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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

Dainier Aleman Garcia, Petitioner, v. Jeff Tindall, Jailer, Oldham County Detention Center Todd M. Lyons, Acting Director, or his agent, U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the U.S. Department of Homeland Security; Pam Bondi, Attorney General of the United States, in their official capacities, Respondents.	Case No. 3:25-cv-00522-RGJ

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

1. INTRODUCTION

The Department of Homeland Security ("Department" or "Government") abused its discretion on when they placed the Petitioner in expedited removal proceedings. The Government illegally detained Dainier Aleman Garcia, and illegally placed him in mandatory detention, without eligibility for parole, and expedited removal proceedings. Dainier is a foreign national who has a fear of returning to his country of origin, Cuba; However, the expedited removal statute, 8 U.S.C. § 1225(b)(1)(A)(i), does not apply to the Petitioner.

II. LEGAL ISSUES

i. Is the Petitioner subject to expedited removal and/ or is he subject to the mandatory detention, issued by the Department of Homeland Security on May 13, 2025?

   a. The Petitioner is a non-citizen who does not meet the applicability statute for expedited removal found in 8 CFR 235.3 because he was legally in the United States, and he had continuously resided in the United States for over two years.

ii. Due Process was violated when the United States illegally detained him on May 13, 2025, and illegally placed him in removal proceedings. The Department's recklessly disregarded the evidence in their possession showing that Dainier was compliant with the immigration laws and continuously present in the United States for more than two years.

III. STATEMENT OF FACTS

i. October 20, 2022, to May 13, 2025

Petitioner, Dainier, is a Cuban National. He is a native Spanish speaker. He does not speak English, and his understanding of the language is minimal at best. He cannot carry basic conversations in English. All communications with him, require a Spanish interpreter. He entered the United States on October 20, 2022. He was detained by Immigration Customs and Enforcement (ICE). Prior to his entry in October 2022, Mr. Aleman Garcia entered the United States in late 2017, seeking asylum, and was arrested at the Southern border. He was detained, given a credible fear interview and was deported back to Cuba, in February 2018. He was found credible at his interview, but the government and the judge found that he had failed to establish a fear of return. He was not paroled at the time and was ordered removed.

Normally, an alien with a removal order is under a 5-year bar from re-entering the country.

However, when he returned to Cuba, Mr. Aleman Garcia continued to face heightened persecution. Members of his family had successfully fled Cuba to the safety of the United States. He was alone, had lost his job, because of being vocal against the Cuban government and continued to be persecuted. He'd been beaten, imprisoned and his life threatened by authorities on more than one occasion. Therefore, 4years and 9 months after he has been ordered removed from the United States, Mr. Aleman Garcia re-entered the country. He had to flee for his life.

On his re-entry in October 2022, Mr. Aleman Garcia, met with an ICE officer; and was interviewed, vetted, and after reviewing his circumstances, an ICE officer paroled him into the United States on October 21, 2022, pursuant to INA 212(d)(5)(A).[1] He was given oral instructions to report to ICE on November 5, 2022. Upon release, he reported as instructed in person at the Louisville ICE office, where he was further instructed to schedule future appointments online. He scheduled said appointment for April 5, 2023.

Mr. Aleman Garcia's parole expired on December 20, 2023. In December 2022, he applied for affirmative asylum by applying for Asylum (I-589) to United States Citizenship and Immigration Services (USCIS). The application was received, processed, and accepted by USCIS. A Notice of Action was mailed out to him, on or about December 24, 2022[2]; it explicitly permitted Dainier to remain lawfully in the United States during the adjudication of his application.

[1] Exhibit 1, Copy of Parole Stamp
[2] Exhibit 2, Notice of Action from USCIS

About six months later, Dainier filed for a work authorization as permitted with USCIS. He received a work authorization card permitting him to work in the United States. He remained lawfully in the United States. He did not pick up any criminal charges; he did not commit any traffic violations. He did not miss any report dates required by ICE.

In April 2025, Dainier was instructed by ICE, in an email to report in person, on May 13, 2025. The email was vague. His appointment was scheduled for one hour.[3]

i. May 13, 2025, the Date of Dainier's "Check In"

At the check in, Dainier provided his alien number and identifying documents, the officers confirmed his identity. He was then asked by an ICE officer to sit apart from the other people who were at the ICE office. He sat for a while, and an officer came to inform him that he was going to be detained because the Chicago Asylum Office has issued instructions for him to be detained. Dainier was in shock and kept asking what he had done wrong. He was also asked whether he was married and had children. He responded that he lived with his fiancé and had a 5-month-old baby. Prior to the May 13, 2025, check in, Dainier had been given some documents to sign. He does not recall exactly when, but he recalls that all the documents were in English. None of the documents were read to him, translated into Spanish, or explained to him. Unbeknownst to Dainier, he was signing a Notice of Intent to Reinstate his prior removal order. On May 13, 2025, he was made to sign other documents and was told it was to grant the officers permission to take his street clothes and put him in prison wear. He was also asked if he had a fear of returning to Cuba and he answered yes.

