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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NELSON OMAR RAMIREZ LOPEZ,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

David J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement;

Todd BLANCHE, Attorney General of the United States, U.S. Department of Justice.

Respondents

Case No.: '26CV4550 JAO SBC

[redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner, Nelson Omar Ramirez Lopez, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and alleges as follows:

INTRODUCTION

2. Petitioner Nelson Omar Ramirez Lopez is a native and citizen of Guatemala currently detained at the Otay Mesa Detention Center in San Diego, California.

3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his re-detention by the Department of Homeland Security after having been previously released from federal custody as an unaccompanied minor and permitted to reside at liberty in the United States for approximately three and one-half years.

4. Petitioner entered the United States without inspection as a minor, at the age of 15, and was subsequently encountered by immigration authorities. He was thereafter placed in the custody of the Office of Refugee Resettlement ("ORR") as an unaccompanied minor. On January 8, 2023, the Office of Refugee Resettlement formally released Petitioner from federal custody to his brother as his sponsor in the United States.

5. Following his release, Petitioner remained at liberty in the United States for approximately three and one-half years.

6. Despite this prior release and lengthy period of liberty, Petitioner was arrested in the interior of the United States on June 29, 2026, in Florida, after immigration authorities encountered him while he was a passenger in a work truck. Petitioner was taken into immigration custody and transported to the Krome North Service Processing Center. Respondents provided no prior notice, no opportunity to be heard, and identified no changed circumstances justifying the revocation of his previously granted liberty.

7. On July 2, 2026, after Petitioner had already been taken into immigration custody, DHS issued Petitioner a Notice to Appear placing him in removal proceedings under INA § 240. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he presently remains detained.

8. The government's actions violate the Due Process Clause of the Fifth Amendment. By previously releasing Petitioner from federal custody and permitting him to reside at liberty in the United States for approximately three and one-half years, the government created a substantial liberty interest in his continued freedom from physical restraint.

9. The Constitution does not permit the government to revoke that liberty interest through re-detention without constitutionally adequate pre-deprivation process, including prior notice and a meaningful opportunity to be heard before a neutral decisionmaker.

10. Absent intervention by this Court, no neutral adjudicator will review the legality of Petitioner's re-detention. Petitioner therefore respectfully requests that this Court declare his re-detention unlawful and order his immediate release or, in the alternative, require Respondents to provide a constitutionally adequate custody hearing.

CUSTODY

11. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

12. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

13. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the Constitution, laws, or treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

15. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

16. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Petitioner's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

17. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction because Petitioner challenges only the legality of his detention, not the validity of removal proceedings or any removal order. Federal courts have consistently recognized that habeas corpus remains available to review the statutory and constitutional basis of immigration detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241.

PARTIES

18. Petitioner, Nelson Omar Ramirez Lopez, is a native and citizen of Guatemala currently detained at the Otay Mesa Detention Center in San Diego, California.

19. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego County, California, and is Petitioner's immediate custodian.

20. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS).

21. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

22. Respondent Todd Blanche is the Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

23. All Respondents are named in their official capacities.

STATEMENT OF FACTS

24. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Guatemala who entered the United States without inspection as a minor, at the age of 15.

25. Petitioner was encountered by immigration authorities shortly after his entry into the United States.

26. Shortly after his apprehension, Petitioner was transferred to the custody of the Office of Refugee Resettlement ("ORR") as an unaccompanied minor.

27. On January 8, 2023, the U.S. Department of Health and Human Services, Office of Refugee Resettlement, formally released Petitioner from federal custody to his brother as his sponsor pursuant to a Verification of Release document. (*Ex.* 1).

28. Following his release from ORR custody, Petitioner remained at liberty in the United States for approximately three and one-half years. During that period, Respondents permitted Petitioner to remain at liberty and took no action to return him to *immigration* custody.

29. On June 29, 2026, Petitioner was encountered by immigration authorities in Florida while he was a passenger in a work truck and was taken into immigration custody. Respondents provided no prior notice, no opportunity to be heard, and identified no changed circumstances justifying this re-detention.

30. Following his arrest, Petitioner was taken to the Krome North Service Processing Center in Florida.

31. On July 2, 2026, after Petitioner had already been taken into immigration custody, DHS issued Petitioner a Notice to Appear placing him in removal proceedings under INA § 240.

32. Petitioner was subsequently transferred to the Otay Mesa Detention Center in San Diego, California, where he remains detained.

33. At no point before revoking Petitioner's liberty did DHS provide notice or any meaningful opportunity to be heard before a neutral decisionmaker.

34. At no point has DHS identified any individualized basis for revoking Petitioner's previously granted liberty before his re-detention, nor did it provide Petitioner with constitutionally adequate process before taking him back into custody.

REQUIREMENTS OF 28 U.S.C. § 2243

35. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled to relief. If an OSC is issued, the statute requires that Respondents file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

36. Federal courts have long emphasized the importance of habeas corpus as a protection against unlawful restraint. The Supreme Court has described the Great Writ as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

37. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain a prompt and expeditious remedy. As the Ninth Circuit has explained, "The statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). The court cautioned that delays in habeas proceedings risk creating the impression "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. In habeas corpus proceedings, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive prudential exhaustion where "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Here, exhaustion should be excused because the available administrative process is inadequate to remedy Petitioner's pre-deprivation due-process claim and because his continued detention causes irreparable harm.

39. Petitioner's claim challenges Respondents' failure to provide constitutionally adequate process before revoking his previously granted liberty. Although an administrative custody proceeding may address whether Petitioner should remain detained going forward, it cannot retroactively provide the process required before his re-detention or remedy the deprivation that had already occurred.

40. Moreover, no statutory exhaustion requirement applies to Petitioner's constitutional claim. The claim presents a pure question of constitutional law concerning the procedures required before the government may revoke previously granted liberty through re-detention. That question falls outside the agency's adjudicatory competence and is properly resolved through habeas review.

41. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied after the fact. Continued incarceration following approximately three and one-half years during which Respondents permitted Petitioner to remain at liberty magnifies that ongoing harm. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing detention therefore further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

42. The Immigration and Nationality Act distinguishes between detention at the time of entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225, 1226.

43. Section 235 governs inspection-stage detention of individuals encountered at or near the time of entry while their admissibility is being determined. By contrast, Section 236(a) governs the arrest and detention of noncitizens who have already entered the United States and are later taken into custody pending removal proceedings.

44. Once the federal government releases a noncitizen from custody and permits him to reside at liberty in the United States, any subsequent exercise of detention authority remains subject to the requirements of the Due Process Clause. Whatever statutory detention authority Respondents may invoke, that authority does not resolve the separate constitutional question presented here: whether Respondents could revoke Petitioner's previously granted liberty without constitutionally adequate pre-deprivation process.

45. The Due Process Clause protects all persons within the United States from arbitrary detention. See *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Freedom from physical restraint lies at the core of the liberty protected by the Constitution.

46. Immigration detention is civil in nature and is permissible only when justified by legitimate governmental interests, such as ensuring appearance at proceedings or protecting the community. *Id.* at 690–91.

47. Where the government has previously released a noncitizen from federal custody and permitted him to reside at liberty in the community, that individual possesses a substantial liberty interest in remaining free from physical restraint. Once that liberty has been granted, it cannot be revoked without constitutionally adequate pre-deprivation process. Accordingly, Respondents may not revoke that liberty through re-detention without prior notice, a meaningful opportunity to be heard before a neutral decisionmaker, and an individualized basis demonstrating that re-detention is necessary.

48. The Administrative Procedure Act prohibits agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must provide a reasoned explanation for its actions based on the relevant facts and circumstances.

