

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

RIGOBERTO HERNANDEZ HERNANDEZ,

Petitioner,

v.

U.S. BORDER PATROL; MICHAEL W. BANKS,
Chief of U.S. Border Patrol; RODNEY S. SCOTT,
Commissioner of U.S. Customs and Border
Protection (“CBP”); U.S. CUSTOMS AND
BORDER PROTECTION; U.S. BUREAU OF
LAND MANAGEMENT (“BLM”); BILL
GROFFY, Acting Director of U.S. Bureau of Land
Management; CAMMILLA WAMSLEY, Seattle
Field Office Director, Immigration and Customs
Enforcement and Removal Operations
(“ICE/ERO”); TODD LYONS, Acting Director of
Immigration Customs Enforcement (“ICE”); U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; KRISTI NOEM, Secretary of
the Department of Homeland Security (“DHS”);
U.S. DEPARTMENT OF HOMELAND
SECURITY and the EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW (“EOIR”),

Respondents.

Case No.

Agency No. AXXX-XXX-475

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

1. On August 27, 2025, in the middle of the Olympic Peninsula, just outside the
perimeter of the largest wildland fire in decades burning more than 10,000 acres of temperate

rainforest in Bear Gulch at the north end of the wild Lake Cushman area, several armed United States Border Patrol (Border Patrol) agents appeared and trapped a crew of wildland firefighters in order to conduct an immigration inspection.

2. While immigration inspections are common at United States airports and international borders, they are rare in a disaster area in the middle of the forest during an active wildland firefighting suppression effort. So rare, in fact, that, until now, there have been no reported incidents of Border Patrol inspecting the immigration status of wildland firefighters near the perimeter of or within an active wildland fire.

3. Blocking their egress from the staging area with at least five armed guards, the Border Patrol divided the firefighters into line, whistling at them like they were dogs. Despite the immediate wildfire disaster and the exhaustion of the crew from several days of hiking through steep and wild terrain to suppress fire in the Bear Gulch area, several armed federal agents separated the firefighters on the crew, one by one, demanding documents and evidence of immigration status.

4. Petitioner, Rigoberto Hernandez Hernandez, is a member of one of the crews and has been a wildlife firefighter for three years. When a Border Patrol agent confronted him, this exchange occurred:

Q. This is an immigration inspection. Since you didn't have any identification except your - what was the card?

A. It was the Fire Card.¹

¹ The Incident Qualification Card, also known as the Red Card, is an interagency certification that a person is qualified to be a wildland firefighter because they have the minimum training, experience, and physical fitness necessary for wildland fire positions. *See, e.g.*, National Park Service, Wildland Fire Incident Qualifications, <https://www.nps.gov/subjects/fire/wildland-fire-incident-qualifications.htm>, <https://perma.cc/AU3H-WNXXB> (last visited Sept. 18, 2025). Incident Qualification Cards contain a photograph, name, employee identification numbers, and other data.

1 Q. The Fire Card, okay. What country were you born in?

2 A. I plead the Fifth.

3 5. Having already blocked their egress and threatened that “[y]ou can either cooperate
4 with us or we throw you in handcuffs and put you in the back of the vehicle,” with no lawful basis
5 to do so, the Border Patrol agents took Mr. Hernandez into custody only because of his race and
6 because he asserted his constitutional right to remain silent.

7 6. For Mr. Hernandez—exhausted and weary from days of firefighting in the middle
8 of the national forest hundreds of miles from anywhere—his arrest and detention amidst an active
9 fire was startling and shocking.

10 7. For the agents who arrested him and have held him in custody since, he is just a
11 “number, pure number” to fill a quota where “[q]uantity over quality” is “[a]ll that matters.”²

12 8. “At its historical core, the writ of habeas corpus has served as a means of reviewing
13 the legality of Executive detention, and it is in that context that its protections have been strongest.”
14 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel*
15 *v. U.S. Att’y Gen.*, 971 F.3d 1258, 1270 (11th Cir. 2020). The writ is meant to provide exactly the
16 relief Mr. Hernandez seeks here: to prevent the Respondents—a whole set of immigration agencies
17 with vast resources, who have at their disposal a punitive detention system and agents roving the

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19 ² Jennie Taer, *Trump admin’s 3,000 ICE arrests per day quota is taking focus off criminals and*
20 *‘killing morale’: insiders warn*, NY Post, June 17, 2025, [https://nypost.com/2025/06/17/us-](https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/)
21 [news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-](https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/)
22 [morale-insiders/](https://perma.cc/DB9R-MJUC), <https://perma.cc/DB9R-MJUC> (last visited Sept. 18, 2025) (“The Trump
23 administration’s mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to
deprioritize going after dangerous criminals and targets with deportation orders, insiders warn.
Instead, federal immigration officers are spending more time rounding up people off the streets,
sources said. ‘All that matters is numbers, pure numbers. Quantity over quality,’ one
Immigrations and Customs Enforcement insider told The Post.”).

1 national forests to arrest immigrants—from setting themselves above the law in order to detain
2 him.

3 9. In their lawless pursuit of detention bed quotas, Respondents cast aside Mr.
4 Hernandez’s due process rights—a bedrock of American freedom—one after the other after the
5 other. They stopped him without reasonable suspicion, arrested him without probable cause, ignored
6 the laws governing warrantless arrests, arrested him in the midst of a natural disaster despite his
7 pending U Visa application, denied him calls to counsel, and detained him for two weeks without
8 considering him for release or even indicating what law authorized his detention. In short, in the
9 Department of Homeland Security’s (DHS’s) mindless pursuit of bodies to stack into overcrowded
10 detention centers, Respondents disregarded all of the laws and procedures that were designed to
11 prevent the unnecessary (and unlawful) detention of a noncitizen in the United States who poses
12 no danger or flight risk.

13 10. Had the Executive Branch followed the U.S. Constitution and all the laws and
14 policies it is required to follow before restraining an individual’s liberty, Mr. Hernandez would
15 not have been detained at all.

16 11. Yet today, Mr. Hernandez is in unlawful executive detention. As of this filing he is
17 being held at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. He has
18 been in Respondents custody since August 27, 2025. But it was not until the evening of September
19 15, 2025—weeks into his unlawful detention—that Respondent Immigration and Customs
20 Enforcement (ICE) initiated removal proceedings against him through the filing of a Notice to
21 Appear; but even then, they never provided him notice of the immigration charges against him.
22 As of at least September 18, 2025, he still does not appear in ICE’s public-facing ICE Detainee
23 Locator.

1 12. U.S. Border Patrol stopped and arrested Mr. Hernandez unlawfully, and their
2 violation of law is plain. They had no reasonable suspicion to stop him, no probable cause to arrest
3 him, no warrant for his arrest, and no reason to believe that he was likely to escape before a warrant
4 could be obtained. They had *no facts* to suggest he was in the United States in violation of
5 immigration law other than his race. Even after the hours of his arrest and handcuffing, the Border
6 Patrol had no reason to believe he was born outside the United States. In short, they had no reason
7 to arrest him and take him into detention.

8 13. The only reason Border Patrol agents arrested Mr. Hernandez is because he is
9 Latino and had the courage to invoke and maintain his right to remain silent. Neither of these
10 reasons, standing alone or together, justifies arrest.

11 14. Absent a warrant, the Border Patrol may only conduct an immigration arrest where
12 they have probable cause to believe an immigration violation has occurred and there are exigent
13 circumstances in which a person might disappear before a warrant could be secured. This was
14 certainly not the case in the middle of the Bear Gulch fire response, operated by the federal
15 government, where Mr. Hernandez, an employee of a federal contractor, was fighting a fire *on*
16 *behalf of* the people of the United States. On the contrary, the only exigent circumstances were
17 those of the fire and its danger to the community. The Border Patrol's warrantless arrest was illegal.

18 15. The Border Patrol's violations of Mr. Hernandez's rights only continued to grow,
19 as they stacked illegality on illegality. Even if the agency had proper authority to arrest Mr.
20 Hernandez without a warrant (which it did not), that authority would only allow 48 hours of
21 warrantless detention; to detain Mr. Hernandez beyond that point, the agency is required to make
22 a lawful custody determination or to release him. Only in limited circumstances, where the DHS
23 can prove that Mr. Hernandez is present in the U.S. in violation of immigration law and that he is

1 a flight risk or danger to the community, may DHS invoke its authority to detain him. Because he
2 is entitled to an individualized determination on whether he is to continue in custody, the law
3 requires that he must also be given an opportunity to be heard on that question. That determination
4 is fact specific and *requires* the DHS officers to examine a set of facts about Mr. Hernandez related
5 to whether he is a flight risk or danger to the community. Had DHS followed the law, they would
6 have been compelled to conclude that Mr. Hernandez was neither.

7 16. After Mr. Hernandez was illegally arrested and handcuffed, the Border Patrol
8 “detained and transported [him]” about 200 miles from the fire closure zone to the Bellingham
9 Border Patrol Station, so that the Border Patrol could “confirm or dispel his immigration status
10 and to determine alienage by running his fingerprints.”

11 17. Approximately seven hours after the Border Patrol initially seized Mr. Hernandez
12 because of his race—or his invocation of his constitutional right—and no other reason, the Border
13 Patrol’s fingerprint check revealed that Mr. Hernandez’s application for immigration status—a U-
14 nonimmigrant visa—had been complete and on file with DHS *since 2018*, but had not yet been
15 adjudicated because of the endless and unreasonable delays plaguing DHS.