[3] Exhibit 3, email from ICE confirming appointment.

He proceeded to tell them, that his fear of return is why he fled Cuba and filed his asylum application. The officer did not say anything back. Instead, they put him in a holding cell for about two hours, came back and put him in prison clothing and shackled him at the hands and ankles.

He was also informed that his documents are no longer correct, and ICE is sending him back. He was informed he was going to Oldham County. He was also informed that he would be permitted to call his family before he is "sent back." He was never informed he had a deportation order or how he received one. He did not know he had a right to counsel. ICE communicated to him in Spanish and English but once again did not spell out his right to counsel.

He was informed that when he was improperly processed on October 20, 2022, so he is being detained. His family was informed that he was in mandatory detention, because he had a prior removal order. He was never received a Notice to Appear (NTA) initiating removal proceedings. Since May 13, 2025, Mr. Aleman Garcia's right to due process has been and continues to be violated on numerous occasions. For example, during his reasonable fear interview in June, he was denied notice, and the opportunity to consult with his counsel, although his counsel had entered her appearance and filed a G28, both with the DHS and with the Oldham County detention facility. After two negative findings of his reasonable fear interview, both holding him credible, but finding that he did not have a fear of return, Dainier, by and through counsel, petitioned this court, on August 20, 2025. On August 28, 2025, the United States submitted a copy of the Notice of Intent/ Decision to Reinstate Prior Order.[4] This document purports to support the government's allegation that Dainier was informed and willingly signed said document. This is abjectly false. Mr. Aleman states that he was forced to append his signature on a piece of paper, which was in English. It was never read to or explained to him in Spanish.

When he asked what he was signing, he was told that it meant "his status has changed", and that he did not have a choice but to sign the document, and so in compliance, he reluctantly signed the paper. When he enquired further, he was told that he now had an I220. He trusted the DHS. After the fact, and without any explanation to him, Mr. Aleman Garcia assumed the document he had been made to sign, was actually a positive development because he was seeking to legitimize his status in the United States, and he knew that a number of Cubans with I220s were on parole and were able to adjust their status based on their parole. To date, Mr. Aleman Garcia has not been served with an NTA or any charging document. However, the DHS has kept and continues to keep Dainier in detention while his asylum application remains pending and un adjudicated and treating him as if he is in expedited removal.

[4] Exhibit 4, Notice of Intent /Decision to Reinstate prior order.

II. OVERVIEW OF EXPEDITED REMOVAL

i. Expedited Removal in General

Congress enacted expedited removal in 1996 [5] to streamline and expedite the removal of certain categories of noncitizens, particularly those deemed inadmissible or involved in criminal actives, while balancing procedural safeguards. Congress's intent was to focus on inefficiencies in the removal process and ensure the swift removal of individuals who violated immigration laws and reduce administrative burden. This permits the United States government to deport a certain alien from the United States without any judicial oversight and little due process, unless a non-citizen expresses fear of returning to his or her country of origin.

This procedure is usually conducted by immigration officers from U.S. Customs and Border Protection (CBP), a component agency of the Department of Homeland Security (DHS), 8 U.S.C. § 1225(b)(1). The removal of the individual is paused if he or she expresses a fear of returning to their country of origin.[6]

Historically, expedited removal was utilized at ports of entry or at the United States border. It was applied to foreign nationals, who had little to no ties to the United States. Specifically, individuals who attempted to enter the United States or recently entered the United States would be detained, assessed, and removed from the United States, or detained, assessed and provided a credible fear interview. If an individual was found to have a credible fear, then he or she would release from custody[7] into the United States eligible to apply for asylum. If an individual received an adverse finding, he or she could appeal it to an immigration judge for review.

[5] Illegal Immigration and Immigrant Responsibility Act (IIRIRA).

[6] The regulations governing expedited removal and associated procedures include 8 C.F.R. §§ 235.3 and 235.15 (expedited removal), 8 C.F.R. §§ 208.30/1208.30. The detention of individuals in expedited removal proceedings is governed by 8 U.S.C. §1225(b)(1)(B)(ii) and (iii)(IV) and 8 C.F.R. § 235.3(b)(2)(iii).

