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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Esteban RIOS SOSA

Petitioner,

v.

Daniel A. BRIGHTMAN, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, in his official capacity; Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne MULLIN, U.S. Secretary of Homeland Security, in his official capacity; Todd BLANCHE, Acting U.S Attorney General, in his official capacity,

Respondents.

Case No. '26CV4345 JLS MMP

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. Plaintiff-Petitioner Esteban Rios Sosa ("Petitioner" or "Mr. Rios Sosa") is the proud father of three adult U.S. citizen children, including a former member of the U.S. Marine Corps. He is a devoted husband, loving grandfather, homeowner, and hardworking automobile detailer who has worked tirelessly to provide for his family during the several decades that he lived in the United States. Last fall, Defendants-Respondents ("Respondents") unlawfully deported Mr. Rios Sosa to Mexico despite his valid U visa Deferred Action status and without regard for the nearly forty years he spent working hard to build a life in the United States.[1]

2. At present, Mr. Rios Sosa remains deported in Mexico and separated from his family, including his three-month-old grandson whose birth and first months of life he has missed out on as a result of Respondents' unlawful and unconstitutional actions. Mr. Rios Sosa brings this Petition for Writ of Habeas Corpus and Complaint to seek his return to the United States.

3. On October 9, 2025, Mr. Rios Sosa appeared at an appointment with U.S. Immigration and Customs Enforcement ("ICE") at the federal building at 880 Front Street in San Diego, as agents had previously directed him to do. Mr. Rios Sosa appeared alongside his wife and their son, a U.S. citizen and then-Sergeant in the U.S. Marine Corps. Despite assuring him numerous times before and on that date that they would not seek to detain or deport him due to his son's and son-in-law's military service, decades in the United States, and valid U visa Deferred Action status, Respondents did the opposite: they rushed him down to the basement of the federal building, told him to wear a mask so he would be away from the public eye, and summarily deported him to Mexico the next day.

[1] Pursuant to Chief Judge Order No. 144, Standard Procedures for Immigration Habeas Petitions (S.D. Cal. Mar. 9, 2026), Petitioner requests the Court adopt the following briefing schedule: Respondents shall file a Response by August 5, seven days after the filing of this Petition, and Petitioner may file a Reply by August 12, seven days after the Response is filed. Moreover, Respondents "shall address" Petitioner's request for preliminary injunctive relief, which Petitioner requests through this Petition, in their Response.

4. It all started less than two weeks before that, on Sunday, September 28, 2026, when Mr. Rios Sosa, his wife Luisa, and their son Steve, a then-Sergeant with the U.S. Marine Corps, set out to visit Mr. Rios Sosa's daughter, who was around four months pregnant at the time and living at Camp Pendleton—a military base in north San Diego—with her husband, also an active-duty Marine. They intended to pick her up at the base and take her out to have breakfast, as they had many times before.

5. Steve drove the three of them to Camp Pendleton and stopped at the entrance of the military base, as they had done before, to show their identification documents to the guard. Despite producing their "REAL ID" identification documents and, for Mr. Rios Sosa and Luisa, valid Employment Authorization Documents in connection with their U visa Deferred Action status, the guard told them he would have to call someone else, and eventually—hours later—immigration agents appeared and took Mr. Rios Sosa and Luisa into custody, drove them to ICE offices at 880 Front Street in downtown San Diego, took their fingerprints, and put ankle monitors on them. The immigration agents repeatedly told Mr. Rios Sosa that they would not be detained or deported, but that he and Luisa had to again appear for a check-in at those same offices on October 9.

6. At the October 9 check-in, rather than follow through on the previous promises and release Mr. Rios Sosa because of his valid U visa Deferred Action status, his sons' military service to the United States, and his decades in the United States without a single criminal conviction, the ICE agent who Mr. Rios Sosa interacted with dug his heels in; he told Mr. Rios Sosa that despite all of those equities in his favor, he would be deporting him because that was his job. "No hard feelings," the ICE agent told Mr. Rios Sosa.

7. Respondents summarily deported Mr. Rios Sosa to Mexico on October 10 after he spent one night detained in the basement of 880 Front Street, despite asking to see a judge and informing an ICE agent that he had a fear of returning to

Mexico.

8. Mr. Rios Sosa is a derivative on his wife Luisa's U visa application, which she filed on or about April 14, 2022. Luisa filed the application for a U visa—an immigration benefit for noncitizen victims of crime who are helpful in the investigation or prosecution of that crime—after she survived a violent attack that left her with a broken nose that required surgery as well as other injuries and trauma. On or about January 7, 2025, U.S. Citizenship and Immigration Services ("USCIS") granted Mr. Rios Sosa Deferred Action and work authorization in connection with the pending U visa petition. As of the date of filing, USCIS has not revoked his Deferred Action status, which is valid until January 6, 2029.

9. Respondents detained and deported Mr. Rios Sosa despite the fact that "[a]pproval of deferred action status means that. . . no action will thereafter be taken to proceed against an apparently deportable [non-citizen], even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("*AAADC*").

10. On May 20, 2026, in a class action lawsuit brought on behalf of immigrant victims of serious crimes, a federal judge in the Central District of California restored protections for individuals like Mr. Rios Sosa, who have petitions pending before USCIS on account of their status as victims or immediate family of victims of crimes, including protections against detention and removal. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) ("*ICWC*"). Mr. Rios Sosa is a member of the Deferred Action Class certified in that case.

11. That order was based in pertinent part on a finding that Plaintiffs in *ICWC* are likely to succeed on their claim that Respondents' policy of de facto revoking U Visa Deferred Action status from individuals like Mr. Rios Sosa by refusing to "honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas," and subjecting them to detention and/or removal,

likely violates the Administrative Procedure Act ("APA"). *Id.* at *47. As the court found, "a person with deferred action should neither be removed nor detained for immigration enforcement (removal) purposes." *Id.* at *40.

12. As a result of Respondents' actions, Mr. Rios Sosa continues to suffer irreparable harm. Since his unlawful and unconstitutional deportation on October 20, 2025, he has been separated from his wife Luisa and his U.S. citizen children and grandchildren for over nine months and counting and has missed out on significant milestone events, including his daughter's college commencement ceremony and the birth of his youngest grandson; he cannot access adequate medical care in Mexico; he cannot sleep and suffers from depression; and he cannot find work in Mexico, so he has agonized being so far from his family and unable to support them in any way. Mr. Rios Sosa's family has also suffered tremendously in the wake of his deportation, including his U.S. citizen children and his wife and principal U visa applicant, Luisa.

13. Accordingly, Mr. Rios Sosa respectfully requests the court issue a Writ of Habeas Corpus and order Respondents to permit his return to the United States in the same legal status he had before his detention and removal.

JURISDICTION

14. This Court has jurisdiction under 28 U.S.C. 2241(c) (habeas corpus); 28 U.S.C. 1331 (federal question); 28 U.S.C. 2201 *et seq.* (Declaratory Judgment Act); 28 U.S.C. 1361 (Mandamus Act); 28 U.S.C. 1651 (All Writs Act); and Article I, section 9, clause 2 of the U.S. Constitution (Suspension Clause).

VENUE

15. Venue is proper in the Southern District of California, because a substantial part of the events giving rise to Petitioner's claim occurred there. 28 U.S.C. 1391(b).

