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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Nereo Said ORDAZ RESENDIZ,

Petitioner,

v.

WARDEN, Mesa Verde Detention Center;
Sergio ALBARRAN, or his successor, Field
Office Director for the San Francisco Field
Office of U.S. ICE, Enforcement and
Removal Operations;
David VENTURELLA, or his successor,
Senior Official Performing the Duties of
Director of U.S. ICE;
Markwayne MULLIN, or his successor,
Secretary of the United States Department of
Homeland Security; and
Todd BLANCHE, or his successor, Acting
Attorney General of the United States,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. §2241
and COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

Petitioner Nereo Said Ordaz Resendiz,  through counsel Ann Barhoum,

respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. §2241 and alleges as follows:

I. INTRODUCTION

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1. Petitioner Nereo Said Ordaz Resendiz has lived in the United States since 2003. He is the husband of a United States citizen, the father of two United States citizen children, and the stepfather of another United States citizen whom he has helped raise since infancy.
2. Petitioner has been in ordinary removal proceedings under INA §240 since 2013. He has applied for cancellation of removal under INA §240A(b), asylum, withholding of removal, and protection under the Convention Against Torture. His removal proceedings remain pending, and his next Immigration Court hearing is not scheduled until January 31, 2028. Exhs. E–F.
3. Petitioner was previously detained by immigration authorities in 2013. On August 30, 2013, an Immigration Judge exercised custody jurisdiction under the regulations implementing INA §236 and ordered Petitioner released under a \$6,000 immigration bond. Exh. C.
4. The Immigration Judge imposed conditions prohibiting drug use and consumption of alcohol. Exh. C. The order was not an informal exercise of enforcement discretion. It was an adjudicated custody determination by a neutral Immigration Judge.
5. Petitioner thereafter lived at liberty under the bond for nearly thirteen years.
6. ICE continued to recognize and enforce that bond in 2026. On June 4, 2026, ICE issued a formal Notice to Obligor to Deliver Alien, identified the existing delivery bond, and directed Petitioner to appear at the San Francisco ERO Field Office on July 7, 2026, at 8:00 a.m. Exh. B.

1 7. ICE identified the purpose of the appointment as an “Interview,” rather than “Removal.”

2 ICE warned that failure to deliver Petitioner or cause him to appear could breach the
3 bond and result in forfeiture. Exh. B.

4 8. Petitioner complied. He appeared at the place and time ICE selected. His appearance
5 demonstrated that the bond continued to accomplish its central regulatory purpose:
6 ensuring his appearance before immigration authorities.

7 9. ICE nevertheless arrested and detained Petitioner when he appeared. Exh. A.

8 10. ICE gave Petitioner no advance notice that it intended to revoke his bond. It afforded no
9 pre-deprivation hearing and made no disclosed finding that Petitioner had violated the
10 bond, become dangerous, become likely to flee, or could no longer be safely managed
11 through the existing bond or additional noncustodial conditions.

12 11. Upon information and belief, ICE may assert that Petitioner is detained under INA
13 §235(b), 8 U.S.C. §1225(b), solely because he entered the United States without
14 inspection more than twenty-three years ago.

15 12. That position is inconsistent with the statutory structure, Petitioner’s longstanding
16 presence in the interior, his ordinary §240 removal proceedings, and the Immigration
17 Judge’s prior exercise of custody jurisdiction under §236.

18 13. ICE may instead contend that the Laken Riley Act retroactively subjects Petitioner to
19 mandatory detention under amended 8 U.S.C. §1226(c)(1)(E) because of a misdemeanor
20 petty-theft conviction entered in 2005.

21 14. Congress did not clearly provide that the 2025 amendment applies to arrests, charges, or
22 convictions that occurred before enactment. Applying the amendment to Petitioner would

1 attach a severe new detention consequence to a misdemeanor conviction entered
2 approximately twenty years before the statute existed.

3 15. Petitioner also currently has one unresolved misdemeanor case pending in San Mateo

4 County Superior Court. In *People v. Ordaz Resendiz*, Case No. 

5 Petitioner is charged with one misdemeanor violation of California Vehicle Code
6 §4462.5, presenting or displaying false evidence of vehicle registration. He pleaded not
7 guilty, and the case remains pending.

8 16. The pending case is disclosed here, but it does not independently establish mandatory
9 detention. It is not a conviction and does not charge theft, burglary, larceny, shoplifting,
10 assault on a law-enforcement officer, or another offense enumerated in §1226(c)(1)(E).

11 17. Nor could a routine Immigration Court bond proceeding adequately remedy the unlawful
12 re-detention.

13 18. If DHS asserts §1225(b), binding agency precedent directs Immigration Judges to
14 conclude that they lack custody-redetermination jurisdiction.

15 19. If DHS concedes that §1226 governs, an ordinary agency bond proceeding would place
16 the practical burden on Petitioner and would not necessarily require DHS to establish
17 materially changed circumstances since the 2013 bond order.

18 20. Recent evidence also demonstrates that a bare order directing an Immigration Judge to
19 conduct a bond hearing may not produce a meaningful remedy. Bond denials have
20 increased, bond amounts have risen, and DHS appeals and automatic-stay practices may
21 prevent actual release even after bond is granted. Exhs. J-L.

21. Petitioner therefore seeks immediate restoration to the bond and conditions under which he lived before July 7, 2026.

22. At minimum, due process requires a prompt hearing before a neutral decisionmaker at which Respondents bear the burden of proving, by clear and convincing evidence, that:

- a. a lawful statutory ground permits Petitioner's continued detention;
- b. materially changed circumstances justify revocation of the 2013 bond order;
- c. Petitioner presently poses a danger or flight risk; and
- d. the existing bond and less restrictive conditions cannot reasonably address any proven risk.

II. JURISDICTION, VENUE, AND CUSTODY

23. This Court has jurisdiction under 28 U.S.C. §2241(c)(3) because Petitioner is in federal custody in violation of the Constitution and laws of the United States.

24. This Court also has jurisdiction under 28 U.S.C. §1331 because this action arises under the Constitution, the Immigration and Nationality Act, and federal habeas law.

25. This Court has authority to grant declaratory and injunctive relief under 28 U.S.C. §§2201–2202 and its authority to dispose of habeas matters as law and justice require. 28 U.S.C. §2243.

26. Habeas corpus provides the traditional means of testing the legality of Executive detention. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

1 27. Petitioner does not challenge any order of removal, seek review of the merits of his
2 removal proceedings, or ask this Court to determine his eligibility for cancellation of
3 removal, asylum, withholding of removal, or CAT protection.

4 28. Petitioner challenges only the statutory and constitutional authority for his present
5 detention and the procedures through which his previously adjudicated release was
6 revoked.

7 29. Sections 1252(a)(5), 1252(b)(9), and 1252(g) do not bar habeas review of a detention
8 claim independent of the merits of removal proceedings. *Jennings v. Rodriguez*, 583 U.S.
9 281, 292–95 (2018); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006);
10 *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011).

11 30. Section 1226(e) does not bar review because Petitioner does not seek review of a
12 discretionary custody judgment. He challenges the governing detention statute and the
13 constitutional sufficiency of the procedures used to deprive him of liberty. *Jennings*, 583
14 U.S. at 294–96; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

15 31. Petitioner’s family was informed that he was being transported to Bakersfield after his
16 arrest.

17 32. Upon information and belief, Petitioner is presently detained at the Mesa Verde ICE
18 Processing Center in Bakersfield, California, within the Eastern District of California.

19 33. Counsel has not yet obtained online detainee-locator confirmation or the complete ICE
20 custody record. Petitioner will amend the facility and immediate-custodian allegations if
21 subsequently obtained information requires correction.

34. Venue is proper in this District because Petitioner is, upon information and belief, confined in Kern County, California. 28 U.S.C. §§84(b), 1391(e).

III. PARTIES

35. Petitioner Nereo Said Ordaz Resendiz is a native and citizen of Mexico. His A-Number is



36. Petitioner has lived in the United States since 2003 and is presently detained by ICE while his removal proceedings remain pending.

37. Respondent Warden of the Mesa Verde ICE Processing Center is, upon information and belief, Petitioner's immediate physical custodian and exercises day-to-day control over his detention. The Warden is sued in an official capacity. Petitioner will substitute the Warden's name when it becomes available.

38. Respondent Sergio Albarran, or his successor, is the Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations.

39. Respondent Albarran exercises authority over ICE enforcement and custody decisions arising from Petitioner's San Francisco removal proceedings and his arrest at the San Francisco ERO Field Office. He is sued in his official capacity.

40. Respondent David J. Venturella, or his successor, is the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for ICE policies and practices governing civil immigration detention and is sued in his official capacity.

41. Respondent Markwayne Mullin, or his successor, is the Secretary of the United States Department of Homeland Security. He is responsible for the administration and

1 enforcement of the immigration laws, including detention by DHS and ICE, and is sued
2 in his official capacity.

3 42. Respondent Todd Blanche, or his successor, is the Acting Attorney General of the United
4 States. He oversees the Executive Office for Immigration Review and the Immigration
5 Courts, including custody-redetermination procedures, and is sued in his official capacity.

6 **IV. FACTUAL BACKGROUND**

7 **A. Petitioner's Longstanding Residence and Family**

8 43. Petitioner was born in Querétaro, Mexico, [REDACTED]

9 44. He entered the United States in 2003, when he was approximately seventeen years old.

10 45. He has now lived in this country for more than twenty-three years.

11 46. Petitioner is married to Lucy [REDACTED] a native-born United States citizen. They
12 married in 2007. Exh. G.

13 47. Petitioner and Lucy have two United States citizen sons.

14 48. Petitioner is also the stepfather of Lucy's United States citizen daughter, whom he has
15 helped raise since she was an infant. Exhs. E, G.

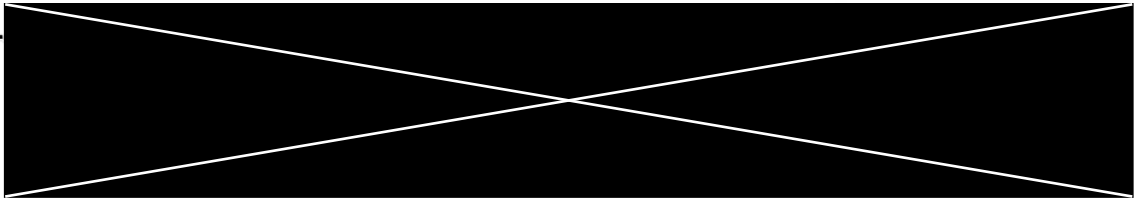
16 49. Petitioner has long provided financial, practical, and emotional support to his family.

17 50. Representative letters from family members and community members describe
18 Petitioner's role within his family, his longstanding ties, and the hardship caused by his
19 detention. Exh. I.

20 51. Lucy has been diagnosed with [REDACTED]

21 [REDACTED] Exh. H.

1 52.



2
3
4 53. The evaluation further documents Petitioner's central role as Lucy's principal source of
5 emotional and psychological support. Exh. H.

6 54. The evaluator concluded that separation from Petitioner would likely exacerbate Lucy's
7 mental-health conditions and could result in severe and potentially life-threatening
8 consequences. Exh. H.

9 **B. The 2013 Custody Determination and Bond Order**

10 55. DHS initiated removal proceedings against Petitioner in August 2013. Exh. D.

11 56. The Notice to Appear placed Petitioner in ordinary removal proceedings under INA
12 §240. Exh. D.

13 57. Petitioner was initially detained by immigration authorities.

14 58. On August 30, 2013, Immigration Judge Alison E. Daw considered Petitioner's custody
15 status under the regulations implementing INA §236. Exh. C.

16 59. The Immigration Judge granted Petitioner's request for a change in custody status and
17 ordered him released under a \$6,000 bond. Exh. C.

18 60. The Immigration Judge imposed conditions prohibiting drug use and alcohol
19 consumption. Exh. C.

20 61. The order reflects an adjudicated determination by a neutral Immigration Judge that
21 Petitioner could be released subject to monetary and behavioral conditions.

22 62. Petitioner thereafter lived at liberty under the bond for nearly thirteen years.

63. ICE has not identified any adjudicated finding that Petitioner violated the conditions imposed by the Immigration Judge.

64. ICE has not identified any prior order revoking or modifying the 2013 bond.

C. Petitioner's Pending Applications for Relief

65. Petitioner filed Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, with the Immigration Court. Exh. E.

66. Petitioner also filed Form I-589 seeking asylum, withholding of removal, and protection under the Convention Against Torture.

67. The Immigration Court filing documentation confirms receipt of Petitioner's application for cancellation of removal. Exh. E.

68. Petitioner's pre-hearing statement addresses his continuous physical presence, United States citizen qualifying relatives, hardship evidence, criminal history, and statutory eligibility for cancellation of removal. Exh. E.

69. The pre-hearing statement explains that Petitioner's 2005 Penal Code §484 conviction was a misdemeanor petty-theft offense involving property valued at no more than \$400. Exh. E.

70. The statement further explains that the offense was punishable by no more than six months and fell within the petty-offense exception to the inadmissibility ground for crimes involving moral turpitude. Exh. E.

71. The pre-hearing statement also addresses Petitioner's other historical dispositions and explains why they do not bar cancellation of removal. Exh. E.

72. Those dispositions include a pre-2011 deferred-entry-of-judgment disposition for simple possession, a Penal Code §12020 matter involving a non-firearm weapon, and a misdemeanor Penal Code §236 disposition. Exh. E.

73. Petitioner appears to have sustained no criminal conviction after 2011.

74. Petitioner currently has one unresolved misdemeanor case pending in San Mateo County Superior Court, *People v. Ordaz Resendiz*, Case No. [REDACTED]

75. That case charges one misdemeanor violation of California Vehicle Code §4462.5, presenting or displaying false evidence of vehicle registration.

76. Petitioner pleaded not guilty, and the case remains active and unresolved.

77. The pending charge does not allege violence, theft, burglary, larceny, shoplifting, assault on a law-enforcement officer, or another offense enumerated in 8 U.S.C. §1226(c)(1)(E).

78. It is not a conviction and does not independently establish that Petitioner is subject to mandatory detention.

79. Petitioner's removal proceedings remain pending.

80. EOIR's Automated Case Information system states that his next master calendar hearing is scheduled for January 31, 2028. Exh. F.

D. ICE Used the Existing Bond to Compel Petitioner's Appearance

81. On June 4, 2026, ICE issued a Notice to Obligor to Deliver Alien concerning Petitioner. Exh. B.

82. The notice identified Petitioner, his A-Number, and the existing delivery-bond number.

83. ICE demanded that the obligor deliver Petitioner or cause him to appear at the San Francisco ERO Field Office on July 7, 2026, at 8:00 a.m.

1 84. ICE checked the box identifying the purpose of the appointment as an “Interview.”

2 85. ICE did not check the box identifying the appointment as being for “Removal.”

3 86. ICE warned that failure to deliver Petitioner or cause him to appear could breach the
4 bond and result in forfeiture.

5 87. The notice demonstrates that, immediately before Petitioner’s arrest, ICE continued to
6 recognize, invoke, and enforce the delivery bond under which he had been released.

7 88. ICE used the bond’s compulsory force to secure Petitioner’s attendance at the
8 appointment.

9 **E. Petitioner Appeared and Was Summarily Re-Detained**

10 89. Petitioner complied with ICE’s demand and appeared at the San Francisco ERO Field
11 Office on July 7, 2026. Exh. A.

12 90. Petitioner did not flee, hide, refuse to report, or require arrest at an unknown location.

13 91. He appeared voluntarily at the place and time ICE selected because ICE directed him to
14 do so under the existing bond.

15 92. His appearance demonstrated that the existing bond continued to secure his compliance.

16 93. ICE nevertheless arrested Petitioner at the appointment. Exh. A.

17 94. ICE did not provide advance notice that it intended to revoke the 2013 bond order.

18 95. ICE did not provide a pre-deprivation hearing.

19 96. ICE did not disclose the evidence or statutory basis on which it intended to revoke
20 Petitioner’s release.

21 97. ICE did not establish before a neutral decisionmaker that the pending misdemeanor
22 charge or any other circumstance materially altered the 2013 custody determination.

1 98. ICE did not establish that Petitioner presently posed a danger to the community.

2 99. ICE did not establish that Petitioner presently posed a flight risk.

3 100. ICE did not establish that the existing bond, reporting requirements, electronic
4 monitoring, or other less restrictive conditions were inadequate.

5 101. ICE did not identify any emergency requiring Petitioner's immediate
6 imprisonment before a hearing could be held.

7 102. ICE itself selected the appointment date, issued the notice more than one month in
8 advance, and described the appointment as an interview.

9 103. After arresting Petitioner, ICE transported him away from the San Francisco area.

10 104. Petitioner's family was informed that he was being taken to Bakersfield. Exh. A.

11 105. Upon information and belief, Petitioner is now detained at the Mesa Verde ICE
12 Processing Center.

13 106. As of filing, counsel has not received an I-286, written custody determination,
14 notice of bond revocation, warrant, or other document identifying ICE's asserted
15 statutory basis for detention.

16 **F. A Bare Immigration Court Bond Hearing Is Not an Adequate Remedy**

17 107. DHS has recently asserted in numerous cases that noncitizens who entered
18 without inspection are detained under INA §235(b), rather than INA §236(a), even when
19 they have lived in the United States for years and are arrested in the interior while
20 ordinary removal proceedings remain pending. Exh. J.

1 108. Under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Immigration
2 Judges generally conclude that they lack jurisdiction to conduct an ordinary custody-
3 redetermination hearing where DHS invokes §235(b). Exh. J.

4 109. The Board reaffirmed that position in *Matter of N-A-G-C-*, 29 I. & N. Dec. 662
5 (BIA 2026).

6 110. If DHS classifies Petitioner under §235(b), an Immigration Judge will therefore
7 likely decline to consider his danger, flight risk, prior bond, compliance, family ties,
8 eligibility for relief, or less restrictive alternatives. Exh. J.

9 111. Attorney Christopher Todd further explains that even where DHS acknowledges
10 §236(a) bond eligibility, ordinary Immigration Court bond proceedings frequently place
11 the burden on the detained person and may rely heavily upon any criminal history,
12 including remote misdemeanor conduct, without requiring DHS to establish present
13 dangerousness. Exh. J.

14 112. Petitioner's historical record creates a substantial risk that an ordinary bond
15 hearing would simply confirm ICE's decision unless the Court specifies the burden,
16 standard of proof, changed-circumstances requirement, and obligation to consider less
17 restrictive alternatives. Exh. J.

18 113. The May 2026 BKLG report similarly states that ICE discretionary release has
19 become rare and that bond hearings have become increasingly difficult to access. Exh. K.

20 114. The report states that national bond-grant rates have declined substantially, bond
21 amounts have increased, and DHS appeals and automatic-stay practices may prevent
22 release even after bond is set. Exh. K.

115. The Salazar declaration provides additional empirical evidence concerning recent Immigration Court bond outcomes. Exh. L.

116. Dr. Salazar found that, after November 10, 2025, Adelanto bond denials increased from 39.3% to 57.4% of completed records, while the bond-grant rate declined from 37.0% to 25.7%. Exh. L.

117. Dr. Salazar also found that the median recorded positive bond increased from \$7,500 to \$10,000, and the share of recorded bonds above \$15,000 more than doubled. Exh. L.

118. This evidence supports immediate restoration of Petitioner's prior bond.

119. At minimum, it demonstrates that any alternative hearing remedy must contain specific and enforceable procedural safeguards.

V. EXHAUSTION AND FUTILITY

120. Section 2241 contains no statutory exhaustion requirement applicable to this Petition.

121. Any exhaustion requirement is prudential and may be excused where administrative remedies are futile, inadequate, unavailable, or incapable of preventing irreparable injury. *Laing v. Ashcroft*, 370 F.3d 994, 997–1001 (9th Cir. 2004).

122. If DHS classifies Petitioner under §1225(b), requesting bond from the Immigration Court would be futile.

123. Under *Matter of Yajure Hurtado* and *Matter of N-A-G-C-*, Immigration Judges are bound to treat persons whom DHS classifies under §1225(b)(2)(A) as outside ordinary bond jurisdiction.

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1 124. An Immigration Judge therefore could not grant Petitioner an ordinary custody-
2 redetermination hearing if DHS invokes §1225(b), regardless of Petitioner's prior bond,
3 compliance, family ties, pending relief, or lack of present dangerousness.

4 125. Petitioner's challenge also presents a threshold statutory question that an
5 Immigration Judge cannot finally resolve contrary to binding Board precedent: whether
6 §1226 rather than §1225 governs his detention.

7 126. If DHS instead classifies Petitioner under §1226(c), an ordinary *Matter of Joseph*,
8 22 I. & N. Dec. 799 (BIA 1999), hearing would likewise be inadequate.

9 127. An ordinary *Joseph* hearing places the burden on the detained person to
10 demonstrate that DHS is substantially unlikely to establish a mandatory-detention
11 predicate.

12 128. That procedure would require Petitioner to disprove DHS's classification while
13 the relevant custody records and legal rationale remain in the government's possession.

14 129. Due process does not require Petitioner to overcome DHS's unexplained
15 detention classification before obtaining judicial review of whether Respondents have
16 lawful authority to imprison him.

17 130. If DHS concedes §1226(a), an ordinary bond proceeding would still be inadequate
18 to remedy the challenged deprivation.

19 131. The ordinary agency procedure does not necessarily require DHS to establish
20 materially changed circumstances since the 2013 bond order.

21 132. It also does not redress ICE's failure to provide notice and an opportunity to be
22 heard before revoking a liberty interest Petitioner exercised for nearly thirteen years.

1 133. The Immigration Court cannot declare the procedures used by ICE
2 unconstitutional or grant the complete declaratory, injunctive, and habeas relief sought
3 here.

4 134. Delay is itself part of the injury. Petitioner remains physically confined, separated
5 from his family, and unable to provide the daily support upon which his wife and children
6 depend.

7 135. Further administrative exhaustion is therefore excused.

8 **VI. CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **Violation of the INA and 28 U.S.C. §2241:**

11 **Petitioner's Detention Is Governed by 8 U.S.C. §1226, Not §1225(b)**

12 136. Petitioner realleges and incorporates paragraphs 1 through 135.

13 137. Section 1226 governs the arrest, detention, and release of a noncitizen "pending a
14 decision on whether the alien is to be removed from the United States." 8 U.S.C.
§1226(a).

15 138. Petitioner is detained while the Immigration Court decides whether he is
16 removable and whether he qualifies for relief or protection.

17 139. His case remains pending, and no final removal order exists. Exh. F.

18 140. Section 1226(a) authorizes detention, release on bond, or release on conditional
19 parole. 8 U.S.C. §1226(a)(1)–(2).

20 141. Section 1225 is different. It is principally an inspection-and-admission
21 framework. *Jennings*, 583 U.S. at 287–89.

22 142. Section 1225(b)(1) governs expedited-removal and credible-fear procedures.

23 *PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241*
24 *Ordaz Resendiz v. Warden, et al.*

1 143. Section 1225(b)(2)(A) refers to an applicant for admission whom an examining
2 immigration officer determines is not clearly and beyond a doubt entitled to admission.

3 144. Petitioner was not arrested at a port of entry or while attempting to enter the
4 United States.

5 145. He was arrested in San Francisco after more than twenty-three years of residence
6 in the United States and approximately thirteen years after being placed in ordinary §240
7 proceedings.

8 146. An Immigration Judge previously exercised custody authority under the §236
9 regulations and ordered Petitioner released under a \$6,000 bond.

10 147. Section 1225(b) does not authorize ordinary Immigration Court bond orders. The
11 2013 order is therefore powerful contemporaneous evidence that Petitioner's custody
12 was—and remains—governed by §1226.

13 148. ICE itself continued to recognize and enforce the bond immediately before
14 Petitioner's arrest.

15 149. The fact that Petitioner may be charged as inadmissible under §1182(a)(6)(A)(i)
16 does not resolve the separate custody question presented here.

17 150. Section 1226(a) is not limited to admitted noncitizens. It applies broadly to “an
18 alien” detained pending a decision on removal.

19 151. Respondents' interpretation would collapse §1225 and §1226 by making
20 §1226(a)'s bond framework unavailable to virtually every person charged as present
21 without admission, regardless of decades of residence or prior release under §1226.
22

1 152. The structure of §1226(c) confirms that inadmissibility does not itself place every
2 person within §1225(b).

3 153. Section 1226(c)(1)(A) expressly applies to certain persons who are inadmissible
4 under §1182(a)(2).

5 154. The Laken Riley Act added §1226(c)(1)(E), covering certain persons inadmissible
6 under §1182(a)(6)(A), (6)(C), or (7) who have specified criminal contacts.

7 155. Those provisions would perform little work if every person inadmissible under
8 §1182(a)(6)(A) were already categorically detained without bond under §1225(b).

9 156. The Board's contrary interpretation in *Matter of Yajure Hurtado* does not bind
10 this Court. Federal courts must exercise independent judgment in interpreting federal
11 statutes. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024).

12 157. The substantial weight of authority in this District has rejected DHS's broad
13 §1225(b)(2)(A) theory and held that §1226 governs detention of persons arrested in the
14 interior while ordinary removal proceedings remain pending. See, e.g., *Guerrero Lepe v.*
15 *Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 WL 2716910, at *3–5 (E.D. Cal. Sept. 23,
16 2025); *Martinez Casas v. Noem*, No. 1:25-cv-01487-CDB, 2026 WL 119325, at *3 (E.D.
17 Cal. Jan. 8, 2026); *J.S. v. Wofford*, No. 1:25-cv-02016-DC-SCR, 2026 WL 125258, at
18 *3–5 (E.D. Cal. Jan. 16, 2026), findings and recommendations adopted, 2026 WL
19 297304 (E.D. Cal. Feb. 4, 2026).

20 158. Petitioner's case is stronger because an Immigration Judge previously exercised
21 §236 custody jurisdiction and ordered him released on bond.

1 159. To the extent Respondents detain Petitioner under §1225(b), the detention is
2 contrary to the INA.

3 160. Petitioner is entitled to immediate restoration of his release or, at minimum,
4 access to constitutionally adequate §1226 custody procedures.

5 **SECOND CLAIM FOR RELIEF**
6 **Violation of the INA and 28 U.S.C. §2241:**
7 **The Laken Riley Act Does Not Retroactively Subject Petitioner to Mandatory Detention**

8 161. Petitioner realleges and incorporates paragraphs 1 through 160.

9 162. The Laken Riley Act was enacted on January 29, 2025.

10 163. It amended §1226(c) by adding a mandatory-detention category for certain
11 noncitizens who are inadmissible under specified grounds and who are charged with,
12 arrested for, convicted of, or admit committing listed offenses, including theft. Pub. L.
13 No. 119-1, §2, 139 Stat. 3.

14 164. Petitioner's misdemeanor theft conviction was entered in 2005, approximately
15 twenty years before the Laken Riley Act was enacted.

16 165. Congress did not expressly provide that amended §1226(c)(1)(E) applies to
17 arrests, charges, or convictions occurring before enactment.

18 166. Courts presume that legislation operates prospectively unless Congress clearly
19 directs otherwise. *Landgraf v. USI Film Products*, 511 U.S. 244, 265–80 (1994).

20 167. The presumption applies with particular force where a new statute attaches a
21 serious legal disability to completed past conduct. *Vartelas v. Holder*, 566 U.S. 257, 266–
22 73 (2012); *St. Cyr*, 533 U.S. at 321–26.

1 168. At the time Petitioner entered his plea, the misdemeanor did not permanently
2 eliminate immigration bond eligibility.

3 169. Indeed, after considering Petitioner's custody in 2013, an Immigration Judge
4 ordered him released under §236.

5 170. Applying §1226(c)(1)(E) now would transform a remote misdemeanor that did
6 not previously require mandatory detention into a permanent no-bond predicate.

7 171. It would thereby attach a severe new legal consequence—physical imprisonment
8 without ordinary bond eligibility—to a conviction completed approximately twenty years
9 before the statute existed.

10 172. Nothing in the Laken Riley Act clearly directs that result.

11 173. In *Alvarado v. Bondi*, No. 2:26-cv-00416-APG-DJA, ECF No. 12, at 4–7 (D. Nev.
12 Apr. 9, 2026), the court applied *Landgraf* and held that §1226(c)(1)(E) could not be
13 applied to pre-enactment burglary and larceny arrests because the Act contained no clear
14 retroactivity command and would impose a new mandatory-detention consequence.

15 174. The same reasoning applies to Petitioner's 2005 misdemeanor conviction.

16 175. The application would be particularly inequitable here because Petitioner was
17 affirmatively ordered released under §236 and exercised that liberty for nearly thirteen
18 years.

19 176. Petitioner is not otherwise subject to mandatory detention under §1226(c) on the
20 presently available record.

21 177. His 2005 Penal Code §484 misdemeanor fell within the petty-offense exception
22 and did not render him inadmissible under §1182(a)(2)(A)(i)(I). Exh. E.

1 178. His pre-2011 simple-possession disposition was dismissed following California
2 deferred entry of judgment and is governed by the pre-*Nunez-Reyes* rule described in
3 *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000). Exh. E.

4 179. His Penal Code §12020 disposition involved a non-firearm weapon. Exh. E.

5 180. His misdemeanor Penal Code §236 disposition is not categorically a crime
6 involving moral turpitude. *Turijan v. Holder*, 744 F.3d 617, 620–22 (9th Cir. 2014).

7 181. Petitioner's pending misdemeanor charge under Vehicle Code §4462.5 is not a
8 conviction and is not among the offenses enumerated in §1226(c)(1)(E).

9 182. It therefore does not independently establish mandatory detention.

10 183. Respondents bear responsibility for identifying a lawful statutory basis for
11 Petitioner's imprisonment.

12 184. The presently available record establishes no valid mandatory-detention ground.

13 185. Respondents may not rely on amended §1226(c)(1)(E) to detain Petitioner based
14 upon the 2005 conviction.

15 **THIRD CLAIM FOR RELIEF**
16 **Violation of Procedural Due Process:**
17 **ICE Revoked Petitioner's Bond and Re-Detained Him**
18 **Without Notice or a Meaningful Hearing**

19 186. Petitioner realleges and incorporates paragraphs 1 through 185.

20 187. The Fifth Amendment prohibits the federal government from depriving any
21 person of liberty without due process of law.

22 188. Freedom from physical restraint lies at the core of the liberty protected by the Due
23 Process Clause. *Zadvydas*, 533 U.S. at 690.

24 189. Petitioner possessed more than a unilateral expectation of release.

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1 190. A neutral Immigration Judge adjudicated his custody status, ordered him released
2 under a specified \$6,000 bond, and imposed express conditions of release.

3 191. Petitioner then exercised that liberty for nearly thirteen years.

4 192. ICE continued to recognize and enforce the bond and used it to compel his
5 appearance on July 7, 2026.

6 193. Petitioner therefore possessed a substantial and continuing liberty interest in
7 remaining released absent constitutionally adequate procedures.

8 194. Section 1226(b) states that the Attorney General may revoke a bond “at any
9 time,” rearrest the person under the original warrant, and detain the person.

10 195. That provision authorizes reconsideration of custody. It does not eliminate the
11 Fifth Amendment or specify that an adjudicated release may be extinguished without
12 notice and an opportunity to be heard.

13 196. Agency precedent recognizes that an Immigration Judge’s bond determination
14 should not be altered absent changed circumstances. *Matter of Sugay*, 17 I. & N. Dec.
15 637, 640 (BIA 1981).

16 197. In *Saravia for A.H. v. Sessions*, the Ninth Circuit affirmed relief requiring the
17 government to establish changed circumstances before re-detaining persons previously
18 released from immigration custody. 905 F.3d 1137, 1143–45 (9th Cir. 2018).

19 198. The principle is directly applicable here: after the government adjudicated
20 Petitioner suitable for release and permitted him to live at liberty for nearly thirteen years,
21 it could not summarily reverse that determination without meaningful process.

22 199. Under *Mathews v. Eldridge*, the Court considers:

23 PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
24 Ordaz Resendiz v. Warden, et al.

1 a. the private interest affected;

2 b. the risk of erroneous deprivation under the procedures used and the probable
3 value of additional safeguards; and

4 c. the government's interest and administrative burden. 424 U.S. 319, 335 (1976).

5 200. Petitioner's private interest is exceptionally weighty. He has been deprived of
6 physical liberty and separated from his United States citizen wife and children.

7 201. The risk of erroneous deprivation was extreme because ICE provided no hearing
8 at all.

9 202. ICE gave no advance notice that it intended to revoke the bond.

10 203. ICE did not identify the statutory basis for detention.

11 204. ICE did not disclose the evidence upon which it relied.

12 205. ICE made no disclosed finding concerning current danger, flight risk, changed
13 circumstances, or less restrictive conditions.

14 206. A hearing would have substantial value.

15 207. Petitioner could present evidence of his longstanding residence, family ties,
16 pending applications for relief, prior bond, voluntary appearance, remote conviction
17 history, unresolved and nonviolent nature of the 2025 charge, and availability of
18 conditions short of confinement.

19 208. The relevant custody records and the government's rationale are uniquely within
20 Respondents' possession.

21 209. Requiring Respondents to disclose and prove the basis for detention would
22 materially reduce the risk of an erroneous deprivation.

1 210. There was no emergency that prevented pre-deprivation process.

2 211. ICE selected the appointment date more than a month in advance.

3 212. ICE knew where Petitioner lived and how to compel his appearance.

4 213. Petitioner appeared exactly as directed.

5 214. His appearance demonstrated that immediate imprisonment was not required to
6 prevent flight.

7 215. Respondents may contend that the pending 2025 misdemeanor charge constitutes
8 a changed circumstance.

9 216. But due process required Respondents to establish before a neutral decisionmaker
10 that the unresolved charge materially altered the 2013 custody determination and justified
11 physical confinement.

12 217. No such hearing occurred.

13 218. An ordinary *Joseph* hearing would not provide adequate process if Respondents
14 assert mandatory detention.

15 219. That procedure would place the burden on Petitioner to disprove DHS's
16 classification even though DHS possesses the relevant detention records and bears
17 responsibility for identifying a lawful basis for confinement.

18 220. An ordinary §1226(a) hearing would likewise be inadequate unless it requires
19 Respondents to establish materially changed circumstances and the present necessity of
20 detention.

21 221. Due process requires the government to bear the burden where continued physical
22 confinement is at stake. *Singh*, 638 F.3d at 1203–05.

1 222. The appropriate standard is clear and convincing evidence because the
2 consequences of error are severe and continued detention represents a substantial
3 deprivation of liberty.

4 223. The decisionmaker must also consider whether the existing bond or other less
5 restrictive conditions can reasonably address any demonstrated risk.

6 224. Any monetary condition must account for ability to pay. A bond amount that
7 Petitioner cannot pay operates as detention rather than release.

8 225. Respondents violated procedural due process by revoking Petitioner's release and
9 re-detaining him without notice and a meaningful opportunity to contest the asserted
10 basis for confinement.

11 226. Immediate restoration to the 2013 bond is the appropriate remedy.

12 227. At minimum, Respondents must provide a prompt hearing containing the
13 safeguards specified in the request for relief below.

14 **FOURTH CLAIM FOR RELIEF**

15 **Violation of Substantive Due Process:**

16 **Petitioner's Re-Detention Is Arbitrary, Punitive, and Not Reasonably Related to a
17 Legitimate Civil-Detention Purpose**

18 228. Petitioner realleges and incorporates paragraphs 1 through 227.

19 229. Immigration detention is civil and regulatory rather than criminal and punitive.

20 230. Civil detention is constitutionally permissible only when it bears a reasonable
21 relationship to a legitimate nonpunitive governmental purpose. *Zadvydas*, 533 U.S. at
22 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

1 231. The recognized regulatory purposes of pre-final-order immigration detention are
2 ensuring appearance at immigration proceedings and protecting the community from
3 present danger.

4 232. Physical confinement may not be imposed as punishment for unlawful presence, a
5 remote conviction, an unresolved criminal charge, or a person's decision to pursue
6 available immigration relief.

7 233. Nor may detention rest solely upon a categorical enforcement preference divorced
8 from an individualized assessment of whether confinement is reasonably necessary.

9 234. Petitioner's history demonstrates that detention is not reasonably necessary to
10 ensure his appearance.

11 235. The Immigration Judge released Petitioner under a \$6,000 bond in 2013.

12 236. Petitioner remained available to immigration authorities for nearly thirteen years.

13 237. ICE knew his address and knew how to direct him to appear.

14 238. When ICE invoked the bond and ordered him to report on July 7, 2026, Petitioner
15 appeared exactly as instructed.

16 239. Petitioner's appearance is direct evidence that the bond continued to serve its
17 regulatory purpose.

18 240. Respondents have identified no instance in which Petitioner absconded from
19 immigration proceedings, concealed himself from ICE, or refused to comply with the
20 June 2026 delivery demand.

21 241. Detaining Petitioner after he complied with the bond demand does not advance
22 appearance-related interests in any rational or proportionate way.

1 242. To the contrary, it disregards the demonstrated effectiveness of the existing bond.

2 243. Respondents have likewise made no individualized finding that Petitioner
3 currently poses a danger to the community.

4 244. Petitioner's criminal convictions are remote. He appears to have sustained no
5 conviction after 2011.

6 245. The unresolved 2025 matter alleges a nonviolent misdemeanor registration
7 offense.

8 246. Petitioner has pleaded not guilty, and no conviction has been entered.

9 247. An accusation alone does not establish present dangerousness.

10 248. Nor does the charge allege conduct violating the drug- and alcohol-related
11 conditions imposed in the 2013 bond order.

12 249. Respondents have not established that the pending charge demonstrates a present
13 threat that cannot be addressed by the existing bond or additional noncustodial
14 conditions.

15 250. To the extent Respondents rely on Petitioner's remote 2005 misdemeanor theft
16 conviction, that conviction was known or available when an Immigration Judge ordered
17 release in 2013.

18 251. It cannot rationally establish a newly emergent danger approximately twenty-one
19 years after the offense and thirteen years after the custody order, absent evidence of
20 current dangerousness.

21 252. Respondents have not alleged that Petitioner committed any violent offense while
22 released on immigration bond.

1 253. Respondents have not alleged that Petitioner violated the release conditions
2 imposed by the Immigration Judge.

3 254. Respondents have not shown that the existing monetary bond is inadequate.

4 255. Respondents have not considered increased reporting, electronic monitoring,
5 geographic restrictions, or any other alternative less restrictive than incarceration.

6 256. Due process requires meaningful consideration of alternatives because civil
7 confinement may continue only to the extent reasonably necessary to accomplish a
8 legitimate regulatory purpose.

9 257. The government does not possess a legitimate regulatory interest in choosing
10 incarceration where a demonstrated and less restrictive means has successfully secured
11 compliance for nearly thirteen years.

12 258. Nor does the government possess a legitimate interest in using civil immigration
13 detention as an anticipatory penalty for an unresolved misdemeanor charge.

14 259. If Respondents' decision rests solely on a new agency classification under
15 §1225(b), the detention is not based on any individualized change in Petitioner's conduct
16 or risk.

17 260. If the decision rests solely on retroactive application of the Laken Riley Act, the
18 detention likewise turns on a legal reclassification of a decades-old conviction rather than
19 a present assessment of danger or flight.

20 261. In either event, the detention bears no reasonable relationship to any newly
21 established regulatory necessity.

22 262. The arbitrariness is heightened by the manner in which ICE secured custody.

1 263. ICE invoked the existing bond, characterized the appointment as an interview,
2 warned of forfeiture for nonappearance, and obtained Petitioner's voluntary compliance.

3 264. ICE then used Petitioner's compliance as the occasion to imprison him without
4 establishing that the bond had failed.

5 265. A detention system that treats compliance as the mechanism for confinement,
6 while refusing to assess whether confinement is necessary, is not reasonably tailored to
7 encouraging future compliance.

8 266. Petitioner's detention also inflicts consequences characteristic of punishment.

9 267. It separates him from his United States citizen family, prevents him from
10 supporting them, aggravates his wife's serious psychiatric conditions, and impairs his
11 ability to prepare his pending applications for relief.

12 268. Those consequences cannot be justified merely by invoking the pendency of
13 removal proceedings.

14 269. The pendency of removal proceedings explains why the government may impose
15 reasonable conditions to ensure appearance. It does not itself establish that incarceration
16 is necessary.

17 270. Recent bond evidence further demonstrates why a generic referral to ordinary
18 agency procedures would not cure the constitutional problem. Exhs. J-L.

19 271. A process that places the burden on Petitioner, treats remote conduct as
20 dispositive, disregards alternatives, or imposes an unaffordable bond may preserve
21 detention without determining whether it is reasonably necessary.

1 272. Substantive due process requires more than a formal opportunity to request
2 release. It prohibits civil confinement that is arbitrary or excessive in relation to its
3 asserted regulatory purposes.

4 273. Where, as here, the existing bond demonstrably secured Petitioner's appearance,
5 there has been no finding of present danger, and Respondents have not considered less
6 restrictive alternatives, continued detention is excessive and arbitrary.

7 274. To the extent detention is based on the unresolved state charge or remote criminal
8 history without proof of current danger, it functions as punishment rather than regulation.

9 275. To the extent detention is based solely on an asserted change in statutory
10 classification, without any changed conduct or risk, it is untethered to the individualized
11 regulatory purposes that can constitutionally justify civil confinement.

