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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ELI NOE LEIVA,

Petitioner,

v.

Peter Berg, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; PAMELA BONDI, in her official capacity as U.S. Attorney General; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; JOEL BROTT, Sherburne County Jail Sheriff

Respondents.

Case No.: 0:25-cv-4438

PETITION FOR WRIT OF HABEAS CORPUS

1 **INTRODUCTION**

2 1. This case is about a 41-year-old father of four with a pending U Visa application
3 with deferred action status who cannot be removed from the United States because he has a valid
4 grant of Deferred Action. Nevertheless, Respondents seek to detain him and remove him in
5 contravention of federal law and the Constitution.

6 2. Eli Noe Leiva is currently 41 years old. His most recent residence prior to being
7 detained was in Plymouth, Minnesota. He resided there with his wife and four children. On
8 November 3, 2025, Immigration and Customs Enforcement ("ICE") arrested Eli without a warrant
9 while he was at work. Eli was asked for his identity information and his immigration status. Eli
10 was detained and transferred to the Sherburne County Jail in Elk River, Minnesota, where he has
11 remained detained ever since.

12 3. Eli came to the United States from El Salvador when he was 21 years old in January
13 of 2006, after suffering threats of assault and other violence by gang members. He was initially
14 detained by the Department of Homeland Security ("DHS") upon entry to the United States. He
15 was processed under 8 USC 1229(a) for removal proceedings and released on his own
16 recognizance.

17 4. Eli moved to Minnesota shortly after his release and unbeknownst to him, Eli was
18 scheduled to appear in the Harlingen, Texas Immigration Court on April 13, 2006, but because he
19 failed to receive notice of this hearing due to a deficient Notice to Appear that did not list a time
20 or place for this hearing, he failed to appear and was ordered removed *in absentia*.

21 5. On October 9, 2018 Eli's daughter, [redacted] applied for U
22 Nonimmigrant status. As part of that application she sent an application I-918 Supplement A,
23 Petition for Qualifying Family Member of U-1 Recipient. Eli's Daughter was the victim of
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1 felonious assault, an enumerated ground for protection under the U Nonimmigrant visa status. The
2 U Nonimmigrant visa is a humanitarian immigration protection enshrined in federal statute that is
3 designed to afford certain immigrants that are victims of crimes in the United States the
4 opportunity to remain safely and permanently in the United States.

5 6. A U visa is intended to provide a path to lawful status for immigrant victims of
6 crime who cooperate with law enforcement in the investigation or prosecution of such crimes. 8
7 U.S.C. § 1101(a)(15)(U). The purpose of the U Visa is to encourage aliens present in the United
8 States to report crimes to authorities regardless of immigration status. Eli and his daughter aided
9 in the investigation of her felonious assault and as such the Brooklyn Park Police Department
10 signed a U Visa certification confirming their help in the investigation.

11 7. Eli required a waiver of inadmissibility to be eligible for a U visa because of his
12 prior immigration removal order. The U Visa includes an ancillary form I-192, application for
13 advance permission to enter as a nonimmigrant which *inter alia* includes waivers for previous
14 removal orders. However, because of a visa backlog, people with approvable, or bona fide cases
15 must wait—often years—before they are able to apply for a green card and gain lawful permanent
16 resident ("LPR") status.

17 8. Under a U.S. Citizenship and Immigration Services ("USCIS") policy designed to
18 protect this vulnerable group during this wait, USCIS also provided Eli with a four-year, renewable
19 grant of deferred action and accompanying employment authorization. This allowed him to start
20 building a stable life here in the United States without the threat of deportation while he waits to
21 apply for the visa to become available. As part of the application process Eli attended biometrics
22 services to review his background and confirm his eligibility.

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9. While Eli has an order of removal *in absentia* from 2006, issued against him without his knowledge, his grant of deferred action prevents ICE from deporting him.

10. Moreover, deporting Eli would completely undermine the purpose of the U Visa statute. Through his deferred action grant and pending U Visa, Eli is on a path to permanent legal status, which he must remain in the United States to access. Respondents' efforts to block Eli from accessing the protections Congress specifically enacted for the benefit of victims like him improperly subverts Congress' intent that he be permitted to adjust status and establish a stable life in the United States.

11. Eli's warrantless arrest violated his statutory and Fourth Amendment rights. Because Eli cannot be removed, his ongoing detention—particularly without an individualized review—serves no lawful purposes and runs afoul of the substantive and procedural due process protections of the Fifth Amendment. Eli brings this habeas petition challenging his unlawful arrest and detention. To be clear, this petition does not challenge Respondents' ability to issue a removal order against Eli and does not challenge the removal order; it strictly seeks to liberate Eli from detention on the basis that his arrest was unlawful, his detention serves no lawful purpose, and his removal is not reasonably foreseeable. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 679 (2001).

PARTIES

12. Petitioner **Eli Noe Leiva** is a 41-year-old father of four, who came to the United States at the age of 21 on his own. He has a pending U Visa, he has been granted deferred action, and he has no criminal history. Nonetheless, on November 3, 2025, ICE arrested Eli while he was

at his place of employment. Eli is now detained at Sherburne County Jail in Elk River, Minnesota. He is currently in the custody of Respondents.

13. Respondent **Peter Berg** is the Director of the St. Paul Field Office of ICE's Enforcement and Removal Operations division. As such, he is Eli's immediate custodian and is responsible for Eli's detention and removal. He is named in his official capacity.

14. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Eli's detention. Ms. Noem has ultimate custodial authority over Eli and is sued in her official capacity.

15. Respondent **Pamela Bondi** is Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Eli's removal and bond proceedings, including the standards used in those proceedings, and as such, she is Eli's legal custodian. She is sued in her official capacity.

16. Respondent **Todd Lyons** is sued in his official capacity as Acting Director of ICE, and as such is the legal custodian of Eli.

17. Respondent **Joel Brott** is sued in his official capacity as Sherburne County Sheriff. The Sherburne County Jail, where Eli is detained, is operated by the Sherburne County Sheriff's Office, which has ultimate authority over the Jail. He is responsible for the operations of the Kandiyohi County Jail and is the immediate physical custodian of Eli.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas

corpus), 28 U.S.C. § 1331 (federal question), Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

19. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvyda*, 533 U.S. at 687 (same); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (same).

20. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Eli is detained within the District of Minnesota, his immediate physical custodian is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District.

REQUIREMENTS OF 28 U.S.C. § 2243

21. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

22. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

LEGAL FRAMEWORK

1 **A. *The U Visa Adjudication Process***

2 ***1. The U Visa Statute and Legislative History***

3 23. In 2000, Congress created a new visa category for immigrant victims of crime who
4 cooperate with law enforcement in the investigation or prosecution of a crime. See Victims of
5 Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. No. 106–386, 114 Stat.
6 1464 (2000).

7 24. Congress enacted the U visa provision to strengthen law enforcement's ability to
8 investigate and prosecute crimes "while offering protection to victims of such offenses in keeping
9 with the humanitarian interests of the United States." VTVPA, Pub.L. 106–386, at § 1513(a)(2)(A).
10 "This visa will encourage law enforcement officials to better serve immigrant crime victims and
11 to prosecute crimes committed against aliens." *Id.*

12 25. To be eligible for a U visa,[1] an applicant must show: (1) she was the victim of a
13 enumerated crime in violation of law; (2) she "suffered substantial physical or mental abuse as a
14 result of having been a victim of criminal activity"; (3) she possesses information concerning the
15 criminal activity; and (4) she helped or is helping law enforcement or prosecutors in the
16 investigation or prosecution of criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U)(i)(III).

17 26. There is an annual statutory cap on U visas. By statute, USCIS may only issue
18 10,000 visas per year. 8 U.S.C. § 1184(p)(2). In the past several years, U visa applications have
19 far exceeded the 10,000-per-year cap, resulting in a backlog of over 100,000 U visa applications
20 awaiting adjudication.

21 ***2.* The "Waiting List" and Deferred Action**

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24 [1] These visas are referred to as "U" visas due to their placement in the statute at 8 U.S.C. § 1101(a)(15)(U).