16. 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.

PARTIES

17. Petitioner Esteban Rios Sosa is a 57-year-old national and citizen of Mexico who resided in the United States from around 1988 until on or about October 10, 2026, when Respondents deported him to Mexico. Mr. Rios Sosa applied for U nonimmigrant status as a derivative on his wife's application on April 14, 2022. USCIS granted Mr. Rios Sosa Deferred Action and employment authorization on January 7, 2025, which is valid until January 6, 2029. Despite this Deferred Action status, Respondents unlawfully detained and deported Mr. Rios Sosa on October 10, 2025.

18. Respondent Daniel A. Brightman is the Director of the ICE San Diego Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Brightman has custodial authority over Petitioner, and is responsible for Petitioner's unlawful detention and deportation. He is sued in his official capacity.

19. Respondent Todd Lyons is the Acting Director of ICE, which is a component agency of the Department of Homeland Security ("DHS") and is responsible for the enforcement of immigration laws, including the detention and removal of noncitizens, as well as creating and implementing immigration policies for such enforcement. Respondent Lyons is sued in his official capacity.

20. Respondent Markwayne Mullin is the DHS Secretary. He is responsible for the implementation and enforcement of immigration laws, and he oversees ICE, which is responsible for Petitioner's unlawful detention and deportation. He is sued in his official capacity.

21. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review, which includes the immigration court system, is a component agency. Immigration courts have the authority to review certain custody decisions by ICE and to order release in the cases reviewed. He is sued in his official capacity.

FACTUAL ALLEGATIONS

22. Mr. Rios Sosa was born in Veracruz, Mexico and resided in Oceanside, California, from around 1988 until October 2025.

23. Mr. Rios Sosa has been married to Luisa Ofelia Rodriguez Tejeda since 2003. They have two adult U.S. citizen children in common: Steve (25 years old) and Ashley (21 years old). Mr. Rios Sosa's eldest son, Estevan (34 years old), is from his prior relationship with another woman whose name is also Luisa.

24. Mr. Rios Sosa also has three U.S. citizen grandchildren ages eight years old, six years old, and three months old.

25. Mr. Rios Sosa and his wife Luisa have worked tirelessly to provide for their family. Mr. Rios Sosa has dedicated himself to doing automobile detailing for over three decades. Through the company he currently works with, he provides automobile detailing services to a Ford and Kia dealership in San Diego, as well as to other individual clients. His wife works cleaning houses—something she used to do four to five times per week, but now has to do almost every day of the week to make ends meet.

26. Mr. Rios Sosa has owned the home in which he and Luisa raised their children in Oceanside, California, since 2005.

27. Mr. Rios Sosa was a devoted member of his community in North San Diego County. He volunteered at a park in Carlsbad where he helped teach children how to play volleyball and soccer and cleaned trash.

28. On September 17, 2006, Mr. Rios Sosa's wife, Luisa, was the victim of a violent attack outside of a bar. A woman she did not know approached her, called her names, and punched her in the face several times with a closed fist. The attack left Luisa with a broken nose and breathing problems that required her to undergo surgery which put her out of work for two months. In addition to the physical injury, the attack caused her emotional distress, financial hardship, and depression. She

cooperated with the police by filing a report, providing detailed information about the crime, and sharing photographs of her injuries.

29. Mr. Rios Sosa, who was present during the attack against his wife Luisa, supported her by taking her to see a doctor when she could not breathe, and by helping her make arrangements for the surgery. He cared for her before and after the surgery; helped pay for the surgery; and assumed all of their household expenses during the period that Luisa was unable to work as a result of the attack and surgery. He also provided indispensable emotional support in the wake of the traumatic event.

30. On April 14, 2022, Mr. Rios Sosa's wife filed Form I-918 Petition for U Nonimmigrant Status. She included Mr. Rios Sosa as a derivative on the application, which remains pending with USCIS.

31. In 1994, Mr. Rios Sosa was arrested for a domestic violence related incident with his ex-partner and the mother of his first-born. The incident resulted in the police taking Mr. Rios Sosa to jail for a short time before they released him. The charges against him were dropped—he does not have a criminal conviction related to this or any other incident. The underlying relationship he was in with his ex-partner ended soon thereafter. This information was disclosed to USCIS as part of the U visa application process.

32. In 1999, Mr. Rios Sosa was issued an expedited removal order by the Immigration and Naturalization Service ("INS"), DHS's predecessor agency. That same year, INS paroled him into the United States to serve as a material witness in a criminal smuggling case. Mr. Rios Sosa later reentered the United States without authorization. This information was also disclosed to USCIS as part of the U visa application process.

33. As a part of his U visa application, Mr. Rios Sosa also filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, which functions as a request for a waiver of grounds of inadmissibility. *See* USCIS Form I-192, *Application for Advance Permission to Enter as a Nonimmigrant*,

https://www.uscis.gov/sites/default/files/document/forms/i-192.pdf; *infra* ¶ 60. Mr. Rios Sosa disclosed and requested a waiver of inadmissibility in connection with his prior expedited removal order and subsequent unauthorized return to the United States.

34. On July 5, 2024, USCIS issued Mr. Rios Sosa's wife a Bona Fide Determination Notice indicating the U visa application was bona fide and she warranted a favorable exercise of discretion, but that it could not grant the U visa because the agency had reached the statutory cap for issuance of U visas for the year. USCIS also issued her an Employment Authorization Document ("EAD") under category (c)(14), which pertains to individuals in Deferred Action status. 8 C.F.R. 274a.12.

35. On January 7, 2025, USCIS granted Mr. Rios Sosa an EAD in connection with his U visa Deferred Action status. The EAD is valid until January 6, 2029. Mr. Rios Sosa was elated once he and his wife had Deferred Action and EADs.

36. On September 28, 2025, Mr. Rios Sosa, his wife Luisa, and their son Steve set out to visit Mr. Rios Sosa and Luisa's only daughter, Ashley, who was about four months pregnant at the time and living at the Marine Corps Base Camp Pendleton with her active-duty Marine husband. They decided to visit Ashley to enjoy breakfast together as a family and care for her during her pregnancy. Mr. Rios Sosa believed it was safe to visit his daughter because he and Luisa had REAL ID-compliant identification documents, Deferred Action, and EADs. Indeed, he and his wife Luisa had visited her around ten times before that without issue. Unfortunately, what should have been a pleasant Sunday morning quickly turned into a nightmare for their whole family.

37. Steve drove his mother and father to Camp Pendleton. When their vehicle approached the entrance of the military base, guards asked them for identification. Mr. Rios Sosa and his wife Luisa produced their California state-issued REAL ID-compliant driver's licenses and valid EADs in connection with U

visa Deferred Action. Nevertheless, the guard informed them they would have to wait for others to arrive. Eventually, after they waited for hours, immigration agents showed up.

38. Mr. Rios Sosa, his wife Luisa, and Steve tried explaining to the guard and to the immigration agents that Mr. Rios Sosa Luisa had received bona fide determinations on their U visa applications and had valid EADs. They even called their U visa lawyer so he could explain the situation to the officials. Mr. Rios Sosa's son, Steve, expressed his disbelief at their treatment of his father in light of his years of military service as a Marine, and in light of the fact that they were there to visit his sister and brother-in-law, who is an active-duty Marine.

