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Attorney for Alejandro ZAVALA-JIMENEZ

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

In the Matter of:

File No.: 3:26-cv-03017-JO-AHG

ZAVALA-JIMENEZ, Alejandro



Petitioner,

Vs.

**MOTION FOR FURTHER RELIEF IN
CONNECTION TO PETITION FOR
WRIT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

28 U.S.C. § 2241

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

**PETITIONER'S MOTION FOR FURTHER RELIEF FOR THE PETITION FOR WRIT OF HABEAS
In the Matter of Alejandro ZAVALA JIMENEZ**

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release
Petitioner from detention.

INTRODUCTION

1. Mr. Zavala-Jimenez is fifty-five years old, a native and citizen of Mexico, a native Spanish speaker, and the long-term partner of lawful permanent resident Gabriella Flores. He has resided in the United States for most of his adult life and has three United States citizen children. His family, community, and support network are in the United States.
2. Petitioner is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) pursuant to the reinstatement of a 1997 removal order under INA § 241(a)(5). After expressing a fear of return to Mexico, Petitioner was referred for a reasonable fear screening before U.S. Citizenship and Immigration Services (“USCIS”).
3. On May 4, 2026, USCIS issued a negative reasonable fear determination.
4. On May 4, 2026, USCIS conducted the reasonable fear interview telephonically in Spanish at Otay Mesa from 8:30 a.m. to 10:00 a.m., without counsel or an accredited representative present.
5. Petitioners do not seek review or reopening of the underlying 1997 removal order. Rather, through the present habeas proceeding, Case No. 3:26-cv-03017-JO-AHG, Petitioner seeks relief from unlawful custody and emergency relief to preserve this Court's jurisdiction because Respondents' detention, imminent transfer, and imminent removal consequences are tied to a constitutionally deficient and regulation-violating reasonable fear screening process. Because removal may occur quickly if the

1 Immigration Judge concurs in the negative reasonable fear determination, immediate
2 relief is necessary.

3
4 **JURISDICTION**

- 5 6. This action arises under the Due Process Clause of the Fifth Amendment to the United
6 States Constitution. This Court has subject matter jurisdiction over this Petition pursuant
7 to 28 U.S.C. section 1331 (federal question) and 28 U.S.C. section 2241 (habeas corpus),
8 as well as the Suspension Clause of the U.S. Constitution, Art. I, § 9, cl. 2, and the
9 Administrative Procedure Act (“APA”), 5 U.S.C. section 702.
10
11 7. This Court has the authority to grant declaratory and injunctive relief pursuant to the
12 Habeas Corpus statute (28 U.S.C. § 2241 et seq.), the Declaratory Judgment Act (28
13 U.S.C. § 2201 et seq.), and the All Writs Act (28 U.S.C. § 1651).

14 **VENUE**

- 15 8. Venue is proper in the Southern District of California because Petitioner is physically
16 detained within the judicial district at the Otay Mesa Detention Center, under the
17 immediate custody of Respondents located within this district. See Doe v. Garland, 109
18 F.4th 1188, 1197 99 (9th Cir. 2024).

19
20 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243**

- 21 9. Petitioner is in custody for purposes of 28 U.S.C. § 2241 because Respondents and their
22 agents physically confine him at the Otay Mesa Detention Center and exercise legal
23 custody over him through ICE and DHS. This Petition identifies the custodians, the
24 authority asserted for Petitioner's detention, and the facts and legal grounds demonstrating
25 that his continued detention and the consequences of imminent removal are unlawful.
26
27 Because Petitioner's reasonable-fear review is scheduled for May 15, 2026, and removal
28

1 may follow shortly thereafter, expeditious consideration is warranted, and the Court
2 should issue the writ or an order to show cause forthwith and require Respondents to
3 certify the true cause of detention within three days, or within such shorter period as the
4 Court deems appropriate.
5

6 10. Petitioner satisfies the statutory "in custody" requirement under 28 U.S.C. § 2241 because
7 Respondents and their agents physically confine him at the Otay Mesa Detention Center
8 and exercise legal custody over him through ICE and DHS.
9

10 PARTIES

11 11. Petitioner Alejandro ZAVALA-JIMENEZ is a detained noncitizen in ICE custody at Otay
12 Mesa Detention Center in San Diego, California. He is named in his individual capacity
13 as the person detained and seeking habeas relief.
14

15 12. Respondent Christopher J. LaRose is the Senior Warden of Otay Mesa Detention Center,
16 the facility where Petitioner is detained. He is a custodian of the Petitioner and is named
17 in his official capacity.
18

19 13. Respondent Patrick Divver is the ICE Field Office Director for the San Diego Field Office.
20 He exercises authority over ICE detention, custody, transfer, and removal operations
21 affecting Petitioner and is named in his official capacity.
22

23 14. Respondent Todd M. Lyons is the Senior Official Performing the Duties of Director of
24 U.S. Immigration and Customs Enforcement. He exercises authority over ICE and its
25 detention and removal operations and is named in his official capacity.
26

27 15. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
28 Security. He exercises authority over DHS components, including ICE and USCIS, and is
named in his official capacity.

