

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

**Mr. Tomas Eduardo NEVAREZ  
JURADO,**

*Petitioner,*

v.

**JOSEPH FREDEN,  
in his official capacity as Field  
Office Director, Buffalo Field  
Office, U.S. Immigration &  
Customs Enforcement;**

**STEVEN KURZDORFER,  
In his official capacity as Acting  
Field Office Director, Buffalo Field  
Office, U.S. Immigration & Customs  
Enforcement;**

**TODD LYONS,  
In his official capacity as Acting  
Director, U.S. Immigration and  
Customs Enforcement,**

**KRISTI NOEM,  
In her official capacity as Secretary  
of Homeland Security,**

*Respondent.*

**Civil Action No. 25-cv-943**

**Immigration No. A** 

**MEMORANDUM OF LAW WITH RESPECT TO THE MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

Mr. Tomas Eduardo Nevarez Jurado (“Mr. Nevarez”) is a Mexican Citizen who was a victim of a violent crime and was granted a *bona fide* determination and deferred action under the U Nonimmigrant Status program by United States Citizenship and Immigration Services (“USCIS”) on October 27, 2022. Nevertheless, and in violation of its own policy directives, he was detained by Immigration and Customs Enforcement (“ICE”) and held at the Buffalo Federal

Detention Facility (“BFDF”) in Batavia, New York after delivering freight to Fort Drum on or about October 22, 2025.

Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268, 74 S.Ct. 499, 98 L.Ed. 681 (1954) (“*Accardi*”) (articulating this principle); *Singh v. DOJ*, 461 F.3d 290, 296 (2d Cir. 2006) (observing that, at least since *Accardi*, “the Supreme Court has held that an administrative agency must adhere to its own regulations”).

Victim-based immigration benefits exist primarily because, absent them, noncitizens who fear deportation are unlikely to come out of the shadows and assist law enforcement with the investigation and prosecution of criminal offenses. If individuals without lawful immigration status can trust that they will be protected from deportation should they step forward, our communities become safer. Malicious actors can no longer hide behind the shroud of fearful communities who remain silent. Congress wisely enacted these protections with the public safety of Americans at heart. It is incumbent upon the executive bureaucracy to respect Congressional intent.

As such, ICE promulgated a directive on December 2, 2021 which begins by discussing the importance of respecting the protections afforded to crime victims under the victim-based immigration benefit programs. Under ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims<sup>1</sup>, ICE officers and agents are directed to tread very carefully when attempting to take enforcement action against crime victims. The directive, which superseded prior directive 11005.2, has not been superseded by the current administration.

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<sup>1</sup> The directive is available at [https://www.ice.gov/doclib/foia/policy/11005.3\\_UsingVictimCenteredApproachNoncitizenVictims.pdf](https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf) and is attached hereto as an exhibit.

Under Section 5.1, entitled “Identifying Applicants for and Beneficiaries of Victim-Based Immigration Benefits,” it is stated that “Except where exigent circumstances exist that make it impracticable to do so, before ICE takes civil immigration enforcement action against a noncitizen, ICE officers and agents must consult available records and databases....to determine whether the noncitizen is a beneficiary of victim-based immigration benefits, or has a pending application or petition for such benefit.” Further, under section 5.4, entitled “Deferring to USCIS Adjudications” it states that “Where USCIS has granted such a noncitizen deferred action or made a bona fide determination or prima facie determination on their application, ICE officers and agents should notify OPLA so that it may consider whether seeking dismissal of proceedings would be appropriate. Where the noncitizen is subject to a final order, ERO should review for a discretionary stay of removal.” It goes on to state that “If USCIS issues an employment authorization document based upon a bona fide determination to a U visa petitioner... ICE should review the case for the exercise of prosecutorial discretion, however appropriate.” Further, with respect to detention, it states in Section 5.6 that ICE must take into account a pending or bona fide U visa application, as a positive discretionary factor, that cuts against any decision to detain the noncitizen. The memo goes on to state that “ICE should pursue civil immigration enforcement action against beneficiaries of victim-based immigration benefits only in exceptional circumstances...” and prescribes a procedure where ICE agents must seek written approval through the chain of command prior to taking such enforcement action, or if exigent circumstances exist, no later than 48 hours thereafter. Section 5.8.

Oddly enough, Mr. Nevarez was stopped by immigration authorities near Yuma, Arizona several weeks ago and, after agents reviewed his paperwork, he was permitted to proceed with his travel and no enforcement action was taken. It appears that those officers were following the

law, since, as a crime victim with a *bona fide* determination on his U visa application and an employment authorization document, Mr. Nevarez is not amenable to enforcement action under the ICE directive.

Mr. Nevarez, relying on such, delivered freight to Fort Drum on October 22, 2025 and was met with immigration authorities taking arbitrary and capricious enforcement action in violation of ICE's own directive. Upon information and belief, none of the prescribed actions in the directive 11005.3 were taken with respect to Mr. Nevarez. No advance permission was received, no consideration was given to his status a crime victim, and no respect was given to the USCIS grant of deferred action. Thus, his detention and any attempts at deporting him are in violation of law and the Temporary Restraining Order should remain in place at this time to prevent the irreparable harm that would come with his deportation.

Dated: September 29, 2025

Respectfully submitted,

/s/ Matthew K. Borowski

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Matthew K. Borowski  
*Attorney for Petitioner*  
4343 Union Road,  
Buffalo NY 14225  
E-mail: [matthew@borowskilaw.com](mailto:matthew@borowskilaw.com)  
Tel: 716-330-1503