16 18. DHS policy—policy that the agency is not free to arbitrarily or capriciously
17 ignore—bars DHS from arresting and detaining individuals exactly like Mr. Hernandez. One
18 policy, memorialized in the 2021 Mayorkas memo, provides that “[a]bsent exigent circumstances,
19 immigration enforcement will not be conducted at locations where disaster and emergency
20 response and relief is being provided.”³ The agency has repeatedly and consistently publicized this

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22 ³ U.S. Dep’t Homeland Security, *Guidelines for Enforcement Near Protected Areas*, October
23 27, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw10272021.pdf>
 (“2021 Mayorkas Memo”), <https://perma.cc/7U6C-9FQK> (last visited Sept. 18, 2025). ICE has
 purported to rescind the 2021 Mayorkas memo. However, this rescission is unlawful because it
 failed to consider the facts and reasoning supporting the policy and prior memos or why those

policy during natural disasters like wildfires in order to ensure public safety.⁴ But here, DHS arrested Mr. Hernandez in a wildland fire disaster even though there were no exigent circumstances.

19. A second policy, also binding on DHS, bars immigration enforcement actions, such as arrest and detention, “against [noncitizens] who are known beneficiaries of victim-based immigration benefits or those known to have pending applications for such benefits” “absent exceptional circumstances.” *See* U.S. Immigration and Customs Enforcement, Using a Victim-Centered Approach with Alien Crime Victims, Questions and Answers, <https://www.ice.gov/factsheets/using-victim-centered-approach-with-victims> (last accessed Aug. 28, 2025).⁵ But here, DHS arrested Mr. Hernandez—whose application for a victim-based

past policies were not sufficient; what circumstances necessitated the sudden departure, or why the public policy and safety concerns cited by past agency heads no longer applied; alternative approaches; or the impact of conducting immigration enforcement activities near or at sensitive locations, including disaster and emergency response, on affected stakeholders, including the general public who rely on wildlife firefighting to protect their lives and properties.

⁴ U.S. Dep’t Homeland Security, DHS Statement on Safety and Immigration Enforcement During Emergency Events, <https://www.dhs.gov/archive/dhs-statement-safety-and-immigration-enforcement-during-emergency-events>, <https://perma.cc/7FHT-KZ5R> (last visited Sept. 18, 2025); *see, e.g.*, U.S. Dep’t Homeland Security, *DHS Statement on Safety and Immigration Enforcement During the 2021 Wildfire Season*, July 19, 2021, <https://www.dhs.gov/publication/dhs-statement-safety-and-immigration-enforcement-during-2021-wildfire-season>, <https://perma.cc/BY66-9P4U> (last visited Sept. 12, 2025).

⁵ ICE has purported to rescind ICE Directive 11005.3: Using a Victim Centered Approach with Noncitizen Victims, and instead purports to rely on ICE Directive 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits. However, the rescission of Directive 11005.3 is in violation of law to the extent that the agency failed to consider how this change would impact victims with pending applications or how it could chill noncitizens’ willingness to engage with law enforcement. Failure to engage with these crucial questions demonstrates that the Respondents “entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering “particular reliance interests” is arbitrary and capricious in violation of the APA). Moreover, even ICE Directive 11005.4 maintains that beneficiaries of victim-based immigration benefits should not be subject to civil immigration enforcement

1 immigration benefit has been pending since 2018—even though there were no “exceptional
2 circumstances.”

3 20. Despite having already violated the law governing stops and arrests, as well as the
4 policies governing immigration enforcement against crime victims and at disaster sites,
5 Respondents doubled down on their illegal behavior. For more than forty-eight hours, the federal
6 immigration agencies hid Mr. Hernandez from his lawyers and his family, preventing him from
7 calling out and his lawyers from calling in to him.

8 21. On August 28, 2025, around 5:00 pm Pacific Time, one Todd M. Hartman of the
9 U.S Border Patrol made the unilateral decision to detain Mr. Hernandez under 8 U.S.C. §
10 1225(b)—a statute that does not apply and does not authorize Mr. Hernandez’s detention. Neither
11 Mr. Hernandez nor his attorney knew about this determination: the Border Patrol never told Mr.
12 Hernandez, and they would not even allow his attorneys to know where he was.

13 22. Executive detention illegally begun does not become lawful over time. Rather, it
14 becomes just more unlawful; harm accumulates. Executive agencies must obey the law: they are
15 always required to follow all of the laws all of the time. The laws that bind DHS are more than just
16 the law of deportation, which does not rise above any other law; rather, Respondents are
17 simultaneously bound by and must appropriately yield to other laws, such as and always the Fourth
18 and Fifth Amendments of the U.S. Constitution. Moreover, as civil detention cannot be wielded
19 as punishment, *see Addington v. Texas*, 441 U.S. 418, 427 (1979), it may only be applied when it
20 is justified in the case of an individual posing a flight risk or danger to the community, *see Matter*
21 *of Guerra*, 13 I&N Dec. 40 (BIA 1968).

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unless, in consultation with the Office of the Principal Legal Advisor (OPLA), “the totality of
circumstances warrant enforcement.”

23. “It is well established that an agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” *See Motor Vehicle Mfrs. Ass’n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983); *accord SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943) (“The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.”); *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907–08 (2020) (“It is a ‘foundational principle of administrative law’ that judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’”).

24. Because Respondent Border Patrol unlawfully arrested Mr. Hernandez without a warrant or reasonable suspicion, on account of his race, and in retaliation for exercising his constitutional right to remain silent, Mr. Hernandez is being held in unlawful executive detention at the Northwest ICE Processing Center in Tacoma, Washington, in violation of the U.S. Constitution and laws of the United States.

25. The Great Writ of habeas corpus requires that the Court grant his immediate release.

JURISDICTION

26. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq.*

27. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

28. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act (INA), 8 U.S.C. § 1252(e)(2).

VENUE

29. Venue is proper because Petitioner is in Respondents' custody at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, in the Western District of Washington. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' custody. 28 U.S.C. § 1391(e).

30. Venue is proper under Local Rule 3(e) because Petitioner was taken into Respondents' custody while fighting the Bear Gulch fire on the Olympic Peninsula; Petitioner is currently in Respondents' custody in Tacoma, Washington; and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

31. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

32. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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).

33. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

34. Petitioner Rigoberto Hernandez Hernandez is a 23-year-old resident of Keizer, Oregon. He was seized by U.S. Border Patrol during his active duty as a wildland fire fighter in the wilderness of the Olympic Peninsula and is currently held in custody by Respondents in Tacoma, Washington, as of the time of the filing of this petition.

35. Respondent U.S. Border Patrol is the federal agency component of U.S. Customs and Border Protection responsible for enforcing immigration laws between official ports of entry including detecting, interdicting, and apprehending non-citizens who enter the United States without authorization.

36. Respondent Michael W. Banks is the Chief of U.S. Border Patrol, and he has authority over the actions of respondent U.S. Border Patrol in general.

37. Respondent Rodney S. Scott is the Commission of U.S. Customs and Border Protection, and he has authority over the actions of Respondents Michael W. Banks, U.S. Border Patrol, and U.S. Customs and Border Protection in particular.

38. Respondent U.S. Customs and Border Protection is the federal agency responsible for border management and control, including making temporary custody decisions pertaining to non-citizens at or near the U.S. border.

39. Respondent U.S. Bureau of Land Management is the federal agency within the U.S. Department of the Interior whose mission is to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.

40. Respondent Bill Groffy is the principal deputy director of the Bureau of Land Management (BLM) and is serving as acting director. In this role, he oversees the bureau's vast portfolio of public lands and has authority over the actions of Respondent BLM in general.

1 41. Respondent Cammilla Wamsley is the Field Office Director for the Seattle Field
2 Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Seattle
3 Field Office is responsible for local custody decisions relating to non-citizens charged with being
4 removable from the United States, including the arrest, detention, and custody status of non-
5 citizens. The Seattle Field Office’s area of responsibility includes Alaska, Oregon, and
6 Washington. Respondent Wamsley is a legal custodian of Petitioner.

7 42. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
8 Enforcement, and he has authority over the actions of Respondent Drew Bostock and ICE in
9 general. Respondent Lyons is a legal custodian of Petitioner.

10 43. Respondent U.S. Immigration Customs Enforcement is the federal agency
11 responsible for custody decisions relating to non-citizens charged with being removable from the
12 United States, including the arrest, detention, and custody status of non-citizens.

13 44. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
14 (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all
15 operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with
16 faithfully administering the immigration laws of the United States.

17 45. Respondent U.S. Department of Homeland Security is the federal agency that has
18 authority over the actions of ICE and all other DHS Respondents.

19 46. Respondent Executive Office for Immigration Review is the federal agency that
20 has authority over the immigration courts.

21 47. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

Legal Requirements for Immigration Stops and Arrests

48. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV.

49. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

50. “Except at the border and its functional equivalents,” immigration agents may stop individuals in public only after identifying “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion” of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *Benitez-Mendez v. I.N.S.*, 752 F.2d 1309, 1311 (9th Cir. 1983), *amended*, 760 F.2d 907 (9th Cir. 1983); *see also* 8 C.F.R. § 287.8(b)(2) (allowing officer to “briefly detain” a noncitizen for questioning if the officer “has a reasonable suspicion, based on specific articulable facts” that the noncitizen is engaged in an offense or is unlawfully in the United States).

51. Reasonable suspicion for an immigration stop cannot be based “on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Rather, reasonable suspicion must be “particularized and objective,” *United States v. Arvizu*, 534 U.S. 266, 273 (2002), meaning the officer has reasonable suspicion as to “the particular person being stopped.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc); *see also Vasquez Perdomo v. Noem*, No. 25-4312, 2025 WL 2181709, at *17 (9th Cir. Aug. 1, 2025), *stay of preliminary injunctive relief granted by Noem v. Vasquez Perdomo*, 2025

1 WL 2585637 (S. Ct. Sept. 8, 2025) (concluding that apparent race or ethnicity, speaking Spanish
2 or speaking English with an accent, particular location, and type of work, even when considered
3 together, did not create reasonable suspicion for an immigration stop). Information obtained from
4 an officer's lawful questioning "may provide the basis for a subsequent arrest." 8 C.F.R. §
5 287.8(b)(3).

