

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MINNESOTA

3 Josue Isaias MERINO PENADO

4 *Petitioner,*

5 v.

6 **David EASTERWOOD**, Field Office
7 Director of Enforcement and
8 Removal Operations, St. Paul
9 Field Office, Immigration and
10 Customs Enforcement;
11 **Markwayne MULLIN**, in his
12 official capacity as Secretary of
13 the U.S. Department of
14 Homeland Security; **David J.**
15 **VENTURELLA**, in his official
16 capacity as acting director of
17 U.S. Immigration and Customs
18 Enforcement; **Todd BLANCHE**,
19 in his official capacity as acting
20 Attorney General of the United
21 States; **Joel Brott**, Sherburne
22 County Sheriff.

23 *Respondents.*
24

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Josue Isaias Merino Penado brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Deferred Action Class certified in *Immigration Center for Women and Children v. Noem* (“ICWC”), a class action brought on behalf of immigrant victims of domestic violence, trafficking, and other serious crimes. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) (“ICWC PI Order”). Despite being in a valid period of deferred action status in connection with a pending U visa petition, Petitioner remains unlawfully detained by Respondent U.S. Immigration and Customs Enforcement (“ICE”) at the Sherburn County Jail. This contravenes the ICWC PI Order, in which the court certified a nationwide class and issued a ruling staying ICE’s policy of refusing to “honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas.” *Id.* at *57. As the court held, “a person with deferred action should neither be removed nor detained for immigration enforcement (removal) purposes.” ICWC PI Order at *40.

2. Separately, Respondents’ failure in honoring the protections of deferred action also violates the U.S. Constitution, the Administrative Procedure Act (“APA”), and the *Accardi* Doctrine.

3. Petitioner is a survivor of second-degree assault with a deadly weapon. On June 27, 2019, Petitioner applied for a U visa, which Congress made available to noncitizens who have suffered substantial harm as a result of having been a victim of certain crimes and who have been helpful, are being

1 helpful, or are likely to be helpful in the investigation or prosecution of the
2 crime. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV).

3 4. On May 15, 2024, Respondent U.S. Citizenship and Immigration
4 Services (“USCIS”) granted Petitioner deferred action and work authorization
5 in relation to Petitioner’s pending U visa petition. USCIS has not revoked
6 Petitioner’s deferred action status, which is valid until May 23, 2028.

7 5. “Approval of deferred action status means that. . . no action will
8 thereafter be taken to proceed against an apparently deportable [non-citizen],
9 even on grounds normally regarded as aggravated.” *Reno v. Am.-Arab Anti-*
10 *Discrimination Comm.*, 525 U.S. 471, 484 (1999) (“AAADC”).

11 6. On or about June 11, 2026, Petitioner was detained by local law
12 enforcement for a DUI.

13 7. After posting a bond in his criminal matter, Respondent ICE took
14 Petitioner into its custody despite Petitioner being in valid deferred action
15 status. Petitioner was transferred to Sherburne County Jail where he
16 unlawfully remains in ICE custody.

17 8. As a result of Respondents’ actions, Petitioner has suffered
18 unnecessary distress and trauma, loss of liberty, and a violation of his basic
19 constitutional protections.

20 9. Accordingly, Petitioner respectfully requests the court issue a writ
21 of habeas corpus and order his release.
22
23
24

JURISDICTION

10. A writ under 28 U.S.C. § 2241 may issue if, among other things, a person “is in custody under or by color of the authority of the United States,” or is “in custody in violation of the Constitution or laws or treaties of the United States.” 8 U.S.C. § 2241(c).

11. Petitioner is in the physical custody of Respondents under color of the authority of the United States. Petitioner is detained by ICE at the Sherburne County Jail in Elk River, Minnesota.

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

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

VENUE

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

15. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and/or agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

16. Petitioner Josue Isaias Merino Penado is a national and citizen of El Salvador who has resided in the United States since 2013. Petitioner applied for U nonimmigrant status on June 27, 2019, which is valid until May 23, 2028. USCIS granted Petitioner deferred action on May 15, 2024. Despite this deferred action status, Respondents continue to unlawfully detain Petitioner.

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

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

19. Respondent Todd Blanche is the acting Attorney General of the United States and the senior official of the U.S. Department of Justice. He has the authority to adjudicate removal cases and to oversee EOIR, which administers the immigration courts and the Board of Immigration Appeals (BIA). Mr. Blanche has ultimate custodial authority over Petitioner and is sued in his official capacity.

20. Respondent David J. Venturella is the acting director of Immigration and Customs Enforcement. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is

1 responsible for Petitioner's detention. Mr. Venturella has ultimate custodial
2 authority over Petitioner and is sued in his official capacity.