1 27. Due to the 10,000-visa cap on U visas discussed above, USCIS adopted a regulatory
2 "waiting list," whereby USCIS conducts an initial adjudication and places "eligible petitioners
3 who, due solely to the cap [of 10,000 visas], are not granted U-1 nonimmigrant status . . . on a
4 waiting list." 8 C.F.R. § 214.14(d)(2).

5 28. Significantly, while on the waiting list, USCIS will grant the applicant deferred
6 action, which is a form of prosecutorial discretion protecting an individual from removal, and
7 USCIS may grant work authorization. *Id.* This would also preclude Petitioner's removal from the
8 United States and would result in his release from detention.

9 29. According to USCIS's published processing times, it currently takes more than two
10 years to adjudicate this first phase of adjudication; i.e., to receive deferred action by placement on
11 the waiting list. *See* Ex. B, USCIS Vermont Service Center processing times. To put it simply,
12 there is now a four-year waiting list to get onto the waiting list.

13 30. Written in the regulatory framework are protections for those waiting for a U Visa
14 to become available and be considered for a discretionary grant of deferred action, meaning that
15 they would be protected from deportation while waiting for a visa to become available. *See*, 8 CFR
16 214.14(d)(2). Persons granted deferred action are shielded from deportation and are eligible to
17 apply for employment authorization under 8 C.F.R. § 214.14(d)(2).

18 31. Deferred action is an act of prosecutorial discretion that defers efforts to deport a
19 noncitizen from the United States for a certain period of time. In the case of U Visa applicants
20 awaiting visas, USCIS granted deferred action for a period of four years. *See id.*

21 32. Deferred action does not confer lawful status and does not prevent an immigration
22 judge from issuing a removal order. However, unless and until terminated, a grant of deferred
23 action prevents immigration authorities from physically removing a noncitizen from the United
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States. *See* USCIS Policy Manual, Vol. 3: Humanitarian Protection and Parole, Part C: Victims of Crimes, Ch. 4: Adjudication; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("*AADC*").

33. Once deferred action is granted, fundamental procedural due process protections attach to the recipient, such as the right to notice and an opportunity to contest the revocation of deferred action. *See Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) (finding that Petitioner was "likely to succeed on his Due Process claim" because he was denied "notice, a hearing, or any opportunity to contest the revocation of his deferred action.").

FACTUAL ALLEGATIONS

34. Eli was born in El Salvador in [redacted] 1984. As a child in El Salvador, Eli lived in poverty. The family home consisted of two bedrooms, a kitchen, and a living room. The bathroom was located outside of the home. Around the time Eli decided to flee El Salvador in 2005, Eli suffered harassment and threats by [redacted], threatening to harm him if he did not help their gang. [redacted] were known to have harmed others for refusing to help them.

35. At the end of 2005 when Eli was around the age of 21, he traveled to the United States. Upon his entry and contact with border patrol officers, Eli was detained by Customs and Border Patrol Officials. Eli was given a Notice to Appear ("NTA") that was deficient as it did not state a date or time for his immigration court hearings. The officials then released Eli under his own recognizance. Despite this lack of notice, the Immigration Court in Harlingen, Texas conducted a removal hearing without his presence. On April 13, 2006 the Immigration Judge ordered Eli removed in absentia.

36. Eli and his family reunited in the United States. He married his wife Zoila Yolanda Leiva on June 29, 2008. They have four children together. Their oldest daughter, [redacted] [redacted]r, was born on [redacted] in El Salvador before Eli came to the U.S. Eventually Eli and Zoila made the difficult decision to have [redacted] come to the United States for the same sort of threats that he faced before fleeing.

37. Unfortunately for the family, [redacted] was the victim of a felonious assault in the family's home. The family called police and participated fully in the investigation. The Brooklyn Park, Minnesota Police Department signed a certification attesting to the fact that [redacted] and her family helped in the investigation and that the crime was one of the enumerated crimes that qualifies for a U Visa. Despite not having immigration status in the United States, the family then decided to apply for a U Visa. On October 9, 2018 USCIS received the application where it remains pending to this day.

38. On February 27, 2024, over eighteen years after the *in absentia* removal order, USCIS[2] granted deferred action for Eli and his family. Eli received an I-797A Notice of Action, which stated: "USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action. As a result, you have been placed in deferred action and you may be issued an employment authorization document." *See* Ex. A, Bona Fide Determination Notice. The notice also stated: "Your grant of deferred action will remain in effect for a period of four years from the date of this notice unless terminated earlier by USCIS." *Id.* Therefore, Eli's deferred cation does not expire until February 21, 2028.

39. Because of the visa backlog impacting U Visa beneficiaries, *see supra* ¶¶ 27-35 , Eli could not immediately apply to adjust status to become an LPR after being granted deferred

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[2] USCIS is the sub-agency of the DHS with exclusive jurisdiction over U Visa petitions, including both granting and revoking status. *See* 8 C.F.R. §§ 204.11

action, and instead was required to wait until a visa became available. Still, he made plans for his future based on deferred action, and his ability to obtain employment authorization to work lawfully. He had plans for supporting his family and being able to provide for them and be with them as they grew up in the United States.

40. Eli proceeded to apply for employment authorization as her Form I-797A stated he was eligible to do. As part of that application process, he was required to attend an appointment at the St. Paul ASC location for fingerprinting on November 27, 2018.

41. Eli went to work on the morning of November 3, 2025 as he had done with his employment authorization. It was at work that ICE officials searching for a co-worker asked Eli about his status. Eli explained his situation and the DHS officials decided to detain him despite having valid deferred action satus.

42. After taking Eli into custody, ICE transferred him to the Sherburne County Jail in Elk River, Minnesota, where he remains today.

CLAIMS FOR RELIEF

CLAIM I

ELI'S DETENTION DESPITE THE FACT THAT HE CANNOT BE REMOVED VIOLATES THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE CONSTITUTION AND 8 U.S.C. § 1231(a)(6)

43. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. Because Eli's removal is not reasonably foreseeable and there is no other justification for his detention, his detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor related to any legitimate government interests, in violation of the substantive due process protections of the Fifth Amendment.

1 45. Because Eli was issued an *in absentia* removal order, he is detained under 8 U.S.C.
2 § 1231(a)(6), which governs the detention of noncitizens with final removal orders.
3 46. In *Zadvydas v. Davis*, the Supreme Court held that to avoid offending the Due
4 Process Clause, detention under that statute is limited to "a period reasonably necessary to bring
5 about" the individual's removal from the United States. 533 U.S. 678, 689 (2001). While detention
6 is presumptively reasonable for up to six months, *id.* at 701, reasonableness is measured "primarily
7 in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment
8 of removal." *Id.* at 699. Accordingly, a noncitizen may challenge his detention prior to the six
9 month mark if she "can prove" that there is no significant likelihood of his removal in the
10 reasonably foreseeable future. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL
11 1750346, at *5 (D.N.J. June 24, 2025); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d.
12 703, 706-07 (S.D. Tex. 2020). If "removal is not reasonably foreseeable, continued detention is
13 unreasonable and no longer authorized by statute." *Primero v. Mattivelo*, No. 1:25-CV-11442-IT,
14 2025 WL 1899115, at *4 (D. Mass. July 9, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-
15 CV-01063-JNW-TLF, 2025 WL 2084400, at *4 (W.D. Wash. July 24, 2025).
16 47. Here, the government cannot remove Eli from the United States for at least three
17 reasons. First, Eli has a valid grant of deferred action, which precludes his removal. *See Primero*,
18 2025 WL 1899115, at *4 ("Respondents do not suggest that ICE routinely removes individuals
19 with active grants of deferred action from the United States, or that Petitioner will be removed
20 before her deferred action is terminated."). Eli's grant of deferred action remains valid until
21 February 21, 2028.
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1 48. Second, Eli has a procedural due process right under the INA and DHS regulations
2 not to have his status revoked without notice and an opportunity to submit evidence in opposition
3 to the revocation and to appeal an adverse decision. 8 U.S.C. § 1155; 8 C.F.R. § 205.2.

