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

PRIMITIVO NICOLAS-JIMENEZ,

Petitioner,

v.

Cristopher LaROSE, Warden at Otay Mesa

Detention Center;

Markwayne MULLIN, Secretary, U.S.

Department of Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the

United States, U.S. Department of Justice.

Respondents

Case No.: '26CV3720 BJC VET



**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 1. Petitioner, Primitivo Nicolas-Jimenez, petitions this Court for a writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and
3 alleges as follows:

4 **INTRODUCTION**

5 2. Petitioner Primitivo Nicolas-Jimenez is a native and citizen of Mexico currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his
8 immigration detention after Respondents agreed to administrative closure of his removal
9 proceedings and thereafter permitted him to reside openly at liberty in the United States for
10 approximately fifteen years before abruptly taking him into immigration custody without prior
11 notice or any individualized justification for detention.

12 4. Petitioner entered the United States without inspection in approximately 1989 and
13 thereafter resided continuously in the United States. Years later, DHS initiated removal
14 proceedings against Petitioner. During the course of those proceedings, the Immigration Court
15 administratively closed Petitioner's case. Following that administrative closure, Petitioner
16 remained at liberty in the community for approximately fifteen years while Respondents took no
17 action to recalendar the proceedings or otherwise revoke his liberty. (Ex. 1.)

18 5. During that period, Petitioner openly resided in the United States, established
19 substantial family and community ties, including his three United States citizen children, ages
20 31, 29, and 20, and remained continuously present in the community without being taken into
21 immigration custody.

22 6. Despite Petitioner's prolonged liberty following administrative closure of his removal
23 proceedings, ICE officers arrested Petitioner on or about May 18, 2026, near his residence in
24 Carlsbad, California, and placed him in immigration detention. Respondents provided no prior
25 notice, no explanation, and identified no individualized justification for detention.

26 7. Petitioner was thereafter transferred to the Otay Mesa Detention Center in San Diego,
27 California, where he presently remains detained.

9. The Constitution does not permit the government to deprive Petitioner of that liberty interest by taking him into immigration custody without prior notice, without identifying any individualized justification for detention, and without providing an opportunity to be heard before a neutral decisionmaker.

CUSTODY

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody

1 under the United States' color of authority, and such custody violates the Constitution, laws, or
 2 treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality,
 3 status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747
 4 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends.
 5 V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

6 14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's
 7 detention. Federal district courts possess broad authority to issue writs of habeas corpus when a
 8 person is held "in custody in violation of the Constitution or laws or treaties of the United States"
 9 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that
 10 survived the REAL ID Act's jurisdictional restrictions.

11 15. Because Petitioner seeks the traditional habeas remedy of release from allegedly
 12 unlawful detention rather than additional administrative review of his underlying claims, his
 13 petition presents precisely the type of threshold legality-of-detention question that § 2241 was
 14 designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v.*
 15 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

16 16. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
 17 substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner
 18 is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243
 19 because Petitioner's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542
 20 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

21 17. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction
 22 because Petitioner challenges only the legality of his detention, not the validity of removal
 23 proceedings or any removal order. Federal courts have consistently recognized that habeas
 24 corpus remains available to review the statutory and constitutional basis of immigration
 25 detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under
 26 28 U.S.C. § 2241.

27 PARTIES

1 18. Petitioner, Primitivo Nicolas-Jimenez, is a native and citizen of Mexico currently
2 detained at the Otay Mesa Detention Center in San Diego, California.

3 19. Respondent Christopher LaRose is the Warden at Otay Mesa Detention Center,
4 located in the city of San Diego, California;

5 20. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
6 Security (DHS).

7 21. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
8 Enforcement (ICE).

9 22. Respondent Todd Blanche is the Acting Attorney General of the United States and
10 the head of the U.S. Department of Justice (DOJ).

11 23. All Respondents are named in their official capacities.

12 **STATEMENT OF FACTS**

13 24. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego,
14 California. Petitioner is a native and citizen of Mexico who entered the United States without
15 inspection in approximately 1989 and has continuously resided in the United States since that
16 time.

