

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-CV-25011-WILLIAMS

ELVIN DONALY GARCIA CASTILLO,

Petitioner/Plaintiff,

v.

CHARLES PARRA, Assistant Field Office
Director, *et al.*

Respondents/Defendants.

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM

Pursuant to the Court's Paperless Order (DE [18]), Petitioner submits this Supplemental Memorandum to address and cure the factual deficiencies identified by the Court in connection with Petitioner's Amended Emergency Motion for Preliminary Injunction and/or Temporary Restraining Order (DE [8]). Specifically, this filing provides additional information regarding Petitioner's whereabouts and immigration status following his July 2013 removal; his circumstances between his October 2017 conviction and the filing of his U-Visa petition in 2022; the factual basis and qualifying criminal activity underlying his U-Visa petition; the grounds on which USCIS granted Petitioner bona fide determination ("BFD") status; and the circumstances surrounding Petitioner's October 2025 arrest and current detention.

I. Petitioner's Whereabouts and Immigration Status (July 2013 – October 2017)

Petitioner was last removed from the United States on July 12, 2013. [ECF No. 12-14]. He resided in Mexico momentarily. On December 16, 2013, Petitioner reentered the United States without inspection through Laredo, Texas. From December 2013 onward, Petitioner resided

continuously in Pompano Beach, Florida. During this period, Petitioner had no lawful immigration status and remained subject to reinstatement of his prior removal order. *See* INA §241(a)(5).

II. Petitioner's Circumstances Between Conviction and U-Visa Filing (2017 – 2022)

On April 30, 2017, Petitioner was arrested in Miami, Florida, for Driving Under the Influence (Fla. Stat. § 316.193(1)), and convicted on October 30, 2017. He was sentenced to 90 days of house arrest, 12 months of probation, fines totaling \$2,697.25, a five-year suspension or revocation of his driver's license, and two years with an interlock device. *See* Exh. A, Extract of Petitioner's U-Visa and U-Visa Waiver Application (Tabs A-F). No further criminal activity or arrests occurred during this period. After completing all conditions, Petitioner continued residing in Pompano Beach, Florida, and worked as a ceramic installer (2013–2019) and later as a laborer (2019–present).

Petitioner filed his U-Visa petition on December 1, 2022. ECF 1-1. In his submission, Petitioner disclosed his 2012 prior removal order and the 2012 and 2017 arrests and convictions under Fla. Stat. 316. 193(1). *See* Exh. A, Copy of Petitioner's Redacted U-Visa and U-Visa Waiver Application. In the U visa cover letter, Petitioner requested a waiver of inadmissibility under INA §§ 212(a)(6)(A), 212(a)(9)(B), 212(a)(9)(C), and 212(a)(2)(A)(i)(II) for: (1) entry without inspection; (2) accrued unlawful presence since his last entry in 2013; (3) reentry after a removal order; (4) a controlled substance offense; and (5) seeking admission following removal. *Id.* Petitioner answered "Yes" to the applicable immigration and criminal history questions on Form I-918. *Id.* Further, Petitioner included his criminal record as Exhibit F to the U-Visa Application. *Id.* Petitioner concurrently filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, seeking a waiver of inadmissibility under INA § 212(d)(14). *Id.*

III. Factual Basis and Qualifying Criminal Activity Underlying U-Visa Petition

Petitioner was the victim of two violent robberies in Pompano Beach, Florida. On August 4, 2019, he was assaulted and robbed, punched in the face, and sustained a swollen and bloody lip while his property was stolen. On August 25, 2019, he was robbed again by two armed men who threatened him with firearms and stole his property. Both incidents were reported to the Broward County Sheriff's Office (Case Nos. 111908000969 and 111908006910), and Petitioner fully cooperated with law enforcement by providing statements and participating in a photo lineup. These offenses constitute qualifying criminal activity, felonious assault and robbery under Fla. Stat. § 812.13, which meet the criteria set forth in INA § 101(a)(15)(U).

IV. Grounds for USCIS Granting Bona Fide Determination (BFD) Status

Respondent, USCIS, granted Petitioner Bona Fide Determination (BFD) status after reviewing Petitioner's properly filed Form I-918 and supporting documentation, which included:

- Evidence of substantial physical and mental harm (medical and psychological evaluations diagnosing PTSD, Major Depressive Disorder, and Generalized Anxiety Disorder);
- Law enforcement certification (Form I-918B signed by Broward Sheriff's Office on June 6, 2022, confirming Petitioner's cooperation in two violent robbery investigations);
- Police reports, affidavits, and photographs corroborating victimization and injuries;
- Proof of ongoing cooperation with law enforcement.

