

1 **DAVID E. WALTERS**
2 **STATE OF NEVADA BAR NO.: 7203**
3 **LAW OFFICE OF DAVID E. WALTERS**
4 **4060 E. RUSSELL RD., STE. 100**
5 **LAS VEGAS, NV 89120**
6 **702-405-6666**

7 **ATTORNEY FOR PETITIONER**

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

11 JOSE RIVERA LOPEZ,

12 Case No.:

13 Plaintiff,

14 vs.

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

23
24 Defendant

25 **PETITION FOR WRIT OF HABEAS**
26 **CORPUS**

27
28 **PETITION FOR WRIT OF HABEAS CORPUS**

29 Petitioner, JOSE RIVERA LOPEZ, through undersigned counsel, respectfully
30 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

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

JURISDICTION

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

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

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

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

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

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

1 29 I&N Dec. 216 (BIA 2025). Where the agency's position is set and an appeal
2 would be futile, prudential exhaustion is not required. *Miguel Angel Maldonado*
3 *Vazquez v. Thomas E. Feeley, et al.*, Case No. 2:25-cv-01542-RFB-EJY, (D. Nev.
4 Sept. 17, 2025) *citing Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Neither
5 the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require
6 petitioners to exhaust administrative remedies before filing petitions for habeas
7 corpus. *Miguel Angel Maldonado Vazquez v. Thomas E. Feeley, et al; Laing v.*
8 *Ashcroft citing Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)).

9 STATEMENT OF FACTS

10 The Petitioner, a native and citizen of Peru, has maintained a continuous presence
11 in the United States since his initial entry circa March 19, 1999. Since establishing
12 residency in Las Vegas, Nevada, in approximately 2004, Respondent has become a
13 property owner, holding title to his primary family residence at [REDACTED]
14 [REDACTED] and an additional investment property at [REDACTED] He
15 maintains a shared household with his U.S. citizen spouse and their three U.S. citizen
16 children. Professionally, Respondent is employed as the Wine Director for Harlo
17 Steak House, with a bi-weekly income of approximately \$4,000.00.
18

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

24 Presently, he is in the custody of U.S. Immigration and Customs Enforcement
25 and has been detained at the Southern Nevada Detention Center since September 19,
26 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 16 IMMIGRATION AND NATIONALITY ACT

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

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
20

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:
(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and

1 Riley Act, mandates detention for specific categories of inadmissible aliens who also
2 have certain criminal histories. If all aliens present without admission were already
3 subject to mandatory detention under §235(b), there would have been no need for
4 Congress to create these specific categories in § 236(c). Laken Riley Act, Pub. L.
5 119-1.

6 **e. Longstanding Agency Practice and Legislative History:** For over
7 two decades following the Illegal Immigration Reform and Immigrant
8 Responsibility Act of 1996 (IIRIRA) amendments, DHS and its predecessor agency
9 consistently treated aliens apprehended in the interior as being detained under
10 §236(a) and afforded them bond hearings. The government's sudden reversal
11 contradicts its own long-standing interpretation and practice, which informed
12 Congress's subsequent amendments to the statutory scheme.
13

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

16 Petitioner realleges and incorporates by reference the preceding paragraphs.

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

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

22 _____

23
24
25 (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing
26 acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault
27 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.

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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12 Case No.:

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

26 Defendant

27
28 I, Juan Carrillo, employee for Attorney David E. Walters, hereby certify that
I served a copy of the **Petition for Habeas Corpus** was made this day by depositing
a copy of the same in the United States Mail in Las Vegas, Nevada, postage prepaid
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
2975 Decker Lake Drive, Suite 100
West Valley City, UT 84119-6096

6
7 Warden John Mattos
8 Nevada Southern Detention Center
2190 E. Mesquite Ave.
9 Pahrump, NV 89060

10
11 Secretary Kristi Noem
United States Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
12 Washington, DC 20528-0525

13
14 Pamela Bondi
15 Attorney General of the United States
950 Pennsylvania Ave. NW
16 Washington DC 20530

17
18 Executed this 16th day of October, 2025, at Las Vegas, Nevada:

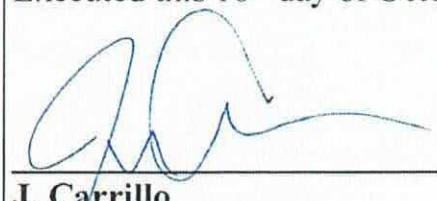
19
20
21 
22 **J. Carrillo**
23 Senior Paralegal
24
25
26
27
28

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

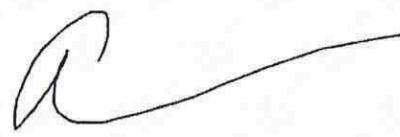
ORDER OF THE IMMIGRATION JUDGE

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