

1 **Heron Vasquez III, Esq.**
Nevada State Bar No. 15666
2 **MEESHA MOULTON LAW**
7160 Rafael Rivera Way, Suite 300
3 Las Vegas, NV 89113
T: (702) 602-7500
4 F: (702) 552-5352
Heron@MeeshaMoultonLaw.com

5 *Attorney for Petitioner*

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 **HORACIO GARCIA COVERRUBIAS,**

Case No.: 2-25-cv-002445-RFB-DJA

9 **Petitioner,**

**AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

10 vs.

11 **LEANDER HOLSTON, Las Vegas Field**
Office Director for U.S. Immigration and
12 Customs Enforcement;
JOHN MATTOS, Warden, Nevada
Southern Detention Center;
13 **KRISTI NOEM, Secretary of the U.S.**
Department of Homeland Security; and
14 **PAMELA BONDI, Attorney General of**
the United States of America,

15
16 **Respondents.**

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18 **Petitioner Horacio Garcia Covarrubias is an immigration detainee proceeding**
19 **with counsel. Petitioner is a noncitizen who entered the United States without**
20 **inspection and who has lived in the country continuously for twenty-seven years.**
21 **On September 10, 2025, Petitioner was detained by Immigration and Customs**
22 **Enforcement (“ICE”) and has since then been under the custody of Defendants at**
23 **the Nevada Southern Detention Center.**

1 On December 9, 2025, an Immigration Judge (“IJ”) from the Las Vegas
2 Immigration Court denied releasing Petitioner on bond based on a finding of lack of
3 jurisdiction as all noncitizens are treated as not admitted to the United States,
4 requiring mandatory detention of all noncitizens pursuant to 8 U.S.C. § 1225(b)(2)(A)
5 under the guidance of the Bureau of Immigration Appeals (“BIA”) decision provided
6 in *Matter of Yajure Hurtado v. Noem*, 29 I&N Dec. 216 (BIA 2025). Further, the IJ
7 reasoned that her lack of jurisdiction is due to “the District Court’s order in
8 *Maldonado Bautista v. Santacruz et. al* [as] not final and a declaratory judgment has
9 not been extended to the class.” See **Exhibit A**.

10 Importantly, the IJ stated “[i]n the alternative, and should the [immigration]
11 Court be found to have jurisdiction, the [immigration] Court deems bond in the
12 amount of \$2,500 plus alternatives to detention at the discretion of the DHS to be
13 appropriate.” See *Id.*

14 Since the IJ Order denying Petitioner’s release on bond, the order in
15 *Maldonado Bautista v. Santacruz et. al* became final and the Bond Eligible Class was
16 certified in the Final Judgment and Amended Order Consolidating the Court’s Orders
17 on Motion for Partial Summary Judgment, Class Certification, and Application for
18 Reconsider or Clarification, both entered on December 18, 2025.

19 The Bond Eligible Class is defined as follows:

20 All noncitizens in the United States without lawful status
21 who (1) have entered or will enter the United States
22 without inspection; (2) were not or will not be apprehended
23 upon arrival; and (3) are not or will not be subject to
detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231
at the time the Department of Homeland Security makes
an initial custody determination.

1 The Final Judgment declares that the Bond Eligible Class members are
2 detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under
3 8 U.S.C. § 1225(b)(2). Petitioner is a member of the Bond Eligible Class because he 1)
4 entered the U.S. without inspection, 2) was not apprehended upon arrival to the U.S,
5 and 3) is not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1),
6 or § 1231.

7 JURISDICTION

- 8 1. Petitioner is in the physical custody of Respondents. Petitioner is detained
9 at the Nevada Southern Detention Center.
- 10 2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5)
11 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
- 12 3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C.
13 § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and
14 the All-Writs Act, 28 U.S.C. § 1651.

15 VENUE

- 16 4. Venue is proper because Petitioner is detained at the Nevada Southern
17 Detention Center, which is within the judicial district of the United States
18 District Court for the District of Nevada.
- 19 5. In addition, venue is proper in this District pursuant to 28 U.S.C. § 1391(e)
20 because Respondents are officers, employees, or agencies of the United
21 States, and because a substantial part of the events or omissions giving rise
22 to Petitioner's claims occurred in this District. Moreover, Petitioner resides
23 in this District, and real property is not involved in this action.

1 9. Defendant Leander Holston is sued in his official capacity as the Las Vegas
2 Field Office Director for U.S. Immigration and Customs Enforcement.
3 Respondent Holston is a legal custodian of Petitioner and has authority to
4 release him.

