

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jorge Fernandez Gomez	)	
Petitioner	)	
	)	PETITIONER'S RESPONSE
	)	TO RESPONDENTS' SURREPLY
v.	)	
	)	CASE No: 0:26-cv-02360
David Easterwood , Director of St. Paul	)	
Enforcement and Removal Operations,	)	
Immigration and Customs Enforcement;	)	
Markwayne Mullin , Sec'ty of the Dep.	)	
Homeland Security; Mike Jambor ,	)	
Administrator of the Kandiyohi County	)	
Jail; Todd Lyons , Acting Director, U.S.	)	
Immigration and Customs Enforcement;	)	
Todd Blanche , Attorney General of the	)	
United States	)	
	)	
Respondents.	)	

PETITIONER'S RESPONSE TO RESPONDENTS' SUR-REPLY

Petitioner respectfully submits this response to clarify the purpose and relevance of his Notice of Supplemental Authority. Respondents' sur-reply mischaracterizes Petitioner's reliance on *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, ECF No. 57 (C.D. Cal. May 20, 2026) ("ICWC"). Petitioner does not contend that ICWC is a habeas writ issued by a California court commanding the release of a person detained in Minnesota. Nor does Petitioner ask this Court to abdicate its own habeas jurisdiction. Petitioner cited ICWC for the ordinary and proper purpose of supplemental authority: to alert this Court to a recent nationwide Rule 23 class action and APA order addressing the same federal agency conduct presented here—ICE's detention

of individuals with USCIS-granted U/T-visa deferred action without USCIS revocation and without process regarding the effective nullification of that deferred-action grant.

Respondents first attempt to minimize ICWC by treating it as an out-of-district habeas decision with no effect beyond California. That is wrong. ICWC is not merely an individual habeas ruling. It is a Rule 23 class action challenging nationwide ICE policies governing civil immigration enforcement against applicants for and beneficiaries of victim-based immigration benefits. The ICWC court did not certify a California-only class. It certified a Deferred Action Class consisting of “[a]ll individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status.” *ICWC*, ECF No. 57 at 38, 95. That class definition contains no geographic limitation.

Respondents’ jurisdictional argument confuses an improper universal injunction with a properly certified Rule 23 class. A nationwide Rule 23 class is not categorically improper. The Supreme Court has held that “[t]he certification of a nationwide class, like most issues arising under Rule 23, is committed in the first instance to the discretion of the district court.” *Califano v. Yamasaki*, 442 U.S. 682, 703 (1979). Rule 23(b)(2) exists for cases where “the party opposing the class has acted or refused to act on grounds that apply generally to the class,” Fed. R. Civ. P. 23(b)(2), and applies where “a single injunction or declaratory judgment would provide relief to each member of the class.”

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 360 (2011). ICWC proceeded through Rule 23. Respondents therefore cannot dismiss its relevance by recasting it as an out-of-district universal injunction or as an effort to issue habeas relief outside the district of confinement.

Nor does Petitioner's separate habeas petition in Minnesota make ICWC irrelevant. Petitioner filed his habeas petition in the District of Minnesota, the district of confinement, and seeks release from this Court. But ICWC separately addresses the legality of the nationwide ICE policy that caused the same legal injury present here: ICE's abandonment of the 2021 victim-centered framework and its resulting de facto revocation of USCIS-granted U/T deferred action through detention and removal. The ICWC court found that the 2025 Guidance was final agency action because it rescinded the 2011 Policy and 2021 Directive, changed ICE's day-to-day operations, and caused U and T visa petitioners to become subject to routine detention and removal from which they were previously protected. *ICWC*, ECF No. 57 at 66–68. The court further found that ICE likely failed to provide a reasoned explanation for abandoning the policies and congressional purposes underlying the 2011 Policy and 2021 Directive. *Id.* at 69–71. Those findings bear directly on whether Respondents may continue detaining Petitioner while refusing to apply the victim-centered framework that the ICWC court found ICE likely acted unlawfully in abandoning.

Respondents also ignore the operational consequence of ICWC. The ICWC court stayed the 2025 Guidance, the De Facto Revocation Policy, and the Blind Removal

Policy under 5 U.S.C. § 705 pending final review. *Id.* at 92–93. Section 705 authorizes a reviewing court to “postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. That matters because the 2025 Guidance was the instrument that “rescinded and superseded” the 2011 Policy and 2021 Directive. *ICWC*, ECF No. 57 at 66–68. Staying that rescission preserves the status quo ante. ICE cannot continue to act as though the 2025 Guidance displaced the prior victim-centered protections while simultaneously arguing that those protections have no bearing on Petitioner’s detention.

The restored 2021 Directive confirms why Petitioner’s detention is unlawful. Under that Directive, absent exceptional circumstances, ICE was to refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and known applicants for such benefits. ICE Directive 11005.3 § 2. The Directive further provided that, when a noncitizen has a pending or approved petition for a victim-based immigration benefit, absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner, primary and derivative, until USCIS makes a negative bona fide determination or waiting-list determination for pending U visa petitions. *Id.* § 2.1. The Directive also defined a bona fide determination as a USCIS determination that the U visa petition is complete and properly filed and includes completed biometric and biographical background checks, and recognized that a U visa petitioner may receive employment authorization and deferred action where USCIS finds the petition bona fide,

the petitioner does not pose a public-safety or national-security risk, and the petitioner merits a favorable exercise of discretion. *Id.* § 3.1.

Petitioner is exactly the kind of person the 2021 Directive protects. USCIS granted him U-visa-based deferred action and employment authorization. ICE is detaining him during the authorized period of that deferred action. Respondents identify no USCIS revocation, no notice of proposed revocation, no opportunity to be heard regarding potential revocation, no national-security concern, and no articulable risk of death, violence, or physical harm. Respondents therefore cannot avoid ICWC by saying that the order does not itself issue a habeas writ for Petitioner. The point is that ICWC stays the very agency policy Respondents rely on to disregard USCIS-granted deferred action and confirms that ICE's refusal to follow the 2021 victim-centered framework is likely unlawful.

Respondents next argue that Petitioner cannot fall within the ICWC Deferred Action Class because *Gomez I* supposedly gave him an "opportunity to be heard regarding potential revocation of his deferred action status." That argument is untenable. A habeas case filed after detention is not agency notice and an opportunity to be heard regarding potential revocation of deferred action. The Deferred Action Class concerns people whom USCIS granted deferred action based on pending U or T visa petitions and whom ICE detains, seeks to detain, or removes during the authorized period of deferred action without notice and an opportunity to be heard regarding potential revocation of that status. The relevant process is process before the Government deprives the person of

the benefit of USCIS-granted deferred action or treats that protection as revoked. It is not satisfied by forcing the detained person to file federal habeas litigation after ICE has already taken him into custody.

Gomez I did not provide that process. It did not involve any USCIS notice of proposed revocation. It did not involve any agency hearing on whether Petitioner's deferred action should be terminated. It did not involve any USCIS decision revoking deferred action. And it did not adjudicate whether ICE may de facto revoke USCIS-granted U-visa deferred action by arresting and detaining Petitioner while the grant remains active. At most, Gomez I addressed the Government's generalized § 1225 detention theory and noted that deferred action does not confer immigration status. That is not the same issue. Petitioner does not argue that deferred action confers status. He argues that ICE cannot detain him for removal while USCIS-granted deferred action remains active and unrevoked, and while ICE lacks authority to revoke that USCIS protection itself.

Respondents' position would defeat the ICWC class definition by circularity. Under their theory, a person detained without pre-deprivation process falls outside the class the moment he files habeas, because the habeas litigation itself becomes the "opportunity to be heard." That cannot be right. The injury identified in ICWC is ICE's de facto revocation of USCIS-granted deferred action through detention or removal without notice and an opportunity to be heard regarding revocation. Post-deprivation

litigation forced by ICE's detention does not cure the absence of pre-deprivation process, and it does not convert ICE's conduct into a USCIS revocation.

Respondents' continued refusal to apply the 2021 Directive and honor USCIS's active deferred-action grant is arbitrary and capricious, contrary to law, and further evidence that Petitioner's detention is unlawful. Agencies must "examine the relevant data and articulate a satisfactory explanation for [their] action." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency changing course must provide "a reasoned explanation" and account for "serious reliance interests." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020). ICWC found that ICE likely failed to do exactly that when it abandoned the 2021 victim-centered regime. Respondents repeat the same defect here at the individual level: they continue to detain Petitioner despite USCIS-granted deferred action, despite the absence of USCIS revocation, despite the absence of exceptional circumstances, despite the APA stay of the 2025 Guidance, and despite the growing body of decisions holding that unrevoked deferred action prevents removal and defeats detention for removal.

That problem matters in habeas because Respondents' asserted detention purpose is removal. But Petitioner's removal cannot presently proceed while his U-visa deferred action remains active and unrevoked. ICE cannot create a lawful removal endpoint by ignoring a protection that USCIS granted and has not terminated. If Respondents believe Petitioner's deferred action should be revoked, the proper course is to provide the process

required for potential revocation through the proper agency channel. What Respondents may not do is detain first, treat the deferred-action grant as a nullity, and then argue that the existence of this habeas litigation supplies the process that was due. Present custody is unlawful when it rests on agency action contrary to the Constitution, statutes, regulations, or binding agency procedures. *See* 28 U.S.C. § 2241(c)(3).

ICWC therefore remains proper supplemental authority for the issues before this Court. It is a nationwide Rule 23 class action and APA order concerning the federal policies governing ICE's treatment of U/T visa petitioners and deferred-action recipients. At minimum, it is persuasive supplemental authority confirming that ICE's refusal to honor USCIS-granted deferred action, and its refusal to apply the 2021 victim-centered framework after the 2025 Guidance was stayed, is arbitrary, capricious, contrary to the Accardi doctrine, and constitutionally defective. Petitioner does not ask this Court to enforce ICWC as though it were a separate habeas writ issued by a California court. He asks this Court to recognize what ICWC makes plain: Respondents' detention theory rests on the same unlawful de facto revocation policy that another federal court has now stayed, and that detention cannot be reconciled with USCIS's active grant of deferred action or ICE's restored victim-centered obligations.

Respondents have not shown that USCIS revoked Petitioner's deferred action, that Petitioner received notice or an opportunity to be heard regarding potential revocation, that exceptional circumstances justify ignoring the 2021 Directive, or that removal is significantly likely in the reasonably foreseeable future. The writ should issue.

Respectfully submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste. 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com
Pro Hac Vice
Attorneys for Petitioner

Certificate of Service

I certify that on June 9, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully Submitted,

/s/ Stacey R. Rogers
Stacey R. Rogers (WSBA 61754)
SRR Law Group LLC
600 25th Avenue S, Ste 201
St. Cloud, MN 56301
(507) 271-9405
stacey@srrlawgroup.com