3 21. Respondent Joel Brott is the Sheriff of Sherburne County,
4 Minnesota, where Petitioner is detained. The Sherburne County Jail is
5 operated by the sheriff's department of Sherburne County. Joel Brott has
6 immediate physical custody of Petitioner. He is sued in his official capacity.

7 FACTUAL ALLEGATIONS

8 **PETITIONER'S BACKGROUND, ARREST, AND DETENTION**

9
10 22. Petitioner was born in El Salvador and resides in Minnesota.
11 Petitioner lives with his wife, Maria Leticia Jimenez-Tejada and their two
12 daughters, V [REDACTED] and A [REDACTED]
13 Petitioner has lived in the United States since December 18, 2013.

14 23. Petitioner's daughters V [REDACTED] and A [REDACTED]
15 [REDACTED] are both United States Citizens.

16 24. On February 10, 2019, Petitioner was the victim of second-degree
17 assault with a deadly weapon. [REDACTED]
18 [REDACTED]

19 25. Petitioner reported this assault to local law enforcement within
20 minutes of it occurring. Petitioner was cooperative and provided a statement
21 to law enforcement using a language line.

22 26. On June 27, 2019, Petitioner filed an I-918 Petition for U
23 Nonimmigrant Status, which remains pending with USCIS.
24

1 27. USCIS granted Petitioner deferred action status on May 15, 2024,
2 based on the pending petition for U Nonimmigrant Status being bona fide.

3 28. USCIS also issued Petitioner an Employment Authorization
4 Document ("EAD") based on Petitioner's deferred action status. The EAD is
5 valid from May 24, 2024, to May 23, 2028.

6 29. On or about June 11, 2026, Petitioner was detained by local law
7 enforcement in Bloomington, Minnesota, for a DUI charge. Petitioner was then
8 transferred into ICE custody and has since been detained at Sherburne County
9 Jail.

10 30. Petitioner has been detained in ICE custody for 12 days.

11 31. Petitioner is the sole financial provider for his wife and his two
12 United States Citizen children. Being detained has impacted and will continue
13 to impact the Petitioner and his family's ability to support themselves.

14 32. Petitioner has suffered greatly as a result of being away from his
15 two children and wife. [REDACTED]

16 [REDACTED] and they rely on each other for support.
17 Petitioner being detained has retraumatized not only the Petitioner but his
18 wife and children as they are still coping and healing from the experience and
19 resulting trauma of the attack.

20 33. Courts have "consistently held that deferred action means the
21 Government agency 'takes no action to proceed against an apparently
22 deportable [noncitizen] based on a prescribed set of factors generally related to
23 humanitarian grounds,'" an interpretation that "finds strong support in
24

1 Supreme Court precedent, circuit authority, and USCIS policy.” *Sepulveda*
2 *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7-8 (W.D.
3 Wash. July 24, 2025) (collecting cases) (citations omitted); *AAADC* at 484
4 (“Approval of deferred action status means that . . . no action will thereafter be
5 taken to proceed against an apparently deportable [non-citizen], even on
6 grounds normally regarded as aggravated.”).

7 34. Because ICE has detained Petitioner and is actively proceeding to
8 seek Petitioner’s removal, which are clearly actions to proceed against
9 Petitioner, it is ignoring USCIS’s grant of deferred action. Accordingly, ICE’s
10 efforts to detain and deport Petitioner amounts to a de facto revocation of such
11 status.

12 35. To date, USCIS has not issued Petitioner any Notice of Intent to
13 Deny or Revoke its grant of deferred action.

14 36. As described below, deferred action issued by USCIS based on a
15 pending U Nonimmigrant petition can only be revoked by USCIS. To date,
16 neither Respondents nor USCIS have provided Petitioner any hearing at
17 which they allege that USCIS’s grant of deferred action should be revoked,
18 nor have they provided Petitioner any opportunity to be heard on the issue of
19 a potential revocation of deferred action.

20 LEGAL FRAMEWORK

21 A. CREATION OF THE U VISA

22 37. In 1994, Congress passed the Violence against Women Act
23 (“VAWA”) to address the widespread problem of noncitizens remaining in
24 relationships with abusers who held the key to their eligibility for lawful

1 immigration status in the United States. See Violent Crime Control and Law
2 Enforcement Act of 1994, Title IV, Pub. L. 103-322, 108 Stat. 1796 (September
3 13, 1994). “[T]he goal of the bill is to ‘permit[] battered immigrant women to
4 leave their batterers without fearing deportation.’” *Hernandez v. Ashcroft*,
5 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103–395, at 25).

