JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Floresmilda Miranda Fuentes

(b) County of Residence of First Listed Plaintiff Washington
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Marandas Garcia Law Group LLC, 16771 Boones Ferry Rd., Ste. 100, Lake Oswego, OR 97035. 503-607-0444

DEFENDANTS

Drew Bostock et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

U.S. Attorney Natalie K. Wight
U.S. Attorney General James R. McHenry III

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [x] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [x] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 2241, 2243

Brief description of cause:
Petition for Writ of Habeas Corpus

VII. REQUESTED IN COMPLAINT:

- [ ] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE
02/04/2025

SIGNATURE OF ATTORNEY OF RECORD
s/ John J. Marandas

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JOHN J. MARANDAS, OSB #973227
john@law-mg.com
CAROLINE K. MEDEIROS, OSB #100493
caroline@law-mg.com
MARANDAS GARCIA LAW GROUP LLC
16771 Boones Ferry Road, Suite 100
Lake Oswego, OR 97035
Office: (503) 607-0444
Mobile: (503) 341-1772

TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

Floresmilda MIRANDA FUENTES,

Petitioner,

v.

DREW BOSTOCK, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"), CALEB VITELLO, Acting Director of Immigration Customs Enforcement ("ICE"), U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"), U.S. DEPARTMENT OF HOMELAND SECURITY, and JAMES R. MCHENRY III, Attorney General of the United States.

Respondents.

Case No.

Agency No. A200-566-670

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Approximately 15 years ago, Petitioner Floresmilda Miranda Fuentes fled religious and gender-based violence in Guatemala and came to the United States seeking safety and protection. Briefly detained and then released by Respondents, Ms. Miranda has complied ever since with all orders, instructions, and rules required of her.

2. Respondents now seek to detain Ms. Miranda, transfer her away from the district of her family and community, and deport her. Respondents do so based not on her personal circumstances or facts, but on Respondents' interpretation of President Trump's whim. Not only is it unlawful to detain and deport Ms. Miranda without providing her due process of law and an individualized custody determination, but the Respondents also seek to do so in contradiction of their own directives and Ms. Miranda's special bona fide determination that she is a "victim of qualifying criminal activity" eligible for U-nonimmigrant status.

3. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Ms. Miranda asks this Court to find that Respondents' attempts to detain, transfer, and deport her are arbitrary and capricious and in violation of the law, and to issue an order preventing her detention, transfer out of this district, and deportation.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

5. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner resides within this judicial district, where she is subject to Respondents' post-removal order reporting requirements and therefore is in their constructive custody. Venue is further proper because a substantial part of the events or omissions giving rise to her claims occurred in this District, where Petitioner reports to Defendant U.S. Immigration and Customs Enforcement in order to comply with her Order of Supervision. 28 U.S.C. § 1391(e).

8. For these same reasons, divisional venue is proper under Local Rule 3-2.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. (emphasis added).

10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

11. Petitioner is "in custody" for the purpose of § 2241 because she is subject to Respondents' post-removal order reporting requirements. "[T]he Supreme Court has repeatedly held that the in-custody requirement [of 28 U.S.C. § 2241] is met where the Government restricts a petitioner's freedom of action or movement," including through an immigration order of supervision. *See Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), *citing Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see also, e.g., Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez v. Holder*, 454 F. App'x 769, 772-72 (11th Cir. 2011) (same). Moreover, the Ninth Circuit has held that a person subject to a final removal order, as Petitioner is here, is "in custody" for the purposes of the habeas statute. *See Veltmann-Barragan v. Holder*, 717 F.3d 1086, 1088 (9th Cir. 2013) (quoting *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995)); *see also, e.g., Rosales v. Bureau of Immigr. And Customs Enf't*, 426 F.3d 733, 735 (5th Cir. 2005).

PARTIES

12. Floresmilda Miranda Fuentes ("Petitioner") is the recipient of a bona fide determination of U-nonimmigrant status. She is a resident of Tigard, Oregon, and is present within the state of Oregon as of the time of the filing of this petition. She is subject to an Order of Supervision and thus she is in the constructive custody, and under the direct control, of Respondents and their agents. She is currently under the threat of deportation based on the 2018 removal order.

