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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Diana Riano Mesa,

Petitioner

v.

Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security,

Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement,

John E. Cantu, in his official capacity as ICE Field Officer Director,

Eric Rokosky in his official capacity as the warden of Eloy Immigration Detention Center,

Pamela Bondi, in her official capacity as the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs Enforcement.

Respondents

Civil No.:

AMENDED VERIFIED PETITION FOR HABEAS CORPUS AND DECLARATORY ACTION

<u>IMMIGRATION HABEAS CASE</u>

INTRODUCTION

1. Diana Riano Mesa ("Petitioner"), by and through her undersigned counsel, hereby file this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is a native and citizen of Colombia who entered the United States on an F1 visa. Ex. 1. Petitioner was taken into ICE custody after an arrest for pending criminal charges. *Id.* On December 22, 2025, USCIS determined that Petitioner was a victim of a U-visa qualifying crime and warranted a bona fide determination on her application. Ex. 2. With a bona fide determination comes certain legal protections, including deferred action. *Id.*

2. Petitioner is currently detained by DHS in ICE custody at Eloy Immigration Detention Center.[1] Petitioner has not been found guilty of any criminal offense.

3. Petitioner remains in ICE custody despite the existence of an operative grant of deferred action issued by United States Citizenship and Immigration Services ("USCIS") in connection with her bona fide U-visa petition. USCIS has affirmatively determined that Petitioner's petition is bona fide and has granted deferred action pursuant to governing regulations. Deferred action constitutes an exercise of prosecutorial discretion through which the Executive elects to forbear from executing removal. Within the structured U-visa framework, deferred action implements Congress's humanitarian and law-enforcement objectives and reflects a formal agency determination that removal should not occur during adjudication of the petition.

4. Petitioner's deferred action has not been revoked. She has received no notice of termination, no explanation of changed circumstances, and no indication that the Department of Homeland Security has undertaken lawful rescission. Nevertheless, ICE has detained her and

[1] It is upon information and belief that Petitioner is detained at the Eloy Immigration Detention Center, as DHS's database does not state that she is in their custody, however, she has been confirmed to be in custody by family.

continues to restrain her liberty. Respondents have not identified any statutory authority that permits detention in light of an unrevoked grant of deferred action.

5. Civil immigration detention must be authorized by statute and must serve a legitimate regulatory purpose consistent with the Due Process Clause of the Fifth Amendment. Detention under 8 U.S.C. § 1226 is permissible only where it is pending a decision on removability and tethered to that statutory objective. Where the government has affirmatively granted deferred action and elected to forbear removal, detention ceases to be connected to that purpose. ICE cannot detain an individual it has already determined should remain in the United States absent lawful revocation of that determination.

6. The continued detention of a person subject to unrevoked deferred action is arbitrary, ultra vires, and unconstitutional. It contradicts the regulatory framework governing U-visa protections, frustrates Congress's humanitarian design, and nullifies the government's own discretionary determination without reasoned decision-making. Petitioner therefore seeks habeas relief under 28 U.S.C. § 2241 declaring her detention unlawful and ordering her immediate release unless and until Respondents establish a valid statutory basis for custody consistent with law.

7. In addition to the substantive unlawfulness of her detention, Petitioner's custody is independently unlawful because her location cannot be ascertained through any publicly accessible Immigration and Customs Enforcement database, including the ICE Online Detainee Locator System. Despite diligent inquiry, Petitioner does not appear in ICE's detainee locator, and Respondents have not disclosed her custodial location.

8. Upon information and belief, Petitioner has been transferred to a detention facility in Eloy, Arizona. However, no official notice of transfer, confirmation of facility, or identification of the immediate custodian has been provided to counsel. Petitioner's inability to be located within ICE's

own custody-tracking systems raises grave due process concerns and independently renders her detention unlawful.

9. Habeas corpus exists to prevent precisely this type of executive restraint, detention without transparency, without accountability, and without meaningful access to judicial review. The writ historically functions to compel the government to produce the detained individual and justify the legal basis for custody. See 28 U.S.C. § 2243 (requiring the custodian to make a return and produce the body of the detained individual).

10. A detainee who cannot be located in official custody databases is effectively held incommunicado. Such detention impairs access to counsel, frustrates judicial review, and obstructs the Court's ability to exercise its habeas jurisdiction. Courts have long recognized that due process requires that civil detention be accompanied by basic procedural safeguards, including notice of custodial status and the ability to challenge confinement before a neutral tribunal.

11. Where the government restrains an individual's liberty but fails to identify the custodial authority or location, detention becomes constitutionally suspect. The Executive may not exercise civil detention authority in secrecy or in a manner that prevents meaningful judicial oversight. The Suspension Clause and the Due Process Clause both require that detention be reviewable and accountable.

12. Accordingly, even apart from the deferred-action violations described above, Petitioner's continued detention is unlawful because Respondents have failed to disclose her custodial location and have effectively prevented meaningful access to habeas review. The Court should order Respondents to immediately identify Petitioner's location, produce her before the Court, and state the statutory authority under which she is being detained.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including 28 U.S.C. § 2241, the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq., and the Administrative Procedure Act, 5 U.S.C. §§ 701–706. This Court has authority to grant habeas relief where a petitioner is "in custody in violation of the Constitution or laws … of the United States." 28 U.S.C. § 2241(c)(3). Petitioner challenges the legality of an ICE detainer that imposes civil restraint without statutory authorization and in excess of delegated authority. Because the Petition asserts federal constitutional and statutory claims, federal-question jurisdiction exists under § 1331.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Respondents are officers or agencies of the United States acting in their official capacities, Petitioner was confined within this District when the initial petition was filed, and the events giving rise to this action occurred within this District.

15. No exhaustion of administrative remedies is required before seeking habeas relief under 28 U.S.C. § 2241 where, as here, Petitioner challenges the statutory and constitutional authority of the government to impose the detainer in the first instance. Courts routinely excuse exhaustion where the petitioner raises a pure question of law concerning the limits of executive power or where exhaustion would be futile. See *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Because this Petition contests the legality of Respondents' authority, not the discretionary exercise of that authority, exhaustion is neither required nor appropriate.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.*

17. Courts have long recognized the significance of the habeas statute in protecting individuals 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).

PARTIES

PETITIONER

18. Petitioner, Diana Riano Mesa, is a citizen and national of Colombia. Upon information and belief, she is detained in Eloy, Arizona. Petitioner is a recipient of a bona fide determination and has received deferred action from USCIS, which has not been revoked.

RESPONDENTS

19. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

18. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

19. Respondent John Cantu is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees

in the Arizona District Court. Respondent John Cantu is sued in his official capacity as an agent of the United States Government.

20. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.

21. Respondent Executive Office for Immigration Review is the federal agency responsible for custody redeterminations relating to non-citizens charged with being removable from the United States.

22. Respondent Eric Rokosky is the warden of the Eloy Immigration Detention Center and thus has custody over the Petitioner. Respondent Eric Rokosky is sued in his official capacity as an agent of the United States.

23. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

LEGAL FRAMEWORK

The U Visa Program

24. On October 28, 2000, Congress created a new nonimmigrant visa classification, referred to as a U visa, through the passage of the Victims of Trafficking and Violence Protection Act 2000 (VTVPA). *See* Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533 (codified at 8 U.S.C. § 1101(a)(15)(U)). The nonimmigrant U visa allows undocumented noncitizens who were victims of qualifying crimes and who assisted in the detection, investigation, or prosecution of the qualifying criminal activity to apply for and receive a nonimmigrant visa. 8 U.S.C. § 1101(a)(15)(U); *see also* 8

C.F.R. § 214.14(a)(5). Upon issuance, the U visa provides noncitizens with up to four years of nonimmigrant status and work authorization. *See* 8 U.S.C. § 1184(p)(6). Additionally, by operation of law, the approval of a U visa cancels any final order of removal to which the petitioner may be subject. 8 C.F.R. § 214.14(c)(5)(i). Moreover, upon residing in the United States in U nonimmigrant status continuously for three years, noncitizens may apply for permanent residency. *See* 8 U.S.C. § 1255(m).

25. In creating the U visa program, Congress sought to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" certain serious crimes "while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." *See* VTVPA, Pub. L. No. 106-386, Title V, § 1513(a), 114 Stat. 1464, 1533. By providing victims of crime with an avenue for gaining lawful immigration status, the U visa encourages victims to cooperate with law enforcement agencies, thus strengthening relations between law enforcement and immigrant communities.

25. Individuals are eligible for U nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the United States or its territories or possessions; (2) have suffered substantial physical or mental abuse as a result; and (3) have been helpful to law enforcement in the detection, investigation, or prosecution of such criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U). As relevant here, a felonious assault is a qualifying crime for a U visa. 8 U.S.C. § 1101(a)(15)(U)(iii). Armed robbery satisfies the definition of an assault; moreover, it is a third degree felony under 76-5-103 of the Utah Criminal Code. Consequently, armed robbery under Utah law is a felonious assault.

26. A U visa applicant also must be admissible to the United States. 8 C.F.R. § 214.14(c)(2)(iv). If an applicant is not admissible, she is eligible for a waiver of the grounds that

render her inadmissible by filing Form I-192 with supporting documentation with her U visa petition. 8 C.F.R. § 212.17(a).

27. To apply for a U visa, a petitioner must file with USCIS a Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement B, a certification from a recognized law enforcement official confirming that the noncitizen has cooperated in the investigation or prosecution of the criminal activity; and a signed statement by the petitioner describing the facts of the victimization. The petitioner may submit additional, supporting evidence. The principal U visa petitioner may request that a qualifying family member, such as the petitioner's spouse, be included as a derivative applicant by filing a Form I-918, Supplement A.

The Waiting List for U Visa Status

28. By statute, USCIS may not grant more than 10,000 principal U visas in any given fiscal year. *See* 8 U.S.C. § 1184(p)(2)(A). The statutory cap only applies to principal applicants, not to derivative applicants. 8 U.S.C. § 1184(p)(2)(B). This cap has been reached every year since 2010. As of the first quarter of Fiscal Year 2025, USCIS reported that 246,137 principal petitions for U nonimmigrant status remained pending nationwide. U.S. Citizenship & Immigr. Servs., *Form I-918, Petition for U Nonimmigrant Status: Fiscal Year 2025, Quarter 1* (2025).

29. Defendants continue to receive, process, and review U visa petitions despite having reached the statutory cap on grants of U visas. USCIS must place petitioners who otherwise would receive such status but for the statutory cap on a U visa waiting list. *See* 8 C.F.R. § 214.14(d)(2) ("All eligible petitioners who, due solely to the cap, are not granted [principal U] nonimmigrant status must be placed on a waiting list and receive written notice of such placement.") (emphasis added).

30. Petitioners and their qualifying family members whom USCIS places on the U visa waiting list are granted temporary protection from removal while their petitions are pending, in the

form of either deferred action if they are in the United States or parole if they are outside of the United States. 8 C.F.R. § 214.14(d)(2). Individuals placed on the wait list also may be granted employment authorization. 8 C.F.R. § 214.14(d)(2).

31. USCIS implemented the U visa waiting list regulations with the stated goals of "assisting law enforcement . . . ; improving customer service by allowing victims to remain in the United States, giving them an opportunity to access victim services to which they may be entitled; and providing [employment authorization documents] to . . . victims so they will have a lawful means through which to support themselves and their families." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53014, 53033 (Sept. 17, 2007); see also id. at 53027 (indicating that it was creating the waiting list process "to balance the statutorily imposed numerical cap against the dual goals of enhancing law enforcement's ability to investigate and prosecute criminal activity and providing protection to [noncitizen] victims of crime"); *id.* ("USCIS believes that this rule's waiting list methodology will provide a stable mechanism through which victims cooperating with law enforcement agencies can regularize their immigration status.").

32. USCIS has a large backlog of pending U visa petitions for which it has not made the determination of whether to place the petitioner on the waiting list. USCIS publishes a "priority date" that reflects the submission date of petitions that it is currently processing for the waiting list.

Deferred Action

33. Deferred action is a longstanding form of prosecutorial discretion by which the Executive Branch elects to forbear from executing removal against a noncitizen for humanitarian, law-enforcement, or administrative reasons. The Supreme Court has recognized deferred action as a practice in which immigration authorities decline to pursue removal notwithstanding theoretical

removability. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999). More recently, the Court reaffirmed that deferred action reflects the Executive's discretionary judgment to prioritize limited enforcement resources and to permit noncitizens to remain in the United States temporarily. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 12–13 (2020).

34. Within the U-visa statutory framework, deferred action serves a specific congressionally mandated humanitarian and law-enforcement function. Congress created U nonimmigrant status to strengthen the ability of law-enforcement agencies to investigate and prosecute serious crimes while protecting noncitizen victims who assist those efforts. *See* Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. No. 106-386, § 1513(a)(2)(A)–(B), 114 Stat. 1464, 1533; 8 U.S.C. § 1101(a)(15)(U). Consistent with those purposes, implementing regulations require that otherwise-eligible U-visa petitioners who cannot receive visas due solely to the statutory cap must be placed on a waiting list and granted temporary protection from removal, including deferred action for those present in the United States. 8 C.F.R. § 214.14(d)(2).

