

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  
13 **Plaintiff,**

Case No.: **2:25-cv-01993-RFB-NJK**

14 vs.

**PETITIONER'S REPLY IN**  
**SUPPORT OF PETITION FOR**  
**HABEAS CORPUS**

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**  
21 **the United States; and**  
22 **KRISTI NOEM, Secretary of Homeland**  
23 **Security, in their official capacities,**

24 **Defendant**

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26 **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF**  
27 **HABEAS CORPUS**

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Petitioner Jose Rivera Lopez has lived in the United States since 1999. Despite his 26-year residence, Respondents seek to classify him as an "arriving alien" subject

1 to mandatory detention under 8 U.S.C. § 1225, stripping him of the right to a bond  
2 hearing. Respondents rely on a novel interpretation of the law to justify indefinite  
3 detention. This Court should reject Respondents' arguments, find that Petitioner is  
4 subject to 8 U.S.C. § 1226(a), and order an adequate bond hearing or release.

### 5 ARGUMENT

#### 6 **I. The Petition is Not Moot Because the October 2, 2025 Hearing Was** 7 **Defective**

8 Respondents argue this Petition is moot because an Immigration Judge (IJ)  
9 denied bond on October 2, 2025. The IJ explicitly found that "the Court lacked  
10 jurisdiction to grant bond" citing *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).  
11 Because the IJ believed he/she lacked authority to grant bond, any subsequent  
12 finding regarding "danger to the community" was superficial after the IJ found no  
13 jurisdiction. Petitioner cannot be said to have received the relief requested—a *valid*  
14 hearing under § 1226(a)—when the presiding judge ruled that § 1226(a) did not apply.  
15 A hearing conducted under the wrong statutory framework, where the judge  
16 disclaims jurisdiction, does not moot a habeas claim challenging that very  
17 framework.  
18

19 A judicial officer cannot simultaneously hold that they lack the authority to hear  
20 a matter and issue a binding decision on its merits. The IJ's "alternative" finding  
21 regarding danger is legally void dicta; it is an opinion offered by a judge who had  
22 already determined he was powerless to grant the relief sought. Because the IJ  
23 believed he was statutorily barred from granting bond under *Hurtado*, Petitioner was  
24 denied a meaningful opportunity to be heard. A hearing conducted by a judge who  
25 believes their hands are tied is not a *bona fide* bond hearing that satisfies Due Process  
26 or moots this habeas petition.  
27



1 explicitly granted Petitioner the benefit of Advance Parole, allowing him to depart  
2 the United States and return lawfully. Upon his return on October 2, 2023, he  
3 presented himself at a port of entry and was paroled into the country by Customs and  
4 Border Protection.

5 The holding in *Hurtado* is narrow: it applies to aliens "present in the United States  
6 without admission". Petitioner was inspected and authorized to enter by the  
7 Department of Homeland Security itself. The BIA in *Hurtado* did not strip  
8 Immigration Judges of jurisdiction over paroled aliens whose parole was  
9 subsequently terminated; it addressed those who had never interacted with border  
10 officials upon entry. Extending *Hurtado* to cover beneficiaries of Advance Parole  
11 improperly expands the decision beyond its text.

12 In their Response, Respondents argue that Petitioner's history "does not contain  
13 any evidence of Petitioner's parole" and claim the Form I-213 lacks this information.  
14 Respondents' failure to maintain accurate records of their own grants of benefits  
15 should not result in Petitioner's indefinite detention. Petitioner attaches hereto as  
16 **Exhibit 1** proof of the Advance Parole grant/entry; petitioner previously provided  
17 this evidence during the initial bond proceedings. Because Petitioner entered  
18 pursuant to this specific DHS authorization, he falls outside the specific factual  
19 predicate of *Hurtado*, and the general detention statute, 8 U.S.C. § 1226(a), must  
20 govern his custody status. To hold otherwise would allow DHS to lure long-term  
21 residents out of the country with promises of safe return (Advance Parole) only to  
22 trap them in mandatory detention upon arrival, a violation of fundamental fairness  
23 and Due Process.  
24

#### 25 **IV. This Court Retains Jurisdiction**

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1 Respondents erroneously claim 8 U.S.C. § 1252 strips this Court of jurisdiction.  
2 However, the Supreme Court has clarified that 8 U.S.C. § 1252(b)(9) does not bar  
3 habeas challenges to the *statutory framework* of detention. Petitioner is not  
4 challenging a discretionary decision by the Attorney General; he is challenging the  
5 Government's legal authority to detain him under § 1225 versus § 1226. This is a  
6 question of statutory interpretation and constitutional Due Process over which this  
7 District Court retains habeas jurisdiction under 28 U.S.C. § 2241.

8  
9 **CONCLUSION**

10 For the foregoing reasons, Petitioner respectfully requests this Court grant the  
11 Writ of Habeas Corpus and order Respondents to provide an individualized bond  
12 hearing pursuant to 8 U.S.C. § 1226(a) or release the petitioner from custody.

13  
14 Respectfully submitted,

15  
16 Date: November 20, 2025

17 

18 David E. Walters  
19 Attorney for Petitioner  
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1 **DAVID E. WALTERS**  
2 **STATE OF NEVADA BAR NO.: 7203**  
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9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 **JOSE RIVERA LOPEZ,**  
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13 **Plaintiff,**

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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**  
21 **the United States; and**  
22 **KRISTI NOEM, Secretary of Homeland**  
23 **Security, in their official capacities,**

24 **Defendant**

Case No.: **2:25-cv-01993-RFB-NJK**

**CERTIFICATE OF SERVICE**

25 I, Juan Carrillo, employee for Attorney David E. Walters, hereby certify that  
26 I served a copy of the **Reply** was made this day by depositing a copy of the same in  
27 the United States Mail in Las Vegas, Nevada, postage prepaid for priority mailing,  
28 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

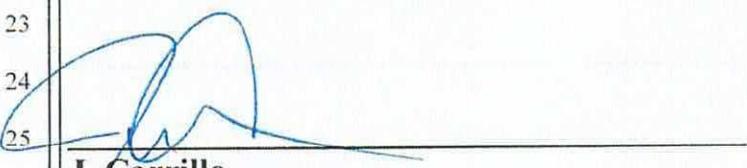
12 Secretary Kristi Noem  
13 United States Department of Homeland Security  
14 2707 Martin Luther King Jr. Ave. SE  
15 Washington, DC 20528-0525

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

20 US Attorney's Office for the District of Nevada- Civil Division  
21 [USANV.CivilDuty@usdoj.gov](mailto:USANV.CivilDuty@usdoj.gov)

22 Summer Johnson  
23 US Attorney's Office for the District of Nevada- Civil Division  
24 [Summer.Johnson@usdoj.gov](mailto:Summer.Johnson@usdoj.gov)

25 Executed this 20<sup>th</sup> day of November, 2025, at Las Vegas, Nevada:

26   
27 **J. Carrillo**  
28 **Senior Paralegal**

---

# **EXHIBIT 1**

---

THE UNITED STATES OF AMERICA

**I-512T** | AUTHORIZATION FOR TRAVEL BY A NONCITIZEN TO THE UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY | U.S. CITIZENSHIP AND IMMIGRATION SERVICES



Family Name/Given Name/Middle Initial RIVERA LOPEZ, JOSE		A-Number [REDACTED]	Receipt Number [REDACTED]
Date of Birth (Month/Day/Year) [REDACTED]	Country of Birth El Salvador	Date Issued: 06/15/2023	USCIS Account Number [REDACTED]
U.S. Address (Apt Number/Street Number and Name/City/State or Province/Zip/Postal Code) [REDACTED]			

RIVERA LOPEZ, JOSE  
[REDACTED]

**TRAVEL AUTHORIZATION:** Presentation of the original of this document authorizes a transportation line to accept the named bearer on board for travel to the United States without liability under section 273 of the Immigration and Nationality Act (INA) for bringing an alien who does not have a visa.

**TPS TRAVEL AUTHORIZATION:** The named bearer of this authorization has been granted Temporary Protected Status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (INA). The named bearer departed the United States temporarily and intends to return to the United States to resume their TPS. Presentation of the original of this document prior to 06/13/2024 allows a U.S. Customs and Border Protection (CBP) Officer at a port-of-entry to admit the named bearer, whose photograph appears hereon, into the United States. **This authorization is valid for multiple applications for admission into the United States during the validity period noted above.** Each admission period shall not exceed one year from the date of admission at the port-of-entry.

Approved  
Conditions/comments:

**NOTICE - READ BEFORE YOU TRAVEL ABROAD**

**Determination at Inspection.** If you have valid TPS and return to the United States from travel with a TPS travel authorization document, DHS will determine at inspection whether you may be admitted into TPS. See Section 304(c)(1) of the *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991* (MTINA), Pub. L. 102-232, 105 Stat. 1733, 1749 (December 12, 1991), *as amended*. If you are under removal proceedings, which includes having an unexecuted final order of removal before you leave the United States on your TPS-related travel document, then you return subject to such proceedings and, if applicable, any such removal order. If you travel and return in accordance with your TPS travel authorization and your TPS remains valid, you will be admitted into TPS as long as you are not inadmissible for certain criminal or security grounds that are mandatory ineligibility grounds for TPS. See *id.* See also INA 244(c)(2)(A)(iii). If you are inadmissible on such grounds, you may be placed in removal proceedings, and your TPS may be withdrawn.

**Travel Warning Regarding Unlawful Presence.** If you have been unlawfully present in the United States, you may want to ask an immigration attorney or a representative at an immigrant assistance organization accredited by the Board of Immigration Appeals (BIA) whether leaving the United States and again seeking admission would make you inadmissible and therefore ineligible for adjustment of status or other non-TPS immigration benefits. Under section 212(a)(9)(B)(i) of the INA, aliens who depart the United States after being unlawfully present in the United States for certain periods and again seek admission may become subject to new or additional grounds of inadmissibility. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you again seek admission to the United States after travelling abroad. **However, inadmissibility grounds based on unlawful presence under INA 212(a)(9)(B)(i) and (ii) are not applicable to admission into TPS upon return to the United States following a period of authorized travel.**

**Inadmissibility in general.** If you have concerns about admissibility and waivers, you should contact an immigration attorney or an immigrant assistance organization accredited by the BIA before making foreign travel plans.

*Laura Zuchowski*

Laura Zuchowski

Manassas Service Center  
38 River Road  
Essex Junction VT 05479-0001  
(Authorizing Office)

**Admission Stamp**