39. The immigration agents nevertheless took Mr. Rios Sosa and his wife Luisa into custody, drove them from Camp Pendleton to the federal building in downtown San Diego at 880 Front Street, took their fingerprints, and put ankle monitors on them. The immigration agents repeatedly told Mr. Rios Sosa and his wife that they would not be detained or deported because of their son's military service. They even told him that because of recent news involving ICE agents who beat the father of military servicemen near Los Angeles, they were going to cut Mr. Rios Sosa a break.

40. Still, the agents fitted Mr. Rios Sosa and his wife with ankle monitors and told them they would have to appear for a check-in with ICE less than two weeks later, on October 9, and that perhaps on that date, ICE would remove their ankle monitors. The agents again assured them they would not be detained or deported.

41. On October 9, Mr. Rios Sosa and his wife appeared at an appointment with ICE at the federal building at 880 Front Street in San Diego, as the ICE agents directed them to do. They were accompanied by their son Steve, then-Sergeant in the U.S. Marine Corps.

42. Despite assuring him numerous times before and on that date that he would not face detention or removal due to his son's military service, decades in the

United States, and valid U visa Deferred Action status, ICE agents did the opposite: they rushed him away to the basement of the federal building, told him to wear a mask so his face would not be visible to the news cameras in the building, and summarily deported him to Mexico the next day.

43. The ICE agent who told Mr. Rios Sosa that he would be deporting him told him that his initial arrest was a mistake, but that he had to do his job, and that he hoped Mr. Rios Sosa would have "no hard feelings."

44. ICE summarily deported Mr. Rios Sosa to Mexico on October 10, presumably pursuant to a reinstatement of his 1999 expedited removal order, after he spent one night in the basement of 880 Front Street. ICE deported him even after he asked to see a judge and informed an ICE agent that he had a fear of returning to Mexico. Moreover, ICE deported him despite his valid Deferred Action status, which USCIS issued to him notwithstanding his decades-old expedited removal order, as he is eligible for the waiver he requested of any inadmissibility ground in connection with that order. *See* 8 U.S.C. 1182(d)(14); *infra* ¶ 60.

45. Mr. Rios Sosa's wife Luisa was taken into detention at the Otay Mesa Detention Center and was released weeks later after an immigration judge terminated her removal proceedings in light of her U visa Deferred Action status.

46. Multiple news outlets reported on Mr. Rios Sosa's detention and deportation.[2] After the bad media coverage, on October 16, 2025, ICE released a press release in which it accused Mr. Rios Sosa of having a "violent criminal rap sheet" including a false claim that he has a 2020 charge of "domestic violence and aggravated assaulted [sic] with a deadly weapon."[3] In fact, Mr. Rios Sosa has no such

[2] Shelby Bremer, *ICE detains parents of U.S. Marine in San Diego; father later deported,* NBC San Diego (Oct. 15, 2025), https://www.nbcsandiego.com/news/local/ice-detains-parents-of-marine-san-diego/3914030/

[3] *Press Release: DHS Debunks Mainstream Media Lies About "Father of Marine" with a Violent Criminal Rap Sheet,* U.S. Department of Homeland Security (Oct. 16, 2025), https://www.dhs.gov/news/2025/10/16/dhs-debunks-mainstream-media-lies-about-father-marine-violent-criminal-rap-sheet

2020 arrest, charge, or conviction. He has not had contact with the criminal legal system since his 1994 arrest, which resulted in dropped charges and which USCIS was aware of when it granted him Deferred Action status.

47. Indeed, the only non-immigration related arrest that appears on Mr. Rios Sosa's FBI rap sheet, which he sent to USCIS as part of the U visa application process, is the 1994 domestic violence-related arrest (which did not include a charge for assault with a deadly weapon).

48. Since his detention, deportation, and ICE's fabricated press release, Mr. Rios Sosa has suffered immeasurable harm. He has remained separated from his wife and children for over nine months and counting—during which time he has suffered from depression, sleeplessness, hair loss, and despair. He feels extremely alone having had to leave behind his loved ones, family home, stable work, and life in North San Diego County. Moreover, he cannot bear being so far from his family and unable to provide for them as he did for decades in the United States. Significantly, Mr. Rios Sosa's unlawful removal has also robbed him of the opportunity to be present during major milestones in the lives of his loved ones, including his daughter Ashley's college commencement ceremony, and the birth and first three months of the life of his youngest grandchild—Ashley's son—whose arrival he eagerly awaited ever since learning of Ashley's pregnancy.

49. Mr. Rios Sosa has also been unable to access adequate medical care while in Mexico. In the past, Mr. Rios Sosa has had issues with his prostate that he has been able to keep under control. But in Mexico, he has not been able to see a doctor, and he fears his extreme stress is aggravating his physical health.

50. Mr. Rios Sosa has also struggled through the unbearable knowledge of the effects that his deportation has had on the people he loves the most: his wife Luisa and son Steve are themselves experiencing depression and financial hardship in Mr. Rios Sosa's absence. Steve has left the U.S. Marines and has experienced intense disillusionment with how the country he served treated his father. Ashley is

heartbroken by her father's absence during such a momentous period in her life. For Mr. Rios Sosa's wife Luisa, the experience has resurfaced her residual trauma from the 2006 attack that led to their U visa application; she finds herself afraid to be around others, worried that strangers are going to hurt her, and she constantly feels like she is going to faint. Mr. Rios Sosa feels helpless knowing his deportation is the source of their anguish and being unable to help.

51. Mr. Rios Sosa feels hopeless and with no recourse.

52. To date, USCIS has not revoked Mr. Rios Sosa's Deferred Action or issued him any Notice of Intent to Deny or Revoke its grant of Deferred Action.

53. Nor has USCIS or ICE provided Mr. Rios Sosa any hearing at which they allege that USCIS's grant of Deferred Action should be revoked, or otherwise provided him any opportunity to be heard on the issue of a potential revocation of Deferred Action.

LEGAL FRAMEWORK

A. U VISA BACKGROUND

i. Creation of the U visa

54. In 1994, Congress passed the Violence against Women Act ("VAWA") to address the widespread problem of noncitizens remaining in relationships with abusers who held the key to their eligibility for lawful immigration status in the United States. *See* Violent Crime Control and Law Enforcement Act of 1994, Title IV, Pub. L. 103-322, 108 Stat. 1796 (September 13, 1994). "[T]he goal of the bill is to 'permit[ ] battered immigrant women to leave their batterers without fearing deportation.'" *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103–395, at 25).

55. In 2000, with overwhelming bipartisan support, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), which reauthorized VAWA through the Violence Against Women Act of 2000 ("VAWA 2000"). The VTVPA dramatically expanded protections for immigrant survivors.

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

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

58. Among Congress's stated purposes in creating the U visa were (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of [noncitizens] , and other crimes . . . committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." BIWPA 1513(a)(2). Permitting qualifying family members to join as derivatives serves both the public safety purpose – a person may be just as deterred from participating in an investigation by a threat to their close family's immigration status as by one to their own – and humanitarian purposes of the U visa. VTVPA 2000, PL 106–386, October 28, 2000, 114 Stat 1464 (Attorney General may adjust status of U visa principal or derivative petitioner "when doing so is justified on humanitarian grounds, *for family unity*, or is otherwise in the public

interest.") (emphasis added).

