

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 JAKELIN BORREGO MARQUEZ (“Petitioner”) is a X-year-old citizen of Cuba. She is detained by the Respondents at the Otay Mesa Detention Center.

10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior Warden of the (Otay Mesa Detention Center). Respondent LaRose has custody of petitioner.

11. Respondent TODD BLANCHE is being sued in his official capacity as the Acting Attorney General of the United States. He is the official generally charged with supervisory authority over all operations of the Department of Justice. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office for Immigration Review (“EOIR”), a component of the DOJ, which includes the immigration courts and the Board of Immigration Appeals (“BIA” or “Board”). He is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation’s Immigration Judges and the BIA.

12. Respondent MARKWAYNE MULLIN is being sued in his official capacity as the Secretary of the United States Department of Homeland Security. He is the executive officer who has been given authority to manage and control U.S. Immigration and Customs Enforcement (“ICE”). As such, he is the ultimate legal custodian of petitioner.

13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a component of DHS with responsibility over persons in immigration custody at the Otay Mesa Detention Center. Director Divver has custody of petitioner.

LEGAL FRAMEWORK

14. This petition presents the question of whether the Constitution allows the indefinite prolonged detention of a noncitizen subject to a final order of removal.

15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens are entitled to due process of law in deportation proceedings and must be given notice and an opportunity to be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. ___, 145 S. Ct. 1003, 1006 (2025).

16. “The detention and release of noncitizens that are subject to a final order of removal is governed by 8 U.S.C. § 1231. This statute provides that “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8

1 U.S.C. § 1231(a)(1)(A). “If the alien does not leave or is not removed within the removal period,
2 the alien, pending removal, shall be subject to supervision under regulations prescribed by the
3 Attorney General.” *Id.* § 1231(a)(3).

4 17. Supervised release and any revocation of such release thereafter is governed by
5 either 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13; *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025
6 WL 2581575, at *4 (E.D. Cal. Sept. 5, 2025).

7 18. After the 8 U.S.C. § 1231 removal period, the statute “limits an alien’s post-removal-
8 period detention to a period reasonably necessary to bring about that alien’s removal from the
9 United States” and “does not permit indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 679
10 (2001).. A six-month period of post-removal detention constitutes a “presumptively reasonable
11 period of detention.” *Id.* At 701. After this six-month period passes, the petitioner has the burden to
12 “provide[] good reason to believe that there is no significant likelihood of removal in the
13 reasonably foreseeable future.” *Id.* If petitioner satisfies their initial burden, it then shifts to the
14 Government to rebut that showing. *Id.* “[F]or detention to remain reasonable, as the period of prior
15 post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely
16 would have to shrink.” *Id.* “[O]nce removal is no longer reasonably foreseeable, continued
17 detention is no longer authorized by statute.” *Id.* At 699.. In that case, the alien’s release may be
18 conditioned on any of the various forms of conditioned release, including an order of supervised
19 release. *Id.* At 700.

20 19. The Due Process Clause puts serious guardrails on the government’s ability to detain
21 any person indefinitely without individualized justification of detention itself. *Zadvydas v. Davis*,
22 533 U.S. at 690. For noncitizens subject to final orders of removal, the Supreme Court has held that
23 individualized justification is necessary after a six-month period in which detention is
24 presumptively reasonable to effectuate removal. *Id.* It has been a legal axiom, dating back to the
25 founding generation, that no person may be detained for an indefinite time without some process
26 justifying their detention itself. *See, e.g.*, U.S. Const. amend. V, § 1; *Rodriguez v. Marin*, 909 F.3d
27 252, 256 (9th Cir. 2018) (“We have grave doubts that any statute that allows for arbitrary prolonged
28 detention without any process is constitutional or that those who founded our democracy precisely

1 to protect against the government's arbitrary deprivation of liberty would have thought so.");
2 *Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a
3 serious constitutional problem."); The Federalist No. 84 (Alexander Hamilton) ("The practice of
4 arbitrary imprisonments has been, in all ages, the favorite and most formidable instruments of
5 tyranny."). *Bayani v. LaRose*, No. 26-cv-0266, 2026 WL 194748 at *2 (S.D. Cal. Jan. 26, 2026).

6 20. As relevant here, 8 U.S.C. § 1231(a)(1)(A) provides a 90-day removal period that
7 begins when the order of removal becomes administratively final. Petitioner was originally ordered
8 removed years ago, but she unlawfully re-entered the United States in 2025. Although subject to
9 reinstatement of removal, Jakelin was provided with a reasonable fear interview. The asylum officer
10 made a negative reasonable fear determination. The removal order became administratively final on
11 October 8, 2025, when the immigration judge upheld the negative reasonable fear determination.
12 See 8 C.F.R. § 1003.39; 8 C.F.R. § 1241.1(e).

13 FACTUAL ALLEGATIONS

14 21. Petitioner JAKELIN BORREGO MARQUEZ is a 55-year-old citizen of Cuba. She
15 is not married. She has one child, Jason, age 27. Jason is a United States citizen. She used to work
16 cleaning houses. Petitoiner originally came to the United States fleeing religious oppression in
17 Cuba. She arrived to the United States around 1994.

18 22. In 2003, Jakelin married a citizen of Mexico. The husband was a violent man, who
19 would regularly beat petitioner. In August 2004, an immigration judge ordered Jakelin's removal to
20 Mexico. In 2004, Jakelin was surprised to be arrested and sent to Mexico, where the family of her
21 husband had accused her of a crime. Jakelin was convicted of a crime, for which she spent several
22 years in prison in Mexico. Jakelin insists she committed no crime in Mexico.

23 23. In 2019, petitioner applied to return to the United States by going to a port of entry.
24 The DHS detained Jakelin and placed her in removal proceedings. Jakelin applied for asylum. On
25 October 15, 2019, an immigration judge denied the application and ordered removal to Cuba.
26 Jakelin was detained at the Adelanto Detention Facility for around eleven months. Around
27 November 20, 2019, the DHS released Jakelin on an Order of Supervision because she could not be
28 removed to Cuba. From 2019 to January 2025, petitioner was at liberty on the Order of Supervision.

1 She was provided with an employment authorization and attended her appointments as directed.

2 24. Around January 19, 2025, petitioner was detained by ICE without explanation. The
3 ICE agents threatened to deport petitioner to the American prison camp at Guantanamo Bay, Cuba.
4 On February 14, 2025, ICE removed petitioner to Mexico. In April 2025, petitioner was the victim
5 of an attempted kidnapping in Mexico. Fearing for her life, on May 11, 2025, petitioner attempted
6 to re-enter the United States unlawfully but she was detained by the Border Patrol.

7 25. On August 18, 2025, petitioner was convicted in the Southern District of California
8 of the crime of illegal reentry to the United States (8 U.S.C. § 1325(a)(1)) and sentenced to time
9 served (100 days) (25 CR 2145-LL). On August 19, 2025, upon her release from the federal jail,
10 petitioner was detained by DHS/ICE. She was sent to the Otay Mesa Detention Center.

11 26. Petitioner was provided with a reasonable fear interview. The asylum officer made a
12 negative reasonable fear determination. On October 14, 2025, the immigration judge upheld the
13 negative reasonable fear determination. Petitioner did not file a petition for review. Months passed,
14 but Jakelin remained detained at the Otay Mesa Detention Center.

15 27. Petitioner became desperate, so she hired an attorney who filed a habeas corpus
16 petition in the Southern District of California on December 12, 2025 (25 cv 03538-LL-VET). The
17 habeas corpus petition alleged that the DHS unlawfully re-detained Jakelin in 2019 and she
18 requested a final order prolonged detention bond hearing. On February 25, 2025, the court denied
19 the habeas petition. The court concluded that any unlawful re-detention of Jakelin in 2019 was
20 rendered moot because of her removal to Mexico. The court also concluded that Jakelin's removal
21 order became final on October 14, 2025, so she did not have prolonged detention when she filed the
22 habeas petition on December 12, 2025. Petitioner now does have over six months in detention after
23 her October 14, 2025 final order of removal, so she is filing this new habeas corpus petition.

24 28. Petitioner alleges that there is no significant likelihood of removal in the reasonably
25 foreseeable future for several reasons. She was detained for around 11 months in 2019 without
26 being removed. She was at liberty under an Order of Supervision with a final order of removal
27 between November 2019 and January 2025 (62 months) without being removed. She has been
28 detained with a final order of removal since October 14, 2025 without being removed.

1 **CAUSES OF ACTION**

2 **COUNT 1**

3 (Violation of the Administrative Procedure Act))

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

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

8 31. Petitioner has a regulatory and due process right to have respondents comply with
9 the regulations relating to orders of supervision and prolonged detention.

10 32. The respondents have not considered an Order of Supervision despite the fact that
11 they have detained petitioner since the October 14, 2025 final order of removal—a period of over
12 six months.

13 33. Respondents failed to comply with the regulations in that they have not placed
14 petitioner on an order of supervision.

15 34. Respondents have also failed to comply with the regulation by failing to consider an
16 order of supervision or giving petitioner an opportunity to request release from detention.

17 35. Respondents' refusal to comply with the regulations harms her and constitutes final
18 agency action for purposes of the APA.

19 36. There are no other adequate available remedies.

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

22 **COUNT 2**

23 (Violation of the Due Process Clause)

24 38. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 37.

25 39. On August 19, 2025, DHS agents detained petitioner and sent her to the Otay Mesa
26 Detention Center. She still remains detained there to this day. She has not had a bond hearing.

27 40. Petitioner has been detained as the subject of a final order of removal since October
28 14, 2025—a total of 198 days as of today.

41. The prolonged detention of petitioner where there is no significant likelihood of removal in the reasonably foreseeable future violates the Due Process Clause of the United States Constitution.

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 must be considered for an Order of Supervision and her prolonged detention violates the Due Process Clause of the Fifth Amendment and the regulations;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately subject to an Order of Supervision;
- (5) Issue an order prohibiting respondents from revoking the Order of Supervision without complying with the regulations and Due Process of law;
- (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: 30 April 2026

Respectfully submitted,

/s/ William Baker

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1 **VERIFICATION**

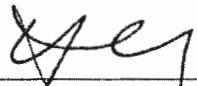
2 **DECLARATION UNDER PENALTY OF PERJURY**

3 I declare under penalty of perjury under the laws of the United States that I am the petitioner; I
4 have read the petition or had it read to me in a language I understand, and the information in the
5 petition is true and correct. I understand that a false statement of a material fact may serve as the
6 basis for prosecution for perjury.

7 **VERIFICACIÓN**

8 **DECLARACIÓN BAJO PENA DE PERJURIO**

9 Declaro bajo pena de perjurio según las leyes de los Estados Unidos que soy el peticionario; He
10 leído la petición o me la han leído en un idioma que entiendo, y la información de la petición es
11 verdadera y correcta. Entiendo que una declaración falsa de un hecho material puede servir como
12 base para el enjuiciamiento por perjurio.

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15 JAKELIN BORREGO MARQUEZ
16 Petitioner/Peticionario
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