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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE ELIAS ALVARADO-RODRIGUEZ
(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. **'26CV4003 DMS AHG**

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. I. INTRODUCTION

1. Petitioner Jose Elias Alvarado-Rodriguez, a long-term interior resident of the United States for over twelve years, is currently suffering unconstitutional, mandatory administrative detention enforced by Respondents. On June 3, 2026, the Harlingen Immigration Court denied Petitioner's Motion to Reopen his 2014 *in absentia* removal proceedings. Petitioner timely appealed that denial to the Board of Immigration Appeals ("BIA") on June 18, 2026, where the matter remains actively pending. Despite the non-finality of his immigration status, an Immigration Judge summarily denied Petitioner a custody redetermination hearing on July 6, 2026, claiming a categorical "lack of jurisdiction" rooted in the BIA's administrative precedent, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
2. By stripping Petitioner of a bond hearing based on an aggressive retroactive fiction—reclassifying deep-rooted interior residents as border "applicants for admission" under INA \S235(b)(2)—the Government violates the Fifth Amendment's Due Process Clause, the Eighth Amendment's Excessive Bail Clause, and the Suspension Clause.
3. This Petition seeks an individualized bond hearing where the **constitutional burden of proof is placed squarely on the Government** to demonstrate by clear and convincing evidence that Petitioner is a flight risk or a danger to safety, or, in the alternative, an order for his immediate release.

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this Court by 28 U.S.C. \S2241 (habeas corpus), 28 U.S.C. \S1331 (federal question), and the Suspension Clause of the U.S. Constitution (Art. I, \S9, cl. 2).
5. Venue is proper under 28 U.S.C. \S1391(e) because Petitioner is currently detained at the Otay Mesa Detention Center within the Southern District of California.
6. **Exhaustion of Administrative Remedies:** Petitioner has properly and aggressively engaged the administrative process to challenge his underlying removal order by filing a Motion to Reopen. Following its denial on June 3, 2026, Petitioner timely filed a non-frivolous appeal to the BIA on June 18, 2026, which is currently pending under BIA Case Type: MTR. While a nominal administrative appeal window also exists for the July 6, 2026, custody denial, further administrative exhaustion on the issue of bond jurisdiction is legally futile. The lower immigration court's jurisdictional denial was strictly compelled by binding BIA precedent (*Yajure Hurtado*); because the BIA lacks the authority to declare its own published precedents or the underlying DHS statutory mandates unconstitutional, federal judicial review under 28 U.S.C. § 2241 is the sole mechanism capable of providing constitutional relief.

III. PARTIES

7. **Petitioner Jose Elias Alvarado-Rodriguez** is a citizen of Honduras currently imprisoned under civil administrative authority at the Otay Mesa Detention Center in San Diego, California.

8. **Respondent Markwayne Mullin** is the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, he directs the operations of Immigration and Customs Enforcement (ICE) and is a legal custodian of Petitioner.
9. **Respondent Todd Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement (ICE), the principal agency responsible for the arrest and ongoing detention of noncitizens.
10. **Respondent Patrick Divver** is the San Diego Field Office Director for ICE. He exercises direct operational oversight regarding administrative detention assignments within this judicial district.
11. **Respondent Warden of the Otay Mesa Detention Center** is the immediate physical custodian responsible for day-to-day operations and institutional control over Petitioner's confinement.
12. **Respondent Todd Blanche** is the Attorney General of the United States. In this capacity, he heads the Department of Justice, controls the Executive Office for Immigration Review (EOIR), and exercises ultimate statutory authority over the interpretation of immigration law.

IV. STATEMENT OF FACTS AND IMMIGRATION HISTORY

13. **The 2013 Unaccompanied Minor Entry:** Petitioner originally entered the United States without inspection on October 12, 2013, as a 15-year-old child. He was apprehended on that exact date, processed as an unaccompanied juvenile, and formally released into the United States interior by immigration authorities.
14. **The 2014 Void *In Absentia* Order:** On March 13, 2014, an Immigration Judge in Harlingen, Texas, issued an *in absentia* removal order against Petitioner. At just 15 years old, unrepresented by counsel, and entirely unschooled in the complexities of the American immigration legal system, Petitioner was completely lost regarding

how the system worked, rendering the notice structurally and fundamentally defective under due process principles.

15. **Deep Interior Equities:** Following his release as a child, Petitioner spent over twelve years continuously residing inside the United States, building deep ties to the community. He is a stable homeowner with a residential mortgage, a verified taxpayer, and a productive entrepreneur as the lawful owner of [redacted] Crucially, Petitioner is the devoted father of a nine-year-old United States citizen child. He holds a valid, USCIS-issued Employment Authorization Document valid through July 18, 2030.

