

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

Jose Rafael Hinojosa Garcia,

Petitioner,

v.

Case No.:

Kristi Noem, Secretary of the Department of Homeland Security; **Pamela Bondi**, Attorney General of the U.S.; **Todd M. Lyons**, Acting Director U.S. Immigration and Customs Enforcement; **Garrett Ripa**, ICE ERO Miami Field Office Director; and, **Kevin Guthrie**, Executive Director of the Florida Division of Emergency Management,

Respondents.

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §2241 AND FOR IMMEDIATE RELEASE OR, IN THE
ALTERNATIVE, A PROMPT INDIVIDUALIZED BOND HEARING**

To the Honorable Judge of Said Court:

I. INTRODUCTION

1. Petitioner, Jose Rafael Hinojosa Garcia (hereinafter “Mr. Hinojosa Garcia”), seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents. Mr. Hinojosa Garcia is being unlawfully detained by Respondents without Respondents providing any legal justification for his ongoing detention and without the commencement of any proceedings against him.

2. Mr. Hinojosa Garcia, a 31-year-old Mexican national, entered the United States (hereinafter “US”) in or around 2007 and has been living here since then. Despite having no prior significant criminal history, he was detained on September 18, 2025, and transferred to a detention facility inside the Big Cypress National Preserve, named Alligator Alcatraz (hereinafter, “the detention center”), run by the State of Florida Division of Emergency Management (hereinafter “FL

Emergency Mgmt.”) and under the supervision/control of the US Department of Homeland Security (hereinafter “DHS” or “the Department”) and the US Immigration and Customs Enforcement (hereinafter “ICE”).

3. Mr. Hinojosa Garcia was denied the right to due process under the Fifth Amendment to the US Constitution. Respondents are unlawfully detaining Mr. Hinojosa Garcia without providing a legal justification for his ongoing detention and without providing him with a bond hearing.

4. Mr. Hinojosa Garcia respectfully requests that this Honorable Court order Respondents to show cause why the writ should not be granted within three days and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243.

5. Mr. Hinojosa Garcia further respectfully requests that this Honorable Court grant him a writ of habeas corpus, ordering Respondents to release him immediately.

II. PARTIES

6. Petitioner, Jose Rafael Hinojosa Garcia, is a 31-year-old native and citizen of Mexico who entered the US in or around 2007. He is being detained without a bond by Respondents at the detention center in Florida.

7. Respondent, Kristi Noem, is the Secretary of DHS, which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Mr. Hinojosa Garcia. This Respondent is being sued in her official capacity.

8. Respondent, Pamela Bondi, is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (hereinafter “BIA”) and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the immigration laws with Respondent Noem. As such, Ms. Bondi is a legal

custodian of Mr. Hinojosa Garcia. This Respondent is being sued in her official capacity.

9. Respondent, Todd M. Lyons, is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including noncitizen detention. As such, he is a legal custodian of Mr. Hinojosa Garcia. This Respondent is being sued in his official capacity.

10. Respondent, Garrett Ripa, is the ICE Field Office Director for the Miami Field Office. The Miami Field Office is responsible for the detention of noncitizens in Florida and at the detention center where Mr. Hinojosa Garcia is being detained. This Respondent also effects operational, legal, and factual control over the detention center and, as such, is a legal custodian of Mr. Hinojosa Garcia. This Respondent is being sued in his official capacity.

11. Respondent Kevin Guthrie, is the Executive Director of FL Emergency Mgmt., which manages the detention center where Mr. Hinojosa Garcia is being detained. As such, he is a legal custodian of Mr. Hinojosa Garcia. This Respondent is being sued in his official capacity.

III. JURISDICTION AND VENUE

12. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Art. I, Sec. 9, Cl. 2 of the United States Constitution (Suspension Clause), as Mr. Hinojosa Garcia is presently in custody under, or by color of, the authority of the US and challenges his custody as in violation of the Constitution, laws, or treaties of the US.

13. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 291-295 (2018).

14. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 1391 and

2241(d) because Mr. Hinojosa Garcia is detained at the detention center in or near Ochopee, Florida, within the court's jurisdiction.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Mr. Hinojosa Garcia has no administrative remedies available to him and his only remedy is by way of this judicial action.

16. Mr. Hinojosa Garcia is detained by Respondents pursuant to immigration custody. He has no adequate administrative remedy to obtain a bond hearing in light of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a recent precedential decision of the BIA which determined immigration judges (hereinafter "IJs") lack jurisdiction to consider bond for individuals present in the US without admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Exhaustion is therefore futile and not required. *See* 28 U.S.C. § 2241; *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992).

17. Further, no statutory exhaustion requirements apply to Mr. Hinojosa Garcia's claim of unlawful detention. This petition raises a constitutional law issue, and the administrative agency will not address the constitutional issue. Likewise, the agency is unable to strike down its own regulation as in violation of the statute. *See Matter of G-K-*, 26 I&N Dec. 88 (BIA 2013)

V. LEGAL FRAMEWORK

18. Noncitizens who enter the US are entitled to due process under the Fifth Amendment to the US Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

19. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

20. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely

to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. at 690.

21. The Immigration and Nationality Act (hereinafter “INA”) distinguishes between detention of applicants for admission under 8 U.S.C. § 1225 and detention of other noncitizens under 8 U.S.C. § 1226. Under 8 U.S.C. § 1225(b)(1)–(2) noncitizens subject to expedited removal and applicants for admission who recently arrived seeking admission are subject to mandatory detention. Under 8 U.S.C. § 1226, all other noncitizens may be detained, however are eligible to a bond hearing with an IJ, except for certain noncitizens who have been arrested, charged with, or convicted of committing certain crimes.

22. In *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General held that certain § 1225(b)(1) detainees transferred to § 240 proceedings remain ineligible for IJ bond. In 2025, the BIA extended this logic in *Matter of Yajure Hurtado*, holding that all individuals present without admission are applicants for admission under § 1225(a)(1) and subject to mandatory detention under § 1225(b)(2)(A), thereby foreclosing IJ bond jurisdiction.

23. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Prior to this recent BIA decision, most people who entered the country without inspection and were placed in standard removal proceedings received bond hearings, unless ineligible due to their criminal history.

24. Furthermore, Respondent’s new policy has been rejected by federal courts, both before and after the BIA decision in *Matter of Yajure Hurtado*.¹

¹ See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D.

VI. FACTS AND PROCEDURAL HISTORY

25. In or around 2007, Mr. Hinojosa Garcia entered the US. He has lived in the country since then and has two children who are US citizens.

26. On October 3, 2017, he filed a Petition for U Nonimmigrant Status, Form I-918 (hereinafter “U Petition”), which is currently pending with U.S. Citizenship and Immigration Services (hereinafter “USCIS”). See Petition for U Nonimmigrant Status, Form I-918, Receipt Notice attached hereto as **Exhibit A**.

27. USCIS granted him employment authorization through August 22, 2026. See, Application for Employment Authorization, Form I-765, Approval Notice, attached hereto as **Exhibit B**.

28. Mr. Hinojosa was detained on or around September 18, 2025, and transferred to the detention center on or around September 22, 2025.

29. Upon information and belief, Mr. Hinojosa Garcia remains at the detention center, however, as a result of Respondents’ practice of not including individuals detained at the detention center in ICE’s online detainee locator system, Mr. Hinojosa Garcia effectively remains off the grid of the immigration tracking system.

30. As of the date of this filing, Mr. Hinojosa Garcia has not been served with a Notice to Appear (hereinafter “NTA”) and removal proceedings have not been commenced against him. If and when removal proceedings against him are commenced, he is ready to participate in the

La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, [2025 WL 2466670](#) (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, [2025 WL 2496379](#) (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, [2025 WL 2549431](#) (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), [2025 WL 2591530](#) (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, [2025 WL 2609425](#) (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, [2025 WL 2607924](#) (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, [2025 WL 2531566](#), at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, [2025 WL 2402271](#) at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, [2025 WL 2374224](#) at *2 (D. Neb. Aug. 14, 2025) (same).

proceedings and submit himself to the immigration court's jurisdiction. Mr. Hinojosa Garcia appears eligible for cancellation of removal of non-permanent residents and for U visa status.

31. Mr. Hinojosa Garcia challenges Respondent's constitutional and statutory authority to detain him, with or without a bond, where Respondents have presented no legal justification for his ongoing detention.

32. Respondents have provided no meaningful procedures and deprived Mr. Hinojosa Garcia of procedural and substantive due process, and acted contrary to established law in an arbitrary and capricious manner. *See Jennings*, 583 U.S. at 291-298; *Id.* at 355-356 (Breyer, J., dissenting); *Zadvydas*, 533 U.S. at 688 (Explaining the court's authority to consider a habeas challenge to detention that is without statutory authority notwithstanding Congress' attempt to limit judicial review in immigration matters).

VII. CAUSES OF ACTION

Count 1: Unlawful Restraint/Detention in Violation of Constitutional Due Process

33. Mr. Hinojosa Garcia re-alleges and incorporates the preceding paragraphs.

34. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend.V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

35. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As categorical detention becomes increasingly prolonged, a sufficiently strong special justification is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91

36. Civil detention also violates due process unless it is accompanied by strong procedural

protections to guard against the erroneous deprivation of liberty. *Id.* at 690-91; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). To justify Mr. Hinojosa Garcia's ongoing detention, due process requires that the government provide a legal justification for his ongoing detention. *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987); *Svetlana Doe, et al., v. Noem, et al.*, No. 25-cv-10495 (D. Mass. April 14, 2025).

37. Mr. Hinojosa Garcia has not been afforded the necessary procedural safeguards to guarantee against the erroneous deprivation of his liberty. This is particularly true as Mr. Hinojosa Garcia's period of detention grows and where the government provides no legal justification for his ongoing detention.

