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

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 **SERGIO GARCIA NICOLAS,**
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Plaintiff,

vs.

13 **JOHN MATTOS, Warden, Nevada**
14 **Southern Detention Center;**
15 **MICHAEL BERNACKE, Field Office**
16 **Director, U.S. Immigration and Customs**
17 **Enforcement,**
18 **PAMELA BONDI, Attorney General of**
19 **the United States; and**
20 **KRISTI NOEM, Secretary of Homeland**
21 **Security, in their official capacities,**

Defendant

Case No.:

**PETITION FOR WRIT OF HABEAS
CORPUS**

24 **PETITION FOR WRIT OF HABEAS CORPUS**
25 Petitioner, Sergio Garcia Nicolas, through undersigned counsel, respectfully
26 petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. §2241.
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1 Petitioner is a long-term resident of Nevada who has been unlawfully detained
2 without a bond hearing by Respondents. This detention is based on a new legal
3 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.
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16 **CUSTODY**

17 Petitioner is in the physical custody of Respondent Michael Bernacke, Field
18 Office Director for U.S. Immigration and Customs Enforcement (“ICE”), Pamela
19 Bondi, Attorney General of the United States, Kristi Noem, Secretary of Homeland
20 Security and JOHN MATTOS, Warden of the NEVADA SOUTHERN
21 DETENTION CENTER in Pahrump, Nevada, within this judicial district. He is
22 under the direct control of Respondents and their agents.
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JURISDICTION

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

VENUE

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

PARTIES

Petitioner Sergio Garcia Nicolas is a native and citizen of Mexico who has resided continuously in the United States for approximately twenty-one (21) years.

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

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

1 Respondent Kristi Noem is the Secretary for the U.S. Department of Homeland
2 Security.

3
4 Respondent JOHN MATTOS is the Warden of the NEVADA SOUTHERN
5 DETENTION CENTER and is Petitioner's immediate physical custodian.

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7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 The BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
9 (BIA 2025), has already decided the dispositive legal issue against Petitioner's
10 position. Under such circumstances, where an agency's position is firmly set and an
11 appeal would be futile, prudential exhaustion is not required. This principle has been
12 affirmed in this district, noting that neither the habeas statute nor the relevant
13 sections of the INA require the exhaustion of administrative remedies before filing
14 a petition for habeas corpus when such efforts would be fruitless. *Jacobo Ramirez v.*
15 *Noem*, No 2:25-cv-02136-RFB-MDC, 2025 WL 3270137, at *5-6 (D. Nev. Nov. 24,
16 2025).

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20 **AGENCY NON-ACQUIESCENCE AND THE NECESSITY OF A
21 WRIT**

22 In addition to the futility of appeal described above, the Executive Office for
23 Immigration Review ("EOIR") has issued explicit guidance instructing Immigration
24 Judges to disregard federal declaratory judgments that conflict with *Matter of Yajure*
25 *Hurtado*.

1 On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued a
2 directive to all Immigration Judges via email with the subject line "Guidance". In
3 this directive, the Chief Immigration Judge instructed that recent federal court
4 rulings (specifically *Maldonado Bautista*) are "not a nationwide injunction" and do
5 "not purport to vacate, stay, or enjoin *Yajure Hurtado*". See *Attached Exhibit 1*.
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8 The directive explicitly commands that "*Yajure Hurtado* remains binding
9 precedent on agency adjudicators.". Furthermore, the agency has instructed its
10 judges that "declaratory judgments differ from injunctions... in that the former
11 clarifies parties' legal rights... without ordering specific action," and that a
12 declaratory judgment "does not, by itself, have the effect of compelling specific
13 action by a party."
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16 This guidance confirms that a simple remand or a declaratory judgment
17 finding that Petitioner is correctly detained under INA § 236(a) will be disregarded
18 by the Immigration Judge. The agency has instructed its adjudicators to continue
19 applying the mandatory detention holding of *Matter of Yajure Hurtado* unless a court
20 issues a coercive order compelling specific action.
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23 Consequently, even if this Court determines that Petitioner is being held under
24 the wrong statutory authority, the Immigration Judge is currently under
25 administrative orders to deny jurisdiction over a bond hearing and to disregard
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1 judicial clarifications of the law that lack injunctive force. Because the Executive
2 Office for Immigration Review has instructed its judges to strictly adhere to the
3 mandatory detention mandates of *Matter of Yajure Hurtado* regardless of contrary
4 declaratory judgments, a remand for a bond hearing would be futile. Therefore,
5 Petitioner requests that this Court issue a Writ of Habeas Corpus ordering immediate
6 release from custody rather than remanding the matter to an agency that has
7 predetermined the result.
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10 **STATEMENT OF FACTS**

