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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 ADRIANA FABURRIETA CRUZ (“Petitioner”) is a 44-year-old citizen of Mexico. She is detained by the Respondents at the Otay Mesa Detention Center.

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

24 19. In July 2025, the current administration in Washington decided to try and change the
25 detention rules that have been applied for decades in immigration court. Ignoring the plain meaning
26 of the statutes as well as the decades of legal precedent, respondents began to say that the expedited
27 removal mandatory detention rules apply to *all* noncitizens who entered the United States
28 unlawfully. Respondents’ central argument is that petitioner is subject to mandatory detention

1 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the
2 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the
3 government’s new interpretation of § 1225.

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

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

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

28 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,

1 2025).

2 22. For some reason, the litigation of this issue still continues. In late November
3 2025, another judge included a survey of cases that reached the same conclusion: “This is
4 not the first time the administration’s change of heart has been challenged in court. By a
5 recent count, the central issue in this case – the administration’s new position that *all*
6 noncitizens who came into the United States illegally, but since have been living in the
7 United States, *must be detained* until their removal proceedings are completed – has been
8 challenged in at least 362 cases in federal district courts. The challengers have prevailed,
9 either on a preliminary or final basis, in 350 of those cases decided by over 160 different
10 judges sitting in about fifty different courts spread across the United States. Thus, the
11 overwhelming, lopsided majority have held that the law still means what it always has
12 meant.” *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903 (S.D. New York
13 November 26, 2025). (footnotes 22 and 23 omitted but attached to this petition as Appendix
14 A and Appendix B). The judge clarified that none of these citations were binding precedent
15 on the court, as each judge must make an independent assessment of whether the 1225 or
16 1226 rules apply to the individual petitioner.

17 23. 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 24. Petitioner Adriana Faburrieta Cruz entered the United States in 1998, when she was
28 waved through the border crossing as a passenger in a motor vehicle. She was not apprehended

1 upon her arrival to the United States. She has no departures.

2 25. Adriana is married. She has six children, ages 26, 22, 19, 18, 15, and 10. Adriana's
3 husband and children are all United States citizens. Adriana has eight siblings, three of whom live
4 in the United States and enjoy lawful permanent resident (LPR) status. Adriana has no criminal
5 record. She lived in Exeter, California and worked as an agricultural field worker and packer.

6 26. Adriana applied for adjustment of status with the USCIS through her United States
7 citizen husband. The USCIS scheduled an adjustment of status interview for November 18, 2025
8 Adriana and her husband attended the adjustment of status, expecting to celebrate her acquisition of
9 LPR status when her adjustment application was approved. Instead, Adriana and her husband were
10 stunned when instead of receiving her green card, she was detained by ICE agents. For some reason,
11 the DHS transferred Adriana 300 miles away to the Otay Mesa Detention Center, where she
12 remains today. Adriana had never been detained before in her life. Her prolonged detention (70
13 days) at the immigration jail and distant isolation from her family continues to cause her
14 extraordinary emotional and physical distress.

15 27. The DHS started a removal case against Adriana by filing a Notice to Appear (NTA)
16 at the Otay Mesa Immigration Court. The NTA charges Adriana with removability pursuant to INA
17 § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled.
18 Adriana contests removability under this charge because she was waved into the United States at the
19 border. As relief from removal petitioner qualifies to apply for adjustment of status; cancellation of
20 removal; asylum and voluntary departure.

21 28. Petitioner filed a motion for bond redetermination with the Otay Mesa Immigration
22 Court. However, on January 23, 2026, the immigration judge denied the bond motion, concluding
23 that the court does not have jurisdiction to consider a bond according to the BIA case of *Yajure-*
24 *Hurtado*. Moreover, the immigration judge also concluded that the recent case of *Maldonado*
25 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403 (C.D. Cal.
26 Nov. 25, 2025) does not apply to petitioner.

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1 **CAUSES OF ACTION**

2 **COUNT 1**

3 (Violation of the Immigration and Nationality Act)

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

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

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

9 **COUNT 2**

10 (Violation of the Due Process Clause)

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

12 33. In November 2025, DHS agents detained petitioner at the USCIS office in central
13 California. Petitioner was then transferred to the Otay Mesa Detention Center.

14 34. The detention of petitioner without the opportunity to apply for a bond violates Ninth
15 Circuit case law and the Due Process Clause of the Fifth Amendment to the United States
16 Constitution.

17 **PRAYER FOR RELIEF**

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

19 (1) Assume jurisdiction over this matter;

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

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

24 (4) Issue a Writ of Habeas Corpus ordering Respondents to either (a) release Petitioner
25 immediately or (b) schedule a bond hearing pursuant to 8 U.S.C. § 1226(a);

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

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

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

4 DATED: 27 January 2026

5 Respectfully submitted,

6 */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.

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.



Adriana Faburrieta Cruz
Petitioner/Peticionario