

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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Nathaniel Sterling,	)	
	)	
<i>Petitioner,</i>	)	No. 3:25-cv-02122 (KAD)
	)	
v.	)	
	)	
Todd Blanche, Acting Attorney General of	)	
the United States, <i>et al.</i> ,	)	June 08, 2026
	)	
<i>Respondents.</i>	)	
_____	)	

**SUPPLEMENTAL BRIEF IN RESPONSE TO
THE COURT'S MAY 28, 2026 ORDER**

I. Introduction

Petitioner Nathaniel Sterling was [REDACTED] ECF 37-2 at 92. The Hartford Police Department (“HPD”) investigated his unprovoked assault, and in April 2025, eight months prior to his sudden re-detention, Mr. Sterling received a law enforcement certification from HPD based upon his cooperation with their investigation. ECF 37-2 at 77-82. He subsequently applied for a U visa, with U.S. Citizenship and Immigration Services (“USCIS”) receiving his petition on September 24, 2025. Exhibit A. That petition remains pending before USCIS. Exhibit B.

The government has superior information, but Mr. Sterling’s arrest by ICE on December 19, 2025, may not have complied with ICE’s 2025 Guidance, which was operative at that time. *See* ICE Guidance 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025) (“2025 Guidance”).¹ That 2025 Guidance imposed few restrictions on ICE’s arrest or detention of U visa applicants, however, and thus Mr. Sterling did not previously raise this issue. The district court’s order in *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) (“*ICWC*”), altered that by staying ICE’s 2025 Guidance and restoring guidance previously in effect. *See* ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) (“2021 Directive”).² The restored 2021 Directive precludes the detention, from May 20, 2026 forward, of U visa petitioners absent (1) “exceptional circumstances” not present here and (2) compliance with procedural requirements that, to the best of Mr. Sterling’s knowledge, ICE has not fulfilled. In

¹ The 2025 Guidance is available at <https://www.ice.gov/doclib/foia/policy/11005.4.pdf>.

² The 2021 Directive is available at https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf.

other words, ICE's detention of Mr. Sterling since May 20, 2026, violates the restored 2021 Directive. Through counsel, he promptly brought the *ICWC* order to this Court's attention.

Mr. Sterling does not request leave to amend his habeas petition so as to add an Administrative Procedure Act claim or otherwise, but the *ICWC* order is relevant to this petition as pled. As explained below, Respondents' noncompliance with the 2021 Directive since May 20, 2026, and the *ICWC* order constitute "extraordinary circumstances" favoring release pending adjudication under *Mapp v. Reno*, 251 F.3d 221 (2d Cir. 2001), as pled in the Fifth Claim for Relief in the Second Amended Petition ("SAP"). See ECF 25, at 22 ¶ 110. Additionally, the government's failure to apply longstanding procedural safeguards for U visa petitioners and its likely failure to comply with the bare requirements of the 2025 Guidance at the time of Mr. Sterling's arrest strengthens his Second Claim for violations of Procedural Due Process. See ECF 25, at 17-19 ¶¶ 84-94. This Court should thus consider the supplemental authorities outlined below in adjudicating the SAP.

II. The *ICWC* Order Is Relevant to Claim 5 for Release Pending Adjudication Under *Mapp v. Reno*.

The *ICWC* order is relevant to Mr. Sterling's claim for release pending adjudication. The Second Circuit held in *Mapp* that federal courts have the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d at 226. The Court determined that extraordinary circumstances exist when government conduct effectively deprives a noncitizen of the opportunity to pursue relief Congress has made available and where "the propriety of [the conduct] is clearly open to question." *Id.* at 230.

In addition to the information outlined in the SAP, the *ICWC* order confirms the existence of “extraordinary circumstances” warranting release pursuant to *Mapp*. Mr. Sterling’s detention since May 20, 2026, violates the restored 2021 Directive. Since that date, ICE has unlawfully deprived Mr. Sterling of his freedom despite his status as a crime victim who qualifies for one of the victim-based immigration benefits the 2021 Directive was designed to protect. *See ICWC*, 2026 WL 1455004, at *5-6. The *ICWC* order is therefore relevant to Mr. Sterling’s showing of the extraordinary circumstances required for release under *Mapp*.