59. As DHS has acknowledged, Congress

> created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding U.S. laws, fear of deportation, and cultural differences.[4]

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

61. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. No. 110-457, 122 Stat. 5044. The TVPRA added section 237(d) to the Immigration and Nationality Act ("INA"), which authorizes DHS to issue a stay of any removal order against a U or T visa petitioner if the petition "sets forth a prima facie case for approval." 8 U.S.C. 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. 1227(d)(1)-(3).

62. Moreover, the TVPRA authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA 2011 (codified at 8 U.S.C. 1184(p)(6)).

ii. U visa interim benefits: Deferred Action and Work Authorization Pursuant to the Bona Fide Determination and Waiting List Processes

63. In 2007, DHS promulgated regulations setting forth the process for

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

adjudicating U visa petitions. *See* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007). Because there is a statutory limit of 10,000 visas that may be conferred annually, 8 U.S.C. 1184(p)(2), a significant, years-long backlog for U visa petitions exists. To address the backlog, these DHS regulations created interim benefits for petitioners while they wait. The regulations require that crime victims who are not granted U visas "due solely to the cap . . . must be placed on a waiting list." 8 C.F.R. 214.14(d)(2). USCIS must "grant deferred action" to individuals placed on the waiting list until a U visa becomes available. *Id.* Wait-listed individuals are also eligible for work authorization. *Id.*

64. In 2021, as a means to implement the provision of 8 U.S.C. 1184(p)(6) authorizing employment for bona fide U visa petitioners, USCIS created a formal Bona Fide Determination process, which is reflected in the USCIS Policy Manual ("PM").[5]

65. In the Bona Fide Determination process, rather than the full adjudication required for the waiting-list process, USCIS conducts a streamlined initial review of the petition to determine whether it is "bona fide." PM, vol. 3, pt. C, ch. 4. 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 EAD and Deferred Action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch. 5.C.

66. Petitioners granted a Bona Fide Determination EAD and Deferred

[5] "The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies." PM, available at https://www.uscis.gov/policy-manual (last checked July 14, 2026).

Action are placed in the queue to wait for a U visa to become available as if they were on the U visa waiting list.

67. Bona Fide Determination EADs and Deferred Action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5.

68. 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.*

69. For those deemed ineligible for a Bona Fide Determination EAD and Deferred Action, USCIS proceeds to a full adjudication of the petition and determines whether any applicable inadmissibility grounds are waivable. 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.

70. Pursuant to USCIS policy, *only* USCIS may revoke Deferred Action conferred in connection with a U visa petition. PM vol. 3, pt. C, ch. 5.; 8 C.F.R. 214.14(d)(2)-(3). This is consistent with congressional intent "to protect petitioners for victim-based immigration benefits from immigration enforcement pending the adjudication of their applications." *ICWC* at *44; Indeed, as one of the TVPRA's co-sponsors stated when Congress reauthorized VAWA in 2005, "Immigration enforcement officials at the Bureau of Immigration and Customs Enforcement do not have authority to overrule a [US]CIS grant of deferred action to [a noncitizen] victim" and "should refer" any such individuals they encounter to the "specially trained VAWA unit." Rep. Conyers, 151 Cong. Rec. E2605-04, 151 Cong. Rec. E2605-04, E2607, 2005 WL 3453763 (Dec. 18, 2005) (statement of

Rep. Conyers).

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

iii. Longstanding agency policy guidance that presumptively protected U visa petitioners from immigration enforcement

72. 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.[6] *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 July 14, 2026), and ICE Directive 11005.3,

[6] *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*, (Sep. 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* (Sep. 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.

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_UsingVictimCenteredApproachNoncitizenVictims.pdf (last checked July 14, 2026).

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

74. 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," "absent exceptional circumstances" such as national security or public safety concerns. 2021 Directive at 1-2, 9. If such an application was pending, ICE was to "defer" enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *Id.* at 2. Agents were to request expedited prima facie adjudications from USCIS for people in ICE custody, and eligibility "for victim-based immigration benefits . . . must be considered" a "positive discretionary factor." *Id.* at 2, 9.

75. On January 30, 2025, ICE issued a policy directive that, for the first time in the agency's history, authorized the routine detention and removal of noncitizen victims of crime who had petitioned for victim-based immigration benefits, such as the U visa. *See* ICE Policy Number 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025) ("2025 Guidance"), available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf (last checked July 14, 2026).

76. The 2025 Guidance stated that it became "effective immediately and

remains in effect until superseded." 2025 Guidance at 1. It explicitly "rescinded and superseded" the 2021 Directive and 2011 Policy, thereby reneging the government's promise to protect noncitizen crime victims and greenlighting a deportation campaign that ignores their potential eligibility for relief.

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

78. The 2025 Guidance marked an abrupt about-face from longstanding DHS practices, under which immigration agencies generally refrained from enforcement against U visa petitioners absent serious adverse factors.

79. As a result of the 2025 Guidance, ICE now engages in an unlawful policy and practice under which it routinely detains and deports people who have valid grants of Deferred Action from USCIS in connection with pending U or T visa petitions.[7] Neither Respondent ICE nor USCIS provides any notice or opportunity to be heard regarding whether such Deferred Action should be revoked prior to doing so.

***iv. Mr. Rios Sosa's Deferred Action Class membership in* ICWC**

80. On October 14, 2025, several individual plaintiffs and non-profit legal organizations serving immigrant survivors filed a class action complaint in *ICWC*, challenging the lawfulness of the 2025 Guidance and, as relevant here, the De Facto

[7] A T visa petition is a separate survivor-based immigration benefit program, for survivors of severe forms of human trafficking.

Revocation Policy. *See* Compl. ¶¶ 200-233, *Immigr. Ctr. For Women & Child. v. Noem, et al.*, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14, 2025) (ECF 1).

81. On May 20, 2026, the U.S. District Court for the Central District of California granted plaintiffs' Motion for Class Certification and granted in part plaintiffs' Motion for APA 705 Relief and Individual and Classwide Preliminary Injunction. *ICWC.*

82. As part of its ruling, the court provisionally certified three classes, including, as relevant here, the Deferred Action Class, which is defined to include "All individuals to whom USCIS 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* at *47.

83. The court also stayed ICE's De Facto Revocation Policy pursuant to 5 U.S.C. 705 as to Deferred Action Class members. *Id.* at *47 ("Pursuant to 5 U.S.C. 705, the Court hereby **STAYS** the De Facto Revocation Policy, under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas.").

84. Specifically, the court concluded that plaintiffs were likely to prevail on the merits of their claims that the De Facto Revocation Policy is arbitrary and capricious under the APA, violates the *Accardi* doctrine requiring agencies to follow their own procedures, and violates class members' due process rights under the Fifth Amendment. *Id.* at *37-40 ("Because ICE lacks authority to revoke USCIS grants of deferred action status, ICE cannot de facto revoke that status."); *id.* at *40 (holding ICE violated class members' "right to due process because pursuant to the Policy, Defendants have pursued immigration enforcement actions against them despite their deferred action status."). As a result, ICE may not detain Deferred Action Class members.