6 52. Immigration officers may arrest an individual without a warrant in limited
7 circumstances. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012) (noting strong
8 Congressional preference, as expressed in INA, for immigration arrests to be based on warrants).
9 The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen
10 (1) is in the United States in violation of the immigration laws and (2) "is likely to escape before
11 a warrant can be obtained for his arrest". 8 U.S.C. § 1357(a)(2); *accord.* 8 C.F.R. § 287.8(c)(2)(i)-
12 (ii). An officer "has reason to believe" when they have the equivalent of "the constitutional
13 requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

14 53. The Fifth Amendment right to remain silent may be properly invoked during a civil
15 immigration arrest. *See* U.S. Const., amend. V. *See Kastigar v. United States*, 406 U.S. 441, 444–
16 45 (1972) (The privilege against self-incrimination "can be asserted in any proceeding, civil or
17 criminal, administrative or judicial, investigatory or adjudicatory . . . This Court has been zealous
18 to safeguard the values which underlie the privilege."). An immigration officer may not establish
19 probable cause on the basis of a noncitizen's silence pursuant to his Fifth Amendment rights. *See*
20 *Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming "the fundamental principle that
21 a suspect's silence in the face of questioning cannot be used as evidence against him at trial").

22 54. If an immigration officer makes a warrantless arrest, at the time of an arrest and "as
23 soon as it is practical and safe to do so," immigration officers must identify themselves as

1 immigration officers authorized to make arrests, inform the person arrested that they are under
2 arrest, and state the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). The noncitizen must then “be
3 taken without unnecessary delay for examination before an officer of the Service having authority
4 to examine [noncitizens] as to their right to enter or remain in the United States.” 8 U.S.C. §
5 1357(a)(2).

6 55. Within 48 hours of an immigration arrest (or within a reasonable time in the case
7 of emergency or extraordinary circumstances), an immigration official must make an initial
8 custody determination to decide whether the noncitizen should remain in custody or be released.
9 8 U.S.C. § 1226(a); 8 C.F.R. § 287.3(d). These procedures are essential to protect the arrested
10 person’s Fourth and Fifth Amendment rights.

11 56. In making a case-by-case custody determination, ICE agents must consider a
12 number of individual factors, including a noncitizen’s status as a victim of crime.

13 57. ICE Directive 11005.3 established that “absent exceptional circumstances, ICE will
14 refrain from taking civil immigration enforcement action against known beneficiaries of victim-
15 based immigration benefits and those known to have a pending application for such benefits.”

16 58. ICE Directive 11005.4, which purported to replace ICE Directive 11005.3 on
17 January 31, 2025, maintains that beneficiaries of victim-based immigration benefits should not be
18 subject to civil immigration enforcement unless, in consultation with the Office of the Principal
19 Legal Advisor (OPLA), “the totality of circumstances warrant enforcement.”

20 **The U-Visa Program**

21 59. On October 28, 2000, Congress created the U Visa program. *See* Victims of
22 Trafficking and Violence Prevention Act of 2000 (VTVPA), Pub. L. No. 106-386, Title V, § 1513,
23 114 Stat. 1464, 1533 (2000); 8 U.S.C. § 1101(a)(15)(U); INA § 101(a)(15)(U).

60. Congress acted to establish the U Visa program in order to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute” certain serious crimes “while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.” *See* VTVPA § 1513(a), 114 Stat. 1533.

61. The U Visa program creates a mechanism for noncitizen victims of serious crime to safely engage law enforcement and, likewise, for law enforcement to engage immigrant communities to deter, prevent, and prosecute criminal activity for the betterment of the United States.

62. The U Visa was created to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. By providing victims of crime with an avenue for regularization of their immigrant status, the U Visa encourages victims to work and cooperate with law enforcement agencies. Congress also aimed to strengthen relations between law enforcement and immigrant communities by increasing cooperation and removing some of the fear of deportation held by many undocumented migrants. *See, e.g.,* U.S. Dep’t Homeland Security, *U Visa Law Enforcement Resource Guide*, https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf, <https://perma.cc/S25P-RTXZ> (last visited Sept. 18, 2025).

63. A noncitizen is eligible for status under the U Visa program if (1) he suffered substantial physical or mental abuse as a result of having been a victim of one of the enumerated crimes; (2) he possesses or possessed information concerning the criminal activity; (3) he has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to

1 other Federal, State, or local authorities investigating or prosecuting the criminal activity; and (4)
2 the criminal activity violated the laws of the United States or occurred in the United States
3 (including in Indian country and military installations) or the territories and possessions of the
4 United States. *See* 8 U.S.C. § 1101(a)(15)(U); INA § 101(a)(15)(U).

5 64. Certain qualifying family members are eligible for derivative U Visas based on
6 their relationship to the principal petitioner. Where the principal petitioner is at least 21 years of
7 age, their spouse and children are eligible to apply for derivative U nonimmigrant status. *See*
8 USCIS, *Victims of Criminal Activity: U Nonimmigrant Status* (last reviewed/updated May 16,
9 2025), available at [https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-](https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status)
10 [nonimmigrant-status](https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status), <https://perma.cc/46F6-S6Y2> (last visited Sept. 18, 2025).

11 65. The administrative processing to accord U nonimmigrant status to eligible
12 petitioners and derivatives is tightly prescribed and regulated.

13 66. First, a petitioner must obtain a certification from a law enforcement official that
14 he was the victim of a crime; that the crime is a recognized crime under the U Visa program; and
15 that the petitioner was, is, or is likely to be helpful in the investigation or prosecution of the
16 criminal activity. The USCIS has prescribed that law enforcement officials make this certification
17 on a particular form, USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification. *See*
18 8 C.F.R. § 214.14(a)(12).

19 67. Second, on submission, the USCIS makes a completeness check to verify that all
20 required initial evidence is present. The petition must include Form I-918, Petition for U
21 Nonimmigrant Status; Form I-918, Supplement B, U Nonimmigrant Status Certification; Form I-
22 192, Application for Advance Permission to Enter as Nonimmigrant, if there are any
23

1 inadmissibility issues; a personal statement describing the criminal activity of which the applicant
2 was a victim; and evidence to establish each eligibility requirement.

3 68. Third, USCIS either adjudicates the petition by granting U-nonimmigrant status or,
4 in most cases, places the petitioner on the waitlist status for an adjudication. *See* 8 C.F.R. §
5 214.14(d)(2). A statutory cap limits the grant of U Visas to 10,000 per fiscal year. INA §
6 214(p)(2)(A). *See* INA § 214(p)(2)(A); 8 C.F.R. § 214.14(d)(1). The statutory cap only applies to
7 principal applicants and does not apply to derivative applicants. INA § 214(p)(2)(B). A wait list
8 was created by regulation to provide deferred action to an eligible petitioner whenever the statutory
9 cap is reached within a given fiscal year. *See* New Classification for Victims of Criminal Activity;
10 Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53027 (Sept. 29, 1995) (codified at
11 8 C.F.R. § 214.14(d)(2)).

12 69. Recognizing the long wait times for eligible applicants, USCIS established a bona
13 fide screening process for U-Visa petitioners. Congress granted USCIS the authority to grant work
14 authorization for petitioners with pending, bona fide applications. 8 U.S.C. § 1184(p)(6); INA §
15 214(p)(6) (“The Secretary may grant work authorization to any [non-citizen] who has a pending,
16 bona fide application for nonimmigrant status under [INA] section 101(a)(15)(U)”).

17 70. A bona fide application means an application where there appears to be no instance
18 of fraud in the application, the application is complete, properly filed, contains an LEA
19 endorsement, includes completed fingerprint and background checks, and presents *prima facie*
20 evidence to show eligibility for U nonimmigrant status. *See, e.g.*, 8 C.F.R. § 214.11(k) (defining
21 “bona fide” for related statutory nonimmigrant program).

22 71. For a qualifying family member to receive a bona fide determination, the principal
23 petitioner must have received a bona fide determination, the qualifying family member’s

1 application must be complete, the family member must demonstrate credible evidence of the
2 qualifying family relationship, and the family member must have completed background and
3 security checks. *See* USCIS, *National Engagement – U Visa and Bona Fide Determination Process*
4 – *Frequently Asked Questions* (last reviewed/updated Oct. 29, 2022), *available at*
5 [https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-](https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions)
6 [fide-determination-process-frequently-asked-questions](https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions), <https://perma.cc/6D2D-4PX8> (last visited
7 Sept. 18, 2025).

8 **Removal Protections for U-Visa Applicants**

9 72. The Immigration and Nationality Act (INA) establishes various procedures through
10 which individuals may be removed from the United States. Among these are removal proceedings,
11 described in section 240 of the INA. *See* 8 U.S.C. § 1229a.

12 73. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth
13 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

14 74. On December 2, 2021, ICE issued ICE Directive 11005.3, *Using a Victim-Centered*
15 *Approach with Noncitizen Crime Victims*. Consistent with the statutory provisions establishing the
16 U-Visa program, ICE Directive 11005.3 directed that “applying a victim-centered approach
17 minimizes any chilling effect that civil immigration enforcement actions may have on the
18 willingness and ability of noncitizen crime victims to contact law enforcement, participate in
19 investigations and prosecutions, pursue justice, and seek benefits.”

20 75. Under ICE Directive 11005.3, “[e]xcept where exceptional circumstances exist, or
21 if USCIS has administratively closed a case for failure of the applicant to prosecute the application,
22 a noncitizen with a pending victim-based application or petition who is subject to an
23 administratively final removal order should generally be issued a stay of removal.”

76. On January 31, 2025, ICE issued ICE Directive 11005.4: Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, purporting to rescind and supersede ICE Directive 11005.3.

FACTUAL ALLEGATIONS

Respondents' Detention and Deportation Policies

77. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

78. In late May, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.⁶

⁶ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877> (last visited Sept. 18, 2025); Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494> (last visited Sept. 18, 2025); Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests*, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller> (last visited Sept. 18, 2025).

79. On May 28, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁷

80. Following the directive from Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals”—individuals who by definition would not have warrants.⁸ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁹

81. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law.

82. Respondents have a vast and unaccountable detention system and have transferred individuals to remote detention facilities, including outside of the United States.

83. Respondents have also initiated an unlawful mandatory detention policy, under which, contrary to the plain language of the detention statutes and decades of established agency practice, the vast majority of noncitizens apprehended for immigration purposes are ineligible for any opportunity to request release from detention.

84. A DHS policy announced on July 8, 2025, instructed ICE employees to treat any noncitizen charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), entry without admission

⁷ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, FOX NEWS (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112>, <https://perma.cc/SUX7-NVTY> (last visited Sept. 18, 2025).

⁸ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>, <https://perma.cc/V6BP-G8A8> (last visited Sept. 18, 2025).

⁹ *Id.*

1 or inspection, as mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). Individuals subject to
2 mandatory detention under this provision are statutorily ineligible for release from detention on
3 bond.

4 85. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure*
5 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), a decision that closely tracks this July 2025 policy and
6 concludes, incorrectly, that individuals who are detained even years after entering the country
7 without inspection must be held as “arriving” noncitizens under 8 U.S.C. § 1225(b)(2)(A) and are
8 therefore ineligible for release on bond.

9 86. This policy and the *Matter of Yajure Hurtado* decision are contrary to the plain
10 language of the INA and decades of agency practice.

11 87. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
12 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
13 –208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
14 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
15 (2025).

16 88. After IIRIRA’s passage, the Executive Office for Immigration Review drafted new
17 regulations stating that, in general, people who entered the country without inspection were detained
18 under § 1226(a) and not § 1225. *See* Inspection and Expedited Removal of Aliens; Detention and
19 Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,
20 10323 (Mar. 6, 1997).

21 89. Thus, for decades, noncitizens who entered the country without inspection were
22 entitled to a bond hearing when in removal proceedings under 8 U.S.C. § 1230 (colloquially known
23 as § 240 removal proceedings, referencing the INA), unless subject to mandatory detention under

1 8 U.S.C. § 1226(c) due to criminal history. This process was consistent with pre-IIRIRA practice,
2 in which noncitizens not deemed to be “arriving” were entitled to a custody hearing before an
3 immigration judge or hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-
4 469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously
5 found at § 1252(a)).

6 90. Respondents’ new policies are contrary to the plain language of the statute and
7 decades of agency practice. Section 1226(a) applies by default to all persons “pending a decision
8 on whether the [noncitizen] is to be removed from the United States.” These removal hearings are
9 held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” The
10 language explicitly applies to people charged as being inadmissible, including those who entered
11 without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people
12 makes clear that, by default, such people are afforded a bond hearing under subsection (a). And
13 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent
14 those exceptions, the statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
15 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*,
16 559 U.S. 393, 400 (2010)).

17 91. In contrast, § 1225(b) expressly applies to people arriving at U.S. ports of entry or
18 who recently entered the United States. The statute’s entire framework is premised on inspections
19 at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).
20 As the Supreme Court has explained, this mandatory detention scheme applies “at the Nation’s
21 borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking
22 to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

92. Section 1226's detention authority therefore undoubtedly applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. Dozens of federal courts have agreed. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and

not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

Petitioner's Background

93. Petitioner Rigoberto Hernandez Hernandez was born in 2002.

94. Mr. Hernandez is of indigenous Mixtec ancestry and grew up in a household where English, Spanish, and Mixtec were spoken.

95. Petitioner's father and mother are migrant farmworkers. The family spent time in different years and different agricultural seasons in California's Salinas Valley, Oregon's Willamette and Rogue Valleys, and parts of Washington.

96. Mr. Hernandez attended grade school and middle school in Oregon and California and graduated from Salinas High School, in California. Not too long after he turned 18, he was convicted of his singular misdemeanor crime in Salinas of violating California Vehicle Code 23109(a) for racing on a public highway. He was fined some \$200, and the imposition of the remainder of his sentence was suspended; he completed conditional probation in approximately 2022.

97. Today, Mr. Hernandez is a wildland firefighter. Although he makes his home in Oregon, he can be deployed anywhere in the United States to fight wildfires.

98. In 2009, in Oregon, "what is probably the biggest immigration fraud in Oregon history" began unfolding perpetrated by one Patrick Snyder and one Juvenal Vega.¹⁰

¹⁰ Nigel Jaquiss, *Between ICE and a Hard Place*, Willamette Week, Dec. 23, 2013, <https://www.wweek.com/portland/article-21689-between-ice-and-a-hard-place.html>, <https://perma.cc/5J4N-8JKN> (last visited 9/10/2025).

99. By means of “large-scale immigration fraud and money laundering violations— more than 90 immigrants were defrauded out of more than \$600,000 between 2009 and 2012. According to court documents, Snyder and Vega used Snyder’s business, Immigration Solutions, to solicit immigrants seeking legal status in the United States, falsely promising that they could obtain legal status for these individuals for a fee that ranged between \$5,000 and \$10,000.”¹¹ As part of their scheme, Snyder and Vega falsely told their victims that they were accredited representatives with United States Citizenship and Immigration Services, that Snyder was a lawyer, that Snyder had connections with immigration officials, that Snyder was an immigration agent, and that Snyder was a detective with the Federal Bureau of Investigation (FBI).

100. The law enforcement operation included the FBI, the Medford Police Department, and the Jackson County District Attorney’s Office and was prosecuted by then-Assistant U.S. Attorney Scott E. Bradford for Oregon.¹²

101. Mr. Hernandez and his family were victims of this years-long fraudulent scheme. Snyder and Vega used their positions of power to threaten Mr. Hernandez’s father and the family with deportation if they reported anything to law enforcement regarding the underlying extortion, blackmail, money laundering, or wire fraud schemes.¹³

¹¹ U.S. Attorney’s Office, District of Oregon, *Southern Oregon Men Sentenced for Immigration Fraud and Money Laundering*, Nov. 16, 2017, <https://www.justice.gov/usao-or/pr/southern-oregon-men-sentenced-immigration-fraud-and-money-laundering>, <https://perma.cc/G3YZ-TM4A> (last visited Sept. 10, 2025).

¹² Nigel Jaquiss, *Between ICE and a Hard Place*, Willamette Week, Dec. 23, 2013, <https://www.wweek.com/portland/article-21689-between-ice-and-a-hard-place.html>, <https://perma.cc/5J4N-8JKN> (last visited 9/10/2025); Andrea Damewood, *Greed Card*, Willamette Week, Nov. 26, 2013, <https://www.wweek.com/portland/article-21575-greed-card.html>, <https://perma.cc/6BLU-DKYF> (last visited Sept. 10, 2025).

¹³ U.S. Attorney’s Office, District of Oregon, *Southern Oregon Men Sentenced for Immigration Fraud and Money Laundering*, Nov. 16, 2017, <https://www.justice.gov/usao-or/pr/southern-oregon-men-sentenced-immigration-fraud-and-money-laundering>, <https://perma.cc/G3YZ-TM4A> (last visited Sept. 10, 2025).

102. According to the United States Attorney for the District of Oregon, Mr. Hernandez's father "fully cooperated and was helpful with the prosecution in this case." Mr. Hernandez's father was a federally designated victim in the case. Indeed, the involvement of Mr. Hernandez and other victims was key to the prosecution's success. According to the records in the case, Mr. Hernandez's father came forward voluntarily to provide a statement and key information regarding Synder and Vega's scheme.

103. On July 20, 2017, Synder and Vega pled guilty; they were sentenced on December 11, 2017. Snyder was sentenced to 75 months of imprisonment and ordered to pay \$637,190 in restitution. Likewise, Vega was sentenced to 41 months of imprisonment and ordered to pay \$150,000 in restitution. Previously, Snyder had pleaded guilty to conspiracy to commit mail and wire fraud and money laundering, and Vega had pleaded guilty to money laundering.

104. Billy J. Williams, United States Attorney for the District of Oregon at that time of the investigation and prosecution, explained that, "[t]hese defendants targeted an extremely vulnerable group of individuals based on their race, national origin, and ethnicity. They were the perfect victims—they were desperate and fearful, and these defendants exploited that desperation and fear for their own greedy desires. My office cannot and will not tolerate such conduct."¹⁴

105. On December 14, 2017, the U.S. Attorneys for the District of Oregon issued Form I-918B, Supplement B, U Nonimmigrant Status Certification to Mr. Hernandez's father. The certification was signed by the Chief of the Criminal Division who certified that Mr. Hernandez's father was the victim of extortion, blackmail, and attempts to commit those crimes. The U.S.

¹⁴ U.S. Attorney's Office, District of Oregon, *Southern Oregon Men Sentenced for Immigration Fraud and Money Laundering*, Nov. 16, 2017, <https://www.justice.gov/usao-or/pr/southern-oregon-men-sentenced-immigration-fraud-and-money-laundering>, <https://perma.cc/G3YZ-TM4A> (last visited Sept. 10, 2025).

