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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Erik CARBALLO-FIGUEROA,

Petitioner,

v.

Patrick DIVVER, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations San Diego Field Office; **Markwayne MULLIN**, in his official capacity as Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY**; **Todd BLANCHE**, in his official capacity as Acting U.S. Attorney General; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; **Christopher J. LAROSE**, in his official capacity as Warden of the Otay Mesa Detention Center

Respondents.

Case No. '26CV2984 BAS B JW

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 AND
ORDER TO SHOW CAUSE
WITHIN THREE DAYS**

**IMMIGRATION HABEAS
CASE**

Petitioner, Erik CARBALLO-FIGUEROA (“Petitioner”), through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests an order to show cause within three days why Petitioner should not be released. In support, Petitioner alleges as follows:

I. INTRODUCTION

1. Petitioner, a citizen of Mexico, seeks a writ of habeas corpus under 28 U.S.C. § 2241 because his ongoing immigration detention violates the Due Process Clause of the Fifth Amendment. He is currently detained at the Otay Mesa Detention Center in San Diego, California, within this Court’s jurisdiction.

2. Immigration authorities suddenly detained Petitioner through a warrantless public arrest executed under false pretenses and without providing any meaningful procedural safeguards.

3. Respondents continue to detain Petitioner even though immigration authorities imposed custody through a warrantless public arrest executed without any prior individualized custody determination and without demonstrating that detention was necessary to address any individualized risk of flight or danger.

4. Petitioner therefore seeks this Court’s intervention through a writ of habeas corpus ordering his immediate release from unlawful detention.

5. In the alternative, Petitioner requests that this Court order Respondents to provide a prompt and constitutionally adequate individualized custody determination before a neutral decisionmaker at which the government bears the burden of justifying continued detention by clear and convincing evidence that Petitioner poses a danger to the community or a risk of flight.

II. JURISDICTION & VENUE

6. This case arises under the INA, 8 U.S.C. §§ 1101–1538, its implementing regulations, and the United States Constitution.

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, Federal Rule of Civil Procedure 65, and the Court's inherent equitable powers.

9. Venue is proper in this District because Petitioner is detained within the Southern District of California and Respondents exercise custody over Petitioner within this District.

III. EXHAUSTION

10. Petitioner is not required to exhaust administrative remedies prior to seeking habeas relief. Exhaustion for habeas claims is prudential rather than jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be futile, or irreparable injury would result. *Id.* at 1000.

11. Administrative remedies would be futile, inadequate, and not efficacious for Petitioner. Exhausting his constitutional claim would be futile because the agency does not have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion”).

12. Moreover, Petitioner has no meaningful administrative mechanism through which to challenge the legality of his continued detention because Respondents have not provided him with a constitutionally adequate individualized custody determination. Requiring exhaustion under these circumstances would therefore be futile and would only prolong Petitioner’s unlawful deprivation of liberty.

13. Even if exhaustion were not futile, waiver is warranted because Petitioner's claims present purely legal issues that are appropriately resolved by this Court. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless it appears from the application that the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been described as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

16. Petitioner, Erik CARBALLO-FIGUEROA, is a citizen of Mexico who has resided in the U.S. since approximately 2005 and is currently detained at the Otay Mesa Detention Center.

17. Respondent Patrick DIVVER is the Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”). In that capacity, he oversees immigration enforcement and detention operations within this District and is responsible for decisions regarding the custody and removal of noncitizens detained by ICE in this jurisdiction.

18. Respondent Markwayne MULLIN is the Secretary of DHS. The Secretary is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner’s detention. The Secretary has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

20. Respondent Todd BLANCHE is the Acting Attorney General of the United States, or his successor. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

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

22. Respondent Christopher J. LAROSE is the Warden of the Otay Mesa Detention Center, the official responsible for the custody and day-to-day detention of Petitioner. He is sued in his official capacity.

VI. FACTUAL ALLEGATIONS

23. Petitioner is a citizen of Mexico who has lived in the United States for over 20 years. He first entered the United States without inspection in approximately 2005.

24. Since that time, Petitioner has built a stable life in this country. He has worked consistently, contributed to his community, and maintained close family ties in the United States, including with his three U.S. citizen children.

25. Petitioner has no criminal history and poses no danger to the community. Throughout his time in the United States, he has lived peacefully in the community and complied with the law.

26. In early 2011, Petitioner was placed in removal proceedings and granted voluntary departure. Shortly thereafter, Petitioner reentered the United

States without inspection because his young U.S. citizen child depended on him for emotional and financial support.

27. On April 23, 2026, Petitioner was working at   in Vista, California, when an individual dressed in civilian clothing entered the restaurant and approached Petitioner's adult daughter, Dianna Paola Carballo Guzman ("Dianna"), who was working as a cashier. The individual falsely claimed that he had struck a Mazda vehicle in the parking lot and asked whether the owner worked at the restaurant. (See Ex. A, Declaration of Dianna Paola Carballo Guzman).

28. Based on the description of the vehicle, Dianna understood that the individual was referring to Petitioner's vehicle. She informed Petitioner, and together they walked outside to address the purported accident. Because Petitioner does not speak much English, Dianna accompanied him to assist with communication.

29. The individual asked Petitioner whether the Mazda parked outside belonged to him. Petitioner confirmed that it did. The individual then stated that he needed the vehicle registration information for insurance purposes and accompanied Petitioner toward the vehicle.

30. Once outside, Dianna observed that the individual's vehicle was parked in front of Petitioner's vehicle and that there did not appear to be any damage to

either vehicle. Suddenly, approximately three trucks arrived, and several immigration agents wearing vests and badges exited the vehicles and surrounded Petitioner.

31. The agents aggressively placed Petitioner in handcuffs. At one point, an agent forced Petitioner to the ground and placed a knee on Petitioner's arm even though Petitioner was not resisting or attempting to flee. The agents never asked Petitioner for identification before arresting him and never presented or provided an arrest warrant or any other paperwork. When Dianna attempted to ask why her father was being arrested, the agents ignored her and instructed her to step back. (See Ex. A, Declaration of Dianna Paola Carballo Guzman).

32. The circumstances of Petitioner's arrest demonstrate the absence of any meaningful, individualized custody determination prior to detention and reflect arbitrary enforcement practices inconsistent with due process protections.

33. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. (See Ex. B, ICE Online Detainee Locator System).

34. Since his detention, Petitioner has not been provided a prompt, individualized custody determination before a neutral decisionmaker at which the government must justify his continued detention.

35. EOIR records reflect that Petitioner's Notice to Appear was docketed only after Petitioner had already been arrested and detained. (See Ex. C, EOIR Case Information).

VII. LEGAL FRAMEWORK

36. The federal habeas statute authorizes this Court to review the legality of Petitioner's detention and to order his release where that detention violates the Constitution or laws of the United States. See 28 U.S.C. § 2241.

37. Civil immigration detention is subject to the constraints of the Due Process Clause of the Fifth Amendment. The Supreme Court and the Ninth Circuit have long recognized that noncitizens may not be deprived of liberty without constitutionally adequate process.

38. At a minimum, due process requires that immigration detention be accompanied by a meaningful, individualized custody determination regarding whether continued detention is justified based on legitimate governmental interests, including whether the individual poses a danger to the community or presents a risk of flight. *See Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

39. These constitutional protections apply regardless of the statutory authority under which the government purports to detain an individual. Even where detention is authorized by statute, it must be implemented in a manner consistent with due process.

40. The government's failure to provide Petitioner with a prompt and individualized custody determination—at which it bears the burden of justifying continued detention—renders his ongoing confinement arbitrary and unconstitutional.

VIII. CAUSES OF ACTION

Count I: Violation of Fifth Amendment Due Process Rights

41. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

42. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Civil immigration detention is subject to constitutional limitations and must bear a reasonable relationship to a legitimate governmental purpose. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

43. The Due Process Clause applies to all persons within the United States, including noncitizens, and prohibits the government from depriving individuals of liberty without fair and meaningful procedures.

44. Procedural due process requires that individuals be provided notice and a meaningful opportunity to be heard before being deprived of liberty. As the Supreme Court has explained, “the fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner.” *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

45. Petitioner has lived in the United States for more than two decades, during which time he established substantial family and community ties, supported his U.S. citizen children, and lived peacefully in the community without any criminal history.

46. Immigration authorities abruptly detained Petitioner through a warrantless public arrest executed under false pretenses and without any meaningful procedural safeguards or prior individualized custody determination.

47. Nothing before this Court suggests that Petitioner posed a danger to the community or a risk of flight sufficient to justify a warrantless civil immigration arrest and immediate detention. Respondents seized and detained Petitioner without demonstrating any individualized necessity for such intrusive action.

48. Civil immigration detention that is not accompanied by constitutionally adequate procedural protections violates the Due Process Clause of the Fifth Amendment. At a minimum, due process requires an individualized custody determination regarding whether continued detention is necessary to serve the government’s legitimate interests in ensuring appearance at proceedings and protecting the community. *See Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

49. Courts have long recognized that civil immigration detention is subject to the constraints of the Due Process Clause and that detention imposed without meaningful procedural safeguards raises serious constitutional concerns. *See Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

50. The circumstances of Petitioner's arrest and continued detention—including the use of deception to lure Petitioner outside his workplace, the warrantless public arrest in front of Petitioner's young adult daughter, the absence of any demonstrated danger or flight risk, and the lack of any individualized custody determination—render his detention arbitrary and unconstitutional. Rather than pursuing ordinary civil immigration procedures, Respondents used deception and surprise to isolate and seize Petitioner in public without meaningful procedural safeguards.

51. Because Respondents continue to detain Petitioner without constitutionally adequate procedures and without individualized justification, Petitioner's detention is unlawful and he is entitled to habeas relief.

Count II: Violation of the Administrative Procedure Act – Arbitrary and Capricious Detention

52. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

53. The Administrative Procedure Act (“APA”) prohibits agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

54. Respondents’ decision to arrest and detain Petitioner without any meaningful individualized custody determination or articulated justification constitutes arbitrary and capricious agency action.

55. Despite Petitioner’s lack of criminal history and long-standing compliance with the law, Respondents abruptly detained him through a warrantless public arrest executed under false pretenses and without any articulated individualized necessity for detention.

56. Respondents’ continued detention of Petitioner without an individualized custody determination constitutes agency action that is arbitrary, capricious, and not in accordance with law.

57. Absent intervention by this Court, Respondents’ unlawful detention will continue to deprive Petitioner of liberty.

58. Petitioner is therefore entitled to relief under the APA, including release from detention or, at minimum, an order requiring Respondents to provide a prompt, individualized custody determination consistent with governing law.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from immigration detention without conditions because his continued confinement violates the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act;
- c. In the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody determination before a neutral decisionmaker, at which the government bears the burden of justifying continued detention by clear and convincing evidence that Petitioner poses a danger to the community or a risk of flight;
- d. In the alternative, issue an order requiring Respondents to show cause within three (3) days why Petitioner should not be released from custody;
- e. Declare that Petitioner's detention is unlawful under the United States Constitution and the Administrative Procedure Act;

- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 12th of May 2026.

/s/ Rose M. Thompson

Rose M. Thompson
Attorney at Law

Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am counsel for Petitioner. I have discussed the facts and circumstances described in this Petition with Petitioner and members of his family, and I have reviewed records and information relating to Petitioner's case. Based on those discussions and materials, I hereby verify that the statements contained in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Date: May 12, 2026

Respectfully submitted,

/s/ Rose M. Thompson

Rose M. Thompson
Attorney at Law

Attorney for Petitioner