5 10. Defendant John Mattos is sued in his official capacity as the Warden of the
6 Nevada Southern Detention Center. He has immediate physical custody of
7 Petitioner pursuant to the facility's contract with U.S. Immigration and
8 Customs Enforcement to detain noncitizens. Respondent John Mattos is a
9 legal custodian of Petitioner.

10 11. Defendant Kristi Noem is sued in her official capacity as the Secretary of
11 the U.S. Department of Homeland Security. In this capacity, Respondent
12 Noem is responsible for the implementation and enforcement of the
13 Immigration and Nationality Act and oversees U.S. Immigration and
14 Customs Enforcement, the agency responsible for Petitioner's custody.
15 Respondent Noem is a legal custodian of Petitioner.

16 12. Defendant Pamela Bondi is sued in her official capacity as the Attorney
17 General of the United States and the senior official of the U.S. Department
18 of Justice ("DOJ"). In that capacity, she has the authority to adjudicate
19 removal cases and to oversee the Executive Office for Immigration Review
20 ("EOIR"), which administers the immigration court system. Respondent is
21 a legal custodian of Petitioner.
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STATEMENT OF FACTS

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2 13. Petitioner is a 42-year-old native and citizen of Mexico. He is married and
3 has three U.S. children, has strong community ties and stable employment
4 as a carpet installer. Before being detained he was living at Las Vegas,
5 Nevada.

6 14. Petitioner entered the United States without inspection in or around
7 October 1998. ICE detained Petitioner on September 10, 2025, in Las
8 Vegas, Nevada, and has remained since then in ICE custody at the Nevada
9 Southern Detention Center. He has been residing in the United States for
10 27 years and was therefore not apprehended upon arrival. Thus, Petitioner
11 is subject to 8 U.S.C. § 1226(a) not to § 1225(b)(2) as the Defendants
12 arbitrarily claim.

13 15. On December 9, 2025, Petitioner through his counsel, Walter Jimenez-
14 Ortega, appeared at his custody redetermination hearing at which the IJ
15 denied releasing him on bond based on lack of jurisdiction. The IJ order
16 was based on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

17 16. The IJ entered an alternative order stating that “should the Immigration
18 Court be found to have jurisdiction, the Court deems the Petitioner eligible
19 to be released on bond in the amount of \$2,500” (**Exhibit A**), which means
20 that the IJ found Petitioner is not a danger to the community or a flight
21 risk. Petitioner is not subject to any of the INA’s special mandatory
22 detention provisions and continues to be detained only because of the
23

1 Respondent's unlawful, arbitrary, and capricious actions, when Petitioner
2 should be released instead due to the IJ authority under 8 U.S.C. § 1226(a).

3 LEGAL FRAMEWORK

4 **Mr. Garcia-Covarrubias' continued detention without a bond violates the**
5 **INA as he is subject to 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(1).**

6 Petitioner's case concerns the detention authority of people who entered the
7 United States without inspection, were not apprehended upon arrival, and are not
8 subject to one of the INA's special detention provisions, i.e. 8 U.S.C. § 1225(b)(1) and
9 § 1231(a)(6).

10 Two provisions of the INA govern the detention of noncitizens: 8 U.S.C. §
11 1226(a) and § 1225(b). There is a critical distinction between the two provisions.
12 Noncitizens subject to § 1226(a) are arrested and once detained, the statute allows
13 ICE to release a person on bond or conditional parole, *See* 8 U.S.C. § 1226(a)(1); 8
14 C.F.R. § 236.1(c)(8). If released is denied, the person can seek custody
15 redetermination -better known as a bond hearing- before an IJ. *See* 8 C.F.R. §
16 1236.1(c)(8). At that hearing, the noncitizen may present evidence to show they are
17 not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I & N
18 Dec. 37, 40 (BIA 2006). By contrast, people detained under § 1225(b) are subject to
19 mandatory detention and do not receive a bond hearing. *See* 8 U.S.C. §
20 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian
21 parole at the arresting agency's (i.e., ICE) discretion. *See Jennings*, 583 U.S. at 288; 8
22 U.S.C. § 1182(d)(5).

1 The difference between these two statutes reflects immigration law's
2 longstanding distinction in the detention structure for noncitizens arrested *after*
3 *entering* the country and those arrested when *attempting to enter* the country. Prior to
4 passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
5 (“IIRIRA”), the statutory authority for custody determinations was found at 8 U.S.C.
6 § 1252(a). That statute provided for a noncitizen’s detention during deportation
7 proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a)
8 (1994). Those “deportation” proceedings governed the detention of anyone in the
9 United States, regardless of the manner of entry. *Id.* IIRIRA maintained the same
10 basic detention authority and access to release on bond in the provisions now codified
11 in 8 U.S.C. § 1226(a).

