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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

**JOSE LUIS HERNANDEZ ZAMORA**
(A-Number: [redacted]
*Petitioner,*

vs.

**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.*

Case No. '26CV3913 AGS DDL

Agency No. [redacted]

**PETITION FOR WRIT OF HABEAS CORPUS and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

**Expedited Hearing Requested**

# PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

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# PETITION FOR WRIT OF HABEAS CORPUS

## I. INTRODUCTION

1. Petitioner Jose Luis Hernandez Zamora ("Petitioner"), a native and citizen of Mexico, brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to challenge his unlawful, ongoing civil immigration detention by the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE).
2. Petitioner is currently detained at the Otay Mesa Detention Center under the immediate physical custody of Respondent, the Warden.
3. Petitioner seeks a writ compelling his release or, alternatively, a constitutionally compliant bond hearing. Petitioner is excused from exhausting administrative remedies before the Executive Office for Immigration Review (EOIR) because the Immigration Court will consistently assert that it lacks jurisdiction to grant him a bond hearing, rendering any such administrative effort entirely futile.
4. Petitioner asserts that his continuous confinement without a meaningful custody hearing violates his rights to Procedural Due Process, Substantive Due Process, and Equal Protection under the Fifth Amendment; violates the Excessive Bail Clause of the Eighth Amendment; and operates as an unconstitutional suspension of the Writ of Habeas Corpus.

## II. JURISDICTION AND VENUE

5. Jurisdiction is invoked pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
6. Venue is proper in the Southern District of California because the Petitioner is currently detained within this judicial district at 7488 Calzada De La Fuente, San

Diego, CA 92154, and his immediate physical and legal custodians operate within this district.

## III. PARTIES

7. **Petitioner Jose Luis Hernandez Zamora** ([redacted] is a 55-year-old native and citizen of Mexico who has resided in the United States since approximately November 2001. He is currently held in civil immigration custody.
8. **Respondent Field Office Director** is the Field Office Director for the San Diego ICE Field Office and is a legal custodian of the Petitioner.
9. **Respondent Warden** is the Warden of the Otay Mesa Detention Center and serves as the immediate physical custodian of the Petitioner.
10. **Respondent Director of U.S. Immigration and Customs Enforcement** is the operational head of ICE, the federal agency within DHS responsible for executing detention and removal mandates.
11. **Respondent Secretary of Homeland Security** is the head of DHS and is charged with the overall administration and enforcement of the immigration laws.
12. **Respondent Attorney General** is the Attorney General of the United States and heads the Department of Justice, which includes EOIR.

## IV. STATEMENT OF FACTS AND PROCEDURAL HISTORY

13. Petitioner entered the United States on or about November 25, 2001, near Nogales, Arizona, without inspection, admission, or parole.
14. On June 15, 2026, DHS issued a Notice to Appear (NTA), placing Petitioner into removal proceedings under Section 240 of the Immigration and Nationality Act (INA). The NTA charged Petitioner as removable under INA § 212(a)(6)(A)(i) and INA § 212(a)(7)(A)(i)(I).

15. On June 26, 2026, DHS lodged additional factual allegations via Form I-261, maintaining the charge of removability under the Act.
16. Petitioner is scheduled for an in-person Master Calendar hearing before the Otay Mesa Immigration Court on **July 16, 2026, at 1:00 P.M. PT**.
17. Petitioner is currently represented by counsel, Hernando De Cima of De Cima Law, who entered an appearance via Form EOIR-28 on July 7, 2026.
18. Under current statutory interpretations enforced by EOIR, individuals detained under certain provisions governing unadmitted or arriving aliens face categorical denials of bond hearings by Immigration Judges, who consistently rule that they lack jurisdiction to review or alter ICE's custody determinations.

## V. CLAIMS FOR RELIEF

### COUNT I: VIOLATION OF THE FIFTH AMENDMENT (PROCEDURAL DUE PROCESS)

19. Petitioner incorporates paragraphs 1 through 18 as if fully set forth herein.
20. Procedural due process requires that the government provide notice and a meaningful opportunity to be heard before depriving an individual of liberty.
21. Respondents are detaining Petitioner indefinitely without providing an individualized custody hearing before an impartial adjudicator where the government bears the burden of proof, violating his procedural due process protections.

### COUNT II: VIOLATION OF THE FIFTH AMENDMENT (SUBSTANTIVE DUE PROCESS)

22. Petitioner incorporates paragraphs 1 through 21 as if fully set forth herein.
23. Substantive due process forbids the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Freedom from physical restraint is a fundamental liberty interest.

24. Civil detention is punitive and structurally unconstitutional under the Fifth Amendment unless it is strictly tailored to a legitimate, non-punitive government purpose, such as mitigating danger or flight risk. Detaining Petitioner without an individualized showing of necessity satisfies no such standard.

**COUNT III: VIOLATION OF THE FIFTH AMENDMENT (EQUAL PROTECTION)**

25. Petitioner incorporates paragraphs 1 through 24 as if fully set forth herein.
26. The Due Process Clause of the Fifth Amendment incorporates the principles of Equal Protection, prohibiting the federal government from drawing arbitrary, discriminatory distinctions between classes of persons. *Bolling v. Sharpe*, 347 U.S. 497 (1954).
27. Respondents' policy treats noncitizens categorized as "unadmitted" or "arriving" with categorical restrictions, denying them access to a bond hearing before an Immigration Judge, while providing other detained noncitizens within the exact same jurisdiction access to robust, individualized review. This disparate treatment lacks a rational basis or a compelling governmental interest.

**COUNT IV: VIOLATION OF THE EIGHTH AMENDMENT (EXCESSIVE BAIL)**

28. Petitioner incorporates paragraphs 1 through 27 as if fully set forth herein.
29. The Eighth Amendment commands that "Excessive bail shall not be required." This applies directly to immigration bonds.
30. To the extent that any bond forum is permitted, setting financial parameters without evaluating a noncitizen's personal ability to pay serves as a de facto detention mandate, imposing an excessive financial threshold that bypasses constitutional safety limits.

**COUNT V: VIOLATION OF ARTICLE I, SECTION 9, CLAUSE 2 (SUSPENSION CLAUSE)**

31. Petitioner incorporates paragraphs 1 through 30 as if fully set forth herein.

32. The Suspension Clause protects the historical privilege of the Writ of Habeas Corpus as a judicial check against lawless executive detention.

33. By interpreting agency rules to completely eliminate any administrative forum for bond, and by expanding executive detention beyond judicial correction, Respondents' actions operate as an unconstitutional suspension of the Writ.

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION & PRELIMINARY STATEMENT

Petitioner, Jose Luis Hernandez Zamora, has been taken into custody by executive agents of the federal government and stripped of his physical liberty. The Executive branch now purports to hold him indefinitely in civil detention without providing him access to an individualized custody hearing before an impartial arbitrator where the government bears the burden of proof. Because the agency's internal regulations deny Immigration Judges the jurisdiction to provide this constitutional safety valve, Petitioner seeks structural relief from this Court across multiple constitutional intersections.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a 55-year-old native of Mexico who has built a life in the United States since 2001. On June 15, 2026, DHS agents apprehended Petitioner and initiated Section 240 removal proceedings through a Notice to Appear. DHS chose to maintain Petitioner in continuous, un-bailable custody at the Otay Mesa Detention Facility under the immediate custody of the Warden and ICE authorities. Under current operational policies governing aliens categorized as "present without admission," the local Immigration Court has established an immovable policy of rejecting custody motions on jurisdictional grounds.

## III. ARGUMENT

### A. PRUDENTIAL EXHAUSTION IS EXCUSED BECAUSE THE IMMIGRATION COURT CATEGORICALLY ASSERTS A LACK OF JURISDICTION, RENDERING ADMINISTRATIVE REMEDIES FUTILE

While federal courts generally expect habeas petitioners to exhaust administrative channels under 28 U.S.C. § 2241, this rule is prudential and strictly subject to a "futility" exception. The Ninth Circuit has held that "[i]t makes little sense to require litigants to present claims

to adjudicators who are powerless to grant the relief requested." *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 895 (9th Cir. 2021) (quoting *Carr v. Saul*, 141 S. Ct. 1352, 1361 (2021)).

Because EOIR binds its judges to statutory interpretations that strip them of jurisdiction over the custody reviews of individuals detained in Petitioner's specific operational classification, forcing Petitioner to file a motion for a bond hearing below is a logical impossibility. The Immigration Judge will dismiss the motion for lack of jurisdiction. Where an agency lacks the raw authority to award the remedy sought, administrative exhaustion is legally excused.

**B. PETITIONER'S PROLONGED CIVIL DETENTION WITHOUT AN INDIVIDUALIZED BOND HEARING VIOLATES PROCEDURAL DUE PROCESS**

Procedural due process balances individual interests against government shortcuts using the familiar framework established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Physical liberty is an interest of the highest order. When executive detention becomes prolonged, procedural due process dictates that the government can maintain detention *only* if it satisfies its burden of proof by clear and convincing evidence at an individualized hearing. *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011). The complete omission of this proceeding constitutes a direct, procedural injury under the Fifth Amendment.

**C. ARBITRARY AND NON-TAILORED DETENTION VIOLATES SUBSTANTIVE DUE PROCESS**

Substantive due process protects individuals against arbitrary executive confinement. Under long-standing Supreme Court precedent, civil immigration detention is valid only if it remains non-punitive, temporary, and tailored to its purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). When the government relies on categorical assumptions rather than

individual metrics of flight risk or dangerousness to keep an individual locked up, the confinement ceases to be regulatory and becomes unconstitutionally punitive.

