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2 **STATE OF NEVADA BAR NO.: 7203**  
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7 **ATTORNEY FOR PETITIONER**

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

11 **YAKY HOWARD MEJIA SOTO,**

Case No.: 25-2281

12 **Plaintiff,**

**PETITION FOR WRIT OF HABEAS  
CORPUS**

13 **vs.**

14 **REGGIE RADER, Police Chief,**  
15 **Henderson Detention Center;**  
16 **MICHAEL BERNACKE, Field Office**  
17 **Director, U.S. Immigration and Customs**  
18 **Enforcement,**  
19 **SUMMER JOHNSON, US District**  
20 **Attorney for the District of Nevada,**  
21 **PAMELA BONDI, Attorney General of**  
22 **the United States; and**  
23 **KRISTI NOEM, Secretary of Homeland**  
24 **Security, in their official capacities,**

25 **Defendant**

26 **PETITION FOR WRIT OF HABEAS CORPUS**

27 **Petitioner, Yaky Howard Mejia Soto, through undersigned counsel,**  
28 **respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C.**

1 §2241. Petitioner is a long-term resident of Nevada who has been unlawfully  
2 detained without a bond hearing by Respondents. This detention is based on a new  
3 legal 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

### 15 **CUSTODY**

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, Summer Johnson, US District  
19 Attorney for District of Nevada, Kristi Noem, Secretary of Homeland Security and  
20 Reggie Rader, Police Chief for the HENDERSON DETENTION CENTER in  
21 Henderson, Nevada, within this judicial district. He is under the direct control of  
22 Respondents and their agents.  
23

### 24 **JURISDICTION**

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

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

#### 6 **VENUE**

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

#### 10 **PARTIES**

11 Petitioner Yaky Howard Mejia Soto is a native and citizen of Honduras who has  
12 resided continuously in the United States for over thirty (30) 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 Summer Johnson is the US Attorney for the District of Nevada.

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

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

19 Respondent Reggie Rader is the Police Chief in charge of the HENDERSON  
20 DETENTION CENTER and is Petitioner's immediate physical custodian.

#### 21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 Petitioner exhausted his administrative remedies to the extent required by law.  
23 Petitioner requested a bond hearing from the Immigration Court, which was denied  
24 on jurisdictional grounds based on binding BIA precedent. *See Exhibit A, Order from*  
25 *the Immigration Judge lacking jurisdiction in custody determination.*  
26

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

### 11 STATEMENT OF FACTS

12 The Petitioner, a native and citizen of Honduras, has maintained a continuous  
13 presence in the United States since his initial entry circa 1993. Since establishing  
14 residency in Las Vegas, Nevada, in approximately 1993, Respondent has his primary  
15 family residence at [REDACTED] NV 89147. He maintains a  
16 shared household with his fiancée and their three U.S. citizen children.  
17

18 On October 17, 2025, the Department of Homeland Security (DHS) detained the  
19 petitioner during a scheduled biometrics appointment.

20 Presently, he is in the custody of U.S. Immigration and Customs Enforcement  
21 and has been detained at the Henderson Detention Center since October 17, 2025.

22 During the November 17, 2025, Immigration Judge determined that the court  
23 lacked jurisdiction to consider bond because, as an alien present without admission,  
24 Petitioner is an "applicant for admission" subject to mandatory detention under INA  
25 § 235(b)(2)(A). Bound by the BIA's recent decision in *Matter of Yajure Hurtado*,  
26  
27

1 the Immigration Judge denied the request for a bond hearing on jurisdictional  
2 grounds, finding that Petitioner was subject to mandatory detention.

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

## 6 CLAIMS FOR RELIEF

### 7 COUNT ONE: UNLAWFUL DETENTION IN VIOLATION OF THE 8 IMMIGRATION AND NATIONALITY ACT 9

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

14 a. **Statutory Text and Structure:** The plain language and structure of  
15 the INA distinguish between aliens apprehended at the border while "arriving"  
16 (governed by §235) and aliens apprehended in the interior of the United States  
17 (governed by §236). Section 235, titled "Inspection by immigration officers;  
18 expedited removal of inadmissible arriving aliens," concerns procedures at the  
19 border. In contrast, §236 governs the "apprehension and detention of aliens" already  
20 present in the country.

21 b. **"Seeking Admission":** Respondents' position conflates the statutory  
22 terms "applicant for admission" and "seeking admission." While Petitioner may  
23 technically be an "applicant for admission" under §235(a)(1) by virtue of his  
24 presence without admission, he is not "seeking admission" as is required for  
25 mandatory detention under §235(b)(2)(A). The phrase "seeking admission" implies  
26 an affirmative and contemporaneous act of entry, not the passive state of residing in  
27

1 the country for decades. Applying §235(b)(2)(A) to Petitioner renders the phrase  
2 "seeking admission" redundant and superfluous.

3       **c. Arrest Warrant:** Respondents detained Petitioner on a "Warrant for  
4 Arrest of Alien" that explicitly cites INA §236 as its authority. The plain text of §  
5 236(a) begins, "On a warrant issued by the Attorney General, an alien may be  
6 arrested and detained...". In contrast, INA §235 makes no mention of warrants, as it  
7 applies to warrantless encounters at the border. The government's own choice to  
8 issue a §236 warrant dictates that §236 governs Petitioner's custody and eligibility  
9 for bond.