[7] Petitioner is not addressing mandatory detention under the expedited removal statute. The Petitioner asserts that the detainment on July 28, 2025, was unlawful. The Petitioner is outside the scope of expedited removal. Placing her in the expedited removal process was an abuse of power.

Under the first Trump Administration, the Acting DHS Secretary designated additional categories of noncitizens for expedited removal to cover individuals anywhere in the United States who had been continuously present in the United States for less than two years who were inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7).[8] That expansion was nearly identical to the current expansion and was subject to challenge by litigation.[9]

In March 2022, while the litigation was ongoing, DHS rescinded the expansion designation.[10] Between March 2022 and January 21, 2025, the United States limited the scope of expedited removal to individuals arriving at ports of entry and individuals apprehended within 100 miles of a land border who were unable to demonstrate continuous physical presence in the United States for at least 14 days. This was a revert to the pre-January 2019 use of expedited removal.[11]

On January 21, 2025, the then-Acting DHS Secretary designated expedited removal to apply "to the fullest extent authorized by Congress,"[12] effectively broadening the scope of individuals who may be subject to the expedited removal process. An individual now may be subject to expedited removal if they are inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7) *and* they either arrive at a port of entry or are apprehended less than two years after entry. The current designation is currently being challenged as unlawful pursuant to 8 U.S.C. § 1252(e)(3).[13]

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[8] See Notice Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409-01, 35409 (July 23, 2019).
[9] See Make the Road New York v. McAleenan, 405 F. Supp. 3d 1 (D.D.C. 2019) rev'd and remanded sub nom. Make the Road *New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020).
[10] *See* Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (March 21, 2022).
[11] Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004).
[12] *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025).
[13] *See Make the Road New York v. Huffman*, No. 25-cv-00190 (D.D.C. filed Jan. 22, 2025).

i. <u>The law specifically designates categories non-citizens subject to expedited removal.</u>

The expedited removal statute does not apply to all non-citizens. The United States Code specifies who is subject to expedited removal in 8 CFR 235.3(b)(1). The section is titled "Applicability."[14] It specifically states that the expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section...212(a)(7).[15]

This regulation extends the applicability of expedited removal to aliens who are not arriving at a port of entry but are found within the United States. For such aliens, expedited removal applies if they are inadmissible under INA § 212(a)(7) and cannot affirmatively demonstrate to the satisfaction of an immigration officer that they have been physically present in the United States continuously for the two-year period immediately preceding the determination of inadmissibility.[16]

On January 21, 2025, the Department expanded the use of expedited removal "to the fullest extent authorized by Congress," designating its application to individuals anywhere in the United States "who have been continuously present in the United States for less than two years" when they are apprehended.[17] Thus, currently, an individual may be subject to expedited removal if they: (1) are inadmissible under Section (a)(6)(C) or Section(a)(7); *and* (2) arrive at a port of entry *or* are apprehended less than two years after entry in the United States.

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[14] *Id.*

[15] Section 1182(a)(6)(C) renders inadmissible an individual who makes a false claim to U.S. citizenship or who seeks an immigration benefit by fraud or misrepresentation of material facts. This section is irrelevant to the Petitioner's claim.

[16] 8 USCS § 1225, Las Ams. Immigrant Advocacy Ctr. v. Wolf, 507 F. Supp. 3d 1, Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem, 2025 U.S. Dist. LEXIS 126272, 8 CFR 235.3

[17] *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139-40 (Jan. 24, 2025).

III. LAW & ARGUMENT

i. Dainier was not subject to the Expedited Removal statute even if he was found to be inadmissible on May 13, 2025

On May 13, 2025, the Department abused its discretion by placing Dainier in the expedited removal process and mandatory detention. The Department recklessly disregarded the law when they detained Dainier.

Dainier was paroled, pursuant to INA 212(d)(5)(A), into the United States on December 13, 2022.[18] His parole status expired on December 20, 2023.[19] In December 2022, he filed an affirmative asylum with United States Citizenship and Immigration Services (USCIS). He then received a Notice of Action.[20] The Notice of Action specifically states to the applicant, "You may remain in the U.S. until your asylum application is decided."[21]

Dainier's application for asylum was not adjudicated within 150 days, so he was eligible to apply for a work authorization. As the law permits, he applied for authorization to work in the United States. It was approved. He also secured a social security number and has legally worked and lived in the United States.

On May 13, 2025, Dainier was legally in the United States, authorized to remain in the United States and not subject to the expedited removal despite the fact his parole status expired on December 20, 2023.

[18] Exhibit 1, Copy of Parole Stamp

[19] Id.

