UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EBER RODRIGUEZ ESPINO

Petitioner,

v.

WARDEN,
El Paso Service Processing Center;

MARY DE ANDA-YBARRA,
Field Office Director for El Paso Immigration and Customs Enforcement;

DAVID J. VENTURELLA,
Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

MARKWAYNE MULLIN,
Secretary of the U.S. Department of Homeland Security; *and*

Todd Blanche,
Acting U.S. Attorney Genral;

Respondents.

Case No.:

PETITION FOR WRIT OF HABEAS

INTRODUCTION

Petitioner, Eber Rodriguez Espino, brings this petition for a writ of habeas corpus to seek enforcement of his right as a member of the Pending Petition Class certified in in *Immigration Center for Women and Children v. Noem* ("ICWC"), a class action brought on behalf of immigrant victims of domestic violence, trafficking, and other serious crimes. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) ("ICWC PI Order").

Despite Petitioner having a pending VAWA self-petition, and a prima facie determination, Petitioner remains unlawfully detained by Respondent U.S. Immigration and Customs Enforcement ("ICE") at the El Paso Processing Center. This contravenes the *ICWC* PI Order, in which the court certified a nationwide class and issued a ruling staying the Respondents' 2025 Guidance. Respondents' 2025 guidance sought to revoke ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) ("2011 Policy")[1] and ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) ("2021 Directive") [2]. The 2011 Policy and 2021 Directive centered around victim-based immigration benefits and the exercise of favorable discretion, including release from detention and deferral or stay of removal.

Respondents have not followed their guidance in evaluating Petitioner's Prima Facia Determination and the application of the 2011 Policy and 2021 Directive to Petitioner.

On July 21, 2026, Respondents issued a prime facie determination finding for Petitioner's self-petition under the provisions of the Violence Against Women Act ("VAWA"). Based on such finding, Petitioner became eligible for federal public benefits such as welfare, health, disability, or unemployment and similar benefits while the petition remained pending. *See* 8 U.S.C. §§ 1611(a), 1641(c).

In summary, VAWA self-petitioners, U visa petitioners, and T visa petitioners whose petitions USCIS determines present a prima facie case for approval or are bona fide are eligible for a combination of federal public benefits and protection from enforcement by ICE until USCIS

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[1] https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf

[2] https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf.

finally adjudicates their petitions. *See Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *5 (C.D. Cal. May 20, 2026).

Despite Respondents' prima facie finding, Petitioner remains detained contrary to the favorable exercise of discretion required by Respondents' 2011 Policy and 2021 Directive. Petitioner has informed Respondents of their finding. However, Petitioner remains detained suffering unneeded detention, inability to provide for his family, and emotional harm. Accordingly, Petitioner respectfully requests the court issue a writ of habeas corpus and order his release.

JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal district courts to grant writs of habeas corpus to persons held in custody under or by color of the authority of the United States in violation of the Constitution or laws of the United States. Petitioner challenges the legality of his continued immigration detention by the United States Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE"), and therefore properly invokes this Court's habeas jurisdiction.

This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. Petitioner alleges that his continued detention without constitutionally adequate process violates the Due Process Clause of the Fifth Amendment.

Federal district courts retain jurisdiction under 28 U.S.C. § 2241 to review the statutory and constitutional basis for executive detention, including detention imposed pursuant to the immigration laws of the United States. Petitioner's challenge to the legality of his continued confinement falls squarely within this Court's habeas jurisdiction.

Venue is proper in this District pursuant to 28 U.S.C. § 2241(a) because Petitioner is detained within the territorial jurisdiction of this Court. Petitioner is currently confined at El Paso Processing Center in El Paso, Texas, which is located within the Western District of Texas, El Paso Division.

Venue is further proper because Petitioner's immediate custodian and the other Respondents responsible for his detention are located within this District, and the acts and omissions giving rise to this Petition are occurring within this District.

PARTIES

Petitioner, Eber Rodriguez Espino, is a noncitizen presently detained by U.S. Immigration and Customs Enforcement ("ICE") at the El Paso Processing Center in El Paso, Texas. Petitioner is in the Respondents' custody and is being subjected to ongoing civil immigration detention in violation of the Constitution and laws of the United States. Petitioner has had a pending VAWA petition since June 23, 2025.

Respondent Warden, El Paso Processing Center in El Paso, Texas, is the official responsible for Petitioner's immediate physical custody and day-to-day detention at the facility where Petitioner is confined. The Warden is sued in his or her official capacity.

Respondent Mary De Anda-Ybarra, Field Office Director for ICE's El Paso Field Office, is responsible for overseeing immigration enforcement and detention operations within this region, including the facility where Petitioner is detained. She is sued in her official capacity.

Respondent Todd Lyons, Director of U.S. Immigration and Customs Enforcement, is responsible for the administration and enforcement of immigration detention policies nationwide. He is sued in his official capacity.

Respondent Markwayne Mullin, Secretary of the U.S. Department of Homeland Security, is responsible for the overall administration and enforcement of the immigration laws of the United States, including the detention of noncitizens. He is sued in his official capacity.

Respondent Todd Blanche is the Acting Attorney General of the United States and is responsible for the administration of the immigration court system through the Executive Office for Immigration Review and for the legal framework governing removal proceedings. He is sued in his official capacity.

FACTUAL ALLEGATIONS

Petitioner, Eber Rodriguez Espino, is a native and citizen of Mexico who is currently detained by the DHS and ICE. Petitioner is presently confined at the El Paso ICE Processing Center in El Paso, Texas.

On June 23, 2025, Petitioner filed his VAWA petition with USCIS after being subject to abuse by a qualifying United States citizen. On July 21, 2026, USCIS found that the petition had been reviewed and the petition established a prima facie case for classification under the self-petitioning provision of VAWA. Expiration of such findings was dated July 21, 2027.

On March 23, 2026, Petitioner filed a habeas corpus with this court alleging that his detention was unlawful. That petition was ultimately denied on May 11, 2026. *See Rodriguez Espino v. Lyons et al.*, No. 3:26-cv-00807-LS, (W.D. Texas May 11, 2026) (Doc. 11). On May 20, 2026, a preliminary injunction was issued for certified class members who were affected by Respondents' 2025 Guidance regarding victim-based immigration benefits. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *3 (C.D. Cal. May 20, 2026).

In granting a preliminary injunction in *ICWC*, the court certified a Pending Petition Class defined as "All individuals with a pending principal or derivative U visa petitions, T visa petitions or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement". *See Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *46 (C.D. Cal. May 20, 2026). The court ordered a stay on the implementation of Respondents' 2025 Guidance. *Id.* *47. Respondent's 2025 Guidance expressly "rescinded and superseded" the 2011 Policy and 2021 Directive. *Id.* at *6.

The 2011 Policy directed ICE personnel to "minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice". *See* 2011 Policy, p.1. It also stated that absent any special circumstances or aggravating factors, it was against ICE policy to initiate removal proceedings against known victims of crime. *Id.* Moreover, absent serious adverse factors such as national security concerns or evidence the noncitizen has a serious criminal history, exercising favorable discretion, such as release from detention and deferral or a stay or removal generally, would be appropriate. *Id.* at p.2.

The 2021 Directive continued ICE's policy to refrain from taking civil enforcement action against individuals known to have a pending application for victim-based immigration benefit. *See* 2021 Directive, ¶ 2. The 2021 Directive states that persons with pending applications or petitions absent exceptional circumstances, ICE will defer enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *Id.* ¶ 2.1. Eligibility for victim-based immigration must be considered a positive discretionary factor. *Id.* ¶ 2.

Here, Petitioner is a member of the Pending Petition Class in *ICWC* because he has a pending VAWA self-petition who ICE detains for civil immigration enforcement. Therefore,

immediate release is warranted. Absent release, Petitioner will continue to suffer irreparable harm as he will continue to be detained, and be separated from his family and work.

On July 21, 2026, Petitioner, through counsel, emailed a request for release given his pending VAWA application. On July 27, 2026, Petitioner, through counsel, followed up with the prima facie finding and attached the notice to the email. No response to the request for release has been received.

CLAIMS FOR RELIEF

The "historic purpose of the writ" of habeas corpus is "to relieve detention by executive authorities without judicial trial." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (cleaned up). A habeas court's role is at its "most extensive in cases of pretrial and noncriminal detention," especially "where there ha[s] been little or no previous judicial review of the cause for detention," as is the case here. *Boumediene v. Bush*, 553 U.S. 723, 780 (2008). Here, Petitioner sets for the following claims for issuance of the writ.

CLAIM ONE
Violation of APA 5 U.S.C. § 706(2)(A)
Petitioner's Detention Is Not in Accordance with Law because It Violates the ICWC PI Order

Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraph as if fully set forth herin.

