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

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| Milton WILFREDO DE LEON,<br><br>Petitioner,<br>v.<br><br>Patrick DIVVER, *in his official capacity* as Field Office Director of the San Diego California, U.S. Immigration and Customs Enforcement and Enforcement of Removal Operations (ERO);<br><br>Todd BLANCHE, *in his official capacity* as Acting Attorney General of the United States;<br><br>Markwayne MULLIN, *in his official capacity* as Secretary of U.S. Department of Homeland Security;<br><br>Daren MARGOLIN, Director for Executive Office for Immigration Review,<br><br>Respondents. | **'26CV4039 LL JLB**<br>[redacted]<br><br>PETITION FOR WRIT OF HABEAS CORPUS<br><br>**HEARING REQUESTED** |

## INTRODUCTION

1. Petitioner, Milton Wilfredo De Leon, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his ongoing detention by U.S. Immigration and Customs Enforcement ("ICE").

2. Petitioner was initially detained on June 22, 2026, at the Buffalo Service Processing Center in Buffalo, New York. His detention is purportedly authorized under section 235(b)(2)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2)(A).

3. Petitioner was subsequently transferred to Port Isabel Detention Center in Los Fresnos, Texas on July 6, 2026.

4. Petitioner was then again transferred to Imperial Regional Detention Facility in Calexico, California on July 9, 2026.

5. This action challenges Petitioner's continued immigration detention without meaningful judicial review and the threatened transfer of Petitioner outside this District before the legality of his detention can be reviewed.

6. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court order Respondents to release Petitioner from custody or, in the alternative, an individualized bond hearing at which the Government bears the burden of justifying continued detention.

7. Petitioner also seeks such other relief as the Court deems just and proper to preserve this Court's jurisdiction over his habeas petition.

## CUSTODY

8. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility in Calexico, California. He is therefore in "'custody' of the Department of Homeland Security ("DHS") within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

## JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 which authorizes federal courts to grant writs of habeas corpus to individuals held in custody in violation of the Constitution or laws of the United States, 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) and whether the BIA and Immigration Court have jurisdiction over custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.

11. Although Congress has limited judicial review over certain immigration decisions, habeas jurisdiction remains available to challenge the constitutional and statutory validity of detention. See *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (preserving constitutional challenges to prolonged detention).

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 before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity.

14. Venue is proper in the Southern District of California because Petitioner's last known place of detention was the Imperial Regional Detention Facility in Calexico, California, within this District, and Respondents exercised custody over Petitioner within this District at the time this action arose.

15. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and Petitioner is detained in this District. 28 U.S.C. § 1391(e).

## PARTIES

16. Petitioner is a citizen and national of Guatemala. He is under custody and direct control of Respondents and their agents.

17. Respondent Patrick Divver is the Field Office Director of the San Diego California, U.S. Immigration and Customs Enforcement and Enforcement of Removal

Operations (ERO); which has jurisdiction over ICE detention facilities in San Diego and Imperial Counties in the State of California. He exercises authority over Petitioner's detention and is sued in his official capacity.

18. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. Respondent Blanche is a legal custodian of Petitioner.

19. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

20. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

## STATEMENT OF FACTS

21. Petitioner, Milton Wilfredo De Leon,, is a native and citizen of Guatemala.

22. Petitioner is currently in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Imperial Regional Detention Facility 1572 Gateway Rd., Calexico, CA 92231, where he has remained in ICE custody since July 9, 2026.

23. On June 22, 2026, Petitioner was apprehended by ICE in the parking lot of a Walmart in Buffalo, New York, after completing grocery shopping.

24. Following his arrest, Petitioner was detained at the Buffalo Service Processing Center in Batavia, New York.

25. Petitioner's family confirmed his location through the ICE Online Detainee Locator System.

26. Since his arrest, Petitioner has remained in immigration custody.

27. On July 6, 2026, Petitioner was transferred to Port Isabel Detention Center in Los Fresnos, Texas.

28. On July 9, 2026, Petitioner was again transferred to Imperial Regional Detention Facility in Calexico, CA.

29. Upon information and belief, Petitioner has not received an individualized bond hearing before an immigration judge at which the necessity of his continued detention has been meaningfully reviewed.

30. Petitioner's continued detention substantially restrains his liberty and separates him from his family.

## LEGAL BACKGROUND AND ARGUMENT

31. Petitioner now comes before this Honorable Court for a review of his unlawful and prolonged detention and the Immigration Court's denial of jurisdiction over his custody redetermination proceedings.

32. Mandatory detention under 8 U.S.C. § 1226(c) applies only to narrowly defined categories of individuals with specified criminal convictions, which Petitioner does not have.

33. Where detention is discretionary, due process requires a meaningful opportunity to seek release based on flight risk and danger. *See Jennings v. Rodriguez*, 583 U.S. at 529 (2018).

**COUNT I**
**Violation of 8 U.S.C. § 1226(a)**
**Unlawful Continued Detention**

34. Petitioner restates and realleges all paragraphs as if fully set forth here.

35. Petitioner has no criminal convictions that would trigger mandatory detention under 8 U.S.C. § 1226(c), his detention is governed by 8 U.S.C. § 1226(a), which permits release on bond following an individualized determination. Despite this, Petitioner has been subjected to mandatory detention without a meaningful opportunity for release.

36. The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law.

37. Continued civil immigration detention without an adequate opportunity to obtain individualized review may violate due process where detention becomes unreasonable under the circumstances.

38. Petitioner has remained detained without meaningful judicial review of whether continued detention is necessary.

**COUNT II**
**Violation of the Fifth Amendment Due Process**

39. Petitioner restates and realleges all paragraphs as if fully set forth here.

40. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration

status. *Id.* at 693.

41. Petitioner has been continuously detained since June 22, 2026, without a meaningful opportunity to obtain release based on an individualized determination of flight risk or dangerousness.

42. Petitioner's detention operates as a categorical and effectively indefinite deprivation of liberty.

43. Under these circumstances, continued detention without a meaningful individualized determination violates due process. See *Zadvydas*, 533 U.S. at 690; *Ly v. Hansen*, 351 F.3d 263, 271–72 (6th Cir. 2003).

44. Accordingly, Petitioner's continued detention without the possibility of release on bond or a meaningful custody redetermination, is unconstitutional. It violates his right to due process under the Fifth Amendment.

**COUNT III**
**Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy**

45. Petitioner restates and realleges all paragraphs as if fully set forth here.

46. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Petitioner are detained under § 1226(a) and eligible for release on bond.

47. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

**COUNT IV**
**Individualized Bond Hearing**

48. Petitioner restates and realleges all paragraphs as if fully set forth here.

49. Due process requires an individualized determination of whether continued detention is necessary to serve the Government's legitimate interests.

50. Petitioner has not received such an individualized determination.

51. Petitioner is entitled to a prompt bond hearing before a neutral decisionmaker.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Order Respondents to produce Petitioner before this Court and show cause why his continued detention is lawful;
3. Order Petitioner's immediate release from immigration detention; or, in the alternative,
4. Order Respondents to provide Petitioner with a prompt individualized bond hearing before an impartial immigration judge consistent with constitutional due process;
5. Enjoin Respondents from transferring Petitioner in a manner that would frustrate this Court's jurisdiction while this petition is pending, or require Respondents to notify the Court promptly of Petitioner's current location if a transfer has already occurred;
6. Declare that Petitioner's detention violates the INA;
7. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
8. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;

9. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

10. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

*/s/ Nour G. Chammas*
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Dated: July 14th, 2026

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Milton Wilfredo DeLeon, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 14th day of July, 2026.

*/s/ Nour G. Chammas*
Nour G. Chammas, Esq.