

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 **Irineo Torres-Vasquez**

7
8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Irineo Torres-Vasquez,

11
12 Petitioner,

13 v.

14 Divver et al.

15 Respondents.
16

Case No. **'26CV2757 JO DEB**

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

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

3
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.

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 Irineo Torres-Vasquez 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 is a native and citizen of Mexico.
15. Petitioner was born [REDACTED] in Santa Mónica Cohetzala, Puebla, Mexico.
16. On or about November or December 1984, Petitioner entered the United States near the Tijuana/Otay Mesa border without inspection by walking through the hills near Otay

1 Mesa. He was not apprehended at the time of entry and thereafter made the United States
2 his home.

3 17. Since his entry, Petitioner has resided in the United States for approximately forty years
4 and has built his entire adult life in this country.

5 18. Petitioner previously applied for immigration benefits under the 1986 Amnesty program.

6 A USCIS notice reflects that Petitioner filed an application for status as a temporary
7 resident, with a receipt date of May 13, 1988, and a notice date of July 31, 1997.

8 19. Petitioner has also been the beneficiary of a family-based immigrant petition filed by his
9 United States citizen daughter, Anita M. Torres. USCIS issued a Form I-797C receipt
10 notice dated June 21, 2018, confirming receipt of the I-130 Petition for Alien Relative,
11 listing Petitioner as the beneficiary and identifying the classification as parent of a United
12 States citizen.

13 20. Petitioner's family ties in the United States are substantial. His wife, Enriqueta, resides in
14 the United States, and his four daughters—Anita, Daysi, Arleny, and Erika—were born in
15 the United States. Petitioner has spent decades raising and supporting his family here.

16 21. Petitioner has also established strong community and employment ties. He has worked
17 for many years in California, including for Rancho del Oro Landscape Inc., and
18 previously worked in facilities maintenance for a Christian church and school in
19 Oceanside, California.

20 22. Petitioner has lived as a productive member of the community. He has maintained a
21 driver's license, purchased a home, paid taxes, supported his family, and has no criminal
22 record or history of absconding.

23. On or about April 9, 2025, at approximately 7:30 a.m., Petitioner was driving a work truck for Rancho del Oro Landscape Inc. with three coworkers while traveling on Highway 76 toward Pala, near Interstate 15 North and Highway 76 East.

24. Petitioner and his coworkers were stopped by Border Patrol and immigration officers at a checkpoint on Highway 76. Officers requested proof of lawful status. Two coworkers were able to present lawful permanent resident cards, but Petitioner and another coworker did not have proof of lawful residence to present at that time.

25. Petitioner attempted to explain that he had a pending immigration matter and presented information regarding his legal representation, but the officers did not accept or meaningfully consider that information. Petitioner was taken first to Murrieta, California, then to San Diego, California, and ultimately to the Otay Mesa Detention Center.

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

27. Petitioner is not subject to a final order of removal, and Respondents have not identified a valid basis for mandatory detention.

28. Petitioner has never received a meaningful individualized custody determination or bond hearing before a neutral adjudicator at which the government bears the burden of justifying his continued detention.

VI. LEGAL FRAMEWORK

29. Immigration detention is civil and nonpunitive in nature and may be imposed only to serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*

Flores, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these purposes, or that lacks adequate procedural safeguards, violates due process.

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

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

VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion and Arbitrary and Capricious Continued Detention

32. Petitioner incorporates by reference all preceding paragraphs.

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

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

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

9 36. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
10 rational connection between the facts found and the choice made. *Dep’t of Com. v. New*
11 *York*, 139 S. Ct. 2551 (2019).

12 37. Petitioner is not subject to a final order of removal, and Respondents have not identified a
13 valid basis for mandatory detention. His detention therefore must remain tied to an
14 individualized assessment of whether custody is necessary to address flight risk or
15 danger, rather than imposed or maintained as a matter of administrative convenience.

16 38. On information and belief, Respondents have detained and continued to detain Petitioner
17 without a reasoned, individualized assessment of his current circumstances, including his
18 approximately forty (40) years of residence in the United States, his United States citizen
19 family members, his pending family-based immigration process, his long employment
20 history, his tax history, his community ties, his lack of criminal record, and his lack of
21 any history of absconding.

22 39. By maintaining Petitioner’s detention without a reasoned, individualized custody
23 determination and without adequately considering the facts bearing on flight risk, danger,
24

1 and less restrictive alternatives, Respondents acted arbitrarily and capriciously and
2 abused their discretion in violation of 5 U.S.C. § 706(2)(A).

3 40. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
4 custody decision as applied to him and ordering his immediate release.

