UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Brenda Liliana Solis Garcia

Petitioner,

v.

David Easterwood, 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 the U.S. Department of Homeland Security; Todd Lyons, in his official capacity as acting director of U.S. Immigration and Customs Enforcement; Pam Bondi, in her official capacity as Attorney General of the United States

Respondents.

Case No. 0:26-cv-652

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Brenda Liliana Solis Garcia, is in physical custody of Respondents in Fort Snelling, Minnesota. She is now unlawfully detained despite her eligibility for deferred action after USCIS issued a Bona Fide Determination (BFD) on Petitioner's Form I-918 U-visa petition. Respondents' continued detention of Petitioner violates the INA, the TVPRA, and the Fifth Amendment.

2. On January 26, 2026, Petitioner attended an interview concerning her U-visa application at the USCIS office in Minneapolis, Minnesota. However, USCIS was mysteriously closed that day. DHS agents appear to have used this interview notice as a trap to arrest the Petitioner when she was outside the building. Respondents have not presented evidence demonstrating a valid reason for arrest or that Petitioner would be subject to a removal order. Respondents have yet to file a Notice to Appear with the Immigration Court, nor any other charging document supporting this arrest.

3. Ms. Solis Garcia is the mother of multiple children—including a U.S. citizen son with a history of receiving special education services.

4. Over the last thirty years, Congress has created a carefully balanced framework for the application of immigration laws to noncitizen survivors of serious crimes and their families in an effort to address an endemic public

safety issue: undocumented people are often reluctant to report violent crime to police or cooperate with investigations, out of fear of the consequences they might face from their abusers and from the specter of deportation. Congress's express goal in addressing this problem was to improve public safety for all by creating protections against deportation and exploitation that might encourage noncitizen crime victims to come forward.

5. Central to this public safety goal is the "U visa," which affords a path to lawful status for noncitizens harmed by certain serious crimes who help law enforcement investigate or prosecute those crimes. Family of these non-citizens are eligible for the same protection as derivatives. Furthermore, because the adjudication process for this form of lawful status can take years, Congress also took steps to protect eligible applicants from removal while their petitions are pending, including by authorizing deferred action and employment authorization for those whose petitions are deemed bona fide after an initial review.

6. Until recently, USCIS and ICE followed Congress's lead. For decades, ICE's policy and practice was generally not to pursue civil immigration enforcement against individuals with pending petitions for U visa benefits, absent serious adverse factors such as public safety concerns. Additionally, USCIS created a formal process to provide deferred action and employment

authorization for those deemed to have bona fide petitions until such petitions could be adjudicated.

7. The 2025 Guidance issued by ICE Acting Director Caleb Vitello reverses these decades of agency practice and capsizes the careful balance that Congress created. *See* ICE, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries or Victim-Based Immigration Benefits*, Policy Number: 11005.4 available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf (last accessed January 14, 2026) (2025 Guidance). The 2025 Guidance abruptly rescinded prior ICE directives that, consistent with Congressional intent, generally protected noncitizens with pending U visa benefit petitions from immigration enforcement, replacing them with a directive that unjustly greenlights their detention and removal as a routine matter.

8. The only stated justification for this abrupt reversal is a single sentence from one of President Trump's first-day executive orders calling for "total" enforcement of immigration laws against "all" nominally removal individuals to address a fictional "invasion." *Id.* at 2. This scant explanation is insufficient under the APA to upend decades of prior policy and ignore voluminous Congressional and agency findings regarding the benefits of protecting noncitizen crime survivors.

9. The 2025 Guidance and challenged policies flout the legislative scheme, replacing the long-standing and judiciously crafted "victim-centered" approach with an unforgiving, arbitrary, and unlawful "deportation-centered" system that ignores crime victims' eligibility for relief and railroads them into detention and removal without due process. As a result, Respondents have caused public safety to take a back seat to a mass incarceration campaign that has further victimized survivors of serious crimes who have cooperated with law enforcement to try to make their communities safe from criminals.