13. Respondent Drew Bostock is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-

citizens. The Seattle Field Office's area of responsibility includes Alaska, Oregon, and Washington. Respondent Bostock is a legal custodian of Petitioner.

14. Respondent Caleb Vitello is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Vitello is a legal custodian of Petitioner.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner.

16. Respondent James R. McHenry III is the Attorney General of the United States, and as such has authority over the Department of Justice, which includes the Executive Office for Immigration Review ("EOIR"). EOIR includes, among other components, the immigration courts located in various offices throughout the United States.

17. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

18. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

19. This action is commenced against all Respondents in their official capacities.

20. The validity of Petitioner's prior removal order is not currently the subject of any judicial proceeding.

LEGAL FRAMEWORK

The U-Visa Program

21. On October 28, 2000, Congress created the U Visa program. *See* Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA), Pub. L. No. 106-386, Title V, § 1513, 114 Stat. 1464, 1533 (2000); Immigration and Nationality Act (INA) § 101(a)(15)(U).

22. Concerned that "[i]mmigrant women and children are often targeted to be victims of crimes committed against them in the United States" and that "[a]ll women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes[,]" Congress acted to establish the U Visa program in order to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" certain serious crimes "while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." *See* VTVPA § 1513(a), 114 Stat. 1533.

23. The U Visa program creates a mechanism for noncitizen victims of serious crime to safely engage law enforcement and, likewise, for law enforcement to engage immigrant communities to deter, prevent, and prosecute criminal activity for the betterment of United States.

24. The U Visa was created to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. By providing victims of crime with an avenue for regularization of their immigrant status, the U Visa encourages victims to work and cooperate with law enforcement agencies. Congress also aimed to strengthen relations between law enforcement and immigrant communities by

increasing cooperation and removing some of the fear of deportation held by many undocumented migrants. *See, e.g.*, *U and T Visa Law Enforcement Resource Guide*, DEPARTMENT OF HOMELAND SECURITY (January 4, 2016) https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

25. A noncitizen is eligible for status under the U Visa program if (1) she suffered substantial physical or mental abuse as a result of having been a victim of one of the enumerated crimes; (2) she possesses or possessed information concerning the criminal activity; (3) she has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and (4) the criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States. *See* INA § 101(a)(15)(U).

26. Certain qualifying family members are eligible for derivative U visas based on their relationship to the principal petitioner. Where the principal petitioner is under 21 years of age, parents are eligible to apply for derivative U nonimmigrant status. *See* USCIS, *Victims of Criminal Activity: U Nonimmigrant Status* (last reviewed/updated Jan. 24, 2025), available at https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status.

27. The administrative processing to accord U nonimmigrant status to eligible petitioners and derivatives is tightly prescribed and regulated.

28. First, a petitioner must obtain a certification from a law enforcement official that she was the victim of a crime, the crime is a recognized crime under the U Visa program, and

that she was, is or likely to be helpful in the investigation, or prosecution of the criminal activity. The USCIS has prescribed that law enforcement officials make this certification on a particular form, USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification. *See* 8 C.F.R. § 214.14(a)(12).

29. Second, on submission, the USCIS makes a completeness check to verify that all required initial evidence is present. The petition must include Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement B, U Nonimmigrant Status Certification; Form I-192, Application for Advance Permission to Enter as Nonimmigrant, if there are any inadmissibility issues; a personal statement describing the criminal activity of which the applicant was a victim; and evidence to establish each eligibility requirement.

30. Third, USCIS either adjudicates the petition by granting U-nonimmigrant status or, in most cases, places the petitioner on the wait-list status for an adjudication. *See* 8 C.F.R. § 214.14(d)(2). A statutory cap limits the grant of U Visas to 10,000 per fiscal year. INA § 214(p)(2)(A). *See* INA § 214(p)(2)(A); 8 C.F.R. § 214.14(d)(1). The statutory cap only applies to principal applicants and does not apply to derivative applicants. INA § 214(p)(2)(B). A wait list was created by regulation to provide deferred action to an eligible petitioner whenever the statutory cap is reached within a given fiscal year. *See* New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53027 (Sept. 29, 1995) (codified at 8 C.F.R. § 214.14(d)(2)).