35. Deferred action granted in connection with bona fide or wait-listed U-visa petitions is therefore not an abstract act of grace but a regulatory mechanism implementing congressional policy to ensure that cooperating crime victims may remain safely in the United States during adjudication. *See* 8 C.F.R. § 214.14(d)(2); *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014, 53,027, 53,033 (Sept. 17, 2007) (explaining that deferred action and employment authorization promote law-enforcement cooperation, victim stability, and humanitarian protection).

36. Although deferred action is discretionary in origin, its administration is governed by law. Agencies must exercise prosecutorial discretion in a manner consistent with statutory purpose, regulatory commands, and principles of reasoned decision-making. *See Regents*, 591 U.S. at 26–28

(holding rescission of deferred-action program reviewable under the Administrative Procedure Act and invalid where agency failed to consider reliance interests and relevant factors). Thus, once deferred action is granted pursuant to regulation and congressional policy, the government may not revoke or disregard it arbitrarily or contrary to law.

37. Authority to terminate deferred action rests within the Department of Homeland Security, but revocation must occur through lawful, reasoned decision-making consistent with governing statutes, regulations, and due-process principles. Agencies must at minimum consider the individual's reliance interests, humanitarian equities, and the statutory purposes underlying the protection before rescinding it. *See id.* at 26–30. Summary disregard of deferred action—particularly through coercive enforcement inconsistent with the grant—constitutes agency action not in accordance with law and therefore unlawful. *See* 5 U.S.C. § 706(2)(A).

38. Recent federal litigation concerning Special Immigrant Juvenile ("SIJ") beneficiaries confirms that deferred-action determinations tied to humanitarian statutory schemes are not immune from judicial review merely because they involve discretion. Courts have held that where Congress and implementing regulations create a structured framework for protection, agencies must meaningfully consider and administer deferred action consistent with that framework, and blanket or arbitrary refusals are reviewable and unlawful. *See, e.g.*, *J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1062–64 (N.D. Cal. 2018); *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 372–74 (S.D.N.Y. 2019) (holding SIJ-related policies reviewable and inconsistent with statutory design). These principles apply with equal force to U-visa deferred action, which likewise implements congressionally mandated humanitarian protection.

39. Deferred action may therefore be revoked only where the agency actually exercises its discretion through lawful procedures and reasoned explanation, such as where new disqualifying

conduct arises, statutory eligibility is lost, or humanitarian and law-enforcement purposes no longer support continued protection. Absent such lawful revocation, the government's own grant of deferred action reflects an operative determination that removal should not occur during the pendency of the underlying humanitarian petition.

40. Once USCIS affirmatively grants deferred action pursuant to statute, regulation, or formally structured humanitarian programs, that protection may be withdrawn only through lawful agency action consistent with administrative-law requirements and the governing statutory framework. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26–30 (2020) (holding rescission of deferred-action policy unlawful where the agency failed to provide a satisfactory explanation and consider reliance interests); 5 U.S.C. § 706(2)(A) (requiring courts to set aside agency action that is arbitrary, capricious, or not in accordance with law). Deferred action represents an exercise of prosecutorial discretion that carries concrete legal and practical consequences—including eligibility for employment authorization and reliance interests arising from the government's express decision to forbear removal. Accordingly, rescission or termination of deferred action must occur through reasoned decision-making that considers the relevant statutory purposes, the individual's reliance interests, and the factual basis for withdrawal, rather than through silent disregard or contradictory enforcement. *Id.*

41. These principles apply with particular force where deferred action is granted to implement congressionally mandated humanitarian protections, such as the U-visa framework. Because deferred action in this context operationalizes statutory objectives—namely, protecting crime victims and facilitating cooperation with law enforcement—its termination must be grounded in a legally cognizable change in circumstances or reasoned discretionary judgment consistent with those purposes. Summary enforcement actions that effectively nullify an unrevoked grant of deferred

action, without notice, explanation, or lawful reconsideration by the Department of Homeland Security, constitute arbitrary agency action and ultra vires conduct subject to judicial review. *See Regents*, 591 U.S. at 26–30; 5 U.S.C. § 706(2)(A).

42. Government conduct that compels departure, imposes detention-like restraints, or otherwise effectuates removal despite an unrevoked grant of deferred action is inconsistent with the regulatory scheme, contrary to congressional purpose, and arbitrary under the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A); *Regents*, 591 U.S. at 26–28.

PROCEDURAL AND FACTUAL BACKGROUND

43. Petitioner is a native and citizen of Colombia who entered the United States on an F1 visa. Ex. 1. Petitioner was taken into ICE custody after an arrest for pending criminal charges. *Id.* On December 22, 2025, USCIS determined that Petitioner was a victim of a U-visa qualifying crime and warranted a bona fide determination on her application. Ex. 2. With a bona fide determination comes certain legal protections, including deferred action. *Id.*

44. Petitioner is currently detained by DHS in ICE custody at Eloy Immigration Detention Center.[2] Petitioner has not been found guilty of any criminal offense.

ARGUMENTS

I. THERE IS NO EVIDENCE THAT DHS HAS LAWFULLY REVOKED PETITIONER'S DEFERRED ACTION

45. United States Citizenship and Immigration Services ("USCIS") affirmatively determined that Petitioner's U-visa petition is bona fide and granted her deferred action during the pendency of adjudication. Ex. 2. Deferred action constitutes an exercise of prosecutorial discretion through which DHS elects to forbear from executing removal for humanitarian, law-enforcement, or administrative

[2] It is upon information and belief that Petitioner is detained at the Eloy Immigration Detention Center, as DHS's database does not state that she is in their custody, however, she has been confirmed to be in custody by family.

reasons. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 12–13 (2020). When granted pursuant to statute and regulation within the U-visa framework, deferred action carries concrete legal consequences, including eligibility for employment authorization and reliance interests grounded in the government's express determination that removal should not occur during adjudication. *See Regents*, 591 U.S. at 26–30.

46. Because deferred action in the U-visa context is implemented through a structured statutory and regulatory scheme, its termination must occur through lawful agency action consistent with administrative-law requirements, including reasoned decision-making and consideration of reliance interests. *See id.*; 5 U.S.C. § 706(2)(A). Agencies may not nullify an operative grant of deferred action through silent disregard, contradictory enforcement, or informal action untethered to lawful procedure. *See Regents*, 591 U.S. at 26–30.

47. Here, there is no evidence that DHS has lawfully revoked Petitioner's deferred action. Petitioner has received no notice of termination, no explanation of changed circumstances, and no indication that USCIS or any authorized DHS official has undertaken a reasoned reconsideration of the deferred-action grant. Nor has DHS identified any statutory disqualification, intervening misconduct, or loss of eligibility that would justify rescission. The deferred-action determination therefore remains operative within the agency's own regulatory framework. *See* 8 C.F.R. § 214.14(d)(2).

48. Despite the absence of any lawful revocation, ICE has taken Petitioner into physical custody following dismissal of the state matter and continues to detain him. Physical detention is the most coercive form of immigration enforcement. Government conduct that effectively nullifies deferred action through incarceration, without formal termination, constitutes arbitrary and ultra vires

agency action because it bypasses required administrative procedures and contradicts DHS's own humanitarian determination. *See* 5 U.S.C. § 706(2)(A); *Regents*, 591 U.S. at 26–30.

49. These principles apply with particular force in the U-visa context, where deferred action implements Congress's express purpose of protecting cooperating crime victims and facilitating law-enforcement investigation and prosecution. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A)–(B), 114 Stat. 1464, 1533; 8 C.F.R. § 214.14(d)(2). Permitting physical detention absent lawful revocation would frustrate the statutory scheme, undermine reliance interests, and nullify the regulatory waiting-list framework designed to ensure stability during adjudication.

50. Because Petitioner's deferred action remains unrevoked as a matter of law, ICE lacks authority to execute removal or to detain her in furtherance of removal. Detention under 8 U.S.C. § 1226 must be tethered to a pending removal decision and serve a legitimate regulatory purpose. Where DHS has affirmatively elected to forbear removal and has not rescinded that determination, continued detention is untethered to statutory purpose and therefore unlawful.

51. Accordingly, Petitioner remains entitled to the humanitarian protection conferred by DHS, and her continued detention in the absence of lawful revocation violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.

II. PETITIONER IS STATUTORILY ELIGIBLE FOR U-VISA PROTECTION BUT FOR THE NUMERICAL CAP

52. Petitioner's grant of deferred action arises within the unique statutory and regulatory framework governing U nonimmigrant status, which differs fundamentally from generalized exercises of prosecutorial discretion. Congress created the U-visa program to provide immigration protection to noncitizen victims of qualifying criminal activity who assist law enforcement, thereby

strengthening the detection, investigation, and prosecution of serious crimes while advancing humanitarian objectives. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A)–(B), 114 Stat. 1464, 1533; 8 U.S.C. § 1101(a)(15)(U).

53. Under the governing regulations, where a petitioner satisfies all statutory eligibility requirements for U nonimmigrant status but cannot receive a visa solely because of the annual numerical cap, the Department of Homeland Security places that individual on a waiting list and grants temporary protection from removal, including deferred action, during the pendency of visa availability. *See* 8 C.F.R. § 214.14(d)(2). Deferred action in this context therefore reflects not untethered enforcement discretion, but the agency's determination that the petitioner would receive U-visa status but for the numerical limitation imposed by Congress.

54. USCIS's bona fide determination and grant of deferred action confirm that the government has already concluded Petitioner's U-visa petition is facially meritorious and supported by the requisite evidence of qualifying victimization, cooperation with law enforcement, and statutory eligibility. Ex. 2. The only remaining barrier to issuance of U nonimmigrant status is the statutory cap, not any deficiency in Petitioner's eligibility. Petitioner therefore stands in a materially different position from individuals who receive deferred action pursuant to broad enforcement priorities unrelated to statutory entitlement.

55. Federal courts have recognized that immigration protections grounded in structured humanitarian statutes and implementing regulations create meaningful legal expectations and reliance interests distinct from generalized discretionary forbearance. Cf. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26–30 (2020) (recognizing reliance interests arising from structured deferred-action programs); *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 372–74 (S.D.N.Y. 2019) (reviewing agency action inconsistent with statutory humanitarian protections). Those

principles apply with particular force where deferred action operates as the mandatory interim protection for otherwise-eligible U-visa applicants awaiting visa availability. *See* 8 C.F.R. § 214.14(d)(2).

56. Because Petitioner has already been determined to qualify for U-visa protection and would receive U nonimmigrant status but for the statutory cap, her deferred-action grant embodies Congress's judgment that she must remain in the United States safely while awaiting final adjudication. Physical detention, like removal, directly conflicts with that statutory and regulatory scheme. Detaining an otherwise-eligible U-visa beneficiary awaiting visa availability nullifies the waiting-list framework and frustrates Congress's express purpose of protecting cooperating crime victims.

57. Petitioner is therefore not merely a recipient of discretionary enforcement forbearance; she is a statutorily qualified humanitarian beneficiary awaiting visa availability pursuant to a structured regulatory program. her continued presence in the United States during adjudication is the precise outcome contemplated by Congress and implemented through DHS regulations. Enforcement actions, including civil detention, seeking to restrain or remove Petitioner before visa availability are contrary to law and incompatible with the governing statutory and regulatory scheme.

III. THE VERY PURPOSE OF THE BONA FIDE DETERMINATION IS TO PROVIDE PROTECTION WHILE THE U-VISA IS UNAVAILABLE.

58. Congress created the U visa to strengthen law enforcement's ability to detect, investigate, and prosecute serious crimes while protecting noncitizen victims who come forward to assist. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A)–(B), 114 Stat. 1464, 1533; 8 U.S.C. § 1101(a)(15)(U). The statute reflects a dual purpose: enhancing public safety and ensuring that cooperating victims are not destabilized or removed while aiding law enforcement.

59. The bona fide determination process is DHS's administrative implementation of that congressional mandate. As DHS leadership publicly explained when announcing the policy, the BFD framework exists to provide stability and protection to U-visa applicants while they await full adjudication. It is designed to ensure that qualifying victims "remain safely in the United States," receive "a measure of protection," and are able to continue supporting law enforcement efforts during the pendency of their petitions. The BFD process is not incidental to the U-visa framework; it is the mechanism through which DHS preserves the statutory objectives during periods of visa unavailability caused by the numerical cap.

60. Under 8 C.F.R. § 214.14(d)(2), where a petitioner is statutorily eligible but cannot receive U nonimmigrant status solely because of the annual cap, DHS places the individual on a waiting list and grants deferred action as interim protection. The purpose of this structure is straightforward: to prevent otherwise-eligible, cooperating crime victims from being removed or destabilized while Congress's numerical limitation delays formal visa issuance.

