INNOVATION LAW LAB

August 28, 2025

THE HONORABLE RON WYDEN
UNITED STATES SENATE
via email

Senator Wyden:

Mr. [redacted] (A# [redacted]) was unlawfully detained by U.S. Customs and Border Protection yesterday while he was actively engaged as a firefighter working to contain the Bear Gulch fire on Washington's Olympic Peninsula. He is an Oregonian and resides in Keizer. [redacted]. Although we have been searching for him since yesterday afternoon, CBP has concealed his whereabouts—our client has not been able to make contact with his lawyer or family, the ICE detainee locator has never been updated, and our attempts to use the Department of Homeland Security's systems to locate him failed. Even so, CBP has had the time to put together a press release. Per the CBP press release, our client was transferred to the Bellingham Border Patrol station. According to the press release, we believe he is being wrongfully charged with 8 U.S.C. § 1325, improper entry by alien.

After the press release came out, we called the CBP Bellingham station. The CBP attendant refused to confirm our client's detention location or grant us access. When we called again, the CBP attendant confirmed that our client was being transferred to ICE custody but would not grant us access.

We write this letter to ask that Senator Wyden assist in our client's immediate release from DHS custody. DHS must cease interrogating or interviewing our client and must immediately comply with our client's due process rights and provide him access to counsel. Furthermore, DHS should immediately release our client because he is not a flight risk or a danger to the community.

Based on available videos of the arrest, it appears that the arrest was made without a warrant and in violation of our client's rights. Assuming our client was subject to a warrantless arrest, he must be promptly provided with an individualized custody determination. *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d). This procedure is essential to upholding his Fourth Amendment rights. *See Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 824 (9th Cir. 2020) (holding that individuals arrested and placed in immigration detention are constitutionally entitled to a prompt probable cause determination by a neutral officer to justify their continued detention).

In making his custody determination, DHS should promptly order our client's release. Our client's arrest was in violation of DHS policy that "[a]bsent exigent circumstances, immigration enforcement will not be conducted at locations where disaster and emergency response and relief is being provided[.]" *See DHS Statement on Safety and Immigration Enforcement During the 2021 Wildfire Season*, available at https://www.dhs.gov/publication/dhs-statement-safety-and-immigration-enforcement-during-2021-wildfire-season (last accessed Aug. 28, 2025). His

detention is also in violation of DHS policy that "absent exceptional circumstances, ICE officers will refrain from taking civil immigration enforcement actions against [noncitizens] who are known beneficiaries of victim-based immigration benefits or those known to have pending applications for such benefits." *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).[1] This policy is consistent with Congressional intent in enacting the Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA), which established the U-Visa program 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." VTVPA, Pub. L. No. 106-386, Title V, § 1513, 114 Stat. 1464, 1533 (2000); *see also* Immigration and Nationality Act (INA) § 101(a)(15)(U) (establishing U-Visa eligibility).

Our client and his family were the *victims* of a federal crime committed against them in the state of Oregon and our client's family cooperated with *federal* law enforcement and applied for a U-Visa. Based on the cooperation with federal law enforcement, our client received a signed U-Visa certification from the U.S. Attorney's Office of the District of Oregon and submitted his completed U-Visa application in 2018 with USCIS. Our client has been waiting for USCIS to adjudicate the application since 2018. The U.S. Attorney for the District of Oregon explained that our client's father (on behalf of the family) was a "victim" who "came forward on their own to provide a statement and key information" and "fully cooperated and was helpful with the prosecution in the case against the suspects" and "gave a verbal Victim Impact Statement at the time of sentencing." This official government certification has been on file with the Department of Justice and DHS since 2017.

According to the CBP press release, CBP has alleged that our client is being charged with a violation of 8 U.S.C. § 1325. But that is an illegal after-the-fact justification. Our client came to the United States for a better life when he was approximately four years old—about 19 years ago. Accordingly, any charge now is illegal, in bad faith and unsupported. Our client submitted his U-Visa application to USCIS *after* complying with federal law enforcement directives back in 2018, and underwent biometric processing and screening by USCIS years ago. Our client long ago applied for a waiver of any admissibility grounds the government deems applicable to him.

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[1] ICE has purported to rescind ICE Directive 11005.3: *Using a Victim Centered Approach with Noncitizen Victims*, with ICE Directive 11005.4: *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits*. However, this rescission is in violation of law to the extent that it failed to consider how this change would impact victims with pending applications or how it could chill noncitizens' willingness to engage with law enforcement 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. C*o., 463 U.S. 29, 43 (1983); s*ee 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 unless, in consultation with the Office of the Principal Legal Advisor (OPLA), "the totality of circumstances warrant enforcement".

Now that this information has come to the attention of the agency, and because there are no exceptional circumstances that compel his detention, our client requests your assistance in demanding his swift release from unlawful executive detention.

Sincerely,
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