IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI, FL, DIVISION

GONZALEZ GARCIA, Juan Manuel Petitioner, v. **PAMELA JO BONDI**, in her capacity as the U.S. Attorney General and the overseer of the Executive Office of Immigration Review (EOIR), **DHS ACTING DIRECTOR**, in her/his capacity as the Secretary of the Department of Homeland Security, **TODD LYONS**, in his capacity as the Acting Director of the U. S. Immigration and Customs Enforcement (ICE), **GARRETT J. RIPA**, in his capacity as Miami Field Office Director for U.S. Immigration and Customs Enforcement, and **WARDEN**, in his capacity as the Warden of the Miami, FL Krome Immigration Detention Center Respondents.	)	Case No:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 USC §§ 2241 and 2243
AND
RULE OF CIVIL PROCEDURE 65(a) APPLICATION FOR
PRELIMINARY INJUNCTION

Introduction:

1. Petitioner brings this petition for a writ of habeas corpus to remedy his unlawful custody by the respondents in violation of the Immigration and Nationality Act (INA); and in violation of his U.S. Constitutional 5th Amendment right to not be deprived of liberty or property without due process of law. He also seeks a prompt hearing on a Rule of Civil Procedure 65(a) Application for issuance of a preliminary injunction, enjoining

respondents from detaining him unless they provide him, within (7) days, with a custody redetermination hearing under 8 USC §1226(a) [INA §236(a)]; and finally enjoining the respondents from relocating him to a jurisdiction outside the territorial jurisdiction of the Middle District of Florida.

2. The petitioner is a widowed (37) year-old Mexican citizen (**Exhibit 1 – Petitioner's Birth Certificate with Translation**), who last entered the United States without inspection in February 2014, and who the respondents have been detaining at their Miami, FL Krome Detention Center since about March 5, 2026.

3. Since September 5, 2025, the Attorney General, through the EOIR, and the DHS Secretary, through ICE, have directed immigration judges (IJs) and ICE officials to follow the Board of Immigration Appeals' (BIA's) decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that aliens who have entered without inspection (EWI) are "applicants for admission", and must be detained under the mandatory detention provision of 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] no matter when they last entered the United States and no matter where or when they were last encountered by an immigration official. The respondents are detaining the petitioner under the mandatory detention provision of 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] in accordance with their directive.

4. On March 18, 2026, the Miami, FL IJ refused to consider the petitioner's request for a redetermination of his custody status under 8 USC §1226(a) [INA §236(a)], and instead found him subject to mandatory detention under 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] (**Exhibit 2 – IJ's January 30, 2026 Order**).

Parties:

5. The respondent, U.S. Attorney General, is being sued in her official capacity as the U.S. Attorney General, responsible for the operation and administration of the U.S. Department of Justice, and its subagency, the Executive Office of Immigration Review (EOIR).
6. The respondent, Acting Secretary of the Department of Homeland Security (DHS), is being sued in her/his official capacity as the DHS Secretary responsible for the enforcement of the Immigration and Nationality Act (INA), through the DHS subagency, US Immigration and Customs Enforcement (ICE).
7. The respondent, Todd Lyons, is being sued in his capacity as the Acting Director of ICE, responsible for the enforcement of the immigration laws and overseeing the detention of noncitizens, like the petitioner.
8. The respondent, Garrett J. Ripa, is being sued in his capacity as the Miami, FL, Field Office Director for ICE, responsible for enforcing the detention policies of the DHS and ICE that include when, where, and how the petitioner will be detained.
9. The respondent, Warden, is being sued in his capacity as the Warden of the Miami, FL, Krome Immigration Detention Center, responsible for the physical custody of the petitioner while the petitioner is detained at the Krome Immigration Detention Center.
10. The petitioner is a Mexican citizen and the widowed father of two U.S. citizen children, with whom he resided he resided at [redacted] USA, until he reported to ICE in Stuart, FL on or about March 5, 2026 (**Exhibit 3 – Birth Certificates of Petitioner's US Citizen Children, Exhibit 4 – Marriage Certificate**, and **Exhibit 5 – Death Certificate of Petitioner's Deceased US Citizen Spouse**).

Venue:

11. Venue is proper in the Southern District of Florida because the respondents are detaining the petitioner in Miami-Dade County, Florida.