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

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 17. There is no adequate administrative remedy available to address the unlawful detention
7 and imminent removal consequences challenged in this Petition. Petitioner expressed fear
8 of return, underwent reasonable-fear screening, requested Immigration Judge review of
9 the negative determination, and, through counsel, requested urgent reconsideration and/or
10 re-interview.
11

12 18. Alternatively, Petitioner has exhausted all administrative steps. If the Immigration Judge
13 concurs in the negative reasonable-fear determination, no administrative appeal is
14 available, and the matter is returned to DHS for removal. 8 C.F.R. § 1208.31(g)(1).
15 Judicial intervention is therefore necessary because the injury is imminent, Petitioner's
16 custody is ongoing, and removal would defeat meaningful habeas review.
17

18 **STATEMENT OF FACTS**

19 19. Petitioner Alejandro ZAVALA-JIMENEZ was born  in Mexico. He is
20 fifty-five years old, male, Latino, Catholic, and a native Spanish speaker.
21

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

25 21. Mr. Zavala-Jimenez and Ms. Flores have children, including United States citizen
26 children. The family unit is central to his life and identity, and is central to how he would
27 be perceived upon return to Mexico after decades in the United States.
28

1 22. The available records reflect a 1997 conviction for possession of cocaine with an
2 approximately three-month sentence. After that sentence was completed, he was deported
3 to Mexico in 1997.

4
5 23. After approximately two to three months in Mexico, Mr. Zavala-Jimenez returned to the
6 United States and reunited with his family. DHS's reinstatement paperwork alleges that
7 he reentered on or about September 1, 1997, at or near Otay Mesa, California.

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

10
11 25. In early 2026, Mr. Zavala-Jimenez was arrested in a misdemeanor matter involving a laser
12 pointer directed toward a police helicopter. He stated that he did not intend harm. He was
13 released on supervised bond but was immediately apprehended by ICE after leaving the
14 courthouse.

15
16 26. DHS apprehended and detained Mr. Zavala-Jimenez on or about April 23, 2026, and
17 placed him at Otay Mesa Detention Center. Government records list the date of detention
18 as April 23, 2026.

19 27. DHS issued a Notice of Intent/Decision to Reinstate Prior Order, Form I-871, stating that
20 a prior deportation order was entered on June 20, 1997, at Calexico, California; that Mr.
21 Zavala-Jimenez was removed on June 20, 1997; and that DHS alleged an unlawful reentry
22 on or about September 1, 1997.

23
24 28. Because Mr. Zavala-Jimenez expressed fear of persecution or torture in Mexico, DHS
25 referred him to USCIS for reasonable-fear screening under 8 C.F.R. § 208.31.

26 29. On April 30, 2026, USCIS initiated a telephonic reasonable-fear interview. Mr. Zavala-
27 Jimenez stated that he did not wish to continue without an attorney or accredited
28

1 representative, explained that he had tried to contact attorneys, stated that this was his first
2 time doing this, and asked to speak with his lawyer first.

3 30. The officer agreed to reschedule but advised him that the next interview could be as soon
4 as the next day and that he would need to proceed next time regardless. The officer also
5 provided an email address for counsel to submit a G-28 and availability.
6

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

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

13 33. During the interview, Mr. Zavala-Jimenez testified that he feared returning to Mexico
14 because his mother, father, and nephew had fled after an attempt against their lives. He
15 testified that unknown individuals tried to kill his family members on March 5, 2001.
16

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

19 35. USCIS nevertheless issued a negative reasonable-fear finding. The Form I-898 checked
20 that there was no reasonable possibility that the harm he feared would be on account of
21 race, religion, nationality, political opinion, or membership in a particular social group,
22 and no reasonable possibility of torture with the consent or acquiescence of a public
23 official or person acting in an official capacity.
24

25 36. Mr. Zavala-Jimenez requested that the Immigration Judge review the negative reasonable-
26 fear finding. EOIR's automated case information and the immigration court notices
27 indicate an in-person Review of Reasonable Fear Hearing scheduled for May 15, 2026, at
28

1 8:00 a.m. before Immigration Judge Mark Sameit at 7488 Calzada de la Fuente, San
2 Diego/Otay Mesa, California.

3 37. 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
5 May 15 hearing and the need for competent Spanish interpretation and a fully developed
6 record.
7

8 38. As of this filing, Mr. Zavala-Jimenez remains detained at Otay Mesa Detention Center.
9 He poses no danger to the community, has long-term family and community ties, and was
10 released on supervised bond before ICE detained him.
11

12 LEGAL ARGUMENT

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

14 39. The habeas statute requires immediate judicial action. Under 28 U.S.C. § 2243, a court
15 entertaining a habeas petition shall award the writ or issue an order to show cause unless
16 it appears from the petition itself that the petitioner is not entitled to relief. Habeas corpus
17 has long been recognized as a swift remedy against unlawful restraint.
18

19 40. Petitioners remain in custody and face imminent removal consequences following a
20 negative reasonable-fear determination. Because the challenged process affects
21 Petitioner's liberty and ability to seek protection from removal, the Court should require
22 Respondents to show cause and preserve Petitioner's presence pending review.
23

24 II. Due Process Requires a Meaningful Opportunity to Be Heard

25 41. The Due Process Clause of the Fifth Amendment protects all persons within the United
26 States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process
27
28

1 requires procedures that provide a meaningful opportunity to be heard before significant
2 liberty and removal-related interests are affected.

3 42. Petitioner's interests are substantial because he remains detained and faces possible
4 removal to a country where he fears persecution and torture. The risk of error was
5 significant where the reasonable-fear interview proceeded without counsel after the
6 Petitioner requested counsel and resulted in a negative determination despite the absence
7 of an adverse credibility finding.
8

9 **III. The Reasonable-Fear Process Did Not Provide a Meaningful Review**

10 43. The applicable regulations require a reasonable-fear interview to be conducted in a non-
11 adversarial manner and permit representation by counsel or an accredited representative.
12 8 C.F.R. § 208.31(c). The purpose of the process is to ensure a fair opportunity to present
13 facts relevant to claims for protection.
14

15 44. Petitioner requested an opportunity to consult with counsel before proceeding.
16 Nevertheless, the interview proceeded without counsel and the resulting determination
17 failed to meaningfully address Petitioner's testimony concerning the attack against his
18 mother, his fear of the same individuals, and corruption within law enforcement.
19

20 **IV. The Negative Nexus Determination Was Arbitrary**

21 45. Family membership may constitute a cognizable particular social group under Ninth
22 Circuit precedent. *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015); *Parada v. Sessions*,
23 902 F.3d 901, 910 (9th Cir. 2018). At the reasonable-fear stage, the relevant inquiry is
24 whether the applicant has shown a reasonable possibility of eligibility for protection.
25

26 46. Petitioner testified that his mother was nearly killed in a land-related attack and that he
27 fears the same individuals because he is her son. Rather than meaningfully analyzing that
28

1 family-based theory, the determination treated the claim as a land dispute and concluded
2 that no protected ground was implicated.

3 **V. The Negative CAT Determination Was Legally Deficient**

4
5 47. Protection under the Convention Against Torture requires consideration of whether an
6 applicant faces a reasonable possibility of torture by, or with the consent or acquiescence
7 of, a public official. Government acquiescence includes willful blindness, and reporting
8 to authorities is not required where doing so would be futile or dangerous.

9
10 48. The negative determination relied in part on the fact that Petitioner's family did not report
11 the attack to the police. However, Petitioner testified that there were no police nearby and
12 that police are influenced by criminal organizations, facts directly relevant to
13 acquiescence and futility that were not meaningfully addressed.

14 **VI. Petitioner's Right to Counsel Was Not Meaningfully Honored**

15
16 49. Noncitizens have a statutory and regulatory right to counsel, no expense to the government
17 in proceedings where representation is authorized. 8 U.S.C. § 1362; 8 C.F.R. § 208.31(c).
18 The right to counsel is an important component of fundamental fairness in immigration
19 proceedings.

20
21 50. Petitioner expressly declined to proceed without counsel and requested an opportunity to
22 consult with his attorney. Despite that request, the interview proceeded without counsel
23 and resulted in a negative determination, undermining the fairness and reliability of the
24 screening process.

25 **VII. Continued Detention Warrants Individualized Review**

26
27 51. Immigration detention is civil rather than punitive and must remain reasonably related to
28 legitimate governmental purposes. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Continued detention, therefore, requires procedures sufficient to ensure that the deprivation of liberty is not arbitrary.

52. Petitioner has substantial ties to the United States, including a lawful permanent resident partner and three United States citizen children. Under these circumstances, continued detention warrants individualized review consistent with due process principles.

VIII. A Stay Is Necessary to Preserve the Court's Jurisdiction

53. A stay is warranted where the petitioner raises serious legal questions and faces irreparable harm absent relief. Petitioner raises substantial questions concerning due process, the right to counsel, compliance with the reasonable-fear regulations, and the validity of the resulting determination.

54. The harm is immediate. If the Immigration Judge concurs with the negative reasonable-fear determination, no administrative appeal is available, and DHS may proceed with removal. Preserving the status quo is therefore necessary to protect this Court's jurisdiction and ability to provide meaningful relief.

CAUSES OF ACTION

COUNT ONE

Violation of the Fifth Amendment Due Process Clause

(Unlawful Prolonged Detention Without a Constitutionally Compliant Custody Hearing)

55. Petitioner realleges and incorporates by reference all the allegations contained in the preceding paragraphs.

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

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

3
4 **COUNT TWO**

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

6 58. Petitioner realleges and incorporates by reference each preceding paragraph.

7 59. Under the APA, a court shall hold unlawful and set aside agency action that is arbitrary,
8 capricious, an abuse of discretion, not in accordance with law, contrary to constitutional
9 right, in excess of statutory authority, or without observance of procedure required by law.

10 5 U.S.C. § 706(2)(A)-(D).

11
12 60. Respondents and their agents failed to comply with 8 C.F.R. § 208.31(c), which requires
13 a non-adversarial interview, a meaningful understanding of the process, an opportunity
14 for representation, interpreter assistance when needed, a material-facts summary, and an
15 opportunity to correct errors.

16
17 61. The negative determination was arbitrary and capricious because it failed to consider
18 important aspects of the problem, including family membership as a protected ground,
19 mixed motive, futility of reporting, and willful blindness by public officials. *Motor*
20 *Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

21
22 62. The agency's decision lacked a rational connection between the facts found and the choice
23 made. *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019).

24 63. The Court should declare the process in the Petitioner's case unlawful and order
25 appropriate habeas and equitable relief, including a corrected process and preservation of
26 the Petitioner's presence in this District.

COUNT THREE

Violation of Fifth Amendment Substantive and Procedural Due Process - Arbitrary

Civil Detention

64. Petitioner realleges and incorporates by reference each preceding paragraph. Civil detention must be reasonably related to legitimate governmental purposes and must not be arbitrary or punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

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

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

COUNT FOURTH

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

Withholding and CAT Risk

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

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

1 71. The reasonable-fear process exists to prevent unlawful return by screening reinstated-
2 order cases for withholding and CAT claims. A defective screening process creates an
3 unacceptable risk of refoulement.

4
5 72. Respondents violated due process by allowing a negative determination to issue without
6 a legally adequate analysis of family-based nexus, CAT willful blindness, police
7 corruption, or the futility of reporting in rural Mexico.

8 73. The Court should stay removal and require Respondents to provide a meaningful process
9 before any return to Mexico.
10

11 **COUNT FIVE**

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

13 74. Petitioner realleges and incorporates by reference each preceding paragraph. The
14 Suspension Clause protects the availability of habeas corpus as a meaningful remedy
15 against unlawful executive detention. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008).
16

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

19 76. The All-Writs Act authorizes the Court to issue orders necessary or appropriate in aid of
20 its jurisdiction, including a temporary stay of removal and transfer. 28 U.S.C. § 1651(a).
21

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

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Petitioner respectfully requests that this Court:
26

27 (1) Assume jurisdiction over this matter;
28

- (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;
- (7) In the alternative, order Respondents to provide a prompt individualized custody hearing before a neutral adjudicator, with the Government bearing the burden of proving by clear and convincing evidence that continued detention is necessary;
- (8) Order Respondents to provide a corrected, meaningful reasonable-fear process, including counsel participation, competent Spanish interpretation, the opportunity to submit evidence, and a legally adequate analysis of family-based nexus and CAT acquiescence; and
- (9) Grant such other and further relief as the Court deems just, equitable, and proper.

Dated: June 10, 2026
Respectfully Submitted,

/S/ Mario Portugal
Mario Portugal, Esq.
Attorney for the Petitioner