UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

JOSE MADRID LEIVA Petitioner, v. JACOB WELSH, as Chase County, KS Sheriff and Warden of Chase County Jail; ERIK TESCHNER Assistant Director, of Kanas City Field Office, Immigration and Custom's Enforcement, and, KRISTI NOEM Secretary of Homeland Security; Respondents,	) Case Number 25-3075-JWL) **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE**) **ORAL ARGUMENT REQUESTED**

Petitioner, Jose Madrid Leiva, through his undersigned counsel, alleges as follows:

I. INTRODUCTION

1. Petitioner is in custody despite having done everything that was required of him. He filed his applications, he paid his fees, he disclosed any derogatory information, and he waited for United States Citizenship and Immigration Services ("USCIS") to make a decision on his case. After they favorably granted him deferred action, Petitioner applied for work authorization pursuant to USCIS's instructions. (See attached Exhibit A; BFD determination, I-765 filing).

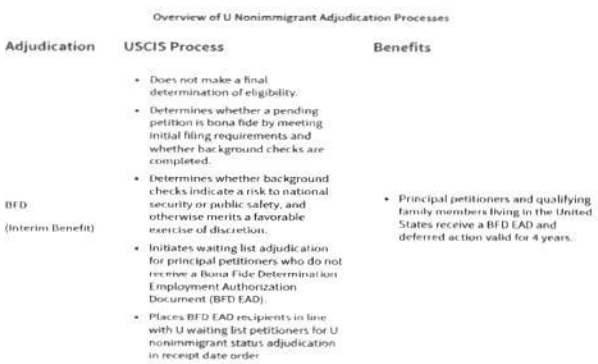
2. Despite being a part of the same agency as USCIS, namely the Department of Homeland Security ("DHS"), Immigration and Custom's Enforcement ("ICE") now wishes to ignore USCIS' determination, ignore the statute, ignore the regulations, and ignore Congressional mandates to hold in custody, and then deport, someone who is not subject to being detained at all-let alone subject to removal. Such actions are

unlawful and unconstitutional. (See attached Exhibit B; Email from ICE)

3. This action seeks habeas, declaratory, and injunctive relief to find that Respondents' actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. ICE has acted impermissibly and unlawfully when they arrested and detained Petitioner contrary to his validly issued Bona Fide Determination (BFD) deferred action grant. Petitioner is not removable from the United States and Defendants detention of him is in violation of law.

4. The plain language of the regulations, and even USCIS's own website make clear that the holder of a BFD is entitled to certain protections, including protections from removal and work authorization consistent with their deferred status. *See* 8 CFR 214.14(e); 8 CFR 274a.12(c)(14) ("Except as provided for in paragraph (c)(33) of this section, *an alien who has been granted deferred action*, an act of administrative convenience to the government that gives some cases lower priority, if the alien establishes an economic necessity for employment.") (emphasis added).

5. USCIS also makes clear what benefit a BFD conveys:



Overview of U Nonimmigrant Adjudication Processes

Adjudication	USCIS Process	Benefits
BFD (Interim Benefit)	• Does not make a final determination of eligibility. • Determines whether a pending petition is bona fide by meeting initial filing requirements and whether background checks are completed. • Determines whether background checks indicate a risk to national security or public safety, and otherwise merits a favorable exercise of discretion. • Initiates waiting list adjudication for principal petitioners who do not receive a Bona Fide Determination Employment Authorization Document (BFD EAD). • Places BFD EAD recipients in line with U waiting list petitioners for U nonimmigrant status adjudication in receipt date order	• Principal petitioners and qualifying family members living in the United States receive a BFD EAD and deferred action valid for 4 years.

https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-4

6. Petitioner, by virtue of the BFD, is a recipient of deferred action protections. Respondent's failure to recognize this grant and instead unlawfully detain him and

further threaten to remove him is contrary to law. Petitioners seek immediate relief to prevent harm that flows from his unlawful detention.