Factual Allegations:

12. The petitioner incorporates and realleges the factual allegations and representations made in paragraphs 1 – 11.

13. The petitioner entered the United States without inspection (EWI) in 02/2014 and has since lived in St Lucie County, FL. When entering, he was not encountered, apprehended, or inspected by a U.S. Border Patrol or other immigration officer.

14. The petitioner's criminal record consists of (7) Florida 2nd degree misdemeanor traffic convictions for the offenses of DUI, No Valid D/L, and Leaving the Scene of an Accident.

15. The petitioner's deceased US citizen spouse passed on December 22, 2025, from a drug overdose following years of controlled substance abuse addiction and maltreatment of the petitioner and their two children.

16. On March 29, 2024, the USCIS granted the petitioner a VAWA Prime Facie Determination, which, when finally approved, entitles him to adjust his status within the United States to that of a legal permanent resident (**Exhibit 6 – November 20, 2025, USCIS Letter**).

17. In January 2023, the respondent attorney general's DOJ and EOIR personnel placed the petitioner in 8 USC §1229a [INA §240] removal proceedings with the filing of a Notice to Appear in the Miami, FL Immigration Court's EOIR (**Exhibit 7 – Notice to Appear**). The petitioner's pending removal matter has been continued multiple times due to COVID-19

hearing continuances, an exceptionally heavy immigration court docket, and a final USCIS decision on his pending VAWA petition.

18. The respondent is eligible for Non-LPR Cancellation of Removal and Adjustment of Status relief pursuant to 8 USC §1229b(b)(2) [INA §240A(b)(2)] and will be eligible for 8 USC §1255(a) [INA §245(a)] adjustment of status upon USCIS' approval of his VAWA petition.
19. Pursuant to the directive of the respondent attorney general, the EOIR and its IJs are currently bound to comply with the BIAs' decision in *Yajure-Hurtado*, which held that noncitizens who last entered the U.S. without inspection (EWI) are "applicants for admission, subject to the mandatory detention provision of 8 USC §1225(b)(2)(A) [INA 235(b)(2)(A)], and are ineligible to seek a redetermination of their custody status before an IJ under 8 USC §1226(a) [INA §235(a)].
20. Pursuant to the directive of the Acting ICE Director, ICE officials are currently required to mandatorily detain noncitizens who have entered the U.S. without inspection in accordance with ICE memos and detention policies that mirror the ruling in *Yajure-Hurtado*.
21. On March 18, 2026, the Miami, FL IJ, pursuant to the attorney general's directive, refused to consider the respondent's request for bond under USC §1226(a) [INA 236(a)]. (**Exhibit 2 – IJ's Order**).

Exhaustion of Remedies:

22. The IJ's decision finding petitioner ineligible for bond because he is subject to mandatory detention under 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] conforms with the decision of the BIA in *Yajure-Hurtado*, and there is no realistic opportunity for relief in an appeal to the BIA. BIA appeals of IJ bond decisions take several months before the BIA affirms

the IJ's decision. Meanwhile, the petitioner and his U.S. citizen children are suffering irreparable harm due to the respondents' unlawful detention of the petitioner.

Jurisdiction:

23. The Court has subject matter jurisdiction under 28 USC §2241(a) and (c)(1), (2), (3), and (5) because the respondents' detention of petitioner is a substantive violation of his liberty interest protected by the U.S. Constitution's 5th Amendment due process clause; and in violation of statutory law due respondents erroneous interpretation and misapplication of the INA's language regarding detention of noncitizens under 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)]. In similar habeas petitions, U.S. District Courts within the 11th Circuit have found they have subject matter jurisdiction over the issues raised herein (*Merino v. Ripa, et al*, (2025 WL 2941609, Case No. 25-23845-CIV-Martinez (October 15, 2025)), *Hernandez-Lopez v. Hardin*, Case No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. October 29, 2025)), *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025)).

24. The U.S. Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) found that custody determination of aliens **already in the country** and in pending removal proceedings are governed under 8 USC §1226(a) [INA §236(a)] and not 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)].

25. The U.S. Supreme Court held that "... the 5th Amendment entitles aliens to due process of law in deportation proceedings" (*Denmore v. Kim*, 538 U.S. 510, 523 (2003), citing *Reno v. Flores*, 507 U.S. 292, 306 (1993), *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001), and *Jennings*, supra at 297).

26. The Court has jurisdiction under 28 USC §1331 (federal question) and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

27. The Court may also grant relief under 28 USC §2201 et seq. (the Declaratory Judgment Act), and 28 USC §1651 (the All-Writs Act).

28. The subsections of 8 USC §1252(a) [INA §242(a)] do not preclude the District Court's review because those subsections do not mention decisions made pursuant to 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A) as being unreviewable.

29. 8 USC §1252(g) [INA §242(g) does not preclude District Court review because the petitioner is not challenging the respondents' decision to commence or adjudicate his removal proceedings, but instead is challenging their unlawful detention of him (*Merino v. Ripa*, 2025 WL 2941609, p. 3 (U.S. District Ct., S.D. FL), *Madu, v. U.S. Atty. Gen.*, 470 F.3d 1362 (11th Cir. 2006) allowing constitutional challenges to detention.

Argument:

30. Petitioner repeats, re-alleges, and incorporates by reference every allegation in the preceding paragraphs as if fully set forth herein.

31. Habeas corpus is "perhaps the most important writ known to 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) (emphasis added)). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." (*Yang v. I.R.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000)).

Claims for Relief:

I. 8 USC §1225 [INA §235] v. 8 USC §1226(a) [INA §235(a)].

32. The BIA premised its decision in *Yajure-Hurtado* on its ruling that 8 USC §1225(a)(1) [INA §235(a)(1)] defines aliens who last entered the United States without inspection as "applicants for admission," though the alien **may be already in the country** for decades. 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] requires an "applicant for admission" to be mandatorily detained until removed or granted relief in removal proceedings. Because the BIA found all EWIs to be applicants for admission, it ruled in *Yajure-Hurtado* that IJs lack jurisdiction to determine custody status.

33. The *Yajure-Hurtado* decision conflicts with the Supreme Court's ruling in *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S.Ct. 830, 200 L.Ed. 2d 122 (2018), summarized as:

> "In sum, the U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorized the Government to detain certain aliens, **already in the country** pending the outcome of removal proceedings under §§ 1226(a) and (c)." (*id.*, 289) (**emphasis added**).

The petitioner was not encountered upon last entering the United States in February 2014 and has been continuously in the country since then. He was last encountered and detained on March 5, 2026, when he self-reported to an immigration officer in Stuart, Martin County, FL, who knew that the petitioner was in pending removal proceedings with an **August 21, 2026**, hearing date (**Exhibit 8 – Notice of In-Person Hearing**) .

34. The decision in *Yajure-Hurtado* is also at odds with the plain language of the statutes. 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] reads in relevant part:

> "... in the case of an alien who is an applicant for admission, if the examining officer determines that an alien **seeking admission** is not

> clearly and beyond a doubt entitled to be admitted, the alien shall be detained ..." **(emphasis added)**.

The "**seeking admission**" phrase implies an activity on the part of the alien, which can only reasonably be understood to be asking to be admitted into the United States before an examining officer. In *Yajure-Hurtado*, the BIA avoided the INA's definition of the terms "admission' and "admitted" in making its decision. The definition is at 8 USC §1101(a)(13)(A) [INA §101(a)(13)(A) and reads:

> "The terms 'admission' and 'admitted' mean, with respect to an alien, **the lawful entry of the alien into the United States after inspection and authorization by an immigration officer**." **(emphasis added)**.

The 11th Circuit Court of Appeals in *Lanier v. Atty. Gen.*, 631 F.3d 1363, 1365-67 (11th Cir. 2011), and *Ortiz-Bouchet v. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013) held that the term "admission" when used in the INA must be interpreted as it is unambiguously defined in 8 USC §1101(a)(13)(A) [INA §101(a)(13)(A)]. If the INA's definition for 'admission' is inserted into the 8 USC §1225(b)(2)(A) phrase "*in the case of an alien who is an applicant for admission*" then petitioner to be an "applicant for admission" when last before, or encountered by, an immigration officer must have been seeking a lawful entry into the United States. During the petitioner's (25) years of undocumented presence in the U.S. following his October 2000 EWI entry, he has never presented himself to or been before an examining immigration officer to request a lawful entry into the United States. Nevertheless, the respondents require the immigration judge to be bound by *Yajure Hurtado* and find the petitioner subject to mandatory detention under 8 USC §1225(b)(2)(A).