It is essential to note that USCIS does not automatically issue a Bona Fide Determination (BFD) or make it a matter of course. Rather, the agency conducts a thorough review of the petition and supporting evidence before exercising favorable discretion. This review includes verification of eligibility, background and security checks, and assessment of discretionary factors. See USCIS Policy Manual, Vol. 3, Part B, Ch. 5, available at <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (last visited on November 19, 2025). USCIS determines a principal petition is

bona fide if USCIS has received the result of the principal petitioner's background and security checks based upon biometrics. Petitioner attended his biometrics appointment with USCIS in connection to his pending Form I-918 on February 2, 2023. Submission of biometrics is a requirement for principal petitioners as well as derivatives. *See* 8 CFR 214.14(c)(3) and 8 CFR 214.14(f)(5).

USCIS may decline to grant a Bona Fide Determination (BFD) and deferred action if a petitioner appears to pose a risk to national security or public safety. *Id.* This decision is made on a case-by-case basis after considering any adverse factors. *Id.* When indicators of such concerns exist, USCIS conducts a comprehensive review of all available evidence before deciding whether to exercise favorable discretion. *Id.* If USCIS determines that the petitioner may pose a risk or has other adverse factors requiring further scrutiny, the agency will not issue a BFD employment authorization. *Id.*

In granting BFD and deferred action status, USCIS necessarily determined that Petitioner's case warranted a favorable exercise of discretion after a thorough review of eligibility, security checks, and discretionary factors. This determination reflects that USCIS found no indicators of national security or public safety concerns and no adverse factors requiring further scrutiny. Rather, USCIS concluded that Petitioner's cooperation with law enforcement, documented victimization, and evidence of rehabilitation outweighed any prior conduct. The issuance of BFD status and deferred action is therefore a significant discretionary decision, underscoring USCIS's confidence in Petitioner's eligibility.

V. Circumstances of Petitioner's October 2025 Arrest

As Respondents have not served Petitioner or undersigned counsel with any documentation regarding the basis for his detention, Petitioner recounts the circumstances of his arrest. On or

about October 24, 2025, Petitioner was stopped by Florida State Troopers on Interstate 95 in Port St. Lucie, Florida. Petitioner had committed no criminal or traffic violations. During the stop, he presented his valid Florida driver's license, and his employment authorization document (EAD) issued under category C(14) indicating deferred action status. Despite this, Petitioner was taken into custody, essentially due to law enforcement's lack of understanding of what deferred action status entails. To date, Petitioner has not been charged with any new criminal or traffic offense.

VI. Current Basis for Petitioner's Detention

Respondents assert that Petitioner is detained pursuant to INA §1231(a)(5), which provides that an alien who illegally reenters after removal "shall be removed under the prior order at any time after the reentry" and is ineligible for relief under the Act. [ECF No. 12, p. 11-12]. Under 8 C.F.R. § 241.8, an immigration officer must make specific determinations before reinstatement, including confirming the existence of a prior order, verifying identity, and establishing unlawful reentry. Once these determinations are made, the officer is required to provide the alien with a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, and afford the alien an opportunity to contest that determination.

Pursuant to the Declaration of Deportation Officer of Ronald Andersson (DO Anderson) [ECF. No. 12, Exh. D], Petitioner was served with the reinstatement order, Form I-871 on October 26, 2025. Respondents have failed to include a copy of the referenced document in the record. The ones on record as of now, ECF 12-11 and 12-12, are from Petitioner's removal in July 2013. Nonetheless, Petitioner does not contest his removability but argues there is no legal basis for his removal due to his BFD and deferred action status, which were conferred upon him by Respondents.

Respondents further contend that, under 8 C.F.R. § 214.14(c)(1)(ii), USCIS's grant of deferred action does not prevent ICE from executing a removal order or detaining Petitioner, as deferred action is "an act of administrative convenience" that does not confer lawful status or a stay of removal. [ECF No. 12, p. 13]. Under 8 C.F.R. § 214.14(d)(2) and consistent nationwide practice¹, BFD status provides discretionary protection from removal and eligibility for employment authorization while the petition is adjudicated. Detention based solely on a prior removal order, particularly one that has not been lawfully reinstated, conflicts with Respondents' own exercise of favorable discretion and the humanitarian protections embedded in the U-Visa framework.

Respectfully submitted,

Dated: November 21, 2025

s/ Alexandra Friz-Garcia
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Alexandra Friz-Garcia
Alexandra Friz-Garcia, Esq.
Counsel for Petitioner

¹ See *Espinoza-Sorto v. Agudelo*, No. 1:25-cv-23201, at *11-12 (S.D. Fla. Oct. 28, 2025) ("the government's grant of deferred action means that no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.") (quoting *Ayala*, 2025 U.S. Dist. LEXIS 142123 at *7) (internal quotations omitted); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 n. 2 (11th Cir. 2012) ("Deferred action status . . . amounts to, in practical application, a reprieve for deportable aliens. No action (i.e. no deportation) will be taken . . . against an alien having deferred action status.") (quoting *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983)) (internal quotations omitted)