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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

**SAMUEL BUSTAMANTE JIMENEZ**
(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. **'26CV4208 RBM VET**

Agency No. A-[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

## TABLE OF CONTENTS

PETITION FOR WRIT OF HABEAS CORPUS.....3

- I. INTRODUCTION.....3
- II. JURISDICTION AND VENUE.....4
- III. PARTIES.....4
- IV. STATEMENT OF FACTS.....5
- V. EXHAUSTION OF ADMINISTRATIVE REMEDIES.....6
- VI. CLAIMS FOR RELIEF.....6
- VII. PRAYER FOR RELIEF.....9

MEMORANDUM OF POINTS AND AUTHORIES.....11

- I. INTRODUCTION.....11
- II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.....12
- III. JURISDICTION AND EXHAUSTION OF REMEDIES.....12
- III. LEGAL ARGUMENTS.....13
- IV. CONCLUSION AND PRAYER FOR RELIEF.....16

VERIFICATION.....18

CERTIFICATE OF SERVICE.....19

PROPOSED ORDER TO SHOW CAUSE.....20

# PETITION FOR WRIT OF HABEAS CORPUS

Comes now Petitioner, **SAMUEL BUSTAMANTE JIMENEZ** (A [redacted]6), by and through undersigned counsel, and petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to end his unlawful detention by Respondents without a constitutionally adequate custody hearing. In support thereof, Petitioner states as follows:

## I. INTRODUCTION

1. Petitioner Samuel Bustamante Jimenez is an immigration detainee currently held in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the **Otay Mesa Detention Center** in San Diego, California.
2. Petitioner was re-detained on June 14, 2026. Respondents maintain that Petitioner is subject to mandatory detention under Section 235(b)(2)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2)(A), as an "applicant for admission" present without inspection, thereby depriving the Immigration Court of jurisdiction to hold a bond redetermination hearing under INA § 236(a) and 8 C.F.R. § 1003.19.
3. Respondents' retroactive reclassification of Petitioner—who was apprehended in the interior of the United States, placed into standard removal proceedings under INA § 240, and previously granted release on a $3,000 bond under INA § 236(a)—violates the statutory scheme of the INA, Petitioner's Fifth Amendment Procedural and Substantive Due Process rights, and the Eighth Amendment's Prohibition of Excessive Bail.
4. Specifically, Respondents have deprived Petitioner of his fundamental physical liberty without providing any pre-deprivation process prior to revoking his prior bond, and without providing any prompt post-deprivation hearing before a neutral decision-maker where Petitioner can present evidence, defend himself, and contest the necessity of his detention.

5. Furthermore, due process and Ninth Circuit law mandate that any custody determination must explicitly consider Petitioner's financial status and non-monetary alternatives to detention so that financial hardship does not result in an unconstitutional *de facto* detention order.
6. Petitioner requests that this Court issue a Writ of Habeas Corpus ordering his immediate release or, in the alternative, directing Respondents to provide him with an individualized bond hearing before an Immigration Judge where the government bears the burden of proof, non-monetary alternatives are evaluated, and any financial bond set is proportional to Petitioner's financial status.

## II. JURISDICTION AND VENUE

7. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. § 2241 (Writ of Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), and the Suspension Clause of the U.S. Constitution, Art. I, § 9, cl. 2.
8. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241(a) because Petitioner is physically detained at the Otay Mesa Detention Center within the territorial jurisdiction of this Court, and Respondent Warden and Respondent Field Office Director exercise immediate and legal custody over Petitioner within this District.

## III. PARTIES

9. **Petitioner SAMUEL BUSTAMANTE JIMENEZ (A[redacted]6)** is a native and citizen of Mexico currently held in ICE custody at the Otay Mesa Detention Center in San Diego, California.
10. **Respondent WARDEN, Otay Mesa Detention Center** is the immediate physical custodian holding Petitioner in custody.