17 25. Petitioner thereafter resided continuously in the United States for approximately
18 thirty-seven years.

19 26. Years after Petitioner entered the United States, DHS initiated removal proceedings
20 against him. During the course of those proceedings, the Immigration Court administratively
21 closed the proceedings.

22 27. Following the administrative closure of his removal proceedings, Petitioner remained
23 at liberty in the community for approximately fifteen years while Respondents took no action to
24 recalendar the proceedings or otherwise revoke Petitioner's liberty.

25 28. During that period, Petitioner openly resided in the United States, established
26 substantial family and community ties, including his three United States citizen children, ages
27

1 31, 29, and 20, and remained continuously present in the community without being taken into
2 immigration custody.

3 29. Throughout that period, Respondents permitted Petitioner to remain at liberty in the
4 community and took no action to seek his detention or to recalendar his removal proceedings.

5 30. Following Petitioner's arrest on or about May 18, 2026, Respondents moved to
6 recalendar Petitioner's administratively closed removal proceedings based upon changed
7 enforcement priorities. (*Ex. 1.*)

8 31. On or about May 18, 2026, Petitioner was arrested by ICE officers near his residence
9 in Carlsbad, California, and taken into immigration custody. Respondents provided no prior
10 notice, no explanation, and identified no individualized justification for detention.

11 32. Following his arrest, Petitioner was transported to the Otay Mesa Detention Center in
12 San Diego, California, where he presently remains detained.

13 33. At no point prior to his arrest did DHS provide Petitioner with notice that his liberty
14 would be revoked, nor did it provide any opportunity to challenge his detention before a neutral
15 decisionmaker.

16 34. At no point has DHS identified any individualized basis for Petitioner's detention, nor
17 has it asserted that Petitioner poses a danger to the community or a risk of flight.

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

19 35. Under 28 U.S.C. § 2243, the Court “must” grant the petition for a writ of habeas
20 corpus or issue an order to show cause (“OSC”) “forthwith,” unless the petitioner is not entitled
21 to relief. If an OSC is issued, the statute requires that Respondents file a return “within three
22 days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
23 (emphasis added).

24 36. Federal courts have long emphasized the importance of habeas corpus as a
25 protection against unlawful restraint. The Supreme Court has described the Great Writ as
26 “perhaps the most important writ known to the constitutional law of England, affording as it
27
28

1 does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
2 *Noia*, 372 U.S. 391, 400 (1963).

3 37. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain
4 a prompt and expeditious remedy. As the Ninth Circuit has explained, “The statute itself directs
5 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
6 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000)
7 (citation omitted). The court cautioned that delays in habeas proceedings risk creating the
8 impression “that courts are more concerned with efficient trial management than with the
9 vindication of constitutional rights.” *Id.*

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 38. In habeas corpus proceedings, exhaustion of administrative remedies is prudential,
14 not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
15 prudential exhaustion where “administrative remedies are inadequate or not efficacious, pursuit
16 of administrative remedies would be a futile gesture, irreparable injury will result, or the
17 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
18 (9th Cir. 2004)). Here, exhaustion should be excused because administrative remedies are (1)
19 futile and (2) Petitioner's continued detention results in irreparable harm.

20 39. Exhaustion would be futile because, to the extent DHS treats Petitioner as subject to
21 detention under 8 U.S.C. § 1225(b), Immigration Judges lack jurisdiction to conduct custody
22 redetermination hearings for individuals DHS classifies as subject to § 235(b) or designates as
23 Arriving Aliens. See 8 C.F.R. § 1003.19(h)(2)(i)(B). In this District, Immigration Judges
24 routinely state on the record that they lack authority to review custody where DHS invokes §
25 235(b). If Petitioner were to request a bond hearing, DHS would rely on that statutory
26 classification to block review, and the Immigration Judge would be required to decline

jurisdiction. Because no administrative mechanism exists to obtain custody review under DHS's asserted detention authority, any attempt to exhaust administrative remedies would be futile.

40. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his detention violates the Constitution and the INA. Constitutional claims and pure questions of law—such as whether DHS has statutory authority to detain Petitioner and whether detention under § 1225(b) is lawful in these circumstances—fall outside the agency's adjudicatory competence. See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (exhaustion excused where the agency “does not have jurisdiction to review” constitutional claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same). There is no administrative forum that can determine whether DHS may lawfully invoke § 1225(b)(2) to detain Petitioner under these circumstances.

41. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied after the fact. Continued detention following approximately fifteen years during which Respondents permitted Petitioner to remain at liberty after the administrative closure of his removal proceedings magnifies that ongoing harm. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing detention therefore further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

42. The Immigration and Nationality Act distinguishes between detention at the time of entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225, 1226.

43. Section 235 governs inspection-stage detention of individuals encountered at or near the time of entry while their admissibility is being determined. By contrast, Section 236(a) governs the arrest and detention of noncitizens who have already entered the United States and are later taken into custody pending removal proceedings.

1 44. Petitioner entered the United States in approximately 1989 and remained at liberty in
2 the community for decades. During that period, his removal proceedings were administratively
3 closed, and Respondents took no action to detain him or resume active proceedings for
4 approximately fifteen years. Under these circumstances, if detention is permitted to continue, it
5 must proceed under the statutory framework governing detention pending removal proceedings
6 rather than as mandatory inspection-stage detention.

7 45. Even if this Court concludes that Petitioner's continued detention is not categorically
8 unlawful, the Due Process Clause requires, at a minimum, a constitutionally adequate custody
9 hearing before a neutral decisionmaker at which Respondents bear the burden of demonstrating
10 by clear and convincing evidence that continued detention is justified, and at which less
11 restrictive alternatives to detention and Petitioner's ability to pay any monetary condition of
12 release are meaningfully considered.

13 46. The Due Process Clause protects all persons within the United States from arbitrary
14 detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Freedom from physical restraint lies
15 at the core of the liberty protected by the Constitution.

16 47. Immigration detention is civil in nature and is permissible only when justified by
17 legitimate governmental interests, such as ensuring appearance at proceedings or protecting the
18 community. *Id.* at 690–91.

19 48. By agreeing to administrative closure of Petitioner's removal proceedings and
20 thereafter permitting Petitioner to reside openly in the United States at liberty for approximately
21 fifteen years, the government created a substantial liberty interest in Petitioner's continued
22 freedom from physical restraint. Having affirmatively allowed Petitioner to remain at liberty for
23 such an extended period while taking no action to recalendar the proceedings or otherwise
24 revoke that liberty, Respondents could not abruptly take Petitioner into immigration custody
25 without prior notice, without identifying any individualized justification for detention, and
26 without providing a meaningful opportunity to be heard. Such arbitrary deprivation of liberty
27 violates the Due Process Clause of the Fifth Amendment.

1 54. Petitioner's removal proceedings were administratively closed for approximately
2 fifteen years, during which Respondents permitted Petitioner to remain at liberty in the United
3 States without seeking to detain him or recalendar the proceedings. On or about May 18, 2026,
4 Petitioner was arrested by ICE officers near his residence in Carlsbad, California, and placed in
5 immigration detention without prior notice, without any explanation, and without any
6 individualized justification for detention. Nothing in the record indicates that Petitioner poses a
7 danger to the community or a risk of flight.

8 55. Having affirmatively agreed to administrative closure of Petitioner's removal
9 proceedings and thereafter allowed him to live at liberty in the community for approximately
10 fifteen years, the government created a substantial liberty interest in Petitioner's continued
11 freedom from detention. Taking Petitioner into immigration custody without prior notice,
12 without an individualized determination that detention had become necessary, and without an
13 opportunity to be heard constitutes an arbitrary deprivation of that liberty in violation of the Due
14 Process Clause. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533
15 U.S. 678, 690 (2001).

16 **COUNT 2**

17 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Not**
18 **in Accordance with Law and in Excess of Statutory Authority)**

19 56. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
20 allegations in the paragraphs above.

21 57. Under the Administrative Procedure Act, a court shall “hold unlawful and set aside
22 agency action” that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
23 with law. 5 U.S.C. § 706(2)(A).

