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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 JAKELIN BORREGO MARQUEZ (“Petitioner”) is a 54-year-old citizen of Cuba. She 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.

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

19 LEGAL FRAMEWORK

20 14. This petition presents the question of whether respondents may lawfully revoke an
21 order of supervision and detain a noncitizen without any explanation or change in circumstances. It
22 also presents the question of whether the Constitution allows indefinite prolonged detention.

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 detention and release of noncitizens that are subject to a final order of removal
28 is governed by 8 U.S.C. § 1231. This statute provides that “when an alien is ordered removed, the

1 Attorney General shall remove the alien from the United States within a period of 90 days.” 8
2 U.S.C. § 1231(a)(1)(A). “If the alien does not leave or is not removed within the removal period,
3 the alien, pending removal, shall be subject to supervision under regulations prescribed by the
4 Attorney General.” *Id.* § 1231(a)(3).

5 17. Supervised release and any revocation of such release thereafter is governed by
6 either 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13; *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025
7 WL 2581575, at *4 (E.D. Cal. Sept. 5, 2025).

8 18. Revocation under § 241.4(l) provides two ways for supervised release to be revoked:

9 (1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of
10 this section who has been released under an order of supervision or other conditions of
11 release who violates the conditions of release may be returned to custody. Any such alien
12 who violates the conditions of an order of supervision is subject to the penalties described
13 in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for
14 revocation of his or her release or parole. The alien will be afforded an initial informal
15 interview promptly after his or her return to Service custody to afford the alien an
16 opportunity to respond to the reasons for revocation stated in the notification.

17 (2) Determination by the Service. The Executive Associate Commissioner shall have
18 authority, in the exercise of discretion, to revoke release and return to Service custody an
19 alien previously approved for release under the procedures in this section. A district
20 director may also revoke release of an alien when, in the district director’s opinion,
21 revocation is in the public interest and circumstances do not reasonably permit referral of
22 the case to the Executive Associate Commissioner. Release may be revoked in the exercise
23 of discretion when, in the opinion of the revoking official: (i) The purposes of release have
24 been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce
25 a removal order or to commence removal proceedings against an alien; or (iv) The conduct
26 of the alien, or any other circumstance, indicates that release would no longer be
27 appropriate. 8 C.F.R. § 241.4(l).

28 19. Revocation under § 241.13 similarly provides that an alien’s supervised release may

1 be revoked after it is granted for two reasons:

2 (i) Revocation of release

3 (1) Violation of conditions of release. Any alien who has been released under an order
4 of supervision under this section who violations any of the conditions of release may be
5 returned to custody and is subject to the penalties described in section 243(b) of the Act.
6 [...]

7 (2) Revocation for removal. The Service may revoke an alien's release under this
8 section and return the alien to custody if, on account of changed circumstances, the Service
9 determines that there is a significant likelihood that the alien may be removed in the
10 reasonably foreseeable future. Thereafter, if the alien is not released from custody
11 following the informal interview provided for in paragraph (h)(3) of this section, the
12 provisions of § 241.4 shall govern the alien's continued detention pending removal. 8
13 C.F.R. § 241.13(4)(i).

14 20. Sections 241.4(l)(1) and 241.13(3) both explicitly require that "Upon revocation, the
15 alien will be notified of the reasons for revocation of his or her release or parole. The alien will be
16 afforded an initial informal interview promptly after his or her return to Service custody to afford
17 the alien an opportunity to respond to the reasons for revocation stated in the notification." These
18 requirements for notice and an initial informal interview are not explicitly required in § 241.4(l)(2),
19 but courts have held that the same requirements constrain revocation of release under this second
20 provision as well. *See Diaz*, 2025 WL 2581575 (citing various district court cases that have rejected
21 the government's arguments that these provisions do not apply to § 241.4(l)(2)); *Constantinovici v.*
22 *Bondi*, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *4 (S.D. Cal. Oct. 10, 2025)
23 ("District courts have consistently rejected this argument and held that § 241.4(l)(1)'s procedural
24 requirements apply equally to revocation of a noncitizen's release pursuant to § 241.4(l)(2)."). Thus,
25 as applicable to this provision, the As other courts have found, Respondents' failure to provide an
26 informal interview after the revocation of release constitutes a due process violation. *M.S.L.*, 2025
27 WL 2430267, at *11 (holding that informal interview was not sufficiently "prompt" where it took
28 place twenty-seven days after revocation and collecting cases); *Constantinovici*, 2025 WL 2898985,

1 at *6 (due process violation where “[n]othing in the record indicates that Petitioner was provided
2 with an interview in connection with the revocation of his release or otherwise afforded an
3 opportunity to respond to the reasons for his re-detention”); *Delkash v. Noem*, No. 5:25-CV-01675-
4 HDV-AGR, 2025 WL 2683988, at *5 (C.D. Cal. Aug. 28, 2025) (same where there was “no
5 evidence that [petitioner] has been afforded an informal or formal interview”); *Phan v. Noem*, No.
6 3:25-CV-02422-RBM-MSB, 2025 WL 2898977, at *4 (S.D. Cal. Oct. 10, 2025) (finding same
7 where no interview was conducted).” *Xayakeson v. Noem*, 3-25-cv-2995-JES-BJW, 2025 WL
8 3229102.

9 21. After the 8 U.S.C. § 1231 removal period, the statute “limits an alien’s post-removal-
10 period detention to a period reasonably necessary to bring about that alien’s removal from the
11 United States” and “does not permit indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 679
12 (2001).. A six-month period of post-removal detention constitutes a “presumptively reasonable
13 period of detention.” *Id.* At 701. After this six-month period passes, the petitioner has the burden to
14 “provide[] good reason to believe that there is no significant likelihood of removal in the
15 reasonably foreseeable future.” *Id.* If petitioner satisfies their initial burden, it then shifts to the
16 Government to rebut that showing. *Id.* “[F]or detention to remain reasonable, as the period of prior
17 post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely
18 would have to shrink.” *Id.* “[O]nce removal is no longer reasonably foreseeable, continued
19 detention is no longer authorized by statute.” *Id.* At 699.. In that case, the alien’s release may be
20 conditioned on any of the various forms of conditioned release, including an order of supervised
21 release. *Id.* At 700.

22 22. Moreover, given the time spent at liberty following an initial release from detention
23 upon a determination that petitioner was not a flight risk or danger, as well as the government’s
24 implicit promise that any custody redetermination would be based on those same criteria, petitioner
25 has a protected “interest in remaining at liberty unless [he] no longer meets those criteria.” *Espinoza*
26 *v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *13 (E.D. Cal. Sept. 5, 2025)
27 (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24,
28 2025).

1 **FACTUAL ALLEGATIONS**

2 23. The facts here are old, and somewhat complex. Here is what petitioner recalls.
3 Petitioner came to the United States fleeing religious oppression in Cuba. She arrived to the United
4 States around 1994. She apparently applied for asylum.

5 24. In 2003, petitioner married a citizen of Mexico. The husband was a violent man, who
6 would regularly beat petitioner. In 2004, petitioner was surprised to be arrested at the immigration
7 court. She was extradited to Mexico and later convicted of a crime, for which she spent several
8 years in prison. In 2019, petitioner returned to the United States..

9 25. Petitioner was detained at the Adelanto Detention Facility for around eleven months.
10 She was then apparently released on an Order of Supervision because she could not be removed to
11 Cuba. From 2019 to January 2025, petitioner was at liberty on the Order of Supervision. She was
12 provided with an employment authorization and attended her appointments with ICE as directed.

13 26. On January 19, 2025, petitioner was detained by ICE without explanation. The ICE
14 agents threatened to deport petitioner to the American prison camp at Guantanamo Bay, Cuba. On
15 February 14, 2025, ICE removed petitioner to Mexico. In April 2025, petitioner was the victim of
16 an attempted kidnapping in Mexico. Fearing for her life, on May 11, 2025, petitioner attempted to
17 re-enter the United States unlawfully but she was detained by the Border Patrol.

18 27. On August 18, 2025, petitioner was convicted in the Southern District of California
19 of the crime of illegal reentry to the United States (8 U.S.C. § 1325(a)(1)) and sentenced to time
20 served (100 days) (25 CR 2145-LL). On August 19, 2025, upon her release from the federal jail,
21 petitioner was detained by DHS/ICE. She was sent to the Otay Mesa Detention Center.

22 28. Petitioner was provided with a reasonable fear interview. The asylum officer made a
23 negative reasonable fear determination. On October 8, 2025, the immigration judge upheld the
24 negative reasonable fear determination. Petitioner did not file a petition for review.

25 **CAUSES OF ACTION**

26 **COUNT 1**

27 (Violation of the Administrative Procedure Act))

28 29. Pctitioner incorporates by reference the allegations set forth in paragraphs 1 to 28.

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

4 31. Petitioner has a regulatory and due process right to have respondents comply with
5 the regulations relating to the revocation of the Order of Supervision and detention.

6 32. The respondents purportedly revoked the Order of Supervision and detained her without
7 complying with the appropriate regulations.

8 33. Respondents failed to comply with the regulation in that they did not provide an
9 adequate explanation for the purported revocation of the Order of Supervision and failed to promptly
10 afford petitioner an informal interview and opportunity to respond to the reasons for the revocation.

11 34. Respondents have also failed to comply with the regulation by releasing her from
12 detention on a new order of supervision, since she apparently cannot be removed from the USA.

13 35. Respondents' refusal to comply with the regulations harms her and constitutes final
14 agency action for purposes of the APA.

15 36. There are no other adequate available remedies.

16 37. Respondents' actions constitute an unlawful withholding of an agency action and
17 unlawful agency action in violation of the APA.

18 COUNT 3

19 (Violation of the Due Process Clause)

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

21 39. In January 2025, DHS agents detained petitioner at her check in and purportedly
22 revoked her Order of Supervision. Respondents failed to provide petitioner an opportunity to
23 respond to the reason for the revocation of the Order of Supervision. Respondents also failed to
24 promptly conduct an informal interview about the revocation of the of the Order of Supervision.

25 40. The revocation of the Order of Supervision without an adequate explanation or a
26 prompt informal interview violates the Due Process Clause of the Fifth Amendment to the United
27 States Constitution.

28 41. The prolonged detention of petitioner where there is no significant likelihood of

1 removal in the reasonably foreseeable future also violates the Due Process Clause of the United
2 States Constitution.

3 **PRAYER FOR RELIEF**

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

5 (1) Assume jurisdiction over this matter;

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

8 (3) Declare that Petitioner's revocation of the Order of Supervision and prolonged detention
9 violates the Due Process Clause of the Fifth Amendment and the regulations;

10 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately
11 subject to the pre-existing Order of Supervision;

12 (5) Issue an order prohibiting respondents from revoking the Order of Supervision without
13 complying with the regulations and Due Process of law;

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

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

17 DATED: 11 December 2025

18 Respectfully submitted,

19 */s/ William Baker*

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21

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VERIFICATION

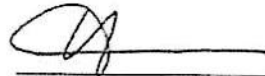
DECLARATION UNDER PENALTY OF PERJURY

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.



Jakelin Borrego Marquez
Petitioner/Peticionario