

1 Jose Torres, Esq. 362715
Moonveil Legal, PC
2 7546 Parkway Dr. Apt. 1U
La Mesa, California 91942
3 Office: 619.573.1138
Fax: 619.694.5180
4 Email: jose@moonveilfirm.com

5 *Counsel for*
6 **Jesus Castillo-Vizcarra**

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9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Jesus Castillo-Vizcarra,
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12 Petitioner,
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14 v.
15 Divver et al.
16 Respondents.

Case No. '26CV2581 JES VET

**WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

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1 Petitioner Jesus Castillo-Vizcarra, through counsel, petitions for a writ of habeas corpus
2 under 28 U.S.C. § 2241 and alleges:

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4 **I. INTRODUCTION**

- 5 1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because Petitioner is in
6 federal immigration custody and is being detained in violation of the Constitution and
7 laws of the United States.
- 8 2. Respondents' detention of Petitioner violates the Immigration and Nationality Act, the
9 Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
- 10 3. Petitioner requests (a) expedited issuance of an Order to Show Cause pursuant to 28
11 U.S.C. § 2243; (b) an order directing Respondents to immediately release Petitioner from
12 custody; and (c) any further relief the Court deems just and proper.

13 **II. JURISDICTION AND VENUE**

- 14 4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"
15 under color of federal authority within this judicial district and alleges that such custody
16 violates the Constitution and laws of the United States.
- 17 5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 18 6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
19 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 20 7. Venue is proper in this District because Petitioner is detained within the South District of
21 California.

1 **III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243**

- 2 8. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show
3 Cause “forthwith” unless it appears from the petition that Petitioner is not entitled to
4 relief.
- 5 9. Habeas corpus is a fundamental mechanism for testing the legality of executive detention
6 and provides a swift and imperative remedy for unlawful restraint of liberty.

7 **IV. PARTIES**

- 8 10. Petitioner Jesus Castillo-Vizcarra is detained by the Department of Homeland Security
9 (“DHS”), through U.S. Immigration and Customs Enforcement (“ICE”), at the Otay
10 Mesa Detention Center (“OMDC”) in San Diego, California.
- 11 11. Respondent Patrick Divver is the Director of the San Diego Field Office of ICE’s
12 Enforcement and Removal Operations division. In that official capacity, he is the federal
13 official most directly responsible for Petitioner’s immigration detention at OMDC. He is
14 sued in his official capacity only.
- 15 12. Respondent Christopher J. LaRose is the Warden of OMDC, where Petitioner is detained.
16 He has day-to-day physical custody of Petitioner and is sued in his official capacity only.
- 17 13. This Petition challenges Petitioner’s present physical confinement under 28 U.S.C. §
18 2241. Respondents are therefore the officials with custody over Petitioner

19 **V. FACTUAL BACKGROUND**

- 20 14. Petitioner is a native and citizen of Mexico.
- 21 15. On or about 2010, Petitioner entered the United States near Otay Mesa/Tecate without
22 inspection. He was not apprehended at the time of entry and thereafter resided in the
23 United States, including in El Cajon, California.
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1 16. Since his entry, Petitioner has established substantial ties in the United States, including
2 three United States citizen children, ages 22, 17, and 14.

3 17. Petitioner has no history of absconding and has remained continuously present in the
4 United States since his entry.

5 18. At some point prior to his current detention, Petitioner was arrested in connection with an
6 alleged fraud-related matter arising from a December 31, 2005, incident. However,
7 Petitioner was not informed of the basis for the arrest at the time, and the allegation was
8 only disclosed during subsequent court proceedings.

9 19. During those proceedings, Petitioner's counsel presented exculpatory evidence
10 demonstrating that Petitioner was not present at the alleged incident, and the government
11 failed to produce evidence substantiating the charge.

12 20. Despite the absence of substantiated criminal wrongdoing, Petitioner was later
13 approached and detained by individuals who failed to identify themselves as immigration
14 officers. Petitioner was forcibly taken into custody without explanation.

15 21. During this encounter, officers used physical force against Petitioner and transported him
16 to a downtown facility. It was only after arrival that the individuals identified themselves
17 as immigration agents.

18 22. While in custody, officers broke Petitioner's cellular phone, preventing him from
19 contacting his family or seeking assistance.

20 23. DHS has since detained Petitioner and continues to hold him in immigration custody,
21 including at the Otay Mesa Detention Center.

22 24. Petitioner is not subject to a final order of removal, and Respondents have not identified a
23 valid basis for mandatory detention
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1 25. Petitioner has never received an individualized custody determination or bond hearing
2 before a neutral adjudicator at which the government bears the burden of justifying
3 continued detention.

4 VI. LEGAL FRAMEWORK

5 26. Immigration detention is civil and nonpunitive in nature and may be imposed only to
6 serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings
7 or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*
8 *Flores*, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these
9 purposes, or that lacks adequate procedural safeguards, violates due process.

10 27. Noncitizens in removal proceedings are entitled to the protections of the Due Process
11 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
12 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
13 the factual and legal basis for continued civil confinement before a neutral
14 decisionmaker.

15 28. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations
16 must be individualized and must meaningfully assess whether continued detention is
17 necessary to address flight risk or danger to the community. The statute expressly
18 authorizes release on bond or conditional parole, and implementing regulations provide
19 for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R.
20 §§ 1236.1(d), 1003.19.

21 29. Even where DHS invokes authority to revoke a prior release under 8 U.S.C. § 1226(b),
22 such revocation must be based on individualized facts and exercised only by officials
23 authorized by regulation. 8 C.F.R. § 1236.1(c)(9). A categorical or automatic re-
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1 detention, or a revocation undertaken without a reasoned, individualized assessment,
2 exceeds statutory and regulatory limits and is inconsistent with due process.

3 **VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)**

4 **Ground One: Violation of the Administrative Procedure Act (APA) Abuse of**
5 **Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)**

6 30. Petitioner incorporates by reference all preceding paragraphs.

7 31. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,
8 including custody maintained in violation of the Constitution or laws of the United States.

9 Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et
10 seq. to the extent Respondents' custody decision constitutes reviewable agency action
11 and no other adequate remedy provides complete relief.

12 32. Under the APA, a reviewing court must "hold unlawful and set aside agency action"
13 found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
14 with law." 5 U.S.C. § 706(2)(A).

15 33. Agency action is arbitrary and capricious where the agency fails to consider an important
16 aspect of the problem, offers an explanation that runs counter to the evidence, or reaches
17 a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S.,*
18 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders*
19 *v. Defs. of Wildlife*, 551 U.S. 644 (2007).

20 34. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
21 rational connection between facts found and choices made. *Dep't of Com. v. New York*,
22 139 S. Ct. 2551 (2019).

1 35. On information and belief, Respondents detained Petitioner without a reasoned,
2 individualized assessment of Petitioner's current circumstances, and without providing a
3 meaningful custody determination adequate to test whether confinement remains
4 necessary.

5 36. On information and belief, Respondents' detention and continued detention operate in
6 practice as a categorical denial of individualized custody review (including by treating
7 parole as the only release mechanism, refusing neutral custody redetermination, or
8 otherwise maintaining detention without an individualized custody analysis), rather than
9 a reasoned exercise of discretion on Petitioner's facts.

10 37. By detaining Petitioner and maintaining custody without a reasoned, individualized
11 revocation decision and without procedures adequate to test the necessity of confinement
12 as applied, Respondents acted arbitrarily and capriciously and abused discretion in
13 violation of 5 U.S.C. § 706(2)(A).

14 38. Petitioner is entitled to habeas and APA relief setting aside the unlawful detention
15 decision as applied and ordering immediate release.

16 **Ground Two: Violation of the Administrative Procedure Act (APA) Not in**
17 **Accordance with Law / In Excess of Statutory Authority / Without Observance of**
18 **Procedure Required by Law Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. §**
19 **1236.1(c)(9).**

20 39. Petitioner realleges and incorporates all preceding paragraphs.

21 40. The APA requires a court to set aside agency action that is "not in accordance with law,"
22 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
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1 procedure required by law.” 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §
2 706(2)(D).

3 41. On information and belief, Petitioner’s custody posture has been determined, directed, or
4 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker
5 rather than an individualized revocation decision by an authorized official consistent with
6 8 C.F.R. § 1236.1(c)(9).

7 42. As a result, Respondents’ detention and continued detention are not in accordance with
8 law, are in excess of statutory authority, and/or were taken without observance of
9 required procedure, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5
10 U.S.C. § 706(2)(D).

11 43. Petitioner is entitled to habeas and APA relief ordering Respondents to set aside the
12 unlawful detention decision and immediately release Petitioner from custody, as these
13 defects cannot be cured through further administrative process.

14 **Ground Three: Violation of the Fifth Amendment Procedural Due Process (As-**
15 **Applied Challenge to Continued Civil Detention Without a Constitutionally**
16 **Adequate Custody Determination).**

17 44. Petitioner realleges and incorporates all preceding paragraphs.

18 45. The Due Process Clause prohibits the federal government from depriving any person of
19 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.
20 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

21 46. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation
22 to impose an automatic schedule of bond hearings; however, as-applied constitutional
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1 challenges to immigration detention remain cognizable on the merits. *Jennings v.*
2 *Rodriguez*, 583 U.S. 131 (2018).

3 47. Because immigration detention is civil and nonpunitive, due process requires procedures
4 adequate to ensure detention remains justified as applied. At minimum, due process
5 requires a meaningful opportunity to contest the factual and legal basis for continued
6 confinement and to obtain an individualized determination whether continued detention
7 remains justified. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

8 48. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)
9 Petitioner's private liberty interest is substantial, (b) the risk of erroneous deprivation is
10 high given the absence of a lawful, individualized custody determination and the manner
11 in which detention has been carried out, and (c) the Government's interests can be served
12 through less restrictive alternatives, such that continued detention is not justified under
13 the circumstances.

14 49. Where detention is imposed or maintained without a lawful statutory basis and without
15 procedures sufficient to meaningfully test the necessity of continued detention, and where
16 the manner in which detention has been carried out renders additional process inadequate,
17 continued detention violates due process, and immediate release—not further custody
18 proceedings—is the appropriate remedy.

19 **VIII. REQUEST FOR RELIEF**

20 50. Petitioner respectfully requests that the Court:

21 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
22 respond forthwith;

23 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;
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- C. Order Respondents to release Petitioner immediately;
- D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and
- E. Grant such other and further relief as the Court deems just and proper.

DATED this April 23, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner