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7 UNITED STATES DISTRICT COURT
8 Southern District of California

9

10 JOSUE SALAS CABALLERO,) Case Number: **25CV2927 BJC KSC**
11 v.)
12)
13 CHRISTOPHER J. LaROSE, Senior Warden)
14 Otay Mesa Detention Center; PAMELA BONDI,)
15 United States Attorney General; KRISTI NOEM,)
16 Secretary of the Department of Homeland)
17 Security; PATRICK DIVVER, ICE San Diego)
18 Field Office Director, in their official capacities,)
19)
20 Respondents.)
21)
22)
23)
24)
25)
26)
27)
28)

20 Petitioner alleges:

21 **INTRODUCTION**

22 1. Petitioner JOSUE SALAS CABALLERO (A  is subjected to unlawful
23 detention by Respondents at the Otay Mesa Detention Center. The immigration judge concluded
24 that he had no jurisdiction to even consider setting a bond based on the case of *Matter of Yajure*
25 *Hurtado*, 29 I & N Dec. 216 (BIA 2025). The BIA and immigration judge interpretation of the
26 Immigration and Nationality Act is plainly contrary to the statutory framework and decades of
27 agency practice. Petitioner seeks an order compelling the immigration judge to accept jurisdiction
28 and afford him a bond decision on the merits.

JURISDICTION

2 2. This action arises under the Constitution of the United States; the Immigration and
3 Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*; and the Administrative Procedures Act (“APA”),
4 5 U.S.C. § 500, *et seq.*

5 3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28
6 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 et seq. (APA);
7 and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

8 4. The court may grant relief under the habeas corpus statutes, the Declaratory
9 Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

11 5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility,
12 in San Diego, California, which is within the jurisdiction of this District.

13 6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at
14 least one federal respondent is in this District; and a substantial part of the events or omissions
15 giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

17 7. The Court must grant the habeas corpus petition or issue an order to show cause
18 (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. §
19 2243. If an order to show cause is issued, the Court must require respondents to file a return “within
20 three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

21 8. Courts have long recognized the significance of the habeas statute in protecting
22 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
23 important writ known to the constitutional law of England, affording as it does a swift and
24 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400
25 (1963) (emphasis added).

PARTIES

27 9. Petitioner JOSUE SALAS CABALLERO (“Petitioner”) is a 42-year-old citizen of
28 Mexico. He is detained by the Respondents at the Otay Mesa Detention Center.

1 10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior
2 Warden of the (Otay Mesa Detention Center). Defendant LaRose has custody of petitioner.

3 11. Respondent PAMELA BONDI is being sued in her official capacity as the Attorney
4 General of the United States. She is the official generally charged with supervisory authority over
5 all operations of the Department of Justice. In this capacity, she is responsible for the administration
6 of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office for
7 Immigration Review (“EOIR”), a component of the DOJ, which includes the immigration courts
8 and the Board of Immigration Appeals (“BIA” or “Board”). She is empowered to oversee the
9 adjudication of removal and bond hearings and by regulation has delegated that power to the
10 nation’s Immigration Judges and the BIA.

11 12. Respondent KRISTI NOEM is being sued in her official capacity as the Secretary of
12 the United States Department of Homeland Security. She is the executive officer who has been
13 given authority to manage and control U.S. Immigration and Customs Enforcement (“ICE”). As
14 such, she is the ultimate legal custodian of petitioner.

13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field
14 Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a
15 component of DHS with responsibility over persons in immigration custody at the Otay Mesa
16 Detention Center. Director Divver has custody of petitioner.

LEGAL FRAMEWORK

20 14. This petition presents the legal question of whether an alien released on his own
21 recognizance and placed in a full removal proceeding is detained under 8 U.S.C. § 1226 or is instead
22 subject to the detention rules relating to expedited removal under 8 U.S.C. § 1225. Petitioner
23 contends he is subject to detention per the § 1226 rules while the DHS argues the § 1225 rules apply.

24 15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens
25 are entitled to due process of law in deportation proceedings and must be given notice and an
26 opportunity to be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. ___,
27 145 S. Ct. 1003, 1006 (2025).

1 16. The “usual removal process” involves an evidentiary hearing before an immigration
2 judge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated
3 under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with the
4 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226
5 provides that while removal proceedings are pending, a noncitizen “may be arrested and detained” and
6 that the government “may release the alien on … conditional parole.” § 1226(a)(2); *accord*
7 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be “detained” or
8 “allowed to reside in this country”).

9 17. When a person is apprehended under § 1226(a), an ICE officer makes the initial
10 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §
11 236.1(c)(8)). A noncitizen will be released if he or she “demonstrate[s] to the satisfaction of the
12 officer that such release would not pose a danger to property or persons, and that the alien is likely
13 to appear for any future proceeding.” *Id.* (citing 8 C.F.R. § 236.1(c)(8)). “Federal regulations
14 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”
15 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,
16 the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to
17 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail
18 risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.
19 Dec. 37, 40 (B.I.A. 2006)).

20 18. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §
21 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that
22 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.
23 2019). However, if an immigration judge has determined the noncitizen should be released, the
24 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,
25 854 F. App’x 787, 788 (9th Cir. 2021) Where the release decision was made by a DHS officer, not
26 an immigration judge, the Government’s practice has been to require a showing of changed
27 circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
28 2017).

1 19. While “§ 1226 applies to *aliens already present in the United States*,” U.S.
2 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*
3 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,
4 583 U.S. at 303 (2018)(emphasis added). Under § 1225, a noncitizen “who has not been admitted or
5 who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. § 1225(a)(1).
6 For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” § 1225(b)(1).

7 20. Respondents’ central argument is that petitioner is subject to mandatory detention
8 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the
9 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the
10 government’s new interpretation of § 1225.

11 21. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no
12 deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)
13 (observing that while “agencies have no special competence in resolving statutory ambiguities,”
14 “[c]ourts do”).

15 22. Multiple District Courts across the entire United States have recently concluded that
16 the government’s proposed interpretation of the statute (a) disregards the plain meaning of section
17 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
18 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
19 statutory interpretation and practice. The following quote is a representative example:

20 “The Court follows other decisions in this Circuit finding that “seeking admission
21 requires an affirmative act such as entering the United States or applying for status,
22 and that it does not apply to individuals who, like [Petitioner], have been residing in
23 the United States and did not apply for admission or a change of status.” *Mosqueda*
24 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
25 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
26 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
27 (“Every district court to address this question has concluded that the government’s
28 position belies the statutory text of the INA, canons of statutory interpretation,

1 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-
2 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4-5 (E.D. Cal. Sept. 9, 2025)
3 (finding that petitioner who was released on bond and rearrested was entitled to a
4 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
5 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
6 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).” *Esquivel-*
7 *Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

8 23. District Courts have found, once immigration authorities “elect to proceed with full
9 removal proceedings under § 1226, [they] cannot [] reverse course and institute § 1225 expedited
10 removal proceedings.” *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4
11 (N.D. Cal. Aug. 21, 2025).

12 24. Moreover, given the time spent at liberty following an initial release from detention
13 upon a determination that petitioner was not a flight risk or danger, as well as the government’s
14 implicit promise that any custody redetermination would be based on those same criteria, petitioner
15 has a protected “interest in remaining at liberty unless [he] no longer meets those criteria.” *Espinosa*
16 *v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *13 (E.D. Cal. Sept. 5, 2025)
17 (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24,
18 2025)).

19 FACTUAL ALLEGATIONS

20 25. Petitioner has lived in the United States since 1993. His last entry was in 2006. He is
21 not married. He has two children, ages 18 and 19. His children are United States citizens. Petitioner
22 works as a self-employed handyman. He has a minimal criminal record consisting of a 2010
23 conviction for petty theft (California Penal Code § 484).

24 26. On June 4, 2010, the DHS detained Petitioner and issued him a Notice to Appear
25 (NTA), then released him on his own recognizance pending his removal hearing at the San Diego
26 Immigration Court.

27 27. The NTA charges Petitioner with removability under 212(a)(6)(A)(i) of the INA, as
28 an alien present in the USA without being admitted or paroled. Petitioner conceded removability.