24 58. Agency action is arbitrary and capricious where the agency fails to consider relevant
25 factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational
26 connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass’n v. State*
27 *Farm*, 463 U.S. 29, 43 (1983).

1 59. An agency must provide a reasoned explanation for its actions based on the facts and
2 circumstances of the individual case. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019).

3 60. Here, Respondents took Petitioner into immigration custody after having
4 affirmatively agreed to administrative closure of his removal proceedings and permitting him to
5 remain at liberty in the United States for approximately fifteen years. Respondents have provided
6 no reasoned explanation why detention became necessary after such a prolonged period of
7 liberty and have identified no individualized basis justifying Petitioner's detention.

8 61. Respondents have further failed to provide any individualized assessment justifying
9 Petitioner's detention. They have not identified any facts indicating that Petitioner poses a danger
10 to the community or a risk of flight.

11 62. By taking Petitioner into immigration custody after having affirmatively agreed to
12 administrative closure of his removal proceedings and permitting him to remain at liberty in the
13 community for approximately fifteen years, without prior notice, without identifying any
14 individualized justification for detention, and without providing a meaningful opportunity to be
15 heard, Respondents have acted arbitrarily and capriciously and in excess of their statutory
16 authority.

17 63. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5
18 U.S.C. § 706(2)(A).

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner respectfully requests that this Court:

- 21 A) Assume jurisdiction over this matter;
22 B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing
23 Respondents to show cause, within three days of the filing of this Petition, why the relief
24 requested should not be granted, and set a hearing within five days of Respondents' return,
25 consistent with 28 U.S.C. § 2243;

1 C) Pending adjudication of this action, enjoin Respondents from transferring Petitioner outside
2 the Southern District of California or removing Petitioner from the United States absent prior
3 authorization from this Court, in order to preserve this Court's jurisdiction;

4 D) Declare that Petitioner's continued detention without prior notice, without an individualized
5 determination that detention has become necessary, and without a meaningful opportunity to be
6 heard violates the Due Process Clause of the Fifth Amendment;

7 E) Declare that Respondents lack lawful authority to take Petitioner into immigration custody
8 without constitutionally adequate process after permitting him to remain at liberty following the
9 administrative closure of his removal proceedings for approximately fifteen years;

10 F) Declare that Respondents' actions detaining Petitioner under an improper statutory
11 framework, without lawful authority and without a reasoned explanation, were arbitrary,
12 capricious, an abuse of discretion, and not in accordance with law, in violation of the
13 Administrative Procedure Act, 5 U.S.C. § 706(2);

14 G) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to
15 5 U.S.C. § 706(2)(A);

16 H) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
17 custody;

18 I) Order Respondents to restore Petitioner to the status quo ante litem by immediately releasing
19 Petitioner from immigration custody, returning all of his documents and personal belongings
20 upon release, and restoring the conditions that existed immediately prior to Respondents'
21 decision to take Petitioner into immigration custody, consistent with this Court's prior orders in
22 materially similar cases;

23 J) Enjoin Respondents from taking Petitioner back into immigration custody absent compliance
24 with constitutional requirements, including constitutionally adequate notice, an individualized
25 determination that detention has become necessary, and a meaningful pre-deprivation hearing
26 before a neutral decisionmaker;

1 K) In the alternative, order a constitutionally adequate custody hearing under INA § 236(a), at
2 which DHS bears the burden of justifying Petitioner's continued detention by clear and
3 convincing evidence, and the neutral adjudicator must consider alternatives to detention and
4 Petitioner's ability to pay any bond imposed;

5 L) In the alternative, declare that if Respondents continue to detain Petitioner pending removal
6 proceedings, such detention must proceed under the statutory framework governing detention
7 pending removal proceedings, rather than under INA § 235(b);

8 M) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
9 2412, and any other basis authorized by law; and

10 N) Grant such other and further relief as the Court deems just and proper.

11 Respectfully submitted,

12 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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16 Phone: (619) 777-6796

17 Counsel for Petitioner

18 Dated: June 25, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and Petitioner's family members, as well as my review of available immigration records and supporting documents.

Based on my review of that information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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Dated: June 25, 2026