11. **Respondent PATRICK DIVVER** is the San Diego Field Office Director for ICE Enforcement and Removal Operations ("ERO"), exercising legal custody over immigration detainees in this District.
12. **Respondent TODD LYONS** is the Acting Director of U.S. Immigration and Customs Enforcement, responsible for overseeing all ICE detention operations.
13. **Respondent MARKWAYNE MULLIN** is the Secretary of the U.S. Department of Homeland Security, responsible for the administration and enforcement of federal immigration laws.
14. **Respondent TODD BLANCHE** is the Attorney General of the United States, overseeing the Department of Justice and the Executive Office for Immigration Review ("EOIR").

## IV. STATEMENT OF FACTS & PROCEDURAL HISTORY

15. On November 27, 2023, Petitioner was issued a Notice to Appear ("NTA") charging him under INA § 212(a)(6)(A)(i) as present in the United States without admission or parole.
16. On February 8, 2024, ICE exercised its discretionary authority under **INA § 236(a)** and released Petitioner from custody on a **$3,000 bond** (Form I-830E).
17. Petitioner's removal proceedings were transferred to the Baltimore Immigration Court, where he is currently defending against removal in formal INA § 240 proceedings, with an Individual Hearing scheduled for **March 17, 2027**.
18. On June 14, 2026, Petitioner was re-detained following a local DUI charge and subsequently transferred to the Otay Mesa Detention Center in San Diego, California.
19. ICE revoked Petitioner's liberty without conducting any pre-deprivation hearing or providing notice and an opportunity to present evidence regarding his flight risk or community safety.
20. Following his re-detention, Respondents position Petitioner as an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A), categorically

denying him any post-deprivation hearing before an Immigration Judge or other neutral magistrate.

## V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Exhaustion of administrative remedies is prudential, not jurisdictional, under 28 U.S.C. § 2241.

22. Seeking a bond hearing before an Immigration Judge or appealing to the Board of Immigration Appeals ("BIA") would be **futile** because EOIR policy and agency precedent hold that Immigration Judges lack jurisdiction under INA § 235(b)(2)(A) to consider bond requests for noncitizens classified as applicants for admission present without inspection.

23. Where administrative remedies are inadequate or futile, federal courts routinely excuse the exhaustion requirement.

## VI. CLAIMS FOR RELIEF

### COUNT I: STATUTORY VIOLATION

*(Misapplication of INA § 235(b)(2)(A) instead of INA § 236(a))*

24. Petitioner realleges paragraphs 1 through 23 as if fully set forth herein.

25. Congress created two distinct detention frameworks in the INA: INA § 235 governs applicants for admission seeking entry at a port of entry or expedited removal, whereas INA § 236(a) governs noncitizens apprehended in the interior of the United States and placed into full INA § 240 removal proceedings.

26. Respondents previously processed Petitioner under INA § 236(a) when setting his $3,000 release bond on February 8, 2024.

27. Subjecting an interior detainee in INA § 240 removal proceedings to mandatory detention under INA § 235(b)(2)(A) violates the plain language and statutory structure of the INA.

**COUNT II: FIFTH AMENDMENT PROCEDURAL DUE PROCESS**

*(Unlawful Detention Without Pre- or Post-Deprivation Hearing, Opportunity to Defend, and Failure to Consider Financial Status or Non-Monetary Alternatives)*

28. Petitioner realleges paragraphs 1 through 27 as if fully set forth herein.
29. The Due Process Clause of the Fifth Amendment applies to all persons within the territory of the United States, regardless of immigration status. Freedom from physical restraint is a fundamental liberty interest protected by the Constitution.
30. Under the three-part balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), Respondents' detention of Petitioner without a pre- or post-deprivation hearing is unconstitutional:
    - **First**, Petitioner's private interest in physical liberty is paramount and fundamental.
    - **Second**, the risk of an erroneous deprivation of liberty under Respondents' current procedure is total. By re-detaining Petitioner without a pre-deprivation hearing and denying him any post-deprivation hearing before an Immigration Judge, Respondents deprive Petitioner of any procedural avenue to present evidence, rebut government allegations, demonstrate his lack of dangerousness or flight risk, or propose less restrictive alternative release conditions.
    - **Third**, the government has no legitimate interest in detaining noncitizens without an individualized determination of flight risk or danger, nor does the government suffer an administrative burden by providing a prompt hearing before an existing administrative tribunal (the Immigration Court).

