

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION AT NATCHEZ

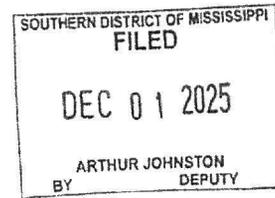
**Elvin Donaly Garcia Canales,**

Petitioner,

v.

Case No.: **5:25-cv-141-DCB-BWR**

**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; **Melissa B. Harper**, ICE ERO New Orleans Field Office Director; and **Raphael Vergara**, in his official capacity as Warden of the Adams County Correctional Center;



**PETITION FOR  
WRIT OF HABEAS CORPUS**

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, Elvin Donaly Garcia Canales (hereinafter “Mr. Garcia Canales”), seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents. Mr. Garcia Canales 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. Garcia Canales, a 22-year-old Honduran national, entered the United States (hereinafter “US”) in or around April 17, 2021, and has been living here since then. Despite having no prior significant criminal history, he was detained on October 27, 2025, and transferred to a detention facility inside the Big Cypress National Preserve, named Alligator Alcatraz 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”). He was then transferred on or about November 12, 2025, to Adams County Correctional Center, (hereinafter, “the detention center”), run by the Department and ICE.

3. Federal law does not authorize state agencies to hold immigration detainees during the removal process.

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

5. Mr. Garcia Canales 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.

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

## II. PARTIES

7. Petitioner, Elvin Donaly Garcia Canales, is a 22-year-old native and citizen of Honduras who entered the US in or around April 17, 2021. He is being detained without a bond by Respondents at the detention center in Mississippi.

8. 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. Garcia Canales. This Respondent is being sued in her official capacity.

9. 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. Garcia Canales. This Respondent is being sued in her official capacity.

10. 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. Garcia Canales. This Respondent is being sued in his official capacity.

11. Respondent, Mellissa B. Harper, is the ICE Field Office Director for the New Orleans Field Office. The New Orleans Field Office is responsible for the detention of noncitizens in Alabama, Arkansas, Louisiana, Mississippi, Tennessee and at the detention center where Mr. Garcia Canales 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. Garcia Canales. This Respondent is being sued in her official capacity.

12. Respondent, Raphael Vergara, is named in his official capacity as the Warden of Adams County Correctional Center. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Vergara’s address is 20 Hobo Forks Rd. Natchez, MS 39120.

### **III. JURISDICTION AND VENUE**

13. 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. Garcia Canales 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.

14. 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).

15. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Garcia Canales is detained at the detention center in or near Natchez, Mississippi, within the court's jurisdiction.

#### **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

17. Mr. Garcia Canales 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).

18. Further, no statutory exhaustion requirements apply to Mr. Garcia Canales' 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**

19. 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).

20. 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).

21. 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.

22. 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.

23. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), IJs lack authority to redetermine custody for “arriving aliens.” 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.

## VI. FACTS AND PROCEDURAL HISTORY

24. In or around April 17, 2021, Mr. Garcia Canales entered the US when he was 17-years-old. He has lived in the country since then.

25. On December 2, 2022, he filed a Petition for Qualifying Family Member of U-1 Recipient, Form I-918A (hereinafter “U Petition”), which is currently pending with U.S. Citizenship and Immigration Services (hereinafter “USCIS”). *See* Petition for Qualifying Family Member of U-1 Recipient, Form I-918A, Receipt Notice attached hereto as **Exhibit A**.

26. USCIS granted him deferred action and employment authorization through February

11, 2029. *See*, Copy of Employment Authorization Card and Bona Fide Determination Notice, attached hereto as **Exhibit B**.

27. Mr. Garcia Canales was detained on or around October 27, 2025, and transferred to the detention center on or around November 12, 2025.

28. Upon information and belief, Mr. Garcia Canales 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. Garcia Canales effectively remains off the grid of the immigration tracking system.

29. Mr. Garcia Canales has been served with a Notice to Appear (hereinafter "NTA") and removal proceedings have been commenced against him. Mr. Garcia Canales is scheduled to appear before November 25, 2025, at 8:30 a.m. before Immigration Judge Jonathan Charles at the LaSalle Immigration Court in Jena, Louisiana. Mr. Garcia Canales appears eligible for U visa status.

30. Mr. Garcia Canales 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.

31. Respondents have provided no meaningful procedures and deprived Mr. Garcia Canales 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**

32. Mr. Garcia Canales re-alleges and incorporates paragraphs 1 through 30 above.

33. 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.

34. 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

35. 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. Garcia Canales’ 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).

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

37. Under these circumstances, Mr. Garcia Canales’ detention violates both substantive and procedural due process.

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

38. Mr. Garcia Canales re-alleges and incorporates paragraphs 1 through 30 above.

39. Even if detained under INA § 235(b)(2)(A), Mr. Garcia Canales’ 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**

40. Mr. Garcia Canales re-alleges and incorporates paragraphs 1 through 31 above.

41. 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).

42. 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)).

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

**VIII. PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Garcia Canales 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. Garcia Canales from their custody based on his deferred action status;
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. Garcia Canales;

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

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

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

9. Declare that Mr. Garcia Canales' 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.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 25<sup>th</sup> day of November, 2025.



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**Documents in Support of Complaint**

*Elvin Donaly Garcia Canales v. Kristi Noem, et al.*

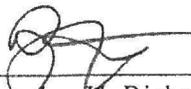
Exhibit A: Petition for Qualifying Family Member of U-1 Recipient, Form I-918A, Receipt Notice

Exhibit B: Copy of Employment Authorization Card and Bona Fide Determination

**CERTIFICATE OF AUTHENTICITY**

I, Brandon H. Riches, 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: November 25, 2025

  
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