UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEREMIAS GARCIA DE LA CRUZ	§	
Petitioner,	§	
	§	Civ. No.
v.	§	
PAM BONDI, United States Attorney General;	§	DHS File Number: A[redacted]
KRISTI NOEM, Secretary of the United States Department of Homeland Security;	§	**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;	§	
BRET BRADFORD, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement;	§	
RANDY TATE, Warden, Montgomery Processing Center	§	
Respondents.	§	

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PRELIMINARY STATEMENT

This petition challenges the unlawful detention of Petitioner JEREMIAS GARCIA DE LA CRUZ (hereinafter "GARCIA DE LA CRUZ"), a 44 -year-old Mexican man, who has resided in the United States for more than 25 years. Petitioner was arrested on 9 November 2025 by the Houston Police Department on suspicion of Class B misdemeanor Driving While Intoxicated and he has since been transferred to the MONTGOMERY PROCESSING CENTER in Conroe, Texas, without a bond hearing. *See* Exh. 1, ICE Locator Search Results. The Department of Homeland Security ("DHS") served two separate warrants for his arrest in the immigration case and asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress's separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge ("IJ") review. The Immigration Court in Conroe, TX has not yet ruled, but Petitioner anticipates that the court will adopt DHS's position in light of *Matter of Yajure-Hurtado*, thereby denying him access to a bond hearing under 8 U.S.C. § 1226.

DHS's novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the Immigration and Nationality Act's (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress's dual-track detention scheme, and imposes categorical detention on long-time residents like GARCIA DE LA CRUZ who present no danger and are not flight risks.

The human consequences are immediate and severe. Mr. GARCIA DE LA CRUZ supports his wife, GLADYS YOLANDA PAZ CABRERA (hereinafter "Paz Cabrera") on a daily basis as she lives with the medical diagnosis that is more particularly detailed in the sealed corroborative materials that are annexed to this application. *See* Sealed Exh. 5, Gladys Yolanda Paz Cabrera

medical records and HIPAA release forms. Mrs. Paz Cabrera would suffer extreme and exceptionally unusual hardship if her husband were detained for an extended period of time. The Constitution, the INA, and basic principles of fairness do not permit this outcome. Petitioner respectfully requests immediate release or, at minimum, that this Honorable Court order that a prompt custody redetermination under § 236(a) occur at the Conroe Immigration Court.

I. INTRODUCTION

1. This Petition seeks the immediate release of Petitioner JEREMIAS GARCIA DE LA CRUZ ("Petitioner"), age 44, from unlawful detention in violation of his constitutional and statutory rights.
2. Petitioner was detained on suspicion of Class B misdemeanor Driving While Intoxicated by the Houston Police Department. When he was released from the Harris County Jail pursuant to a personal recognizance bond, DHS served him with a warrant for his arrest based on the commencement of a removal proceeding. He was transferred by DHS to the civil detention facility operated by the warden of MONTGOMERY PROCESSING CENTER at Conroe, Texas.
3. Petitioner has been in the United States for over 25 years. Petitioner has a US citizen son, J.G.P., who is approximately 15 years old. Petitioner also helped to raise [redacted] who is Mrs. Paz Cabrera's daughter from a prior relationship. Mrs. Cano is now married and resides in Harris County, Texas. Petitioner has resided in Harris County, Texas for more than 25 years, purchased a residence in which his wife and teenage son currently live, and pays taxes through the use of an ITIN on earnings that he gains from self-employment as a home builder. Mrs. Paz Cabrera petitioned USCIS through Form I-130 on or about 10 February 2023 and that petition remains under USCIS administrative review. This

detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support.

4. Petitioner's detention is based on DHS's assertion that his entry into the United States without inspection subjects him to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). The Immigration Court has not yet ruled, but Petitioner anticipates that the court will adopt DHS's position in light of *Matter of Yajure-Hurtado*, thereby denying him access to a bond hearing under 8 U.S.C. § 1226. DHS does not allege in the Notice to Appear that Petitioner is an arriving alien, but rather a person who is present in the United States who has not been admitted or paroled. *See* Sealed Exh. 2, Form I-862 Notice to Appear.
5. On or about 10 November 2025, DHS supervisor Slavin swore a warrant that he then served on Petitioner in Houston, TX at the Harris County Jail. *See* Sealed Exh. 3, Form I-200 "Warrant for Arrest of Alien."
6. On or about 11 November 2025, DHS supervisor Marino swore out a separate warrant and served it upon Petitioner in Conroe, Texas. *See* Sealed Exh. 4, Form I-200 "Warrant for Arrest of Alien."
7. Petitioner is eligible for 42B Cancellation of Removal for Certain Nonpermanent Residents pursuant to 8 U.S.C. §1229b(b), withholding of removal pursuant to the INA and the Convention Against Torture, and post-hearing voluntary departure. Each and every potential relief application depends on a showing of good moral character. 8 U.S.C. § 1101(f).
8. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights. In the alternative, he respectfully requests the Court order

Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

II. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody at MONTGOMERY PROCESSING CENTER. *See* Exh. 1. He has been detained since or about 10 November 2025.

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

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

11. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1391, because at least one Respondent is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F.2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner JEREMIAS GARCIA DE LA CRUZ is a 44 -year-old citizen of MEXICO. He entered the United States in or about 1999 without inspection and has resided here continuously for over 25 years.

15. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the Executive Office for Immigration Review ("EOIR"), including policies that bear on immigration judges' jurisdiction over custody.

16. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of U.S. Immigration and Customs Enforcement ("ICE") and is a legal custodian of Petitioner.

17. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. He oversees ICE operations, including detention and removal, and is a legal custodian of Petitioner.

18. Respondent Bret Bradford is named in his official capacity as Field Office Director of the HOUSTON ICE Field Office. He is responsible for ICE enforcement in this District and is a legal custodian of Petitioner.

19. Respondent Randy Tate is named in his official capacity as Warden of the MONTGOMERY PROCESSING CENTER in Conroe, Texas. He has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens.

20. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner's continued detention.

V. FACTUAL ALLEGATIONS

21. Petitioner was detained following on 9 November 2025 in Houston, Texas by the Houston Police Department on suspicion of Class B misdemeanor Driving While Intoxicated. After DHS issued a warrant for his arrest, he was transferred to ICE custody at the MONTGOMERY PROCESSING CENTER in Conroe, Texas.

22. ICE has held Petitioner without bond, asserting he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

23. On 12 November 2025, DHS filed form I-862 Notice to Appear that commenced a removal proceeding. Undersigned counsel concurrently represents Mr. Garcia De La Cruz for the removal proceeding. The next master calendar hearing is scheduled for 2 December 2025 at 0800. In light of *Matter of Yajure-Hurtado*, Petitioner anticipates that the Immigration Court will opine that it lacks jurisdiction to consider custody re-determination. Petitioner seeks an order from this Honorable Court prior the next scheduled master calendar hearing that directs the Department of Justice to conduct a bond hearing.

24. ICE's litigation stance reflects "interim guidance" issued July 8, 2025, reinterpreting detention authority to treat nearly all noncitizens present without admission as "arriving" and ineligible for bond. Exh. 6, Lyons Memo, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).

25. For nearly three decades, DHS and EOIR treated individuals arrested in the interior and present without admission as detained under § 1226(a), subject to IJ bond hearings unless § 1225(b)(1), § 1226(c), or § 1231 applied.

26. Applying *Yujare Hurtado*, Petitioner anticipates that the immigration judge will not conduct a bond hearing on the asserted grounds of lack of jurisdiction. Petitioner would then pursue an administrative appeal to the Board of Immigration Appeals ("BIA"). BIA bond appeals typically take months, during which detention continues, rendering administrative review an inadequate and delaying remedy in these circumstances.

27. Petitioner's detention has inflicted severe hardship on his family. Petitioner's wife suffers from the conditions that are more particularly highlighted in the corroborative materials that are annexed to this application in a sealed record. *See* Exh. 5. None of the nonpublic personal information in Mrs. Paz Cabrera's medical diagnosis is included in this public portion of this application. She authorized the sharing of her information through the use of HIPAA forms that are included in the sealed exhibit. Petitioner also maintains active self-employment that for many years has been the primary source of room and board for his wife and son.

28. Petitioner's ongoing detention severely impedes his ability to defend against removal, including gathering evidence and coordinating with counsel and witnesses. If he is detained he would not be able to zealously advocate for himself in the pending Harris

County criminal charge. If a conviction in that case results, the immigration court would use the conviction as evidence of his lack of "good moral character" even in spite of the fact that Respondent's wife, Paz Cabrera, would suffer extreme and exceptionally unusual hardship if he were removed to Mexico. Mrs. Paz Cabrera is Honduran and has no ties to Mexico of any kind. Petitioner has not lived in Mexico during this century.

29. Petitioner remains detained solely because DHS misclassifies his custody under § 1225(b) rather than § 1226(a), contrary to statutory text, constitutional principles, and historical practice.

VI. LEGAL FRAMEWORK: DUE PROCESS CLAUSE

30. The Fifth Amendment's Due Process Clause applies to "all persons" within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

31. Congress created two distinct detention regimes. Section 235(b) governs inspection and limited mandatory detention of arriving aliens or those apprehended shortly after entry; § 236(a) governs interior arrests on warrant, authorizing detention pending a removal decision with discretionary release on bond. *See Jennings v. Rodriguez*, 583 U.S. 281, 297, 302–03 (2018) (describing § 235(b) as "primarily" for those seeking entry and § 236(a) as applying to aliens "already in the United States" and arrested "on warrant"). Through the Notice to Appear that DHS filed in the immigration court case, no allegation is made that

Respondent is an arriving alien. *See* Exh. 2. On consecutive days in Houston and Conroe, DHS served Petitioner with Forms I-200, Warrant for Arrest of Alien. *See* Exh. 3, 4.

