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UNITED STATES DISTRICT COURT

Southern District of California

SALVADOR ESCALERA JAIME,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden Otay Mesa Detention Center; PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the Department of Homeland Security; PATRICK DIVVER, ICE San Diego Field Office Director, in their official capacities,

Respondents.

Case Number: '25CV2943 JLS MMP

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

Oral Argument Requested

Petitioner alleges:

## INTRODUCTION

1. Petitioner SALVADOR ESCALERA JAIME (A [redacted] is subjected to unlawful detention by Respondents at the Otay Mesa Detention Center. The immigration judge concluded that he had no jurisdiction to even consider setting a bond based on the case of *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). The BIA and immigration judge interpretation of the Immigration and Nationality Act is plainly contrary to the statutory framework and decades of agency practice. Petitioner seeks an order compelling respondents to release him from custody of for the immigration judge to accept jurisdiction and afford him a bond decision on the merits.

**JURISDICTION**

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

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

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

**VENUE**

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

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions 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**

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

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

**PARTIES**

9. Petitioner SALVADOR ESCALERA JAIME ("Petitioner") is a 47-year-old citizen of Mexico. He is detained by the Respondents at the Otay Mesa Detention Center.

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

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

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

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

**LEGAL FRAMEWORK**

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

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

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

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

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

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

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

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

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

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

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

*Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

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

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

## FACTUAL ALLEGATIONS

25. Petitioner has lived in the United States since 1991. He is married. He has six children, ages 25, 23, 18, 18, 11 and 9. His wife and children are all United States citizens. Petitioner works for the City of San Diego sanitation department. He has a minimal criminal record consisting of a 2011 conviction for burglary (California Penal Code § 459).

26. In March, 2010, the DHS detained Petitioner and issued him a Notice to Appear (NTA) for a removal hearing. The immigration judge set a $25,000 bond and petitioner was released from detention.

27. The NTA charges Petitioner with removability under 212(a)(6)(A)(i) of the INA, as

an alien present in the USA without being admitted or paroled. Petitioner conceded removability.

28. Petitioner filed an application for cancellation of removal. He was issued an employment authorization.

29. In January 2013, the immigration judge administratively closed the removal case.

30. In 2025, the immigration judge granted the DHS motion to re-calendar the removal case. The judge scheduled a master calendar hearing.

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

32. Petitioner filed a motion for a custody redetermination hearing, currently set for October 31, 2025. Petitioner expects that the immigration judge will deny the bond request, concluding he has no jurisdiction to redetermine bond per *Matter of Yajure Hurtado*.

## CAUSES OF ACTION

### COUNT 1

(Violation of the Immigration and Nationality Act)

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

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

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

### COUNT 2

(Violation of the Administrative Procedure Act))

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

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

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

39. Moreover, the respondents' arbitrary re-detention of petitioner—and others—without

explanation or a change in circumstances is unlawful and smacks of malice.

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

41. There are no other adequate available remedies.

42. Respondents' actions constitute an unlawful withholding of an agency action and 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.

44. In April 2010, the immigration judge set a $25,000 bond. Petitioner paid the $25,000 bond and was released from DHS custody. Since then he has complied with all of the terms and conditions of his bond. He has not been in any more trouble with the law.

45. In October 2025, DHS agents detained petitioner when he reported for a check in at the ICE ERO office and sent him to the Otay Mesa Detention Center.

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

**PRAYER FOR RELIEF**

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

(1) Assume jurisdiction over this matter;

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

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

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

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

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28 U.S.C. § 2412), and any other applicable statute or regulation; and

(7) Grant any further relief this Court deems just and proper.

DATED: 28 October 2025

Respectfully submitted,

/s/ *William Baker*

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**VERIFICATION**

DECLARATION UNDER PENALTY OF PERJURY

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

**VERIFICACIÓN**

DECLARACIÓN BAJO PENA DE PERJURIO

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

Salvador Escalera-Jaime
Petitioner/Peticionario