UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

N.S.,

Petitioner,

v.

Leonard Oddo, in his official capacity as Facility Administrator of Moshannon Valley Processing Center; John E. Rife, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office; U.S. Immigration and Customs Enforcement; Markwayne Mullin, in his official capacity as U.S. Secretary of Homeland Security; Todd Blanche, in his official capacity as U.S Attorney General,

Respondents.

CIVIL ACTION NO. 3:26-CV-1563

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

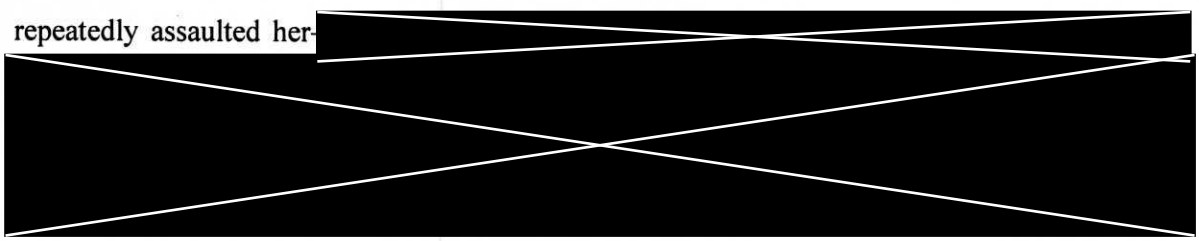
1. Petitioner N.S.[1] brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241 to vindicate her right against physical confinement without due process. N.S. is a national of the Dominican Republic and survivor of domestic violence with a pending application for a U visa, a nonimmigrant visa for victims of qualifying crimes who assist law enforcement with the investigation or prosecution of criminal activity. Decl. of Maya McDonnell ¶¶ 3-7; Ex. A ¶¶ 1, 22-24. Nearly three years ago, on account of that application, the U.S. Department of Homeland Security, through the U.S. Citizenship and Immigration Services ("USCIS"), granted N.S. deferred action status—protecting her from both immigration detention and removal—and authorization to work in the United States. Exs. B-C. Those protections remain in effect until March 2028. Ex. C. Under the Department's regulations, those protections are for USCIS to grant and for USCIS alone to revoke. Yet on May 12, 2026, without USCIS taking any action, without considering N.S.'s deferred action or work authorization, and without an opportunity for pre-deprivation process, U.S. Immigration and Customs Enforcement ("ICE")—another component of the same Department—arrested N.S., initiated removal proceedings, and has detained her without a bond hearing ever since. McDonnell Decl. ¶¶ 10, 21. N.S. is now detained by Respondents at the Moshannon Valley Processing Center in Clearfield County, Pennsylvania. *Id.* ¶¶ 1, 11. Given these circumstances, N.S.'s physical confinement and ICE's effective revocation of her deferred action violates due process and the Department's own regulations, and so she seeks immediate release.

2. N.S. is a member of the Deferred Action Class certified in *Immigration Center for Women and Children v. Noem* ("*ICWC*"), No. 2:25-cv-09848-AB-AS (C.D. Cal.), a class action brought on behalf of victims of domestic violence, trafficking, and other serious crimes with pending applications for victim-based immigration relief. *See ICWC*, 2026 WL 1455004, at *1

[1] Accompanying this petition is a motion by Petitioner to proceed by initials, to redact certain personally identifying information, including her alien registration number, complete date of birth, photograph and last names of family members, in accompanying documents, and to seal her declaration in support of asylum from her removal proceedings and the declaration of her removal defense attorney.

(C.D. Cal. May 20, 2026), *appeal docketed*, No. 26-3961 (9th Cir. June 22, 2026). The *ICWC* court preliminarily certified a nationwide class and stayed ICE's policy of refusing to "honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas." *Id.* at *46-47.

3. N.S. is a survivor of domestic violence. Beginning in 2018, her coworker, J.J., repeatedly assaulted her-



the attack. As a result, the New York City Police Department certified her helpfulness in support of her U visa petition. *Id.*; McDonnell Decl. ¶¶ 6-7. In July 2019, N.S. applied for a U visa, which Congress made available to noncitizens who have suffered substantial harm as a result of having been a victim of certain crimes and who have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of the crime. *See* Ex. B; 8 U.S.C. § 1101(a)(15)(U)(i).

4. On December 15, 2023, after evaluating N.S.'s U visa petition, USCIS determined that the petition was bona fide and that N.S. "warrant[ed] a favorable exercise of discretion to receive employment authorization and deferred action." Ex. B. As a result, USCIS granted N.S. employment authorization and deferred action on March 12, 2024 and provided that these benefits would be valid through March 11, 2028. Ex. C. USCIS has not revoked its bona fide determination, N.S.'s employment authorization, or N.S.'s deferred action status.

5. Nevertheless, without any notice or change in circumstances, armed and masked ICE officers abruptly arrested N.S. on May 12, 2026. McDonnell Decl. ¶ 10; Ex. D at 1. N.S. was first taken to 26 Federal Plaza in New York, and from there, ICE quickly transferred her to Moshannon, where she remains today. McDonnell Decl. ¶¶ 1, 11.

6. On May 28, 2026, Congresswoman Summer Lee conducted an unannounced oversight visit of Moshannon. McDonnell Decl. ¶ 15. N.S. spoke to Congresswoman Lee about her concerns and conditions of detention. *Id.* Four days later, N.S. was placed in solitary

confinement, where she remained without a hearing for approximately 25 days. *Id.* ¶¶ 15-16. Respondents did not provide any reason for placing N.S. in solitary confinement at the time. *Id.*

7. As a result of Respondents' actions, N.S. has been deprived of adequate nutrition, menstrual products, and medical attention; suffered verbal abuse from correctional officers; and been forced into unhygienic conditions, including being forced to urinate on herself while shackled and waiting several hours for a medical appointment. McDonnell Decl. ¶¶ 11-18. These harms stem directly from ICE's unlawful detention of N.S.

8. Respondents' abrupt detention of N.S. violates due process. Despite the government's own previous decision to grant deferred action and employment authorization—benefits that formally remain in effect—Respondents locked N.S. up without any individualized consideration (let alone by USCIS) of whether to revoke those benefits, without any showing of changed circumstances, without notice, and without an opportunity to respond at a hearing before a neutral decisionmaker, violates due process. District courts across the country have recognized that noncitizens facing civil detention have a constitutionally protected interest in their continued liberty and in due process before they are detained. *See, e.g.*, *O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 402-03 (E.D.N.Y. Nov. 25, 2025) (immigration courthouse arrest without notice violated due process); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *2-4 (S.D.N.Y. July 13, 2025) (same); *Millan v. Voorhies*, 2026 WL 248376, at *13-15 (N.D. Ohio Jan. 30, 2026), *adopted in relevant part*, 2026 WL 1374290 (N.D. Ohio May 15, 2026); *Martinez v. LaRose*, 2025 WL 3677938, at *3-5 (S.D. Cal. Dec. 18, 2025); *Rojas v. Almodovar*, 2025 WL 3034183, at *9 (S.D.N.Y. Oct. 30, 2025) (revocation of parole without notice and individualized reason violated due process); *Kelly v. Almodovar*, 2025 WL 2381591, at *3-4 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process).

9. Because ICE's detention of N.S. effectively revoked her deferred action and employment authorization, ICE also violated the Administrative Procedure Act and the Department's own regulations. Just as USCIS's decision to grant these benefits was an agency action under the APA, so too is ICE's decision to effectively revoke them. That action was contrary

to law because the Department's regulations give USCIS alone, and not ICE, the authority to revoke these benefits. In any event, ICE's decision was unreasoned, unexplained, and therefore arbitrary and capricious. And to the extent ICE relied on the policy change stayed by the *ICWC* court, its new policy has already been correctly found to violate the APA and is now stayed by court order.

10. N.S. therefore seeks a writ of habeas corpus ordering that she be released from detention immediately because she was detained without due process and despite her valid deferred action and employment authorization.

JURISDICTION

11. N.S. is in the physical custody of Respondents. N.S. is detained by ICE at Moshannon Valley Processing Center in Clearfield County, Pennsylvania, which is located in the Western District of Pennsylvania.

12. This Court has jurisdiction under 28 U.S.C. § 2241(a) (habeas corpus), 28 U.S.C. § 1331 (federal question), and the Suspension Clause, *see* U.S. Const. art. I, § 9, cl. 2.

13. This Court may grant relief under 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper in this District because it is the judicial district in which N.S. is detained. *See* 28 U.S.C. § 2241(a); *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 493-500 (1973).

15. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must "forthwith" grant the petition for writ of habeas corpus or order Respondents to show cause, unless it appears from the petition that N.S. is not entitled to relief. 28

U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17. Habeas corpus came to this Nation as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (attribution omitted). "Received into our own law in the colonial period," the writ remains "a great constitutional privilege." *Id.* (cleaned up). As the Supreme Court has repeatedly reaffirmed, "there is no higher duty than to maintain it unimpaired." *Id.* (quoting *Bowen v. Johnston*, 306 U.S. 19, 26 (1939)).

PARTIES

18. Petitioner N.S. is a citizen of the Dominican Republic who has been detained by ICE since May 12, 2026. McDonnell Decl. ¶¶ 1, 3, 10-11. She is currently held at Moshannon in Clearfield County, Pennsylvania. *Id.* ¶ 1. N.S. has lived in the United States since 2017. *Id.* ¶ 3. After she applied for a U visa in July 2019, USCIS granted N.S. deferred action and employment authorization in March 2024, valid through March 11, 2028. *Id.* ¶¶ 7-8; Exs. B-C.

19. Respondent Leonard Oddo is employed by The GEO Group, Inc. as Facility Administrator of the Moshannon Valley Processing Center. As the chief administrative official of the facility, he has immediate physical custody of N.S. He is sued in his official capacity.

20. Respondent John E. Rife is the Acting Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations Division. As such, he is N.S.'s immediate custodian and is responsible for her detention. The Acting Director is sued in his official capacity.

21. Respondent U.S. Immigration and Customs Enforcement is a component agency of the Department of Homeland Security and is responsible for the enforcement of immigration laws, including the detention and removal of noncitizens.

22. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is responsible for the implementation and enforcement of immigration laws, and he oversees ICE, which is responsible for N.S.'s detention. The Secretary has ultimate custodial authority over N.S. and is sued in his official capacity.

23. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. Immigration courts have the authority to review certain custody decisions by ICE and to order release in the cases reviewed. Therefore, the Attorney General is a custodian of N.S. He is sued in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. There is no statutory requirement that N.S. exhaust remedies before seeking habeas relief under 28 U.S.C. § 2241. *See Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000) ("[T]here is no statutory exhaustion requirement attached to § 2241 … ."); *see also McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (noting that exhaustion is required only when Congress "specifically mandates" it). Rather, that requirement is prudential.

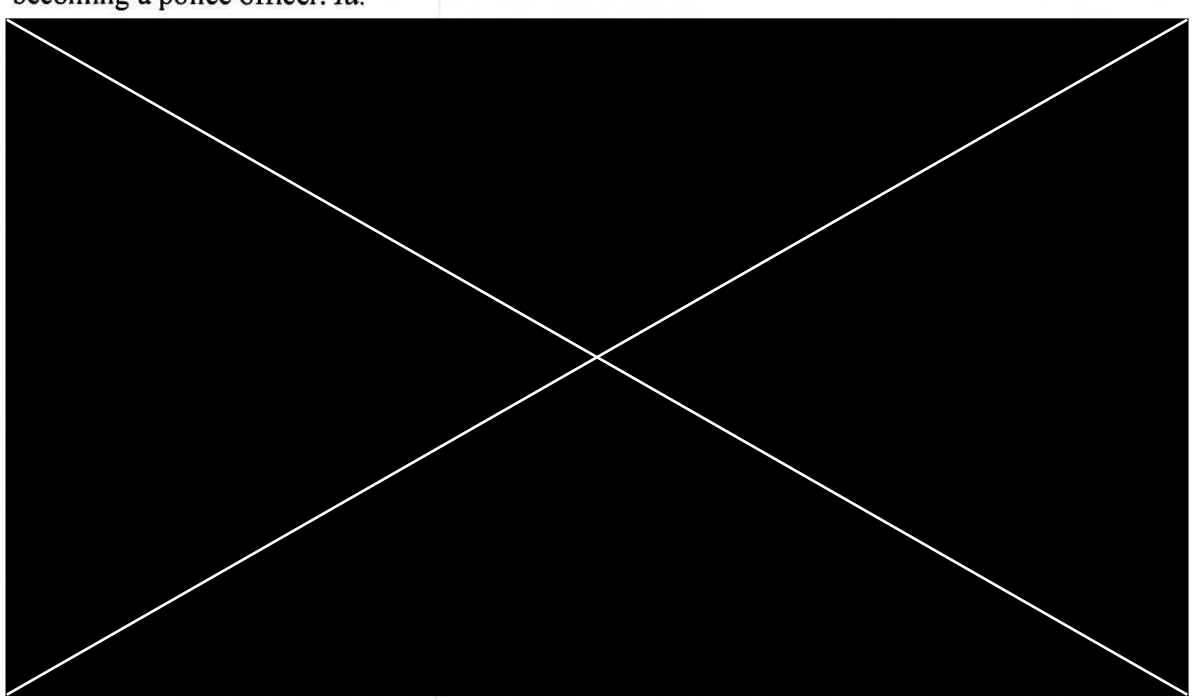
25. Likewise, exhaustion is not required before seeking judicial review of an agency decision when not mandated by the APA. *See Darby v. Cisneros*, 509 U.S. 137, 153-54 (1993) (holding that the APA requires exhaustion of administrative remedies "*only* when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review," and that "[c]ourts are not free to impose" prudential "exhaustion requirement[s] … where the agency action has already become 'final'"); *Fang v. Dir. U.S. Immigr. & Customs Enf't*, 935 F.3d 172, 181 (3d Cir. 2019).

26. Courts in this circuit do not require exhaustion when a noncitizen's "interest in prompt access to the federal courts" outweighs "the government's institutional interest in exhaustion." *See United States v. Dohou*, 948 F.3d 621, 628 (3d Cir. 2020). Even where otherwise required, exhaustion may be excused "when, for instance, waiver, estoppel, tolling or futility applies." *Id.* (cleaned up). And it must be excused "when the challenged agency action presents a clear and unambiguous violation of statutory or constitutional rights." *Id.* (attribution omitted). The Third Circuit has routinely found that constitutional challenges in the immigration context, like N.S.'s claims, are futile and exempt from exhaustion requirements. *See, e.g.*, *Qatanani v. Att'y Gen U.S.*, 144 F.4th 485, 499-500 (3d Cir. 2025).

27. Here, administrative exhaustion is not required because pursuing administrative remedies would be futile, and N.S.'s interest in prompt relief from Respondents' ongoing due process violation outweighs any interest Respondents have in requiring N.S. to use administrative pathways, to the extent any such pathways exist. As the Third Circuit has recognized, exhaustion "is not required where, as here, the petitioner advances a due process claim and shows [s]he suffered prejudice from the breach of the entitled protections." *Qatanani*, 144 F.4th at 499 (cleaned up). There is simply no adequate administrative path for relief.

STATEMENT OF FACTS

28. N.S. was born in the Dominican Republic in 1983. Ex. A ¶ 1. After N.S. finished high school at age 16, she had three children and then worked diligently to realize her dream of becoming a police officer. *Id.*



32. To flee this danger, in 2017, N.S. travelled to Puerto Rico by boat, and in early 2018, she flew to Newark, New Jersey. Ex. A ¶ 21; McDonnell Decl. ¶ 3. She was not inspected by customs in either location, nor was she formally admitted into the United States. McDonnell Decl. ¶ 3.

33. When she first arrived in the United States, N.S. lived with her aunt in the Bronx, New York, before moving to Rockland County, New York, around 2020. McDonnell Decl. ¶ 4; Ex. A ¶¶ 26-27. N.S.'s children joined her in the United States around 2023. Ex. A ¶ 26.

34. After arriving in the United States, N.S. worked at a construction site in Brooklyn. Ex. A ¶ 22; McDonnell Decl. ¶ 4.

35. In October 2018, N.S. was the victim of domestic violence at work. Ex. A ¶¶ 22-23; McDonnel Decl. ¶ 5. [redacted] *Id.*

36. N.S. told the police all the details of the attack. McDonnel Decl. ¶ 6.

37. N.S.'s back injury included a tear near her spine and a disc that came out of place. Ex. A ¶ 23; McDonnell Decl. ¶ 5. She needed injections in her back and was disabled for years. *Id.* N.S. later needed several surgeries, including for her knee, shoulder, and back. *Id.* N.S. gained weight from the injections used to treat her back injury, which in turn led to bariatric surgery and bypass surgery. *Id.*

38. J.J. continued to threaten N.S. over the phone. McDonnell Decl. ¶ 6. N.S. reported J.J.'s threats to law enforcement. *Id.* She continued to provide all relevant information to help the police locate J.J. *Id.* An officer from the domestic violence unit assisted N.S. in obtaining medical care. *Id.*

39. In July 2019, Petitioner filed an I-918 Petition for U Nonimmigrant Status, commonly known as a U visa. Ex. B. The petition remains pending with USCIS.

40. As discussed in more detail below, the annual cap on U visas has led to a yearslong backlog, which the Department has addressed by exercising its statutory authority to grant interim benefits to petitioners on the waiting list or awaiting adjudication. Those benefits include "work authorization," 8 U.S.C. § 1184(p)(6), and "deferred action or parole," 8 C.F.R. § 214.14(d)(2)-(3). Deferred action is a protection against immigration enforcement, including detention and removal. *ICWC*, 2026 WL 1455004, at *37 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*,

525 U.S. 471, 484 (1999)). These interim benefits are available to those with a "bona fide application" for a U visa. 8 U.S.C. § 1184(p)(6).

41. On December 15, 2023, USCIS determined that N.S.'s U visa petition was a bona fide application and that she "warrant[ed] a favorable exercise of discretion to receive employment authorization and deferred action." Ex. B. USCIS explained that N.S. could submit an application for employment authorization, which, when granted, would also trigger her "period of deferred action." *Id.*

42. On March 12, 2024, USCIS granted N.S. employment authorization and, with it, deferred action. Ex. C. The approval notice provided that N.S.'s authorization was valid through March 11, 2028. *Id.*

43. USCIS has neither revoked N.S.'s employment authorization or deferred action status nor given her notice of any intent to do so.

44. In May 2025, N.S.'s daughter moved to Pennsylvania. Ex. A ¶ 28. N.S. then rented rooms to her sister and two other women. *Id.* Less than a month later the two women were arrested for prostitution. *Id.* ¶ 30. Although N.S. was not involved in the crime, she pleaded guilty to a misdemeanor charge under New York law, was sentenced to three years' probation, and was released from criminal custody in January 2026. McDonnell Decl. ¶ 9; Ex. F.

45. On May 12, 2026, while N.S. was traveling to a scheduled probation appointment at the Rockland County Courthouse, several armed and masked ICE officers stopped, shackled, and detained her. Ex. A ¶ 33; McDonnell Decl. ¶ 10. ICE served N.S. with a Notice to Appear alleging that she is "an alien present in the United States who has not been admitted or paroled" and charging her as removable under INA § 212(a)(6)(A)(i) and (a)(7)(A)(i)(I). Ex. D. The notice makes no mention of her still-valid grant of deferred action. *Id.*

46. On a form purportedly signed shortly after the arrest by ICE Supervisory Detention and Deportation Officer Frank C. Franco, ICE invoked its discretionary detention authority under 8 U.S.C. § 1226(a). Ex. E. The form explains that a class action settlement requires officers at ICE's New York City Field Office to use it to make an "initial individualized custody

determination" and to first consider whether a noncitizen is "a danger to property or persons." *Id.* at 1. The form instructs officers to consider "any relevant factors, including, but not limited to: the extensiveness and seriousness of any criminal arrest or conviction; the length of time that has passed since any such arrest or conviction; the sentences imposed; criminal history not known to the immigration officer but disclosed by the noncitizen; statements from the noncitizen regarding dangerous or illegal conduct; evidence of rehabilitation; compliance with sentences; employment history and ties to the community." *Id.* And it directs officers to explain that determination in the space provided. *Id.*

47. Mr. Franco's explanation bears little resemblance to the inquiry ICE was required to be conducting. This was the entirety of his reasoning: "Convicted – 2026 – Promoting Prostitution 4-Advance Or Profit From Prostitution Reduced From: -Felony Promote Prost-3: Two Or More Prostitutes/Travel Facilitate Prostitution and sentenced to 3 years probation." Ex. E at 1. Mr. Franco made no attempt to explain why a misdemeanor conviction for which he knew that a state court determined N.S. should not be physically confined indicated that she was dangerous to people or property. *See id.* Nor did he consider N.S.'s pending U visa application, USCIS's determination that her application was bona fide, N.S.'s deferred action status and employment authorization, or any other facts. *See id.*

48. After the arrest, immigration agents processed N.S. at 26 Federal Plaza in New York. McDonnell Decl. ¶ 11. She was subsequently transferred to the Moshannon facility, where she remains detained. *Id.* N.S. has been detained in ICE custody without a bond hearing for 92 days.

49. More than a month after her arrest, N.S. finally appeared before an immigration judge for removal proceedings on June 18, 2026. McDonnell Decl. ¶ 21.

50. N.S. moved to terminate or administratively close her removal proceedings in light of her bona fide U visa application and deferred action status. McDonnell Decl. ¶ 22. That motion was denied by the immigration judge, who determined that immigration judges have no role in

reviewing DHS's decision to institute proceeding against noncitizens, including those with bona fide U Visa applications. *Id.*

51. In response to the Department's initiating of removal proceedings, N.S. is pursuing asylum, withholding of removal, and Convention Against Torture protection based on her fear of persecution in the Dominican Republic. McDonnell Decl. ¶ 23.

52. N.S. has attended all required appearances before the immigration court. On July 17, 2026, N.S. appeared before an immigration judge for an asylum hearing, which was adjourned until July 28, 2026 and ultimately completed on August 7, 2026. McDonnell Decl. ¶¶ 25-27.

53. On August 7, 2026, the immigration judge denied asylum, withholding of removal, and protection under the Convention Against Torture. McDonnell Decl. ¶ 27. N.S. intends to appeal within 30 days of that decision. *Id.*

54. N.S.'s detention has separated her from her home and support network in New York and interrupted her ongoing medical treatment for the serious back injuries she sustained as a victim of domestic violence.

55. Aggravating the harm from her detention, N.S. was placed in solitary confinement on June 1, 2026 for approximately 25 days, shortly after and apparently in retaliation for speaking to Congresswoman Summer Lee during an oversight visit. *See* McDonnell Decl. ¶¶ 15-16. N.S. was not given any notice or information about the purported reason for moving her to solitary or about how long she would be in solitary confinement. *Id.* ¶ 15. After repeated requests, N.S. was ultimately given a form explaining her placement weeks later on June 23. *Id.* The form was not translated, was backdated to June 1, and stated without explanation that N.S. was a "security risk to [her]self or the security of the facility." *Id.*

56. On July 16, 2026, N.S. was placed in the medical unit on suicide watch until July 20, when she was again transferred to solitary confinement. McDonnell Decl. ¶ 17. At a July 23 disciplinary hearing, N.S. was accused of assaulting another detainee and given a 21-day term in solitary. *Id.* ¶¶ 17-18. N.S. recalls an incident where she was baking a cake with a friend

for another detainee's birthday and brushed butter off her face in jest. *Id.* ¶ 17. The incident report and disciplinary panel review indicate that there were no witnesses, no statement from the alleged victim, and no claim of harm or injury to the alleged victim. *Id.*

57. Instead of releasing N.S. at the end of her 21-day term, officers told her on August 10, 2026, that she would remain in solitary confinement for another 30 days. McDonnell Decl. ¶ 19. N.S. has not been given any reason for or documentation of this latest 30-day placement in solitary. *Id.*

58. N.S.'s detention and her isolation in segregation have caused significant emotional and psychological harm, compounding the trauma she continues to endure from domestic violence. McDonnell Decl. ¶ 18.

EXHIBITS

59. Attached as Exhibit A is a true and correct copy of N.S.'s declaration dated July 14, 2026 and submitted in support of her Form I-589 application for asylum.

60. Attached as Exhibit B is a true and correct copy of the Bona Fide Determination Notice issued by USCIS to N.S. on December 15, 2023.

61. Attached as Exhibit C is a true and correct copy of USCIS's notice of approval of N.S.'s application for employment authorization, issued March 12, 2024 and valid until March 11, 2028.

62. Attached as Exhibit D is a true and correct copy of the Notice to Appear issued to N.S. by ICE on May 12, 2026.

63. Attached as Exhibit E is a true and correct copy of an "INA § 236(a) Initial Custody Determination" form dated May 12, 2026, which appears to have been completed by ICE following N.S.'s detention.

64. Attached as Exhibit F is a true and correct copy of a Certificate of Disposition from the Rockland County Court dated May 6, 2026 regarding N.S.'s misdemeanor conviction.

LEGAL FRAMEWORK

I. The Government Granted N.S. Benefits Through the U Visa Program That Have Not Been Properly Revoked.

A. The U visa program protects crime victims who assist U.S. law enforcement.

65. Congress created the U visa program in 2000 to protect noncitizen victims of qualifying crimes, including domestic violence, who assist law enforcement in investigating or prosecuting those crimes. *See* Battered Immigrant Women Protection Act of 2000, Pub L. No. 106-386, div. B, tit. V, § 1513, 114 Stat. 1464, 1533-37. The program is designed to provide "temporary legal status" to "facilitate the reporting," investigation, and prosecution of covered crimes committed in the United States, followed by a pathway to permanent residency and citizenship when "justified on humanitarian grounds, for family unity, or … otherwise in the public interest." *Id.* § 1513(a), 114 Stat. at 1533-34 (reprinted at 8 U.S.C. § 1101 note).

66. A noncitizen is eligible for a U visa if she (i) "suffered substantial physical or mental abuse as a result of having been a victim of" certain crimes, including "domestic violence"; (ii) "possesses information concerning [the] criminal activity"; (iii) "has been helpful, is being helpful, or is likely to be helpful" to government officials "investigating or prosecuting [the] criminal activity; and (iv) the crime "violated the laws of the United States or occurred in the United States." 8 U.S.C. § 1101(a)(15)(U)(i), (iii); *see also Inestroza-Tosta v. Att'y Gen. U.S.*, 105 F.4th 499, 507 (3d Cir. 2024), *abrogated in other part by Riley v. Bondi*, 145 S. Ct. 2190 (2025).

67. To obtain a U visa, the noncitizen must file a petition with USCIS, which "has sole jurisdiction over all petitions for U nonimmigrant status." 8 C.F.R. § 214.14(c)(1); *accord Inestroza-Tosta*, 105 F.4th at 507 n.2 (same). In general, U visas provide nonimmigrant status for up to four years, subject to extension. 8 U.S.C. § 1184(p)(6). After three years of continuous physical presence with a U visa, the noncitizen is eligible for adjustment of status to that of a lawful permanent resident if the Secretary determines that her "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." *Id.* § 1255(m)(1).

68. As the Department has acknowledged, Congress "created the U [visa] program out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity. Immigrants, especially women and children, can be particularly vulnerable to criminal activity like human trafficking, domestic violence, sexual assault, stalking, and other crimes due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences."[2]

B. Noncitizens awaiting U visas are eligible for deferred action and employment authorization.

69. Because there is a statutory cap of 10,000 U visas per year, 8 U.S.C. § 1184(p)(2)(A), there is a yearslong backlog of U visa petitions. As a result, Congress authorized the Secretary to "grant work authorization to any [noncitizen] who has a pending, bona fide application for" a U visa. *Id.* § 1184(p)(6). The Secretary has delegated the authority to oversee the U visa process by regulation to USCIS—and USCIS alone. *See* 8 C.F.R. § 214.14(c)(1); *see also* 8 C.F.R § 274a.12(c) (indicating that USCIS manages noncitizen employment authorizations).

70. "[E]ligible petitioners who, due solely to the cap, are not granted [U visas] must be placed on a waiting list … ." 8 C.F.R. § 214.14(d)(2). For those on the waiting list, USCIS "will grant deferred action or parole" and, "in its discretion, may authorize employment." *Id.* Petitioners "may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." *Id.* § 214.14(d)(3).

71. In addition to the waiting list, USCIS has created a Bona Fide Determination process to identify petitioners eligible for work authorization under 8 U.S.C. § 1184(p)(6). That

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[2] U.S. Dep't of Homeland Sec., U and T Visa Law Enforcement Resource Guide 4, https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf (2015); *accord* U.S. Dep't of Homeland Sec., U Visa Law Enforcement Resource Guide 1, https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf (last visited August 11, 2026) (similar).

process is set out in the USCIS Policy Manual, "the agency's centralized online repository for USCIS' immigration policies." USCIS Policy Manual, https://www.uscis.gov/policy-manual (last updated August 6, 2026). The Policy Manual contains USCIS's "official policies" and "is to be followed by all USCIS officers in the performance of their duties." *Id.*

72. The Bona Fide Determination process is a streamlined initial review to determine whether USCIS should grant employment authorization and deferred action for applicants awaiting final U visa adjudication. USCIS Policy Manual vol. 3, pt. C, ch. 5 (detailing the process); *see also id.* ch. 4 (overview of U visa adjudication processes). USCIS first determines whether the petition is "bona fide," meaning "made in good faith; without fraud or deceit." *Id.* ch. 5 (attribution omitted). That determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks." *Id.* If the petition is bona fide, USCIS next "considers any national security and public safety risks, as well as any other relevant considerations," to determine whether the petition "merits a favorable exercise of discretion." *Id.* If USCIS grants employment authorization through this process, it also grants "deferred action for the period of the" employment authorization. *Id.* The initial grant of employment authorization and deferred action is "valid for 4 years," *id.* § C.3, after which it is renewable, *id.* § C.6.

73. Petitioners granted employment authorization and deferred action are placed in the queue to wait for a U visa to become available as if they were on the U visa waiting list. *See* USCIS Policy Manual vol. 3, pt. C, ch. 5. ("USCIS generally does not conduct waiting list adjudications for" those granted employment authorization and deferred action; "these petitioners' next adjudicative step is final adjudication when space is available under the statutory cap.").

74. "[D]eferred action status" reflects a decision "not to initiate removal proceedings or enforce departure." 8 C.F.R. § 1.3(a)(4); *accord* USCIS Policy Manual vol. 1, pt. I, ch. 2, § C ("Deferred action is the formal documenting of a decision to exercise prosecutorial discretion to not pursue removal action or deportation against [a noncitizen] for a certain period of time."); *see also Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 912-14 (W.D. Wash. July 24, 2025) (collecting authorities discussing deferred action). In addition to protecting against removal,

deferred action also effectively protects against immigration detention, as there is no basis to detain absent any intent to remove. *See Santiago v. Noem*, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose.").

75. For nearly two decades, Department of Homeland Security policies have generally required ICE to refrain from detaining or pursuing removal efforts against people with pending U visa petitions and deferred action status, absent serious public safety concerns. *See infra* ¶¶ 134-36. These policies promoted Congress's intent to use the U visa program to encourage noncitizen victims to report crime. *See supra* ¶¶ 65-68.

76. USCIS retains the authority to terminate deferred action in certain circumstances. For U visa petitioners granted deferred action and employment authorization through the Bona Fide Determination process, USCIS identifies four circumstances in which it "has the right to revoke" these benefits early: (i) "if USCIS determines a national security or public safety concern is present"; (ii) "if USCIS determines the [employment authorization] and deferred action is no longer warranted"; (iii) if the "law enforcement certification" supporting the U visa petition "is withdrawn"; or (iv) if "USCIS determines the prior [employment authorization] was issued in error." USCIS Policy Manual vol. 3, pt. C, ch. 5, § C.6 & n.32 (citing 8 C.F.R. § 274a.14(b)).

77. The Department's regulations require USCIS to provide written notice and a 15-day opportunity to respond before revoking employment authorization. 8 C.F.R. § 274a.14(b).

78. USCIS has the exclusive authority to grant and revoke employment authorizations and deferred action in connection with U visa petitions. Neither the regulations nor the Policy Manual authorize any other component of the Department of Homeland Security or any other agency to revoke these benefits. *See* 8 C.F.R. § 214.14(c)(1), (d)(2)-(3); USCIS Policy Manual vol. 3, pt. C, ch. 5.

79. USCIS granted N.S. deferred action and employment authorization through its Bona Fide Determination process and specified that these benefits were valid through March 11,

2028. *Supra* ¶¶ 41-42; Ex. C. USCIS has not revoked these benefits or provided any notice that it is considering doing so.

II. Respondents' Detention and Effective Revocation of N.S.'s Deferred Action and Employment Authorization Violated the Fifth Amendment's Due Process Clause.

A. N.S. has a liberty interest in release from physical restraint.

80. The Fifth Amendment's Due Process Clause prevents Respondents from depriving "any person" of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

81. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The government cannot infringe upon a person's liberty without "adequate procedural protections." *Id.* at 690-91. And the protections of due process "appl[y] to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693; *B.C. v. Att'y Gen. U.S.*, 12 F.4th 306, 313 (3d Cir. 2021) ("The Fifth Amendment's Due Process Clause applies to noncitizens in the United States.").

82. Civil immigration confinement infringes on a protected liberty interest. The "essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up). The Court has repeatedly held that the Due Process Clause protects the fundamental liberty interest in freedom from physical restraint and confinement. *See, e.g.*, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality opinion) (describing "the most elemental of liberty interests—the interest in being free from physical detention"); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (reaffirming that "freedom from bodily restraint" is at the core of due process liberty and cannot be arbitrarily curtailed); *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982) (recognizing that the Due Process Clause protects a liberty interest in "freedom from bodily restraint"); *United States v. Salerno*, 481 U.S. 739, 750 (1987) (acknowledging the individual's "strong interest in liberty" and the "fundamental nature" of that right even in the pretrial context); *O'Connor v. Donaldson*, 422

U.S. 563, 575–76 (1975) (holding that a state cannot constitutionally confine a nondangerous person capable of surviving safely in freedom); *Addington v. Texas*, 441 U.S. 418, 425 (1979) (reiterating that civil commitment is a "significant deprivation of liberty" requiring due process protection). Considering this settled law, confinement is constitutionally permissible only when the government can point to a valid legal basis and provide process commensurate with the severity of the deprivation.

83. Without that lawful justification and meaningful procedural protection, confinement violates due process and can be remedied by the writ of habeas corpus. Indeed, "the Supreme Court [has] t[aken] care to explain that habeas review is 'most pressing' in the case of executive detention, as opposed to where 'relief is sought from a sentence that resulted from the judgment of a court of record.'" *Osorio-Martinez v. Att'y Gen. U.S.*, 893 F.3d 153, 177 (3d Cir. 2018); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review.").

84. The liberty interest at stake here is compounded by the government's earlier decision to grant N.S. deferred action and therefore not to detain her. A long line of Supreme Court precedent recognizes that individuals conditionally released from detention have a liberty interest in remaining free. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that liberty interest of an individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process under *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the same pre-deprivation process as *Morrissey* provides). As the D.C. Circuit put it, "[t]he Supreme Court has repeatedly held that at least in some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he

is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). Those principles apply with equal force here; that N.S. had not previously been subjected to immigration detention when USCIS decided that she should remain free does not diminish the constitutional stakes of confinement.

85. In *Morrissey*, the Supreme Court held that to comport with due process, a hearing is necessary to determine whether "the individual has in fact breached the conditions of parole" to protect not only the individual's protected liberty interests, but also the interest of society "in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole." 408 U.S. at 483–84. This rationale applies equally to detention by ICE in the face of USCIS's decision to grant deferred action. *See Nevarez Jurado v. Freden*, 813 F. Supp. 3d 376, 392 (W.D.N.Y. 2025); *ICWC*, 2026 WL 1455004, at *27 ("Even if Plaintiffs 'had their day in immigration court' once Defendants decided to pursue enforcement against them notwithstanding their deferred action status, Plaintiffs did not have pre-deprivation process to determine whether Defendants had grounds to revoke their deferred action."). Put simply, N.S. "received a grant of deferred action that has not been revoked, and [s]he has a constitutionally protected interest in being free from detention while that status is pending." *Id.*

86. District courts across the country have recognized that noncitizens facing civil detention share this constitutionally protected interest in their continued liberty. *See, e.g.*, *Perdomo Reynaud v. Lyons*, 2026 WL 1674229, at *5 (D.N.J. June 10, 2026) (finding that continued detention under § 1231(a)(6) violated a U visa petitioner's due process rights because the "[p]etitioner's deferred action remain[ed] unrevoked, and because Respondents ha[d] not provided competent evidence establishing a significant likelihood of removal in the reasonably foreseeable future"); *Maldonado v. Cabezas*, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025) (finding that detention without an individualized determination under § 1226(a) violated the due process rights of a petitioner with deferred action status and a history of two arrests); *Kelly*, 2025 WL 2381591, at *3 (ICE check-in detention without notice violated due process); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *9 (immigration courthouse arrest without notice violated due process);

Chipantiza-Sisalema, 2025 WL 1927931, at *4 (same); *Valdez v. Joyce*, 2025 WL 1707737, *2 (same); *Ramirez Lopez v. Trump*, No. 25-cv-04826 (JAV) (S.D.N.Y. July 10, 2025), ECF No. 31 (granting a temporary restraining order and release because the re-detention without notice of a person on an order of supervision likely violated due process); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *13 (W.D.N.Y. May 2, 2025) ("[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process."); *see also Rosado v. Figueroa*, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025) ("A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them—has particular relevance here, where Rosado's detention was previously found to be unnecessary to serve any purpose."), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Castellon v. Kaiser*, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Prieto Salazar v. Kaiser*, 2025 WL 2456232 (E.D. Cal. Aug. 26, 2025); *Meza v. Bonnar*, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that the petitioner raised "serious questions going to the merits" that she had a "vested interest" in her continued release from immigration detention).

87. Indeed, as one district court recognized, a petitioner subject to a civil detention scheme has an "arguably greater" liberty interest "than the interest of parolees in *Morrissey*," who had not yet completed their lawfully imposed criminal sentences. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, at 969-70 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the noncitizen petitioner had a "liberty interest in remaining out of [immigration] custody"). And as another district court acknowledged, due process "requirements take on particular significance when [the Court] consider[s] what actually happened to [the petitioner]. He was not 'detained'; he was, in fact, incarcerated under conditions" that are substantially worse than "those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes. But in sharp contrast to them, the 'sum total of procedural protections afforded' to [the petitioner] was far less." *Kelly*, 2025 WL 2381591, at *3 (quoting *Velasco Lopez*, 978 F.3d at 850–51, in turn quoting *Boumediene v. Bush*, 553 U.S. 723, 783 (2008)).

88. The record confirms N.S.'s protected liberty interest. N.S. has lived in the United States for over eight years. McDonnell Decl. ¶ 3; Exs. B-C. She was involved in her community, including driving full time for Uber Eats and DoorDash and attending church. Ex. A ¶ 32. She complied with all government requirements for processing her U visa petition. -N.S. has now been locked up at Moshannon for nearly three months, despite suffering from serious medical conditions, including spinal injuries and complications from her assault. *Id.* ¶¶ 5, 11-13; Ex. A ¶ 23.

89. In short, N.S. is precisely the type of person whose liberty interest demands the procedural protections the Due Process Clause guarantees—she has "come within the territory of the United States *and developed substantial connections with this country*." *Osorio-Martinez*, 893 F.3d at 168 (recognizing constitutional protection and "development of the ties that go with permanent residence" for noncitizens who satisfied the criteria and were awaiting visa availability under another congressionally prescribed protected status program that, like a U visa, permitted a later application for permanent residence); *Qatanani v. Att'y Gen.*, 144 F.4th 485, 503 (3d Cir. 2025) ("[A] noncitizen is accorded a generous and ascending scale of rights as he increases his identity with our society." (attribution omitted)).

90. Accordingly, N.S. has a protectable liberty interest in remaining free from detention.

B. N.S. has a protected interest in retaining her deferred action status and employment authorization.

91. USCIS's decision to "grant deferred action" and employment authorization to N.S. was "an affirmative act of approval" through which USCIS "conferr[ed] immigration relief." *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18-19 (2020) (cleaned up). Under the Bona Fide Determination policy, USCIS reached its decision to grant these forms of relief through a "standardized review process" that was "effectively [an] adjudication[]." *Id.* (cleaned up); *see also Am.-Arab*, 525 U.S. at 484 ("Approval of deferred action status means that … no action will thereafter be taken to proceed against an apparently deportable alien…"

(attribution omitted)); *see also, e.g.*, *Nevarez Jurado*, 813 F. Supp. 3d at 389 ("affirmative benefit").

92. "Not only does the deferred action status create a liberty interest, but the employment authorization document also creates a property interest." *Acosta de Mata v. Sullivan*, __ F. Supp. 3d __, 2026 WL 1230680, at *11 (N.D. Ga. May 4, 2026); *see also, e.g.*, *B.D.A.A. v. Bostock*, 2025 WL 3484912, at *6 (D. Or. Dec. 4, 2025) (recognizing that a U visa work authorization is a "substantial property interest").

93. The decision to grant this relief came with tangible benefits even beyond nonenforcement: the ability to work in the United States and eligibility for Social Security and Medicare benefits. *See Regents*, 591 U.S. at 18-19 (same for the DACA program); 8 C.F.R. § 1.3(a)(4)(vi) (defining noncitizens "currently in deferred action status" as lawfully present for purposes of Social Security benefits); 42 C.F.R. § 417.422(h) (incorporating 8 C.F.R. § 1.3's definition of lawful presence for Medicare purposes). "[A]ccess to these types of benefits is an interest courts often are called upon to protect." *Regents*, 591 U.S. at 18-19 (cleaned up).

94. In short, "[d]eferred action status and employment authorization … mean something real and concrete." *Acosta de Mata*, 2026 WL 1230680, at *12. USCIS's letter granting this relief to N.S. was "a promise that [she] shall be free from detention for four years," subject to revocation only by USCIS and only with due process. *Id.* at *11-12; *accord Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) ("Although the government was free to terminate" the "affirmative relief" of deferred action, "it did not, and [the petitioner's] arrest and detention despite that relief were unauthorized." (cleaned up)); *see also* 8 C.F.R. § 214.14(c)(1), (d)(2)-(3) (giving USCIS exclusive authority); 8 C.F.R. § 274a.12(c) (indicating that USCIS manages noncitizen employment authorizations).

95. To be sure, these are discretionary benefits. But even so, "once a benefit has been conferred, it may not then be taken away without sufficient procedural due process." *Acosta de Mata*, 2026 WL 1230680, at *10 (citing *Bell v. Burson*, 402 U.S. 535, 539 (1971)); *accord Enriquez-Perdomo*, 54 F.4th at 863; *B.D.A.A.*, 2025 WL 3484912, at *6; *Rizo Gomez v. Blanche*,

2026 WL 1045901, at *2 (D.N.M. Apr. 17, 2026); *Sepulveda Ayala*, 794 F. Supp. 3d at 914; *Nevarez Jurado*, 813 F. Supp. 3d at 388 n.8. "[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process." *Martinez v. Jamison*, et al., 2026 WL 700335, at *7 (E.D. Pa. Mar. 12, 2026) (quoting *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025)).

96. It is thus no surprise that, as of May 2026, "every … district court that ha[d] addressed the question" had concluded that "a U visa applicant who was granted deferred action status and employment authorization is entitled to due process before those benefits may be revoked." *Acosta de Mata*, 2026 WL 1230680, at *13 (collecting cases). That consensus has continued in the months since the *Acosta de Mata* court identified it.

C. N.S. is entitled to pre-deprivation notice and an opportunity to be heard.

97. Neither Respondents nor USCIS have provided Petitioner any notice of, potential reason for, or opportunity to be heard on any potential revocation of USCIS's grant of deferred action and employment authorization. Ultimately, "[t]he question of whether [N.S.'s] detention violates [her] due process rights turns on whether the government has free rein to detain a deferred action recipient without a pre-detention hearing or individualized determination." *Nevarez Jurado*, 813 F. Supp. 3d at 391 (cleaned up) (quoting *F.R.P. v. Wamsley*, 2025 WL 3037858, at *3 (D. Or. Oct. 30, 2025)). "Legal precedent strongly suggests that they do not." *Id.* (quoting *Wamsley*, 2025 WL 3037858, at *3-6 (collecting cases)).

98. Respondents cannot deprive N.S. of her liberty without "strong procedural protections." *Zadvydas*, 533 U.S. at 691.

99. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews*, 424 U.S. at 332. "The essence of due process is the requirement that a person in jeopardy of serious loss" receive "notice" and "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333, 348-49 (cleaned up).

100. To evaluate the adequacy of process afforded noncitizens in the United States the Third Circuit applies the three-part *Mathews* balancing test, considering "(1) the interest at stake for the individual noncitizen; (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'; and (3) 'the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *B.C. v. Att'y Gen.*, 12 F.4th 306, 315 (3d Cir. 2021) (quoting *Mathews*, 424 U.S. at 335).

101. Here, the *Mathews* balancing test comes out strongly in favor of N.S.

102. *First*, the private interests that will be affected are profound. N.S.'s liberty is at stake. Freedom from civil confinement "lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Moreover, N.S.'s employment authorization, together with other benefits, is vital to her livelihood, but is now at risk due to ICE's de facto revocation of deferred action. Where "continued possession" of benefits has "become essential in the pursuit of a livelihood" and revocation of those benefits "involves state action that adjudicates important interests," they "are not to be taken away without … procedural due process." *Bell v. Burson*, 402 U.S. 535, 539 (1971).

103. *Second*, "the risk of an erroneous deprivation of" these interests "through the procedures used" here could hardly be higher, compared to "the probable value" of a pre-deprivation process. *Mathews*, 424 U.S. at 335. Respondents provided no process whatsoever before effectively revoking N.S.'s deferred action and employment authorization; their own documentation of the purportedly individualized determination to detain her reflects their failure to even acknowledge, let alone consider, her deferred action status. Ex. E. "[T]he practice of automatic termination" of deferred action "creates an unacceptably high risk of erroneous deprivation." *Inland Empire-Immigrant Youth Collective v. Nielsen*, 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018); *see also Inland Empire-Immigrant Youth Collective v. Nielsen*, 2018 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018) (granting injunction for nationwide class in the same case). And although Respondents filled out a form purporting to provide some minimal process as

to the detention itself, that process came without any notice or opportunity to respond, and it led to error: ICE's own documentation demonstrates that it failed to consider N.S.'s deferred action, which protected her from detention. *Supra* ¶¶ 45-47; Ex. E.

104. *Third*, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," are minimal. *Mathews*, 424 U.S. at 335. USCIS already has a pre-deprivation process; the agency has delineated the circumstances in which it may revoke deferred action it conferred based on a U visa petition and thus subject people like N.S. to immigration detention. USCIS Policy Manual vol. 3, pt. C, ch. 5, §§ C.1, C.6 (discussing conditions for USCIS to "terminate deferred action" based on a U visa bona fide determination). "Government agencies must follow their own published regulations." *Griffin v. Harris*, 571 F.2d 767, 772 (3d Cir. 1978); *see also Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 45 (M.D. Pa. 2025) ("Government interests are not harmed by requiring the government to follow its own regulations."); *Marcano v. Jamison*, 2026 WL 196504, at *3 n.2 (E.D. Pa. Jan. 26, 2026). Respondents can thus claim no legitimate interest in circumventing that process by effectively revoking deferred action through their arbitrary detention of N.S.

105. Accordingly, N.S. has been deprived of due process under the Fifth Amendment.

106. District courts have consistently found due process violations in similar cases. *See, e.g.*, *Cervantes v. Mullin*, 2026 WL 2030189, at *1 (E.D. Cal. July 14, 2026) (granting habeas on due process grounds and finding the petitioner "had a liberty interest in his deferred action status and a property interest in his dependent work authorization, that could not be revoked without proper due process"); *Pineda Parada v. Rice*, 2026 WL 2122879, at *2-3 (W.D. La. July 1, 2026) (finding that detaining a U visa petitioner while his "deferred action remains active and unrevoked" and "without any process addressing the effect of [deferred action] on his continued detention" violated the Fifth Amendment); *Almanza v. Oddo*, 2026 WL 1506283, at *4 (W.D. Pa. May 29, 2026) (determining detention of U visa bona fide determination recipient violated due process); *B.D.A.A. v. Bostock*, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025) (determining the

government "nullified Petitioner's bona fide U visa determination and its attendant benefits, including Petitioner's work authorization and deferred action status without due process"); *F.R.P. v. Wamsley*, 2025 WL 3037858, at *5-6 (D. Or. Oct. 30, 2025) (collecting cases); *O.A.M.R. v. Wofford*, 2025 WL 3702171, at *2 (E.D. Cal. Dec. 21, 2025); *Nevarez Jurado v. Freden*, 813 F. Supp. 3d 376, 391-93 (W.D.N.Y. 2025); *Espinoza-Sorto v. Agudelo*, 2025 WL 3012786, at *6 (S.D. Fla. Oct. 28, 2025); *Maldonado v. Noem*, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025).

107. Because there is no lawful basis for N.S.'s detention while her deferred action remains valid, immediate release is the appropriate remedy.

108. Immediate release is further warranted in light of the harm N.S. faces from continued confinement. *Supra* ¶¶ 54-58. Absent release, N.S. will continue to experience prolonged separation from her family and community, interruption of medical care for her back injuries, and the re-traumatization and emotional harm caused by her detention as a survivor of domestic violence. Therefore, immediate release is warranted.

III. Respondents' Effective Revocation of N.S.'s Deferred Action and Employment Authorization Violated the Administrative Procedure Act.

109. The APA authorizes judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Under the APA, an "agency action" "includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." *Id.* § 551(13); *see also id.* § 701(b)(2). "[T]he word 'action' … cover[s] comprehensively every manner in which an agency may exercise its power." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 478 (2001). And a "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4); *see also id.* § 701(b)(2).

110. An agency action is final when it (i) "mark[s] the consummation of the agency's decisionmaking process," meaning that it is not "merely tentative or interlocutory"; and (ii) is "one

by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (cleaned up); *accord Pinho v. Gonzales*, 432 F.3d 193, 200 (3d Cir. 2005).

111. The APA requires a court to "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see Regents*, 591 U.S. at 16 . The APA's fundamental requirement is that agencies engage in reasoned decisionmaking. *See, e.g.*, *Ohio v. EPA*, 603 U.S. 279, 292(2024) ("An agency action qualifies as arbitrary or capricious if it is not reasonable and reasonably explained." (cleaned up)). To do so, an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (cleaned up). Agency action is arbitrary and capricious when the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* Courts cannot "supply a reasoned basis for [an] agency's action that the agency itself has not given." *Id.* (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

112. When an agency reverses an established policy, it must at least acknowledge that it is changing course and provide a reasoned explanation for doing so. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009). And when the prior policy rested on factual judgments or engendered serious reliance interests, the agency must provide a reasoned explanation for disregarding those judgments and reliance interests. *Id.*; *Regents*, 591 U.S. at 30-33; *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016).

113. An APA claim may be brought in habeas, so long as it has "some relationship to the prisoner's release." *Thieme v. Warden Fort Dix FCI*, 154 F.4th 115, 123 (3d Cir. 2025); *see also Gardner v. Grandolsky*, 585 F.3d 786, 788 (3d Cir. 2009) (reviewing in a habeas proceeding an APA challenge to a regulation regarding early release). Here, there is a clear relationship

between the APA violation and N.S.'s release because the challenged agency action—ICE's effective revocation of N.S.'s deferred action and employment authorization—directly resulted in her detention.

A. Respondents' effective revocation is a final agency action subject to judicial review under the APA.

114. By detaining N.S., ICE constructively stripped her of her deferred action status and employment authorization, which was operative through March 11, 2028. Effectively revoking these benefits is an "agency action" within the APA's broad definition. *See* 5 U.S.C. § 551(4), (13).

115. ICE's action is "final" for purposes of judicial review. Although ICE did not expressly revoke N.S.'s benefits, it functionally stripped her of them. ICE cannot deprive this Court of jurisdiction by eliding the Department's prescribed process. The choice to strip N.S. of the benefits USCIS bestowed has immediate legal consequences. The decision deprived N.S. of her liberty, employment authorization, and deferred action. *See Pinho*, 432 F.3d at 203 (holding that ineligibility for employment authorization and change in status satisfy *Bennett*'s second prong).

116. Litigants need to bring a claim within an agency before raising the claim in district court "*only* when expressly required [to do so] by statute and only when the statute sets forth steps that the immigrant can take to have an action reviewed within the agency." *Jie Fang*, 935 F.3d at 181.

117. N.S. has no opportunity for ICE to review her de facto revocation. Although USCIS has prescribed processes for revoking deferred action, which ultimately include putting a petitioner whose deferred action is revoked on the waiting list for a full U visa adjudication, *see* USCIS Policy Manual vol. 3, pt. C, ch. 5, those processes were not followed here because ICE, not USCIS, undertook the action at issue. Because ICE has no authority to grant or revoke U visa-related benefits to begin with, it is no surprise that ICE has no process by which N.S. could challenge its

decision to effectively revoke those benefits. Nor would taking the issue up with USCIS work; ICE already effectively overruled USCIS through the brute force of physical confinement.

118. The Third Circuit has recognized jurisdiction in similar cases where removal proceedings did not "offer an opportunity for review of the denial of [visa] reinstatement." *Jie Fang*, 935 F.3d at 184. Much like in *Jie Fang*, here, "removal proceedings cannot serve as an opportunity to review" N.S.'s loss of benefits "because neither immigration judges nor the [Board of Immigration Appeals] have jurisdiction to review those decisions." *Id.* at 185. Accordingly, ICE's effective revocation is a reviewable final agency action. *See* 5 U.S.C. § 704.

B. Respondents' effective revocation was contrary to law because USCIS has the exclusive authority to grant and revoke N.S.'s U visa-related benefits.

119. The Supreme Court has long recognized that "rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency." *Leslie v. Att'y Gen.*, 611 F.3d 171, 175 (3d Cir. 2010); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). In other words, agencies are required to follow their own procedures.

120. The Supreme Court first recognized this doctrine in *Accardi*, "where the Supreme Court vacated a removal order of the Board because the procedures leading to the order did not conform to the applicable regulations." *Leslie*, 611 F.3d at 175. And courts have continued to apply this principle to the immigration context. *See id.* at 175-180; *see also Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (noting that the doctrine requires an agency to adhere to "internal procedures," "handbook[s]," and "policy statements").

121. The Department has promulgated regulations giving USCIS "sole jurisdiction over all petitions for U nonimmigrant status." 8 C.F.R. § 214.14(c)(1); *see also* 8 C.F.R. § 274a.12(c) (indicating that USCIS manages noncitizen employment authorizations). This means USCIS—not ICE—has exclusive authority to oversee the benefits conferred by USCIS in connection with a U visa petition.

122. The Department's regulations restrict the circumstances in which USCIS can revoke employment authorization and the process for doing so. "Employment authorization

granted under [8 C.F.R.] § 274.a12(c)"—including for deferred action recipients—"may be revoked by the [USCIS] district director" before its scheduled expiration date in only two circumstances: (i) "when it appears that any condition upon which it was granted has not been met or no longer exists, or for good cause shown"; or (ii) "[u]pon a showing that the information contained in the application [for employment authorization] is not true and correct." 8 C.F.R. § 274a.14(b)(1); *see id.* § 274a.12(c)(14) (making deferred action recipients eligible to apply for employment authorization). The district director must "serve written notice of intent to revoke the employment authorization," "cite the reasons indicating the revocation is warranted," and give the noncitizen "fifteen days from the date of service of the notice within which to submit countervailing evidence." *Id.* § 274a.14(b)(2).

123. The USCIS Policy Manual similarly lays out specific grounds on which deferred action—and thus its protection against detention—may be revoked. For deferred action granted through the U visa Bona Fide Determination process, USCIS identifies four scenarios in which it may revoke: (i) "USCIS determines a national security or public safety concern is present," (ii) "USCIS determines the [employment authorization] and deferred action is no longer warranted," (iii) "the Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (iv) "USCIS determines the prior [employment authorization] was issued in error." USCIS Policy Manual vol. 3, pt. C, ch. 5, § C.6.

124. USCIS granted N.S. deferred action through its Bona Fide Determination process. Ex. B. Thus, any revocation of this deferred action must come from USCIS and comply with the Department's regulations and the USCIS Policy Manual. Rather than following these procedures, Respondent ICE took matters into its own hands by detaining N.S. and thus effectively stripping deferred action.

125. As the court in *ICWC* reasoned, "by permitting ICE to de facto revoke deferred action instead of following USCIS procedure, and without applying any of the applicable criteria from the USCIS Policy Manual," Respondents "are not complying with their own policies for

revoking deferred action" and are violating the *Accardi* doctrine. *ICWC*, 2026 WL 1455004, at *40.

126. In this circuit, an agency's violation of its own regulation warrants "invalidation of the challenged agency action" when the regulation "protect[s] fundamental constitutional or statutory rights" or "with a showing of prejudice." *Leslie*, 611 F.3d at 178.

127. Here, Respondents failed to comply with the Department's binding regulations by allowing ICE to usurp USCIS's exclusive jurisdiction and acting contrary to USCIS's policy for revoking benefits. Even if the regulations and policies at issue do not implicate any fundamental statutory or constitutional right, N.S. has been prejudiced by the loss of her employment authorization and deferred action status. Instead of being allowed to continue living and working in her community, she is now detained and separated from her family. Courts in this circuit have recognized that similar consequences constitute prejudice. *See, e.g.*, *De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400, 410-11 (D.N.J. 2018) (recognizing deportation, family separation, and inability to complete an immigration waiver process as prejudicial). Therefore, ICE's action is contrary to law and must be set aside.

C. Respondents' effective revocation was arbitrary and capricious.

128. Respondents' effective revocation of N.S.'s deferred action status and employment authorization also independently violates the APA because it was arbitrary and capricious.

129. ICE neither identified any justification for revoking N.S.'s benefits nor even acknowledged that it was doing so. That flunks the APA's fundamental requirement that agency actions be "reasonable and reasonably explained." *Ohio*, 603 U.S. at 292 (cleaned up); *accord State Farm*, 463 U.S. at 43.

130. The record indicates that ICE's sole reason for detaining N.S. and thus effectively revoking her benefits was a misdemeanor conviction for which a state court determined that physical confinement was not appropriate. Ex. E; *supra* ¶¶ 45-47. ICE made no attempt to explain how those facts support the conclusion it drew from them—that N.S. was a danger to persons or property—let alone how they justify effectively revoking N.S.'s deferred action status and

employment authorization. ICE therefore failed to identify any "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43.

131. Moreover, ICE "entirely failed to consider" the most "important aspect of the problem" before it. *State Farm*, 463 U.S. at 43. ICE did not even acknowledge, much less consider, N.S.'s unexpired deferred action and employment authorization. Nor did it account for USCIS's underlying determinations that N.S.'s U visa petition was bona fide and that these benefits were warranted after evaluating public safety and other discretionary considerations. Neither did it attempt to explain why its actions satisfied the Department's and USCIS's own standards for revoking deferred action and employment authorization, *see supra* ¶¶ 45-47. Ignoring these critical considerations was a textbook APA violation.

132. Even if ICE had acknowledged what it was doing (and even if it had the authority to do it), ICE's reasoning falls far short of justifying its effective revocation. There is no indication that any of the circumstances identified in the Department's regulations or the USCIS Policy Manual are present here. The closest ICE comes is its reference to N.S.'s misdemeanor, but that no more supports a finding of a "public safety concern," USCIS Policy Manual vol. 3, pt. C, ch. 5, than it did ICE's unexplained conclusion that N.S. is a danger to persons or property. Nothing in the Department's regulations or policies authorizes revoking benefits USCIS has conferred simply because ICE prefers a different outcome.

D. ICE's 2025 policy changes cannot justify Respondents' actions here because the new policies themselves violate the APA and are stayed by court order.

133. ICE's effective revocation of N.S.'s U visa-related benefits may reflect its adherence to 2025 policy changes that directed its agents to disregard those benefits. Those policy changes cannot justify ICE's action here because they both independently violate the APA and are stayed by court order.

134. For nearly two decades, consistent with Congress's intent to encourage noncitizen victims to report crime, the Department's policies have generally required ICE to refrain from

pursuing removal efforts against people with pending U visa petitions, absent serious public safety concerns.[3] These include written policies issued in 2011 and 2021.

135. In 2011, ICE issued Policy No. 10076.1 (the "2011 Policy") "regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence." John Morton, Dir., U.S. Immigr. & Customs Enf't, U.S. Dep't of Homeland Sec., Policy No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs 1 (2011), https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf. The 2011 Policy provided that "[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime." *Id.* And it directed ICE officers "to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions" involving crime victims. *Id.* at 2. It explained that detention is generally inappropriate absent "serious adverse factors," such as "national security concerns or evidence the [noncitizen] has a serious criminal history, is involved in a serious crime, or poses a threat to public safety." *Id.* The 2011 Policy also indicated that "a flag now exists" in the Department's Central Index System "to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief." *Id.* at 3.

