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6 **Amer Antonio Rivas Diaz**

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9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Amer Antonio Rivas Diaz,

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12 Petitioner,

13 v.

14 Divver et al.

15 Respondents.
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Case No. **'26CV2655 GPC GC**

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

1 Petitioner Amer Antonio Rivas Diaz, 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.

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

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

IV. PARTIES

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

V. FACTUAL BACKGROUND

14. Petitioner, Amer Antonio Rivas Diaz, is a native and citizen of Honduras, born on



1 15. Petitioner first entered the United States without inspection on or about April 5, 2000,
2 through Tijuana, Mexico. He was approximately fourteen or fifteen years old at the time
3 and was not apprehended upon entry.

4 16. After that entry, Petitioner lived and worked in the United States. While traveling to work
5 in Los Angeles and passing through Temecula, he was detained with co-workers and
6 removed to Tijuana the same day. Petitioner does not recall whether he signed any
7 deportation paperwork.

8 17. Petitioner re-entered the United States without inspection on or about January 11, 2010,
9 at or near Tijuana/Tecate, California. He was not apprehended upon that entry and has
10 remained in the United States since that time.

11 18. DHS previously issued Petitioner a Notice to Appear dated August 27, 2014, alleging that
12 he is not a citizen or national of the United States, that he is a native and citizen of
13 Honduras, that he entered the United States at or near Tecate, California, on or about
14 January 17, 2010, and that he was not admitted or paroled after inspection by an
15 immigration officer.

16 19. Petitioner is married to Laly Lopez-Rivas. They were married in September 2014 in El
17 Cajon, California.

18 20. Petitioner has a twenty-year-old United States citizen son, Almer Alexander Rivas-
19 Sanchez, who lives in San Diego, California.

20 21. Petitioner also has strong family ties through his spouse's four United States citizen
21 children, all of whom are adults and reside in San Diego, California.

22 22. Petitioner has a limited criminal history consisting of a DUI-related incident from August
23 27, 2014. Petitioner had been sober for several years, was driving a friend's vehicle, and
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1 believes the blood-test result was affected by his prior history of heavy drinking rather
2 than drinking on the day in question. Petitioner was placed on probation and completed
3 all required terms.

4 23. On or about March 25, 2026, Petitioner was staying in his recreational vehicle near
5 Mission Bay. Petitioner would park and move the vehicle as needed.

6 24. On that date, Petitioner was on his way to work with his aunt when an unidentified
7 person yelled at him not to move and stated that ICE was coming for him. The person did
8 not identify himself as an ICE officer.

9 25. Petitioner continued on his way because he was going to work. Before work, he took an
10 exit to pay his car balance. At that time, immigration officers detained him while he was
11 taking an exit from the freeway.

12 26. Petitioner's aunt was with him at the time of the arrest. She worked with him and had
13 been living with him in the recreational vehicle.

14 27. Petitioner has since been detained by DHS and remains in immigration custody.

15 28. Petitioner is not subject to a final order of removal in these proceedings, and Respondents
16 have not identified any valid basis for mandatory detention under the Immigration and
17 Nationality Act.

18 29. Petitioner has never received an individualized custody determination or bond hearing
19 before a neutral adjudicator at which the government bears the burden of justifying
20 continued detention.

21 VI. LEGAL FRAMEWORK

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

4 31. Noncitizens in removal proceedings are entitled to the protections of the Due Process
5 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
6 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
7 the factual and legal basis for continued civil confinement before a neutral
8 decisionmaker.

9 32. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations
10 must be individualized and must meaningfully assess whether continued detention is
11 necessary to address flight risk or danger to the community. The statute expressly
12 authorizes release on bond or conditional parole, and implementing regulations provide
13 for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R.
14 §§ 1236.1(d), 1003.19.

15 33. A categorical without a reasoned, individualized assessment, exceeds statutory and
16 regulatory limits and is inconsistent with due process.

17 VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

18 Ground One: Violation of the Administrative Procedure Act (APA) Abuse of 19 Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)

20 34. Petitioner incorporates by reference all preceding paragraphs.

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

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

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

11 38. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
12 rational connection between facts found and choices made. *Dep't of Com. v. New York*,
13 139 S. Ct. 2551 (2019).

14 39. On information and belief, Respondents detained Petitioner without any
15 contemporaneous, reasoned, and individualized assessment of his current circumstances,
16 including his decades-long residence in the United States, his family ties, and the absence
17 of any serious or recent criminal history.

18 40. On information and belief, Petitioner's detention was initiated without a valid, articulated
19 basis and has been maintained without correction through any meaningful individualized
20 custody determination.

21 41. By detaining Petitioner and maintaining custody without a reasoned, individualized
22 determination, Respondents acted arbitrarily, capriciously, and in abuse of discretion in
23 violation of 5 U.S.C. § 706(2)(A).

1 42. Respondents' continued detention of Petitioner, without applying the proper legal
2 standard or considering less restrictive alternatives to detention, further constitutes
3 agency action that is arbitrary, capricious, and contrary to law.

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

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

10 44. Petitioner realleges and incorporates all preceding paragraphs.

11 45. The APA requires a court to set aside agency action that is "not in accordance with law,"
12 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
13 procedure required by law." 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §
14 706(2)(D).

15 46. On information and belief, Petitioner's custody posture has been determined, directed, or
16 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker
17 rather than an individualized revocation decision by an authorized official consistent with
18 8 C.F.R. § 1236.1(c)(9).

19 47. On information and belief, Petitioner's detention was initiated without a valid or
20 accurate factual basis and has since been maintained without correction through any
21 lawful procedural mechanism. Petitioner was detained during a roadside encounter by
22 individuals who did not identify themselves and did not provide any clear or lawful basis
23 for the arrest. To the extent Respondents relied on unsupported or inaccurate assertions to
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1 justify the arrest or continued detention, such reliance confirms that the detention was not
2 lawfully initiated. The continued detention thus reflects a post hoc justification rather
3 than a valid exercise of statutory authority..

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

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

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

14 50. Petitioner realleges and incorporates all preceding paragraphs.

15 51. The Due Process Clause prohibits the federal government from depriving any person of
16 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.
17 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

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

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

4 54. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)
5 Petitioner's liberty interest is substantial, particularly in light of his more than two
6 decades of residence in the United States, his marriage to a United States-based spouse,
7 his United States citizen son, and his additional United States citizen stepchildren who
8 are part of his immediate family unit in San Diego, as well as his consistent work history;
9 (b) the risk of erroneous deprivation is exceptionally high where detention was initiated
10 on March 25, 2026, while Petitioner was driving from Mission Bay to work and took a
11 freeway exit to make a car payment, after an unidentified individual—who did not
12 identify himself as law enforcement—yelled that “ICE was coming,” and where
13 Petitioner was then detained by ICE at the freeway exit without any clear or articulated
14 legal basis and has since been held without any meaningful individualized custody
15 determination; and (c) the Government's interests do not justify continued detention, and
16 any legitimate regulatory objectives can be satisfied through less restrictive alternatives
17 to detention, particularly where additional process would be inadequate to cure the
18 defects in the initiation and continued detention.

19 **VIII. REQUEST FOR RELIEF**

20 55. 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;

1 C. Order Respondents to release Petitioner immediately;

2 D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and

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

4 DATED April 27, 2026.

5 /s/ Jose Torres

6 Jose Torres

7 *Counsel for Petitioner*