

1 Respondents recently detained Petitioner without any explanation. The immigration judges at Otay
2 Mesa conclude there is no jurisdiction to even consider setting a bond based on the case *Matter of*
3 *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). Moreover, the Ninth Circuit issued a stay in the
4 case of *Maldonado Bautista*. Petitioner seeks an order compelling the immigration judge to accept
5 jurisdiction and afford him a bond decision pursuant to 8 U.S.C. § 1226(a).

6 JURISDICTION

7 2. This action arises under the Constitution of the United States; the Immigration and
8 Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act (“APA”),
9 5 U.S.C. § 500, *et seq*.

10 3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28
11 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq*. (APA);
12 and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

13 4. The court may grant relief under the habeas corpus statutes, the Declaratory
14 Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

15 VENUE

16 5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility,
17 in San Diego, California, which is within the jurisdiction of this District.

18 6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at
19 least one federal respondent is in this District; and a substantial part of the events or omissions
20 giving rise to the claims in this action took place in this District. No real property is involved.

21 REQUIREMENTS OF 28 U.S.C. § 2243

22 7. The Court must grant the habeas corpus petition or issue an order to show cause
23 (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. §
24 2243. If an order to show cause is issued, the Court must require respondents to file a return “within
25 three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id*.

26 8. Courts have long recognized the significance of the habeas statute in protecting
27 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
28 important writ known to the constitutional law of England, affording as it does a swift and

1 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
2 (1963) (emphasis added).

3 **PARTIES**

4 9. Petitioner HELEN MIDORI ARIAS RIVERA (“Petitioner”) is a citizen of Peru. She
5 is detained by the Respondents at the Otay Mesa Detention Center.

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

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

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

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

24 **LEGAL FRAMEWORK**

25 14. This petition presents the legal question of whether an alien released on her own
26 recognizance and placed in a full removal proceeding is subject to an arbitrary re-detention by the
27 DHS without any explanation or change in circumstances. A secondary legal question is whether
28 an alien with long term residence in the United States is subject to detention pursuant to 8 U.S.C. §

1 1226(a) or 8 U.S.C. § 1225.

2 15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens
3 are entitled to due process of law in deportation proceedings and must be given notice and an
4 opportunity to be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. ___,
5 145 S. Ct. 1003, 1006 (2025).

6 **Re-Detention Law**

7 16. “The Fifth Amendment guarantees that “[n]o person shall be ... deprived of life,
8 liberty, or property, without due process of law.” U.S. Const. amend. V. “[T]he Due Process Clause
9 applies to all ‘persons’ within the United States, including aliens, whether their presence here is
10 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).
11 “[I]t is well established that the Fifth Amendment entitles aliens to due process of law in
12 deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Due Process Clause
13 generally “requires some kind of a hearing before the State deprives a person of liberty or property.”
14 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). “Even individuals who face significant constraints on
15 their liberty or over whose liberty the government wields significant discretion retain a protected
16 interest in their liberty.” *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
17 July 25, 2025) (citations omitted). Although the initial decision to detain or release an individual
18 may be within the government’s discretion, “the government’s decision to release an individual
19 from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty
20 ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’ ” *Id.* (quoting
21 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “Thus, even when ICE has the initial discretion to
22 detain or release a noncitizen pending removal proceedings, after that individual is released from
23 custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi*, 2025 WL
24 2084921, at *3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at *2 (N.D. Cal.
25 May 6, 2022)).” *Perez v. LaRose*, No. 25 cv 3409-LL-DDL, 26 WL 92045 (S.D. Cal. Jan. 13,
26 2026).

27 17. Many other District Courts have also held that the DHS may not lawfully re-detain a
28 non-citizen for no good reason. “This Court has granted several habeas petitions filed by similarly

1 situated petitioners who were released from ICE detention on conditional parole and re-detained
2 several years later. In *Faizyan v. Casey*, the Court applied the due process inquiry in *Mathews v.*
3 *Eldridge*, 424 U.S. 319 (1976) and found that Respondents’ summary revocation of the petitioner’s
4 “conditional parole without an opportunity to be heard deprived [him] of his due process rights.”
5 Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025); *see also*
6 *Perez v. LaRose*, Case No.: 3:25-cv-02620-RBM-JLB, 2025 WL 3171742, at *2 (S.D. Cal. Nov. 13,
7 2025) (reaching the same conclusion as to the revocation of a petitioner’s humanitarian parole). The
8 Court “conclude[d] that due process require[d] [the petitioner] to be released from custody and
9 receive a bond hearing before an immigration judge before he can be re-detained.” *Faizyan*, 2025
10 WL 3208844, at *7.” *Xie v. LaRose*, No. 25 cv 03649-RBM-MSB, 26 WL 92066 (S.D. Cal. Jan. 13,
11 2026).

12 **1225 or 1226 Jurisdiction Issue**

13 18. The “usual removal process” involves an evidentiary hearing before an immigration
14 judge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated
15 under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with the
16 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226
17 provides that while removal proceedings are pending, a noncitizen “may be arrested and detained” and
18 that the government “may release the alien on ... conditional parole.” § 1226(a)(2); *accord*
19 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be “detained” or
20 “allowed to reside in this country”).

21 19. When a person is apprehended under § 1226(a), an ICE officer makes the initial
22 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §
23 236.1(c)(8)). A noncitizen will be released if he or she “demonstrate[s] to the satisfaction of the
24 officer that such release would not pose a danger to property or persons, and that the alien is likely
25 to appear for any future proceeding.” *Id.* (citing 8 C.F.R. § 236.1(c)(8)). “Federal regulations
26 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”
27 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,
28 the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to

1 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail
2 risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.
3 Dec. 37, 40 (B.I.A. 2006)).

4 20. While “§ 1226 applies to *aliens already present in the United States*,” U.S.
5 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*
6 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,
7 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen “who has not been admitted
8 or who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. §
9 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” §
10 1225(b)(1).

11 21. In July 2025, the current administration in Washington decided to try and change the
12 detention rules that have been applied for decades in immigration court. Ignoring the plain meaning
13 of the statutes as well as the decades of legal precedent, respondents began to say that the expedited
14 removal mandatory detention rules apply to *all* noncitizens who entered the United States
15 unlawfully. Respondents’ central argument is that petitioner is subject to mandatory detention
16 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the
17 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), which affirmed the
18 government’s new interpretation of § 1225.

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

23 23. Multiple District Courts across the entire United States have concluded that the
24 government’s proposed interpretation of the statute (a) disregards the plain meaning of section
25 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
26 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
27 statutory interpretation and practice. The following quote is a representative example:

28 “The Court follows other decisions in this Circuit finding that “seeking admission

1 requires an affirmative act such as entering the United States or applying for status,
 2 and that it does not apply to individuals who, like [Petitioner], have been residing in
 3 the United States and did not apply for admission or a change of status.” *Mosqueda*
 4 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
 5 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
 6 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
 7 (“Every district court to address this question has concluded that the government’s
 8 position belies the statutory text of the INA, canons of statutory interpretation,
 9 legislative history, and longstanding agency practice.”); *Guzman v. Andrews*, No. 25-
 10 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025)
 11 (finding that petitioner who was released on bond and rearrested was entitled to a
 12 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
 13 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
 14 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”
 15 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
 16 2025).

17 24. For some reason, the litigation of this issue still continues across the nation.
 18 In late November 2025, another District Court judge included a survey of cases that reached
 19 the same conclusion: “This is not the first time the administration’s change of heart has been
 20 challenged in court. By a recent count, the central issue in this case – the administration’s
 21 new position that *all* noncitizens who came into the United States illegally, but since have
 22 been living in the United States, *must be detained* until their removal proceedings are
 23 completed – has been challenged in at least 362 cases in federal district courts. The
 24 challengers have prevailed, either on a preliminary or final basis, in 350 of those cases
 25 decided by over 160 different judges sitting in about fifty different courts spread across the
 26 United States. Thus, the overwhelming, lopsided majority have held that the law still means
 27 what it always has meant.” *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903
 28 (S.D. New York November 26, 2025). (footnotes 22 and 23 omitted but attached to this

petition as Appendix A and Appendix B). The judge clarified that none of these citations were binding precedent on the court, as each judge must make an independent assessment of whether the 1225 or 1226 rules apply to the individual petitioner.

25. Further, some District Courts have found that immediate release, rather than a bond hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) (“Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.”); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (“if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid”); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.”).

26. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. § 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). However, if an immigration judge has determined the noncitizen should be released, the DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021).

FACTUAL ALLEGATIONS

27. Petitioner HELEN MIDORI ARIAS RIVERA is a 23-year-old citizen of Peru. Petitioner is not married. She has one child: [REDACTED] age three. Petitioner has been regularly employed. She was working at [REDACTED] She has no criminal record.

28. Petitioner entered the United States on December 21, 2023 by crossing unlawfully near San Luis, Arizona to apply for asylum. The DHS detained petitioner at the Yuma Processing Center for a credible fear interview. On December 25, 2023 petitioner’s credible fear interview was conducted. The asylum officer made a positive credible fear determination. Around December 30, 2023, the DHS released petitioner from detention on her own recognizance and served her with a

1 Notice to Appear for a removal proceeding.

2 29. The removal proceeding was started on January 9, 2024 at the Hyattsville, Maryland
3 Immigration Court. However, petitioner later moved to California so the venue of the removal case
4 was changed to the San Diego Immigration Court. In April 2024, petitioner filed an asylum
5 application. The asylum application was based on petitioner being persecuted by [REDACTED]
6 [REDACTED] in Peru. On March 17, 2024, the immigration judge granted a motion to pretermi
7 petitioner's asylum application. On March 25, 2026, the immigration judge denied petitioner's
8 application for relief under the United Nations Convention Against Torture and ordered removal to
9 Peru. On April 23, 2023, petitioner filed an appeal at the Board of Immigration Appeals. The BIA
10 appeal is pending.

11 30. During most of these years while the removal case has been pending, petitioner was
12 at liberty. After the immigration judge ordered her removal, petitioner was called in to the
13 downtown ICE office for a check in. At the check in, the agents placed an ICE GPS ankle monitor
14 on petitioner and then let her go home. Around June 5, 2026, petitioner was in a motor vehicle that
15 was stopped by Border Patrol agents. The Border Patrol agents detained petitioner, even though she
16 explained to them she already had an ICE GPS ankle monitor. The DHS sent Petitioner to the Otay
17 Mesa Detention Center, in California, where she remains today. Her detention at the immigration
18 jail is causing Petitioner immense emotional and financial distress.

19 31. Petitioner has not filed a motion for custody redetermination at the Otay Mesa
20 Immigration Court because this is futile. The immigration judges at Otay Mesa conclude there is no
21 jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I & N
22 Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I. & N. Dec 66 (BIA 2025). Moreover, the Ninth
23 Circuit Court of Appeals has stayed the decision in *Maldonado-Bautista*.

24 **CAUSES OF ACTION**

25 **COUNT 1**

26 (Violation of the Immigration and Nationality Act)

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

28 33. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225;

1 therefore he is entitled to a bond redetermination hearing before an immigration judge.

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

4 COUNT 2

5 (Violation of the Due Process Clause)

6 35. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 34.

7 36. In December 2023, the DHS detained petitioner but then released her from detention
8 on her own recognizance, conceding that she was not a danger to the community or a flight risk.
9 After the immigration judge ordered removal, petitioner appealed this decision to the Board of
10 Immigration Appeals. The DHS also installed a ICE GPS ankle monitor on petitioner. In June 2026,
11 Border Patrol agents detained petitioner under mysterious circumstances and even though she
12 already has an ICE GPS ankle monitor. The DHS sent petitioner to the Otay Mesa Detention
13 Center, where she remains today..

14 35. The re-detention of petitioner without notice, a change in circumstances, or the
15 opportunity to apply for a bond violates Ninth Circuit case law and the Due Process Clause of the
16 Fifth Amendment to the United States 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: 17 June 2026

Respectfully submitted,

5 /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.



HELEN MIDORI ARIAS RIVERA
Petitioner/Peticionario