10. Petitioner relied on DHS's prior victim-centered policy when submitting her Form I-918 petition in 2019. As a result of the 2025 Guidance, however, Respondents have attempted a de facto revocation of Petitioner's bona fide determination by detaining her without first providing Petitioner notice or an opportunity to respond, contrary to the Fifth Amendment of the Constitution. Thus, Petitioner, asks this Court to find Respondents' 2025 Guidance and their detention of Petitioner as arbitrary and capricious under the APA and as violation of Petitioner's due process rights under the Fifth Amendment.

11. Petitioner is in removal proceedings before EOIR pursuant to 8 U.S.C. § 1229a.

12. Petitioner is not subject to a final order of removal.

13. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released immediately.

14. The Court should expeditiously grant this petition, as Petitioner remains unjustly separated from her family, including a U.S. citizen son with a history of receiving special education services.

JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Whipple Building in Fort Snelling, Minnesota.

16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Minnesota, the judicial district in which Petitioner currently is detained.

19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the

United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Minnesota.

REQUIREMENTS OF 28 U.S.C. § 2243 TO SHOW CAUSE

20. 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.*

21. 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).

PARTIES

22. Petitioner Brenda Liliana Solis Garcia is a citizen of Mexico who has resided in the United States since 2004. Petitioner has been in immigration detention since January 26, 2026.

23. Respondent David Easterwood is the Director of the MSP Field Office of ICE's Enforcement and Removal Operations division. As such, David Easterwood is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

24. 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 Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

25. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement (ICE). He is responsible for overseeing the federal agency responsible for Petitioner's detention. Mr. Lyons has custodial authority over Petitioner and is sued in his official capacity.

26. Respondent Pam Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice. She has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Ms. Bondi has custodial authority over Petitioner and is sued in her official capacity.

LEGAL FRAMEWORK

U Visa History and Purpose

27. Congress in reauthorizing the Violence Against Women Act (VAWA) in 2000, created U Nonimmigrant Status, commonly referred to as the U visa, which provides a path to citizenship for non-citizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* VAWA 2000, §1513(a)(2)(B), 8 U.S.C. §1101(a)(15)(U).

28. Among Congress's stated purposes in creating the U visa were (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." *Id.* § 1513(a)(2).

29. As DHS has acknowledged, Congress—

> created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes, due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.

DHS, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies*, at 4, available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf (last accessed January 14, 2026).

30. Underscoring the importance of encouraging noncitizen victims of crime to feel comfortable reporting crime and working with law enforcement authorities, Congress authorized DHS to waive virtually any ground of inadmissibility to U visa petitioners in the public interest. VAWA 2000 § 1513(e); 8 U.S.C § 1182(d)(14). Even a noncitizen "who is subject of a final order of removal, deportation, or exclusion is not precluded" from eligibility. 8 C.F.R. § 214.14(c)(1)(ii).

31. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5053 (TVPRA), Congress expanded protections for noncitizens who had come forward to report crime. Most relevant to this action, the TVPRA added § 237(d) to the INA, which authorizes DHS to issue a stay of any removal order against a U visa petitioner if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U

visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

32. The TVPRA also authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)). As stated by USCIS, the Bona Fide Determination (BFD) process "provides an opportunity for certain petitioners to receive BFD [work permits] and deferred action while their petitions are pending, consistent with the [TVPRA]." USCIS PM vol. 3, pt. C, ch. 5.

33. Congress created BFD protections in recognition that the full adjudication of a U visa necessary for placement on the waiting list involves a lengthy process, and Congress intended that petitioners with valid petitions promptly receive protection. Indeed, the bipartisan bill's co-sponsors envisioned that USCIS would determine whether a petition was "bona fide" through a streamlined process lasting no longer than two months, stating—

> [i]mmigrant victims of domestic violence, sexual assault and other violent crimes should not have to wait for up to a year before they can support themselves and their families. The [USCIS] Vermont Service Center should therefore strive to issue work authorization and deferred action in most instances within 60 days of filing, consistent with the need for safe and competent adjudication.