Mr. Sterling has a pending U visa petition and is therefore a member of the certified class under the *ICWC* order that the court found warranted immediate nationwide protection. *ICWC*, 2026 WL 1455004, at *46-47.³ As the *ICWC* order recognized, the 2021 Directive established that “ICE policy was to refrain from immigration enforcement against persons with pending petitions for victim-based benefits, including by releasing them from detention.” *Id.* at *6. Immigration enforcement includes detention. 2021 Directive, at ¶ 3.2(e). The propriety of the government’s conduct is “open to question,” *Mapp*, 241 F.3d at 230, where Respondents continue to detain Mr. Sterling even though, as set forth below, under the 2021 Directive, no “extraordinary circumstances” justify his detention, and ICE has likely failed to comply with the Directive’s procedural requirements. Moreover, ICE continues to disseminate non-public information and falsehoods about his criminal history, *see* ECF 25, at 12-13 ¶¶ 58-60, despite his pending application for victim-based immigration benefits. The *ICWC* order is thus relevant to Mr. Sterling’s *Mapp* claim.

³ In the *ICWC* order, Jude Birotte preliminarily certified three classes. 2026 WL 1455004, at *46-47. Mr. Sterling is a member of the Pending Petition Class, defined as including “[all] individuals with pending principal or derivative U visa petitions . . . who ICE detains or seeks to detain for civil immigration enforcement.” *Id.* at *46.

III. The ICWC Order Is Relevant to Claim 2 as Restoration of the 2021 Directive Confirms that the First and Third *Mathews* Factors Weigh in Favor of Petitioner.

The ICWC order is relevant to and supports Mr. Sterling's Second Claim for Relief: that his Fifth Amendment right to procedural due process was violated when ICE arrested him on December 19, 2025, without providing notice or an opportunity to be heard. First, the restored 2021 Directive (as well as the rescinded 2025 Guidance) confirm that Mr. Sterling possessed a strong liberty interest at the time of his arrest, the first factor under the test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976); *see also* ECF 25, at 18-19 ¶¶ 87-94 (applying the *Mathews* test to re-detention of noncitizens without notice or an opportunity to be heard). The solicitude for crime victims in both Guidance documents confirms the high personal interest in their liberty; this accords with congressional intent in creating the U visa program to insulate crime victims from threats to individual liberty pending adjudication of their benefits applications. *See ICWC*, 2026 WL 1455004, at *3-4.

Second, and of particular relevance, the restoration of the 2021 Directive strengthens Mr. Sterling's argument that the third *Mathews* factor weighs in his favor. Specifically, the Directive confirms that additional procedures were not only available to the government but also that such procedures were feasible and non-burdensome, given that the agency had operated under them for years. *See ICWC*, 2026 WL 1455004, at *5-6 (describing agency policies and procedures in effect for over a decade, including the 2021 Directive).

Under the reinstated 2021 Directive, "exceptional circumstances" justifying detention exist only where a noncitizen poses national security concerns or "an articulable risk of death, violence, or physical harm to any person." 2021 Directive, at ¶ 3.4. The government could have evaluated whether those circumstances applied to Mr. Sterling before re-detaining him. Upon finding that none exist, ICE could then have saved the administrative and fiscal burdens of

detaining Mr. Sterling. But Mr. Sterling is aware of no evidence that ICE even considered his victim status in rendering its custody determination, *see* ECF 25-1, Ex. D; 2021 Directive, at ¶ 5.6, even after the *ICWC* order on May 20, 2026. The availability of longstanding procedures undercuts the government’s argument that the third *Mathews* factor “weighs strongly” in its favor. *See* ECF 15, at 18 (government opposition to Second Claim for Relief because, *inter alia*, “proper application of the *Mathews v. Eldridge* balancing test leads to the conclusion that no additional process that is not already contemplated by the INA is constitutionally required”); *Cf. Black v. Decker*, 103 F.4th 133, 153-55 (2d Cir. 2024) (rejecting the government’s argument that additional procedural safeguards “routinely” performed by immigration officials would involve undue administrative burdens.).

Moreover, even under the *operative* 2025 Guidance in place when ICE arrested Mr. Sterling, the government appears to have violated its non-burdensome procedural protections—further supporting Mr. Sterling’s argument regarding the third *Mathews* factor. The 2025 Guidance “dramatically changed ICE’s enforcement posture towards” pending U visa petitioners, shifting “from a policy of refraining from immigration enforcement against such persons in deference to their pending applications, to a policy of enforcement despite their pending applications.” *ICWC*, 2026 WL 1455004, at *1. Even under that extreme policy, however, ICE was directed to “consult with the Office of Principal Legal Advisor (OPLA) through their Field Office Directors or Special Agents in Charge prior to conducting a civil enforcement action against . . . [a] petitioner[] for [U visa] benefits.” 2025 Guidance, at 2. The record does not reflect any effort by Respondents to comply with even these minimal requirements. Nor did Respondents’ counsel produce any documentation in response to a request

from Petitioner's counsel.⁴ The government could have complied with its own prescribed processes at minimal administrative costs. Therefore, in contesting Mr. Sterling's Second Claim for Relief, the government cannot argue that additional procedural safeguards like an email consultation with OPLA were unnecessary simply because the government has an "important interest" in immigration enforcement broadly. ECF 15, at 17. The agency's own Guidance stated otherwise. 2025 Guidance, at 2.