5 **Ground Two: Violation of the Administrative Procedure Act — Not in Accordance**
6 **with Law, In Excess of Statutory Authority, and Without Observance of Required**
7 **Procedure**

8 41. Petitioner realleges and incorporates all preceding paragraphs.

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

13 43. Petitioner is not subject to a final order of removal, and Respondents have not identified
14 any valid basis for mandatory detention. Accordingly, Petitioner's detention is governed
15 by the discretionary custody framework applicable to noncitizens detained during
16 removal proceedings, including 8 U.S.C. § 1226(a), which permits release on bond or
17 conditional parole.

18 44. Under 8 U.S.C. § 1226(a), detention is not mandatory. The statute gives the Government
19 discretion either to detain the person or to release the person on bond or conditional
20 parole. That discretion must be exercised lawfully, through an individualized custody
21 determination that considers the actual facts bearing on flight risk, danger, and the
22 availability of less restrictive alternatives.

1 45. On information and belief, Respondents have maintained Petitioner's custody without
2 providing a lawful and meaningful individualized custody process consistent with 8
3 U.S.C. § 1226(a). Respondents have continued to detain Petitioner despite his substantial
4 equities, including approximately forty years of residence in the United States, United
5 States citizen family members, a pending family-based immigration process, long-term
6 employment history, tax history, community ties, lack of criminal record, and lack of any
7 history of absconding.

8 46. Respondents' continued detention of Petitioner without a meaningful individualized
9 custody determination is not in accordance with law, exceeds the lawful limits of
10 discretionary detention under 8 U.S.C. § 1226(a), and/or was taken without observance of
11 procedure required by law, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C),
12 and 5 U.S.C. § 706(2)(D).

13 47. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
14 custody determination as applied to him and ordering his immediate release.

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

18 48. Petitioner realleges and incorporates all preceding paragraphs.

19 49. Petitioner realleges and incorporates all preceding paragraphs.

20 50. The Due Process Clause prohibits the federal government from depriving any person of
21 liberty without due process of law. *U.S. Const. amend. V*; *Zadvydas v. Davis*, 533 U.S.
22 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

1 51. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation
2 to impose an automatic schedule of bond hearings. However, Jennings does not foreclose
3 as-applied constitutional challenges to immigration detention, and Petitioner brings this
4 claim as an as-applied due process challenge to his continued civil confinement. *Jennings*
5 *v. Rodriguez*, 583 U.S. 131 (2018).

6 52. Because immigration detention is civil and nonpunitive, due process requires procedures
7 adequate to ensure that detention remains justified as applied to the individual. At
8 minimum, due process requires a meaningful opportunity to contest the factual and legal
9 basis for continued confinement and to obtain an individualized determination of whether
10 detention is necessary to address flight risk or danger. *Mathews v. Eldridge*, 424 U.S. 319
11 (1976).

12 53. Petitioner is not subject to a final order of removal, and Respondents have not identified a
13 valid basis for mandatory detention. His detention is therefore discretionary, not
14 automatic, and continued custody must be supported by a constitutionally adequate
15 process that considers his actual circumstances and the availability of less restrictive
16 alternatives.

17 54. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework,
18 Petitioner's private liberty interest is substantial. Petitioner has lived in the United States
19 for approximately forty years, has built his entire adult life here, has a wife and four
20 United States citizen daughters in this country, has long-standing employment and
21 community ties, has paid taxes, has pursued immigration relief through prior and pending
22 processes, has no criminal record, and has no history of absconding.

1 55. The risk of erroneous deprivation is high because Petitioner has been detained since a
2 work-related checkpoint stop without a constitutionally adequate individualized custody
3 determination. On information and belief, Respondents have not meaningfully considered
4 Petitioner's actual circumstances, including his family ties, immigration history,
5 employment, community ties, lack of criminal record, lack of absconding history, and the
6 availability of bond, supervision, reporting requirements, or other less restrictive
7 alternatives.

8 56. The Government's interests do not justify continued detention without adequate process.
9 Any legitimate interest in securing Petitioner's appearance or protecting the community
10 can be served through less restrictive conditions, particularly where Petitioner has deep
11 family and community ties, no criminal record, no history of flight, and a pending family-
12 based immigration process.

13 57. Where detention is imposed or maintained without procedures sufficient to meaningfully
14 test whether continued confinement remains necessary, continued detention violates due
15 process as applied to Petitioner.

16 58. Petitioner is entitled to habeas relief ordering his immediate release.

17 **VIII. REQUEST FOR RELIEF**

18 59. Petitioner respectfully requests that the Court:

- 19 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
20 respond forthwith;
21 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;
22 C. Order Respondents to release Petitioner immediately;
23 D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and
24

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

2 DATED this April 30, 2026.

3 /s/ Jose Torres

4 Jose Torres

5 *Counsel for Petitioner*