

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

5 | Attorney for petitioner

UNITED STATES DISTRICT COURT

Southern District of California

20 | Petitioner alleges:

## INTRODUCTION

22 1. Petitioner SAMUEL DAVID GRANADILLO ARAUJO (A  is  
23 subjected to unlawful detention by Respondents at the Otay Mesa Detention Center. The DHS  
24 detained petitioner but then released him on his own recognizance pending his full removal  
25 proceeding. The DHS moved to dismiss the removal proceeding in a ploy to rapidly expel him from  
26 the USA via the expedited removal process. Respondents also re-detained petitioner without any  
27 explanation or change in circumstances. Petitioner seeks an order compelling respondents to release  
28 him immediately from detention.

## **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 SAMUEL GRANADILLO ARAUJO ("Petitioner") is a 28-year-old  
28 citizen of Venezuela. 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 recognition and placed in a full removal proceeding is subject expedited removal and an arbitrary  
22 re-detention by the DHS without any explanation or change in circumstances.

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

27       16. The “usual removal process” involves an evidentiary hearing before an immigration  
28 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.” *Espinosa*  
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 came to the United States fleeing violence after he was kidnapped and  
12 threatened by an organized crime group in Venezuela. He arrived to the United States in September  
13 2024 at the Calexico Port of Entry. The DHS paroled petitioner into the United States.

14 22. Petitioner is married to a United States citizen. He has no children. Petitioner has no  
15 criminal record. Before his detention he worked as a cook.

16 23. On September 29, 2024, the DHS detained Petitioner and issued him a Notice to  
17 Appear (NTA), then released him on his own recognizance pending a removal hearing at the Miami,  
18 Florida Immigration Court.

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

21 28. Petitioner applied for and was approved for an employment authorization. He  
22 obtained a job as a cook. In March 2025, he filed an asylum application.

23 29. Petitioner moved to San Diego, California. In July 2025, an official from the San  
24 Diego ERO office instructed petitioner to appear at the office for a “check in.” Petitioner’s attorney  
25 spoke to the ERO deportation officer, who assured her petitioner was not going to be detained.

26 30. Petitioner attended his July 28, 2025 “check in” meeting at the San Diego ERO  
27 office where, of course, he was immediately detained without any explanation and sent to the Otay  
28 Mesa Detention Center. The removal case was changed to the Otay Mesa Immigration Court.

1       31. On August 5, 2025, the DHS filed a motion to dismiss the removal proceeding in an  
2 effort to rapidly expel petitioner from the USA using the expedited removal procedure. On August  
3 12, 2025, the immigration judge granted the motion to dismiss despite petitioner's opposition.  
4 Petitioner appealed this decision to the BIA. The BIA appeal is pending.

5 32. Petitioner filed a motion for a custody redetermination seeking a bond allowing  
6 release from the immigration jail. On August 6, 2025 the immigration judge denied the bond  
7 request, concluding he had no jurisdiction to redetermine bond since petitioner was classified as  
8 arriving alien.

9       33. After much bureaucratic sluggishness, petitioner was able to marry his United States  
10 citizen spouse at the Otay Mesa immigration jail. Since petitioner was paroled into the United States  
11 he is eligible to apply for adjustment of status as the immediate relative spouse of a United States  
12 citizen. He filed an adjustment of status application with the United States Citizenship and  
13 Immigration Services, which has jurisdiction over the application because petitioner is an arriving  
14 alien. The adjustment of status application is pending.

## **CAUSES OF ACTION**

COUNT I

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

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

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

21 36. Petitioner's continued detention under Section 1226(a) in the absence of a bond  
22 hearing and decision on the merits violates the INA.

## COUNT 2

(Violation of the Administrative Procedure Act))

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

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

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

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

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

42. There are no other adequate available remedies.

43. 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.

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

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

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

## PRAYER FOR RELIEF

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

24 (1) Assume jurisdiction over this matter;

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

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

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

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

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

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

8 | DATED: 30 October 2025

Respectfully submitted,

*/s/ William Baker*

William Baker (157 906)  
MORENO & ASSOCIATES  
2082 Otay Lakes Road, Suites 102  
Chula Vista, California 91913  
Telephone: (619) 422-4885  
william.baker@morenoandassociates.com  
Attorney for petitioner

1 **VERIFICATION**

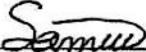
2 **DECLARATION UNDER PENALTY OF PERJURY**

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 leído la petición o me la han leído 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.

13  
14   
15 

---

Samuel David Granadillo Araujo  
Petitioner/Peticionario  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28