6 38. In 2000, with overwhelming bipartisan support, Congress passed
7 the Victims of Trafficking and Violence Protection Act of 2000 (“VTVPA”),
8 which reauthorized VAWA through the Violence Against Women Act of 2000
9 (“VAWA 2000”). The VTVPA dramatically expanded protections for
10 immigrant survivors.

11 39. Through Title 5 of VAWA 2000 – the Battered Immigrant Women
12 Protection Act of 2000 (“BIWPA”) – Congress created the U visa, providing a
13 pathway to U.S. citizenship to noncitizen survivors of qualifying crimes who
14 assist law enforcement in investigating or prosecuting those crimes. See
15 BIWPA § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

16 40. A noncitizen is eligible for a U visa if (1) the petitioner “suffered
17 substantial physical or mental abuse as a result of having been a victim of”
18 certain explicitly identified types of crime; (2) the petitioner “possesses
19 information concerning [the] criminal activity”; (3) the petitioner “has been
20 helpful, is being helpful or is likely to be helpful” to government officials
21 regarding the criminal activity; and (4) the crime occurred in the United
22 States or violated U.S. law. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV). Children,
23 spouses, and, for petitioners younger than 21, siblings and parents, may also
24 receive U visas as derivative beneficiaries of the primary petitioner. 8 C.F.R.
§ 214.14(a)(10).

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

9 42. As DHS has acknowledged, Congress—created the U [visa]
10 program out of recognition that victims without legal status may otherwise
11 be reluctant to help in the investigation or prosecution of criminal activity.
12 Immigrants, especially women and children, can be particularly vulnerable
13 to criminal activity like human trafficking, domestic violence, sexual assault,
14 stalking, and other crimes due to a variety of factors, including but not limited
15 to: language barriers, separation from family and friends, lack of
16 understanding U.S. laws, fear of deportation, and cultural differences.¹

17 43. Congress went further than simply creating the U visa. Congress
18 additionally authorized DHS to waive virtually *any* ground of inadmissibility
19 to U visa petitioners. *Id.* § 1513(e); 8 U.S.C. § 1182(d)(14).

20 44. In 2008, Congress passed the William Wilberforce Trafficking
21 Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. No. 110-

22 ¹ DHS, *U and T Visa Law Enforcement Resource Guide for Federal, State,*
23 *Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and*
24 *Other Government Agencies*, at 4, available at
[https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-](https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf)
[Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf) (last checked 6/23/2026).

1 457, 122 Stat. 5044. The TVPRA added § 237(d) to the Immigration and
2 Nationality Act (“INA”), which authorizes DHS to issue a stay of any removal
3 order against a U or T visa petitioner if the petition “sets forth a prima facie
4 case for approval.” 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until
5 the U or T visa is approved or denied, during which time the applicant “shall
6 not be removed.” 8 U.S.C. §§ 1227(d)(1)-(3).

7 45. Moreover, the TVPRA authorized employment for U visa
8 petitioners who had “a pending, bona fide application” awaiting full
9 adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)).

10
11 **B. U VISA INTERIM BENEFITS: DEFERRED ACTION AND WORK**
12 **AUTHORIZATION PURSUANT TO THE BONA FIDE**
DETERMINATION AND WAITING LIST PROCESSES

13 46. In 2007, DHS promulgated regulations setting forth the process
14 for adjudicating U visa petitions. *See* Interim Rule, 72 Fed. Reg. 53014 (Sept.
15 17, 2007). Because there is a statutory limit of 10,000 visas that may be
16 conferred annually, 8 U.S.C. § 1184(p)(2), a significant, years-long backlog for
17 U visa petitions exists. To address the backlogs, these DHS regulations
18 created interim benefits for petitioners while they wait. The regulations
19 require that crime victims who are not granted U visas “due solely to the
20 cap . . . must be placed on a waiting list.” 8 C.F.R. § 214.14(d)(2). USCIS must
21 “grant deferred action” to individuals placed on the waiting list until a U visa
22 becomes available. *Id.* Wait-listed individuals are also eligible for work
23 authorization. *Id.*

24 47. In 2021, to implement the provision of 8 U.S.C. § 1184(p)(6)
authorizing employment for bona fide U visa petitioners, USCIS created a

1 formal Bona Fide Determination (“BFD”) process, which is reflected in the
2 USCIS Policy Manual (“PM”).²

3
4 48. In the BFD process, rather than the full adjudication required for
5 the waiting-list process, USCIS conducts a streamlined initial review of the
6 petition to determine whether it is “bona fide.” PM, vol. 3, pt. C, ch. 4. The
7 determination is “based on the petitioner’s compliance with initial evidence
8 requirements and successful completion of background checks,” after which
9 USCIS “considers any national security and public safety risks, as well as any
10 other relevant considerations,” in deciding whether to issue an EAD and
11 deferred action. PM, vol. 3, pt. C, ch. 5. “If USCIS determines a principal
12 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.

