

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOSE ALBERTO CHIMAN DIAZ,

Petitioner,

v.

Todd Blanche, Acting Attorney General,

Markwayne Mullin, Secretary, U.S. Department of
Homeland Security,

David J. Venturella, Acting Director of Immigration
and Customs Enforcement,

David Easterwood, Acting Director, St. Paul Field
Office Immigration and Customs Enforcement, and

Eric Tollefson, Sheriff of Kandiyohi County.

Respondents.

Case No. _____

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS**

Expedited Handling
Requested

INTRODUCTION

1. Petitioner Jose Alberto Chiman Diaz, (“Petitioner”), 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 Kandiyohi 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 *47. 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 felonious assault. On September 15, 2017, 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 helpful, or are likely to be helpful in the investigation or prosecution of the crime. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV).

4. On August 24, 2022, Respondent U.S. Citizenship and Immigration Services ("USCIS") granted Petitioner deferred action and work authorization in relation to Petitioner's pending U visa petition. Petitioner renewed his deferred action and work authorization, and USCIS approved the renewal, granting a new period of deferred action and work authorization from February 25, 2026, until February 24, 2030. USCIS has not revoked Petitioner's deferred action status, which is valid until February 24, 2030.

5. "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.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (“*AAADC*”).

6. Despite being in valid deferred action status, immigration authorities arrested Petitioner on or around August 6, 2026. On August 5, 2026, Minnesota State Patrol stopped Petitioner and cited and arrested him for driving without an ignition interlock device. The next day, while Petitioner was still detained, Meeker County Jail transferred him to immigration authorities, who took him into custody and transported him.

7. As a result of Respondents' actions, Petitioner has suffered severe economic hardship, including the inability to access his money, pay the six workers he employs, or provide financial support to his children and partner in Mexico for their schooling and daily needs, as well as fear and distress caused by his detention.

8. Accordingly, Petitioner respectfully requests the court issue a writ of habeas corpus and order his release.

JURISDICTION AND VENUE

9. 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.” 28 U.S.C. § 2241(c).

10. Petitioner is in the physical custody of Respondents under color of the authority of the United States. Petitioner is detained by ICE at the Kandiyohi County Jail in Willmar, MN.

11. 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).

12. 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.

13. Venue is proper in this Court, because it is the judicial district in which Petitioner currently is detained. *See Braden v. 30th Jud. Cir. Ct. of Ky*, 410 U.S. 484, 493-500 (1973).

14. 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

15. Petitioner is a national and citizen of Mexico who has resided in the United States since 2012, when Petitioner was seventeen years old. Petitioner applied for U nonimmigrant status on September 15, 2017. USCIS granted Petitioner deferred action on August 24, 2022, approved his deferred action renewal on February 25, 2026, and his deferred action status is now valid until February 24, 2030. Despite this deferred action status, Respondents continue to unlawfully detain Petitioner.

16. 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. Therefore, Respondent Blanche is a custodian of Petitioner. He is sued in his official capacity.

17. 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 detention. Mr. Mullin has ultimate custody over Petitioner and is sued in his official capacity.

18. Respondent David J. Venturella is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. As such, David J. Venturella 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.

19. Respondent David Easterwood is the Acting Director of the St. Paul 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. David Easterwood is sued in his official capacity.

20. Respondent Sheriff Eric Tollefson is being sued in his official capacity as the Sheriff responsible for the Kandiyohi County Jail. Because Petitioner is detained in the Kandiyohi County Jail facility, Sheriff Tollefson has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

21. Petitioner was born in Mexico and resides in Minnesota. Petitioner lives alone in the United States, while his two children and partner reside in Mexico, whom he supports financially.

22. Petitioner has lived in the United States since 2012. Petitioner is self-employed, having worked in roofing for many years before starting his own roofing company, which he owns and which employs six workers. Petitioner has also, for several years, regularly attended the [REDACTED] in Minneapolis, Minnesota, where he has contributed his time and financial support and has trained to become a volunteer pastoral minister.

23. On October 29, 2016, Petitioner was the victim of felony assault. A perpetrator entered Petitioner's car while he was inside it and struck Petitioner's head twice with a glass statue, causing him to become dizzy. Two additional perpetrators then entered the car and threatened to punch Petitioner. Petitioner fled the car and the area, then immediately reported the crime to the Minneapolis Police Department, describing the assault to officers during an interview at his home.

