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

Vasquez Alva, Brisa Yadira
Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security;
PAM BONDI, in her official capacity as Attorney
General of the United States; Executive Office for
Immigration Review; POLLY KAISER, in his
official capacity as Acting Field Office Director of
the Immigration and Customs Enforcement and
Removal Operations, San Francisco;
TODD LYONS, Acting Director of United States
Immigration and Customs Enforcement; and
CHRISTOPHER CHESTNUT, in his official
capacity as Facility Administrator of California City
Detention Facility.

Respondents.

Case No.

**PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

1. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

JURISDICTION

2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et. seq.
3. This court has subject matter jurisdiction under 28 U.S.C. §2241 (habeas corpus), 28 U.S.C. §1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
4. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. 2241 et. seq., the Declaratory Judgement Act, 28 U.S.C. §2201 et. seq., the All Writs Act, 28 U.S.C. §1651, and the Immigration and Nationality Act, 8 U.S.C. §1252(e)(2).

VENUE

5. Venue is proper because Petitioner is in Respondents' custody in California City, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C §1391(e).

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- 1 6. For these same reasons, divisional venue is proper under the Eastern District of California
2 under this Court's Local Rules. (Local Rule 120(d)).

3 **REQUIREMENTS OF 28 U.S.C. §§2241,2243**

- 4
5 7. The Court must grant the petition for writ of habeas corpus or issue an order to show
6 cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief.
7 28 U.S.C. §2243. If an OSC is issued, the Court must require Respondents to file a return
8 "within three days unless for good cause additional time, not exceeding twenty days, is
9 allowed." *Id.*
10 8. Courts have long recognized the significance of the habeas statute in protecting
11 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the
12 most important writ known to the constitutional law of England, affording as it dows a
13 swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*,
14 372 U.S. 391, 400 (1963).
15 9. Petitioner is "in custody" for the purpose of §2241 because Petitioner is arrested and
16 detained by Respondents.

17 **PARTIES**

- 18 10. Petitioner, Brisa Yadira Vasquez Alva, resides in Turlock, California and is currently
19 detained at the California City immigration detention center.
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11. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (“DHS”), and is sued in her official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. §1103(a).
12. Respondent, Pamela Bondi, is the Attorney General of the United States and is sued in her official capacity as the head of the Department of Justice. The Attorney General is responsible for the fair administration of the laws of the United States.
13. Respondent Executive Office for Immigration Review is a component agency of the Department of Justice responsible for conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory body administered by immigration judges and an appellate body known as the Board of Immigration Appeal (BIA). Immigration judges issue bond redetermination hearing decisions, which are then subject to appeal to the BIA.
14. Respondent, Todd M. Lyons, is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention of Petitioner.
15. Respondent, Christopher Chestnut, is the Facility Administrator at the ICE California City immigration detention facility and is sued in his official capacity. Respondent, Christopher Chestnut, has immediate physical custody of Petitioner.
16. Respondent, Polly Kaiser, is the Director for the San Francisco ICE Field Office and is sued in his official capacity. Respondent, Polly Kaiser, is responsible for the detention of Petitioner.

LEGAL FRAMEWORK

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1 17. Immigration detention should not be used as a punishment and should only be used when,
2 under an individualized determination, a noncitizen is a flight risk because they are
3 unlikely to appear for immigration court or a danger to the community. *Zadvydas v.*
4 *Davis*, 533 U.S. 678, 690 (2001).

5 18. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth
6 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

7 19. The Immigration and Nationality Act (INA) establishes various procedures through
8 which individuals may be detained pending a decision on whether the noncitizen is to be
9 removed. 8 U.S.C. § 1226(a).

10 20. Removal proceedings described in section 240 of the INA are used to determine whether
11 individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. §
12 1229a.

13 21. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to
14 apply for asylum to individuals seeking safe haven in the United States. The purpose of
15 the Refugee Act is to enforce the “historic policy of the United States to respond to the
16 urgent needs of persons subject to persecution in their homelands.” Refugee Act of 1980,
17 § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

18 22. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol
19 Relating to the Status of Refugees, “to which the United States had been bound since
20 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act
21 reflects a legislative purpose “to give ‘statutory meaning to our national commitment to
22

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human rights and humanitarian concerns.” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985)

23. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

24. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

25. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

26. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

27. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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- 1 28. Custody determinations under § 1226(a) are individualized and based on the facts
2 presented in those cases. Unlike § 1226(c), which can provide for categorical
3 determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a
4 case-by-case review of the facts and circumstances.
- 5 29. Once a determination to release an individual from custody is made, the release order
6 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8
7 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may
8 take that individual back into custody by revoking the individual's release when the facts
9 and circumstances warrant it.
- 10 30. Revocation and return to custody is authorized only based on the individualized facts and
11 circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in
12 nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9)

13 **FACTUAL BACKGROUND**

- 14
- 15 31. Petitioner, Brisa Yadira Vasquez Alva, has resided in the United States since early 2024
16 and made her home in Turlock, California with her partner, whom she loves deeply and
17 misses profoundly. Throughout her time in the United States, she has complied fully with
18 every requirement imposed on her. After receiving her EAD, she was eager to work and
19 sought to follow every legal step, including attempting to obtain her Social Security card
20 through the SSA. In doing so, she acted in good faith and with the sole intent of
21 complying with the law. Unfortunately, DHS exploited this and used it as a pretext to
22 bring her into the ICE office where they detained her with no explanation. Petitioner fled

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1 Peru seeking protection from the persecution and discrimination she faced there, and her
2 current detention only compounds the hardship she has already endured.

