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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE RIVERA LOPEZ,

Plaintiff,

vs.

JOHN MATTOS, Warden, Nevada
Southern Detention Center;

MICHAEL BERNACKE, Field Office
Director, U.S. Immigration and Customs
Enforcement,

PAMELA BONDI, Attorney General of
the United States; and

KRISTI NOEM, Secretary of Homeland
Security, in their official capacities,

Defendant

Case No.:

PETITION FOR WRIT OF HABEAS
CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, JOSE RIVERA LOPEZ, through undersigned counsel, respectfully
petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. §2241.

1 Petitioner is a long-term resident of Nevada who has been unlawfully detained
2 without a bond hearing by Respondents. This detention is based on a new legal
3 interpretation by the Department of Homeland Security ("DHS") and a recent
4 precedential decision by the Board of Immigration Appeals ("BIA") which holds
5 that individuals like Petitioner are subject to mandatory detention without bond
6 under § 235(b)(2)(A) of the Immigration and Nationality Act ("INA"). As set forth
7 below, this interpretation contravenes the plain language of the INA, established new
8 canons of statutory construction, overturns decades of agency practice, and violates
9 the Due Process Clause of the Fifth Amendment to the United States Constitution.
10 Petitioner seeks an order from this Court declaring petitioner's detention unlawful
11 and ordering his immediate release or, in the alternative, an order directing
12 Respondents to provide him with an individualized bond hearing before an
13 Immigration Judge pursuant to INA § 236(a).

14 CUSTODY

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16 Petitioner is in the physical custody of Respondent Michael Bernacke, Field
17 Office Director for U.S. Immigration and Customs Enforcement ("ICE"), Pamela
18 Bondi, Attorney General of the United States, Kristi Noem, Secretary of Homeland
19 Security and JOHN MATTOS, Warden of the NEVADA SOUTHERN
20 DETENTION CENTER in Pahrump, Nevada, within this judicial district. He is
21 under the direct control of Respondents and their agents.

22 JURISDICTION

23 This Court has jurisdiction over this petition under 28 U.S.C. §2241, which
24 grants federal courts the authority to issue writs of habeas corpus to petitioners in
25 custody in violation of the Constitution or laws of the United States. A district court's
26 habeas jurisdiction includes challenges to immigration-related detention. *Zadvydas*
27

1 *v. Davis*, 533 U.S. 678, 687 (2001); see also *Demore v. Kim*, 538 U.S. 510, 517
2 (2003). The jurisdiction-stripping provisions of the INA, including 8 U.S.C. §§
3 1226(e) and 1252, do not preclude habeas review of challenges to the statutory
4 framework and constitutional validity of immigration detention.

5 **VENUE**

6 Venue is proper in the District of Nevada as Petitioner is detained at the
7 NEVADA SOUTHERN DETENTION CENTER in Pahrump, Nevada, and
8 Respondents reside and conduct their official duties within this judicial district.

9 **PARTIES**

10 Petitioner JOSE RIVERA LOPEZ is a native and citizen of El Salvador who has
11 resided continuously in the United States for approximately twenty-six (26) years.

12 Respondent Michael Bernacke is the Field Office Director for ICE whose
13 operational area includes Nevada and is Petitioner's legal custodian.

14 Respondent Pamela Bondi is the Attorney General for the United States.

15 Respondent Kristi Noem is the Secretary for the U.S. Department of Homeland
16 Security.

17 Respondent JOHN MATTOS is the Warden of the NEVADA SOUTHERN
18 DETENTION CENTER and is Petitioner's immediate physical custodian.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 Petitioner exhausted his administrative remedies to the extent required by law.
21 Petitioner requested a bond hearing from the Immigration Court, which was denied
22 on jurisdictional grounds based on binding BIA precedent. *See Exhibit A, Order from*
23 *the Immigration Judge lacking jurisdiction in custody determination.*

24 Any further appeal to the BIA would be futile, as the BIA has already decided
25 the dispositive legal issue against Petitioner's position in *Matter of Yajure Hurtado*,
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27

29 I&N Dec. 216 (BIA 2025). Where the agency's position is set and an appeal would be futile, prudential exhaustion is not required. *Miguel Angel Maldonado Vazquez v. Thomas E. Feeley, et al.*, Case No. 2:25-cv-01542-RFB-EJY, (D. Nev. Sept. 17, 2025) citing *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Miguel Angel Maldonado Vazquez v. Thomas E. Feeley, et al*; *Laing v. Ashcroft* citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)).

STATEMENT OF FACTS

The Petitioner, a native and citizen of Peru, has maintained a continuous presence in the United States since his initial entry circa March 19, 1999. Since establishing residency in Las Vegas, Nevada, in approximately 2004, Respondent has become a property owner, holding title to his primary family residence at [REDACTED]

[REDACTED] and an additional investment property at [REDACTED]. He maintains a shared household with his U.S. citizen spouse and their three U.S. citizen children. Professionally, Respondent is employed as the Wine Director for Harlow Steak House, with a bi-weekly income of approximately \$4,000.00.