1 Attorneys explained that “[i]nitially the case was slow to evolve because the main suspect and co-
2 conspirator had threatened to call law enforcement and have the victims deported.” Even so, and
3 despite those threats, Mr. Hernandez’s father “fully cooperated and was helpful with the
4 prosecution in the case against the suspects.”

5 106. On June 12, 2018, Mr. Hernandez along with his family filed for U-nonimmigrant
6 status under INA § 214(p). 8 U.S.C. § 1184(p). Mr. Hernandez’s application is and has been
7 complete and awaiting adjudication for over seven years.

8 107. The effectiveness of the U-visa program turns on whether a noncitizen victim of
9 crime can timely receive protection, because a person who must remain in the shadows for years
10 after reporting a crime is less likely to take the risk of approaching law enforcement. For this
11 reason, Congress intended that U-visa petitioners would quickly receive protection, noting that the
12 statute means to “give[] law enforcement officials a means to regularize the status of cooperating
13 individuals *during* investigations or prosecutions.” Pub. L. No. 106-386, 114 Stat 1464, §
14 1502(a)(2)(B) (emphasis added).

15 **Wildland Firefighting**

16 108. Mr. Hernandez is a wildland firefighter employed by ASI Arden Solutions Inc., a
17 federal contractor. He is a Type 2IA certified firefighter and a qualified sawyer, which means he
18 is physically fit, highly and extensively trained, and capable of leading a squad for initial attacks
19 against wildland fires. His responsibilities during wildland fires may include creating lines to stop
20 the fire from burning into untouched green areas, cutting down trees, and clearing vegetation to
21 manage spread. Prior to his arrest, he was in training to become an Incident Commander Type 5,
22 which requires understanding how to read the weather, work a radio, run a saw, and operate a small
23 squad in a way that is safe and responsible.

1 109. Mr. Hernandez's work requires a combination of specialized knowledge, physical
2 strength, and strong mental focus, which is critical in controlling fires and ensuring the safety of
3 firefighting crews on the fire line.

4 110. During fire season, Mr. Hernandez can be called up to fight wildland fires anywhere
5 in the United States. He has been deployed to fight wildland fires more than 20 times over the past
6 few years including in California, Colorado, Idaho, North Carolina, Oregon, Tennessee, and
7 Washington.

8 111. Wildland firefighters may be required to work long hours in challenging and
9 changing conditions, such as high temperatures and steep terrain.

10 112. Wildfires are unpredictable and devastating natural events that can cause
11 destruction and loss. Wildfires are known for their rapid spread, intense heat, and unpredictable
12 behavior. The speed at which a wildfire spreads can be astonishing.

13 113. Wildland firefighting is generally a federal initiative and has an interagency,
14 hierarchical structure. There are agency firefighters and private contract firefighters, like Mr.
15 Hernandez, who collectively battle wildland fires around the nation.

16 114. The interagency response is generally comprised of the U.S. Forest Service, the
17 National Park Service, the Bureau of Land Management, and other state and local entities. Prior
18 to the incident at issue in the petition, the U.S. Border Patrol has never been part of the interagency
19 fire response; upon information and belief, the agency does not receive wildland fire training.

20 115. The overriding priority in wildland fire response is the protection of human life.
21
22
23

Bear Gulch Fire

116. The Bear Gulch Fire is a wildfire that began on July 6, 2025, on the north side of Lake Cushman in the Olympic National Forest. It is the Olympic Peninsula's largest fire since 1951.¹⁵

117. As of September 17, 2025, the fire had burned 15,739 acres and remains only nine percent contained.¹⁶ Most of the fire's growth happened over just seven hot and dry days since it sparked on July 6, from a human cause that is still under investigation. At one point it sent a column of smoke nearly 30,000 feet into the air, visible from as far as Seattle and Aberdeen.

118. According to the West Mason fire Chief Matt Welander, because of the "steepness of the terrain, how far it was off the road initially, and then, not just all of that, but everything that was on fire was logs that could roll down the hill, rocks that could get kicked loose, lot of dead snags, things that would be dangerous for (any) firefighters," it was clear to him that "[f]rom the very beginning, this was a fire that needed specialized people, specialized equipment, specialized teams."¹⁷

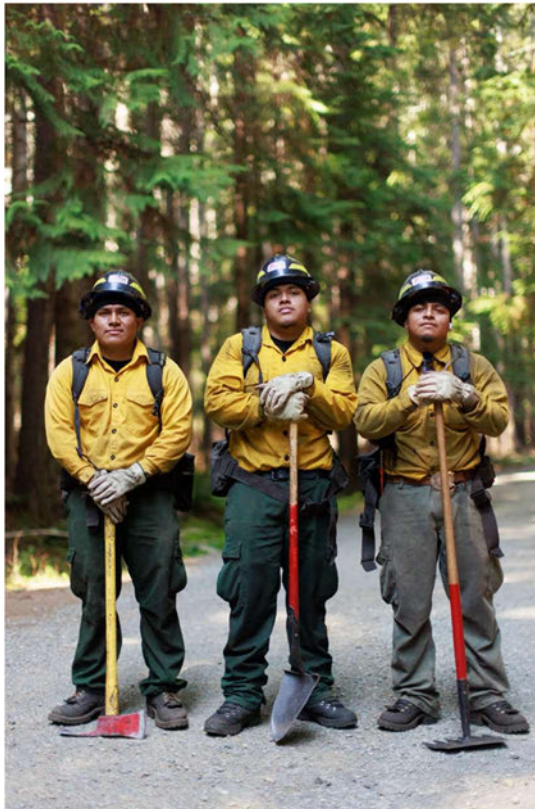
119. The Petitioner, Rigoberto Hernandez Hernandez, along with his brothers, were among those specialized people and specialized teams who arrived to fight the fire.¹⁸

¹⁵ Isabella Breda, *Inside the fight to slow down WA's roller coaster Bear Gulch fire*, The Seattle Times, Aug. 24, 2025, <https://www.seattletimes.com/seattle-news/climate-lab/inside-the-fight-to-slow-down-was-roller-coaster-bear-gulch-fire/>, <https://perma.cc/56S5-PXDZ> (last visited Sept. 9, 2025).

¹⁶ KOMO News Staff, *Bear Gulch fire intensifies after day of high temps, smoke blankets Olympic Peninsula*, Sept. 17, 2025, <https://komonews.com/news/local/bear-gulch-fire-intensifies-after-day-of-high-temps-smoke-blankets-olympic-peninsula-lake-cushman-wildfire-season-high-heat-flames>, <https://perma.cc/7V7B-VZAQ> (last visited Sept. 19, 2025).

¹⁷ Isabella Breda, *Inside the fight to slow down WA's roller coaster Bear Gulch fire*, The Seattle Times, Aug. 24, 2025, <https://www.seattletimes.com/seattle-news/climate-lab/inside-the-fight-to-slow-down-was-roller-coaster-bear-gulch-fire/>, <https://perma.cc/56S5-PXDZ> (last visited Sept. 9, 2025).

¹⁸ Image from *id.*



3 of 4 | The Hernandez brothers, from left, Ricardo, 25; Hector, 18; and Rigoberto, 22, are firefighters working with contractor ASI Arden Solutions in the Staircase area of Olympic National Park. (Erika Schultz / The Seattle Times)

120. Under an interagency response managed by the U.S. Forest Service, the National Park Service, the Washington Department of Natural Resources, the California Interagency Incident Management Team, and Hoodspout Fire & EMS, the Bear Gulch Fire was “being managed with a full suppression strategy” in which all the firefighters “assigned to the incident shall work together to provide a high level of service, safety, and protection” and all personnel “at every level shall ensure transparent, timely and accurate communications while strengthening relationships with each other[.]” Incident Action Plan, Bear Gulch Fire, (published 8/16/2025).¹⁹

¹⁹ An Incident Action Plan is a daily set of actions that the firefighting teams undertake. The Incident Action Plans for the Bear Gulch fire are posted publicly at: https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/IAP/, <https://perma.cc/AZU4-YRZ8> (last visited Sept. 12,

121. Mr. Hernandez arrived on site as a Type 2 Initial Attack firefighter with a private contractor, ASI Arden Solutions Inc., for whom he had worked since 2023. On information and belief, there are very few Type 2 Initial Attack crews in the country, and their skilled firefighters are in high demand.²⁰

122. For the most of his time fighting the Bear Gulch fire, until his arrest by Border Patrol, Mr. Hernandez was assigned to fight the fire by staging, patrolling, and combatting new or reignited fires by getting rid of hotspots and residual flames that could reignite days or weeks later without treatment, often called “mop-up” operations.²¹

123. During mop-up, firefighters use hand tools to turn over soil and smother embers with dirt and apply water when available to cool hot spots and prevent reignition. Crews will keep monitoring for hours or even days to make sure nothing flares up again. Mopping up is one of the most critical steps in controlling a wildfire.²²

2025). The August 16, 2025 IAP is published at:

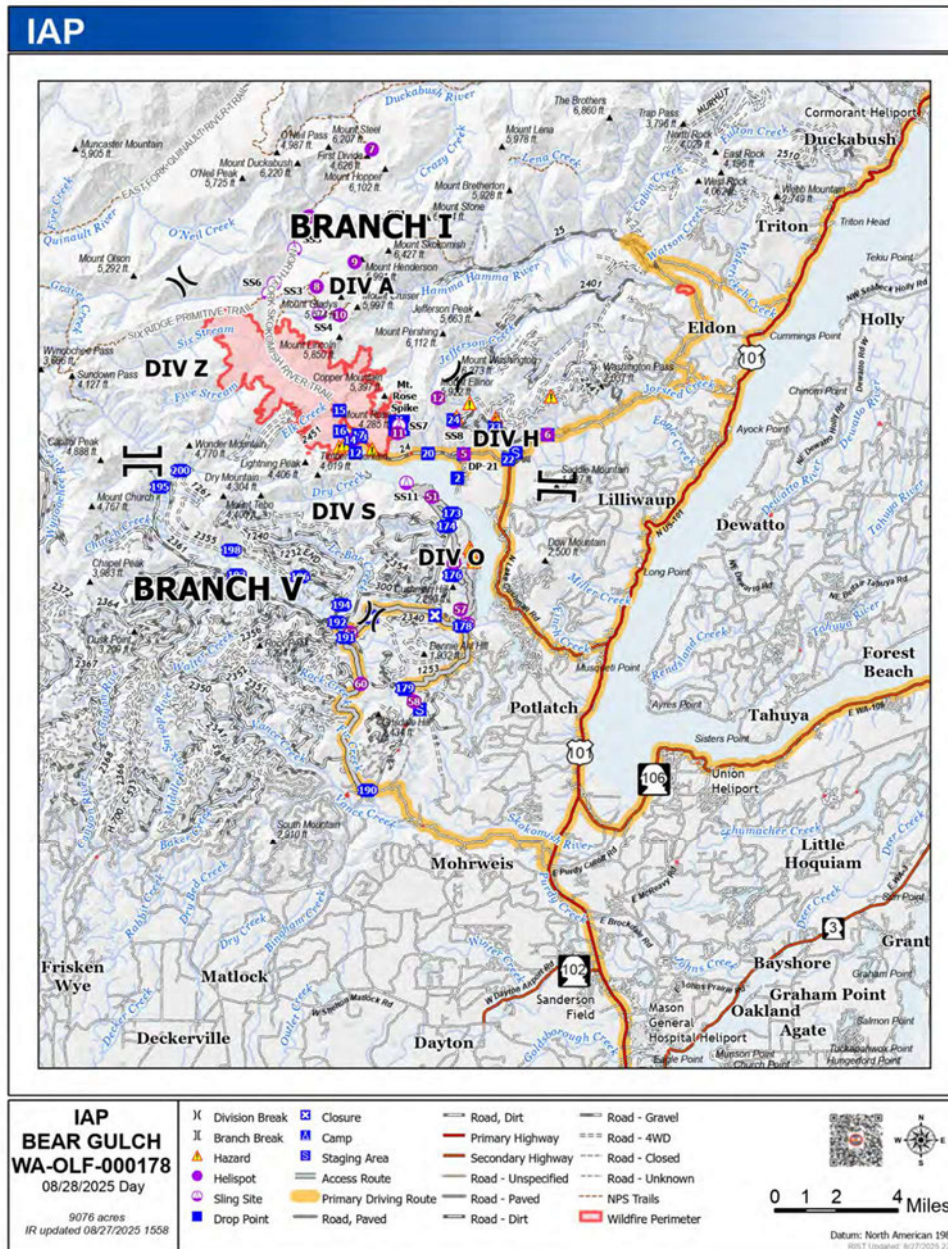
https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/IAP/Archive/IAP_Corrected_20250816_000178.pdf,
<https://perma.cc/95K5-FPS6> (last visited Sept. 12, 2025).

²⁰ See, e.g., Gabrielle Canon, *US faces alarming firefighter shortage during peak wildfire season, data reveals*, The Guardian, July 22, 2025, <https://www.theguardian.com/world/2025/jul/22/us-firefighter-shortage-wildfires#:~:text=A%20longstanding%20problem,people%20out%20of%20the%20service>

(noting that “[t]he problem [is] especially grim in the Pacific north-west, a region facing extremely high fire risk this year, with a [US Forest Service firefighter] vacancy rate of 39%.”).

²¹ See USDA Forest Service, Fire Terminology, <https://www.fs.usda.gov/nwacfire/home/terminology.html#:~:text=Mop%2Dup%3A%20To%20make%20a,they%20won't%20roll%20downhill>, <https://perma.cc/5244-TPKR> (last visited Sept. 18, 2025).

²² Image taken from IAP Map, August 27, 2025, https://ftp.wildfire.gov/public/incident_specific_data/pacific_nw/2025_Incidents_Washington/2025_Bear_Gulch_WAOLF000178/GISS/Products/20250827/iap_85x11_land_20250827_2129_Bear%20Gulch_WAOLF000178_0828_day.pdf, <https://perma.cc/DV78-ZUFZ> (last visited 9/12/2025). The blue dots with numbers are “drop points” or “DP” in the IAP vernacular. They are marked areas within the closed fire zone.



Border Patrol's Unlawful Stop & Arrest of Mr. Hernandez

124. On information and belief, Petitioner was detained by CBP Officers on August 27, 2025, despite there being no reasonable suspicion that he had committed an immigration violation. On that date, numerous uniformed, armed agents including at least one agent from the Bureau of Land Management and several from the U.S. Border Patrol seized approximately 40 people at once, including Mr. Hernandez, held them under armed guard, and did not release them until they



had produced identification and told officers where they were born. Mr. Hernandez was never released.

125. The morning of August 27, Mr. Hernandez's crew was split into two squads to be deployed to two different locations. This was unusual, as the squad usually all worked together.

1 Mr. Hernandez and his squad of about 40 people were driven to a remote drop point – DP 22 –
2 where Mr. Hernandez had never been before.

3 126. Still within the fire closure zone (but not in the active fire perimeter), Drop Point
4 22 was deep into the forest where there was no or limited cell phone service. The site was a large
5 circular clearing surrounded by tall trees and thick forest. Enormous, felled logs flanked the site,
6 which contained a single entrance opening to the road.

7 127. Around 9:00 am Pacific Time, Mr. Hernandez was standing in the drop point with
8 his squad when four vehicles pulled up—two trucks and two SUVs. They parked to block the
9 single exit to the drop site such that no one could go.

10 128. A uniformed agent got out of one of the vehicles and told everyone to gather up.
11 As the squad began gathering together, about four armed agents wearing vests that said “Border
12 Patrol” got out of their vehicles and surrounded the squad. They directed everyone to get in a line,
13 and as the squad complied, three more agents, also armed, got out of their vehicles. Two more
14 trucks arrived, and additional agents got out.

15 129. As the agents surrounded Mr. Hernandez and his squad, Mr. Hernandez could see
16 that all or most of them had guns and magazines on their waists. Most of them had two magazines
17 on their waist and one of them had four magazines. One of the agents was walking around
18 constantly clutching his holster. Some of the agents appeared to be wearing park ranger uniforms
19 but most were wearing vests that said “Border Patrol.”

20 130. When the agents surrounded Mr. Hernandez and the rest of the squad and told them
21 to line up, Mr. Hernandez was not doing anything unlawful. He was on active fire duty, directed
22 to Drop Point 22 to cut firewood for the community, per the orders provided by his crew leaders
23 and divisional leaders. Even so, Mr. Hernandez felt that he had no choice but to line up and do

1 what the agents said because there were many agents all around him, they all had guns, and they
2 were telling everyone what to do. He had no transport away from the drop point because the
3 vehicles and armed agents had blocked that egress and, moreover, he was on orders to be at the
4 drop point and had been transported there by his official crew.

5 131. The Border Patrol agents went from person to person taking people's identification
6 documents and asking them where they were born. After examining a firefighter's identification,
7 officers would state the person was "cleared" or label them as "good" and direct them to a different
8 line.

9 132. Officers asked Mr. Hernandez for his identification. Mr. Hernandez provided his
10 firefighter's ID, which reflects his name, photo, and other identifying details. The agent then asked
11 Mr. Hernandez in what country he was born. Mr. Hernandez stated that he was pleading the Fifth
12 Amendment. The agent mocked him for invoking his constitutional rights. Mr. Hernandez did not
13 carry any documents or identification that reflected his place of birth or nationality.

14 133. Instead of "clearing" Mr. Hernandez, the agents told him to stand apart from the
15 other firefighters. Mr. Hernandez complied with these instructions.

16 134. A Border Patrol agent approached Mr. Hernandez and asked, "Why aren't you
17 providing the information we're asking?" Mr. Hernandez asserted that he was exercising his right
18 to remain silent and would not answer questions.

19 135. The interrogation was as follows:

20 Q. This is an immigration inspection. Since you didn't have any identification
21 except your - what was the card?

22 A. It was the Fire Card.

23 Q. The Fire Card, okay. What country were you born in?

A. I plead the Fifth.

136. The officer's response was to laugh and say "That's a good one." When another agent approached, the bald agent said, "This guy is exercising his rights and not answering the questions." The other agent replied, "that's not gonna be good for him."



137. The agents instructed a group of men, including Mr. Hernandez, to sit down and to not go anywhere. Mr. Hernandez complied.

138. The agents then announced that they would be calling out a list of names. Those whose names were called were "good" and should return to the trucks to be taken back to camp. Some men whose names were called tried to stay with the rest of the group until the situation resolved but the agents would not allow them to do so.

139. For nearly three more hours, Mr. Hernandez was held by armed Border Patrol agents at the site.



140. Eventually, the Border Patrol agent instructed Mr. Hernandez to put his hands behind his back. He handcuffed him and told him that he was under arrest but did not tell him why; when asked, he replied “because you’re here illegally.”

141. At no point during the hours-long stop did any agent produce a warrant, explain why Mr. Hernandez had been stopped initially, or provide any documents of any kind.

142. At no point during the hours-long stop did any agent provide their name or badge number to Mr. Hernandez. When his brother asked one of the agents for their name and badge number, the agent threatened to put his brother in handcuffs.

143. At no point during the hours-long stop did any agent advise Mr. Hernandez that they were immigration officials authorized to make immigration arrests.

144. At no point during the hours-long stop did any agent ask Mr. Hernandez any questions about his family or community ties.

1 145. After being handcuffed, for the next hour Mr. Hernandez sat on the ground while
2 handcuffed. He was surrounded by roughly 8 to 12 armed agents.

3 146. While Mr. Hernandez was sitting on the ground handcuffed, he heard officers
4 talking about him and guessing where he was from based on the way he looked. They named a
5 few different foreign countries. One of the officers suggested that he could be Oaxacan, but another
6 officer said, “No, he’s too big, too tall to be Oaxacan.”

7 147. After waiting approximately three hours during the Border Patrol’s questioning and
8 an additional hour handcuffed on the ground, agents transported Mr. Hernandez to a Customs and
9 Border Protection station in Ferndale, Washington approximately 200 miles from the arrest site.

10 148. At the time of the handcuffing, the Border Patrol had determined based solely on
11 Mr. Hernandez’s race that he was in the United States without status.

12 149. The Border Patrol detained Mr. Hernandez and transported him in order to take
13 biometrics to see if they could learn his country of birth and immigration status.

14 150. At the Bellingham station, Mr. Hernandez told officers that he wanted to speak with
15 his attorney. He also asked repeatedly for a phone call; each request was denied. Although Mr.
16 Hernandez’ counsel was attempting to contact him, at no point did officers at the CBP station tell
17 Mr. Hernandez that anyone was trying to reach him. Mr. Hernandez asked if he was being denied
18 a phone call until he was transferred to a different facility, and he was told yes.

19 151. On August 27, 2025, after Mr. Hernandez arrived at the Border Patrol station, the
20 Border Patrol ran Mr. Hernandez’s fingerprints and discovered that he was an applicant for a U-
21 visa because he had been the victim of a crime.

22 152. Agents demanded that Mr. Hernandez sign documents without explaining the
23 documents. Mr. Hernandez refused. At one point, they woke him up in the middle of the night and

1 brought him to an interrogation room. Again, Mr. Hernandez pleaded his Fifth Amendment right
2 to remain silent.

3 153. After roughly 24 hours detained at the CBP station, Mr. Hernandez was transferred
4 to NWIPC in Tacoma, Washington, again before having any opportunity to speak with his counsel.
5 He has been detained at NWIPC ever since.

6 154. At no point during any of the days since he was handcuffed has any officer asked
7 Mr. Hernandez about his family, employment, or community ties; nor has any officer undertaken
8 any other evaluation of whether he posed a risk of flight or dangerousness.

9 155. Upon information and belief, the Border Patrol agents who stopped and detained
10 Mr. Hernandez did not have a reasonable suspicion that he was unlawfully present in the United
11 States.

12 156. Without any individualized suspicion, CBP agents detained the entire crew on
13 which Mr. Hernandez served instead of letting him and his crew use their highly specialized skills
14 to fight the massive Bear Gulch fire that was endangering the people of Washington and its
15 landscape.

16 **CLAIMS FOR RELIEF**

17 **COUNT ONE**

18 **Violation of the Fourth Amendment of the United States Constitution**
19 **Unreasonable Seizure**

20 (Respondents U.S. Border Patrol, Chief Michael W. Banks, Chief Rodney S. Scott, CBP)

21 157. Petitioner realleges and incorporates by reference each allegation contained in the
22 preceding paragraphs as if set forth fully herein.
23

163. Except at the border and its functional equivalents, the Fourth Amendment to the U.S. Constitution prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. Likewise, the Fourth Amendment prohibits Respondents from making an arrest without probable cause to believe that a person is a noncitizen unlawfully in the United States.

164. Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because probable cause is a more demanding standard than reasonable suspicion, race or apparent ethnicity, standing alone, is also necessarily insufficient to form the basis for probable cause.

165. Respondents had no basis to detain Petitioner and inquire about his immigration status other than his race and apparent ethnicity. Likewise, Respondents had no basis to arrest Petitioner other than his race and apparent ethnicity. No other salient factors existed to suggest that he might not be a citizen of the United States. Because Respondents only detained Petitioner because of his race, they did not have reasonable suspicion, and the detention violated the Fourth Amendment.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Violation of 8 C.F.R. § 287.8(c)(2)(ii)

Detentive Stop Without Reasonable Suspicion

(Respondents U.S. Border Patrol, Chief Michael W. Banks, Commissioner Rodney S. Scott, CBP)

166. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

167. Under the APA, a court shall “hold unlawful and set aside agency action” that is not in accordance with law or an abuse of discretion. 5 U.S.C. § 706(2)(A).

168. An action is an abuse of discretion if the agency “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.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

169. 8 C.F.R. § 287.8(c)(2)(ii) requires that before detaining an individual for questioning, an immigration officer must have “a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States.”

170. Respondents’ detentive stop of Petitioner in the Olympic National Forest, without any reasonable suspicion of a qualifying offense, violates the APA and Respondents’ authority under 8 C.F.R. § 287.8(c)(2).

171. Separate from the APA, Respondents’ detention of Petitioner without any reasonable suspicion is *ultra vires*.

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(i)

Warrantless Arrest Without Probable Cause of Immigration Violation

(Respondents U.S. Border Patrol, Chief Michael W. Banks, Commissioner Rodney S. Scott, CBP)

172. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

173. Under the APA, a court shall “hold unlawful and set aside agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction,

1 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
2 706(2)(A)-(D).

3 174. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest
4 only if that officer has “reason to believe” that an individual is in the United States in violation of
5 the immigration laws. A “reason to believe” is equivalent to “the constitutional requirement of
6 probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

7 175. 8 C.F.R. § 287.8(c)(2)(i) requires that before making a warrantless arrest, an
8 immigration officer must have probable cause “to believe that the person to be arrested has
9 committed an offense against the United States or is an alien illegally in the United States.”

10 176. Because criminal penalties may attach to some immigration offenses, the Fifth
11 Amendment right to remain silent may be properly invoked during a civil immigration arrest. *See*
12 U.S. Const., amend. V. An immigration officer may not establish probable cause on the basis of a
13 noncitizen’s silence pursuant to his Fifth Amendment rights. *See Hurd v. Terhune*, 619 F.3d 1080,
14 1088 (9th Cir. 2010) (affirming “the fundamental principle that a suspect’s silence in the face of
15 questioning cannot be used as evidence against him at trial”).

16 177. Respondents questioned Petitioner as part of an unlawful detentive stop in the
17 middle of the Olympic National Forest. Petitioner provided his firefighter identification, which
18 included his full name, and then invoked his Fifth Amendment right to silence.

19 178. Respondents’ warrantless arrest of Petitioner in the Olympic National Forest, based
20 on no information beyond his race and his lawful invocation of his constitutional right to silence,
21 is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under
22 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

179. Separate from the APA, Respondents' warrantless arrest of Petitioner without probable cause that he had committed an immigration violation is *ultra vires*.

COUNT FIVE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii)
Warrantless Arrest Without Probable Cause of Likelihood of Escape

(Respondents U.S. Border Patrol, Chief Michael W. Banks, Commissioner Rodney S. Scott, CBP)

180. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

181. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has “reason to believe” that an individual is “likely to escape before a warrant can be obtained for [their] arrest.” To meet this requirement, officers must have “grounds for a reasonable belief that they were particularly likely to escape.” *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995). A “reason to believe” is equivalent to “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

182. 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is “likely to escape before a warrant can be obtained.”

183. Respondents arrested Petitioner while he was actively working as a federal contractor to combat a major, uncontained wildfire in the Olympic National Forest. During his assignment to the Bear Gulch fire, Petitioner both worked and resided in remote, demarcated areas of the Olympic National Forest that were assigned by his team leadership.

184. Respondents' warrantless arrest of Petitioner in the Olympic National Forest, in the middle of his active deployment to fight the Bear Gulch fire, without an individualized

determination that he was “likely to escape” before a warrant is issued is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

185. Separate from the APA, Respondents’ warrantless arrest of Petitioner without probable cause that he was likely to escape before a warrant could be obtained is *ultra vires*.

COUNT SIX

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Violation of 8 U.S.C. § 1357(a)(2), 8 U.S.C. § 1226(a), 8 C.F.R. § 287.3(d) Failure to Make a Custody Determination Within 48 Hours

(All Respondents Except BLM, Acting Director Bill Groffy, and EOIR)

186. Petitioner restates and realleges all paragraphs as if fully set forth here.

187. Following a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the individual arrested “shall be taken without unnecessary delay” for further consideration of “their right to enter or remain in the United States”.

188. Absent emergency or extraordinary circumstances, 8 C.F.R. § 287.3(d) requires that within 48 hours of a warrantless immigration arrest, an immigration officer must make an individualized custody determination as to whether the noncitizen should remain in custody or be released. *See* 8 U.S.C. § 1226(a) (granting statutory authority to continue detention following an immigration arrest). The custody determination is recorded in the Form I-286, “Notice of Custody Determination.” These procedures are essential to protect the arrested person’s Fourth Amendment and Fifth Amendment rights.

189. There were no emergency or extraordinary circumstances at the time of the arrest or at any time thereafter during Petitioner’s detention that would justify delay of an individualized custody determination.

190. Respondents' continued detention of Petitioner without any individualized custody determination is "final agency action" that is "in excess of statutory jurisdiction, authority, or limitations" under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

191. Separate from the APA, Respondents' detention of Petitioner beyond 48 hours without an individualized determination as to whether custody should be continued is *ultra vires*.