13
14 49. Petitioners granted a BFD EAD and deferred action are placed in
15 the queue to wait for a U visa to become available as if they were on the U
visa waiting list.

16
17 50. A BFD EAD and deferred action are valid for four years and
renewable. PM vol. 3, pt. C, ch. 5.

18
19 51. USCIS identifies four circumstances when early revocation of
20 deferred action is appropriate: (1) “if USCIS determines a national security
21 or public safety concern is present,” (2) “if USCIS determines the BFD EAD
22 and deferred action is no longer warranted,” (3) if “the Form I-918

23 ² “The USCIS Policy Manual is the agency’s centralized online repository for
24 USCIS’ immigration policies.” PM, available at [https://www.uscis.gov/policy-](https://www.uscis.gov/policy-manual)
[manual](https://www.uscis.gov/policy-manual) (last checked June 23, 2026).

1 Supplement B law enforcement certification is withdrawn” by the certifying
2 agency, or (4) “USCIS determines the prior BFD EAD was issued in error.”
3 *Id.*

4 52. For those deemed ineligible for a BFD EAD and deferred action,
5 USCIS proceeds to a full adjudication of the petition and determines whether
6 any applicable inadmissibility grounds are waivable. If the petition is
7 approvable and a U visa is not available due solely to the annual cap, USCIS
8 then places petitioners on the U visa waiting list and must confer deferred
9 action until a U visa becomes available or a change in circumstances causes
10 USCIS to remove the petitioner from the waiting list. PM, vol. 3, pt. C, ch. 4.

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

14 54. Pursuant to USCIS policy, *only* USCIS may revoke deferred
15 action conferred in connection with a U visa petition. PM vol. 3, pt. C, ch. 5.;
16 8 C.F.R. § 214.14(d)(2)-(3).

17 55. Once a U visa finally becomes available to someone with a BFD
18 EAD or someone on the waiting list, USCIS will conduct another background
19 check to screen for any new material facts affecting eligibility, and if none,
20 approve the visa. PM, vol. 3, pt. C, ch. 7.A-B. The visa recipient is authorized
21 to work incident to status and may apply for lawful permanent residence
22 three years later. 8 C.F.R. § 274a.12(19)-(20); 8 C.F.R. § 245.24(b).
23
24

C. UNTIL 2025, DECADES OF AGENCY POLICY GUIDANCE PRESUMPTIVELY PROTECTED U VISA PETITIONERS FROM IMMIGRATION ENFORCEMENT

56. Consistent with Congress's intent to encourage noncitizen victims to report crime, for nearly two decades, DHS policies have generally required ICE to refrain from pursuing removal efforts against people with pending U visa petitions, like Petitioner, absent serious public safety concerns.³ These include written policies issued in 2011 and 2021. See John Morton, ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) ("2011 Policy"), available at <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf> (last checked June 19, 2026), and 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 UsingVictimCenteredApproac>

³ See Memorandum from William J. Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *Prosecutorial Discretion* (Oct. 24, 2005), available at <https://www.aila.org/library/ice-prosecutorial-discretion-memo>; Memorandum from William Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *VAWA 2005 Amendments to the Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007), available at <https://www.ice.gov/doclib/foia/policy/memoVAWA 2005 INA Amendments 02.01.2007.pdf>; 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), available at https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf; 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), available at https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf; ICE Directive 11005.2, *Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners*, (Aug. 2, 2019), available at <https://www.ice.gov/doclib/foia/policy/11005.2 StayRemovalReqRemProcUVisaPetitioners.pdf>.

1 [hNoncitizenVictims.pdf](#) (last checked June 19, 2026).

2
3 57. As with prior DHS policy, the 2011 Policy reiterated that
4 “[a]bsent special circumstances or aggravating factors,” it is generally
5 “against ICE policy to initiate removal proceedings against” known victims of
6 crime. 2011 Policy at 1. Notably, the 2011 Policy explains “that a flag now
7 exists in” DHS systems “to identify those victims of domestic violence,
8 trafficking, or other crimes who already have filed for . . . victim-based
immigration relief.” 2011 Policy at 3.

9 58. The 2021 Directive continued ICE’s longstanding policy to
10 “refrain from taking civil enforcement action against” individuals “known to
11 have a pending application” for “victim-based immigration benefits,” “absent
12 exceptional circumstances” such as national security or public safety
13 concerns. 2021 Directive at 1-2, 9. If such an application was pending, ICE
14 was to “defer” enforcement until USCIS adjudicates the petition or issues a
15 negative interim adjudication. *Id.* at 2. Agents were to request expedited
16 prima facie adjudications from USCIS for people in ICE custody, and
17 eligibility “for victim-based immigration benefits . . . must be considered” a
“positive discretionary factor.” *Id.* at 2, 9.

18 59. On January 30, 2025, ICE issued a policy directive that, for the
19 first time in the agency’s history, authorized the routine detention and
20 removal of noncitizen victims of crime who had petitioned for victim-based
21 immigration benefits, such as the U visa. *See* ICE Policy Number 11005.4,
22 *Interim Guidance on Civil Immigration Enforcement Actions Involving*
23 *Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan.
24 30, 2025) (“2025 Guidance”), available at

1 <https://www.ice.gov/doclib/foia/policy/11005.4.pdf> (last checked June 19,
2 2026).

3
4 60. The 2025 Guidance became “effective immediately and remains
5 in effect until superseded.” 2025 Guidance at 1. It explicitly “rescinded and
6 superseded” the 2021 Directive and 2011 Policy, thereby reneging the
7 government’s promise to protect noncitizen crime victims and greenlighting a
8 deportation campaign that ignores their potential eligibility for relief.

9 61. Specifically, the 2025 Guidance requires, when ICE officers seek
10 to detain or remove individuals with pending U visa petitions, that they (1)
11 merely “coordinate and deconflict internally” and with law enforcement
12 agencies “to ensure criminal investigative and other enforcement actions will
13 not be compromised,” (2) “consult with” local ICE attorneys only “to ensure
14 any such action is consistent with applicable legal limitations,” (3) need not
15 consider a noncitizen being “a victim of a crime” as “a positive discretionary
16 factor,” and (4) will not “routinely request expedited adjudications from
17 USCIS,” but may do so only when “it is in ICE’s best interests.” 2025 Guidance
18 at 2-3.

19 62. The 2025 Guidance marked an abrupt about-face from
20 longstanding DHS practices, under which immigration agencies generally
21 refrained from enforcement against crime victims absent serious adverse
22 factors.

23 63. As a result of the 2025 Guidance, ICE now engages in an unlawful
24 policy and practice under which it routinely detains and deports people who
25 have valid grants of deferred action from USCIS in connection with pending

1 U or T visa petitions.⁴ Neither Respondent ICE nor USCIS provides any
2 notice or opportunity to be heard regarding whether such deferred action
3 should be revoked prior to doing so. This policy, referred to herein and in
4 *ICWC* as the De Facto Revocation Policy, unlawfully renders deferred action
5 status meaningless.

6 **D. PETITIONER IS A DEFERRED ACTION CLASS MEMBER IN**
7 ***ICWC*.**

8 64. On October 14, 2025, several individual plaintiffs and non-profit
9 legal organizations serving immigrant survivors filed a class action complaint
10 in *ICWC*, challenging the lawfulness of the 2025 Guidance and, as relevant
11 here, the De Facto Revocation Policy. *See* Compl. ¶¶ 200-233 *Immigr. Ctr. for*
12 *Women & Child. v. Noem, et al.*, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14,
13 2025) [Dkt. 1].

14 65. On May 20, 2026, the U.S. District Court for the Central District
15 of California granted plaintiffs' Motion for Class Certification and granted in
16 part plaintiffs' Motion for APA § 705 Relief and Individual and Classwide
17 Preliminary Injunction. *ICWC* PI Order.

18 66. As part of its ruling, the court provisionally certified three
19 classes, including, as relevant here, the Deferred Action Class,⁵ and stayed
20 the De Facto Revocation Policy pursuant to 5 U.S.C. § 705 as to Deferred

21 ⁴ A T visa petition is a separate survivor-based immigration benefit program,
22 for survivors of severe forms of human trafficking.

23 ⁵ The Deferred Action Class is defined as: "All individuals to whom USCIS
24 has granted deferred action based on a pending U or T visa petition and who,
during the authorized period of deferred action, ICE detains, seeks to detain,
or removed without providing notice and an opportunity to be heard
regarding potential revocation of their deferred action status." *ICWC* PI
Order at *95.

1 Action Class members. *Id.* at 95-96 (“Pursuant to 5 U.S.C. § 705, the Court
2 hereby **STAYS** the De Facto Revocation Policy, under which ICE does not
3 honor grants of deferred action conferred by USCIS to individuals with
4 pending petitions for U or T visas.”).