49. Re-detaining a noncitizen after a prolonged period of liberty—without identifying any changed circumstances, without providing an individualized justification, and without constitutionally adequate pre-deprivation process—constitutes arbitrary and unlawful agency action.

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

50. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs.

51. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. This protection applies to all persons within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

52. Petitioner was previously released from federal custody on January 8, 2023, and thereafter remained at liberty in the United States for approximately three and one-half years. On June 29, 2026, Petitioner was encountered by immigration authorities in Florida while he was a passenger in a work truck and was taken into immigration custody without prior notice, without any explanation, and without any identified change in circumstances. Respondents made no individualized pre-deprivation determination that Petitioner posed a danger to the community or a risk of flight.

53. Having previously released Petitioner from custody and allowed him to live at liberty in the community, the government created a substantial liberty interest in Petitioner's continued freedom from detention. By re-detaining Petitioner without constitutionally adequate pre-

deprivation process, including prior notice, an individualized determination, and a meaningful opportunity to be heard before a neutral decisionmaker, Respondents arbitrarily deprived Petitioner of that liberty in violation of the Due Process Clause. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

COUNT 2

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Arbitrary, Capricious, and Not in Accordance with Law)

54. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

55. Under the Administrative Procedure Act, a court shall "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

56. Agency action is arbitrary and capricious where the agency fails to consider relevant factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

57. An agency must provide a reasoned explanation for its actions based on the facts and circumstances of the individual case. *Dep't of Com. v. New York,* 139 S. Ct. 2551, 2569 (2019).

58. Here, Respondents re-detained Petitioner after previously releasing him from federal custody and permitting him to reside at liberty in the United States for approximately three and one-half years. Respondents have provided no reasoned explanation for this re-detention and have identified no changed circumstances that would justify revoking Petitioner's liberty.

59. Respondents have further failed to provide any individualized assessment justifying Petitioner's detention. They have not identified any facts indicating that Petitioner poses a danger to the community or a risk of flight.

60. By re-detaining Petitioner in the interior of the United States, without explanation, without identifying any changed circumstances, without providing any individualized

justification, and without constitutionally adequate pre-deprivation process, Respondents have acted arbitrarily and capriciously and not in accordance with law.

61. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents' return, consistent with 28 U.S.C. § 2243;

C) Pending adjudication of this action, enjoin Respondents from transferring Petitioner outside the Southern District of California or removing Petitioner from the United States absent prior authorization from this Court, in order to preserve this Court's jurisdiction;

D) Declare that Petitioner's re-detention without constitutionally adequate pre-deprivation process violated the Due Process Clause of the Fifth Amendment;

E) Declare that Respondents lack lawful authority to re-detain Petitioner without constitutionally adequate pre-deprivation process after previously releasing him into the United States and permitting him to reside at liberty;

F) Declare that Respondents' actions re-detaining Petitioner without constitutionally adequate pre-deprivation process, individualized justification, or a reasoned explanation were arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);

G) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to 5 U.S.C. § 706(2)(A);

H) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;

I) Order Respondents to restore Petitioner to the *status quo ante*, including releasing him under the same conditions that existed prior to his re-detention and returning all of his documents and personal belongings at the time of release, consistent with this Court's prior orders in materially similar cases;

J) Enjoin Respondents from re-arresting or re-detaining Petitioner absent compliance with constitutional requirements, including constitutionally adequate notice, identification of any changed circumstances, and a meaningful pre-deprivation hearing before a neutral decisionmaker;

K) In the alternative, order a prompt constitutionally adequate custody hearing before a neutral decisionmaker, at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which the neutral decisionmaker must consider alternatives to detention and Petitioner's ability to pay any bond imposed;

L) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other basis authorized by law; and

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

Respectfully submitted,

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Counsel for Petitioner

Dated: August 10, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and his family members, as well as my review of available immigration records and supporting documents, including, but not limited to, the Verification of Release issued by the Office of Refugee Resettlement and the Notice to Appear issued by the Department of Homeland Security.

Based on my review of that information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

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