31. In addition, controlling Ninth Circuit precedent dictates that due process requires explicit consideration of financial circumstances and alternative release conditions. *See Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017) ("A bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests."). Imposing a monetary bond without considering financial capability or non-monetary alternatives results in an impermissible *de facto* detention order based solely on indigence.

**COUNT III: FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS**

*(Arbitrary and Excessive Deprivation of Liberty)*

32. Petitioner realleges paragraphs 1 through 31 as if fully set forth herein.
33. Substantive due process protects individuals from government detention that is arbitrary, excessive, or unrelated to a legitimate governmental interest.
34. Civil immigration detention is non-punitive; its sole constitutionally permissible purposes are to prevent flight and protect the community from danger.
35. Denying Petitioner any opportunity to seek bail, demonstrate non-flight risk or lack of danger, or seek non-monetary conditions of release renders his detention punitive and arbitrary, violating his Fifth Amendment substantive due process rights.

**COUNT IV: EIGHTH AMENDMENT EXCESSIVE BAIL CLAUSE**

*(Categorical Denial of Bail and Imposition of Financial Conditions Beyond Petitioner's Means)*

36. Petitioner realleges paragraphs 1 through 35 as if fully set forth herein.
37. The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required."

38. The Excessive Bail Clause applies to civil detention schemes where liberty interests are implicated. A categorical refusal to consider bail or non-monetary alternatives for an individual detained in the interior of the United States—or setting monetary conditions without regard to the individual's financial status—constitutes a constitutional violation equivalent to requiring excessive bail under the Eighth Amendment.

## VII. PRAYER FOR RELIEF

**WHEREFORE**, Petitioner respectfully requests that this Court:

1. **GRANT** the Petition for Writ of Habeas Corpus;
2. **ORDER** Respondents to immediately release Petitioner from custody under non-monetary conditions of supervision (such as order of recognizance, community-based supervision, or electronic monitoring);
3. **IN THE ALTERNATIVE, ORDER** Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within **seven (7) days**, with instructions that:
    - Petitioner be provided full notice and a meaningful opportunity to present oral and documentary evidence in his defense;
    - Respondents bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;
    - The adjudicator must explicitly consider non-monetary alternatives to detention (such as supervised release, reporting requirements, or Alternative to Detention programs) prior to or in lieu of imposing a financial bond; and
    - If a monetary bond is deemed necessary, the bond amount must be set at an amount proportional to Petitioner's financial status and demonstrated ability to pay, so that it does not operate as a *de facto* detention order based on indigence (*see Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017));

4. **AWARD** Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412; and
5. **GRANT** such other and further relief as the Court deems just and proper.

Dated: 7/22/2026

Respectfully submitted,

/s/Hernando De Cima
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*Attorney for Petitioner*

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Petitioner **SAMUEL BUSTAMANTE JIMENEZ** ([redacted]), by and through undersigned counsel, respectfully submits this Memorandum of Points and Authorities in Support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

Petitioner is a noncitizen who was apprehended in the interior of the United States, placed into standard removal proceedings under Section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a, and granted release on a $3,000 bond by U.S. Immigration and Customs Enforcement ("ICE") under INA § 236(a) on February 8, 2024. On June 14, 2026, Petitioner was re-detained following a local DUI charge and transferred to the Otay Mesa Detention Center in San Diego, California.

Upon re-detention, Respondents unilaterally reclassified Petitioner as an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Under this agency policy, Executive Office for Immigration Review ("EOIR") precedent disclaims Immigration Judge ("IJ") jurisdiction to hold a bond redetermination hearing under 8 C.F.R. § 1003.19.

Respondents' refusal to afford Petitioner a pre- or post-deprivation custody hearing before an impartial magistrate violates the statutory scheme of the INA, the Fifth Amendment's Due Process Clause, and the Eighth Amendment's Prohibition of Excessive Bail. Petitioner respectfully requests that this Court issue a Writ of Habeas Corpus ordering his immediate release or, in the alternative, directing Respondents to conduct an individualized bond hearing before an IJ where the government bears the burden of proof, non-monetary alternatives are evaluated, and any financial bond set is proportional to Petitioner's financial capability pursuant to *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. Petitioner is a native and citizen of Mexico who was apprehended in the interior of the United States.
2. On November 27, 2023, Respondents issued a Notice to Appear ("NTA") placing Petitioner into formal INA § 240 removal proceedings and charging him under INA § 212(a)(6)(A)(i) as present in the United States without admission or parole.
3. On February 8, 2024, ICE released Petitioner from custody on a **$3,000 bond** under INA § 236(a) (Form I-830E).
4. Petitioner's removal proceedings were transferred to the Baltimore Immigration Court, where he is actively defending against removal, with an Individual Hearing set for **March 17, 2027**.
5. On June 14, 2026, Petitioner was re-detained following a local DUI arrest and subsequently detained at the Otay Mesa Detention Center in San Diego, California.
6. Respondents revoked Petitioner's release without providing a pre-deprivation hearing. Following re-detention, Respondents asserted that Petitioner is subject to mandatory detention under INA § 235(b)(2)(A), denying him any opportunity to defend himself or seek bond before an IJ.

## III. JURISDICTION AND EXHAUSTION OF REMEDIES

### A. Federal District Court Subject-Matter Jurisdiction

Federal district courts maintain subject-matter jurisdiction under 28 U.S.C. § 2241 to review constitutional and statutory challenges to civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

**B. Administrative Exhaustion Should Be Excused as Futile**

Unlike statutory exhaustion under INA § 242(d)(1) for final orders of removal, exhaustion of administrative remedies in § 2241 habeas challenges to pre-order detention is prudential, not jurisdictional. *See Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012); *Laing v. Ashcroft*, 370 F.3d 994, 997–98 (9th Cir. 2004).

Courts excuse prudential exhaustion where pursuing administrative remedies would be futile. *See El Rescate Legal Servs., Inc. v. Exec. Off. for Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991). Under agency precedent (*Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)) and EOIR policy, Immigration Judges disclaim statutory jurisdiction under 8 C.F.R. § 1003.19 to conduct bond hearings for noncitizens categorized as applicants for admission under INA § 235(b)(2)(A). Requiring Petitioner to request a bond hearing before an IJ or appeal to the Board of Immigration Appeals ("BIA") would be a futile exercise.

**IV. LEGAL ARGUMENT**

**A. Respondents' Detention of Petitioner Under INA § 235(b)(2)(A) Violates the Statutory Framework of the INA**

Congress established two distinct detention schemes in the INA:

1. **INA § 235 (8 U.S.C. § 1225):** Applies to noncitizens arriving at a port of entry or seeking admission, subjecting them to mandatory detention during inspection or expedited removal.
2. **INA § 236(a) (8 U.S.C. § 1226(a)):** Governs noncitizens apprehended in the interior of the United States and placed in standard INA § 240 removal proceedings. Under § 236(a), the Attorney General has discretionary authority to release a detainee on bond or conditional parole.

Respondents previously acknowledged that INA § 236(a) governs Petitioner when ICE granted him a $3,000 bond on February 8, 2024. Retroactively reclassifying Petitioner as an "applicant for admission" under INA § 235(b)(2)(A) upon his re-detention contradicts the statutory design. Interior detainees in full § 240 removal proceedings are governed by INA § 236(a), which confers IJ jurisdiction to conduct bond redetermination hearings pursuant to 8 C.F.R. § 1003.19.

