

1 WILLIAM BAKER, SBN 157 906
Moreno & Associates Law Firm, APC
2 2082 Otay Lakes Road, Ste. 102
Chula Vista, CA 91913
3 619-422-4885
william.baker@morenoandassociates.com
4

5 Attorney for petitioner
6

7 UNITED STATES DISTRICT COURT
8 Southern District of California
9

10 CELIA NOHEMI MERLOS DE MENDEZ,) Case Number: **'25CV2941 JES MSB**


11) Petitioner,) **VERIFIED PETITION FOR WRIT OF**
12) v.) **HABEAS CORPUS**

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

17 Respondents.
18)
19)

20 Petitioner alleges:

21 **INTRODUCTION**

22 1. Petitioner CELIA NOEMI MERLOS DE MENDEZ (A ) is subjected to
23 unlawful detention by Respondents at the Otay Mesa Detention Center. The DHS detained
24 petitioner and released her on her own recognizance. Respondents re-detained petitioner without
25 explanation or a change in circumstances. Petitioner seeks an order compelling respondents to
26 release her from detention.

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 CELIA NOEMI MERLOS DE MENDEZ ("Petitioner") is a 39-year-old citizen of El Salvador. She 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 her own recognizance and placed in a full removal proceeding is subject to an arbitrary re-detention by the DHS without any explanation or change in circumstances.

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

1 under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with the
 2 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226
 3 provides that while removal proceedings are pending, a noncitizen “may be arrested and detained” and
 4 that the government “may release the alien on ... conditional parole.” § 1226(a)(2); *accord*
 5 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be “detained” or
 6 “allowed to reside in this country”).

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

18 18. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §
 19 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that
 20 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.
 21 2019). However, if an immigration judge has determined the noncitizen should be released, the
 22 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,
 23 854 F. App’x 787, 788 (9th Cir. 2021) Where the release decision was made by a DHS officer, not
 24 an immigration judge, the Government’s practice has been to require a showing of changed
 25 circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
 26 2017).

27 19. District Courts have found, once immigration authorities “elect to proceed with full
 28 removal proceedings under § 1226, [they] cannot [] reverse course and institute § 1225 expedited

1 removal proceedings.” *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4
2 (N.D. Cal. Aug. 21, 2025).

3 20. Moreover, given the time spent at liberty following an initial release from detention
4 upon a determination that petitioner was not a flight risk or danger, as well as the government’s
5 implicit promise that any custody redetermination would be based on those same criteria, petitioner
6 has a protected “interest in remaining at liberty unless [he] no longer meets those criteria.” *Espinoza*
7 *v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *13 (E.D. Cal. Sept. 5, 2025)
8 (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24,
9 2025).

10 FACTUAL ALLEGATIONS

11 21. Petitioner arrived to the United States in September 2024 at the Paso Del Norte Port
12 of Entry. The DHS paroled petitioner into the United States. She has no departures.

13 22. Petitioner is married. She has three children, ages 30, 28, and 25. The husband and
14 children have no immigration status and live in El Salvador. Petitioner has no criminal record.

15 23. On September 7, 2024, the DHS detained Petitioner and issued her a Notice to
16 Appear (NTA), then released her on her own recognizance pending a removal hearing at the New
17 York Immigration Court.

18 27. The NTA charges Petitioner with removability under 212(a)(7)(A)(i)(I) of the INA,
19 as an alien without lawful entry documents.

20 28. Petitioner applied for and was approved for an employment authorization. She
21 obtained a job as a house cleaner.

22 29. In May 2025, petitioner moved from New York to San Diego, California. In June
23 2025, the venue of the removal case was changed to the San Diego Immigration Court. The case
24 was scheduled for a master calendar hearing on August 25, 2025.

25 30. Petitioner attended her August 25, 2025 master calendar hearing where the DHS
26 attorney made an oral motion to dismiss the case in an attempt to place petitioner in a truncated
27 expedited removal proceeding. The judge continued the case to September 16 without ruling on the
28 motion to dismiss to allow petitioner’s attorney an opportunity to respond to the motion to dismiss.

31. Upon leaving the immigration judge's courtroom, petitioner was detained by masked men standing in the hallway of the immigration court. The masked men did not have an arrest warrant and did not explain how or why petitioner was being detained. They just took petitioner to a holding cell and later sent her to the Otay Mesa Detention Center.

32. Petitioner filed a motion for a custody redetermination seeking a bond allowing release from the immigration jail. On September 8, 2025 the immigration judge denied the bond request, concluding he had no jurisdiction to redetermine bond since petitioner was classified as arriving alien.

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 she 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 and decision on the merits 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 her and constitutes final agency action for purposes of the APA.

1 41. There are no other adequate available remedies.

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

4 **COUNT 3**

5 **(Violation of the Due Process Clause)**

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

7 44. In September 2024, the DHS detained petitioner for a removal proceeding but then
8 released her upon his own recognizance (OR), conceding that she was neither a flight risk nor a
9 danger to the community.

10 45. In August 2025, DHS agents detained petitioner at the immigration court without
11 explanation and sent him to the Otay Mesa Detention Center. Respondents did not provide
12 petitioner with a pre-deprivation of liberty hearing before a neutral decisionmaker.

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

16 **PRAYER FOR RELIEF**

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

18 (1) Assume jurisdiction over this matter;

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

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

23 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

24 (5) Issue an order prohibiting respondents from re-detaining petitioner without a material
25 change in circumstances and a pre-deprivation hearing where respondents must prove by clear and
26 convincing evidence that petitioner is either a flight risk or danger to the community;

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

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

2 DATED: 28 October 2025

3 Respectfully submitted,

4 /s/ William Baker

5
6 William Baker (157 906)
7 MORENO & ASSOCIATES
8 2082 Otay Lakes Road, Suites 102
9 Chula Vista, California 91913
10 Telephone: (619) 422-4885
11 william.baker@morenoandassociates
12 Attorney for petitioner
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3 **VERIFICATION**

4 **DECLARATION UNDER PENALTY OF PERJURY**

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

9 **VERIFICACIÓN**

10 **DECLARACIÓN BAJO PENA DE PERJURIO**

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

15 

16 Celia Nohemi Merlos De Mendez
17 Petitioner/Peticionario
18
19
20
21
22
23
24
25
26
27
28