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*Attorney for Petitioner-Plaintiff*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

Bernabe GODINEZ HERNANDEZ,

Petitioner-Plaintiff,

v.

Markwayne MULLIN, in his Official Capacity,  
Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney  
General of the United States;

Todd M. LYONS, Acting Director, Immigration and  
Customs Enforcement, U.S. Department of Homeland  
Security;

Jason KNIGHT, Salt Lake City Field Office Director  
for Detention and Removal, U.S. Immigration and  
Customs Enforcement, Department of Homeland  
Security; and

Darin BALAAM, Sherriff, Washoe County Detention  
Center.

Respondents-Defendants.

Agency No.

A 

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Challenge to Unlawful  
Incarceration Under Color of  
Immigration Detention Statutes;  
Request for Declaratory and  
Injunctive Relief

**INTRODUCTION**

1 1. Petitioner Bernabe Godinez Hernandez (“Mr. Godinez Hernandez”), Agency Number  
2 , by and through his undersigned counsel, respectfully submits this petition for a Writ  
3 of Habeas Corpus and a Complaint for Declaratory and Injunctive Relief to stop the U.S.  
4 Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE)  
5 from unlawfully detaining him in immigration custody despite his lawful status in deferred action.

6 2. This is a petition for a writ of habeas corpus challenging the unlawful detention of Mr.  
7 Godinez Hernandez by ICE. Mr. Godinez Hernandez is a 41-year-old native and citizen of  
8 Guatemala who has lived in the United States for more than a decade, where he resides with his  
9 wife and three minor U.S. citizen children, all of whom depend on him as their sole financial  
10 provider.

11 3. Although Mr. Godinez Hernandez was previously removed in 2011, he re-entered the  
12 United States later that year to reunite with and support his family and has remained continuously  
13 present since that time. In 2018, he applied for derivative U nonimmigrant status based on his  
14 spouse’s victimization. On April 6, 2023, U.S. Citizenship and Immigration Services (“USCIS”)  
15 determined that his petition was bona fide and granted him deferred action and employment  
16 authorization, thereby placing him in a period of authorized stay and affirmatively deferring his  
17 removal.

18 4. Despite this grant of deferred action, ICE has taken Mr. Godinez Hernandez into custody  
19 following a minor, non-violent incident arising from his employment as a truck driver, and now  
20 seeks to detain him pending removal. But DHS has already determined that Mr. Godinez  
21 Hernandez will not be removed while his deferred action remains in effect. His continued  
22 detention therefore serves no legitimate immigration purpose.

23 5. This case presents a straightforward legal question: whether the Government may detain  
24 a noncitizen for the purpose of effectuating removal after it has affirmatively decided to defer that  
25 removal. It may not. By detaining Mr. Godinez Hernandez under these circumstances,  
26 Respondents are acting without statutory authority and in violation of the Due Process Clause of  
27 the Fifth Amendment.

28 6. Mr. Godinez Hernandez’s continued confinement is unlawful and has imposed severe

1 hardship on his family, separating him from his spouse and young children despite his lawful  
2 presence and lack of any danger to the community. Through this petition, Mr. Godinez Hernandez  
3 seeks immediate release from custody.

#### 4 CUSTODY

5 7. Mr. Godinez Hernandez is currently in custody of ICE at the Washoe County Detention  
6 Center in Reno, Nevada. Mr. Godinez Hernandez is therefore in “custody” of [the DHS] within  
7 the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

#### 8 JURISDICTION

9 8. This action arises under the Constitution of the United States and the Immigration and  
10 Nationality Act (INA), 8 U.S.C. § 1101 et seq.

11 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241  
12 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 et seq.  
13 (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2  
14 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under  
15 the common law.

#### 16 REQUIREMENTS OF 28 U.S.C. § 2243

17 10. The Court must grant the petition for writ of habeas corpus or issue an order to show  
18 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.  
19 § 2243. If an order to show cause is issued, the Court must require Respondents to file a return  
20 “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.”  
21 *Id.* (emphasis added).

