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

Adrian Velazquez Montiel, Petitioner, v. Warden of Folkston ICE Processing Center, Respondent.	C/A No.: 5:25-cv-00165-LGW-BWC

PETITIONER'S TRAVERSE

This Court held that the term "alien seeking admission" in 8 U.S.C. § 1225(b)(2) does not include noncitizens who have resided for "some period of time" in the United States that are not nowhere near the border. *Villa v. Normand*, No. 5:25-CV-89, 2025 WL 3095969, at *1 (S.D. Ga. Nov. 4, 2025). It is undisputed that Respondent Adrian Velazquez Montiel ("Adrian") has lived in North Carolina lawfully as a parolee and then as a member of the U visa waiting list with deferred action for nearly 22 months. Respondent tries to avoid *Villa's* application here by focusing on *how* Adrian entered the United States. But *Villa's* interpretation of the term "alien seeking admission" has nothing to do with *how* a noncitizen entered the United States. If this Court adopted Respondent's argument, it would give bond hearings to noncitizens who entered the United States without inspection but deprive noncitizens who entered the United States lawfully of those same bond hearings. This Court should not adopt a new interpretation of § 1225(b)(2) that would punish noncitizens who entered lawfully while rewarding those who entered without inspection. For the reasons below, this Court should grant this petition and order Respondent to immediately release Adrian or provide him a bond hearing within 48-hours.

I. Adrian is not an "alien seeking admission" and, therefore, cannot be detained without a bond hearing under § 1225(b)(2).

Respondent argues that, as a parolee, Adrian was, is, and will always be an "alien seeking admission" under 8 U.S.C. § 1225(b)(2) and, as a parolee, *Villa* does not apply to his habeas petition, regardless of the fact that he has lived in North Carolina for the last 22 months. Gov't Ret. at 4-5. This argument fails because *Villa*'s interpretation of the statutory term "alien seeking admission" is in no way based on the way a particular noncitizen enters the United States.

In *Villa v. Normand*, No. 5:25-CV-89, 2025 WL 3095969, at *1 (S.D. Ga. Nov. 4, 2025), Magistrate Judge Cheesbro interpreted the phrase "alien seeking admission" as used in § 1225(b)(2). 2025 WL 3095969 at *6. Rejecting Respondent's broad interpretation, the court interpreted "alien seeking admission" to mean a noncitizen seeking entry into the United States at the border:

> The expression "alien seeking admission" plainly describes individual taking some action, and, given the placement in the statute, that action would likely occur at the border upon inspection. Numerous courts that have considered the issue have reached the same conclusion. . . . The courts have concluded—as I do—that the phrase "seeking admission" "implies action—something that is currently occurring, and . . . would most logically occur at the border upon inspection." Thus, the plain language of the statute demonstrates that an individual like Petitioner, who has resided inside the United States for some period of time, is not an "alien seeking admission."

Id. at *7 (internal citations omitted). The court then supported its interpretation with the regulations:

> Under the regulations, an "arriving alien means an applicant for admission coming or attempting to come into the United States." 8 C.F.R. § 1.2. And, as noted, under the statute, an applicant for admission is defined as a person who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). When read together with the title, an "arriving alien" is an "applicant" who is also doing something: coming or attempting to come into the United States. In other words, an "alien seeking admission" is an individual who is actively seeking admission, not one who is already present in the United States. Accordingly, the implementing regulation demonstrates that Petitioner is not subject to mandatory detention under

> § 1225(b)(2), which plainly controls "arriving aliens" who have not been admitted, but who are "seeking admission."

Id. The court then rejected the government's proposed, broad interpretation, citing at least 17 cases from courts around the Country that agreed. *Id.* at 8-10. This Court adopted the magistrate judge's Report and Recommendation without modification and, again, rejected the government's proposed expansive interpretation. *Villa v. Normand*, No. 5:25-CV-100, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025).

