IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Adrian Velazquez Montiel,	)	C/A No.: _____
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Warden of Folkston ICE Processing Center,	)	
	)	
Respondent.	)	
	)	

PETITION FOR A WRIT OF HABEAS CORPUS

Civil immigration detention serves no valid purpose if a detainee cannot be removed. U.S. Immigration and Customs Enforcement ("ICE"), however, chose to detain Petitioner Adrian Velazquez Montiel who U.S. Citizenship and Immigration Services ("USCIS") issued a U visa waiting list decision, parole travel documents, and *deferred action*. Under USCIS's policies, Adrian has deferred action and he cannot be removed. ICE is welcome to start removal proceedings, but where the noncitizen cannot be removed, ICE cannot detain Adrian during any removal proceedings while the grant of deferred action is in place. As such, ICE lacks authority to detain Adrian because he has USCIS approved deferred action, which has not been revoked. This Court should join the chorus of courts rejecting ICE's attempts to round up and detain noncitizens with deferred action. *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *5 (D. Or. Oct. 30, 2025) (collecting cases); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025) (holding ICE lacked authority to detain noncitizen with USCIS approved deferred action); *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201-GAYLES, 2025 WL 3012786, at *6 (S.D. Fla. Oct. 28, 2025). In the alternative, ICE considers Respondent as an arriving alien despite the fact that he has lived in the US lawfully for

more than 18 months. Thus, this Case should be consolidated with the cases ordering ICE to afford such noncitizen detainees a bond hearing within 3 days. *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025).

This Court should order the Respondents to respond within three days to explain why Adrian should not be released or receive a bond hearing. 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.").

PARTIES

1. Petitioner Adrian Velazquez Montiel (A[redacted] is a citizen and national of Mexico. He has resided in Charlotte, North Carolian since February 16, 2024, when he was paroled into the United States. At the time of this filing, he is detained in Folkston ICE Processing Center

2. Respondent Warden of Folkston ICE Processing Center is the immediate custodian over Adrian.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear Petitioner's habeas claim under 28 U.S.C. § 2241 because his current detention without a bond hearing is unlawful and unconstitutional.

4. Venue is proper because, at the time of filing, Petitioner is currently detained in Folkston ICE Processing Center, which is geographically located in this District and Division.

5. For Petitioner's second claim, he need not exhaust any remedies such as requesting a bond hearing from an immigration judge because such request would be futile as immigration judges are bound by the Board of Immigration Appeals and the Board of Immigration Appeals has determined that noncitizens like Petitioner are subject to mandatory, bondless detention

under 8 U.S.C. § 1225. Thus, any request for bond would be futile as the immigration judge must hold it has no jurisdiction to consider bond from Petitioner under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

FACTS

6. Petitioner Adrian Velazquez Montiel ("Adrian") is a citizen and national of Mexico. He is twenty-three years old.

7. While Adrian was residing in Mexico, his sister was the victim of a serious crime in the United States while she was under 18 years old.

8. His sister reported the crime, and she assisted law enforcement.

9. In turn, the law enforcement agreed to sponsor her for a "U visa."

10. U visas are available to victims of serious crimes—and their qualifying relatives—who report the crimes and assist the police in the investigation or prosecution. 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); 8 C.F.R. § 214.14.

11. When a child is the victim of a serious crime, qualifying relatives include siblings. 8 C.F.R. § 214.14(a)(10).

12. Based on the police certification, Adrian's sister filed for a U visa on behalf of herself *and* Adrian on September 4, 2018.

13. USCIS assigned Adrian's Form I-918A—the relevant application for derivative U visa applicants—the following receipt number [redacted]

14. Throughout this whole period, Adrian was in Mexico.

15. However, on October 11, 2023, U.S. Citizenship and Immigration Services ("USCIS") issued Adrian a waiting list decision under 8 C.F.R. § 214.14(d)(2). Adrian's WLD (attached as Ex. A).

16. Under § 214.14(d)(2), USCIS is required to issue members of the waiting list either deferred action or parole: "USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." *Id.*

17. Because members of the waiting list who are outside the United States cannot benefit from "deferred action"—an affirmative benefit that prevents actions to remove a noncitizen from the United States—USCIS is required to issue overseas members of the waiting list parole travel documents. *Id.*

18. This is what happened to Adrian, and his waiting list decision therefore states:

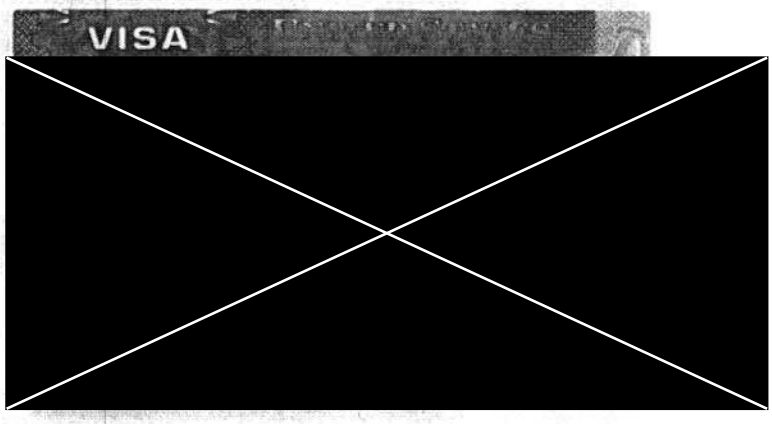
> Regulations allow for the issuance of deferred action to petitioners and derivatives on the waiting list. Deferred action is an act of administrative convenience to the government which gives some cases lower priority for removal. In order to be granted deferred action, the individual must be physically present in the United States. However, because your family member is currently outside of the United States, he or she cannot be granted deferred action at this time.
>
> Although your family member cannot currently be granted deferred action, USCIS has conditional approved your request for parole for your family member for a period of one year contingent upon successful completion of identity verification and biometric checks.

Id.

19. So, again, on October 11, 2023, USCIS issued Adrian a U visa waiting list decision and a positive conditional parole decision.

20. Based on the grant of conditional parole, Adrian reached out to the U.S. Consulate, completed a DS160, and attended an interview.

21. The U.S. Department of State then placed a boarding foil in Adrian's passport that would permit him to travel to a port of entry and request parole at the border:



22. With this travel document, on February 16, 2024, he requested parole at a port of entry and U.S. Customs and Border Protection granted his request and paroled him into the United States for one year:

23. So, Adrian was lawfully paroled into the United States with an unexpired, valid travel document.

24. After being paroled, per USCIS's instructions, Adrian filed for work authorization:

> Once your family member is paroled into the United States, your family member should submit an Application for Employment Authorization, Form I-765, as soon

> as possible to request employment authorization under 8 CFR 274a.12(c)(14), which is the filing category for deferred action, not parole. Upon your family member's filing of the Form I-765 under (c)(14), USCIS will consider your family member for deferred action and employment authorization, based on your family member's waiting list placement.

Id.

25. Adrian filed his work authorization on March 11, 2024.

26. USCIS approved it and issued it to him on May 26, 2024.

27. On that date, under USCIS's policy, USCIS accorded Adrian deferred action.

28. Further—on that date—Adrian could no longer accrue any unlawful presence under 8 C.F.R. § 214.14(d)(3).

29. As of May 26, 2024, Adrian was a member of the U visa waiting list accorded deferred action and work authorization under § 214.14(d)(2) and protection from accruing unlawful presence under § 214.14(d)(3).

30. Adrian then started living in North Carolina with his family.

31. He had a good job. And he had no run ins with any law enforcement.

32. Adrian's U visa will not become current for him for at least another three years.

33. On Tuesday, November 18, 2025, however, as part of the executive's operation "Charlotte's Web," an immigration officer detained Adrian.

34. Adrian explained that he had deferred action and a U visa waiting list decision.

35. U.S. Immigration and Customs Enforcement ("ICE") said it didn't matter.

36. It detained him and shipped him to Folkston ICE Processing Center.

37. On November 19, 2025, ICE charged Adrian with removability as an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), which provides:

> [A]ny immigrant at the time of application for admission— (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing

> identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title . . . is inadmissible.

8 U.S.C. § 1182(a)(7)(i)(I),

38. Adrian is now in Folkston. Adrian's continued detention is causing serious harm to him.

39. Adrian's current detention is unlawful as unauthorized because ICE lacks authority to detain a member of the U visa waiting list with deferred action unless or until USCIS revokes that deferred action. Thus, his detention exceeds ICE's authority. *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *5 (D. Or. Oct. 30, 2025) (collecting cases); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025) (holding ICE lacked authority to detain noncitizen with USCIS approved deferred action); *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201-GAYLES, 2025 WL 3012786, at *6 (S.D. Fla. Oct. 28, 2025) (restraining ICE from removing someone with USCIS approved deferred action).

40. In the alternative, ICE considers him an arriving alien and detained under 8 U.S.C. § 1225(b) and, therefore, it will not accord him a bond hearing. At all. But Adrian has lived in the United States for more than 18 months lawfully. He is not seeking admission. This is unconstitutional. Requesting a bond hearing is futile.

41. USCIS has not revoked Adrian's deferred action. And it has not revoked his sister or his grant of waiting list decision.

42. Adrian's detention is unlawful and unconstitutional.

FIRST CAUSE OF ACTION
(Unlawful Detention of Noncitizen with Deferred Action)

43. ICE lacks authority to detain Adrian because Adrian is a USCIS-approved member of the U visa waiting list with deferred action. *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL

3037858, at *5 (D. Or. Oct. 30, 2025) (collecting cases); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025) (holding ICE lacked authority to detain noncitizen with USCIS approved deferred action); *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201-GAYLES, 2025 WL 3012786, at *6 (S.D. Fla. Oct. 28, 2025) (restraining ICE from removing someone with USCIS approved deferred action).

44. Deferred action is an enforceable promise that no federal agency will take any action to proceed against an apparently deportable noncitizen. *Sepulveda*, 2025 WL 2084400.

45. The United States Supreme Court described "deferred action" as meaning that "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482, 484 (1999).

46. ICE seeks to detain him under § 1225 or § 1226 but he cannot be removed. And if he cannot be removed, his detention serves no legitimate purpose.

47. Various courts have looked at this argument and granted habeas.

48. In *Primero v. Mattivelo*, the District of Massachusetts granted habeas relief to a deferred action recipient, finding no "significant likelihood of his removal in the reasonably foreseeable future" and holding that the government could not rely on the *Zadvydas* presumptive detention period. No. 1:25-CV-11442-IT, 2025 WL 1899115, at *4–5 (D. Mass. July 9, 2025).

49. Likewise, in *Sepulveda Ayala v. Bondi*, the Western District of Washington enjoined ICE from detaining or removing a deferred action recipient, holding that "established precedent defines deferred action as the Government's decision not to proceed with removal." No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *1, *6, *8 (W.D. Wash. July 24, 2025).

50. In *Maldonado v. Noem*, the Southern District of Texas granted a temporary restraining order, finding that ICE's attempt to remove a deferred action recipient "effectively nullif[ied] his deferred action" and likely violated due process. No. 4:25-CV-2541, 2025 WL 1593133, at *1 (S.D. Tex. June 5, 2025).

51. Similarly, in *Santiago v. Noem*, the Western District of Texas held that "[w]here an individual is protected from removal through deferred action, their detention serves no valid purpose," and partially granted habeas relief to a DACA recipient. No. EP-25-CV-361-KC, 2025 WL 2792588, at *6, *12 (W.D. Tex. Oct. 2, 2025).

52. Finally, in *Gamez Lira v. Noem*, the District of New Mexico granted a TRO to a DACA recipient, finding a likelihood of success on both substantive and procedural due process grounds. No. 1:25-CV-00855-WJ-KK, 2025 WL 2581710, at *2–3 (D.N.M. Sept. 5, 2025). The court held that petitioner reasonably relied on his DACA status and that his detention bore no relation to any legitimate government purpose. *Id.*

53. Here, Adrian lawfully entered the United States on a grant of parole travel documents by USCIS; a grant of parole by USCBP; and a grant of deferred action by USCIS.

54. ICE cannot simply ignore its sister agency's decisions and detain Adrian who it cannot remove because its sister agencies have deemed their presence necessary and important.

55. Adrian is not an applicant for admission; he sought parole and was paroled.

56. He is now waiting for a U visa, which will come in approximatively 4 years.

57. Until or unless USCIS revokes his deferred action, ICE cannot use it as a basis for detention when Adrian could not be removed.

58. This Court should join the chorus of courts and stop the detention of noncitizens with valid, unexpired grants of deferred action.

SECOND CAUSE OF ACTION
(Unauthorized, Bondless Detention)

59. In the alternative, ICE considers Adrian an arriving alien and, therefore, will not accord him a bond hearing. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

60. The Immigration and Nationality Act ("INA") establishes two distinct statutory authorities under which the government may detain noncitizens pending removal proceedings: 8 U.S.C. § 1225 and 8 U.S.C. § 1226

61. Section 1225(b) governs "applicants for admission," meaning individuals encountered at or near the border seeking entry into the United States or those apprehended immediately after unlawful entry. By its plain terms and legislative context, § 1225(b) applies to persons who are literally in the process of seeking admission and authorizes mandatory detention during that limited threshold period.

62. Section 1226(a), by contrast, governs detention of noncitizens who are already *present in the interior of the United States* and subject to removal proceedings. It vests the Attorney General with discretion to either detain or release such individuals on bond, permitting individualized custody determinations by Immigration Judges.

63. For decades, the Department of Homeland Security ("DHS") and its predecessor agencies uniformly applied § 1226(a) to individuals like Petitioner—noncitizens who entered without inspection years earlier, developed ties in the United States, and were later apprehended well after entry. Immigration Judges routinely held bond hearings in such cases under §§ 236 and 8 C.F.R. § 1003.19.

64. This settled practice was reaffirmed repeatedly in agency and judicial decisions recognizing that once a noncitizen has entered the United States—even unlawfully—and established residence, he or she is "within the United States" and subject to § 1226(a), not §

1225(b). See *Matter of Patel*, 15 I. & N. Dec. 666, 668 (BIA 1976) ("An alien who has effected an entry, even without inspection, is physically present in and has entered the United States.").

65. Beginning in July 2025, DHS abruptly abandoned this longstanding interpretation. In an internal memorandum issued on July 8, 2025, Acting ICE Director Todd Lyons directed field offices to treat *all* individuals who entered without inspection—regardless of when or where apprehended—as "applicants for admission" subject to mandatory detention under § 1225(b)(2).

66. Two months later, on September 5, 2025, the Board of Immigration Appeals ("BIA") adopted that view in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens present in the United States without admission fall under § 1225(b)(2) and thus lack eligibility for bond.

67. This reinterpretation upended nearly three decades of settled administrative and judicial practice and has been widely rejected by federal courts. *See, e.g., Garcia v. Noem, et. al.*, No. 1:25-CV-1271, 2025 WL 3017200, at *4 (W.D. Mich. Oct. 29, 2025); *Diaz v. Olson, et. al.*, No. 25 CV 12141, 2025 WL 3022170, at *5 (N.D. Ill. Oct. 29, 2025); *Rodriguez v. Noem, et. al.*, No. 1:25-CV-1196, 2025 WL 3022212, at *6 (W.D. Mich. Oct. 29, 2025); *Puga*, 2025 WL 2938369; *Lopez-Campos*, 2025 WL 2496379, at *8; *see also Rodriguez*, 779 F. Supp. 3d at 1256–61; *Singh v. Lewis*, No. 4:25-cv-96, 2025 WL 2699219, at *3–5 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *7–12 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-1774, 2025 WL 2694763, at *2–5 (S.D. Ind. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-2677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *2–4 (W.D. La. Aug. 27, 2025); *Romero*, 2025 WL 2403827, at *8–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*,

