UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Josue Isaias MERINO PENADO,

Petitioner,

v.

David EASTERWOOD, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security; David J. VENTURELLA, in his official capacity as acting director of U.S. Immigration and Customs Enforcement; Todd BLANCHE, in his official capacity as Attorney General of the United States; Joel Brott, Sherburne County Sheriff.

Respondents.

Case No. 0:26-cv-4016

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Josue Isaias Merino Penado is detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Sherburne County Jail in Elk River, Minnesota. At the time of Petitioner's ICE arrest, he was a member of the Deferred Action Class certified in *Immigration Center for Women and Children v. Noem* ("*ICWC*"), a class action brought on behalf of immigrant victims of domestic violence, trafficking, and other serious crimes. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) ("*ICWC* PI Order"). Despite being in a valid period of deferred action status in connection with a pending U visa petition at the time of his arrest, Petitioner was unlawfully arrested and remains detained by Respondent ICE. This contravenes the *ICWC* PI Order, in which the court certified a nationwide class and issued a ruling staying 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 *57. As the court held, "a person with deferred action should neither be removed nor detained for immigration enforcement (removal) purposes." *ICWC* PI Order at *40.

2. On May 15, 2024, USCIS granted Petitioner deferred action and employment authorization in connection with his pending U visa petition. At the time of his arrest, USCIS had not revoked Petitioner's deferred action and work authorization in relation to Petitioner's pending U visa petition. Petitioner's deferred action was valid until May 23, 2028.

3. Approval of deferred action status means that. . . no action will thereafter be taken to proceed against an apparently deportable [non-citizen], even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("*AAADC*").

4. Petitioner previously litigated his detention through a habeas petition which was granted, and a bond hearing was ordered. *Merino Penado v. Easterwood*,

No. 26-cv-03063 (NEB/JFD) (D. Minn. June 23, 2026). Petitioner's bond hearing before the immigration judge was denied and he remains in ICE custody. While detained, USCIS directed Petitioner to appear for a biometrics appointment on July 20, 2026. ICE failed to assist in this biometrics request.

5. This petition challenges the present lawfulness of that detention as applied to Petitioner after ICE's failure to provide any practicable means for him to comply with a USCIS biometrics appointment required for his pending I-918, Petition for U Nonimmigrant Status.

6. ICE did not facilitate Petitioner's compliance. USCIS thereafter denied Petitioner's U visa petition because Petitioner did not complete biometrics. Petitioner's nonappearance was the predictable product of detention and ICE's failure to make compliance possible, not a voluntary failure to pursue the benefit.

7. Separately, Respondents' failure in honoring the protections of deferred action at the time of Petitioner's arrest also violates the U.S. Constitution, the Administrative Procedure Act ("APA"), and the *Accardi* Doctrine.

8. This is not an effort to relitigate Petitioner's prior habeas action or the immigration judge's bond determination. The material facts underlying this petition—the scheduled biometrics appointment, ICE's notice and failure to facilitate it, and USCIS's denial for noncompletion of biometrics—arose after, and could not be raised in, the prior habeas litigation. The petition challenges present custody and Government conduct that caused Petitioner to lose a meaningful opportunity to comply with a federally required component of his pending U visa petition.

9. Petitioner seeks a writ requiring his immediate release from ICE custody because Respondents' detention caused prevention of biometric compliance

violated Petitioner's right to due process of law.

JURISDICTION

10. A writ under 28 U.S.C. § 2241 may issue if, among other things, a person "is in custody under or by color of the authority of the United States," or is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c).

11. Petitioner is in the physical custody of Respondents under color of the authority of the United States. Petitioner is detained by ICE at the Sherburne County Jail in Elk River, Minnesota.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Minnesota, the judicial district in which Petitioner currently is detained.

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

PARTIES

16. Petitioner Josue Isaias Merino Penado is a national and citizen of El Salvador who has resided in the United States since 2014.

