

DETAINED

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

FELIPE AGUILAR GAMA,

Petitioner,

v.

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

Respondents.

Case No.: 3:25-cv-5897

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. Felipe Aguilar Gama (Mr. Aguilar Gama), is a 51-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 10. Venue in the Western District of Washington is appropriate under 28 U.S.C.
2 § 1391(e)(1) because the Petitioner is detained in this judicial district.

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

7
8 **FACTUAL BACKGROUND**

9 12. In September 2005, Mr. Aguilar Gama was removed to Mexico. Declaration of
10 Hilary Smith, at 1. He re-entered the U.S. without inspection later that year, and he has remained
11 in the U.S. since then, for nearly twenty years. Declaration of Hilary Smith, at 1-2.

12 13. On April 23, 2024, Mr. Aguilar Gama's wife filed an I-918 Petition for U
13 Nonimmigrant Status with the USCIS Nebraska Service Center (NSC), with a I-918, Supplement
14 A, Petition for Qualifying Family Member, for Mr. Aguilar Gama. Both Mr. Aguilar Gama and
15 his wife filed these forms together with applications for employment authorization, Form I-765,
16 and applications for advance permission to enter as a nonimmigrant, Form I-192. Declaration of
17 Hilary Smith, at 1-5; *see also* 8 U.S.C. § 1182(a) (2025); 8 C.F.R. § 212.17.

18 14. On April 20, 2025, USCIS issued a determination that Mr. Aguilar Gama's I-918,
19 Supplement A is bona fide and that he qualifies for deferred action and employment
20 authorization while he awaits a U visa to become available under the statutory cap. Declaration
21 of Hilary Smith, at 2, 6-7. A few days later, USCIS issued a Bona Fide Employment
22 Authorization Document ("BFD EAD") to Mr. Aguilar Gama. Declaration of Hilary Smith, at 2,
23 8.

1 15. On or around September 15, 2025, immigration officials reinstated the 2005
2 removal order and arrested Mr. Aguilar Gama. He has been detained at the NWIPC ever since.
3 Declaration of Kelly Vomacka, at 2. The NWIPC is a privately owned and operated immigration
4 detention facility run by the GEO Group on behalf of U.S. Immigration and Customs
5 Enforcement.

6 16. Mr. Aguilar Gama has been detained for 18 days so far.
7

8 MEMORANDUM OF LAW

9 Overview of DHS/USCIS Bona Fide Determination Process and Deferred Action for U 10 Nonimmigrant Petitioners.

11 17. Under 8 U.S.C. § 1184(p)(2), the total number of noncitizens who may be issued
12 a U-1 nonimmigrant visa or granted U-1 nonimmigrant status may not exceed 10,000 in any
13 fiscal year (“statutory cap”). 8 C.F.R. § 214.14(d)(2); *see also* 3 USCIS-PM C.6. When the
14 10,000 visas under the statutory cap have been allocated in a given fiscal year, DHS/USCIS must
15 place the remaining petitioners eligible for U nonimmigrant status on the waiting list. *Id.* Under 8
16 U.S.C. § 1184(p)(6), DHS/USCIS has discretion to provide employment authorization to
17 noncitizens with pending bona fide U nonimmigrant status petitions. *See also* 3 USCIS-PM C.5.
18 Thus, petitioners on the waiting list are eligible for employment authorization and to receive a
19 grant of deferred action. *Id.*

20 18. To further its “primary goal” of adequate evaluation and efficient adjudication of
21 petitions, DHS/USCIS developed a “bona fide determination (BFD) process.” 3 USCIS-PM C.5.
22 Consistent with the William Wilberforce Trafficking Victims Reauthorization Act of 2008
23 (TVPRA 2008), the BFD process provides an opportunity for petitioners to receive a Bona Fide

1 Determination Employment Authorization Document (“BFD EAD”) and deferred action while
2 their petitions are pending. *Id.*; *See* Pub. L. 110-457 (PDF) (December 23, 2008).