COUNT SEVEN

Violation of Fourth Amendment to the U.S. Constitution Failure to Justify Continued Detention

(All Respondents Except BLM, Acting Director Bill Groffy, and EOIR)

192. Petitioner restates and realleges all paragraphs as if fully set forth here.

193. An individual who is arrested and placed in immigration detention is constitutionally entitled to a prompt probable cause determination by a neutral officer to justify their continued detention. *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 824 (9th Cir. 2020).

194. Petitioner has now been detained by Respondents for over three weeks. In that time, upon information and belief, no warrant has been issued and no individualized custody determination has occurred purporting to justify his continued detention. *See* 8 C.F.R. § 287.3(d) (requiring that within 48 hours after a warrantless arrest, the agency make "a determination . . . whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued").

195. Respondents' continued detention of Petitioner without probable cause to justify his detention violates the Fourth Amendment to the U.S. Constitution.

COUNT EIGHT

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Unlawful Revocation and Disregard of Agency Directive 11005.3**

(Respondents ICE, Acting Director Todd Lyons, Field Office Director Cammilla Wamsley)

196. Petitioner restates and realleges all paragraphs as if fully set forth here.

197. Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). Courts may provide judicial review of “executive agency action for procedural correctness.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009). An agency must provide “reasoned explanation for its action” and “may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *Id.* at 515.

198. ICE Directive 11005.3 established that “absent exceptional circumstances, ICE will refrain from taking civil immigration enforcement action against known beneficiaries of victim-based immigration benefits and those known to have a pending application for such benefits.”

199. ICE Directive 11005.4 purported to replace ICE Directive 11005.3 on January 31, 2025. However, this Directive fails to engage in any manner with the important policy considerations underlying ICE Directive 11005.3.

200. Respondents’ decision to rescind and supersede ICE Directive 11005.3 is arbitrary and capricious, and the rescission cannot be applied to Petitioner. ICE Directive 11005.3’s respect for noncitizen crime victims rests on solid policy reasoning, including the strong legal protections laid out by Congress and the need to “encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status,” which in turn “strengthens” the possible law enforcement response to criminal activity. *See* ICE Directive 11005.3(1). ICE Directive 11005.4 does not provide any “reasoned explanation” for abandoning this strategy.

1 Instead, the Directive cites solely President Trump’s Executive Order “Protecting the American
2 People Against Invasion,” which states the policy of the United States to achieve the “total and
3 efficient enforcement of [immigration] laws”.

4 201. Because the purported rescission of the directive is arbitrary and capricious,
5 Respondents should have applied ICE Directive 11005.3 when considering whether to detain
6 Petitioner. To the extent that Respondents did not apply this policy when making a determination
7 about Petitioner’s custody, Respondents violated the APA.

8 202. Because no exceptional circumstances justified the detention of Mr. Hernandez, a
9 known pending U-visa applicant, Respondents violated agency policy regarding applicants of
10 victim-based immigration benefits.

11 COUNT NINE

12 Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) 13 Unlawful Violation of Agency Policy on Immigration Enforcement During Disaster and 14 Emergency Response as Embodied in the 2021 Mayorkas Memo

15 (Respondents DHS, Secretary Kristi Noem, ICE, Acting Secretary Todd Lyons, Field Office
16 Director Cammilla Wamsley)

17 203. Per longstanding DHS policy, “[a]bsent exigent circumstances, immigration
18 enforcement will not be conducted at locations where disaster and emergency response and relief
19 is being provided.”²³ The agency has consistently issued public statements affirming this policy
20 during significant natural disasters, including during wildfires in January 2025 (Los Angeles
21 County), December 2024 (Malibu Canyon), June 2024 (New Mexico), August 2023 (Hawaii),
22 September 2022 (California), April 2022 (the Southwest and Midwest), January 2022 (Colorado),

23 ²³ U.S. Dep’t Homeland Security, *DHS Statement on Safety and Immigration Enforcement During the 2021 Wildfire Season*, July 19, 2021, <https://www.dhs.gov/publication/dhs-statement-safety-and-immigration-enforcement-during-2021-wildfire-season>, <https://perma.cc/HEN6-ZT6H> (last visited Sept. 18, 2025).

the 2021 wildfire season, October 2019 (California), August 2018 (Northern California), and November 2018 (California).

204. This policy was formalized in the agency’s 2021 Mayorkas Memo, which designated places “where disaster or emergency response and relief is being provided” as “protected areas” where immigration enforcement was prohibited “[t]o the fullest extent possible.”²⁴

205. Defendants rescinded the 2021 Mayorkas Memo through issuance of the 2025 Huffman Memo²⁵; this rescission constitutes final agency action under the APA. 5 U.S.C. § 704. This nine-sentence rescission was unlawful because it failed to consider the facts and reasoning supporting the 2021 Mayorkas Memo and prior memos or why those past policies were not sufficient; what circumstances necessitated the sudden departure, or why the public policy and safety concerns cited by past agency heads no longer applied; evaluation of alternative approaches; or the impact of conducting immigration enforcement activities near or at sensitive locations, including disaster and emergency response, on affected stakeholders, including the general public who rely on wildlife firefighting to protect their lives and properties.

206. Petitioner’s apprehension in the active disaster and emergency response site of a wildfire violates the agency’s longstanding policy of non-enforcement in such areas and thus violates the Administrative Procedure Act.

²⁴ Memorandum from Alejandro N. Mayorkas, Sec’y, Dep’t of Homeland Sec., “Guidelines for Enforcement Actions in or Near Protected Areas” (Oct. 27, 2021), available at <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw10272021.pdf>, <https://perma.cc/7LFG-VAUU> (last visited Sept. 18, 2025).

²⁵ See Memorandum from Benjamine C. Huffman, Acting Sec’y, Dep’t of Homeland Sec., “Enforcement Actions in or Near Protected Areas” (Jan. 20, 2025), available at https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf, <https://perma.cc/FT34-ECSL> (last visited Sept. 18, 2025).

COUNT TEN

**Violation of Fifth Amendment Right to Due Process
Procedural Due Process**

(All Respondents)

207. The allegations in the above paragraphs are realleged and incorporated herein.

208. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *accord Flores*, 507 U.S. at 306.

209. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

210. Here, Petitioner has been stopped, arrested, and detained in an arbitrary manner, without any notice of the basis for his arrest and continued detention, and not based on a rational and individualized determination of whether he should be detained based on his individual facts and circumstances pertaining to whether he was a flight risk or danger to the community.

211. Respondents’ stop, arrest, and continued detention of Petitioner are violations of his due process rights under the Fifth Amendment to the U.S. Constitution.

COUNT ELEVEN

Violation of 8 U.S.C. §§ 1226(a) and 1225(b)(2)(A)

(Respondents DHS, Secretary Kristi Noem, ICE, Acting Secretary Todd Lyons, Field Office Director Cammilla Wamsley, and EOIR)

212. The allegations in the above paragraphs are realleged and incorporated herein.

213. Respondents purport to hold Petitioner in mandatory detention under 8 U.S.C. 1225(b)(2)(A), without eligibility for release on bond.

214. Petitioner's detention on this basis is in violation of the plain language of the Immigration and Nationality Act. Having been alleged to have entered the country without inspection and resided here thereafter, the proper detention authority of Petitioner can only be 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond. By its plain language, 8 U.S.C. § 1225(b)(2)(A) does not apply to those who resided in the United States after entering without inspection.

215. Thus, the application of § 1225(b)(2) to Petitioner unlawfully mandates his detention without opportunity for release by the agency and violates the INA.

COUNT TWELVE

**Violation of Fifth Amendment Right to Due Process
Procedural Due Process**

(Respondents DHS, Secretary Kristi Noem, ICE, Acting Secretary Todd Lyons, Field Office Director Cammilla Wamsley and EOIR)

216. The allegations in the above paragraphs are realleged and incorporated herein.

217. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States,

1 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
2 permanent.” *Zadvydas*, 533 U.S. at 693.

3 218. Petitioner has a fundamental interest in being at liberty from detention. Subjecting
4 Petitioner to mandatory detention under ICE’s July 8, 2025, detention policy and the Board of
5 Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), both of
6 which are legally incorrect, without evaluating whether he is a flight risk or a danger to community,
7 violates his right to due process.

8 I. PRAYER FOR RELIEF

9 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 10 1) Assume jurisdiction over this matter;
- 11 2) Issue an immediate Order prohibiting the Respondents from transferring
12 Petitioner from the districts of Washington or Oregon without notice to and
13 approval by the Court;
- 14 3) Issue an Order to Show Cause ordering Respondents to show cause why this
15 Petition should not be granted within three days;
- 16 4) Declare that Petitioner’s detentive stop without reasonable suspicion violates the
17 APA, the INA, and the Fourth Amendment;
- 18 5) Declare that Petitioner’s warrantless arrest without probable cause violates the
19 Fourth Amendment, the APA, the INA, and implementing regulations;
- 20 6) Declare that Petitioner’s continued detention without an individualized custody
21 determination or probable cause violates the APA, the INA, implementing
22 regulations, and the Fourth and Fifth Amendments;
- 23

- 7) Declare that Petitioner's continued detention violates agency policy, including policies protecting applicants for victim-based immigration benefits and restricting arrests in disaster response zones, in violation of the APA;
- 8) Declare that Petitioner's deprivation of liberty through his unlawful stop, arrest, and continued detention without an opportunity to be heard violates the Due Process Clause of the Fifth Amendment;
- 9) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- 10) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 11) Grant any further relief this Court deems just and proper.

Dated: September 19, 2025.

s/ Stephen W Manning

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**Motion for Pro Hac Vice Forthcoming*