12 Separately, through IIRIRA, Congress enacted new detention and removal
13 authority for people who were apprehended upon arriving in the United States.
14 *See* 8 U.S.C. § 1225(b)(1)-(2). These individuals can be placed in special expedited
15 removal proceedings (where DHS officers issue administrative removal orders
16 without any hearings), or regular removal proceedings (before IJs). Either way, such
17 people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV),
18 (b)(2)(A).

19 In implementing IIRIRA’s detention authority, the former Immigration and
20 Naturalization Service clarified that—just as before IIRIRA—people who entered the
21 United States without inspection and were not apprehended while “arriving” in the
22 country would continue to be detained under the same detention authority they have
23 always been pursuant to § 1226(a) (previously § 1252(a)). Inadmissible noncitizens

1 thus, except for arriving noncitizens, have available to them bond redetermination
2 hearings before an immigration judge.

3 Consistent with these principles, during the nearly thirty years since IIRIRA
4 was enacted, DHS and the Executive Office for Immigration Review (“EOIR”) have
5 applied § 1226(a) to the detention of people who were apprehended within the United
6 States after having entered without inspection and have provided them access to
7 release on bond. Notwithstanding this long history, Defendants have now switched
8 course, concluding that 1225(b)(2)(A) imposes mandatory detention on all persons
9 who entered the United States without inspection, regardless of how long they have
10 resided here. After *Matter of Yajure Hurtado* (BIA 2025), IJs in Las Vegas
11 Immigration Court have adopted this unprecedented interpretation of the INA’s
12 detention scheme.

13 CLAIMS FOR RELIEF

14 COUNT ONE

15 **Violation of the INA 8 U.S.C. § 1226(a)**

16 17. The allegations in the above paragraphs are realleged and incorporated
17 herein.

18 18. Respondents are not releasing Petitioner on bond pursuant to 8 U.S.C. §
19 1225(b), which imposes mandatory detention to all persons who entered the
20 United States without inspection, regardless of how long they have resided
21 here.

22 19. However, Petitioner’s detention is governed by 8 U.S.C. § 1226(a) as he
23 entered without inspection, has been living in the United States for more

1 than two years, was not apprehended while trying to enter the United States,
2 and has no criminal record that subject him to mandatory detention under
3 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

4 20. Accordingly, no statute authorizes detention here. Petitioner's is subject to
5 8 U.S.C. § 1226(a) and not to § 1225(b).

6 21. The IJ erred in refusing to consider release on bond by finding that she does
7 not have jurisdiction under Matter of Yajure Hurtado (BIA 2025), which
8 makes an erroneous interpretation of 8 U.S.C. § 1226(a) and § 1225(b).

9 22. For these reasons, Petitioner's detention violates 8 U.S.C. § 1226(a) and
10 therefore the Court should order Petitioner immediate release.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests the following relief:

- 13 1. Assume jurisdiction over the matter;
- 14 2. Declare that the Petitioner's detention violates Due Process;
- 15 3. Declare that the Petitioner's detention is done pursuant to 8 U.S.C. § 1226(a);
- 16 4. Issue a Writ of Habeas Corpus empowering the Las Vegas Immigration Court
17 with jurisdiction to release Petitioner on bond pursuant to 8 U.S.C. § 1226(a);
- 18 5. Ordering Respondents to release Petitioner pursuant to the IJ Order;
- 19 6. For an award of reasonable attorney's fees under the Equal Access to
20 Justice Act;
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- 7. For an award of costs of suit; and
- 8. Such further relief that the Court deems proper.

DATED this 19th day of December 2025.

MEESHA MOULTON LAW



HERON VASQUEZ III, ESQ.
Nevada Bar No. 15666
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing AMENDED PETITION FOR WRIT OF HABEAS CORPUS was submitted via Email and Mail Service on the 19th day of December 2025. Service of the foregoing document shall be made as follows:¹

Contact

Address

John Mattos

2190 East Mesquite Avenue
Pahrump, NV 89060

Lester Holston

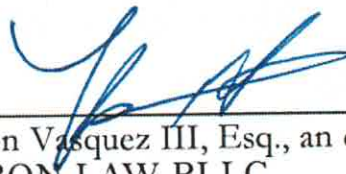
501 S. Las Vegas Boulevard, Ste. 200
Las Vegas, NV 89101

Kristi Noem

2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

Pamela Bondi

950 Pennsylvania Avenue
Washington, DC 20530



Heron Vasquez III, Esq., an employee of
HERON LAW PLLC

¹ Pursuant to FRCP 5(b).

