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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUAN DIEGO RODRIGUEZ ORJUELA
([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. **'26CV4272 TWR 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

Comes now Petitioner, **JUAN DIEGO RODRIGUEZ ORJUELA (**[redacted]**)**, 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 **JUAN DIEGO RODRIGUEZ ORJUELA** ("Petitioner" or "Juan Diego"), A-Number [redacted], is a citizen of Colombia currently held in civil immigration detention by the U.S. Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.
2. Petitioner crossed the border in August 2023, was immediately apprehended at the border, and was formally inspected and paroled into the U.S. interior under statutory authority pursuant to INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). Following his lawful release on parole, Petitioner complied with all conditions imposed by federal authorities, timely submitted his Form I-589 Application for Asylum on August 27, 2024, received Employment Authorization, worked lawfully, paid taxes, and established a life in the U.S., where he serves as the primary caregiver for his infant United States citizen son.
3. On or about June 29, 2026, while driving to work, Petitioner was abruptly stopped at an ICE vehicle raid. ICE agents shattered Petitioner's driver-side window, forcefully extracted him, and detained him without a warrant, without probable cause, and without prior notice or a pre- or post-deprivation hearing regarding the revocation of his parole status.
4. Petitioner's Notice to Appear ("NTA") incorrectly charges him under INA § 212(a)(6)(A)(i) as an alien present without admission or parole. This erroneous

classification ignores his grant of statutory parole under INA § 212(d)(5)(A) in August 2023, his current Employment Authorization, and his pending affirmative asylum proceeding.

5. Petitioner challenges his unlawful detention under the Immigration and Nationality Act (INA), the Substantive and Procedural Due Process Clauses of the Fifth Amendment, the Right to Family Integrity under the Fifth Amendment, the Fourth Amendment's Prohibition against Unreasonable Seizures, and the Protection Against Excessive Bail under the Eighth Amendment (*citing Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)). He seeks an order directing his immediate release or, in the alternative, an immediate individualized bond hearing before an Immigration Judge within **seven (7) days** where the government bears the burden of proof by clear and convincing evidence.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this Petition pursuant to **28 U.S.C. § 2241** (habeas corpus), **28 U.S.C. § 1331** (federal question), and Article I, Section 9, Clause 2 of the U.S. Constitution (Suspension Clause).
7. Venue is proper in the Southern District of California pursuant to **28 U.S.C. § 1391(e)** and **28 U.S.C. § 2241(a)** because Petitioner is physically confined within this judicial district at the Otay Mesa Detention Center.

III. PARTIES

8. **Petitioner JUAN DIEGO RODRIGUEZ ORJUELA** (A# [redacted]) is a native and citizen of Colombia currently held in civil immigration detention at Otay Mesa Detention Center, San Diego, CA.

9. **Respondent MARKWAYNE MULLIN** is the Secretary of the U.S. Department of Homeland Security, exercising ultimate authority over ICE and Petitioner's custody. Sued in official capacity.
10. **Respondent TODD LYONS** is the Acting Director of U.S. Immigration and Customs Enforcement, overseeing civil immigration detention facilities nationwide. Sued in official capacity.
11. **Respondent PATRICK DIVVER** is the San Diego Field Office Director for ICE ERO, exercising operational control over detentions within this district. Sued in official capacity.
12. **Respondent WARDEN, OTAY MESA DETENTION CENTER** is the immediate physical custodian holding Petitioner at 7488 Calzada De La Fuente, San Diego, CA 92154. Sued in official capacity.
13. **Respondent TODD BLANCHE** is the Attorney General of the United States, exercising administrative authority over EOIR and removal proceedings. Sued in official capacity.

IV. STATEMENT OF FACTS

14. Petitioner fled Colombia after suffering severe threats and extortion by guerrilla organizations.
15. In August 2023, Petitioner crossed the U.S. border, was immediately detained by border authorities, and, following initial processing, was inspected and granted statutory parole into the United States interior under INA § 212(d)(5)(A).
16. On August 27, 2024, Petitioner filed a timely Form I-589 Application for Asylum and Withholding of Removal.
17. Petitioner was granted Employment Authorization, filed federal and state taxes, and maintained compliance with all supervision terms while residing in Kearny, New Jersey.

18. Petitioner is the father and caregiver of a U.S. citizen infant child, [redacted] Rodriguez Mejia, born in New Jersey on [redacted].

19. On or about June 29, 2026, ICE agents forcibly stopped Petitioner while he was driving to work, shattered his vehicle window, and took him into custody without a warrant or hearing.

20. Petitioner was not provided with a written notice of charges, nor an explanation for the revocation of his August 2023 parole grant, and no pre- or post-deprivation hearing.

21. Petitioner was transferred to the Otay Mesa Detention Center in San Diego, CA, on July 7, 2026.

22. The Form I-862 Notice to Appear issued by DHS improperly charges Petitioner under INA § 212(a)(6)(A)(i) as an uninspected entrant, ignoring his inspection and statutory parole in August 2023, his valid employment authorization, and his pending asylum application.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. There are no statutory administrative remedies under the INA that mandate exhaustion prior to bringing a 28 U.S.C. § 2241 habeas challenge for unlawful detention, improper statutory classification, and unconstitutional parole revocation.