24. Petitioner remained ready and willing to assist in the investigation at all times. After reporting the crime, Petitioner went to the hospital, where he was treated for a swollen head injury; he suffered severe headaches and pain for many days afterward. The Minneapolis Police Department investigated the crime and signed a certification confirming that Petitioner was the victim of felony assault.

25. On September 15, 2017, Petitioner filed an I-918 Petition for U Nonimmigrant Status, which remains pending with USCIS.

26. Petitioner does not have a serious criminal history. On July 21, 2025, Petitioner was arrested and charged with two counts of third-degree DWI, with a jury trial scheduled for October 26, 2026. Petitioner also has a prior DWI conviction from a separate incident, though the date of that conviction is unknown. Petitioner disclosed this history in his U visa petition. When Petitioner subsequently renewed his deferred action, USCIS reviewed his renewal application and conducted a biometrics appointment to check his criminal history in light of his recent and prior DWIs. Despite being aware of these arrests, USCIS determined that Petitioner did not pose a risk to public safety and approved his deferred action renewal request on February 25, 2026. Petitioner was more recently arrested and charged with driving without an ignition interlock device, with a hearing scheduled for that case on September 17, 2026.

27. USCIS granted Petitioner deferred action status on August 24, 2022, based on a bona fide determination on his pending U visa petition. USCIS subsequently granted a deferred action renewal request on February 25, 2026, extending his deferred action status to February 24, 2030.

28. USCIS also issued Petitioner an Employment Authorization Document ("EAD") based on Petitioner's deferred action status. The EAD is valid from February 25, 2026 to February 24, 2030.

29. Petitioner lawfully works as a contractor and owns his own roofing company. Absent release, Petitioner will be unable to pay his workers, support his

children and partner in Mexico, or complete his pending projects, causing economic hardship to himself, his family, and his employees.

30. On August 5, 2026, Minnesota State Patrol stopped Petitioner and cited and arrested him for driving without an ignition interlock device. The next day, while Petitioner was still detained at the jail, Meeker County Jail transferred him to immigration authorities, who took him into custody and transported him.

31. Petitioner informed immigration authorities of his pending U visa petition and grant of deferred action. Immigration authorities did not provide Petitioner with any arrest warrant or other document, and told him that his deferred action provided no protection and that he could not be released. To date, immigration authorities have not shown Petitioner an arrest warrant or given him a reason for his arrest.

32. After the arrest, immigration agents transported Petitioner to Kandiyohi County Sheriff's Office in Willmar, MN. Petitioner has been detained in ICE custody since then.

33. Since his detention, Petitioner has suffered significant harm. He does not feel well in detention and lives in fear of being removed from the United States. Petitioner is unable to access his money, pay the six workers he employs, or continue his pending roofing projects, and he can no longer provide financial support to his children and partner in Mexico for their schooling and daily needs.

34. Courts have “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*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7-8 (W.D. Wash. July 24, 2025) (collecting cases) (citations omitted); *AAADC* at 484 (“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.”).

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

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

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

LEGAL FRAMEWORK

A. CREATION OF THE U VISA

38. 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).

39. 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.

40. 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).

41. 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).

42. 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 aliens, 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).

43. 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.¹

44. 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.* § 1513(e); 8 U.S.C. § 1182(d)(14).

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

¹ 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 Aug. 7, 2026).

The TVPRA added § 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).

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

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

47. In 2007, DHS promulgated regulations setting forth the process for adjudicating U visa petitions. *See* Interim Rule, 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 backlogs, 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.*

48. 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 (“BFD”) process, which is reflected in the USCIS Policy Manual

(“PM”).²

49. In the BFD 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.

50. Petitioners granted a BFD EAD and deferred 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.

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

52. 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

² “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 Aug. 7, 2026).

withdrawn” by the certifying agency, or (4) “USCIS determines the prior BFD EAD was issued in error.” *Id.*

53. For those deemed ineligible for a BFD 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.

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

55. 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).

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

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

57. 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 Aug. 7, 2026), and ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) (“2021 Directive”),

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.

available

at

https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf (last checked Aug. 7, 2026).

58. 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.

59. 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.

60. 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 Aug. 7, 2026).

61. The 2025 Guidance 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.

62. 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.

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

64. 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.⁴ 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. This policy, referred to herein and in *ICWC* as the De Facto Revocation Policy, unlawfully renders deferred action status meaningless.

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

65. 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 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) [Dkt. 1].

66. 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* PI Order.

67. As part of its ruling, the court provisionally certified three classes, including, as relevant here, the Deferred Action Class,⁵ and stayed the De Facto

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

⁵ The Deferred Action Class is defined as: "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* PI Order at *47.

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.”).

68. 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.

69. Here, Petitioner is a member of the Deferred Action Class in *ICWC* because he:

- a. is an individual to whom USCIS has granted deferred action based on a pending U visa petition; and
- b. during the authorized period of deferred action, was detained by ICE without being provided notice and an opportunity to be heard regarding the potential revocation of that deferred action status. *Id.* at *47; *see also* n.5 *supra*.

70. Accordingly, 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,” may not be applied to Petitioner. *Id.* at *47. Therefore, immediate release is warranted.

71. Absent release, Petitioner will continue to experience economic hardship to himself, his family in Mexico, and the workers he employs, along with emotional distress and worry for his family in Mexico, who can no longer receive his financial support.

CLAIMS FOR RELIEF

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

CLAIM ONE

Violation of APA 5 U.S.C. § 706(2)(A)

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

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

74. 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).

75. Respondent’s detention of Petitioner constitutes final agency action under the APA. 5 U.S.C. § 551(13), 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

76. In *ICWC*, the court concluded that plaintiffs were likely to succeed on their claim that the De Facto Revocation Policy is arbitrary and capricious and not in accordance with law under the APA. *ICWC* PI Order at *37.

77. As a result, the court stayed 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.” *Id.* at *47.

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

79. Respondents detained Petitioner pursuant to the stayed De Facto Revocation policy.

80. Accordingly, Respondents’ detention of Petitioner is not in accordance with law in violation of the APA, as it directly contravenes the § 705 relief issued in the *ICWC* PI Order.

CLAIM TWO

Violation of the Fifth Amendment to the United States Constitution *Procedural Due Process Requires Notice and Opportunity to Be Heard before Deferred Action May Be Revoked*

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

82. “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).

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

84. In determining what process is due when ICE 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.

85. First, the private interests that will be affected are profound. First, Petitioner’s liberty is at stake. There is no question that freedom from government imprisonment is a significant private interest that “lies at the heart of the liberty that” Due Process protects. *Zadvydas*, 533 U.S. at 690. Moreover, Petitioner’s employment authorization, together with other 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 “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).

86. In addition, Petitioner's "private interest in avoiding removal or detention pending removal is great." *ICWC* PI Order at *41. Petitioner, as a result of deferred action, has been able to live and work freely without fear of detention or removal, provide for his family, start his own business, and employ and pay his workers.

87. 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-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) (emphasis added); *see also Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018) (granting classwide injunction for nationwide class in same case).

88. 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 BFD). Respondents can thus claim no legitimate interest in circumventing that process by revoking deferred action

through enforcement and arbitrarily detaining Petitioner.

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

CLAIM THREE

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

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

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

92. Immigration detention only comports with due process when it furthers the government’s goals of “ensuring the appearance of [noncitizens] 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.

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

94. Here, deportation is a “remote possibility” as Petitioner’s deferred action

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

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

96. Accordingly, because Petitioner’s detention is not justified by flight risk or danger concerns, it bears no reasonable relation to a legitimate government purpose, and thus violates Petitioner’s substantive due process rights.⁶

⁶ A growing number of courts agree that detention and removal of individuals in deferred action status violates due process. *See, e.g., Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708 (W.D. Wash. 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, 2025 WL 3012786 (S.D. Fla. Oct. 28, 2025); *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Or. 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-

CLAIM FOUR

Accardi Doctrine

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

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

98. 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.* at 1162.

99. 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

AA, 2025 WL 3484912 (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 (N.D. Ind. Dec. 18, 2025); *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264 (W.D.N.Y. Dec. 19, 2025); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171 (E.D. Cal. Dec. 21, 2025); *Mauricio Leon v. Noem*, Case 5:25-cv-02582-FMO-RAO (C.D. Cal. October 10, 2025).

certifying agency, or (4) “USCIS determines the prior BFD EAD was issued in error.”

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

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

101. 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).

102. Here, Petitioner received deferred action through BFD. 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 deferred action through detaining Petitioner.

103. 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* PI Order at *40.

REMEDY

104. When a habeas petitioner's detention is without legal basis, the typical and appropriate remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention"); *Wilson L.L. v. Blanche*, No. 26-CV-02475, 2026 WL 1283186, at *2-3 (D. Minn. May 11, 2026) (because "Petitioner's detention is unlawful . . . as in other similar cases, the Court concludes that the appropriate remedy is release from custody"); *Emily Andreina N.V. v. Blanche*, No. 0:26-cv-02570, 2026 WL 2209844, at *4-5 (D. Minn. July 31, 2026) (ordering release; distinguishing "[s]eeking release from custody in an immigration habeas case" from "a noncitizen's effort to prohibit the government from pursuing removal proceedings"); *see also Pedro Eduardo R. P. v Bondi*, No. 26-CV-01323, 2026 WL 473140 (D. Minn. Feb. 17, 2026) (recommending immediate release after the government failed to contest petitioner's Fourth and Fifth Amendment arguments), *report and recommendation adopted*, 2026 WL 478607 (Feb. 19, 2026); *Jefferson Y.M.*, 2026 WL 1848510 (granting immediate release when government responded in an untimely manner and thereby waived any challenge to Fifth Amendment arguments). Courts across the country have accordingly ordered release when granting immigration habeas petitions. *See, e.g. Jose L.R.O. v. Bondi*, No. 5:26-CA-850, Doc. No. 11 at 25 (W.D. Tex. Mar. 23, 2026); *Sanchez v. Sec'y of Homeland Sec.*, No. 3:26-cv-00695, 2026 WL 1238601, at *2 (M.D. Fla. May 6, 2026); *Amandeep S. v. Mullin*, No. 6:26-cv-03341 (W.D. Mo. June 25, 2026), Doc. No. 11.

105. Release is an appropriate remedy for individuals with various immigration histories. *See, e.g., Dylan M. v. Blanche*, No. 26-CV-2802 (D. Minn. June 8, 2026), Doc 12 at p. 10 (granting the habeas corpus petition of a teenager who arrived on a tourist visa as a child, which visa subsequently expired, and who was found to have been detained unlawfully) and *Makitio G. A., v. Blanche*, No. 26-CV-2200, 2026 WL 1584457, at *6 (D. Minn. May 22, 2026) (recommending release for someone who was unconstitutionally and unlawfully detained after Respondent's revoked petitioner's order of supervision), *report and recommendation adopted*, 2026 WL 1591270 (June 3, 2026).

Release Based on Unlawful Arrest

106. Judges in this district have repeatedly found that when Respondents arrest a noncitizen unlawfully, the remedy should be release rather than a bond hearing. *Cutberto R.P.*, No. 26-CV-01934 (MJD-DTS) (D. Minn. April 10, 2026), Doc. no. 11 at pp. 10-13; *Jefferson G.H.L.*, No. 26-CV-2344 (JRT-ECW), 2026 WL 1229623, at *3; *Hector J.A.S. v. Shea*, No. CV 26-2242 (JRT-DLM), 2026 WL 1243500, at *3 (D. Minn. May 6, 2026); *Martha C.G.P. v. Blanche*, No. CV 26-2308 (DWF-JFD), 2026 WL 1329577, at *3 (D. Minn. May 13, 2026); *Jesus F.D. v. Mullin*, No. 26-CV-2486 (PJS-DTS), 2026 U.S. Dist. LEXIS 137045, at *5 (D. Minn. June 10, 2026); *Walther Ademir A.S.*, No. 26-CV-02804 (LMP-SGE), 2026 WL 1734906, at *2-5 (D. Minn. June 16, 2026); *Pedro D.C.*, 2026 WL 1759444; *Yonatan S. v. Blanche*, No. 26-CV-02949 (JMB-EMB) (D. Minn. June 26, 2026) Doc. No. 14; *Sergio F.M. v. Blanche*, No. 26-CV-02749 (ECT-DTS) (D. Minn. June 15, 2026) Doc. No. 8, *report and rec. adopted*, (D. Minn. July 8, 2026) Doc. No. 11.

Release Based on Absence of Due Process

107. There is no indication here that Petitioner's detention was based on any facts that might indicate Petitioner should be in custody and deprived of his liberty. Due Process requires that Petitioner be able to continue engaging in his substantive civil immigration proceedings while released from custody rather than from a jail cell.

108. As a court in the Western District of Texas has explained, "bond hearings are no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Jose L.R.O.*, No. 5:26-CA-00850, Doc. No. 11 at 26.

