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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE AMILCAR ROJAS MAGANA **A#** [redacted] **Petitioner,** **v.** Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; **and** Department of Homeland Security Secretary, Respondents	Case No.: **PETITION FOR WRIT OF HABEAS CORPUS** **(28 U.S.C. § 2241)** **Emergency Request for Immediate Release or Constitutionally Adequate Bond Hearing**

I. INTRODUCTION

Petitioner Jose Amilcar Rojas Magana respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241.

Petitioner has remained imprisoned by Immigration and Customs Enforcement ("ICE") since December 17, 2025.

He has now endured approximately seven months of civil immigration detention without any realistic end in sight.

Although immigration detention is civil—not punitive—the Government continues to incarcerate Petitioner despite:

- no criminal convictions;
- no danger to the community;
- no meaningful flight risk;
- prolonged detention becoming constitutionally unreasonable.

The Due Process Clause of the Fifth Amendment prohibits indefinite civil detention without adequate procedural safeguards.

Petitioner requests immediate release or, alternatively, a prompt individualized bond hearing before a neutral decisionmaker at which DHS bears the burden of proving by clear and convincing evidence that continued detention is justified.

II. JURISDICTION

This Court has jurisdiction under:

- 28 U.S.C. §2241
- 28 U.S.C. §1331
- U.S. Const. art. I, §9
- Fifth Amendment

Venue is proper in the Southern District of California because Petitioner is detained at:

Otay Mesa Detention Center

7488 Calzada de la Fuente

San Diego, California

III. PARTIES

Petitioner

Jose Amilcar Rojas Magana

A[redacted]

Citizen of Guatemala

Currently detained at Otay Mesa Detention Center.

Respondents

Melissa Harper, Warden

Todd Lyons, Acting Director of ICE

Kristi Noem, Secretary of Homeland Security

IV. FACTUAL ALLEGATIONS

1. Petitioner entered ICE custody on December 17, 2025.
2. He has remained continuously detained.
3. Removal proceedings remain pending before the Otay Mesa Immigration Court.
4. Petitioner sought release during immigration proceedings.
5. Relief was denied, and detention continues. The immigration court record reflects that the custody request was denied.

6. Petitioner has no criminal history.
7. ICE has never alleged violent criminal conduct.
8. Petitioner has fully cooperated throughout proceedings.
9. The Government continues to prosecute removal proceedings while Petitioner remains incarcerated.
10. Immigration detention is civil rather than criminal.
11. Civil detention cannot become punishment.
12. Petitioner's detention has become excessive and constitutionally unreasonable.
13. Continued incarceration serves no legitimate governmental interest that cannot be accomplished through less restrictive alternatives.

V. LEGAL FRAMEWORK

The Due Process Clause limits civil detention.

The Supreme Court has repeatedly recognized constitutional limitations on prolonged immigration detention.

Among the controlling authorities are:

- Zadvydas v. Davis, 533 U.S. 678 (2001)
- Demore v. Kim, 538 U.S. 510 (2003)
- Jennings v. Rodriguez, 583 U.S. 281 (2018)

Although Jennings rejected a statutory reading requiring automatic bond hearings, it expressly left open constitutional challenges under the Fifth Amendment.

The Ninth Circuit has likewise recognized that prolonged immigration detention may violate due process and require an individualized bond hearing.

Relevant authorities include:

- Rodriguez Diaz v. Garland
- Martinez v. Clark
- Singh v. Holder
- Casas-Castrillon v. DHS
- Diouf v. Napolitano

VI. CLAIM FOR RELIEF

FIRST CLAIM

Violation of the Fifth Amendment Due Process Clause

Petitioner incorporates all prior allegations.

Civil detention must bear a reasonable relationship to its legitimate purpose.

Petitioner's detention has now become unreasonably prolonged.

The Government has failed to provide constitutionally sufficient procedural protections.

No neutral tribunal has required DHS to justify continued detention under the heightened standard required by due process.

Continued incarceration violates the Fifth Amendment.

SECOND CLAIM

Unreasonable Prolonged Immigration Detention

The Supreme Court has recognized that immigration detention cannot become indefinite.

Here:

• detention has exceeded seven months;

• proceedings remain ongoing;

• no final removal has occurred;

• no criminal sentence is being served;

• detention has become excessive.

THIRD CLAIM

Failure to Provide Constitutionally Adequate Bond Hearing

Due process requires meaningful review of continued detention.

At any constitutionally adequate hearing:

DHS—not Petitioner—must prove:

• danger to the community

or

• flight risk

by clear and convincing evidence.

