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8 UNITED STATES DISTRICT COURT
9 Central District of California

10 KATHIA RUGAMA PEREZ,
11 Petitioner,

12 v.

13 MARK BOWEN, Warden of the Adelanto ICE
14 Processing Center; PAMELA BONDI, United
15 States Attorney General; KRISTI NOEM,
16 Secretary of the Department of Homeland
17 Security; ERNESTO SANTACRUZ JR., ICE
18 Los Angeles Field Office Director, in their
19 official capacities,

20 Respondents.


) Case Number:

) **VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

) Oral Argument Requested

21 Petitioner alleges:

22 **INTRODUCTION**

23 1. Petitioner KATHIA RUGAMA PEREZ (A ) is subjected to unlawful
24 immigration detention at the Adelanto ICE Processing Center. Respondent was detained by
25 immigration agents. The immigration judges at Adelanto conclude there is no jurisdiction to even
26 consider setting a bond based *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). The BIA
27 and immigration judge interpretation of the Immigration and Nationality Act is plainly contrary to
28 the statutory framework and decades of agency practice. Petitioner seeks an order compelling the
immigration judge to accept jurisdiction to conduct a custody redetermination hearing and afford
her a bond decision on the merits.

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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).

PARTIES

9. Petitioner KATHIA RUGAMA PEREZ ("Petitioner") is a 34-year-old citizen of Nicaragua. She is detained by the Respondents at the Adelanto Detention Center.

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. While "§ 1226 applies to *aliens already present in the United States*," U.S.
21 immigration law also "authorizes the Government to detain certain *aliens seeking admission into the*
22 *country* under §§ 1225(b)(1) and (b)(2)," a process that provides for expedited removal. *Jennings*,
23 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen "who has not been admitted
24 or who arrives in the United States" is considered "an applicant for admission." 8 U.S.C. §
25 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes "expedited removal." §
26 1225(b)(1).

27 19. Respondents' central argument is that petitioner is subject to mandatory detention
28 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the

1 BIA's recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the
2 government's new interpretation of § 1225.

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

7 21. Multiple District Courts across the entire United States have recently concluded that
8 the government's proposed interpretation of the statute (a) disregards the plain meaning of section
9 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
10 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
11 statutory interpretation and practice. The following quote is a representative example:

12 "The Court follows other decisions in this Circuit finding that "seeking admission
13 requires an affirmative act such as entering the United States or applying for status,
14 and that it does not apply to individuals who, like [Petitioner], have been residing in
15 the United States and did not apply for admission or a change of status." *Mosqueda*
16 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
17 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
18 2676082, at *11-16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
19 ("Every district court to address this question has concluded that the government's
20 position belies the statutory text of the INA, canons of statutory interpretation,
21 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-
22 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4-5 (E.D. Cal. Sept. 9, 2025)
23 (finding that petitioner who was released on bond and rearrested was entitled to a
24 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
25 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
26 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."
27 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
28 2025).

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FACTUAL ALLEGATIONS

22. Petitioner came to the USA fleeing violence and death in Nicaragua. She arrived to the United States in May 2022. She is married to a United States citizen. She used to work as a certified nurse assistant. She has no criminal convictions.

23. The DHS paroled petitioner into the USA in May 2022. The DHS released petitioner on her own recognizance pending a removal proceeding.

24. The DHS filed Notice to Appear (NTA) in the Immigration Court to commence a removal proceeding. Petitioner filed an asylum application. The removal case is pending.

25. On October 15, 2025, the DHS detained petitioner and sent her to the Adelanto Detention Center, where she remains today.

26. As relief from removal, petitioner will apply for asylum and adjustment of status.

27. Petitioner filed a motion for custody redetermination with the Immigration Court. The immigration judge will the bond for lack of jurisdiction, citing the BIA case of *Yajure-Hurtado*.

CAUSES OF ACTION

COUNT 1

(Violation of the Immigration and Nationality Act)

28. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 27.

29. 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.

30. 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))

31. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 30.

32. 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).

33. Petitioner has a statutory and due process right to have an Immigration Judge

1 conduct a bond hearing pursuant to 8 U.S.C. § 1226.

2 34. Moreover, the respondents' detention of petitioner in the apparent absence of an arrest
3 warrant smacks of racial profiling and may be unlawful.

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

6 36. There are no other adequate available remedies.

7 36. Respondents' actions constitute an unlawful withholding of an agency action and
8 unlawful agency action in violation of the APA.

9 **COUNT 3**

10 (Violation of the Due Process Clause)

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

12 38. Respondents detain petitioner and argue that the immigration judge has no
13 jurisdiction to conduct a custody redetermination hearing.

14 39. The detention of petitioner without a bond hearing violates both the INA and the
15 Due Process Clause of 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 or
24 schedule a bond hearing on the merits before an immigration judge;

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

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

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

DATED: 12 December 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.

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Kathia Rugama Perez
Petitioner