UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WILBER RAFAEL GARCES PEREZ, Petitioner, v. BOBBY THOMPSON, Warden, South Texas ICE Processing Center; SYLVESTER M. ORTEGA, in his official capacity as Acting Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; DAVID VENTURELLA, in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as U.S. Secretary of Homeland Security; TODD BLANCHE, in his official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	§	Civil Action No. 26-6038

PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241

Petitioner Wilber Rafael Garces Perez ("Petitioner"), through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241, seeking an immediate stay of removal and his immediate release from ICE custody. Petitioner does not challenge the validity of his removal order or the Government's authority to seek his removal. Rather, he challenges Respondents' attempt to remove him before he has a meaningful opportunity to investigate and pursue eligibility for U

nonimmigrant status, for which he is prima facie eligible as the victim of a violent crime, namely, being shot by a federal officer. He also challenges the decision to keep him detained while he pursues this relief. Respondents' attempt to remove Petitioner before he has an opportunity to pursue that relief violates the Due Process Clause of the Fifth Amendment. In support, Petitioner alleges:

I. NATURE OF THE ACTION

1. On September 20, 2026, a U.S. Immigration and Customs Enforcement ("ICE") officer shot Petitioner in North Austin, Texas at approximately 12:56 p.m. He was hospitalized with a gunshot wound to the torso and, hours later, released from the hospital into ICE custody. He is now detained at the South Texas ICE Processing Center in Pearsall, Texas.

2. As the potential victim of a qualifying violent crime who possesses information about it and can assist the authorities investigating it, Petitioner is prima facie eligible to seek U nonimmigrant status under 8 U.S.C. § 1101(a)(15)(U). Congress created that status precisely for noncitizen crime victims like him.

3. Petitioner does not ask this Court to review, vacate, or decline to enforce his removal order. He asks only that the Court preserve the status quo — by staying his removal for a limited time — so that he may exercise the opportunity Congress gave him to apply for U nonimmigrant status. Removing him now would permanently and irreversibly foreclose that opportunity without any process at all.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, the Suspension Clause (U.S. Const. art. I, § 9, cl. 2), and the All Writs Act, 28 U.S.C. § 1651.

5. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens challenging the lawfulness of their detention under federal law. *See Demore v. Kim*, 538 U.S. 510,

516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D.Tex. 2015); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008).

6. The jurisdiction-channeling provisions of the immigration laws do not bar this action. Petitioner does not seek review of a final order of removal, so 8 U.S.C. § 1252(a)(5) is not implicated. His claim does not "arise from" the decision to commence proceedings, adjudicate his case, or execute his removal order within the meaning of 8 U.S.C. § 1252(g); it arises from Respondents' denial of a constitutionally adequate opportunity to pursue independent collateral relief adjudicated by U.S. Citizenship and Immigration Services outside the removal process. S*ee Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) (§ 1252(g) reaches only three discrete, enumerated actions). Nor does 8 U.S.C. § 1252(b)(9) apply, because the U nonimmigrant petition is not a question "arising from" the removal proceeding.

7. The individualized stay Petitioner seeks is not barred by 8 U.S.C. § 1252(f)(1), which restrains only class-wide injunctions against the operation of the removal provisions and leaves individual relief available. *See Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

8. Venue is proper in the Western District of Texas, San Antonio Division. Petitioner is confined at the South Texas ICE Processing Center in Pearsall, Frio County, which lies within this Division. His immediate custodian is located here. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

III. PARTIES

9. Petitioner Wilber Rafael Garces Perez is a 28-year-old national of Venezuela detained at the South Texas ICE Processing Center, Pearsall, Texas.

10. Respondent Bobby Thompson is the Warden or Officer-in-Charge of the South Texas ICE Processing Center and is Petitioner's immediate custodian.

11. Respondent Sylvester Ortega Field Office Director, San Antonio Field Office, ICE Enforcement and Removal Operations, has authority over Petitioner's custody, removal, and transfer.

12. Respondents David Venturella, Markwayne Mullin, Todd Blanch and Sirce Owens are sued in their official capacities.

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

IV. STATEMENT OF FACTS

14. At approximately 12:56 p.m. on September 20, 2026, an ICE officer shot Petitioner near the intersection of West Anderson Lane and Research Boulevard in North Austin, Texas. Austin-Travis County EMS transported him to Dell Seton Medical Center with a gunshot wound to the torso. The Austin Police Department has stated it was not involved in the shooting or the underlying operation.

15. On September 20, 2026, at approximately 4:30 p.m., ICE took Petitioner into custody directly from the hospital, where he had been receiving treatment for a gunshot wound. Petitioner was discharged with the bullet still lodged in his body and while he continued to experience pain. Rather than remain in a medical setting, Petitioner was transported to a temporary processing center, where he was forced to sleep on a cement floor. At approximately 4:00 a.m. on September 21, 2026, ICE transferred Petitioner to the South Texas ICE Processing Center in Pearsall, Texas.

16. The shooting of Petitioner is the subject of ongoing investigation and public inquiry, including calls by members of Congress and local elected officials for an independent investigation and release of body-worn-camera footage. Petitioner is both the victim of, and a witness to, that shooting.

17. A felonious assault may be considered a "qualifying criminal activity" for purposes of U nonimmigrant status. See 8 U.S.C. § 1101(a)(15)(U)(iii). Petitioner suffered substantial physical harm, possesses information about the crime, and is able to be helpful to the authorities investigating it. He is therefore prima facie eligible to petition for U nonimmigrant status under 8 U.S.C. § 1101(a)(15)(U) and 8 C.F.R. § 214.14.

18. Petitioner intends to investigate and potentially pursue U nonimmigrant status, including by seeking a law-enforcement certification (Form I-918, Supplement B) from an appropriate certifying agency and filing a petition (Form I-918) with USCIS. He requires a reasonable, brief opportunity to do so.

19. On information and belief, Respondents intend to remove Petitioner imminently. Removal would place him outside the United States and, as a practical matter, foreclose his ability to obtain and pursue U nonimmigrant status and to remain with his wife in this country.

20. On information and belief, the current administration has demonstrated a pattern of accelerating immigration enforcement against individuals connected to incidents involving federal immigration officers, raising a substantial and immediate concern that Respondents will attempt to remove Petitioner before he has an opportunity to pursue U nonimmigrant status. For example, Minnesota prosecutors have alleged that federal immigration authorities sought to deport individuals who witnessed an ICE shooting in Minneapolis, including individuals with temporary protected status. Mike Manzoni, *Judge Halts Deportation of ICE Shooting Witness in Minneapolis*, FOX9 (Feb. 5, 2026), https://www.fox9.com/news/judge-halts-deportation-ice-shooting-witness-minneapolis. This was only stopped when a federal judge intervened. *Id.* Respondents' efforts to evade accountability are also well documented in the inaccurate and misleading statements made to the public following the shootings in Minnesota. Jude Joff-Block, Huo Jingnan, Audrey Nguyen, *DHS Keeps Making Broader Claims about People. Its Part of a Broader Pattern*, NPR (Jan. 31, 2026),

https://www.npr.org/2026/01/31/nx-s1-5690124/ice-alex-pretti-immigration-unproven-claims-dhs-enforcement-arrests.

V. CLAIM FOR RELIEF

Fifth Amendment — Denial of Procedural Due Process

21. Petitioner incorporates the preceding paragraphs.

22. The Due Process Clause protects all persons within the United States, including noncitizens subject to removal. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Landon v. Plasencia*, 459 U.S. 21 (1982).

23. Petitioner has cognizable liberty interests in his physical freedom, in remaining with his wife and family in the United States, and in the meaningful opportunity Congress afforded him to seek U nonimmigrant status as a crime victim.

24. Respondents' attempt to remove Petitioner immediately — before he has any opportunity to apply for that relief — deprives him of these interests without the process that the Fifth Amendment requires. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the process due before the government may effect a deprivation of liberty is measured by three factors: "the private interest that will be affected by the official action"; "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 "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* All three weigh decisively in Petitioner's favor: the private interests at stake are weighty; the risk of erroneous and irreversible deprivation from summary removal is high; the value of a brief stay permitting him to file is substantial; and the Government's interest in removing him instantly, rather than after a limited stay, is slight and is

outweighed by the public's strong interest in the accountability that his availability as victim and witness serves.

25. A limited stay of removal is the minimal process necessary to prevent the permanent, erroneous deprivation of Petitioner's opportunity to seek relief Congress created.

26. An immediate release from ICE custody, in addition to a stay of removal, is necessary to preserve Petitioner's opportunity to seek the relief Congress has created and prevent the erroneous deprivation of that opportunity before his claims can be adjudicated.