109. In the context of preventative civil detention, the Supreme Court has permitted narrow categorical rationales for such detention in only limited circumstances when applicable exclusively to "small segments" of people and even then only when subject to "strong" and "strict" procedural safeguards. *Zadvydas*, 533 U.S. at 690-91; *see also, e.g., Victor S. v. Noem*, No. 25-CV-00403, 2026 WL 596133, at *10 (W.D. Tex. March 2, 2026) (collecting cases); and *Rincon v. Hyde*, 810 F.Supp.3d 101, 114 (D. Mass. 2025) (categorical presumptions do not hold "where the only rationale for mandatory detention appears to be Respondents' asserted authority to withhold generally available due-process protections based on Petitioner's immigration status."). It stands to reason that "[i]f the Constitution imposes limits on detention after a final order of removal," as *Zadvydas* held, "it necessarily imposes at least comparable limits, and requires meaningful procedural safeguards, before one is entered." *Haiguang Z. v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, at *8 (D.N.J. Mar. 23, 2026).

110. The Government's recent policy of mass detentions under 8 U.S.C. § 1225(b)(2) is not being applied to a narrow class of persons for a special nonpunitive purpose in a way that provides a "special justification" that outweighs the individual's constitutionally protected interest in avoiding physical restraint. Section 1225(b)(2) is merely a catchall provision. *Jennings*, 583 U.S. at 287. There is nothing to suggest that detainees subject to § 1225(b)(2) share a categorical characteristic that supersedes their individual interests in physical freedom sufficient to satisfy Due Process by proxy. *See Victor S.*, 2026 WL 596133, at *7-10; *see also Rincon*, 810 F. Supp. 3d at 113. Civil detention is punitive if it "become[s] a 'mechanism for retribution or general deterrence.'" *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (*quoting Kansas v. Hendricks*, 521 U.S. 346, 372 (1997) (Kennedy, J., concurring)). Because detention is being applied for general deterrence or retribution, rather than narrowly for a special nonpunitive purpose, Respondents' application of § 1225(b)(2) to Petitioner is unconstitutional.

Futility and/or Inadequacy of a Bond Hearing

111. Immediate release is particularly appropriate in view of Respondents' oft-stated position following *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that administrative immigration courts have no jurisdiction to conduct bond hearings for noncitizens detained under 8 U.S.C. § 1225(b)(2). Ordering a bond hearing in that context would require an administrative immigration judge to do that which he or she believes he or she lacks authority to do as an "inferior officer"⁷ of the executive branch. Indeed, the

⁷ *Jackler v. Dept. of Justice*, 2026 MSPB 3, 2 (2026); *United States v. Arthrex, Inc.*, 594 U.S. 1, ___, 141 S.Ct. 1970, 1984 (2021) (dicta); *see also* 8 U.S.C. § 1101(b)(4).

Government regularly asserts that immigration judges lack authority to conduct bond hearings. *E.g., Ignacio R.M. v. Blanche*, No. 26-CV-03182, Doc. No. 6 at p. 9 (D. Minn. July 8, 2026) (“Even if this Court were to order a bond hearing to occur before an immigration judge, the immigration judge would not be able to hear the merits under binding precedent.”). As explained by another district court in this circuit, petitioners in such circumstances have “no forum, administrative or judicial, through which [they] may seek release based on [their] circumstances. This is not minimal process. It is zero process. Respondents’ position, that no such process is required, cannot be reconciled with the Fifth Amendment.” *Stepan H. v. Arnott*, No. 6:26-CV-03220, 2026 WL 1103450, at *4 (W.D. Mo. April 23, 2026). And, when a bond hearing is ordered, Respondents have made only an “illusory” and “hypothetical” reference to release on bond. *David J.C.P. v. Blanche*, No. 26-CV-02181, slip op. at 2-3 (D. Minn. May 14, 2026) Doc. no. 19 (IJ determined she lacked jurisdiction to grant bond following court order for bond hearing, and IJ’s “alternative finding . . . setting a hypothetical bond does not suffice” and is “ultimately immaterial in light of the immigration judge’s decision that she lacked jurisdiction. Petitioner has no option to pay that bond and be released. The bond is illusory.”).

112. In terms of constitutionally-sufficient procedural Due Process safeguards, an impartial decisionmaker is essential. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (stressing importance of decisionmaker’s conclusion being grounded in the evidence presented and accompanied by a statement indicating the reasons for the decision and the evidence relied upon). Sham bond hearings do not provide Due Process. Current

circumstances surrounding immigration bond hearings “raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires.” *Haiguang Z.*, 2026 WL 800203, at *3,7 (questioning “whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ [immigration judge]” today after hundreds of IJs were terminated and the Government seeks to fill vacancies created by those firings by openly advertising for “deportation judge” roles).

113. Moreover, courts have scrutinized the burden of proof applied in immigration bond hearings. If the Government permits a bond hearing at all, it places the burden of proof on detainees. *E.g.*, *Matter of Adeniji*, 2 I&N Dec. 1102 (BIA 1999); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of A-L-S-*, 29 I&N Dec. 794 (BIA 2026). That does not provide constitutional Due Process and is a structural error that constitutes a *per se* prejudice. The Supreme Court has struck down civil detention schemes that placed the burden on the detainee to prove nondangerousness but has upheld civil detention processes where the government bore the burden of proof by clear and convincing evidence. *Zadvydas*, 533 U.S. at 691 (citing *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) and *United States v. Salerno*, 481 U.S. 739, 747, 750-52 (1987)); see also *Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021) (under the second *Mathews* factor, the Government carries the burden of proof).

114. Immediate release is the appropriate remedy where “a new [bond] hearing would either be unnecessary, futile, or an inadequate remedy”, and “would effectively allow the Government to transform an unlawful detention into a lawful one through *post-*

hoc justifications.” *Haiguang Z.*, 2026 WL 800203, at *10-11. Here, a bond hearing would be futile or inadequate. Immediate release is therefore the appropriate remedy. *See Stepan H.*, 2026 WL 1103450, at *4; *Briceno Solano v. Mason*, 818 F. Supp. 3d 802, 835-36 (S.D. W. Va. 2026) (ordering release where a court had “no faith that the Government would comply with an order to hold a bond hearing” and “a bond hearing would be futile”).

REQUEST FOR ORDER TO SHOW CAUSE

115. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

116. Petitioner respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court’s order, showing cause, if any, why a writ of habeas corpus should not be granted. Petitioner requests that the Court’s order require Respondents to specifically provide (1) a statement concerning immigration court jurisdiction over Petitioner, including jurisdiction to consider bond; and (2) a statement concerning whether Petitioner is, or may be, a class member of any pending or certified immigration class action suit. Additionally, Petitioner asks the Court to order Respondents to release Petitioner without conditions if they choose to release him instead of responding.

117. Petitioner further respectfully requests that an Order to Show Cause direct Respondents, should they offer a warrant in this case, to provide sufficient details to establish the validity of the proffered warrant, such as: (1) the name, title, training, and qualifications of the officer who issued the warrant; (2) the time and place at which the warrant was issued; (3) the evidence the issuing officer relied upon in making his determination that an arrest was warranted in this case, including any existing Notice to Appear; (4) the name, title, training and qualifications of the agent who served the warrant upon Petitioner; (5) the time, place, and manner by which the warrant was served upon Petitioner; and (6) whether the warrant was created specifically in response to or in anticipation of this habeas corpus petition.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner out of the District of Minnesota pending the duration of these proceedings, or transport Petitioner back to Minnesota if moved out of state;
3. Order Respondents to show cause as to why Petitioner should not be released immediately, without conditions;
4. Issue a writ of habeas corpus and order Respondents to immediately release Petitioner and forbid them from redetaining Petitioner while in valid deferred action status;
5. Require that Petitioner be released within the State of Minnesota, at a safe time and place communicated to counsel and with all of Petitioner's personal belongings and effects in Respondents' possession, such as Petitioner's driver's license, immigration papers, identification documents including any passport or employment authorization document, cell phone, and keys;

6. Enjoin Respondents from implementing any condition of release, including the “Alternatives to Detention” program involving ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile application;
7. Declare that Petitioner’s arrest and detention exceeded Respondents’ authority;
8. In the alternative, if immediate release is not ordered, order Respondents to afford Petitioner a bond hearing within seven days, with at least 48 hours advance notice, in which Respondents bear the burden of proof to demonstrate by clear and convincing evidence that Petitioner is a flight risk or a danger to the community that justifies his continued detention;
9. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and
10. Grant any other and further relief that this Court may deem just and proper.

Date: August 7, 2026

Respectfully submitted,

ZHANAY LAW LLC

By: /s/ Edwin Zhanay

Edwin Zhanay (#0506884)

3359 Central Ave. NE, Ste. 6

Minneapolis, MN 55418

Telephone: (612) 208-7058

Fax: (612) 324-2830

edwin@zhanaylaw.com

Attorney for Petitioner

Verification Pursuant to 28 U.S.C. § 2242

I am Petitioner's attorney and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, which knowledge comes from my conversations with my client, a copy of my client's immigration file, my client's family when preparing this filing, and a review of Respondents' publicly available websites.

Date: August 7, 2026

/s/ Edwin Zhanay
Edwin Zhanay (#0506884)

Attorney for Petitioner