16. **The 2026 Apprehension and Post-Order Litigation:** On April 26, 2026, Petitioner was apprehended at an airport in Florida based on the legacy 2014 *in absentia* order. Seeking to correct the underlying due process defects of that order, Petitioner promptly filed a Motion to Reopen with the Harlingen Immigration Court. On June 3, 2026, the Immigration Court denied the Motion to Reopen.

17. **Active BIA Appeal and Custody Denial:** On June 18, 2026, Petitioner timely filed a non-frivolous appeal of the denial of the Motion to Reopen to the BIA, which was formally received and remains actively pending. While this structural challenge to the removal order was unfolding, Petitioner moved for a custody redetermination before the Otay Mesa Immigration Court. On July 6, 2026, Immigration Judge Eugene Robinson issued an order denying the request, checking the box stating, *"The Court lacks jurisdiction to consider the respondent's custody status. Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)."* Petitioner remains civilly incarcerated without a hearing.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Fifth Amendment: Substantive and Procedural Due Process)

18. Petitioner incorporates paragraphs 1 through 17 as if fully set forth herein.

19. Freedom from physical detention is a core liberty interest protected by the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court has long established that noncitizens who have crossed the border and established a life within the United States interior vest with deep constitutional protections that cannot be stripped away by retroactive statutory shuffling.

20. By applying the border-enforcement mechanics of INA \S235(b)(2) to an interior resident who entered over a decade ago as a child, the Government enforces unreviewable, mandatory civil detention past the bounds of necessity.

21. Furthermore, due process demands an individualized assessment of flight risk and dangerousness. Petitioner was not deemed a danger to safety when immigration authorities released him as a minor in 2013, and he is not a danger now. No event, criminal conviction, or structural change has occurred over the last twelve years to alter that fact. Depriving him of a forum to present these facts is a direct violation of procedural due process.

SECOND CLAIM FOR RELIEF

(Constitutional Allocation of the Burden of Proof Under the Fifth Amendment)

22. Petitioner incorporates paragraphs 1 through 21 as if fully set forth herein.

23. In ordinary, non-mandatory immigration bond proceedings under INA \S236(a), agency rules historically place the burden of proof on the noncitizen to demonstrate

eligibility for release. In the context of prolonged, interior civil detention, this structural allocation is constitutionally invalid.

24. Under the Supreme Court's clear standards in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the private interest in avoiding cages is massive, the risk of erroneous deprivation under automatic agency detention is absolute, and the Government suffers no administrative burden by validating its detention choices.

25. Therefore, the **burden of proof must constitutionally fall squarely on the Government**. To continue depriving Petitioner of physical liberty, the Government must affirmatively establish, by clear and convincing evidence, that his continuous release poses an active danger to public safety or an unmanageable flight risk. Shifting this burden to Petitioner effectively operates as a de facto order of perpetual, arbitrary detention.

THIRD CLAIM FOR RELIEF

(Violation of the Eighth Amendment: Excessive Bail and Prohibitive Civil Custody)

26. Petitioner incorporates paragraphs 1 through 25 as if fully set forth herein.

27. The Excessive Bail Clause of the Eighth Amendment applies directly to civil immigration detention frameworks. Bail is unconstitutionally excessive when it is set at an amount higher than reasonably calculated to fulfill its stated, legitimate civil purposes—namely, ensuring presence at a future hearing and protecting public safety. *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

28. Because Petitioner is backed by verified property stakes, an active business infrastructure, and a robust, fully cooperative financial sponsor who has guaranteed absolute court compliance, the outright denial of an attainable bond is mathematically disproportionate to any legitimate civil goal. Categorically denying any access to bail operates as an absolute, excessive de facto mechanism of punishment, crossing the line from a civil regulatory function into punitive incarceration.

FOURTH CLAIM FOR RELIEF

(Violation of the Suspension Clause)

29. Petitioner incorporates paragraphs 1 through 28 as if fully set forth herein.

30. Article I, Section 9, Clause 2 of the United States Constitution mandates that the Writ of Habeas Corpus shall not be suspended unless in cases of rebellion or invasion.

31. By utilizing *Matter of Yajure Hurtado* to strip Immigration Judges of jurisdiction over interior residents, the executive branch has effectively closed the door on administrative custody review for an entire class of interior residents. Because the administrative process provides absolutely no alternative method to challenge the executive's basis for detention, the Government's enforcement of unreviewable mandatory custody amounts to an unconstitutional suspension of the Writ.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- **A.** Assume jurisdiction over this matter;
- **B.** Issue a Writ of Habeas Corpus declaring that Petitioner's mandatory detention without an individualized bond hearing is unconstitutional under the Fifth Amendment, Eighth Amendment, and Suspension Clause;
- **C.** Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days, wherein **the burden of proof is placed on the Government** to show by clear and convincing evidence that Petitioner is a flight risk or a danger;
- **D.** In the alternative, immediately order Petitioner's release under reasonable conditions or personal recognizance; and
- **E.** Grant any other relief this Court deems just and proper.

Dated: 7/13/2026

Respectfully submitted,

/s/Hernando De Cima

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This Memorandum is submitted in support of Petitioner Jose Elias Alvarado-Rodriguez's Petition for a Writ of Habeas Corpus. Petitioner has resided continuously in the United States interior for over twelve years, having originally entered as a 15-year-old unaccompanied minor. On July 6, 2026, an Immigration Judge summarily stripped Petitioner of his right to an individualized bond hearing, asserting a categorical lack of jurisdiction under the Board of Immigration Appeals' ("BIA") administrative precedent *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

The Government's ongoing detention of Petitioner without any administrative forum to assess his flight risk or dangerousness is constitutionally intolerable. Due Process mandates that an interior resident with deep societal roots cannot be subjected to mandatory, non-reviewable civil detention based on a decade-old entry infraction.

Furthermore, where a fundamental liberty interest is threatened by the State, the United States Constitution demands that the **burden of proof rest squarely on the Government.** This Court must intervene to vindicate Petitioner's rights under the Fifth Amendment, Eighth Amendment, and the Suspension Clause, and order an individualized hearing where the Government must justify Petitioner's confinement by clear and convincing evidence.

II. QUESTIONS PRESENTED

1. Does the Fifth Amendment's Due Process Clause permit the mandatory, unreviewable civil detention of an interior resident who integrated into the United States over twelve years ago as a minor, based on a retroactive reclassification as an "applicant for admission"?

2. Does the Constitution require the Government, rather than the detainee, to bear the burden of proof by clear and convincing evidence to justify prolonged civil immigration detention?
3. Does the outright denial of any access to bail for an interior resident with extensive property, business, and family ties violate the Excessive Bail Clause of the Eighth Amendment?

III. STATEMENT OF FACTS

Petitioner Jose Elias Alvarado-Rodriguez is a 28-year-old citizen of Honduras who has lived inside the United States for nearly half his life. On October 12, 2013, at the age of fifteen, Petitioner crossed the border without inspection. He was immediately apprehended by immigration officials, processed under the protective framework governing unaccompanied minors, and formally released into the interior of the United States.

On March 13, 2014, while Petitioner was still a child, an immigration court in Harlingen, Texas, issued an *in absentia* removal order. Lacking legal representation, guardians fluent in federal administrative procedures, or any meaningful understanding of the American legal system, Petitioner was completely lost regarding how the immigration system functioned.

Over the subsequent twelve years, Petitioner built a stable, law-abiding life in the interior. He is a homeowner with a verified commercial residential mortgage, a consistent taxpayer, and a business owner who founded and operates [redacted] Petitioner is also the devoted father of a nine-year-old United States citizen child and possesses a valid, USCIS-issued Employment Authorization Document valid through July 18, 2030.

On April 26, 2026, Petitioner was arrested at an airport in Florida based on the legacy 2014 administrative order. On July 6, 2026, Immigration Judge Eugene Robinson denied Petitioner's motion for a custody redetermination, checking a standardized box declaring

that the court lacked jurisdiction to consider his custody status under *Matter of Yajure Hurtado*. Petitioner remains caged at the Otay Mesa Detention Center.

IV. ARGUMENT

A. Exhaustion of Administrative Remedies is Excused as Futile

While a nominal administrative appeal window remains open until August 3, 2026, it is black-letter law that exhaustion of administrative remedies is not a jurisdictional requirement under 28 U.S.C. § 2241 and must be waived where seeking such remedies would be entirely futile. *See Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012).

Because the Immigration Judge's denial of a bond hearing was compelled by binding BIA precedent (*Yajure Hurtado*), an administrative appeal to that same Board would simply result in a summary confirmation of its own rule. The BIA lacks the authority to adjudicate the constitutional validity of its own published precedents or the statutory schemes enforced by DHS. Accordingly, judicial review is ripe.

B. The Retroactive Application of Mandatory Border Detention to Interior Residents Violates Due Process

Freedom from physical restraint forms the bedrock of constitutional liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court has consistently drawn a bright line between noncitizens standing at the threshold of entry and those who have entered the territory and developed roots in the interior. Noncitizens residing within the interior are vested with constitutional Due Process rights that cannot be stripped via retroactive statutory fiction. *Id.*

In *Matter of Yajure Hurtado*, the agency relies on an expansive interpretation of INA § 235(b)(2) to argue that any noncitizen who entered without inspection remains a perpetual

"applicant for admission," stripping them of bond eligibility under INA § 236(a) even decades after integrating into the domestic interior.

This legal fiction completely upends established Ninth Circuit law. An individual who has integrated into the fabric of the United States for over twelve years cannot be retroactively subjected to the summary, unreviewable mandatory detention frameworks meant for recent arrivals at the physical border. Applying mandatory detention to an interior resident like Petitioner violates substantive due process because it is not narrowly tailored to any legitimate, non-punitive government purpose.