136. In 2021, ICE issued Directive 11005.3 (the "2021 Directive"), which set forth its "policy regarding civil immigration enforcement actions involving noncitizen crime victims, including applicants for" U visas. Tae D. Johnson, Acting Director, U.S. Immigr. & Customs Enf't, ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims § 1 (2021), https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf. The 2021 Directive provided that "absent exceptional circumstances, ICE will refrain from

[3] *See, e.g.*, Memorandum from David J. Venturella, Acting Director, Detention and Removal Operations, U.S. Immigr. & Customs Enf't, U.S. Dep't of Homeland Sec., to Field Office Directors, Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants (Sept. 24, 2009), https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf.

taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits." *Id.* § 2; *see also id.* § 5.8 (detailing the process for making exceptions to this policy, including submitting a written justification and obtaining advance approval). The policy defined "civil immigration enforcement action" to include detention. *Id.* § 3.2(e).

137. On January 30, 2025, ICE reversed course. It issued Policy No. 11005.4 (the "2025 Policy"), which "rescinded and superseded" the 2011 Policy and 2021 Directive and thus cleared the way—for the first time in the agency's history—for the routine detention of U visa petitioners. *See* Caleb Vitello, Acting Dir., U.S. Immigr. & Customs Enf't, U.S. Dep't of Homeland Sec., Policy No. 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits (2025), https://www.ice.gov/doclib/foia/policy/11005.4.pdf. The policy asserts that "[c]urrent beneficiaries of victim-based immigration benefits may be subject to civil immigration enforcement." *Id.* at 1 n.1. Although it nominally requires internal consultation with other ICE officials before "conducting a civil enforcement action against [a] known beneficiary" of or a "petitioner[] for such benefits," that consultation is only "to ensure any such action is consistent with applicable legal limitations." *Id.* at 2.

138. The 2025 Policy has led to an unwritten policy and practice under which ICE refuses to honor USCIS's valid, unexpired grants of deferred action based on pending U visa petitions. *See ICWC*, 2026 WL 1455004, at *37-38 (finding substantial nationwide evidence that ICE was likely detaining and removing deferred-action recipients under such a policy, rather than through isolated actions by individual officers). The *ICWC* labeled this ICE's "De Facto Revocation Policy." *Id.*

139. The De Facto Revocation Policy treats USCIS's deferred action determinations as meaningless. When ICE detains a deferred-action recipient for purposes of pursuing removal without first obtaining a revocation decision from USCIS, ICE imposes the very enforcement consequences that USCIS expressly deferred at least until a scheduled expiration date. The result

is an effective revocation carried out by an agency component that did not confer the benefit and without applying any of the standards governing its revocation.

1. ICE's 2025 Policy and De Facto Revocation Policy cannot be applied to N.S. because they are stayed by court order.

140. On May 20, 2026, the *ICWC* court exercised its authority under 5 U.S.C. § 705 to stay the 2025 Policy and the De Facto Revocation Policy in favor of members of the Deferred Action Class. 2026 WL 1455004, at *47 (staying "the 2025 [Policy], including its rescission of prior policies," and "the De Facto Revocation Policy, under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas").

141. Because N.S. is an "individual[] 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 [has] detain[ed] … without providing notice and an opportunity to be heard regarding potential revocation of [her] deferred action status," N.S. is a member of the Deferred Action Class. *ICWC*, 2026 WL 1455004, at *47 (defining and preliminarily certifying the class).

142. Respondents ICE and the Secretary are defendants in *ICWC* and therefore are bound by the *ICWC* court's order entered against them and for the benefit of class members including N.S.

143. As a result, whatever the merits of the 2025 Policy and De Facto Revocation Policy, ICE and the Secretary are prohibited by court order from applying them to N.S. The policies therefore cannot justify Respondents' effective revocation of N.S.'s deferred action and employment authorization or their detention of N.S.

2. Regardless, the 2025 Policy and De Facto Revocation Policy cannot be applied to N.S. because they violate the APA.

144. Even setting aside the *ICWC* court's binding order, Respondents cannot rely on the 2025 Policy or the De Facto Revocation Policy here because those policies violate the APA. As the *ICWC* court correctly found under the preliminary injunction standard, both the 2025 Policy and De Facto Revocation Policy are final agency actions reviewable under the APA, and both violate the APA. *See* 2026 WL 1455004, at *32-37 (concluding that the plaintiffs are likely to

prevail on their claims that the 2025 Policy is arbitrary, capricious, and contrary to law); *id.* at *37-41 (concluding that the plaintiffs are likely to prevail on their claims that the De Facto Revocation Policy is arbitrary, capricious, and contrary to the *Accardi* doctrine).

145. The 2025 Policy is an "agency action" within the APA's broad definition. *See* 5 U.S.C. §§ 551(4), (13). The policy expressly revokes earlier policies restricting enforcement actions against current and potential beneficiaries of victim-based immigration benefits, and it prescribes what ICE personnel must and must not do with respect to that class of noncitizens. *See* 2025 Policy at 1-3. Because the policy is "an agency statement of general ... applicability and future effect designed to implement, interpret, or prescribe law or policy," it satisfies the APA's definition of a "rule," 5 U.S.C. § 551(4), which is a type of "agency action," *id.* § 551(13).

146. The 2025 Policy is final for purposes of judicial review. *See Bennett*, 520 U.S. at 177-78. It provides that it is "effective immediately," expressly rescinds and supersedes earlier policies, and states that it will "remain[] in effect until superseded." 2025 Policy at 1. It therefore "mark[s] the consummation of the agency's decisionmaking process." *Bennett*, 520 U.S. at 177-78 (cleaned up); *see ICWC*, 2026 WL 1455004, at *34. And "legal consequences will flow" from it—as they did here. *Bennett*, 520 U.S. at 178 (attribution omitted). Under the policies it rescinds, ICE officers were generally required to refrain from taking enforcement actions, including detention, against known beneficiaries of or applicants for victim-based benefits. *Supra* ¶¶ 134-137. The 2025 Policy withdraws those protections and more, clearing the way for detention and other actions that were previously prohibited. *ICWC*, 2026 WL 1455004, at *34. U visa petitioners like N.S. "are now subject to routine detention and removal from which they were previously protected." *Id.* Accordingly, the 2025 Policy "is a final agency action under the *Bennett* test and is therefore subject to APA review." *Id.*

147. That the policy is labeled "interim" makes no difference; the possibility that ICE will change its mind later does not make its currently operative decision any less final. *See U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597-99 (2016) (explaining that the

"possibility" of revision of agency guidance "is a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal").

148. The De Facto Revocation Policy is likewise a final, reviewable agency action. *See ICWC*, 2026 WL 1455004, at *37-38. The policy "arises out of the language of the 2025 [Policy]," which subjects U visa-based deferred action recipients to civil immigration enforcement. *Id.* at *37. The 2025 Policy "reflects a decision to subject persons with deferred action to immigration enforcement," and ICE has "in fact been taking enforcement actions against persons with deferred action by detaining and removing them without formally revoking their deferred action status." *Id.* There is nothing tentative about a policy that ICE has acted on throughout the country and in this very case. And as N.S.'s detention demonstrates, direct legal consequences flow from ICE's policy of effectively revoking deferred action: Despite USCIS's grant of deferred action, Respondents subjected N.S. to arrest, physical confinement, and the practical loss of employment authorization. *See id.* at *37-38.

149. Both policies are arbitrary, capricious, and contrary to law. 5 U.S.C. § 706(2)(A).

150. These policies reversed ICE's longstanding position. The 2025 Policy itself acknowledges that the 2011 Policy and 2021 Directive generally required officers to refrain from enforcement against known beneficiaries and applicants absent exceptional circumstances. 2025 Policy at 2. As a court in this District has recognized, the 2025 Policy replaced ICE's prior victim-centered approach, under which individuals with pending U-visa applications generally received stays of removal, without any recognition "that withdrawing protections might chill non-citizen cooperation and weaken the ability of law enforcement." *Zavala Almanza*, 2026 WL 1506283, at *5-6 (cleaned up).

151. The 2025 Policy provides no reasoned explanation for abandoning the factual and policy judgments underlying the former approach. Its only contemporaneous justification is a reference to Executive Order 14159 and that order's general objective of achieving "total and efficient enforcement" of the immigration laws. 2025 Policy at 2. The 2025 Policy does not identify any evidence that the policies it revoked impeded immigration enforcement, that their

factual premises had become inaccurate, that crime victims with pending benefit petitions presented newly identified flight or public safety risks, or that the former process imposed materially greater administrative burdens. Nor does it explain why eliminating victim protections would improve the efficiency of immigration enforcement. *See ICWC*, 2026 WL 1455004, at *35.

152. Moreover, the policies do not further the stated rationale "to achieve the 'total and efficient enforcement of immigration laws' against all inadmissible and removable" noncitizens. 2025 Policy at 2. Federal immigration law includes U visas and the interim benefits associated with U visa petitions. Yet ICE's policies render those interim benefits meaningless, obstructing Congress's intent in creating the U visa program and authorizing interim benefits. A bare assertion that ICE seeks more complete enforcement does not explain how undermining congressionally created immigration protections promotes enforcement of the immigration laws as a whole. *ICWC*, 2026 WL 1455004, at *35-36 ("[W]ithdrawing or weakening these protections is likely to undermine the goal of protecting victims and is likely to weaken law enforcement and compromise public safety."). In short, because ICE's approach is not "tied … to the purposes of the immigration laws or the appropriate operation of the immigration system," it "is arbitrary and capricious." *See Judalang v. Holder*, 565 U.S. 42, at 53-55 (2011).

153. ICE failed to consider the purpose of the U visa program that Congress, the Department, and ICE itself have repeatedly recognized. Congress created the U visa program both to protect victims of serious crimes and to strengthen law enforcement's ability to detect, investigate, and prosecute those crimes by encouraging noncitizen victims to report abuse and cooperate with authorities. Battered Immigrant Women Protection Act § 1513(a)(2)(A)-(B), 114 Stat. at 1533-34; *supra* ¶¶ 65-68. The 2025 Policy simply ignores the chilling effect that it will have on victims reporting abuse and cooperating with law enforcement. *See State Farm*, 463 U.S. at 43; *ICWC*, 2026 WL 1455004, at *36-37.