II. JURISDICTION

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

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

9. 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., the Administrative Procedure Act, 5 U.S.C. § 701, et seq, and the All Writs Act, 28 U.S.C. § 1651.

10. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA § 242. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242 does not bar a claim challenging agency authority that does not implicate discretion). Generally, a narrower construction of jurisdiction-stripping provision is favored over the broader one, as reflected by the "familiar principle of statutory construction: the presumption favoring judicial review of administrative action." *Kucana v. Holder*, 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent "clear and convincing evidence" of congressional intent specifically to eliminate review of certain administrative actions, the above-cited principles of statutory construction support a narrow reading of the jurisdiction-stripping language of 8 U.S.C. § 1252(a)(2)(B)(ii). *Id.*, at 251-252. *See also, Geneme v. Holder*, 935 F.Supp.2d 184, 192 (D.D.C. 2013) (discussing *Kucana's* citation to a presumption favoring judicial review of administrative action when the

statute does not specify discretion.)

11. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that "a petition for review filed with an appropriate court of appeals in accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act[.]" As the present action is not an action to review a removal order but an action challenging the unlawful conduct of DHS in unlawfully arresting, and detaining Petitioner contrary to his grant of deferred action under the U visa Program, this Court retains original jurisdiction under the APA and 28 U.S.C. § 1331, as well as for declaratory relief under 28 U.S.C. § 2201.

III. VENUE

12. Venue is proper because Petitioner is detained at Chase County Jail in Cottonwood Falls, Kansas which is within the jurisdiction of this District.

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO SHOW CAUSE

14. 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 order to show cause 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).

15. 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).

16. Pursuant to 28 U.S.C. § 2243, Petitioner, Jose Madrid Leiva ("Petitioner or Mr. Madrid Leiva") respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

17. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Kansas City Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

V. PARTIES

18. Petitioner is currently detained in Chase County, Kansas County Jail. He was arrested and detained on April 22, 2025, after Missouri Highway Patrol conducted a "vehicle check" and subsequently called Immigration and Custom's Enforcement. He is currently a holder of a valid Bona Fide Determination ("BFD") issued by the United States Citizenship and Immigration Services ("USCIS") on February 18, 2025. In compliance with the regulations, after receiving his BFD, Petitioner timely filed his employment authorization document with USCIS on April 9, 2025.

19. Respondent Jacob Welsh is the Chase County, KS Sheriff and Warden of Chase County Jail. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Welch is the legal custodian of Petitioner.

20. Respondent Erik Teschner is the Assistant Field Office Director of the Kanas City Field Office, Immigration and Custom's Enforcement, Respondent Teschner is a legal custodian of Petitioner and has authority to release him.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner.

VI. LEGAL BACKGROUND

22. On October 28, 2020, Congress created a new nonimmigrant visa classification, referred to as a U visa, through the passage of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). See Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533 (codified at 8 U.S.C. § 1101(a)(15)(U)). The nonimmigrant U Visa allows undocumented non-citizens who were victims of qualifying crimes and who assisted in the detection, investigation, or prosecution of the qualifying criminal activity to apply for and receive a nonimmigrant visa. 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14(a)(5). Upon issuance, the U Visa provides non-citizens with up to 4 years of non-immigrant status and work authorization. *See* 8 U.S.C. § 1184(p)(6). Moreover, upon residing in the United States in U nonimmigrant status continuously for three

years, non-citizens may apply for permanent residency. *See* 8 U.S.C. § 1255(m).

23. In creating the U Visa program, Congress sought to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" certain serious crimes "while offering protection to victims of such offenses and keeping with the humanitarian interests of the United States." *See* VTVPA Pub. L. No. 106-386, Title V § 1513(a), 114 Stat. 1464, 1533. By providing victims of crime with an avenue for gaining lawful immigration status, the U visa encourages victims to cooperate with law enforcement agencies, thus strengthening relations between law enforcement and immigrant communities.

