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DETAINED

Attorney for Petitioner Alejandro ZAVALA-JIMENEZ

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of:

ZAVALA-JIMENEZ, Alejandro

Petitioner,

v.

**CHRISTOPHER J.
LAROSE, Senior Warden, Otay Mesa
Detention Center; PATRICK DIVVER,
Field Office Director, San Diego Office of
Detention and Removal, U.S. Immigration
and Customs Enforcement; TODD M.
LYONS, Senior Official Performing the
Duties of Director, U.S. Immigration and
Customs Enforcement; MARKWAYNE
MULLIN, Secretary, U.S. Department of
Homeland Security,**

Respondents.

File No.: **'26CV3017 JO AHG**



**CONSOLIDATED PETITION FOR
WRIT OF HABEAS CORPUS; TRO
FOR EMERGENCY STAY OF
REMOVAL; AND ORDER TO
SHOW CAUSE WITHIN THREE
DAYS**

28 U.S.C. § 2241

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
EMERGENCY STAY OF REMOVAL AND ORDER TO SHOW CAUSE**

1 Petitioner Alejandro ZAVALA-JIMENEZ respectfully petitions this Honorable Court for
2 a writ of habeas corpus, emergency preservation of this Court's jurisdiction, and an order to show
3 cause requiring Respondents to justify his detention and the imminent removal consequences
4 flowing from a materially defective reasonable-fear process.

5 INTRODUCTION

- 6 1. This is an emergency habeas action brought by a detained Mexican national whose reasonable-
7 fear screening process was conducted under circumstances that deprived him of a meaningful
8 opportunity to be heard, to consult counsel, and to present the legally material facts supporting
9 withholding of removal and protection under the Convention Against Torture ("CAT").
- 10 2. Mr. Zavala-Jimenez is fifty-five years old, a native and citizen of Mexico, a native Spanish
11 speaker, and the long-term partner of lawful permanent resident Gabriella Flores. He has
12 resided in the United States for most of his adult life and has three United States citizen children.
13 His family, community, and support network are in the United States.
- 14 3. DHS reinstated a 1997 removal order under INA § 241(a)(5). After Mr. Zavala-Jimenez
15 expressed fear of return to Mexico, USCIS conducted a reasonable-fear screening. USCIS
16 ultimately issued a negative reasonable-fear finding on May 4, 2026, but did not make an
17 adverse credibility finding. To the contrary, the I-899 worksheet checked that his testimony
18 was sufficiently detailed, consistent, and plausible in material respects.
- 19 4. The negative determination was based on two narrow conclusions: first, that there was no
20 reasonable possibility of nexus to a protected ground; second, that there was no reasonable
21 possibility of torture with public-official consent or acquiescence. Those conclusions
22 improperly discounted the family-based facts, the land-related attack on his mother, his
23 credible testimony that he fears the same attackers because he is the son of the woman they

1 nearly killed, and his testimony that Mexican police and government actors are infiltrated by
2 or aligned with criminal groups.

3 5. The procedural history compounds the substantive error. On April 30, 2026, Mr. Zavala-
4 Jimenez expressly declined to proceed without counsel, stated that this was the first time he
5 was going through the credible fear process, and asked to speak with his lawyer first. The
6 officer rescheduled but advised that the next interview could be as soon as the next day and
7 that he would need to proceed next time regardless. On May 4, 2026, the interview proceeded
8 telephonically at Otay Mesa in Spanish, from 8:30 a.m. to 10:00 a.m., without counsel or an
9 accredited representative present.

10 6. Mr. Zavala-Jimenez does not ask this Court to reopen or review the 1997 removal order as
11 such. He seeks habeas relief from unlawful custody and emergency relief to preserve this
12 Court's jurisdiction because Respondents' detention, imminent transfer, and imminent removal
13 consequences are tied to a constitutionally deficient and regulation-violating process.

14 7. The right protected here is basic: a detained person who faces possible return to a country
15 where he credibly fears death or torture must receive a fair, meaningful, and non-arbitrary
16 screening process before the Government uses detention and summary procedures to remove
17 him.