61. The BFD process serves that same stabilizing function at an earlier stage of review. It allows DHS to determine that a petition is facially meritorious and supported by required evidence, and to confer interim protection, through deferred action and employment authorization, while the petition proceeds through adjudication. Its design is practical and present-focused. It protects individuals who are physically present in the United States, cooperating with law enforcement, and awaiting visa availability.

62. Detention during the pendency of an operative bona fide determination contradicts the very purpose of that framework. Physical incarceration is incompatible with the concept of "stability" that the BFD process was designed to provide. Just as removal would nullify the protective function of a bona fide determination, so too does detention sever the stabilizing effect of

deferred action by placing the petitioner in coercive custody despite DHS's prior decision to forbear removal.

63. The BFD framework exists precisely because Congress imposed a numerical cap. It reflects DHS's recognition that statutory delay must not defeat statutory purpose. Absent interim protection, cooperating victims could be removed before their eligibility is formally recognized, undermining law enforcement objectives and discouraging future cooperation. The agency created the BFD mechanism to prevent that outcome.

64. Permitting ICE to detain an individual whose petition has been deemed bona fide and who has been granted deferred action nullifies the stabilizing function of the BFD process. It transforms interim protection into a hollow designation, one that exists on paper while the beneficiary remains in jail. That result is incompatible with the statutory purpose of encouraging victims to assist law enforcement without fear of deportation or destabilization.

65. The Government cannot simultaneously recognize that a petitioner warrants interim protection under the U-visa framework and subject that same individual to custodial enforcement that defeats the purpose of that protection. The BFD process was implemented to ensure safety and stability while the visa is unavailable. Detention is the opposite of stability. It undermines the humanitarian and public-safety objectives embedded in the statute and implemented through regulation.

66. Because the very purpose of the bona fide determination is to provide protection while the U visa is unavailable due to the numerical cap, enforcement actions—particularly physical detention—that contradict that protection are contrary to law and incompatible with the governing statutory and regulatory scheme.

IV. DETENTION FRUSTRATES CONGRESSIONAL PURPOSE AND EXCEEDS STATUTORY AUTHORITY UNDER 8 U.S.C. § 1226

67. Civil immigration detention is permissible only to the extent authorized by statute and consistent with the Constitution. The Government's asserted detention authority here arises, if at all, under 8 U.S.C. § 1226, which governs the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). That statutory authority is not boundless. It is tethered to a specific regulatory purpose: ensuring the individual's presence at removal proceedings and protecting the community while removability is adjudicated.

68. Section 1226 does not authorize detention untethered to a pending removal determination or in contradiction of an affirmative agency decision to forbear removal. Where DHS has granted deferred action pursuant to a bona fide determination under the U-visa framework, it has already exercised prosecutorial discretion to decline removal during the pendency of adjudication. Detention in that posture is incompatible with the statute's purpose.

69. The Supreme Court has repeatedly recognized that immigration detention must serve a legitimate regulatory objective and may not become arbitrary or punitive. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). Detention under § 1226 is justified as a temporary measure during active removal proceedings. It is not authorized as a mechanism to incarcerate individuals whom the Government has already determined should remain in the United States pursuant to structured humanitarian protections.

70. Here, Petitioner is the beneficiary of an unrevoked grant of deferred action issued in connection with a bona fide U-visa determination. Deferred action reflects DHS's formal decision to forbear from executing removal. As a matter of administrative law and statutory structure, the Government cannot simultaneously declare that removal will not be pursued and detain Petitioner "pending" removal. The statutory predicate for detention collapses when removal is not being executed and deferred action remains operative.

71. Moreover, the U-visa framework reflects Congress's specific judgment that cooperating victims of crime should remain safely in the United States while visa availability is constrained by the numerical cap. *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(d)(2). The bona fide determination process exists precisely to stabilize such individuals during this interim period. Detention undermines that stabilization function and frustrates congressional purpose.

72. Section 1226 must be interpreted in harmony with the broader statutory scheme. It does not authorize detention that nullifies protections conferred elsewhere in the Immigration and Nationality Act and its implementing regulations. Reading § 1226 to permit incarceration of statutorily eligible U-visa beneficiaries awaiting visa availability would defeat the humanitarian and law-enforcement objectives Congress embedded in the statute.

73. To the extent Respondents contend that § 1226(a) confers generalized discretionary authority to detain any noncitizen encountered within the United States, that reading cannot stand. The statute authorizes detention "pending a decision on whether the alien is to be removed." Where DHS has affirmatively elected to defer removal and has not revoked that determination, detention is not "pending" removal in any meaningful sense. It becomes detention without statutory anchor.

74. Nor can the Government rely on the mere possibility of future removal to justify present incarceration. The Supreme Court has cautioned that immigration detention must bear a reasonable relation to its underlying purpose. *Zadvydas*, 533 U.S. at 690. When deferred action remains in place, removal is not being executed, and detention ceases to serve the purpose contemplated by § 1226.

75. Detention in these circumstances is therefore ultra vires. It exceeds the statutory authority granted by Congress, conflicts with the regulatory framework governing U-visa beneficiaries, and frustrates the very purpose of the bona fide determination process. The Immigration and Nationality

Act does not permit ICE to incarcerate an individual whom DHS has determined warrants interim humanitarian protection and whose removal has been affirmatively deferred.

76. Because Petitioner's detention is untethered to lawful statutory authority and inconsistent with Congress's design, it violates both the Immigration and Nationality Act and the Due Process Clause. Habeas relief is therefore warranted.

V. RESPONDENTS' ACTIONS VIOLATE PETITIONER'S DUE PROCESS RIGHTS AND RIGHTS TO COUNSEL BY HIDING HER LOCATION

77. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Civil immigration detention, while civil in form, constitutes a severe restraint on physical liberty and is therefore subject to constitutional limitations. At minimum, due process requires transparency of custody, meaningful access to counsel, and the ability to challenge detention before a neutral decisionmaker.

78. Petitioner is presently detained by Immigration and Customs Enforcement. However, she does not appear in the ICE Online Detainee Locator System or any publicly accessible ICE custody database. Despite diligent inquiry, Respondents have not disclosed her custodial location. Upon information and belief, Petitioner has been transferred to a detention facility in Eloy Arizona, but no official notice of transfer or confirmation of facility has been provided.

79. Detention without disclosure of custodial location fundamentally impairs Petitioner's ability to exercise her constitutional rights. A detainee who cannot be located cannot meaningfully consult with counsel, cannot prepare legal filings, and cannot effectively challenge the legality of her confinement. Habeas corpus presupposes that the custodian is identifiable and that the detained individual can be produced before the Court. *See* 28 U.S.C. § 2243 (requiring the custodian to make a return and produce the body).

80. The right to counsel in immigration proceedings, while statutory in origin, is protected by due process. *See* 8 U.S.C. § 1362. That right necessarily includes reasonable access to counsel. Courts have long recognized that government interference with attorney-client communication in the context of detention violates due process. Meaningful access to counsel cannot exist where the government withholds the detainee's location.

81. By failing to disclose Petitioner's custodial location and by maintaining her outside of publicly accessible custody databases, Respondents have effectively placed her beyond the ordinary mechanisms of accountability and review. Such conduct obstructs judicial oversight and undermines the Court's ability to exercise its habeas jurisdiction.

82. Transparency of detention is not optional. The writ of habeas corpus exists to prevent secret or unreviewable executive restraint. When the Government detains an individual but fails to identify the location of confinement or the immediate custodian, it frustrates the core function of the writ and raises grave constitutional concerns.

82. The harm is not speculative. Without knowledge of Petitioner's location, counsel cannot ensure regular communication, confirm conditions of confinement, assess access to immigration proceedings, or prepare an adequate legal challenge. The deprivation of access to counsel during civil detention is itself a constitutional injury.

83. Respondents' conduct therefore violates Petitioner's due process rights and her statutory and constitutional rights to counsel. At minimum, due process requires that the Government disclose Petitioner's custodial location, identify the immediate custodian, and ensure meaningful access to legal representation.

84. The Court should order Respondents to immediately disclose Petitioner's location, identify the proper custodian, ensure access to counsel, and produce Petitioner before the Court as required under 28 U.S.C. § 2243.

CAUSES OF ACTION

1. FIRST CAUSE OF ACTION: Unlawful Physical Detention in Violation of the Fifth Amendment and 28 U.S.C. § 2241

85. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

86. This Court possesses jurisdiction under 28 U.S.C. § 2241(c)(3) to grant habeas relief where an individual is "in custody in violation of the Constitution or laws or treaties of the United States." Civil immigration detention must be authorized by statute and must comport with the Due Process Clause of the Fifth Amendment, which prohibits arbitrary governmental restraint on physical liberty.

87. Petitioner is presently in actual physical custody of Immigration and Customs Enforcement. Physical incarceration constitutes the paradigmatic form of habeas "custody." *See Jones v. Cunningham*, 371 U.S. 236, 242–43 (1963). The restraint imposed upon Petitioner is severe, immediate, and ongoing.

88. Immigration detention under 8 U.S.C. § 1226 is permissible only "pending a decision on whether the alien is to be removed from the United States" and must serve a legitimate regulatory purpose. Detention that is untethered to statutory authority or that contradicts an operative grant of deferred action exceeds the scope of § 1226 and violates the Immigration and Nationality Act.

89. Petitioner is the beneficiary of an unrevoked grant of deferred action issued in connection with a bona fide U-visa determination. Deferred action reflects the Department of Homeland Security's formal decision to forbear removal during the pendency of adjudication. DHS has not provided notice of termination, identified lawful rescission, or asserted any statutory disqualification.

90. In the absence of lawful revocation of deferred action, detention is not "pending" removal in any meaningful statutory sense. The Government cannot simultaneously elect to forbear removal and incarcerate Petitioner on the premise that removal is imminent. Such detention lacks statutory authorization and exceeds the authority conferred by 8 U.S.C. § 1226.

91. Civil detention must bear a reasonable relation to its regulatory purpose and may not become arbitrary or punitive. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where DHS has affirmatively granted interim humanitarian protection and removal is deferred, continued incarceration serves no legitimate regulatory function and becomes arbitrary governmental restraint.

92. In addition, Respondents have failed to disclose Petitioner's custodial location and have not identified the immediate custodian. Petitioner does not appear in ICE's public detainee locator system. Detention without transparency of location impairs access to counsel and frustrates judicial review, compounding the constitutional infirmity of the custody itself.

93. Petitioner is therefore held in custody in violation of the Constitution and laws of the United States within the meaning of 28 U.S.C. § 2241(c)(3). Federal courts within the Tenth Circuit recognize § 2241 jurisdiction over unlawful immigration detention. *See, e.g., Soberanes v. Comfort*, 388 F.3d 1305, 1310–11 (10th Cir. 2004).

94. Petitioner is entitled to habeas relief under 28 U.S.C. §§ 2241 and 2243, including an order declaring her detention unlawful and directing her immediate release unless and until Respondents establish valid statutory authority for continued custody consistent with the Constitution and governing immigration laws.

2. SECOND CAUSE OF ACTION:
Administrative Procedure Act – Agency Action Contrary to Law and Ultra Vires

95. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

96. The APA requires federal courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or in excess of statutory jurisdiction or authority. 5 U.S.C. § 706(2)(A), (C). Agency enforcement actions that contradict governing statutes, regulations, or binding agency determinations are unlawful and subject to judicial review.

97. Federal immigration regulations expressly provide that otherwise-eligible U-visa petitioners who cannot receive visas solely because of the statutory numerical cap must receive temporary protection from removal, including deferred action, during the pendency of visa availability. *See* 8 C.F.R. § 214.14(d)(2). Deferred action granted pursuant to this regulation implements Congress's humanitarian and law-enforcement purposes and reflects the Department of Homeland Security's determination that removal should not occur while adjudication remains pending.

98. Petitioner has received a bona fide determination and grant of deferred action in connection with her pending U-visa petition arising from qualifying criminal activity and cooperation with law enforcement. Ex. 2. This determination confirms that Petitioner is a statutorily qualified humanitarian beneficiary awaiting visa availability and that DHS has elected to forbear removal during adjudication.

99. ICE has nevertheless taken Petitioner into physical custody following dismissal of the state matter and continues to detain her notwithstanding the continued existence of unrevoked deferred action. ICE has not identified any lawful revocation of deferred action, statutory disqualification, or other legal basis rendering removal presently executable.

100. Enforcement action in the form of physical detention that effectuates or advances removal despite unrevoked deferred action is contrary to the governing regulatory framework and

inconsistent with congressional purpose. Such action is therefore "not in accordance with law" within the meaning of 5 U.S.C. § 706(2)(A). It also exceeds DHS's statutory authority and is ultra vires under § 706(2)(C), because removal and detention predicated on removal are not legally authorized while deferred action remains operative.

101. The Supreme Court has confirmed that rescission or disregard of deferred-action protections must be supported by reasoned decision-making consistent with statutory purpose and reliance interests, and agency action lacking such justification is unlawful under the APA. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26–30 (2020). Here, no lawful revocation, reasoned explanation, or consideration of reliance interests has been provided.