24. Individuals are eligible for U nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the United States or its territories or possessions; (2) have suffered substantial physical or mental abuse as a result; and (3) have been helpful to law enforcement in the detection, investigation, or prosecution of such criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U).

25. Under INA § 212(d)(14), U nonimmigrant applicants may apply for a waiver *of any inadmissibility ground except those in INA § 212(a)(3)(E)*, which include specifically participants in Nazi persecutions, genocide, torture, or extrajudicial killing. This inadmissibility waiver for potential U nonimmigrants is very generous and does not apply in most other immigration petitions and applications. Moreover, The INA authorizes USCIS to grant an inadmissibility waiver for U nonimmigrants when a waiver would be in the "public or national interest." Put another way, in granting any relief under the U visa program, USCIS makes certain findings to ensure that relief under this humanitarian form of relief is merited at all stages.

26. To apply for a U visa, a petitioner must file with USCIS a Form I-918, Petition for U

nonimmigrant status; Form I-918, Supplement B, a certification from a recognized law enforcement official confirming that the non-citizen has cooperated in the investigation or prosecution of criminal activity; and a sign statement by the petitioner describing the facts of the victimization. The principal U visa petitioner may request that a qualifying family member, such as the petitioner's spouse, be included as a derivative applicant by filing a form I-918, Supplement A. In addition to the U visa applications, applicants must also submit a request for a waiver of any ground of inadmissibility using Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

27. By statute, USCIS may not grant more than 10,000 principal U visas in any given fiscal year. *See* 8 U.S.C. § 1184(p)(2)(A). The statutory cap only applies to principal applicants, not to derivative applicants. *See* 8 U.S.C. § 1182(p)(2)(B). This cap has been reached every year since at least 2010.

28. To address the issue of the backlogs, even the law provided two interim forms of relief: the Bona Fide Determinations, and the waitlist Petitioners and their qualifying members whom USCIS places in the either of these categories, who *are granted temporary protection from removal while their petitions are pending, in the form of either deferred action* if they are in the United States or parole if they are outside of the United States. *See* 8 C.F.R. § 214.14(d)(2) (*emphasis added*). Individuals placed on BFD or the wait list also may be granted employment authorization ("EAD"). *See* 8 C.F.R. § 214.14(d)(2).

29. Congress, on December 23, 2008, amended the immigration statute to provide these added protections in the context of the BFD by stating that the "Secretary [of DHS] may grant work authorization to any alien who has a pending, bona fide application

for [U] nonimmigrant status." 8 U.S.C. § 1184(p)(6), as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), P. L. 110-457, 122 Stat. 5044.

30. On June 14, 2021, USCIS announced that pursuant to 8 U.S.C. § 1184(p)(6) it would begin a more stream-lined process for issuing EADs to those victims who have pending U visa petitions, known as a "bona fide determination" or BFD. USCIS Policy Alert PA-2021-13. *See* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5.

31. The BFD was designed to allow USCIS to make determinations on eligibility, including any issues of inadmissibility that could not be waived. Inherent in such a determination, then, is the notion that those with a BFD are presumed to have met their burdens for eligibility, and for waivers of inadmissibility. This milestone grants deferred action and provides protection from removal while the application remains pending due to a lack of U visa availability because of the statutory cap.

32. USCIS interprets "bona fide" as part of its administrative authority to implement the statute as outlined below. Bona fide generally means "made in good faith; without fraud or deceit." Accordingly, when interpreting the statutory term within the context of U nonimmigrant status, USCIS determines whether a petition is bona fide based on the petitioner's compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS then considers any national security and public safety risks, as well as any other relevant considerations, as part of the discretionary adjudication. *See* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5

33. As a primary goal, USCIS seeks to adequately evaluate and adjudicate petitions as

efficiently as possible. The BFD process provides an opportunity for certain petitioners to receive BFD EADs and deferred action while their petitions are pending, consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA 2008). *Id.*

34. USCIS has itself recognized that the BFD process is designed for "[o]nly petitioners living in the United States to receive BFD EADs, since those outside the United States cannot as a practical matter work in the United States. Likewise, *deferred action can only be accorded to petitioners in the United States since those outside the United States have no potential removal to be deferred. Id.* (emphasis added).

35. Under the regulations, an individual who has been granted certain relief, whether permanent or interim relief is eligible to seek employment authorization. *See generally* 8 CFR § 274a.12. The regulations work in a linear way and not in the contorted way that Defendants suggest. Employment authorization is a permission that stems from the existence of certain criteria; it does not create the criteria itself. Indeed, the regulation is plainly captioned to read "Classes of aliens authorized to accept employment". In particular, with individuals like Petitioner, who have deferred action, their category to apply can be found at 8 CFR § 274.1.12(c)(14). The regulations plainly indicate to use this category for "an alien granted deferred action," not one who will be given such a grant at a future date. The BFD Notice of Action that is provided by USCIS specifically instructs individuals who are holding the grant to tender their employment authorization under the very section of the regulation which specifically relies on a grant of deferred action.

36. While USCIS could revoke or terminate a BFD grant, they cannot do so without proper notice and opportunity to be heard. While USCIS may have the right to

terminate deferred action, it must do so conforming with due process by providing proper notice and an opportunity to be heard-something that USCIS has not done in this case. *Cf.* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5

37. Respondents have indicated that the BFD document does not confer deferred action itself. This interpretation is arbitrary, capricious and contrary to the law because it disregards the plain language of the regulations.

38. The existence of a prior removal order is not a bar to either a U visa or a BFD grant. This is because the U visa program allows for the waiver of any ground of inadmissibility, including removals and re-entries. Furthermore, in order to be granted a BFD, USCIS would have to consider all inadmissibility grounds first. Finally, if USCIS has recognized that one benefit of a BFD grant is protection from removal, then the existence of a removal order would be contemplated in their policy. *See generally* USCIS Policy Manual Vol. 3, part C https://www.uscis.gov/policy-manual/volume-3-part-c

39. Even if ICE were to claim that they are proceeding with Petitioner's case under 8 USC 1231(a)(5), the law does not allow for reinstatement where, as here, Petitioner reentered the US after presenting himself at the border and being allowed to enter the US under a color of law by CBP officers. Put another way, an entry following inspection and admission is procedurally regular and, therefore, a legal entry. The plain language of the statute establishes that reinstatement applies *only* to noncitizens who return to the United States without authorization after having been removed under a prior order of deportation, exclusion, or removal. In this way, the plain language prohibits reinstatement where an individual's entry comports with all procedural regularity. *See Matter Areguillin*, 17 I & N Dec. 308 (BIA 1980). *Matter of*

Quilantan, 25 I & N 285 (BIA 2010).

40. Even still, the U visa program clearly contemplates that removal orders, of any kind, can be waived as part of the application process and are not a bar to either the grant of the U visa or a grant of a BFD because as a form of humanitarian relief, the waivers offer generous safe havens to ensure the intent of Congress is not thwarted especially where it has acted so strongly in protecting vulnerable noncitizens. *See* 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14, et al.

VII. STATEMENT OF FACTS

41. Petitioner, Mr. Madrid Leiva first entered the United States on November 12, 2003, without inspection. Six years later, on October 25, 2009, he was charged with DUI, Speeding, and transporting an open container in Municipal Court of Overland Park, Kansas. After successfully completing diversion, the matter was dismissed on January 21, 2011.

42. After his DUI arrest, Mr. Madrid Leiva was transferred to ICE custody and placed in removal proceedings. In proceedings, Mr. Madrid Leiva applied for relief from removal in the form of asylum.

43. On January 22, 2011, Mr. Madrid Leiva married a lawful permanent resident, Cindy Pinto Lopez. Despite the marriage on August 8, 2011, the immigration judge denied relief and ordered removal. Mr. Madrid Leiva timely appealed to the Board of Immigration Appeals.

