

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 **Kenny Moises Rodriguez-Silva**

7
8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10
11 Kenny Moises Rodriguez-Silva,
12
13
14
15
16
17
18
19
20
21
22
23
24
Petitioner,

v.

Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
Diego Field Office, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Christopher J.
LaRose, Warden of Otay Mesa Detention
Center,

Respondents.

Case No. '26CV1315 CAB MSB

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

1 Petitioner Kenny Moises Rodriguez-Silva, 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' continued detention of Petitioner without a prompt and individualized
8 custody determination violates the Immigration and Nationality Act, the Administrative
9 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 requiring a prompt individualized custody hearing (or other
12 prompt individualized custody determination) with appropriate procedural safeguards; (c)
13 release unless Respondents carry the applicable burden to justify continued detention;
14 and (d) 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.
- 24

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 Kenny Moises Rodriguez-Silva is detained by the Department of Homeland Security (“DHS”), through Immigration and Customs Enforcement (“ICE”), at OMD.
11. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.
12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
14. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration

1 Review and the immigration court system it operates is a component agency. She is sued
2 in her official capacity.

3 15. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
4 responsible for implementing and enforcing the INA in removal proceedings, including
5 for custody redeterminations in bond hearings.

6 16. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the Otay
7 Mesa Detention Center, where Petitioner is detained. He has immediate physical custody
8 of Petitioner. He is sued in his official capacity.

9 **V. FACTUAL BACKGROUND**

10 17. Petitioner is a native and citizen of Venezuela.

11 18. On or about December 29, 2023, Petitioner entered the United States near Eagle Pass,
12 TX. Upon apprehension, Petitioner expressed a fear of return to Venezuela.

13 19. Following his apprehension, Petitioner was released from immigration custody.

14 20. At some point thereafter, DHS initiated removal proceedings under INA § 240 by issuing
15 a Form I-862 Notice to Appear.

16 21. Petitioner's proceedings are currently pending before the BIA.

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

20 **VI. LEGAL FRAMEWORK**

21 23. Immigration detention is civil and nonpunitive in nature and may be imposed only to
22 serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings
23 or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*
24

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

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

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

14 26. Even where DHS invokes authority to revoke a prior release under 8 U.S.C. § 1226(b),
15 such revocation must be based on individualized facts and exercised only by officials
16 authorized by regulation. 8 C.F.R. § 1236.1(c)(9). A categorical or automatic re-
17 detention, or a revocation undertaken without a reasoned, individualized assessment,
18 exceeds statutory and regulatory limits and is inconsistent with due process.

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

20 **Ground One: Violation of the Administrative Procedure Act (APA) Abuse of** 21 **Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)**

22 27. Petitioner incorporates by reference all preceding paragraphs.
23
24

1 28. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,
2 including custody maintained in violation of the Constitution or laws of the United States.

3 Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et
4 seq. to the extent Respondents' custody decision constitutes reviewable agency action
5 and no other adequate remedy provides complete relief.

6 29. 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 30. 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 31. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
15 rational connection between facts found and choices made. *Dep't of Com. v. New York*,
16 139 S. Ct. 2551 (2019).

17 32. Petitioner was previously released from immigration custody and later re-detained. On
18 information and belief, Respondents re-detained Petitioner and/or revoked Petitioner's
19 prior release determination without a reasoned, individualized assessment of Petitioner's
20 current circumstances, and without providing a meaningful custody determination
21 adequate to test whether confinement remains necessary.

22 33. On information and belief, Respondents' re-detention and continued detention operate in
23 practice as a categorical denial of individualized custody review (including by treating
24

1 parole as the only release mechanism, refusing neutral custody redetermination, or
2 otherwise maintaining detention without an individualized custody analysis), rather than
3 a reasoned exercise of discretion on Petitioner's facts.

4 34. If Respondents contend Petitioner's prior release was revoked pursuant to 8 U.S.C. §
5 1226(b), then the revocation had to be the product of an individualized exercise of
6 discretion within the limits set by statute and the implementing regulation, including the
7 requirement that revocation authority be exercised only by the official(s) authorized
8 under 8 C.F.R. § 1236.1(c)(9).

9 35. By re-detaining Petitioner and maintaining custody without a reasoned, individualized
10 revocation decision and without procedures adequate to test the necessity of confinement
11 as applied, Respondents acted arbitrarily and capriciously and abused discretion in
12 violation of 5 U.S.C. § 706(2)(A).

13 36. Petitioner is entitled to habeas and APA relief setting aside the unlawful revocation/re-
14 detention decision as applied and ordering a prompt, individualized custody
15 determination by a neutral decisionmaker

16 **Ground Two: Violation of the Administrative Procedure Act (APA) Not in**
17 **Accordance with Law / In Excess of Statutory Authority / Without Observance of**
18 **Procedure Required by Law Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. §**
19 **1236.1(c)(9).**

20 37. Petitioner realleges and incorporates all preceding paragraphs.

21 38. The APA requires a court to set aside agency action that is "not in accordance with law,"
22 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
23
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 39. To the extent Respondents purported to revoke a prior release determination under 8
4 U.S.C. § 1226(b), that revocation had to be (a) made on an individualized basis and (b)
5 made by the official(s) authorized to exercise revocation authority under 8 C.F.R. §
6 1236.1(c)(9).

7 40. On information and belief, Petitioner’s custody posture has been determined, directed, or
8 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker
9 rather than an individualized revocation decision by an authorized official consistent with
10 8 C.F.R. § 1236.1(c)(9).

11 41. As a result, Respondents’ re-detention and continued detention are not in accordance with
12 law, are in excess of statutory authority, and/or were taken without observance of
13 required procedure, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5
14 U.S.C. § 706(2)(D).

15 42. Petitioner is entitled to habeas and APA relief ordering Respondents to cure these legal
16 defects and provide a prompt, individualized custody determination consistent with
17 governing law

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

21 43. Petitioner realleges and incorporates all preceding paragraphs.
22
23
24

1 44. The Due Process Clause prohibits the federal government from depriving any person of
2 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.
3 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

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

8 46. Petitioner is detained and has not received a prompt, individualized custody hearing
9 before a neutral adjudicator at which release on bond or conditions may be meaningfully
10 considered.

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

16 48. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)
17 Petitioner's private liberty interest is substantial, (b) the risk of erroneous deprivation is
18 high absent an individualized, neutral custody determination, and (c) the Government's
19 interests can be served through less restrictive alternatives and conditions of release
20 where appropriate.

21 49. Continued detention without a prompt, individualized, constitutionally adequate custody
22 determination violates the Due Process Clause as applied and warrants habeas relief
23 under 28 U.S.C. § 2241.

VIII. REQUEST FOR RELIEF

50. Petitioner respectfully requests that the Court:

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

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

C. Order Petitioner released;

D. In the alternative, Order Respondents to provide a prompt, individualized custody determination before a neutral adjudicator that meaningfully considers whether continued detention is justified and, if not, what conditions of release would reasonably address flight risk or danger;

E. Award Petitioner attorneys' fees and costs to the extent permitted by law, including under 28 U.S.C. § 2412; and

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

DATED this March 02, 2026.

/s/ Jose Torres

Jose Torres

Counsel for Petitioner