85. Here, Mr. Rios Sosa is a member of the Deferred Action Class in *ICWC* because he is an individual to whom USCIS has granted Deferred Action based on a pending U visa petition; and during the authorized period of Deferred Action, was detained and removed by ICE without being provided notice and an opportunity to be heard regarding the potential revocation of that deferred action status. *Id.* at *47.

B. PROCEDURAL DUE PROCESS

86. "The Ninth Circuit has consistently held that deferred action means the Government agency 'takes no action to proceed against an apparently deportable [noncitizen] based on a prescribed set of factors generally related to humanitarian grounds,'" an interpretation that "finds strong support in Supreme Court precedent, circuit authority, and USCIS policy." *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 912, 914 (W.D. Wash. 2025) (collecting cases) (citations omitted); *AAADC*, 525 U.S. at 484 (1999) ("Approval of deferred action status means that... no action will thereafter be taken to proceed against an apparently deportable [non-citizen], even on grounds normally regarded as aggravated."). Indeed, "Deferred action is a longstanding form of administrative action by which the Executive Branch decides, for humanitarian or other reasons, to refrain from seeking a noncitizen's removal and to authorize his or her continued presence in the United States." *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV172048-PSG-SHKX, 2018 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018) (*Inland Empire II*).

87. Despite such authorized presence, ICE removed Mr. Rios Sosa on October 10, 2025, rendering the promise of Deferred Action entirely illusory for him. Because imprisoning noncitizens in immigration detention facilities and seeking their removal are clearly "action[s] to proceed" against them, ICE's unilateral action to do so against Mr. Rios Sosa while he was in valid Deferred Action status necessarily constitutes a de facto revocation of that status. *ICWC* at *40 (finding ICE likely maintains policy of "detaining and removing noncitizens who have been granted deferred action." *Id.* at *38); *cf. Holman v. City of*

Warrenton, 242 F. Supp. 2d 791, 807 (D. Or. 2002) (finding due process violation for unilateral "decision to withhold [a] building permit" which served as "*de facto* revocation of the previously-issued conditional use permit").

88. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The essence of due process is the requirement that a person in jeopardy of serious loss" receive "notice" and "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333, 348-49 (citations omitted). "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *ICWC* at 40 (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

89. When USCIS granted Deferred Action to Mr. Rios Sosa, "even if the grant was discretionary, it 'confer[ed] affirmative immigration relief.'" *ICWC* at *40 (citing , *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 16, 18 (2020) ("*Regents*")). "[E]ven absent a claim of entitlement to an important benefit, once [Deferred Action] is conferred, recipients have a protected property interest that requires a fair process before the government may take that benefit away." *Inland Empire—Immigr. Youth Collective v. Nielsen*, Case No. EDCV 17-2048, 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) ("*Inland Empire III*") (internal quotation marks omitted). "Thus, a person with deferred action should neither be removed nor detained for immigration (removal) purposes." *ICWC* at *40.

90. To determine what process is due when ICE unilaterally revokes Deferred Action status through its enforcement actions, the Court must apply the *Mathews* three-part balancing test. *Mathews*, 424 U.S. at 335. Here, *Mathews* balancing favors Mr. Rios Sosa's claim.

91. First, Mr. Rios Sosa's private interests in his Deferred Action status were profound because they included "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint" which "lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Thus, "it is beyond dispute that" a person with deferred action "has a protected interest in his freedom." *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (holding VAWA petitioner with Deferred Action was likely to succeed on merits of claim that his detention violated due process). They also included employment authorization and the ability to live with and provide for his growing family in the United States. Indeed, Mr. Rios Sosa "built [his] li[fe] in reliance on [his] deferred action . . ." *ICWC* at *41. Thus, where "continued possession" of benefits has "become essential in the pursuit of a livelihood," and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without [] procedural due process." *Bell v. Burson*, 402 U.S. 535, 539 (1971).

92. Mr. Rios Sosa's abrupt detention and removal is emblematic of "the significant private interests at stake for [Deferred Action] recipients, and the deleterious effects of [its] termination." *Inland Empire III*, 2018 WL 4998230, at *19.

93. Second, "the risk of an erroneous deprivation of" these interests "through the procedures used" is extremely high, compared to "the probable value" of the proposed "procedural safeguards" of a pre-deprivation process. *Mathews*, 424 U.S. at 335. That is especially so because Respondents provided *no process at all* before engaging in immigration enforcement and effectively revoking Deferred Action against Mr. Rios Sosa. *See ICWC* at *41; *Inland Empire III,* 2018 WL 4998230, at *19 ("[T]he practice of *automatic* termination" of Deferred Action "creates an unacceptably high risk of erroneous deprivation." (emphasis added)).

94. Third, "the government's interest in providing no pre-deprivation

process is insubstantial and entitled to no weight." *ICWC* at *41. USCIS already provides a pre-deprivation process for revoking Deferred Action, which it failed to observe here. *Id.* Compared to the "staggering" "costs to the public of immigration detention," *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), the "effort and cost required" for USCIS to simply provide notice and an opportunity to be heard "is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

95. Thus, Respondents' failure to provide Mr. Rios Sosa a pre-deprivation process prior to de facto revoking his Deferred Action and detaining and deporting him violated his procedural Due Process rights.

C. *ACCARDI* DOCTRINE

96. The Supreme Court has long recognized that, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The Ninth Circuit has 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.*

97. Here, the USCIS Policy Manual lays out specific grounds on which Deferred Action may be revoked, contemplating that such revocation may only be done by USCIS. *ICWC* at *40. For Deferred Action based on a U visa Bona Fide Determination, USCIS identifies four specific situations in which it may revoke: (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." PM vol. 3, pt. C, ch. 5.C.

98. Thus, Respondents' longstanding policy is that USCIS, not ICE, has

exclusive authority to revoke its Deferred Action determinations and that revocation must be based on specific criteria. Respondents' failure to observe this policy violates the *Accardi* doctrine.

D. APA SECTION 706(2)

99. Under the APA, courts "shall... hold unlawful and set aside agency action" that is, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. 706(2)(A).

100. The APA permits "judicial review" of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. 704.

101. Mr. Rios Sosa's detention and removal constitute final agency action because they constitute "the whole or part of" ICE's "rule, order, license, sanction, relief, or the equivalent or denial thereof," 5 U.S.C. 551, because they mark the "consummation" of ICE's decision-making process in Mr. Rios Sosa's case, and because they are actions by which "obligations have been determined, or from which legal consequences" flowed, *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citations and quotation marks omitted). Thus the actions are reviewable under the APA.

102. The 2025 Guidance pursuant to which Mr. Rios Sosa was removed also constitutes final agency action because it is "the consummation of the agency's decisionmaking process," by which "rights" of petitioners for Survivor-based benefits "have been determined" or "from which legal consequences" for such petitioners "will flow." *Id.* at 177–78. It had a "direct and immediate effect" on ICE's daily operations, and has resulted in ICE's routine pursuit of immigration enforcement against applicants for victim-based benefits. *ICWC* at *34. There is no other adequate remedy because "[n]o statute authorizes judicial review" of policies like the 2025 Guidance in another tribunal. *Cabaccang v. U.S. Citizenship & Immigr. Servs.*, 627 F.3d 1313, 1315 (9th Cir. 2010); *ICWC* at *33 (concluding Plaintiffs are likely to establish there is "no other adequate remedy in a court" to

challenge the 2025 Guidance and other challenged policies). Thus, the 2025 Guidance is reviewable under the APA.