Petitioner has never received such a hearing.

VII. IRREPARABLE HARM

Every additional day of unconstitutional detention constitutes irreparable injury.

Petitioner continues suffering:

loss of liberty;

family separation;

psychological harm;

emotional distress;

economic hardship;

inability to assist fully in preparing his immigration case.

No monetary damages can remedy these injuries.

VIII. EXHAUSTION

To the extent exhaustion is required, it has either been satisfied or should be excused because:

continued detention presents an ongoing constitutional injury;

further administrative review would be futile;

only this Court can provide effective habeas relief.

IX. REQUEST FOR EXPEDITED CONSIDERATION

Petitioner respectfully requests expedited review because every additional day of unconstitutional detention inflicts irreparable harm.

X. PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus;
2. Declare Petitioner's continued detention unconstitutional;
3. Order Petitioner's immediate release;

OR, alternatively,

4. Order Respondents to provide a constitutionally adequate bond hearing before an Immigration Judge within seven (7) days;

5. Require DHS to prove by clear and convincing evidence that continued detention is necessary;
6. Award reasonable attorney's fees and costs where authorized;
7. Grant such additional relief as the Court deems just and proper.

Respectfully submitted,

/s/ Gordon Turner

Attorney for Petitioner

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

JOSE AMILCAR ROJAS MAGANA

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
GORDON TURNER, ESQ. (SBN 226215)
21300 Victory Blvd Ste 300
Woodland Hills CA 91367 (818) 710-3812

DEFENDANTS

Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; and Department of Homeland

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [x] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	[ ] 625 Drug Related Seizure of Property 21 USC 881	[ ] 422 Appeal 28 USC 158	[ ] 375 False Claims Act
[ ] 120 Marine	[ ] 310 Airplane	[ ] 365 Personal Injury - Product Liability	[ ] 690 Other	[ ] 423 Withdrawal 28 USC 157	[ ] 376 Qui Tam (31 USC 3729(a))
[ ] 130 Miller Act	[ ] 315 Airplane Product Liability	[ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS	[ ] 400 State Reapportionment
[ ] 140 Negotiable Instrument	[ ] 320 Assault, Libel & Slander	[ ] 368 Asbestos Personal Injury Product Liability		[ ] 820 Copyrights	[ ] 410 Antitrust
[ ] 150 Recovery of Overpayment & Enforcement of Judgment	[ ] 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	[ ] 830 Patent	[ ] 430 Banks and Banking
[ ] 151 Medicare Act	[ ] 340 Marine	[ ] 370 Other Fraud	[ ] 710 Fair Labor Standards Act	[ ] 835 Patent - Abbreviated New Drug Application	[ ] 450 Commerce
[ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)	[ ] 345 Marine Product Liability	[ ] 371 Truth in Lending	[ ] 720 Labor/Management Relations	[ ] 840 Trademark	[ ] 460 Deportation
[ ] 153 Recovery of Overpayment of Veteran's Benefits	[ ] 350 Motor Vehicle	[ ] 380 Other Personal Property Damage	[ ] 740 Railway Labor Act	[ ] 880 Defend Trade Secrets Act of 2016	[ ] 470 Racketeer Influenced and Corrupt Organizations
[ ] 160 Stockholders' Suits	[ ] 355 Motor Vehicle Product Liability	[ ] 385 Property Damage Product Liability	[ ] 751 Family and Medical Leave Act	SOCIAL SECURITY	[ ] 480 Consumer Credit (15 USC 1681 or 1692)
[ ] 190 Other Contract	[ ] 360 Other Personal Injury		[ ] 790 Other Labor Litigation	[ ] 861 HIA (1395ff)	[ ] 485 Telephone Consumer Protection Act
[ ] 195 Contract Product Liability	[ ] 362 Personal Injury - Medical Malpractice		[ ] 791 Employee Retirement Income Security Act	[ ] 862 Black Lung (923)	[ ] 490 Cable/Sat TV
[ ] 196 Franchise				[ ] 863 DIWC/DIWW (405(g))	[ ] 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	[ ] 864 SSID Title XVI	[ ] 890 Other Statutory Actions
[ ] 210 Land Condemnation	[ ] 440 Other Civil Rights	Habeas Corpus:	[ ] 462 Naturalization Application	[ ] 865 RSI (405(g))	[ ] 891 Agricultural Acts
[ ] 220 Foreclosure	[ ] 441 Voting	[ ] 463 Alien Detainee	[ ] 465 Other Immigration Actions	FEDERAL TAX SUITS	[ ] 893 Environmental Matters
[ ] 230 Rent Lease & Ejectment	[ ] 442 Employment	[ ] 510 Motions to Vacate Sentence		[ ] 870 Taxes (U.S. Plaintiff or Defendant)	[ ] 895 Freedom of Information Act
[ ] 240 Torts to Land	[ ] 443 Housing/ Accommodations	[x] 530 General		[ ] 871 IRS—Third Party 26 USC 7609	[ ] 896 Arbitration
[ ] 245 Tort Product Liability	[ ] 445 Amer. w/Disabilities - Employment	[ ] 535 Death Penalty			[ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
[ ] 290 All Other Real Property	[ ] 446 Amer. w/Disabilities - Other	Other:			[ ] 950 Constitutionality of State Statutes
	[ ] 448 Education	[ ] 540 Mandamus & Other			
		[ ] 550 Civil Rights			
		[ ] 555 Prison Condition			
		[ ] 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. SECTION 2241

Brief description of cause:
Emergency Request for Immediate Release

VII. REQUESTED IN COMPLAINT:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [ ] No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
July 22, 2026

SIGNATURE OF ATTORNEY OF RECORD
Gordon Turner

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23. F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Email: gordoneturner@gmail.com

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE AMILCAR ROJAS MAGANA **A#** [redacted] **Petitioner,** **v.** Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; **and** Department of Homeland Security Secretary, Respondents	Case No.: **DECLARATION OF GORDON TURNER IN SUPPORT PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)**

I, Gordon Turner, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am counsel of record for Petitioner, **Jose Amilcar Rojas Magana (A No.** [redacted] I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto.

2. Mr. Rojas Magana is a native and citizen of Guatemala, originally from Chiquimula, Guatemala. He is presently detained at the Otay Mesa Detention Center in San Diego County, California.
3. I represented Mr. Rojas Magana during his custody redetermination (bond) proceedings before the Immigration Court at Otay Mesa.
4. On February 18, 2026, the Honorable Immigration Judge conducted a custody redetermination hearing. During that hearing, the Court received evidence demonstrating Mr. Rojas Magana's good moral character, strong family ties, stable employment history, and other favorable equities.
5. At the conclusion of the hearing, the Immigration Judge determined that she lacked jurisdiction to grant bond under the then-applicable law and denied bond solely on that jurisdictional basis, rather than because Mr. Rojas Magana posed either a danger to the community or a risk of flight.
6. Mr. Rojas Magana has **no criminal history whatsoever**. He is a hardworking business owner who established and operated a business specializing in the repair of heavy machinery. He was not arrested while committing, attempting to commit, or suspected of committing any criminal offense. Rather, he was detained by immigration authorities while traveling on Interstate 5, returning to Los Angeles from San Diego after submitting a bid for a heavy equipment repair project.
7. Mr. Rojas Magana has substantial family ties within the United States. His brother, who also resides in Los Angeles County and is currently an asylum seeker, together with his mother and numerous aunts, uncles, and cousins, provide him with a strong support

network. He has maintained close relationships with these family members throughout his time in the United States.

8. Prior to his detention, Mr. Rojas Magana consistently contributed to the financial support of his mother and other family members while building his business and developing a respected career as a skilled heavy machinery mechanic.

9. Through his dedication, professionalism, and expertise, Mr. Rojas Magana has earned an excellent reputation among his clients and within his profession. He is widely regarded as an honest, dependable, and highly skilled mechanic.

10. Before the Board of Immigration Appeals' decision in *Matter of Q. Li*, similarly situated individuals with no criminal history, significant community ties, and strong evidence of rehabilitation and stability commonly received bond pending the adjudication of their immigration proceedings. The change in legal interpretation following that decision, rather than any individualized finding regarding Mr. Rojas Magana, resulted in the denial of bond.

11. Based upon my representation of Mr. Rojas Magana and my familiarity with his background and circumstances, I firmly believe that he poses **no danger to the community** and presents **no meaningful risk of flight**. Throughout my representation, he has consistently demonstrated respect for the legal process and a sincere commitment to pursuing his asylum claim through lawful means.

12. Mr. Rojas Magana remains actively engaged in his immigration proceedings and is currently scheduled for an Individual Merits Hearing on his asylum application on **July 28, 2026**, before the Immigration Court in Otay Mesa, California.

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

Executed on _July 22_, 2026, at _Woodland Hills, California_.