17. Respondent David Easterwood is the Director of the MSP Field Office of ICE's Enforcement and Removal Operations Division. As such, David Easterwood is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent Todd Blanche is the acting Attorney General of the United States and the senior official of the U.S. Department of Justice. He has the authority to adjudicate removal cases and to oversee EOIR, which administers the immigration courts and the Board of Immigration Appeals (BIA). Mr. Blanche has ultimate custodial authority over Petitioner and is sued in his official capacity.

20. Respondent David J. Venturella is the acting director of Immigration and Customs Enforcement. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Venturella has ultimate custodial authority over Petitioner and is sued in his official capacity.

21. Respondent Joel Brott is the Sheriff of Sherburne County, Minnesota, where Petitioner is detained. The Sherburne County Detention Center is operated by

the sheriff's department of Sherburne County. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

A. PETITIONER'S U VISA PETITION AND DEFERRED ACTION

22. On February 10, 2019, Petitioner was the victim of second-degree assault with a dangerous weapon in Bloomington, Minnesota. Petitioner cooperated with Bloomington police by providing a statement through a language-line interpreter, allowing officers to enter his home, and permitting collection of photographs and the knife used in the assault.

23. On June 27, 2019, Petitioner filed an I-918 Petition for U Nonimmigrant Status. *See* Ex. A.

24. USCIS granted Petitioner deferred action status on May 15, 2024, based on the pending petition for a U visa being bona fide. *See* Ex. B.

25. USCIS also issued Petitioner an Employment Authorization Document ("EAD") based on Petitioner's deferred action status. The EAD is valid from May 24, 2024, to May 23, 2028. *See* Ex. C.

B. DETENTION AND PRIOR HABEAS PROCEEDINGS

26. On or about June 11, 2026, Petitioner was detained by local law enforcement in Bloomington, Minnesota, for a DUI charge. Petitioner was then transferred into ICE custody and has since been detained at Sherburne County Jail.

27. In Petitioner's prior federal habeas action, the Court ordered a bond hearing. The hearing occurred, and bond was denied.

28. The prior habeas petition did not assert that ICE had failed to facilitate a USCIS biometrics appointment, did not seek relief based on the resulting loss of a U visa adjudication opportunity, and did not seek an order requiring ICE or USCIS to cure that failure.

C. ICE'S FAILURE TO FACILITATE BIOMETRICS CAUSED THE U VISA DENIAL

29. While Petitioner was detained, USCIS sent him a notice directing that he appears at an Application Support Center for a biometrics appointment on July 20, 2026. *See* Ex. D.

30. Although undersigned counsel did not represent Petitioner in connection with his U visa application, undersigned counsel promptly contacted ICE on August 30, 2026, after learning of the missed appointment. Undersigned counsel requested that ICE arrange for biometric collection while Petitioner remained detained. *See* Ex. E. Counsel relied on ICE instructions stating that ICE will initiate the fingerprinting process upon a request from the attorney of record. *See* Ex. F.

31. Having received no response, undersigned counsel again notified ICE on September 1, 2026, of Petitioner's previously scheduled biometrics appointment and requested assistance in facilitating the collection of his biometrics while in detention. Undersigned counsel also copied the Fort Snelling OPLA duty attorney on the correspondence in an additional effort to bring attention to the matter and obtain assistance. *See* Ex. G.

32. ICE did not acknowledge counsel's requests, arrange biometric collection, coordinate with USCIS, or provide a detention verification explaining why Petitioner could not attend the appointment.

33. On September 8, 2026, USCIS denied Petitioner's Form I-918 because he did not complete biometrics. *See* Ex. H.

34. A separate DHS regulation confirms that, for covered immigration-court applications, DHS is responsible for obtaining biometrics from a detained noncitizen. 8 C.F.R. § 1003.47(d). Petitioner does not contend that § 1003.47(d) directly governs USCIS's adjudication of Form I-918; rather, it confirms that DHS has recognized the practical reality that detainees cannot independently comply with biometric requirements.

35. The denial resulted directly from the combination of ICE's custody and ICE's failure, after notice, to make compliance practicable. Petitioner did not voluntarily abandon his U-visa petition and could not independently attend the appointment while detained.

36. The denial has caused concrete and irreparable harm. It jeopardizes Petitioner's access to a congressionally created victim-based benefit, threatens his existing deferred-action-related protections and employment authorization, prolongs his detention, and inflicts serious hardship on Petitioner and his family.

37. Petitioner does not seek an order directing USCIS to grant U status or to adjudicate the merits of the U visa petition. Petitioner seeks habeas relief from the present unlawful restraint of liberty that caused the biometric noncompliance and resulting denial.

LEGAL FRAMEWORK

A. CREATION OF THE U VISA

38. In 1994, Congress passed the Violence against Women Act

("VAWA") to address the widespread problem of noncitizens remaining in relationships with abusers who held the key to their eligibility for lawful immigration status in the United States. *See* Violent Crime Control and Law Enforcement Act of 1994, Title IV, Pub. L. 103-322, 108 Stat. 1796 (September 13, 1994). "[T]he goal of the bill is to 'permit[ ] battered immigrant women to leave their batterers without fearing deportation.'" *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003) (quoting H.R. Rep. No. 103–395, at 25).

39. In 2000, with overwhelming bipartisan support, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), which reauthorized VAWA through the Violence Against Women Act of 2000 ("VAWA 2000"). The VTVPA dramatically expanded protections for immigrant survivors.

40. Through Title 5 of VAWA 2000 – the Battered Immigrant Women Protection Act of 2000 ("BIWPA") – Congress created the U visa, providing a pathway to U.S. citizenship to noncitizen survivors of qualifying crimes who assist law enforcement in investigating or prosecuting those crimes. *See* BIWPA § 1513(a)(2)(B), (b); 8 U.S.C. § 1101(a)(15)(U).

41. A noncitizen is eligible for a U visa if (1) the petitioner "suffered substantial physical or mental abuse as a result of having been a victim of" certain explicitly identified types of crime; (2) the petitioner "possesses information concerning [the] criminal activity"; (3) the petitioner "has been helpful, is being helpful or is likely to be helpful" to government officials regarding the criminal activity: and (4) the crime occurred in the United States or violated U.S. law. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV). Children, spouses, and, for petitioners younger than 21, siblings and parents, may also receive U visas as derivative beneficiaries of the primary petitioner. 8 C.F.R. § 214.14(a)(10).

42. Among Congress's stated purposes in creating the U visa were (1) "to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes. . . committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States," and (2) to "facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused [noncitizens] who are not in lawful immigration status." BIWPA § 1513(a)(2).

43. As DHS 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 U.S. laws, fear of deportation, and cultural differences.[1]

44. Congress went further than simply creating the U visa. Congress additionally authorized DHS to waive virtually *any* ground of inadmissibility to U visa petitioners. *Id.* § 1513(e); 8 U.S.C. § 1182(d)(14).

45. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. No. 110-457, 122 Stat. 5044. The TVPRA added § 237(d) to the Immigration and Nationality Act ("INA"), which authorizes DHS to issue a stay of any removal order against a

[1] DHS, *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, at 4, available at https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf (last checked September 15, 2026).

U or T visa petitioner if the petition "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1). Any such stay remains in effect until the U or T visa is approved or denied, during which time the applicant "shall not be removed." 8 U.S.C. §§ 1227(d)(1)-(3).

46. Moreover, the TVPRA authorized employment for U visa petitioners who had "a pending, bona fide application" awaiting full adjudication. TVPRA § 201(c) (codified at 8 U.S.C. § 1184(p)(6)).

B. U VISA INTERIM BENEFITS: DEFERRED ACTION AND WORK AUTHORIZATION PURSUANT TO THE BONA FIDE DETERMINATION AND WAITING LIST PROCESSES

47. In 2007, DHS promulgated regulations setting forth the process for adjudicating U visa petitions. *See* Interim Rule, 72 Fed. Reg. 53014 (Sept. 17, 2007). Because there is a statutory limit of 10,000 visas that may be conferred annually, 8 U.S.C. § 1184(p)(2), a significant, years-long backlog for U visa petitions exists. To address the backlogs, these DHS regulations created interim benefits for petitioners while they wait. The regulations require that crime victims who are not granted U visas "due solely to the cap . . . must be placed on a waiting list." 8 C.F.R. § 214.14(d)(2). USCIS must "grant deferred action" to individuals placed on the waiting list until a U visa becomes available. *Id.* Wait-listed individuals are also eligible for work authorization. *Id.*

48. In 2021, as a means to implement the provision of 8 U.S.C. § 1184(p)(6) authorizing employment for bona fide U visa petitioners, USCIS created a formal Bona Fide Determination ("BFD") process, which is reflected in

the USCIS Policy Manual ("PM").[2]

49. In the BFD process, rather than the full adjudication required for the waiting-list process, USCIS conducts a streamlined initial review of the petition to determine whether it is "bona fide." PM, vol. 3, pt. C, ch. 4. The determination is "based on the petitioner's compliance with initial evidence requirements and successful completion of background checks," after which USCIS "considers any national security and public safety risks, as well as any other relevant considerations," in deciding whether to issue an EAD and deferred action. PM, vol. 3, pt. C, ch. 5. "If USCIS determines a principal petitioner and any other qualifying family members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues them BFD EADs and grants deferred action." PM, vol. 3, pt. C, ch. 5.C.

50. Petitioners granted a BFD EAD 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.

51. A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt. C, ch. 5.

52. USCIS identifies four circumstances when early revocation of deferred action is appropriate: (1) "if USCIS determines a national security or public safety concern is present," (2) "if USCIS determines the BFD EAD and deferred action is no longer warranted," (3) if "the Form I-918 Supplement B law enforcement certification is withdrawn" by the certifying agency, or (4) "USCIS determines the prior BFD EAD was issued in error." *Id.*

[2] "The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies." PM, available at https://www.uscis.gov/policy-manual (last checked September 14, 2026).

53. For those deemed ineligible for a BFD EAD and deferred action, USCIS proceeds to a full adjudication of the petition and determines whether any applicable inadmissibility grounds are waivable. If the petition is approvable and a U visa is not available due solely to the annual cap, USCIS then places petitioners on the U visa waiting list and must confer deferred action until a U visa becomes available or a change in circumstances causes USCIS to remove the petitioner from the waiting list. PM, vol. 3, pt. C, ch. 4.

54. Because deferred action for those on the waiting list is mandatory by regulation, it can only be revoked due to a material change in eligibility for the U visa. *See* 8 C.F.R. § 214.14(d)(2)-(3).

55. Pursuant to USCIS policy, *only* USCIS may revoke deferred action conferred in connection with a U visa petition. PM vol. 3, pt. C, ch. 5.; 8 C.F.R. § 214.14(d)(2)-(3).

56. Once a U visa finally becomes available to someone with a BFD EAD or someone on the waiting list, USCIS will conduct another background check to screen for any new material facts affecting eligibility, and if none, approve the visa. PM, vol. 3, pt. C, ch. 7.A-B. The visa recipient is authorized to work incident to status and may apply for lawful permanent residence three years later. 8 C.F.R. § 274a.12(19)-(20); 8 C.F.R. § 245.24(b).

C. UNTIL 2025, DECADES OF AGENCY POLICY GUIDANCE PRESUMPTIVELY PROTECTED U VISA PETITIONERS FROM IMMIGRATION ENFORCEMENT

57. Consistent with Congress's intent to encourage noncitizen victims to report crime, for nearly two decades, DHS policies have generally required ICE to

refrain from pursuing removal efforts against people with pending U visa petitions, like petitioner, absent serious public safety concerns.[3] These include written policies issued in 2011 and 2021. *See* John Morton, ICE Policy Statement 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011) ("2011 Policy"), available at https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf (last checked June 19, 2026), and ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) ("2021 Directive"), available at https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf (last checked June 19, 2026).

58. As with prior DHS policy, the 2011 Policy reiterated that "[a]bsent special circumstances or aggravating factors," it is generally "against ICE policy to initiate removal proceedings against" known victims of crime. 2011 Policy at 1. Notably, the 2011 Policy explains "that a flag now exists in" DHS systems "to identify those victims of domestic violence, trafficking, or other crimes who

[3] *See* Memorandum from William J. Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *Prosecutorial Discretion* (Oct. 24, 2005), available at https://www.aila.org/library/ice-prosecutorial-discretion-memo; Memorandum from William Howard, Principal Legal Advisor, to All OPLA Chief Counsel, *VAWA 2005 Amendments to the Immigration and Nationality Act and 8 U.S.C. § 1367* (Feb. 1, 2007), available at https://www.ice.gov/doclib/foia/policy/memoVAWA_2005_INA_Amendments_02.01.2007.pdf; Memorandum of David J. Venturella, Acting Director, Detention and Removal Operations, to Field Office Directors, *Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-visa) Applicants*, (Sept. 24, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/11005_1-hd-stay_requests_filed_by_u_visa_applicants.pdf; Memorandum from Peter S. Vincent, Principal Legal Advisor, to OPLA Attorneys, *Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal* (Sept. 25, 2009), available at https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf; ICE Directive 11005.2, *Stay of Removal Requests and Removal Proceedings Involving U Nonimmigrant Status (U Visa) Petitioners*, (Aug. 2. 2019), available at https://www.ice.gov/doclib/foia/policy/11005.2_StayRemovalReqRemProcUVisaPetitioners.pdf.

already have filed for . . .victim-based immigration relief." 2011 Policy at 3.

59. The 2021 Directive continued ICE's longstanding policy to "refrain from taking civil enforcement action against" individuals "known to have a pending application" for "victim-based immigration benefits," "absent exceptional circumstances" such as national security or public safety concerns. 2021 Directive at 1-2, 9. If such an application was pending, ICE was to "defer" enforcement until USCIS adjudicates the petition or issues a negative interim adjudication. *Id.* at 2. Agents were to request expedited prima facie adjudications from USCIS for people in ICE custody, and eligibility "for victim-based immigration benefits . . . must be considered" a "positive discretionary factor." *Id.* at 2, 9.

60. On January 30, 2025, ICE issued a policy directive that, for the first time in the agency's history, authorized the routine detention and removal of noncitizen victims of crime who had petitioned for victim-based immigration benefits, such as the U visa. *See* ICE Policy Number 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025) ("2025 Guidance"), available at https://www.ice.gov/doclib/foia/policy/11005.4.pdf (last checked June 19, 2026).

61. The 2025 Guidance became "effective immediately and remains in effect until superseded." 2025 Guidance at 1. It explicitly "rescinded and superseded" the 2021 Directive and 2011 Policy, thereby reneging the government's promise to protect noncitizen crime victims and greenlighting a deportation campaign that ignores their potential eligibility for relief.

62. Specifically, the 2025 Guidance requires, when ICE officers seek to detain or remove individuals with pending U visa petitions, that they (1) merely

"coordinate and deconflict internally" and with law enforcement agencies "to ensure criminal investigative and other enforcement actions will not be compromised," (2) "consult with" local ICE attorneys only "to ensure any such action is consistent with applicable legal limitations," (3) need not consider a noncitizen being "a victim of a crime" as "a positive discretionary factor," and (4) will not "routinely request expedited adjudications from USCIS," but may do so only when "it is in ICE's best interests." 2025 Guidance at 2-3.

63. The 2025 Guidance marked an abrupt about-face from longstanding DHS practices, under which immigration agencies generally refrained from enforcement against crime victims absent serious adverse factors.

64. As a result of the 2025 Guidance, ICE now engages in an unlawful policy and practice under which it routinely detains and deports people who have valid grants of deferred action from USCIS in connection with pending U or T visa petitions.[4]

D. U VISA REGULATIONS

65. The U visa regulations require every U visa petitioner to submit to biometric capture. USCIS is to notify the petitioner of the time and location for capture after Form I-918 is filed. 8 C.F.R. § 214.14(c)(3). USCIS has sole jurisdiction over U-visa petitions, and the Court is not asked to decide the merits of Petitioner's eligibility. 8 C.F.R. § 214.14(c)(1).

66. A separate DHS regulation provides that DHS is responsible for obtaining biometrics and other biographical information from a noncitizen in detention. 8 C.F.R. § 1003.47(d). Petitioner invokes that provision as confirmation

[4] A T visa petition is a separate survivor-based immigration benefit program, for survivors of severe forms of human trafficking.

that detention cannot be used to prevent biometric compliance. Petitioner acknowledges that Respondents may dispute its direct applicability to a U-visa petition filed with USCIS; this petition independently rests on the Fifth Amendment prohibition against a custody arrangement that makes compliance impossible and then treats the resulting noncompliance as a basis for adverse action.

67. In a closely analogous District of Minnesota case, the court required ICE to transport a detained U-visa applicant to a scheduled USCIS biometrics appointment. After USCIS refused to process the appointment because the applicant was detained, the court ordered Respondents to show cause, required disclosure of the policy and legal basis for the refusal, and ICE then captured and transmitted the petitioner's fingerprints to USCIS. *Acuna Cruz v. Easterwood, No. 26-cv-1393* (SRN/LIB), ECF No. 53 at 16–21 (D. Minn. Mar. 26, 2026). Although that decision involved different immigration benefit and detention facts, it demonstrates that ICE can facilitate biometrics for a detained U-visa petitioner and that a court can require the Government to explain a failure to do so.

E. AT THE TIME OF HIS ARREST, PETITIONER WAS A DEFERRED ACTION CLASS MEMBER IN *ICWC*.

68. On October 14, 2025, several individual plaintiffs and non-profit legal organizations serving immigrant survivors filed a class action complaint in *ICWC*, challenging the lawfulness of the 2025 Guidance and, as relevant here, the De Facto Revocation Policy. *See* Compl. ¶¶ 200-233 *Immigr. Ctr. for Women & Child. v. Noem, et al.*, No. 2:25-cv-09848-AB-AS (C.D. Cal. Oct. 14, 2025) [Dkt. 1].

69. On May 20, 2026, the U.S. District Court for the Central District of California granted plaintiffs' Motion for Class Certification and granted in part

plaintiffs' Motion for APA § 705 Relief and Individual and Classwide Preliminary Injunction. *ICWC* PI Order.

70. As part of its ruling, the court provisionally certified three classes, including, as relevant here, the Deferred Action Class,[5] and stayed the De Facto Revocation Policy pursuant to 5 U.S.C. § 705 as to Deferred Action Class members. *Id.* at 95-96 ("Pursuant to 5 U.S.C. § 705, the Court hereby **STAYS** 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.").

71. Specifically, the court concluded that plaintiffs were likely to prevail on the merits of their claims that the De Facto Revocation Policy is arbitrary and capricious under the APA, violates the *Accardi* doctrine requiring agencies to follow their own procedures, and violates class members' due process rights under the Fifth Amendment. *Id.* at 75-84 ("Because ICE lacks authority to revoke USCIS grants of deferred action status, ICE cannot de facto revoke that status."); *id.* at 84 (holding ICE violated class members' "right to due process because pursuant to the Policy, Defendants have pursued immigration enforcement actions against them despite their deferred action status."). As a result, ICE may not detain Deferred Action Class members.

72. Here, Petitioner was a member of the Deferred Action Class in *ICWC* because, at the time of his arrest, he was:

a. an individual to whom USCIS has granted deferred action based on a pending U visa petition; and

[5] The Deferred Action Class is defined as: "All individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status." *ICWC* PI Order at *95.

b. during the authorized period of deferred action, was detained by ICE without being provided notice and an opportunity to be heard regarding the potential revocation of that deferred action status. *Id.* at 95; *see also* n.5 *supra*.

73. Accordingly, 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," may not be applied to Petitioner. *Id.* at 96. Therefore, immediate release is warranted.

74. Absent release, Petitioner will be unable to properly address his U visa denial that directly resulted from ICE's detention, and he will continue experiencing post-traumatic stress, financial hardship, and emotional distress to Petitioner and his family.

CLAIMS FOR RELIEF

COUNT I

Fifth Amendment Procedural Due Process

Detention caused loss of a meaningful opportunity

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

76. "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 v. Eldridge*, 424 U.S. 319, 332 (1976). "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 (citations omitted).

77. Petitioner has a fundamental liberty interest in freedom from physical restraint. ICE's detention deprived him of the practical ability to attend USCIS's scheduled biometrics appointment without ICE's assistance.

78. Petitioner has a fundamental liberty interest in freedom from physical restraint. ICE's detention deprived him of the practical ability to attend USCIS's scheduled biometrics appointment without ICE's assistance.

79. Under the *Mathews* balancing framework, additional process was constitutionally required before the Government's custody arrangement could result in a denial based on noncompletion of biometrics:

(a) Petitioner's interests are weighty. He lost physical liberty and, because of detention-caused noncompliance, faces the loss of meaningful consideration of a victim-based U-visa petition, continuing family separation, and loss of financial support for his family.

(b) The risk of erroneous deprivation was acute. ICE knew or should have known that Petitioner could not appear independently while detained. Once counsel supplied notice of the appointment and requested assistance, treating the missed appointment as Petitioner's failure rather than a custody-created impossibility created a substantial risk of erroneous denial.

(c) The value of additional safeguards was substantial and the Government's administrative burden limited. ICE could transport Petitioner, arrange in-custody biometric collection, coordinate with USCIS, or notify USCIS in writing that detention prevented Petitioner's appearance. The relief Petitioner requests is targeted to those practicable measures.

80. Respondents' failure to take any practicable step to facilitate compliance after notice, followed by USCIS's denial based on noncompletion of biometrics, deprived Petitioner of due process. His continued detention is arbitrary as applied because it directly caused the loss of a meaningful opportunity to comply with the required process.

81. Petitioner is entitled to habeas relief requiring his immediate release from ICE custody. Continued detention cannot be permitted where it has caused the loss of Petitioner's meaningful opportunity to comply with a required U-visa process.

COUNT II

Violation of Fifth Amendment of United States Constitution

Detaining Individuals with Valid Deferred Action Status Violates Substantive Due Process

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

83. 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).

84. Immigration detention only comports with due process when it furthers the government's goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Id.* (cleaned up). The only two accepted justifications for keeping someone in civil

immigration detention are insufficient as applied to Petitioner.

85. "The first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility." *Id.* at 679.

86. Here, deportation is a "remote possibility" as Petitioner's deferred action status protected him from removal, and the status was arbitrarily revoked. *Id.* "Where an individual is protected from removal through deferred action, their detention serves no valid purpose." *Santiago v. Noem*, Case No. EP-25-CV-361-KC, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025). *See Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025) ("deferred action prevents recipients' removal from the United States"). Rather, Petitioner now more than ever has a strong incentive to comply with any future conditions—he wants to challenge the arbitrary denial of his U visa that occurred through no fault of his own.

87. Moreover, to have received deferred action in the first place, Petitioner necessarily passed background checks and was vetted for national security and public safety risks. Thus, any dangerousness justification here would be specious, because Petitioner has not engaged in any acts that would change that determination. "[T]he 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).

88. Accordingly, because Petitioner's detention is not justified by flight risk or danger concerns, it bears no reasonable relation to a legitimate government

purpose and thus violates Petitioner's substantive due process rights. [6] Accordingly, Petitioner should be ordered immediately released.

COUNT III

Violation of APA 5 U.S.C. § 706(2)(A)

Petitioner's Detention is not in Accordance with Law Because it Violated the ICWC PI ORDER

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

90. Under the APA, courts "shall . . . hold unlawful and set aside agency action . . .found to be . . .not in accordance with law." 5 U.S.C. § 706(2)(A).

91. Respondent's detention of Petitioner constitutes final agency action under the APA. 5 U.S.C. §§ 551(c)(10) & (13), 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

92. In *ICWC,* the court concluded that plaintiffs were likely to succeed in their claim that the De Facto Revocation Policy is arbitrary and capricious and not in accordance with law under the APA. *ICWC* PI Order at *47.

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[6] A growing number of courts agree that detention and removal of individuals in deferred action status violates due process. *See, e.g., Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025); *Maldonado v. Noem*, No. 25-CV-2541, 2025 WL 1593133 (S.D. Tex. June 5, 2025); *Espinoza-Sorto v. Agudelo*, No. 25-23201, 25 WL 3012786 (S.D. Fla. Oct. 28, 2025); *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Ore. Oct. 30, 2025); *Patel v. Hyde*, No. 25-12518, 2025 WL 3169875 (D. Mass. Nov. 12, 2025); *Cruz Zafra v. Noem*, No. 25-00541, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025); *Aguilar Gama v. Bondi*, 25-01925, 2025 WL 3559942 (W.D. Wash. Dec. 12, 2025); *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025); *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *8–9 (W.D.N.Y. Dec. 19, 2025); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171, at *1 (E.D. Cal. Dec. 21, 2025); *Mauricio Leon v. Noem*, Case 5:25-cv-02582-FMO-RAO, * 5-6 (C.D. Cal. October 10, 2025).

93. As a result, the court stayed 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." *Id.* at *96.

94. The stay applies in favor to members of the Deferred Action Class, which included Petitioner at the time of his arrest. *Id.*

95. Respondents detained Petitioner pursuant to the stayed De Facto Revocation policy.

96. Accordingly, Respondents' detention of Petitioner is not in accordance with law in violation of the APA, as it directly contravenes the § 705 relief issued in the *ICWC* PI Order. The Court should set aside this unlawful detention and order the Petitioner immediately released.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Direct Respondents to show cause why the writ should not be issued and set expedited briefing;

(3) Issue a writ of habeas corpus requiring Petitioner's immediate release from ICE custody because his continued detention has deprived him of due process by causing the loss of a meaningful opportunity to comply with the U visa biometrics requirement;

(4) Direct Respondents to coordinate with USCIS to facilitate reopening or reconsideration of Petitioner's Form I-918, Petition for U Nonimmigrant

Status, based on Petitioner's inability to attend the required biometrics appointment while detained in ICE custody; or, alternatively, direct Respondents to provide Petitioner and USCIS a certified declaration identifying Petitioner's dates of ICE detention, the date and location of the biometrics appointment, Respondents' notice of the appointment, and the reasons Petitioner was unable to attend, to support Petitioner's request that USCIS reopen or reconsider the denial;

(5) Declare that Respondents' detention caused prevention of Petitioner's biometric compliance; and the resulting adverse effect on his U visa petition, violated the Fifth Amendment Due Process Clause;

(6) Award reasonable costs and attorneys' fees; and

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

Dated: September 14, 2026

Respectfully submitted,

/s/ Katherine L. Santamaria El Bayoumi

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge

DATED: September 15, 2026
Saint Paul, Minnesota

Respectfully submitted,

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