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6 **Adolfo Gonzalez**

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9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Adolfo Gonzalez,

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12 Petitioner,

13 v.

14 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
15 Diego Field Office, Immigration and Customs
Enforcement; et al,

16 Respondents.
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Case No. **'26CV2788 JO GC**

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

1 Petitioner Adolfo Gonzalez, through counsel, petitions for a writ of habeas corpus under
2 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 he is in federal
5 immigration custody and is being detained in violation of the Constitution and laws of the
6 United States.
- 7 2. Respondents' continued detention of Petitioner without a prompt, meaningful, and
8 individualized custody determination violates the Immigration and Naturalization Act,
9 the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
- 10 3. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. §
11 2243; an order directing Respondents to release Petitioner immediately, or, in the
12 alternative, to provide a prompt constitutionally adequate custody hearing before a
13 neutral adjudicator at which the Government bears the burden of justifying continued
14 detention; and any further relief the Court deems just and proper.

15 II. JURISDICTION AND VENUE

- 16 4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"
17 under color of federal authority within this judicial district and alleges that such custody
18 violates the Constitution and laws of the United States.
- 19 5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 20 6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
21 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 22 7. Venue is proper in this District because Petitioner is detained within the South District of
23 California.
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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 Adolfo Gonzalez 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 Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner’s immigration custody and continued detention within this District. He is sued in his official capacity only.

12. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

13. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. In that official capacity, he is responsible for the administration and enforcement of the Immigration and Nationality Act, including DHS and ICE detention policies and practices. He is sued in his official capacity only.

1 14. Respondent Department of Homeland Security is the federal agency responsible for
2 implementing and enforcing the Immigration and Nationality Act, including the detention
3 and removal of noncitizens.

4 15. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. §
5 2241. Respondents are the officials and agency responsible for Petitioner's custody and
6 continued detention.

7 **V. FACTUAL BACKGROUND**

8 16. Petitioner is a native and citizen of Guatemala.

9 17. Petitioner was born [REDACTED] in Huehuetenango, Guatemala.

10 18. Petitioner is the son of Pedro Gonzalez, deceased, and Isabel Gonzalez. He is the oldest
11 of four siblings and the father of one minor child, [REDACTED] who is
12 approximately twelve years old.

13 19. Petitioner came to the United States as a child. According to his declaration, he left
14 Guatemala at approximately six (6) years old and entered the U.S. on or about 2001.

15 20. After entering the United States, Petitioner lived in Arkansas for approximately one year.
16 On or about 2002, he moved with his family to California, including Fallbrook,
17 California, where he has lived for most of his life.

18 21. Petitioner grew up and was educated in the United States. He attended elementary school
19 in Fallbrook, including William H. Frazier Elementary School, Fallbrook Street
20 Elementary School, and Live Oak Elementary School.

21 22. Petitioner later attended Potter Junior High School from approximately 2007 to 2009 and
22 then attended Fallbrook High School from approximately 2009 to 2013, completing high
23 school at approximately nineteen (19) years old.

1 23. After high school, Petitioner began working. He obtained employment through GO Staff
2 and worked in construction-site cleanup and agricultural field work from approximately
3 2013 to 2014.

4 24. On or about 2014, Petitioner worked for Eli's Farms, where he performed maintenance
5 work related to crops and was later promoted to selling plants throughout North and
6 South San Diego County. He remained in that employment until approximately 2015.

7 25. On or about 2015, Petitioner worked for Trinity Grading for approximately six (6)
8 months, performing grading and land-leveling work for construction-related projects.

9 26. Petitioner previously had work authorization through DACA. According to his
10 declaration, his work permit was valid during approximately 2014 to 2016. He attempted
11 to renew his DACA work permit in or about 2017, but the renewal was not granted.

12 27. Petitioner has strong family, community, employment, and religious ties in the United
13 States. He has lived in the United States since childhood, has resided for many years in
14 Fallbrook, California, and his family continues to reside in the same community.

15 28. Petitioner is engaged to Anita Torres, with whom he has been in a relationship for
16 approximately eight (8) years, and they have plans to marry.

17 29. Petitioner has been involved in Christianity for more than twelve (12) years. He has
18 served in church ministries, including youth ministry, and currently participates in the
19 music and service ministry at a church identified in his declaration as Nueva de Gracia.

20 30. Petitioner considers himself a humble, responsible, hardworking person with good moral
21 values. He has long-standing ties to Fallbrook and the San Diego County community,
22 does not pose a danger to the community, and is not a flight risk.

1 31. On or about April 9, 2026, at approximately 7:40 a.m., Petitioner was driving to work
2 toward Pala on Highway 76 when he encountered an immigration checkpoint.

3 32. Immigration officers signaled vehicles to stop and asked Petitioner and the other
4 occupants of the vehicle for their documents. Of the four people in the vehicle, two were
5 detained.

6 33. Petitioner was placed under arrest and transferred to an immigration office in Murrieta,
7 California, where he was processed and held for most of the day.

8 34. Petitioner was later transferred to immigration offices in downtown San Diego, where he
9 spent the night. The following morning, he was transferred to the Otay Mesa Detention
10 Center.

11 35. DHS has since detained Petitioner and continues to hold him in immigration custody at
12 the Otay Mesa Detention Center.

13 36. Petitioner is not serving a criminal sentence, is detained solely under federal immigration
14 authority, and is not subject to a final order of removal.

15 37. Petitioner has not received a meaningful individualized custody determination or bond
16 hearing before a neutral adjudicator at which the Government bears the burden of
17 justifying continued detention.

18 VI. LEGAL FRAMEWORK

19 38. Immigration detention is civil and nonpunitive in nature and may be imposed only to
20 serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings
21 or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*
22 *Flores*, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these
23 purposes, or that lacks adequate procedural safeguards, violates due process.
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1 39. Noncitizens in removal proceedings are entitled to the protections of the Due Process
2 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
3 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
4 the factual and legal basis for continued civil confinement before a neutral
5 decisionmaker.

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

12 41. Because Petitioner is not subject to a final order of removal and is not serving a criminal
13 sentence, his detention must remain discretionary and individualized. Continued
14 detention without a meaningful custody determination is inconsistent with § 1226(a)'s
15 discretionary framework, particularly where Petitioner has lived in the United States
16 since childhood, was educated here, has long-standing family, employment, religious,
17 and community ties in Fallbrook and San Diego County, and has not been provided a
18 neutral process to test whether detention is necessary.

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

20 **Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion** 21 **and Arbitrary and Capricious Continued Detention.**

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

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

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

14 46. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
15 rational connection between the facts found and the choice made. *Dep't of Com. v. New*
16 *York*, 139 S. Ct. 2551 (2019).

17 47. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and
18 Respondents have not identified any valid basis for mandatory detention. His continued
19 confinement therefore must be justified by an individualized and reasoned custody
20 decision tied to legitimate regulatory purposes, not by detention as a default result of a
21 checkpoint arrest.

22 48. Respondents have detained and continued to detain Petitioner without a reasoned,
23 individualized assessment of his actual circumstances. Petitioner has lived in the United
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1 States since childhood, was educated in this country, has long-standing family and
2 community ties in Fallbrook and San Diego County, is the father of a minor child, is
3 engaged to be married, has a history of steady employment in the local community, has
4 served in church ministries, previously had DACA-related work authorization, and has no
5 facts showing that he is a danger to the community or a flight risk.

6 49. Respondents have also failed to meaningfully consider whether any legitimate
7 governmental interest could be satisfied through less restrictive alternatives to detention,
8 including release on recognizance, bond, supervision, reporting requirements, or other
9 noncustodial conditions. This failure is especially unreasonable given Petitioner's deep
10 local ties, long residence, family responsibilities, employment history, and lack of any
11 individualized finding that detention is necessary.

12 50. By maintaining Petitioner's custody without a reasoned, individualized decision and
13 without procedures adequate to test the necessity of confinement as applied, Respondents
14 acted arbitrarily and capriciously and abused their discretion in violation of 5 U.S.C. §
15 706(2)(A).

16 51. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
17 custody decision as applied and ordering his immediate release.

18 **Ground Two: Violation of the Administrative Procedure Act — Not in Accordance**
19 **with Law, In Excess of Statutory Authority, and Without Observance of Required**
20 **Procedure.**

21 52. Petitioner realleges and incorporates all preceding paragraphs.

22 53. The APA requires a court to set aside agency action that is "not in accordance with law,"
23 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
24

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 54. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and
4 Respondents have not identified a valid basis for mandatory detention. His custody is
5 therefore governed by the discretionary detention framework applicable to noncitizens
6 detained during pending removal proceedings, including 8 U.S.C. § 1226(a).

7 55. Under 8 U.S.C. § 1226(a), detention is not automatic. The statute authorizes DHS either
8 to detain the person or to release the person on bond or conditional parole. That authority
9 must be exercised within statutory limits and through a lawful, individualized decision
10 that accounts for the person’s actual circumstances.

11 56. Respondents have maintained Petitioner’s detention without providing a lawful custody
12 process consistent with 8 U.S.C. § 1226(a). On information and belief, Petitioner has not
13 received any written or oral custody determination identifying an individualized basis for
14 continued detention, and he has not received a meaningful opportunity to contest whether
15 his confinement is necessary.

16 57. Respondents’ continued detention of Petitioner without a lawful individualized custody
17 determination is not in accordance with law, exceeds the lawful limits of discretionary
18 detention under 8 U.S.C. § 1226(a), and/or was taken without observance of procedure
19 required by law, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5 U.S.C.
20 § 706(2)(D).

21 58. Petitioner is entitled to habeas and APA relief setting aside Respondents’ unlawful
22 custody decision as applied and ordering his immediate release.

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

59. Petitioner realleges and incorporates all preceding paragraphs.

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

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

62. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and Respondents have not identified a valid basis for mandatory detention. His detention is therefore discretionary, not automatic, and continued custody must be supported by constitutionally adequate procedures that meaningfully test whether confinement is necessary as applied to him.

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

1 64. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework,
2 Petitioner's private liberty interest is substantial. Petitioner has lived in the United States
3 since childhood, was educated in this country, has long-standing family and community
4 ties in Fallbrook and San Diego County, is the father of a minor child, is engaged to be
5 married, has a history of steady employment, has served in church ministries, previously
6 had DACA-related work authorization, and has built his adult life in the United States.

7 65. The risk of erroneous deprivation is high because Petitioner has been detained since a
8 work-related checkpoint stop without a constitutionally adequate individualized custody
9 determination. On information and belief, Respondents have not meaningfully considered
10 Petitioner's actual circumstances, including his childhood arrival, long residence, family
11 responsibilities, employment history, religious and community ties, prior DACA-related
12 work authorization, lack of any individualized danger finding, and the availability of less
13 restrictive alternatives.

14 66. The Government's interests do not justify continued detention without adequate process.
15 Any legitimate interest in securing Petitioner's appearance or protecting the community
16 can be addressed through less restrictive conditions, including release on recognizance,
17 bond, supervision, reporting requirements, or other noncustodial measures.

18 67. Where detention is imposed or maintained without procedures sufficient to meaningfully
19 test whether continued confinement remains necessary, continued detention violates due
20 process as applied to Petitioner.

21 68. Petitioner is entitled to habeas relief ordering his immediate release.

22 **VIII. REQUEST FOR RELIEF**

23 69. Petitioner respectfully requests that the Court:
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1 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
2 respond forthwith;

3 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;

4 C. Order Petitioner released immediately;

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

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

7 DATED this April 30, 2026.

8 /s/ Jose Torres

9 Jose Torres

10 *Counsel for Petitioner*