

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

OSCAR GASCA-AGUILAR	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. _____
	)	
	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS
Warden of Folkston Detention Center;	)	
Secretary of the U.S. Dept of Homeland	)	
Security; and, Attorney General of the	)	
United States, in their official capacities,	)	
	)	
Respondents.	)	

PETITION FOR A WRIT OF HABEAS CORPUS

AMIR M. FARZANEH  
LEAD COUNSEL  
PRO HAC VICE MOTION FILED CONTEMPORANEOUSLY

AMY LEE COPELAND  
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COUNSEL FOR PETITIONER  
OSCAR GASCA-AGUILAR

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**PETITION FOR A WRIT OF HABEAS CORPUS**

COMES NOW, Petitioner, Oscar Gasca-Aguilar, by and through his attorney of record, Amir M. Farzaneh, and hereby petitions this Court to issue a Writ of Habeas Corpus to review his unlawful detention by the U.S. Immigration and Customs Enforcement (ICE) and to enjoin his removal from the United States. No petition for a writ of habeas corpus, or any other request for judicial review, has previously been filed in any court to review the detention and pending removal proceedings complained of herein.

Petitioner files this action because the Immigration Court finds that under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) it does not have jurisdiction to consider the matter of bond of a bond hearing. This is in stark contradiction to the *Bautista* court’s final

judgment in the case holding that the immigration courts do have jurisdiction. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C. D. Cal. Dec. 18, 2025). Therefore, Petitioner files this action to protect his rights under both the Due Process Clause of the Fifth Amendment to the Constitution and applicable federal law. In support of this petition, Petitioner alleges as follows:

### **JURISDICTION**

1. This action arises under the Constitution, the Immigration and Nationality Act of 1952, as amended (the INA), 8 U.S.C. §1101 *et. seq.*, and the Administrative Procedure Act (the APA), 5 U.S.C. *et. seq.* This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 *et. seq.*; Art. I, §9, Cl. 2 of the United States Constitution (the Suspense Clause); and the common law. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, and the All Writs Act, 28 U.S.C. § 1651. Finally, this Court has mandamus jurisdiction pursuant to 28 U.S.C. § 1361.

### **VENUE**

2. Venue is proper because Petitioner is currently detained at the Folkston D. James Detention Facility in Folkston, Georgia, which is within the jurisdiction of this Court. 28 U.S.C. § 2241 *et. seq.* and 28 U.S.C. §1391.
3. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and a substantial part of the events or omission giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

4. The Court must grant the petition for writ of habeas corpus or issue an order to show cause 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).
5. 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).

**PARTIES**

6. Oscar Gasca-Aguilar is a native citizen of Mexico. His last entry into the United States was in 2003. He has been detained by (ICE) since October 8th, 2025.
7. Warden of Folkston Detention Center, and he/she has immediate physical custody of Petitioner pursuant to the facility’s contract with ICE to detain noncitizens and is legal custodian of Petitioner. The Warden is a legal custodian of Petitioner.
8. 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 Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the component agency responsible for Petitioner’s detention. Respondent Noem is a legal custodian of Petitioner.

9. Respondent, Pam Bondi, is sued in her official capacity as the Attorney General of the United States and 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 court and the BIA. Respondent Bondi is a legal custodian of Petitioner.

### **STATEMENT OF FACTS**

10. Oscar Gasca-Aguilar is a citizen of Mexico. He last entered the United States in June 2003. At that time, he was not inspected or admitted. Petitioner has three children. Two are U.S. citizens, and one is a DACA recipient. Petitioner is eligible for Parole in Place (PIP), based on his U.S. citizen daughter's enlistment in the Oklahoma Air National Guard.
11. Additionally, he qualifies for cancellation of removal pursuant to INA § 240A(b), because of the undue hardship that his daughter, who is a U.S. citizen, would face if he were removed.
12. Both of these Applications have been filed on behalf of Petitioner.
13. On October 8th, 2025, Petitioner was placed under ICE custody in Folkston D. Ray Processing Center.
14. On January 15, 2026, Petitioner had a hearing for bond redetermination. The immigration court ruled that under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) it lacked the jurisdiction to determine whether a bond hearing could be granted. In response, Petitioner withdrew his request for bond, so he could refile after this Petition is filed.

**AUTHORITY FOR ADJUSTMENT OF STATUS**

15. A PIP is authorized pursuant to INA § 212(d)(5)(A). The policy emphasizes that close family members of military personnel are deserving of consideration for a favorable exercise of discretion on a case-by-case policy in accordance with USCIS policy.
16. A grant of PIP cures the inadmissibility ground under INA § 212(a)(6)(A)(i), relating to individuals “present in the United States without being admitted or paroled.”
17. An Application for Cancellation of Removal for Certain Nonpermanent Residents falls under INA § 240A(b); 8 U.S.C. § 1229(b).
18. It provides relief for certain non-citizens facing deportation by allowing adjustment to Lawful Permanent Resident status if they meet strict criteria for hardship and continuous presence in the United States.

**RIGHT TO JUDICIAL INTERVENTION**

19. The basis for this Court’s habeas jurisdiction to review the Petitioner’s claim is contained in 28 U.S.C. §2241, the general grant of habeas jurisdiction bestowed on the federal district courts, which neither the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), nor the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) eliminated or amended.
20. Petitioner is also entitled to have his detention reviewed under the common law and as a matter of constitutional right. The Writ of Habeas Corpus is guaranteed by the Constitution and cannot be suspended except where “in Cases of Rebellion or

Invasion the Public Safety may require it.” U.S. Constitution, Art. I, §9, Cl. 2 (Suspension Clause).

21. In the present action, Petitioner asserts that his detention and removal by the Respondent is in violation of the Constitution, the INA, and the APA.

**COUNT ONE**  
**Violation of the Fifth Amendment to Due Process**

22. The allegations in the above paragraphs are re-alleged and incorporated herein.

23. Oscar Gasca-Aguilar is protected by every clause of the United States Constitution that is not expressly reserved to citizens. The protection includes the Fifth Amendment. The Respondent has denied Petitioner’s application for adjustment of status and placed him in removal proceedings in direct contradiction with the BIA’s aforementioned decisions.

24. The denial of Petitioner’s adjustment of status and placing him in removal proceedings interferes with rights implicit in the concept of ordered liberty and shocks the conscience. Hence, the Respondent’s conduct is unconstitutional because it violates Oscar Gasca-Aguilar’s substantive Due Process guaranteed by the Due Process Clause of the Fifth Amendment.

**COUNT TWO**

**Violation of 8 U.S.C. § § 1255, 1229(b) and Implementing Regulations**

25. The allegations in the above paragraphs are re-alleged and incorporated herein.

26. Oscar Gasca-Aguilar has been unlawfully denied having a meaningful bond hearing since the Immigration Judge claims not to have jurisdiction. Thereby, Petitioner has been denied statutory and regulatory relief.

27. For these reasons, Petitioner's detention violates 8 U.S.C. §§ 1255 and 1229(b).

**IRREPARABLE HARM**

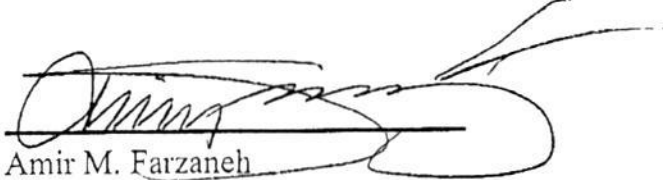
28. The Respondent's conduct is depriving Oscar Gasca-Aguilar of his liberty without providing him due process of law. The deprivation of his liberty is, in and of itself, irreparable harm. Furthermore, the unlawful denial of his adjustment of status and his placement in removal proceedings from the United States is causing irreparable harm to his family. Two of Petitioner's children are United States citizens. Removal of Oscar Gasca-Aguilar has already caused this family economic injury and inflicted upon the members of his family serious mental anguish. If Oscar Gasca-Aguilar were to be removed from the United States, his family would be economically incapable of replacing his income and would therefore require government assistance, a condition that is contrary to current U.S. immigration policy.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests this Court to grant the following relief:

- (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 within three days;
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. §§ 1255 and 1229(b);
- (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 and on any other basis justified under the law; and,
- (6) Grant any further relief this Court deems just and proper.

Respectfully Submitted,



Amir M. Farzaneh

LEAD COUNSEL

Pro Hac Vice Motion Filed Contemporaneously

OBA No. 16953

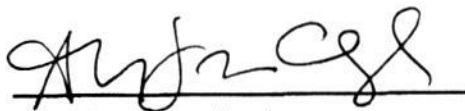
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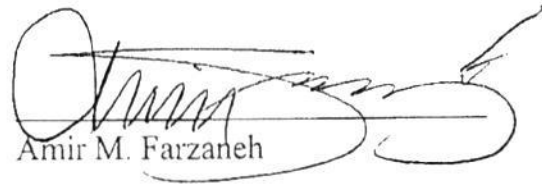
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Oscar Gasca-Aguilar, 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 29<sup>th</sup> day of January, 2026.

  
Amir M. Farzaneh