Jose Torres, Esq. 362715
Moonveil Legal, PC
7546 Parkway Dr. Apt. 1U
La Mesa, California 91942
Office: 619.573.1138
Fax: 619.694.5180
Email: jose@moonveilfirm.com

Counsel for
Oscar Eduardo-Lema-Sanchez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Oscar Eduardo-Lema-Sanchez,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Christopher J. LaRose, Warden of Otay Mesa Detention Center,

Respondents.

Case No. '26CV1016 AGS DDL

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

Petitioner Oscar Eduardo-Lema-Sanchez, 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 Petitioner 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 and individualized custody determination violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
3. Petitioner requests (a) expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. § 2243; (b) an order requiring a prompt individualized custody hearing (or other prompt individualized custody determination) with appropriate procedural safeguards; (c) release unless Respondents carry the applicable burden to justify continued detention; and (d) 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 Oscar Eduardo-Lema-Sanchez detained by the Department of Homeland Security ("DHS"), through Immigration and Customs Enforcement ("ICE"), at OMDC.

11. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

14. Respondent Pamela Bondi is the Attorney General of the United States. She 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. She is sued in her official capacity.

15. 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.

16. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

V. FACTUAL BACKGROUND

17. Petitioner is a native and citizen of Ecuador.

18. On or about November 2023, Petitioner entered the United States near Eagle Pass, Texas. Upon apprehension, Petitioner expressed a fear of return to Ecuador.

19. Following his apprehension, Petitioner was released from immigration custody.

20. Petitioner has no criminal history.

21. At some point thereafter, DHS initiated removal proceedings under INA § 240 by issuing a Form I-862 Notice to Appear. Petitioner's removal case remains pending before the Immigration Court, and no final order of removal has issued.

22. Despite the pendency of removal proceedings and the absence of a final order, DHS re-detained Petitioner and transferred him to the Otay Mesa Detention Center, where he remains confined.

23. Petitioner has never received an individualized custody determination or bond hearing before a neutral adjudicator at which the government bears the burden of justifying continued detention.

VI. LEGAL FRAMEWORK

24. 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.

25. 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.

26. 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.

27. Even where DHS invokes authority to revoke a prior release under 8 U.S.C. § 1226(b), such revocation must be based on individualized facts and exercised only by officials authorized by regulation. 8 C.F.R. § 1236.1(c)(9). A categorical or automatic re-detention, or a revocation undertaken without a reasoned, individualized assessment, exceeds statutory and regulatory limits and is inconsistent with due process.

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VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

Ground One: Violation of the Administrative Procedure Act (APA) Abuse of Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)

28. Petitioner incorporates by reference all preceding paragraphs.

29. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody, including 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.

30. 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).

31. 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).

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

33. Petitioner was previously released from immigration custody and later re-detained. On information and belief, Respondents re-detained Petitioner and/or revoked Petitioner's prior release determination without a reasoned, individualized assessment of Petitioner's

current circumstances, and without providing a meaningful custody determination adequate to test whether confinement remains necessary.

34. On information and belief, Respondents' re-detention and continued detention operate in practice as a categorical denial of individualized custody review (including by treating parole as the only release mechanism, refusing neutral custody redetermination, or otherwise maintaining detention without an individualized custody analysis), rather than a reasoned exercise of discretion on Petitioner's facts.

35. If Respondents contend Petitioner's prior release was revoked pursuant to 8 U.S.C. § 1226(b), then the revocation had to be the product of an individualized exercise of discretion within the limits set by statute and the implementing regulation, including the requirement that revocation authority be exercised only by the official(s) authorized under 8 C.F.R. § 1236.1(c)(9).

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

37. Petitioner is entitled to habeas and APA relief setting aside the unlawful revocation/re-detention decision as applied and ordering a prompt, individualized custody determination by a neutral decisionmaker

Ground Two: Violation of the Administrative Procedure Act (APA) Not in Accordance with Law / In Excess of Statutory Authority / Without Observance of Procedure Required by Law Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9).

38. Petitioner realleges and incorporates all preceding paragraphs.

39. 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).

40. To the extent Respondents purported to revoke a prior release determination under 8 U.S.C. § 1226(b), that revocation had to be (a) made on an individualized basis and (b) made by the official(s) authorized to exercise revocation authority under 8 C.F.R. § 1236.1(c)(9).

41. On information and belief, Petitioner's custody posture has been determined, directed, or maintained through a categorical practice, blanket rule, or non-authorized decisionmaker rather than an individualized revocation decision by an authorized official consistent with 8 C.F.R. § 1236.1(c)(9).

42. As a result, Respondents' re-detention and continued detention are not in accordance with law, are in excess of statutory authority, and/or were taken without observance of required procedure, 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).

43. Petitioner is entitled to habeas and APA relief ordering Respondents to cure these legal defects and provide a prompt, individualized custody determination consistent with governing law

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

44. Petitioner realleges and incorporates all preceding paragraphs.

45. 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).*

46. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation to impose an automatic schedule of bond hearings; however, as-applied constitutional challenges to immigration detention remain cognizable on the merits. *Jennings v. Rodriguez, 583 U.S. 131 (2018).*

47. Petitioner is detained during pending removal proceedings and has not received a prompt, individualized custody hearing before a neutral adjudicator at which release on bond or conditions may be meaningfully considered.

48. Because immigration detention is civil and nonpunitive, due process requires procedures adequate to ensure detention remains justified as applied. At minimum, due process requires a meaningful opportunity to contest the factual and legal basis for continued confinement and to obtain an individualized determination whether continued detention remains justified. *Mathews v. Eldridge, 424 U.S. 319 (1976).*

49. Applying the *Mathews v Eldridge, 424 U.S. 319 (1976)* balancing framework, (a) Petitioner's private liberty interest is substantial, (b) the risk of erroneous deprivation is high absent an individualized, neutral custody determination, and (c) the Government's interests can be served through less restrictive alternatives and conditions of release where appropriate.

50. Continued detention without a prompt, individualized, constitutionally adequate custody determination violates the Due Process Clause as applied and warrants habeas relief under 28 U.S.C. § 2241.

Ground Four: Unlawful detention under the INA—Petitioner is detained (or must be treated as detained) under 8 U.S.C. § 1226(a) and is entitled to a bond hearing.

51. Where a noncitizen is placed into removal proceedings under INA § 240 after the credible-fear process, DHS may contend detention is governed by 8 U.S.C. § 1225(b)(1)(B)(ii), which provides that the noncitizen "shall be detained" for further consideration of the application for asylum. *Jennings v. Rodriguez, 583 U.S. 131 (2018)*; *Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019)*. Petitioner contests Respondents' asserted custody authority as applied and seeks a constitutionally adequate custody determination.

52. Prior to policy changes associated with *Matter of M-S-, 27 I. & N. Dec 509 (A.G. 2019)*, many noncitizens initially placed in expedited removal but later placed in INA § 240 proceedings after a credible-fear finding were, as a matter of agency practice, permitted to seek custody redeterminations before an Immigration Judge. *Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019)*.

53. In *Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019)*, relying on the Supreme Court's statutory analysis in *Jennings v. Rodriguez, 583 U.S. 131 (2018)*, the Attorney General concluded that certain noncitizens described in 8 U.S.C. § 1225(b)(1)(B)(ii) are subject to mandatory detention during the pendency of INA § 240 proceedings and are not entitled to Immigration Judge bond hearings under 8 U.S.C. § 1226(a). Under that regime, release

is generally limited to DHS parole for "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

54. By contrast, where DHS detains a noncitizen under discretionary detention authority in 8 U.S.C. § 1226(a), the statute authorizes detention "pending a decision on whether the alien is to be removed." and authorizes discretionary release on bond or conditional parole, with custody redetermination procedures implemented by regulation. 8 U.S.C. § 1226(a).

55. Here, DHS has issued a Form I-862 Notice to Appear and EOIR has docketed the matter in the Otay Mesa Immigration Court; no final Immigration Judge decision has issued. Based on that procedural posture, Respondents' continued confinement is occurring during pending INA § 240 proceedings.

56. Petitioner pleads in the alternative that, to the extent Respondents do not establish continuing detention authority under 8 U.S.C. § 1225(b)(1)(B)(ii), detention during pending INA § 240 removal proceedings is governed by 8 U.S.C. § 1226(a), and the discretionary custody and release framework provided by that statute must be made available.

57. Petitioner is currently in formal INA § 240 removal proceedings. Respondents nevertheless maintain that Petitioner is detained without access to Immigration Judge bond review.

58. Respondents may contend that custody is governed by 8 U.S.C. § 1225(b)(1)(B)(ii), as construed in *Jennings v. Rodriguez, 583 U.S. 131 (2018)* and as applied by the Attorney General in *Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019)*, such that no Immigration Judge bond hearing is available absent parole. Petitioner challenges (a) Respondents'

asserted custody authority as applied on these facts and (b) the constitutionality of continued bondless detention without a meaningful, individualized custody determination.

59. Petitioner therefore seeks an order under 28 U.S.C. § 2241 requiring Respondents to provide a prompt, individualized custody determination before a neutral adjudicator that meaningfully considers whether continued civil confinement remains justified and, if not, what conditions of release would reasonably address flight risk or danger. *Jennings v. Rodriguez, 583 U.S. 131 (2018).*

60. In the alternative, if the Court determines that Petitioner's detention is governed by 8 U.S.C. § 1226(a), Petitioner seeks an order requiring Respondents to provide the custody redetermination process available under that discretionary detention authority, including a bond hearing.

VIII. REQUEST FOR RELIEF

61. 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 unless Respondents provide such a custody determination within a time certain set by the Court;

D. In the alternative, Order Respondents to provide a prompt, individualized custody determination before a neutral adjudicator that meaningfully considers whether continued detention is justified and, if not, what conditions of release would reasonably address flight risk or danger;

E. Award Petitioner attorneys' fees and costs to the extent permitted by law, including under 28 U.S.C. § 2412; and

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

DATED this February 17, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner