UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

LUIS ADAMES ZAMBRANO,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 1:25-cv-00260-H
PAMELA BONDI, et al.,	)	
	)	
Respondents.	)	

**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF**

The Petitioner, LUIS ADAMES ZAMBRANO, by and through his own and proper person and through his attorney, files this memorandum in support of his petition for habeas corpus and in response to the Respondents' Answer, states as follows:

Respondents deprived Petitioner of his Fifth Amendment due process rights by detaining him without prior notice and hearing. Respondents thus nullified Petitioner's bona fide U visa determination and its attendant benefits, including Petitioner's work authorization and deferred action status without due process, and in violation of the Administrative Procedures Act (APA).

The Respondents take pains to point out that "[a] grant of deferred action arising from a bona fide determination in connection with a U visa application is not synonymous with a stay of removal." Dkt. 6 at 7. But that is beside the point. Petitioner has never incurred a final order of removal, and thus would have no need at present to ask to stay one. The Respondents conflate their legal ability to initiate and to complete removal proceedings with his constitutional right to due process in the context of removal proceedings. Dkt. 6 at 9, citing *N.A. v LaRose*, 3:25-CV-03028-RBM-DEB, 2025 WL 3512412, at *3 (S.D. Cal. Dec. 8, 2025). In the present case, Petitioner is

not challenging the Government's ability to initiate removal proceedings, but, instead, the process by which his arrest was effectuated and the ensuing unlawful detention. Habeas jurisdiction is allowed when the arrest occurred in violation of due process. *Portillo Vasquez v. Turek*, 2:25-cv-741, 2025 WL 2733631, at *2 (D.Vt., Dec. 8, 2025); *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *1 (S.D. Tex. June 5, 2025) (holding that ICE's attempt to remove Petitioner who had a bona fide U visa determination "effectively nullif[ied] his deferred action" and violated his due process rights). Moreover, Respondents acted arbitrarily and capriciously when they continued to detain Petitioner after immigration checks allegedly revealed: "These checks revealed that Adames-Zambrano does not have any approved petitions permitting lawful residence, admission, or presence in the United States." Dkt. 6-1 (Jason Harrison Declaration).

A. Respondent's Summary Arrest of Petitioner in the Interior of the United States without Warrant, on October 31, 20, violated Due Process

The parties do not dispute the relevant facts. Petitioner is a citizen of Colombia who was admitted on a B-2 visitor for pleasure on May 6, 2019, and overstayed beyond the visa's allowed date. On May 8, 2023, he filed his U visa petition for nonimmigrant status with DHS, under 8 U.S.C. § 1101(a)(15)(U). His application revealed his home address, his place of employment, and other pertinent biographical factors that he voluntarily provided. The DHS captured his biometric data to run criminal and background checks.[1] On March 17, 2025, the DHS then granted him

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[1] USCIS determines a qualifying family member's petition is bona fide when:

- The principal petitioner receives a BFD;
- The petitioner has properly filed a complete Petition for Qualifying Family Member of U-1 Recipient (Form I-918, Supplement A);
- The petition includes credible evidence of the qualifying family relationship, and
- USCIS has received the results of the qualifying family member's background and security checks based upon biometrics.

https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5

deferred action, and issued him work authorization pursuant to 8 U.S.C. § § 1184(p(6). ICE then arrested him on October 31, 2025 in the interior of the United States, without a warrant, and has detained him without bond ever since under 8 U.S.C. § 1226(a). He moved for a bond hearing with the Immigration Judge (IJ), Nicholas B. Lucic, who conducted a bond hearing under 8 U.S.C. § 1226(a), and who denied his request to re-determine bond at any amount on November 13, 2025, because the IJ deemed Petitioner to be "a flight risk." Dkt. 1-2. The IJ's two-word written decision did not identify any specific factors or cite to any case law. *Id.* Petitioner's next scheduled removal hearing date at the El Paso SPC immigration court is with IJ Tida, and will take place on January 6, 2026. He has appealed IJ Lucic's decision to the Board of Immigration Appeals. Exh. 2, copy of uploaded BIA appeal Form EOIR-26, filed November 21, 2025. The only action taken to date by the BIA on his appeal is to issue him an appeal receipt on December 3, 2025. Exh. 2. And as the Court in *Lopez-Campos v. Raycraft* has noted, bond appeals before the BIA on average take six months to complete. *Lopez-Campos v. Raycraft*, —— F.Supp.3d ——, ——, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) (citing to *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1245 (W.D. Wash. 2025)). See also *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *11 (D.Md., 2025) ("[i]t is common (judicial) knowledge these days that the BIA is presently drinking from a veritable firehose of hundreds of thousands of cases on appeal."). Thus, his ability to achieve redress for his ab initio unlawful detention at the BIA by appealing his bond denial is time limited, because his removal would take place before they would address the rightfulness or wrongfulness of the IJ's denial of bond as "flight risk."

The Respondents do not dispute that the DHS sub-agency charged with issuing U visas, United States Citizenship and Immigration Services (USCIS), has granted him deferred action on March 17, 2025, and issued him a work authorization document valid for four years, i.e., until

March 17, 2029. Petitioner's Traverse, Exh. 1, USCIS Bona Fide Determination Notice; Dkt. 6. See 8 U.S.C. § 1184(p(6) ("The [Secretary of DHS] may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).") They argue rather that the U.S. Department of Justice may order him removed regardless of the DHS's prior deferred action grant because a grant is simply a determination that he is a "lower enforcement priority," which is not an "absolute protection from removal proceedings." *Id.* at 10. The Respondents offer no other justification or rationalization for arresting him. Dkt. 6.

The Respondents put the disputed issue as whether an interior arrestee has legal status. Dkt. 6 at 5. Petitioner has never disputed that Respondents *may* initiate removal proceedings. Dkt. 1. The legal matter at issue is whether ICE's arrest of him in the interior of the United States on October 31, 2025—well after DHS's issuance of deferred action—and its ongoing detention of him, violates due process. The Respondents insist that notwithstanding the DHS's grant of deferred action, it does not "provide [Petitioner] immigrant or nonimmigrant status." Dkt. 6 at 5. Therefore, they argue, he is subject to detention under 8 U.S.C. § 1226(a) ["Arrest, detention, and release – On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."] The Respondents do not allege that they have revoked, or intend to revoke, his grant of U visa deferred action. Dkt. 6. Indeed, they ignore that his U-visa BFD operates as an administrative stay of removal such that Respondents cannot lawfully detain or remove him without first *revoking* deferred action in accordance with the U-visa regulations. *See* 8 C.F.R. § 214.14(d)(2) (noting "USCIS will grant deferred action or parole to U–1 petitioners and qualifying family members"); cf. 8 C.F.R. § 274a.12(c)(14) ("Except as provided for in paragraph (c)(33) of this section, an alien who has been granted deferred action, an act of administrative convenience to the government that gives some

cases lower priority, if the alien establishes an economic necessity for employment."); See also USCIS Policy Manual, Vol. 3, Chapter 5, available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 ("USCIS reserves the right to revoke the BFD EAD and terminate the grant of deferred action at any time if it determines the BFD EAD or favorable exercise of discretion are no longer warranted, or the prior BFD EAD and deferred action were granted in error."); *Santiago-Santiago v Noem*,EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) at *14 (noting the government's concession that a removal order is inexecutable against a DACA recipient and granting immediate release from detention).

His deferred action remains unrevoked under governing regulations. See *Maldonado v. Noem*, No. 4:25-cv-02541, Doc. 8 (S.D. Tex. June 5, 2025) (Ellison, J.). Petitioner is not arguing that he could not be detained under 8 U.S.C. § 1226—only that before the Government does so, it must make a pre-deprivation discretionary determination that he presents a risk of flight or danger to the community. *See Valdez v. Joyce*, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) ("[T]he issue here is not the permissibility of immigration detention, but rather the process required in connection with such detention."). Here, it is undisputed that ICE arrested him on October 31, 2025, without any independent reasoning that he presented a flight risk or danger, or indication it would revoke or had revoked his deferred action. See 8 C.F.R. § 214.14(d)(2) ("a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.") The Respondents' suggestion that government agents may sweep up any person they wish, for [no] reason [whatsoever] ... so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema v. Francis*, 2025 WL

1927931, at *3 (S.D.N.Y. July 13, 2025) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) at *3-4.)

The Government's sole basis for detaining Petitioner is that it may do so in order to remove him. *See* Dkt. 6 at 8 ("[deferred action does not] …protect him from removal or detention"); *cf. Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (1999) ("Detention by the INS can be lawful only in aid of deportation."). Yet Respondents do not address their grant of deferred action status which prevents removal, referring to it, without elaboration, as "an act of administrative convenience." Dkt. 6 at 5. Both parties here have cited to the USCIS Policy Manual, which defines deferred action as "a form of prosecutorial discretion to defer removal action (deportation) against an alien for a certain period of time. Aliens granted deferred action are considered to be in a period of stay authorized under USCIS policy for the period deferred action is in effect." USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4). He asserts that under the manual that no legal basis to detain Petitioner existed or exists. He concedes that, had DHS properly revoked his deferred action status, then arrest to pursue his removal would be lawful.[2] But that is not the case here. It is uncontested that Petitioner has *no intervening arrests or conduct* that could cause DHS to revoke his deferred action.

i. Application of Mathews v Eldridge Deprivation of Due Process Factors

[2] The same USCIS manual section provides in the subsequent paragraph: "For example, USCIS may revoke the BFD EAD and terminate deferred action if USCIS identifies any adverse information, such as new information pertaining to the risks the petitioner poses to national security or public safety, or the withdrawal of a petitioner's Form I-918, Supplement B. At that time, USCIS initiates a waiting list adjudication to gather additional information and evidence to determine if the petitioner is eligible for a waiver of inadmissibility for any relevant inadmissibility grounds and placement on the waiting list."

