

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


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5 Attorney for petitioner
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7 UNITED STATES DISTRICT COURT
8 Southern District of California

9 PEDRO DIAZ JIMENEZ,) Case Number: **'26CV0483 AGS AHG**
10)
Petitioner,) **VERIFIED PETITION FOR WRIT OF**
11 v.) **HABEAS CORPUS**
12)
CHRISTOPHER J. LaROSE, Senior Warden) Oral Argument Requested
13 Otay Mesa Detention Center; PAMELA BONDI,)
United States Attorney General; KRISTI NOEM,)
14 Secretary of the Department of Homeland)
Security; PATRICK DIVVER, ICE San Diego)
15 Field Office Director, in their official capacities,)
16 Respondents.)
17)
18)

19
20 Petitioner alleges:

21 **INTRODUCTION**

22 1. Petitioner PEDRO DIAZ JIMENEZ  is subjected to unlawful
23 detention by Respondents at the Otay Mesa Detention Center. In October 2018 petitioner arrived to
24 the USA, fleeing persecution in Guatemala. The DHS detained petitioner at the border but released
25 him on his own recognizance (OR) pending a removal proceeding, which was later closed. In
26 December 2025, respondents re-detained petitioner without explanation or any change in
27 circumstances. Petitioner seeks an order compelling respondents to immediately release him from
28 detention on the same terms and conditions as his original OR release.

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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 PEDRO DIAZ JIMENEZ (“Petitioner”) is a 49-year-old citizen of Guatemala. He is detained by the Respondents at the Otay Mesa Detention Center.

1 initiated under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with
2 the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section
3 § 1226 provides that while removal proceedings are pending, a noncitizen “may be arrested and
4 detained” and that the government “may release the alien on ... conditional parole.” § 1226(a)(2);
5 *accord Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be
6 “detained” or “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. While “§ 1226 applies to *aliens already present in the United States*,” U.S.
19 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*
20 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,
21 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen “who has not been admitted
22 or who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. §
23 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” §
24 1225(b)(1).

25 19. Respondents’ central argument is that petitioner is subject to mandatory detention
26 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the
27 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the
28 government’s new interpretation of § 1225.

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

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

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

27 22. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §
28 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that

1 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.
2 2019). However, if an immigration judge has determined the noncitizen should be released, the
3 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,
4 854 F. App’x 787, 788 (9th Cir. 2021) Where the release decision was made by a DHS officer, not
5 an immigration judge, the Government’s practice has been to require a showing of changed
6 circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
7 2017).

8 23. District Courts have found, once immigration authorities “elect to proceed with full
9 removal proceedings under § 1226, [they] cannot [] reverse course and institute § 1225 expedited
10 removal proceedings.” *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4
11 (N.D. Cal. Aug. 21, 2025).

12 24. “The Fifth Amendment guarantees that “[n]o person shall be ... deprived of life,
13 liberty, or property, without due process of law.” U.S. Const. amend. V. “[T]he Due Process Clause
14 applies to all ‘persons’ within the United States, including aliens, whether their presence here is
15 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).
16 “[I]t is well established that the Fifth Amendment entitles aliens to due process of law in
17 deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Due Process Clause
18 generally “requires some kind of a hearing before the State deprives a person of liberty or property.”
19 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). “Even individuals who face significant constraints on
20 their liberty or over whose liberty the government wields significant discretion retain a protected
21 interest in their liberty.” *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
22 July 25, 2025) (citations omitted). Although the initial decision to detain or release an individual
23 may be within the government’s discretion, “the government’s decision to release an individual
24 from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty
25 ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’ ” *Id.* (quoting
26 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “Thus, even when ICE has the initial discretion to
27 detain or release a noncitizen pending removal proceedings, after that individual is released from
28 custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi*, 2025 WL

1 2084921, at *3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at *2 (N.D. Cal.
2 May 6, 2022)).” *Perez v. LaRose*, No. 25 cv 3409-LL-DDL, 26 WL 92045 (S.D. Cal. Jan. 13,
3 2026).

