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5 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
6 **SAN DIEGO**

7 Pedro DIAZ,
Petitioner,

8 v.

Todd Blanche, Acting Attorney
9 General of the United States,
Department of Justice;

10 Markwayne Mullin, Secretary of
Homeland Security;

12 Todd Lyons, Senior Official
Performing the Duties of the Director
13 of U.S. Immigration and Customs
Enforcement;

14 Patrick Divver, Field Office Director of
15 the San Diego Immigration and
Customs Enforcement Office;

16 Jorge Velarde, Assistant Field Office
17 Director of the Immigration and
Customs Enforcement, Otay Mesa
18 Detention Center;

19 Christopher J. LaRose; Senior Warden,
Otay Mesa Detention Center;

20 Respondents.
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Case No. '26CV3595 TWR SBC

Agency No. 

**PETITION FOR WRIT OF
HABEAS CORPUS BY A
PERSON IN FEDERAL
CUSTODY UNDER
28 U.S.C. § 2241 AND ORDER TO
SHOW CAUSE**

INTRODUCTION

1. Petitioner, Pedro Diaz ([REDACTED]) (hereinafter “Petitioner” or “Mr. Diaz”), a 59-year-old Mexican national and loving father, has been re-detained at the Otay Mesa Detention Center, in violation of his due process rights, since on or about June 8, 2026. He was last in Immigration and Customs Enforcement (“ICE”) custody in October 2011 when he was released pursuant to a \$4,000 bond. Ex. A, Notice of Release. There have been no changed circumstances in his life since. He has been a client of Counsel’s office since March 2026, when he and his family retained us to recalendar his administratively closed removal proceedings and seek to have those proceedings terminated because he is eligible to adjust his status and receive lawful permanent residency.
2. This petition alleges Mr. Diaz has been re-detained unjustly in violation of his Constitutional right to liberty. Therefore, he requests this court make an order to show cause; that he may not be transferred during the pendency of this petition; and that he be released immediately upon the conclusion of the review of all filings. Alternatively, we request an order declaring Petitioner to be in custody pursuant to 8 U.S.C. § 1226(a) and requiring a bond hearing before a fair and neutral arbiter.
3. Petitioner prefers not to file a temporary restraining order given the clear legal precedent in this case substantiating Petitioner’s claims, and would instead request

1 Respondents be required to provide a response within three days or alternatively
2 timing pursuant to Chief Judge Order No. 144.

3 **JURISDICTION**

4 4. This action arises under the Constitution of the United States and the Immigration
5 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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

9 6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*
10 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs
11 Act, 28 U.S.C. § 1651.

12 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
13 jurisdiction. Petitioner is not contesting the commencement or adjudication of
14 removal proceedings against him, nor is he raising an issue with respect to the
15 execution of removal. The petition is independent of the removal proceedings and
16 all questions related to the commencement of removal proceedings or any part of
17 the removal process. “[C]laims that are independent of or collateral to the removal
18 process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d
19 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit
20 challenges to unlawful practices merely because they are in some fashion

1 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
2 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
3 and 1252(b)(9).

4 **VENUE**

5 8. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center
6 in the County of San Diego, which is within the jurisdiction of this District.
7 Further, a substantial part of the events or omissions giving rise to his claims
8 occurred in this District and no real property is involved in this action. 28 U.S.C.
9 § 1391(e).

10 **REQUIREMENTS OF 28 U.S.C. § 2243**

11 9. The Court must grant the petition for writ of habeas corpus or issue an order to
12 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
13 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
14 must require respondents to file a return “within *three days* unless for good cause
15 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
16 10. Courts have long recognized the significance of the habeas statute in protecting
17 individuals from unlawful detention. The Great Writ has been referred to as
18 “perhaps the most important writ known to the constitutional law of England,
19 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
20 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

Petitioner

11. Petitioner, Mr. Diaz, is a Mexican national who is in custody at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. When at liberty, he and his family reside at their home in San Diego, California. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

12. Respondent, Todd Blanche, Acting U.S. Attorney General, is sued in their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (“DOJ”). In that capacity, they have the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the Board of Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of Petitioner.

13. Respondent, Markwayne Mullin, Secretary of U.S. Department of Homeland Security (“DHS”), is sued in their official capacity as the Secretary of the DHS. In this capacity, Respondent Secretary is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement (“ICE”), the component agency responsible for Petitioner’s detention and custody. Respondent Secretary is a legal custodian of Petitioner.

1 14. Respondent, Todd Lyons, is sued in his official capacity as the Senior Official
2 Performing the Duties of the Director ICE. Respondent Lyons is the legal
3 custodian of Petitioner.

4 15. Respondent, Patrick Divver, is sued in his official capacity as the Field Office
5 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of
6 Petitioner and has authority to release him.

7 16. Respondent, Jorge Velarde, is sued in his official capacity as Assistant Field
8 Office Director of the ICE at the Otay Mesa Detention Center. Respondent
9 Velarde is a legal custodian of Petitioner and has direct authority to release him.