24. Pursuing administrative remedies before the Executive Office for Immigration Review (EOIR) is legally futile, as Immigration Judges lack jurisdiction to correct erroneous DHS charging classifications under INA § 212(a)(6)(A)(i), review discretionary executive parole revocations under 8 C.F.R. § 212.5, or rule on constitutional due process violations.

VI. CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA)

(Improper Statutory Classification under INA § 212(a)(6)(A)(i))

25. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.
26. Under the INA, an individual who is inspected and paroled into the United States pursuant to INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), is not an "alien present without admission or parole."
27. Respondents violated the statutory scheme of the INA by misclassifying Petitioner in his Notice to Appear under INA § 212(a)(6)(A)(i) as an uninspected entry without parole. This statutory misclassification artificially alters Petitioner's legal status, denies him statutory eligibility for custody review before an Immigration Judge, and serves as an illegal predicate for his arbitrary detention.

COUNT II

VIOLATION OF FIFTH AMENDMENT PROCEDURAL DUE PROCESS

(Unlawful Revocation of Parole/Release without Hearing)

28. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.
29. Following his inspection and statutory parole in August 2023, Petitioner established residency in the U.S. interior, filed for asylum, received employment authorization, and integrated into the community, establishing a constitutionally protected liberty

interest under the Fifth Amendment (*citing Morrissey v. Brewer*, 408 U.S. 471 (1972)).

30. Respondents violated procedural due process by abruptly terminating Petitioner's parole and liberty without prior written notice of allegations, an opportunity to contest the revocation, or a prompt post-deprivation custody hearing.

COUNT III

VIOLATION OF FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS

(Arbitrary, Punitive, and Unjustified Confinement)

31. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.

32. Civil immigration detention violates Substantive Due Process unless it is strictly regulatory and bears a reasonable, non-punitive relationship to a legitimate government purpose—specifically ensuring appearance at court proceedings or protecting public safety (*citing Zadvydas v. Davis*, 533 U.S. 678 (2001); *Kansas v. Hendricks*, 521 U.S. 346 (1997)).

33. Because Petitioner has no criminal record, maintains strong family and economic ties, supports a U.S. citizen child, and has an active court date, his detention serves no legitimate regulatory purpose and is unconstitutionally punitive (*citing Demore v. Kim*, 538 U.S. 510 (2003)).

COUNT IV

VIOLATION OF THE EIGHTH AMENDMENT AND FIFTH AMENDMENT DUE PROCESS

(Excessive Bail and Failure to Consider Proportional Release Terms / Financial Ability)

34. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.

35. Under the Eighth Amendment's Prohibition against Excessive Bail and the Fifth Amendment's Due Process Clause, civil immigration detention is unconstitutional when the government refuses to consider financial ability to pay bond or fails to evaluate alternative, non-monetary release conditions (*citing Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)).

36. Respondents' categorical detention of Petitioner without providing a proportional bail assessment, without considering his financial resources, and without evaluating non-monetary alternatives (such as electronic monitoring or conditional parole) constitutes excessive bail and arbitrary deprivation of liberty under *Hernandez v. Sessions*.

COUNT V

VIOLATION OF FIFTH AMENDMENT DUE PROCESS

(Infringement on the Fundamental Right to Family Integrity)

37. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.

38. The Due Process Clause of the Fifth Amendment protects the fundamental liberty interest of parents in the care, custody, and management of their minor children (*citing Moore v. City of East Cleveland*, 431 U.S. 494 (1977); *Troxel v. Granville*, 530 U.S. 57 (2000)).

39. Petitioner is the primary caregiver and support system for his U.S. citizen infant child, [redacted] Respondents' arbitrary detention of Petitioner severely infringes upon this protected family integrity without a compelling governmental justification.

COUNT VI

VIOLATION OF THE FOURTH AMENDMENT

(Unreasonable Seizure and Excessive Force)

40. Petitioner realleges and incorporates Paragraphs 1 through 24 as if fully set forth herein.

41. The Fourth Amendment protects individuals against unreasonable seizures and the use of excessive force during civil administrative immigration stops (*citing Graham v. Connor*, 490 U.S. 386 (1989); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)).

42. ICE agents seized Petitioner without a warrant or reasonable suspicion of criminal conduct, smashed his driver-side window, and forcefully removed him from his vehicle, constituting an unreasonable seizure and excessive force under the Fourth Amendment.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

1. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from physical custody under reasonable, non-monetary conditions of supervision;
2. In the alternative, order Respondents to grant Petitioner an individualized bond hearing before an Immigration Judge within **seven (7) days**, wherein:

   a. DHS bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community (*citing Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)); and

b. The decisionmaker must consider Petitioner's financial ability to pay bond and evaluate non-monetary alternatives to detention to establish proportional release conditions (*citing Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017));

3. Issue an order correcting Petitioner's statutory classification under the INA from an uninspected entrant under INA § 212(a)(6)(A)(i) to a paroled noncitizen under INA § 212(d)(5)(A);
4. Issue an injunction enjoining Respondents from transferring Petitioner outside the Southern District of California during the pendency of this proceeding;
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 such other relief as this Court deems just and proper.

Dated: 7/26/2026

Respectfully submitted,

/s/Hernando De Cima
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858-525-5578
Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Juan Diego Rodriguez Orjuela seeks habeas corpus relief under 28 U.S.C. § 2241. Petitioner entered in August 2023, was inspected, and was granted statutory parole under INA § 212(d)(5)(A). He complied with all parole terms, filed a timely asylum claim, obtained employment authorization, and cared for his U.S. citizen son. On June 29, 2026, ICE agents forcibly arrested him by smashing his driver-side window. Respondents now hold Petitioner at Otay Mesa Detention Center under an erroneous NTA charge, in violation of the INA, the Fifth, Fourth, and Eighth Amendments, and Ninth Circuit precedent in *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The factual background is detailed in Section IV of the Petition and incorporated herein. Petitioner remains detained in San Diego, CA, awaiting his EOIR Master Hearing scheduled for August 12, 2026.

III. JURISDICTION AND EXHAUSTION OF REMEDIES

Federal district courts retain jurisdiction under 28 U.S.C. § 2241 to adjudicate statutory INA misclassifications and constitutional challenges to civil immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Exhaustion of administrative remedies is not required where EOIR lacks jurisdiction to resolve statutory classification errors or review parole revocations under 8 C.F.R. § 212.5.

IV. LEGAL ARGUMENTS

1. Misclassification under the INA: An individual granted statutory parole pursuant to INA § 212(d)(5)(A) cannot legally be categorized as an alien "present without admission or parole" under INA § 212(a)(6)(A)(i). DHS's improper NTA designation deprives Petitioner of his correct statutory standing and serves as an illegal foundation for ongoing detention.

2. Procedural Due Process Protection for Paroled Noncitizens: Noncitizens paroled into the interior acquire constitutional procedural protections under the Fifth Amendment. *Morrissey v. Brewer*, 408 U.S. 471 (1972) establishes that conditional liberty cannot be revoked without written notice and a prompt hearing.

3. Constitutional Imperative: The Government Must Bear the Burden of Proof at Any Custody Hearing:

Under the Fifth Amendment's Due Process Clause, "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). In our constitutional order, physical liberty is the default baseline, and civil detention prior to trial or final judgment is a narrow, strictly regulated exception. *United States v. Salerno*, 481 U.S. 739, 749 (1987).

When the government seeks to deprive an individual of liberty in a civil proceeding, the constitutional balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Addington v. Texas*, 441 U.S. 418 (1979), dictates that the risk of an erroneous deprivation must fall on the state, not the individual. Because the potential injury to the noncitizen—loss of fundamental physical freedom—is immense compared to the administrative burden on the state, forcing the individual to prove a negative (that they are *not* a flight risk or danger) turns constitutional due process on its head. *Addington*, 441 U.S. at 427.

Accordingly, established Ninth Circuit jurisprudence commands that at any custody or bond hearing, the Fifth Amendment requires the **government to establish dangerousness or flight risk by clear and convincing evidence**. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). This burden is further heightened where, as here, the government seeks to revoke an existing conditional grant of liberty (parole) for an interior resident with extensive roots, tax compliance, and a U.S. citizen child (*citing Morrissey v. Brewer*, 408 U.S. 471 (1972)).

4. Proportional Release and Bond Consideration under *Hernandez v. Sessions*: In *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017), the Ninth Circuit held that due process and Eighth Amendment principles require immigration custody decisionmakers to consider a noncitizen's financial ability to pay bond and evaluate non-monetary alternatives to detention (such as electronic monitoring). Categorical detention without assessing financial ability or non-monetary release conditions results in impermissible, unproportional detention based solely on poverty.

5. Substantive Due Process and Right to Family Integrity: Civil immigration detention is unconstitutional when arbitrary or excessive in relation to its regulatory purpose. *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997). Furthermore, the Fifth Amendment protects fundamental family relationships. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). Detaining a non-violent father who is the sole caregiver for a U.S. citizen infant violates substantive due process.

6. Fourth Amendment Protection Against Unreasonable Seizures: The Fourth Amendment prohibits government officials from executing civil administrative stops using excessive force, such as smashing vehicle windows, without a warrant or reasonable suspicion of criminal activity. *Graham v. Connor*, 490 U.S. 386 (1989).

V. CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated above, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order his immediate release or a prompt *Hernandez*-compliant custody hearing within **seven (7) days** (As stated in the Petition previously).

Dated: 7/26/2026

Respectfully submitted,

/s/Hernando De Cima
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hernando@decimalaw.com
858-525-5578
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: 7/26/2026

Respectfully submitted,

/s/Hernando De Cima
Hernando De Cima, Esq
105 N Rose St Ste 109
Escondido, Ca 92027
hernando@decimalaw.com
858-525-5578
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/26/2026, 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: 7/26/2026

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 on 7/26/2026:

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