

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 **OSCAR DAVID ALAS GARCIA,**
12
13 **Plaintiff,**

Case No.: 2:25-cv-02580

14 vs.

**PETITION FOR WRIT OF 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**

25 **PETITION FOR WRIT OF HABEAS CORPUS**

26 **Petitioner, Oscar David Alas Garcia, through undersigned counsel,**
27 **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, Kristi Noem, Secretary of Homeland
19 Security and JOHN MATTOS, Warden of the NEVADA SOUTHERN
20 DETENTION CENTER in Pahrump, Nevada, within this judicial district. He is
21 under the direct control of Respondents and their agents.
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23 JURISDICTION

24 This Court has jurisdiction over this petition under 28 U.S.C. §2241, which
25 grants federal courts the authority to issue writs of habeas corpus to petitioners in
26 custody in violation of the Constitution or laws of the United States. A district court's
27 habeas jurisdiction includes challenges to immigration-related detention. *Zadvydas*
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1 *v. Davis*, 533 U.S. 678, 687 (2001); see also *Demore v. Kim*, 538 U.S. 510, 517
2 (2003). The jurisdiction-stripping provisions of the INA, including 8 U.S.C. §§
3 1226(e) and 1252, do not preclude habeas review of challenges to the statutory
4 framework and constitutional validity of immigration detention.

5 **VENUE**

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

9 **PARTIES**

10 Petitioner Oscar David Alas Garcia is a native and citizen of El Salvador who has
11 resided continuously in the United States for approximately thirteen (13) years.

12 Respondent Michael Bernacke is the Field Office Director for ICE whose
13 operational area includes Nevada and is Petitioner's legal custodian.

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

15 Respondent Kristi Noem is the Secretary for the U.S. Department of Homeland
16 Security.

17 Respondent JOHN MATTOS is the Warden of the NEVADA SOUTHERN
18 DETENTION CENTER and is Petitioner's immediate physical custodian.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 The BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
21 (BIA 2025), has already decided the dispositive legal issue against Petitioner's
22 position. Under such circumstances, where an agency's position is firmly set and an
23 appeal would be futile, prudential exhaustion is not required. This principle has been
24 affirmed in this district, noting that neither the habeas statute nor the relevant
25 sections of the INA require the exhaustion of administrative remedies before filing
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1 a petition for habeas corpus when such efforts would be fruitless. *Jacobo Ramirez v.*
2 *Noem*, No 2:25-cv-02136-RFB-MDC, 2025 WL 3270137, at *5-6 (D. Nev. Nov. 24,
3 2025).

4 **STATEMENT OF FACTS**

5 The Petitioner, a native and citizen of El Salvador, has maintained a continuous
6 presence in the United States since his initial entry circa April 2012. Since
7 establishing residency in Las Vegas, Nevada, in approximately 2012, Respondent
8 has established his primary family residence at [REDACTED] Las Vegas, NV
9 89108. He maintains a shared household with his spouse and their three children.
10 Professionally, Petitioner is a self-employed contractor.

11 In September 2025, Petitioner was apprehended at a scheduled check-in with the
12 Department of Homeland Security.

13 Presently, he is in the custody of U.S. Immigration and Customs Enforcement
14 and has been detained at the Southern Nevada Detention Center since September
15 2025.

16 **CLAIMS FOR RELIEF**

17 **COUNT ONE: UNLAWFUL DETENTION IN VIOLATION OF THE** 18 **IMMIGRATION AND NATIONALITY ACT**

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

23 a. **Statutory Text and Structure:** The plain language and structure of
24 the INA distinguish between aliens apprehended at the border while "arriving"
25 (governed by §235) and aliens apprehended in the interior of the United States
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1 (governed by §236). Section 235, titled "Inspection by immigration officers;
2 expedited removal of inadmissible arriving aliens," concerns procedures at the
3 border. In contrast, §236 governs the "apprehension and detention of aliens" already
4 present in the country.

5 **b. "Seeking Admission":** Respondents' position conflates the statutory
6 terms "applicant for admission" and "seeking admission." While Petitioner may
7 technically be an "applicant for admission" under §235(a)(1) by virtue of his
8 presence without admission, he is not "seeking admission" as is required for
9 mandatory detention under §235(b)(2)(A). The phrase "seeking admission" implies
10 an affirmative and contemporaneous act of entry, not the passive state of residing in
11 the country for decades. Applying §235(b)(2)(A) to Petitioner renders the phrase
12 "seeking admission" redundant and superfluous.

13 **c. Arrest Warrant:** Respondents detained Petitioner on a "Warrant for
14 Arrest of Alien" that explicitly cites INA §236 as its authority. The plain text of §
15 236(a) begins, "On a warrant issued by the Attorney General, an alien may be
16 arrested and detained...". In contrast, INA §235 makes no mention of warrants, as it
17 applies to warrantless encounters at the border. The government's own choice to
18 issue a §236 warrant dictates that §236 governs Petitioner's custody and eligibility
19 for bond.
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21 **d. Surplusage and the Laken Riley Act¹:** Respondents' interpretation
22 renders INA §236(c) superfluous. Section 236(c), as recently amended by the Laken
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26 ¹ The Laken Riley Act, Pub. L. 119-1 amends the Immigration and Nationality Act (INA) to
27 provide an additional category of aliens who are subject to mandatory detention. Specifically, the
28 Laken Riley Act amends the categories of aliens subject to mandatory detention under INA §

1 Riley Act, mandates detention for specific categories of inadmissible aliens who also
2 have certain criminal histories. If all aliens present without admission were already
3 subject to mandatory detention under §235(b), there would have been no need for
4 Congress to create these specific categories in § 236(c). Laken Riley Act, Pub. L.
5 119–1.

6 **e. Longstanding Agency Practice and Legislative History:** For over
7 two decades following the Illegal Immigration Reform and Immigrant
8 Responsibility Act of 1996 (IIRIRA) amendments, DHS and its predecessor agency
9 consistently treated aliens apprehended in the interior as being detained under
10 §236(a) and afforded them bond hearings. The government’s sudden reversal
11 contradicts its own long-standing interpretation and practice, which informed
12 Congress's subsequent amendments to the statutory scheme.

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14 **COUNT TWO: UNLAWFUL DETENTION IN VIOLATION OF THE DUE**
15 **PROCESS CLAUSE OF THE FIFTH AMENDMENT**

16 Petitioner realleges and incorporates by reference the preceding paragraphs.

17 Petitioner’s mandatory, prolonged detention violates his rights to procedural and
18 substantive due process under the Fifth Amendment.

19 **a. Procedural Due Process:** The Fifth Amendment requires "notice
20 and opportunity to be heard 'appropriate to the nature of the case'". *Mullane v.*
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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:(i) is
26 inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and (ii) is charged with, is
27 arrested for, is convicted of, admits having committed, or admits committing acts which constitute
28 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 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Trump v. J.G.G.*, 604
2 U.S. ____ (2025). For a long-term Nevada resident like Petitioner, whose detention
3 imposes a "massive curtailment of liberty," procedural due process requires, at a
4 minimum, an individualized bond hearing before a neutral decision-maker to assess
5 whether his detention is necessary to prevent flight risk or danger to the community.
6 *Humphrey v. Cady*, 405 U.S. 504 at 509.

7 Respondents' policy of mandatory detention categorically denies him this
8 fundamental procedural safeguard.

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10 b. **Substantive Due Process:** Freedom from imprisonment is a
11 fundamental liberty interest that lies "at the heart of the liberty" protected by the Due
12 Process Clause. *Zadvydas*, 533 U.S. at 690. Government detention is
13 unconstitutional if it is arbitrary and not "narrowly tailored to serve a compelling
14 state interest". *Reno v. Flores*, 507 U.S. 292 at 301-302 citing *United States v.*
15 *Salerno*, 481 U.S. 739, 747 (1987) ("infringements of fundamental rights must be
16 "narrowly tailored to serve a compelling state interest). The suspension clause has
17 been interpreted to guarantee that anyone detained by the government, citizen or
18 non-citizen, must have access to a court to challenge the legality of their custody.
19 *Ins v. St. Cyr*, 533 U.S. 289 (2001). The mandatory detention of a long-term resident
20 with deep community ties, without any individualized assessment of risk, is not
21 narrowly tailored. It is punitive in effect and constitutes arbitrary government
22 confinement, which violates substantive due process.

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

4 **COUNT THREE: ATTORNEY'S FEES**

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioner respectfully prays that this Court:

- 10
- 11 1. Assume jurisdiction over this matter;
 - 12 2. Issue an order directing Respondents to show cause why the writ of habeas
13 corpus should not be granted;
 - 14 3. Issue a writ of habeas corpus declaring Petitioner's detention unlawful and
15 ordering Respondents to immediately release Petitioner from custody; or, in
16 the alternative, order Respondents to provide Petitioner with an individualized
17 custody redetermination hearing before an Immigration Judge pursuant to
18 INA § 236(a) within seven (7) days of this Court's order;
 - 19 4. Award Petitioner reasonable attorney's fees and costs; and
 - 20 5. Grant any other relief this Court deems just and proper.

21 Respectfully submitted,

22
23 Date: December 23, 2025

24
25 **/s: David E. Walters, Esq.**

26 David E. Walters

27 State of Nevada Bar No.: 7203

28 Law Office of David E. Walters

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

24 **Defendant**

25 **CERTIFICATE OF SERVICE**

26 I, Juan Carrillo, employee for Attorney David E. Walters, hereby certify that
27 I served a copy of the **Petition for Habeas Corpus** was made this day by depositing

1 a copy of the same in the United States Mail in Las Vegas, Nevada, postage prepaid
2 for overnight courier, addressed to:

3 MICHAEL BERNACKE
4 Field Office Director
5 Salt Lake City Field Office of U.S. Immigration
6 and Customs Enforcement's
7 Enforcement & Removal Operations Division
8 2975 Decker Lake Drive, Suite 100
9 West Valley City, UT 84119-6096

10 Warden John Mattos
11 Nevada Southern Detention Center
12 2190 E. Mesquite Ave.
13 Pahrump, NV 89060

14 Secretary Kristi Noem
15 United States Department of Homeland Security
16 2707 Martin Luther King Jr. Ave. SE
17 Washington, DC 20528-0525

18 Pamela Bondi
19 Attorney General of the United States
20 950 Pennsylvania Ave. NW
21 Washington DC 20530

22 Executed this 23rd day of December, 2025, at Las Vegas, Nevada:

23 **/s: Juan Carrillo**
24 **J. Carrillo**
25 **Senior Paralegal**