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

11 Macario Mijael LIVIA VICHARRA,
12 Petitioner,
13 v.

14 Brian HENKEY, Field Office Director of
Enforcement and Removal Operations, Salt
Lake City Field Office, Immigration and
15 Customs Enforcement; Michael
BERNACKE, Acting Director of the Las
16 Vegas U.S. Immigration and Customs
Enforcement Field Sub-Office; Kristi NOEM,
17 Secretary, U.S. Department of Homeland
Security Pamela BONDI, U.S. Attorney
18 General; John MATTOS, Warden, Nevada
Southern Detention Center,

19 Respondents.
20

Case No. 2:25-cv-02336-RFB-EJY

**Federal Respondents' Response to
Court's Order to Show Cause, ECF
No. 5**

21 The Federal Respondents hereby submit this Response to the Court's Order to
22 Show Cause why Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1) should not
23 be granted. ECF No. 5.

24 **I. Introduction**

25 Petitioner seeks immediate relief challenging the Department of Homeland
26 Security's ("DHS") detention authority, contending that his custody is governed by
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1 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A). This is not a novel question; identical
2 arguments have recently been litigated in parallel proceedings before this Court and other
3 district courts.

4 For the reasons stated below—and as set forth more fully in the government’s prior
5 filing in *Jose Rivera Lopez v. Noem, et. al.*, No. 2:25-cv-01993-RFB-NJK (D. Nev. November
6 5, 2025) as incorporated herein—Petitioner fails to demonstrate that he should not be
7 considered as an applicant for admission and is therefore subject to mandatory detention
8 under 8 U.S.C. § 1225(b)(2)(A).

9 The Federal Respondents are amenable to receiving a ruling on the papers and are
10 willing to waive a hearing.

11 **II. Factual and Procedural Background**

12 Petitioner is a native and citizen of Peru. ECF No. 1 at ¶ 44. He is currently
13 detained at the Nevada Southern Detention Center. *Id.* On an unknown date and
14 unknown place, Petitioner entered the United States without admission, inspection or
15 parole in or around 2017. *Id.* at ¶ 44; *see* Exhibit “A”, Notice to Appear. Petitioner was
16 taken into custody by DHS on or about October 29, 2025, following his arrest for
17 attempted strangulation. *See* Exhibit “B” at 2.

18 Following his detention, ICE issued a custody determination to continue
19 Petitioner’s detention without an opportunity to post bond or be released on other
20 conditions. ECF No. 1 at ¶ 46. It is unclear whether Petitioner has sought a bond
21 redetermination with the Immigration Judge. A master calendar hearing is currently set in
22 Petitioner’s immigration matter for December 11, 2025. *See* Exhibit “C”.

23 On November 24, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. ECF
24 No. 1. Petitioner seeks his release from detention or, in the alternative, for Respondents to
25 provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.
26 ECF No. 1 at p. 13. On November 26, 2025, the Court ordered Respondents to show
27 cause why the Petition for Writ of Habeas Corpus should not be granted. ECF No. 5. This
28 response follows.

1 **III. Argument**

2 ***A. Incorporation By Reference of Government’s Prior Response***

3 Federal Respondents hereby incorporate by reference Federal Respondents’
4 Response to the Petition for Writ of Habeas Corpus in *Jose Rivera Lopez v. Noem, et. al.*, No.
5 2:25-cv-01993-RFB-NJK (D. Nev. November 5, 2025) (“*Rivera Lopez Response*”), as though
6 fully set forth herein.¹ The *Rivera Lopez Response* addresses identical statutory and
7 constitutional questions regarding DHS’s authority to detain individuals under
8 § 1225(b)(2)(A) who are not yet admitted and whose cases remain in pending removal
9 proceedings.

10 For efficiency and consistency, Respondents adopt the *Rivera Lopez Response* in full,
11 except for Sections I.B. (“Factual Background”) and III.A., which do not apply here.

12 The arguments in Sections I.A, II., III.B-D, and IV. of the *Rivera Lopez Response* are
13 equally applicable and incorporated by reference. Those sections demonstrate that
14 detention under § 1225(b)(2)(A) is mandatory by statute, not § 1226(a), and that DHS’s
15 custody determination therefore complies with both statutory and constitutional
16 requirements.

17 (*See Rivera Lopez Response*, ECF No. 9, attached hereto as Exhibit “D” and
18 incorporated herein by reference.)

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28 ¹ The Court has endorsed the incorporation by reference of prior government filings in related or substantively identical immigration habeas petitions, recognizing the efficiency of unified briefing given the number of overlapping cases presenting identical questions under 8 U.S.C. § 1225(b)(2)(A) and § 1226(a).

IV. Conclusion

For the reasons stated herein and, in the *Rivera Lopez Response*, Petitioner fails to demonstrate that he should not be considered as an applicant for admission and is therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The Order to Show Cause should be discharged, and the Petition for Writ of Habeas Corpus be denied.

Respectfully submitted this 4th day of December 2025.

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/s/ Summer A. Johnson
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