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6 **Edwin Oswaldo Aquino-Alvarado**

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9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Edwin Oswaldo Aquino-Alvarado,
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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. '26CV2981 AGS DDL

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

1 Petitioner Edwin Oswaldo Aquino-Alvarado, through counsel, petitions for a writ of
2 habeas corpus under 28 U.S.C. § 2241 and alleges:

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4 **I. INTRODUCTION**

- 5 1. Petitioner Edwin Oswaldo Aquino-Alvarado seeks a writ of habeas corpus under 28
6 U.S.C. § 2241 because he is in federal immigration custody and is being detained in
7 violation of the Constitution and laws of the United States.
8 2. Respondents' continued detention of Petitioner without a prompt, meaningful, and
9 individualized custody determination violates the Immigration and Nationality Act, the
10 Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
11 3. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. §
12 2243; an order directing Respondents to release Petitioner immediately, or, in the
13 alternative, to provide a prompt constitutionally adequate custody hearing before a
14 neutral adjudicator at which the Government bears the burden of justifying continued
15 detention; and any further relief the Court deems just and proper.

16 **II. JURISDICTION AND VENUE**

- 17 4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"
18 under color of federal authority within this judicial district and alleges that such custody
19 violates the Constitution and laws of the United States.
20 5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
21 6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
22 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
23 7. Venue is proper in this District because Petitioner is detained within the South District of
24 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 Edwin Oswaldo Aquino-Alvarado 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 Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens.
14. This Petition challenges Petitioner’s present physical confinement under 28 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner’s custody and continued detention.

V. FACTUAL BACKGROUND

15. Petitioner Edwin Oswaldo Aquino-Alvarado is a native and citizen of Guatemala.

16. Petitioner was born [REDACTED] in Guatemala.

17. Petitioner's Alien Registration Number is A [REDACTED] His Notice to Appear identifies him as Edwin Oswaldo Aquino Alvarado, a native and citizen of Guatemala.

18. Petitioner reported in his intake that he entered the United States one time, on or about December 26, 2024, without inspection and undetected. DHS separately alleges in the Notice to Appear that Petitioner arrived in the United States at or near Tucson, Arizona, on or about January 5, 2025.

19. DHS alleges that Petitioner was not admitted or paroled into the United States after inspection by an immigration officer.

20. DHS further alleges that Petitioner was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document at the time of application for admission.

21. DHS charged Petitioner as removable under INA § 212(a)(6)(A)(i), as a person present in the United States without being admitted or paroled, and INA § 212(a)(7)(A)(i)(I), as an immigrant not in possession of valid entry documents.

22. Petitioner has no known criminal history. The intake reflects that he reported no arrests, no criminal convictions, and no trouble with police in the United States or any other country.

23. Before detention, Petitioner lived in Los Angeles, California.

24. Petitioner is married and has two children in Guatemala.

1 25. Petitioner fears returning to Guatemala. According to the intake notes, his fear relates to
2 extortion by  who threatened his family, apparently because of his work and
3 perceived ability to pay. The threats were made by phone, and Petitioner reported that
4 there was no attempt to contact authorities.

5 26. Petitioner was detained by immigration authorities on or about April 12, 2026.

6 27. Petitioner remains detained at the Otay Mesa Detention Center.

7 28. Petitioner is not serving a criminal sentence, is detained solely under federal immigration
8 authority, and is not subject to a final order of removal.

9 29. Petitioner is in pending removal proceedings under INA § 240.

10 30. Petitioner requested a custody redetermination/bond hearing, but no constitutionally
11 adequate bond hearing has been provided.

12 31. Petitioner challenges DHS/ICE's decision to detain and continue detaining him during
13 pending removal proceedings without an individualized custody determination or bond
14 hearing.

15 VI. LEGAL FRAMEWORK

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

21 33. Noncitizens in removal proceedings are entitled to the protections of the Due Process
22 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
23 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
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1 the factual and legal basis for continued civil confinement before a neutral
2 decisionmaker.

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

9 35. Because Petitioner is not subject to a final order of removal and is not serving a criminal
10 sentence, his detention must remain discretionary and individualized. Continued
11 detention without a meaningful custody determination is inconsistent with § 1226(a)'s
12 discretionary framework, particularly where Petitioner has no known criminal history,
13 lived in Los Angeles before detention, worked in construction, has support in the United
14 States, is married with two children in Guatemala, and has a pending fear-based claim for
15 protection from removal based on threats and extortion by maras in Guatemala.

16 VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

17 Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion 18 and Arbitrary and Capricious Continued Detention.

19 36. Petitioner incorporates by reference all preceding paragraphs.

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

3 38. 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 39. 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 40. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
12 rational connection between the facts found and the choice made. *Dep't of Com. v. New*
13 *York*, 139 S. Ct. 2551 (2019).

14 41. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and
15 Respondents have not identified any valid basis for mandatory detention. His continued
16 confinement therefore must be justified by an individualized and reasoned custody
17 decision tied to legitimate regulatory purposes, not by detention as a default result of
18 being placed in removal proceedings.

19 42. Respondents have detained and continued to detain Petitioner without a reasoned,
20 individualized assessment of his actual circumstances. Petitioner has no known criminal
21 history, lived in Los Angeles before detention, worked in construction, is married, has
22 two children in Guatemala, has support in the United States, and has a fear-based claim
23 related to threats and extortion by maras in Guatemala. The intake materials do not show
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1 facts establishing that he is a danger to the community or that no conditions could
2 reasonably secure his appearance.

3 43. Respondents have also failed to meaningfully consider whether any legitimate
4 governmental interest could be satisfied through less restrictive alternatives to detention,
5 including release on recognizance, bond, supervision, reporting requirements, or other
6 noncustodial conditions. This failure is especially unreasonable given Petitioner's lack of
7 known criminal history, support, employment history, pending protection claim, and the
8 absence of any individualized finding that detention is necessary.

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

13 45. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
14 custody decision as applied and ordering his immediate releasee.

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

18 46. Petitioner realleges and incorporates all preceding paragraphs.

19 47. The APA requires a court to set aside agency action that is "not in accordance with law,"
20 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
21 procedure required by law." 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §
22 706(2)(D).

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

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

9 50. Respondents have maintained Petitioner's detention without providing a lawful custody
10 process consistent with 8 U.S.C. § 1226(a). On information and belief, Petitioner has not
11 received any written or oral custody determination identifying an individualized basis for
12 continued detention, and he has not received a meaningful opportunity to contest whether
13 his confinement is necessary despite his lack of known criminal history, his work history
14 in construction, his support in the United States, and his pending fear-based claim for
15 protection from removal.

16 51. 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 52. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
22 custody decision as applied and ordering his immediate release.
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Ground Three: Violation of the Fifth Amendment Procedural Due Process — As-Applied Challenge to Continued Civil Detention Without a Constitutionally Adequate Custody Determination).

53. Petitioner realleges and incorporates all preceding paragraphs.

54. 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).

55. 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).

56. 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.

57. 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 58. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework,
2 Petitioner's private liberty interest is substantial. Petitioner is detained in a civil
3 immigration facility, is not serving a criminal sentence, has no known criminal history,
4 lived in Los Angeles before detention, worked in construction, is married, has two
5 children in Guatemala, and has a pending removal case in which asylum has been
6 identified as potential relief.

7 59. The risk of erroneous deprivation is high because Petitioner has remained detained
8 without a constitutionally adequate individualized custody determination. On information
9 and belief, Respondents have not meaningfully considered Petitioner's actual
10 circumstances, including his lack of known criminal history, support in the United States,
11 employment history, fear of return to Guatemala, lack of any individualized danger
12 finding, and the availability of less restrictive alternatives.

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

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

20 62. Petitioner is entitled to habeas relief ordering his immediate release.
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VIII. REQUEST FOR RELIEF

63. 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 immediately;
- D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and
- E. Grant such other and further relief as the Court deems just and proper.

DATED this May 12, 2026.

/s/ Jose Torres

Jose Torres
Counsel for Petitioner