C. The Constitution Structurally Places the Burden of Proof On the Government

The central constitutional flaw in Petitioner's current detention is the total absence of a forum to allocate a burden of proof. Procedural due process dictates that when the State moves to deprive an individual of physical liberty, the State must bear the burden of justifying that deprivation. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

1. ***The Private Interest is Absolute:*** Petitioner faces a catastrophic deprivation of liberty—indefinite confinement in a civil prison, severed from his U.S. citizen child, his home, and his livelihood.
2. ***The Risk of Erroneous Deprivation is Absolute:*** Under the mechanical operation of *Yajure Hurtado*, the government utilizes a blanket mandate that completely bypasses individualized adjudication. This ensures an unconstitutional rate of erroneous deprivation for individuals who present zero flight risk or danger.
3. ***The Government Bears No Legitimate Burden:*** Forcing the government to demonstrate a justification for caging an interior resident inflicts no structural or administrative harm on the State.

Consequently, the burden cannot constitutionally be placed on Petitioner to prove his eligibility for release. Rather, **the burden must fall squarely on the Government** to prove,

by clear and convincing evidence, that Petitioner presents an active danger to public safety or an unmanageable flight risk. *See Singh v. Garland*, 20 F.4th 506 (9th Cir. 2021) (holding that due process places the burden of proof on the government in prolonged detention hearings).

The Government cannot meet this burden. Petitioner was deemed entirely safe for release as a minor in 2013, and his immaculate record over the last twelve years establishes that he presents absolutely no danger to his community today.

D. The Structural Vulnerability of Petitioner's Entry as a Minor Invalidates the Basis for Detention

The Government justifies its denial of a bond forum by pointing to Petitioner's 2014 *in absentia* removal order. However, this order was entered against a 15-year-old child navigating a notoriously complex, adversarial legal system completely alone.

The Supreme Court and the Ninth Circuit have repeatedly recognized that children possess structural vulnerabilities that must be accommodated to satisfy due process. To deny a mature adult an individualized custody hearing today based on a breakdown of notice and appearance that occurred when he was a displaced, unrepresented child over a decade ago is fundamentally unfair and a violation of procedural due process.

E. Absolute Denial of Access to Bail Violates the Eighth Amendment

The Eighth Amendment's Excessive Bail Clause prevents the Government from utilizing financial or categorical bars to mandate detention where lesser regulatory measures can achieve court compliance. *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

Petitioner represents the antithesis of a flight risk: he owns fixed real estate, maintains a local corporate entity, and is backed by a highly solvent financial sponsor who has executed a formal compliance guarantee. By deploying *Yajure Hurtado* to categorically bar Petitioner

from accessing any bond, the Government is using civil detention as a punitive measure. A civil administrative mechanism that functions as an unreviewable penal cage is a flagrant violation of the Eighth Amendment.

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the mandatory, unreviewable civil detention of Petitioner Jose Elias Alvarado-Rodriguez without an individualized custody hearing violates the core protections of the Fifth Amendment, the Eighth Amendment, and the Suspension Clause. The Government cannot escape its constitutional obligations by retroactively applying border-enforcement fictions to a long-term interior resident who integrated into the fabric of this country as a minor. Because liberty is the constitutional norm and civil cage confinement is the strictly limited exception, the burden of justifying this ongoing deprivation must fall squarely upon the Government, which it cannot meet given Petitioner's immaculate record and deep community equities.

WHEREFORE, Petitioner respectfully requests that this Court assume jurisdiction over this matter, grant the Petition for a Writ of Habeas Corpus, and order the following specific relief:

- **A. Assume jurisdiction** over this matter and the named Respondents;
- **B. Issue a Writ of Habeas Corpus** declaring that Respondents' mandatory detention of Petitioner without an individualized bond hearing is unconstitutional under the Fifth Amendment's Due Process Clause, the Eighth Amendment's Excessive Bail Clause, and the Suspension Clause;
- **C. Invalidate the jurisdictional bar** erected by *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as applied to long-term interior residents;
- **D. Order Respondents to provide Petitioner with an individualized bond hearing** before an Immigration Judge within seven (7) days of this Court's order,

wherein **the burden of proof is placed constitutionally and squarely on the Government** to demonstrate by clear and convincing evidence that Petitioner's continuous release poses an active danger to public safety or an unmanageable flight risk;

- **E. In the alternative, immediately order Petitioner's release** from custody under reasonable conditions or on his own personal recognizance; and
- **F. Grant any other and further relief** as this Court deems just, equitable, and proper.

Dated: 7/13/2026

Respectfully submitted,

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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 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: 7/13/2026

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/13/2026, 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: 7/13/2026

Respectfully submitted,

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