12 276. Respondents' detention of Petitioner therefore violates substantive due process.

13 277. Immediate release under the preexisting bond is the appropriate remedy.

14 278. In the alternative, the Court should order a prompt and enforceable hearing at
15 which Respondents must prove that continued detention is presently necessary and that
16 no less restrictive condition can reasonably address a demonstrated danger or flight risk.

17 **VII. REQUEST FOR RELIEF**

18 WHEREFORE, Petitioner respectfully requests that this Court:

19 A. Assume jurisdiction over this action;

20 B. Issue the writ of habeas corpus or an order to show cause requiring Respondents promptly to
21 justify Petitioner's detention;

22 C. Order Respondents to disclose immediately:

23 *PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241*
24 *Ordaz Resendiz v. Warden, et al.*

1. the statutory basis for Petitioner's detention;
2. any Form I-286 or other custody determination;
3. any warrant or order relied upon to re-arrest Petitioner;
4. any notice or decision purporting to revoke the 2013 bond;
5. all records upon which Respondents rely to assert that Petitioner is subject to §1225(b) or §1226(c); and
6. the identity and location of Petitioner's present custodian;

D. Declare that Petitioner's detention is governed by 8 U.S.C. §1226 rather than 8 U.S.C. §1225(b);

E. Declare that amended §1226(c)(1)(E) may not be applied retroactively to Petitioner's 2005 conviction;

F. Declare that Respondents violated the Due Process Clause by revoking Petitioner's bond and re-detaining him without notice or a meaningful hearing;

G. Declare that Petitioner's continued detention, absent an individualized and constitutionally adequate determination of necessity, violates substantive due process;

H. Order Respondents immediately to release Petitioner under the bond and conditions governing his release immediately before July 7, 2026;

I. Permit Respondents, if necessary, to impose reasonable additional noncustodial reporting or supervision conditions consistent with the 2013 release determination;

J. If the Court does not order immediate release, require Respondents within 48 hours, or within such similarly prompt period as the Court sets, to provide a hearing before a neutral decisionmaker at which:

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1. Respondents bear the burden of proof;
 2. Respondents must prove by clear and convincing evidence that Petitioner is lawfully included within any asserted mandatory-detention category;
 3. Respondents must produce sufficiently before the hearing all records upon which they rely to establish a mandatory-detention predicate;
 4. Respondents must prove by clear and convincing evidence that materially changed circumstances since the August 30, 2013 bond order justify revocation of Petitioner's release;
 5. Respondents must prove by clear and convincing evidence that Petitioner presently poses a danger or flight risk;
 6. Respondents must prove that the existing bond and less restrictive conditions cannot reasonably address any demonstrated risk;
 7. the decisionmaker must consider alternatives to detention;
 8. the decisionmaker must consider Petitioner's ability to pay before imposing any monetary condition;
 9. no bond may be set in an amount that results in detention solely because Petitioner cannot pay;
 10. the decisionmaker must issue a contemporaneous written decision identifying the evidence relied upon and the reasons supporting the custody determination; and
 11. Petitioner must be released unless Respondents satisfy the required burdens;
- K. Prohibit Respondents from transferring Petitioner outside the Eastern District while this action and any associated request for emergency relief remain pending;

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1 L. Prohibit Respondents from re-detaining Petitioner following release absent materially changed
2 circumstances and constitutionally adequate pre-deprivation process;

3 M. Waive any bond requirement under Federal Rule of Civil Procedure 65(c);

4 N. Award reasonable attorney's fees and costs as permitted by law; and

5 O. Grant such other and further relief as the Court deems just and proper.
6

7 Dated: July 8, 2026

Respectfully submitted,
By: /s/ Ann Barhoum
ANN BARHOUM
Attorney for Petitioner
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23 *PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241*
24 *Ordaz Resendiz v. Warden, et al.*

VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. §2242

I, Ann Barhoum, declare as follows:

1. I am counsel for Petitioner Nereo Said Ordaz Resendiz in this habeas corpus action.
2. Petitioner was taken into immigration custody on July 7, 2026, and is not readily available to review and personally verify this Petition before filing.
3. Counsel has not yet obtained reliable online detainee-locator access or the complete ICE custody record identifying Petitioner's present detention facility and asserted statutory basis for detention.
4. I have reviewed the foregoing Petition for Writ of Habeas Corpus and the exhibits submitted in support of it.
5. The factual allegations in the Petition are based upon the records and exhibits submitted with the Petition, information provided by Petitioner's immigration counsel and family, EOIR public records, and other information presently available to counsel.
6. Allegations concerning Petitioner's present detention location and matters uniquely within Respondents' possession are made upon information and belief and are believed to be true.
7. To the best of my knowledge, information, and belief, formed after reasonable inquiry under the circumstances, the factual allegations are supported by the existing record or are likely to have evidentiary support after Respondents produce the custody record and related detention documents.
8. The legal claims and requests for relief are warranted by existing law or by nonfrivolous arguments for the extension, modification, or reversal of existing law.
9. I submit this verification on Petitioner's behalf pursuant to 28 U.S.C. §2242 because Petitioner is detained and counsel is acting on his behalf in seeking habeas relief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of July 2026, at San Jose, CA, by

/s/Ann Barhoum

Ann Barhoum

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241
Ordaz Resendiz v. Warden, et al.

1 **SIGNATURE ATTESTATION**

2 I hereby attest that I have on file all holographic signatures corresponding to any signatures
3 indicated by a conformed signature (/s/) within this e-filed document.

4 By: /s/ Ann Barhoum
ANN BARHOUM

5 **CERTIFICATE OF SERVICE**

6 I hereby certify that on June 23, 2026, I electronically filed the foregoing with the Clerk of the
Court for the United States District Court for the Eastern District of California using CM/ECF. I
7 certify that all participants in the case are registered CM/ECF users and that service will be
accomplished by the CM/ECF system.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed on June 23,
2026, in San Jose, California.

9 By: /s/ Ann Barhoum
10 ANN BARHOUM