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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Client Name, Diego Garcia Reyes [redacted]

Petitioner, | PETITION FOR WRIT OF HABEAS CORPUS

v. | UNDER 28 U.S.C. § 2241

MESA VERDE DIRECTOR, in his/her official capacity, | Mesa Verde ICE Processing Center, Respondent.

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 (IMMIGRATION DETENTION)

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

(PRE-FINAL-ORDER IMMIGRATION DETENTION)

I. INTRODUCTION

Petitioner respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his arbitrary and unlawful immigration detention. Petitioner is detained under INA § 236(a), a discretionary, bond-eligible statute, despite having no criminal convictions which would render Petitioner ineligible to request a bond redetermination, dismissed criminal charges, no final order of removal, and who is cancellation of removable eligible based on USC minor children who may serve as qualifying relatives for such an application. Under binding Ninth Circuit precedent, detention that is

unauthorized, arbitrary, or lacking a reasonable relation to a legitimate regulatory purpose violates the Due Process Clause and warrants habeas relief.

II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and challenges the legality of that custody on constitutional grounds. Venue is proper in the Eastern District of California because Petitioner is confined at the Mesa Verde ICE Processing Center in Kern County and the immediate custodian is located within this District. Jurisdiction to review Petitioner's detention is not barred by the Immigration and Nationality Act. Federal courts retain habeas jurisdiction to remedy unconstitutional immigration detention. See *Nadarajah v. Gonzales*, 443 F.3d 1069; *Flores-Torres v. Mukasey*, 548 F.3d 708.

III. PARTIES

Petitioner is a 38 year old native and citizen of Mexico who has resided in the United States for over ten years and is cancellation eligible and also fears return to Mexico and has or is in the process of lodging an asylum application with EOIR. Respondent is the Warden or Facility Director of the Mesa Verde ICE Processing Center, Petitioner's immediate custodian.

IV. FACTUAL BACKGROUND

A. Immigration Status and Residence

Petitioner last entered the United States in 2012 and has remained continuously present since that time. He is currently in removal proceedings and has no final order of removal. He is eligible to apply for several forms of relief from removal including asylum, withholding, CAT, cancellation of removal for certain non permanent residents and possibly others. Undersigned counsel has not been

retained to further these applications for relief and is unaware of the exact status of any/all applications.

B. Statutory Basis of Detention

DHS is detaining Petitioner under INA § 236(a). Petitioner has no criminal convictions which would subject him to mandatory detention under § 236(c). He is therefore statutorily bond-eligible.

C. Custody History

On or about June 27, 2026, Petitioner was taken into ICE custody after being pulled over by law enforcement when he was driving in Milpitas, California where he resides. The cause for the stop is unclear. Petitioner was immediately transferred to the Mesa Verde ICE Processing Center, where he remains detained.

D. Arrests and Criminal Charges

Petitioner was previously arrested in 2025 connection with charges alleging misdemeanor vandalism - Cal. PC594(a); possession of a firearm without a valid state serial number or marking – Cal PC23920(b) and misdemeanor vehicle code violations (DUI)- Cal VC23152(a)/(b). These charges appear to be unresolved and are pending. If convicted of all charges, Petitioner would nonetheless not be bond ineligible.

E. Bond Proceedings and Failure to Exercise Authority

DHS has refused to extend a bond redetermination hearing to Petitioner. He has been instructed to, instead, file this instant Petition.

E. Bond Proceedings and Failure to Exercise Authority

Petitioner has resided in the United States for nearly fifteen years. He is married and has two USC children. He is a delivery truck driver for [redacted] a bottled water delivery company serving homes and businesses throughout the bay area. He has held this job for several years, demonstrating economic stability and

strong community ties. The CEO has indicated in writing that Petitioner is a key employee and a caring father and hard worker and that his job awaits him should he be released from custody. He has a fixed residence, family support, and community connections, and poses no danger and no flight risk.

V. LEGAL STANDARD

Immigration detention is civil, not punitive, and is constitutional only so long as it bears a reasonable relation to a legitimate regulatory purpose. *Nadarajah v. Gonzales*, 443 F.3d at 1080. Detention under INA § 236(a) requires an individualized exercise of discretion; detention by default violates due process. Habeas relief is appropriate where detention is unauthorized or legally improper, regardless of its duration. *Flores-Torres v. Mukasey*, 548 F.3d at 712–13. Where the government seeks to justify detention, it bears the burden to do so by clear and convincing evidence. Singh v. Holder, 638 F.3d 1196.

VI. GROUNDS FOR RELIEF

A. GROUND ONE

Arbitrary Detention in Violation of the Fifth Amendment

Petitioner is detained under INA § 236(a) but has never received a substantive custody determination. The service has declined to exercise bond authority based on a mistaken belief that a habeas order was required before bond could be considered. As a result, Petitioner's detention continues by default, not by a reasoned discretionary decision. Detention that lacks a reasonable relation to a legitimate regulatory purpose is arbitrary and unconstitutional. *Nadarajah*, 443 F.3d at 1080.

B. GROUND TWO

Detention Without Clear Statutory Authority Is Unlawful Regardless of Duration

Although DHS invokes § 236(a), the statute's discretionary framework was never lawfully applied. Under *Flores-Torres*, detention without clear statutory authority is unlawful from the outset, regardless of the length of detention. 548 F.3d at 712–13.

C. GROUND THREE

The Government Failed to Carry Its Burden to Justify Detention

The government has presented no evidence—let alone clear and convincing evidence—that Petitioner poses a danger or flight risk. Continued detention without satisfying the burden articulated in *Singh v. Holder* violates due process.

VII. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

A. Grant the Petition for Writ of Habeas Corpus;

B. Order Petitioner's immediate release from ICE custody;

OR, in the alternative,

C. Order a prompt, meaningful bond hearing before an Immigration Judge who must exercise discretion under INA § 236(a);

D. Grant such other and further relief as the Court deems just and proper.

VIII. VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 7/13/2026

Dated: Respectfully submitted,

By: /s/ Alexander H. Lubarsky

Alexander Lubarsky, SBN 182691

Attorney for Petitioner Diego Garcia