IV. Restoration of the 2021 Directive Favors Release.

A. The 2021 Directive requires ICE to defer enforcement action.

The restored 2021 Directive requires ICE to defer enforcement action against Mr. Sterling and favors discretionary relief, including Mr. Sterling's release from detention pending full adjudication. The Directive recognizes that immigration enforcement against crime victims—including their detention—can undermine Congress's purpose in creating U visas and other victim-based protections. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 17 (1994); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000). This is because enforcement may discourage victims from reporting crimes and cooperating with law enforcement. 2021 Directive, at ¶1.

To address those concerns, the 2021 Directive instructs ICE to exercise prosecutorial discretion in favor of noncitizen victims of crime. *Id.* at ¶ 2. Specifically, the Directive provides that, absent exceptional circumstances, ICE "will refrain from taking civil enforcement action" against individuals with pending applications for victim-based immigration benefits. *Id.* The Directive defines "civil immigration enforcement action" to include detention, *Id.* at ¶ 2, and

⁴ Mr. Sterling submits this analysis in response to the Court's indication that "the Court has inadequate information as to whether Petitioner was arrested and detained on December 19, 2025, in accordance with the 2025 guidance, or some other authority." ECF 45. In submitting this analysis, Mr. Sterling recognizes that the government has better access to information about the December 19, 2025 arrest.

further provides that ICE “will exercise discretion to defer decisions on civil immigration enforcement action” until USCIS adjudicates the pending application or petition. *Id.* at ¶ 2.1. The Directive also requires ICE officers to consider victim status when making enforcement decisions. *Id.* at ¶ 2. Victim status qualifies as a favorable discretionary factor. *Id.* ICE must consider that factor when deciding whether to detain a noncitizen. *Id.*⁵

Here, Mr. Sterling is within the category of people protected by the 2021 Directive. He suffered a qualifying crime. He cooperated with law enforcement. He filed a U visa petition based on that cooperation. USCIS has not adjudicated that petition. The restored guidance therefore requires ICE to defer enforcement action, including detention, unless exceptional circumstances exist and ICE satisfies specific procedural requirements. As the next section shows, neither condition is present here.

B. ICE cannot justify Mr. Sterling’s continued detention under the restored guidance.

As discussed, the restored 2021 Directive generally bars enforcement action, including detention, against individuals like Mr. Sterling who have pending victim-based petitions. 2021 Directive at ¶¶ 2, 2.1. ICE can overcome that general bar only if “exceptional circumstances” exist and if ICE follows specific approval procedures. Respondents have not shown compliance with either requirement.

⁵ In addition to restoring the 2021 Directive, Judge Birotte’s order also restored ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011), available at <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (the “2011 Policy”). The restored 2011 Policy reaches the same result as the 2021 Directive. The 2011 Policy directs ICE officers to exercise favorable discretion toward victims of crime unless serious adverse factors exist. *See* 2011 Policy, at 2. The policy identifies “release from detention and deferral or a stay of removal” as appropriate exercises of discretion in most cases. *Id.*

1. *Exceptional circumstances are not present here.*

The Directive defines “exceptional circumstances” narrowly. Those circumstances exist only when “the noncitizen poses national security concerns” or “the noncitizen poses an articulable risk of death, violence, or physical harm to any person.” *Id.* at ¶ 3.4. Neither circumstance exists here. Respondents do not claim that Mr. Sterling threatens national security. They do not claim that Mr. Sterling poses an articulable risk of death, violence, or physical harm to anyone.⁶ He has never been convicted of any criminal offense and has no charges pending. ECF 25, at 12 ¶ 54. Exceptional circumstances do not justify Mr. Sterling’s continued detention.

Mr. Sterling instead seeks protection as a victim of a crime. He cooperated with law enforcement. He filed a U visa petition based on that cooperation. His circumstances fit squarely within the class that the Directive protects. ICE therefore cannot invoke an exceptional circumstance exception to justify continued detention.

2. *There is no evidence that there was any written justification submitted through the chain of command after May 20, 2026.*

Even if ICE believed exceptional circumstances existed, the restored 2021 Directive requires review and documentation before ICE may depart from its victim-centered framework. 2021 Directive, at ¶¶ 5.7, 5.8. The Directive does not permit field officers to disregard its

⁶ ICE’s claim during the January 8, 2026 bond hearing that Mr. Sterling poses a danger to the community does not meet this standard. *See* ECF 25-1, at 1–5 (unofficial transcript of January 8, 2026 bond hearing). Respondents did not identify any harm allegedly posed by Petitioner, much less did they allege or show that Mr. Sterling poses an articulable risk of death, violence, or physical harm to another person. *See id.* at 3 (falsely stating as the entirety of the argument on dangerousness that “there is a conviction for a firearm charge” and that there is a pending charge for “[e]ssentially a driving offense.” Mr. Sterling had no convictions on January 8, and he has none today; the referenced driving offense was *nolled* on the day Mr. Sterling was arrested.). Immigration Judge Smith’s finding of dangerousness to the community, apparently based on mere “contacts” with law enforcement, is currently on appeal at the BIA, and the constitutional sufficiency of Immigration Judge Smith’s finding has been briefed and argued before this Court. *See* ECF 30, at 7-10; ECF 32, at 3-6; ECF, 32-1 at 1-11; ECF 36. Law enforcement “contacts” do not satisfy the requirement of an “articulable risk of death, violence, or physical harm to another person.”

protections without review. *Id.*⁷ It establishes a supervisory structure that requires review and oversight when ICE seeks to take enforcement action against individuals protected by the policy. *Id.* Yet, Respondents have not produced any written justification explaining why ICE continued to detain Mr. Sterling after the restored Directive took effect on May 20, 2026, despite a written request emailed by Mr. Sterling. Mr. Sterling is unaware of any indication that any ICE official evaluated Mr. Sterling's case under the Directive's exceptional circumstances standard. Nor does the record show that any official documented a basis for departing from the Directive's presumption against enforcement action or ran that justification through the chain of command.

That omission matters. The Directive requires ICE to justify departures from its victim-centered framework. When ICE fails to create or produce any record showing compliance with that framework, the Court cannot presume that ICE followed its own policy. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-268 (1954) (holding that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures"). Respondents have produced no evidence showing that ICE followed the Directive's required review process or lawfully departed from its governing policy.

3. *The record contains no evidence that Headquarters Responsible Officials ("HRO") approved continued detention after May 20, 2026.*

ICE also failed to obtain HRO approval that the Directive requires before taking enforcement action against protected victims and witnesses, the necessary next step of the process governed by the 2021 Directive. Absent exceptional circumstances, ICE "will not take civil immigration enforcement actions against victims and witnesses without approval from

⁷ The 2021 Directive instructs that "ICE should pursue civil immigration enforcement action against beneficiaries of victim-based immigration benefits only [...] with approval from the applicable HRO." Even in the limited circumstances where "exigent circumstances make it impracticable to obtain preapproval for a civil immigration enforcement action," ICE must still "request approval from the HRO within 48 hours following the action with an explanation of the exigent circumstances through the chain of command." 2021 Directive, at ¶ 5.8.

Headquarters Responsible Officials.” 2021 Directive, at ¶ 2.2. The Directive defines HROs as senior ICE leadership, including Executive Associate Directors and other headquarters-level officials. *Id.* at ¶ 3.6. Those officials provide centralized oversight and ensure that field officers apply the Directive consistently. *Id.* at ¶ 5.8(b).

Respondents have not identified any HRO who reviewed Mr. Sterling’s case on or after May 20, 2026, nor produced evidence that approval was obtained (despite a request for such evidence by Mr. Sterling’s counsel). They have not cited any headquarters determination that exceptional circumstances justified continued detention. The restored 2021 Directive required HRO approval before ICE could continue enforcement action against a protected victim of a crime, absent exceptional circumstances. Because Respondents have produced no evidence that any HRO approved Mr. Sterling’s continued detention, ICE cannot show that it complied with the governing policy. To any extent that Mr. Sterling’s detention was permissible under the 2025 Guidance—and Mr. Sterling maintains it was not—the restored 2021 Directive therefore clarifies and confirms that his ongoing detention violates the restored 2021 Directive.

V. Conclusion

For the foregoing reasons, this Court should grant release pending adjudication of the Second Amended Petition (Claim 5) and hold that ICE’s arrest and continued detention of Mr. Sterling violate procedural due process (Claim 2) in light of the reinstated 2021 Directive.

Dated: June 08, 2026

Respectfully submitted,

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