44. Subsequently, on September 14, 2012, Ms. Pinto Lopez naturalized, and the couple quickly filed a family-based application to secure an immigrant visa for her husband. That visa application was approved on January 23, 2013. As luck would have it, just a few weeks later, in February 2013, the Board of Immigration Appeals would affirm

the Immigration Judge's decision and dismiss the appeal.

45. Not wanting to disregard the order, on February 14, 2013, Mr. Madrid Leiva surrendered himself to ICE. He was removed to Guatemala on March 7, 2013, and his wife and he continued to work to resolve his immigration issues in the US. They worked diligently, but time and distance took its toll until their marriage failed and the couple divorced in January 2016. Two weeks later, Mr. Madrid Leiva withdrew his application to immigrate to the US since the divorce rendered him ineligible.

46. For the next 3 years of so, Mr. Madrid Leiva remained in Guatemala. Until the same circumstances which led to him leaving in 2003, and were the basis for his asylum claim, began to cause issues again. Fearful for his and his family's safety, on March 06, 2019, Mr. Madrid Leva Jose appeared at US border in Wellton Station AZ. He was traveling with his son, B[redacted](2years old). The son was issued a Notice to Appear placed in removal proceedings. Mr. Leiva was allowed to enter the US as part of a family unity ("FAMU") along with his 2-year-old son B[redacted] The contact is confirmed by the FBI check for Mr. Madrid Leiva. (See Exhibit C; B[redacted] NTA and FBI report for Petitioner.)

47. On March 27, 2022, Mr. Madrid Leiva became a victim of felonious assault in Merriam, KS. He was robbed at gunpoint at a gas station while he was pumping gas. He reported the crime and cooperated with law enforcement. Subsequently, on November 25, 2022, he completed and filed all required forms, documents, and fees for a U nonimmigrant status. Included in his application were the waivers he needed to overcome the grounds of inadmissibility for his prior unlawful presence, and his prior removal order.

48. Thereafter, on February 9, 2023, Mr. Madrid Leiva appeared for immigration court as

required. The court, after reviewing the documents and evidence, realized that CBP had indeed issued deficient and flawed papers to Mr. Madrid Leiva so he severed his case and terminated his proceedings. For his family, the Court administratively closed proceedings to allow for the U visa applications to process.

49. Finally, on February 18, 2025, USCIS issued Mr. Madrid Leiva and his family notice of a favorable BFD finding. Consistent with law, and the deferred action determination, Mr. Madrid Leiva and his family completed applications for him to obtain work authorization and filed them with USCIS tendering the applicable fees. They did this on April 8, 2025.

50. On April 22, 2025, at about 10:00am, Mr. Madrid Leiva was pulled over by Missouri State Highway Patrol for a "vehicle inspection." Mr. Madrid Leiva was driving a trailer which pulls materials. While the encounter did not result in citations, the Trooper advised Mr. Madrid Leiva that a system check showed that there was a "ICE detainer" on him and thus, Mr. Madrid Leiva was subject to arrest and detention. The Trooper handcuffed Mr. Madrid Leiva and placed him in the back of his vehicle to wait for ICE Officers to arrive. He remained in the patrol car for about 30 minutes before ICE arrived on scene and took Mr. Madrid Leiva into ICE custody.

51. Mr. Madrid Leiva was transported to ICE officers near the Kansas City airport where he was asked to sign unknown documents; Mr. Madrid Leiva, unsure of what the documents were, declined to sign. He did advise ICE officers that he had a valid BFD from USCIS and had applied for his work authorization. Mr. Madrid Leiva currently remains in custody at the Chase County Jail in Cottonwood Falls, Kanas. (*See* attached Exhibit D; Chase County Jail records).

52. Mr. Madrid Leiva, a recipient of deferred action under the U visa program, is being

held in custody despite there being no legal basis for the detention. He falls squarely within the protections of the BFD and USCIS itself recognizes the benefit.