35. Additionally, the language in USC §1225(b)(2)(A) requires several steps before mandatory detention applies. An "**examining officer**" must conclude during an "**inspection**" of an

"**applicant for admission**' or of (**an alien seeking law entry after inspection**), that the alien is **not clearly and beyond a doubt entitled to be admitted** or (not clearly entitled to the lawful entry she is seeking).

36. Because the petitioner, when last encountered, was not seeking a lawful entry into the U.S. after inspection and authorization by an immigration officer, but **had already been in the country for 12 years**, he is entitled to a bond or redetermination of custody hearing under 8 USC §1226(a) [INA §236(a)] (*Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S.Ct. 830, 200 L.Ed. 2d 122 (2018)).

37. The BIA's interpretation of USC §1225(b)(2)(A) is unnecessarily duplicative and invokes the cannon against surplusage. The recently enacted Lincoln Riley Act (LRA) (8 USC §1226(c)(1)(E) [INA §236(c)(1)(E)] was unnecessary "**if**" 8 USC §1225(b)(2) already mandates detention of an EWI alien, no matter how long they have been present. The LRA at 8 USC §1226(c)(1)(E) [INA §236(c)(1)(E)] requires mandatory detention of aliens inadmissible under 8 USC §1182(a)(6)(A) [INA §212(a)(6)(A)] if they are charged with, arrested for, or convicted of certain crimes. 8 USC §1182(a)(6)(A) [INA §212(a)(6)(A)] states that EWI aliens are inadmissible. If the noncitizen is already subject to mandatory detention under 8 USC §1225(b)(2) for merely entering without inspection, then the LRA's criminal element requirement for invoking mandatory detention of an EWI alien is superfluous and unnecessary.

II. Petitioner's detention violates the 5th Amendment Due Process Clause.

38. The U. S. Supreme Court has held "that the 5th Amendment entitled aliens to due process of law in deportation proceedings" (*Denmore v. Kim*, 538 U.S. 510, 523 (2003), *Reno v. Flores*, 507 U.S. 292, 306 (1993), *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001)).

39. The respondents' refusal to provide the petitioner with a bond hearing under 8 USC §1226(a) [INA §236(a)], and their continued restraint of his liberty interest, violates the 5th Amendment's due process clause.

III. Rule of Civil Procedure 65(a) Application for Preliminary Injunction.

40. The petitioner is **likely to succeed** on his petition because the material facts and legal arguments involved in his petition matches those of the habeas petitioners in the U.S. District Courts of the Southern and Middle Districts of Florida.

41. The petitioner and his now parentless USC children have suffered and are suffering **irreparable harm** by his continued and unlawful mandatory detention.

42. The petitioner has been the only stable parent for his two U.S. citizen children for the last 12 years. His retention of counsel to assist him through the legal immigration process and in his ongoing removal proceedings, to ensure that his children have a present parent, are **equities that counterbalance** the risk of flight or potential danger to the community. ICE can attach an electronic monitoring device if there is a risk of flight.

43. It is in the **public interest** to protect the Constitutional protections of noncitizens in the United States and to unite family members, more so when a deportation may fictitiously orphan two U.S. citizen children.

Prayer for Relief:

44. The petitioner requests the Court to:

    a. Assume Jurisdiction over this matter

    b. Issue a writ of habeas corpus, requiring the respondents to release the petitioner if they fail to timely provide him with a redetermination of custody hearing under the authority of 8 USC §1226(a) [INA §236(a)].

c. Set a hearing within (7) days for the Court to consider the issuance of a preliminary injunction, restraining the respondents from relocating the petitioner outside the territorial jurisdiction of this Court and enjoining the respondents from detaining the petitioner under 8 USC §1225(b)(2)(A) [INA §235(b)(2)(A)] unless they provide him a bond or redetermination of custody hearing under the auspices for 8 USC §1226(a) [INA§236(a)Issue a preliminary injunction requiring the respondents to release the petitioner unless they provide him a bond hearing under 8 USC §1226(a) [INA §236(a)] within (7) days.

d. Issue a preliminary injunction restricting or enjoining the respondents from removing the petitioner from the territorial jurisdiction of this Court until such time that the Court has adjudicated the Petition.

e. Grant any other and further relief the Court deems just and proper.

Dated: Friday, 20 March 2026

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Verification by Someone Acting on the Petitioner's Behalf Pursuant to 28 USC § 2242.

I, Vincent James Benincasa, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I have discussed the events described in the petition with the petitioner. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: Friday, 20 March 2026

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