22 11. Courts have long recognized the significance of the habeas statute in protecting  
23 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
24 important writ known to the constitutional law of England, affording as it does a *swift* and  
25 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,  
26 400 (1963) (emphasis added).

27 12. Habeas Corpus must remain a swift remedy. Importantly, “the statute itself directs  
28 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious

1 hearing and determination.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations  
2 omitted). The Ninth Circuit warned against any action creating the perception “that courts are  
3 more concerned with efficient trial management than with the vindication of constitutional  
4 rights.” *Id.*

5 **VENUE**

6 13. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Respondents are  
7 officers or employees of the United States acting in their official capacities.

8 14. Mr. Godinez Hernandez is currently under the supervision of the ERO Salt Lake City –  
9 Reno Sub Office, which falls within the jurisdiction of this District. This action does not involve  
10 any real property.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12  
13 15. Mr. Godinez Hernandez has satisfied any applicable exhaustion requirements, or, in the  
14 alternative, exhaustion should be excused because no adequate or effective administrative  
15 remedies are available to challenge the legality of his detention.

16 16. In the context of habeas corpus claims, exhaustion of administrative remedies is a  
17 *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute.  
18 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive  
19 prudential exhaustion where administrative remedies are inadequate or ineffective, when  
20 pursuing them would be futile, when irreparable harm would result, or where the administrative  
21 process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The  
22 burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of  
23 the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).  
24  
25

26 The government has alleged that he is detained pursuant to 8 U.S.C. §1231(a) and  
27  
28

1 thus has no right to a bond hearing. See also 8 CFR. § 1241.8(a) and therefore Mr. Godinez  
2 Hernandez has exhausted all of his administrative remedies.

### 3 PARTIES

4 17. Mr. Godinez Hernandez is a citizen and national of Guatemala who has continuously  
5 resided in the United States since 2011. His last entry into the United States was without  
6 inspection and admission or parole. He is currently detained under the direct custody and control  
7 of the Respondents and their agents.

8 18. Respondent Markwayne MULLIN is the Secretary of DHS and is named in his official  
9 capacity. DHS is the federal agency encompassing ICE, which is responsible for the  
10 administration and enforcement of the INA and all other laws relating to the immigration of  
11 noncitizens. In his capacity as Secretary, Respondent Mullin has responsibility for the  
12 administration and enforcement of the immigration and naturalization laws pursuant to section  
13 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002);  
14 *see also* 8 U.S.C. § 1103(a). Respondent Mullin is the ultimate legal custodian of Mr. Godinez  
15 Hernandez.

16 19. Respondent Pam BONDI is the Attorney General of the United States and the most senior  
17 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the  
18 authority to interpret immigration laws and adjudicate removal cases. The Attorney General  
19 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which  
20 administers the immigration courts and the BIA.

21 20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official  
22 capacity. Among other things, ICE is responsible for the administration and enforcement of the  
23 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,  
24 he is the legal custodian of Mr. Godinez Hernandez.

25 21. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the  
26 Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent  
27 KNIGHT is a legal custodian of Petition and has authority to release his.  
28

22. Respondent Darin Balaam is the Sherriff of the Washoe County Detention Center, where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and, as such, serves as one of Petitioner's legal custodians.

**STATEMENT OF FACTS**

Mr. Godinez Hernandez is a 41-year-old native and citizen of Guatemala who last entered the United States on or about November 28, 2011, and has resided continuously in the country since that time. He is currently in the custody of U.S. Immigration and Customs Enforcement and is being held at the Washoe County Sheriff's Office pending removal.

Mr. Godinez Hernandez was previously ordered removed by an Immigration Judge on July 13, 2011, and was physically removed from the United States on July 22, 2011. Later that same year, he re-entered the United States without inspection in order to reunite with and support his family. Since that time, he has established significant ties in the United States and has remained in the country for over a decade.