11 The Petitioner, a native and citizen of Mexico, has maintained a continuous
12 presence in the United States since his initial entry circa 2004. Since establishing
13 residency in Las Vegas, Nevada, in approximately 2004, Respondent has established
14 his primary family residence at  Las Vegas, NV 89146. He
15 maintains a shared household with his girlfriend. Professionally, Petitioner is a self-
16 employed contractor.
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20 On January 15, 2026, Petitioner's custody was transferred to the Department of
21 Homeland Security.
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23 Presently, he is in the custody of U.S. Immigration and Customs Enforcement
24 and has been detained at the Southern Nevada Detention Center since January 15,
25 2026.
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CLAIMS FOR RELIEF
COUNT ONE: UNLAWFUL DETENTION IN VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT

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

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

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

1 the country for decades. Applying §235(b)(2)(A) to Petitioner renders the phrase
2 "seeking admission" redundant and superfluous.
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4 **c. Arrest Warrant:** Respondents detained Petitioner on a "Warrant for
5 Arrest of Alien" that explicitly cites INA §236 as its authority. The plain text of
6 §236(a) begins, "On a warrant issued by the Attorney General, an alien may be
7 arrested and detained...". In contrast, INA §235 makes no mention of warrants, as it
8 applies to warrantless encounters at the border.
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11 **d. Surplusage and the Laken Riley Act¹:** Respondents' interpretation
12 renders INA §236(c) superfluous. Section 236(c), as recently amended by the Laken
13 Riley Act, mandates detention for specific categories of inadmissible aliens who also
14 have certain criminal histories. If all aliens present without admission were already
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19 ¹ The Laken Riley Act, Pub. L. 119–1 amends the Immigration and Nationality Act
20 (INA) to provide an additional category of aliens who are subject to mandatory
21 detention. Specifically, the Laken Riley Act amends the categories of aliens subject
22 to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c), by adding an
23 additional category at INA § 236(c)(1)(E), 8 U.S.C. § 1226(c)(1)(E), to require the
24 Secretary of Homeland Security to detain any alien who:(i) is inadmissible under
25 paragraph (6)(A), (6)(C), or (7) of section 212(a); and (ii) is charged with, is arrested
26 for, is convicted of, admits having committed, or admits committing acts which
27 constitute the essential elements of any burglary, theft, larceny, shoplifting, or
28 assault of a law enforcement officer offense, or any crime that results in death or
serious bodily injury to another person.

1 subject to mandatory detention under §235(b), there would have been no need for
2 Congress to create these specific categories in § 236(c). Laken Riley Act, Pub. L.
3 119-1.
4

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

17 Petitioner realleges and incorporates by reference the preceding paragraphs.

18 Petitioner's mandatory, prolonged detention violates his rights to procedural and
19 substantive due process under the Fifth Amendment.
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21 **a. Procedural Due Process:** The Fifth Amendment requires "notice
22 and opportunity to be heard 'appropriate to the nature of the case'". *Mullane v.*
23 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Trump v. J.G.G.*, 604
24 U.S. ____ (2025). For a long-term Nevada resident like Petitioner, whose detention
25 imposes a "massive curtailment of liberty," procedural due process requires, at a
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1 minimum, an individualized bond hearing before a neutral decision-maker to assess
2 whether his detention is necessary to prevent flight risk or danger to the community.

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4 *Humphrey v. Cady*, 405 U.S. 504 at 509.

