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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**MARCELA PEREZ HERNANDEZ**

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. '26CV3600 JES MSB

**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, Marcela Perez Hernandez (“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 her ongoing immigration detention violates the Due Process Clause of the Fifth Amendment. She is currently detained at the Otay Mesa Detention Center (herein OMDC) 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 after a warrantless public arrest done while she was a passenger in an automobile.

4. Petitioner therefore seeks this Court’s intervention through a Writ of Habeas Corpus ordering her 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 has exhausted her remedies at a prior bond hearing, held on June 11, 2026. The Immigration Judge devalued the evidence of her prior entry with a border crossing card and ordered her held without bond.

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 her continued detention because Respondents have not given weight to her prior entries with a border crossing card, nor her illegal arrest by Border Patrol Officials.

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, Marcela Perez Hernandez, is a 57-year-old Mexican citizen and has resided in the U.S. since approximately 1998 and is currently detained at the OMDC.

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 28 years. She first entered the United States, with a border crossing card, in approximately 1998. She has departed and entered the United States with inspection.

24. Since that time, Petitioner has built a stable life in this country. She has worked consistently as a housekeeper, contributed to her community through her involvement in church, and maintains close family ties in the United States, including with her 19-year old son, who is diagnosed with severe autism. She has a United States Citizen sister and brother and a legal permanent resident mother.

25. Petitioner has no immigration or criminal history and poses no danger to the community. Throughout her time in the United States, she has lived peacefully in the community, devoted as a single mother to her son, and complied with the law.

26. On May 14, 2026, Petitioner was a passenger in an automobile with three other people driving north on Highway 15. A Federal Border patrol unit suspected the driver was smuggling aliens because the automobile had a Baja California plate and it had crossed four hours previously through the San Ysidro Port of Entry. See, I-213, EXHIBIT A.

27. The Federal Border Patrol allegedly viewed suspicious activity such as not looking at him and appeared to be monitoring their location. Approximately seventy miles from the San Ysidro POE, the officers pulled over the automobile by

the Murrieta Hot Springs Road by Temecula, California. The driver was a United States Citizen and indicated they were all church members on their way to an event. See, See, Exhibit A, I – 213.

28. The other occupants were pulled out of the vehicle and questioned, and Ms. Perez revealed she last entered the U.S. with her border crosser card and is a citizen of Mexico. The Border Patrol officer entered her fingerprints into a database and it was discovered her last entry was with a border crossing card in 2007. Her prints revealed no criminal convictions.

29. Respondent was arrested and detained for overstaying her visa and placed in a holding cell for seven days, during which time she could not communicate with her family. She was transferred to OMDC on May 22, 2026, where she remains today.

30. EOIR records reflect that Petitioner's Notice to Appear was docketed only after Petitioner had already been arrested and detained for eight days. She was held in a holding tank for seven days. (See Ex. B, EOIR Case Information). She has been unlawfully detained for approximately one month.

31. At her bond hearing on June 11, 2026, the government argued a visa renewal application at the U.S. Consulate had been refused in 2001, and claimed their own evidence - the I -213 -was incorrect. Petitioner denied this as the renewal of her visa

may have been refused, but she had retained her original border crossing card and was able to successfully enter the U.S.

32. Nonetheless, Respondents have charged Petitioner with entering the U.S. without inspection and denied her a bond under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

33. The circumstances of Petitioner's arrest demonstrate the absence of a meaningful, individualized custody determination and reflect arbitrary enforcement practices inconsistent with due process protections. Approximately 87,500 people cross the San Ysidro Port of Entry daily, in 41,700 personal vehicle. See, <https://border-times.com/en/blog/san-ysidro-border-crossing-guide>. It is outrageous for the Border Patrol to target the vehicle petitioner was in because it was one of the 41,700 vehicles that had crossed that day.

## **VII. LEGAL FRAMEWORK**

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

35. 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.

36. 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).

37. 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.

38. The government's detention of Petitioner is contrary to the I-213 they filed to attempt to demonstrate she entered without inspection and the illegal arrest and detention for seven days with no access to a hearing or counsel is a violation of her due process rights to a fair and full hearing. Her ongoing confinement is arbitrary and unconstitutional.

## **VIII. CAUSES OF ACTION**

### **Count I: Violation of Fifth Amendment Due Process Rights**

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

40. 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).

41. 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.

42. 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).

43. Petitioner has lived in the United States for almost three decades, during which time she established substantial family and community ties, supported her U.S. citizen child, as a single mother, and lived peacefully in the community without any criminal history.

44. Immigration authorities abruptly detained Petitioner through a warrantless collateral arrest executed under assumptions, and without any meaningful procedural safeguards or prior individualized custody determination.

Their reasoning to pull over the automobile in which Petitioner was a passenger is nonsensical.

45. 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.

46. Civil immigration detention that is not accompanied by constitutionally adequate procedural protections violates the Due Process Clause of the Fifth Amendment.

47. 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).

48. The circumstances of Petitioner's arrest and continued detention—including the use of faulty reasoning regarding the timing of when a automobile crosses the border to the time of arrest, does not comport with any indication that the driver is an alien smuggler. There was no reason to detain Petitioner as a passenger in a car in which there were no definable grounds to pull over and the absence of any demonstrated danger or flight risk render her detention arbitrary and unconstitutional. Rather than pursuing ordinary civil immigration procedures, Respondents used a

absurd reason to seize Petitioner from her friend's car, without meaningful procedural safeguards.

49. Because Respondents continue to detain Petitioner without constitutionally adequate procedures, Petitioner's detention is unlawful and she is entitled to habeas relief.

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

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

51. 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).

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

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

54. Respondents' denial of a bond by an Immigration Judge is arbitrary, capricious, and not in accordance with law.

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

56. 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 her 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 17<sup>th</sup> of June 2026

/s/Karla L. Kraus

Karla L. Kraus  
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: June 17, 2026

Respectfully submitted,

/s/ Karla L. Kraus

Karla L. Kraus  
Attorney at Law

*Attorney for Petitioner*