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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Domingo Simon-Francisco,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; et al,

Respondents.

Case No. '26CV4750 JO JLB

WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Domingo Simon-Francisco, through counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241 and alleges:

I. INTRODUCTION

1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because he is in federal immigration custody and is being detained in violation of the Constitution and laws of the United States.
2. Respondents' continued detention of Petitioner without a prompt, meaningful, and individualized custody determination violates the Immigration and Naturalization Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
3. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. § 2243; an order directing Respondents to release Petitioner immediately, or, in the alternative, to provide a prompt constitutionally adequate custody hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention; and any further relief the Court deems just and proper.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody" under color of federal authority within this judicial district and alleges that such custody violates the Constitution and laws of the United States.
5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
7. Venue is proper in this District because Petitioner is detained within the South District of California.

III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

8. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show Cause "forthwith" unless it appears from the petition that Petitioner is not entitled to relief.

9. Habeas corpus is a fundamental mechanism for testing the legality of executive detention and provides a swift and imperative remedy for unlawful restraint of liberty.

IV. PARTIES

10. Petitioner Domingo Simon-Francisco is detained by the Department of Homeland Security ("DHS"), through U.S. Immigration and Customs Enforcement ("ICE"), at the Otay Mesa Detention Center ("OMDC") in San Diego, California.

11. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner's immigration custody and continued detention within this District. He is sued in his official capacity only.

12. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

13. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens.

14. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner's custody and continued detention.

V. FACTUAL BACKGROUND

15. Petitioner Domingo Simon-Francisco is a native and citizen of Guatemala. His Alien Registration Number is A# [redacted].

16. Mr. Simon-Francisco first and only entered the United States on or about June 10, 2023, near Ciudad Juárez, Mexico.

17. After crossing the border, Mr. Simon-Francisco walked for approximately one day before encountering United States immigration authorities.

18. At approximately 10:00 a.m., immigration officers placed Mr. Simon-Francisco on a bus and transported him to an immigration detention facility in Texas.

19. Mr. Simon-Francisco remained detained for approximately one month and three days. DHS then released him from immigration custody.

20. Following his release, DHS did not require Mr. Simon-Francisco to attend ICE check-ins or otherwise report to ICE. Accordingly, he did not fail to comply with any reporting requirement imposed by DHS.

21. On February 18, 2026, Mr. Simon-Francisco was a passenger in a vehicle driven by a friend while they were traveling toward Escondido, California.

22. According to Mr. Simon-Francisco, ICE officers stopped the vehicle on the freeway because the vehicle's license plates had expired. Mr. Simon-Francisco was not driving the vehicle.

23. ICE officers detained Mr. Simon-Francisco during the stop and placed him in immigration custody.

24. Mr. Simon-Francisco has remained in DHS immigration custody since February 18, 2026, and is presently detained at Otay Mesa Detention Center.

25. Mr. Simon-Francisco is not serving a criminal sentence. His present detention is solely civil and arises under federal immigration authority. Mr. Simon-Francisco's removal proceedings remain pending, and he is not subject to a final order of removal. Mr. Simon-Francisco has no known criminal convictions, pending criminal charges, or history of violence demonstrating that he presents a danger to the community.

26. Despite his prolonged detention, Mr. Simon-Francisco has not received a meaningful individualized custody determination or bond hearing before a neutral adjudicator at which the Government bears the burden of justifying his continued detention.

VI. LEGAL FRAMEWORK

27. Immigration detention is civil and nonpunitive in nature and may be imposed only to serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v. Flores*, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these purposes, or that lacks adequate procedural safeguards, violates due process.

28. Noncitizens in removal proceedings are entitled to the protections of the Due Process Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S. 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest the factual and legal basis for continued civil confinement before a neutral decisionmaker.

29. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations must be individualized and must meaningfully assess whether continued detention is necessary to address flight risk or danger to the community. The statute expressly authorizes release on bond or conditional parole, and implementing regulations provide

for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19.

30. Because Petitioner is not subject to a final order of removal and is not serving a criminal sentence, his detention must remain discretionary and individualized. Continued detention without a meaningful custody determination is inconsistent with § 1226(a)'s discretionary framework.

VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion and Arbitrary and Capricious Continued Detention.

31. Petitioner incorporates by reference all preceding paragraphs.

32. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody, including immigration custody maintained in violation of the Constitution or laws of the United States. Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., to the extent Respondents' custody decision constitutes reviewable agency action and no other adequate remedy provides complete relief.