102. To the extent Respondents contend that detention may proceed independently of removal, such action still conflicts with the regulatory structure governing U-visa beneficiaries. The deferred-action grant reflects an affirmative agency determination that removal should not occur during adjudication. Detention undertaken in disregard of that determination nullifies the regulatory protection without formal rescission and constitutes arbitrary agency action.

103. Additionally, Respondents' failure to disclose Petitioner's custodial location and identify the immediate custodian compounds the unlawfulness of the enforcement action. Agency conduct that obstructs transparency and frustrates judicial review further demonstrates action in excess of lawful authority.

104. Because Respondents' detention of Petitioner is contrary to law, arbitrary and capricious, and in excess of statutory authority, Petitioner is entitled to relief under the Administrative Procedure Act, including declaratory and injunctive relief setting aside the unlawful agency conduct.

105. Petitioner therefore seeks an order declaring Respondents' detention unlawful, vacating that action under 5 U.S.C. § 706, enjoining further enforcement inconsistent with Petitioner's

deferred-action protection unless and until lawfully revoked, and granting such additional relief as necessary to restore compliance with federal law.

3. THIRD CAUSE OF ACTION: Administrative Procedure Act – Failure to Follow Required Procedure

106. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

107. The Administrative Procedure Act requires federal courts to hold unlawful and set aside agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Where statutes, regulations, or binding agency determinations establish procedural safeguards governing the exercise or withdrawal of discretionary immigration protections, federal agencies must comply with those procedures before imposing enforcement consequences inconsistent with existing protection.

108. Federal immigration regulations governing U-visa eligibility and waiting-list protection provide that otherwise-eligible petitioners who cannot receive visas solely because of the statutory cap must be granted temporary protection from removal, including deferred action, during the pendency of visa availability. *See* 8 C.F.R. § 214.14(d)(2). This regulatory framework establishes a structured process for administering humanitarian protection and does not permit summary nullification through informal, contradictory, or unexplained enforcement.

109. Petitioner received a bona fide determination and grant of deferred action pursuant to this statutory and regulatory framework. Ex. 2. That determination created operative agency protection and corresponding reliance interests that could be withdrawn only through lawful reconsideration and reasoned agency decision-making consistent with governing procedures. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26–30 (2020).

110. Respondents have not provided Petitioner with notice of termination, explanation of revocation, identification of changed circumstances, or any procedurally valid agency determination rescinding deferred action. Nor have Respondents followed any formal mechanism required to withdraw the regulatory protection associated with Petitioner's U-visa status. Deferred action therefore remains operative as a matter of law.

111. Despite the absence of any lawful procedural revocation, ICE has taken Petitioner into physical custody and continues to detain her, an enforcement action that directly contradicts and effectively nullifies the deferred-action protection without compliance with required procedures.

112. Agency conduct that functionally rescinds, disregards, or undermines deferred action without observance of required procedures constitutes agency action taken in violation of 5 U.S.C. § 706(2)(D) and is unlawful. *See Regents*, 591 U.S. at 26–30 (holding that rescission of deferred-action protections must be supported by reasoned and procedurally adequate decision-making).

113. Because Respondents failed to follow the procedures required by law before imposing detention inconsistent with Petitioner's unrevoked deferred-action protection, that enforcement action must be set aside under the Administrative Procedure Act.

114. Petitioner therefore seeks declaratory and injunctive relief vacating Respondents' procedurally unlawful detention, prohibiting further enforcement inconsistent with Petitioner's unrevoked deferred-action status unless and until lawfully rescinded, and granting such additional relief as necessary to ensure compliance with federal law.

4. FOURTH CAUSE OF ACTION:
Violation of the Fifth Amendment Due Process Clause

115. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

116. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. Civil immigration detention constitutes a profound deprivation of physical liberty and must therefore be authorized by statute, consistent with governing regulations, and free from arbitrary governmental action. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

117. Petitioner possesses a constitutionally protected liberty interest in freedom from physical restraint and arbitrary incarceration. That interest is at its apex where the Government has affirmatively granted deferred action pursuant to the structured U-visa statutory and regulatory framework. Once DHS confers humanitarian protection designed to permit continued presence in the United States, it may not disregard that protection through coercive detention lacking lawful basis or procedural safeguards. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 26–30 (2020).

118. Respondents have taken Petitioner into physical custody notwithstanding the continued existence of unrevoked deferred action associated with her bona fide U-visa petition. Respondents have not provided notice of termination, explanation of revocation, identification of changed circumstances, or any lawful rescission of the protection previously granted.

119. Because Respondents have neither lawfully revoked deferred action nor identified statutory authority permitting detention consistent with that protection, Petitioner's continued incarceration is arbitrary and irrational. Civil detention must bear a reasonable relation to a legitimate regulatory purpose. *Zadvydas*, 533 U.S. at 690. Where removal has been affirmatively deferred and no lawful rescission has occurred, detention serves no permissible regulatory objective and becomes constitutionally infirm.

120. The constitutional violation is compounded by Respondents' failure to disclose Petitioner's custodial location. Petitioner does not appear in ICE's public detainee locator system, and Respondents have not identified her immediate custodian. Detention without transparency of location impairs access to counsel, frustrates judicial review, and undermines the fundamental fairness required by due process.

121. The absence of lawful process is particularly severe here because Petitioner relied on DHS's deferred-action determination implementing Congress's protection for cooperating crime victims. Respondents' contradictory enforcement nullifies that protection without notice, explanation, or meaningful opportunity to be heard. Such arbitrary deprivation of liberty offends the core guarantee of the Fifth Amendment. *See Regents*, 591 U.S. at 26–30.

122. As a direct and proximate result of Respondents' unconstitutional conduct, Petitioner remains physically incarcerated and deprived of liberty in violation of the Fifth Amendment.

123. Petitioner is therefore entitled to declaratory, injunctive, and habeas relief prohibiting Respondents from continuing to detain her absent lawful revocation of deferred action or other valid statutory authority consistent with due process, and ordering her immediate release unless such lawful authority is established.

5. FIFTH CAUSE OF ACTION:
Ultra Vires Agency Action and Non-Statutory Review

124. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

125. Federal courts retain inherent equitable authority to review and enjoin agency action taken in excess of statutory authority or contrary to constitutional limitations, even where specific statutory causes of action may be limited. *See Leedom v. Kyne*, 358 U.S. 184, 188–89 (1958). Such

non-statutory review is available where an agency has plainly acted beyond the bounds of authority delegated by Congress.