3 32. She was placed into removal proceedings to appear before an IJ and was charged with
4 INA §212(a)(7)(A)(i)(I), applying for admission without valid immigrant visa or travel
5 documents.

6 33. On January 20, 2025, President Donald Trump issued several executive actions relating to
7 immigration, including “Protecting the American People Against Invasion,” an executive
8 order (EO) setting out a series of interior immigration enforcement actions. The Trump
9 administration, through this and other actions, has outlined sweeping, executive branch
10 led changes to immigration enforcement policy, establishing a formal framework for
11 mass deportation. The “Protecting the American People Against Invasion” EO instructs
12 the DHS Secretary “to take all appropriate action to enable “ICE, CBP, and USCIS to
13 prioritize civil immigration enforcement procedures including through the use of mass
14 detention.

15 34. On information and belief, Respondents are detaining Petitioner regardless of the
16 individual facts and circumstances of her case.

17 35. On information and belief, Respondents are using the immigration detention system,
18 including extra territorial transfer and detention, as a means to punish individuals for
19 asserting rights under the Refugee Act.

20 36. On information and belief, Petitioner has no criminal history.

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CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. §1226(b), 8 C.F.R §1236.1(c)(9)

37. Petitioner restates and realleges all paragraphs as if fully set forth here.

38. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

39. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

40. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

41. By categorically revoking Petitioner’s release without consideration of her individualized facts and circumstances, Respondents have violated the APA.

42. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to her facts or circumstances since the agency made its initial custody determinations that would support the revocation of her release from custody.

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1 43. Respondents have already considered Petitioner's facts and circumstances and
2 determined that she was not a flight risk or danger to the community. There have been no
3 changes to the facts that justify this revocation of her release on her own recognizance.
4 The fact that Petitioner has already been granted release by Respondents under the same
5 facts and circumstances shows that Respondents do not consider her, on an individualized
6 basis, to be a danger to the community or a flight risk. Moreover, Respondents found she
7 was such a low risk that she was not even required to wear an ankle monitor device upon
8 initial release.

9
10 **COUNT TWO**

11 **Violation of the Administrative Procedure Act – 5 U.S.C §706(3)(a)**

12 **Not in Accordance with Law and in Excess of Statutory Authority**

13 **Violation of 8 U.S.C. §1226(b), 8 C.F.R. §1236.1(c)(9)**

14
15 44. Petitioner restates and realleges all paragraphs as if fully set forth here.

16 45. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
17 accordance with law;” “contrary to constitutional right;” “in excess of statutory
18 jurisdiction, authority, or limitations;” or “without observance of procedure required by
19 law.” 5 U.S.C. § 706(2)(A)-(D).

20 46. 48 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a
21 bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the
22 initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies

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1 that such revocations of release from custody may only be carried out in the “discretion
2 of the district director, acting district director, deputy district director, assistant district
3 director for investigations, assistant district director for detention and deportation, or
4 officer in charge (except foreign).”

5 47. It is a well-established administrative principle that “agency action taken without lawful
6 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d
7 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015);
8 see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016)
9 (invalidating agency action because it was taken by unauthorized official).

10 48. On information and belief, Respondents have revoked or are revoking Petitioner’s prior
11 custody determination as a result of a categorical policy prepared by and implemented by
12 unidentified government officials in Washington, not through the individual exercise of
13 discretion required by law or by the individuals enumerated by regulation to do so.

14 49. Because Petitioner’s revocation of release from custody has been made or will be
15 categorically directed by government officials not authorized by law to make this
16 determination, Respondents’ detention of Petitioner is not in accordance with law and in
17 excess of statutory authority.

18 COUNT THREE

19 Violation of Fifth Amendment Right to Due Process

20 Procedural Due Process

21 50. Petitioner restates and realleges all paragraphs as if fully set forth here.

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53. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates her right to procedural due process.

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;

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- 3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- 4) Declare that Petitioner's revocation of parole from custody was made in violation of statute and regulation;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or require the government provide a pre-deprivation bond hearing within seven (7) days where the government bears the burden of proof by clear and convincing evidence;
- 6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- 7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: November 20, 2025

/s/Jessica Jaramillo Perez

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