

1 Jordan Weiner (SBN 356297)

2 jordan@lrcl.org

3 La Raza Centro Legal

4 474 Valencia St., Ste. 295

5 San Francisco, CA 94103

6 Telephone: (415) 553-3435

7 *Attorney for Petitioner*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ODILIO MISAEAL ORELLANA REYES,

Petitioner,

v.

SERGIO ALBARRAN et al.,

Respondents.

CASE NO. 3:26-cv-01756

**PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

Petitioner Odilio Misael Orellana Reyes has a pending U-visa application based on his and his family's cooperation in [REDACTED] of Petitioner's daughter. Petitioner applied for a derivative U-visa based on the implicit understanding that ICE would not deport or detain him while he awaited his Bona Fide Determination. After all, Congress created the U-visa program to encourage people like Petitioner and his family to come out of the shadows and cooperate with law enforcement. ICE's decision to arbitrarily detain him a year after he applied for the U-visa contravenes the due process protections enshrined in our Constitution and laws of our nation.

Petitioner's petition is based on four claims: (1) violation of procedural due process; (2) violation of substantive due process; (3) violation of the Fourth Amendment; and (4) violation of the Administrative Procedure Act. Although claims 3 and 4 were not included in the original Petition due to the emergency nature of this case, which necessitated a rapid filing, Petitioner intends to amend the petition as soon as possible and remains within the applicable time period to do so.

ARGUMENT

I. Petitioner's detention violates procedural due process.

Respondents make no mention of Petitioner's pending derivative U-visa application outside of a passing reference. Response at 2. However, his U-visa petition, and the protections it provides, are at the heart of this case.

Congress created the U-visa to provides a path to citizenship for non-citizens who are the victims of serious crimes and who assist law enforcement in investigating or prosecuting those crimes. *See* VAWA 2000, § 1513(a)(2)(B); 8 U.S.C. § 1101(a)(15)(U). In so doing, Congress expressly found that "Immigrant women and children are often targeted to be victims of crimes

committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.” VAWA 2000 § 1513(a)(1).

Thus, Congress's express purposes in creating the U visa included (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes... committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." *Id.* § 1513(a)(2); *see also* PM vol. 3, pt. C, chap. 1.A.

Here, Petitioner and his partner came out of the shadows and bravely assisted their minor daughter in reporting [REDACTED] They did so in part based on the protections from detention and deportation that U-visas would provide. Although Petitioner has a final order of removal, U-visas can waive this ground of inadmissibility through Form I-192 — Application for Advance Permission to Enter as a Nonimmigrant.

Petitioner submitted his derivative U-visa application on April 23, 2025, and ICE did not take any action against him until yesterday - almost a year later. Petitioner's repeated contacts with Respondents, through filing his U visa application and alerting him to his presence in the United States, created a liberty interest that Respondents could not take away without process. *Kharitonova v. Albarran*, No. 3:26-cv-01362-JSC, 2026 U.S. Dist. LEXIS 39213, at *5-6 ("The government's decision not to detain Petitioner 'when it processed her asylum application, took her biometrics, referred her asylum case to EOIR, and advised her to appear for multiple hearings over a period of years,' likewise gave rise to 'a liberty interest on Petitioner's part that she would remain free unless

1 she violated her conditions of release.”); *id.* at *6 (“Although the government did not detain and then
2 release her, it made a decision not to detain her in the first place; Petitioner thus has the same liberty
3 interest in her continued freedom as an individual initially detained.”).