154 Cong. Rec. H10888-01, H10905, 2008 WL 5169865 (Dec. 10, 2008) (statement of Reps. Berman and Conyers).

34. Another co-sponsor added, "By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to victims we will make every effort to make you safe and secure." 154 Cong. Rec. H10888-01, H10902, 2008 WL 5169865 (Statement of Rep. Smith).

U-Visa Eligibility, Adjudication, and Benefits

35. A noncitizen is eligible for a U visa if (1) the applicant "suffered substantial physical or mental abuse as a result of having been a victim of" certain explicitly identified types of crimes; (2) the applicant "possesses information concerning [the] criminal activity"; (3) the applicant "has been helpful, is being helpful or is likely to be helpful" to government officials regarding the criminal activity; and (4) the criminal activity "occurred in the United States" or violated the United States law. 8 U.S.C. §§ 1101(a)(16)(U)(i)(I-IV). Children and spouses and, for petitioners under the age of 21, siblings and parents, may also receive U visas as derivative beneficiaries. 8 C.F.R. § 214.14(a)(10).

36. Congress capped the number of principal U visas that may be granted annually at 10,000. 8 U.S.C. § 1184(p)(2). In 2007, DHS created implementing regulations setting forth the process for adjudicating U visa petitions. *See* Interim Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007). To address backlogs caused by the annual cap, these regulations required that crime

victims who are not granted U visas "due solely to the cap…must be placed on a waiting list." 8 C.F.R. § 214.14(d)(2). USCIS must also "grant deferred action" to individuals placed on the waiting list until a U visa becomes available. *Id.* Wait-listed individuals are eligible for work authorization. *Id.*

37. After the TVPRA authorized employment for U visa petitioners with "bona fide" petitions, 8 U.S.C. § 1184(p)(6), USCIS created a formal and streamlined BFD process in 2021 for making such bona fide determinations.

38. Thus, as it exists today, the U visa adjudication process "involves three distinct adjudicative processes:" (1) the streamlined BFD process, (2) for petitions in which the BFD process did not result in deferred action and work authorization, full adjudication for potential placement on the U visa waiting list, and then (3) granting of a U visa once available. USCIS PM. vol. 3, pt. C, ch. 4.

39. A U visa BFD work authorization and deferred action are valid for four years and are renewable. USCIS PM. vol. 3, pt. C, ch. 5.

40. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) "if USCIS determines a national security or public safety concern is present," (2) "if USCIS determines the BFD and deferred action is no longer warranted," (3) if "the Form I-918 Supplement B law enforcement certification is withdrawn" by certifying agency, or (4) USCIS determines the prior BFD EAD was issued in error." *Id.* If changed

circumstances appear to warrant such revocation, USCIS "initiates a waiting list adjudication to gather additional information and evidence. *Id.* ch. 5.C.1.

41. Persons granted deferred action are shielded from deportation and are eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14). Deferred action is an act of prosecutorial discretion that defers efforts to deport a noncitizen from the United State for a certain period of time. Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, unless and until terminated, a grant of deferred action prevents immigration authorities form physically removing a noncitizen from the United States. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (*AADC*).

42. 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 153133, at *2 (S.D. Tex. June 5, 2025) (finding 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.").

43. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding her detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

FACTS

44. Petitioner, Brenda Liliana Solis Garcia, is a 43-year-old native and citizen of Mexico. Petitioner entered the United States on or around 2004 and has not departed since.

45. Prior to her detention, Petitioner and her family resided in Minneapolis, Minnesota. Petitioner has multiple children, including a son with a history of receiving special education services.

46. Petitioner has no criminal history subjecting her to mandatory detention or providing grounds for revocation of her bona fide determination.

47. On June 06, 2019, Petitioner submitted a Form I-918, petition for a U-visa, supported by a law enforcement certification confirming her cooperation as a crime victim. On February 09, 2024, U.S. Citizenship and Immigration Services (USCIS) determined Petitioner's Form I-918 is bona fide and that she warrants a favorable exercise of discretion and may receive employment authorization and deferred action.

48. DHS deprived Petitioner of liberty through their warrantless seizure of Petitioner on January 25, 2026, despite Petitioner having a bona fide U-visa application pending.