53. Mr. Madrid Leiva has complied in every way with his legal obligations and any conditions placed upon him by USCIS, the Immigration Court, and ICE. Now despite having all the protections afforded to him under law, Respondents continue to act unlawfully and in violation of Mr. Leiva's statutory, regulatory, and Constitutional rights.

54. Mr. Madrid Leiva is at risk of being wrongfully removed from the United States, and has been told he will be removed by Immigration officials.

VIII. CLAIMS FOR RELIEF

Count I - Violation of Fifth Amendment Rights to Due Process

55. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law.

56. The Petitioner, as a BFD recipient who has tendered and paid for his employment authorization document in conformance with USCIS procedures and upon their assurances that he was eligible to secure that document, has a liberty interest in being able to obtain the benefits he was granted. This protected liberty interest flowed from the statute and regulations which permitted Petitioner's BFD grant, and the actual grant of BFD to the Petitioner.

57. Petitioner has followed the legal requirements to obtain benefits under the U visa program and indeed has been granted them under the regulations. Defendants' efforts to now unilaterally and without due process strip him of those benefits is unlawful under the Fifth Amendment of the Constitution.

58. Petitioner has complied with each and every requirement USCIS and Defendants have imposed upon him. He has applied for U visa benefits and provided all requested information, including biometrics and fees. Despite each of these things, Defendants never alerted Petitioner to any issues or concerns at any point prior to their unlawful detention and threats to remove him and dissolve his BFD benefits unilaterally, without notice and without justification.

59. Defendants cannot effectuate *de facto* termination of his BFD, without proper procedures consistent with the Due Process clause. *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 n.8 (1954).

60. Procedural due process requires, in most cases, a hearing of some kind. *Mathews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902 (1976). The process due depends on three factors:

> [f]irst, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. 424 U.S. at 335, 96 S.Ct. at 903.

61. Petitioner has a fundamental liberty interest in the benefits he has obtained under his BFD grant.

62. The procedures employed by Defendants offered Petitioner no hearing, no notice, and no opportunity to be heard.

63. Defendants had multiple other means available to achieve its objective without denying the Petitioner procedural fairness.

64. The cost and administrative burden of adopting these alternate procedures would be

minimal, as the Respondent already possesses an entire agency dedicated to processing removal cases.

65. Instead, Respondents have acted with complete disregard to due process by unlawfully acting in a way to terminate his BFD and unlawfully detain him under a threat of removal. Such unlawful actions threaten Petitioner's interests in his interim benefits in the short term and his U visa filings in the long term

66. Given the Petitioner's rights and interests, the Government's interests, and the cost and availability of alternate means of protecting the Government's objectives, the procedures employed by the Government violated the Due Process clause of the Fifth Amendment.

Count II -Violation of 8 U.S.C. § 1101(a)(15)(U) and Implementing Regulations

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

68. Defendants' failure to recognize Petitioner's facially valid, and legally obtained BFD document and all the benefits it conveys is arbitrary, capricious, and contrary to law.

69. Only petitioners living in the United States may receive BFD EADs, since those outside the United States cannot as a practical matter work in the United States. Likewise, deferred action can only be accorded to petitioners in the United States since those outside the United States have no potential removal to be deferred. Defendants position to the contrary fails to comport with law and is therefore unlawful.

70. Respondent's detention of Petitioner despite his being afforded BFD protections is contrary to law as it violates violates 8 U.S.C. § 1101(a)(15)(U) and its implementing regulations.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court:

1. Assume jurisdiction over the matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within 3 days.
3. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the District of Kansas pending the resolution of this case;
4. Declare that Defendants' failure to recognize and give full weight to a lawfully issued BFD grant by USCIS is in violation of the APA and the INA;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); see also 8 C.F.R. § 214.14, et al.
6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
8. Grant any further relief this Court deems just and proper.

April 24, 2025

Respectfully Submitted,

s/Rekha Sharma-Crawford
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

s/Rekha Sharma-Crawford April 24, 2025
Rekha Sharma-Crawford