UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

JOSE MADRID LEIVA Petitioner, v. JACOB WELSH, as Chase County, KS Sheriff and Warden of Chase County Jail; ERIK TESCHNER Assistant Director, of Kanas City Field Office, Immigration and Custom's Enforcement, and, KRISTI NOEM Secretary of Homeland Security; Respondents,	) Case No: 25-cv-3075-TC) **VERIFIED FIRST AMENDED[1] PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioner, Jose Madrid Leiva, through his undersigned counsel, alleges as follows:

I. INTRODUCTION

1. Dating back to English common law, the writ of habeas corpus has provided a right to judicial review of the legality of restraints on one's liberty and has been understood to be available to both citizens and foreigners within the United States. *See INS v. St. Cyr*, 533 U.S. 289, 300-302 (2001). The common law experience was adopted by the Framers, who understood that the writ served as "the great bulwark of personal liberty; since it is the appropriate remedy to ascertain whether any person is rightfully in confinement or not ... ." *Story, Commentaries on the Constitution of the United States* § 1333 (1833). Accordingly, The Supreme Court has said that the Suspension Clause protects, at minimum, the writ as it existed in 1789. *St. Cyr*, 533

[1] Consistent with Fed. R. 15(a)(2), Respondents have consented to Petitioner's amendment of this petition (Doc. 15).

U.S. at 301.

2. Congress's plenary authority over noncitizens remains subject to the limitations of the Constitution. *E.g., INS v. Chadha*, 462 U.S. 919, 940-941 (1983). Those limitations include the Suspension Clause, which restricts the powers of the political branches and preserves the role of the judiciary in protecting the separation of powers. *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). Moreover, the Supreme Court has long held that noncitizens subject to removal orders were "doubtless entitled" to petition for habeas corpus "to ascertain whether [their] restraint [was] lawful." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892). A noncitizen who entered and remains in the country is entitled to invoke the protections of the Suspension Clause. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention." *St. Cyr*, 533 U.S. at 301 (emphasis added). Consistent with that central purpose, the writ has long allowed individuals to challenge their detention "based on errors of law," including "constitutional error" and "the erroneous application or interpretation of statutes." *Id.* at 302-303.

3. Petitioner is in custody despite having done everything that was required of him and despite having a valid bona fide determination ("BFD") of his U visa application made by immigration officials; a determination that grants him some concrete benefits under the plain language of the law. Petitioner filed his applications, he paid his fees, he disclosed any derogatory information, and he waited for United States Citizenship and Immigration Services ("USCIS") to make a decision on his case. After they favorably granted him deferred action-by way of his BFD grant, Petitioner applied for a work authorization document ("EAD") pursuant to USCIS's instructions for applicants with deferred action. (See attached Exhibit A; BFD determination, I-765

filing).

4. Despite being a part of the same agency as USCIS, namely the Department of Homeland Security ("DHS"), Immigration and Custom's Enforcement ("ICE") now wishes to ignore USCIS's determination, ignore the statute, ignore the regulations, and ignore Congressional mandates to hold in custody someone who is not subject to being detained at all-let alone subject to removal. Such actions are unlawful and unconstitutional. (*See* attached Exhibit B; Email from ICE)

5. This action seeks habeas, declaratory, and injunctive[2] relief to find that Respondents' actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. ICE has acted impermissibly and unlawfully when they arrested and detained Petitioner contrary to his validly issued BFD deferred action grant based on an erroneous interpretation of the law. Petitioner is not removable from the United States and Respondents' detention of him is in violation of law.

6. The plain language of the regulations, and even USCIS's own website make clear that the holder of a BFD is entitled to certain protections, including protections from removal and work authorization consistent with their deferred status. *See* 8 C.F.R. 214.14(e); 8 C.F.R. 274a.12(c)(14) ("Except as provided for in paragraph (c)(33) of this section, *an alien who has been granted deferred action*, an act of administrative convenience to the government that gives some cases lower priority, if the alien establishes an economic necessity for employment.") (emphasis added).

[2] Subsequent to Petition filing his Petition for Habeas Corpus (Doc. 1) and the Court issuing an Order to Show Cause (Doc. 2), Respondents agreed to not remove Petitioner from the jurisdiction of the Court until a final determination has been made in the matters contained in this Petition. Petitioner remains detained at the Chase County Jail in Cottonwood Falls, Kansas.

7. USCIS also makes clear what benefit a BFD conveys:

https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4

8. Petitioner, by virtue of the BFD, is a recipient of deferred action protections. Respondent's failure to recognize this grant and instead unlawfully detain him is contrary to law. Petitioner seeks habeas relief to prevent harm that flows from his unlawful detention.

