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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WALFRED ROLANDO LOPEZ LOPEZ)

Petitioner)

v.)

CHRISTOPHER J. LAROSE, Senior Warden,)
Otay Mesa Detention Center;)
DANIEL A. BRIGHTMAN,)
San Diego, Field Office Director, U.S.)
U.S. Immigration & Customs)
& Customs Enforcement (ICE); TODD)
LYONS, Acting Director, U.S. ICE;)
MARKWAYNE MULLIN, U.S. Secretary)
of Homeland Security; TODD BLANCHE,)
Attorney General of the United States)

Respondents.)

Case No. '26CV3444 JO MSB

Agency No. 

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS**

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, Walfred Rolando Lopez Lopez, under §1226(a). Mr. Lopez is currently in the custody of Immigration and Customs Enforcement (ICE) at the Otay Mesa Detention Center. He is neither a flight risk nor a danger to the community. But on March 11, 2026, ICE detained Mr. Lopez at his annual check-in, without notice or opportunity to be heard and without findings required by law.

2. Mr. Lopez entered the United States on May 20, 2004. He was apprehended by US Immigration and Customs Enforcement (ICE) on December 21, 2012, and placed in removal proceedings. The same day he was released on his own recognizance, subject to attending his removal proceedings. Approximately four years ago ICE requested that Mr. Lopez check in with them for the first time. Consequently, for the next four years, Mr. Lopez continued to check in with ICE annually. No material change in facts or circumstances occurred in that time to justify his re-arrest.

3. On November 12, 2014, the Immigration Judge denied Mr. Lopez's relief applications and on April 12, 2016, the Board of Immigration Appeals (BIA) dismissed his appeal. On March 20, 2020, Mr. Lopez filed a Motion To Reopen with the BIA, but the motion was denied on September 23, 2020. Mr. Lopez timely filed a Petition For Review with the Ninth Circuit Court Of Appeals (Ninth Circuit) with a request for a stay of removal. On November 19, 2021, the Ninth Circuit entered an order staying removal until the issuance of a mandate or the Ninth Circuit orders otherwise.

4. Respondents thus lack authority to remove Mr. Lopez pending a decision from the Ninth Circuit.

5. At Mr. Lopez's regularly scheduled annual check in with ICE on March 11, 2026, Respondents suddenly and without any prior notice or opportunity to be heard took Mr. Lopez into custody at the San Diego ICE Office and transferred him to the Otay Mesa Detention Facility (OMDC), where he remains to this day.

6. Respondents' actions violate the Due Process Clause of the Fifth Amendment of the United States Constitution, the Immigration and Nationality Act (INA) and its implementing regulations and the Administrative Procedure Act (APA).

7. Before detaining Mr. Lopez on March 11, 2026, Respondents did not provide Mr. Lopez a hearing before a neutral decision-maker where ICE was required to justify the basis for re-detention or explain why Mr. Lopez is a flight risk or danger to the community.

8. By failing to provide such a hearing, Respondents have violated Mr. Lopez's constitutional right to due process.

9. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and order Mr. Lopez's immediate release.

JURISDICTION

10. This action arises under the Constitution of the United States, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. and the Administrative Procedure Act (APA), 5 U.S.C. §551 et seq.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is properly with this Court because Respondent Warden LAROSE is Mr. Lopez's immediate custodian at the Otay Mesa Detention Center in Otay Mesa, California. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the judicial district in which Mr. Lopez is currently in custody.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District Of California.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

16. Habeas corpus is “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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination”)

PARTIES

17. Petitioner, Mr. WOLFRED ROLANDO LOPEZ LOPEZ is an adult from Guatemala who is currently detained at the Otay Mesa Detention Center.

18. Respondent CHRISTOPHER J. LAROSE is the Senior Warden at Otay Mesa Detention Center (OMDC). Respondent oversees the day-to-day operations at OMDC and acts at the direction of Respondents BRIGHTMAN, LYONS, MULLIN, AND BLANCHE. He is custodian of the Petitioner and is named in this official capacity.

19. Respondent DANIEL BRIGHTMAN is the Field Office Director for ICE’s San Diego Field Office. The San Diego Field Office is responsible for local custody decisions relating to noncitizens charged with being removable from the United States. Respondent is a legal custodian of Petitioner and is sued in his official capacity.

20. Respondent TODD LYONS is the Acting Director of ICE and is named in his official capacity. In his official capacity, he is a legal custodian of the Petitioner.

21. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security (DHS). He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

22. Respondent TODD BLANCHE is the Attorney General of the United States, and as such has authority over the Department of Justice. He is sued in his official capacity.

FACTUAL BACKGROUND

23. The Petitioner, Mr. Walfred Rolando Lopez Lopez, is a citizen of Guatemala. In May 2004 he entered the United States near Tecate, California. On December 21, 2012, Petitioner was arrested for disorderly conduct. No charges were filed, but he was picked up by ICE and placed in removal proceedings. The same day ICE released him on his own recognizance, subject to attending his removal proceedings.

24. Following his release, Mr. Lopez applied for withholding of removal and for relief under the US Convention against Torture (CAT) before the Immigration Court. On November 12, 2014, the Immigration Judge denied all relief applications and Mr. Lopez timely filed an appeal with the BIA. On April 12, 2016, the BIA dismissed his appeal. On March 18, 2020, Mr. Lopez filed a Motion To Reopen with the BIA and on September 23, 2021, his motion to reopen was denied. Mr. Lopez timely filed a Petition For Review and a Motion For Stay of Removal with the Ninth Circuit. On November 19, 2021, the Ninth Circuit entered an order staying removal until the issuance of a mandate or the Ninth Circuit orders otherwise. On May 12, 2022,

the Ninth Circuit granted the government's motion for judicial administrative closure. On April 17, 2026, the Ninth Circuit granted government's motion to reopen Mr. Lopez's case.

25. Mr. Lopez's Petition For Review is currently pending.

26. Where a petition for review is pending and a stay of removal has been granted by the Ninth Circuit, the removal order is not final for detention purposes.

27. However, on March 11, 2026, when Mr. Lopez appeared for his scheduled annual ICE check-in, he was taken into custody based on a removal order that was under active appellate review and not final.

28. Mr. Lopez was eventually taken to the Otay Mesa Detention Facility where he remains to this day.

29. On September 24, 2018, Mr. Lopez was convicted of a violation of California Vehicle code §23152(b), DUI alcohol and sentenced to pay a fine, attend AA classes and 5 years' probation. Mr. Lopez has successfully completed probation.

30. Approximately four years ago ICE requested that Mr. Lopez check in with them for the first time. Consequently, for the next four years Mr. Lopez continued to check in with ICE annually. No material changes in facts or circumstances occurred in that time to justify his re-arrest.

31. Prior to Lopez's re-arrest, he did not receive written notice of the reason for his re-detention.

32. Prior to Mr. Lopez's re-arrest, ICE did not assess whether he presented a flight risk or a danger to the community, or whether his re-arrest was justified for some other reason.

33. Prior to Mr. Lopez’s re-detention, he never received a hearing before a neutral decisionmaker to determine if his re-detention is justified.

LEGAL FRAMEWORK

XII. LEGAL FRAMEWORK

Constitutional Due Process Requirements

34. The Due Process Clause prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. CONST. amend. V. “The Due Process Clause protects all persons within the United States, including aliens whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

35. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] protects.” *Id.* at 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a “special justification” sufficient to outweigh one’s “constitutionally protected interest in avoiding physical restraint.” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted).

36. Under substantive due process doctrine, a restraint on liberty is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas*, 533 U.S. at 690.

37. “Procedural due process imposes constraints on governmental decisions which deprive individuals of their liberty,” *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333.

38. The 90 days after an alien’s removal order becomes administratively final is known as the “removal period.” 8 U.S.C. § 1231(a)(1). This removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court order a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). “During the removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2)(A). Thus, “[o]nce the removal periodbegins, [the] alienwill be taken into custody pursuant to [a] warrant of removal.” 8 C.F.R. § 241.3(a). However, the execution of a warrant of removal is delayed “upon an affirmative order of a [federal] court.” 8 C.F.R. § 241.3(c). The “statute makes clear that when a court of appeals issues a stay of removal pending its decision on an alien’s petition for review of this removal order, the removal period begins only after the court denies the petition and withdraws the stay of removal.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). “[T]he plain language of § 1231(a) provides no authority to detain aliens.....whose removal order is administratively-but not judicially final.” *Id.* at 1060.

CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process

39. Mr. Lopez restates and realleges all the prior paragraphs as if fully set forth herein.

40. The Supreme Court in *Matthews v. Eldridge*, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. 424 U.S. 319, 333 (1976).

41. The first factor, the Petitioner's interest in "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner who was allowed to remain on his own recognizance during his removal proceedings, since November 2012, has a liberty interest in his continued liberty. This liberty interest remained during the over four years Mr. Lopez remained at liberty pursuant to the Ninth Circuit's order staying his removal. This factor favors the Petitioner.

42. The second factor, risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. When Mr. Lopez was placed in removal proceedings in 2012 and during his annual check ins, Respondents determined there was no reason to detain him under § 1226(a). As such, to detain him at his check-in without prior notice or opportunity to be heard is a violation of his due process rights. Requiring Respondents to give notice and an opportunity to respond prior to arresting him is of great value because it

reduces the probability that a person—like the Petitioner who poses neither a danger to the community nor a flight risk—will be erroneously detained.

43. The third factor, the government’s interest, also favors the Petitioner. The government has an interest in “ensuring the appearance of aliens at future immigration proceedings” and “preventing danger to the community” *Zadvydas*, 533 U.S. at 690. There is no evidence here that the government’s interest has been at risk since Petitioner was placed in removal proceedings. Respondents deprived Mr. Lopez of liberty without providing him with written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

44. Accordingly, Mr. Lopez’s re-detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) Contrary to Law and Constitutional Right

45. Mr. Lopez incorporates the allegations in the paragraphs above as though fully set forth here.

46. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

47. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs.*

of Wildlife, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S. Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

48. To prevail against such a claim, the agency must articulate “a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.” *Dept. of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

49. Respondents considered Mr. Lopez’s individual facts and circumstances in December 2012 and during his annual check-ins and determined that he was not a flight risk or danger to the community. There have been no changes to Mr. Lopez’s circumstances that justify this re-detention. The fact that Mr. Lopez has already been granted release by Respondents under the same facts and circumstances that continue to exist at this time, shows that the Respondents do not consider him a flight risk or danger to the community and have not for over 10 years.

50. By categorically re-detaining him without consideration of his individualized facts and circumstances, Respondents have violated the APA by failing to exercise discretion at all, let alone find facts and make a rational choice based on those facts.

PRAYER FOR RELIEF

WHEREFORE, Mr. Lopez respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an order prohibiting Respondents from transferring Mr. Lopez outside the Southern District of California pending the resolution of this case;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;

(4) Declare that Mr. Lopez's re-detention without first providing an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Lopez from custody immediately under the same conditions prior to his re-arrest and permanently enjoining his re-detention during the pendency of his Petition For Review absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that he is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;

(6) Enjoin Respondents from adding additional requirements to Mr. Lopez's release conditions, including but not limited to enrollment in an "alternatives to detention" program that requires GPS or any other electronic monitoring;

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- (7) Award Mr. Lopez's attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted on this 7th day of June, 2026

/s/R.Sherif
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Dated: June 7, 2026

/s/ R.Sherif
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Counsel for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on June 8, 2026, through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice Of Electronic Filing.

/s/R.Sherif

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