

Ever Samuel Montenegro Olivas/A 220-890-948

Name and Prisoner Number/Alien Registration Number

Otero Processing Center

Place of Confinement

26 McGregor Range Road

Mailing Address

Chaparral, NM 88081

City, State, Zip Code

(Failure to notify the Court of a change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Ever Samuel Montenegro Olivas,

(Full Name of Petitioner)

Petitioner,

v.
Todd Lyons, Acting Director of U.S. Immigration Customs and Enforcement;
Mary De Anda-Ybarra, Field Office Director for Enforcement and Removal
Operations (ERO); Dora Castro, Warden of Otero, Pam Bondi, U.S. Attorney
General, Kristi Noem, Secretary of U.S. Department of Homeland Security,
in their official capacities.

(Name of Warden, Jailor or authorized person
having custody of Petitioner)

No. CV 25-1197

(To be supplied by the Clerk)

AMENDED PETITION

Respondent(s).

PETITION UNDER 28 U.S.C. § 2241 FOR A WRIT OF HABEAS CORPUS

1. What are you challenging in this petition?

- Immigration detention
- Bureau of Prisons sentence calculation or loss of good-time credits
- Probation, parole or supervised release
- State Pre-trial detention
- Other (explain): _____

2. (a) Name and location of the agency or court that made the decision you are challenging:

(b) Case or opinion number: _____

(c) Decision made by the agency or court: _____

(d) Date of the decision: _____

3. Did you appeal the decision to a higher agency or court? Yes No

If yes, answer the following:

(a) First appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Second appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(c) Third appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

4. If you did not appeal this decision to a higher agency or court, explain why you did not:

The Petitioner is challenging his unlawful detention and is challenging his categorization as an "applicant for admission" under INA 235 per DHS' July 8, 2025 guidance and Board of Immigration Appeals precedential decision of Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). Requesting a bond with the Immigration Judge and an appeal with the Board will be futile. There is no decision to appeal. The habeas petition is the only feasible route to relief for Petitioner.

5. Other than the appeals listed above, have you filed any other petitions, applications or motions concerning the issues raised in this petition? Yes No

If yes, answer the following:

(a) Name of the Agency or court: _____

(b) Date you filed: _____

(c) Opinion or case number: _____

(d) Result: _____

(e) Date of result: _____

(f) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

6. For this petition, **state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States.** Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) any available administrative or judicial remedies on each ground on which you requested action by the federal court.

GROUND ONE: Unlawful Detention Under 8 USC Section 1225; Custody Properly Governed by 8 USC Section 1226 (Misapplication of Mandatory Detention Statute).

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner has been in the United States since January 3, 2022, after he entered without inspection.

Petitioner entered without inspection and was placed in INA 240 proceedings. Petitioner was appearing to all of his court hearings in the non-detained docket and was reporting as required with his ICE officer.

While traveling for work, Petitioner was detained at a checkpoint. At inspection, he showed his work authorization document but was taken to ICE custody. Petitioner's notice to appear charges him with

being present without being admitted or paroled; he is not seeking admission. Petitioner should be classified under INA 236 as bond eligible and not INA 235.

(b) Did you exhaust all available administrative or judicial remedies relating to Ground One?

Yes

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
 - The Office of General Counsel
 - The Parole Commission
 - The State Court
 - Other:

(d) If you did not exhaust all available remedies relating to Ground One, explain why:

There is no decision to appeal. Petitioner is challenging his mandatory detention. Since DHS issued its July 8th guidance and since the Board of Immigration Appeals issued Matter of Yajure-Hurtado, detainees like the Petitioner have been classified as "applicants for admission" and subject to mandatory

detention under INA 235 without the possibility of bond. Immigration Judges are bound by Matter of Yajure Hurtado.

GROUND TWO: Violation of Fifth Amendment Due Process Clause (Substantive and Procedural)

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

Petitioner's classification by DHS under INA 235 and Matter of Yajure-Hurtado deprives him of the due process protections found in INA 236, which grants noncitizens like the Petitioner an opportunity to have an individualized bond hearing before an Immigration Judge.

(b) Did you exhaust all available administrative or judicial remedies relating to Ground Two?

Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
 - The Office of General Counsel
 - The Parole Commission
 - The State Court
 - Other:

(d) If you did not exhaust all available remedies relating to Ground Two, explain why:

As explained in ground one, there is no decision to appeal. The Immigration Judge is bound to follow Matter of Yajure-Hurtado. As a result, Petitioner is classified as an application for admission

pursuant to INA 235 and thus, subject to mandatory detention. Noncitizens in Petitioner's position are being denied bond for lack of jurisdiction pursuant to Matter of Yajure-Hurtado. Any appeal to the Board of Immigration Appeals is futile due to controlling case law.

GROUND THREE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Did you exhaust all available administrative or judicial remedies relating to Ground Three?

Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
 - The Office of General Counsel
 - The Parole Commission
 - The State Court
 - Other:

(d) If you did not exhaust all available remedies relating to Ground Three, explain why:

GROUND FOUR: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Did you exhaust all available administrative or judicial remedies relating to Ground Four?

Yes No

(c) If yes, did you present the issue to:

The Board of Immigration Appeals

- The Office of General Counsel
- The Parole Commission
- The State Court
- Other: _____

(d) If you did not exhaust all available remedies relating to Ground Four, explain why: _____

Please answer these additional questions about this petition:

7. Are you challenging your conviction or sentence in any of the grounds raised above?

Yes No

(Claims challenging a federal conviction or sentence may only be raised in a motion under 28 U.S.C. § 2255, unless remedies under § 2255 are legally inadequate or ineffective. Claims challenging a state conviction or sentence must be raised in a petition for writ of habeas corpus under 28 U.S.C. § 2254.)

If yes, answer the following:

- (a) Have you filed -- a motion under 28 U.S.C. § 2255? Yes No
 -- a petition under 28 U.S.C. § 2254? Yes No

If yes, answer the following:

- (1) Name of court: _____
 - (2) Case number: _____
 - (3) Opinion or case number: _____
 - (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
-

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Explain why the remedy under § 2255 is inadequate or ineffective: _____

8. If this petition concerns immigration detention or removal proceedings, answer the following:

(a) Date you were taken into immigration custody: 10/14/2025

(b) Date of removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals? Yes No

(1) Date you filed: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

9. If this petition concerns your confinement by the State of New Mexico, answer the following:

(a) Date you were arrested/detained: _____

(b) Charge(s) brought: _____

(c) Projected date of your trial: _____

(d) Are you represented by counsel? Yes No

(e) Have you raised your claims in the State Court? Yes No

(1) Name of Court: _____

(2) Date you filed: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

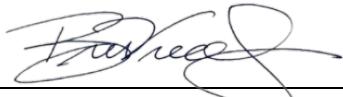
Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

10. Petitioner asks that the Court grant the following relief: 1) Direct Respondents to immediately set a bond hearing under INA 236(a); 2) assume jurisdiction over this matter; 3) issue an order to show cause ordering the Respondents to show cause why this Petition should not be granted; 4) order that the Immigration Judge cannot deny Petitioner's bond request for lack of jurisdiction and that INA 236(a) applies in this case.
or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 12/02/2025 (month, day, year).

Evers

Signature of Petitioner



Signature of attorney, if any

12/02/2025

Date