

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Abel Garcia Plaza

(b) County of Residence of First Listed Plaintiff Travis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Peek Law Group, Jeffrey A. Peek, 1406 Waller Street
Austin, Texas 78702 512-474-4445

DEFENDANTS

Kristi Noem, Secretary of Homeland Security, et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney's Office of the Western District of Texas

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	Click here for: Nature of Suit Code Descriptions.	
☐ 110 Insurance	☐ 120 Marine	☐ 130 Miller Act	☐ 140 Negotiable Instrument	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 151 Medicare Act	☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 160 Stockholders' Suits	☐ 190 Other Contract	☐ 195 Contract Product Liability	☐ 196 Franchise		
REAL PROPERTY		CIVIL RIGHTS		PRISONER PETITIONS	BANKRUPTCY	
☐ 210 Land Condemnation	☐ 220 Foreclosure	☐ 230 Rent Lease & Ejectment	☐ 240 Torts to Land	☐ 245 Tort Product Liability	☐ 290 All Other Real Property	☐ 422 Appeal 28 USC 158
						☐ 423 Withdrawal 28 USC 157
						INTELLECTUAL PROPERTY RIGHTS
						☐ 820 Copyrights
						☐ 830 Patent
						☐ 835 Patent - Abbreviated New Drug Application
						☐ 840 Trademark
						☐ 880 Defend Trade Secrets Act of 2016
						SOCIAL SECURITY
						☐ 861 HIA (1395ff)
						☐ 862 Black Lung (923)
						☐ 863 DIWC/DIWW (405(g))
						☐ 864 SSID Title XVI
						☐ 865 RSI (405(g))
						FEDERAL TAX SUITS
						☐ 870 Taxes (U.S. Plaintiff or Defendant)
						☐ 871 IRS—Third Party 26 USC 7609
						OTHER STATUTES
						☐ 375 False Claims Act
						☐ 376 Qui Tam (31 USC 3729(a))
						☐ 400 State Reapportionment
						☐ 410 Antitrust
						☐ 430 Banks and Banking
						☐ 450 Commerce
						☐ 460 Deportation
						☐ 470 Racketeer Influenced and Corrupt Organizations
						☐ 480 Consumer Credit (15 USC 1681 or 1692)
						☐ 485 Telephone Consumer Protection Act
						☐ 490 Cable/Sat TV
						☐ 850 Securities/Commodities/Exchange
						☐ 890 Other Statutory Actions
						☐ 891 Agricultural Acts
						☐ 893 Environmental Matters
						☐ 895 Freedom of Information Act
						☐ 896 Arbitration
						☐ 899

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ABEL GARCIA PLAZA
Petitioner

v.

CHARLOTTE COLLINS, Warden at T. Don Hutto
Detention Center;
MIGUEL VERGARA, San Antonio Field Office
Director, ICE Enforcement and Removal Operations;
TODD LYONS, Acting Director, U.S. Immigration and
Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of
Homeland Security;
PAMELA JO BONDI, Attorney General, U.S.
Department of Justice.

Respondents

Case No. 26-CV-68

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE**

COMES NOW, Petitioner, Abel Garcia Plaza, through undersigned counsel, and brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner has been illegally detained in Immigrations and Customs Enforcement ("ICE") custody since on or around October 28, 2025, in violation of the Constitution. This Court should order his immediate release.

I. INTRODUCTION

1. The Petitioner Mr. Abel Garcia Plaza is a 42-year-old native and citizen of Mexico who entered the United States in 2000. He has resided in Texas for more than twenty five (25) years with his U.S citizen wife Luna Cathy May and their 4 U.S Citizen children: Garcia [REDACTED] [REDACTED] DOB [REDACTED], Garcia [REDACTED] DOB [REDACTED] DOB [REDACTED] and [REDACTED] DOB [REDACTED]. See Exhibit 1 Identification documents and Exhibit 8 U.S Brith certificates of wife and children. One of his children suffers from speech delay and severe asthma. See Exhibit 9 Medical Record for Petitioner's son.

2. On or around October 28, 2025 he was apprehended by ICE after pleading guilty of one single charge of Reckless Driving for which he served thirty (30) days in jail. See Exhibit 10 Criminal Conviction record.

3. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position that noncitizens "present in the United States without admission" are subject to mandatory detention under INA § 235(b)(2)(A) and that immigration judges lack bond jurisdiction even when ICE has placed the case in § 240 proceedings. This new precedent is unlawful and cannot justify Petitioner's ongoing confinement: it misreads the statute, conflicts with binding regulations that limit expedited-removal custody to classes designated by Federal Register notice, and raises grave constitutional concerns the avoidance canon requires courts to steer away from. See INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)-(2); 62 Fed. Reg. 10,312, 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed. Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

4. Despite detaining Petitioner Mr. Garcia Plaza, ICE has not demonstrated any significant likelihood that Petitioner will be removed in the reasonably foreseeable future. Petitioner's ongoing detention violates the pre-removal-period detention statute, 8 U.S.C. § 1226, the post-removal-period detention statute, 8 U.S.C. § 1231(a)(6), and the Due Process clause of the Fifth Amendment to the U.S. Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (finding that prolonged detention of someone who could not be removed would violate due process).

5. Petitioner therefore seeks a writ of habeas corpus directing his immediate release.

II. JURISDICTION

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

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 et. seq. (declaratory action), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the Administrative Procedure Act, 5 U.S.C. § 701, et. seq., and the All Writs Act, 28 § U.S.C. § 1651.

9. This district court has subject-matter jurisdiction under 28 U.S.C. § 2241 because none of the INA's jurisdiction-stripping provisions bar review of a habeas petition that challenges the legality of civil immigration detention. Section 1252(b)(9) applies only when a noncitizen

seeks judicial review of an order of removal, the government's decision to initiate removal proceedings, or the process by which removability will be determined.

10. The Supreme Court has made clear that § 1252(b)(9) does not bar federal jurisdiction where, as here, the petitioner is not asking for review of a removal order or any step in the removal-adjudication process. See *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). For the same reason, § 1252(b)(4) is irrelevant because it governs only the standards and limits for reviewing a final order of removal, which the petitioner does not challenge. Section 1252(g) likewise offers no jurisdictional bar because it applies only to three discrete actions by the Executive: commencing proceedings, adjudicating cases, or executing removal orders. See *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). A challenge to the legality of ongoing detention is not one of those three actions and therefore remains subject to habeas review.

11. Section 1252(e)(3) also does not bar jurisdiction because it governs only systemic challenges to the validity of expedited-removal regulations or written policies. Courts consistently hold that § 1252(e)(3) is limited to such system-wide claims and does not apply to individualized or as-applied detention challenges. See *Shunaula v. Holder*, 732 F.3d 143, 147 (2d Cir. 2013); *Rodrigues v. McAleenan*, 435 F. Supp. 3d 731, 737 (N.D. Tex. 2020); *Mata Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *6 (W.D.N.Y. July 16, 2025). A habeas petition challenging whether the government has lawful statutory authority to detain a long-term resident under § 1225 rather than § 1226 is an as-applied challenge to individual custody, not a challenge to the "validity of the system." Because the petition contests only the statutory basis for detention and seeks no review of removal proceedings, the district court retains full subject-matter jurisdiction to decide the claim.

III. VENUE

12. Venue is proper because Petitioner Mr. Garcia Plaza is detained at the T. Don Hutto Detention Center, which is within the jurisdiction of this District.

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO SHOW CAUSE

14. 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).

15. Pursuant to 28 U.S.C. § 2243, Petitioner Mr. Vitela Hernandez respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner’s Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. §

701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

16. Pending adjudication of these claims, Petitioner Mr. Garcia Plaza asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Houston Field Office of the Immigration & Customs Enforcement (“ICE”) Office of Enforcement and Removal Operations (“ERO”) and this District and from ultimately resolving the removal proceedings until this case is resolved.

V. PARTIES

17. Petitioner is currently detained in the T. Don Hutto Detention Center, Texas. He was arrested and detained on or around October 6, 2025, by ICE ERO.

18. Respondent Charlotte Collins is the warden of T. Don Hutto detention center. 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 Collins is the legal custodian of Petitioner. Respondent Collin’s office is located at 1001 Welch St, Taylor, TX 76574.

19. Respondent Miguel Vergara is the Field Office Director of the Houston Field Office, Immigration and Custom’s Enforcement, which has jurisdiction over San Antonio and surrounding areas ICE Enforcement and Removal Operations (ERO). Respondent Vergara is a legal custodian of Petitioner and has authority to release him. Respondent Guevara’s office is located at 1777 NE Loop 410, Suite 1500, San Antonio, TX 78217.


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