Here, Adrian is not an "alien seeking admission" under § 1225(b)(2) because he has lived in the United States in North Carolina for nearly 22 months and he has had deferred action for a vast majority of that time. It is undisputed that Adrian sought parole at a lawful port of entry on February 16, 2024. Gov't Return at 4. It is further undisputed that he has lived in North Carolina and the United States since then with deferred action and work authorization since May 2024. And when he was arrested, Adrian was nowhere near an international border or "seeking admission" in any way. Rather, he was eating lunch on his lunch break with a group of his co-workers. There can be no serious argument that Adrian was arrested while taking action to come or attempt to come into the United States *because he had already been in the United States for nearly 22 months* when he was arrested. Further, Adrian never sought "admission"—as that term is defined under the Immigration and Nationality Act. Rather, on February 16, 2024, he sought and acquired "parole"—which is not "admission."

Villa stands for the proposition that a noncitizen who has "resided inside the United States for some period of time[] is not an 'alien seeking admission'" and, therefore, not subject to mandatory detention under § 1225(b)(2). Contrary to Respondent's argument, *Villa's* rationale is not contingent on *how* the noncitizen entered the United States; it is contingent on the noncitizen's period of residence inside the United States after entering the United States. This

Court should reject Respondent's repeated factual claim that Adrian was and is "actively pursuing lawful admission" because there is no evidence to support such a claim. Adrian has not sought physical entry into the United States at a port of entry since February 16, 2024. Simply because Adrian was paroled into the United States and awarded deferred action under 8 C.F.R. § 214.14(d)(2) does not by operation of law or factually mean he is "actively pursuing lawful admission." *Villa* applies to Adrian because he has lived lawfully in the United States for nearly 22 months and, at the time of his arrest, he was nowhere near a port of entry or taking any action to "seek admission."

Finally, courts around the country have given no weight to *how* longtime noncitizen residents entered the United States when rejecting Respondent's interpretation of § 1225(b)(2). *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).

As such, this Court should consolidate this case with *Villa*, grant this petition, and order Respondent to immediately release Adrian or provide him a bond hearing within 48-hours.

II. Respondent concedes Adrian's detention is wholly unauthorized because he has deferred action.

Respondent wholly fails to address—and therefore concedes—Adrian's alternative, independent claim (likely) because courts across the country have consistently granted habeas petitions for noncitizens with deferred action and ordered them to have bond hearings or immediate release. *See Patel v. Hardin*, No. 2:25-cv-870, 2025 WL 3442706 (M.D. Fl. Dec. 1, 2025) (ordering bond hearing for detainee with U visa deferred action); *Maldonado v. Noem*, No. 4:25-cv-2541, 2025 WL 1593133 (S.D. Tex. Jun. 5, 2025) (granting TRO for detainee with U visa deferred action); *Velasco Gomez v. Scott*, No. 2:25-cv-522, 2025 WL 1382855 (W.D. Wash. Apr. 29, 2025) (granting TRO for detainee with U visa deferred action); *Cf. Velasco Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (ordering immediate release for parolee with DACA deferred action); *Inlago Tocagon v. Moniz*, —F. Supp. 3d—, 2025 WL 2778023 (D. Mass. Sep. 29, 2025) (ordering bond hearing for detainee with SIJ deferred action); *Sarmiento v. Perry*, No. 1:25-cv-1644, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025) (ordering bond hearing for detainee with SIJ deferred action); *See 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).

Here, the rationale in this long line of recent cases—several of which are also in the Eleventh Circuit—applies to Adrian because he has deferred action under 8 C.F.R. § 214.14(d)(2) and, therefore, cannot be removed unless or until the grant of deferred action is revoked or his U visa is denied. Again, it is undisputed that U.S. Citizenship and Immigration Services ("USCIS") placed Adrian on the U visa waiting list while he was abroad. ECF No. 1-1. The U.S. Department of State then issued him a parole travel document to travel to the United States and seek parole. ECF No. 1 at ¶ 21. U.S. Customs and Border Protection then paroled him into the United States. *Id.* at ¶ 22. And finally, USCIS issued him deferred action and work authorization. *Id.* at ¶¶ 26-27. Because Adrian has deferred action and USCIS has taken no steps to revoke or rescind it, Adrian's detention serves no valid purpose.

For these reasons, this Court should grant this petition and order Respondent to immediately release Adrian or provide him a bond hearing within 48-hours.

CONCLUSION

For these reasons, this Court should grant this petition and order Respondent to immediately release Adrian or provide him a bond hearing within 48-hours.

December 3, 2025

Respectfully submitted,

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