31. Recognizing the long wait times for eligible applicants, USCIS established a bona fide screening process for U visa petitioners. Congress granted USCIS the authority to grant work authorization for petitioners with pending, bona fide applications. INA § 214(p)(6) ("The

Secretary may grant work authorization to any [non-citizen] who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U)").

32. A bona fide application means an application where there appears to be no instance of fraud in the application, the application is complete, properly filed, contains an LEA endorsement, includes completed fingerprint and background checks, and presents *prima facie* evidence to show eligibility for U nonimmigrant status. *See, e.g.*, 8 C.F.R. § 214.11(k) (defining "bona fide" for related statutory nonimmigrant program).

33. For a qualifying family member to receive a bona fide determination, the principal petitioner must have received a bona fide determination, the qualifying family member's application must be complete, the family member must demonstrate credible evidence of the qualifying family relationship, and the family member must have completed background and security checks. *See* USCIS, *National Engagement – U Visa and Bona Fide Determination Process – Frequently Asked Questions* (last reviewed/updated Jan. 24, 2025), *available at* https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions.

Removal Protections for U-Visa Applicants

34. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be removed from the United States. Among these are removal proceedings, described in section 240 of the INA. *See* 8 U.S.C. § 1229a.

35. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

36. On December 2, 2021, ICE issued ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims.* Consistent with the statutory provisions

establishing the U Visa program, ICE Directive 11005.3 directs that "applying a victim-centered approach minimizes any chilling effect that civil immigration enforcement actions may have on the willingness and ability of noncitizen crime victims to contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek benefits."

37. Under ICE Directive 11005.3, "[e]xcept where exceptional circumstances exist, or if USCIS has administratively closed a case for failure of the applicant to prosecute the application, a noncitizen with a pending victim-based application or petition who is subject to an administratively final removal order should generally be issued a stay of removal."

38. As of at least the filing of this petition, ICE Directive 11005.3 appears on ICE's website and appears to be in force. *See* ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021), https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf (last accessed Feb. 4, 2025). *See also* U.S. Immigration and Customs Enforcement, *Using a Victim-Centered Approach with Alien Crime Victims, Questions and Answers* (Aug. 8, 2023), https://www.ice.gov/factsheets/using-victim-centered-approach-with-victims (referencing Directive 11005.3 as the agency's "updated policy") (last accessed Feb. 4, 2025).

Custody Protections for U-Visa Applicants

39. Immigration officers may arrest an individual without a warrant if they have reason to believe that that noncitizen is in the United States in violation of the immigration laws and is likely to escape before they can obtain a warrant. 8 U.S.C. § 1357(a)(2). Where an immigration officer makes such an arrest, the noncitizen must "be taken without unnecessary delay for examination before an officer of the Service having authority to examine [noncitizens] as to their right to enter or remain in the United States." *Id.*

40. Within 48 hours of an immigration arrest (or within a reasonable time in the case of emergency or extraordinary circumstances), an immigration official must make an initial custody determination to decide whether the noncitizen should remain in custody or be released. 8 C.F.R. § 287.3(d). This decision is recorded in the Form I-286, "Notice of Custody Determination." These procedures are essential to protect the arrested person's Fourth Amendment rights. *See Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 824 (9th Cir. 2020) (holding that individuals arrested and placed in immigration detention are constitutionally entitled to a prompt probable cause determination by a neutral officer to justify their continued detention).

41. In making a case-by-case custody determination, ICE agents must consider a number of individual factors, including a noncitizen's status as a victim of crime.

42. ICE Directive 11005.3 establishes that "absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits."

FACTUAL BACKGROUND

43. Petitioner is a citizen of Guatemala. She last entered the United States on December 19, 2010.

44. Petitioner applied for asylum, withholding, and relief under the Convention Against Torture ("CAT") on October 3, 2011. An Immigration Judge (IJ) found Petitioner to be credible but denied her applications for relief.

45. Petitioner timely appealed the IJ's decision to the Board of Immigration Appeals ("BIA") and then the U.S. Court of Appeals for the Fifth Circuit. Her Petition for Review was denied by the Fifth Circuit on April 21, 2021, and the mandate issued on June 14, 2021.

46. The validity of Petitioner's prior removal order is not currently the subject of any judicial proceeding. However, Petitioner filed an emergency motion to reopen and terminate removal proceedings and an emergency motion to stay removal with the BIA on February 3, 2025. Neither motion has been granted as of the time of the filing of this petition. A pending emergency stay request with the BIA will not prevent Petitioner's detention or removal. *See* U.S. Dep't of Justice, *Fact Sheet: BIA Emergency Stay Requests* (March 2018), https://www.justice.gov/eoir/page/file/1043831/dl?inline. Issuance of a stay of removal by the BIA is extremely rare.

47. In May of 2020, Petitioner' daughter, then under the age of 21, was a victim of a serious qualifying crime at her home in Tigard, Oregon. *See* 8 C.F.R. § 214.14(a)(9). The perpetrator was arrested by the King City Police Department and charges were filed with the Circuit Court for the State of Oregon in Washington County. The case was set for trial, but the defendant failed to appear at a hearing and now there is a warrant out for his arrest.

48. On December 23, 2021, Petitioner and her daughter concurrently filed forms I-918 (principal petitioner) and I-918A (derivative petitioner) respectively, requesting a grant of U nonimmigrant status. If approved, the validity period in U visa status is four years. After an individual has held U visa status for three years, the individual may apply for adjustment of status to that of a U.S. lawful permanent resident.

49. On November 26, 2024, U.S. Citizenship and Immigration Services (USCIS) determined that "the evidence demonstrates [that Petitioner's] Form I-918, Supplement A

petition for U nonimmigrant status is bona fide, and that they warrant a favorable exercise of discretion to receive employment authorization and deferred action." This bona fide determination notice provides that "[d]eferred action is an act of administrative convenience to the government which gives some cases lower priority for removal." *See* 8 U.S.C. § 1184(p)6) (describing bona fide status). This Bona Fide Determination (BFD) notice confirms the case is bona fide and USCIS has received the results of background and security checks.

50. Petitioner is *prima facie* eligible for U-nonimmigrant status, as a derivative of her daughter's U visa petition. The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Petitioner was included as a derivative applicant in her daughter's U visa application, which was filed before her daughter turned 21.

51. Petitioner lives in Tigard, Oregon with her husband, her daughter, who was the victim of the qualifying crime, her daughter's husband, and their daughter. Petitioner's 20-year old son is a U.S.-born citizen. Petitioner's husband is ill and she has four U.S.-citizen grandchildren who all depend on her financial, emotional, and spiritual support.

52. Petitioner does not have any arrests or convictions. She continues to be a faithful member of her Jehovah's Witnesses church and a productive member of her community.

53. Petitioner has a valid employment authorization document (EAD) issued by U.S. Citizenship and Immigration Service. She works as a caretaker for the elderly and is well-liked by residents and coworkers. She has recently been required to take on additional responsibilities at her work due to the lack of qualified employees at her job. She is a compassionate and caring

individual who helps others; she has no criminal record and poses no safety risk to the community.

54. Respondent ICE placed Petitioner on an Order of Supervision on December 23, 2019 because she was not a flight risk or danger to the community. She has been in compliance with all conditions of the Order of Supervision, including reporting in person approximately every six (6) months at the ICE office in Portland, Oregon.

55. Petitioner surrendered her Guatemalan passport to ICE and has filed six I-246 applications for a stay of removal to ICE. Each stay request has been granted by Respondents. The last I-246 stay request was granted on November 20, 2024 and is valid through November 3, 2025.

56. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing the most formal framework for mass deportation proposed to date. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures "that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal."

57. On January 31, 2025, ICE Acting Director Caleb Vitello issued an internal e-mail to all ICE Employees entitled "Issuance of Interim Policy Guidance Regarding Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based

Immigration Benefits." The e-mail cites the Executive Order entitled "Protecting the American People Against Invasion" and purports to rescind ICE Directive 11005.3, which affords prosecutorial discretion for victims of crimes with a pending U visa. Nevertheless, ICE Directive 11005.3 remains on the agency's website and would appear to be in force. *See* https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf (last accessed February 4, 2025).

58. On information and belief, Respondents have adopted a blanket policy to detain and immediately remove individuals, irrespective of any protected victim status.

59. On information and belief, Respondents have adopted a blanket policy to detain and immediately remove individuals who have administratively final orders of removal yet have lawful pathways or status in the United States.

60. Petitioner has a final order of removal. Based on information and belief, the Respondents consider Petitioner to be a categorical target for detention and removal, notwithstanding her bona fide pending application for U nonimmigrant status, issuance of deferred action as a bona fide U nonimmigrant petitioner, the prior issuance of an I-246 stay, and any other particularized facts.

61. On Wednesday, February 5, 2025, Petitioner must report to U.S. Immigration and Customs Enforcement to comply with her Order of Supervision. On information and belief, Respondents will apply their blanket, categorical policy to her, revoke her I-246 stay, disregard her grant of deferred action based on her particular circumstances, disregard her bona fide pending application for U-nonimmigrant status, take her into physical custody, remove her from the district, and transfer her to the ICE Northwest Processing Center in Tacoma, Washington to then remove her.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Arbitrary & Capricious
Violation of Agency Directive 11005.13

62. Petitioner restates and realleges all paragraphs as if fully set forth here.

63. Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A).

64. An action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

65. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

66. By deciding to detain, transfer, and deport Petitioner despite her status as a bona fide applicant for a victim-based immigration benefit and her existing stay of removal, Respondents violated the APA. Respondents' own directive, ICE Directive 11005.3, establishes that "absent exceptional circumstances, [the agency] will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits."

67. By choosing to categorically detain, transfer, and deport the Respondent, a known beneficiary of a victim-based immigration benefit, Respondents act arbitrarily and capriciously in violation of the APA. There have been no changes to the facts that create "exceptional

circumstances" to justify her removal; in fact, Petitioner has already been granted several stays of removal by Respondents, showing that they do not consider her to be a danger to the community or a priority for removal.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Arbitrary & Capricious
Unlawful Revocation of Agency Directive 11005.13

68. Petitioner restates and realleges all paragraphs as if fully set forth here.

69. Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). Courts may provide judicial review of "executive agency action for procedural correctness." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009). An agency must provide "reasoned explanation for its action" and "may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *Id.* at 515.

70. Here, if ICE Directive 11005.13 has indeed been rescinded, the agency's decision to do so is arbitrary and capricious and the rescission cannot be applied to Petitioner. ICE Directive 11005.13's respect for noncitizen crime victims rests on solid policy reasoning, including the strong legal protections laid out by Congress and the need to "encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status," which in turn "strengthens" the possible law enforcement response to criminal activity. *See* ICE Directive 11005.13(1). The email to ICE employees attempting to rescind the guidance does not even purport to provide a "reasoned explanation" for abandoning this strategy. Because the purported rescission of the directive is arbitrary and capricious, it would violate the APA to rely on such rescission to justify Petitioner's detention and removal.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

71. The allegations in the above paragraphs are realleged and incorporated herein.

72. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *accord Flores*, 507 U.S. at 306.

73. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

74. Here, Petitioner reasonably believes Respondents will detain and deport her in an arbitrary manner and not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process. Respondents have granted Petitioner several stays of removal, including one that is in force until November 3, 2025; moreover, U.S. Citizenship and Immigration Services has issued a Bona Fide Determination Notice confirming that her U Visa application is bona fide; that she merits a favorable exercise of discretion; and that she should be considered a low priority for removal. Detaining and removing Petitioner when no circumstances have changed to make her a flight risk or a danger to the community would violate due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to:

a. Release Petitioner from custody;

b. Not transfer Petitioner from the district without the court's approval;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Dated: February 4, 2025.

/s/ John J. Marandas

JOHN J. MARANDAS, OSB #973227
john@law-mg.com
CAROLINE K. MEDEIROS, OSB #100493
caroline@law-mg.com
MARANDAS GARCIA LAW GROUP LLC
16771 Boones Ferry Road, Suite 100
Lake Oswego, OR 97035
Office: (503) 607-0444
Mobile: (503) 341-1772

TESS HELLGREN, OSB # 191622
tess@innovationlawlab.org
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner