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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUVENTINO MORALES JUAREZ (A-Number: [redacted] *Petitioner,*	Case No.
vs.	Agency No. [redacted]
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; **TODD LYONS,** Acting Director, U.S. Immigration and Customs Enforcement; **PATRICK DIVVER,** San Diego Field Office Director, ICE; **WARDEN, OTAY MESA DETENTION CENTER; and TODD BLANCHE**, Attorney General of the United States *Respondents.*	**PETITIONE'S TRAVERSE TO RESPONDENT'S RESPONSE**

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE TO THE ORDER TO SHOW CAUSE

I. INTRODUCTION

Petitioner Juventino Morales Juarez, through counsel, respectfully submits this Traverse to Respondents' Response to this Court's July 8, 2026, Order to Show Cause.

Respondents' Response has fundamentally changed the landscape of this litigation. While Respondents open with standard, boilerplate procedural attacks regarding standing and pleading standards, they ultimately **concede the core legal issue** by explicitly stating they **"do not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a)"**.

However, because Respondents have kept Petitioner unlawfully detained since June 15, 2026, without a single minute of judicial oversight, and because Respondents' Response **fails to proffer a single shred of evidence** that Petitioner poses a flight risk or a danger to the community, this Court should not merely settle for an administrative bond hearing. This Court possesses the inherent equitable power under 28 U.S.C. § 2241 to remedy an unconstitutional, ongoing physical imprisonment by ordering Petitioner's **immediate release**.

To the extent this Court declines to order immediate release, Petitioner requests that this Court order a § 1226(a) bond hearing, reject the government's attempt to place the burden of proof on Petitioner, and reject the government's request for a 14-day delay. Under the Fifth and Eighth Amendments, the Court must order the hearing to occur within seven (7) days, with the burden of proof placed squarely on the government, and with explicit instructions that any bond set must be non-excessive, nominal, or non-monetary.

II. ARGUMENT

A. Petitioner Has Plainly Established Article III Standing and Habeas Jurisdiction

Respondents' preliminary arguments that Petitioner lacks standing or fails to state a claim cognizable under 28 U.S.C. § 2241 are legally meritless.

First, Petitioner is in active, physical civil detention at the Otay Mesa Detention Center under the authority of Respondents. There is no "hypothetical" injury here; his daily, physical confinement is a concrete, ongoing injury-in-fact that is directly traceable to Respondents and easily redressed by this Court ordering his release or a bond hearing. This satisfies the "irreducible constitutional minimum" of standing under *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Second, this claim classically arises under § 2241. Habeas corpus historically provides a mechanism to challenge the legality of physical restraint. Respondents' reliance on *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) is misplaced. In *Pinson*, the petitioner challenged medical transfer policies, whereas here, Petitioner directly challenges the absolute deprivation of his physical liberty without any legal forum to seek release. When a noncitizen is detained without access to an administrative bail forum, a federal court has clear jurisdiction under § 2241 to order a constitutionally sufficient remedy.

B. Immediate Release is the Only Proper Remedy to Cure the Government's Procedural Default and Unlawful Detention *Ab Initio*

This Court's Order to Show Cause directed Respondents to show cause as to why the Petition should not be granted. To justify ongoing civil detention under the Fifth Amendment, the government must demonstrate that the detainee poses a flight risk or an active danger to society.

Respondents have procedurally defaulted on this burden. In their formal response to the OSC, Respondents have provided **zero evidence**—not even a single factual allegation—to suggest that Petitioner Juventino Morales Juarez poses any threat of flight or danger to the community. Under Ninth Circuit law, civil detention cannot be used as a default,

administrative setting. Because Respondents have failed to present any clear and convincing evidence of risk, and because the initial deprivation of Petitioner's liberty was executed without any prompt judicial review, his ongoing detention is unlawful *ab initio*. This Court should exercise its inherent habeas authority to order his **immediate release** on his own recognizance or under reasonable, non-monetary conditions of supervision.

C. In the Alternative, Constitutional Due Process Mandates that the Government Bear the Burden of Proof by Clear and Convincing Evidence

Should this Court decline to order immediate release and instead order a bond hearing under 8 U.S.C. § 1226(a), the Court must reject Respondents' request to place the burden of proof on Petitioner under *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

While *Rodriguez Diaz* addressed statutory review under § 1226(a) for individuals who had already received initial custody processing, it does not govern cases where the government has bypassed fundamental constitutional safeguards from the outset of detention. Petitioner has been locked up since June 15, 2026, on a purely administrative warrant, without **any** prompt pre- or post-detention judicial hearing.

Due process requires that when the government deprives an individual of physical liberty, the government must bear the burden of justifying that detention. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). In the Ninth Circuit, the government must establish by **clear and convincing evidence** that detention is warranted because the detainee is a flight risk or an active danger to the community. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Because Petitioner has had zero baseline judicial reviews of his custody, placing the initial burden on him to prove his fitness for release violates the Fifth Amendment.

D. The Eighth Amendment's Excessive Bail Clause Mandates that Any Bond Set Be Nominal, Non-Monetary, or Tailored to Petitioner's Financial Circumstances

The Eighth Amendment prohibits the imposition of "excessive bail." U.S. Const. amend. VIII. It is well-established that the constitutional prohibition on excessive bail applies to civil detention, including immigration detention. *See United States v. Salerno*, 481 U.S. 739, 754 (1987) (noting the Excessive Bail Clause applies in civil detention contexts where bail is available).

In the context of immigration bond determinations, setting a monetary bond at an amount the detainee cannot possibly afford, without considering their financial circumstances or alternative non-monetary conditions of release, operates as an unconstitutional *de facto* detention order in direct violation of the Eighth Amendment. To safeguard Petitioner's Eighth Amendment rights, this Court must dictate the constitutional parameters of any bond hearing ordered under 8 U.S.C. § 1226(a).

Specifically, the Court should order that:

1. The adjudicator **must consider Petitioner's financial circumstances** and ability to pay.
2. The adjudicator **must prioritize non-monetary conditions of release** (such as standard ICE Alternatives to Detention (ATD), reporting requirements, or release on own recognizance).
3. Any monetary bond set must be **nominal** and strictly calculated to secure Petitioner's future appearance, rather than serving as an insurmountable financial barrier designed to perpetuate his physical imprisonment.

E. The Court Should Reject Respondents' Request for a 14-Day Delay

Respondents respectfully request fourteen (14) days from the Court's order to hold the bond hearing, citing "heavy caseloads and staffing levels".

Petitioner strongly objects. Liberty is of the highest order, and every day of unauthorized confinement constitutes an irreparable injury. Respondents have had control of Petitioner's physical custody since June 15, 2026, and have been fully aware of this litigation since the Petition was filed on July 7, 2026. Administrative convenience and staffing issues cannot serve as a constitutional justification for extending the unlawful deprivation of a person's liberty. If a hearing is ordered, it must occur within seven (7) calendar days of this Court's order.

III. CONCLUSION & PRAYER FOR RELIEF

For the reasons stated above and in the original Petition, and in light of Respondents' total failure to produce any evidence of flight risk or danger to justify Petitioner's ongoing, unconstitutional imprisonment, Petitioner Juventino Morales Juarez respectfully requests that this Court:

1. **GRANT** the Petition for Writ of Habeas Corpus;
2. **ORDER the immediate release** of Petitioner from physical custody on his own recognizance or under reasonable, non-monetary conditions of supervision (such as standard ICE Alternatives to Detention);
3. **IN THE ALTERNATIVE**, if the Court declines to order immediate release, **ORDER** Respondents to provide Petitioner with an individualized bond hearing pursuant to 8 U.S.C. § 1226(a) within **seven (7) calendar days** of this Court's order, and explicitly instruct that:
    - The government bears the absolute burden of proof to justify continued detention by clear and convincing evidence;
    - Under the Eighth Amendment, the adjudicator must consider Petitioner's financial circumstances and prioritize release on own recognizance or non-monetary conditions, ensuring that any monetary bond set is nominal and non-excessive; and

4. **ENJOIN** Respondents from transferring Petitioner outside of this judicial district or executing his removal during the pendency of these proceedings.

Dated: 7/16/2026

Respectfully submitted,

/s/Hernando De Cima
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CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/16/2026, I filed the foregoing with the Clerk of the Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the Southern District of California.

Dated: 7/16/2026

Respectfully submitted,

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