4 Respondents’ statutory argument that Petitioner is subject to 8 U.S.C. § 1231 cannot
5 insulate them from Petitioner’s constitutional claim. Respondents assert that § 1231’s mandatory
6 detention framework controls Petitioner’s constitutional claim. Response at 5. However,
7 mandatory detention is subject to constitutional limitations. *See Zadvydas*, 533 U.S. at 701.
8 Courts regularly order the government to release noncitizens subject to mandatory detention on
9 substantive due process claims. *See e.g., Doe v. Chestnut*, No. 1:24-cv-00943-EPG, 2025 U.S.
10 Dist. LEXIS 232754, at *72 (E.D. Cal. Nov. 26, 2025); *Doe v. Becerra*, 732 F. Supp. 3d 1071
11 (N.D. Cal. 2024). Although the Supreme Court has upheld facial challenges to mandatory
12 detention, such as 8 U.S.C. § 1226(c), it has not “foreclose[d] as-applied challenges—that is,
13 constitutional challenges to applications of the statute.” *See Nielsen v. Preap*, 586 U.S. 392, 420
14 (2019). An as-applied challenge, like Petitioner’s due process claim, require a petitioner to show
15 only that “the application of the statute to a specific factual circumstance” is unconstitutional.
16 *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at * 4 (E.D.
17 Cal. Aug. 21, 2025). Therefore, even if Petitioner were subject to mandatory detention under §
18 1231, he has still established that re-detention in *his* case, where he inarguably poses no risk of
19 flight or danger to the community, violates substantive due process. *See id.*

22 **II. Petitioner’s detention violates substantive due process.**

23 Whereas procedural due process “promotes fairness” in government decisions to deprive
24 persons of their liberty by “require[ing] the government to follow proper procedures,”
25 substantive due process “prevent[s] governmental power from being used for purposes of
26 oppression” by “barring certain actions regardless of the fairness of the procedures used to
27

1 implement them.” *Daniel v. Williams*, 474 U.S. 327, 331 (1986). As an initial matter,
2 Respondents do not attempt to argue that Petitioner is a flight risk or danger to society, the only
3 two constitutionally permissible reasons to detain a noncitizen. *See Zadvydas*, 533 U.S. at 690.
4 They thus waive any opposition to Petitioner’s argument that his violates his substantive due
5 process rights. *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

6 Freedom from detention “lies at the heart of liberty” protected by the Due Process
7 Clause. *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to
8 the community, immigration detention serves no legitimate government purpose and becomes
9 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
10 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
11 government’s interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*,
12 2025 WL 2741654, at *11-12 (N.D. Cal. Sep. 26, 2025); *Leiva Flores v. Albarran*, 2025 WL
13 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v. Noem*, 2025 WL 3295382, at
14 *3 (N.D. Cal. Nov. 26, 2025) (same); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
15 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner
16 may succeed on claim that the government lacks any legitimate reason to detain him”).

17 As the Ninth Circuit has held, “the government has no legitimate interest in detaining
18 individuals who have been determined not to be a danger to the community and whose
19 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
20 alternative conditions.” *Hernandez*, 872 F.3d at 994. When immigration officials allowed
21 Petitioner to submit a derivative U visa application, as he was entitled to by Congress, there was
22 an implicit understanding that Petitioner was going through the normal channels to regularize his
23 status and thus would not be detained and deported.

24 Respondents suddenly detained Petitioner without any showing that he has since become

1 a flight risk or danger to the community. Because the government cannot show that Petitioner's
2 detention would advance the only accepted rationales for civil detention—flight risk or danger—
3 Petitioner has demonstrated his detention violates his substantive due process rights. *Zadvydas*,
4 533 U.S. at 690. Where, as here, the government does not even make bare allegations of flight
5 risk or danger to justify detention, detention violates the Constitution regardless of the procedural
6 protections involved.

7 **III. ICE violated Petitioner's Fourth Amendment Right.**

8
9 The Fourth Amendment provides a fundamental right to be free not only from unlawful
10 searches and seizures, but also from detention that flows from their exploitation. U.S. Const. amend.
11 IV; *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963). The suspicion-less stop and search of
12 Petitioner set in motion the chain of events that led to Petitioner's interrogation and eventual
13 confinement. Because the Petitioner's custody was the direct fruit of that unconstitutional act, the
14 detention itself is unlawful within the meaning of 28 U.S.C. § 2241. *See Manuel v. City of Joliet*, 580
15 U.S. 357, 367 (2017) ("Pretrial detention can violate the Fourth Amendment when it precedes or
16 accompanies legal process unsupported by probable cause.").