Fifth Amendment – Denial of Substantive Due Process

27. Petitioner incorporates the preceding paragraphs.

28. There are two independent violations of Substantive Due Process if Petitioner remains detained. His detention violates the due process protection against *punishment* for civil enforcement. Moreover, his continued detention in threat of his life violates his substantive interest in right to life.

29. First, his continued detention violates his right to be free from punishment because of the pain he is experiencing and because the purpose of the detention and removal may be an effort to silence him. Under the Fifth Amendment Due Process Clause, a civil detainee, including noncitizens in immigrant detention, may not be subjected to punishment. *Bell v. Wolfish*, 441 U.S. 520, 536–37 (1979). Punishment occurs either when a restriction is accompanied by an express intent to punish or when there is "an alternative purpose to which [the restriction or condition] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." *Id.* at 538 (quotation omitted).

30. Civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896). Civil detention is also punitive if it becomes a

"'mechanism for retribution or general deterrence.'" *Mohad-Rumbos*, 2026 WL 911414, at *10 (W.D. Tex. March 20, 2026) (*citing Kansas v. Crane*, 534 U.S. 407, 412 (2002)).

31. Here, the circumstances of Petitioner's detention, including his detention while a bullet remains lodged in his body and while he requires medical care, support a finding that the detention is punitive. *See Medina-Gutierrez v. Director, S. Tex. Immigr. Processing Ctr.*, 2026 WL 1611972, at *9, n. 8 (W.D. Tex. June 3, 2026) (*citing Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004)) (discussing how the harshness of treatment of a detainee gives rise to a substantive due process claim). Moreover, ICE's apparent effort to remove Petitioner, who is both a victim and a witness to the shooting involving a federal officer, raises serious concerns that his removal would function as a form of retribution and frustrate his ability to pursue statutory relief. This Court has the authority to prevent that irreparable harm.

32. In addition, Petitioner faces an ongoing threat to his life. This is a well-documented substantive right to life, both in our nation's history and binding case law. *See, e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 856 (1998) (Kennedy, J., concurring) (the interest in one's life is "protected by the text of the [Due Process Clause]"); *Ford v. Wainwright*, 477 U.S. 399, 409 (1986) (acknowledging a "fundamental right to life"); *Tennessee v. Garner*, 471 U.S. 1, 9 (1985) (acknowledging a "suspect's fundamental interest in his own life"); *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938) (acknowledging the right to life as a "fundamental human right[]"); *United States v. Cruikshank*, 92 U.S. 542, 553-54 (1875) (acknowledging the right to life as a "fundamental right[] which belong [s] to every citizen as a member of society"); *see also Furman v. Georgia*, 408 U.S. 238, 290 (1972) (Brennan, J., concurring); S*crews v. United States*, 325 U.S. 91, 133 (1945) (Rutledge, J., concurring).

33. Petitioner requires potential surgery, medical assistance, and time to recover from his injuries. Instead, Respondents have detained him while he continues to experience severe pain and have allegedly

denied him adequate medical care. At the same time, Respondents seek to remove him before he has a meaningful opportunity to report the shooting, cooperate with law enforcement, and pursue U nonimmigrant status. Petitioner's ongoing medical condition and the imminent threat of removal present an immediate and irreparable risk of harm. This Court has the authority to intervene to protect Petitioner's health, preserve his access to statutory relief, and prevent his removal before his claims can be meaningfully adjudicated.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

a. Assume jurisdiction over this matter and issue a writ of habeas corpus;

b. Stay Petitioner's removal from the United States for a reasonable period sufficient to permit him to seek a law-enforcement certification and to investigate and potentially file and have adjudicated a bona fide petition for U nonimmigrant status, or until further order of the Court;

c. Order Petitioner's immediate release from ICE custody, to preserve his opportunity to seek the relief Congress has created and prevent the erroneous deprivation of that opportunity before his claims can be adjudicated.

d. Enjoin Respondents from transferring Petitioner outside this District without prior written notice to counsel and the Court;

e. Order that Petitioner be permitted confidential access to counsel to prepare his U nonimmigrant petition;

f. Award costs and reasonable attorney's fees as permitted by law; and

g. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Kristin Etter
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner Wilber Rafael Garces Perez because Petitioner's current detention makes it impracticable for him to submit one on his own behalf. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

/s/ Kristin Etter
Kristin Etter