

DETAINED

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**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON**

ARTURO SEPULVEDA AYALA,

Petitioner,


v.

PAMELA BONDI, United States Attorney
General;
KRISTI NOEM, Secretary of U.S.
Department of Homeland Security;
NATHALIE ASHER, Seattle Field Office
Director, Immigration and Customs
Enforcement;
BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

Respondents.

Case No.: 2:25-cv-1063

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

Agency File Number: 

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The petitioner, Mr. Arturo Sepulveda Ayala ("Mr. Sepulveda Ayala"), is a 53-year-old Mexican native and citizen who is currently being held in detention at the Northwest ICE Processing Center (NWIPC) by U.S. Immigration and Citizenship Enforcement (ICE).

1 2. In November 2022, Mr. Sepulveda Ayala applied for a U visa. He later received a
2 stay of removal. In late January 2025, the stay of removal expired before his application for a
3 second stay had been adjudicated. On February 2, 2025, ICE reinstated a 2004 removal order
4 against Mr. Sepulveda Ayala and detained him. He has been detained ever since.

5 3. About two weeks after he was detained, USCIS determined that his petition for a
6 U visa is bona fide, and it granted him deferred action and employment authorization while he
7 waits for a U visa to become available under the statutory cap.

8 4. Because he has deferred action, Mr. Sepulveda Ayala is lawfully present in the
9 United States and cannot be removed. Despite this, ICE has continued to detain Mr. Sepulveda
10 Ayala for more than four months. In April, he had to miss his daughter's wedding, and he came
11 within days of being removed. He avoided removal only because this Court issued a temporary
12 restraining order preventing it.

13 5. In March 2025, Mr. Sepulveda Ayala sought mandamus relief in this district,
14 seeking to be placed on the U visa waiting list and other relief. He argued that the waiting list is
15 more legally secure than the bona fide determination (BFD), because the waiting list rests on
16 regulation and the BFD rests on policy. The mandamus cause number is 3:25-cv-5185-JNW. In
17 that case, the government has taken the position that the BFD and the waiting list are equivalent
18 and that therefore Mr. Sepulveda Ayala already has the relief he seeks. Mr. Sepulveda Ayala has
19 argued that they are not equivalent. But he brings this habeas petition on the alternative theory
20 that they are in fact equivalent and that therefore Mr. Sepulveda Ayala is being illegally detained
21 even under the BFD deferred action.

22 6. The respondents' continuing detention of Mr. Sepulveda Ayala violates both the
23 Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

PARTIES

1
2 1. Petitioner Arturo Sepulveda Ayala is a citizen of Mexico who is presently
3 detained at the Northwest ICE Processing Center in Tacoma, Washington.

4 2. Respondent Pamela Bondi is sued in her official capacity as the Attorney General
5 of the United States.

6 3. Respondent Kristi Noem is sued in her official capacity as the Secretary of the
7 U.S. Department of Homeland Security.

8 4. Respondent, Nathalie Asher, is sued in her official capacity as Field Office
9 Director for the Seattle office of Immigration and Customs Enforcement, an agency of the
10 Department of Homeland Security.

11 5. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the
12 Northwest ICE Processing Center, the privately-operated immigration detention center where the
13 Petitioner is being detained. Mr. Scott has direct custody of Mr. Sepulveda Ayala.

14
15 **JURISDICTION**

16 6. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal
17 question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

18 7. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9,
19 cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

20 8. No other petitions, appeals, or motions regarding habeas corpus have been filed
21 with any other court. Mr. Sepulveda Ayala has a mandamus case pending in this district on
22 similar issues, under cause number 3:25-cv-5185-JNW.

9. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1) because the Petitioner is detained in this judicial district.

10. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live, work, and/or operate within this judicial district and because the actions which gave rise to this Petition took place in Tacoma, Washington, which falls within this judicial district.

FACTUAL BACKGROUND

11. On January 28, 2004, Mr. Sepulveda Ayala was removed to Mexico. Declaration of Kelly Vomacka, at 11. He re-entered the U.S. without inspection later that year, and he has remained in the U.S. since then, for more than 20 years. Declaration of Kelly Vomacka, at 4-9.