17
18 Here, ICE pulled over Petitioner in his vehicle on March 1, 2026. Ex. 1, Declaration of
19 Wendy Yanileth Barahona Ramirez. One of the officers was masked. *Id.* They did not show a
20 warrant or explain that he did anything wrong. *Id.* They took him away without saying why. *Id.*

21 Petitioner retains a fundamental right to be free not only from unlawful searches and
22 seizures, but also from detention that flows from their exploitation. U.S. Const. amend. IV; *Wong*
23 *Sun v. United States*, 371 U.S. 471, 484–88 (1963). When the government's custody depends on
24 evidence obtained through an unconstitutional seizure, continued confinement constitutes an
25 ongoing violation of the Fourth Amendment and the Due Process Clause. *See Rosado v.*
26 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *18 (D. Ariz. Aug. 11,
27

1 2025) (holding immediate release warranted where ICE custody “flowed directly from” unlawful
2 seizure).

3 Habeas corpus provides the appropriate remedy because it is the only vehicle capable of
4 restoring the petitioner to the liberty that the Constitution guarantees. The writ of habeas corpus,
5 as the Supreme Court has held, may be deployed whenever an individual “is being unlawfully
6 subjected to physical restraint,” and “in each case habeas corpus has been accepted as the
7 specific instrument to obtain release from such confinement.” *Preiser v. Rodriguez*, 411 U.S.
8 475, 484 (1973).

9
10 **IV. Petitioner’s detention violates the APA.**

11 Petitioner filed a I-246, application for a stay of deportation of removal, today. *See* Ex.
12 2, (ICE Stay, Form I-246). In 2021, ICE, under the Biden Administration, issued Directive
13 11005.3, encouraging a “Victim-Centered” enforcement approach and superseding the 2019
14 Directive. ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime
15 Victims (Dec. 2, 2021) (“2021 Directive”). Noting that “Congress created victim-based
16 immigration benefits to encourage noncitizen victims to seek assistance and report crimes
17 committed against them despite their undocumented status,” the 2021 Directive states that
18 “[w]hen victims have access to humanitarian protections, regardless of their immigration status,
19 and can feel safe in coming forward, it strengthens the ability of local, state, and federal law
20 enforcement agencies, including ICE, to detect, investigate, and prosecute crimes.” *Id.*
21 Accordingly, the 2021 Directive seeks to “minimize[] any chilling effect that civil immigration
22 enforcement actions may have on the willingness and ability of noncitizen crime victims to
23 contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek
24 benefits” and to “bolster[] faith in the entire criminal justice and civil immigration systems.” *Id.*

25
26
27 Thus, the 2021 Directive continued ICE’s longstanding policy to “refrain from taking

1 civil enforcement action against” individuals “known to have a pending application” for
2 “victim-based immigration benefits” unless there are “exceptional circumstances” such as
3 national security concerns or a “risk of death, violence, or physical harm to any person.” *Id.* at
4 1-2. If an application is pending, ICE will “defer decisions” on enforcement until final
5 determinations are made on pending petitions or a negative determination is made on an interim
6 adjudication like a BFD or wait-list determination. *Id.* at 2. The 2021 Directive also reinstated a
7 policy of requesting expedited adjudications for people in ICE custody. *Id.* at 9. “The fact that
8 someone is a victim of crime and... may be eligible for victim-based benefits” is to be
9 considered a “positive discretionary factor.” *Id.*

11 Shortly after President Trump took office for his second term, however, ICE Acting
12 Director Caleb Vitello issued a 2025 Guidance. The sparse 2025 Guidance explicitly
13 “rescinded and superseded” the 2021 Policy and 2011 Policy, replacing them with requirements
14 that, when conducting civil immigration enforcement actions against applicant for Survivor-
15 based Benefits, ICE officers —