154. ICE also failed to consider the serious reliance interests created by the prior policy and by individualized grants of deferred action. An agency changing policy must determine whether reliance interests exist, assess their significance, and weigh them against the agency's

competing objectives. *Regents*, 591 U.S. at 30. Victims relied on the statutory and administrative protections in disclosing their identities and locations, reporting crimes, assisting law enforcement, and applying for relief, but the 2025 Policy failed to identify, assess, or weigh those reliance interests. *ICWC*, 2026 WL 1455004, at *37-38.

155. The 2025 Policy and De Facto Revocation Policy are also contrary to law because they usurp USCIS's exclusive authority over the U visa process and, in particular, grants of deferred action and employment authorization to U visa petitioners. *Supra* ¶¶ 69-78, 121-23; *see Accardi*, 347 U.S. at 268; *Leslie*, 611 F.3d at 175. By effectively revoking benefits over which USCIS has sole jurisdiction, ICE violated the Department's own regulations and policies. *See supra* ¶¶ 119-127; *ICWC*, 2026 WL 1455004, at *39-40.

156. Even setting aside ICE's lack of authority to revoke U visa-related benefits, its De Facto Revocation Policy flouts the Department's regulations and policies by ignoring the standards and processes governing revocation of those benefits. *See* 8 C.F.R. § 274a.14(b)(1); USCIS Policy Manual vol. 3, pt. C, chs. 5-6; *supra* ¶¶ 69-78, 119-127.

157. The 2025 Policy and De Facto Revocation Policy are therefore arbitrary, capricious, and contrary to law. 5 U.S.C. § 706(2)(A). They cannot provide a lawful basis for effectively revoking N.S.'s immigration benefits or for her continued confinement.

CLAIMS FOR RELIEF

158. 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).

159. The Court should issue the writ based on any of the independent claims set forth below.

COUNT I:
VIOLATION OF PROCEDURAL DUE PROCESS—DETENTION AND EFFECTIVE REVOCATION OF DEFERRED ACTION AND EMPLOYMENT AUTHORIZATION WITHOUT NOTICE OR A PRE-DEPRIVATION PROCESS

160. N.S. realleges and incorporates by reference the paragraphs above.

161. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Fifth Amendment's Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

162. Respondents detained N.S. in May 2026 and have kept her physically confined at Moshannon ever since, infringing upon her liberty interest in freedom from confinement. *Supra* ¶¶ 80-90. That detention also effectively revoked the affirmative immigration benefits—deferred action and employment authorization—that USCIS granted N.S. through March 2028. The effective revocation infringed upon N.S.'s liberty interest in deferred action and liberty and property interests in employment authorization. *Supra* ¶¶ 91-96.

163. Under the *Mathews* test, Respondents were required to provide individualized consideration, notice, and an opportunity to respond before effectively revoking N.S.'s immigration benefits and incarcerating her in ICE detention. *Supra* ¶¶ 97-108.

164. The Court should find that N.S.'s detention and Respondents' effective revocation of deferred action and employment authorization without the required procedural protections violates the Fifth Amendment's Due Process Clause, and it should therefore order immediate release.

COUNT II:
VIOLATION OF SUBSTANTIVE DUE PROCESS—DETENTION DESPITE VALID DEFERRED ACTION STATUS

165. N.S. realleges and incorporates by reference the paragraphs above.

166. Because "[a]rbitrary civil detention is not a feature of our American government," *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil confinement is only permissible "in certain special and narrow non-punitive circumstances," where a "special justification" asserted

by the government "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (cleaned up).

167. "Where an individual is protected from removal through deferred action, their detention serves no valid purpose." *Santiago v. Noem*, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025); *see also Perdomo Reynaud*, 2026 WL 1674229, at *5 ("At bottom, Respondents offer no meaningful legal argument as to how Petitioner's removal could be reasonably foreseeable given her unrevoked grant of deferred action [from her U visa petition]."); *Ayala v. Bondi*, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025) ("[D]eferred action prevents recipients' removal from the United States.").

168. Moreover, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by ... alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017); *see Chi Thon Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) ("Due process is not satisfied ... by rubberstamp denials based on temporally distant offenses. The process due even to excludable aliens requires an opportunity for an evaluation of the individual's current threat to the community and his risk of flight."); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020) (holding that to justify continued detention under § 1226(c), the government must show clear and convincing individualized evidence "that continued detention is needed to prevent [the petitioner] from fleeing or harming the community"); *Collado Nunez v. Oddo*, 2026 WL 1170973, at *9 (W.D. Pa. Apr. 30, 2026) (finding that DHS did not meet its burden to show "clear and convincing evidence that Petitioner was a *current* danger to the community" where "DHS relied solely on the bare record of temporally distant convictions" and record showed a "lack of evidence of any dangerous activity by Petitioner in the nearly five years that he remained at liberty" and an "absence of evidence of any violence or disciplinary infraction committed by Petitioner while he ha[d] been detained"). To have received deferred action in the first place, N.S. necessarily passed background checks and was vetted for national security and public safety risks. *Supra* ¶¶ 131. Nothing significant has changed

since USCIS determined that she was not dangerous. As ICE's own attempt to establish dangerousness shows, it relied exclusively on a misdemeanor conviction for which a court had already determined that N.S. could safely be released on probation. Ex. E.

169. Accordingly, Petitioner's detention bears no reasonable relation to a legitimate government purpose and thus violates Petitioner's substantive due process rights.[4]

COUNT III:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT—EFFECTIVE REVOCATION OF DEFERRED ACTION AND EMPLOYMENT AUTHORIZATION.

170. N.S. realleges and incorporates by reference the paragraphs above.

171. Under the APA, courts "shall … hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims may be raised in habeas proceedings. *Thieme v. Warden Fort Dix FCI*, 154 F.4th 115, 123 (3d Cir. 2025).

172. Respondents' decision to effectively revoke USCIS's grant of deferred action and employment authorization by detaining her is an agency action reviewable under the APA. *See Regents*, 591 U.S. at 18-19 ("[A]ccess to these types of benefits is an interest courts are often called upon to protect." (cleaned up)); *see also* 5 U.S.C. § 551(13) (defining "agency action" to include an agency "order," "relief, or the equivalent or denial thereof," whether in "whole" or "part").

173. The effective revocation is a final agency action within the meaning of 5 U.S.C. § 704. An agency action is "final" for purposes of judicial review when it (i) "mark[s] the

[4] A growing number of courts agree that detention of individuals in deferred action status violates substantive due process. *See, e.g.*, *Xajil v. Field Off. Dir. of Enf't & Removal Operations*, 2026 WL 1413116, at *2 (M.D. Fla. May 20, 2026) (determining that detaining a noncitizen with deferred action status violated substantive due process); *Garcia v. Guthrie*, 2026 WL 1139123, at *2 (M.D. Fla. Apr. 28, 2026) (same); *Reales v. Dir. of Enf't & Removal Operations*, 2026 WL 1090955, at *2 (M.D. Fla. Apr. 22, 2026) (same); *A.T. v. Baltazar*, 2026 WL 962595, at *5 (D. Colo. Apr. 9, 2026) (recognizing that arbitrary detention of a T Visa applicant with deferred action status violated substantive due process); *Gamez Lira v. Noem*, 2025 WL 2581710, at *2 (D.N.M. Sept. 5, 2025) (determining that a DACA recipient was likely to succeed on the merits of his substantive due process claim); *cf. Voskanyan v. Bondi*, 2025 WL 4649293, at *6 (C.D. Cal. Dec. 8, 2025) (granting a preliminary injunction based on a substantive due process claim in an immigration detention challenge); *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 940 (N.D. Cal.2025) (same).

consummation of the agency's decisionmaking process," as distinct from "a merely tentative or interlocutory" action; and (ii) is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett,* 520 U.S. at 177-78 (cleaned up). Respondents have already completed their effective revocation through their continued detention of N.S. And by taking away the benefits USCIS affirmatively granted, Respondents' action determined N.S.'s rights or obligations and created legal consequences. *See Pinho v. Gonzales*, 432 F.3d 193, 203 (3d Cir. 2005) (holding that ineligibility for employment authorization and change in status satisfies *Bennett*'s second prong). Before her detention, N.S. was free from detention, authorized to work, and protected from removal for a four-year period; now, she is locked up, prevented from working, and in removal proceedings.

174. The effective revocation was contrary to law. USCIS has the exclusive authority to grant and revoke deferred action and employment authorization in connection with a U visa petition. 8 C.F.R. § 214.14(c)(1), (d)(2)-(3); *supra* ¶¶ 69-78, 121-23. USCIS has granted deferred action and has not revoked it, and Respondents lack authority to act themselves. *Supra* ¶¶ 43, 69-78, 119-127.

175. In any event, the effective revocation was arbitrary and capricious. Respondents did not consider USCIS's grant of deferred action and employment authorization at all, let alone provide any reasoned explanation for revoking these benefits. *Supra* ¶¶ 128-132. Respondents did not just "fail[] to consider an important aspect of the problem"; they did not consider the problem at all. *State Farm*, 463 U.S. at 43.

176. Finally, to the extent Respondents relied on their 2025 policy changes, those policies are themselves arbitrary, capricious, contrary to law, and stayed by court order, and so they cannot justify Respondents' effective revocation. *Supra* ¶¶ 144-157; *ICWC*, 2026 WL 1455004, at *32-41.

177. Accordingly, Respondents' effective revocation of deferred action and employment authorization should be "h[e]ld unlawful and set aside" under the APA. 5 U.S.C. § 706(2). And because Respondents have no other basis for detaining N.S., her immediate release is warranted.

REQUEST FOR RELIEF

For these reasons, Petitioner requests that this Court grant the following relief:

a. Order that N.S. shall not be transferred outside the Western District of Pennsylvania while this habeas petition is pending;

b. Order Respondents to show cause why this petition should not be granted within three days and set this matter for a hearing within five days of the return, *see* 28 U.S.C. § 2243;

c. Issue a writ of habeas corpus requiring that Respondents immediately release N.S. and not re-detain her while she remains in valid deferred action status;

d. Award N.S. attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

Dated: August 12, 2026

Respectfully submitted,

/s/ Elyssa Williams

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(motion to proceed pro hac vice forthcoming)*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of N.S. because I am one of her attorneys at The Legal Aid Society and have reviewed her case materials and communicated with the other attorneys on her case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 12, 2026

Respectfully submitted,

/s/ Maya McDonnell

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