32. The Laken Riley Act confirms Congress preserved § 236(a)'s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory-detention category under § 236(c)(1)(E) (pairing inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) with specified crimes). If § 235(b) already mandated detention for all inadmissible entrants, § 236(c)(1)(E) would be redundant—an outcome courts must avoid. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress legislated against decades of agency practice applying § 236(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025).

33. On September 5, 2025, the BIA in *Matter of Yajure-Hurtado* adopted DHS's position that immigration judges lack bond jurisdiction for noncitizens present without admission because they are "applicants for admission" detained under § 235(b)(2)(A) for the duration of proceedings. 29 I. & N. Dec. at 220 (relying on *Jennings*, 583 U.S. at 300). But *Jennings* construed statutory text and explicitly left open constitutional challenges. *Id.* at 303. Moreover, the Supreme Court has since overruled *Chevron* deference; courts must independently interpret the INA rather than deferring to agency readings. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024).

34. Longstanding agency materials confirm that individuals encountered inside the country without admission were treated under § 236(a) and were "eligible for bond and bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). DHS itself historically limited the "applicant for admission"

designation to encounters within a short time and distance from the border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020) (describing DHS's 2004 14-day/100-mile policy for expedited removal).

35. Arrest authority reinforces this divide: warrantless arrests are narrowly permitted under 8 U.S.C. § 1357(a) (INA § 287(a)); otherwise, interior arrests proceed on warrant (Form I-200) and fall under § 236(a). *See Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022) (equating "reason to believe" with probable cause; warrantless arrests are exceptional). Mr. GARCIA DE LA CRUZ's interior arrest was effectuated pursuant to an I-200 warrant—placing him squarely within § 236(a). *See* Exh. 2, 3, 4.

36. Statutes must be read "with a view to their place in the overall statutory scheme," giving effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted); *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). DHS's view collapses §§ 235 and 236, nullifies § 236(c)(1)(E), and contradicts the INA's structure.

37. Federal courts addressing DHS's new theory have rejected it and ordered relief, concluding § 236(a) governs noncitizens "already in the country."[1] Even under DHS's classification,

[1] *See, e.g., Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2, *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2267803, at *4–7 (S.D.N.Y. Aug. 8, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *4–7 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *11–16 (W.D. Wash. Apr. 24, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025); *Ercelik v. Hyde*, No. 1:25-cv-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025); *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025); *Cuevas-Guzman v. Andrews*, No. 1:25-cv-00759, 2025 WL 2617256, at *7 (E.D. Cal. Aug. 2025); *Alvarez-Martinez v. Noem*, No. 5:25-cv-00876, 2025 WL 2598379, at *4–5 (W.D. Tex. Aug. 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-11641, 2025 WL 2609425, at *3 (E.D. Mich. Aug. 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099, at *5–7 (D. Ariz. Aug. 11, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *6–8 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411, at *4–6 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 1:25-cv-11631-BEM, 2025 WL 2403827, at *3–5 (D. Mass. Aug. 19, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, slip op. at 3–5 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *8–10 (W.D. La. Aug. 27, 2025).

constitutional avoidance and due process require meaningful review of whether mandatory detention actually applies (a *Joseph*-type inquiry), and courts must preserve habeas for unlawful detention. *See Jennings*, 583 U.S. at 303; *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

38. The equities here underscore the *Mathews v. Eldridge* balance: (1) Petitioner's profound liberty and family interests; (2) the high risk of erroneous deprivation from DHS's categorical no-bond stance (and the value of individualized hearings); and (3) minimal governmental burden to provide the longstanding process Congress preserved. *See* 424 U.S. 319, 333, 335 (1976).

39. Because Mr. GARCIA DE LA CRUZ was arrested in the interior and under warrant authority, § 236(a) governs his detention. DHS's attempt to shoehorn him into § 235(b)(2) is contrary to the statutory text, structure, and constitutional principles. He is entitled to release or, at minimum, a prompt bond hearing before an IJ applying the correct legal standard.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

41. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

42. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

43. Mr. GARCIA DE LA CRUZ's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

44. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has 25+ years), Mr. GARCIA DE LA CRUZ is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

45. Respondents have deprived Mr. GARCIA DE LA CRUZ of his liberty interest protected by the Fifth Amendment by detaining him since 10 November 2025.