/s/ Gordon Turner

Declarant

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE AMILCAR ROJAS MAGANA **A#** [redacted] **Petitioner,** **v.** Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; and Department of Homeland Security Secretary, Respondents	Case No.: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

This case presents a fundamental constitutional question concerning the permissible duration of civil immigration detention under the Due Process Clause of the Fifth Amendment.

Petitioner, **Jose Amilcar Rojas Magana**, has been detained by Immigration and Customs Enforcement ("ICE") continuously since **December 17, 2025**, without a meaningful opportunity

to obtain release despite having no criminal history and despite the continuing pendency of his removal proceedings.

Immigration detention is civil rather than punitive. While Congress has authorized detention in certain circumstances to facilitate removal proceedings and ensure appearance at future hearings, the Constitution imposes substantive and procedural limits on the Government's authority to deprive individuals of their liberty. When detention becomes prolonged and no longer bears a reasonable relationship to its regulatory purposes, continued incarceration violates the Due Process Clause.

Petitioner respectfully requests that this Court issue a writ of habeas corpus ordering his immediate release or, alternatively, directing Respondents to provide a prompt individualized bond hearing before an Immigration Judge at which the Government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary because Petitioner poses either a danger to the community or a significant risk of flight.

II. STATEMENT OF FACTS

Petitioner is a native and citizen of Guatemala.

He has remained continuously detained at the Otay Mesa Detention Center since December 17, 2025.

Removal proceedings remain pending before the Executive Office for Immigration Review ("EOIR"). The immigration court records show that an individual hearing was scheduled for July 28, 2026, demonstrating that the proceedings are ongoing rather than completed.

Petitioner sought custody redetermination before the Immigration Court. On February 18, 2026, the Immigration Judge denied the request, concluding that the court lacked jurisdiction over the custody request.

Petitioner has no criminal convictions and no history of violence. Throughout his detention, he has complied with immigration proceedings and has remained available for all hearings.

As of the filing of this petition, Petitioner has been detained for approximately seven months. That detention is civil in nature and has extended well beyond the brief period contemplated by the Supreme Court in *Demore v. Kim*.

III. JURISDICTION

This Court has jurisdiction pursuant to:

- 28 U.S.C. § 2241;
- 28 U.S.C. § 1331;
- the Suspension Clause, U.S. Const. art. I, § 9;
- the Due Process Clause of the Fifth Amendment.

Venue is proper in this District because Petitioner is confined within the Southern District of California.

IV. STANDARD OF REVIEW

Federal district courts possess jurisdiction under 28 U.S.C. § 2241 to review constitutional challenges to the legality of immigration detention.

While federal courts generally lack jurisdiction to review discretionary immigration decisions, they retain jurisdiction over constitutional claims and questions of law challenging the legality of detention itself.

V. LEGAL FRAMEWORK

A. Immigration Detention Is Civil Rather Than Criminal

The Supreme Court has consistently recognized that immigration detention serves regulatory—not punitive—purposes.

The Government's interests include:

- ensuring attendance at removal proceedings; and
- protecting the community from genuinely dangerous individuals.

However, because immigration detention is civil, constitutional protections against arbitrary detention remain fully applicable.

B. Due Process Prohibits Indefinite Civil Detention

The Fifth Amendment provides that no person shall be deprived of liberty without due process of law.

Freedom from physical restraint lies at the core of liberty protected by the Constitution.

Even noncitizens are entitled to due process protections while physically present within the United States.

VI. SUPREME COURT PRECEDENT

A. Zadvydas v. Davis

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that immigration detention cannot continue indefinitely.

The Court emphasized that civil detention becomes unconstitutional once it no longer bears a reasonable relationship to its regulatory objectives.

Although *Zadvydas* addressed post-removal-order detention, its constitutional reasoning applies broadly to prolonged civil confinement.

B. Demore v. Kim

In *Demore v. Kim*, 538 U.S. 510 (2003), the Court upheld mandatory detention only because it was expected to last for a brief period.

The Court repeatedly relied upon the historically short duration of detention during removal proceedings.

The Court did not authorize detention extending many months or years.

C. Jennings v. Rodriguez

In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court rejected a statutory interpretation requiring automatic six-month bond hearings.

Importantly, however, Jennings expressly left unresolved constitutional challenges brought under the Fifth Amendment.

Thus, federal courts remain fully authorized to determine whether prolonged detention violates constitutional due process.

VII. NINTH CIRCUIT AUTHORITY

The Ninth Circuit has repeatedly recognized constitutional limitations on prolonged immigration detention.

In Singh v. Holder, the Court held that due process requires the Government to prove dangerousness or flight risk by clear and convincing evidence.

Similarly, in Casas-Castrillon v. DHS and Diouf v. Napolitano, the Ninth Circuit recognized that prolonged detention requires heightened procedural protections.

Although subsequent statutory interpretations have evolved following *Jennings*, the constitutional principles underlying these decisions remain persuasive.

VIII. PETITIONER'S DETENTION HAS BECOME UNREASONABLE

Several factors demonstrate that continued detention violates due process:

A. Length of Detention

Petitioner has remained incarcerated for approximately seven months.

This exceeds the brief period contemplated in *Demore*.

B. No Criminal History

Petitioner has no criminal convictions.

Nothing in the record demonstrates that he poses a danger to the community.

C. Proceedings Continue

The Government continues litigating Petitioner's removal case while he remains imprisoned.

There is no indication that removal is imminent.

D. Civil Detention Has Become Excessive

Civil detention must remain reasonably related to its regulatory purposes.

Once detention becomes excessive in relation to those purposes, due process requires meaningful judicial intervention.

IX. THE MATHEWS v. ELDRIDGE BALANCING TEST

Under *Mathews v. Eldridge*, courts evaluate:

1. the private interest affected;
2. the risk of erroneous deprivation;
3. the Government's interest.

Petitioner's liberty interest is among the most fundamental recognized by the Constitution.

The risk of erroneous detention is substantial when detention continues without a constitutionally adequate bond hearing.

The Government's interests can be fully protected through reasonable conditions of release or a bond determination applying the proper burden of proof.

Accordingly, the *Mathews* balancing test strongly favors additional procedural protections.

X. IRREPARABLE HARM

Each day of unconstitutional confinement inflicts irreparable injury.

Petitioner continues to suffer:

- loss of liberty;
- separation from family;
- emotional hardship;
- inability to work;
- diminished ability to prepare his immigration case.

These injuries cannot be remedied through monetary damages.

XI. REMEDY

Federal courts possess broad equitable authority under 28 U.S.C. § 2241.

Courts throughout the Ninth Circuit have ordered:

- immediate release;
- constitutionally adequate bond hearings;
- temporary release under supervision.

The appropriate remedy is either:

1. immediate release; or
2. an individualized bond hearing before an Immigration Judge within seven days, at which DHS bears the burden of proving by clear and convincing evidence that continued

detention is necessary because Petitioner presents a danger to the community or a substantial flight risk.

XII. CONCLUSION

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

1. Grant the Petition for Writ of Habeas Corpus;
2. Declare Petitioner's continued detention unconstitutional;
3. Order Petitioner's immediate release from ICE custody;

or, in the alternative,

4. Order Respondents to provide a constitutionally adequate bond hearing within seven (7) days;
5. Require the Government to bear the burden of proving by clear and convincing evidence that continued detention is justified;
6. Award any further relief the Court deems just and proper.

Respectfully submitted,

/s/ Gordon Turner

Attorney for Petitioner

GORDON TURNER, ESQ. (SBN 226215)
Attorney at Law
21300 Victory Blvd., Suite 300
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE AMILCAR ROJAS MAGANA **A#** [redacted] **Petitioner,** **v.** Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; and Department of Homeland Security Secretary, Respondents	Case No.: **Exhibit Index**

The following exhibits are attached in support of Petitioner's Petition for Writ of Habeas Corpus:

Exhibit	**Description**
Exhibit A	Notice to Appear (Form I-862)
Exhibit B	Immigration Judge's Order denying bond or custody redetermination.
Exhibit C	Notice of In-Person Hearing

Exhibit D	Notice of Custody Redetermination Hearing in Immigration Proceedings
Exhibit E	Immigration Court custody or case status printout.

Respectfully submitted,

/s/ Gordon Turner

Attorney for Petitioner

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE AMILCAR ROJAS MAGANA **A#** [redacted] **Petitioner,** **v.** Otay Mesa Detention Center Warden; U.S. Immigration and Customs Enforcement; and Department of Homeland Security Secretary, Respondents	Case No.: **CERTIFICATE OF SERVICE**

I certify that on 07/22/2026, I served a true and correct copy of the Petition for Writ of Habeas Corpus and all accompanying pleadings by certified United States Mail, return receipt requested, and by electronic mail where available, upon:

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Attorney for Respondents

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _22___ day of __July_, ***2026***.

/s/ Gordon Turner

Attorney for Petitioner