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6 **Juan Oscar Cruz-Colmenares**

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8  
9 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT

10 Juan Oscar Cruz-Colmenares,

11  
12 Petitioner,

13 v.

14 Divver et al.

15 Respondents.

Case No. **'26CV2635 LEK JLB**

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

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1 Petitioner Juan Oscar Cruz-Colmenares, through counsel, petitions for a writ of habeas  
2 corpus under 28 U.S.C. § 2241 and alleges:

3 **I. INTRODUCTION**

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

12 **II. JURISDICTION AND VENUE**

- 13 4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"  
14 under color of federal authority within this judicial district and alleges that such custody  
15 violates the Constitution and laws of the United States.
- 16 5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 17 6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition  
18 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 19 7. Venue is proper in this District because Petitioner is detained within the South District of  
20 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 Juan Oscar Cruz-Colmenares is detained by the Department of Homeland  
9 Security (“DHS”), through U.S. Immigration and Customs Enforcement (“ICE”), at the  
10 Otay 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, Juan Oscar Cruz Colmenares, is a native and citizen of Mexico, born on   
21  in Oaxaca, Mexico.

22 15. Petitioner initially entered the United States without inspection in or about 1998 through  
23 San Ysidro, California. Following a prior removal in or about 1998 or 1999, Petitioner re-

1 entered the United States without inspection in or about 2000 and has remained  
2 continuously present in the United States since that time.

3 16. Petitioner is the father of two United States citizen children, ages 25 and 22.

4 17. Petitioner has no criminal history and no history of absconding. He has remained  
5 continuously present in the United States.

6 18. On or about Wednesday morning at approximately 5:30 a.m., Petitioner was detained by  
7 immigration officers while leaving his home on his way to work. At the time of the arrest,  
8 officers informed Petitioner that there was an outstanding warrant for his arrest and  
9 displayed a document purporting to be a warrant. Due to the darkness and the  
10 circumstances of the encounter, Petitioner was unable to verify the contents of the  
11 document.

12 19. Petitioner was inside his vehicle at the time of the encounter. Officers instructed him to  
13 roll down his window; however, the window was inoperable. Petitioner attempted to  
14 explain this to the officers but was not permitted to do so. At the same time, officers  
15 ordered him to raise his hands while he was attempting to retrieve his phone to contact  
16 his wife, as he does not speak English and needed assistance to communicate.

17 20. Despite Petitioner's attempts to comply, officers escalated the encounter by breaking the  
18 frame of the passenger-side door and window of the vehicle. Several officers pointed  
19 firearms at Petitioner during the incident. Petitioner was then forcibly removed from the  
20 vehicle, dragged out, and taken into a nearby parking lot before being taken into custody.

21 21. After being taken to a detention facility, Petitioner repeatedly inquired—approximately  
22 three to four times—about the alleged warrant. Officers ultimately acknowledged that no  
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1 such warrant existed and confirmed that Petitioner's record is clean. Petitioner was  
2 informed that he was likely detained based on his prior removal from 1998 or 1999.

3 22. Petitioner has since been detained by the Department of Homeland Security ("DHS") and  
4 remains in immigration custody, including at the Otay Mesa Detention Center. His  
5 removal proceedings are pending, and his initial Master Calendar Hearing is scheduled  
6 for April 27, 2026, at 8:00 a.m. before Immigration Judge Eugene H. Robinson, Jr.

7 23. Petitioner suffers from diabetes and a back injury. Since his detention, he has not been  
8 provided with his full prescribed medication, raising serious concerns regarding the  
9 adequacy of his medical care while in custody. Medical records supporting these  
10 conditions are available and can be obtained.

11 24. Petitioner is not subject to a final order of removal, and Respondents have not identified  
12 any valid basis for mandatory detention under the Immigration and Nationality Act.

13 25. Petitioner has never received an individualized custody determination or bond hearing  
14 before a neutral adjudicator at which the government bears the burden of justifying  
15 continued detention.

## 16 VI. LEGAL FRAMEWORK

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

22 27. Noncitizens in removal proceedings are entitled to the protections of the Due Process  
23 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.

1 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest  
2 the factual and legal basis for continued civil confinement before a neutral  
3 decisionmaker.

4 28. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations  
5 must be individualized and must meaningfully assess whether continued detention is  
6 necessary to address flight risk or danger to the community. The statute expressly  
7 authorizes release on bond or conditional parole, and implementing regulations provide  
8 for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R.  
9 §§ 1236.1(d), 1003.19.

10 29. A categorical without a reasoned, individualized assessment, exceeds statutory and  
11 regulatory limits and is inconsistent with due process.

## 12 **VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)**

### 13 **Ground One: Violation of the Administrative Procedure Act (APA) Abuse of** 14 **Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)**

15 30. Petitioner incorporates by reference all preceding paragraphs.

16 31. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,  
17 including custody maintained in violation of the Constitution or laws of the United States.  
18 Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et  
19 seq. to the extent Respondents' custody decision constitutes reviewable agency action  
20 and no other adequate remedy provides complete relief.

21 32. Under the APA, a reviewing court must "hold unlawful and set aside agency action"  
22 found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
23 with law." 5 U.S.C. § 706(2)(A).  
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1 33. Agency action is arbitrary and capricious where the agency fails to consider an important  
2 aspect of the problem, offers an explanation that runs counter to the evidence, or reaches  
3 a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S.,*  
4 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders*  
5 *v. Defs. of Wildlife*, 551 U.S. 644 (2007).

6 34. To satisfy APA review, the agency must provide a reasoned explanation reflecting a  
7 rational connection between facts found and choices made. *Dep't of Com. v. New York*,  
8 139 S. Ct. 2551 (2019).

9 35. On information and belief, Respondents detained Petitioner without any  
10 contemporaneous, reasoned, and individualized assessment of Petitioner's current  
11 circumstances, including his lack of criminal history, long-term residence, family ties,  
12 and medical vulnerability.

13 36. On information and belief, Petitioner's detention was initiated based on materially false  
14 information—namely, the representation that an arrest warrant existed when, in fact, no  
15 such warrant existed—and has been maintained without correction through any  
16 meaningful individualized custody determination.

17 37. By detaining Petitioner and maintaining custody without a reasoned, individualized  
18 determination—and where the initial detention itself was predicated on false or  
19 unsupported grounds—Respondents acted arbitrarily, capriciously, and in abuse of  
20 discretion in violation of 5 U.S.C. § 706(2)(A).

21 38. By detaining Petitioner and maintaining custody without a reasoned, individualized  
22 determination—and where the initial detention itself was predicated on false or  
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1 unsupported grounds—Respondents acted arbitrarily, capriciously, and in abuse of  
2 discretion in violation of 5 U.S.C. § 706(2)(A)

3 39. Petitioner is entitled to habeas and APA relief setting aside the unlawful detention  
4 decision as applied and ordering immediate release.

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

9 40. Petitioner realleges and incorporates all preceding paragraphs.

10 41. The APA requires a court to set aside agency action that is “not in accordance with law,”  
11 “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of  
12 procedure required by law.” 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §  
13 706(2)(D).

14 42. On information and belief, Petitioner’s custody posture has been determined, directed, or  
15 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker  
16 rather than an individualized revocation decision by an authorized official consistent with  
17 8 C.F.R. § 1236.1(c)(9).

18 43. On information and belief, Petitioner’s detention was further initiated based on materially  
19 false or unsupported assertions, including the representation that an arrest warrant existed  
20 when, in fact, no such warrant existed, and has since been maintained without correction  
21 through any lawful procedural mechanism. Such detention does not reflect a valid  
22 exercise of statutory authority but instead constitutes a post hoc justification for a  
23 detention that was not lawfully initiated.

1 44. As a result, Respondents' detention and continued detention are not in accordance with  
2 law, are in excess of statutory authority, and/or were taken without observance of  
3 required procedure, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5  
4 U.S.C. § 706(2)(D).

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

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

11 46. Petitioner realleges and incorporates all preceding paragraphs.

12 47. The Due Process Clause prohibits the federal government from depriving any person of  
13 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.  
14 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

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

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

1 50. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)  
2 Petitioner's liberty interest is substantial, particularly in light of his decades-long  
3 residence, family ties, employment history, and medical condition; (b) the risk of  
4 erroneous deprivation is exceptionally high where detention was initiated based on  
5 materially false or unsupported assertions, carried out through the use of excessive force,  
6 and maintained without any meaningful individualized custody determination; and (c) the  
7 Government's interests do not justify continued detention, and any legitimate regulatory  
8 objectives can be satisfied without further deprivation of liberty, particularly where  
9 additional process would be inadequate to cure the defects in the initiation and  
10 maintenance of detention

11 **VIII. REQUEST FOR RELIEF**

12 51. Petitioner respectfully requests that the Court:

- 13 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to  
14 respond forthwith;
- 15 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;
- 16 C. Order Respondents to release Petitioner immediately;
- 17 D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and
- 18 E. Grant such other and further relief as the Court deems just and proper.

19 DATED April 24, 2026.

20 /s/ Jose Torres

21 Jose Torres  
22 Counsel for Petitioner