**B. Detention Without a Pre- or Post-Deprivation Hearing Violates Fifth Amendment Procedural Due Process**

The Due Process Clause of the Fifth Amendment applies to all persons within the territory of the United States. *See Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the very core of the liberty protected by the Due Process Clause." *Id.*

To determine what process is due, courts apply the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976):

1. **Private Interest:** Petitioner's interest in physical liberty is fundamental. Re-detaining Petitioner deprived him of his employment, family support, and ability to prepare his defense in his pending immigration case.
2. **Risk of Erroneous Deprivation:** The risk of erroneous deprivation under Respondents' current procedure is complete. ICE revoked Petitioner's liberty without a pre-deprivation hearing and offers no post-deprivation forum before an impartial decision-maker. Petitioner has been stripped of any procedural opportunity to present evidence, rebut government claims regarding his DUI arrest, show a lack of flight risk, or demonstrate community ties.
3. **Government Interest:** The government's interest in ensuring court appearance and public safety is adequately served by an individualized bond hearing before an IJ.

The government suffers no administrative hardship by utilizing existing Immigration Court bond procedures under 8 C.F.R. § 1003.19.

Depriving Petitioner of his liberty without a pre-deprivation hearing or a prompt post-deprivation hearing before a neutral adjudicator violates Fifth Amendment Procedural Due Process.

**C. Controlling Ninth Circuit Precedent Mandates Consideration of Financial Circumstances and Non-Monetary Alternatives**

Under Ninth Circuit law, due process requires that any custody determination must explicitly consider the noncitizen's financial circumstances and non-monetary alternatives to detention.

In *Hernandez v. Sessions*, the Ninth Circuit held that:

"A bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests."

— *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

The Ninth Circuit emphasized that setting a monetary bond without considering a detainee's financial capability or non-monetary alternatives (such as electronic monitoring or community supervision) leads to unconstitutional *de facto* detention orders based solely on indigence. *Id.* at 992.

Accordingly, if an IJ or court conducts a bond hearing for Petitioner, due process requires that:

1. The government bear the burden of proving flight risk or dangerousness by clear and convincing evidence;
2. Non-monetary release conditions be evaluated prior to imposing a financial bond; and
3. Any financial bond set be proportional to Petitioner's demonstrated financial ability to pay.

**D. Categorical Detention Violates Substantive Due Process and the Eighth Amendment Excessive Bail Clause**

Civil immigration detention is non-punitive; its constitutionally permissible scope is limited to preventing flight and protecting the community. *See Zadvydas*, 533 U.S. at 690. Detaining Petitioner indefinitely without an individualized finding that he poses an unmanageable flight risk or danger renders his detention punitive and arbitrary, violating Fifth Amendment Substantive Due Process.

Furthermore, the Eighth Amendment guarantees that "[e]xcessive bail shall not be required." U.S. Const. amend. VIII. The Excessive Bail Clause applies to civil detention schemes. *See Carlson v. Landon*, 342 U.S. 524, 545 (1952). Categorically refusing to consider bail or setting financial conditions beyond a detainee's financial reach without an individualized assessment violates the Eighth Amendment.

## V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. **GRANT** the Petition for Writ of Habeas Corpus;
2. **ORDER** Respondents to immediately release Petitioner from custody under non-monetary conditions of supervision;

3. **IN THE ALTERNATIVE, ORDER** Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within **Seven (7) days**, with instructions that:
    - Petitioner receive notice and a meaningful opportunity to present evidence in his defense;
    - Respondents bear the burden of proving flight risk or dangerousness by clear and convincing evidence;
    - The adjudicator evaluate non-monetary alternatives to detention; and
    - Any monetary bond set be proportional to Petitioner's financial status (*see Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017));
4. **AWARD** Petitioner attorney's fees and costs under EAJA, 28 U.S.C. § 2412; and
5. **GRANT** such other and further relief as the Court deems just and proper.

Dated: 7/22/2026

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 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: 7/22/2026

Respectfully submitted,

/s/Hernando De Cima
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*Attorney for Petitioner*

Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the Southern District of California.

Dated: 7/22/2026

Respectfully submitted,

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