103. "[T]he touchstone of 'arbitrary and capricious' review under the APA is 'reasoned decisionmaking.'" *Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061, 1080 (9th Cir. 2019) (citation omitted).

104. The 2025 Guidance reverses decades of consistent DHS policy maintaining that, barring serious adverse factors, immigration agencies will not take civil enforcement actions against individuals with pending applications for Survivor-based Benefits. Instead of the protections required by prior policies, the only considerations the 2025 Guidance requires of ICE officers when conducting immigration enforcement against such individuals are (1) whether enforcement would conflict with an active criminal investigation, and (2) whether ICE's attorneys assert there are any "legal limitations" to enforcement. 2025 Guidance at 2. It is thus a policy of detention and deportation whenever possible.

105. The 2025 Guidance fails to provide a sufficiently "reasoned explanation" for ICE's "disregarding facts and circumstances that underlay or were engendered by the prior policy." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). Here, both Congress and Respondents have made robust factual findings regarding the importance of protecting immigrant survivors of domestic violence, crime, and human trafficking from removal that the 2025 Guidance ignores and contradicts.

106. Congress stated the "purpose of" creating the U visa was to "facilitate the reporting of crimes . . . by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status" which would in turn "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" crimes "while offering protection to victims" by providing a "means to regularize the status of cooperating individuals." BIWPA 1513(a)(2)(A), (B).

107. Similarly, ICE stated the purpose of the 2011 Policy was to "minimize

any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." 2011 Policy at 1. Similarly, in the now-rescinded 2021 Directive, ICE recognized that "Congress created victim-based immigration benefits to encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status," and 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." 2021 Directive at 1.

108. The 2025 Guidance does not address, refute, or even acknowledge any of these past findings that formed the foundation of prior policies protecting immigrant crime survivors. It rests instead upon a general statement from the President that his policy is to deport everyone he can, providing no countervailing facts at all. "[A]n agency's action can only survive arbitrary or capricious review where it has articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *All. For the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) (cleaned up). When "new policy rests upon factual findings that contradict those which underlay its prior policy," the APA requires "a more detailed justification." *F.C.C.*, 556 U.S. at 515. Respondents' failure to provide a reasoned explanation for the 2025 Guidance renders it arbitrary and capricious. *ICWC* at *35 ("The 2025 Guidance was issued without a reasoned explanation for disregarding the reasons underlying the prior 2011 Policy and 2021 Directive . . .").

109. The 2025 Guidance is additionally arbitrary and capricious because it failed to consider the reliance interests of individuals like Mr. Rios Sosa who applied for the protections that Congress and Respondents promised. "When an agency changes course . . . it 'must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.'"

Regents, 591 U.S. at 30 (quoting *Encino Motorcars, LLC* v. *Navarro*, 579 U.S. 211, 222 (2016)). Thus, an agency reversing prior policy must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Id.* at 33. ICE's "failure to respond demonstrates a lack of consideration of the serious reliance interests of persons impacted by the change in policy." *ICWC* at *36.

110. Further, ICE "entirely failed to consider [] important aspect[s] of the problem.," *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*"), when it failed to consider the public safety risks of reverting to an enforcement-heavy approach to noncitizen crime victims, and the resulting "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," 2021 Policy at 1.

111. Respondents' detention and removal of Mr. Rios Sosa while in Deferred Action status, which functioned as a de facto revocation of his Deferred Action, was independently arbitrary and capricious for the same reasons: they offered no reasoned basis for de facto revoking Mr. Rios Sosa's Deferred Action; they failed to consider Mr. Rios Sosa's reliance interests in his Deferred Action; and they failed to consider the impact that the de facto revocation of Deferred Action would have on Mr. Rios Sosa's ability to avail himself of its protections—continue living and working in the United States in order to provide for his family.

112. Moreover, ICE's decision to unilaterally and summarily deport Mr. Rios Sosa without regard for his Deferred Action status has "no connection to the goals of the deportation process or the rational operation of the immigration laws." *Judulang v. Holder*, 565 U.S. 42, 58 (2011). A system "that neither focuses on nor relates to a[noncitizen]'s fitness to remain in the country—is arbitrary and capricious." *Id.* at 55.

113. Indeed, "a decision to subject persons with deferred action to immigration enforcement," is "directly contrary to caselaw holding that deferred action protects a person from immigration enforcement action." *ICWC* at 37 (citing *AAADC*, 525 U.S. at 484 ("Approval of deferred action status means that . . . no action will thereafter be taken to proceed against an apparently deportable [noncitizen], even on grounds normally regarded as aggravated.").

114. Thus, "If USCIS grants deferred action 'to promote victim stability and continued cooperation with law enforcement,' and considers whether the petition is complete and the petitioner presents no national security or public safety risks," then ICE actions to take "enforcement action against such victims without first considering 'victim stability' or whether the petitioner still satisfies the criteria for deferred action is arbitrary and capricious, because it works against this purpose, defeats the criteria, and undermines the purposes of the U visa and T visa programs." *ICWC* at *39.

115. Moreover, by removing Mr. Rios Sosa, ICE has also profoundly harmed his wife, whom USCIS sought to protect with Deferred Action, and has shattered the family's trust in enforcement agencies, thereby undermining the humanitarian and public safety purposes of the U visa program.

116. Accordingly, Respondents' detention and removal of Mr. Rios Sosa pursuant to the 2025 Guidance and Respondents' de facto revocation of his Deferred Action were arbitrary and capricious in violation of the APA.

E. THIS COURT HAS AUTHORITY TO ORDER PETITIONER'S RETURN

117. In the Ninth Circuit, district courts retain habeas jurisdiction over certain claims brought by noncitizens who have already been removed to a foreign country notwithstanding the custody requirement of 28 U.S.C. 2241. *See Singh v. Waters*, 87 F.3d 346, 347 (9th Cir. 1996) (finding that where the government unlawfully removes a petitioner to a foreign country, rendering him unable to

challenge his removal in the manner prescribed by the Immigration and Nationality Act, he remains "a[noncitizen] held in custody pursuant to an order of deportation."); *Miranda v. Reno*, 238 F.3d 1156, 1159 (quoting *Singh*, 87 F.3d at 349-50) (acknowledging *Singh* holding that district courts have habeas corpus jurisdiction over petitions filed by removed immigrants "under extreme circumstances"); *Nava v. Ceja*, 546 F. App'x 629 (9th Cir. 2013) (reaffirming the vitality of the exception to custody requirement of 28 U.S.C. 2241 where extreme circumstances apply).

118. Moreover, the "in custody" requirement for habeas petitions is not limited to actual present physical detention, *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004), and can include banishment, loss of citizenship, and exclusion from the country, *see Jones v. Cunningham*, 371 U.S. 236, 240 and n.10 (1963) (citing cases where noncitizens excluded from the United States were treated as "in custody"). The imminent threat of being taken into custody and excluded may also qualify as custody. *Williams v. INS*, 795 F.2d 738, 744–45 (9th Cir. 1986) (treating petitioner subject to a final order of deportation as "in custody" even though he was not physically detained).

119. Thus, courts have affirmed their jurisdiction to order return of unlawfully removed noncitizens in numerous contexts, including in connection with petitions for writ of habeas corpus. *Carrillo v. Ashcroft*, 111 F. App'x 532 (9th Cir. 2004) (exercising jurisdiction over a deported noncitizen's habeas petition, where the petitioner asserted that the government never notified him that an immigration judge denied his motion to rescind a removal order before deportation); *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531, at *1 (C.D. Cal. Jan. 29, 2017) (granting temporary restraining order enjoining and restraining government "from barring Petitioner's return to the United States" in case brought as petition for writ of habeas corpus and complaint); *Ortiz-Mondragon v. Symdon*, No. 15-CV-1412, 2019 WL 330528 at *5 (E.D. Wis. Jan. 25, 2019) (finding habeas jurisdiction over

petitioner who was removed while on probation because "mere absence from the country at the time of filing does not preclude habeas jurisdiction."); *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 408 (S.D.N.Y. 2004), *amended in part on reconsideration as to other portions*, No. 03 CIV.7261 (AKH), 2004 WL 1348994 (S.D.N.Y. June 15, 2004) (granting "habeas corpus petition and order[ing] that [Petitioner] be returned to the United States" after removal in violation of court order); *Dennis v. I.N.S.*, No. CIV.A. 301CV279SRU, 2002 WL 295100, at *4 (D. Conn. Feb. 19, 2002) (granting motion for court order directing INS to return petitioner and ordering INS to return petitioner "immediately, and in no event later than 21 days from entry of this order" where INS removed petitioner after he filed a petition for writ of habeas corpus).

120. Courts have also routinely ordered the return of unlawfully removed individuals in non-habeas equitable relief contexts. *See, Walters v. Reno*, 145 F.3d 1032, 1051 (9th Cir. 1998) (upholding permanent injunction requiring government to grant parole to noncitizens deported in violation of their Due Process rights); *Mendez v. INS,* 563 F.2d 956 (9th Cir.1977) (ordering government permit return of noncitizen removed in violation of Due Process rights); *ICWC* at *47 (preliminarily enjoining government from preventing re-entry of named plaintiffs who were removed in likely violation of restored protections for applicants for immigration benefits for noncitizen victims of crime and trafficking); *Juarez v. Noem*, No. 26-cv-801, 2026 WL 799976 at *5 (E.D. Cal. March 23, 2026) (granting motion for temporary restraining order directing government to facilitate within seven days return of petitioner removed in contravention of her Deferred Action for Childhood Arrivals status where "it is difficult to argue that Petitioner's removal constitutes anything less than an 'extreme circumstance.'"); *Noem v. Abrego Garcia*, 604 U.S. ——, 145 S. Ct. 1017, 1018 (2025) (finding district court order requiring government to "facilitate" petitioner's "release from [prison]custody in El Salvador and to ensure that his case is handled as it would have been had he not been

improperly sent to El Salvador."); *Ms. L. v. ICE*, No. 18-cv-0428 DMS (AHG), 2026 WL 313340, at *3 (S.D. Cal. Feb. 5, 2026) (concluding district court has authority to order return of wrongfully deported parents); 403 F. Supp. 3d 853, 860 (S.D. Cal. 2019) (same and ordering government to pay for cost of return).

121. Additionally, this court may compel Respondents to return Mr. Rios Sosa under the mandamus statute because Respondents have a non-discretionary duty to correct their wrongful conduct. *See* 28 U.S.C. 1361; *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997).

122. Courts have ordered the government to return individuals under the mandamus statute, *Samirah v. Holder*, 627 F.3d 652, 665 (7th Cir. 2010) ("We remand ... for the issuance of a mandamus commanding the Attorney General to take whatever steps are necessary to enable the plaintiff to reenter the United States for the limited purpose of reacquiring the status ... that he enjoyed when he left the United States."), and they have otherwise acknowledged mandamus jurisdiction to order return, *B.P. v. Bostock*, No. 23-cv-00890-KKE, 2024 WL 2959550 (W.D. Wash. June 12, 2024) (denying government's motion to dismiss petition for writ of mandamus and complaint seeking return of noncitizens who were removed pursuant to non-final removal order).

123. Thus, whether pursuant to habeas, equitable, or mandamus relief, this Court has authority to order Mr. Rios Sosa's return because the facts surrounding his removal while he had valid Deferred Action constitute extreme circumstances; his unlawful and unconstitutional removal constitute banishment; and the Court has equitable and mandamus authority to order return as a remedy for the violations in Mr. Rios Sosa's case.

124. Moreover, 8 U.S.C. 1252(g) does not bar jurisdiction because that statute must be read "narrowly" and applies only to "actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir.

2018). Here, Mr. Rios Sosa does not challenge any discretionary determination to remove him, but rather whether his detention and removal while in valid Deferred Action status was lawful, which is a purely legal question. Respondents do not have the discretion to violate the law. Where DHS "totally lacks the discretion to effectuate a removal order, 1252(g) is simply not implicated." *Id.* at 801; *see also Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) ("We have jurisdiction to decide a 'purely legal question' that 'does not challenge the Attorney General's discretionary authority ... even if the answer to that legal question ... forms the backdrop against which the Attorney General later will exercise discretionary authority.'") (internal citation omitted); *see also Juarez*, 2026 WL 799976, at *3.

125. Likewise, 8 U.S.C. 1252(e) does not bar jurisdiction because Mr. Rios Sosa "does not challenge the validity of DHS's determination regarding [his] expedited removal order in this court;" rather, he challenges the unlawful nature of removing him altogether in light of his valid Deferred Action status. *Id.* at *4.

126. The public interest and the balance of the equities favor Mr. Rios Sosa's return. "[N]either equity nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v Jaddou*, 52 F 4th 821, 832 (9th Cir. 2022); *see also Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *California v. Azar,* 911 F.3d 558, 581 (9th Cir. 2018) ("The public interest is served by compliance with the APA.").

CLAIMS FOR RELIEF

CLAIM ONE
Violation of the Due Process Clause of the Fifth Amendment
Respondents' De Facto Revocation of Mr. Rios Sosa's Deferred Action Without Notice and Opportunity to Be Heard Violated Procedural Due Process

127. Petitioner repeats, re-alleges, and incorporates by reference each and

every allegation in the preceding paragraphs as if fully set forth herein.

128. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews*, 424 U.S. at 332. "The essence of due process is the requirement that a person in jeopardy of serious loss" receive "notice" and "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333, 348-49 (citations omitted).

129. Here, Petitioner has a protected liberty interest in his Deferred Action status. *See ICWC* at *40.

130. In determining what process is due when ICE de facto revokes Deferred Action status through its enforcement actions, courts must apply the *Mathews* three-part balancing test, considering (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest . . .that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Here, the *Mathews* balancing test comes out strongly in favor of Petitioner.

