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5 **UNITED STATES DISTRICT COURT FOR**
6 **THE DISTRICT OF NEVADA**

7 CLAUDIA JERUSELY RODRIGUEZ
FUENTES,

8 Petitioner

9 vs.

10 REGGIE RADER, Henderson Police
11 Chief in charge of the Henderson
Detention Center; MICHAEL
12 BERNACKE, Immigration and Customs
Enforcement Field Director for Salt Lake
13 City, and KRISTI NOEM, Secretary of
Homeland Security,

14 Respondents

CASE NO.:

2:25-cv-000846-CDS-DJA

AMENDED

PETITION FOR A WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR AN
ORDER TO SHOW CAUSE

ORAL ARGUMENT
REQUESTED

15
16 COMES NOW, CLAUDIA JERUSELY RODRIGUEZ FUENTES, by and
17 through her attorney ANGELA MARIE GRAF, ESQ., who alleges as follows:

18 I. INTRODUCTION

19 1. Petitioner is in immigration custody even though she was admitted to,
20 and is currently in, U Nonimmigrant status. The granting of this status prevents

1 Immigration and Customs Enforcement (“ICE”) from reinstating a prior removal
2 order (which entails removing an individual from the United States without any
3 further hearing).

4 2. On April 17, 2021, in conjunction with Petitioner’s U visa applications,
5 the United States Citizenship and Immigration Services (“USCIS”) approved
6 Petitioner’s inadmissibility waiver under 8 U.S.C. 1182 § (d)(14) and waived both
7 grounds of inadmissibility under 8 U.S.C. §§ 1182(a)(9)(A) and 1182 (a)(9)(C).
8 *See* attached Exhibit A; I-918 Approval Notice.

9 3. Under the U Visa program, once an applicant has been in U visa status
10 for a period of three years, they are eligible to seek adjustment of status under 8
11 U.S.C. § 1255(m). This allows a nonimmigrant to obtain their lawful permanent
12 residence in the United States. It is done on Form I-485, Application to Register
13 Permanent Residence (“I-485”).

14 4. On April 12, 2021, Petitioner timely filed her I-485. *See* attached
15 Exhibit B; I-485 Receipt Notice. As stated on the receipt notice, Petitioner’s U
16 Nonimmigrant status was automatically extended upon filing of this application
17 and would remain valid through final adjudication of the application.

18 5. Despite being a part of the same agency as USCIS, namely the
19 Department of Homeland Security (“DHS”), ICE now wishes to ignore the waiver
20 of inadmissibility, the grant of U Nonimmigrant status, and the pending adjustment

1 of status application to hold in custody, and then remove without a hearing,
2 someone who is not subject to being detained and whose prior removal order
3 cannot be reinstated. *See* attached Exhibit C; Email from ICE and Form I-871.
4 Such actions are unlawful and unconstitutional.

5 6. This action seeks habeas, declaratory, and injunctive relief to find that
6 Respondents' actions were arbitrary, capricious, an abuse of discretion, or
7 otherwise not in accordance with law. ICE acted impermissibly and unlawfully
8 when they arrested and detained Petitioner contrary to her validly issued U
9 Nonimmigrant status. Petitioner is not subject to reinstatement of her prior removal
10 order and is not removable from the United States. Respondents' detention of her
11 is in violation of law.

12 7. The plain language of the statute and regulations make clear that a U
13 Nonimmigrant is entitled to certain protections, including waivers of
14 inadmissibility, cancellation of administrative orders of removal, protections from
15 removal, work authorization, and the ability to apply for lawful permanent
16 residency.

17 8. Petitioner, by virtue of her grant of U Nonimmigrant status, had her
18 prior removal waived and was legally admitted to the United States. Her waiver
19 and subsequent admission mean that she is not subject to reinstatement.
20 Furthermore, subjecting Petitioner to reinstatement after her admission would

1 imply the “doctrine of futility.” Respondent remains in U Nonimmigrant status and
2 has not committed a new violation that would make her removable under 8 U.S.C.
3 § 1227. Respondents’ failure to recognize this grant of status and instead
4 unlawfully detain Petitioner and further threaten to remove her without a hearing is
5 contrary to law. Petitioner seeks immediate relief to prevent harm that flows from
6 her unlawful detention.

7 II. JURISDICTION

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

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

14 11. This Court may grant relief under the habeas corpus statutes, 28
15 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the
16 Administrative Procedure Act, 5 U.S.C. § 701, et seq, and the All Writs Act, 28
17 U.S.C. § 1651.

18 12. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA §
19 242. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242
20 does not bar a claim challenging agency authority that does not implicate

1 discretion). Generally, a narrower construction of jurisdiction-stripping provision
2 is favored over the broader one, as reflected by the “familiar principle of statutory
3 construction: the presumption favoring judicial review of administrative action.”
4 *Kucana v. Holder*, 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent “clear
5 and convincing evidence” of congressional intent specifically to eliminate review
6 of certain administrative actions, the above-cited principles of statutory
7 construction support a narrow reading of the jurisdiction-stripping language of 8
8 U.S.C. § 1252(a)(2)(B)(ii). *Id.*, at 251-252. *See also*, *Geneme v. Holder*, 935
9 F.Supp.2d 184, 192 (D.D.C. 2013) (discussing *Kucana*’s citation to a presumption
10 favoring judicial review of administrative action when the statute does not specify
11 discretion.)

12 13. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that “a petition for
13 review filed with an appropriate court of appeals in accordance with this section,
14 shall be the sole and exclusive means for judicial review of an order of removal
15 entered or issued under any provision of this Act[.]” As the present action is not an
16 action to review a removal order but an action challenging the unlawful conduct of
17 DHS in unlawfully arresting, and detaining Petitioner contrary to her grant of U
18 Nonimmigrant status, this Court retains original jurisdiction under the APA and 28
19 U.S.C. § 1331, as well as for declaratory relief under 28 U.S.C. § 2201.

20 III. VENUE

1 14. Venue is proper because Petitioner is detained at Henderson Detention
2 Center, in Henderson, Nevada which is within the jurisdiction of this District.

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

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

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

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

19 18. Pursuant to 28 U.S.C. § 2243, Petitioner, Claudia Jerusely Rodriguez
20 Fuentes (“Petitioner or Ms. Rodriguez Fuentes”) respectfully requests that the

1 Court issue an order to all Respondents requiring them to show cause why the
2 Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and
3 Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl.
4 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the
5 Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act,
6 28 U.S.C. § 2201 should not be granted and why Respondents should not be
7 ordered to release Petitioner from detention.

8 19. Pending adjudication of these claims, Petitioner asks for an order
9 enjoining Respondents from transferring Petitioner from the jurisdiction of the Las
10 Vegas sub-Field Office of the Immigration & Customs Enforcement (“ICE”)
11 Office of Enforcement and Removal Operations (“ERO”) and this District.

12 V. PARTIES

13 20. Petitioner is currently detained in the Henderson Detention Center.
14 She was arrested and detained on April 19, 2025, after a traffic accident when the
15 Las Vegas Metropolitan Police Department called Immigration and Custom’s
16 Enforcement before she was released from police custody. She was thereafter
17 remanded to ICE custody on April 20, 2025 and remains at the Henderson
18 Detention Center. Petitioner was admitted as a U Nonimmigrant as of April 17,
19 2017, and continues in that status.

20 21. Respondent Reggie Rader is the Chief of the Henderson Police

1 Department, which controls the Henderson Detention Center. He has immediate
2 physical custody of Petitioner pursuant to the facility's contract with U.S.
3 Immigration and Customs Enforcement to detain noncitizens. Respondent Rader is
4 a legal custodian of Petitioner. Itzhak Henn was the Interim Chief of Police at the
5 time this petition was originally filed.

6 22. Respondent Michale Bernacke is the Field Office Director of the Salt
7 Lake City Field Office, Immigration and Custom's Enforcement. The Salt Lake
8 City Field Office controls the Las Vega sub-office. Respondent Bernacke is a legal
9 custodian of Petitioner and has authority to release her.

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

16 VI. LEGAL BACKGROUND

17 24. Grounds of inadmissibility (prohibiting a noncitizen from seeking
18 entry or admission) are found in 8 U.S.C. § 1182. Grounds of deportability
19 (removing a noncitizen who was previously admitted to the United States) are
20 found in 8 U.S.C. § 1227. Circumstances regarding reinstatement (in which the

1 government may “reinstate” a previously executive removal order) are found in 8
2 U.S.C. § 1231(a)(5). Individuals seeking immigrant or nonimmigrant status have
3 the burden to prove that they are admissible to the United States or otherwise
4 qualify for a waiver of inadmissibility. *See Lennon v. INS*, 527 F.2d 187 (2d Cir.
5 1975), *rev’g Matter of Lennon*, 15 I&N Dec. 9 (BIA 1974).

6 25. Since at least 1978, the Board of Immigration Appeals has held that
7 individuals who were deported (or ordered deported) on a ground under 8 U.S.C. §
8 1227 and are either admissible (or qualify for a waiver of inadmissibility) cannot
9 be denied admission and they cannot later be found deportable for the conduct that
10 occurred before their admission. (*See Matter of Rainford*, 20 I&N Dec 598 (BIA
11 1992) (finding that a noncitizen who was ordered deported on a criminal ground
12 was admissible to adjust his status to that of a lawful permanent resident and that
13 the violation may not serve as a ground of deportability if the applicant becomes a
14 lawful permanent resident); *Matter of Rafipour*, 16 I&N Dec 470 (BIA 1978)
15 (finding that adjustment of status cannot be denied based on a previous ground of
16 deportability unless there is an equivalent ground of exclusion, and that the acts
17 giving rise to deportability must occur after the admission).

18 26. Under 8 U.S.C. 1231(a)(5), a noncitizen is subject to reinstatement of
19 removal if they have received a prior order of removal, have departed the United
20 States under that order, and have unlawfully reentered the United States without

1 authorization after their departure. If these conditions are met, the prior removal
2 order is reinstated and the individual is subject to removal without further process
3 or the opportunity to apply for relief. *Id.*

4 27. In *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 44 (2006), the
5 Supreme Court held that reinstatement was not unconstitutional in that it is not a
6 penalty but rather intended to stop an “indefinitely and continuing” violation. The
7 Ninth Circuit, following *Fernandez-Vargas*, clarified that reinstatement is meant to
8 stop the ongoing violation and prevent a windfall. *See Morales-Izquierdo vs.*
9 *Gonzales*, 486 F.3d 484 (9th Cir. 2007). They held that the Due Process Clause
10 could not be used to put a noncitizen inside the United States to in a better position
11 or afford them more rights than those who have followed the process and waited
12 for a lawful admission to the United States. *See id.*

13 28. On October 28, 2020, Congress created a new nonimmigrant visa
14 classification, referred to as U Nonimmigrant status or the “U Visa”, through the
15 passage of the Victims of Trafficking and Violence Protection Act of 2000
16 (VTVPA). *See* Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533
17 (codified at 8 U.S.C. § 1101(a)(15)(U)). U Nonimmigrant status allows
18 undocumented non-citizens who were victims of qualifying crimes and who
19 assisted in the detection, investigation, or prosecution of the qualifying criminal
20 activity to apply for and receive a nonimmigrant visa. 8 U.S.C. § 1101(a)(15)(U);

1 see also 8 C.F.R. § 214.14(a)(5). Upon issuance, the U Visa provides non-citizens
2 with up to 4 years of nonimmigrant status and work authorization. *See* 8 U.S.C. §
3 1184(p)(6). Moreover, upon residing in the United States in U Nonimmigrant
4 status continuously for three years, non-citizens may apply for permanent
5 residency. *See* 8 U.S.C. § 1255(m). U Nonimmigrant status is extended through the
6 pendency of the adjustment of status application. *See id.*

7 29. In creating the U Visa program, Congress sought to “strengthen the
8 ability of law enforcement agencies to detect, investigate, and prosecute” certain
9 serious crimes “while offering protection to victims of such offenses and keeping
10 with the humanitarian interests of the United States.” *See* VTVPA Pub. L. No. 106-
11 386, Title V § 1513(a), 114 Stat. 1464, 1533. By providing victims of crime with
12 an avenue for gaining lawful immigration status, the U Visa encourages victims to
13 cooperate with law enforcement agencies, thus strengthening relations between law
14 enforcement and immigrant communities.

15 30. Individuals are eligible for U Nonimmigrant status if they: (1) are the
16 victim of qualifying criminal activity that occurred in the United States or its
17 territories or possessions; (2) have suffered substantial physical or mental abuse as
18 a result; and (3) have been helpful to law enforcement in the detection,
19 investigation, or prosecution of such criminal activity. *See* 8 U.S.C. §
20 1101(a)(15)(U).

1 31. Under 8 U.S.C. § 1182(d)(14), petitioners for U Nonimmigrant status
2 may apply for a waiver of any inadmissibility ground except those in 8 U.S.C. §
3 1182(a)(3)(E), which include specifically participants in Nazi persecutions,
4 genocide, torture, or extrajudicial killing. This inadmissibility waiver for potential
5 U Nonimmigrants is very generous and does not apply in most other immigration
6 petitions and applications. Moreover, The Immigration and Nationality Act
7 (“INA”) authorizes USCIS to grant an inadmissibility waiver for U Nonimmigrants
8 when a waiver would be in the “public or national interest.” Put another way, in
9 granting any relief under the U visa program, USCIS makes certain findings to
10 ensure that relief under this humanitarian form of relief is merited at all stages.

11 32. To apply for U Nonimmigrant status, a petitioner must file with
12 USCIS a Form I-918, Petition for U Nonimmigrant status; Form I-918, Supplement
13 B, a certification from a recognized law enforcement official confirming that the
14 non-citizen has cooperated in the investigation or prosecution of criminal activity;
15 and a signed statement by the petitioner describing the facts of the victimization.
16 The principal U Visa petitioner may request that a qualifying family member, such
17 as the petitioner's spouse, be included as a derivative applicant by filing a form I-
18 918, Supplement A. In addition to the U Visa applications, applicants must also
19 submit a request for a waiver of any ground of inadmissibility using Form I-192,
20 Application for Advance Permission to Enter as a Nonimmigrant.

1 33. Upon a grant of U Nonimmigrant status, all benefits therein confer,
2 including waiver of 8 U.S.C. § 1182(a)(9)(C). Under 8 C.F.R. § 214.14(h), USCIS
3 may only revoke U Nonimmigrant status on notice, and for certain reasons. For
4 principal U Nonimmigrants, those reasons include withdrawal or disavowal of the
5 law enforcement agency certification that formed the basis of the petition, approval
6 of the petition in error, or a finding of fraud in the petition. See 8 C.F.R. §
7 214.14(h)(2)(i). The notice of revocation must also be in writing and contain the
8 grounds for revocation. 8 C.F.R. § 214.14(h)(2)(ii).

9 34. The existence of a prior removal order is not a bar to a grant of U
10 Nonimmigrant status. This is because the U Visa program allows for the waiver of
11 any ground of inadmissibility, including removals and re-entries.

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

18 36. Where USCIS determines a petitioner has met all the eligibility
19 requirements and grants U Nonimmigrant status, any prior removal order against a
20 petitioner issued by the Secretary of Homeland Security is "deemed canceled by

1 operation of law as of the date of USCIS's approval" of the I-918 petition. 8 C.F.R.
2 § 214.14(c)(5)(i). This interpretation has been consistently upheld by DHS. The
3 "canceled by operation of law" provisions are meant to ensure that the survivor
4 cannot be removed pursuant to a reinstatement order.

5 37. Although an individual who has previously been removed from the
6 United States and subsequently illegally reenters cannot generally seek relief under
7 8 U.S.C. § 1231(a)(5) due to the reinstatement provisions, if a U petitioner is
8 subject to an order of exclusion, deportation, or removal, "the order will be deemed
9 canceled by operation of law as of the date of USCIS' approval of [the U petition] .
10 . . ." 8 C.F.R. 214.14(c)(5)(i).

11 38. Moreover, waivers of inadmissibility related to 8 U.S.C. §§
12 1182(a)(9)(A) and 1182(a)(9)(C) also waive the prior order for purposes of 8
13 U.S.C. § 1231(a)(5). This is consistent with the fact that a U petitioner can seek a
14 waiver (under 8 U.S.C. § 1182(d)(14)) of the underlying inadmissibility ground on
15 which the reinstated order is predicated (8 U.S.C. § 1182(a)(9)(A), 8 U.S.C. §
16 1182(a)(9)(C)(i)(II) (illegal re-entry after removal)).

17 39. This statutory waiver provision for U petitioners indicates that
18 Congress contemplated USCIS's authority to grant U Nonimmigrant status to an
19 individual who illegally reentered the United States after removal, but who is
20 otherwise eligible and merits approval of his or her I-918 petition. Because USCIS

1 waived 8 U.S.C. §§ 1182(a)(9)(A) and 1182(a)(9)(C), the order is waived.

2 40. A grant of U Nonimmigrant status is a legal admission to the United
3 States. *See Alejandro Garnica Silva*, A098 269 615 (BIA June 29, 2017). Because
4 a U Nonimmigrant had their inadmissibility waived and was subsequently admitted
5 to the United States, they cannot have their prior order of removal reinstated.

6 41. Moreover, DHS has continuously held that individuals who are
7 removed from the United States on a removal order do not have a jurisdictional
8 right to reopening their prior removal orders. Precedent from the Board of
9 Immigration Appeals has given deference to DHS and found that they lack
10 jurisdiction to grant post-departure motions to reopen in most circumstances. *See*
11 *Matter of Armendarez-Mendez*, 24 I&N Dec. 646 (BIA 2008); *Matter of Bulnes-*
12 *Nolasco*, 25 I&N Dec. 57 (BIA 2009). If an executed order of removal were not in
13 fact waived with the waiver of 8 U.S.C. §§ 1182(a)(9)(A) and 1182(a)(9)(C), then
14 only one group of U Nonimmigrants, those with executed judicial orders, would be
15 left vulnerable while individuals who triggered 8 U.S.C. § 1182(a)(9)(C) after an
16 administrative removal and individuals who remained in the United States after an
17 order of removal are protected.

18 42. 8 U.S.C. § 1255(m) and 8 C.F.R. § 245.24(b) hold that adjustment of
19 status is available to those applicants who were lawfully admitted to the United
20 States as a U Nonimmigrant, continue to hold U Nonimmigrant status at the time

1 of application, have demonstrated sufficient physical presence before and during
2 the application process, are not inadmissible under 8 U.S.C § 1182(a)(3)(E), have
3 not unreasonably refused to provide assistance, and establish that their presence is
4 justified on humanitarian grounds, to ensure family unity, or is in the public
5 interest.

6 43. If a U Nonimmigrant who has applied for adjustment of status under 8
7 U.S.C. § 1255(m) leaves the United States, the adjustment application will be
8 deemed abandoned and will be denied. 8 C.F.R. § 245.24(j). The adjustment of
9 status regulations also state that those applicants who travel on valid advance
10 parole will not have their applications deemed abandoned upon departure, but that
11 if the application for adjustment of status is deemed abandoned after travel on
12 advance parole, that a subsequent denial of the adjustment of status application will
13 result in the applicant being treated as an applicant for admission under 8 U.S.C §§
14 1182 and 1225. *Id.* This treatment as an applicant for admission is only applied to
15 those applicants who traveled on advance parole.

16 VII. STATEMENT OF FACTS

17 44. In or around 1987, when Claudia Jerusely Rodriguez Fuentes
18 (“Petitioner”) was two years old, she entered the United States with her family. She
19 and her family were issued voluntary departure on June 21, 2000. A motion to
20 reopen was completed on September 27, 2000, and was denied, converting the

1 voluntary departure to a removal order.

2 45. Around that same time, Petitioner began a relationship with an older
3 man. She got pregnant with their first child at the age of sixteen. Forced out of her
4 home, Petitioner moved in with her partner, who became abusive almost
5 immediately. He insulted her, called her names, pushed her, and forced her to have
6 sex. Still underage, and without family support, Petitioner remained under his
7 control.

8 46. In November of 2002 Petitioner's partner punched her in the face
9 because she didn't clean well enough. At the time she was three months pregnant
10 and was caring for an eleven month old child. Petitioner, afraid that her children
11 would grow up experience violence in the same way that she had, called the police.
12 Despite her fear, Petitioner cooperated with the police in their domestic violence
13 investigation. Her abuser was eventually deported.

14 47. Petitioner was also the victim of stalking when a man from her friend
15 group started parking in front of her home and watching her, insisting that they had
16 a romantic relationship. He began leaving her threatening messages and following
17 her. Finally, he showed up at her housing screaming that she was unfaithful to him
18 and demanding that her lover come out. Terrified for her safety, Petitioner called
19 the police and he was arrested. She cooperated with the police in this investigation
20 as well.

1 48. As a result of these crimes, Petitioner suffered from depression,
2 anxiety, and Post Traumatic Stress Disorder. Despite this, she continued to care for
3 her children the best that she could as a single mother.

4 49. In July of 2010, DHS executed Petitioner's removal order and
5 removed her to Mexico without an additional hearing. She found herself alone in a
6 country that she could not remember, terrified that her abuser would find her and
7 take revenge for his arrest and deportation. She was also terrified to be separated
8 from her children, who were then seven and eight years old, and who did not have
9 another parent in the United States.

10 50. In December of 2010, Petitioner presented false documents at the
11 border and was admitted to the United States. Thereafter, she filed forms I-918,
12 Petition for U Nonimmigrant status, and I-192, Application for Advance
13 Permission to Enter as Nonimmigrant based on her victimization. Petitioner's I-
14 192 application specifically requested a waiver of 8 U.S.C. §§ 1182(a)(9)(A) and
15 1182(a)(9)(C). Petitioner's application was approved on April 20, 2017.

16 51. Petitioner did not file a motion to reopen her previous deportation
17 case after being admitted as a U Nonimmigrant because her prior removal order
18 had already been executed, the resulting inadmissibility and underlying order had
19 been waived, and the grant of Nonimmigrant status had vacated any DHS orders of
20 removal. On April 12, 2021, Petitioner filed for Adjustment of Status. Although

1 her application was erroneously denied on July 13, 2023, she requested that USCIS
2 reopen her proceedings because her RFE response had, in fact, been submitted on
3 time. On August 3, 2023, USCIS changed her case status (which had previously
4 reflected a denial) to indicate that her case was again being actively reviewed. That
5 case status has not changed after August 3, 2023, despite several inquiries
6 submitted to USCIS and an inquiry filed with the USCIS Office of the
7 Ombudsman.

8 52. After a traffic accident on April 19, 2025, Petitioner was arrested. She
9 was released on recognizance on April 20, 2025, but as she left the holding area
10 with police officers, ICE was waiting to immediately took her into custody and
11 move her to the Henderson Detention Center. That same day, ICE issued Form I-
12 871 to Petitioner, indicating that they wished to reinstate her removal order from
13 2000 and remove her to Mexico without a hearing.

14 53. At the time that they issued the reinstatement notice, ICE told
15 undersigned counsel that their internal systems showed that Petitioner had never
16 filed for Adjustment of Status. Undersigned counsel explained to both the
17 deportation officer and DHS counsel that reinstatement was not a correct avenue
18 (given the grant of U Nonimmigrant status in 2017) and submitted proof that
19 Petitioner timely filed for adjustment of status, along with a current case status
20 showing that the application was active and pending as of August 3, 2023. DHS

1 counsel acknowledged the error on April 25, 2025 and indicated that Petitioner
2 would be released from detention. When undersigned counsel later inquired as to
3 why Petitioner had not been released, DHS counsel then indicated a USCIS
4 employee had stated that Petitioner's adjustment case had been denied and,
5 therefore, DHS would issue a new Notice to Appear as Petitioner was now
6 removable for overstaying her U Nonimmigrant status.

7 54. Petitioner filed for bond the following Monday, and a hearing was set
8 for May 9, 2025. On May 8, 2025, DHS filed Form I-871 with the Immigration
9 Court, indicating that it would, in fact, pursue reinstatement rather than issue a new
10 Notice to Appear. After a hearing on May 9, 2025, the Immigration Judge denied
11 the request for bond redetermination, finding that she did not have jurisdiction to
12 issue a bond if a reinstatement notice had been issued to the Petitioner, even if that
13 reinstatement order were to be invalid. *See Exhibit D – Denial of Motion for Bond.*

14 55. Petitioner is currently held in custody despite there being no legal
15 basis for her detention. She falls squarely within the protections of the U
16 Nonimmigrant visa. Petitioner has complied in every way with her legal
17 obligations and any conditions placed upon him by USCIS, the Immigration Court,
18 and ICE. Now despite having all the protections afforded to her under law,
19 Respondents continue to act unlawfully and in violation of Petitioner's statutory,
20 regulatory, and Constitutional rights.

1 56. Petitioner is at risk of being wrongfully removed from the United
2 States and has been told by Immigration officials that they will remove her without
3 a hearing unless she passes a Reasonable Fear interview.

4 VIII. CLAIMS FOR RELIEF

5 Count I - Violation of Fifth Amendment Rights to Due Process

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

9 58. Petitioner, after having been admitted as a U Nonimmigrant, has a
10 liberty interest in being able to obtain the benefits she was granted. This protected
11 liberty interest flows from the statute and regulations which permitted Petitioner's
12 grant of U Nonimmigrant status as the actual grant of such status and lawful
13 admission to the United States.

14 59. Petitioner followed the legal requirements to obtain benefits under the
15 U Visa program and indeed was granted those benefits under the regulations.
16 Respondents' efforts to now unilaterally and without due process strip her of those
17 benefits are unlawful under the Fifth Amendment of the Constitution.

18 60. Petitioner complied with each and every requirement that USCIS and
19 Respondents have imposed upon her. She applied for U Visa benefits and provided
20 all requested information, not only after filing her I-918 petition, but also after

1 filing her I-485 application and responding to USCIS's Request for Evidence.

2 61. Local ICE counsel and deportation officers have taken the position
3 that neither Petitioner's waiver of inadmissibility nor her subsequent admission as
4 a nonimmigrant prevent them from later reinstating her previous order of removal.
5 These arguments, if accepted, violate Petitioner's due process rights.

6 62. First, any finding that Petitioner's waiver of inadmissibility before
7 admission does not prevent reinstatement reactivates the "futility clause" and denies
8 her is in conflict with BIA precedent. *See Matter of Rainford, supra; Matter of*
9 *Rafipour, supra*. Petitioner, as with the respondents in these cases, was able to see
10 admission as a nonimmigrant. Even if her prior deportation and subsequent reentry
11 made her subject to reinstatement, the approval of her waiver allowed her to be
12 admitted as a nonimmigrant. While no waiver of reinstatement is available, the
13 statute and regulations allowed for her admission as a U Nonimmigrant. To find
14 that acts occurring before her admission would form the basis for reinstatement
15 after admission would put her in the same position as the respondents who the
16 government sought to deport based on acts that occurred before they were
17 admitted. *See id.*

18 63. Further, the interpretation of the reinstatement statute proposed by
19 DHS does not follow the reasoning in *Fernandez-Vargas* and *Morales-Izquierdo*
20 and violates the Due Process clause. The rationale in those cases was that

1 reinstatement was not unconstitutional because it was intended to stop an ongoing
2 violation and prevent a windfall. *See Fernandez-Vargas v. Gonzales, supra*;
3 *Morales-Izquierdo v. Gonzales, supra*. In the present case, the facts are sufficiently
4 diverse as to affect the analysis. While there may be a question as to whether
5 Petitioner's entry with false document in 2010 was a lawful admission, the
6 approval of her waiver application and the subsequent admission as a U
7 Nonimmigrant was clearly lawful and stopped any ongoing violaton. *See Alejandr*
8 *Garncia Silva, supra*. In addition, Petitioner followed the exact same process
9 afforded to individuals outside of the United States in qualifying for U
10 Nonimmigrant status. She applied for the same waiver, had her case adjudicated
11 under the same standards, and waited the same period of time as a U Visa
12 petitioner who was outside the United States.

13 64. Petitioner's case is distinguishable from *Morales-Izquierdo*, in that
14 she was admitted as a nonimmigrant subsequent to the events that DHS argues
15 make her subject to reinstatement. *See Morales-Izquierdo v. Gonzales, supra*. A
16 noncitizen who has been admitted to the United States is entitled to different
17 jurisdiction for removal than those who are applicants for admission. In addition,
18 Petitioner has a legal path to residency, whereas the respondent in *Morales-*
19 *Izquierdo* did not. *See id.*

20 65. Based on the above, there is no ongoing violation that would be cured

1 by reinstatement. Moreover, Petitioner did not receive an unjust windfall, as she
2 followed the required legal process in applying for U Nonimmigrant status. DHS's
3 interpretation that reinstatement is appropriate after the grant of U Nonimmigrant
4 status converts the reinstatement provision into a punishment.

5 66. DHS's interpretation that reinstatement is possible after a grant of U
6 Nonimmigrant status would render the entire practice of applying for a waiver of
7 inadmissibility of 8 U.S.C. § 1182(a)(9)(C) moot and would indicate that any
8 noncitizen who ever had a prior removal order and illegally reentered is
9 permanently subject to reinstatement. Even a U petitioner (or any nonimmigrant)
10 who entered with consular processing after the approval of a Form I-192 or Form
11 I-212 would be subject to reinstatement. Similarly, even conditional lawful
12 permanent residents who had their inadmissibility waived would be subject to
13 reinstatement if USCIS.

14 67. Additional concerns would arise in the naturalization context. If the
15 underlying effectuated removal order is not waived with a grant of the I-192, then
16 lawful permanent residents who seek citizenship would be deemed ineligible based
17 on the prior order, as individuals with removal orders are barred from
18 naturalization. *See* 8 U.S.C. § 1429 (dictating that no application for naturalization
19 shall be considered if there is an outstanding final order).

20 68. While an approved waiver cannot be applied to a future request for

1 admission (as each admission requires its own waiver) there is nothing in the
2 regulations that indicates that reinstatement is again available. The wording of the
3 regulations is deliberate, and states that administrative orders are “canceled” not
4 “stayed.” DHS’s position in this case is arbitrary and capricious and in opposition
5 to all interpretation and case law.

6 69. Defendants cannot effectuate de facto revocation of Petitioner’s U
7 Nonimmigrant status, with the admission and protections it afforded, without
8 proper procedures consistent with the Due Process clause. *United States ex rel.*
9 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 n.8 (1954).

10 70. Procedural due process requires, in most cases, a hearing of some
11 kind. *Mathews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902 (1976).
12 The process due depends on three factors: [f]irst, the private interest that will be
13 affected by the official action; second, the risk of an erroneous deprivation of such
14 interest through the procedures used, and the probable value, if any, of additional
15 or substitute procedural safeguards; and finally, the Government’s interest,
16 including the function involved and the fiscal and administrative burdens that the
17 additional or substitute procedural requirement would entail. *Id.*, 424 U.S. at 335,
18 96 S.Ct. at 903.

19 71. Petitioner has a fundamental liberty interest in the benefits she has
20 obtained under U Nonimmigrant status. Additionally, Petitioner has a fundamental

1 liberty interest in having her application for adjustment of status adjudicated. If
2 DHS removes her from the United States, the adjustment of status application will
3 be denied. There is no process to apply for adjustment of status as a U
4 Nonimmigrant from abroad. These facts are analogous to *Fatty v. Nielson*, Case
5 C17-1535-MJP (Jul. 20, 2018), where the United States District Court for the
6 Western District of Washington found that removing an applicant for T
7 Nonimmigrant status would violate due process because the applicant could no
8 longer have his application adjudicated if he departed the United States.

9 72. Similarly, even if Petitioner's U Nonimmigrant status had expired, she
10 would be eligible to file an I-539 to extend her status *nunc pro tunc*. Reinstatement
11 and removal would deny her the opportunity to pursue that relief.

12 73. The procedures employed by Defendants offer Petitioner no hearing,
13 no notice, and no opportunity to be heard. Defendants had multiple other means
14 available to achieve their objective without denying the Petitioner procedural
15 fairness.

16 74. The cost and administrative burden of adopting these alternate
17 procedures would be minimal, as the Respondents already possess an entire agency
18 dedicated to processing removal cases.

19 75. Instead, Respondents have acted with complete disregard to due
20 process by unlawfully acting in a way to revoke her U nonimmigrant status,

1 rescind the protections it affords her, and unlawfully detain her under a threat of
2 removal. Such unlawful actions threaten Petitioner's interests in her immigration
3 benefits in both the long and the short term.

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

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

9 77. The allegations in the above paragraphs are realleged and
10 incorporated herein.

11 78. Defendants' failure to recognize Petitioner's facially valid and legally
12 obtained U Nonimmigrant status and all the benefits it conveys is arbitrary,
13 capricious, and contrary to law.

14 79. Only petitioners living in the United States apply for and be granted
15 adjustment of status under 8 U.S.C. § 1255(m), since those outside the United
16 States do not have the continuous physical presence required by statute and
17 regulation. Likewise, a departure or deportation after the filing of an application
18 for adjustment of status will result in the application being denied. Respondents'
19 position to the contrary fails to comport with law and is therefore unlawful.

20 80. Respondents' detention of Petitioner without bond despite her waiver

1 of 8 U.S.C. 1182(a)(9)(C) and admission as a U Nonimmigrant is contrary to law
2 as it violates 8 U.S.C. § 1101(a)(15)(U), 8 U.S.C. § 1255 (m), and their
3 implementing regulations.

4 IX. PRAYER FOR RELIEF

5 WHEREFORE, Petitioner prays that this Honorable Court:

- 6 1. Assume jurisdiction over the matter;
- 7 2. Issue an Order to Show Cause ordering Respondents to show cause
8 why this Petition should not be granted within three (3) days;
- 9 3. Enjoin Respondents from transferring the Petitioner outside the
10 jurisdiction of the District of Nevada pending the resolution of this case;
- 11 4. Declare that Respondents failure to recognize and give full weight
12 Petitioner's approved waiver of inadmissibility and admission as a U
13 Nonimmigrant by USCIS is in violation of the APA and the INA;
- 14 5. Declare that Petitioner's detention violates the Due Process Clause of
15 the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); *see also* 8
16 C.F.R. § 214.14, *et al.*
- 17 6. Issue a Writ of Habeas Corpus ordering Respondents to release
18 Petitioner immediately;
- 19 7. Award Petitioner attorney's fees and costs under the Equal Access to
20 Justice Act, and on any other basis justified under law; and

8. Grant any further relief this Court deems just and proper.

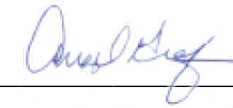
DATED this 8th day of July, 2025.

By Angelina Marie Graf
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VERIFICATION

I, ANGELA MARIE GRAF, declare that I have read the foregoing Petition and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

By: _____



ANGELA MARIE GRAF