18 8. Because removal may occur quickly if the Immigration Judge concurs in the negative finding,
19 and because no administrative appeal lies from such concurrence, immediate relief is necessary.
20 The Court should issue an order to show cause within the timeframe required by 28 U.S.C. §
21 2243, stay removal and transfer absent Court approval, and order release or, at a minimum, a
22 prompt individualized custody hearing and corrected fear-screening process.
23

JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. §§ 1331, 2241, 2242, and 2243; Article I, § 9, cl. 2 of the United States Constitution; the Fifth Amendment; the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. § 1651.

10. Habeas is available to test the legality of executive detention. As the Supreme Court has recognized, the Great Writ provides a vital mechanism to prevent unlawful restraint, and the habeas statute requires swift judicial action. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

11. Under 28 U.S.C. § 2243, the Court must forthwith award the writ or issue an order to show cause unless it appears from the petition that the person detained is not entitled to relief. The respondent must make a return within three days unless the Court allows additional time for good cause.

12. This Petition challenges present custody and the procedures that make that custody unlawful; it does not seek direct appellate review of the reinstated removal order. To the extent Respondents invoke jurisdictional bars, those bars do not foreclose habeas review of constitutional custody claims, procedural due process claims, and requests necessary to preserve the Court's jurisdiction over the detained person.

13. *The Court may grant declaratory and injunctive relief ancillary to habeas where necessary to ensure that the remedy is meaningful.* *Nken v. Holder*, 556 U.S. 418, 426-27 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 966-68 (9th Cir. 2011).

VENUE

14. Venue is proper in this District because Mr. Zavala-Jimenez is detained at the Otay Mesa Detention Center in San Diego, California, within the *Southern District of California*. *Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

15. Respondents exercise custody and control over Petitioner in this District, and the immigration court proceedings and reasonable-fear review are pending at 7488 Calzada de la Fuente, San Diego/Otay Mesa, California.

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243

16. Petitioner is in custody for purposes of 28 U.S.C. § 2241 because Respondents and their agents physically confine him at Otay Mesa Detention Center and exercise legal custody over him through ICE and DHS.

17. Section 2242 requires an application to allege the facts concerning the detention, the custodian, and the claimed authority for custody. This Petition identifies the custodians and alleges the facts and legal grounds showing that Petitioner's detention and imminent removal consequences are unlawful.

18. Section 2243 requires expeditious treatment. The Court should issue the writ or an order to show cause forthwith and require Respondents to certify the true cause of detention within three days, or within such shorter period as the Court deems appropriate due to the imminent May 15, 2026 reasonable-fear review and risk of removal.

STATEMENT OF FACTS

19. Petitioner Alejandro ZAVALA-JIMENEZ was born  in Mexico. He is fifty-five years old, male, Latino, Catholic, and a native Spanish speaker.

1 20. Mr. Zavala-Jimenez first entered the United States in or about 1989 after severe economic
2 hardship and threats in Mexico. He built a long-term family life in the United States with his
3 lawful permanent resident partner, Gabriella Flores.

4 21. Mr. Zavala-Jimenez and Ms. Flores have children, including United States citizen children.
5 The family unit is central to his life and identity, and is central to how he would be perceived
6 upon return to Mexico after decades in the United States.

7 22. The available records reflect a 1997 conviction for possession of cocaine with an
8 approximately three-month sentence. After the completion of that sentence, he was deported
9 to Mexico in 1997.

10 23. After approximately two to three months in Mexico, Mr. Zavala-Jimenez returned to the United
11 States and reunited with his family. DHS's reinstatement paperwork alleges that he reentered
12 on or about September 1, 1997, at or near Otay Mesa, California.

13 24. From approximately 1997 until 2026, Mr. Zavala-Jimenez remained in the United States, lived
14 with or near his family, and worked in food service.

15 25. In early 2026, Mr. Zavala-Jimenez was arrested in a misdemeanor matter involving a laser
16 pointer directed toward a police helicopter. He stated that he did not intend harm. He was
17 released on supervised bond, but was immediately apprehended by ICE after leaving the
18 courthouse.

19 26. DHS apprehended and detained Mr. Zavala-Jimenez on or about April 23, 2026, and placed
20 him at Otay Mesa Detention Center. Government records list the date of detention as April 23,
21 2026.

22 27. DHS issued a Notice of Intent/Decision to Reinstate Prior Order, Form I-871, stating that a
23 prior deportation order was entered on June 20, 1997, at Calexico, California; that Mr. Zavala-

1 Jimenez was removed on June 20, 1997; and that DHS alleged an unlawful reentry on or about
2 September 1, 1997.

3 28. Because Mr. Zavala-Jimenez expressed fear of persecution or torture in Mexico, DHS referred
4 him to USCIS for reasonable-fear screening under 8 C.F.R. § 208.31.

5 29. On April 30, 2026, USCIS initiated a telephonic reasonable-fear interview. Mr. Zavala-
6 Jimenez stated that he did not wish to continue without an attorney or accredited representative,
7 explained that he had tried to contact attorneys, stated that this was his first time doing this,
8 and asked to speak with his lawyer first.

9 30. The officer agreed to reschedule but advised him that the next interview could be as soon as
10 the next day and that he would need to proceed next time regardless. The officer also provided
11 an email address for counsel to submit a G-28 and availability.

12 31. On May 4, 2026, the reasonable-fear interview occurred telephonically at Otay Mesa Detention
13 Center. The I-899 reflects that the interview was conducted in Spanish with LIS Solutions
14 interpreter ID 4698, began at 8:30 a.m., and ended at 10:00 a.m.

15 32. No attorney or accredited representative was present during the May 4 interview. The record
16 reflects that only the applicant and the asylum officer were present.

17 33. During the interview, Mr. Zavala-Jimenez testified that he feared returning to Mexico because
18 his mother, father, and nephew had fled after an attempt against their lives. He testified that
19 unknown individuals tried to kill his family members on March 5, 2001.

20 34. Mr. Zavala-Jimenez testified that his mother believed the attackers wanted to take over her
21 land, that his mother was badly hurt and almost died, and that he feared the same people
22 because he is the son of the person they tried to kill.
23

1 35. Mr. Zavala-Jimenez further testified that if he returned to his home area, people would see that
2 he had returned and would find out he was back. He stated that he did not believe he could
3 safely relocate to Mexico because he did not know anyone else.

4 36. The interview record contains CAT-relevant testimony. Mr. Zavala-Jimenez stated that his
5 family did not report the 2001 attack because they lived in the countryside and there were no
6 police nearby. He testified that he did not believe Mexican police or the government would
7 protect him because the government is involved with gangs, gangs pay off police, and the
8 police cannot be trusted.

9 37. USCIS found Mr. Zavala-Jimenez credible. The I-899 checked that his testimony was
10 sufficiently detailed, consistent, and plausible in material respects.

11 38. USCIS nevertheless issued a negative reasonable-fear finding. The Form I-898 checked that
12 there was no reasonable possibility that the harm he feared would be on account of race,
13 religion, nationality, political opinion, or membership in a particular social group, and no
14 reasonable possibility of torture with the consent or acquiescence of a public official or person
15 acting in an official capacity.

16 39. The written analysis characterized his claim as an unprotected land dispute, even though the
17 testimony identified the reason he personally would be targeted: he is the son of the person the
18 attackers nearly killed. The analysis also treated the absence of a prior police report as
19 dispositive, even though he explained that reporting was impractical in the countryside and
20 that police corruption and gang influence made protection futile.

21 40. Mr. Zavala-Jimenez requested that the Immigration Judge review the negative reasonable-fear
22 finding. EOIR's automated case information and the immigration court notices indicate an in-
23 person Review of Reasonable Fear Hearing scheduled for May 15, 2026, at 8:00 a.m. before

1 Immigration Judge Mark Sameit at 7488 Calzada de la Fuente, San Diego/Otay Mesa,
2 California.

3 41. Counsel entered an appearance on May 13, 2026, and submitted an urgent request for
4 reconsideration and/or a reasonable-fear re-interview to USCIS and ICE, emphasizing the May
5 15 hearing and the need for competent Spanish interpretation and a fully developed record.

6 42. As of this filing, Mr. Zavala-Jimenez remains detained at Otay Mesa Detention Center. He
7 poses no danger to the community, has long-term family and community ties, and was released
8 on supervised bond before ICE detained him.

9 **PARTIES**

10 43. Petitioner Alejandro ZAVALA-JIMENEZ is a detained noncitizen in ICE custody at Otay
11 Mesa Detention Center in San Diego, California. He is named in his individual capacity as the
12 person detained and seeking habeas relief.

13 44. Respondent Christopher J. LaRose is the Senior Warden of Otay Mesa Detention Center, the
14 facility where Petitioner is detained. He is a custodian of the Petitioner and is named in his
15 official capacity.

16 45. Respondent Patrick Divver is the ICE Field Office Director for the San Diego Field Office. He
17 exercises authority over ICE detention, custody, transfer, and removal operations affecting
18 Petitioner and is named in his official capacity.

19 46. Respondent Todd M. Lyons is the Senior Official Performing the Duties of Director of U.S.
20 Immigration and Customs Enforcement. He exercises authority over ICE and its detention and
21 removal operations and is named in his official capacity.
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1 47. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security.
2 He exercises authority over DHS components, including ICE and USCIS, and is named in his
3 official capacity.

4 48. Respondents collectively hold Petitioner in custody, control his detention and transfer, and
5 control the removal consequences that will follow if the defective reasonable-fear process is
6 allowed to become the basis for removal.

7 **EXHAUSTION AND JUSTICIABILITY**

8 49. Petitioner has exhausted available administrative steps to the extent practicable. He expressed
9 fear of return, underwent reasonable-fear screening, requested Immigration Judge review of
10 the negative determination, and through counsel requested urgent reconsideration and/or re-
11 interview.

12 50. No adequate administrative remedy exists to address the unlawful detention and imminent
13 removal consequences at issue here. If the Immigration Judge concurs in the negative finding,
14 regulations provide no administrative appeal from that decision and the matter is returned to
15 DHS for removal. 8 C.F.R. § 1208.31(g)(1).

16 51. Judicial intervention is necessary now because the injury is imminent, the custody is ongoing,
17 and removal would defeat meaningful habeas review. The All Writs Act authorizes orders
18 necessary or appropriate in aid of this Court's jurisdiction. 28 U.S.C. § 1651(a).
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LEGAL ARGUMENT

I. Habeas Relief and an Order to Show Cause Are Required Forthwith

52. The habeas statute requires this Court to act swiftly. Section 2243 provides that a court entertaining a habeas application shall forthwith award the writ or issue an order to show cause unless the petition itself shows that the detained person is not entitled to relief.

53. *Courts have long recognized that habeas is a prompt and imperative remedy against unlawful restraint. Fay v. Noia*, 372 U.S. 391, 400 (1963). *The Ninth Circuit has likewise emphasized that habeas proceedings require expeditious determination. Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

54. Petitioner remains in custody and faces imminent removal consequences following a negative reasonable-fear finding that was issued after an uncounseled telephonic interview and a materially incomplete analysis. The Court should order Respondents to show cause within three days and preserve Petitioner's presence in this District.

II. Due Process Requires a Meaningful Opportunity to Be Heard Before Civil Detention and Removal Consequences Become Irreversible

55. *Noncitizens within the United States are persons protected by the Due Process Clause of the Fifth Amendment. Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003).

56. *Freedom from physical restraint lies at the heart of the liberty protected by due process. Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even civil immigration detention must be reasonably related to legitimate purposes and accompanied by adequate procedural protections.

1 57. The procedural due process analysis requires balancing: (1) the private interest affected; (2)
2 the risk of erroneous deprivation and the value of additional safeguards; and (3) the
3 government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

4 58. Each *Mathews* factor favors Petitioner. His private interests are extraordinary: physical liberty,
5 family unity, protection from removal to a place where he credibly fears death or torture, and
6 the ability to participate meaningfully in proceedings that may determine whether he can seek
7 withholding or CAT protection.