On February 6, 2018, Mr. Godinez Hernandez filed Form I-918, Supplement A, Petition for Qualifying Family Member of a U-1 Nonimmigrant, with the Nebraska Service Center. His spouse was the victim of a qualifying crime, and as her legally recognized husband, Mr. Godinez Hernandez qualified as a derivative beneficiary under the U visa provisions. Concurrently, he filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

On April 6, 2023, U.S. Citizenship and Immigration Services determined that Mr. Godinez Hernandez's U visa petition was bona fide and granted him deferred action, along with employment authorization, while he awaits the availability of a U visa under the statutory cap. As a recipient of deferred action, Mr. Godinez Hernandez is considered lawfully present in the United States for the duration of that grant and is not subject to removal during this period.

Notwithstanding this lawful status, ICE has continued to detain Mr. Godinez Hernandez. His ongoing detention is inconsistent with the Immigration and Nationality Act and violates the Due Process Clause of the Fifth Amendment.

1 Mr. Godinez Hernandez is married and serves as the sole financial provider for his  
2 household. He is the father of three minor children, all under the age of 13, each of whom is a  
3 United States citizen. His detention has imposed significant hardship on his family.

4 Importantly, the circumstances leading to Mr. Godinez Hernandez's detention do not  
5 involve violent criminal conduct. At the time of his arrest, Mr. Godinez Hernandez was working  
6 as a truck driver transporting fruit. He stopped after observing that a coworker driving ahead of  
7 him had been pulled over by the Highway Patrol. Upon stopping to check on his coworker, it  
8 was discovered that the coworker's driver's license had expired. Because Mr. Godinez  
9 Hernandez was present and aware of the situation, he was arrested for alleged knowledge of the  
10 coworker's expired license, which subsequently led to the placement of an ICE detainer.

11 However, Mr. Godinez Hernandez's placement in ICE custody is improper given his  
12 grant of deferred action and lawful presence in the United States. His continued detention is  
13 therefore unjustified and contrary to governing law and policy.

#### 14 LEGAL BACKGROUND

##### 15 **A. Overview of the Department of Homeland Security and U.S. Citizenship and** 16 **Immigration Services Bona Fide Determination Process and Deferred Action for U** 17 **Nonimmigrant Petitioners**

18 Pursuant to 8 U.S.C. § 1184(p)(2), no more than 10,000 noncitizens may be issued U-1  
19 nonimmigrant visas or granted U-1 status in any fiscal year (the "statutory cap"). See also 8  
20 C.F.R. § 214.14(d)(2); 3 USCIS-PM C.6. Once this annual limit is reached, DHS/USCIS is  
21 required to place any additional eligible petitioners on a waiting list. *Id.* Additionally, under 8  
22 U.S.C. § 1184(p)(6), DHS/USCIS retains discretion to grant employment authorization to  
23 noncitizens who have pending, bona fide U nonimmigrant status petitions. See also 3 USCIS-PM  
24 C.5.  
25

26 Accordingly, individuals placed on the waiting list may qualify for employment authorization  
27 and may also be granted deferred action.  
28

1 To advance its “primary goal” of ensuring adequate evaluation and efficient adjudication of  
2 petitions, DHS/USCIS created a “bona fide determination (BFD) process.” See 3 USCIS-PM  
3 C.5. In line with the William Wilberforce Trafficking Victims Reauthorization Act of 2008  
4 (TVPRA 2008), this process allows petitioners to obtain a Bona Fide Determination  
5 Employment Authorization Document (“BFD EAD”) and deferred action while their petitions  
6 remain pending. *Id.*; see Pub. L. 110-457 (December 23, 2008).

8 DHS/USCIS considers a principal petition to be bona fide when the principal petitioner has  
9 properly submitted a completed Form I-918, Petition for U Nonimmigrant Status, along with all  
10 required initial evidence, except for Form I-192, Application for Advance Permission to Enter as  
11 a Nonimmigrant, and DHS/USCIS has received the results of the petitioner’s background and  
12 security checks based on biometrics. *Id.*; see also 8 C.F.R. § 214.14(c)(2).

14 After DHS/USCIS determines that a petition is bona fide, it then evaluates whether the  
15 petitioner poses a risk to national security or public safety by reviewing the results of  
16 background checks and considering any other relevant discretionary factors. It also decides  
17 whether to exercise its discretion to issue a Bona Fide Determination Employment Authorization  
18 Document and grant deferred action to the petitioner. See 3 USCIS-PM C.5(C)(1); see also 8  
19 U.S.C. § 1182(a)(3).

21 If DHS/USCIS grants a U petitioner a BFD EAD, it has also exercised its discretion to grant  
22 deferred action and to stay the petitioner’s removal (deportation) for the duration of the BFD  
23 EAD. See 3 USCIS-PM C.5. The final step for such petitioners is adjudication of the Form I-918  
24 petition when a visa becomes available under the statutory cap. *Id.*

26 **B. Deferred Action**

1 Deferred action originates from what the Supreme Court has described as a “commendable  
2 exercise of administrative discretion,” through which immigration authorities may mitigate harsh  
3 or unjust outcomes by declining to initiate proceedings, terminating pending proceedings, or  
4 choosing not to execute a final order of deportation. *Reno v. Am.-Arab Anti-Discrimination*  
5 *Comm.*, 525 U.S. 471, 484 (1999).  
6

7 Under current policy, USCIS—and therefore DHS—defines deferred action as a form of  
8 prosecutorial or enforcement discretion that defers a noncitizen’s removal (deportation) for a  
9 specified period. *See* 1 USCIS-PM H.2(A)(4). In the context of Deferred Action for Childhood  
10 Arrivals (DACA), USCIS policy clarifies that the action being deferred is removal itself.  
11

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

22 DACA Frequently Asked Questions ([https://www.uscis.gov/humanitarian /consideration-](https://www.uscis.gov/humanitarian/consideration-ofdeferred-action-for-childhood-arrivals-daca/frequently-asked-questions)  
23 [ofdeferred-action-for-childhood-arrivals-daca/frequently-asked-questions](https://www.uscis.gov/humanitarian/consideration-ofdeferred-action-for-childhood-arrivals-daca/frequently-asked-questions)) (emphasis added). I  
24

25 More broadly, individuals granted deferred action are regarded as lawfully present in the United  
26 States for a variety of purposes, including domestic security, *see* 6 C.F.R. § 37.3; Social Security  
27 benefits, *see* 8 C.F.R. § 1.3(a)(4)(vi); and eligibility for certain public benefits, *see* 45 C.F.R. §  
28 155.20. Additionally, individuals granted deferred action through the U visa waiting list do not  
accrue unlawful presence. *See* 8 C.F.R. § 214.14(d)(2).

Consistent with this framework, the Ninth Circuit has repeatedly recognized deferred action  
as a form of prosecutorial discretion in which the government elects not to pursue removal of an

1 otherwise deportable individual, typically for humanitarian reasons. *See Barahona-Gomez v.*  
2 *Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001); *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d  
3 795, 800 (D. Ariz. 2015). Numerous decisions further confirm that deferred action functions to  
4 prevent removal. *See, e.g., Lee v. Holder*, 599 F.3d 973, 974–75 (9th Cir. 2010) (interim relief  
5 program providing deferred action to U-visa applicants prevented removal); *Ariz. Dream Act*  
6 *Coal. v. Brewer*, 855 F.3d 957, 958 (9th Cir. 2017) (dissent) (describing deferred action as the  
7 government’s “commitment not to deport”); *Alvarez Leal v. Lynch*, 673 F. App’x 630, 632 (9th  
8 Cir. 2017) (Pregerson, J., dissenting) (characterizing deferred action as a formal determination  
9 not to remove an individual); *De Sousa v. Dir. of U.S. Citizenship and Immigr. Servs.*, 755 F.  
10 Supp. 3d 1266, 1268 (N.D. Cal. 2024) (holding that deferred action protects noncitizens from  
11 removal while awaiting visa availability under the statutory cap); *Medina v. U.S. Dep’t of*  
12 *Homeland Sec.*, 408 F. Supp. 3d 1224, 1228 (W.D. Wash. 2019) (describing DACA as a  
13 conditional promise not to pursue removal during its term).

14  
15  
16 Current USCIS policy is consistent with this precedent. The USCIS Policy Manual defines  
17 deferred action as “a form of prosecutorial discretion to defer removal action (deportation)  
18 against an alien for a certain period of time,” and further explains that individuals granted  
19 deferred action are considered to be in a period of stay authorized under USCIS policy for as  
20 long as deferred action remains in effect. *See* USCIS Policy Manual, Vol. 1, Part H, Ch. 2(A)(4).

21  
22  
23 Additionally, if Mr. is granted a U visa and deferred action ends, his removal will be  
24 “deemed canceled by operation of law as of the date of USCIS” approval of Form 1-918,” 8  
25 C.F.R. § 214.14(c)(5)(i).

26  
27 **C. Habeas Corpus Under 28 U.S.C. § 2241**  
28

1 The Constitution ensures that the writ of habeas corpus is available to any person detained  
2 within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. art. I,  
3 § 9, cl. 2). Habeas corpus permits an individual in custody to challenge the lawfulness of that  
4 detention, and its traditional purpose is to obtain release from custody that is not legally  
5 authorized. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

6 Federal courts are authorized to grant habeas relief under 28 U.S.C. § 2241(c)(3) where a  
7 petitioner establishes that their detention violates the Constitution or federal law. Historically,  
8 habeas corpus has been used to review the legality of detention by the Executive Branch, and  
9 courts have recognized that its protections are at their strongest in that context. *INS v. St. Cyr*,  
10 533 U.S. 289, 301 (2001).

11 Accordingly, district courts have habeas jurisdiction to consider challenges to  
12 immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S.  
13 510, 517 (2003).

#### 14 **D. Right to Liberty and Due Process**

15 The Fifth Amendment of the U.S. Consitution guarantees that “[no] person shall... be  
16 deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.  
17 Importantly, the supreme court has clarified that this protection extends to noncitizens, stating:  
18 “Once an alien teres the country, the legal circumstances changes, for the Due Process clause  
19 applies to all ‘persons’ within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701  
20 (2001).

21 Civil immigration detention is meant to serve limited regulatory purposes: ensuring  
22 appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*,  
23 538 U.S. 510 (2003), emphasized that detention may only last for the “brief period necessary  
24 for... removal proceedings” and cannot be punitive.

25 Where detention extends beyond those limited purposes or rests on mere allegations, it  
26 violates due process. As the Court stressed in *Zadvydas*: “freedom from imprisonment – from  
27 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty  
28 that the Clause protects.” 533 U.S. at 690.

1       **E. Civil Nature of Immigration Detention**

2       The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In  
3       *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: “If a restriction or condition is not  
4       reasonably related to a legitimate governmental objective, it amounts to punishment.”

5  
6                               **FIRST CAUSE OF ACTION**

7  
8       **I.    Unlawful Detention in Violation of the Immigration and Nationality Act and the**  
9       **Fifth Amendment.**

10       Respondents are unlawfully detaining Mr. Godinez Hernandez despite the Department of  
11       Homeland Security’s affirmative decision to grant him deferred action and to defer his removal.  
12       Because Mr. Godinez Hernandez is not subject to execution of a removal order during the period  
13       of deferred action, his continued detention lacks statutory authority under the Immigration and  
14       Nationality Act and violates his rights under the Due Process Clause of the Fifth Amendment

15       Respondents’ continued detention of Mr. Godinez Hernandez is unlawful because it rests on  
16       a legal fiction—that the Government may simultaneously defer his removal and detain him for  
17       the purpose of effectuating that same removal. That position is irreconcilable with the settled  
18       meaning and function of deferred action.  
19

20       Deferred action is not merely a matter of enforcement “priority,” as Respondents may suggest;  
21       it is a formal exercise of prosecutorial discretion in which the Government affirmatively decides  
22       to refrain from pursuing removal against a specific individual. By granting Mr. Godinez  
23       Hernandez deferred action, the Department of Homeland Security has already made the  
24       operative determination that no action will be taken to execute his removal during the relevant  
25       period. That determination necessarily eliminates the legal predicate for detention under a  
26       removal statute whose sole purpose is to effectuate deportation.  
27  
28

1 Civil immigration detention is permissible only insofar as it serves its stated purpose—  
2 ensuring removal. Where the Government has decided not to proceed with removal, detention  
3 loses its statutory and constitutional justification. In Mr. Godinez Hernandez’s case, there is no  
4 longer a meaningful nexus between his detention and any legitimate immigration objective. His  
5 confinement is therefore not regulatory, but arbitrary.

6  
7 The attempt to characterize deferred action as having no binding effect on its enforcement  
8 authority is particularly unpersuasive in light of its own conduct. Federal agencies, including  
9 USCIS, treat deferred action as placing individuals in a period of authorized stay and protecting  
10 them from removal. Indeed, recognizing deferred action while continuing to detain Mr. Godinez  
11 Hernandez would render the benefit illusory—reducing it to a hollow designation devoid of  
12 practical effect. The law does not permit such internally contradictory positions, especially where  
13 they result in the deprivation of liberty.  
14

15 Moreover, allowing the Government to detain individuals after granting deferred action would  
16 effectively collapse the distinction between removing a person and choosing not to remove them.  
17 That contradiction confirms the absence of any lawful basis for Mr. Godinez Hernandez’s  
18 detention. If the Government has chosen to “refrain from executing” his removal, it cannot  
19 simultaneously justify his incarceration as necessary to carry out that very act.  
20

21 Finally, Respondents’ position raises serious constitutional concerns. Once the Government  
22 confers a concrete benefit such as deferred action—accompanied by lawful presence and  
23 employment authorization—it cannot disregard that determination without consequence.  
24 Detaining Mr. Godinez Hernandez despite that grant transforms a discretionary benefit into an  
25 arbitrary deprivation of liberty, precisely the type of executive overreach the Due Process Clause  
26 forbids.  
27  
28

1 In sum, because the Government has affirmatively deferred Mr. Godinez Hernandez's removal,  
2 there is no statutory or constitutional basis for his continued detention. His confinement is  
3 therefore unlawful and must cease.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Mr. Godinez Hernandez prays that this Court grant the following relief:

- 7 (1) Assume jurisdiction over this matter;  
8 (2) Order ICE to immediately release Mr. Godinez Hernandez from his unlawful  
9 detention;  
10 (3) Order that Mr. Godinez Hernandez not be transferred out of the District of  
11 Nevada until resolution of this matter.  
12 (4) Award reasonable costs and attorney fees; and  
13 (5) Grant such further relief as the Court deems just and proper.

14  
15 Dated this 27<sup>th</sup> day of March 2026

Respectfully submitted,

16 /s/ Karen Monrreal

17 Karen S. Monrreal, Esq.

18 Attorney for Mr. Godinez Hernandez

19 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

20 I am submitting this verification on behalf of the Petitioner because I am one of  
21 Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition.  
22 Based on those discussions, I hereby verify that the factual statements made in the attached  
23 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

24 Executed on this 27<sup>th</sup> day of March 2026 in Reno, NV.

25 /s/ Karen Monrreal

26 Karen S. Monrreal, Esq.

27 Attorney for Mr. Godinez Hernandez  
28