Under the APA, courts "shall . . . hold unlawful and set aside agency action . . . found to be . . . not in accordance with the law." 5 U.S.C. § 706(2)(A). Respondents' detention of Petitioner constitutes final agency action under the APA. 5 U.S.C. § 551(13), 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

In *ICWC*, the court concluded that plaintiffs were likely to succeed on their claim that Respondents' 2025 Guidance was arbitrary and capricious and not in accordance with law under the APA. *See Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *35 (C.D. Cal. May 20, 2026). As a result, the court stayed the 2025 Guidance in regard to class members who have a pending VAWA petition. *Id.* at *47.

The stay applies in favor to members of the Pending Petion Class which includes Petitioner. *Id.* Respondent detained Petitioner pursuant to the stayed 2025 Guidance. Accordingly, Respondents' detention of Petitioner is not in accordance with law in violation of the APA, as it directly contravenes the § 705 relief issued in the *ICWC* PI Order.

CLAIM TWO
Accardi Doctrine
Petitioner's Detention Violates the PM, Regulations, and Longstating Policy and Practice

Petitioner's Detention Violates the PM, Regulations, and Longstanding Policy and Practice

Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

The Supreme Court has long recognized that government agencies are required to follow their own procedures. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Courts have regularly applied this principle to the immigration context. *See, e.g., Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004). The Accardi doctrine extends beyond just "regulations" to include, e.g., "internal operating procedures," "handbook[s]," "policy statements," and other evidence of an agency's "usual practice." *Id.* at 1162.

The 2021 Directive and the 2011 Policy clearly outline the enforcement priorities for ICE. Namely, ICE policies continue to protect U, T, and VAWA petitions from civil immigration enforcement absent exceptional circumstances. Therefore, in the case of victims like Petitioner, in

the absence of national security concerns or serious criminal history, exercising favorable discretion such as release from detention is appropriate. *See* 2011 Policy, at 2. Moreover, absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefit. *See* 2021 Directive, at 2 ¶ 2. Such exceptional circumstances are defined as noncitizens who pose a national security concern or the noncitizens who pose an articulable risk of death, violence or physical harm to any person. *Id.* at 3 ¶ 3.4.

Here, Petitioner has no criminal history and has received a prima facie determination from Respondents. This in turn does not give any rise to a national security concern or an articulable risk of death, violence, or physical harm to any person. Additionally, based on the 2021 Directive and the 2011 Policy, Petitioner is the exact type of person who applies for a favorable exercise of discretion. Respondents have already acted in their discretion by applying such policies related to victim-based immigration benefits. Such policies where also in line with Congress' attempt to provide victim-based immigration benefits. Additionally, detention is costly and Petitioner's removal proceedings on premised on a 2025 Guidance that has now been stayed.

REQUESTED RELIEF

WHEREFORE, Petitioner, respectfully requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order Respondents to show cause why the writ should not be granted;

(3) Issue a writ of habeas corpus and order Respondents to immediately release petitioner and forbid them from redetaining Petitioner while his VAWA petition is pending;

(4) Declare that Petitioner's detention is unlawful; and

(5) Grant such further relief as the Court deems just and proper.

/S/ FELIPE DJ MILLAN

FELIPE D.J. MILLAN

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ATTORNEY FOR PETITIONER

VERIFICATION

I, Felipe Millan, am counsel for Petitioner Eber Rodriguez Espino in this habeas corpus proceeding. Petitioner is currently detained in immigration custody and is therefore unable to personally verify this Petition.

Pursuant to 28 U.S.C. § 2242, I verify on behalf of Petitioner that the factual statements contained in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief, based upon my communications with Petitioner, the

Petitioner's communication with the employees of the Law Office of Felipe Millan, and review of records and information available to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of August, 2026, at El Paso, Texas.

/S/ FELIPE DJ MILLAN
FELIPE D.J. MILLAN

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 2026, a true and correct copy of the foregoing Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 was filed with the Clerk of the Court.

I further certify that a true and correct copy of the foregoing Petition is being served upon Respondents in accordance with Rule 4(i) of the Federal Rules of Civil Procedure, including service upon the Office of the United States Attorney for the Western District of Texas, which represents Respondents in this action, as well as the United States Attorney General.

I declare under penalty of perjury that the foregoing is true and correct.

/S/ FELIPE DJ MILLAN

FELIPE D.J. MILLAN