II. JURISDICTION

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

10. This Court has subject matter jurisdiction over this petition under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U. S. C. § 2241 et seq. (declaratory action) and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

11. Petitioner seeks relief under the Administrative Procedure Act (APA) which provides a cause of action and judicial review for "a person . . . adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Under the APA, district courts "shall decide all

Overview of U Nonimmigrant Adjudication Processes

Adjudication	USCIS Process	Benefits
BFD (Interim Benefit)	• Does not make a final determination of eligibility. • Determines whether a pending petition is bona fide by meeting initial filing requirements and whether background checks are completed. • Determines whether background checks indicate a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. • Initiates waiting list adjudication for principal petitioners who do not receive a Bona Fide Determination Employment Authorization Document (BFD EAD). • Places BFD EAD recipients in line with U waiting list petitioners for U nonimmigrant status adjudication in receipt date order	• Principal petitioners and qualifying family members living in the United States receive a BFD EAD and deferred action valid for 4 years.

relevant questions of law [and] interpret constitutional and statutory provisions." *Id.* § 706. The APA requires courts to hold unlawful and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "fails to observe procedure required by law." 5 U.S.C. § 706(2)(A), (D). The APA also directs courts to "compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

12. 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 APA Act, 5 U.S.C. § 701, *et seq*, and the All Writs Act, 28 U.S.C. § 1651.

13. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA § 242. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242 does not bar a claim challenging agency authority that does not implicate discretion). Generally, a narrower construction of jurisdiction-stripping provision is favored over the broader one, as reflected by the "familiar principle of statutory construction: the presumption favoring judicial review of administrative action." *Kucana v. Holder*, 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent "clear and convincing evidence" of congressional intent specifically to eliminate review of certain administrative actions, the above-cited principles of statutory construction support a narrow reading of the jurisdiction-stripping language of 8 U.S.C. § 1252(a)(2)(B)(ii). *Id.*, at 251-252. *See also, Geneme v. Holder*, 935 F.Supp.2d 184, 192 (D.D.C. 2013) (discussing *Kucana's* citation to a presumption favoring judicial review of administrative action when the statute does not specify discretion.)

14. Petitioner does not seek review of a removal order. Under 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), "a petition for review filed with an appropriate court of appeals, in

accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act[.]" Indeed Petitioner has timely filed his Petition for Review with the Court of Appeals for the Eighth Circuit challenging whether or not the actual removal order issued against him is firm and proper. (Case No. 25-2023 8th Cir.). The challenge to the removal order, itself, is distinct and independent to the unlawful detention here. Petitioner here challenges only the lawfulness of his detention under the APA and Due Process Clause, which are claims independent of a prior removal order and fall outside the jurisdiction-channeling provision of 8 U.S.C. § 1252(a)(5). *C.f. Skurtu v. Mukasey*, 552 F.3d 651, 656 (8th Cir. 2008) (district courts lack jurisdiction over habeas petitions that merely attack removal orders).

15. Petitioner would not be subject to detention but for Respondents' actions in failing to adhere to DHS regulations and USCIS's public-facing policies. Respondents' failures—namely ignoring that BFD is a grant of deferred action to Petitioner—raise significant legal and Constitutional questions regarding the lawfulness of Petitioner's detention that can and must be decided by this Court. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (rejecting expansive reading of companion provision to 8 U.S.C. § 1252(a)(5) and holding that district court jurisdiction exists for suits that do not seek "review of an order of removal, decision to seek removal, or the process by which removability will be determined.") (cleaned up).

16. The distinction between habeas challenges to removal orders and collateral challenges to detention authority is crucial. Congress did not intend to "preclude habeas review over challenges to detention that are independent of challenges to

removal orders." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (citing H.R. Rep. No. 109-72, at 175 (2005)). This action challenges Respondents' erroneous interpretation of the statutory and regulatory provisions of the U visa program, Respondents' decision to disregard deferred action granted to Petitioner based on an incorrect interpretation of the law, and Respondents' failure to adhere to regulations and policies promulgated to protect Petitioner's rights, all of which has resulted in Petitioner's unlawful detention.

17. The proper interpretation of statutes and regulations is a question of law for the court to decide. *Int'l Union v. Brock*, 477 U.S. 274, 287 (1986). "[C]ourts must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). The APA "makes clear that agency interpretations of statutes are *not* entitled to deference." *Id.* at 462 (emphasis in original). Courts must begin statutory interpretation with the plain meaning of the law and end their analysis if Congress's intent is clear from the statutory text. *Union Pac. R.R. v. Surface Transp. Bd.*, 113 F.4th 823, 833 (8th Cir. 2024). *See also Quito-Gauchichulca v. Garland*, 122 F.4th 732 (8th Cir. 2024), ("we no longer treat the government's views as controlling or even 'especially informative.' Deference to the Board, in other words, is now a relic of the past." *Id.* at 735. (internal citations omitted).

18. Several courts have held that district courts maintain proper jurisdiction when detention, rather than the underlying removal order, is the focus of a habeas proceeding. *See, e.g., Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006) (finding that when petitioner challenges only his detention in a habeas petition, rather than his removal, the case cannot be transferred to the court of appeals); *Bonhometre v. Gonzales*, 414 F.3d 442, 446 n.4 (3d Cir. 2005) ("An alien challenging the legality of his

detention still may petition for habeas corpus [post-Real ID]."); *Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005) (transferring case back to district court where petitioner challenged only his detention and not removal); *Channer v. DHS*, 406 F. Supp. 2d 204 (D.Conn. 2005) (finding habeas review over detention). *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (jurisdiction-stripping provision of REAL ID Act is inapplicable where no final order of removal exists); *Ali v. Gonzales*, 421 F.3d 795, 797 n.1 (9th Cir. 2005) (in habeas corpus action seeking an injunction preventing removal to Somalia, "[t]he Real ID Act of 2005, . . ., does not apply to this case because petitioners do not challenge or seek review of any removal order"); *Gonzalez v. U.S. Immigration & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) (reiterating rule that jurisdiction is not precluded when challenges to detention "are independent of the removal process."); *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (same).

19. As the present action does not challenge a removal order but is an action challenging Respondents' interpretation of the law and DHS's unlawful conduct in arresting, and detaining Petitioner contrary to his grant of deferred action under the U visa Program, this Court retains original jurisdiction under the APA and 28 U.S.C. § 1331, as well as for declaratory relief under 28 U.S.C. § 2201.

III. VENUE

20. Venue is proper because Petitioner is detained at Chase County Jail in Cottonwood Falls, Kansas which is within the jurisdiction of this District.

21. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

IV. PARTIES

22. Petitioner Jose Madrid Leiva is currently detained in Chase County, Kansas County Jail. He was arrested and detained on April 22, 2025, after Missouri Highway Patrol conducted a "vehicle check" and subsequently called Immigration and Custom's Enforcement. He is currently a holder of a valid Bona Fide Determination ("BFD") issued by the United States Citizenship and Immigration Services ("USCIS") on February 18, 2025. In compliance with the regulations, after receiving his BFD and deferred action, Petitioner timely filed his employment authorization document with USCIS on April 9, 2025.

23. Respondent Jacob Welsh is the Chase County, KS Sheriff and Warden of Chase County Jail. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Welch is the legal custodian of Petitioner.

24. Respondent Erik Teschner is the Assistant Field Office Director of the Kanas City Field Office, Immigration and Custom's Enforcement, Respondent Teschner is a legal custodian of Petitioner and has authority to release him.

25. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner.

V. LEGAL BACKGROUND

A. Statutory Protections for Victims of Qualifying Crimes

26. On October 28, 2020, Congress created a new nonimmigrant visa classification, referred to as a U visa, through the passage of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). See Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533 (codified at 8 U.S.C. § 1101(a)(15)(U)). The nonimmigrant U Visa allows undocumented non-citizens who were victims of qualifying crimes and who assisted in the detection, investigation, or prosecution of the qualifying criminal activity to apply for and receive a nonimmigrant visa. 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14(a)(5). Upon issuance, the U Visa provides non-citizens with up to 4 years of non-immigrant status and work authorization. *See* 8 U.S.C. § 1184(p)(6). Moreover, upon residing in the United States in U nonimmigrant status continuously for three years, non-citizens may apply for permanent residency. *See* 8 U.S.C. § 1255(m).

27. In creating the U Visa program, Congress sought to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" certain serious crimes "while offering protection to victims of such offenses and keeping with the humanitarian interests of the United States." *See* VTVPA Pub. L. No. 106-386, Title V § 1513(a), 114 Stat. 1464, 1533. By providing victims of crime with an avenue for gaining lawful immigration status, the U visa encourages victims to cooperate with law enforcement agencies, thus strengthening relations between law enforcement and immigrant communities.

28. Individuals are eligible for U nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the United States or its territories or possessions; (2) have suffered substantial physical or mental abuse as a result; and

(3) have been helpful to law enforcement in the detection, investigation, or prosecution of such criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U).

29. Under INA § 212(d)(14), U nonimmigrant applicants may apply for a waiver *of any inadmissibility ground except those in INA § 212(a)(3)(E)*, which includes participants in Nazi persecutions, genocide, torture, or extrajudicial killing. This inadmissibility waiver for potential U nonimmigrants is very generous and does not apply in most other immigration petitions and applications. Moreover, the INA authorizes USCIS to grant an inadmissibility waiver for U nonimmigrants when a waiver would be in the "public or national interest." Put another way, in granting any relief under the U visa program, USCIS makes certain findings to ensure that relief under this humanitarian form of relief is merited at all stages.

30. To apply for a U visa, a petitioner must file with USCIS a Form I-918, Petition for U nonimmigrant status; Form I-918, Supplement B, a certification from a recognized law enforcement official confirming that the non-citizen has cooperated in the investigation or prosecution of criminal activity; and a signed statement by the petitioner describing the facts of the victimization. The principal U visa petitioner may request that a qualifying family member, such as the petitioner's spouse, be included as a derivative applicant by filing a form I-918, Supplement A. In addition to the U visa applications, applicants must also submit a request for a waiver of any ground of inadmissibility using Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

31. By statute, USCIS may not grant more than 10,000 principal U visas in any given fiscal year. *See* 8 U.S.C. § 1184(p)(2)(A). The statutory cap only applies to principal applicants, not to derivative applicants. *See* 8 U.S.C. § 1182(p)(2)(B). This cap has

been reached every year since at least 2010.

B. U Visa Bona Fide Determination Provides Deferred Action, Protection from Detention, Removal, and Employment Authorization

32. To address the issue of the backlogs, the law provides two interim forms of relief: the Bona Fide Determinations, and the waitlist. Petitioners and their qualifying members whom USCIS places in either of these categories *are granted temporary protection from removal while their petitions are pending, in the form of either deferred action if they are in the United States* or parole if they are outside of the United States. *See* 8 C.F.R. § 214.14(d)(2) (*emphasis added*). Individuals placed on BFD or the wait list also may be granted employment authorization document (EAD). *See* 8 C.F.R. § 214.14(d)(2).

33. In this context there is a twostep process that occurs. "8 U.S.C. § 1184(p)(6) and the Bona Fide Determination Process require USCIS to decide whether a U-visa application is 'bona fide' *before* the agency can exercise its discretion and decide whether principal petitioners and their qualifying family members may receive Bona Fide Determination Employment Authorization Documents." See *Barrios Garcia v. U.S. Department of Homeland Security*, 25 F.4th 430, 436 (6th Cir. 2022). *See also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), P. L. 110-457, 122 Stat. 5044.

34. On June 14, 2021, USCIS announced that, pursuant to 8 U.S.C. § 1184(p)(6), it would begin a more stream-lined process for issuing EADs to those victims who have pending U visa petitions, known as a "bona fide determination" or BFD. USCIS Policy Alert PA-2021-13. *See* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5.

35. The BFD was designed to allow USCIS to make determinations on eligibility, including any issues of inadmissibility that could not be waived. Inherent in such a determination, then, is the notion that those with a BFD are presumed to have met their burdens for eligibility, and for waivers of inadmissibility. This milestone grants deferred action and provides protection from detention and removal while the application remains pending due to a lack of U visa availability because of the statutory cap.

36. USCIS interprets "bona fide" as part of its administrative authority to implement the statute as outlined below. Bona fide generally means "made in good faith; without fraud or deceit." Accordingly, when interpreting the statutory term within the context of U nonimmigrant status, USCIS determines whether a petition is bona fide based on the petitioner's compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS then considers any national security and public safety risks, as well as any other relevant considerations, as part of the discretionary adjudication. *See* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5

37. As a primary goal, USCIS seeks to adequately evaluate and adjudicate petitions as efficiently as possible. The BFD process provides an opportunity for certain petitioners to receive BFD EADs and deferred action while their petitions are pending, consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA 2008). USCIS acknowledges that "one of the main purposes for issuing employment authorization to those with *pending, bona fide petitions* is to provide EADs to good faith petitioners who are vulnerable due to lengthy wait times. Requiring and adjudicating [U visa petitions] for purposes of the EAD would delay the

EAD adjudication and undermine efficiency." USCIS Policy Manual, Vol C. Part 3, Ch. 5 n.8, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5#footnote-8 (emphasis added). In this way, USCIS also recognizes that the application is first determined to be bona fide and then as a subsequent step, the work authorization may be issued.

38. The distinction of the two steps is found in USCIS' own policy manual where it states that "USCIS only issues BFD EADs *and deferred action* to petitioners living in the United States as it cannot provide deferred action or employment authorization to petitioners outside the United States." *See* USCIS Policy Manual, Vol C. Part 3, Ch. 5, section 7, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5.

39. Under the regulations which authorize noncitizens to work, an individual who has been granted certain relief, whether permanent or interim relief, is eligible to seek employment authorization. *See generally* 8 C.F.R. § 274a.12. The regulations work in a linear way and not in the contorted way that Respondents might suggest. Employment authorization is a permission that stems from the existence of certain criteria; it does not create the criteria itself. Indeed, the regulation is plainly captioned to read "Classes of aliens authorized to accept employment". 8 C.F.R. § 274a.12. In particular, with individuals like Petitioner who have deferred action, their category to apply for employment authorization can be found at 8 C.F.R. § 274.1.12(c)(14). The regulations plainly indicate that EAD category (c)(14) is solely reserved for "an alien granted deferred action," not one who will be given such a grant at a future date. The BFD Notice of Action that is provided by USCIS specifically instructs individuals who receive BFD to submit their employment authorization applications under the very section of the regulation—category (c)(14)—which

specifically requires a grant of deferred action.

40. Normally a (c)(14) EAD is based on a grant of deferred action, this assumes the grant of deferred action must occur first. This is consistent with a grant of deferred action which is granted separately from the EAD in cases such as the Violence Against Women's Act (EAD category (C)(31) or DACA EAD category (c)(33) contrast with the T visa BFD EAD category (c)(40) which specifies "A noncitizen applicant for T nonimmigrant status, and eligible family members, who have pending, bona fide applications, and who merit a favorable exercise of discretion".

41. The distinction here made is similar to the one made by the Fifth Circuit Court of Appeals in the context of the challenges to the Deferred Action for Childhood Arrivals program, commonly known as DACA. The Court there recognized that forbearance issues which stem from a grant of deferred action are separate from work authorization grants. See *State of Texas, et al. v. U.S.A, et al.*, 23-40653 (5th Cir. 2025).

42. Under the U visa program, while USCIS could revoke or terminate a BFD grant, they cannot do so without proper notice and opportunity to be heard. While USCIS may have the right to terminate deferred action, it must do so conforming with due process by providing proper notice and an opportunity to be heard-something that USCIS has not done in this case. *Cf.* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5.

C. Required Procedures for Reinstated Removal Orders

43. Despite having a BFD, Respondents arrested and detained Petitioner and sought to reinstate his prior order of removal. Petitioner does not challenge in this habeas petition the validity of that order because that issue is properly before the Eighth Circuit Court of Appeals. Petitioner does challenge Respondents' unlawful policy of

not properly serving the reinstatement paperwork as required by law so as to ensure meaningful due process.

44. A prior removal order may be reinstated if DHS finds that a noncitizen has reentered the United States illegally after removal. 8 U.S.C. § 1231(a)(5). The law imposes several procedural safeguards that DHS must follow before a prior removal may be reinstated. *See* 8 C.F.R. § 241.8. DHS must determine: (1) whether the noncitizen is subject to reinstatement by obtaining the prior order; (2) the identity of the noncitizen identified in the prior order; and (3) whether the noncitizen reentered unlawfully, after considering "all relevant evidence" and attempting "to verify [a] claim, if any, that [the noncitizen] was lawfully admitted." *Id.* § 241.8(a)(1)-(3).

45. DHS must provide notice of its reinstatement determination. *Id.* § 241.8(b). Where a noncitizen is represented by counsel, DHS is required to serve notice on the attorney or representative of record. *Id.* § 292.5(a). DHS must also afford the noncitizen an opportunity to challenge the reinstatement determination. *Id.* § 241.8(b). A noncitizen cannot be removed under 8 U.S.C. § 1231(a)(5) unless these procedures are met. *C.f. id.* § 241.8(c). A properly executed reinstated order triggers the 30-day deadline to file a petition for review to the court of appeals. 8 U.S.C. § 1252(b)(1). This filing deadline is mandatory and jurisdictional. *See Stone v. INS*, 514 US 386, 405 (1995).

46. The existence of a prior removal order is not a bar to either a U visa or a BFD grant. This is because the U visa program allows for the waiver of any ground of inadmissibility, including removals and re-entries. Furthermore, in order to be granted a BFD, USCIS would have to consider all inadmissibility grounds first. Finally, if USCIS has recognized that one benefit of a BFD grant is protection from removal,

then the existence of a removal order would be contemplated in their policy. *See generally* USCIS Policy Manual Vol. 3, part C https://www.uscis.gov/policy-manual/volume-3-part-c.

47. Even if ICE were to claim that they are proceeding with Petitioner's case under 8 U.S.C. § 1231(a)(5), the law does not allow for reinstatement where, as here, Petitioner reentered the United States after presenting himself at the border and was permitted to enter the United States under color of law by Custom and Border Protection (CBP) officers. Put another way, an entry following inspection and admission is procedurally regular and, therefore, a legal entry. The plain language of the statute establishes that reinstatement applies *only* to noncitizens who return to the United States without authorization after having been removed under a prior order of deportation, exclusion, or removal. *See* 8 U.S.C. § 1231(a)(5). In this way, the plain language prohibits reinstatement where an individual's entry comports with all procedural regularity. *See Matter Areguillin*, 17 I & N Dec. 308 (BIA 1980). *Matter of Quilantan*, 25 I & N 285 (BIA 2010).

48. Even still, the U visa program clearly contemplates that removal orders, of any kind, can be waived as part of the application process. They are not a bar to either the grant of the U visa or a grant of a BFD because as a form of humanitarian relief, the waivers offer generous safe havens to ensure the intent of Congress is not thwarted, especially where it has acted so strongly in protecting vulnerable noncitizens. *See* 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14, *et al.*

49. The reinstatement procedures allow noncitizens to raise any arguments against reinstatement with the agency first to ensure that the administrative record is proper and complete for review before the Court of Appeals. Respondents failure to comply

with the regulations has denied Petitioner meaningful due process in that he has been denied the opportunity to fully develop the record. Respondents failure to discharge their legal procedural duties is fundamentally prejudicial to Petitioner.

D. Government Must Follow Its Own Regulations and Policies

50. The *Accardi* Doctrine requires agencies to follow their own procedures where individual rights are implicated. *See United States Ex Rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Agencies must follow formal regulations and informal operating procedures, "even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). An agency's failure to follow its *own regulations* can be challenged under the APA, *Webster v. Doe*, 486 U.S. 592, 602 n.7 (1988) (emphasis in original).

51. The Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Freedom from unlawful detention is a bedrock principle of liberty and the writ of habeas corpus is a vital mechanism to secure one's freedom. *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969).

52. Respondents have indicated that Petitioner's BFD document does not confer deferred action itself. This interpretation is arbitrary, capricious and contrary to the law because it disregards the plain language of the regulations. In addition, Respondents have failed to adhere to procedures intended to provide Petitioner due process by providing an opportunity to be heard in the reinstatement process. By disregarding the plain language of the regulations, Respondents fail to adhere to those regulations. Taken together, Respondents' interpretation and actions amount to a due process violation and has led to Petitioner' unlawful detention because it stems from their

violation of regulations and procedures specifically designed to protect Petitioner's rights.