33. Under the APA, a reviewing court must "hold unlawful and set aside agency action" found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

34. Agency action is arbitrary and capricious where the agency fails to consider an important aspect of the problem, offers an explanation that runs counter to the evidence, or reaches a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders v. Defs. of Wildlife,* 551 U.S. 644 (2007).

35. To satisfy APA review, the agency must provide a reasoned explanation reflecting a rational connection between the facts found and the choice made. *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019).

36. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and Respondents have not identified any valid basis for mandatory detention. His continued confinement therefore must be justified by an individualized and reasoned custody decision tied to legitimate regulatory purposes, not by detention as a default result of a checkpoint arrest.

37. Respondents have detained and continued to detain Petitioner without a reasoned, individualized assessment of his actual circumstances.

38. Respondents have also failed to meaningfully consider whether any legitimate governmental interest could be satisfied through less restrictive alternatives to detention, including release on recognizance, bond, supervision, reporting requirements, or other noncustodial conditions..

39. By maintaining Petitioner's custody without a reasoned, individualized decision and without procedures adequate to test the necessity of confinement as applied, Respondents acted arbitrarily and capriciously and abused their discretion in violation of 5 U.S.C. § 706(2)(A).

40. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful custody decision as applied and ordering his immediate release.

Ground Two: Violation of the Administrative Procedure Act — Not in Accordance with Law, In Excess of Statutory Authority, and Without Observance of Required Procedure.

41. Petitioner realleges and incorporates all preceding paragraphs.

42. The APA requires a court to set aside agency action that is "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. § 706(2)(D).

43. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and Respondents have not identified a valid basis for mandatory detention. His custody is therefore governed by the discretionary detention framework applicable to noncitizens detained during pending removal proceedings, including 8 U.S.C. § 1226(a).

44. Under 8 U.S.C. § 1226(a), detention is not automatic. The statute authorizes DHS either to detain the person or to release the person on bond or conditional parole. That authority must be exercised within statutory limits and through a lawful, individualized decision that accounts for the person's actual circumstances.

45. Respondents have maintained Petitioner's detention without providing a lawful custody process consistent with 8 U.S.C. § 1226(a). On information and belief, Petitioner has not received any written or oral custody determination identifying an individualized basis for continued detention, and he has not received a meaningful opportunity to contest whether his confinement is necessary.

46. Respondents' continued detention of Petitioner without a lawful individualized custody determination is not in accordance with law, exceeds the lawful limits of discretionary

detention under 8 U.S.C. § 1226(a), and/or was taken without observance of procedure required by law, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5 U.S.C. § 706(2)(D). Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful custody decision as applied and ordering his immediate release.

Ground Three: Violation of the Fifth Amendment Procedural Due Process — As-Applied Challenge to Continued Civil Detention Without a Constitutionally Adequate Custody Determination).

47. Petitioner realleges and incorporates all preceding paragraphs.

48. The Due Process Clause prohibits the federal government from depriving any person of liberty without due process of law. *U.S. Const. amend. V; Zadvydas v. Davis*, 533 U.S. 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

49. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation to impose an automatic schedule of bond hearings. However, Jennings does not foreclose as-applied constitutional challenges to immigration detention, and Petitioner brings this claim as an as-applied due process challenge to his continued civil confinement. *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

50. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and Respondents have not identified a valid basis for mandatory detention. His detention is therefore discretionary, not automatic, and continued custody must be supported by constitutionally adequate procedures that meaningfully test whether confinement is necessary as applied to him.

51. Because immigration detention is civil and nonpunitive, due process requires procedures adequate to ensure that detention remains justified as applied to the individual. At

minimum, due process requires a meaningful opportunity to contest the factual and legal basis for continued confinement before a neutral decisionmaker and to obtain an individualized determination of whether detention is necessary to address flight risk or danger. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

52. The Government's interests do not justify continued detention without adequate process. Any legitimate interest in securing Petitioner's appearance or protecting the community can be addressed through less restrictive conditions, including release on recognizance, bond, supervision, reporting requirements, or other noncustodial measures.

53. Where detention is imposed or maintained without procedures sufficient to meaningfully test whether continued confinement remains necessary, continued detention violates due process as applied to Petitioner.

54. Petitioner is entitled to habeas relief ordering his immediate release.

VIII. REQUEST FOR RELIEF

55. Petitioner respectfully requests that the Court:

A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to respond forthwith;

B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;

C. Order Petitioner released immediately;

D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and

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

DATED this August 19, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner