UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DIPAKKUMAR BALDEVBHAI PATEL (A[redacted])	)	
Petitioner,	)	
v.	)	Case No. 25-cv-03167
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; MIKE STASKO, Jail Administrator, Freeborn County Jail, Minnesota.	)	
Defendants.	)	

PETITION FOR WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS, AND COMPLAINT FOR DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE

Plaintiff DIPAKKUMAR BALDEVBHAI PATEL, by and through his own and proper person and through his attorneys KRIEZELMAN BURTON & ASSOCIATES, LLC, hereby petition this Honorable Court to, first, issue a Writ of Habeas Corpus to review his unlawful detention while he waits for his U visa to be adjudicated by U.S. Citizenship & Immigration Services (hereinafter "USCIS"), second, issue a Writ of Mandamus to direct USCIS to adjudicate the Petitioner's petition for U nonimmigrant status (Forms I-918) and application for work authorization (Forms I-765), given his detained status, and, third, rule on a Complaint for Declaratory and Injunctive Relief for an Order To Show Cause,

considering that Respondents' actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In support thereof, Petitioner states as follows:

Introduction

1. This is a civil action brought by Petitioner DIPAKKUMAR BALDEVBHAI PATEL to, first, compel the Defendants to order the Petitioner's release.
2. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Freeborn County Jail in Albert Lea, Minnesota.
3. This civil action also seeks for this Court to require Defendants to take action on the petition for U nonimmigrant status (Form I-918) and application for work authorization (Form I-765) filed with U.S. Citizenship and Immigration Services ("USCIS") more than 1 year ago.
4. The Petitioner's detention and prolonged delay in his U visa adjudication is contrary to law.
5. Petitioner asks this Court to find his detention unlawful, order the Petitioner's release, and direct USCIS to adjudicate his Forms I-918 and I-765.

Jurisdiction

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

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. section 1331 (federal question) in conjunction with 28 U.S.C. section 1361 (mandamus), the Administrative Procedure Act (APA) (5 U.S.C. § 555(b) and 5 U.S.C. §702), 28 U.S.C. § 2241 et seq. (declaratory action), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), the Immigration & Nationality Act and regulations implementing it (Title 8 of the CFR), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

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

9. 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

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.)

10. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that "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[.]" As the present action is not an action to review a removal order but an action challenging the unlawful conduct of DHS in unlawfully arresting, and detaining Petitioner contrary to his pending adjudication 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.

11. In regards to the Writ of Mandamus, under 28 U.S.C. section 1331, "(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." There is jurisdiction under 28 U.S.C. section 1331 because this action arises under the Administrative Procedure Act (APA) (5 U.S.C. § 555(b) and 5 U.S.C. § 702), and the Immigration & Nationality Act (INA) and regulations implementing it (Title 8 of the CFR).

12. Under 28 U.S.C. section 1361, "(t)he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

13. Further, pursuant to the APA, a person is entitled to judicial review where they have been "adversely affected or aggrieved by agency action," and therefore an action "stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity…shall not be dismissed nor relief be denied on the ground that it is against the United States." *See* 5 U.S.C. § 702.

14. The APA requires USCIS to carry out its duties within a reasonable time. 5 U.S.C. section 555(b) states, "(w)ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable

time, each agency shall proceed to conclude a matter presented to it." USCIS is subject to 5 U.S.C. section 555(b). Plaintiff contends that the delay in processing his petition for U nonimmigrant status is unreasonable.

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

Venue

16. Venue of this action is proper under 28 U.S.C. sections 1391(e)(1) and (2). Plaintiff DIPAKKUMAR BALDEVBHAI PATEL is currently detained by ICE at Freeborn County Jail in Albert Lea, Minnesota, which is within the judicial district of the District of Minnesota. Further, a "substantial part of the events or omissions giving rise to the claim occurred within this district." 28 U.S.C. § 1391(e)(2).

Requirements of 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

19. Pursuant to 28 U.S.C. § 2243, Petitioner DIPAKKUMAR BALDEVBHAI PATEL respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

20. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the

Minnesota Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

Parties

21. Plaintiff DIPAKKUMAR BALDEVBHAI PATEL is a native and citizen of India.

22. Plaintiff has United States citizen immediate relatives and has lived in the United States for over fifteen years.

23. Plaintiff was the victim of a crime in the United States in 2023 and submitted a petition for U nonimmigrant status in April 2024.

24. Defendant KRISTI NOEM, Secretary for the Department of Homeland Security ("DHS"), is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has authority to oversee the detention and removal operations of ICE and is the legal custodian of all people detained in immigration detention facilities. Defendant NOEM through her delegates, also has authority to adjudicate the adjustment of status applications and visa petitions filed with the United States Citizenship and Immigration Services (USCIS) and to accord lawful permanent resident status pursuant to 8 U.S.C. section 1255.

25. Defendant MIKE STASKO, Jail Administrator of the Freeborn County Jail, in Albert Lea, Minnesota is being sued in his official capacity only. In his capacity as Jail Administrator for Freeborn County Jail, under ICE's supervision, where Petitioner is presently being detained, he is Petitioner's immediate custodian.

Immigration Law Framework

26. On October 28, 2000, the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), codified at *inter alia*, 8 U.S.C. § 1101(a)(15)(U) ("Crime Victims Act"), was signed into law. This Act permits immigrants who are victims of serious crimes and who assist law enforcement to apply for and receive "U" nonimmigrant visas. After possessing U status for three years, such immigrants may apply for lawful permanent resident status.

27. According to 8 U.S.C. section 1101(a)(15)(U)(i)(I)-(IV), an applicant qualifies for a "U" nonimmigrant visa, if they have (1) suffered substantial physical or mental abuse as a result of having been a victim of criminal activity, (2) possess information concerning the criminal activity, (3) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities

investigating or prosecuting criminal activity; and (4) the criminal activity violated the laws of the United States or occurred in the United States.

28. 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 include specifically 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.

29. 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 sign 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.

30. Further, the petition submitted to USCIS must contain "certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity..." *See* 8 U.S.C. § 1184(p)(1).

31. According to 8 U.S.C. § 1184(p)(2) and section 214(p)(2) of the Immigration and Nationality Act, the total number of aliens who may be issued U-1 nonimmigrant visas or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

32. Both the regulations and the INA provide numerous examples of duties owed by USCIS in the petition for U nonimmigrant status process. 8 U.S.C. section 1184 states that "[t]he Attorney General *shall* consider any credible evidence relevant to the petition." (emphasis added). The Code of Federal Regulations further provides that USCIS "*shall* conduct a de novo review of all evidence submitted," and, most importantly, after that review "USCIS *will issue* a written decision....and notify the petitioner of the decision." 8 C.F.R. § 214.14(c)(4) & (5) (emphasis added).

33. Due to this fiscal year limit of 10,000 U visas, the Code of Federal Regulations creates a duty for USCIS to place all eligible petitioners, who due solely to the cap are not granted U-1 nonimmigrant, on a waiting list and receive written notice of such placement. *See* 8 C.F.R. § 214.14(d)(2).

34. To address the issue of the backlogs, even the law provided two interim forms of relief: the Bona Fide Determinations, and the waitlist Petitioners and their qualifying members whom USCIS places in the either of these categories, who *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 ("EAD"). *See* 8 C.F.R. § 214.14(d)(2).

35. Pursuant to the regulations, "USCIS *will grant* deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." 8 C.F.R. § 214.14(d)(2) (emphasis added). This deferred action status allows petitioners and their qualifying family members to apply for work authorization and remain in the United States while they remain on the waiting list.

36. 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-cchapter-5

37. 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 removal while the application remains pending due to a lack of U visa availability because of the statutory cap.

38. 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.

39. 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). *Id.*

40. USCIS has itself recognized that the BFD process is designed for "[o]nly petitioners living in the United States to receive BFD 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. Id.* (emphasis added).

41. Under the regulations, an individual who has been granted certain relief, whether permanent or interim relief is eligible to seek employment authorization. *See generally* 8 CFR § 274a.12. The regulations work in a linear way and not in the contorted way that Defendants 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". In

particular, with individuals like Petitioner, who have deferred action, their category to apply can be found at 8 CFR § 274.1.12(c)(14). The regulations plainly indicate to use this category 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 are holding the grant to tender their employment authorization under the very section of the regulation which specifically relies on a grant of deferred action.

42. While USCIS could revoke or terminate a BFD grant, they cannot do so without proper notice and opportunity to be heard. Similarly, 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

43. Assuming, *arguendo*, that Respondents indicate that waiting for the adjudication of the BFD document does not confer any protection itself, this interpretation is arbitrary, capricious and contrary to the law because it disregards the plain language of the regulations and its congressional intent.

44. The regulations do not direct USCIS to adjudicate petitions eligible for deferred action in any specific order. Rather, only once the petition is on the waitlist is USCIS required to prioritize the issuance of U Visas by the date the petitions were filed. *See* 8 C.F.R. § 214.14(d)(2).

45. 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

46. Moreover, the U visa program clearly contemplates that removal orders, of any kind, can be waived as part of the application process and 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.

47. The INA creates further duties owed by USCIS in the processing of petitions for U nonimmigrant status and to those individuals described in subsection (a)(15)(U) of section 101 of the Act. These duties are outlined in 8 U.S.C. section 1184(p) which states that "the Attorney General *shall*...provide the aliens with employment authorization." (emphasis added).

48. Assessing reasonableness frequently involves a balancing test, in which a statutory requirement is a very substantial factor. *See Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 77-78 (D.C. Cir. 1984). In determining the reasonableness, this Court has applied a four-factor test:

> (1) Whether the time the agency takes to make a decision is governed by a rule of reason, the context for which may be supplied by an enabling statute that provides a timetable or other indication of the speed with which Congress expects the agency to proceed;
> (2) whether human health and welfare are at stake (delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake);
> (3) the effect of expediting delayed action on agency activities of a higher or competing priority; and
> (4) the nature and extent of the interests prejudiced by the delay.

Mohamed v. Dorochoff, No. 11 C 1610, 2011 WL 4496228, at *5 (N.D. Ill. Sept. 22, 2011).

49. The language of the statute and these regulations are mandatory, not discretionary, and requires the Defendants to provide the protections

memorialized in the relevant statutes and regulations, as well as to adjudicate the petitions for U nonimmigrant status, even prior to visa availability. The Seventh Circuit Court of Appeals, for instance, has held that an applicant has a right to have his/her U visa petition evaluated within a reasonable period of time. *Calderon-Ramirez v. McCament*, 877 F.3d 272, 274 (7th Cir. 2017).

Factual Background

50. Plaintiff DIPAKKUMAR BALDEVBHAI PATEL is a native and citizen of India.

51. Plaintiff DIPAKKUMAR BALDEVBHAI PATEL was a victim of a crime in 2023 while living in the United States.

52. In April 2024, Plaintiff filed his petition for U nonimmigrant status and at the same time filed an application for employment authorization (Form I-765), requesting a bona fide determination.

53. Plaintiff DIPAKKUMAR BALDEVBHAI PATEL's I-918 petition was assigned receipt number, EAC[redacted]

54. Since the submission of the petition for U nonimmigrant status, Plaintiff has inquired multiple times regarding the status of the petition. To date, Plaintiff has not received responses to his inquiries.

55. Plaintiff wishes to be placed on the deferred action wait list or to be given a *bona fide* determination, as he is prima facie eligible for the relief sought.

Request For Relief

56. All of the foregoing allegations are repeated and incorporated as though fully set forth herein.

57. Respondents are presently detaining Petitioner in violation of their own policies and of the due process clause of the Fifth Amendment of the United States Constitution.

58. Plaintiff has complied with all of the requirements for filing his petition for U Nonimmigrant Status.

59. The Defendants have willfully and unreasonably delayed and have refused to adjudicate the Petition for U Nonimmigrant Status (Form I-918), or place Plaintiff on the waiting list or issue a bona fide determination.

60. The delay in adjudicating the applications is not attributable to the Plaintiff.

61. There has been no indication from ICE that Petitioner's removal will occur in the reasonably foreseeable future. In fact, ICE is prohibited from removing Petitioner under the law. Yet, petitioner has been in ICE custody, he has no right to be heard before an Immigration Judge because his case is closed, and his status as a Temporary Protected Status holder is still valid. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("freedom from

imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.").

62. In the "special and narrow nonpunitive circumstances" of immigration detention, due process requires "a special justification . . . [that] outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes - to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *See id.* The prolonged unjustified continued detention of Petitioner is arbitrary and violates due process.

63. The conditions of confinement are also relevant to the due process inquiry, because they directly impact on the individual interest in being free from detention. The due process clause protects immigrant detainees from cruel and unusual punishment to an even greater extent than the Eighth Amendment protects people who have been convicted of crimes. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1877 (2017) (Thomas, J., concurring) (noting that the Due Process Clause governs the conditions of detention for immigrant and pre-trial detainees). Due process requires that governments who deprive people of their liberty, and thus their ability to care for themselves,

must provide them with medical care and ensure their safety. *DeShaney v. Winnebago C'ty Dep't of Social Servs.*, 489 U.S. 189, 199 (1989).

64. The Supreme Court has found that the Eighth Amendment protects against future harm to inmates, as "it would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). The Eighth Amendment requires that "inmates be furnished with the basic human needs, one of which is 'reasonable safety,'" and that the risk of contracting a communicable disease may constitute such an "unsafe, life-threatening condition" that threatens "reasonably safety." Id. (quoting *DeShaney*, 489 U.S. at 200).

65. These Constitutional protections also apply in the context of immigration detention because immigrant detainees, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas*, 533 U.S. at 690. Because detained immigrants are civil detainees, they are entitled to rights derived from the Fifth Amendment, and the due process protections derived from Fifth Amendment's due process protections do not allow punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished.").

66. A condition of confinement for a civil immigration detainee violates the Constitution "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), aff'd sub nom. *Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017).

67. In violation of the law, Defendants continue to detain Petitioner. There is no evidence that Defendants are not in violation of the law and regulations that direct ICE not to detain or remove an individual, like Petitioner, who is awaiting his U visa bona fide determination.

68. There are no legal justifications for continuing the detention of Petitioner who is a low-risk, non-violent immigrant detainee who is suffering from being separated from his family, and the only method to properly protect Petitioner is through release from custody.

69. USCIS fails to timely place petitioners on the waiting list and issue parole despite USCIS's Associate Director for Service Center Operations, Donald Neufeld's, admission that USCIS has essentially completed the administrative process for determining waitlist eligibility within months

after a petition is filed. *See Solis v. Cissna*, D.S.C. No. 9:18-83, Dkt. 84, at 31 (quoting declaration of Donald Neufeld).

70. This failure to timely process U visa petitions is contrary to 8 C.F.R. § 214.14(d)(2) and congressional intent when passing the U visa statute.

71. The Defendants owe Plaintiffs a duty to adjudicate the Petitions for U Nonimmigrant Status (Form I-918) and the Form I-918, Supplement A, and have unreasonably failed to perform that duty by not adjudicating the petitions and applications in the more than 1 year the petition has remained pending. This duty is owed under the Immigration & Nationality Act and its implementing regulations.

72. The delay is unreasonable per se.

73. Alternatively, or in addition thereto, the delay is unreasonable in light of Plaintiff DIPAKKUMAR BALDEVBHAI PATEL's status as a crime victim. Plaintiff was the direct victim of serious crime, which is considered qualifying criminal activity, and he suffered substantial mental and emotional harm as a result. As a victim of this type of crime, he must remain in this country without lawful status for an extended period of time, causing Plaintiff further anguish.

74. The delay is unreasonable in light of the fact that USCIS has been unable to adequately respond to any of the Plaintiff's inquiries on the petition.

75. By making numerous inquiries on the status of the petition, Plaintiff has exhausted any and all administrative remedies that may exist. No other remedy exists to resolve Defendants' delay and lack of ability or willingness to adjudicate the petition and issue work authorization.

76. By delaying adjudication of Plaintiff's petition for U nonimmigrant status and application for work authorization, USCIS has deprived Plaintiff of the opportunity of work authorization.

WHEREFORE, and in light of the foregoing, Plaintiff DIPAKKUMAR BALDEVBHAI PATEL prays that this Honorable Court:

A. Assume jurisdiction herein;

B. Compel the Defendants and those acting under them to perform their duty or duties to determine Plaintiff's eligibility for placement on the U-status waiting list pursuant to 5 U.S.C. §§ 555(b) & 706(1) and 8 C.F.R. § 214.14(d)(2), or alternatively Compel the Defendants to determine Plaintiff's eligibility for the U visa by making Bona Fide Determination (BFD); and

C. Grant such other and further relief, as the Court deems appropriate and just.

Dated: Roseville, Minnesota
August 7, 2025

Respectfully Submitted,
DIPAKKUMAR BALDEVBHAI PATEL

By: */s/ Marc Prokosch*

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