16
17 (1) need only “coordinate and deconflict” with law enforcement agencies “to ensure
18 criminal investigative and other enforcement actions will not be compromised”;

19 (2) “should consult with” local ICE attorneys only “to ensure any such action is
20 consistent with applicable legal limitations”;

21 (3) need not consider the fact that a noncitizen “is a victim of a crime” as “a positive
22 discretionary factor”; and

23 (4) “will no longer routinely request expedited adjudications from USCIS,” but may
24 do so only when “it is in ICE’s best interests.”

25
26 2025 Guidance at 2-3 (emphasis added).

27 Thus, the 2025 Guidance reverses course from decades of agency practice under which

1 immigration agencies generally refrained from enforcement against survivors of serious crime,
2 unless warranted by adverse factors. Instead, the 2025 Guidance requires enforcement against
3 survivors of crime to the maximum extent that ICE attorneys say it is legal to do so, with the
4 only exception being when enforcement will interfere with active law enforcement
5 investigations.

6 Under the APA, courts “shall... hold unlawful and set aside agency action” that is,
7 among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in
8 accordance with law.” 5 U.S.C. § 706(2)(A). Plaintiffs are likely to prevail on their claims that
9 the 2025 Guidance violates § 706(2)(A).
10

11 The APA permits “judicial review” of “final agency action for which there is no other
12 adequate remedy in a court.” 5 U.S.C. § 704. The 2025 Guidance constitutes “final agency
13 action” because it is “the consummation of the agency’s decision-making process,” by which
14 “rights” of petitioners for Survivor-based Benefits “have been determined” or “[f]rom which
15 legal consequences” for such petitioners “will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78
16 (1997) (citations and quotation marks omitted).
17

18 The 2025 Guidance reverses decades of consistent DHS policy that, barring serious
19 adverse factors, immigration agencies will not take civil enforcement actions against
20 individuals with pending applications for Survivor-based Benefits and will employ a victim-
21 based approach, including by considering survivors for release and prosecutorial discretion.
22

23 Instead of the protections required by prior policies, the only considerations the 2025
24 Guidance requires of ICE officers when conducting immigration enforcement against such
25 individuals are (1) whether enforcement would conflict with an active criminal investigation,
26 and (2) whether ICE’s attorneys assert there are any “legal limitations” to enforcement. 2025
27 Guidance at 2. It is thus a policy of detention and deportation whenever possible.
28

1 The 2025 Guidance fails to provide a sufficiently “reasoned explanation” for ICE’s
2 “disregarding facts and circumstances that underlay or were engendered by the prior policy.”
3 *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

4 The 2025 Guidance is also arbitrary and capricious because it fails to account for the
5 reliance interests of noncitizens who applied for the protections that Congress and Defendants
6 promised. “When an agency changes course . . . it ‘must be cognizant that longstanding policies
7 may have engendered serious reliance interests that must be taken into account.’” *Regents*, 591
8 U.S. at 30 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016)).
9

10 Petitioner’s detention after the rescission of the 2021 Directive, and Respondents efforts
11 to deport him, violate the APA.

12 The 2025 guidance is also being challenged as arbitrary capricious in *ICWC v. Noem*,
13 No. 2:25-cv-09848, (C.D. Cal, filed Nov. 17, 2025), a pending class-action. Oral arguments on a
14 preliminary injunction that affects issues in this case was held on February 10, 2026, and the judge
15 is expected to issue a decision soon on relief that may require the government to return Petitioner if
16 he is wrongfully deported without adequate consideration of his stay request.
17

18 CONCLUSION

19 For the foregoing reasons, the Court should grant the temporary restraining order.
20
21

22 March 2, 2026

Respectfully submitted,

23 /s/Jordan Weiner

24 Jordan Weiner
25
26
27