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6 **Noe Becerra-Gonzalez**

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8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Noe Becerra-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. **'26 CV2908 AGS MSB**

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

1 Petitioner Noe Becerra-Gonzalez, 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 is being held in civil immigration detention even though he has a substantial
6 and nonfrivolous claim that he derived United States citizenship before age eighteen
7 under former Immigration and Nationality Act § 321, 8 U.S.C. § 1432(a) (repealed 2000).
8 If Petitioner derived citizenship, Respondents lack statutory authority to detain him under
9 the immigration laws.
- 10 2. This petition challenges present detention only. Petitioner does not ask this Court to
11 review any final order of removal; there is no final order. Rather, Petitioner seeks release
12 from custody because Respondents are exercising immigration detention authority
13 without first lawfully establishing that Petitioner is an alien subject to that authority.
- 14 3. The Supreme Court has long held that where the Executive restrains a person under the
15 immigration laws and that person makes a nonfrivolous claim to United States
16 citizenship, due process requires a judicial determination of the citizenship issue because
17 deportation or exclusion of a citizen results in a grave deprivation of liberty. *Ng Fung Ho*
18 *v. White*, 259 U.S. 276, 284–85 (1922). Habeas corpus remains available to test the
19 legality of executive detention. *INS v. St. Cyr*, 533 U.S. 289, 301–14 (2001); *Zadvydas*
20 *v. Davis*, 533 U.S. 678, 687 (2001).
- 21 4. Respondents have continued to detain Petitioner at the Otay Mesa Detention Center
22 despite notice that Petitioner may already be a United States citizen by operation of law.
23 Citizenship, if derived, vests automatically when the statute’s conditions are met; a later
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1 certificate is evidence of citizenship, not the source of it. *Minasyan v. Gonzales*, 401 F.3d
2 1069, 1075–76 (9th Cir. 2005).

3 5. Petitioner therefore requests that the Court issue an order to show cause forthwith under
4 28 U.S.C. § 2243, declare his present detention unlawful, and order his immediate
5 release. In the alternative, Petitioner requests an expedited evidentiary hearing on the
6 threshold citizenship issue and such interim relief as is necessary to end unlawful
7 detention..

8 II. JURISDICTION AND VENUE

9 6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in federal
10 custody in violation of the Constitution and laws of the United States.

11 7. This Court has authority to grant habeas relief under 28 U.S.C. §§ 2241 and 2243.

12 8. This Court also has federal-question jurisdiction under 28 U.S.C. § 1331 because
13 Petitioner’s claims arise under the Constitution and laws of the United States, including
14 the Immigration and Nationality Act.

15 9. District courts retain jurisdiction over challenges to immigration detention
16 notwithstanding jurisdiction-channeling provisions directed to review of removal orders.
17 *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006). This petition does not
18 seek review of any final order of removal.

19 10. Venue is proper in this District because Petitioner is confined at the Otay Mesa Detention
20 Center in San Diego County, California, and Respondents exercise custody over him in
21 this District. 28 U.S.C. § 2241(a); *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004).

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

2 11. 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 12. 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 13. Petitioner Noe Becerra-Gonzalez is detained by the Department of Homeland Security
9 (“DHS”), through Immigration and Customs Enforcement (“ICE”), at OMDC.

10 14. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s
11 Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s
12 immediate custodian and is responsible for Petitioner’s detention and removal. He is
13 named in his official capacity.

14 15. Respondent Department of Homeland Security (DHS) is the federal agency responsible
15 for implementing and enforcing the INA, including the detention and removal of
16 noncitizens.

17 16. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
18 responsible for implementing and enforcing the INA in removal proceedings, including
19 for custody redeterminations in bond hearings.

20 17. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the Otay
21 Mesa Detention Center, where Petitioner is detained. He has immediate physical custody
22 of Petitioner. He is sued in his official capacity.

V. FACTUAL BACKGROUND

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2 18. Petitioner Noe Becerra-Gonzalez was born on [REDACTED] in Mexico.

3 19. Petitioner was admitted to the United States as a lawful permanent resident while he was
4 a child.

5 20. Petitioner has lived nearly his entire life in the United States. He was raised in this
6 country, worked in this country, built his family life here, and remained rooted in the
7 United States as a lawful permanent resident.

8 21. Petitioner's father is [REDACTED]

9 22. [REDACTED] became a United States citizen while Petitioner was still under the age of
10 eighteen.

11 23. Petitioner's derivative-citizenship claim arises under former INA § 321, 8 U.S.C. §
12 1432(a), because the relevant events occurred before Petitioner turned eighteen and
13 before the Child Citizenship Act of 2000 became effective.

14 24. Petitioner's family ties are overwhelmingly in the United States. His children are United
15 States citizens. His late spouse was also a United States citizen and served in the United
16 States Navy.

17 25. On or about March 1, 2026, Petitioner returned to the United States through the Andrade
18 Port of Entry.

19 26. At the port of entry, Petitioner presented as a lawful permanent resident.

20 27. DHS detained Petitioner and later initiated removal proceedings against him.

21 28. DHS issued a Notice to Appear alleging that Petitioner is not a citizen or national of the
22 United States.

1 29. DHS further alleged that Petitioner was previously admitted as a lawful permanent
2 resident on or about January 17, 1983.

3 30. DHS charged Petitioner as removable based on a prior federal conviction for importation
4 of methamphetamine under 21 U.S.C. §§ 952 and 960.

5 31. The Notice to Appear treats Petitioner as an alien subject to removal. That premise is
6 disputed because Petitioner may have derived United States citizenship before turning
7 eighteen.

8 32. Respondents have continued to detain Petitioner at the Otay Mesa Detention Center.

9 33. On information and belief, Respondents have not issued a reasoned written decision
10 addressing whether Petitioner derived United States citizenship through his father before
11 turning eighteen.

12 34. On information and belief, Respondents have not meaningfully addressed the statutory
13 requirements of former INA § 321, including Petitioner's lawful permanent residence as
14 a child, his father's naturalization, and the custody and family-status facts relevant to
15 derivative citizenship.

16 35. Petitioner remains in civil immigration custody even though the threshold question of
17 DHS's immigration authority over him has not been lawfully resolved.

18 36. Petitioner has no final order of removal.

19 37. Petitioner brings this habeas petition to challenge his present detention, not to bypass
20 ordinary review of a final order of removal.

21 **VI. LEGAL FRAMEWORK**

22 38. The INA's detention provisions apply only where the Government has statutory authority
23 to detain a person under the immigration laws.

1 39. DHS has no immigration detention authority over a United States citizen.

2 40. A person who derives citizenship by operation of law becomes a United States citizen
3 when the statutory requirements are satisfied. Citizenship does not depend on later
4 issuance of a certificate of citizenship. *Minasyan*, 401 F.3d at 1075–76.

5 41. The law governing a derivative-citizenship claim is the law in effect when the critical
6 events giving rise to eligibility occurred. *Minasyan*, 401 F.3d at 1075.

7 42. Because Petitioner was born in 1977 and turned eighteen before the Child Citizenship
8 Act of 2000 became effective, his claim is governed by former INA § 321, 8 U.S.C. §
9 1432(a).

10 43. Former INA § 321 governed automatic citizenship for children born outside the United
11 States to alien parents when the statutory requirements were satisfied before the child
12 turned eighteen.

13 44. Under former INA § 321, the analysis may require consideration of the child’s lawful
14 permanent residence, the timing of the parent’s naturalization, whether both parents
15 naturalized, whether one parent was deceased, whether the parents were legally
16 separated, whether the naturalized parent had legal custody, and other statutory facts.

17 45. Federal courts review nationality and derivative-citizenship questions independently,
18 without deferring to the agency’s legal interpretation of the citizenship statutes. *Hughes v.*
19 *Ashcroft*, 255 F.3d 752, 758–60 (9th Cir. 2001); *Minasyan*, 401 F.3d at 1074–75.

20 46. In alienage disputes, the Government bears the burden of establishing removability.
21 Where foreign birth creates a rebuttable presumption of alienage, a person claiming
22 citizenship may rebut that presumption with substantial credible evidence, after which the
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1 burden shifts back to the Government to prove alienage and removability. *Mondaca-Vega*
2 *v. Lynch*, 808 F.3d 413, 419–20 (9th Cir. 2015) (en banc).

3 47. Those burden principles matter here because Respondents are detaining Petitioner under
4 immigration authority while relying on the disputed premise that Petitioner is an alien.

5 48. Due process requires meaningful procedures before the Government may deprive a
6 person of liberty.

7 49. The need for process is especially strong where the Government detains a person under
8 immigration authority while the facts presented may establish United States citizenship.

9 50. The APA requires a reviewing court to hold unlawful and set aside agency action that is
10 arbitrary, capricious, not in accordance with law, in excess of statutory authority, or taken
11 without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (C), (D).

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

13 **Ground One: Unlawful Detention Under 28 U.S.C. § 2241 Because Respondents** 14 **Have Not Established Immigration Detention Authority Over Petitioner.**

15 51. Petitioner realleges and incorporates all preceding paragraphs.

16 52. Respondents are detaining Petitioner under immigration authority.

17 53. That authority depends on the premise that Petitioner is an alien subject to the INA's
18 detention and removal provisions.

19 54. Petitioner disputes that premise because he may have derived United States citizenship
20 through his father before turning eighteen.

21 55. Petitioner's derivative-citizenship claim arises from statutory facts existing before his
22 eighteenth birthday, including his lawful permanent residence as a child and his father's
23 naturalization.

1 56. DHS initiated removal proceedings by alleging that Petitioner is not a citizen or national
2 of the United States.

3 57. DHS cannot continue detaining Petitioner as an immigration detainee without
4 meaningfully addressing whether he derived citizenship by operation of law.

5 58. Respondents have not issued a reasoned determination establishing that Petitioner is
6 subject to immigration detention as an alien.

7 59. Respondents' detention of Petitioner therefore exceeds the lawful scope of immigration
8 detention authority.

9 60. Petitioner's continued custody violates 28 U.S.C. § 2241 and the Constitution and laws of
10 the United States.

11 61. Petitioner is entitled to habeas relief, including immediate release from immigration
12 custody

13 **Ground Two: Violation of the Fifth Amendment Due Process Clause.**

14 62. Petitioner realleges and incorporates all preceding paragraphs.

15 63. The Due Process Clause prohibits the Government from depriving any person of liberty
16 without due process of law.

17 64. Immigration detention is civil and may be imposed only when authorized by statute and
18 reasonably related to a legitimate regulatory purpose.

19 65. Respondents' continued detention of Petitioner is not reasonably related to a legitimate
20 immigration purpose unless DHS first establishes that Petitioner is subject to immigration
21 authority as an alien.

1 66. Petitioner has facts supporting derivative citizenship under former INA § 321, including
2 lawful permanent residence as a child and a United States citizen father who naturalized
3 while Petitioner was under eighteen.

4 67. Respondents have not provided Petitioner with a meaningful process to address the
5 citizenship issue before continuing his detention.

6 68. Petitioner's liberty interest is substantial. He is confined in civil immigration custody,
7 separated from his family and community, and facing removal proceedings despite facts
8 showing that he may be a United States citizen.

9 69. The risk of erroneous deprivation is high because DHS's detention decision rests on an
10 unresolved threshold allegation that Petitioner is not a citizen or national of the United
11 States.

12 70. The Government has no legitimate interest in detaining a person under immigration
13 authority without first addressing whether the person is subject to that authority.

14 71. Less restrictive alternatives cannot cure the threshold defect where Respondents have not
15 established that immigration detention authority applies at all.

16 72. Respondents' continued detention of Petitioner without a meaningful and reasoned
17 citizenship determination violates the Fifth Amendment.

18 73. Petitioner is entitled to habeas relief, including release from immigration custody.

19 **Ground Three: Violation of the Administrative Procedure Act.**

20 74. Petitioner realleges and incorporates all preceding paragraphs.

21 75. The APA requires a reviewing court to hold unlawful and set aside agency action that is
22 arbitrary, capricious, not in accordance with law, in excess of statutory authority, or taken
23 without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (C), (D).

1 76. Respondents' decision to detain Petitioner and maintain custody against him is agency
2 action subject to review to the extent no other adequate remedy provides complete relief.

3 77. DHS's custody decision and removal charging decision rest on the premise that Petitioner
4 is not a citizen or national of the United States.

5 78. DHS failed to meaningfully address an important aspect of the problem: whether
6 Petitioner derived United States citizenship through his father before turning eighteen.

7 79. DHS's own charging documents acknowledge facts relevant to the derivative-citizenship
8 analysis, including Petitioner's lawful permanent residence as a child.

9 80. By detaining Petitioner and maintaining custody without a reasoned citizenship
10 determination, Respondents acted contrary to law and in excess of statutory authority.

11 81. Respondents also acted arbitrarily and capriciously by failing to consider the derivative-
12 citizenship issue before continuing detention.

13 **Ground Four: Ultra Vires Assertion of Immigration Authority.**

14 82. Petitioner realleges and incorporates all preceding paragraphs.

15 83. DHS may initiate and maintain removal proceedings only against persons subject to
16 removal under the INA.

17 84. A United States citizen is not removable as an alien.

18 85. DHS initiated removal proceedings by alleging that Petitioner is not a citizen or national
19 of the United States.

20 86. Petitioner disputes that allegation because his citizenship may have arisen by operation of
21 law under former INA § 321.

1 87. DHS's authority to detain Petitioner and maintain removal proceedings depends on the
2 same threshold issue: whether Petitioner is an alien subject to the INA's removal and
3 detention provisions.

4 88. Respondents have not lawfully resolved that threshold issue.

5 89. Respondents' continued detention of Petitioner is ultra vires as applied because it rests on
6 an unresolved assertion of immigration authority over a person who may already be a
7 United States citizen.

8 90. To the extent the Court concludes that ultimate resolution of removability belongs in the
9 immigration proceedings or in a petition for review after a final order, Petitioner still
10 remains entitled to habeas relief from present unlawful custody because the issue before
11 this Court is whether Respondents may continue detaining him now.

12 **Ground Five: Violation of the Non-Detention Act.**

13 91. Petitioner realleges and incorporates all preceding paragraphs.

14 92. The Non-Detention Act provides that no citizen shall be imprisoned or otherwise
15 detained by the United States except pursuant to an Act of Congress. 18 U.S.C. §
16 4001(a).

17 93. The immigration detention statutes do not authorize detention of United States citizens.

18 94. If Petitioner derived citizenship under former INA § 321, Respondents' immigration
19 detention authority does not apply to him.

20 95. Respondents have continued to detain Petitioner without first lawfully addressing
21 whether he is a United States citizen.

1 96. Continued detention under immigration authority, without a lawful determination that
2 Petitioner is an alien subject to that authority, violates the Constitution, the INA, and the
3 Non-Detention Act.

4 **VIII. REQUEST FOR RELIEF**

5 97. Petitioner respectfully requests that the Court:

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

8 B. Declare that Respondents' continued detention of Petitioner is unlawful because
9 Respondents have not established lawful immigration detention authority in light of
10 Petitioner's derivative-citizenship claim;

11 C. Order Petitioner released immediately;

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

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

14 DATED this May 08, 2026.

15 /s/ Jose Torres

16 Jose Torres

17 *Counsel for Petitioner*