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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 ANGEL CARLOS ZABALA SISLEMA (“Petitioner”) is a 38-year-old citizen of Ecuador. 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.

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 legal question of whether an alien released on his own  
21 recognizance and placed in a full removal proceeding is subject to an arbitrary re-detention by the  
22 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.” *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 from Ecuador with his two minor children in  
12 November 2022 near Hildago, Texas. He came to the United States seeking asylum after petitioner  
13 was menaced by gang members in Ecuador. The DHS detained the three for processing, then  
14 paroled them into the United States. Petitioner and the children moved to New York.

15 22. Petitioner is divorced. He has two children, ages 7 and 8. The children have no  
16 immigration status and live in New York. Petitioner works as a plumber. He has no criminal record.

17 23. In October 2023, petitioner (and the children) filed an asylum application with the  
18 USCIS. The asylum application is pending. In May 2024, the USCIS approved petitioner’s  
19 application for an employment authorization. The employment authorization is valid until 2029.

20 24. On October 30, 2025, petitioner was chased down and detained by unknown men  
21 one morning while he was at work. The DHS alleges that special agents were looking to arrest a  
22 different man, but detained petitioner instead.

23 25. On October 30, 2025, the DHS filed a Notice to Appear at the New York  
24 Immigration Court charging petitioner with removability as an alien present in the United States  
25 without being admitted or paroled.

26 26. On November 7, 2025, the DHS transferred petitioner to the Otay Mesa Detention  
27 Center, where he remains today. His removal case is pending at the Otay Mesa Immigration Court.

28 27. Petitioner filed a motion for bond redetermination with the Otay Mesa Immigration

1 Court. On December 5, 2025, the immigration judge denied the bond motion, concluding that the  
2 court does not have jurisdiction to consider a bond according to the BIA case of *Yajure-Hurtado*.

3 **CAUSES OF ACTION**

4 **COUNT 1**

5 (Violation of the Immigration and Nationality Act)

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

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

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

11 **COUNT 2**

12 (Violation of the Due Process Clause)

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

14 32. In November 2022, the DHS detained petitioner for a removal proceeding but then  
15 paroled him into the United States upon his own recognizance (OR), conceding that he was neither  
16 a flight risk nor a danger to the community. For some reason, the DHS did not file a Notice to  
17 Appear to start the removal proceeding.

18 33. In October 2025, DHS agents detained petitioner outside his work without  
19 explanation and sent him to MDC Brooklyn Center. Petitioner was then transferred on November  
20 2025 to the Otay Mesa Detention Center. Respondents did not provide petitioner with a pre-  
21 deprivation of liberty hearing before a neutral decisionmaker.

22 34. The re-detention of petitioner after his OR release without any explanation, notice,  
23 hearing, or change in circumstances violates Ninth Circuit case law and the Due Process Clause of  
24 the Fifth Amendment to the United States Constitution

25 **PRAYER FOR RELIEF**

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

27 (1) Assume jurisdiction over this matter;

28

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

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

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

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

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

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

12 DATED: 15 December 2025

13 Respectfully submitted,

14 /s/ *William Baker*

15  
16 \_\_\_\_\_  
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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.



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Angel Carlos Zabala Sislema  
Petitioner/Peticionario