10       **d. Surplusage and the Laken Riley Act<sup>1</sup>:** Respondents' interpretation  
11 renders INA §236(c) superfluous. Section 236(c), as recently amended by the Laken  
12 Riley Act, mandates detention for specific categories of inadmissible aliens who also  
13 have certain criminal histories. If all aliens present without admission were already  
14 subject to mandatory detention under §235(b), there would have been no need for  
15 Congress to create these specific categories in § 236(c). Laken Riley Act, Pub. L.  
16 119-1.  
17

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18  
19  
20  
21 <sup>1</sup> The Laken Riley Act, Pub. L. 119-1 amends the Immigration and Nationality Act (INA) to  
22 provide an additional category of aliens who are subject to mandatory detention. Specifically, the  
23 Laken Riley Act amends the categories of aliens subject to mandatory detention under INA §  
24 236(c), 8 U.S.C. § 1226(c), by adding an additional category at INA § 236(c)(1)(E), 8 U.S.C. §  
25 1226(c)(1)(E), to require the Secretary of Homeland Security to detain any alien who:

26 (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and  
27 (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing  
28 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           **e. Longstanding Agency Practice and Legislative History:** For over  
2 two decades following the Illegal Immigration Reform and Immigrant  
3 Responsibility Act of 1996 (IIRIRA) amendments, DHS and its predecessor agency  
4 consistently treated aliens apprehended in the interior as being detained under  
5 §236(a) and afforded them bond hearings. The government's sudden reversal  
6 contradicts its own long-standing interpretation and practice, which informed  
7 Congress's subsequent amendments to the statutory scheme.

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

10           Petitioner realleges and incorporates by reference the preceding paragraphs.

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

13           **a. Procedural Due Process:** The Fifth Amendment requires "notice  
14 and opportunity to be heard 'appropriate to the nature of the case'". *Mullane v.*  
15 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Trump v. J.G.G.*, 604  
16 U.S. \_\_\_\_ (2025). For a long-term Nevada resident like Petitioner, whose detention  
17 imposes a "massive curtailment of liberty," procedural due process requires, at a  
18 minimum, an individualized bond hearing before a neutral decision-maker to assess  
19 whether his detention is necessary to prevent flight risk or danger to the community.  
20 *Humphrey v. Cady*, 405 U.S. 504 at 509.

21           Respondents' policy of mandatory detention categorically denies him this  
22 fundamental procedural safeguard.

23           **b. Substantive Due Process:** Freedom from imprisonment is a  
24 fundamental liberty interest that lies "at the heart of the liberty" protected by the Due  
25 Process Clause. *Zadvydas*, 533 U.S. at 690. Government detention is  
26  
27

1 unconstitutional if it is arbitrary and not "narrowly tailored to serve a compelling  
2 state interest". *Reno v. Flores*, 507 U.S. 292 at 301-302 citing *United States v.*  
3 *Salerno*, 481 U.S. 739, 747 (1987) ("infringements of fundamental rights must be  
4 "narrowly tailored to serve a compelling state interest). The mandatory detention of  
5 a long-term resident with deep community ties, without any individualized  
6 assessment of risk, is not narrowly tailored. It is punitive in effect and constitutes  
7 arbitrary government confinement, which violates substantive due process.

8  
9 **c. Canon of Constitutional Avoidance:** Where a statute is susceptible  
10 to two interpretations, one of which raises serious constitutional questions, courts  
11 must adopt the construction that avoids such problems. Here, Respondents' reading  
12 of INA §235(b) raises grave constitutional concerns by authorizing prolonged,  
13 mandatory detention of long-term residents without any due process. This Court  
14 should therefore adopt the alternative interpretation—that §236(a) applies—which  
15 is not only better supported by the text but also avoids these constitutional infirmities.

### 16 **COUNT THREE: ATTORNEY'S FEES**

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

### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully prays that this Court:

- 22 1. Assume jurisdiction over this matter;
- 23 2. Issue an order directing Respondents to show cause why the writ of habeas  
24 corpus should not be granted;
- 25 3. Issue a writ of habeas corpus declaring Petitioner's detention unlawful and  
26 ordering Respondents to immediately release Petitioner from custody; or, in  
27

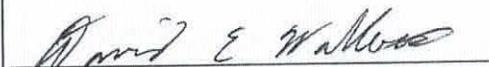
1 the alternative, order Respondents to provide Petitioner with an individualized  
2 custody redetermination hearing before an Immigration Judge pursuant to  
3 INA § 236(a) within seven (7) days of this Court's order;

4 4. Award Petitioner reasonable attorney's fees and costs; and

5 5. Grant any other relief this Court deems just and proper.

6 Respectfully submitted,

7  
8 Date: November 17, 2025

9  
10 

11 David E. Walters

12 State of Nevada Bar No.: 7203

13 Law Office of David E. Walters

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15 Las Vegas, NV 89120

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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 I, Juan Carrillo, employee for Attorney David E. Walters, hereby certify that  
28 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 first-class courier, addressed to:

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

7 Henderson Police Department  
8 Attn: Chief of Police Reggie Rader  
9 223 Lead St.  
10 Henderson, NV 89015

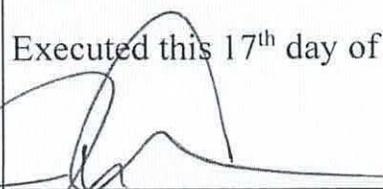
11 Secretary Kristi Noem  
12 United States Department of Homeland Security  
13 2707 Martin Luther King Jr. Ave. SE  
14 Washington, DC 20528-0525

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

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

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

24 Executed this 17<sup>th</sup> day of November, 2025, at Las Vegas, Nevada:

25   
26 **J. Carrillo**  
27 **Senior Paralegal**