49. The Petitioner is now detained.

50. Petitioner's criminal history involves no offenses subjecting her to mandatory detention.

51. Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of U.S.C. § 706(2)(A) – The 2025 Guidance is Arbitrary and Capricious

52. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

53. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

54. The 2025 Guidance is reviewable under the APA because it constitutes "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. This is because it marks the consummation of Respondents' decision-making process and is an action "from which 'legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 156 (1997) (citation omitted).

55. Section 706(2)(A) of the APA "requires agencies to engage in reasoned decision making." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 16 (2020) (*Regents*) (citations and quotations omitted). "[A]gency action must be based on non-arbitrary, relevant factors, which," in the immigration context, "means that the [agency's] approach must be tied, even if loosely, to the purposes of the immigration laws or the appropriate operation of the immigration system. A method for disfavoring deportable [noncitizens] that bear no relation to these matters—that neither focuses on nor relates to an [noncitizen's] fitness to remain in the country—is arbitrary and capricious." *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (internal quotations and citations omitted).

56. The 2025 Guidance reversed decades of consistent DHS policy that created a presumption against detention and removal of noncitizen survivors of serious crimes, in favor of a policy of detention and deportation whenever possible, so long as it does not disrupt a criminal prosecution. The

only explanation provided for this change is the statement in the Presidential Executive Order regarding "'total and efficient enforcement of the immigration laws' against all inadmissible and removable" individuals. 2025 Guidance at 2.

57. This scant reasoning fails the APA's "requirement that [the agency] provide a reasoned explanation for its action" and is therefore arbitrary and capricious. *Regents*, 591 U.S. at 35.

58. Further, the 2025 Guidance fails to address the reliance interests of noncitizens, such as Petitioner, who applied for protection prior to the reversal of decades long victim-centered policy. "When an agency change course, as DHS did here, it must be cognizant that longstanding policies may have 'endangered serious reliance interests that must be taken into account.'" *Regents*, 591 U.S. at 30 (citation omitted). Here, the 2025 Guidance fails "to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Id.* at 33.

59. The public safety risks imposed by the 2025 Guidance's removal of protections from enforcement are also weighty, especially because maintaining those protections could be achieved consistently with the supposedly competing policy concerns of President Trump's Executive Order cited in the 2025 Guidance. For instance, if the agency's true goal was to

"enforc[e]" immigration laws "against all inadmissible and removable" noncitizens, it could do so by having USCIS adjudicate U petitions more quickly and initiating removal proceedings only against individuals denied a visa. Such an alternative would prevent re-traumatization of vulnerable individuals through arrest and detention and ensure their unique vulnerabilities are considered, while still enforcing immigration laws against all removable noncitizens. *See Regents*, 591 U.S. at 30 ("[W]hen an agency rescinds a prior policy[,] its reasoned analysis must consider the alternatives that within the ambit of the [current] policy.").

60. The 2025 Guidance alone relies on an Executive Order issued by President Trump which is not a sufficiently "reasoned explanation" for ICE's "disregarding facts and circumstances that underlay or were engendered by the prior policy" of protecting applicants for survivor-based benefits. *F.C.C. v. Fox Television Studios, Inc.*, 556 U.S. 502, 516 (2009). When "new policy rests upon factual findings that contradict those which underlay its prior policy," then "a more detailed justification" is needed. *Id.* at 515.

61. Here, the rescinded 2021 Policy expressly found that: ICE's "duty to protect and assist noncitizen crime victims" was "enshrined in" VAWA and the TVPRA; "[w]hen victims have access to humanitarian protections, regardless of their immigration status, and can feel safe in coming forward, it strengthens the ability of local, state, and federal law enforcement agencies,

including ICE, to detect, investigate, and prosecute crimes'"; there is a "chilling effect that civil immigration enforcement actions may have on the willingness and ability of noncitizen crime victims to contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek benefits"; and "[a] victim-centered approach encourages victim cooperation with law enforcement, engenders trust in ICE agents and officers, and bolsters faith in the entire criminal justice and civil immigration systems." 2021 Policy at 1.