5 67. Specifically, the court concluded that plaintiffs were likely to
6 prevail on the merits of their claims that the De Facto Revocation Policy is
7 arbitrary and capricious under the APA, violates the *Accardi* doctrine
8 requiring agencies to follow their own procedures, and violates class
9 members’ due process rights under the Fifth Amendment. *Id.* at 75-84
10 (“Because ICE lacks authority to revoke USCIS grants of deferred action
11 status, ICE cannot de facto revoke that status.”); *id.* at 84 (holding ICE
12 violated class members’ “right to due process because pursuant to the Policy,
13 Defendants have pursued immigration enforcement actions against them
14 despite their deferred action status.”). As a result, ICE may not detain
Deferred Action Class members.

15 68. Here, Petitioner is a member of the Deferred Action Class in
16 ICWC because he:

- 17 a. is an individual to whom USCIS has granted deferred action
18 based on a pending U visa petition; and
19
20 b. during the authorized period of deferred action, was detained
21 by ICE without being provided notice and an opportunity to
22 be heard regarding the potential revocation of that deferred
action status. *Id.* at 95; *see also* n.5 *supra*.

23 69. Accordingly, the De Facto Revocation Policy, “under which ICE
24

1 does not honor grants of deferred action conferred by USCIS to individuals
2 with pending petitions for U or T visas,” may not be applied to Petitioner. *Id.*
3 at 96. Therefore, immediate release is warranted.

4 70. Absent release, Petitioner will continue to experience post-
5 traumatic stress, financial hardship, and emotional distress to Petitioner and
6 his family.

7 CLAIMS FOR RELIEF

8 71. The “historic purpose of the writ” of habeas corpus is “to relieve
9 detention by executive authorities without judicial trial.” *Zadvydas v. Davis*,
10 533 U.S. 678, 699 (2001) (cleaned up). A habeas court’s role is at its “most
11 extensive in cases of pretrial and noncriminal detention,” especially “where
12 there ha[s] been little or no previous judicial review of the cause for
13 detention,” as is the case here. *Boumediene v. Bush*, 553 U.S. 723, 780 (2008).
14 Here, Petitioner sets for the following claims for issuance of the writ.

15 CLAIM ONE

16 **Violation of APA 5 U.S.C. § 706(2)(A)**

17 ***Petitioner’s Detention Is Not in Accordance with Law because It*** 18 ***Violates the ICWC PI ORDER***

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

21 73. Under the APA, courts “shall . . . hold unlawful and set aside
22 agency action . . . found to be . . . not in accordance with law.” 5 U.S.C. §
23 706(2)(A).

24 74. Respondent’s detention of Petitioner constitutes final agency
action under the APA. 5 U.S.C. §§ 551(c)(10) & (13), 704; *Bennett v. Spear*,

1 520 U.S. 154, 177-78 (1997).

2
3 75. In *ICWC*, the court concluded that plaintiffs were likely to
4 succeed on their claim that the De Facto Revocation Policy is arbitrary and
5 capricious and not in accordance with law under the APA. *ICWC* PI Order at
6 *47.

7 76. As a result, the court stayed the De Facto Revocation Policy,
8 “under which ICE does not honor grants of deferred action conferred by
9 USCIS to individuals with pending petitions for U or T visas.” *Id.* at *96.

10 77. The stay applies in favor to members of the Deferred Action
11 Class, which includes Petitioner. *Id.*

12 78. Respondents detained Petitioner pursuant to the stayed De Facto
13 Revocation policy.

14 79. Accordingly, Respondents’ detention of Petitioner is not in
15 accordance with law in violation of the APA, as it directly contravenes the §
16 705 relief issued in the *ICWC* PI Order. The Court should set aside this
17 unlawful detention and order the Petitioner immediately released.

18 **CLAIM TWO**

19 **Violation of the Fifth Amendment to the United States Constitution**

20 ***Procedural Due Process Requires Notice and Opportunity to Be***
21 ***Heard before Deferred Action May Be Revoked***

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

1 81. “Procedural due process imposes constraints on governmental
2 decisions which deprive individuals of ‘liberty’ or ‘property’ interests within
3 the meaning of the Due Process Clause of the Fifth or Fourteenth
4 Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The essence of
5 due process is the requirement that a person in jeopardy of serious loss”
6 receive “notice” and “opportunity to be heard ‘at a meaningful time and in a
7 meaningful manner.’” *Id.* at 333, 348-49 (citations omitted).

8 82. Here, Petitioner has a protected liberty interest in their deferred
9 action. *See ICWC PI Order at *40.*

10 83. In determining what process is due when ICE revokes deferred
11 action status through its enforcement actions, courts must apply the *Mathews*
12 three-part balancing test, considering (1) “the private interest that will be
13 affected by the official action,” (2) “the risk of an erroneous deprivation of such
14 interest through the procedures used, and the probable value, if any, of
15 additional or substitute procedural safeguards,” and (3) “the Government’s
16 interest . . . that the additional or substitute procedural requirement would
17 entail.” *Id.* at 335. Here, the *Mathews* balancing test comes out strongly in
18 favor of Petitioner.

19 84. First, the private interests that will be affected are profound.
20 First, Petitioner’s liberty is at stake. There is no question that freedom from
21 government imprisonment is a significant private interest that “lies at the
22 heart of the liberty that” Due Process protects. *Zadvydas*, 533 U.S. at 690.
23 Moreover, Petitioner’s employment authorization, together with other
24 benefits, is vital to Petitioner’s livelihood, but is now at risk due to ICE’s de
facto revocation of deferred action. *See* 8 C.F.R. § 274a.12(c)(14). Where

1 “continued possession” of benefits has “become essential in the pursuit of a
2 livelihood,” and revocation of those benefits “involves state action that
3 adjudicates important interests,” they “are not to be taken away without []
4 procedural due process.” *Bell v. Burson*, 402 U.S. 535, 539 (1971).

5 85. In addition, Petitioner’s “private interest in avoiding removal or
6 detention pending removal is great.” ICWC PI Order at *41. Petitioner has
7 been able to support his family and be there for his two young children.

8 86. Second, “the risk of an erroneous deprivation of” these interests
9 “through the procedures used” is extremely high, compared to “the probable
10 value” of a pre-deprivation process where Respondents have provided *no*
11 *process at all* before engaging in immigration enforcement that effectively
12 revoked Petitioner’s deferred action. *Mathews*, 424 U.S. at 335. “[T]he
13 practice of automatic termination” of deferred action “creates an unacceptably
14 high risk of erroneous deprivation.” *Inland Empire-Immigrant Youth*
15 *Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230, at
16 *19 (C.D. Cal. Apr. 19, 2018) (emphasis added); *see also Inland Empire-*
17 *Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018
18 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018) (granting classwide injunction
for nationwide class in same case).

19 87. Third, “the Government’s interest, including the function
20 involved and the fiscal and administrative burdens that the additional or
21 substitute procedural requirement would entail,” are minimal. *Mathews*, 424
22 U.S. at 335. USCIS already has a pre-deprivation process; the agency has
23 delineated the circumstances on which it may revoke deferred action it
24 conferred based on a U visa petition, and thus subject people like Petitioner

1 to immigration detention. PM vol. 3, pt. C, ch. 5.C.1, 6) (discussing conditions
2 for USCIS to “terminate deferred action” based on U visa BFD). Respondents
3 can thus claim no legitimate interest in circumventing that process by
4 revoking deferred action through enforcement and arbitrarily detaining
5 Petitioner.

6 88. Accordingly, without any procedural protections, Petitioner has
7 been deprived of due process under the Fifth Amendment. The proper remedy
8 for detention without a pre-deprivation hearing is immediate release.

9
10 **CLAIM THREE**

11 ***Violation of Fifth Amendment of United States Constitution***
12 ***Detaining Individuals with Valid Deferred Action Status Violates***
13 ***Substantive Due Process***

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

16 90. Because “[a]rbitrary civil detention is not a feature of our
17 American government,” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
18 2018), civil confinement is only permissible “in certain special and narrow
19 non-punitive circumstances,” where a “special justification” asserted by the
20 government “outweighs the individual’s constitutionally protected interest in
21 avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (cleaned up).

22 91. Immigration detention only comports with due process when it
23 furthers the government’s goals of “ensuring the appearance of [noncitizens]
24 at future immigration proceedings and preventing danger to the community.”
Id. (cleaned up). The only two accepted justifications for keeping someone in
civil immigration detention are insufficient as applied to Petitioner.

1 92. “The first justification—preventing flight—is weak or
2 nonexistent where removal seems a remote possibility.” *Id.* at 679.

3 93. Here, deportation is a “remote possibility” as Petitioner’s deferred
4 action status protects him from removal, and the status has not been properly
5 revoked. *Id.* “Where an individual is protected from removal through
6 deferred action, their detention serves no valid purpose.” *Santiago v. Noem*,
7 Case No. EP-25-CV-361-KC, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2,
8 2025). *See Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708,
9 at *3 (W.D. Wash. Aug. 4, 2025) (“deferred action prevents recipients’ removal
10 from the United States”).

11 94. Moreover, to have received deferred action in the first place,
12 Petitioner necessarily passed background checks and was vetted for national
13 security and public safety risks. Thus, any dangerousness justification here
14 would be specious, because Petitioner has not engaged in any acts that would
15 change that determination. “[T]he government has no legitimate interest in
16 detaining individuals who have been determined not to be a danger to the
17 community and whose appearance at future immigration proceedings can be
18 reasonably ensured by . . . alternative conditions.” *Hernandez v. Sessions*, 872
F.3d 976, 994 (9th Cir. 2017).