5 Respondents' policy of mandatory detention categorically denies him this
6 fundamental procedural safeguard.
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8 b. **Substantive Due Process:** Freedom from imprisonment is a
9 fundamental liberty interest that lies "at the heart of the liberty" protected by the Due
10 Process Clause. *Zadvydas*, 533 U.S. at 690. Government detention is
11 unconstitutional if it is arbitrary and not "narrowly tailored to serve a compelling
12 state interest". *Reno v. Flores*, 507 U.S. 292 at 301-302 citing *United States v.*
13 *Salerno*, 481 U.S. 739, 747 (1987) ("infringements of fundamental rights must be
14 "narrowly tailored to serve a compelling state interest). The suspension clause has
15 been interpreted to guarantee that anyone detained by the government, citizen or
16 non-citizen, must have access to a court to challenge the legality of their custody.
17 *Ins v. St. Cyr*, 533 U.S. 289 (2001). The mandatory detention of a long-term resident
18 with deep community ties, without any individualized assessment of risk, is not
19 narrowly tailored. It is punitive in effect and constitutes arbitrary government
20 confinement, which violates substantive due process.
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1 **c. Canon of Constitutional Avoidance:** Where a statute is susceptible
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3 to two interpretations, one of which raises serious constitutional questions, courts
4 must adopt the construction that avoids such problems. Here, Respondents' reading
5 of INA §235(b) raises grave constitutional concerns by authorizing prolonged,
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7 mandatory detention of long-term residents without any due process. This Court
8 should therefore adopt the alternative interpretation—that §236(a) applies—which
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10 is not only better supported by the text but also avoids these constitutional infirmities.

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

12 Petitioner alleges and incorporates by reference the preceding paragraphs. If he
13 prevails, Petitioner requests attorney's fees and costs under the Equal Access to
14 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.
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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner respectfully prays that this Court:

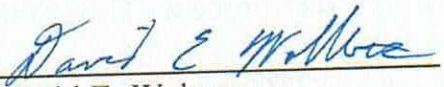
- 18 1. Assume jurisdiction over this matter;
- 19 2. Issue an order directing Respondents to show cause why the writ of habeas
20 corpus should not be granted;
- 21 3. Issue a writ of habeas corpus declaring Petitioner's detention unlawful and
22 ordering Respondents to immediately release Petitioner from custody, as a
23 remand for a bond hearing is futile given agency instructions to disregard
24 declaratory relief;
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1 4. Award Petitioner reasonable attorney's fees and costs; and

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

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4 Respectfully submitted,

5
6 Date: January 16, 2026

7 
8 David E. Walters
9 State of Nevada Bar No.: 7203
10 Law Office of David E. Walters

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

11 **SERGIO GARCIA NICOLAS,**
12
13 **Plaintiff,**

14 **vs.**

15 **JOHN MATTOS, Warden, Nevada**
16 **Southern Detention Center;**
17 **MICHAEL BERNACKE, Field Office**
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22 **KRISTI NOEM, Secretary of Homeland**
23 **Security, in their official capacities,**

24 **Defendant**

Case No.:

**PETITION FOR WRIT OF HABEAS
CORPUS**

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 16th day of January, 2026, at Las Vegas, Nevada:

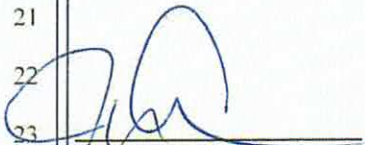
23 
24 **J. Carrillo**
25 **Senior Paralegal**

EXHIBIT 1

From: Riley, Teresa (EOIR) <Teresa.Riley@ice.dhs.gov>
Sent: Tuesday, January 13, 2026 3:09 PM
Subject: Guidance

Good afternoon/evening ACIs:

Please provide the following guidance to all Immigration Judges forthwith:

Maldonado Baubista is not a nationwide injunction and does not purport to vacate, stay, or enjoin Yajure Hurtado. Therefore, Yajure Hurtado remains binding precedent on agency adjudicators. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party.

Thank you for your attention in this matter.

Sincerely,

Teresa L. Riley
Chief Immigration Judge