

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

JOSE LUIS DIAZ OVEIDO

AGENCY No A 

PETITIONER,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, et. al.,

RESPONDENTS.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 SAN DIEGO DIVISION

10 JOSE LUIS DIAZ OLVEIDO

11 Petitioner,

Case No. 26CV2299 JLS VET

12 v.

**PETITION FOR WRIT OF
HABEAS CORPUS**

13 Kristi NOEM, in her official capacity as
14 Secretary of Homeland Security, Christopher J.
15 LAROSE, in his official capacity as Warden of
16 Otay Mesa Detention Center, Gregory J.
17 ARCHAMBEAULT, in his official capacity as
18 San Diego Field Office Director, ICE
19 Enforcement Removal Operations; Todd
20 LYONS, in his official capacity as Acting
21 Director of ICE; and TODD BLANCHE, U.S.
22 acting Attorney General; IMMIGRATION
23 AND CUSTOMS ENFORCEMENT;
24 DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

1 Petitioner, JOSE LUIS OVEIDO DIAZ, petitions this Court for a writ of habeas corpus under 28
2 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully and states as follows:

3 **INTRODUCTION**

4 1. Petitioner JOSE LUIS DIAZ OVEIDO is an Ecuadorian asylum seeker detained
5 at Otay Mesa Detention Center in San Diego, California. He was persecuted in Ecuador and
6 properly and timely submitted an asylum application to the United States Citizenship and
7 Immigration Service.

8 2. Petitioner was last and arbitrarily detained late March 2026.

9 3. On or about September 2022 Mr Diaz entered the United States, requested
10 asylum, and was enrolled in the alternatives to detention program. He was issued a Notice to
11 Appear and it was subsequently filed by Respondents to the Executive Office of Immigration
12 Review and Mr. Diaz faithfully attended each and every immigration court hearing he was
13 required to attend. After, the proceedings were terminated by the Respondent's request.
14 Petitioner then properly submitted his asylum application to the United States Citizenship and
15 Immigration Service. He was subsequently granted employment authorization for five years.

16 4. Respondent was apprehended at a military base after accidentally turning onto the
17 base. There he was taken into custody. He was never informed if an assessment was made as to
18 flight risk or danger to the community. This is especially concerning where record checks would
19 have revealed that an I-589 application for asylum was pending with Respondent's own agency.

20 5. But Respondents cannot evade due process requirements so easily. The U.S.
21 Constitution requires the Respondents provide at least the rights available to him when he filed
22 his application for asylum.

6. The Constitution protects Mr. Diaz.—and every other person present in this country—from arbitrary deprivations of his liberty, and guarantees due process of law. The government’s power over immigration is broad, but as the Supreme Court has declared, it “is subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

8 7. Mr. Diaz seeks declaratory and injunctive relief to compel his immediate release
9 from the immigration jail where he has been held by DHS since being unlawfully detained on
10 late March 2026, without first being provided a due process hearing to determine whether
11 incarceration is justified.

8. Absent review in this Court, no other neutral adjudicator will examine Mr. Diaz' plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

9. For the reasons outlined below, Mr. Diaz' arrest and inability to contest his arbitrary detention violate his statutory and constitutional rights, including Due Process protections under the U.S. Constitution. Mr. Diaz respectfully requests that this Court should grant the instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to prevent such harms from recurring. Mr. Diaz also asks this Court to find that Respondents' attempts to detain, transfer, and deport her are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district.

JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq.

11. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).

12. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-LH v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

14. Venue is proper because Petitioner is in Respondents' legal and physical custody at Otay Mesa Detention Center in San Diego, 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 Respondents' legal and physical custody, including his current and ongoing detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must be addressed to the federal district court of confinement);

1 Wairimu v. Dir., Dep't of Homeland Sec., No. 19-CV-174-BTMMDD, 2019 WL 460561, at *2
2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the Court
3 otherwise has personal jurisdiction). For these same reasons, venue should be found proper under
4 Local Civil Rule HC.1. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
5 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of
6 California, the judicial district in which Petitioner currently is detained.

7 15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
8 Respondents are employees, officers, and agencies of the United States, and because a
9 substantial part of the events or omissions giving rise to the claims occurred in the Southern
10 District of California.

