



1 **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.

10 **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.

16 **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).

26 **PARTIES**

27 9. Petitioner MIGUEL LOPEZ PEREZ (“Petitioner”) is a 41-year-old citizen of  
28 Mexico. He is detained by the Respondents at the Otay Mesa Detention Center.



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

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

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

#### 26 **FACTUAL ALLEGATIONS**

27 19. Petitioner entered the United States without inspection by crossing through the hills  
28 near Tecate in July 2001.



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**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;
- (5) Issue an order prohibiting respondents from re-detaining petitioner without a material change in circumstances and a pre-deprivation hearing where respondents must prove by clear and convincing evidence that petitioner is either a flight risk or danger to the community;
- (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: 15 December 2025

Respectfully submitted,  
*/s/ William Baker*

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Attorney for petitioner

**VERIFICATION**

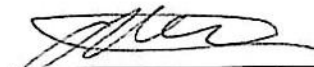
**DECLARATION UNDER PENALTY OF PERJURY**

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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Miguel Lopez Perez  
Petitioner