As to the first *Mathews* factor, the private interest at stake, the parties do not dispute that Petitioner received a bona fide determination of his U visa status and was notified that "[he] warrant[ed] a favorable exercise of discretion to receive employment authorization and deferred action." Exh. A. He was then granted a work authorization. Because a bona fide U visa determination confers deferred action and work authorization, he risks the loss of a substantial property interest. *Sepulveda Ayala v Bondi*, 794 F.Supp.3d 901, 908 (W.D. Wash. 2025). Further, "deferred action is an immigration benefit that prevents removal," so Petitioner also risks the loss of his liberty interest. *Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025); B.D.A.A. v. Bostock, 2025 WL 3484912, at *6 (D.Or., 2025)

In *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("*AADC*"), the Supreme Court described deferred action as meaning "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *AADC*, 525 U.S. at 484. "This definition reflects the fundamental nature of deferred action, regardless of the specific program or context in which it is granted." *Ayala*, 2025 WL 2209708, at *3. "The Ninth Circuit and numerous district courts have consistently applied this understanding across different deferred action contexts, holding that deferred action prevents recipients' removal from the United States." *Id.* (citing *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001) (A deferred action means that the government agency "takes no action to proceed against an apparently deportable alien based on a prescribed set of factors generally related to humanitarian grounds."). *See Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010) (interim relief program providing deferred action to U visa applicants prevented their removal from the United States); *see also Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015) (defining deferred action, generally, as "a form of prosecutorial discretion" by which the Secretary of

Homeland Security "decide[s] not to pursue the removal of a person unlawfully in the United States"); *De Sousa*, 755 F. Supp. 3d at 1270 (" 'Deferred action' refers to an 'exercise in administrative discretion' under which 'no action will thereafter be taken to proceed' with the applicant's removal from the United States."); (*Bustos-Alonso v. Chestnut*, No. 1:25-CV-01570-DJC-AC, 2025 WL 3254621, at *4 (E.D. Cal. Nov. 21, 2025) (same). And even though "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion," *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005), once a benefit has been conferred, it may not then be taken away without sufficient procedural due process, *Bell v. Burson*, 402 U.S. 535, 539 (1971). Petitioner thus risks losing his work authorization and deferred status, which confer substantial property interests. And the loss of Petitioner's deferred status also risks the loss of his liberty interest—a deprivation that cannot be remedied after the fact. Petitioner's property and liberty interests are great. The first *Mathews* factor strongly favors Petitioner.

As to the second *Mathews* factor, the risk of erroneous deprivation "through the procedures used" is great. The parties do not dispute that no procedures have been used. Petitioner has not been provided any pre-deprivation notice or hearing. Yet, Respondents' actions have nullified Petitioner's work authorization and deferred status, and he is detained and now subject to removal proceedings. *See F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (finding a "serious risk of erroneous deprivation" where "there are serious questions as to whether [detained U visa holder] is removable at all"); *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *1 (S.D. Tex. June 5, 2025) (holding that ICE's attempt to remove Petitioner who had a bona fide U visa determination "effectively nullif[ied] his deferred action" and violated his due process rights). Because Respondents provided no pre-deprivation notice or

hearing or other procedure, the risk of erroneous deprivation is great. The second *Mathews* factor strongly favors Petitioner.

Finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893. Although the government has an interest in the enforcement of its immigration laws, the government's interest in detaining petitioner without any procedural protections is substantially "low." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest [petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without [any procedural protections] is low."); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). Where an individual is protected from removal through deferred action, their detention serves no valid purpose. *See Sepulveda Ayala v. Bondi* ("Sepulveda Ayala II"), 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (concluding government had no legal basis to detain petitioner where deferred action prevented his removal); *Primero*, 2025 WL 1899115, at *5(same). *Santiago v. Noem*, 2025 WL 2792588, at *12 (W.D.Tex., 2025).

Here, if the Respondents have reason to revoke Petitioner's deferred action grant, they may undertake steps to do so, leaving him in an entirely different light. The third factor of weightiness of governmental interest favors Petitioner.

Although the Respondents here do yeoman's work in trying to persuade otherwise, the record does not come close to supporting a finding of constitutional harmlessness. Petitioner has met his burden on his habeas petition.

B. Respondents in Their Answer Do Not Meaningfully Dispute Petitioner's APA Claim

The Answer filed by Respondents does not advert to his Administrative Procedures Act claim of violation of Immigration and Nationality Act procedures and arbitrary and capricious action in arresting him. It is undisputed Petitioner held a valid state driver license at the time of his arrest on October 31, 2025. Dkt. 1 at 10. The record shows that on that date, a local law enforcement officer in the interior of the United States "encountered" Petitioner. Dkt. 6-1, Declaration of Jason Harrison. "The officer contacted the United States Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE-ERO) sub-office in Tulsa, Oklahoma to initiate immigration checks. These checks revealed that Adames-Zambrano does not have any approved petitions permitting lawful residence, admission, or presence in the United States. He was subsequently transported to the Tulsa County Jail pending case processing and later transferred to the ICE-ERO office in Tulsa for further processing." The arrest summary made on December 11, 2025 makes no reference to Petitioner's valid employment authorization, his valid state driver license, and his grant of deferred action based on bona fide determination of U visa.

Under the INA, an immigration officer may make a warrantless arrest only when that officer "has reason to believe" that the individual "is in the United States in violation of [the immigration laws]" *and* "is likely to escape before a warrant can be obtained for his arrest." *Ramirez Ovando v. Noem*, 2025 WL 3293467, at *17 (D.Colo., 2025) (emphasis added) (citing 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii)). ICE officers must satisfy both prongs to establish probable cause to effect a warrantless arrest. Setting aside the likely Fourth Amendment violation, Respondents' contravention of INA arrest procedures is an APA violation that also nullified Petitioner's deferred action status. *See id.* at 19 (explaining that an ICE officer's failure to satisfy both prongs of the INA's warrantless arrest requirements before effecting a warrantless arrest is an

agency action that exceeds "statutory jurisdiction, authority, or limitations, or [is] short of statutory right") (citing 5 U.S.C. § 706(2)(c)).

Considering the totality of the circumstances, the Court should find that there was no probable cause for Petitioner's warrantless arrest. His arrest violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii). He has met his burden to show that ICE arrested him without a warrant and without probable cause of flight risk based on an individualized assessment. Respondents have failed to rebut that showing with any specific evidence to the contrary. See *Ramirez Ovando*, 2025 WL 3293467, at *17.

C. Scope of Relief

As to the appropriate remedy, Petitioner requests that he be immediately released from custody. This is because a bond hearing would only be an appropriate remedy where "the government has at least some articulable, legitimate interest in detaining the petitioner," but immediate release is appropriate where "the government had no or an insignificant interest in detaining the petitioner." *Santiago*, 2025 WL 2792588, at *13. Additionally, noncitizens released by the government into the country acquire a protected liberty interest in remaining out of custody and are entitled to procedural safeguards before being detained. *See Danierov v. Noem*, No. 2:25-cv-01215-KG-KRS, 2025 WL 3653925, at *2 (D.N.M. Dec. 17, 2025); *Santiago*, 2025 WL 2792588, at *11. The Supreme Court's *Mathews v. Eldridge* test provides the appropriate framework when determining what procedural safeguards are due, requiring courts to consider "(1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguard; and (3) the Government's interest, including the fiscal and administrative burdens of additional procedures." *Danierov*, 2025 WL 3653925, at *2 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (internal quotations omitted).

Indeed, many district courts have determined instead to order the immediate release of immigration habeas petitioners held in custody in violation of their due process rights. *See, e.g., J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025);*Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025);*Rosado*, 2025 WL 2337099, at *19; *M.S.L.*, 2025 WL 2430267, at *15. In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *See J.U.*, 2025 WL 2772765, at *10; *Zumba*, 2025 WL 2753496, at *10; *Rosado*, 2025 WL 2337099, at *14, 18;*Sepulveda Ayala II*, 2025 WL 2209708, at *3. In the context of deferred action recipients, district courts have found both immediate release and a bond hearing to be appropriate remedies. *Compare Sepulveda Ayala II*, 2025 WL 2209708, at *5 (ordering immediate release) *with Primero*, 2025 WL 1899115, at *5(ordering bond hearing). Here, a further bond hearing would be futile, because Respondents have declined to find a bond amount they believe would mitigate his "flight risk." Dkt. 6-2. Immediate release, on the other hand, will restore the status quo ante.

D. Conclusion

For the foregoing reasons, this Court should order Petitioner's release within 5 days of the order.

Respectfully Submitted,

/s/ Stephen O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2025, I electronically filed the foregoing Petitioner's Traverse with the Clerk of Court using the CM/ECF system. In addition, on December 27, 2025, I served a courtesy copy of this motion by email to Ann Cruce-Haag, counsel for Respondents, at ann.haag@usdoj.gov.

Respectfully submitted,

s/ Stephen O'Connor

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