12. On November 15, 2022, Mr. Sepulveda Ayala filed an I-918 Petition for U Nonimmigrant Status with the USCIS Nebraska Service Center (NSC), together with an application for employment authorization, Form I-765, and an application for advance permission to enter as a nonimmigrant, Form I-192. Declaration of Kelly Vomacka, at 1, 4-10; *see also* 8 U.S.C. § 1182(a) (2025); 8 C.F.R. § 212.17.

13. On November 8, 2023, Mr. Sepulveda Ayala filed his first application for a Stay of Removal (I-246). On January 23, 2024, the stay was granted for one year. Declaration of Kelly Vomacka, at 2, 10.

14. On January 8, 2024, Mr. Sepulveda Ayala filed his second application for a Stay of Removal (I-246). Declaration of Kelly Vomacka, at 2, 10.

15. On January 23, 2025, the stay that had been in effect for the last year expired, and the second application for stay was still pending. Declaration of Kelly Vomacka, at 2.

1 16. On February 2, 2025, immigration officials reinstated the 2004 removal order and
2 arrested Mr. Sepulveda Ayala. He has been detained at NWIPC ever since. Declaration of Kelly
3 Vomacka, at 2, 11.

4 17. On February 19, 2025, USCIS issued a determination that Mr. Sepulveda Ayala's
5 I-918 Petition is bona fide and that he qualifies for deferred action and employment authorization
6 while he awaits a U visa to become available under the statutory cap. Declaration of Kelly
7 Vomacka, at 2, 12-13. A few days later, USCIS issued a Bona Fide Employment Authorization
8 Document ("BFD EAD") to Mr. Sepulveda Ayala. Declaration of Kelly Vomacka, at 2, 10.

9 18. On March 5, 2025, Mr. Sepulveda Ayala filed a complaint in this district, under
10 cause number 3:25-cv-5185-JNW, seeking mandamus relief to compel the issuance of a waiting-
11 list adjudication on his application for a U visa (Form I-918) and the adjudication of the U visa
12 itself and his application for advance permission to enter as a nonimmigrant (Form I-192). He
13 also sought relief under the Administrative Procedures Act (APA).

14 19. On March 6, 2025, ICE denied the second application for a Stay of Removal,
15 saying that a stay would be "unnecessary and in fact, redundant" with the grant of deferred
16 action. Declaration of Kelly Vomacka, at 2, 14-15.

17 20. On April 25, 2025, ICE *sua sponte* conducted a "secondary review" and
18 determined that the initial denial was not accurate. Instead, the same ICE officer issued a second
19 denial, stating that, "Although I am sympathetic to the emotional and financial hardships
20 associated with this case, they do not rise to the level of exceptional..." Declaration of Kelly
21 Vomacka, at 2, 16-17.

22 21. On April 25, 2025, the government informed the Mr. Sepulveda Ayala's lawyer
23 that Mr. Sepulveda Ayala was "manifested for removal" the following week. Mr. Sepulveda

1 Ayala sought an emergency temporary restraining order (TRO) that afternoon in the mandamus
2 case, which the Court granted the next morning.

3 22. On May 2, 2025, Mr. Sepulveda Ayala filed a motion for a preliminary injunction
4 in the mandamus case. The court extended the TRO to June 5, 2025, while it considered the
5 motion for preliminary injunction.

6 23. On June 5, 2025, the court denied the motion for preliminary injunction, and the
7 TRO expired.

8 24. Mr. Sepulveda Ayala remains detained. He is currently being held in Tacoma,
9 Washington, at the Northwest ICE Processing Center, which is a privately owned and operated
10 immigration detention facility run by the GEO Group on behalf of U.S. Immigration and
11 Customs Enforcement.

12 25. Mr. Sepulveda Ayala has been detained for 124 days so far.

13
14 **MEMORANDUM OF LAW**

15 **Overview of DHS/USCIS Bona Fide Determination Process and Deferred Action for U**
16 **Nonimmigrant Petitioners.**

17 26. Under 8 U.S.C. § 1184(p)(2), the total number of noncitizens who may be issued
18 a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any
19 fiscal year (“statutory cap”). 8 C.F.R. § 214.14(d)(2); *see also* 3 USCIS-PM C.6. When the
20 10,000 visas under the statutory cap have been allocated in a given fiscal year, DHS/USCIS must
21 place the remaining petitioners eligible for U nonimmigrant status on the waiting list. *Id.* Under 8
22 U.S.C. § 1184(p)(6), DHS/USCIS has discretion to provide employment authorization to
23 noncitizens with pending bona fide U nonimmigrant status petitions. *See also* 3 USCIS-PM C.5.

1 Thus, petitioners on the waiting list are eligible for employment authorization and to receive a
2 grant of deferred action. *Id.*

3 27. To further its “primary goal” of adequate evaluation and efficient adjudication of
4 petitions, DHS/USCIS developed a “bona fide determination (BFD) process.” 3 USCIS-PM C.5.
5 Consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008
6 (TVPRA 2008), the BFD process provides an opportunity for petitioners to receive a Bona Fide
7 Determination Employment Authorization Document (“BFD EAD”) and deferred action while
8 their petitions are pending. *Id.*; *See* Pub. L. 110-457 (PDF) (December 23, 2008).

9 28. DHS/USCIS determines a principal petition is bona fide if the principal petitioner
10 has properly filed a completed Form I-918 Petition for U Nonimmigrant Status, including all
11 required initial evidence, except for the Form I-192 Application for Advance Permission to Enter
12 as a Nonimmigrant, and DHS/USCIS has received the result of the principal petitioner’s
13 background and security checks based upon biometrics. *Id.*; *see also* 8 C.F.R. § 214.14(c)(2).

14 29. Once DHS/USCIS has determined a petition is bona fide, USCIS next determines
15 whether the petitioner poses a risk to national security or public safety by reviewing the results of
16 background checks and considering other relevant discretionary factors, and whether to exercise
17 its discretion by issuing a Bona Fide Determination Employment Authorization Document
18 (“BFD EAD”) and grant deferred action to a petitioner. 3 USCIS-PM C.5(C)(1); *see also* 8
19 U.S.C. § 1182(a)(3).

20 30. If DHS/USCIS grants the U petitioner a BFD EAD, DHS/USCIS has then also
21 exercised its discretion to grant him deferred action and for his removal (deportation) to be
22 stayed for the period of the BFD EAD. 3 USCIS-PM C.5. The final step for these petitioners is
23 adjudication of the I-918 Petition when space is available under the statutory cap. *Id.*

Deferred Action Defers Removal.

31. Historically, deferred action originated as a “commendable exercise in administrative discretion,” by which, “To ameliorate a harsh and unjust outcome, the INS may decline to institute proceedings, terminate proceedings, or *decline to execute a final order of deportation.*” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (emphasis added). Today, USCIS (and therefore DHS) policy defines deferred action as “a form of prosecutorial and enforcement discretion to *defer removal* (deportation) against a noncitizen for a certain period of time.” 1 USCIS-PM H.2(A)(4) (emphasis added). In the context of deferred action for childhood arrivals, USCIS policy states that the action that is deferred is removal:

Deferred action is a discretionary determination *to defer removal* of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based on prior periods of unlawful presence in the United States, an individual is not considered to be unlawfully present during the period when deferred action is in effect. An individual who has received deferred action *is authorized by DHS to be in the United States* for the duration of the deferred action period. Deferred action recipients are also considered to be lawfully present as described in 8 C.F.R. § 1.3(a)(4)(vi) for purposes of eligibility for certain public benefits (such as certain Social Security benefits) during the period of deferred action.

DACA Frequently Asked Questions (<https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>) (emphasis added).

Recipients of deferred action are also deemed to be lawfully present in the United States for a variety of purposes, including domestic security, 6 C.F.R. § 37.3; Social Security benefits, 8 C.F.R. § 1.3(a)(4)(vi); and public benefits, 45 C.F.R. § 155.20. Also, if a person has deferred action through the U visa waitlist, he does not accrue unlawful presence. 8 C.F.R. § 214.14(d)(3).

