

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Leida Marcelina PEREZ LOPEZ,

Petitioner,

v.

TODD M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement, U.S.
Department of Homeland Security;
KRISTI NOEM, Secretary of U.S. Department of
Homeland Security;
PAMELA BONDI, Attorney General of the
United States;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;
WARDEN of El Paso Processing Center, El Paso
Texas,

In their official capacities,

Respondents.

Case No.: 3:26-cv-459-KC

**PETITION FOR WRIT OF HABEAS
CORPUS**

Challenge to Unlawful Incarceration Under
Color of Immigration Detention Statutes;
Request for Declaratory and Injunctive Relief

**PETITION FOR HABEAS CORPUS
FIRST AMENDED PETITION**

Petitioner Leida Marcelina Perez Lopez submits this amended petition with this Court for a writ of habeas corpus under 28 U.S.C. § 2242. Due to miscommunication, she seeks to correct a factual error. While she does have Deferred Action, it is based on the DALE Program (Deferred Action for Labor Enforcement) and not on her pending U visa. Her deferred action has not been terminated, and this change does not materially affect her Petition or claims for relief. But in the interest of candor before the Court, she seeks to amend this factual error with the amended petition as follows-

Leave of Court is not required because the amendment is being done within 21 days. Also no new parties are added to the Petition.

INTRODUCTION

1. Petitioner Perez Lopez is a 53-year-old citizen and national of Guatemala, who is detained at El Paso Processing Center, El Paso Texas. (“Petitioner” or “Ms. Perez Lopez”) submits this habeas petition under 28 U.S.C. § 2241 for a judicial check on Respondents’ unlawful detention despite her grant of Deferred Action from USCIS. She also has a pending U visa.
2. Furthermore, ICE’s new 2025 Policy Directive, under which Ms. Perez Lopez was detained, is arbitrary, capricious, and not in accordance with the law. And her detention violates her Fifth Amendment rights to due process.
3. Absent review in this Court, no other neutral adjudicator will examine Ms. Perez Lopez’s plight. She thus urges this Court to review the lawfulness of her detention; declare that her detention is unlawful; and order her immediate release.

CUSTODY

4. Ms. Perez Lopez is currently in the Respondents’ physical and legal custody. They are detaining her at the El Paso Processing Center, El Paso Texas. She is under Respondents’ and their agents’ direct control.

PARTIES

5. Petitioner Ms. Perez Lopez is a citizen of Guatemala. On February 2, 2024, USCIS granted deferred action to Ms. Perez Lopez based on USCIS’ determination that she assisted in an investigation of workplace violations as a part of Biden’s DALE Program (Deferred Action for Labor Enforcement). USCIS also issued a work permit based on deferred action, which is valid until January 12, 2028. She therefore currently holds deferred action. She also has a pending U visa based on a separate incident which occurred years earlier in Minnesota.

6. Ms. Perez Lopez is currently in Respondents' legal and physical custody at the El Paso Processing Center, El Paso, Texas.

7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Ms. Perez Lopez.

8. Respondent Executive Office of Immigration Review (EOIR) has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

9. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent NOEM has responsibility for the administration and enforcement of the immigration and naturalization laws under section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of Ms. Perez Lopez.

10. Respondent Pamela BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ") and is named in her official capacity. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

11. Respondent Warden is the head of El Paso Processing Center, El Paso Texas. Petitioner is in the direct custody of the Warden.

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IRRIIRA”), Pub. L. No. 104-208, 110 Stat. 1570, to challenge Ms. Perez Lopez’s detention under the INA and any inherent or plenary powers the government may claim to continue holding her.

13. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701-706 (Administrative Procedures Act, “APA”); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited by a petitioner’s nationality, immigration status, or any other classification. *See Boumediene v. Bush*, 55s U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Ms. Perez Lopez’s detention and her challenge to ICE’s attempt to unlawfully detain her despite her grant of deferred action. Respondents do not have the statutory authority to revoke her grant of deferred action, and thus, her detention is unlawful. Respondents should not have detained Petitioner. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held “in custody in violation of the Constitution or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that

survived the REAL ID Act's jurisdictional restrictions. Because Ms. Perez Lopez seeks the traditional habeas remedy of release from allegedly unlawful detention, her petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211-12)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of Ms. Perez Lopez's detention.

15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here, Ms. Perez Lopez is detained here, and her custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Ms. Perez Lopez's immediate custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Courts have long recognized the significance of the habeas statute in protecting persons from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

FACTUAL BACKGROUND

18. Ms. Perez Lopez reserves the right to amend and supplement her factual statement.

19. Ms. Perez Lopez is a native and citizen of Guatemala and no other country.

20. Ms. Perez Lopez last entered the United States in around March of the year 2003. She initially entered the United States without inspection, and has remained in the country since that date.

21. On August 18, 2011, Ms. Perez Lopez was the victim of “criminal sexual conduct” in Minnesota where the assailant forced himself onto Ms. Perez Lopez while she was running in Thompson Park with her dog. As a result, to this day Ms. Perez Lopez still suffers from severe anxiety, depression, and chronic Post Traumatic Stress Disorder (PTSD). She was then helpful in the investigation or prosecution of that crime by reporting the incident to the West St. Paul Police Department in West St. Paul, Minnesota. The West St. Paul Police Department certified that Ms. Perez Lopez was helpful in the investigation or prosecution of the crime by completing Form I-918B on her behalf.

22. Ms. Perez Lopez applied for a U visa by submitting her application to USCIS in November 2025. Her application remains pending.

23. Ms. Perez Lopez also applied for deferred action through the DALE Program (Deferred Action for Labor Enforcement), which was a short-lived program created under President Biden for non-citizens who assist in the investigation of workplace violations. In December 2024, USCIS issued a grant of deferred action under the DALE Program, along with a deferred action work permit, to Ms. Perez Lopez which is valid until December 2028. Her deferred action remains valid and has not been terminated.

24. But on February 1, 2026, Respondents detained Ms. Perez Lopez despite her grant of deferred action based on DALE and her pending U visa. Because her deferred action remains valid, this was an unlawful detention.

25. Respondents detained Ms. Perez Lopez pursuant to ICE's 2025 Policy Directive that deviates from long-standing policy regarding the treatment of survivors. *See* 2005, 2007, 2011, 2021, and 2025 ICE Policy Directives, attached as exhibits.

EXHAUSTION OF REMEDIES

26. Ms. Perez Lopez has exhausted all administrative remedies, and further ones are not available to her.

LEGAL FRAMEWORK

A. Legal Framework for U visa

27. 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 United States law. 8 U.S.C. §§ 1101(a)(15)(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).

28. 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 also eligible for work authorization. *Id.*

29. 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.

30. 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. PM, vol. 3, pt. C, ch. 4. 53. First, in the BFD process, USCIS conducts a streamlined initial review to determine whether an application is "bona fide." *Id.* The determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks," after which USCIS "considers any national security and public safety risks, as well as any other relevant considerations," in deciding whether to issue an employment authorization document ("EAD") and deferred action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch. 5.C.

31. Under USCIS's BFD policy, petitioners granted a BFD EAD and deferred action skip the second step of waiting list adjudication and are instead placed directly in the queue to wait for a U visa to come available. If USCIS declines to issue a BFD EAD and deferred action, it then

proceeds to the second step of a full adjudication for purposes of the waiting list, in which the agency provides an opportunity to address "any deficiencies or concerns" regarding approval. *Id.* ch. 5.C.5. 55. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5. Deferred action for those on the waiting list is mandatory by regulation. See 8 C.F.R. § 214.14(d)(2)-(3).

32. Third, once a U visa becomes available to someone with a BFD EAD or someone on the waiting list, USCIS will conduct another background check to screen for any new material facts affecting eligibility, and if none, approve the visa. PM, vol. 3, pt. C, ch. 7.A-B. The visa recipient is authorized to work incident to status and may apply for lawful permanent residence three years later. 8 C.F.R. § 274a.12(19)-(20); 8 C.F.R. § 245.24(b).

C. ICE Policy Directives for Beneficiaries of Victim-Based Benefits and The De Facto Revocation Policy

33. Prior to 2025, ICE policy directives generally required ICE not to detain potential beneficiaries of victim-based immigration benefits, including those with pending U visas. This included ICE policy directives issued in 2005, 2007, 2011, and 2021. These policies incorporated the intent of Congress when enacting VAWA and U visa legislation. *See* 2005, 2007, 2011, 2021, and 2025 ICE Policy Directives, attached as exhibits.

34. The 2025 Guidance flouts 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 without due process on their survivor-based benefits, including the U visa.

35. The 2025 ICE policy creates a de facto revocation for U visa deferred action by stating that ICE officers-

36. (1) need only "coordinate and deconflict" with law enforcement agencies "to ensure criminal investigative and other enforcement actions will not be compromised";
37. (2) "should consult with" local ICE attorneys only "to ensure any such action is consistent with applicable legal limitations";
38. (3) need not consider the fact that a noncitizen "is a victim of a crime" as "a positive discretionary factor"; and
39. (4) "will no longer routinely request expedited adjudications from USCIS," but may do so only when "it is in ICE's best interests."

2025 Guidance at 2-3 (emphasis added).

42. Instead of the long-standing, victim-centered approach, which applies the Congressional intent, as evidenced by the statute of the U visa, ICE now applies an ICE-centered and law-enforcement-centered approach to detention.

D. Legal Framework for the Change-in-Position Doctrine

40. The Change-in-Position Doctrine applies regardless of whether a policy was promulgated through a formal rulemaking process. The change-in-position doctrine squarely governs the 2025 ICE Directive.
41. The doctrine asks two questions: "The first is whether an agency changed existing policy"; the second is: "Did the agency 'display awareness that it is changing position' and offer 'good reasons for the new policy'?" *FDA v. Wages and White Lion Investments, L.L.C.*, 145 S. Ct. 898, 918 & n.5 (quoting *Fox Television*, 556 U.S. at 515). The agency is also required to consider serious reliance interests. *Id.* at 917.
42. To avoid reversal as arbitrary and capricious agency action, the Agency is supposed to "offer good reasons for the new policy." *Id.* at 919.

43. As to the first question, the Supreme Court in *White Lion* “assume[d], without deciding, that the change-in-position doctrine applies to an agency’s divergence from a position articulated in nonbinding guidance documents[,]” *id.* at 918 n.5, applying the framework even though the standards at issue in the case appeared only in guidance and internal memoranda, *id.* at 918–19. *See also Shenzhen Youme Info. Tech. Co. v. FDA*, 147 F.4th 502, 512 (5th Cir. 2025) (months after *White Lion*, the Fifth Circuit similarly “assume[d], without deciding” that informal policy changes are subject to the change-in-position doctrine).

44. The 2025 ICE Policy Directive does not comply with the requirements for “change-in-position” doctrine because it provides “no good reason” for their change. There is no reason to detain someone with a pending U visa, especially when they are waiting for deferred action and deferred action is mandatory based on the regulations.

E. Legal Framework For Due Process

45. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or federal law. 28 U.S.C. § 2241.

46. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation omitted).

47. Immigration detention is civil and must “bear[] a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community.

See id. at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). “Retribution and deterrence are not legitimate nonpunitive governmental objectives.” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

F. Legal Framework for the DALE Program (Deferred Action for Labor Enforcement)

48. The Deferred Action for Labor Enforcement Program (DALE) was a short-lived program under the Biden Administration that sought to protect workers, including undocumented workers. If undocumented workers were helpful in the investigation of workplace investigations, they could be eligible for a grant of deferred action. Eligible non-citizens could apply for deferred action from USCIS. If deferred action was granted, they could also apply for a work permit based on the deferred action.
49. While a grant of deferred action under DALE can be terminated at DHS’ “discretion,” the program lays out steps which DHS must take. The FAQs, attached as an exhibit, state that prior to terminating a grant of Deferred Action, DHS will provide a Notice of Intent to Terminate (NOIT) and will allow the Requestor 60 days to respond. DHS must also take into account the circumstances surrounding the initial grant of deferred action prior to termination.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Fifth Amendment - Policy of Detaining Individuals with Deferred Action without a Pre-Detention Hearing Violates Due Process

50. Ms. Perez Lopez realleges and incorporates, as though fully set forth herein, each and every allegation contained in the above paragraphs.
51. Because Respondents have not engaged in any effort to formally revoke Ms. Perez Lopez’s Deferred Action, and any attempts to do so would be arbitrary and capricious, Petitioner maintains authorized presence in the United States that prohibits her removal.

