IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERASMO ZAVALA ALMANZA, individually and on behalf of the minor child, [redacted]I., as her legal guardian, Petitioners/Plaintiffs, v. LEONARD ODDO, in his official capacity as Facility Administrator of the Moshannon Valley Processing Center; JOHN E. RIFE, in his official capacity as acting Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; JOSEPH B. EDLOW, in his official capacity as Director of U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; U.S. DEPARTMENT OF HOMELAND SECURITY; MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review; U.S. DEPARMENT OF JUSTICE; and TODD BLANCHE, in his official capacity as Acting Attorney General of the United States; Respondents/Defendants.	Case No.: 26-720 DHS Case Number: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **ORAL ARGUMENT REQUESTED**

Petitioner/Plaintiffs ("Petitioners") Erasmo Zavala Almanza and his minor granddaughter, [redacted]H., petition this Honorable Court for habeas, mandamus, declaratory, statutory, and injunctive relief arising from Zavala Almanza's ongoing immigration detention, delays in the adjudication of his petition for U nonimmigrant status ("U Visa"), and novel policy directives which have upended decades of practice and unlawfully caused Petitioners irreparable injury, which is likely to continue if unabated by this Court. In support of their petition for relief, Petitioners aver as follows:

INTRODUCTION

1. Petitioner Erasmo Zavala Almanza is citizen and native of Mexico who is currently being held by Respondents in immigration detention at the Moshannon Valley Processing Center (MVPC or "the Facility") in Philipsburg, Pennsylvania.
2. Petitioner [redacted]H. is a U.S. citizen and the one-year-old granddaughter of Petitioner Zavala Almanza. See Exhibit A, Birth Certificate.
3. In 2025, Petitioners experienced horrific family trauma after [redacted]H.'s biological father shot [redacted]H., her mother, and then himself. See Exhibit B, News Articles.
4. Following multiple surgeries, [redacted]H. narrowly survived the attack; her parents did not. See Exhibit C, Death Certificate.
5. To safeguard [redacted]H. after the incident, Zavala Almanza and his wife sought and received legal guardianship of [redacted]H. from the Berks County Court of Common Pleas and are now her primary source of parental care and support. See Exhibit D, Guardianship Order.
6. Following the murder of his daughter, Zavala Almanza and his wife filed petitions for U nonimmigrant status (also known as a "U Visa") with the United States Citizenship and Immigration Service (USCIS), based on their status as indirect victims and cooperating police witnesses of criminal activity. See Exhibit E, Form I-918 Receipt Notice.

7. Zavala Almanza and his wife's cooperation with Berks County authorities in the investigation of the murder of their daughter and the horrific shooting and attempted murder of their infant granddaughter was certified by the Berks County District Attorney's office. See Exhibit F, U Visa Law Enforcement Certification.
8. USCIS has not taken any actions to adjudicate Zavala Almanza's petition at the time of this filing, and the matter remains pending before the agency.
9. On or about April 15, 2026, Respondents took Zavala Almanza into immigration custody near his home in Temple, Pennsylvania, even though he has no criminal record and is cooperating with immigration officials to seek legal presence in the United States.
10. Upon information and belief, Respondents intend as to deport Zavala Almanza soon as possible, based on his immigration history.
11. Zavala Almanza previously received voluntary departure on or about August 17, 2010, and thereafter departed the United States.
12. Zavala Almanza returned to the United States on or about the year 2014.
13. Zavala Almanza does not pose a flight risk or any danger to his community whatsoever; his detention is not reasonable and is not narrowly tailored.
14. Further, Zavala Almanza's petition for a U Visa is *bona fide* and will likely provide relief from removal, notwithstanding his prior immigration history.
15. However, USCIS has unreasonably delayed the adjudication of his U Visa petition, including not making any efforts to engage in the statutorily-required *bona fide* determination process that could lead to mandated deferred action and protection from removal.

16. As it stands, most U Visa determinations are taking years; as such, there is no reasonable possibility that his petition will be adjudicated before Zavala Almanza is removed from the United States.
17. This situation is further exacerbated by recent changes in agency policies, under which Immigration and Customs Enforcement (ICE) is now actively targeting U Visa applicants for removal without first affirmatively seeking expedited adjudication of their applications from USCIS.
18. This novel policy change upended years of consistent policies that protected U Visa applicants across multiple administrations.
19. Further, the change occurred without proceeding through the statutorily required notice-and-comment rulemaking procedures. See Exhibit G, 2025 ICE Policy Memorandum.
20. Further, there was no basis for the change such that it was arbitrary, capricious, and contrary to law.
21. Respondents are currently holding Zavala Almanza in custody without the opportunity to seek an immigration bond pursuant to 8 U.S. Code § 1226a.
22. Zavala Almanza is without any meaningful way to challenge his detention or to assert a defense to his removal based on his U Visa application, as was intended by Congress when it created the U Visa program.
23. Zavala Almanza's arrest and detention is an embarrassing abuse of discretion that illustrates Respondents' misplaced enforcement priorities and a reckless disregard for the potential for unnecessary injuries caused by arbitrary and unlawful agency policy changes.

24. Respondents' actions have unlawfully caused irreparable injury to both Petitioners, who are now experiencing family separation among other injuries, and will continue to do so without the intervention of this Court.

25. To remedy these injuries,

    a. Zavala Almanza petitions this court for a writ of habeas corpus, challenging his present physical detention by federal immigration authorities within the Western District of Pennsylvania as unlawful, and seeking immediate release from custody, or in the alternative, to hold a bond hearing within 7 days where the government must bear the burden to justify further detention by proving that Petitioner is a flight risk or a danger to the community and specifically accounting for the availability of alternatives to detention, which would allow him to return home and continue to serve as the primary source of care and supervision for his infant granddaughter;

    b. Zavala Almanza and [redacted]. jointly seek injunctive relief barring Respondents from transferring him to a detention facility outside the Commonwealth of Pennsylvania during the pendency of this action, to facilitate resolution of this matter, lessen interference caused by his continued detention, and to ensure availability of visitation with [redacted].;

    c. Zavala Almanza and [redacted]. jointly seek temporary, preliminary, and permanent injunctive relief preventing Respondents from removing him from the United States unless and until USCIS issues a negative *bona fide* determination or final denial of his pending U Visa petition, stripping Zavala Almanza of the protections afforded to him by Congress and unlawfully depriving [redacted]. of her grandfather's presence in her life;

d. Zavala Almanza seeks a writ of mandamus ordering Respondents to comply with their statutory duty to adjudicate his u Visa bona fide determination within 14 days, or in the alternative, compel Respondents to adjudicate Petitioner's u Visa bona fide determination within 14 days under the Administrative Procedures Act (APA), because his application has been unlawfully withheld and/or unreasonably delayed under 5 U.S. Code § 706;

e. Zavala Almanza and S.Z.H. jointly ask the court to issue a declaratory judgment finding that the January 31, 2025, interim guidance memo entitled "Issuance of Interim Policy Guidance Regarding Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits," which rescinded ICE Directive 11005.3: "Using a Victim-Centered Approach with Noncitizen Chime Victims" (Dec. 2, 2021) and ICE Policy 10076.1: "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs" (Jun. 17, 2011), was improper and failed to follow proper notice-and-comment rulemaking procedures under 5 U.S. Code § 553; and

f. Zavala Almanza and S.Z.H. jointly ask the court to hold unlawful and set aside the January 31, 2025, interim guidance memo entitled "Issuance of Interim Policy Guidance Regarding Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits" as finding it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law.

JURISDICTION AND VENUE

26. This Court has jurisdiction over habeas claims under 28 U.S.C. § 2241 and Art. I, § 9, cl. 2 of the United States Constitution, because Petitioner Zavala Almanza is in federal immigration custody within this District and challenges the lawfulness of that custody.

27. This Court has jurisdiction over the non-habeas claims under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the APA, 5 U.S.C. §§ 553, 706, and the Mandamus Act, 28 U.S.C. § 1361.

28. This Court may award declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57.

29. This Court has authority to issue injunctive relief under 5 U.S.C. § 702 and its inherent equitable powers.

30. Venue lies in the Western District of Pennsylvania under 28 U.S.C. § 1391(e) because Petitioner Zavala Almanza is confined in this District, a substantial part of the events giving rise to the claims occurred in this District, and at least one Respondent or custodian is located in this District.

31. Venue is also proper for the habeas claims because Petitioner Zavala Almanza's immediate custodian is located within this District.

PARTIES

32. Petitioner Zavala Almanza is a citizen and native of Mexico. He is presently detained by ICE at the Moshannon Valley Processing Center (MVPC), located in Philipsburg, Pennsylvania. Petitioner is the primary caregiver and source of day-to-day supervision and support for his infant granddaughter, [redacted].

33. Petitioner [redacted]H., through her grandfather and legal guardian Zavala Almanza, is a one-year-old U.S. citizen who is completely reliant on Zavala Almanza for her daily care, supervision, and basic necessities. Petitioner [redacted]. was the direct victim of a shooting when she was two months old, where she was shot at or near her abdomen by her father. Her mother, Selena Zavala Hernandez, was also murdered in the same incident. Her father, the perpetrator, thereafter shot himself. The incident occurred on or about February 16, 2025, in Reading, Pennsylvania.

34. Respondent Leonard Oddo is the Warden/Facility Administrator of the Moshannon Valley Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

35. Respondent John E. Rife is the acting Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. He is responsible for administration and management of ICE Enforcement Removal Operations in Pennsylvania. As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

36. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner.

37. Respondent Immigration and Customs Enforcement is a component agency of the Department of Homeland Security, the federal agency responsible for implementing and

enforcing the INA, including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security.

38. Respondent Joseph B. Edlow is the Director of U.S. Citizenship and Immigration Services (USCIS), the federal agency that oversees lawful immigration to the United States, including the U Visa program, and a component agency of the Department of Homeland Security. He is sued in his official capacity.

39. Respondent United States Citizenship and Immigration Service (USCIS) is a component agency of the Department of Homeland Security responsible for adjudicating Petitioner's U Visa petition and any bona fide determination associated with that filing.

40. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

41. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. He has ultimate custodial authority over Petitioner and is sued in his official capacity.

42. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings, and a component agency of the Department of Justice.

43. Respondent Daren K. Margolin is the acting director of the Executive Office for Immigration Review and the immigration court system it operates, a component agency of the Department of Justice. He is sued in her official capacity.

44. Respondent Department of Justice (DOJ) is the federal agency responsible for adjudicating immigration and removal agency proceedings through the immigration court system.

45. Respondent Todd Blanche is the acting Attorney General of the United States. He is responsible for overseeing the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

STATUTORY FRAMEWORK

A. U nonimmigrant status (U Visa) Framework

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

47. Congress created U nonimmigrant status to encourage noncitizen victims of qualifying criminal activity to report crimes, cooperate with law enforcement, and seek protection without fear that their immigration status alone would prevent them from assisting authorities. 8 U.S.C. § 1101(a)(15)(U).

48. A noncitizen, who is either a direct victim or an indirect victim based on victimization of a family member, can obtain a U Visa by obtaining a certification of cooperation from a law enforcement agency, and submitting a self-petition to USCIS.

49. To be eligible for a U Visa, an applicant must show: (1) she was the victim of a enumerated crime in violation of law; (2) she "suffered substantial physical or mental abuse as a result of having been a victim of criminal activity"; (3) she possesses information concerning the criminal activity; and (4) she helped or is helping law

enforcement or prosecutors in the investigation or prosecution of criminal activity. See 8 U.S.C. § 1101(a)(15)(U)(i)(III).

50. Following review, USCIS may grant the petition, which enables the noncitizen to remain in the United States for four years.

51. Underscoring the importance of encouraging noncitizen victims of crime to feel comfortable reporting crime and working with law enforcement authorities, Congress authorized DHS to waive virtually any ground of inadmissibility to U Visa petitioners in the public interest. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(e), 114 Stat. 1464, 1533 (2000); 8 U.S.C. § 1182(d)(14).

52. Even a noncitizen "who is the subject of a final order of removal, deportation, or exclusion is not precluded" from eligibility. 8 C.F.R. § 214.14(c)(1)(ii).

53. These generous waivers facilitate the goal of easing the victim's pathway to remain in the United States. Additionally, they create a possible pathway to lawful permanent residence and eventual citizenship for qualified individuals, even those who might otherwise be barred from pursuing permanent residence.

B. The U Visa Backlog, Bona Fide Determinations (BFD), and the Waitlist

54. There is an annual statutory cap on U Visas. By statute, USCIS may only issue 10,000 visas per year. 8 U.S.C. § 1184(p)(2).

55. In the past several years, U Visa applications have far exceeded the 10,000-per-year cap, resulting in a backlog of nearly 90,000 U Visa applications awaiting adjudication.

56. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No.110-457, 122 Stat. 5044, 5053 ("TVPRA"), Congress expanded the

protections for noncitizens who had come forward to report crime, to specifically address the backlog.

57. Most relevant to this action, the TVPRA added § 237(d) to the INA, which authorizes DHS to issue a stay of any removal order against a U Visa petitioner if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1).

58. Any such stay remains in effect until the U Visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

59. The TVPRA also authorized employment for U Visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)).

60. As stated by USCIS, the Bona Fide Determination ("BFD") process "provides an opportunity for certain petitioners to receive BFD [work permits] and deferred action while their petitions are pending, consistent with the [TVPRA]." USCIS Policy Manual vol. 3, pt. C, ch. 5.

61. Congress created BFD protections in recognition that the full adjudication of a U Visa necessary for placement on the waiting list involves a lengthy process.

62. Congress intended that petitioners with valid petitions promptly receive protection. Indeed, the bipartisan bill's co-sponsors envisioned that USCIS would determine whether a petition was "bona fide" through a streamlined process lasting no longer than two months, stating:

> [i]mmigrant victims of domestic violence, sexual assault and other violent crimes should not have to wait for up to a year before they can support themselves and their families. The [USCIS] Vermont Service Center should therefore strive to issue work authorization and deferred action in

most instances within 60 days of filing, consistent with the need for safe and competent adjudication[1].

63. Another co-sponsor added, "By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure." [2]

64. In addition to the Congressional amendments, USCIS also adopted a regulatory "waiting list," whereby USCIS conducts an initial adjudication and places "eligible petitioners who, due solely to the cap [of 10,000 visas], are not granted U-1 nonimmigrant status ... on a waiting list." 8 C.F.R. § 214.14(d)(2).

65. Significantly, while on the waiting list, USCIS will grant the applicant deferred action, which is a form of prosecutorial discretion protecting an individual from removal, and USCIS may grant work authorization. Id.

66. Deferred action is a method of prosecutorial discretion that the immigration agencies may grant "[t]o ameliorate a harsh and unjust outcome." C. Gordon, S. Mailman, & S. Yale-Loehr, Immigration Law and Procedure § 72.03 [2][h] (1998) (as quoted in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999)).

67. Through deferred action, ICE may "decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation." Id.

68. "Approval of deferred action status means that ... no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." Id.

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[1] 154 Cong. Rec. H10888-01, H10905, 2008 WL 5169865 (Dec.10, 2008) (statement of Reps. Berman and Convers).

[2] 154 Cong. Rec. H10888-01, H10902, 2008 WL 5169865 (Statement of Rep. Smith).

C. The BFD Process

69. 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.

70. 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.

71. First, in the BFD process, USCIS conducts a streamlined initial review to determine whether an application is "bona fide." Id.

72. 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.

73. "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.

74. 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.

75. 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.

76. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5.

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

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

79. Second, in the BFD process, for those deemed ineligible for a BFD EAD and deferred action, USCIS proceeds to a full adjudication of the petition, including any waivers of grounds of removability that might have prevented the BFD.

80. If the petition is approvable and a U Visa is not available due solely to the annual cap, USCIS then places petitioners on the U Visa waiting list and must confer deferred action until a U Visa becomes available or a change in circumstances causes USCIS to remove the petitioner from the waiting list. PM, vol. 3, pt. C, ch. 4.

81. Because deferred action for those on the waiting list is mandatory by regulation, it can only be revoked due to a material change in eligibility for the U Visa. See 8 C.F.R. § 214.14(d)(2)-(3).

82. 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 S 245.24(b).

83. Deferred action would preclude Petitioner's removal from the United States and would result in Petitioner's release from detention.

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

D. Previous Prosecutorial Discretion Policies

85. Since the creation of the U Visa benefits, DHS policy has consistently been written to implement Congress's intent to encourage noncitizen victims of domestic violence, severe trafficking, and other serious crime to report crime and cooperate with law enforcement without fear of immigration consequences.

86. Since 2005, multiple internal agency guidance documents have articulated a policy that broadly favored not initiating removal of U Visa applicants until the application is adjudicated and not pursuing removal until the application is denied. See, e.g.,

Memorandum from William J. Howard, Principal Legal Advisor, to All OPLA Chief Counsel, Prosecutorial Discretion, at 3 (Oct. 24, 2005) ("Howard Memo"); Memorandum from William Howard, Principal Legal Advisor, to All OPLA Chief Counsel, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum of David J. Venturella, Acting Director, Detention and Removal Operations, to Field Office Directors, Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U Visa) Applicants, (Sept. 24, 2009) ("Directive 11005.1"); Memorandum from Peter S. Vincent, Principal Legal Advisor, to OPLA Attorneys, Guidance Regarding U Nonimmigrant Status (U Visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009) ("2009 Vincent Memo"); John Morton, ICE Policy Statement 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (Jun. 17, 2011) ("2011 Policy" or "Morton Memo") at 1.

87. In 2019, ICE under the first Trump Administration issued Directive 11005.2, which superseded Directive 11005.1 and the 2009 Vincent Memo. ICE Directive 11005.2, Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners, (Aug. 2. 2019) ("2019 Directive"), available at https://www.ice.gov/doclib/foia/policy/11005.2_StayRemovalReqRemProcUVisaPetitioners.pdf.

88. In 2021, ICE, under the Biden Administration, issued Directive 11005.3, encouraging a "Victim-Centered" enforcement approach and superseding the 2019 Directive. ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims (Dec. 2, 2021) ("2021 Directive"), available at

https://www.ice.gov/doclib/foia/policy/11005.3 UsingVictimCenteredApproachNoncitizen Victims.pdf.

89. Noting that "Congress created victim-based immigration benefits to encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status," the 2021 Directive states that "[w]hen victims have access to humanitarian protections, regardless of their immigration status, and can feel safe in coming forward, it strengthens the ability of local, state, and federal law enforcement agencies, including ICE, to detect, investigate, and prosecute crimes." Id.

90. Accordingly, the 2021 Directive seeks to "minimize[] any chilling effect that civil immigration enforcement actions may have on the willingness and ability of noncitizen crime victims to contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek benefits" and to "bolster[] faith in the entire criminal justice and civil immigration systems." Id.

91. Thus, the 2021 Directive continued ICE's longstanding policy to "refrain from taking civil enforcement action against" individuals "known to have a pending application" for "victim-based immigration benefits" unless there are "exceptional circumstances" such as national security concerns or a risk of death, violence, or physical harm to any person." Id. at 1-2.

92. If an application is pending, ICE will "defer decisions" on enforcement until final determinations are made on pending petitions or a negative determination is made on an interim adjudication like a BFD or wait-list determination. Id. at 2.

93. The 2021 Directive also reinstated a policy of requesting expedited adjudications for people in ICE custody. Id. at 9.

94. "The fact that someone is a victim of crime and... may be eligible for victim-based benefits" is to be considered a "positive discretionary factor." Id.

E. The 2025 Policy Change

95. Shortly after President Trump took office for his second term, ICE Acting Director Caleb Vitello issued the 2025 Guidance challenged in this case. Ex. H.

96. On January 30, 2025, acting ICE leadership signed an interim policy memorandum titled "Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits," which was reported publicly on January 31, 2025.

97. The January 2025 interim guidance rescinded Directive 11005.3 and ICE Policy 10076.1

98. According to the directive, ICE officers are no longer required to affirmatively seek indicia that a noncitizen is a crime victim or to treat such evidence as a positive discretionary factor when making enforcement decisions.

99. Further, the directive states that the document eliminated prior direction that ICE seek expedited adjudication of pending victim-based applications and petitions, including those involving people in ICE custody, unless expedition is in *ICE's* own interest.

100. ICE's current enforcement guidance rescinded earlier directives that had instructed officers to refrain, absent exceptional circumstances, from civil immigration enforcement against known beneficiaries and pending applicants for victim-based relief, and to affirmatively look for evidence indicating that a noncitizen is a crime victim.

101. The sparse 2025 Guidance explicitly "rescinded and superseded" the 2021 Policy and 2011 Policy, replacing them with requirements that, when conducting civil

immigration enforcement actions against applicant for Survivor-based Benefits, ICE officers —

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

Ex H.

102. Thus, the 2025 Guidance reverses course from decades of agency practice under which immigration agencies generally refrained from enforcement against survivors of serious crime, unless warranted by adverse factors.

103. Instead, the 2025 Guidance requires enforcement against survivors of crime to the maximum extent that ICE attorneys say it is legal to do so, with the only exception being when enforcement will interfere with active law enforcement investigations.

104. As detailed below, the unprecedented result is that noncitizen victims of crime who have cooperated with police, applied for the benefits Congress afforded them for doing so, and are simply awaiting adjudication of their applications, including even those with valid grants of deferred action or who are prima facie eligible for relief, are now routinely being detained and deported.

105. The 2025 Guidance devotes a single sentence to justifying this about-face, identifying the sole reason language from one of President Trump's first-day Executive Orders calling for "the "total and efficient enforcement of [immigration] laws' against all inadmissible and removable" people.

106. It does not reference any of the factual findings or purposes of Congress's enactments or prior immigration policies, much less make any of its own.

107. The stated purpose of the Executive Order relied upon was to address a supposed "flood of illegal immigration" that had occurred "[o]ver the past 4 years," and to "ensure[] that the Federal Government protects the American people by faithfully executing the immigration laws of the United States." Exec. Order No. 14159, Protecting the American People Against Invasion, § 1 (Jan. 20, 2025) ("Invasion EO").

108. Accordingly, the Invasion EO states the Trump Administration's policy "to faithfully execute the immigration laws against all inadmissible and removable aliens" and "to achieve the total and efficient enforcement of those laws." Id. § 2.

109. The 2025 Guidance has directly resulted in two additional unlawful policies and practices by Defendants that Plaintiffs challenge here.

110. Under the "De Facto Revocation" Policy, ICE now routinely detains and deports people who have valid grants of deferred action from USCIS in connection with pending U Visa petitions.

111. Neither ICE nor USCIS provides any notice or opportunity to be heard regarding whether such deferred action should be revoked prior to doing so.

112. Instead, ICE treats its enforcement action as a *de facto* revocation of deferred action.

113. This policy unlawfully renders the protection of deferred action completely meaningless.

114. Under the "Blind Removal" Policy, ICE now engages in a pattern and practice of refusing to request prima facie determinations from USCIS when people with pending U Visa petitions request stays of their removal orders.

115. By doing so, ICE renders itself willfully blind to an individual's eligibility for protection when seeking to remove the person.

116. This policy is inconsistent with the requirements of 8 U.S.C. §1227(d)(1) and Congress's intent that individuals with prima facie eligibility for relief should generally be protected from removal.

117. Policies that explicitly protect crime survivors are necessary to effect Congress's repeated intent and public safety goal of encouraging noncitizen survivors of serious crime to come forward, report crime, and cooperate with law enforcement.

118. Instead, Defendants have created a climate of fear and implemented the 2025 Guidance to strip the protections of prior policies, giving immigration agents the green light to arrest and deport vulnerable individuals who bravely confronted their perpetrators and who relied on the government's long-standing promise of protection.

F. Due Process Protections

119. Respondent's detention authority has recently been subjected to numerous legal challenges, in part due to policy changes under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

120. Upon information and belief, Petitioner will not be afforded access to a bond hearing pursuant to 8 U.S. Code § 1226a.

121. The denial of bond is a violation of Petitioner's substantive and procedural due process rights.

122. The Fifth Amendment to the U.S. Constitution provides limits on detention. As the Supreme Court has noted, "[i]t is well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

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

124. This fundamental due process protection applies to all noncitizens, even if they are removable or inadmissible. See id. at 721 (Kennedy, J., dissenting) ("[Bloth removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.").

125. Under these due process principles, detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." Id. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

126. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id. at 690 (internal quotations omitted).

127. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. Id.; *Demore*, 538 U.S. at 538.

128. Following *Zadvydas* and *Demore*, every circuit court to confront the issue of prolonged detention has protected the due process rights of people detained in civil immigration detention by requiring a custody hearing for noncitizens subject to

unreasonably prolonged detention pending removal proceedings. See *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins* (*Rodriguez III*), 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

EXHAUSTION

129. No administrative remedy is available that can provide prompt and adequate relief from Petitioner's present unlawful detention, transfer, and threatened removal before adjudication of his bona fide determination.

130. To the extent exhaustion may otherwise apply to any claim, it should be excused as futile, inadequate, and incapable of preventing irreparable injury.

STATEMENT OF FACTS

131. Zavala Almanza is the legal guardian and grandfather of [redacted]., a one-year-old U.S. citizen.

132. Zavala Almanza last entered the United States without inspection on or about December of 2014.

133. Zavala Almanza was previously granted voluntary departure on or about August 17, 2010, and he previously departed the United States.

134. In 2025, Zavala Almanza's U.S. citizen daughter, Selena Zavala Hernandez, was shot and killed while she laid in bed next to her two-month-old daughter, [redacted]., by her intimate partner, who then took his own life.

135. During the incident, the infant [redacted]. was also shot by her biological father, sustaining life threatening injuries.

136. Following death of his daughter, Zavala Almanza stepped in to take care of [redacted]H., ensuring that she received all required medical follow-up care.

137. With help from social workers with the Berks County Department of Child and Youth Services and legal counsel, Zavala Almanza and his wife obtained legal guardianship of [redacted]I., allowing them to act as her parents in all capacities.

138. With assistance from the Berks County District Attorney's Office, filed for U nonimmigrant status based on his assistance of law enforcement, and his status as an indirect victim of the qualifying criminal activity.

139. Petitioner filed Form I-918, Petition for U Nonimmigrant Status, based on his victimization and assistance to law enforcement concerning the murder of his daughter and the aggravated assault of his granddaughter.

140. USCIS accepted Petitioner's U Visa filing on January 8, 2026, and it remains pending.

141. Following these events, on April 15, 2026, Zavala Almanza was arrested by Respondents near his home in Temple, Pennsylvania, and is currently being detained at MVPC in Philipsburg, Pennsylvania.

142. Petitioner has no criminal record, and he is engaged in a lawful process to normalize his immigration status; he is not a danger to the community, and he is not a flight risk.

143. He has strong family ties, a stable release plan, a fixed residence at [redacted], and a compelling reason to appear for all future proceedings because his U Visa petition remains pending.

144. Less restrictive alternatives to detention are available, including release on recognizance, reporting requirements, GPS monitoring, all of which would be sufficient to ensure Zavala Almanza's cooperation with his immigration case.

145. Petitioner has remained in ICE detention notwithstanding his pending U Visa filing and notwithstanding the humanitarian and public-interest considerations that arise from his status as a victim and witness who assisted law enforcement.

146. Respondents have continued to detain Petitioner without affording a constitutionally adequate custody determination, and the equities of this case demand that the Government to justify continued detention and to address alternatives to detention in light of Petitioner's caregiving role and pending victim-based application.

147. Petitioner's detention inflicts severe hardship on his family; he is the primary source of care and supervision for [redacted]., and detention prevents him from returning home to resume that caregiving role.

148. Zavala Almanza's detention and Respondents' failure to seek or issue a bona fide determination ("BFD") have caused, and continue to cause, concrete, severe, and irreparable injuries to both Petitioners. These injuries are not speculative. They are the direct, foreseeable, and ongoing consequence of Respondents' unlawful policies and practices.

149. While Petitioner has not been in custody long, given these equities, Petitioner's detention is already unreasonable, to the degree that his absence as caregiver threatens the health, safety, and rights of free association of [redacted].

150. Where the government detains a noncitizen for a prolonged period or where he or she is pursuing a substantial defense to removal or claim to relief—such as a U Visa that

is *prima facie* eligible—due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Demore* at 532 (Kennedy, J., concurring) ("individualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); see also *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the initial commitment requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) ("lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards).

151. Courts weigh the following factors when assessing reasonableness of detention: (1) how long the detention will likely continue in the absence of judicial relief; (2) the nature and extent of removal proceedings, including whether any delays are attributable to the government or the immigrant; (3) the conditions of detention; and (4) the likelihood that the proceedings and judicial review will end with a removal order. See *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859-60. (D. Minn. 2019) (describing the multifactor test).

152. Further, Petitioner faces an ongoing risk that ICE may transfer him to a detention facility outside Pennsylvania.

153. Such a transfer would interfere with access to counsel, disrupt family contact, burden preparation of this case, and risk frustrating this Court's jurisdiction.

154. Additionally, despite the pending U Visa filing, USCIS has not adjudicated whether Petitioner qualifies for a bona fide determination.

155. Petitioner is within the class of persons that congress specifically sought to protect by creating the U Visa, and because of this he is legally entitled to review of his application for potential bona fide determination, at a minimum.

156. The BFD process is not merely a procedural formality. It is a congressionally authorized mechanism, codified at 8 U.S.C. § 1184(p)(6), and implemented through USCIS's formal adjudicative framework. Congress enacted the BFD process specifically because it recognized that the multi-year wait for full U visa adjudication would expose cooperating crime victims to exactly the harm Zavala Almanza now faces: detention and removal before the petition can be fully evaluated.

157. This determination is critically important to Petitioner because it includes the possibility of deferred action, preventing his removal, and employment authorization if the agency determines the filing is bona fide.

158. Each of these benefits is a legally cognizable entitlement, not a discretionary "gift," and each flows directly from Congress's determination that U visa petitioners who present bona fide petitions should not be removed while awaiting full adjudication.

159. Zavala Almanza's petition is not merely facially valid, it is compelling; his daughter was murdered, his infant granddaughter was shot, and the Berks County District Attorney certified his cooperation in the homicide investigation. On any objective assessment, this petition presents a bona fide case warranting interim protection.

160. However, USCIS has not initiated a BFD review and ICE has failed to secure prompt adjudication of Petitioner's bona fide determination, despite clear authority and compelling reasons to do so. Until recent policy changes, Respondents would have ordinarily sought expedited adjudication of the U Visa petition as a matter of course.

161. The failure to conduct a BFD is not a mere delay in paperwork; it is the denial of the only legal mechanism that could, at this juncture, stop Zavala Almanza's removal.

162. Without a BFD, there is no deferred action. Without deferred action, ICE is proceeding toward removal of a man who is, by any fair reading of the statute, precisely the individual Congress intended to protect.

163. The denial of a BFD thus directly causes the very irreparable harm that the U visa framework was designed to prevent.

164. However, under current guidance, Respondents will not do so, despite clear statutory authority that entitles Zavala Almanza to a bona fide determination, which would provide him with relief from removal.

165. As it stands, Respondents have unlawfully withheld or delayed adjudication of the U Visa and bona fide determination, with ICE seeking to remove him before USCIS makes this determination.

166. ICE does not pause removal efforts while bona fide visa applications are pending with USCIS, frustrating the purpose of the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), which Congress enacted to protect immigrant victims of crime who come forward, and raising serious questions about whether such actions are *ultra vires*.

167. Continued detention frustrates Congress's victim-protection framework, separates him from a dependent infant for whom he provides primary care, and places him at risk of transfer outside Pennsylvania, thereby impairing visitation from his granddaughter, access to counsel, and potentially frustrating this Court's jurisdictional supervision.

168. Zavala Almanza has suffered and continues to suffer immediate injury from the absence of a BFD. He is detained at the Moshannon Valley Processing Center in conditions of civil confinement, separated from his family, unable to work, and unable to provide care to his infant granddaughter. Each day of detention is a harm that is not adequately compensable by monetary damages.

169. [redacted]. is a U.S. citizen, not much more than one year old. She is the direct victim of a shooting that occurred when she was *two months old*.

170. [redacted].'s injury from Respondents' failure to issue a BFD is direct and severe. The BFD, if issued, would result in deferred action for Zavala Almanza, which would require his release from detention and bar his removal. His release would permit him to return home and resume his role as [redacted].'s primary caregiver.

171. Respondents' failure to conduct the BFD thus directly and causally produces the deprivation of [redacted].'s primary caregiver. This harm is concrete, immediate, and ongoing.

172. Petitioner's detention directly infringes upon the constitutionally protected liberty interest in family integrity. Courts have held that the government's separation of a parent from a child, without a finding of parental unfitness or danger to the child, violates substantive due process under the Fifth Amendment. *Ms. L. v. U.S. Immigration & Customs Enf't*, 302 F. Supp. 3d 1149, 1160–67 (S.D. Cal. 2018); *see also* 310 F. Supp. 3d 1133, 1147 (S.D. Cal. 2018) (describing the liberty interest of parents in the care, custody, and control of their children as "perhaps the oldest of the fundamental liberty interests" recognized by the Supreme Court) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

Respondents' detention of Zavala Almanza, and their failure to pursue the BFD that would secure his release, directly infringes this interest.

173. [redacted]H.'s injury is aggravated by her particular vulnerability. Her development, health, and stability depend on the continuity of care that Zavala Almanza provides. The disruption caused by his detention is not a generalized inconvenience; it is a deprivation that directly threatens the health and welfare of a uniquely vulnerable U.S. citizen child.

174. [redacted]. has standing to assert her own constitutional and statutory injuries, through her legal guardian. Her interest in the BFD adjudication is not derivative of her grandfather's, it is her own claim.

175. If issued, the BFD will directly benefit [redacted]. by restoring her primary caregiver. Her deprivation is unnecessarily prolonged for every day that Respondents' failure to issue the BFD continues.

176. Accordingly, the Court should order Zavala Almanza's immediate release, or at minimum a constitutionally adequate bond hearing; stay his removal unless and until USCIS issues a negative bona fide determination; compel adjudication of the bona fide determination; and declare unlawful and set aside the January 31, 2025 interim ICE guidance.

177. Further, USCIS's failure to adjudicate his U Visa petition BFD within a reasonable time violates the Administrative Procedures Act. See 5 USC §706(1).

178. This failure has left Zavala Almanza vulnerable to detention and removal, despite the prima facie U Visa case, which would have prevented his arrest, incarceration, and separation from [redacted].

179. Accordingly, Petitioners seek a writ of mandamus ordering USCIS to perform its statutory ministerial duty to review the U Visa application and issue a bona fide determination within 14 days.

180. In the Alternative, Petitioners ask the Court to order USCIS to review the U Visa application and issue a bona fide determination within 14 days, under its authority established by the APA.

COUNT I — Habeas Corpus Relief (28 U.S.C. § 2241)

Unlawful Detention Prior to Bona Fide Determination

181. Paragraphs 1 – 179 are incorporated by reference.

182. This Court has jurisdiction to grant a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

183. Petitioner Zavala Almanza is currently detained by Respondents within the jurisdiction of this Court and is being held without the ability to challenge the lawfulness of his detention. Petitioner is not a threat to his community or a flight risk, the two legitimate reasons for immigration detention under the laws of the United States.

184. Further, Petitioner filed a Form I-918 petition for U nonimmigrant status with USCIS, which has not been adjudicated. Petitioner's U visa petition is predicated on his victimization in connection with the violent crime that killed both of his granddaughter's parents. Petitioner's U Visa was complete and properly filed, including the submission of law enforcement certification. As such, he is entitled to a Bona Fide Determination of his U Visa Petition under the INA.

185. USCIS has not issued a bona fide determination on Petitioner's petition and Respondents arrested and detained Petitioner before USCIS had the opportunity to issue a bona fide determination.

186. A positive bona fide determination would entitle Petitioner to deferred action and protection from removal.

187. Detaining Petitioner before issuance of a bona fide determination deprives him of a legally protected interest without due process of law.

188. Petitioner's detention prior to a bona fide determination is not authorized by statute.

189. Accordingly, Petitioner is held in custody by Respondents in violation of the Constitution and laws of the United States, as described herein.

COUNT II — Violation of the Fifth Amendment Due Process Clause

Substantive Due Process

190. Paragraphs 1 – 179 are incorporated by reference.

191. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

192. Petitioner Zavala Almanza's detention is not reasonably related to those goals and thus violates substantive due process. Petitioner is not a flight risk; he is a *bona fide* U Visa applicant who is known to the Respondents and has ties to his local community. Further, he has no criminal contacts and is in no way a danger to his community.

193. Respondents' detention of Petitioner without any reason that is reasonably related to a legitimate state goal, and is therefore in violation of Petitioner's substantiative due process rights under the Fifth Amendment.

COUNT III -- Violation of the Fifth Amendment Due Process Clause

Procedural Due Process

194. Paragraphs 1 – 179 are incorporated by reference.

195. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

196. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

197. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner Zavala Almanza's liberty is a particularly weighty interest. As it stands, Petitioner's restricted liberty substantially interferes with his ability to care for his one-year-old granddaughter, to pursue his U Visa petition, and to provide further assistance to law enforcement should it be required.

198. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards afforded by additional procedures. *Id.* Here, there is a great risk of unnecessary detention because Petitioner Zavala Almanza's U Visa petition is bona fide on its face, and the Respondents actions have not afforded him the opportunity to challenge his detention and have not proven that his detention is rationally related to any legitimate state interest. Any number of alternatives to detention would satisfy the government's reasons for detaining Petitioner without erroneously depriving him of his physical liberty. Further, by providing the mandated Bona Fide Determination, there is a strong likelihood that Petitioner would be

protected from removal, rendering his detention wholly unnecessary and not authorized by the INA.

199. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Further, Petitioner's detention is contrary to Congressional mandate, in light of his U Visa petition, which is prima facie valid. Therefore, the government does not have an interest in continuing to detain Petitioner, and his continued detention violates procedural due process.

200. Additionally, Petitioner has not been afforded an individualized bond hearing. Respondents have made no individualized finding that Petitioner is a flight risk or a danger to the community.

201. Respondents have not considered alternatives to detention that would permit Petitioner to return home.

202. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c) because he has not been convicted of a qualifying criminal offense.

203. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which requires an individualized bond determination.

204. Prolonged civil immigration detention without an individualized hearing violates the procedural component of the Due Process Clause of the Fifth Amendment.

COUNT IV — Violation of the Fifth Amendment Due Process Clause
Substantive Due Process

205. Paragraphs 1 – 179 are incorporated by reference.

206. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

207. Petitioner [redacted]. lost both biological parents to the murder-suicide crime underlying the U Visa petition, and she is now without a surviving parent and entirely dependent on an adult caregiver due to being only one-year-old.

208. Her grandfather remains her legal guardian and primary source of care and supervision for her since the death of her parents.

209. Petitioner [redacted]. has a fundamental right and liberty interest in her family's integrity.

210. Her separation from her legal guardian without a finding of parental unfitness or danger to the child, violates substantive due process under the Fifth Amendment. *Ms. L. v. U.S. Immigration & Customs Enf't*, 302 F. Supp. 3d 1149, 1160–67 (S.D. Cal. 2018); *see also* 310 F. Supp. 3d 1133, 1147 (S.D. Cal. 2018) (describing the liberty interest of parents in the care, custody, and control of their children as "perhaps the oldest of the fundamental liberty interests" recognized by the Supreme Court) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

COUNT V — Unreasonable Agency Delay: Failure to Adjudicate Bona Fide Determination (5 U.S.C. § 706(1))

211. Paragraphs 1 – 179 are incorporated by reference.

212. USCIS has not issued a bona fide determination on Petitioner's pending U visa petition.

213. The failure to adjudicate the bona fide determination is unreasonable under the circumstances, and far outside the time line envisioned by Congress in its revisions to the law.

214. Petitioner remains detained while awaiting adjudication; a positive bona fide determination would result in deferred action and would provide a basis for Petitioner's release from detention.

215. Further, Petitioner S.Z.H. remains without her caregiver for each day the adjudication is delayed.

216. Under 5 U.S.C. § 706(1), this Court shall compel agency action unlawfully withheld or unreasonably delayed.

217. This Court should compel USCIS to issue a bona fide determination within 14 days.

COUNT VI — Writ of Mandamus: Compel Bona Fide Determination (28 U.S.C. § 1361)

218. Paragraphs 1 – 179 are incorporated by reference.

219. USCIS has a clear, certain, and non-discretionary duty to adjudicate pending U visa petitions that meet the threshold criteria for a bona fide determination. See 5 U.S.C. §555(b); see also 8 C.F.R. § 214.14(d)(2).

220. Engaging in the BFD process is a matter of agency obligation, though the decision to make a BFD finding remains discretionary.

221. Petitioner's petition meets those threshold criteria, but USCIS has failed to fulfill their duty under the INA.

222. This Court has authority under 28 U.S.C. § 1361 to compel an officer of the United States to perform a non-discretionary duty.

223. This Court should issue a writ of mandamus directing USCIS to complete the bona fide determination within 14 days.

COUNT VII —Stay of Removal Pending Bona Fide Determination (Traditional Equitable Remedy and 5 U.S.C. § 705)

224. Paragraphs 1 – 179 are incorporated by reference.

225. Petitioner's U visa petition and bona fide determination remain pending.

226. Removing Petitioner before USCIS issues a determination would moot the pending proceedings.

227. Removing Petitioner would cause irreparable harm to Petitioner.

228. Removing Petitioner would cause irreparable harm to Petitioner [redacted]I., who would be left without her legal guardian and primary caregiver.

229. The public interest does not favor removal of a crime victim's surviving family caregiver while victim-based immigration relief remains pending.

230. This Court has inherent authority to stay removal to prevent the mooting of pending proceedings and to prevent irreparable harm.

231. Further, 5 U.S.C. § 705 empowers this court to issue all necessary and appropriate processes to preserve the *status quo* pending the conclusion of the review proceedings.

232. This court should preserve the *status quo* by staying removal until Petitioner receives an negative adjudication as part of BFD review, or a final denial of his petition for a U Visa.

COUNT VIII — Violation of APA Notice-and-Comment Requirements (5 U.S.C. § 553)

233. Paragraphs 1 – 179 are incorporated by reference.

234. On January 31, 2025, Respondents issued interim guidance titled "Issuance of Interim Policy Guidance Regarding Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits."

235. The January 31, 2025, guidance substantively altered the legal protections available to pending U visa petitioners.

236. A rule that substantively alters the rights or obligations of regulated parties is a legislative rule under the APA.

237. Legislative rules must comply with the notice-and-comment requirements of 5 U.S.C. § 553.

238. The January 31, 2025, guidance was issued without prior public notice.

239. The January 31, 2025, guidance was issued without an opportunity for public comment.

240. No finding of good cause was made to waive the notice-and-comment requirements.

241. The January 31, 2025, guidance was therefore issued in violation of 5 U.S.C. § 553 and is invalid.

COUNT IX — Unlawful Agency Action: Challenge to January 31, 2025 Guidance (APA § 706(2))

242. Paragraphs 1 – 179 are incorporated by reference.

243. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

244. The January 31, 2025, guidance reversed prior agency policy protecting U Visa applicants from civil immigration enforcement.

245. The prior protective policy had been in effect for years and was relied upon by crime victims and their families.

246. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

247. The January 31, 2025, guidance is contrary to 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p), which establish the U visa framework for crime victims.

248. An agency action that is arbitrary, capricious, or contrary to law must be held unlawful and set aside under 5 U.S.C. § 706(2).

249. The 2025 Interim Guidance Memorandum is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

250. The January 31, 2025 guidance document was therefore arbitrary, capricious, and contrary to law.

251. The January 31, 2025 guidance must be held unlawful and set aside under 5 U.S.C. § 706(2).

COUNT X — As-Applied Constitutional Challenge:

Fifth Amendment Equal Protection and Due Process

252. Paragraphs 1 – 179 are incorporated by reference.

253. As applied to Petitioner, the January 31, 2025, guidance authorized Respondents to treat him as an ordinary civil immigration detainee, ignoring his status as a U Visa applicant and the protections afforded to people of that status, namely the right to have a bona fide determination of their petition.

254. Respondents made no individualized assessment of Petitioner's pending U visa petition before arresting him.

255. Respondents made no individualized assessment of Petitioner's status as a crime victim before arresting him.

256. Respondents made no individualized assessment of Petitioner S.Z.H.'s dependence on Petitioner before arresting him.

257. Congress established the U visa specifically to protect crime victims like Petitioner from exactly this type of governmental action.

258. Treating a pending U visa petitioner whose victimization is the basis of the petition identically to any other civil immigration detainee bears no rational relationship to any legitimate governmental interest.

259. The January 31, 2025, guidance, as applied to Petitioner, therefore violates the equal protection component of the Fifth Amendment's Due Process Clause.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from detention, or in the alternative order a bond hearing within 7 days at which the Government bears the burden of proving that Petitioner is a flight risk or danger to the community and must specifically address alternatives to detention, including conditions that would permit him to return home and continue serving as the primary source of care and supervision for his infant granddaughter;
3. Order Respondents to refrain from detaining or transferring Petitioner to a facility outside the Commonwealth of Pennsylvania during the pendency of this action absent prior authorization of this Court;
4. Stay Petitioner's removal from the United States unless and until USCIS issues a negative bona fide determination or denial of his pending U Visa petition;
5. Issue a writ of mandamus ordering Respondents to adjudicate Petitioner's bona fide determination within 14 days, or alternatively compel adjudication within 14 days pursuant to 5 U.S.C. § 706(1);
6. Declare that the January 31, 2025, interim guidance titled "Issuance of Interim Policy Guidance Regarding Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits" was issued unlawfully, including without compliance with 5 U.S.C. § 553;
7. Hold unlawful and set aside the January 31, 2025 interim guidance under 5 U.S.C. § 706(2);
8. Award reasonable attorney's fees and costs as permitted by law; and
9. Grant such other and further relief as the Court deems just and proper.

Dated: April 17, 2026

Respectfully submitted,

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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 the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition are true and correct to the best of my knowledge.

Dated: April 17, 2026

Respectfully Submitted,

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