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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **Vivaldo Montes Herrera,**



12 Petitioner,

13 v.

14 **CHRISTOPHER LAROSE**, Warden of Otay Mesa
Detention Center; **DANIEL BRIGHTMAN**, Acting
15 Field Office Director, San Diego Office; **TODD**
LYONS, in his official capacity as Acting Director
16 of Immigration and Customs
Enforcement; **MARKWAYNE MULLIN**, U.S.
17 Department of Homeland Security; and **TODD**
BLANCHE, Acting U.S. Attorney General.

18 Respondents.
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Civil Action No.: **'26CV2891 CAB GC**

21 **PETITION FOR WRIT OF HABEAS CORPUS**
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INTRODUCTION

1. Petitioner Vivaldo Montes Herrera, a 56-year-old citizen of Mexico, has resided continuously in the United States for more than 30 years. He has no criminal history except for a driving without a license traffic offense. He is the father of three U.S. citizen children, three U.S. citizen stepchildren, and three U.S. citizen grandchildren. He is the sole financial provider for his family and has deep community ties, including active membership and volunteer service at Holy Cross Catholic Church in Los Angeles.
2. On July 15, 2025, an Immigration Judge (IJ) granted Petitioner bond after a full hearing. *See* Exhibit A, IJ Bond Decision.
3. On July 16, 2025, the Department of Homeland Security (DHS) filed a Form EOIR-43, appealing the IJ's bond order to the Board of Immigration Appeals (BIA). The filing of Form EOIR-43 triggered an automatic stay of the IJ's release order under 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c). As a result, Petitioner was never released.
4. On September 19, 2025, the BIA sustained DHS's appeal and vacated the IJ's bond order, holding that under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Immigration Judges lack authority to grant bond to noncitizens who entered without inspection. *See* Exhibit B, BIA Bond Decision.
5. The BIA's decision is **contrary to law**. The Southern District of California has repeatedly held that long-term residents like Petitioner (over 30 years in the U.S.) are **not** subject to mandatory detention under § 1225(b)(2) and are entitled to bond hearings under § 1226(a). *See Salazar Arroyo v. LaRose*, No. 25cv2190-LL-MMP, slip op. at 4-5 (S.D. Cal. Dec. 9, 2025); *Fernandez v. Warden, Otay Mesa Det. Ctr.*, No. 3:26-cv-02137-RBM-AHG, slip op. at 2 (S.D. Cal. Apr. 30, 2026); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, slip op. at 3 (S.D. Cal. Dec. 8, 2025).

- 1 6. Moreover, the government never obtained a pre-arrest warrant issued by the Attorney
2 General before Petitioner's apprehension on June 18, 2025. Section 8 U.S.C. § 1226(a)
3 requires a warrant. The I-213 contains no warrant number and it is post-dated. *See* Exhibit
4 C, Form I-213; Hellerstein Decl. ¶ 7.
- 5 7. Petitioner has been detained for over ten months without any bond hearing at which the
6 government bore the burden of proving flight risk or danger by clear and convincing
7 evidence. This prolonged detention also violates due process. *Singh v. Holder*, 638 F.3d
8 1196, 1203-04 (9th Cir. 2011).
- 9 8. Exhaustion is futile because the BIA has already ruled against Petitioner on the bond
10 issue. *Silvestre-Mendoza*, slip op. at 3.
- 11 9. Petitioner brings this habeas corpus petition under 28 U.S.C. § 2241 to challenge the
12 legality of his custody. He seeks immediate release. Pursuant to Chief Judge Order No.
13 144, Petitioner requests that the Court consider the request for immediate release and
14 injunctive relief together with the merits of the Petition, without separate briefing on a
15 temporary restraining order.
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18 JURISDICTION AND VENUE

- 19 10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331
20 (federal question), and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.
- 21 11. Venue is proper in the Southern District of California because Petitioner is detained at the
22 Otay Mesa Detention Center, which is located within this district. 28 U.S.C. § 2241(a); 28
23 U.S.C. § 1391(b)(2).
24

25 PARTIES

- 26 12. Petitioner Vivaldo Montes Herrera is a native and citizen of Mexico, currently detained at
27 Otay Mesa Detention Center in San Diego, California.
28

1 13. Respondent Christopher Larose is the Warden of the Otay Mesa Detention Center, where
2 Petitioner is detained, and has immediate physical custody of Petitioner. He is sued in his
3 official capacity.

4 14. Respondent Daniel Brightman is the Acting Field Office Director for the San Diego Field
5 Office of ICE's Enforcement and Removal Operations. He is responsible for Petitioner's
6 detention and removal and is sued in his official capacity.

7 15. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
8 Enforcement, sued in his official capacity.

9 16. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
10 Security, sued in his official capacity.

11 17. Respondent Todd Blanche is the Acting Attorney General of the United States, sued in his
12 official capacity.
13

14 **FACTUAL BACKGROUND**

15 **A. Petitioner's Longstanding Ties to the United States**

16
17 18. Petitioner Vivaldo Montes Herrera entered the United States without inspection in
18 approximately May 1993, at San Ysidro, California. He has resided continuously in the
19 United States for over 30 years. He was 23 years old at the time of entry. Hellerstein Decl.
20 ¶ 4.

21 19. For 27 of those years, Petitioner lived at the same address in Los Angeles. He has three
22 U.S. citizen children, three U.S. citizen stepchildren, and three U.S. citizen grandchildren.
23 He is the sole financial provider for his household. Hellerstein Decl. ¶ 3.

24 20. Petitioner has worked consistently in the United States, most recently as a maintenance
25 worker. He has filed federal income tax returns for multiple years. Hellerstein Decl. ¶ 3.

26 21. Petitioner has no significant criminal history. On October 8, 2010, he was arrested for
27 alleged solicitation (CA Penal Code § 647(b)), but that charge was dismissed. He was
28

1 convicted only of driving without a license (CA Vehicle Code § 12500(a)), a non-violent
2 traffic infraction, and sentenced to five days in jail. Hellerstein Decl. ¶ 13.

3 22. Petitioner is an active member of Holy Cross Catholic Church in Los Angeles, where he
4 has volunteered with the church's ministry group. Hellerstein Decl. ¶ 3.

5 **B. The Warrantless Arrest and Initiation of Proceedings**

6 23. On June 18, 2025, ICE agents apprehended Petitioner in Los Angeles,
7 California. *See* Exhibit C, Form I-213.

8
9 24. The government has never produced an arrest warrant issued by the Attorney General
10 before that apprehension. The I-213 contains no warrant number. No warrant is attached to
11 any filing. The "Disposition" notation on the I-213 is dated after the arrest and does not
12 indicate that a warrant was obtained beforehand. *Id.*

13 25. No immigration officer has ever claimed that Petitioner fell within the narrow exception
14 for warrantless arrests under 8 U.S.C. § 1357(a)(2) (i.e., that he was "likely to escape before
15 a warrant could be obtained"). Hellerstein Decl. ¶ 9.

16
17 **C. The Bond Grant, Government Appeal, and Automatic Stay**

18 26. On July 15, 2025, an Immigration Judge conducted a bond hearing for Petitioner. The IJ
19 found that Petitioner does not pose a danger to the community but does present some risk
20 of flight. Accordingly, the IJ granted Petitioner's release upon posting a monetary bond of
21 \$8,000, coupled with alternatives to detention at DHS's discretion. *See* Exhibit A, IJ Bond
22 Order; Hellerstein Decl. ¶ 5.

23
24 27. On July 16, 2025, DHS filed a Form EOIR-43, indicating its intent to appeal the IJ's
25 custody order to the BIA. The filing triggered an automatic stay of the IJ's release order
26 under 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c). Hellerstein Decl. ¶ 6.

27 28. Petitioner has remained detained without bond since June 18, 2025, now more than ten
28 months.

D. Removal Order and Appeal

29. On December 19, 2025, Immigration Judge Mark Sameit denied Petitioner's application for cancellation of removal and ordered him removed to Mexico. Hellerstein Decl. ¶ 15.