126. The Immigration and Nationality Act and its implementing regulations establish a comprehensive statutory framework governing removal, humanitarian protection, and deferred action for qualifying U-visa petitioners. *See, e.g.,* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(d)(2). Under that framework, the Department of Homeland Security provides temporary protection from removal, including deferred action, to otherwise-eligible petitioners awaiting visa availability due solely to the statutory numerical cap.

127. Petitioner has received a bona fide determination and grant of deferred action pursuant to this statutory and regulatory scheme. Ex. 2. No lawful revocation of deferred action has occurred. Petitioner therefore remains entitled to DHS's forbearance from removal during adjudication of her U-visa petition.

128. Respondents' actions, taking Petitioner into physical custody and continuing to detain her notwithstanding the continued existence of unrevoked deferred action, seek to effectuate removal or advance removal enforcement despite the regulatory protection currently in force. Respondents have not identified any statutory provision authorizing detention that contradicts an operative grant of deferred action.

129. These enforcement measures conflict with the governing statutory and regulatory framework and therefore exceed the authority delegated to Respondents under federal immigration law. The INA does not authorize the incarceration of an individual whom DHS has affirmatively determined should remain in the United States under a structured humanitarian protection pending visa availability.

129. Agency conduct that nullifies congressionally mandated humanitarian protection without lawful revocation is ultra vires and subject to equitable judicial intervention. *See Leedom*, 358 U.S. at 188–89. Courts may enjoin enforcement actions that operate beyond statutory limits or frustrate the purposes of federal law.

130. Additionally, Respondents' failure to disclose Petitioner's custodial location and identify the immediate custodian further demonstrates action outside lawful authority. The INA does not authorize secret or undisclosed detention that impairs access to counsel and judicial review.

131. Because Respondents are acting in excess of statutory jurisdiction and contrary to federal law, Petitioner is entitled to equitable, declaratory, and injunctive relief prohibiting further unlawful detention and restoring Petitioner to the legal position required by the Immigration and Nationality Act and its implementing regulations.

132. Absent judicial intervention, Petitioner will continue to suffer unlawful incarceration and the imminent risk of removal despite Congress's directive that qualifying U-visa petitioners receive protection from removal during adjudication. Equity therefore requires immediate relief.

6. SIXTH CAUSE OF ACTION
Violation of Due Process – Access to counsel

133. Petitioner incorporates and realleges the allegations above as though fully set forth herein.

134. The Fifth Amendment's Due Process Clause guarantees noncitizens in immigration custody the right to a fundamentally fair proceeding. Fundamental fairness includes meaningful access to retained counsel. Although immigration proceedings are civil in nature, the right to counsel at no expense to the government is expressly protected by statute. *See* 8 U.S.C. § 1362. That statutory right is secured by the Due Process Clause.

135. Meaningful access to counsel requires that a detained individual be able to communicate with counsel, receive confidential legal advice, and participate in the preparation of legal challenges to detention and removal. Government action that substantially interferes with attorney-client communication violates due process.

136. Petitioner is presently detained by Immigration and Customs Enforcement. However, Respondents have failed to disclose her custodial location. Petitioner does not appear in ICE's public detainee locator system, and Respondents have not identified the facility in which she is confined or the immediate custodian responsible for her detention.

137. By withholding Petitioner's location and failing to provide notice of transfer or confirmation of confinement, Respondents have materially impaired Petitioner's ability to communicate with counsel and prepare her defense. Counsel cannot reliably schedule legal calls, confirm visitation procedures, verify access to legal materials, or ensure confidential communication without knowledge of Petitioner's place of detention.

138. Access to counsel is especially critical here because Petitioner challenges the legality of her detention and the Government's authority to hold her notwithstanding an unrevoked grant of deferred action. When the Government both detains an individual and obscures her location, it erects barriers to judicial review and deprives the detainee of a meaningful opportunity to be heard.

139. The Due Process Clause prohibits the Government from interfering with the attorney-client relationship in a manner that undermines the fairness of proceedings or obstructs the ability to challenge detention. Detention that is effectively incommunicado—or that substantially restricts access to counsel through concealment of location—fails to satisfy constitutional standards.

140. Respondents' conduct is not a minor administrative oversight. Transparency of custody is a foundational safeguard of habeas corpus and due process. The writ presupposes that a detainee

can be located, identified, and produced before the Court. Concealment or nondisclosure of location frustrates that constitutional guarantee.

141. As a direct and proximate result of Respondents' actions, Petitioner's ability to consult with counsel, prepare legal filings, and pursue relief from unlawful detention has been impaired. This deprivation constitutes an independent violation of the Fifth Amendment.

142. Petitioner is therefore entitled to declaratory, injunctive, and habeas relief requiring Respondents to immediately disclose her custodial location, identify the proper custodian, ensure confidential and meaningful access to counsel, and cease any conduct that interferes with her constitutional right to legal representation.

RESERVATION OF RIGHTS

Petitioner reserves the right to add additional allegations of agency error and related causes of action upon receiving the certified administrative record.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

A. Assume jurisdiction over this habeas, declaratory, and injunctive action pursuant to 28 U.S.C. §§ 1331, 2241–2243, and 28 U.S.C. §§ 2201–2202, and issue an Order to Show Cause forthwith pursuant to 28 U.S.C. § 2243;

B. Grant the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and declare that Petitioner is in custody in violation of the Constitution and laws of the United States;

C. Order Respondents to immediately disclose Petitioner's custodial location, identify the immediate custodian, and produce Petitioner before this Court as required under 28 U.S.C. § 2243;

D. Order Respondents to immediately release Petitioner from immigration detention unless and until Respondents establish lawful statutory authority for continued custody consistent with the Immigration and Nationality Act, governing regulations, and the Due Process Clause;

E. Declare that Respondents' detention of Petitioner notwithstanding her unrevoked grant of deferred action is contrary to law, arbitrary and capricious, procedurally unlawful, and in excess of statutory authority under 5 U.S.C. § 706;

F. Vacate and set aside Respondents' unlawful detention pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), and (D);

G. Enjoin Respondents from re-detaining Petitioner or executing removal against her absent (i) lawful revocation of deferred action through reasoned and procedurally valid agency action, and (ii) identification of valid statutory authority consistent with Title 8 and the Constitution;

H. Award Petitioner costs of this action to the extent permitted by law, including costs authorized under 28 U.S.C. § 1920 and, where applicable, attorney's fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412;

I. Grant such other and further relief as this Court deems just and proper.

DATED: March 16, 2026

Respectfully submitted,

/S/ ALEC S. BRACKEN
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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner's family the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: March 16, 2026

Respectfully submitted,

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