4 49. Third, removing Eli (regardless of his deferred action grant) would contravene the
5 very purpose of the U Visa statute. As discussed *supra*, the core purpose of U Visa protection is
6 to provide beneficiaries like Eli with a means to adjust their status to become a lawful permanent
7 resident from within the United States. Allowing Eli to be removed from the United States after
8 he has already been granted deferred action would thus eviscerate Congress' goal in creating the
9 U Visa in the first place.

10 50. For all the foregoing reasons, the government cannot lawfully remove Eli from the
11 United States. Therefore, there is no significant likelihood of his removal in the reasonably
12 foreseeable future and his detention violates 8 U.S.C.(a)(6). *See Primero,* 2025 WL 1899115, at
13 *4 (granting habeas petition for young person with SIJS deferred action); *Ayala v. Bondi,* No. 2:25-
14 CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (granting habeas
15 petition for a noncitizen with U Visa deferred action); *Chuol P.M. v. Garland,* No. 21-cv-1746,
16 2022 WL 2442600 (D. Minn. Jan. 7, 2022) (granting habeas for a noncitizen detained pursuant to
17 § 1231(a) by re-affirming *Zadvydas* and that the government could not show that the respondent
18 would be removed in the reasonably foreseeable future).

19 51. For the same reasons, Eli's detention violates his substantive due process rights
20 under the Fifth Amendment. The Supreme Court has long recognized that noncitizens physically
21 present in the United States are entitled to due process protections, regardless of their immigration
22 status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976.) Substantive due
23 process requires that there be a reasonable relation between an individual's detention and the
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1 government's purported interests in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738
2 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). As the Supreme Court recognized in
3 *Zadvydas*, the government's only interests in post-order immigration detention are to (1) prevent
4 flight risk, so a person can actually be removed, or (2) otherwise ensure the safety of the
5 community. *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed,
6 "preventing flight" is a "weak or nonexistent" justification. *Id.* at 690; *cf. Phan v. Reno*, 56 F. Supp.
7 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of
8 deportation."). Detention for community safety, in turn, is only permissible "when limited to
9 specially dangerous individuals and subject to strong procedural protections." *Id.* at 691.

10 52. Here, the government's inability to lawfully remove Eli eliminates any justification
11 of flight risk, which the government could not show in any event, given Eli's deep ties to his family
12 and community, including the care of her U.S. citizen children, time in the United States, and his
13 ability as an U Visa applicant to eventually adjust to lawful permanent resident status and then
14 gain citizenship. Additionally, Eli's lack of any criminal record obviously eliminates any possible
15 justification of danger.

16 53. Accordingly, because Eli's removal is not reasonably foreseeable and there is no
17 other justification for his detention, his detention is neither authorized by 8 U.S.C. § 1231(a)(6)
18 nor related to any legitimate government interests. Therefore, his detention violates the substantive
19 due process protections of the Fifth Amendment.

20 **CLAIM II**

21 **ELI'S DETENTION WITHOUT NOTICE AND AN OPPORTUNITY TO RESPOND VIOLATES THE PROCEDURAL DUE PROCESS PROTECTIONS OF THE FIFTH**
22 **AMENDMENT OF THE CONSTITUTION**

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54. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

55. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

56. In contrast to other habeas petitioners challenging their detention under 8 U.S.C. § 1231(a)(6), Eli "has been afforded no review of [his] detention." *Primero*, 2025 WL 1899115, at *5. "To the contrary, Respondents have made no suggestion that there has been any review of Petitioner's record to determine that his detention was warranted to ensure her removal." *Id.* (internal quotations omitted). Instead, Petitioner's detention in this case was the result of a humanitarian-blind enforcement action.

57. Under the familiar *Eldridge* Due Process test, then, the government's decision to arrest Eli without any notice or an opportunity to respond, and continue to detain him without any opportunity to meaningfully challenge that detention, clearly violates his procedural due process rights.

58. First, Eli has a substantial, legally protectable liberty interest, created by his reliance on U Visa application and deferred action, at stake.