On June 15, 2023, the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) issued petitioner a travel document to safely travel outside the country. On October 2, 2023, following a brief departure, DHS paroled the petitioner into the country. *See Exhibit B, DHS Advanced Parole Document.*

Presently, he is in the custody of U.S. Immigration and Customs Enforcement and has been detained at the Southern Nevada Detention Center since September 19, 2025.

1 Petitioner was transferred to the custody of the Department of Homeland Security,
2 Immigration and Customs Enforcement on September 19, 2025 following an arrest
3 for coercion w/force or threat of force.

4 At the hearing, DHS argued that the Immigration Judge lacked jurisdiction to
5 consider bond because, as an alien present without admission, Petitioner is an
6 "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A).
7 Bound by the BIA's recent decision in *Matter of Yajure Hurtado*, the Immigration
8 Judge denied the request for a bond hearing on jurisdictional grounds, finding that
9 Petitioner was subject to mandatory detention.

10 As a result, Petitioner remains detained indefinitely without any individualized
11 assessment of whether he poses a flight risk or a danger to the community, despite
12 substantial evidence to the contrary.

13 CLAIMS FOR RELIEF

14 COUNT ONE: UNLAWFUL DETENTION IN VIOLATION OF THE 15 IMMIGRATION AND NATIONALITY ACT 16

17 Petitioner realleges and incorporates by reference the preceding paragraphs.
18 Petitioner's detention is governed by INA § 236(a), which provides for discretionary
19 release on bond, not INA § 235(b), which mandates detention for certain "arriving
20 aliens" and other applicants for admission.

21 a. **Statutory Text and Structure:** The plain language and structure of
22 the INA distinguish between aliens apprehended at the border while "arriving"
23 (governed by §235) and aliens apprehended in the interior of the United States
24 (governed by §236). Section 235, titled "Inspection by immigration officers;
25 expedited removal of inadmissible arriving aliens," concerns procedures at the
26

1 border. In contrast, §236 governs the "apprehension and detention of aliens" already
2 present in the country.

3 **b. "Seeking Admission":** Respondents' position conflates the statutory
4 terms "applicant for admission" and "seeking admission." While Petitioner may
5 technically be an "applicant for admission" under §235(a)(1) by virtue of his
6 presence without admission, he is not "seeking admission" as is required for
7 mandatory detention under §235(b)(2)(A). The phrase "seeking admission" implies
8 an affirmative and contemporaneous act of entry, not the passive state of residing in
9 the country for decades. Applying §235(b)(2)(A) to Petitioner renders the phrase
10 "seeking admission" redundant and superfluous.

11 **c. Arrest Warrant:** Respondents detained Petitioner on a "Warrant for
12 Arrest of Alien" that explicitly cites INA §236 as its authority. The plain text of §
13 236(a) begins, "On a warrant issued by the Attorney General, an alien may be
14 arrested and detained...". In contrast, INA §235 makes no mention of warrants, as it
15 applies to warrantless encounters at the border. The government's own choice to
16 issue a §236 warrant dictates that §236 governs Petitioner's custody and eligibility
17 for bond.

18 **d. Surplusage and the Laken Riley Act¹:** Respondents' interpretation
19 renders INA §236(c) superfluous. Section 236(c), as recently amended by the Laken
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21
22
23 ¹ The Laken Riley Act, Pub. L. 119-1 amends the Immigration and Nationality Act (INA) to
24 provide an additional category of aliens who are subject to mandatory detention. Specifically, the
25 Laken Riley Act amends the categories of aliens subject to mandatory detention under INA §
26 236(c), 8 U.S.C. § 1226(c), by adding an additional category at INA § 236(c)(1)(E), 8 U.S.C. §
27 1226(c)(1)(E), to require the Secretary of Homeland Security to detain any alien who:
28 (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and

Riley Act, mandates detention for specific categories of inadmissible aliens who also have certain criminal histories. If all aliens present without admission were already subject to mandatory detention under §235(b), there would have been no need for Congress to create these specific categories in § 236(c). Laken Riley Act, Pub. L. 119-1.

e. Longstanding Agency Practice and Legislative History: For over two decades following the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amendments, DHS and its predecessor agency consistently treated aliens apprehended in the interior as being detained under §236(a) and afforded them bond hearings. The government's sudden reversal contradicts its own long-standing interpretation and practice, which informed Congress's subsequent amendments to the statutory scheme.

COUNT TWO: UNLAWFUL DETENTION IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Petitioner realleges and incorporates by reference the preceding paragraphs.

Petitioner's mandatory, prolonged detention violates his rights to procedural and substantive due process under the Fifth Amendment.

a. Procedural Due Process: The Fifth Amendment requires "notice and opportunity to be heard 'appropriate to the nature of the case'". *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Trump v. J.G.G.*, 604

(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

1 U.S. ____ (2025). For a long-term Nevada resident like Petitioner, whose detention
2 imposes a "massive curtailment of liberty," procedural due process requires, at a
3 minimum, an individualized bond hearing before a neutral decision-maker to assess
4 whether his detention is necessary to prevent flight risk or danger to the community.
5 *Humphrey v. Cady*, 405 U.S. 504 at 509.

6 Respondents' policy of mandatory detention categorically denies him this
7 fundamental procedural safeguard.

8 **b. Substantive Due Process:** Freedom from imprisonment is a
9 fundamental liberty interest that lies "at the heart of the liberty" protected by the Due
10 Process Clause. *Zadvydas*, 533 U.S. at 690. Government detention is
11 unconstitutional if it is arbitrary and not "narrowly tailored to serve a compelling
12 state interest". *Reno v. Flores*, 507 U.S. 292 at 301-302 citing *United States v.*
13 *Salerno*, 481 U.S. 739, 747 (1987) ("infringements of fundamental rights must be
14 "narrowly tailored to serve a compelling state interest). The mandatory detention of
15 a long-term resident with deep community ties, without any individualized
16 assessment of risk, is not narrowly tailored. It is punitive in effect and constitutes
17 arbitrary government confinement, which violates substantive due process.

18 **c. Canon of Constitutional Avoidance:** Where a statute is susceptible
19 to two interpretations, one of which raises serious constitutional questions, courts
20 must adopt the construction that avoids such problems. Here, Respondents' reading
21 of INA §235(b) raises grave constitutional concerns by authorizing prolonged,
22 mandatory detention of long-term residents without any due process. This Court
23 should therefore adopt the alternative interpretation—that §236(a) applies—which
24 is not only better supported by the text but also avoids these constitutional infirmities.
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COUNT THREE: ATTORNEY'S FEES

Petitioner alleges and incorporates by reference the preceding paragraphs. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.


PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause why the writ of habeas corpus should not be granted;
3. Issue a writ of habeas corpus declaring Petitioner's detention unlawful and ordering Respondents to immediately release Petitioner from custody; or, in the alternative, order Respondents to provide Petitioner with an individualized custody redetermination hearing before an Immigration Judge pursuant to INA § 236(a) within seven (7) days of this Court's order;
4. Award Petitioner reasonable attorney's fees and costs; and
5. Grant any other relief this Court deems just and proper.

Respectfully submitted,

Date: October 16, 2025


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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 **JOSE RIVERA LOPEZ,**

12 **Plaintiff,**

13 **vs.**

14 **JOHN MATTOS, Warden, Nevada**
15 **Southern Detention Center;**
16 **MICHAEL BERNACKE, Field Office**
17 **Director, U.S. Immigration and Customs**
18 **Enforcement,**
19 **PAMELA BONDI, Attorney General of**
20 **the United States; and**
21 **KRISTI NOEM, Secretary of Homeland**
22 **Security, in their official capacities,**

23 **Defendant**

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CORPUS**

24 I, Juan Carrillo, employee for Attorney David E. Walters, hereby certify that
25 I served a copy of the **Petition for Habeas Corpus** was made this day by depositing
26 a copy of the same in the United States Mail in Las Vegas, Nevada, postage prepaid
27 for overnight courier, addressed to:

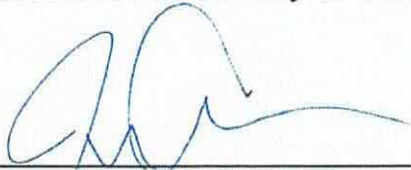
1 MICHAEL BERNACKE
2 Field Office Director
3 Salt Lake City Field Office of U.S. Immigration
4 and Customs Enforcement's
5 Enforcement & Removal Operations Division
6 2975 Decker Lake Drive, Suite 100
7 West Valley City, UT 84119-6096

8 Warden John Mattos
9 Nevada Southern Detention Center
10 2190 E. Mesquite Ave.
11 Pahrump, NV 89060

12 Secretary Kristi Noem
13 United States Department of Homeland Security
14 2707 Martin Luther King Jr. Ave. SE
15 Washington, DC 20528-0525

16 Pamela Bondi
17 Attorney General of the United States
18 950 Pennsylvania Ave. NW
19 Washington DC 20530

20 Executed this 16th day of October, 2025, at Las Vegas, Nevada:

21 

22 **J. Carrillo**
23 **Senior Paralegal**

EXHIBIT A



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LAS VEGAS IMMIGRATION COURT**

Respondent Name:

RIVERA-LOPEZ, JOSE

To:

Walters, David Edward
4060 E. Russell Rd. Ste. 100
LAS VEGAS, NV 89120

A-Number:



Riders:

In Custody Redetermination Proceedings

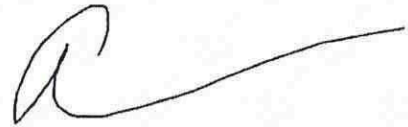
Date:

10/02/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

- ☒ Denied, because
Court lacks jurisdiction under Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). In alternative, if jurisdiction exists, Respondent has failed to demonstrate that he is not a danger to the community.
- ☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
 - ☐ released from custody under bond of \$
 - ☐ other:
- ☐ Other:



Immigration Judge: Nguyen, An 10/02/2025

Appeal: Department of Homeland Security: ☒ waived ☐ reserved
Respondent: ☐ waived ☒ reserved
Appeal Due: 11/03/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : RIVERA-LOPEZ, JOSE | A-Number : 

Riders:

Date: 10/02/2025 By: Kraay, Megan, Court Staff