No. 0:25-cv-03142, 2025 WL 2374411, at *9–16 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052, 2025 WL 2370988, at *6–9 (D. Mass. Aug. 14, 2025); Lopez Benitez, 2025 WL 2371588, at *3–9; Rosado, 2025 WL 2337099, at *6–11, report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes*, 2025 WL 1869299, at *6–8.

68. As multiple courts have recognized, the government's new position "would upend decades of practice" and "ignores the plain statutory structure distinguishing between applicants for admission and those already within the United States." *Duarte Escobar v. Perry*, 2025 WL 3006742 (E.D. Va. Oct. 27, 2025)

69. These courts have uniformly held that noncitizens who have resided in the United States for years and are apprehended within the interior are detained under § 1226(a), not § 1225(b). As Judge Rodriguez explained in *Mendoza Gutierrez*, "the plain structure of the INA, its legislative history, and decades of agency practice make clear that § 1226 governs detention of long-term residents arrested in the interior of the country."

70. This District joined this chorus in the last week.

71. In *Aguirre Villa*, Judge Cheesbro recommended granting the petitioner's habeas because he held that: "an 'alien seeking admission' is an individual who is actively seeking admission, not one who is already present in the United States." 2025 WL 3095969 at *9.

72. The Court went on to find that the legislative history of the statute further reinforced this interpretation. *Id.* at *9-10.

73. Finally, the Court openly rejected *Hurtado* as unpersuasive. *Id.* at *10.

74. As such, he held that the petitioner their—a long time resident of the United States—was detained under § 1226(a), not § 1225(b), and therefore, was entitled to a bond hearing. *Id.*

75. Here, Adrian has lived in the United States lawfully since February 16, 2024—more than 18 months.

76. First, he was paroled.

77. Second, he followed USCIS's instructions and sought work authorization.

78. Finally, he was granted work authorization, and with it, deferred action.

79. Further, from the moment he got his work authorization, he would no longer accrue any unlawful presence. § 214.14(d)(3).

80. Respondents are violating Adrian's statutory and constitutional rights by refusing to provide him a bond hearing because he is detained under § 1226(a), not § 1225(b)(2).

81. As such, this Court should grant this habeas and order Respondents to provide him a bond hearing immediately.

THIRD CAUSE OF ACTION
(Procedural Due Process)

82. Adrian's ongoing detention violates Due Process because ICE's detention is functionally nullifying his grant of deferred action.

83. Adrian has a due process right to his deferred action.

84. It has effectively been taken from him with no process by ICE detention.

85. Adrian is not removable.

86. The detention his harming Adrian.

87. Adrian reincorporates and re-alleges all allegations above as though restated here.

88. Adrian's ongoing detention and any detention without bond violates Due Process.

89. This Court should grant this habeas because Adrian's detention is unconstitutional.

90. This detention is harming Adrian.

EQUAL ACCESS TO JUSTICE ACT FEES

91. Respondent's decision to detain Adrian was unlawful and substantially unjustified.

92. Respondents decision to refuse Adrian a bond hearing is not substantially justified.

93. Adrian qualifies for fees under the Equal Access to Justice Act.

94. This Court should order Respondents to pay reasonable attorney's fees and costs.

PRAYER FOR RELIEF

Angel Prays this Court will:

95. Take jurisdiction over this case;

96. Order Respondent to show cause within three days why Adrian should not be released or, in the alternative, provided a bond hearing immediately;

97. Grant this writ of habeas corpus and order Respondent to release Adrian or provide Adrian a bond hearing immediately;

98. Award Adrian reasonable attorneys' fees and costs; and

99. Enter any other order required for justice to be done.

November 20, 2025

Respectfully submitted,

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