131. First, Petitioner's "private interest in avoiding removal or detention pending removal is great." *ICWC* at *41. Indeed, his Deferred Action status conferred on him freedom to remain at liberty in the United States with his family without fear of detention or deportation, as well as employment authorization. Together, these benefits formed the basis of his livelihood. Respondents pulled the rug out from under him through their de facto revocation of his Deferred Action and subsequent detention and removal to Mexico. *See* 8 C.F.R. 274a.12(c)(14). Where "continued possession" of benefits has "become essential in the pursuit of a livelihood," and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without [] procedural due

process." *Bell*, 402 U.S. at 539.

132. Second, "the risk of an erroneous deprivation of" these interests "through the procedures used" is extremely high, compared to "the probable value" of a pre-deprivation process where Respondents have provided *no process at all* before engaging in immigration enforcement that effectively revoked Petitioner's Deferred Action. *Mathews*, 424 U.S. at 335. "[T]he practice of automatic termination" of Deferred Action "creates an unacceptably high risk of erroneous deprivation." *Inland Empire III* , 2018 WL 4998230, at *19 (emphasis added); *see also Inland Empire II,*, 2018 WL 1061408, at *1 (granting classwide injunction for nationwide class in same case).

133. Third, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," are minimal. *Mathews*, 424 U.S. at 335. USCIS already has a pre-deprivation process; the agency has delineated the circumstances on which it may revoke Deferred Action it conferred based on a U visa petition, and thus subject people like Petitioner to immigration detention. PM vol. 3, pt. C, ch. 5.C.1, 6) (discussing conditions for USCIS to "terminate deferred action" based on U visa Bona Fide Determination). Respondents can thus claim no legitimate interest in circumventing that process by revoking Deferred Action through enforcement and arbitrarily detaining Petitioner.

134. Accordingly, without any procedural protections, Petitioner has been deprived of due process under the Fifth Amendment.

CLAIM TWO

Violation of the *Accardi* Doctrine

Respondents' De Facto Revocation of Mr. Rios Sosa's Deferred Action Violated the Accardi Doctrine

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

136. The Supreme Court has long recognized that government agencies are required to follow their own procedures. *See Accardi*, 347 U.S. at 268. Courts have regularly applied this principle to the immigration context. *See, e.g., Alcaraz*, 384 F.3d at1162. The *Accardi* doctrine extends beyond just "regulations" to include, e.g., "internal operating procedures," "handbook[s]," "policy statement," and other evidence of an agency's "usual practice." *Id.* at 1162.

137. 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 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." PM vol. 3, pt. C, ch. 5.C.

138. Furthermore, Respondents' longstanding policy is that only USCIS—not ICE—has the exclusive authority to revoke Deferred Action conferred by USCIS in connection with a U visa petition, and that such revocation must be based on specific criteria. 8 C.F.R. 214.14(d)(3) (U-visa waiting list "deferred action or parole may be terminated *at the discretion of USCIS*") (emphasis added).

139. Here, Petitioner received Deferred Action through a Bona Fide Determination. Thus, any revocation of this Deferred Action must take place in accordance with the USCIS Policy Manual. Rather than following these procedures, Respondent ICE took matters into its own hands by stripping Mr. Rios Sosa's Deferred Action unilaterally.

140. As the court in *ICWC* held, "by permitting ICE to de facto revoke deferred action instead of following USCIS procedure, and without applying any of the applicable criteria from the USCIS Policy Manual," Respondents "are not complying with their own policies for revoking deferred action" and are violating

the *Accardi* Doctrine. *ICWC* at *40.

CLAIM THREE

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

Respondents' Detention and Removal of Mr. Rios Sosa Pursuant to the 2025 Guidance was Arbitrary and Capricious in Violation of the APA

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

142. Under the APA, courts "shall . . . hold unlawful and set aside agency action . . .found to be . . .not in accordance with law." 5 U.S.C. 706(2)(A).

143. Respondents detained and removed Petitioner pursuant to the 2025 Guidance, which constitutes final agency action because it marks "the consummation of the agency's decision-making process," by which "rights" of petitioners for Survivor-based Benefits "have been determined" or "from which legal consequences" for such petitioners "will flow." *Bennett*, 520 U.S. at 177–78 (citations and quotation marks omitted).

144. The 2025 Guidance is arbitrary and capricious for three reasons. First, Respondents failed to provide a sufficiently "reasoned explanation" for ICE's "disregarding facts and circumstances that underlay or were engendered by the prior policy." *F.C.C.*, 556 U.S. at 516. Second, it failed to account for the reliance interests of noncitizens like Petitioner who applied for the protections that Congress and Respondents promised. *Regents*, 591 U.S. at 30. Third, Respondents "entirely failed to consider [] important aspect[s] of the problem," including the public safety risks of reverting to an enforcement-heavy approach to noncitizen crime victims. *See State Farm*, 463 U.S. at 43.

145. Accordingly, Respondents' detention and removal of Petitioner pursuant to the 2025 Guidance is arbitrary and capricious in violation of 5 U.S.C. 706(2).

CLAIM FOUR

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

Respondents' De Facto Revocation of Mr. Rios Sosa's Deferred Action was Arbitrary and Capricious in Violation of the APA

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

147. Under the APA, courts "shall . . . hold unlawful and set aside agency action . . .found to be . . .not in accordance with law." 5 U.S.C. 706(2)(A).

148. Respondents' detention and removal of Petitioner, which amounted to de facto revocation of his Deferred Action, constitutes final agency action because it marks "the consummation of the agency's decision-making process," by which the "rights" of Petitioner to remain at liberty and with employment authorization in the United States "have been determined" or "from which legal consequences will flow." *Bennett*, 520 U.S. at 177–78 (citations and quotation marks omitted).

149. Respondents' de facto revocation of Petitioner's Deferred Action was arbitrary and capricious because they failed to offer a reasoned explanation for the de facto revocation, *F.C.C.*, 556 U.S. at 516; they failed to consider Petitioner's reliance interests in his Deferred Action, *Regents*, 591 U.S. at 30; and they failed to consider important aspects of the problems associated with the de facto revocation *State Farm*, 463 U.S. at 43.

150. Moreover, ICE's decision to take enforcement action against Mr. Rios Sosa "without first considering 'victim stability' or whether the petitioner still satisfies the criteria for deferred action is arbitrary and capricious, because it works against [USCIS's] purpose, defeats the criteria, and undermines the purposes of the U visa and T visa programs." *ICWC* at *39.

151. Accordingly, Respondents' detention and removal of Petitioner, which amounted to de facto revocation of his Deferred Action is arbitrary and capricious in violation of 5 U.S.C. 706(2).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Issue a writ of habeas corpus requiring Respondents to immediately permit Petitioner's return to the United States in the same immigration status he was in prior to his unlawful detention and removal;
4. Grant injunctive relief ordering Respondents to immediately permit Petitioner's return to the United States in the same immigration status he was in prior to his unlawful detention and removal;
5. Issue a writ of mandamus compelling Respondents to immediately permit Petitioner's return to the United States in the same immigration status he was in prior to his unlawful detention and removal;
6. Set aside Petitioner's detention and removal pursuant to APA Section 706(2);
7. Declare that Petitioner's detention and removal were unlawful;
8. Award reasonable costs and attorneys' fees; and
9. Grant such further relief as the Court deems just and proper.

Dated: July 29, 2026

Respectfully submitted,

/s/ Monika Y. Langarica
Monika Y. Langarica
Bardis Vakili
CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW