

Anna Ciesielski OSB# 062967
anna@oregonimmigrationgroup.com
M. Renee Cummings OSB# 042669
renee@oregonimmigrationgroup.com
Oregon Immigration Group, PC
PO BOX 13764
Portland, OR 97213
503-548-1575

Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division**

Felipe Milian Mojica,


Petitioner,

v.

Camilla Wamsley, et al, Respondents
include: (1) Camilla Wamsley, Seattle
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations ("ICE/ERO"); (2) Todd
Lyons, Acting Director of Immigration
Customs Enforcement ("ICE"); (3) Kristi
Noem Secretary of the Department of
Homeland Security ("DHS"); (4) Pamela
Bondi, Attorney General of the United
States; (5) U.S. Immigration and
Customs Enforcement; and 6) U.S.
Department of Homeland Security.

Respondents.

Case No.

Agency No. A 

**PETITION FOR WRIT OF
HABEAS CORPUS**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. The petitioner, Felipe Milian Mojica, (“Mr. Milian Mojica”) is a 50-year-old Mexican native and citizen who is currently being held in detention at the ICE Processing Center by U.S. Immigration and Citizenship Enforcement (ICE) in Portland, Oregon.

2. In December of 2017, Mr. Milian Mojica’s wife applied for a U visa. In February of 2025, Mr. Milian Mojica’s wife and Mr. Milian Mojica filed an application for Mr. Milian Mojica to be a derivative on his wife’s U visa application.

3. On information and belief, Petitioner stated that he was afraid of returning to his country of origin while in ICE custody.

4. On June 17, 2016, nine years and almost 3 months ago, Petitioner was released from immigration on Orders of Supervised Release (“OSUP”) pursuant to an individualized determination that Petitioner was not dangerous and was not a flight risk.

5. Now, Respondents have detained Petitioner at the Portland ICE office without following the processes mandated in the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and other federal regulations, and in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

6. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents’ attempts to detain, transfer, and deport them are arbitrary and

capricious and in violation of the law, and to immediately issue an order preventing their transfer out of this district.

JURISDICTION

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

8. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

10. Venue is proper because Petitioner is in Respondents' custody in Portland, Oregon. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

11. For these same reasons, divisional venue is proper under Local Rule 3-2.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. 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 OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Its “root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.” *Fay v. Noia*, 372 U.S. 391, 402 (1963). “It must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired.” *Bowen v. Johnston*, 306 U.S. 19, 26 (1939).

14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

15. Petitioner Felipe Milian Mojica is a citizen of Mexico who is presently held at the ICE facility in Portland, Oregon.

16. Respondent Camilla Wamsley is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal

Operations (“ICE”). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The Seattle Field Office’s area of responsibility includes Alaska, Oregon, and Washington. Respondent Bostock is a legal custodian of Petitioner.

17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

21. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

22. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

23. Noncitizens are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *See Trump v. J.G.G.*, 604 U.S. ___, 145 S. Ct. 1003, 1006 (2025) (per curiam) and *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

24. Immigration detention is a form of civil confinement. “[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

25. Individuals with prior removal orders can be detained during the removal period but may be released from detention and confinement. 8 U.S.C. § 1231.

26. Individuals detained under 8 U.S.C. § 1231(a)(3) may be released, subject to terms of supervision.

27. Individuals with a prior order of removal who have a reasonable fear of persecution or torture upon return to their country of origin, are able to apply for Withholding of Removal. 8 C.F.R. § 208.31.

28. Revocation and return to custody is authorized upon following certain processes and an exercise of discretion by certain authorized officials making individualized findings. 8 C.F.R. § 241.4(l).

29. A noncitizen must promptly be notified of the reasons for revocation of release, be afforded an initial informal interview to respond to the reasons for

revocation, and the revoking official can only exercise his or her discretion after a particularized finding is made. 8 C.F.R. § 241.4(l).

FACTUAL BACKGROUND

30. Mr. Milian Mojica has been removed to Mexico three times: 1995 2001 and 2017. Each time he re-entered the U.S. without proper legal authority.

Declaration of Renee Cummings, at XX.

31. On December 5, 2017, Mr. Milian Mojica's wife filed an I-918 Petition for U Nonimmigrant Status with the USCIS Vermont Service Center (VSC). On February 24, 2025, Mr. Milian Mojica and his wife filed Form I-918A, Petition for Qualifying Family Member of U-1 Recipient. Declaration of Renee Cummings, at XX, *See also* 8 U.S.C. § 1182(a) (2025); 8 C.F.R. § 212.17.

32. On October 22, 2025, immigration officials arrested and detained Mr. Milian Mojica and he is being held at the ICE facility in Portland, Oregon.

33. Petitioner has three convictions. He was convicted of possessing narcotics for sale in 1995. Theft in 1997 and possession of a controlled substance in 2001. Declaration of Renee Cummings, at XX.

34. Mr. Milian Mojica has three U.S. citizen children, who of which are minors. Declaration of Renee Cummings, at XX.

35. On September 7, 2022, U.S. Citizenship and Immigration Services made a Bona Fide Determination in Mr. Milian Mojica's wife's case and she was granted an Employment Authorization Document. Declaration of Renee Cummings, at XX.

MEMORANDUM OF LAW

36. 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, and their derivatives, 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.

37. 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.

38. 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.

39. 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).

40. 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).

41. 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).

42. 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.

43. 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>.

44. 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.

45. 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

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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>.

46. 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.*

47. 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).

48. 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. 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

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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.

49. 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>.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A), the Immigration and Nationality Act—8 U.S.C. § 1231, and Federal Regulations Not in Accordance with Law and in Excess of Statutory Authority, Abuse of Discretion

50. Petitioner restates and realleges all paragraphs as if fully set forth here.

51. Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary, and/or an abuse of discretion, among other things. 5 U.S.C. § 706(2)(A).

52. An action is arbitrary or capricious and thus an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency,

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or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

53. 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.

54. 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).

55. 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>.

56. 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.

57. 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).

58. 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 nonimmigrant status, even prior to visa availability.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

59. Petitioner restates and realleges all paragraphs as if fully set forth here.

60. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

61. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

62. While the government has discretion to detain individuals under 8 U.S.C. § 1231 and to revoke custody decisions under 8 C.F.R. § 241.4(l), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 697-98.

63. Respondents have chosen to detain Petitioner in an arbitrary manner and without the formal processes and findings required by statute and regulation, in violation of due process. Because no individualized determination for revocation has been made and because Petitioner has not been afforded an opportunity to respond to the reasons for revocation, Respondents’ revocation of Petitioner’s release violates her right to procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner’s re-detention without an individualized determination violates the APA;
- (4) Declare that Petitioner’s re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

- (5) Declare that Respondents' application of the January 2025 Designation to Petitioner is illegal;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (9) Grant any further relief this Court deems just and proper.

Dated: October 22, 2025.

s/ Anna Ciesielski

Anna Ciesielski OSB# 062967
anna@oregonimmigrationgroup.com
M. Renee Cummings OSB# 042669
renee@oregonimmigrationgroup.com
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