8 59. The risk of error is high because the interview was telephonic, conducted in detention,
9 conducted without counsel after Petitioner had requested counsel, and culminated in a written
10 analysis that ignored or minimized family-based nexus, rural inability to report, police
11 corruption, and willful blindness.

12 60. Additional safeguards are valuable and modest: access to counsel, a reasonable opportunity to
13 supplement evidence, competent Spanish interpretation, review of the summary in Spanish
14 with meaningful corrections, a re-interview or corrected reasonable-fear review, and an
15 individualized custody assessment.

16 61. The government's legitimate interests are not undermined by fair procedures. The government
17 has no legitimate interest in detaining a person through an unreliable process or in removing
18 him before the Court can determine whether the consequences of custody and removal are
19 lawful.

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21 **III. The Reasonable-Fear Regulations Require a Non-Adversarial, Meaningful, and Fair**
22 **Interview**

23 62. The applicable regulations require the asylum officer to conduct the reasonable-fear interview
24 in a non-adversarial manner, determine that the person understands the process, allow

1 representation by counsel or an accredited representative at no expense to the Government,
2 and permit the presentation of evidence relevant to persecution or torture. 8 C.F.R. § 208.31(c).

3 63. If the applicant cannot proceed effectively in English, the officer must arrange interpreter
4 assistance. The officer must create a summary of the material facts, review it with the applicant,
5 and provide an opportunity to correct any errors. 8 C.F.R. § 208.31(c).

6 64. A reasonable fear of persecution exists where there is a reasonable possibility that the person
7 would be persecuted on account of a protected ground. A reasonable fear of torture exists where
8 there is a reasonable possibility that the person would be tortured in the country of removal. 8
9 C.F.R. § 208.31(c).

10 65. Upon a negative reasonable-fear decision, the applicant may request a *de novo* Immigration
11 Judge review. 8 C.F.R. § 1208.31(g). But if the Immigration Judge concurs with the negative
12 determination, the case is returned to DHS for removal, and no administrative appeal lies. 8
13 C.F.R. § 1208.31(g)(1). That finality makes a fair screening record and fair review essential.

14 66. The record here falls short. Petitioner was credible; he identified a family-based reason for
15 targeting; he explained that his mother was nearly killed in a land-related attack; he identified
16 the inability to seek rural police assistance; and he described police corruption and gang
17 influence. Yet the written analysis treated his fear as merely economic or generalized, and
18 rejected withholding and CAT on the grounds of lack of prior police reporting.

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20 **IV. The Negative Nexus Analysis Was Arbitrary Because Family Membership Is a**
21 **Cognizable Basis for a Particular Social Group**

22 67. *Family membership can constitute a particular social group because kinship ties are*
23 *immutable and socially recognizable. Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015);*
24 *Parada v. Sessions, 902 F.3d 901, 910 (9th Cir. 2018).*

68. Mr. Zavala-Jimenez's testimony was not simply that unknown persons might harm anyone. He testified that the attackers nearly killed his mother in connection with land, that his mother almost died, and that he fears the same attackers because he is her son. At the screening stage, it is a family-based nexus theory requiring full development.

69. An applicant need not establish the final formulation of every particular social group at the screening stage. The relevant question is whether the credible facts present a reasonable possibility of eligibility. A family-based group, such as members of the Zavala-Jimenez family, targeted because of land and kinship ties, is legally viable and was not meaningfully analyzed.

70. *The officer's analysis acknowledged the key family fact but then dismissed the claim as a land dispute. That analysis misunderstands mixed-motive nexus. Persecution can be on account of a protected ground even when other motives are also present. Navas v. INS*, 217 F.3d 646, 656-57 (9th Cir. 2000); *Parada v. Sessions*, 902 F.3d 901, 910-11 (9th Cir. 2018).

71. The record also supports further development of a second social group or imputed status theory: long-term U.S. residents/deportees returning to Mexico with U.S. citizen and lawful permanent resident family ties, perceived as having access to U.S. resources and lacking local protection. At a minimum, the officer should have elicited and analyzed those facts rather than reducing the claim to generalized fear.

V. The Negative CAT Analysis Was Arbitrary Because It Ignored Willful Blindness, Futility of Reporting, and Country Conditions

72. CAT protection does not require nexus to a protected ground. It requires analysis of whether the applicant is more likely than not to be tortured, and at the screening stage whether there is a reasonable possibility of torture, by or with the consent or acquiescence of a public official or other person acting in an official capacity.

1 73. *Government acquiescence includes willful blindness. Zheng v. Ashcroft*, 332 F.3d 1186, 1194-
2 97 (9th Cir. 2003); *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 787-88 (9th Cir. 2004); *Cole v.*
3 *Holder*, 659 F.3d 762, 771 (9th Cir. 2011).

4 74. *The Ninth Circuit has repeatedly held that a person need not report harm to authorities where*
5 *reporting would be futile or dangerous. Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058-59
6 (9th Cir. 2006); *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069-72 (9th Cir. 2017).

7 75. The officer rejected CAT because Petitioner's family did not report the 2001 attack and because
8 police therefore supposedly could not acquiesce. That reasoning is legally too narrow.
9 Petitioner's testimony that there were no police nearby in the countryside and that police are
10 paid by gangs directly raises futility, willful blindness, and official acquiescence.

11 76. Country conditions corroborate the risk. Human Rights Watch's World Report 2026 describes
12 Mexico as suffering a human-rights crisis rooted in extreme violence by organized crime and
13 abuse by state agents with widespread impunity. Freedom House's 2026 Mexico report rates
14 Mexico Partly Free and describes severe rule-of-law deficits. Amnesty International's
15 2025/2026 reporting describes torture, disappearances, and attacks on rights defenders and
16 searchers. These materials are directly relevant to CAT acquiescence and should have been
17 considered.

18 77. The record also contains Guerrero-specific risk. Petitioner identified his prior address as
19 Guerrero, Mexico, and recent public reporting has described cartel violence, displacement, and
20 lack of effective state protection in Guerrero. Such evidence reinforces the need for a corrected
21 screening process rather than summary rejection.
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VI. The Right to Counsel and the Request for Counsel Were Not Meaningfully Honored

78. Noncitizens have a statutory and regulatory right to counsel at no expense to the Government in immigration proceedings and related screening settings where regulations provide for representation. 8 U.S.C. § 1362; 8 C.F.R. § 208.31(c).

79. *The Ninth Circuit has emphasized that the right to counsel in immigration proceedings is a critical component of due process. Biwot v. Gonzales*, 403 F.3d 1094, 1098-99 (9th Cir. 2005); *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312-13 (9th Cir. 1987).

80. *A denial of the right to counsel can be structural and does not require a separate showing of prejudice in the same way as ordinary procedural errors. Montes-Lopez v. Holder*, 694 F.3d 1085, 1091-93 (9th Cir. 2012).

81. Here, Petitioner explicitly declined to proceed without counsel on April 30, 2026, and said he wished to speak to his lawyer first. The Government's response was not to ensure a meaningful opportunity to obtain representation, but to warn that the next interview could occur as soon as the next day and that he would need to proceed regardless.

82. When the May 4 interview proceeded without counsel, the predictable result followed: the legally significant facts were not developed. No representative identified or formulated the family-based particular social group, explained mixed-motive nexus, supplied country-condition evidence, or explained CAT willful blindness and futility of reporting.

83. This is precisely the type of error that counsel safeguards against. The remedy should be a stay, an order to show cause, and a corrected process that permits counsel to participate meaningfully.

VII. Petitioner's Continued Detention Is Arbitrary Without an Individualized Custody Determination

84. Immigration detention is civil, not punitive. *It is permissible only when reasonably related to legitimate purposes such as preventing flight or protecting the community. Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 528 (2003).

85. Petitioner has deep family ties in the United States, a long-term partner, U.S. citizen children, a long history of residence, and a strong incentive to appear because his only meaningful protection from removal depends on pursuing his legal claims.

86. The recent misdemeanor matter resulted in supervised bond before ICE detention. The record does not show that DHS made an individualized, evidence-based finding that Petitioner is dangerous or a flight risk that cannot be addressed through reasonable conditions.

87. *A bond or custody redetermination hearing would impose minimal burden and significantly reduce the risk of erroneous deprivation of liberty. Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011); *Casas-Castrillon v. DHS*, 535 F.3d 942, 950-52 (9th Cir. 2008).

88. Even if Respondents invoke post-order detention authority, due process still requires detention to be non-arbitrary and reasonably related to legitimate purposes. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001); *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

VIII. A TRO for Stay of Removal and Transfer Is Necessary to Preserve Jurisdiction and Prevent Irreparable Harm

89. A stay is warranted where the moving party shows serious legal questions, irreparable harm, a favorable balance of equities, and public interest in lawful procedures. *Nken v. Holder*, 556 U.S. 418, 426, 434 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 966-68 (9th Cir. 2011).

90. Petitioner raises serious legal questions concerning due process, counsel, the reasonable-fear regulations, CAT willful blindness, family-based nexus, and the legality of detention based on a defective process.

91. The irreparable harm is immediate. If the Immigration Judge concurs with the negative determination, no administrative appeal lies, and DHS may remove Petitioner to Mexico before this Court can adjudicate the legality of custody and process.

92. The equities favor a stay. Petitioner seeks only preservation of the status quo, access to counsel, a fair process, and an individualized custody determination. Respondents suffer no cognizable harm from complying with constitutional and regulatory safeguards.

93. The public interest favors fair immigration procedures, accurate fear determinations, lawful detention, and protection against return to torture or persecution. The public has no interest in removal based on a materially incomplete and unreliable screening record.

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Procedural Due Process - Uncounseled and Defective Reasonable-Fear Process

94. Petitioner realleges and incorporates by reference each preceding paragraph.

95. The Fifth Amendment prohibits Respondents from depriving Petitioner of liberty without due process of law.

96. Petitioner had a protected liberty interest in fair procedures before detention and imminent removal consequences became tied to a negative reasonable-fear determination.

1 97. Respondents violated due process by proceeding with the May 4, 2026 telephonic reasonable-
2 fear interview without counsel after Petitioner had expressly declined to proceed without
3 counsel on April 30, 2026 and asked to speak to his lawyer first.

4 98. Respondents further violated due process by failing to elicit, develop, and fairly analyze
5 material facts concerning family-based nexus, mixed motive, rural inability to report, police
6 corruption, official acquiescence, and CAT willful blindness.

7 99. The deprivation is ongoing because Petitioner remains detained and faces imminent removal
8 based on the defective process.

9
10 **COUNT TWO**

11 **Violation of the Administrative Procedure Act and 8 C.F.R. §§ 208.31 and 1208.31**

12 100. Petitioner realleges and incorporates by reference each preceding paragraph.

13 101. Under the APA, a court shall hold unlawful and set aside agency action that is arbitrary,
14 capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right,
15 in excess of statutory authority, or without observance of procedure required by law. 5 U.S.C.
16 § 706(2)(A)-(D).

17 102. Respondents and their agents failed to comply with 8 C.F.R. § 208.31(c), which requires a
18 non-adversarial interview, a meaningful understanding of the process, an opportunity for
19 representation, interpreter assistance when needed, a material-facts summary, and an
20 opportunity to correct errors.

21 103. The negative determination was arbitrary and capricious because it failed to consider
22 important aspects of the problem, including family membership as a protected ground, mixed
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1 motive, futility of reporting, and willful blindness by public officials. *Motor Vehicle Mfrs.*
2 *Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

3 104. *The agency's decision lacked a rational connection between the facts found and the choice*
4 *made. Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019).

5 105. The Court should declare the process in the Petitioner's case unlawful and order
6 appropriate habeas and equitable relief, including a corrected process and preservation of the
7 Petitioner's presence in this District.

8 **COUNT THREE**

9 **Violation of Fifth Amendment Substantive and Procedural Due Process - Arbitrary Civil** 10 **Detention**

11 106. Petitioner realleges and incorporates by reference each preceding paragraph.

12 107. *Civil detention must be reasonably related to legitimate governmental purposes and must*
13 *not be arbitrary or punitive. Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

14 108. Respondents detain Petitioner without a meaningful individualized determination that he
15 presents a danger or flight risk that cannot be addressed through reasonable conditions.

16 109. Petitioner has extensive family ties, a long-term partner, U.S. citizen children, and an
17 urgent legal interest in appearing for proceedings. He was released on supervised bond before
18 ICE took him into custody.

19 110. Detention under these circumstances, especially when tethered to a flawed reasonable-fear
20 process, violates due process.

1 111. The Court should order release or, at a minimum, a constitutionally adequate custody
2 hearing at which Respondents bear the burden of justifying continued detention by clear and
3 convincing evidence.

4 **COUNT FOUR**

5 **Violation of Due Process and Non-Refoulement Principles - Failure to Fairly Assess**

6 **Withholding and CAT Risk**

7 112. Petitioner realleges and incorporates by reference each preceding paragraph.

8 113. The United States may not remove a person to a country where he is more likely than not
9 to face persecution on account of a protected ground or torture with official consent or
10 acquiescence. INA § 241(b)(3); 8 C.F.R. §§ 1208.16 and 1208.17.

11 114. The reasonable-fear process exists to prevent unlawful return by screening reinstated-order
12 cases for withholding and CAT claims. A defective screening process creates an unacceptable
13 risk of refoulement.

14 115. Respondents violated due process by allowing a negative determination to issue without a
15 legally adequate analysis of family-based nexus, CAT willful blindness, police corruption, or
16 the futility of reporting in rural Mexico.

17 116. The Court should stay removal and require Respondents to provide a meaningful process
18 before any return to Mexico.

19 **COUNT FIVE**

20 **Suspension Clause and All Writs Act - Preservation of Habeas Jurisdiction**

21 117. Petitioner realleges and incorporates by reference each preceding paragraph.
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118. *The Suspension Clause protects the availability of habeas corpus as a meaningful remedy against unlawful executive detention. Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

119. If Respondents remove or transfer Petitioner before this Court adjudicates the legality of custody and process, habeas relief may become ineffective or impossible.

120. The All-Writs Act authorizes the Court to issue orders necessary or appropriate in aid of its jurisdiction, including a temporary stay of removal and transfer. 28 U.S.C. § 1651(a).

121. The Court should prohibit transfer outside this District and removal from the United States, absent further order of the Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause requiring Respondents to show cause within three days why the writ should not be granted;
- (3) Issue a TRO to Stay Petitioner's removal from the United States pending resolution of this habeas action and any related emergency motions;
- (4) Prohibit Respondents from transferring Petitioner outside the Southern District of California without advance notice to Petitioner and leave of Court;
- (5) Declare that Petitioner's detention and the defective reasonable-fear process violate the Fifth Amendment, 8 C.F.R. § 208.31, 8 C.F.R. § 1208.31, and the APA;
- (6) Order Respondents to release Petitioner from custody under reasonable conditions of supervision;

1 (7) In the alternative, order Respondents to provide a prompt individualized custody hearing
2 before a neutral adjudicator, with the Government bearing the burden of proving by clear and
3 convincing evidence that continued detention is necessary;

4 (8) Order Respondents to provide a corrected, meaningful reasonable-fear process, including
5 counsel participation, competent Spanish interpretation, the opportunity to submit evidence,
6 and a legally adequate analysis of family-based nexus and CAT acquiescence; and

7 (9) Grant such other and further relief as the Court deems just, equitable, and proper.

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9 Respectfully Submitted,

10 /S/ Mario Portugal

11 Mario Portugal, Esq.

12 Attorney for the Petitioner
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