32. In the mandamus case, the government has moved to dismiss in part by arguing that deferred action is not a bar to removal. It cites there to a single regulation, which refers to deferred action as “an act of administrative convenience to the government which gives some

1 cases lower priority.” 8 C.F.R. § 274a.12(c)(14). However, this phrase is not a definition of
2 “deferred action.” It is only a descriptive subordinate clause in a regulation setting out that
3 people with deferred action can also get employment authorization. The clause is accurate, in
4 that a “commendable exercise in administrative discretion” that “ameliorate[s] a harsh and unjust
5 outcome” is likely convenient to the government, and because the effect of deferred action is
6 indeed to give some cases lower priority. *Am.-Arab Anti-Discrimination Comm., supra*. But the
7 government could give some cases lower priority for its own convenience without also granting
8 deferred action. Nothing requires the government to make every case a high priority. So, the
9 subordinate clause is not granting USCIS authority that it otherwise lacks. Instead, the clause
10 serves only to describe collateral consequences of the deferred-action policy, not to define
11 deferred action itself. The only definition of deferred action is in USCIS policy, and that policy
12 makes explicitly plain that deferred action “defer[s] removal.” 1 USCIS-PM H.2(A)(4).

13 33. Additionally, if Sepulveda Ayala is granted a U visa and deferred action ends, his
14 removal will be “deemed canceled by operation of law as of the date of USCIS’ approval of
15 Form I-918.” 8 C.F.R. § 214.14(c)(5)(i).

16
17 **Because DHS has decided to grant Mr. Sepulveda Ayala deferred action and to defer his**
18 **removal, he is unlawfully detained.**

19 34. Mr. Sepulveda Ayala is purportedly being held in detention by Respondents
20 pursuant to 8 U.S.C. § 1231(a) because ICE is seeking to remove Mr. Sepulveda Ayala to Mexico
21 based on the reinstated 2004 removal order.

22 35. However, about two weeks after DHS/ICE reinstated the order, DHS/USCIS
23 made a decision to grant Mr. Sepulveda Ayala deferred action and issue him a BFD EAD,

1 pursuant to its bona fide determination process for U nonimmigrant petitioners, thereby deferring
2 his removal. Declaration of Kelly Vomacka, at 2, 12-13; *see* 8 C.F.R. § 274a.14(b)(1)-(2).

3 36. Because DHS has already agreed to defer deportation of Mr. Sepulveda Ayala, the
4 government can provide no lawful justification for his detention. Mr. Sepulveda Ayala asks to be
5 immediately released.

6 37. This Petition has been verified by Petitioner. *See* Verification of Petitioner.
7

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 38. Petitioner has exhausted all available administrative remedies that can provide the
10 relief he seeks. The government has alleged that he is detained pursuant to 8 U.S.C. §1231(a) and
11 thus has no right to a bond hearing. *See also* 8 C.F.R. § 1241.8(a).
12

13 **IRREPARABLE INJURY**

14 39. Mr. Sepulveda Ayala has suffered irreparable injury as a result of his detention.
15 Just six months ago, he was a guest speaker at a regional AA conference in California.
16 Declaration of Kelly Vomacka, at 18-33. But six weeks ago, he had to miss his daughter's
17 wedding. Declaration of Kelly Vomacka, at 34-35. He has been in custody for more than four
18 months and has come within days of being deported, despite the grant of deferred action, despite
19 living in the United States for more than 20 years, despite seven children and stepchildren who
20 are citizens, and despite the redemption he has earned through 22 years of sobriety. Declaration
21 of Kelly Vomacka, at 18-33. His physical liberty continues to be restrained, and no just cause for
22 doing so can be specified.
23

PRAYER FOR RELIEF

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

- (1) Issue an order immediately releasing Mr. Sepulveda Ayala from detention;
- (2) Immediately issue an order preventing Mr. Sepulveda Ayala from being removed from the United States;
- (3) Issue an order providing for an award of attorney's fees and costs; and
- (4) Grant such other relief as may be just and reasonable.

Dated: June 6, 2025.

/s/ Kelly Vomacka

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