1 28. In 2013, Petitioner filed applications for cancellation of removal and asylum.

2 29. In March 2013, the immigration judge granted Petitioner's unopposed motion for an
3 administrative closure of the removal case. The removal case was closed.

4 30. In September 2025, the immigration judge granted the DHS motion to re-calendar
5 the removal case. The judge scheduled a master calendar hearing for October 21, 2025.

6 31. Before the new court hearing, the DHS detained petitioner without explanation and
7 sent him to the Otay Mesa Detention Center, where he remains today.

8 32. Petitioner filed a motion for a custody redetermination seeking a bond allowing
9 release from the immigration jail. On September 22, 2025 the immigration judge denied the bond
10 request, concluding he had no jurisdiction to redetermine bond per *Matter of Yajure Hurtado*.

11 **CAUSES OF ACTION**

12 **COUNT 1**

13 **(Violation of the Immigration and Nationality Act)**

14 33. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 32.

15 34. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225;
16 therefore he is entitled to a bond redetermination hearing before an immigration judge.

17 35. Petitioner's continued detention under Section 1226(a) in the absence of a bond
18 hearing violates the INA.

19 **COUNT 2**

20 **(Violation of the Administrative Procedure Act)**

21 36. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 35.

22 37. Section 706 of 5 U.S.C. provides that a reviewing court shall compel agency action
23 unlawfully withheld and hold unlawful and set aside agency action not in accordance with law. 5
24 U.S.C. § 706(1)-(2).

25 38. Petitioner has a statutory and due process right to have an Immigration Judge
26 conduct a bond hearing pursuant to 8 U.S.C. § 1226.

27 39. Moreover, the respondents' arbitrary re-detention of petitioner—and others—without
28 explanation or a change in circumstances is unlawful and smacks of malice.

1 40. Defendants' refusal to provide a bond hearing to petitioner harms him and
2 constitutes final agency action for purposes of the APA.

3 41. There are no other adequate available remedies.

4 42. Respondents' actions constitute an unlawful withholding of an agency action and
5 unlawful agency action in violation of the APA.

COUNT 3

(Violation of the Due Process Clause)

43. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 41.

9 44. In June 2010, the DHS detained petitioner for a removal proceeding but then
10 released him upon his own recognizance (OR), conceding that he was neither a flight risk nor a
11 danger to the community.

12 45. In September 2025, DHS agents detained petitioner on the street without explanation
13 and sent him to the Otay Mesa Detention Center.

14 46. The re-detention of petitioner after his OR release without any explanation or change
15 in circumstances violates Ninth Circuit case law and the Due Process Clause of the Fifth Amendment
16 to the United States Constitution

PRAYER FOR RELIEF

18 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

19 (1) Assume jurisdiction over this matter;

20 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
21 should not be granted within three days;

22 (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth
23 Amendment, the INA, and the APA;

24 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or
25 schedule a bond hearing on the merits before an immigration judge;

26 (5) Issue an order prohibiting respondents from continuing to detain petitioner on the basis
27 that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2);

4 | DATED: 28 October 2025

Respectfully submitted,

/s/ William Baker

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1 **VERIFICATION**

2 **DECLARATION UNDER PENALTY OF PERJURY**

3 I declare under penalty of perjury under the laws of the United States that I am the petitioner; I
4 have read the petition or had it read to me in a language I understand, and the information in the
5 petition is true and correct. I understand that a false statement of a material fact may serve as the
6 basis for prosecution for perjury.

7 **VERIFICACIÓN**

8 **DECLARACIÓN BAJO PENA DE PERJURIO**

9 Declaro bajo pena de perjurio según las leyes de los Estados Unidos que soy el peticionario; He
10 leido la petición o me la han leido en un idioma que entiendo, y la información de la petición es
11 verdadera y correcta. Entiendo que una declaración falsa de un hecho material puede servir como
12 base para el enjuiciamiento por perjurio.

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14 
15 **JOSUE SALAS CABALLERO**
16 Petitioner/Peticionario
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