 1182(a)(2)(A)(i)(I) — require a conviction or a qualifying admission of the essential elements of the offense. Petitioner has neither: the charges arising from his June 27, 2026 arrest remain pending, contested, and unadjudicated, and Petitioner denies the underlying conduct. Nor would the resolution criminal defense counsel anticipates alter the analysis. Disorderly conduct under Ohio Rev. Code § 2917.11— which reaches unreasonable noise, offensively coarse utterances, and physically offensive conditions — involves no fraud, deception, or depraved conduct and is not a crime involving moral turpitude. And as a fourth-degree misdemeanor carrying a maximum penalty of thirty days, Ohio Rev. Code § 2929.24(A)(4), any such conviction would fall squarely within the petty offense exception, 8 U.S.C. § 1182(a)(2)(A)(ii)(II), which independently negates the inadmissibility ground — and with it, mandatory detention — for a single offense with a maximum penalty of one year or less and any sentence of six months or less. Petitioner's only prior record consists of misdemeanor OVI offenses, which are not crimes involving moral turpitude. On every plausible outcome of the criminal case, Petitioner's detention remains discretionary under § 1226(a).

28. Because "[f]reedom from imprisonment . . . lies at the heart of the liberty" the Due Process Clause protects, any exercise of § 1226(a) authority must rest on an individualized determination that detention serves its only permissible purposes —

ensuring appearance at proceedings and protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

II. The Legal Effect of the § 705 Stay in *Immigration Center for Women and Children v. Noem*

29. In *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal. May 20, 2026) (*see* Exhibit 4), 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," *see* Exhibit 4 at 38 — 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, and, by suspending the rescission of ICE's prior 2011 Policy and 2021 Directive, restored those policies — which required ICE to refrain from enforcement against pending petitioners absent exceptional circumstances and to seek expedited USCIS adjudications — to operative effect. *Id.* at 95.

30. 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). But the significance of the § 705 stay for this petition does not depend on any request that this Court enforce another court's order. 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. Detention carried out in the enforcement posture of a legally suspended policy is detention without operative legal authority, and whether Petitioner's custody violates "the Constitution or laws . . . of the United States," 28 U.S.C. § 2241(c)(3), is a question within this Court's independent habeas jurisdiction.

III. The Government Bears the Burden of Justifying Civil Confinement

31. The writ compels the custodian to 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).

STATEMENT OF FACTS

32. Petitioner is a citizen and national of Guatemala, born in 1980. He last entered the United States without inspection in 2008 and has resided continuously in Salem, Ohio, for approximately eighteen years.

33. Petitioner lives with his wife and their four U.S. citizen children, aged 17, 14, 12 and 9. Petitioner is the primary financial provider for his family.

34. On June 22, 2020, Petitioner became a victim of an aggravated robbery. On January 3, 2023, based on his victimization, a Petition for U Nonimmigrant Status (Form I-918) was

filed with USCIS on Petitioner's behalf through his prior counsel and remains pending, supported by a law enforcement certification. *See* Exhibit 2.

35. On March 14, 2025, USCIS issued a Bona Fide Determination on Petitioner's I-918 petition. *See* Exhibit 3. A Bona Fide Determination is an affirmative adjudication by USCIS — issued only after the agency confirms that the petition was properly filed with a law enforcement certification and personal statement, and that biometrics and background checks are complete — that the petition is bona fide. Petitioner's petition has thus been pending for more than three and a half years, and for more than a year the government's own records have reflected USCIS's determination that it is bona fide. The petition remains pending, awaiting final adjudication under the statutory cap.

36. In the same March 14, 2025 notice, USCIS further determined: "the evidence demonstrates your petition for U nonimmigrant status is bona fide, and you warrant a favorable exercise of discretion to receive employment authorization and deferred action." Exhibit 3. The notice also confirmed that Petitioner's previously filed Form I-765, Application for Employment Authorization, would be adjudicated under 8 C.F.R. § 274a.12(c)(14) — the employment authorization category available to noncitizens placed in deferred action — with separate correspondence to follow. *Id.* Thus, as of March 14, 2025, the government's own adjudication reflected not only that Petitioner's victim-based petition is bona fide, but that Petitioner himself — upon a discretionary review that encompasses criminal history and all adverse factors — merits protection from enforcement in the form of employment authorization and deferred action.

37. Petitioner is in removal proceedings before the Cleveland Immigration Court. His application for cancellation of removal for certain nonpermanent residents under INA INA § 240A(b), 8 U.S.C. § 1229b(b), is pending, and his individual merits hearing is scheduled for August 20, 2026. Petitioner has appeared for his immigration court hearings and intends to appear and pursue his applications for relief.

38. On or about June 27, 2026, Petitioner was arrested and charged with operating a vehicle under the influence and obstruction. Those charges remain pending and are being actively litigated; the next hearing in the criminal matter is scheduled for August 3, 2026. Petitioner was not the operator of the vehicle at issue, and criminal defense counsel anticipates that on or before that hearing the charges will either be dismissed or resolved by amendment to a single count of disorderly conduct, a fourth-degree misdemeanor under Ohio Rev. Code § 2917.11. Petitioner has not been convicted of any offense arising from the June 27, 2026 arrest and is presumed innocent.

39. Following the June 27, 2026 arrest, ICE took Petitioner into custody, and he has since been detained at the Mahoning County Jail in Youngstown, Ohio. *See* Exhibit 1. No Immigration Judge has held a bond hearing or made any individualized custody determination with respect to Petitioner's current detention.

40. Petitioner's only prior criminal history consists of three misdemeanor OVI convictions, on April 4, 2000, April 9, 2010, and March 7, 2018. His most recent conviction is more than eight years old, none involved injury to any person, and Petitioner has no other criminal record.

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.), *see* Exhibit 4, 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* Exhibit 4 at 38. 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: his U visa petition has been pending since January 3, 2023 — more than three years before ICE detained him and before the 2025 Guidance existed — and ICE currently detains him for civil immigration enforcement. Membership is automatic; no additional step is required.

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* Exhibit 4 at 94–96. By suspending the rescission of ICE's prior 2011 Policy and 2021 Directive, the stay restored those policies to operative effect: ICE must refrain from enforcement against pending petitioners absent exceptional circumstances and seek expedited USCIS adjudications.

44. Undersigned counsel has submitted written requests to the ICE Detroit Field Office seeking Petitioner's release from custody, expressly invoking Petitioner's pending U visa petition, USCIS's Bona Fide Determination and favorable exercise of discretion determination, and the *ICWC* Order. *See* Exhibit 5. On information and belief, Respondents have not granted those requests, have not identified any exceptional circumstances justifying enforcement against Petitioner under the restored policies, and have not provided any reasoned response.

45. Petitioner remains in ICE custody as of the filing of this petition, separated from his wife and four United States citizen children, and detained during the critical weeks in which he must prepare, with counsel, for both his August 3, 2026 criminal hearing and his August 20, 2026 individual merits hearing before the Cleveland Immigration Court. His continued detention also jeopardizes the business through which he employs approximately ten workers and supports his family.

46. Petitioner presents no danger to the community, and the record — including Petitioner's approximately eighteen years of continuous residence in Ohio, his four United States citizen children, his substantial business and community ties, his tax compliance, his history of appearing for immigration court hearings, and his pending applications for humanitarian and other relief — establishes strong ties rebutting any claim of flight risk.

47. Respondents Mullin and Venturella are the same institutional Defendants, in the same official capacities, subject to the *ICWC* Order, *see Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985); Fed. R. Civ. P. 25(d), and they and their officers, agents, and employees with actual notice — including those responsible for Petitioner's custody — remain

bound by it. Fed. R. Civ. P. 65(d)(2). On information and belief, Respondents continue to detain Petitioner in the enforcement posture of the stayed 2025 Guidance, without applying the restored 2011 Policy and 2021 Directive to him.

CLAIMS FOR RELIEF

COUNT I

Detention Without Operative Legal Authority — Custody in Violation of 28 U.S.C. § 2241(c)(3) and the Fifth Amendment, in Light of the § 705 Stay in ICWC v. Noem

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

49. Petitioner is a member of the Pending Petition Class certified in *ICWC v. Noem*; the class membership certified under Rule 23(b)(2) is automatic, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361–62 (2011). The § 705 stay entered in that action suspends the operation of the 2025 Guidance and the Blind Removal Policy as to class members nationwide. *See* Exhibit 4 at 38, 94–96.

50. A policy stayed under 5 U.S.C. § 705 has no legal force while the stay is in effect and cannot authorize detention. Petitioner does not ask this Court to enforce another court's order; he relies on its legal effect. Because Respondents detain Petitioner in the enforcement posture of the stayed 2025 Guidance — rather than under the restored 2011 Policy and 2021 Directive, which require ICE to refrain from enforcement against pending petitioners absent exceptional circumstances that Respondents have not identified and that do not exist — his custody is without operative legal authority, in

violation of 28 U.S.C. § 2241(c)(3) and the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

51. 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 to him. In the alternative, because Respondents were not individually named in *ICWC*, Petitioner brings the independent claims below.

COUNT II

Violation of 8 U.S.C. § 1227(d)(1) and the Administrative Procedure Act — Detention and Threatened Removal in Disregard of USCIS's Bona Fide Determination

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

53. 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, and the *ICWC* court found ICE's practice of disregarding pending petitions without seeking one likely unlawful under § 1227(d)(1) and the APA. *See* Exhibit 4 at 84–86. Here, USCIS has already determined that Petitioner's petition is bona fide and that he warrants a favorable exercise of discretion. Respondents' continued detention of Petitioner, and any effort to remove him, in disregard of those determinations is arbitrary, capricious, not in accordance with law, and in excess of statutory authority. 5 U.S.C. § 706(2)(A), (C). Petitioner is entitled to an order enjoining his removal pending resolution of this petition and, to the extent Respondents contend a separate prima facie determination is required, directing them to request it forthwith.

COUNT III

Fifth Amendment Due Process Violation — Continued Detention Without Any Individualized Custody Determination

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

55. Petitioner has been detained since June 27, 2026 without any bond hearing or individualized determination that he presents a flight risk or a danger to the community. Due process permits civil detention only when it bears a reasonable relation to those purposes and rests on a special justification outweighing the individual's liberty interest. *Zadvydas*, 533 U.S. at 690–91. No such justification exists here: Petitioner has resided in Ohio for approximately eighteen years; has a wife and four United States citizen children; owns a business employing approximately ten workers and pays his taxes; and faces an individual merits hearing on his application for cancellation of removal on August 20, 2026 — the strongest possible incentive to appear.

56. The charges underlying Petitioner's arrest remain pending, contested, and unadjudicated, and are expected to be dismissed or resolved as a single fourth-degree-misdemeanor count of disorderly conduct. A pending, unproven charge is not a conviction and cannot alone supply the required special justification; nor can Petitioner's dated misdemeanor record, the most recent conviction being more than eight years old. His continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment.

57. In the alternative, Petitioner requests an expedited bond hearing before an Immigration Judge, in advance of his August 20, 2026 individual hearing, at which the government

bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community, with consideration of his ability to pay and alternatives to detention. Because no bond determination exists to review, ordering a first hearing is a classic habeas remedy — 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, policy, and factual basis for Petitioner's continued detention;

3) 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, 2026 WL 1455004 (C.D. Cal. May 20, 2026), and that his continued detention pursuant to the policies stayed in that action is without operative legal authority;

4) Declare that Petitioner's continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment;

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, in advance of

his August 20, 2026 individual hearing, at which the government bears the burden of proof by clear and convincing evidence and at which the Immigration Judge must consider Petitioner's pending U visa petition, USCIS's Bona Fide Determination and favorable exercise of discretion determination, and the legal effect of the *ICWC v. Noem* § 705 stay;

7) Order that Respondents may not continue Petitioner's detention in reliance on the stayed 2025 Guidance or Blind Removal Policy and must apply the restored 2011 Policy and 2021 Directive to him, including, to the extent Respondents contend one is required notwithstanding USCIS's existing Bona Fide Determination, by requesting a prima facie determination from USCIS forthwith;

8) Enjoin Respondents from removing Petitioner from the United States pending this Court's resolution of this petition;

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

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

Dated July 31, 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 31st day of July, 2026

Respectfully submitted,

/s /Margaret W. Wong
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st 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
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