62. By Contrast, the 2025 Guidance only relies on President Trump's Executive Order and fails to offer any contrary factual findings or explain why Congress and the immigration agencies' prior findings were incorrect. "An agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past[.]" *F.C.C.*, 556 U.S. at 537. In fact, neither the 2025 Guidance nor President Trump's Executive Order cited in the Guidance offer *any* factual findings: no statistics, no studies—no actual evidence at all. "[C]onclusory statements do not suffice to explain" a change in policy "that is inconsistent with the Department's longstanding earlier position" and any such unsupported policy "cannot carry the force of law." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 224 (2016).

63. Further, there is no "invasion." The entire foundation on which the 2025 Guidance rests is a fiction of political convenience, designed to

justify a harsh and unprecedented immigration crackdown, even against longtime residents who have not been convicted of serious crimes, such as Petitioner.

64. Reversing longstanding policy based on claims that are unsupported by any actual facts is necessarily arbitrary and capricious.

COUNT II

Violation of U.S.C. § 706(2)(A) – The De Facto Revocation Policy is Arbitrary and Capricious

65. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

66. The APA requires courts to "set aside" agency action that is "arbitrary, capricious" or "an abuse of discretion." 5 U.S.C. §706(2)(A).

67. Respondents maintain a policy and practice of treating its enforcement decisions against U visa petitioners to whom USCIS has conferred deferred action status, such as Petitioner, as a de facto revocation of that status. This "De Facto Revocation" policy constitutes "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. The 2025 Guidance expressly asserts that ICE has discretion to cause "the termination of the victim-based benefit," including deferred action. 2025 Guidance at 1 n.1. Under the De Facto Revocation policy, ICE asserts this purported authority to detain and remove people without first formally revoking deferred action, thereby ignoring and de facto terminating deferred action status. These positions mark the consummation of the Defendants' decision-making process on the issue and

is one "from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted).

68. If an agency "announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy...could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of" § 706(2)(A). *INS v. Yang*, 519 U.S. 26, 32 (1996).

69. "As long as there is a 'meaningful standard against which to judge the agency's exercise of discretion,' judicial review is available under the APA because there is "law to apply." *Perez Perez v. Wolf*, 943 F.3d 853, 862 (9th Cir. 2019). This can be so where a statute, regulation, or agency policy "establishes the goal of the program" or "agency duties...including the duty to consider certain criteria." *Jajati v. U.S. Customs & Border Prot.*, 102 F.4th 1011, 1018 (9th Cir. 2024).

70. An immigration policy is arbitrary and capricious when it has "no connection to the goals of the deportation process or the rational operation of the immigration laws." *Judulang*, 565 U.S. at 53, 58.

71. Here, USCIS regulations and policies provide meaningful standards by which a noncitizen's fitness for deferred action will be determined. *See* 8 C.F.R. § 214.14(d)(2); *see also* USCIS PM vol. 3, pt. C, ch. 5.C.6; PM vol. 3, pt. B, ch. 6.

72. A grant of deferred action necessarily means USCIS determined that the recipient "merit[s] a favorable exercise of discretion, considering any risk to national security or public safety, as well as other relevant discretionary facts." USCIS PM vol. 3, pt. C, ch. 5.B.

73. Nevertheless, Respondents engage in a practice of terminating such bona fide determinations by force rather than legal reasoning, as they did here by detaining Petitioner on January 26, 2026.

74. Agency action that gives controlling weight to the "immigration official's charging decision" is necessarily arbitrary and capricious. *Judulang*, 565 U.S. at 57. That is precisely what the De Facto Revocation policy does. Immigration courts have no authority over the granting or revocation of deferred action or eligibility for a U visa. *Lee v. Holder* 599 F.3d 973, 975-76 (9th Cir. 2010). Thus, ICE's determination to detain Petitioner and purportedly placing her in removal proceedings is controlling. Therefore, the De Facto Revocation policy is unlawful under the APA.

COUNT III

Violation of the Accardi Doctrine – The Particular De Facto Revocation of the Petitioner's BFD Was Unlawful

75. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

76. Under the *Accardi* doctrine, Ms. Solis Garcia has a right to set aside agency action that violates agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) ("If Petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

77. De facto of the Petitioner's revocation of bona fide determination cannot have been lawful given no prior notice was provided to allow the Petitioner to challenge the revocation.

78. USCIS clearly enumerated factual bases for the early revocation of deferred action. *See* 8 C.F.R. § 214.14(d)(2); *see also* USCIS PM vol. 3, pt. C, ch. 5.C.6; PM vol. 3, pt. B, ch. 6. No factual basis in the record could support the revocation on the basis of this stated agency policy. Even if the Petitioner had been provided notice, the record would not support a finding that the revocation could have been consistent with existing agency procedures, rules or instructions.

79. Under *Accardi*, Respondents' actions should be set aside for violating agency procedures, rules, or instructions.

COUNT IV

Violation of Due Process

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

82. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth

Amendment. *Mathews v. Eldridge*, 424 U.S. 318, 332 (1976). "The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Id.* at 348 (internal quotation marks omitted). Thus, some form of "hearing is required at some time before a person is finally deprived of his property interests." *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974).

83. Petitioner has a fundamental interest in liberty and being free from official restraint.

84. Here, in granting a bona fide determination pursuant to Petitioner's U visa petition, the government has allowed Petitioner to seek deferred action. Petitioner's ability to seek deferred action has been compromised by her detention. When reviewing an application for deferred action, "USCIS solicit[s] [an] application from [an] eligible [noncitizen], institute[s] a standardized review process, and sen[ds] formal notices indicating whether the [petitioner] would receive the [four]-year forbearance." *Regents*, 592 U.S. at 18. "These [deferred action] proceedings are effectively adjudications." *Id.* (cleaned up). "[T]he result of these adjudications—DHS's decision to grant deferred action …—is an affirmative act of approval" that "confer[s] affirmative immigration relief." *Id.* "[D]eferred action recipients are considered 'lawfully present' for purposes of, and therefore eligible to receive, [federal] benefits. *Id.* at 1902 (citations omitted). Thus, a "grant of [deferred

action] constitutes a conferred benefit that requires procedural safeguards before it can be terminated." *Inland Empire – Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSGSHKX, 2018 WL 4998230, at *19-20 (C.D. Cal. Apr. 19, 2018) (*Inland Empire*).

85. In determining whether process is sufficient, courts apply the familiar *Mathews* test, considering (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest though the procedures used, and the probable value, if any of additional or substitute safeguards," and (3) the Government's interest…that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Here, *Mathews* balancing comes out strongly in favor of Petitioner.

86. First, Petitioner has a profound interest in maintaining her bona fide determination and seeking deferred action status and attendant benefits. Because a person cannot be detained for removal if she cannot be removed, maintaining deferred action should be tantamount to maintaining one's freedom. *See Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *4 (D. Mass. July 9, 2025) ("Respondents do not suggest that ICE routinely removes individuals with active grants of deferred action from the United States, or that the Petitioner will be removed before his deferred action is terminated."). The Supreme Court described deferred action in *AADC* as

meaning "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." 525 U.S. at 484 (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03[2][h] (1998)). *AADC* cited Fifth Circuit precedent to support this definition. *Id.* (citing *Johns v. Dep't of Justice*, 653 F.2d 884, 890-92 (5th Cir. 1981)). In *Johns*, the Fifth Circuit distinguished deferred action from a stay of removal explaining that deferred action means the Government chooses to "refrain from (or in administrative parlance, to defer in) executing an outstanding order of deportation." 653 F.2d at 890. "[A]n individual's private interest in freedom from prolonged detention is unquestionably substantial." *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1207 (9th Cir. 2022) (cleaned up).

87. Yet, despite deferral of removal against those with deferred action, under the De Facto Revocation policy, ICE imprisoned Petitioner despite her eligibility to seek this status and left her in jail-like conditions pending removal proceedings. Because civil immigration detention is only lawful if it is reasonably related to effecting a removal order.

88. Second, "the practice of automatic termination [of deferred action]" without any opportunity to be heard "creates an unacceptably high risk of erroneous deprivation." *Inland Empire*, 2018 WL 4998230, at * 19. Respondents provided Petitioner no process at all, and certainly no-

predeprivation process for her bona fide determination before detaining her on January 26, 2026. Immigration judges do not have authority to grant or take away deferred action, and immigration courts have now taken the position that those who entered without inspection without immigration contact, like Petitioner, are ineligible for release from custody. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The risk of error is compounded because Respondents' stated goal is to accomplish "total" enforcement of immigration laws against "all" inadmissible and removable noncitizens, and their efforts to do so demonstrate little regard for an individualized determination regarding Petitioner's fitness to remain in the United States.

89. Civil confinement is only permissible "in certain special and narrow non-punitive circumstances," where a "special justification" asserted by the government "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (cleaned up).

90. The two traditionally accepted justifications for keeping someone in civil immigration custody do not warrant the imprisonment of Petitioner. "The first justification –preventing flight—is weak or nonexistent where removal seems a remote possibility." *Id.* at 679. Petitioner is not subject to a removal order, so a lawfully executed removal order remains remote.

91. "Preventive detention based on the second justification—protecting the community—has been upheld only when limited to especially dangerous

individuals subject to strong procedural protections. *Id.* Here, any such justification would be specious. By definition as a person with a bona fide determination eligible to apply for deferred action, Petitioner has passed background checks and has been vetted for national security and public safety risks as a necessary prerequisite to receiving deferred action. *See e.g.*, USCIS PM, vol. 3, pt. C, ch. 5. Furthermore, prior to being detained by Respondents, Petitioner was living free in the United States with Respondents' knowledge and approval. When DHS seeks to detain a noncitizen it has previously subjected to robust vetting and determined to present no security or flight risks by granting deferred action, it must provide the person first with a pre-detention hearing to prove changed circumstances that warrant civil incarceration.

92. Third, the government's interests in providing no process at all when revoking deferred action are insubstantial. "The fact that DHS' rules already provide for [] basic pre-deprivation protections in most circumstances" regarding revocation of deferred action for childhood arrivals "reinforces both that the value of such safeguards is high, and that providing such limited process would not place undue fiscal or administrative burdens on the government." *Inland* Empire, 2018 WL 3998230, at * 19 n.8. Although it may impose "some costs in time, effort, and expense" to provide a notice and an opportunity to be heard regarding the revocation of deferred action, "these rather ordinary costs cannot outweigh the constitutional right" to due process." *Fuentes v. Shevin*, 407 U.S. 67, 92 n.22 (1972).

93. Respondents' decision to grant a bona fide determination while simultaneously ignoring it entirely in order to detain people would also create

the kind of "arbitrary imprisonment without law or the appearance of law" that violates due process. *Boumediene v. Bush*, 553 U.S. 723, 785 (1008).

94. Thus, Respondents cannot seek to revoke the bona fide determination and eligibility for deferred action without explanation or process as it is a concrete entitlement Respondents have already bestowed upon Petitioner, nor can they detain Petitioner without a pre-deprivation hearing at which Respondents provide notice and an opportunity to be heard.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately;

c. Issue a writ of habeas corpus requiring that Respondents immediately return Petitioner's driver's license and any other seized documents or property lawfully issued to her, so as not to impair her liberty upon release;

d. If Petitioner is not immediately released, order that EOIR has jurisdiction to determine a bond;

e. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241 should not be granted within three days;

f. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;

g. Issue an order enjoining Respondents from revoking Petitioner's bona fide determination status until pre-deprivation hearing at which Respondents provide notice and an opportunity to be heard;

h. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

i. Enjoin Respondents from redetaining Petitioner under any statutory theory that the Court rejects in its order on the habeas petition;

j. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

k. Grant any other and further relief that this Court deems just and proper.

DATED this 26th day of January 2026.

/s/Gloria Contreras Edin
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