53. In addition, Respondents reinstated the prior removal order without ever serving him or his counsel[3]. Due process requires that "notice must be afforded within a reasonable time and in such a manner as will allow [an individual] to actually seek [] relief in the proper venue." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025). Respondents' failure to serve either Petitioner or his counsel, as required both by 8 C.F.R. § 292.5(a) and due process, prejudiced Petitioner's right to exercise his regulatory rights under the reinstatement procedures insofar as he was denied an opportunity to meaningfully contest the reinstatement and develop the record for a meaningful appeal. They further denied him any meaningful guidance or legal assistance with respect to those rights.

VI. STATEMENT OF FACTS

54. Petitioner first entered the United States on November 12, 2003, without inspection. Six years later, on October 25, 2009, he was charged with DUI, Speeding, and transporting an open container in Municipal Court of Overland Park, Kansas. After successfully completing diversion, the matter was dismissed on January 21, 2011.

55. After his DUI arrest, Petitioner was transferred to ICE custody and placed in removal proceedings. In proceedings, Petitioner applied for relief from removal in the form of asylum.

56. On January 22, 2011, Petitioner married a lawful permanent resident, Cindy Pinto

[3] The attached Exhibit E was obtained from the US attorneys office. The document itself is unsigned and incomplete. While the validity of the order is a question for the Court of Appeals for the 8th Circuit, the documents provides clear evidence of a failure to follow regulations and procedures.

Lopez. Despite the marriage on August 8, 2011, the immigration judge denied relief and ordered removal. Petitioner timely appealed to the Board of Immigration Appeals.

57. Subsequently, on September 14, 2012, Ms. Pinto Lopez naturalized, and the couple quickly filed a family-based application to secure an immigrant visa for her husband. That visa application was approved on January 23, 2013. As luck would have it, just a few weeks later, in February 2013, the Board of Immigration Appeals would affirm the Immigration Judge's decision and dismiss the appeal.

58. Not wanting to disregard the order, on February 14, 2013, Petitioner surrendered himself to ICE. He was removed to Guatemala on March 7, 2013, and his wife and he continued to work to resolve his immigration issues in the US. They worked diligently, but time and distance took its toll until their marriage failed and the couple divorced in January 2016. Two weeks later, Petitioner withdrew his application to immigrate to the US since the divorce rendered him ineligible.

59. For the next 3 years of so, Petitioner remained in Guatemala until the same circumstances which led to him leaving in 2003, and were the basis for his asylum claim, began to cause issues again. Fearful for his and his family's safety, on March 06, 2019, Mr. Madrid Leva Jose made the journey back to the United States. He was traveling with his son, Bryan (2years old). At the border, he and his son were taken by Customs and Border Patrol ("CBP") to a station in Wellton Station AZ and questioned. The son was issued a Notice to Appear and placed in removal proceedings. Mr. Leiva was allowed to enter the US as part of a family unity ("FAMU") along with Bryan. The contact is confirmed by the documents provided to him at the border and the FBI check for Petitioner. (See Exhibit C; Release documents for

Petitioner, Bryan's NTA and FBI report for Petitioner.)

60. On March 27, 2022, Petitioner became a victim of felonious assault in Merriam, KS. He was robbed at gunpoint at a gas station while he was pumping gas. He reported the crime and cooperated with law enforcement. Subsequently, on November 25, 2022, he completed and filed all required forms, documents, and fees for U nonimmigrant status. Included in his application were the waivers he needed to overcome the grounds of inadmissibility for his prior unlawful presence, and his prior removal order.

61. Thereafter, on February 9, 2023, Petitioner appeared for immigration court as required. The court, after reviewing the documents and evidence, realized that CBP had indeed issued deficient and flawed papers to Petitioner, so the Court severed his case and terminated his proceedings. For his family, the Court administratively closed proceedings to allow for the U visa applications to be processed.

62. Finally, on February 18, 2025, USCIS issued Petitioner and his family notice of a favorable BFD finding. Consistent with law, and the deferred action determination, on April 8, 2025, Petitioner and his family completed applications for him to obtain work authorization and filed them with USCIS after tendering the applicable fees.

63. On April 22, 2025, at about 10:00am, Petitioner was pulled over by Missouri State Highway Patrol for a "vehicle inspection." Petitioner was driving a trailer which pulls materials. While the encounter did not result in citations, the Trooper advised Petitioner that a system check showed that there was a "ICE detainer" on him and thus, Petitioner was subject to arrest and detention. The Trooper handcuffed Petitioner and placed him in the back of his vehicle to wait for ICE Officers to arrive. He remained in the patrol car for about 30 minutes before ICE arrived on scene and

took Petitioner into ICE custody.

64. The petitioner was transported to ICE offices near the Kansas City airport where he was asked to sign unknown documents. He was not provided with a copy of those documents, and it remains unclear what those documents were. Petitioner further advised ICE officers that he was represented by counsel and provided them with his attorney's name. The officer disregarded this information altogether.

65. Petitioner was not given written notice of the officer's determination, he was not advised he could make any written or oral statement contesting his determination, or that such information would be considered in the officer's determination. Petitioner was further not provided a copy of the reinstated order or advised of his appeal rights. A copy of the order was never served on Petitioner's attorney as required by the regulations. (See attached Exhibit D; Declaration of Petitioner)

66. Petitioner also advised ICE officers that he had a valid BFD from USCIS and had applied for his work authorization.

67. Petitioner currently remains in custody at the Chase County Jail in Cottonwood Falls, Kanas.

68. A recipient of deferred action under the U visa program, Petitioner is being held in custody despite there being no legal basis for the detention. He falls squarely within the protection of the BFD, and USCIS's stated policies plainly recognize that BFD confers deferred action and protection against removal. Respondents' failure to adhere to DHS regulations and USCIS policies are final agency actions based on legal interpretations that are contrary to law. Without complying with any due process protections that are afforded to Petitioner, Respondents' actions effectually dissolve his BFD and deferred action. Respondents' actions subject Petitioner to unlawful

detention in violation of the APA and the Fifth Amendment Due Process Clause.

69. Petitioner is further being unlawfully detained after a reinstatement order was issued without adherence to the regulations and procedures. Respondents failed to adhere to due process protections contemplated in the regulations thus denying Petitioner a meaningful opportunity to contest his reinstatement, or develop the administrative record in violation of the regulations.

70. Petitioner has complied in every way with his legal obligations and any conditions placed upon him by USCIS, the Immigration Court, and ICE. Now despite having all the protections afforded to him under law, Respondents continue to act unlawfully and in violation of Petitioner's statutory, regulatory, and Constitutional rights.

VII. CLAIMS FOR RELIEF

Count I - Violation of Fifth Amendment Rights to Due Process

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

72. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law.

73. The petitioner, as a BFD recipient granted deferred action who has tendered and paid for his employment authorization document in conformance with USCIS procedures, and upon Respondents' assurances that he was eligible to secure that document, has a liberty interest in being able to obtain the benefits he was granted. This protected liberty interest flowed from the statute and regulations which permitted Petitioner's BFD grant, and the actual grant of BFD to the Petitioner.

74. Petitioner has followed the legal requirements to obtain benefits under the U visa program and indeed has been granted them under the regulations. Respondents'

efforts to now unilaterally, and without due process, strip him of those benefits is unlawful under the Fifth Amendment of the Constitution.

75. Petitioner has complied with each and every requirement USCIS and Respondents have imposed upon him. He has applied for U visa benefits and provided all requested information, including biometrics and fees. Despite each of these things, Respondents never alerted Petitioner to any issues or concerns at any point prior to their unlawful detention and threatens to remove him and dissolve his BFD benefits unilaterally, without notice and without justification. Thus, Respondents detain Petitioner without statutory authority in violation of his right to due process.

76. Respondents cannot effectuate *de facto* termination of his BFD, without proper procedures consistent with the Due Process clause. *Accardi*, 347 U.S. at 268 n.8.

77. Procedural due process requires, in most cases, a hearing of some kind. *Mathews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902 (1976). The process due depends on three factors:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. 424 U.S. at 335, 96 S.Ct. at 903.

78. Petitioner has a fundamental liberty interest in the benefits he has obtained under his BFD grant.

79. The procedures employed by Respondents offered Petitioner no hearing, no notice, and no opportunity to be heard.

80. Respondents had multiple other means available to achieve its objective without

denying the Petitioner procedural fairness.

81. The cost and administrative burden of adopting these alternate procedures would be minimal, as the Respondent already possesses an entire agency dedicated to processing removal cases.

82. Instead, Respondents have acted with complete disregard to due process by unlawfully acting in a way to terminate his BFD and unlawfully detain him under a threat of removal. Such unlawful actions threaten Petitioner's interests in his interim benefits in the short term, and his U visa filings in the long term.

83. Given the Petitioner's rights and interests, the Government's interests, and the cost and availability of alternate means of protecting the Government's objectives, the procedures employed by Respondents violated the Due Process clause of the Fifth Amendment.

Count II -Violation of 8 U.S.C. § 1101(a)(15)(U) and Implementing Regulations

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

85. This Court must "decide all relevant questions of law [and] interpret constitutional and statutory provisions," hold unlawful and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706, *et seq.*

86. Only petitioners living in the United States may receive BFD and EADs, since those outside the United States cannot as a practical matter work in the United States. Likewise, deferred action can only be accorded to petitioners in the United States since those outside the United States have no potential removal to be deferred. Respondents position to the contrary fails to comport with law and is therefore unlawful.

87. The plain language of the statutory text must control, *see Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021), and the plain reading of the statute and regulations taken together establish that Petitioner received deferred action at the time USCIS granted him BFD. Otherwise, Petitioner could not be statutorily eligible for a BFD EAD under a regulatory category reserved for applicants who have deferred action, as Respondents incorrectly suggest. *See* 8 C.F.R. § 274a.12(c)(14).

88. Respondents' failure to recognize Petitioner's facially valid and legally obtained BFD document, and all the benefits it conveys, is final agency action that is arbitrary, capricious, and contrary to law.

89. Respondents' failure is based on an incorrect interpretation of the statutes, regulations, and policies underlying the U visa program. This is a pure question of law for this Court to decide.

90. Followed to its logical conclusion, Respondents' statutory interpretation leads to an absurd result and should be avoided. *See Griffin v. Oceanic Contractors*, 458 U.S. 564, 575 (1982). Respondents' suggest that BFD deferred action only arises after USCIS issues an EAD—not when a petitioner is notified of BFD. But such an interpretation makes no sense and contravenes the plain language of the law. If BFD does not confer deferred action at the time of notification, an applicant for an EAD could not be eligible for an EAD under 8 C.F.R. § 274a.12(c)(14), which expressly pertains to "an alien who has been granted deferred action" and is the exact regulatory provision USCIS instructs BFD recipients to apply under.

91. The plausible and logical interpretation, consistent with the plain text of 8 C.F.R. § 274a.12(c)(14), is that the BFD Notice of Action is the grant of deferred action under the U visa program, thereby creating eligibility to apply for an EAD under category

(c)(14). The resulting EAD is merely a benefit flowing from the deferred action grant.

92. Respondents violate the APA and *Accardi* doctrine by refusing to comply with their own regulations and public-facing policies. As Respondents have not taken affirmative steps to revoke Petitioner's BFD, the law requires Respondents to recognize Petitioner's BFD and deferred action, as well as the protection it provides against removal.

93. Respondents' actions based on an interpretation that deferred action only comes into existence once USCIS approves an EAD for a BFD recipient, and their detention of Petitioner despite his being afforded BFD protections, is contrary to law as it violates 8 U.S.C. § 1101(a)(15)(U) and its implementing regulations.

Count III – Violation of 8 U.S.C. § 1231(a)(5), 8 C.F.R. § 241.8, and 8 C.F.R. § 292.5(a)

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

95. The *Accardi* doctrine requires agencies to adhere to their own regulations and policies when individual rights are impacted. *Accardi*, 347 U.S. 260 (1954). "An agency's unexplained refusal to follow its own regulations effecting individuals' procedural benefits poses a high probability that the agency is not acting in accordance with the APA." *Ratsantiboon v. Noem*, No. 25-CV-01315 (JMB/JFD), 2025 U.S. Dist. LEXIS 71734, at *6 (D. Minn. Apr. 15, 2025) (citing *Accardi*, 347 U.S. at 265).

96. Under 8 U.S.C. § 1231(a)(5), a prior removal order may be reinstated if DHS finds that a noncitizen reentered the United States illegally after removal. DHS promulgated regulations containing procedural safeguards that must be followed before a prior order can be reinstated. *See* 8 C.F.R. § 241.8(b). Specifically, the regulations provide that "if an officer determines that a [noncitizen] is subject to removal under this section, he or she *shall* provide the [noncitizen] with written notice of his or her determination.

The officer *shall* advise the [noncitizen] that he or she may make a written or oral statement contesting the determination. If the [noncitizen] wishes to make such a statement, the officer *shall* allow the [noncitizen] to do so and *shall* consider whether the [noncitizen's] statement warrants reconsideration of the determination." None of these procedures were followed in the instant matter.

97. The law requires that judicial review of a reinstated removal order must be brought in a petition for review before the court of appeals within 30 days of the properly executed reinstatement. *See* 8 U.S.C. § 1252(b)(1).

98. Relatedly, DHS promulgated a rule requiring that whenever a person "is required to be given notice, such notice shall be given to or served upon the attorney or representative of record." 8 C.F.R. § 292.5(a) (cleaned up).

99. The plain text of 8 U.S.C. § 1231(a)(5) and its implementing regulations do not permit reinstatement of a prior removal order when a noncitizen reenters the United States legally. Petitioner was permitted to enter the United States as part of FAMU after he was removed from the United States under an order of removal. Petitioner's entry following inspection and admission is a legal entry. DHS contravenes the law and its own regulations in violation of the APA by failing to afford Petitioner an opportunity to provide mitigating evidence that must, under the regulations, be considered prior to an order being reinstated. Respondents' failure to follow their own regulations has resulted in a due process violation and Petitioner's unlawful detention.

100. Even if Petitioner was properly subject to reinstatement, DHS must serve notice of any reinstatement determination on Petitioner's attorney as requirement by 8 C.F.R. § 292.5(a).

101. Respondents failed to comply with DHS regulations in violation of the APA when they

failed to serve Petitioner or his counsel with a reinstated removal order. This denied Petitioner of his ability to have meaningful due process as contemplated by the reinstatement procedures outlined in the regulations.

102. Respondents' failure to timely serve counsel with notice of a reinstated order prejudiced Petitioner's right to timely seek review with meaningful benefit of counsel. Respondents' actions also violate Petitioner's fundamental right to be free from unlawful detention.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court:

1. Assume jurisdiction over the matter;
2. Declare that Respondents' failure to recognize and give full weight to a lawfully issued BFD grant by USCIS is in violation of the APA and the INA;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14, *et al.*
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

June 20, 2025,

Respectfully Submitted,

s/Rekha Sharma-Crawford
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

s/Rekha Sharma-Crawford June 20, 2025
Rekha Sharma-Crawford