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

8 20. A qualifying family member’s petition may independently receive a bona fide
9 determination if they demonstrate that their Form I-918, Supplement A is bona fide. DHS/USCIS
10 determines a family member’s petition is bona fide when: (1) the principal petitioner receives a
11 BFD; (2) the petitioner has properly filed a complete Petition for Qualifying Family Member of
12 U-1 Recipient; (3) the petition includes credible evidence of the qualifying family relationship;
13 and (4) USCIS had received the results of the qualifying family member’s background and
14 security checks based upon biometrics. 3 USCIS-PM C.5(A)(2).

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

21 22. If DHS/USCIS grants the U petitioner and qualifying family member a BFD
22 EAD, DHS/USCIS has then also exercised its discretion to grant them deferred action and for
23 their removal (deportation) to be stayed for the period of the BFD EAD. 3 USCIS-PM C.5. The

1 final step for these petitioners is adjudication of the I-918 Petition and accompanying supplement
2 when space is available under the statutory cap. *Id.*

3 **Deferred Action Defers Removal.**

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

14
15 Deferred action is a discretionary determination to *defer removal* of an individual
16 as an act of prosecutorial discretion. For purposes of future inadmissibility based
17 on prior periods of unlawful presence in the United States, an individual is not
18 considered to be unlawfully present during the period when deferred action is in
19 effect. An individual who has received deferred action is *authorized by DHS to be*
20 *in the United States* for the duration of the deferred action period. Deferred action
21 recipients are also considered to be lawfully present as described in 8 C.F.R. §
22 1.3(a)(4)(vi) for purposes of eligibility for certain public benefits (such as certain
23 Social Security benefits) during the period of deferred action.

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

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

1 24. Additionally, if Mr. Aguilar Gama is granted a U visa and deferred action ends,
2 his removal will be “deemed canceled by operation of law as of the date of USCIS’ approval of
3 Form I-918.” 8 C.F.R. § 214.14(c)(5)(i).

4
5 **Because DHS has decided to grant Mr. Aguilar Gama deferred action and to defer his**
6 **removal, he is unlawfully detained.**

7 25. Mr. Aguilar Gama is purportedly being held in detention by Respondents pursuant
8 to 8 U.S.C. §1231(a) because ICE is seeking to remove Mr. Aguilar Gama to Mexico based on
9 the reinstated 2005 removal order.

10 26. However, nearly five months *before* DHS/ICE reinstated the order, DHS/USCIS
11 decided to grant Mr. Aguilar Gama deferred action and issue him a BFD EAD, pursuant to its
12 bona fide determination process for U nonimmigrant petitioners and qualifying family members,
13 thereby deferring his removal. Declaration of Hilary Smith, at 2, 6-7; *see* 8 C.F.R. §
14 274a.14(b)(1)-(2).

15 27. Because DHS has already agreed to defer deportation of Mr. Aguilar Gama, the
16 government can provide no lawful justification for his detention. Mr. Aguilar Gama asks to be
17 immediately released.

18 28. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

19
20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

1
2 **IRREPARABLE INJURY**

3 30. Mr. Aguilar Gama has suffered irreparable injury as a result of his detention. He
4 has been in custody for nearly a month, despite the grant of deferred action, despite living in the
5 United States for nearly twenty years, despite six children and stepchildren who are citizens, four
6 step-grandchildren who are citizens. His physical liberty continues to be restrained, and no just
7 cause for doing so can be specified. Additionally, Mr. Aguilar Gama's daughter informed his
8 counsel that her father had just called her and told her that his "commissary account had been
9 drained" and that he was being taken back to a room where others had been told they were being
10 deported. Declaration of Hilary Smith, at 2.

11
12 **PRAYER FOR RELIEF**

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

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

19
20 Dated: October 3, 2025.

21 /s/ Hilary Smith
22 HILARY SMITH, WSBA #60474
Attorney for Petitioner

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