46. Mr. GARCIA DE LA CRUZ's detention is improper because he would be deprived of a bond hearing at the immigration court. A hearing is a right to be heard, and here the administrative rule makes it a foregone conclusion that GARCIA DE LA CRUZ is ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, *habeas* is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

47. Respondents' actions in detaining Mr. GARCIA DE LA CRUZ without sound legal justification violate the Fifth Amendment.

48. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

49. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

50. Petitioner re-alleges and incorporates by reference the paragraphs above.

51. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, DHS finds that he is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

53. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

54. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process
Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

55. Petitioner re-alleges and incorporates by reference the paragraphs above.

56. Mr. GARCIA DE LA CRUZ has a vested liberty interest in preventing his removal because he is eligible for 42B Cancellation of Removal for Certain Nonpermanent Residents, Withholding of Removal, and post-hearing voluntary departure, and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk under 8 U.S.C. §1226(a).

57. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

FOURTH CAUSE OF ACTION
ADMINISTRATIVE PROCEDURE ACT

59. Petitioner re-alleges and incorporates by reference the paragraphs above.

60. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

61. As set forth in Count Two and Three, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an IJ.

62. In being denied the opportunity to return to his family, and pursue 42B Cancellation of Removal for Certain Nonpermanent Residents or Withholding of Removal in a non-detained court setting where he is free to gather the necessary evidence, Mr. GARCIA DE LA CRUZ would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural

and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody.

63. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that Petitioner is detained under § 236(a), not § 235(b), and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

FIFTH CAUSE OF ACTION
STAY OF REMOVAL CLAIM

64. Petitioner re-alleges and incorporates by reference the paragraphs above.

65. The denial of a bond hearing, followed by removal of Mr. GARCIA DE LA CRUZ from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

66. The Court should grant the stay of Mr. GARCIA DE LA CRUZ's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

67. Petitioner re-alleges and incorporates by reference the paragraphs above.

68. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. GARCIA DE LA CRUZ the opportunity for meaningful review of the unlawfulness of his detention and removal.

69. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. GARCIA DE LA CRUZ satisfies these three requirements and may invoke the Suspension Clause.

70. First, although Mr. GARCIA DE LA CRUZ is not a U.S. citizen or resident, he has lived here for over 25+ years, and he qualifies for 42B Cancellation of Removal for Certain Nonpermanent Residents, because he has been lawfully and lovingly married to a lawful permanent resident, Mrs. Paz Cabrera, who would suffer extreme and exceptionally

unusual hardship as the result of Mr. GARCIA DE LA CRUZ's removal. Mr. GARCIA DE LA CRUZ has significant family connections in the United States, including a teenage son and an adult stepdaughter who is now married. In spite of the presence of the children, it is Petitioner and not the children who has the moral responsibility to care for his wife, Mrs. Paz Cabrera. All of which establishes a substantial legal relationship with the United States.

71. Mr. GARCIA DE LA CRUZ satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

72. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. GARCIA DE LA CRUZ is entitled to the writ.

73. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. GARCIA DE LA CRUZ the right to show at a hearing that he is mis-classified and that he is not subject to mandatory detention, without proper notice or due process, deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

SEVENTH CAUSE OF ACTION
INJUNCTIVE RELIEF

74. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

75. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury

outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. Id.

76. Respondents' actions have caused Petitioner harm that warrants immediate relief.

VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's 10 November 2025, apprehension and detention without bond of Mr. GARCIA DE LA CRUZ was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should *not* be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

(5) Enjoin ICE from transferring Mr. GARCIA DE LA CRUZ outside of the SOUTHERN District of Texas while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. GARCIA DE LA CRUZ on his own recognizance, parole, or reasonable conditions of supervision, *or* order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Joseph.*

(7) Grant any other relief that this Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner, his wife, and his U.S. son and stepdaughter, depriving them of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted,

/s/ Timothy Michael Donahue
Counsel for Petitioner
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tmdonahueatty@hotmail.com

19 November 2025

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

I represent Petitioner, JEREMIAS GARCIA DE LA CRUZ, and submit this verification on his behalf. On 15 November 2025, I visited him at the Montgomery Processing Center in Conroe, Texas, and translated the factual basis portions of this application to him from English to Spanish. 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 after thoughtful review by GARCIA DE LA CRUZ.

/s/ Timothy Michael Donahue
Counsel for Petitioner
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Houston, TX 77008
Tel: 713-894-9664
tmdonahueatty@hotmail.com

19 November 2025

CERTIFICATE OF SERVICE

I hereby certify that on 19 November 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the SOUTHERN District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600
HOUSTON, TX 78216

Warden, MONTGOMERY PROCESSING CENTER
Randy Tate
806 Hilbig Road
Conroe, TX 77301

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

/s/ Timothy Michael Donahue
Counsel for Petitioner
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19 November 2025