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

12 16. The Court must grant the petition for writ of habeas corpus or issue an order to
13 show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28
14 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within
15 three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

16 17. Courts have long recognized the significance of the habeas statute in protecting
17 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
18 important writ known to the constitutional law of England, affording as it does a swift and
19 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
20 400 (1963).

21 18. Mr. Diaz is "in custody" for the purpose of 28 U.S.C. section 2241 because he
22 was arrested by Respondents and remains in their legal and physical custody at Otay Mesa
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1 Detention Center in San Diego, California. He is under Respondents' and their agents' direct
2 control

3
4 **PARTIES**

5 19. Mr. Diaz. ("Petitioner") is a 32-year-old citizen of Ecuador. He arrived in the U.S.
6 on or about September 2022, to seek asylum, withholding of removal, or protection under the
7 Convention Against Torture after fleeing persecution in Ecuador. In late March 2026, at a San
8 Diego military base entrance, Petitioner was arrested and since that date has remained in
9 Respondent's custody.

10 20. Mr. Diaz is currently residing in Respondents' custody at Otay Mesa Detention
11 Center in San Diego, California, as of the time of the filing of this petition.

12 21. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa
13 Detention Center in San Diego, California, where Ms. N.A. is detained. LaRose is responsible
14 for the day-to-day operations and confinement of noncitizens detained at that facility. He acts at
15 the direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Ms. N.A. and
16 is named in his official capacity.

17 22. Respondent Gregory Archambault is the Director of the San Diego Field Office
18 of ICE's Enforcement and Removal Operations division. As such, Gregory Archambault is
19 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is
20 named in his official capacity.

21 23. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
22 Security. He is responsible for the implementation and enforcement of the Immigration and
23 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr.
24 Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

1 24. Respondent Department of Homeland Security (DHS) is the federal agency
2 responsible for implementing and enforcing the INA, including the detention and removal of
3 noncitizens.

4 25. Respondent Todd Blanche is the Attorney General of the United States. He is
5 responsible for the Department of Justice, of which the Executive Office for Immigration Review
6 and the immigration court system it operates is a component agency. He is sued in his official
7 capacity.

8 26. Respondent Executive Office for Immigration Review (EOIR) is the federal
9 agency responsible for implementing and enforcing the INA in removal proceedings, including
10 for custody redeterminations in bond hearings.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 27. Petitioner has no administrative remedies to exhaust.

13 28. After Respondents' arrest of Mr. Diaz, he then received a new NTA which was
14 filed before the Otay Mesa Immigration Court to re-initiate his INA section 240 immigration
15 proceedings while he remains detained at Otay Mesa Detention Center.

16 29. Mr. Diaz is alleged to be an arriving alien. As such, Mr. Diaz continued unlawful
17 detention in Respondents' custody cannot be challenged by way of bond proceedings before an
18 Immigration Judge.

19 30. Therefore, a writ of habeas corpus is the sole avenue to vindicate Ms. N.A.'s
20 constitutional, statutory, and regulatory rights and restore her liberty.

21 **LEGAL FRAMEWORK**

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

6 32. The “motivation for the enactment of the Refugee Act” was the United Nations
7 Protocol Relating to the Status of Refugees, “to which the United States had been bound since
8 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
9 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
10 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

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

20 35. Although a grant of asylum may be discretionary, the right to apply for asylum is
21 not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is
22 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. §
23 1158(a)(1).

24

1 36. Because of the life-or-death stakes, the statutory right to apply for asylum is
2 robust. The right necessarily includes the right to counsel, at no expense to the government, see 8
3 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. §
4 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B)
5 (placing the burden on the applicant to present evidence to establish eligibility.).

6 37. Noncitizens seeking asylum are guaranteed Due Process under the Fifth
7 Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

8 38. Noncitizens who are applicants for asylum are entitled to a full hearing in
9 immigration court before they can be removed from the United States. 8 U.S.C. § 1229a.
10 Consistent with due process, noncitizens may seek administrative appellate review before the
11 Board of Immigration Appeals of removal orders entered against them and judicial review in
12 federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

13 39. Asylum is not an admission to the United States and an applicant for asylum,
14 while they must be physically present in the United States to apply, need not apply for or seek
15 admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

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

20 41. On January 20, 2025, President Donald Trump issued several executive actions
21 relating to immigration, including “Protecting the American People Against Invasion,” an
22 executive order (EO) setting out a series of interior immigration enforcement actions. The Trump
23 administration, through this and other actions, has outlined sweeping, executive branch-led
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1 changes to immigration enforcement policy, establishing a formal framework for mass
2 deportation. The “Protecting the American People Against Invasion” EO instructs the DHS
3 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil
4 immigration enforcement procedures including through the use of mass detention.

5 42. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued
6 for public inspection and effective immediately a designation expanding the scope of expedited
7 removal to apply nationwide and to certain noncitizens who are unable to prove they have been
8 in the country continuously for two years. On January 24, 2025, DHS published a Notice that
9 expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland
10 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January 2025.

11 43. The January 2025 Designation expands the pool of noncitizens who can be
12 subjected to the summary removal process substantially to include noncitizens who are
13 apprehended anywhere in the United States and who have not been in the United States
14 continuously for more than two years. Id. at 8140. Designation”). The designation was “effective
15 on” January 21, 2025.

16 44. The January 2025 Designation does not state that it applies to noncitizens who
17 were in the United States before its effective date.

18 45. On information and belief, Mr. Diaz avers that Respondent’s used the military
19 base to apprehend any and all immigrants possible with the purpose of divesting them of their
20 due process rights in his properly filed asylum application.

21 46. On information and belief, Respondents are using the immigration detention
22 system, including extra-territorial transfer and detention, as a means to punish individuals for
23 asserting rights under the Refugee Act.

24

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

47. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

48. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

49. Due process requires that government action be rational and nonarbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007)

50. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

51. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, see *id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, see *id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, see *id.* §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, see *id.* § 1229a(c)(6)-(7).

52. Mr. Diaz has a vital liberty interest in remaining free from DHS custody. See *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)

1 (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025))
2 (explaining that a non-citizen that ICE released from custody after initial apprehension “has a
3 substantial private interest in remaining out of custody” which includes an interest in
4 “...obtaining necessary medical care, [and] maintaining her relationships in the community...”).

5 53. Even if the initial decision to release a non-citizen on from DHS custody is
6 discretionary, “...after that individual is released from custody she has a protected liberty interest
7 in remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
8 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP,
2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

9 54. Here, Mr. Diaz. was not advised by DHS that they sought to take him into
10 custody, depriving him of his liberty interest and the bundle of rights associated with his original
11 pending asylum application in violation of due process. See generally *Mathews v. Eldridge*, 424
12 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a
13 legally protected interest). Nor has the government identified any materially changed
14 circumstances that would warrant detaining Mr. Diaz after he submitted his Asylum Application
15 (Form I-589), declaration, and corroborating evidence to the United States Citizenship and
Immigration Service.

16 COUNT TWO

17 Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance 18 with Law and in Excess of Statutory Authority, Unlawful Detention

19 55. Petitioner restates, realleges, and incorporates by reference each and every
20 allegation in the paragraphs above as if fully set forth herein.

21 56. Under the APA, a court shall “hold unlawful and set aside agency action...” that
22 is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
23 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).
24

1 57. An action is an abuse of discretion if the agency “entirely failed to consider an
2 important aspect of the problem, offered an explanation for its decision that runs counter to the
3
4 evidence before the agency, or is so implausible that it could not be ascribed to a difference in
5 view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551
6 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*
7 *Ins. Co.*, 463 U.S. 29, 43 (1983)).

8 58. To survive an APA challenge, the agency must articulate “a satisfactory
9 explanation” for its action, “including a rational connection between the facts found and the
10 choice made.” *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted)

11 59. The INA provides that Respondents may, as they did in 2024 in Petitioner’s case,
12 release an individual from apprehension or custody based on an individualized determination of
13 their danger and flight risk. See 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of*
14 *Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the
15 custody determination may be made only when warranted by an individual’s specific facts and
16 circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

17 60. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the
18 Court explained the process of discretionary release from custody in immigration cases and
19 noted that before revoking the release, the non-citizen must be given written notice of the
20 impending revocation, which must include a cogent description of the reasons. Under the APA,
21 non-citizens are entitled to determinations related to their release revocations that are not
22 arbitrary, capricious or an abuse of discretion. See *id.* at *10.

23 61. By categorically revoking Mr. Diaz’ release from DHS custody, and detaining
24 him without notice or consideration of his individualized facts and circumstances, Respondents
have violated the INA, implementing regulations, and the APA.

 62. Respondents have made no finding that Petitioner is a danger to the community.

1 63. Respondents have made no finding that Petitioner is a flight risk because, in fact,
2 he was arrested while his asylum application was pending.

3 64. On information and belief, by detaining Mr. Diaz categorically and without
4 notice, Respondents have further abused their discretion because, since the agency made its
5 initial custody determination, on information and belief, there have been no changes to Mr. Diaz'
6 specific facts or circumstances that support the revocation of his release from custody on his own
7 recognizance.

8 65. Respondents have already considered Mr. Diaz.'s facts and circumstances and
9 determined that he was not a flight risk or danger to the community. On information and belief,
10 there have been no changes to the facts of Mr. Diaz's proceedings that justify this revocation of
11 his release from DHS custody. The fact that Mr. Diaz has previously been granted release by
12 Respondents under the same facts and circumstances shows that Respondents do not consider
Mr. Diaz, on an individualized basis, to be a danger to the community or a flight risk.

13 COUNT THREE

14 Violation of the Fourth Amendment of the Constitution

15 66. Petitioner restates, realleges, and incorporates by reference each and every
16 allegation in the paragraphs above as if fully set forth herein.

17 67. The Fourth Amendment protects "[t]he right of the people to be secure in their
18 persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme
19 Court has recognized that immigration arrests and detentions are "seizures" within the meaning
20 of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging
that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of
the person).

21 68. The Fourth Amendment requires that arrests entail a neutral, judicial
22 determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral,
23 judicial determination can occur either before the arrest, in the form of a warrant, or promptly
24

1 afterward, in the form of a prompt judicial probable cause determination. See *id.* Arrest and
2 detention of a person, including of a noncitizen, absent a neutral judicial determination of
3 probable cause violates the Fourth Amendment of the Constitution. *Id.*; see also *Cnty. of*
4 *Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours
5 of detention, which includes weekends, unless there is a bona fide emergency or other
6 extraordinary circumstances. See *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

7 69. Congress enacted a strong preference that immigration arrests be based on
8 warrants. See *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and
9 Nationality Act thus provides immigration officers with only limited authority to conduct
10 warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on
11 warrantless arrests. See 8 C.F.R. § 287.8(c)(2)(ii).

12 70. MR. Diaz at the moment of the arrest by Respondents, was lawfully present based
13 on Respondents' prior grant of release from DHS custody. He did not receive any judicial
14 determination of probable cause for her arrest or continued detention by Respondents.

15 71. The Government cannot salvage this seizure by invoking generalized immigration
16 enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and
17 demands individualized justification for both the arrest and the extended detention. See *United*
18 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Diaz was
19 granted release from DHS custody in 2022 and did not pose any danger to any person in the
20 community at large.

21 72. Respondents' warrantless arrest of Mr. Diaz constitutes an unreasonable and
22 unlawful seizure in violation of the Fourth Amendment

23 COUNT FOUR

24 VIOLATIONS OF THE FOURTH AMENDMENT OF THE CONSTITUTION

73. Petitioner restates, realleges, and incorporates by reference each and every
allegation in the paragraphs above as if fully set forth herein.

1 74. The Fourth Amendment protects “[t]he right of the people to be secure in their
2 persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme
3 Court has recognized that immigration arrests and detentions are “seizures” within the meaning
4 of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging
5 that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of
6 the person).

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8 probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
9 determination can occur either before the arrest, in the form of a warrant, or promptly
10 afterward, in the form of a prompt judicial probable cause determination. See *id.* Arrest
11 and detention of a person, including of a noncitizen, absent a neutral judicial
12 determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*;
13 see also *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination
14 must occur within 48 hours of detention, which includes weekends, unless there is a bona
15 fide emergency or other extraordinary circumstances. See *Cnty. of Riverside v.*
16 *McLaughlin*, 500 U.S. 44, 57 (1991).

17 76. Congress enacted a strong preference that immigration arrests be based on warrants. See
18 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality
19 Act thus provides immigration officers with only limited authority to conduct warrantless
20 arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on
21 warrantless arrests. See 8 C.F.R. § 287.8(c)(2)(ii).

22 77. MR. Diaz at the moment of the arrest by Respondents, was lawfully present based on
23 Respondents’ prior grant of release from DHS custody. He did not receive any judicial
24 determination of probable cause for his arrest or continued detention by Respondents.

 78. The Government cannot salvage this seizure by invoking generalized immigration
enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific

1 and demands individualized justification for both the arrest and the extended detention.
2 See United States v. Brignoni-Ponce, 422 U.S. 873, 882–84 (1975); Gerstein, 420 U.S. at
3 114. Ms. N.A. was granted release from DHS custody in 2024 and did not pose any
4 danger to any person in the community at large.

5 79. Respondents' warrantless arrest of Mr. Diaz constitutes an unreasonable and unlawful
6 seizure in violation of the Fourth Amendment.

7 **COUNT FIVE**

8 **Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V**

9 80. Petitioner restates, realleges, and incorporates by reference each and every allegation in
10 the paragraphs above as if fully set forth herein.

11 81. The government may not deprive a person of life, liberty, or property without due
12 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government
13 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
14 the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

15 82. Mr. Diaz has a fundamental interest in liberty and being free from official restraint.

16 83. The government's detention of Petitioner without a notice or an opportunity to be heard
17 before detention violates her right to due process.

18 84. The government's detention of Petitioner without a meaningful bond and custody
19 redetermination hearing to determine whether she is a flight risk or danger to others
20 violates his right to due process

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays that this Court grant the following relief:
23

24 a. Assume jurisdiction over this matter;

- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- d. Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- e. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- f. Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- g. Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 7 days to meaningfully consider his eligibility for release from DHS custody;
- h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- i. Grant any other and further relief that this Court deems just and proper.

DATED this 10 of April, 2026.

/s/ Stephanie M Alcala

Attorney for Petitioner

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF CALIFORNIA

JOSE LUIS DIAZ OVEIDO

Petitioner

v.

MARKWAYNE MULLIN, IN HIS OFFICIAL CAPACITY,
ET. AL. (SEE BRIEF)

Respondent

(name of warden or authorized person having custody of petitioner)

Case No. **'26CV2299 JLS VET**
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: JOSE LUIS DIAZ OVEIDO
(b) Other names you have used: _____
2. Place of confinement: _____
(a) Name of institution: OTAY MESA DETENTION CENTER
(b) Address: _____
(c) Your identification number: 
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
☒ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- ☐ Pretrial detention
☒ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:
(a) Name and location of the agency or court: OTAY MESA IMMIGRATION COURT, 7488 CALZADA DE LA FUENTE SAN DIEGO CA 92154
(b) Docket number, case number, or opinion number: _____
(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
IMMIGRATION AND CUSTOMS DETENTION

(d) Date of the decision or action: 02/04/2026

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☐ No

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If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☒ Yes

☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 03/04/2026

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Respondent violated Petitioner's fifth amendment right to due process

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner had a valid application for asylum pending before USCIS when he was re-arrested by Respondent's with no notice or due process

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO: Respondents violated the APA

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Respondents had released petitioner in 2022 and redetained him on March 2026 without a warrant or an individualized assessment of risk to the community or flight risk

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE: Petitioner's fourth amendment rights were violated

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner entered the United States about 4 years ago and was released

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☒ No

GROUND FOUR:

Respondent violated of fourth Amendment Right to Due Process — Procedural Due Process, U.S. Const. Amend.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Respondent entered the United States in 2022. He was released on recognizance and Petitioners impeded in his fundamental liberty interest by detaining him

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Assume jurisdiction over this matter; Issue a writ of Habeas Corpus requiring that within one day Respondent release Petitioner; Alternatively, issue a writ of habeas corpus requiring Respondent's release Petitioner unless they provide a bond hearing under within seven days; Award Petitioner attorney fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 USC 2412, and on any other basis justified under law; and grant any other and further relief that this Court deems just and proper.

Declaration Under Penalty Of Perjury

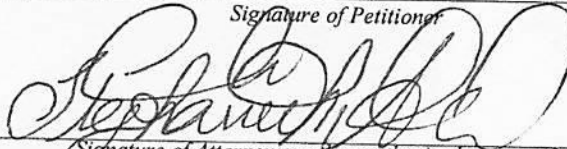
If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

4/10/2026

Signature of Petitioner



Signature of Attorney or other authorized person, if any