**D. CATEGORICAL DENIAL OF HEARINGS TO DETAINED NONCITIZENS VIOLATES EQUAL PROTECTION**

The equal protection component of the Fifth Amendment commands the government to treat similarly situated individuals in a similar manner. *Bolling*, 347 U.S. at 499. The government's enforcement matrix divides detained individuals into arbitrary subclasses, offering robust bond reviews to some while denying any administrative recourse to others based solely on initial processing labels. This discriminatory denial of basic procedural protections fails even the lowest threshold of constitutional scrutiny.

**E. EXCESSIVE FINANCIAL BOND ORDERS VIOLATE THE EIGHTH AMENDMENT**

The Excessive Bail Clause applies directly to civil immigration custody determinations. *Carlson v. Landon*, 342 U.S. 524, 545 (1952). Financial bail conditions are excessive under the Eighth Amendment if they are higher than necessary to ensure the individual's appearance in court. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). The Ninth Circuit has made clear that setting a high bond without considering an individual's financial stability and ability to pay violates constitutional requirements. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017). Any ordered bond must be proportional, not a tool for de facto detention.

**F. THE TOTAL ELIMINATION OF A BOND FORUM OPERATES AS AN UNCONSTITUTIONAL SUSPENSION**

The Suspension Clause ensures that executive detention remains subject to meaningful judicial oversight. U.S. Const. art. I, § 9, cl. 2. A statute or agency interpretation that completely cuts off access to a custody hearing, leaving no alternative administrative mechanism for relief, raises serious constitutional problems under the Suspension Clause. *INS v. St. Cyr*, 533 U.S. 289, 300 (2001). This Court must step in to provide the required constitutional check.

## IV. CONCLUSION AND PRAYER FOR RELIEF

For the reasons set forth above, Petitioner respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter and excuse any requirement for administrative exhaustion on the grounds of futility;
2. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, OR, in the alternative;
3. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within 7 days, with instructions that the court possesses the requisite authority and that the government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified by safety or flight risk;
4. Issue an injunction ordering that any bond set by the Immigration Court or DHS must strictly comply with the Eighth Amendment, necessitating an individualized assessment of Petitioner's ability to pay, and prohibiting the imposition of an excessive, cost-prohibitive financial sum designed to cause de facto detention;

5. Award Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and
6. Grant any other and further relief that this Court deems just and proper.

Dated: 7/7/2026

Respectfully submitted,

/s/Hernando De Cima
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*Attorney for Petitioner*

**ATTORNEY VERIFICATION**

I, Hernando De Cima, declare as follows under penalty of perjury:

1. I am an attorney licensed to practice law in the State of California and am counsel of record for Petitioner Jose Luis Hernandez Zamora in these federal habeas corpus proceedings.
2. I have read the foregoing Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities. I am familiar with the contents thereof.
3. The factual allegations concerning Petitioner's immigration history, removal charges, detention status, and scheduled Immigration Court hearings are true and correct to the best of my personal knowledge, based on an exhaustive review of official Department of Homeland Security and Executive Office for Immigration Review documents provided to my firm.
4. I execute this verification on behalf of Petitioner because he is currently detained at a secure facility located away from my office, making an immediate client signature logistically unfeasible before emergency filing deadlines.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: 7/7/2026

Respectfully submitted,

/s/Hernando De Cima
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*Attorney for Petitioner*

## X. CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/7/2026, 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: 7/7/2026

Respectfully submitted,

/s/Hernando De Cima
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*Attorney for Petitioner*

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

**PROPOSED ORDER TO SHOW CAUSE**

Upon consideration of the verified Petition for a Writ of Habeas Corpus filed by Petitioner Abraham Barreto Sanchez on 7/7/2026:

**IT IS HEREBY ORDERED** that Respondents show cause before this Court why a Writ of Habeas Corpus should not issue directing Petitioner's release from civil immigration custody or, in the alternative, ordering Respondents to provide Petitioner with an individualized, constitutional custody redetermination hearing before an Immigration Judge.

**IT IS FURTHER ORDERED THAT:**

1. Respondents shall file a Return to the Petition and Show Cause Response, including any supporting briefs, declarations, or administrative records within three (3) calendar days of the date of service of this Order;
2. Petitioner may file a Traverse/Reply to Respondents' Return on or before within two (2) calendar days of the filing of Respondents' Return; and
3. A hearing on the Petition is scheduled before the Honorable District Court Judge on **_____, 2026, at ___:___ __.m.** in Courtroom ___ of the United States District Court for the Southern District of California, located at 333 West Broadway, San Diego, CA 92101.

**IT IS SO ORDERED.**

Dated: _____, 2026

_____
UNITED STATES DISTRICT JUDGE