30. Petitioner timely appealed to the BIA on January 10, 2026. The BIA issued a filing receipt on January 21, 2026. Exhibit D, BIA Appeal. The appeal remains pending so Petitioner is not subject to a final removal order at this time.

E. Prolonged Detention and Resulting Hardship

31. Petitioner has been detained continuously since June 18, 2025 – a period of more than ten months as of the filing of this petition. Hellerstein Decl. ¶ 11.

32. Since his detention, Petitioner has not received any individualized bond hearing at which the government bore the burden of proving flight risk or danger by clear and convincing evidence. The bond hearing that resulted in the \$8,000 grant was effectively nullified by the government's appeal, the automatic stay, and the BIA's vacatur. Hellerstein Decl. ¶ 12.

33. Petitioner has never missed a court appearance. He is not a flight risk and not a danger to the community. Hellerstein Decl. ¶ 13.

34. Based on declarant's communications with Petitioner and his family, his prolonged detention has caused severe hardship. His two-year-old U.S. citizen daughter has exhibited regression in development, anxiety, and unexplained fear, and refuses to eat. His step-daughter, aged 11, has also shown regression and refuses to attend school. His other step-daughter, who just turned 18, was forced to withdraw from nursing school to support the family. His step-son, age 21, has also taken on additional work to help support the household. Hellerstein Decl. ¶ 14.

35. The BIA is bound by its own precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that noncitizens who entered without inspection are subject to mandatory detention under § 1225(b)(2) and have no right to bond hearings under §

1 1226(a). The government appealed Petitioner's bond grant specifically to invoke *Yajure*.
2 The BIA would be compelled to follow *Yajure* and reverse any bond grant. Requiring
3 Petitioner to exhaust administrative remedies by appealing to the BIA would therefore be
4 futile. Hellerstein Decl. ¶ 16.

5 LEGAL BACKGROUND

6 A. The Warrant Requirement of 8 U.S.C. § 1226(a) Is Absolute

7 36. Section 8 U.S.C. § 1226(a) provides the discretionary detention authority for noncitizens
8 who are present in the United States and eligible for removal. Unlike mandatory detention
9 statutes, § 1226(a) gives the government discretion to release a noncitizen on
10 bond. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022).

11 37. However, Congress imposed a clear, non-discretionary prerequisite to any arrest or
12 detention under § 1226(a). The statute states:

13
14 “On a warrant issued by the Attorney General, an alien may be arrested and
15 detained pending a decision on whether the alien is to be removed from the United
16 States.” 8 U.S.C. § 1226(a) (emphasis added).

17 38. The statute's structure confirms the warrant requirement is a **precondition**, not an
18 afterthought. By placing “On a warrant issued by the Attorney General” at the very
19 beginning of the sentence, which is a grammatical construction known as a “fronted
20 prepositional phrase,” Congress made that phrase an absolute precondition to any arrest or
21 detention. If the government could arrest without a warrant, the phrase would have no
22 logical placement; it would be a dangling modifier. Congress does not write dangling
23 modifiers.

24 39. Moreover, the statute uses the past participle “**issued**,” not “to be issued” or “subsequently
25 obtained.” The plain meaning requires the warrant to exist **before** the arrest. A post-arrest
26 warrant cannot retroactively validate an arrest that occurred without a warrant. *See Yociris*

1 *P. v. Bondi*, 2026 WL 327937, at *3 (D. Minn. Feb. 8, 2026) (“Where the record shows
2 Respondents have not identified a valid statutory basis for detention in the first place, the
3 remedy is not to supply one through further proceedings.”)

4 40. District courts across the country have enforced this warrant requirement. *See Batres v.*
5 *Lyons*, No. 1:26-cv-1665-JLT-SAB-HC, slip op. at 7 (E.D. Cal. Apr. 2, 2026) (“absent a
6 warrant a noncitizen may not be arrested and detained under section 1226(a)”); *J.A.C.P. v.*
7 *Wofford*, 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (“issuance of a warrant is a
8 necessary condition to justify discretionary detention under section 1226(a)”; *Chogillo*
9 *Chaffa v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025) (same).
10

11 **B. Even If the Arrest Was Lawful Under § 1357, Detention Still Requires a Warrant Under**
12 **§ 1226(a)**

13 41. Even if Petitioner’s warrantless arrest could somehow be justified under 8 U.S.C. §
14 1357(a)(2) (the narrow exception for warrantless arrests when the officer has reason to
15 believe the person is likely to escape), that would not satisfy the separate statutory
16 requirement for **detention** under § 1226(a). Section 1226(a) is the specific statute
17 governing detention pending removal proceedings. It states without exception: “On a
18 warrant issued by the Attorney General, an alien may be arrested **and detained.**” The
19 warrant requirement applies to **both** arrest and detention. Lawful arrest does not
20 automatically authorize detention; the two are legally distinct. *See J.A.C.P.*, 2025 WL
21 3013328, at *8 (“detention is improper because there is no evidence ... that [petitioner was]
22 arrested **pursuant to a warrant**”).
23
24

25 **C. The Automatic Stay Regulation Violates Due Process, Though It Is No Longer in Effect**

26 42. Under 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c), DHS’s appeal of an IJ’s bond
27 grant automatically stays the release order. Although the BIA has now ruled and the
28 automatic stay is no longer the immediate cause of Petitioner’s detention, the government’s
PETITION FOR WRIT OF HABEAS CORPUS

1 invocation of the stay – and the BIA’s subsequent erroneous decision – arose from the same
 2 flawed legal premise. The stay itself was unconstitutional. *Fernandez*, slip op. at 4
 3 (enjoining the automatic stay).

4 **D. Defiance of an IJ’s Bond Order Violates Due Process**

5 43. When the government unilaterally detains a noncitizen after an IJ has ordered release, that
 6 detention violates procedural due process. *Guo v. Archambeault*, No. 26-cv-2656-GPC-
 7 DDL, slip op. at 9-12 (S.D. Cal. May 5, 2026). In *Guo*, the Court applied the *Mathews v.*
 8 *Eldridge* test and found that (1) the private interest in liberty is “the most elemental”; (2)
 9 “continuing to detain a Petitioner after an IJ order directing his release creates an extreme
 10 risk of erroneous and arbitrary confinement”; and (3) the government’s failure to abide by
 11 existing procedures cannot be considered a burden. *Id.*

13 **E. Section 1225(b)(2) Does Not Apply to Long-Term Residents Who Are Not Apprehended** 14 **Upon Arrival**

15 44. The BIA vacated Petitioner’s bond based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216
 16 (BIA 2025), which held that noncitizens who entered without inspection are “applicants
 17 for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This
 18 interpretation conflicts with the plain text of the INA and has been repeatedly rejected by
 19 the Southern District of California.

21 45. Section 1225(b)(2) applies to persons “seeking admission” at the time of inspection. The
 22 Ninth Circuit has held that a noncitizen does not remain in a perpetual state of “seeking
 23 admission” years after entry. *Torres v. Barr*, 976 F.3d 918, 922-923 (9th Cir. 2020) (“we
 24 have previously explained that the phrase ‘at the time’ imposes a ‘temporal requirement’ ...
 25 stretching the phrase ‘at the time of application for admission’ to refer to a period of years
 26 would push the statutory text beyond its breaking point.”)

1 46. Consistent with *Torres*, district courts in this circuit have held that noncitizens who have
2 resided in the United States for many years and were not apprehended upon arrival
3 are **not** subject to mandatory detention under § 1225(b)(2). *See Salazar Arroyo*, slip op. at
4 4-5 (21-year resident encountered at Home Depot was detained under § 1226(a));
5 *Fernandez*, slip op. at 2 (10-year resident not apprehended upon arrival is subject to §
6 1226(a)); *Silvestre-Mendoza*, slip op. at 3 (same).

7
8 47. Because Petitioner has resided in the United States for over 30 years and was not
9 apprehended upon arrival, his detention is governed by § 1226(a), not § 1225(b)(2). The
10 BIA's contrary ruling in *Yajure* is erroneous and cannot justify his continued detention.

11 **CLAIMS FOR RELIEF**

12 **COUNT I: Violation of 8 U.S.C. § 1226(a) – No Pre-Arrest Warrant, No Lawful**

13 **Detention**

14 48. Petitioner incorporates by reference all preceding paragraphs.

15 49. The government never obtained a pre-arrest warrant for Petitioner's apprehension on June
16 18, 2025. The I-213 contains no warrant number. Exh. C; Hellerstein Decl. ¶ 9.

17
18 50. Because no pre-arrest warrant was issued, detention under § 1226(a) is unlawful. *Batres*,
19 slip op. at 7; *J.A.C.P.*, 2025 WL 3013328, at *8.

20 51. No other statute justifies detention. Section 1225(b)(2) does not apply to long-term
21 residents like Petitioner (over 30 years, not apprehended upon arrival). *Salazar Arroyo*, slip
22 op. at 4-5; *Fernandez*, slip op. at 2; *Silvestre-Mendoza*, slip op. at 3. Sections 1226(c) and
23 1231 do not apply.

24
25 52. The government's failure to comply with § 1226(a)'s warrant requirement renders
26 Petitioner's detention unlawful from its inception. He is entitled to immediate release.

27 **COUNT II: Violation of the Fifth Amendment – The BIA's *Yajure Hurtado* Decision**

28 **and Ensuing Mandatory Detention Violate Due Process**

53. Petitioner incorporates by reference all preceding paragraphs.

54. The BIA vacated Petitioner's bond solely under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that EWI noncitizens are subject to mandatory detention under § 1225(b)(2). *See* Exhibit B.

55. That holding is contrary to the INA and Ninth Circuit precedent. *Torres v. Barr*, 976 F.3d 918, 932-33 (9th Cir. 2020) ("stretching the phrase 'at the time of application for admission' to refer to a period of years would push the statutory text beyond its breaking point.").

56. The Southern District of California has repeatedly rejected *Yajure Hurtado* as applied to long-term residents. *Salazar Arroyo*, slip op. at 4-5; *Fernandez*, slip op. at 2; *Silvestre-Mendoza*, slip op. at 3.

57. Detention based on an erroneous agency decision is arbitrary and violates due process. Petitioner is entitled to immediate release.

COUNT III: Prolonged Detention Without a Constitutionally Adequate Bond Hearing

58. Petitioner incorporates by reference all preceding paragraphs.

59. Petitioner has been detained for more than ten months. Even if his initial detention were lawful, prolonged detention without a hearing at which the government bears the burden of proving flight risk or danger by clear and convincing evidence violates due process. *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011).

60. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), three factors determine the process that is due: (1) the private interest affected; (2) the risk of erroneous deprivation under existing procedures; and (3) the government's interest. All three factors favor Petitioner.

1 61. First, Petitioner's private interest in liberty is "the most fundamental." *Hamdi v. Rumsfeld*,
2 542 U.S. 507, 529 (2004). He has been separated from his three U.S. citizen children, three
3 stepchildren, and three grandchildren for over ten months. Hellerstein Decl. ¶¶ 3, 14.

4 62. Second, the risk of erroneous deprivation is extreme. The government has never been
5 required to prove by clear and convincing evidence that Petitioner is a flight risk or a
6 danger. The July 15, 2025 bond hearing resulted in a grant of release, but that hearing was
7 nullified by the government's appeal and the BIA's erroneous *Yajure Hurtado* decision.
8 Petitioner has had no meaningful opportunity to challenge his continued detention under
9 the correct legal standard.
10

11 63. Third, the government's interest in detention is minimal. Petitioner has no criminal history
12 (a single 2010 traffic infraction), has never missed a court appearance, has worked
13 consistently for over 30 years, has a fixed address, and has deep family and community
14 ties. Hellerstein Decl. ¶¶ 3, 11, 13. The government has offered no individualized
15 justification for detaining him for ten months.
16

17 64. Petitioner is entitled to **immediate release** or, in the alternative, a new bond hearing under
18 § 1226(a) within seven days, at which the government bears the burden of proving by clear
19 and convincing evidence that Petitioner is a flight risk or a danger, and at which the IJ
20 considers alternatives to detention and Petitioner's ability to pay bond. *See Fernandez*, slip
21 op. at 3-4; *Silvestre-Mendoza*, slip op. at 2-3.

22 **COUNT IV: Exhaustion**

23 65. Petitioner incorporates by reference all preceding paragraphs.
24

25 66. Exhaustion of administrative remedies is not required where it would be futile. *Laing v.*
26 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

27 67. The BIA is bound by its own precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
28 (BIA 2025), which holds that noncitizens who entered without inspection are subject to

1 mandatory detention under § 1225(b)(2) and have no right to a bond hearing. The
2 government appealed Petitioner's bond grant specifically to invoke *Yajure*. The BIA would
3 be compelled to follow *Yajure* and reverse the IJ's bond grant.

4 68. As the Southern District of California has held, "exhaustion would be futile because the
5 Board of Immigration Appeals 'is obligated to apply the binding precedent of *Matter of*
6 *Yajure Hurtado* ... to find that detention is mandatory.'" *Silvestre-Mendoza*, slip op. at 3.

7 69. The Court should therefore waive any exhaustion requirement and proceed to the merits.
8

9 **PRAYER FOR RELIEF**

10 Petitioner respectfully requests that this Court:

- 11 1. Assume jurisdiction over this matter;
- 12 2. Issue a writ of habeas corpus ordering Respondents to IMMEDIATELY
13 RELEASE Petitioner from custody at Otay Mesa Detention Center;
- 14 3. Declare that Petitioner's arrest and detention violate 8 U.S.C. § 1226(a) (the warrant
15 requirement) and the Fifth Amendment to the United States Constitution;
- 16 4. In the alternative, if the Court does not order immediate release, order Respondents to
17 provide Petitioner with a constitutionally adequate bond hearing under 8 U.S.C. §
18 1226(a) within seven (7) days, at which:
 - 19 ○ The government shall bear the burden of proving by clear and convincing
20 evidence that Petitioner poses a flight risk or a danger to the community;
 - 21 ○ The immigration judge shall consider alternatives to detention (including the
22 Intensive Supervision Appearance Program (ISAP) and home confinement) and
23 Petitioner's ability to pay any bond;
 - 24 ○ A contemporaneous record of the hearing shall be made; and
 - 25
 - 26
 - 27
 - 28

- Respondents SHALL NOT invoke the automatic stay procedure under 8 C.F.R. § 1003.19(i)(2) or 8 C.F.R. § 1003.6(c) to stay any order of release pending appeal. *See Fernandez*, slip op. at 4;

5. Enjoin Respondents from re-detaining Petitioner unless:

- Respondents provide at least seven (7) days' advance written notice to Petitioner and his counsel; and
- Respondents first obtain an order authorizing detention at a pre-deprivation hearing before a neutral arbiter, at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community;

6. Award Petitioner his costs and reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable law (to be separately noticed); and

7. Grant such other and further relief as the Court deems just and proper.

Date: May 7, 2026

Respectfully Submitted,

/s/ Prerna P. Lal
Prerna Preshika Lal

Attorney for Petitioner

VERIFICATION

I, Vivaldo Montes Herrera, am the Petitioner in the above-captioned action. I have read the foregoing Verified Petition for Writ of Habeas Corpus. The factual allegations contained therein are true and correct to the best of my knowledge, based on my personal knowledge and the documents provided to my attorney. I have authorized my attorney, Perna Preshika Lal, to file this petition on my behalf.

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

Executed on May 6, 2026, at Otay Mesa Detention Center, San Diego, California.

/s/ Vivaldo Montes Herrera

Vivaldo Montes Herrera, 

Petitioner, pro se (through counsel)

CERTIFICATE OF SERVICE

I, Prerna Preshika Lal, declare that I electronically filed the foregoing document with the Clerk of Court via CM/ECF on May 7, 2026 which will serve electronic notice upon all counsel of record listed in the ECF docket.

Date: May 7, 2026

Respectfully Submitted,

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