10 17. Respondent, Christopher J. LaRose, is sued in his official capacity as the Senior
11 Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical
12 custodian of Petitioner and has direct authority to release him.

13 **STATEMENT OF FACTS**

14 18. Petitioner, Mr. Diaz, is a loving father and San Diego resident who has lived in
15 the United States since August 18, 2006, when he entered the United States on a
16 V1 visa.

17 19. In 2011, Mr. Diaz was arrested, charged, and convicted for driving under the
18 influence of alcohol ("DUI"). On September 9, 2011, following those criminal
19 proceedings, ICE detained him and issued to him a Notice to Appear ("NTA") in
20 removal proceedings. Ex. B, NTA.

1 20.Despite his DUI conviction, on October 5, 2011, Mr. Diaz won his release from
2 ICE custody pursuant to a \$4,000 bond. Ex. A. He remained at liberty without any
3 changes in his circumstances since. His removal proceedings were
4 administratively closed February 6, 2013, as a matter of prosecutorial discretion.

5 21.In March 2026, Mr. Diaz and his family hired our office to assist him in seeking to
6 adjust his status to a lawful permanent resident through the petition of his U.S.
7 citizen daughter.

8 22.On April 7, 2026, we assisted his U.S. citizen daughter, Yesenia, to file an
9 immediate relative petition for Mr. Diaz so that he may eventually adjust his status
10 to become a lawful permanent resident. That petition remains pending.

11 23.Thereafter, on or about May 14, 2026, Mr. Diaz, through present Counsel's office,
12 filed a motion to re-calendar¹ his removal proceedings and terminate those
13 proceedings so Mr. Diaz may seek to change his immigration status. Counsel for
14 the Department of Homeland Security ("DHS") did not oppose the motion to re-
15 calendar proceedings, but filed an opposition to the motion to terminate his
16 proceedings. An immigration judge granted the motion to re-calendar
17 proceedings. Ex. C, Order.

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¹ It is common for DHS to seek re-calendarings of removal proceedings. It is less
common for a respondent in removal proceedings to seek re-calendarings of removal
proceedings. Mr. Diaz is in the less common category wherein he is proactively
seeking to correct his immigration status.

1 24.Despite Mr. Diaz being proactive and re-calendaring his removal proceedings, and
2 filing immigration documents to change his status, and despite him not having any
3 additional encounters with law enforcement since his conviction for a DUI in
4 2011, ICE re-detained Mr. Diaz in June 2026.

5 25.Therefore, upon consideration of the legal bases below, Mr. Diaz requests this
6 court issue a habeas order requiring he be immediately released from custody
7 because there is no basis for his re-detention or that he be provided a lawful bond
8 hearing before a fair, neutral, and open-minded arbiter so that his unlawful
9 detention does not continue.

10 LEGAL FRAMEWORK

11 26. The Immigration and Nationality Act (“INA”) prescribes three basic forms of
12 detention for the vast majority of noncitizens in removal proceedings conducted
13 pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of
14 noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C.
15 § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S.
16 who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

17 27. Immigration detention “has two regulatory goals: ensuring the appearance of
18 [noncitizens] at future immigration proceedings and preventing danger to the
19 community.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations
20 omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

1 28. Someone like Mr. Diaz who was previously released from custody has been
2 deemed, to be neither a flight risk nor a danger. 8 C.F.R 1236.1(c)(8) (authorizing
3 release of noncitizens under 1226(a) if they “would not pose a danger to property
4 or persons,” and are “likely to appear for any future proceeding”); 8 C.F.R.
5 212.5(b) (authorizing parole from custody of noncitizens deemed “neither a
6 security risk nor a risk of absconding”).

7 29. In cases of individuals previously released by DHS, re-detention under section
8 1226(a) requires an individualized determination of a material change in
9 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968
10 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
11 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
12 637, 640 (BIA 1981) (“[W]here a previous bond determination has been made by
13 an immigration judge, no change should be made by [DHS] absent a change of
14 circumstance.”).

15 30. The Constitution establishes due process rights for “all ‘persons’ within the
16 United States, including [noncitizens], whether their presence here is lawful,
17 unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990
18 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). These due
19 process rights are both substantive and procedural.

1 31. “The touchstone of due process is protection of the individual against arbitrary
2 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including
3 “the exercise of power without any reasonable justification in the service of a
4 legitimate government objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,
5 846 (1998).

6 32. These protections extend to noncitizens facing detention, as “[i]n our society
7 liberty is the norm, and detention prior to trial or without trial is the carefully
8 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
9 Accordingly, “[f]reedom from imprisonment—from government custody,
10 detention, or other forms of physical restraint—lies at the heart of the liberty that
11 [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

12 33. Substantive due process thus requires that all forms of civil detention—including
13 immigration detention—bear a “reasonable relation” to a non-punitive purpose.
14 *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has
15 recognized only two permissible non-punitive purposes for immigration detention:
16 ensuring a noncitizen’s appearance at immigration proceedings and preventing
17 danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*,
18 538 U.S. 510, 519–20, 527–28, 31 (2003).

19 34. Generally, “the Constitution requires some kind of a hearing *before* the State
20 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127