59. Second, the risk of erroneously depriving Eli of that interest is severe. At forty-one years old, a a father of four, he is missing work, falling behind on helping support his home and family. Despite his best efforts to finally find stability and submitting to the immigration process to lawfully apply for immigration status in the United States, he he has been thrown into sudden

instability once again. He is being separated from his family, which harms not only him, but his family. Eli has been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since this deprivation, making the value of additional process high. *See Eldridge*, 424 U.S. at 343.

60. Third, the government's interest in detaining Eli is minimal. USCIS has determined that he is not a priority for removal in its deferred action determination. Eli cannot be deported and does not present any flight risk or danger: he has a U.S. citizen child, he is firmly settled in Minnesota, he has a stable job that he attends regularly, he has an attorney, and he has absolutely no criminal history. Meanwhile, additional process would entail little to no burden on the government. *See Eldridge*, 424 U.S. at 347.

61. Eli's continued detention without an opportunity to be heard violates her procedural due process rights under the Fifth Amendment of the Constitution.

CLAIM III

ELI'S ARREST AND DETENTION VIOLATE THE FOURTH AMENDMENT OF THE CONSTITUTION AND 8 U.S.C. § 1357(a)(2)

62. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

63. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

1 64. As a general matter, the Fourth Amendment requires that all arrests entail a neutral,
2 judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That
3 neutral, judicial determination can occur either before the arrest, in the form of a warrant, or
4 promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest
5 and detention of a person, including of a noncitizen, absent a neutral, judicial determination of
6 probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside*
7 *v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention,
8 which includes weekends, unless there is a bona fide emergency or other extraordinary
9 circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

10 65. Congress enacted a strong preference that immigration arrests be based on warrants.
11 *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with
12 only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer
13 must have "reason to believe" the person is violating the immigration laws and that the person "is
14 likely to escape before a warrant can be obtained." *Id.* Federal regulations track the strict
15 limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

16 66. Here, at the moment of seizure, Eli had been granted a bona fide determination and
17 deferred action, which is a valid status. Agents were conducting sweeping detentions with no
18 regard for protections afforded under the Constitution. Agents were clearly waiting for Eli at his
19 work, showing that they knew ahead of time he would be there and prepared for him to be there
20 for the purposes of detaining him. It was through their own lack of due process that they did not
21 obtain a warrant prior to having contact with him.

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67. Therefore, no officer could hold a reasonable belief that Eli was both present in violation of the immigration laws and that he was likely to escape before a warrant could be obtained. *See* 8 U.S.C. § 1357(a)(2).

68. Without a statutory basis to arrest, the Government is required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Eli. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Eli received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

69. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Here, Eli is present with deferred action. Agents arrested and detained Eli when he responded ot their questions while he was at his place of employment.

70. Eli's warrantless arrest occurred in violation of the clear, narrow circumstances permitted by statute. There has been no finding of probable cause or other determination by a neutral magistrate that would cure this infirmity; his arrest lacked any legal basis and there continues to be no legal basis for his detention. Therefore, his arrest and ensuing detention constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment and 8 U.S.C.§ 1357(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

A. Assume jurisdiction over this matter;

B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension;

C. Temporarily prohibit Petitioner's transfer outside the District of Minnesota during the pendency of this action;

D. Declare that Petitioner's arrest and continued detention violate 8 U.S.C. § 1231(a)(6) and the Fourth and Fifth Amendment of the U.S. Constitution;

E. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;

F. In the alternative, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention;

G. In the alternative, grant bail pending the conclusion of the habeas review; *see, e.g.*, *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, WL 1118718 (W.D. Tex. Apr. 28, 2004) (granting bail where the applicant does not pose a risk of flight or danger, and finding that such relief is necessary to "give effect to the requested habeas relief"); *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001); and

H. Grant such other and further relief as law and justice require.

DATED: November 24, 2025

Respectfully submitted,

/s/ Kevin V. Heinz
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Attorney for Petitioner

VERIFICAITON PURSUANT TO 27 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, and on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: November 24, 2025

/s/ Kevin V. Heinz
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