

1 Jose Torres, Esq. 362715
Moonveil Legal, PC
2 1901 First Ave. Ste. 220
San Diego, California 92101
3 Office: 619.573.1138
Fax: 619.694.5180
4 Email: jose@moonveilfirm.com

5
6 *Counsel for*
Roy Dedet Lopez-Zavala

7
8
9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT

12 Roy Dedet Lopez-Zavala,

13 Petitioner,

14 v.

15 Divver, Field Office Director of Enforcement
16 and Removal Operations, San Diego Field
Office, Immigration and Customs Enforcement;
17 et al.

18 Respondents.

Case No. **'26CV2880 JO JAC**

**PETITION FOR WRIT OF
HABEAS CORPUS**

19
20
21
22
23
24

1 Petitioner Roy Dedet Lopez-Zavala, through counsel, petitions for a writ of habeas
2 corpus under 28 U.S.C. § 2241 and alleges:

3 I. INTRODUCTION

- 4 1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because he is in federal
5 immigration custody and is being detained in violation of the Constitution and laws of the
6 United States.
- 7 2. Respondents' continued detention of Petitioner without a prompt, meaningful, and
8 individualized custody determination violates the Immigration and Naturalization Act,
9 the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
- 10 3. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. §
11 2243; an order directing Respondents to release Petitioner immediately, or, in the
12 alternative, to provide a prompt constitutionally adequate custody hearing before a
13 neutral adjudicator at which the Government bears the burden of justifying continued
14 detention; and any further relief the Court deems just and proper.

15 II. JURISDICTION AND VENUE

- 16 4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"
17 under color of federal authority within this judicial district and alleges that such custody
18 violates the Constitution and laws of the United States.
- 19 5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 20 6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
21 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 22 7. Venue is proper in this District because Petitioner is detained within the South District of
23 California.
- 24

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 Roy Dedet Lopez-Sachez 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 Markwayne Mullin is the Secretary of the Department of Homeland Security. In that official capacity, he is responsible for the administration and enforcement of the Immigration and Nationality Act, including DHS and ICE detention policies and practices. He is sued in his official capacity only.

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

4 15. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. §
5 2241. Respondents are the officials and agency responsible for Petitioner's custody and
6 continued detention.

7 **V. FACTUAL BACKGROUND**

8 16. Petitioner is a native and citizen of Guatemala.

9 17. Petitioner, Roy Dedet Lopez Zavala, is nineteen years old and is currently detained at the
10 Otay Mesa Detention Center.

11 18. Petitioner first entered the United States in or about March 2023, when he was
12 approximately sixteen years old, as an unaccompanied minor.

13 19. Petitioner fled Guatemala after local gangs began targeting him and other young men for
14 recruitment. Petitioner attempted to remain in his community and refuse the gang's
15 demands, but each refusal caused the threats and pressure to escalate.

16 20. Petitioner feared for his own safety and for his mother's safety in Guatemala. Because the
17 threats continued to worsen and he did not believe he could remain safely in his home
18 country, he fled to the United States.

19 21. After reaching the United States, Petitioner was detained for approximately twenty-one
20 days and was later released.

21 22. Following his release, Petitioner went to live with an aunt in Florida. He remained with
22 her for approximately one year.
23
24

1 23. After approximately one year, Petitioner's aunt told him that he could no longer stay with
2 her and that he would have to support himself. As a result, Petitioner lost stable family
3 support and was forced to fend for himself at a young age.

4 24. Without stable family support, Petitioner began working full time to support himself.
5 Because he had to focus on survival, housing, and employment, he was unable to
6 meaningfully continue pursuing his immigration case.

7 25. Petitioner later moved from Florida to San Diego County, California.

8 26. Before his current detention, Petitioner lived in San Marcos, California, where he rented a
9 room from a woman and supported himself through work.

10 27. Before detention, Petitioner worked in construction. He has demonstrated a consistent
11 willingness to work and support himself despite his young age and lack of family
12 support.

13 28. Petitioner has a sister who lives in San Marcos, California, although he is unsure of her
14 immigration status.

15 29. Petitioner's parents remain in Guatemala.

16 30. Petitioner is not married, has no children, and does not have United States citizen family
17 members.

18 31. Petitioner has no criminal history.

19 32. On or about February 6, 2026, at approximately 10:00 p.m., Petitioner was traveling
20 northbound on I-5 near San Clemente in a borrowed vehicle when he was stopped before
21 reaching the checkpoint.

22 33. During the stop, officers asked Petitioner for immigration documents. Petitioner did not
23 have any immigration documents to provide.
24

1 34. Petitioner was then asked to step out of the vehicle, placed in a government vehicle, and
2 taken into immigration custody.

3 35. At no point during the stop did officers show Petitioner a warrant.

4 36. Petitioner was later transferred to the Otay Mesa Detention Center, where he remains
5 detained.

6 37. DHS has detained Petitioner since February 6, 2026, and continues to hold him in
7 immigration custody at the Otay Mesa Detention Center.

8 38. Petitioner is not serving a criminal sentence, is detained solely under federal immigration
9 authority, and is not subject to a final order of removal.

10 39. Petitioner has not received a meaningful individualized custody determination or bond
11 hearing before a neutral adjudicator at which the Government bears the burden of
12 justifying continued detention.

13 VI. LEGAL FRAMEWORK

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

19 41. Noncitizens in removal proceedings are entitled to the protections of the Due Process
20 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
21 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
22 the factual and legal basis for continued civil confinement before a neutral
23 decisionmaker.
24

1 42. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations
2 must be individualized and must meaningfully assess whether continued detention is
3 necessary to address flight risk or danger to the community. The statute expressly
4 authorizes release on bond or conditional parole, and implementing regulations provide
5 for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R.
6 §§ 1236.1(d), 1003.19.

7 43. Because Petitioner is not subject to a final order of removal and is not serving a criminal
8 sentence, his detention must remain discretionary and individualized. Continued
9 detention without a meaningful custody determination is inconsistent with § 1226(a)'s
10 discretionary framework, particularly where Petitioner has lived in the United States
11 since childhood, was educated here, has long-standing family, employment, religious,
12 and community ties in Fallbrook and San Diego County, and has not been provided a
13 neutral process to test whether detention is necessary.

14 **VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)**

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

17 44. Petitioner incorporates by reference all preceding paragraphs.

18 45. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,
19 including immigration custody maintained in violation of the Constitution or laws of the
20 United States. Petitioner also seeks relief under the Administrative Procedure Act, 5
21 U.S.C. § 701 et seq., to the extent Respondents' custody decision constitutes reviewable
22 agency action and no other adequate remedy provides complete relief.
23
24

1 46. Under the APA, a reviewing court must “hold unlawful and set aside agency action”

2 found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
3 with law.” 5 U.S.C. § 706(2)(A).

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

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

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

17 50. Respondents have detained and continued to detain Petitioner without a reasoned,
18 individualized assessment of his actual circumstances. Petitioner is a nineteen-year-old
19 Guatemalan national who entered the United States as an unaccompanied minor after
20 fleeing gang recruitment and escalating threats in Guatemala. Since his release, he has
21 tried to survive without stable family support, first living with an aunt in Florida until that
22 support ended, and later moving to San Diego County, where he lived in San Marcos and
23
24

1 worked in construction. Petitioner has no criminal history, no record of violence, and no
2 facts showing that he is a danger to the community or a flight risk.

3 51. Respondents have also failed to meaningfully consider whether any legitimate
4 governmental interest could be satisfied through less restrictive alternatives to detention,
5 including release on recognizance, bond, supervision, reporting requirements, or other
6 noncustodial conditions. This failure is especially unreasonable given Petitioner's deep
7 local ties, long residence, family responsibilities, employment history, and lack of any
8 individualized finding that detention is necessary.

9 52. By maintaining Petitioner's custody without a reasoned, individualized decision and
10 without procedures adequate to test the necessity of confinement as applied, Respondents
11 acted arbitrarily and capriciously and abused their discretion in violation of 5 U.S.C. §
12 706(2)(A).

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

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

18 54. Petitioner realleges and incorporates all preceding paragraphs.

19 55. The APA requires a court to set aside agency action that is "not in accordance with law,"
20 "in excess of statutory jurisdiction, authority, or limitations," or "without observance of
21 procedure required by law." 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §
22 706(2)(D).

23

24

1 56. Petitioner is not subject to a final order of removal, is not serving a criminal sentence, and

2 Respondents have not identified a valid basis for mandatory detention. His custody is
3 therefore governed by the discretionary detention framework applicable to noncitizens
4 detained during pending removal proceedings, including 8 U.S.C. § 1226(a).

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

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

14 59. Respondents' continued detention of Petitioner without a lawful individualized custody
15 determination is not in accordance with law, exceeds the lawful limits of discretionary
16 detention under 8 U.S.C. § 1226(a), and/or was taken without observance of procedure
17 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.
18 § 706(2)(D).

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

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

24

1 61. Petitioner realleges and incorporates all preceding paragraphs.

2 62. The Due Process Clause prohibits the federal government from depriving any person of
3 liberty without due process of law. *U.S. Const. amend. V*; *Zadvydas v. Davis*, 533 U.S.
4 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

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

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

15 65. Because immigration detention is civil and nonpunitive, due process requires procedures
16 adequate to ensure that detention remains justified as applied to the individual. At
17 minimum, due process requires a meaningful opportunity to contest the factual and legal
18 basis for continued confinement before a neutral decisionmaker and to obtain an
19 individualized determination of whether detention is necessary to address flight risk or
20 danger. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

21 66. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework,
22 Petitioner's private liberty interest is substantial. Petitioner is only nineteen years old and
23 entered the United States as an unaccompanied minor after fleeing gang recruitment and
24

1 escalating threats in Guatemala. Since his release from initial immigration custody, he
2 has tried to support himself without stable family protection, including by working full
3 time and later moving to San Diego County, where he lived in San Marcos and worked in
4 construction. His continued detention separates him from the limited support he has in the
5 United States, prevents him from working to support himself, and imposes a severe loss
6 of liberty even though he is not serving a criminal sentence and has no criminal history.

7 67. The risk of erroneous deprivation is high because Petitioner has been detained since a
8 checkpoint stop on northbound I-5 near San Clemente without a constitutionally adequate
9 individualized custody determination. On information and belief, Respondents have not
10 meaningfully considered Petitioner's actual circumstances, including his age, his entry as
11 an unaccompanied minor, the threats that forced him to flee Guatemala, his lack of stable
12 family support after his aunt required him to leave her home in Florida, his work history,
13 his residence in San Marcos, his lack of criminal history, his lack of any individualized
14 danger finding, and the availability of less restrictive alternatives to detention.

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

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

22 70. Petitioner is entitled to habeas relief ordering his immediate release.
23
24

VIII. REQUEST FOR RELIEF

71. 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 May 07, 2026.

/s/ Jose Torres

Jose Torres

Counsel for Petitioner