UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Alfredo Benito Maldonado, Petitioner, v. Kristi Noem Secretary, U.S. Department of Homeland Security et al. Respondents.	Cause No. 4:25-cv-02541

PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

Petitioner, by and through undersigned counsel, respectfully files this Motion for Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and brief in support of to prevent the imminent deportation of Petitioner pending resolution of this matter. In support thereof, Petitioner states as follows:

I. INTRODUCTION

Petitioner seeks immediate relief to prevent imminent and irreparable harm caused by deportation. Deportation would result in severe and irreparable injury, including separation from family, severe economic loss to his family for which he is the sole provider, and loss of access to legal remedies.

II. JURISDICTION AND VENUE

This Court has jurisdiction to hear this case under *28 U.S.C. § 2241* and *28 U.S.C. § 1331*, Federal Question Jurisdiction, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to *28 U.S.C. § 2241*, and the *All Writs Act, 28 U.S.C. § 1651.* Venue is proper in this district pursuant to *28 U.S.C. § 1391(e).*

III. FACTUAL BACKGROUND

Petitioner Alfredo Benito Maldonado is a Mexican national who last entered the United States in 2011. He has a prior order of removal which the Respondents are seeking to reinstate. Petitioner resides in the United States with his wife and four children, two of which are minor U.S. citizens for whom he is the sole provider. On November 2, 2021, the Petitioner's minor child was the victim of a violent qualifying U-visa crime in which a police report was filed. On September 23, 2022, the San Antonio Police Department certified the Petitioner's child's request on form I-918b. (*See Dkt 1. Ex 1 U Cert -redacted*). Pursuant to the certified I-918b, the Petitioner and his family filed for a U-visa on March 13, 2023. Concurrently with his derivative U-visa, the Petitioner filed for a waiver of inadmissibility on form I-192 and a work authorization. (*See Dkt 1 Ex 2 U visa and I-192 Receipt Notices*) On June 13, 2024, USCIS issued a

bonafide determination notice ("BFD") to the Petitioner and his family. The BFD states that the U-visa filed in 2023 was a bona fide application and that the Petitioner and his family were placed in deferred action for a period of four years. The notice specifically states that the Petitioner's period of deferred action was granted and warranted a favorable exercise of discretion. Pursuant to the BFD, the Petitioner was also granted a four-year work authorization. (*See Dkt 1 Ex 3 BFD and Deferred Action Grant*)

On May 22, 2025, the Petitioner was apprehended by agents of ICE enforcement and placed in immigration custody at the Montgomery Processing Center in Conroe, Texas. This was in spite of the deferred action grant. On May 23, 2025, a stay or removal was filed with the Respondents; however, it was denied on May 27, 2025. (*Dkt 1 Ex 4 Stay of Removal Denial*) On June 5, 2025, this Court granted the Petitioner's temporary restraining order and then subsequently extended the TRO to allow time for the preliminary injunction hearing. (*Dkt 8, 9, 11*)

IV. LEGAL STANDARD

The purpose of a preliminary injunction is to "preserve the status quo and thus prevent irreparable harm until respective rights of the parties can be ascertained during a trial on the merits." *City of Dallas v. Delta Air Lines, Inc.*, 847 F.3d 279, 285 (5th Cir. 2017) (internal quotations omitted). To obtain a preliminary injunction, an applicant must show "(1) a substantial likelihood of

success on the merits, (2) a substantial threat of irreparable injury, (3) the threatened injury to the movant outweighs the threatened harm to the party sought to be enjoined; and (4) granting the injunctive relief will not disserve the public interest." *Id.* "[H]arm is irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). "Because a preliminary injunction is an extraordinary remedy" the petitioner must clearly satisfy the burden of persuasion on each element. *City of Dallas,* 847 F.3d at 285. "The grant of a preliminary injunction is immediately appealable." *Petrello v. Nath*, 350 F. App'x 887, 890 (5th Cir. 2009).

V. ARGUMENT

In 2000, Congress created the U-visa as part of the Victims of Trafficking and Violence Protection Act ("The TVPRA"). Pub. L. No. 106–386, § 1513, 114 Stat. 1464, 1533–37 (2000) (codified in scattered sections of 8 U.S.C.). The U-visa is available for victims of certain crimes who have suffered mental or physical abuse and who have been, are being, or are likely to be helpful to law enforcement or government officials in the investigation or prosecution of the crime of which they were victims. *8 U.S.C. § 1101(a)(15)(U)(i)*. The Act also provides that certain qualifying family members can obtain derivative U-visas based on their relationship to the victim, the principal filing for the U-visa. *Id. § 1101(a)(15)(U)(ii).*

A. *Likelihood of Success on the Merits*

i. Violation of U-Visa Statutory Scheme:

Congress created the U-visa to protect victims of crime who assist law enforcement. USCIS's bona fide determination process is designed to confer immediate interim protection, including deferred action—to qualifying petitioners. Removal under these circumstances undermines congressional intent and contravenes the statutory scheme.[1] *See also* USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5 (2021) ("Bona Fide Determination provides for deferred action and employment authorization to victims who demonstrate meritorious eligibility and meet statutory requirements."). According to the TVPRA the U-visa, at its inception, was created "[to] strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking ... against noncitizens ... while offering protection to victims."). *See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 1513(a)(2)(A)–(B), 114 Stat. 1464* (Oct. 28, 2000) Congress has further stated that "The purpose of the U nonimmigrant visa is to offer protection to victims of serious crimes who are helpful to law enforcement... [It] helps to stabilize the immigration status of victims while allowing law

[1] "The U visa was designed with the dual purpose of protecting noncitizen victims of serious crimes and promoting cooperation between law enforcement and victims." U.S. Citizenship & Immigration Servs., *U Visa Law Enforcement Resource Guide*, 1 (July 24, 2019),https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf.

enforcement to pursue investigations and prosecutions." *See H.R. Rep. No. 106-939, at 101* (2000) (Conf. Rep.), reprinted in 2000 U.S.C.C.A.N. 1380, 1383. In 2021, USCIS implemented a Bonafide Determination Process "BFD" to provide certain petitioners with earlier access to deferred action and work authorization, even before being waitlisted. This process applies to petitioners who file a properly completed Form I-918 and meet background check requirements. *See* – USCIS Bonafide Determination Q&A https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions. The purpose was to encourage stability and access to support while waiting for full adjudication. *Id.* The Petitioner and his family have received a BFD and have been offered deferred action as a matter of discretion extended by DHS pending visa numbers for final approval on their U-visas. (*See Dkt 1 Ex 1-3*)

Further, despite the Petitioner having a final order of removal, he has filed form I-192 Application for Advance Permission to Enter as a Non-Immigrant. (See Dkt 1 Ex 2) In general all applicants for U nonimmigrant status, including derivative family members of U principal applicants, are subject to the grounds of inadmissibility in § 212(a) of the Immigration and Nationality Act (INA). 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) [participants in Nazi persecutions, genocide, torture, or extrajudicial killing]. This

inadmissibility waiver for potential U nonimmigrants is very generous and does not apply nearly all other immigration petitions and applications. The availability of a waiver means that the INA recognizes the significant public interest in protecting crime victims and offers a pathway to cure inadmissibility, even prior removal orders, for U-visa recipients and their families. Despite the lack of published criteria, the INA authorizes U.S. Citizenship and Immigration Services (USCIS) to grant an inadmissibility waiver for U nonimmigrants when a waiver would be in the "public or national interest."

It is therefore clear that the removal of a non-citizen, like the petitioner, who was granted BFD, has a U-visa pending and filed a waiver of inadmissibility, would undermine the entire U visa program and the TVPRA's protection of crime victims and their families.

ii. Petitioner's Detention and Imminent Removal Violate the Fifth Amendment Due Process Clause

The Fifth Circuit has repeatedly held that due process protections apply to removal proceedings and detention. *Vetcher v. Barr*, 953 F.3d 361, 369-70 (5th Cir. 2020). In *Reno v. Flores*, the Supreme Court acknowledged that noncitizens are entitled to due process protections even in the context of enforcement proceedings. *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 1449 (1993). The government's decision to remove a U-visa BFD holder without regard to his pending petition and waiver is fundamentally unfair and

denies him a meaningful opportunity to be heard. Further, Petitioner's detention is arbitrary in light of his BFD and pending adjudication. Due process requires meaningful review and cannot allow the government to ignore USCIS's own findings of U visa eligibility. *Zadvydas v. Davis*, 533 U.S. 678, 692 (2001). The government has granted deferred action signaling eligibility and intent to grant a U-visa, when visa numbers are current, and they have not notified the Petitioner of his termination of deferred action.

iii. Failure to Consider USCIS's BFD and Deferred Action Is Arbitrary and Capricious Under the APA

Effectuating a removal despite granting a BFD and deferred action is arbitrary, capricious, and contrary to law under *5 U.S.C. § 706(2)*. Agencies must consider all relevant factors when exercising enforcement discretion. The failure to recognize or give weight to USCIS's issuance of a bona fide determination constitutes arbitrary and capricious agency action. An agency must "provide [a] reasoned explanation for its action," and if it departs from previous policy, it must "display awareness that it *is* changing its position" and "that there are good reasons for it, and that the agency *believes* it to be better." *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (emphasis original). Additionally, the Fifth Circuit in *Texas v. Biden*, 20 F.4th 928, 989 (5th Cir. 2021), emphasized that agencies must offer reasoned explanations for their decisions, including when they deviate from past policy or fail to apply their

own regulations. Over the last five years DHS has issued numerous policy memos and reports to congress on the U visa process stating that it would not effectuate removal for U-visa applicants with certified law enforcement form I-918b's or deferred action. *See* ICE Directive 11005.2 (2019); ICE Directive 11005.3 (2021); Mayorkas Memorandum Guidelines for the Enforcement of Civil Immigration Law (2021). Further, DHS even issued a report to congress that in conclusion stated:

> ICE fully appreciates its obligations to enforce the Nation's immigration laws and to uphold public safety, and the enforcement actions that ICE employs are intended to accomplish this fairly and safely. ICE also is committed to carrying out its functions in a victim-centered manner that ensures that noncitizen victims are willing and able to contact law enforcement, to participate in investigations and prosecutions, to pursue justice, and to seek available benefits. ICE's new directive is a strong step to reach that end, and ICE will continue to work with USCIS on strengthening the U visa process. *See* U.S. Immigration & Customs Enforcement (ICE), Removals of Noncitizens with Denied, Revoked, or Pending U Visa Petitions (June 2022).[2]

To this end, this Court previously inquired about pertinent case law on removals of non-citizens with BFD and deferred action; however, neither party could cite to any case law with the exclusion of a single case from Washington District Court. The reason that no case law is available is that prior to 2025 individuals

[2] U.S. Immigration & Customs Enforcement (ICE), *Removals of Noncitizens with Denied, Revoked, or Pending U Visa Petitions* (June 2022), https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Removals%20of%20Noncitizens%20with%20Denied%2C%20Revoked%2C%20or%20Pending%20U%20Visa%20Petitions.pdf.

with BFDs and in deferred action were not removed and were granted the ability to reside in the United States safely as per the above cited memos. The active removal of crime victims and their families by DHS is a complete reversal in policy from a victim-centered approach to handling cases involving immigrant victims of crime, including applicants for U Visas, VAWA, and T Visas. *See* Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits January 31, 2025. The new policy flies in the face of the U-visa, BFD, and deferred action program set up over the last five years to protect crime victims. No reasoned explanation for this policy shift has been provided nor is there any real justification for the large-scale enforcement of removal operations against crime victims despite the TVPRA's express protection of these individuals.

B. Irreparable Harm

Petitioner is the sole provider for his family which includes his spouse, two minor children and two adult children, for whom he pays college tuition. (*Dkt 3 Ex 2 Affidavit from Spouse*) If the Petitioner is removed from the United States, his family would be without means to support themselves. Further, the Petitioner's adult children would be forced to drop out of college due to inability to afford tuition. Petitioner is also currently residing in the United States lawfully under a period of deferred action. (*See Dkt 1 Ex 3 BFD and Deferred*

Action Grant) By law deferred action can not be given to an individual outside of the United States. The Petitioner, if removed, would lose his work authorization and ability to lawfully reside in the United States.

This harm cannot be undone. Irreparable harm is presumed where removal would result in the deprivation of statutory rights or lead to credible threats of persecution or retaliation. In *Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1049 (N.D. Cal 2018), the court found that removal of a noncitizen with a pending humanitarian visa application would cause irreparable harm by cutting off access to lawful relief and exposing the individual to danger.

Courts have further held that harm to family integrity, mental health, and the loss of opportunity for statutory protection may satisfy the irreparable harm standard. *See also Ruiz-Diaz v. United States*, 703 F.3d 483, 487 (9th Cir. 2012) (finding irreparable harm when removal undermined pending visa applications and congressional purpose).

C. *Balance of Equities and Public Interest*

The Court should consider the balance-of-equities and public-interest elements together. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of equities favors the Plaintiff in granting a preliminary injunction as it would serve in the public interest to uphold due process and prevent family separation. *C.M. v. United States*, 672 F. Supp. 3d 288, 312 (W.D. Tex. 2023). Here, delaying Petitioner's removal while his habeas petition is heard causes no

prejudice to Respondents but shields Petitioner from life-altering consequences.

VI. PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1) Issue a Preliminary Injunction prohibiting Respondents from deporting Petitioner pending resolution of this matter.

2) Grant any further relief as appropriate.

VII. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests the Court to grant this Preliminary Injunction.

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CERTIFICATE OF SERVICE

I certify that on July 7, 2025, the foregoing document was filed with the Court through the Court CM/ECF system on all parties and counsel registered with the Court CM/ECF.

Respectfully submitted,

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