See 8 C.F.R. § 214.14(d)(2)-(3), (i). Because civil immigration detention is only lawful if it is reasonably related to effecting a removal order, a policy of detaining people with deferred action for anything longer than the cursory period it takes to confirm such status violates Petitioner's due process rights.

52. Importantly, the DALE program lays out the process for terminating Petitioner's deferred action, which they have neglected to follow.

53. Due Process "protections apply to all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent, and to immigration detention as well as criminal detention." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up).

54. Because "[a]rbitrary civil detention is not a feature of our American government," *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), 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).

55. The two traditionally accepted justifications for keeping someone in civil immigration custody do not warrant the imprisonment of those with Deferred Action. "The first justification-preventing flight-is weak or nonexistent where removal seems a remote possibility." *Id.* at 679. By definition, the removal of someone with deferred action is necessarily "a remote possibility" until it is formally revoked. *Id.*

56. "Preventive detention based on the second justification-protecting the community-has been upheld only when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* Here, any such justification would be specious. By definition,

an individual with Deferred Action has passed a background check and has been vetted for national security and public safety risks as a necessary prerequisite to receiving any grant of deferred action or benefit from USCIS.

57. Thus, the detention of Petitioner violates her rights to due process.

SECOND CAUSE OF ACTION
Fourth Amendment - Detention of Individuals with Deferred Action
Constitutes an Unreasonable Seizure

58. Ms. Perez Lopez repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

59. The Fourth Amendment prohibits unreasonable searches and seizures by the Government. *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 978 (C.D. Cal. 2024). This requires "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." *Baker v. McCollan*, 443 U.S. 137, 142 (1979). Probable cause requires "facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (cleaned up).

60. In the immigration context, "[t]he Fourth Amendment requires probable cause to seize or detain an individual for a civil immigration offense." *Gonzalez v. United States Immigr. & Customs Enft*, 975 F.3d 788, 798 (9th Cir. 2020).

61. Respondents' detention of Ms. Perez Lopez without probable cause or any violation of her deferred action is an unlawful seizure under the Fourth Amendment.

THIRD CAUSE OF ACTION
Fifth Amendment-ICE's Detention of Ms. Perez Lopez Violates Procedural Due Process by
Failing to Provide any Process for Revoking Deferred Action

62. Ms. Perez Lopez realleges and incorporates, as though fully set forth herein, each and every allegation contained in the above paragraphs.

63. "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. 319, 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 (1974).
64. Petitioner has a liberty interest in her deferred action.
65. Here, in granting deferred action pursuant to DALE Program (Deferred Action for Labor Enforcement) petition, USCIS instituted a standardized review process and sent a formal notice indicating that enforcement actions against her would be deferred. *Regents*, 591 U.S. at 18. "These 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 23 [deferred action] constitutes a conferred benefit that requires procedural 24 25 26 27 28 safeguards before it can be terminated." *Inland Empire -Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSGSHKX, 2018 WL 4998230, at *1920 (C.D. Cal. Apr. 19, 2018) ("Inland Empire").
66. 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 through the procedures used, and the probable value, if any, of additional or substitute procedural 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.

67. Petitioner has a liberty interest in maintaining her deferred action. She has two children and a husband here in the United States, and he has lived here since 2003. 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. Defendants provide no process at all, and certainly no pre-deprivation process, to Petitioner. 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 4998230, 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).

FOURTH CAUSE OF ACTION
5 U.S.C. § 706(2)(A), (C) - The 2025 Guidance is Not in Accordance
with Law and in Excess of Statutory Authority

68. Ms. Perez Lopez repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

69. Under the APA, courts "shall ... hold unlawful and set aside agency action" that is, among other things, "not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C § 706(2)(A), (C). 197. The Congressional intent for U visas and long-standing agency practice, requires that applicants for Survivor-based Benefits generally be protected from detention unless serious adverse factors warrant otherwise. U visa applicants, who receive a bona fide determination and deferred action, may continue to renew their deferred action and employment authorization until there is a U visa available.

70. But by imposing a policy of "total" enforcement against "all" removable noncitizens, the 2025 Guidance encourages detention of non-citizens, like Ms. Perez Lopez, who are eligible for a U visa or have pending applications.

71. Any policy that does not require Respondents to consider an applicant's prima facie eligibility for Survivor-based Benefits as a positive factor is not in accordance with the law and in excess of statutory authority. The 2025 Guidance is such a policy.

72. Ms. Perez Lopez is entitled to immediate release or a bond hearing because she was detained based on ICE's 2025 policy directive, and this directive is arbitrary, capricious, and not in accordance with the law.

FOURTH CAUSE OF ACTION

The 2025 Policy Directive

Violates the Change-in-Position Doctrine

73. Ms. Perez Lopez repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

74. The Change-in-Position Doctrine Applies Regardless of Whether a Policy Was Promulgated Through a Formal Rulemaking Process. The change-in-position doctrine squarely governs the 2025 ICE Directive.
75. The doctrine asks two questions: “The first is whether an agency changed existing policy”; the second is: “Did the agency ‘display awareness that it is changing position’ and offer ‘good reasons for the new policy’?” *White Lion*, 145 S. Ct. at 918 & n.5 (quoting *Fox Television*, 556 U.S. at 515). The Agency is also supposed to consider any serious reliance interests.
76. The 2025 ICE Policy Directive violates the change-in-position doctrine because they did not offer “good reasons” for this new policy and they did not consider any serious reliance interests. *See* 2005, 2007, 2011, 2021, and 2025 ICE Policy Directives, attached as exhibits.
77. ICE states that the 2025 policy is meant to “achieve total and efficient enforcement of the immigration laws” as quickly as possible. But any reason for the 2025 ICE policy that fails to consider the purpose of the U visa- helping victims who risk their safety by cooperating with law enforcement- is not a good reason.
78. The 2025 ICE directive also fails to consider any reliance interest in their change in policy. Many victims may have decided to report crime to the police because they believed immigration would protect them if they did so.
79. Because it appears that ICE relied on the 2025 ICE Policy Directive when it detained Ms. Perez Lopez, this Court must order her immediately released. The 2025 Policy Directive deviates from prior policy, does not meet the requirements for change-in-position, offers no “good reasons” and is arbitrary and capricious agency action.

PRAYER FOR RELIEF

Ms. Perez Lopez respectfully requests this Court grant the following relief:

- A. Assume jurisdiction over this matter.
- B. Order ICE to return Ms. Perez Lopez's property- including her work permit- upon any release from custody;
- C. Order Ms. Perez Lopez not be removed from the United States or transferred to another jurisdiction during the pendency of these habeas proceedings;
- D. Issue the writ of habeas corpus and order Respondents to show cause, within three days of Ms. Perez Lopez's filing this petition, why the relief she seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);
- E. Declare that Respondents have violated Ms. Perez Lopez's rights;
- F. Order Respondents to release Ms. Perez Lopez from detention because they detained her based on the 2025 policy and not for one of the reasons in the regulations;
- G. Order Respondents to release Ms. Perez Lopez because the 2025 policy is arbitrary and capricious agency action that violates the "change-in-position" doctrine;
- H. Order Ms. Perez Lopez released because she has deferred action, which remains valid;
- I. Declare that Ms. Perez Lopez's detention when she has deferred action was unlawful and order her immediate release;
- J. Enjoin Respondents from detaining Ms. Perez Lopez under the 2025 ICE policy because it is arbitrary, capricious, and not in accordance with the law;
- K. Grant any and all other relief this Court deems proper and just.

Respectfully submitted on this 18th day of February 2026,

/s/ Jennifer Scarborough
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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned counsel has verified that the statements in the Petition are true and correct to the best of her knowledge and belief.

Date: 18 February 2026

/s/ Jennifer Scarborough
Attorney for Petitioner

CERTIFICATE OF SERVICE

All parties were served through the Court's ECF system.

Date: 18 February 2026

/s/ Jennifer Scarborough
Attorney for Petitioner