[20] Exhibit 2

[21] It is important to distinguish expedited removal from removal proceedings. The Notice of Action explicitly states that having a pending asylum application with USCIS does not preclude the applicant from placing him or her in Removal Proceedings. Removal Proceedings are different then Expedited Removal Proceedings. Removal Proceedings are governed by 8 U.S.C. 1229.

The expedited removal statute includes a safeguard for non-citizens seeking asylum in the United States. Specifically, INA §212(a)(7) [8 U.S.C. § 1182] does not preclude an individual from applying for asylum affirmatively if they meet the eligibility criteria under INA § 208 [8 USCS § 1158]. A non-citizen who is inadmissible under § 212(a)(7) and expresses an intention to apply for asylum or a fear of persecution must be referred for an asylum interview or removal proceedings, where his asylum claim can be adjudicated.[22]

Dainier procedurally bypassed the expedited removal process and mandatory detention, when he was paroled into the United States over two years ago, and maintained continued presence for two years in the United States, without committing any criminal offences. His first point of contact with the U.S. Immigration process was on October 20, 2022. He was detained by U.S. Customs and Enforcement. He was held for one day and paroled on October 21, 2022. U.S. Immigration officers interviewed him, possibly questioned him about why he fled Cuba and/or by passed the expedited removal process and paroled him into the United States. Then he applied for affirmative asylum within one year of entering the United States as required by statute.

Expedited removal, in this context, is a fast-track process for determining if someone is prima facia eligible for asylum. Under expedited removal process, certain noncitizens arriving at the border or who have recently entered the United States without inspection may be removed without a formal hearing or review.[23] However, if a non-citizen is subject to expedited removal expresses an intention to apply for asylum or a fear of persecution, the process halts, and the individual must be referred for a credible fear interview.[24]

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[22] 8 USCS § 1225, Mendoza-Linares v. Garland, 51 F.4th 1146.
[23] 8 USCS §1225.
[24] 8 U.S.C. §1225, *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1.

If it is determined that the applicant has a credible fear, then they are referred to USCIS for adjudication of his or her asylum claim.[25] Dainier was beyond this procedurally.

On May 13, 2025, he had been in the United States for over two years. He had already been assessed by immigration and released into the United States. He had an open and pending asylum application with (USCIS). He was awaiting adjudication of his asylum application. The law permits him to remain in the United States for this process.

i. <u>Client was able to demonstrate that he resided in the United States for over two years.</u>

The Department has the authority to designate which groups of noncitizens are subject to expedited removal; however, this power is not absolute. The plain language of the statute is unequivocally clear. If the alien can prove that he or she has been in the United States for over two years, then the expedited removal statute does not apply. This is a limitation on the Department's power to unilaterally remove an individual from the United States without judicial oversight.

The designation provision allows the extension of expedited removal procedures as designated by the Secretary of Homeland Security to any or all who have not been admitted or paroled into the United States *and* who cannot demonstrate that they have been continuously present in the United States for two years (emphasis added).[26]

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[25] USCIS website, Credible Fear Screening, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/credible-fear-screenings.

[26] 8 U.S.C.S. §1225(b)(1)(A)(iii)(I), (II). Make the Rd. N.Y. v. Wolf, 962 F.3d 612, § 61.05 Disposition by Immigration Officer. Las Ams. Immigrant Advocacy Ctr. v. Wolf, 507 F. Supp.

It does not matter if the alien did not have valid entry documents, it does not matter that the alien has been paroled into the United States. Dainier fits outside the scope of the plain language the expedited removal statute, because he had maintained a continuous presence in the United States for over two years.

The Department was in possession of sufficient evidence proving that Dainier has been in the United States continuously for two years. The Department of Homeland Security admits that he was paroled into the United States on October 21, 2022. He submitted an asylum application to USCIS on or about December 23, 2022. His address at the time was 104 Southview Square. Apt 44, Louisville, KY 40214. Six months later he applied for authorization to work in the United States by applying for work authorization. This application requires the disclosure of his current address to the Department of Homeland Security.[27] The application was approved. All the records are in the Department's possession. The Department of Homeland Security is in possession of evidence demonstrating that Dainier has resided continuously in the United States since October 21, 2022. The Department disregarded the records in their custody and recklessly detained Dainier and illegally placed him in the expedited removal process.

27 Exhibit 5 - I-765 form and Danier's I-765 Notice of Action

IV. OVERVIEW OF MANDATORY DETENTION

Mandatory detention.[28] in the U.S. is generally triggered by specific criminal convictions or other serious offenses that fall under grounds for inadmissibility or deportability, including aggravated felonies, certain drug offenses, terrorism-related activity, money laundering, and human trafficking. An admission of guilt or even an arrest/charge for certain crimes, like those involving serious bodily injury, can also lead to mandatory detention, even without a conviction. Some common grounds for mandatory detention are terrorism related offences, aggravated felonies. drug offense, crimes involving moral turpitude, firearm offenses, prostitution related offenses, human trafficking, money laundering, burglary, theft or assault offenses. under certain laws like the 2025 Laken-Riley Act, even charges or admissions related to these crimes, or crimes resulting in death or serious injury, can lead to mandatory detention.

Individuals subject to mandatory detention generally cannot be released on bond or their own recognizance while their removal case is pending. Mandatory detention can apply when an alien is released from criminal custody after committing one of the specified offenses. The grounds for mandatory detention are established under sections 212(a) (inadmissibility) and 237(a) (deportability) of the Immigration and Nationality Act (INA).

28 8 USC S 1226 and 1227

> "The Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in section 1182(a)(2); is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) is deportable under section 1227(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year, is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, or is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a), and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person".

Mr. Dainier Aleman Garcia has not been arrested, charged, or convicted of any criminal charges. There is no evidence that Mr. Aleman Garcia has any criminal proclivities. His detention without bond, is unlawful.

i. The Department Violated Client's Due Process Rights

The Department unlawfully detained Dainier on May 13, 2025. They failed to adequately inform of his right to counsel, his rights under the expedited removal statute, they failed to follow the procedures and protocol for the expedited removal process. They were reckless and completely disregarded the law.

The procedures established by Congress for expedited removal comport with due process under the fifth amendment. Congress specifically set forth a list of conditions the establish the scope, purpose and process of expedited removal.[29] This process affords the individual notice of the process, a right to retain counsel, aliens may express fear of returning to their home country, they are interviewed, and any adverse finding may be reviewed by an administrative process. The Department recklessly disregarded every right afforded to his under the United States Constitution. The Department dissected the statute piecing together the sections effectively turning the rule of law into Frankenstein's monster. They ignore the function and the purpose of the law. On October 20, 2022, Dainier received humanitarian parole, pursuant to 8 U.S.C. § 1182(d)(5). This was given at the discretion of the Department of Homeland Security. Humanitarian parole is a discretionary measure that allows noncitizens to enter or remain in the United States temporarily for "urgent humanitarian reasons" or "significant public benefit." Even though it does not constitute an admission into the United States. It is granted on a case-by-case basis.[30] Humanitarian parole permits the alien to enter the United States and apply for another status.[31] Instead, the Department abused its discretion by ignoring the information in their possession. They illegally detained Dainier, illegally placed his in removal proceedings, and to this day continue to violate the rights afforded to him under the United States Constitution.

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[29] 8 CFR S 235.3

[30] Humanitarian parole, pursuant to 8 U.S.C. § 1182(d)(5), is typically used in situations such as medical emergencies, family reunification, or to address specific public interest needs. For example, programs like Operation Allies Welcome and Uniting for Ukraine have utilized humanitarian parole to assist individuals fleeing crises in Afghanistan and Ukraine, respectively. The Court should not permit the Department's interpretation and abuse of humanitarian parole.

[31] Once an applicant for admissions is paroled into the United States, he or she does not remain in that status indefinitely. Typically, the applicant applies for Temporary Protective Statue, Application to Adjust Status ("Permanent Residency"), asylum, etc. If the parole is not extended and expires with no other attempts to apply for legal status are made, then the applicant loses status.

V. REQUESTS

WHEREFORE NOW, the Petitioner, Dainier Aleman Garcia, requests this Court to:

1. Set this matter for an evidentiary hearing, so that the Petitioner may be present and testify. The Petitioner will require a Spanish interpreter.
2. Compel the Department of Homeland Security to provide all documents relevant to the Petitioner's status in the United States. This includes, but is not limited to, documents relevant to expedited removal, such as Form I-867A, Form I-867B; a copy of all documents instructing the detention and removal of the Petitioner, any documents and memorandums used in assessing that the Petitioner was subject to expedited removal on May 13, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of this Brief and all the exhibits were served upon opposing counsel through electronic filing on September 6, 2025.

Sylvia S. Quaye

EXHIBIT LIST

i. Exhibit 1, Copy of Parole Stamp

ii. Exhibit 2, Notice of Action from USCIS

iii. Exhibit 3, Appointment confirmation email from ICE.

iv. Exhibit 4, Notice of Intent to Reinstate Removal Order

v. Exhibit 5, Example Application for Work Authorization (I765).