38. Under these circumstances, Mr. Hinojosa Garcia's detention violates both substantive and procedural due process.

Count 2: Unlawful Restraint/Detention in Violation of Statutory Authority and Arbitrary Detention

39. Mr. Hinojosa Garcia re-alleges and incorporates the preceding paragraphs.

40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the US who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the country prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

41. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

42. Even if detained under INA § 235(b)(2)(A), Mr. Hinojosa Garcia's detention without a bond hearing exceeds statutory authority and is arbitrary and capricious. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018) (reserving constitutional questions); *Demore v. Kim*, 538 U.S. 510, 530–31 (2003) (upholding brief, not indefinite, detention).

Count 3: Violation of the Administrative Procedure Act

43. Mr. Hinojosa Garcia re-alleges and incorporates the preceding paragraphs.

44. Under the Administrative Procedure Act (hereinafter “APA”), a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

45. An action is an abuse of discretion and an violation of the APA if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Homebuilders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007)(quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983)).

46. By categorically denying bond hearings to all applicants for admission, including Mr. Hinojosa Garcia, Respondents violated the APA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Mr. Hinojosa Garcia prays that this Court grant the following relief:

1. Accept jurisdiction and maintain continuing jurisdiction of this action;
2. Order Respondents to show cause why the writ should not be granted within three days, and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;
3. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Hinojosa Garcia from their custody;
4. In the alternative, Order Respondents to provide, within seven days, an individualized bond hearing before a neutral decisionmaker at which government bears the burden to justify detention by clear and convincing evidence and to consider alternatives to detention;
5. Enter preliminary and permanent injunctive relief enjoining Respondents from further

unlawful detention of Mr. Hinojosa Garcia;

6. Enjoin Respondents from transferring Mr. Hinojosa Garcia outside the jurisdiction of the Court pending resolution of this matter;

7. Declare that Mr. Hinojosa Garcia's detention violates the Due Process Clause of the Fifth Amendment;

8. Declare that Mr. Hinojosa Garcia's detention violates the Immigration and Nationality Act;

9. Declare that Mr. Hinojosa Garcia's detention violates the Administrative Procedures Act;

10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

11. Grant such further relief as this Court deems just and proper.

Dated: October 3, 2025

Respectfully submitted,

/s/Evelyn J. Pabon Figueroa/s/
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Verification by Someone Acting on the Petitioner's Behalf Pursuant to 28 USC § 2242

I, Evelyn J. Pabon Figueroa, hereby declare under penalty of perjury that the facts alleged in the foregoing Petition for Writ of Habeas Corpus are true and correct, to the best of my knowledge.

Dated: October 3, 2025

Respectfully submitted,

/s/Evelyn J. Pabon Figueroa/s/
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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

I HEREBY CERTIFY that the following persons may have an interest in the outcome of this case:

1. **Bondi, Pamela**, Attorney General of the United States, U.S. Department of Justice
2. **Guthrie, Kevin**, Executive Director of the Florida Division of Emergency Management
3. **Hinojosa Garcia, Jose Rafael**, Petitioner
4. **Lyons, Todd M.**, Acting Director of ICE, U.S. Department of Homeland Security
5. **Mazzara, Joseph N.**, Acting General Counsel, Department of Homeland Security
6. **Noem, Kristi**, Secretary, Department of Homeland Security
7. **Pabon Figueroa, Evelyn J.**, Esquire, Counsel for Petitioner
8. **Ripa, Garrett**, ICE Field Office Director for the Miami Field Office, Department of Homeland Security
9. **Symphorien-Saavedra, Francisco**, Esquire, Counsel for Petitioner

Dated: October 3, 2025

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CERTIFICATE OF SERVICE

I, Francisco "Frank" Symphorien-Saavedra, certify that on October 3, 2025, I caused a true and exact copy of the foregoing writ to be served by first class certified mail on the following:

Kristi Noem

Secretary, U.S. Department of Homeland Security
C/O General Counsel
2707 Martin Luther King Jr. Ave. SE
Washington, D.C. 20528

Pamela Bondi

U.S. Attorney General
United States Department of Justice
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Todd M. Lyons

Acting Director
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Garrett Ripa

Field Office Director
Miami Field Office, ICE
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U.S. Attorney's Office, Civil Process Clerk

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Kevin Guthrie

Executive Director
Florida Division of Emergency Management
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/s/Evelyn J. Pabon Figueroa/s/

Evelyn J. Pabon Figueroa, Esquire
Florida Bar No. 0015594
Attorney for Petitioner

Documents in Support of Complaint

Jose Rafael Hinojosa Garcia v. Kristi Noem, et al.

Exhibit A: Petition for U Nonimmigrant Status, Form I-918, Receipt Notice

Exhibit B: Application for Employment Authorization, Form I-765, Approval Notice

CERTIFICATE OF AUTHENTICITY

I, Evelyn J. Pabon Figueroa, certify and declare under penalty of perjury that the above referenced exhibits are authentic and true and correct copies of the original documents contained in the administrative record of proceedings to the best of my knowledge.

Dated: October 3, 2025

/s/Evelyn J. Pabon Figueroa/s/
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