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Attorneys for Petitioner

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

**JAIRO JOSE ESPINOZA CRUZ,** )  
 )  
Petitioner, )  
 )  
v. )  
 )  
**BRIAN ENGLISH**, Warden, Miami Correctional )  
Facility; **KAMSING LEE**, of Indianapolis Field )  
Office U.S. Immigration and Customs Enforcement;) )  
**KRISTI NOEM**, Secretary of the U.S. Department )  
of Homeland Security; and **PAMELA JO BONDI**, )  
Attorney General of the United States, )  
in their official capacities, )  
 )  
Respondents. )  
 )

Case No. 3:25-cv-919

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

This is an Amended Petition for a Writ of Habeas Corpus filed on behalf of Jairo Jose Espinoza Cruz (hereinafter “Mr. Espinoza”) seeking relief to remedy his unlawful detention. Petitioner files this Amended Petition to correct and clarify the factual record that were not fully

addressed in the original filing. Petitioner is a 32-year-old citizen of Nicaragua who was detained by the Department of Homeland Security (“DHS”) on July 31, 2025. Respondents are detaining Mr. Espinoza Cruz pending the execution of his final removal order. Mr. Espinoza Cruz has fully cooperated with Respondents in their efforts to remove him. To date, Respondents have been unable or unwilling to remove Mr. Espinoza and thus, he has been detained for more than three months. Mr. Espinoza Cruz is not a flight risk or danger to the community. His prolonged detention is no longer justifies under the Constitution or the Immigration and Nationality Act (hereinafter “INA”).

On or about July 31, 2025, Respondents arrested Mr. Espinoza Cruz and placed in the custody of the Clay County Detention Facility. On or about October 24, 2025, Petitioner was transferred to the Miami Correctional Facility. Petitioner petitions this Court for a Writ of Habeas Corpus, pursuant to 28 USC §2241 and the Administrative Procedure Act, 5 U.S.C. § 701, et seq., to remedy his continued unlawful detention by Respondents. Petitioner requests that he be released during the pendency of this Petition. In support of this Petition, Petitioner alleges as follows:

### **JURISDICTION**

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

### **VENUE**

1. Venue is proper because Petitioner is detained at Miami Correctional Facility in Bunker Hill, Indiana, which is within the jurisdiction of this District.

**REQUIREMENTS OF 28 U.S.C. § 2243**

1. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
2. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
3. Petitioner is “in custody” for purpose of § 2241 because he is arrested and detained by Respondents.

**PARTIES**

1. Petitioner is a 32 year old citizen of Nicaragua. He is a resident of Indianapolis, Indiana, and is present within the state of Indiana as of the time of the filing of this petition. Petitioner is currently detained at Miami Correctional Facility. He is in the custody, and under the direct control, of Respondents and their agents.
2. Respondent Brian English is the Warden of Miami Correctional Facility, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Mr. English is a legal custodian of Petitioner.
3. Respondent Kamsing Lee is sued in his official capacity as the Director of the Indianapolis

Field Office of U.S. Immigration and Customs Enforcement. Respondent Mr. Lee is a legal custodian of Petitioner and has authority to release him.

4. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's custody. Respondent Ms. Noem is a legal custodian of Petitioner.
5. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Ms. Bondi is a legal custodian of Petitioner.

#### **STATEMENT OF FACTS**

1. Petitioner, Mr. Espinoza, is a 32-year-old citizen of Nicaragua. He entered the United States at the age of 17 and has remained in the country continuously since that time.
2. Mr. Espinoza was previously removed *in absentia* on or about September 28, 2017. Following his removal order, he applied for U nonimmigrant status ("U visa"), a form of immigration relief available to victims of certain qualifying crimes who have assisted or are willing to assist law enforcement under the Immigration and Nationality Act ("INA").
3. Petitioner filed a Motion to Reopen based on no notice received, as his ex-partner had forcibly removed him from his home and he did not receive any forwarded mail.
4. An Appeal to the denial of his Motion to Reopen is currently pending before the Board of Immigration Appeals ("BIA"). See *Exhibit 1*.

5. The U.S. Citizenship and Immigration Services (“USCIS”) has determined that Mr. Espinoza’s U visa petition is prima facie approvable and issued a bona fide determination under 8 U.S.C. §1184(p)(6) (*Exhibit 2*), however, a final adjudication cannot yet be made because no U visas are currently available for issuance due to annual statutory caps. Mr. Espinoza is also eligible for a waiver of inadmissibility in connection with his U visa application.
6. Mr. Espinoza has been detained for over three months. His detention arose from an argument with his domestic partner that led to his arrest and no criminal charges were filed. See *Exhibit 6* to find a letter of support from the mother of his children. He currently has no pending criminal cases, and his record reflects that he poses no danger to the community and is not a flight risk.
7. Mr. Espinoza has deep family and community ties in the United States. He has three U.S. citizen children, including a newborn born during his detention. His two-year-old child has been diagnosed with Ectodermal Dysplasia, a rare genetic disorder requiring speech and occupational therapy and constant parental care, see *Exhibit 4*. His partner, who recently gave birth, is struggling to care for both the newborn and their special-needs child without his support. See *Exhibit 5* to find all of his U.S. Citizen children birth certificates.
8. Prior to his arrest, Mr. Espinoza worked diligently, paid taxes, and served as the primary provider for his family, while his partner remained home to care for their children. His continued detention deprives his family of both emotional support and financial stability.
9. Given these circumstances, the continued detention of Mr. Espinoza is arbitrary, capricious, and legally unjustifiable. His release would not pose any risk to public safety and would serve the humanitarian purpose underlying the U visa program. The United States Citizenship and Immigration Services has indicated when issuing Deferred Action and Bona Fide

Determination he is not a priority for removal. Petitioner should be precluded from removal because no new facts or circumstances have occurred since the Deferred Action. There is no better time for this Court to consider the merits of Mr. Espinoza's request for release.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**CONSTITUTIONAL CLAIM**

1. Petitioner's allegations in the above paragraphs are realleged and incorporated herein.
2. Petitioner's detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

**COUNT TWO**

**STATUTORY CLAIM**

1. Petitioner's allegations in the above paragraphs are realleged and incorporated herein.
2. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.
3. USCIS has already issued a bona fide determination and granted deferred action, confirming that Petitioner is not a removal priority at this time and there are no changes circumstances to justify revocation of deferred action.

**COUNT THREE**

**VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

1. Petitioner's allegations in the above paragraphs are realleged and incorporated herein.

2. Mr. Espinoza has been aggrieved by Respondents' actions in detaining Mr. Espinoza. Respondents' detention of and failure to release Mr. Espinoza constitutes final agency action.
3. Respondents' detention of Mr. Espinoza and their failure to release Mr. Espinoza is arbitrary, capricious, and not in accordance with the law.
4. The agency's action determined the rights of Mr. Espinoza and has the legal consequence of continued detainment, depriving Mr. Espinoza of his fundamental right to liberty and family integrity. Accordingly, Mr. Espinoza is entitled to judicial review of the Respondent's actions under 5 U.S.C. § 704.
5. Mr. Espinoza has exhausted all administrative remedies available to him as of right.
6. Mr. Espinoza has no recourse to judicial review other than by this action.

#### **COUNT FOUR**

1. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. §2412.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1101 *et seq.*;
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any other basis justified under law; and

6. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Katie Rosenberger

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*Counsel for Petitioner*

Dated: November 19, 2025

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

I represent Petitioner, Jairo Jose Espinoza Cruz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this   19th   day of   November  , 2025.

/s/Katie Rosenberger

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