4 25. Many other District Courts have also held that the DHS may not lawfully re-detain a
5 noncitizen for no good reason. “This Court has granted several habeas petitions filed by similarly
6 situated petitioners who were released from ICE detention on conditional parole and re-detained
7 several years later. In *Faizyan v. Casey*, the Court applied the due process inquiry in *Mathews v.*
8 *Eldridge*, 424 U.S. 319 (1976) and found that Respondents’ summary revocation of the petitioner’s
9 “conditional parole without an opportunity to be heard deprived [him] of his due process rights.”
10 Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025); *see also*
11 *Perez v. LaRose*, Case No.: 3:25-cv-02620-RBM-JLB, 2025 WL 3171742, at *2 (S.D. Cal. Nov. 13,
12 2025) (reaching the same conclusion as to the revocation of a petitioner’s humanitarian parole). The
13 Court “conclude[d] that due process require[d] [the petitioner] to be released from custody and
14 receive a bond hearing before an immigration judge before he can be re-detained.” *Faizyan*, 2025
15 WL 3208844, at *7.” *Xie v. LaRose*, No. 25 cv 03649-RBM-MSB, 26 WL 92066 (S.D. Cal. Jan. 13,
16 2026).

17 **FACTUAL ALLEGATIONS**

18 26. Petitioner arrived to the United States in October 2018, near Tecate, California.
19 Petitioner is an indigenous Mayan who came to the United States fleeing persecution and death in
20 Guatemala. The DHS detained petitioner at the border upon his arrival but then released him on his
21 own recognizance pending an INA § 240 removal proceeding.

22 27. In November 2018, the DHS filed a Notice to Appear in immigration court
23 commencing the removal proceeding against petitioner. The NTA charges petitioner with
24 removability under INA § 212(a)(6)(A)(i) as an alien present in the USA without being admitted or
25 paroled. Petitioner conceded removability, filed an asylum application, and attended his
26 immigration court hearings. In May 2023, the immigration judge granted a joint motion to dismiss
27 and dismissed the removal proceeding.

28 28. Petitioner is married. He has eight children. He has no criminal record. He was

1 employed in a variety of jobs, including landscaping and cleaning. He earned around \$2,500 per
2 month, which he used to support his family.

3 29. On December 27, 2025, petitioner was surprised to be stopped and detained by
4 armed men while waiting for his ride to work by armed men. The armed men detained petitioner
5 and without any explanation sent him to the Otay Mesa Detention Facility, where he remains today.

6 30. In December 2025, the DHS filed a new NTA now charging petitioner with
7 removability under INA § 212(a)(7)(A)(i)(I) as an alien applicant for admission without valid entry
8 documents. Petitioner filed a motion for custody re-determination at the Otay Mesa Immigration
9 Court. On January 20, 2026, the immigration judge denied the bond motion, concluding that the
10 court had no jurisdiction to set a bond.

11 CAUSES OF ACTION

12 COUNT 1

13 (Violation of the Immigration and Nationality Act)

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

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

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

19 COUNT 2

20 (Violation of the Due Process Clause)

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

22 35. In October 2018, the DHS detained petitioner for a removal proceeding but then
23 released him upon his own recognizance (OR), conceding that he was neither a flight risk nor a
24 danger to the community.

25 36. The DHS started a removal proceeding. Petitioner filed an asylum application. He
26 complied with all his conditions of release. In May 2023, the removal proceeding was dismissed.

27 37. On December 27, 2025, petitioner was surprised to be stopped and detained outside
28 his home by armed men. The men detained petitioner and without any explanation sent him to the

1 Otay Mesa Detention Facility, where he remains today. Respondents did not provide petitioner with
2 a pre-deprivation of liberty hearing before a neutral decisionmaker.

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

6 **COUNT 3**

7 (Violation of the Administrative Procedure Act)

8 39. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 38.

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

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

14 42. Moreover, the respondents' arbitrary re-detention of petitioner—and others—without
15 explanation or a change in circumstances is unlawful and smacks of malice. Likewise, the
16 respondents' attempts to reverse decades of practice and allege that petitioner is now detained under
17 8 U.S.C. § 1225 is unlawful, arbitrary, petty, and malicious.

18 43. Defendants' refusal to provide a bond hearing to petitioner harms him and
19 constitutes final agency action for purposes of the APA.

20 44. There are no other adequate available remedies.

21 45. Respondents' actions constitute an unlawful withholding of an agency action and
22 unlawful agency action in violation of the APA.

23

24 **PRAYER FOR RELIEF**

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

26 (1) Assume jurisdiction over this matter;

27 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition

28 should not be granted within three days;

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

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

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

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

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

10 DATED: 20 January 2026

11 Respectfully submitted,

12 /s/ William Baker

13 _____
14 William Baker (157 906)
15 MORENO & ASSOCIATES
16 2082 Otay Lakes Road, Suites 102
17 Chula Vista, California 91913
18 Telephone: (619) 422-4885
19 william.baker@morenoandassociates
20 Attorney for petitioner
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VERIFICATION

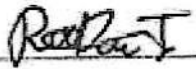
DECLARATION UNDER PENALTY OF PERJURY

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.



Pedro Diaz Jimenez
Petitioner/Peticionario