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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Henry Jehovany AGUIRRE SANCHEZ,

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**; **Jeremy CASEY**, in his official capacity as Warden/Facility Administrator of the Imperial Regional Detention Facility

Respondents.

Case No. '26CV4294 JLS GC

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, Henry Jehovany Aguirre Sanchez ("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 Honduras, seeks a writ of habeas corpus under 28 U.S.C. § 2241 because his warrantless arrest and ongoing immigration detention violate the Due Process Clause of the Fifth Amendment and exceed the limited warrantless-arrest authority granted by 8 U.S.C. § 1357(a)(2). He is currently detained at the Imperial Regional Detention Facility in Calexico, California, within this Court's jurisdiction.

2. This case presents the question whether immigration officers may seize and incarcerate a noncitizen through a warrantless immigration arrest without satisfying the statutory limitations imposed by 8 U.S.C. § 1357(a)(2) and without providing the procedural protections required by the Fifth Amendment.

3. This case challenges the lawfulness of Petitioner's warrantless arrest and resulting civil immigration detention, not merely the duration of that detention. Customs and Border Protection agents seized Petitioner without an administrative warrant while he was a passenger in a vehicle, without making any individualized

determination that he was likely to escape before a warrant could be obtained, and without providing constitutionally adequate procedural safeguards before depriving him of his physical liberty.

4. Respondents continue to detain Petitioner based on that warrantless arrest even though they have never demonstrated that the statutory prerequisites of 8 U.S.C. § 1357(a)(2) were satisfied or afforded Petitioner constitutionally adequate process before depriving him of his liberty.

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

6. In the alternative, Petitioner requests that this Court order Respondents to provide a prompt and constitutionally adequate individualized custody hearing 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

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

8. 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).

9. 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.

10. This collateral challenge to the legality of Petitioner's present immigration detention is not barred by 8 U.S.C. §§ 1252(g), 1252(a)(5), or 1252(b)(9), because Petitioner does not challenge any final order of removal or seek review of the Attorney General's discretionary decisions regarding removal, but instead challenges the constitutionality and legality of his current detention. See *Esquivel Pacheco v. LaRose*, 818 F. Supp. 3d 1168, 1174-75 (S.D. Cal. 2026).

11. 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

12. 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.

13. 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").

14. Moreover, Petitioner has no meaningful administrative mechanism through which to challenge the legality of his continued detention. Although DHS has initiated removal proceedings against Petitioner, he has not been provided any individualized custody determination before a neutral decisionmaker regarding the lawfulness or necessity of his continued detention. Requiring exhaustion under these circumstances would therefore be futile and would only prolong Petitioner's unlawful deprivation of liberty.

15. 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

16. 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).

17. 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

18. Petitioner, Henry Jehovany Aguirre Sanchez, is a citizen of Honduras who has resided in the U.S. since approximately 2012 and is currently detained at the Imperial Regional Detention Facility in Calexico, California.

19. 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"), which has jurisdiction over San Diego and Imperial

Counties, including the Imperial Regional Detention Facility. 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, including Petitioner.

20. 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.

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

22. 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.

23. 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.

24. Respondent Jeremy CASEY is the Warden/Facility Administrator of the Imperial Regional Detention Facility, the official responsible for the custody and day-to-day detention of Petitioner. He is sued in his official capacity.

VI. FACTUAL ALLEGATIONS

25. Petitioner is a citizen of Honduras who has lived in the United States for approximately fourteen years. He first entered the United States without inspection in approximately 2012.

26. Since that time, Petitioner has resided continuously in the United States. He was not apprehended at or near the time of his entry and was never released or paroled by immigration authorities, because he had no encounter with immigration officials at all until his arrest described below.

27. Petitioner has no criminal history, has never been arrested, 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.

28. Prior to the arrest described below, Petitioner had never previously been placed in removal proceedings, never previously been arrested or encountered by immigration authorities, and never filed an application for asylum or other immigration relief. He has never missed an immigration check-in because none was ever scheduled: this was his first and only encounter with immigration enforcement in approximately fourteen years of continuous residence in the United States.

29. During those fourteen years, Petitioner lived openly in the United States, maintained employment, and was never sought by immigration authorities.

30. On June 17, 2026, Petitioner was returning home from work in Buffalo, New York, where he had traveled temporarily for employment, when he was taken into custody by U.S. Customs and Border Protection ("CBP") agents while riding as a passenger in a vehicle. He has remained in DHS custody since that date.

31. Petitioner was not the driver of the vehicle. On information and belief, Respondents have identified no individualized facts suggesting that Petitioner was likely to escape before an administrative warrant could have been obtained.

32. On information and belief, no administrative arrest warrant was obtained or presented to Petitioner before he was taken into custody. Respondents have not identified any exigent circumstance that would have justified dispensing with the warrant requirement of 8 U.S.C. § 1357(a)(2).

33. Petitioner was arrested without an administrative warrant and has since remained detained without any prior individualized custody determination before a neutral decisionmaker.

34. Nothing in the record establishes that Petitioner poses a danger to the community or a risk of flight such that his continued detention, without a prompt and constitutionally adequate custody determination, is justified.

35. Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California. (*See* Ex. A, ICE Online Detainee Locator System).

36. Following his arrest, DHS initiated removal proceedings against Petitioner. Petitioner's first Master Calendar Hearing is currently scheduled for August 19, 2026, before the Immigration Court. (*See* Ex. B, EOIR Case Status)

37. Since his detention on June 17, 2026, Petitioner has not been provided a prompt, individualized custody determination before a neutral decisionmaker at which the government must justify his continued detention, nor has he received any process by which to contest the lawfulness of his warrantless arrest.

38. No petition for writ of habeas corpus has previously been filed on Petitioner's behalf challenging this detention.

VII. LEGAL FRAMEWORK

39. 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.

40. 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.

41. 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).

42. In addition to this constitutional violation, Congress has strictly limited the authority of immigration officers to make warrantless immigration arrests. Under 8 U.S.C. § 1357(a)(2), a warrantless arrest is authorized only where the arresting officer has reason to believe both that the individual is removable and that the individual is "likely to escape before a warrant can be obtained for his arrest." The statute thus requires an individualized determination of exigency before dispensing with the ordinary warrant requirement. Congress's statutory limitation on warrantless arrests reinforces—not replaces—the procedural protections independently guaranteed by the Fifth Amendment.

43. On information and belief, Respondents have identified no individualized facts demonstrating that Petitioner was likely to escape before an administrative warrant could have been obtained. Petitioner had resided openly in the United States for approximately fourteen years before his first encounter with immigration authorities. Nothing presently known suggests that Respondents made the individualized exigency determination required by § 1357(a)(2) before dispensing with the statutory warrant requirement. If Respondents contend otherwise, they should be required to identify the specific facts known to the

arresting officers at the time of the warrantless arrest that allegedly satisfied § 1357(a)(2).

44. The Southern District of California has repeatedly recognized that, once the government deprives an individual of physical liberty through civil immigration detention, due process generally requires meaningful procedural protections before or contemporaneous with that deprivation, and that a later bond hearing does not necessarily cure the constitutional injury because the deprivation occurs at the moment of arrest and detention. See *Noori v. LaRose*, 807 F.Supp.3d 1146 (S.D. Cal. 2025); *Araujo v. LaRose*, No. 25-cv-02942-BTM-MMP, 2025 WL 3278016 (S.D. Cal. Nov. 24, 2025); *Velasquez-Chinga v. Noem*, No. 3:26-cv-00105-RBM-KSC, 2026 WL 311507 (S.D. Cal. Feb. 5, 2026).

45. These decisions, and more recent immediate-release decisions applying similar reasoning, emphasize that post-deprivation procedures cannot fully remedy the loss of physical liberty once an individual has already been seized and incarcerated, and that immediate release—not merely a delayed bond hearing—is the appropriate habeas remedy where detention results from constitutionally deficient procedures. See, e.g., *Baltazar Raymundo Juan v. Blanche*, No. 3:26-cv-03984-JO-SBC (S.D. Cal. July 27, 2026) (ordering immediate release, rather than a bond hearing, where petitioner had been detained for approximately one month because the government had provided no individualized custody determination and

articulated no individualized justification for continued detention); *Xiaoming Yang v. Field Office Dir.*, No. 5:26-cv-02334-AJR (C.D. Cal. May 18, 2026); *Castellano v. Blanche*, No. 2:26-cv-00124-GMN-BNW (D. Nev. May 20, 2026); *Vazquez v. Mullin*, No. C26-2039-KKE (W.D. Wash. July 2, 2026).

46. Most directly on point, this Court has already granted habeas relief on materially similar facts. In *Lucas Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC (S.D. Cal. July 16, 2026), the petitioner, who had resided in the United States for over five years, was arrested by ICE during a traffic stop in the interior of the United States and could not obtain a bond hearing because the immigration courts lacked jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This Court held that the discretionary detention procedures of 8 U.S.C. § 1226 governed the petitioner's detention and ordered immediate release—rather than a bond hearing—because a post-deprivation hearing cannot cure an erroneous deprivation of liberty that has already occurred. The same reasoning applies with equal force to Petitioner here.

47. Although Petitioner was not previously released on parole or an order of supervision before his June 17, 2026 arrest, the same constitutional principle applies. The liberty interest protected by the Fifth Amendment is not limited to individuals previously released by DHS; it is the interest in freedom from physical restraint. Petitioner lived freely in the United States for approximately fourteen years

before his first and only encounter with ICE. Before effecting the warrantless arrest, Respondents identified no individualized facts demonstrating that immediate warrantless detention was necessary because Petitioner was likely to escape before an administrative warrant could be obtained, as § 1357(a)(2) requires. Both the statutory limitations Congress imposed and the procedural protections guaranteed by the Fifth Amendment therefore weigh against the legality of Petitioner's warrantless arrest and continued detention.

48. 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.

49. 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

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

51. 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).

52. 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.

53. 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).

54. Petitioner has lived in the United States for approximately fourteen years, during which time he lived peacefully in the community, worked consistently, and maintained no criminal history whatsoever.

55. Immigration authorities abruptly detained Petitioner through a warrantless arrest while he was riding as a passenger in a vehicle, without any individualized determination of exigency under 8 U.S.C. § 1357(a)(2), and without any meaningful procedural safeguards or prior individualized custody determination.

56. 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.

57. 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); *Noori v. LaRose*, 807 F.Supp.3d 1146 (S.D. Cal. 2025).

58. This Court and other courts within the Southern District of California 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); *Araujo v. LaRose*, No. 25-cv-02942-BTM-MMP, 2025 WL 3278016 (S.D. Cal. Nov. 24, 2025); *Lucas Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC (S.D. Cal. July 16, 2026) (ordering immediate release of similarly-situated petitioner arrested during an interior traffic stop).

59. The circumstances of Petitioner's arrest and continued detention—including the warrantless seizure of Petitioner, the absence of any individualized facts demonstrating that Petitioner was likely to escape before an administrative warrant could have been obtained, 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 obtaining an administrative warrant or identifying individualized facts establishing exigency under § 1357(a)(2), Respondents seized Petitioner without meaningful procedural safeguards.

60. 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: Warrantless Arrest in Excess of Statutory Authority Under 8 U.S.C. § 1357(a)(2)

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

62. Congress strictly limited the authority of immigration officers to conduct warrantless civil immigration arrests. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has reason to believe both that the individual is removable and that the individual is "likely to escape before a warrant can be obtained for his arrest." The statute

therefore requires an individualized determination of exigency before dispensing with the ordinary warrant requirement.

63. Respondents' warrantless arrest of Petitioner did not satisfy § 1357(a)(2). On information and belief, Respondents have identified no individualized facts demonstrating that Petitioner was likely to escape before an administrative warrant could have been obtained. Petitioner had resided openly in the United States for approximately fourteen years before his first encounter with immigration authorities.

64. Despite Petitioner's lack of criminal history and long-standing, peaceful residence in the United States, Respondents seized him through a warrantless arrest without any articulated individualized necessity for dispensing with the statutory warrant requirement.

65. Respondents' warrantless arrest and resulting detention of Petitioner therefore exceeded the statutory authority granted by 8 U.S.C. § 1357(a)(2) and were unlawful from their inception. The absence of facts satisfying § 1357(a)(2) also reinforces the conclusion that Petitioner's arrest and resulting detention violated the Fifth Amendment, as alleged in Count I above.

66. Absent intervention by this Court, Respondents' unlawful, ultra vires detention of Petitioner will continue to deprive him of liberty.

67. Because Petitioner's detention originated in a warrantless arrest that exceeded the limited statutory authority granted by 8 U.S.C. §1357(a)(2), he is entitled to habeas relief under 28 U.S.C. §2241, including immediate release from detention or, in the alternative, a prompt, constitutionally adequate individualized custody determination.

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 resulted from a warrantless arrest exceeding the authority granted by 8 U.S.C. § 1357(a)(2);

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 that Respondents' warrantless arrest exceeded the authority granted by 8 U.S.C. § 1357(a)(2).

f. Enjoin Respondents from re-detaining Petitioner without first providing constitutionally adequate process, including an individualized custody determination before a neutral decisionmaker at which the government bears the burden of demonstrating that detention is justified.

g. 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

h. Grant any other and further relief that this Court deems just and proper.

Dated: July 27, 2026

Respectfully submitted,

/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. Based on that discussion, 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.

Dated: July 27, 2026

Respectfully submitted,

/s/ Rose M. Thompson

Rose M. Thompson
Attorney at Law

Attorney for Petitioner