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**JURISDICTION**

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

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

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

**VENUE**

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

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

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

9. Petitioner JAVIER SANTOS LUCAS JUAN (“Petitioner”) is a citizen of Guatemala. He is detained by the Respondents at the Otay Mesa Detention Center.

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

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

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

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

#### 19                                   LEGAL FRAMEWORK

20           14.     This petition presents the legal question of whether an alien with long term residence  
21 in the United States is subject to detention pursuant to 8 U.S.C. § 1226 or 8 U.S.C. § 1225.

22           15.     As a threshold matter, the United States Supreme Court has re-affirmed that aliens are  
23 entitled to due process of law in deportation proceedings and must be given notice and an opportunity to  
24 be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. \_\_\_, 145 S. Ct. 1003,  
25 1006 (2025).

26           16.     The “usual removal process” involves an evidentiary hearing before an immigration  
27 judge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated  
28 under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with the

1 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226  
 2 provides that while removal proceedings are pending, a noncitizen “may be arrested and detained” and  
 3 that the government “may release the alien on ... conditional parole.” § 1226(a)(2); *accord*  
 4 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be “detained” or  
 5 “allowed to reside in this country”).

6 17. When a person is apprehended under § 1226(a), an ICE officer makes the initial  
 7 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §  
 8 236.1(c)(8)). A noncitizen will be released if he or she “demonstrate[s] to the satisfaction of the  
 9 officer that such release would not pose a danger to property or persons, and that the alien is likely  
 10 to appear for any future proceeding.” *Id.* (citing 8 C.F.R. § 236.1(c)(8)). “Federal regulations  
 11 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”  
 12 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,  
 13 the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to  
 14 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail  
 15 risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.  
 16 Dec. 37, 40 (B.I.A. 2006)). Further, When determining the conditions of release for an individual  
 17 detained pursuant to 8 U.S.C. § 1226(a), U.S. Immigration and Customs Enforcement (“ICE”)  
 18 officers and immigration judges (“IJ”) must consider the person’s (1) financial ability to post bond  
 19 and (2) suitability for release on non-monetary alternative conditions of supervision. There are  
 20 procedures necessary to ensure that “no person [is] imprisoned merely on account of his poverty,”  
 21 in violation of his or her due process rights. *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir.  
 22 2017) (Citing *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

23 18. While “§ 1226 applies to *aliens already present in the United States*,” U.S.  
 24 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*  
 25 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,  
 26 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen “who has not been admitted  
 27 or who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. §  
 28 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” §

1 1225(b)(1).

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

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

14 21. Multiple District Courts across the entire United States have concluded that the  
15 government's proposed interpretation of the statute (a) disregards the plain meaning of section  
16 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a  
17 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior  
18 statutory interpretation and practice. The following quote is a representative example:

19 "The Court follows other decisions in this Circuit finding that "seeking admission  
20 requires an affirmative act such as entering the United States or applying for status,  
21 and that it does not apply to individuals who, like [Petitioner], have been residing in  
22 the United States and did not apply for admission or a change of status." *Mosqueda*  
23 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at \*5 (C.D. Cal. Sept. 8,  
24 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL  
25 2676082, at \*11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at \*1  
26 ("Every district court to address this question has concluded that the government's  
27 position belies the statutory text of the INA, canons of statutory interpretation,  
28 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-

CV-1015-KES-SKO (HC), 2025 WL 2617256, at \*4–5 (E.D. Cal. Sept. 9, 2025) (finding that petitioner who was released on bond and rearrested was entitled to a bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at \*8 (providing petitioner with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”

*Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

22. For some reason, the litigation of this issue still continues across the nation. In late November 2025, another District Court judge included a survey of cases that reached the same conclusion: “This is not the first time the administration’s change of heart has been challenged in court. By a recent count, the central issue in this case – the administration’s new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed – has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant.” *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903 (S.D. New York November 26, 2025). (footnotes 22 and 23 omitted but attached to this petition as Appendix A and Appendix B). The judge clarified that none of these citations were binding precedent on the court, as each judge must make an independent assessment of whether the 1225 or 1226 rules apply to the individual petitioner.

23. Further, some District Courts have found that immediate release, rather than a bond hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) (“Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.”); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (“if Petitioner is detained, he will already have

1 suffered the injury he is now seeking to avoid”); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL),  
 2 2025 WL 1940179, at \*3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[ ] received a prompt post-  
 3 detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already  
 4 suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.”).

5 24. Immediate release has also been found to be the appropriate remedy for unlawful  
 6 detention where the government arrested and detained a noncitizen without a warrant issued by the  
 7 Attorney General. *See e.g., Mayen v. Warden, California City Det. Ctr.*, No. 1:26-CV-02354-DAD-  
 8 AC, 2026 WL 1158217, at \*2 (E.D. Cal. Apr. 29, 2026) (ordering petitioner’s immediate release  
 9 where there was no evidence that the government issued a warrant for petitioner’s arrest when  
 10 he was detained); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at \*3 (D.  
 11 Minn. Jan. 5, 2026) (holding that “[r]elease is an available and appropriate remedy for detention  
 12 that lacks a lawful predicate.”); *J.A.C.P.*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328,  
 13 at \*8 (“Since the Government did not comply with the plain language of section 1226(a),  
 14 petitioner’s immediate release is justified.”). Under 8 U.S.C. § 1226(a), a noncitizen may only be  
 15 arrested and detained pending a decision on removal “[o]n a warrant issued by the Attorney  
 16 General.” 8 U.S.C. § 1226(a). Accordingly, the “[i]ssuance of a warrant is a necessary condition to  
 17 justify discretionary detention under section 1226(a).” *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-  
 18 KES-SKO (HC), 2025 WL 3013328, at \*8 (E.D. Cal. Oct. 27, 2025) (quoting *Choglo Chafila v.*  
 19 *Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025)). When the government does “not comply with the  
 20 plain language of section 1226(a), [a petitioner’s] immediate release is justified.” *Choglo Chafila*,  
 21 804 F. Supp. 3d at 264; see also *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a  
 22 remedy for unlawful executive detention. The typical remedy for such detention is, of course,  
 23 release.” (internal citation omitted)).

24 25. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §  
 25 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that  
 26 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.  
 27 2019). However, if an immigration judge has determined the noncitizen should be released, the  
 28 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,

1 854 F. App'x 787, 788 (9th Cir. 2021).

2 **FACTUAL ALLEGATIONS**

3 26. Petitioner JAVIER SANTOS LUCAS JUAN is a forty-three-year-old citizen of  
4 Guatemala. Petitioner is married to his wife of twenty-two years [REDACTED]. Petitioner has  
5 four children, ages nineteen, sixteen, eight and six. His wife and his three youngest children reside  
6 in Guatemala. His oldest son, [REDACTED] lives in the United States with him. Petitioner  
7 has now lived in the United States for over seven years. Petitioner has been regularly employed. He  
8 works in landscaping. He earns around \$3500 a month. He supports his son and his family in  
9 Guatemala. He has no criminal history.

10 27. In May 2019, Petitioner presented himself at the border near El Paso, Texas with his  
11 eleven-year-old son [REDACTED] seeking protection. Petitioner was permitted to enter the  
12 United States with his son in order to care for him, and removal proceedings were initiated against  
13 his son [REDACTED] only. His son [REDACTED] was released under his own recognizance while his case  
14 was pending. For the past seven years, Petitioner has advocated for his son; he has attended every  
15 required court hearing and ICE check-in for his son. The ICE check-ins have taken place every  
16 three to four months with the exception of during the pandemic.

17 28. In March 2025, Petitioner received his own Call- In Letter from the DHS, with an  
18 ICE check-in date scheduled for September 16, 2025. Petitioner attended the check-in without any  
19 issues. He was not detained at that time nor was he informed of anything else; he was just told that  
20 "everything seemed fine" and he was allowed to leave.

21 29. On June 11, 2026, around 7:15 a.m., Petitioner was at a gas station in Poway,  
22 California, and had just entered his vehicle to leave when an unmarked vehicle approached him. It  
23 turned on what looked like police lights so Petitioner stopped his vehicle. About four vehicles  
24 arrived in total and surrounded his car. Petitioner was told to first lower his window and then he was  
25 told to exit his car. Petitioner was asked where he was going to which he responded work. Before  
26 being handcuffed, an officer told him to give him his cellphone and wallet. Petitioner was then  
27 handcuffed, arrested and detained without any reason or explanation. He was not shown an arrest  
28 warrant nor was he told why he was being arrested. DHS then sent Petitioner to the Otay Mesa

1 Detention Center, where he remains today. His detention at the immigration jail is causing him and  
2 his family emotional distress.

3 30. The DHS started a removal case against Petitioner by filing a Notice to Appear  
4 (NTA) at the Otay Mesa Immigration Court. Petitioner qualifies to apply for asylum, withholding,  
5 and CAT.

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

## 12 CAUSES OF ACTION

### 13 COUNT 1

14 (Violation of the Immigration and Nationality Act)

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

16 33. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225;  
17 therefore he is entitled to a bond redetermination hearing before an immigration judge.

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

### 20 COUNT 2

21 (Violation of the Due Process Clause)

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

23 36. In June 2026, DHS agents detained Petitioner in California under mysterious  
24 circumstances. Petitioner was then transferred to the Otay Mesa Detention Center.

25 37. The detention of petitioner without the opportunity to apply for a bond violates Ninth  
26 Circuit case law and the Due Process Clause of the Fifth Amendment to the United States Constitution

## 27 PRAYER FOR RELIEF

28 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1 (1) Assume jurisdiction over this matter;

2 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
3 should not be granted within three days;

4 (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth  
5 Amendment, the INA, and the APA;

6 (4) Issue a Writ of Habeas Corpus ordering Respondents to either (a) release Petitioner  
7 immediately or (b) schedule a bond hearing pursuant to 8 U.S.C. § 1226(a) where both the  
8 Petitioner's financial ability to post bond and suitability for release on non-monetary alternative  
9 conditions of supervision are considered;

10 (5) Issue an order prohibiting respondents from re-detaining petitioner without a material  
11 change in circumstances and a pre-deprivation hearing where respondents must prove by clear and  
12 convincing evidence that petitioner is either a flight risk or danger to the community;

13 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28  
14 U.S.C. § 2412), and any other applicable statute or regulation; and

15 (7) Grant any further relief this Court deems just and proper.

16 DATED: 16 June 2026

Respectfully submitted,

17 */s/ William Baker*

18 William Baker (157 906)  
19 MORENO & ASSOCIATES  
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21 Telephone: (619) 422-4885  
william.baker@morenoandassociates  
22 Attorney for petitioner  
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1 **VERIFICATION**

2 **DECLARATION UNDER PENALTY OF PERJURY**

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

7 **VERIFICACIÓN**

8 **DECLARACIÓN BAJO PENA DE PERJURIO**

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

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15 Javier Santos Lucas Juan  
16 Petitioner/Peticionario  
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