19 95. Accordingly, because Petitioner’s detention is not justified by
20 flight risk or danger concerns, it bears no reasonable relation to a legitimate
21 government purpose and thus violates Petitioner’s substantive due process
22 rights. ⁶ Accordingly, Petitioner should be ordered immediately released.

23 ⁶ A growing number of courts agree that detention and removal of individuals
24 in deferred action status violates due process. *See, e.g., Sepulveda Ayala v.*
Bondi, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash.

CLAIM FOUR

Accardi Doctrine

Petitioner's Detention Violates the PM, Regulations, and Longstanding Policy and Practice

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

97. The Supreme Court has long recognized that government agencies are required to follow their own procedures. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Courts have regularly applied this principle to the immigration context. *See, e.g., Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004). The *Accardi* doctrine extends beyond just “regulations” to include, e.g., “internal operating procedures,” “handbook[s],” “policy statements,” and other evidence of an agency’s “usual practice.” *Id.*

98. The USCIS Policy Manual lays out specific grounds on which deferred action—and its protection against detention—may be revoked. For deferred action based on a U visa Bona Fide Determination, USCIS identifies four scenarios on which it may revoke: (1) “if USCIS determines a national

Aug. 4, 2025); *Maldonado v. Noem*, No. 25-CV-2541, 2025 WL 1593133 (S.D. Tex. June 5, 2025); *Espinoza-Sorto v. Agudelo*, No. 25-23201, 25 WL 3012786 (S.D. Fla. Oct. 28, 2025); *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Ore. Oct. 30, 2025); *Patel v. Hyde*, No. 25-12518, 2025 WL 3169875 (D. Mass. Nov. 12, 2025); *Cruz Zafra v. Noem*, No. 25-00541, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025); *Aguilar Gama v. Bondi*, 25-01925, 2025 WL 3559942 (W.D. Wash. Dec. 12, 2025); *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025); *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171, at *1 (E.D. Cal. Dec. 21, 2025); *Mauricio Leon v. Noem*, Case 5:25-cv-02582-FMO-RAO, * 5-6 (C.D. Cal. October 10, 2025).

1 security or public safety concern is present,” (2) “if USCIS determines the
2 BFD EAD and deferred action is no longer warranted,” (3) if “the Form I-918
3 Supplement B law enforcement certification is withdrawn” by the certifying
4 agency, or (4) “USCIS determines the prior BFD EAD was issued in error.”
5 PM vol. 3, pt. C, ch. 5.C.

6 99. As for deferred action based on an applicant’s position on the
7 waiting list, revocation is only permissible if USCIS determines that the
8 person no longer qualifies for the U visa. 8 C.F.R. § 214.14(d)(2)-(3).

9 100. Furthermore, Respondents’ longstanding policy is that only
10 USCIS—not ICE—has the exclusive authority to revoke deferred action
11 conferred by USCIS in connection with a U visa petition, and that such
12 revocation must be based on specific criteria. 8 C.F.R. § 214.14(d)(3) (U-visa
13 waiting list “deferred action or parole may be terminated *at the discretion of*
14 *USCIS*”) (emphasis added).

15 101. Here, Petitioner received deferred action through bona fide
16 determination. Thus, any revocation of this deferred action must take place
17 in accordance with the USCIS Policy Manual. Rather than following these
18 procedures, Respondent ICE took matters into its own hands by stripping
19 deferred action through detaining Petitioner.

20 As the court in *ICWC* held, “by permitting ICE to de facto revoke deferred
21 action instead of following USCIS procedure, and without applying any of the
22 applicable criteria from the USCIS Policy Manual,” Respondents “are not
23 complying with their own policies for revoking deferred action” and are
24 violating the *Accardi* Doctrine. *ICWC* PI Order at *40.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner;
- (3) Issue a writ of habeas corpus and forbid Respondents from redetaining Petitioner while in valid deferred action status;
- (4) Issue a writ of habeas corpus requiring that Respondents immediately return Petitioner's identification documents, and any other seized documents or property lawfully issued to him, so as not to impair his liberty upon release;
- (5) Declare that Petitioner's detention is unlawful;
- (6) Require notice be given to Petitioner's counsel of his release at a safe time and place to ensure independent monitoring of compliance with the Court's Order and expeditious remedy of any non-compliance;
- (7) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- (8) Grant any other and further relief that this Court deems just and proper.

1 DATED this 22nd day of June 2026.

2
3 Respectfully submitted,

4 /s/ Katherine L. Santamaria El Bayoumi

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