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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AHMED AMEIRA
(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. **'26CV4676 TWR DDL**

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

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I. INTRODUCTION

1. Petitioner **AHMED AMEIRA** (A# [redacted]) is a native and citizen of Mauritania currently held in civil immigration custody by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.
2. Petitioner has been continuously detained by ICE since **January 5, 2026**—a period now exceeding **seven months**—while his appeal remains pending before the Board of Immigration Appeals ("BIA").
3. Following an unconstitutional custody redetermination hearing in New York, ICE abruptly transferred Petitioner across the country to California, physically severing him from his U.S. citizen sponsor, evidence, and support network.
4. Petitioner seeks a Writ of Habeas Corpus ordering his immediate release from custody under reasonable conditions of supervision or, in the alternative, an order directing Respondents to provide him with a constitutionally adequate, individualized bond hearing before an Immigration Judge ("IJ") where the Government bears the burden of proof by clear and convincing evidence, and is required to consider financial ability and alternative conditions of release under *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action 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 United States Constitution (Suspension Clause).
6. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) because Petitioner is physically detained within this judicial district at the Otay Mesa Detention Center.

III. PARTIES

7. **Petitioner AHMED AMEIRA** is a citizen of Mauritania currently confined at the Otay Mesa Detention Center in San Diego, California.
8. **Respondent Markwayne Mullin** is the Secretary of the Department of Homeland Security ("DHS") and is responsible for the administration and enforcement of the immigration laws.
9. **Respondent Todd Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE").
10. **Respondent Patrick Divver** is the San Diego Field Office Director for ICE, having direct authority over Petitioner's detention within this district.
11. **Respondent Warden, Otay Mesa Detention Center**, is the immediate custodian with physical custody of Petitioner.
12. **Respondent Todd Blanche** is the Attorney General of the United States.

IV. STATEMENT OF FACTS

13. **Entry and Initial Release:** Petitioner entered the United States without inspection on or about June 8, 2023. He was released on an Order of Release on Recognizance (Form I-220A) and placed in standard removal proceedings under INA § 240.
14. **Removal Proceedings & Pending BIA Appeal:** On November 3, 2025, an IJ issued an order denying Petitioner's applications for relief and ordering removal. Petitioner timely appealed this decision to the BIA on December 3, 2025. The appeal remains pending before the BIA, meaning Petitioner's removal order is **not** administratively final under 8 C.F.R. § 1241.1.
15. **Re-Detention by ICE:** On January 5, 2026, ICE re-detained Petitioner. Because his removal order is non-final and stayed pending appeal, his detention is governed by **INA § 236(a)** (8 U.S.C. § 1226(a)), which provides discretionary detention authority.

16. **Lack of Criminal Record:** On October 11, 2025, Petitioner was arrested in Philadelphia due to an unverified workplace incident during his first day of employment. On January 22, 2026, **all criminal charges were fully withdrawn by the prosecution** (Dkt. No. MC-51-CR-0018995-2025). Petitioner has zero criminal convictions in the U.S. or abroad.
17. **Defective Bond Hearing in New York:** On May 18, 2026, Immigration Judge Kieran Lalor denied Petitioner's motion for bond redetermination at the Ulster Immigration Court in New York, finding him a "flight risk". The IJ committed reversible legal error by characterizing Petitioner as having a "final order of removal" despite his pending BIA appeal. Furthermore, the IJ improperly placed the burden of proof on Petitioner and failed to evaluate alternative non-monetary conditions of release.
18. **Intersite Transfer to California:** Shortly after the bond denial, ICE forcibly transferred Petitioner thousands of miles away to the Otay Mesa Detention Center in San Diego, California. This transfer severed Petitioner from his immediate geographic ties, including his primary U.S. citizen sponsor, Mr. Yahya Ould Loud, who resides in the Bronx, New York.
19. **Community Support:** Petitioner's sponsor, Mr. Yahya Ould Loud, submitted a sworn affidavit offering housing, financial support, and a commitment to ensuring Petitioner's attendance at all future immigration proceedings.

V. STATEMENT OF EXHAUSTION AND FUTILITY

20. **28 U.S.C. § 2241 contains no statutory exhaustion requirement** for challenging pre-final-order detention under INA § 236(a). Administrative exhaustion in immigration habeas cases is purely a prudential doctrine.
21. To the extent any prudential exhaustion requirement applies, **exhaustion must be excused** under established Ninth Circuit precedent (*Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004)) for the following reasons:

- **Futility:** Requiring further BIA appeal would be futile. The BIA lacks authority to declare statutory detention procedures unconstitutional or to enforce fundamental constitutional constraints under the Fifth and Eighth Amendments.
- **Obstruction and Prejudice Caused by Transfer:** ICE's sudden cross-country transfer of Petitioner from New York to California—far from his sponsor, evidence, and legal representation—created severe logistical barriers to pursuing administrative remedies and severely prejudiced his ability to litigate his custody status.
- **Irreparable Harm:** Forcing Petitioner to endure continued unconstitutional, prolonged confinement while navigating administrative channels constitutes an ongoing, irreparable deprivation of liberty.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of Fifth Amendment Substantive Due Process – Prolonged & Arbitrary Detention)

22. Petitioner realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21.
23. Freedom from physical restraint is a fundamental liberty interest protected by the Substantive Due Process Clause of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
24. Civil immigration detention violates Substantive Due Process unless it is strictly necessary to serve a compelling government purpose (i.e., preventing flight or danger to the community) and is accompanied by adequate procedural safeguards.

25. Petitioner's continued detention for over seven months—where he has no criminal convictions, poses no danger, and possesses strong community ties—has become punitive, arbitrary, and excessive in relation to the government's regulatory interest, in violation of the Fifth Amendment.

SECOND CLAIM FOR RELIEF

(Violation of Fifth Amendment Procedural Due Process – Improper Burden of Proof & Non-Compliance with *Hernandez v. Sessions*)

26. Petitioner realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21.
27. Under the Ninth Circuit's binding decision in *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), due process requires immigration officials and IJs to consider a detainee's financial circumstances and alternative non-monetary conditions of release (such as electronic monitoring or supervision) during bond determinations.
28. Due process further requires that the Government bear the burden of proving by clear and convincing evidence that detention is necessary to prevent flight or danger.
29. The Immigration Court violated Procedural Due Process by unconstitutionally placing the burden of proof on Petitioner, failing to consider alternative conditions of release under *Hernandez*, and predicating its decision on the legally erroneous belief that Petitioner was subject to a final order of removal.

THIRD CLAIM FOR RELIEF

(Violation of Eighth Amendment – Excessive Bail Clause)

30. Petitioner realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21.

31. The Excessive Bail Clause of the Eighth Amendment prohibits the imposition of bail or conditions of release that are excessive or designed to result in the de facto, categorical denial of release without individualized justification.

32. By refusing bond and failing to evaluate non-monetary conditions of release tailored to Petitioner's circumstances, Respondents have effectuated an absolute denial of bail that is unconstitutionally excessive and disproportionate under the Eighth Amendment.

VII. MEMORANDUM OF POINTS AND AUTHORITIES

A. Legal Framework & Fundamental Constitutional Rights

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause of the Fifth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of their immigration status. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Civil immigration detention is constitutionally permissible only as a non-punitive regulatory measure designed to ensure appearance at future proceedings or protect the community from danger. *Demore v. Kim*, 538 U.S. 510, 523 (2003). Where detention ceases to serve these narrow regulatory goals, or where the procedural mechanisms designed to evaluate them are constitutionally deficient, the detention violates Substantive and Procedural Due Process.

B. Petitioner's Detention is Unconstitutionally Prolonged Under Substantive Due Process

While the Supreme Court in *Demore v. Kim* upheld brief periods of mandatory detention without a bond hearing, it emphasized that such detention was permissible because it lasted for a "brief period" (typically brief, 45 to 90 days). In contrast, Petitioner has been incarcerated in civil detention for **over seven months** (since January 5, 2026).

Under Ninth Circuit jurisprudence, as detention becomes increasingly prolonged, the private interest in liberty grows weightier, increasing the risk of an erroneous deprivation of liberty. *Casas-Castrillon v. DHS*, 535 F.3d 942, 950 (9th Cir. 2008); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Continued incarceration over seven months without a constitutionally compliant hearing crosses the threshold into arbitrary detention that violates Substantive Due Process.

C. Procedural Due Process Requires the Government to Bear a Clear and Convincing Burden of Proof

Under the balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process requires that when a fundamental liberty interest is at stake, the government must provide procedural safeguards that minimize the risk of erroneous deprivation.

In the Ninth Circuit, it is established law that due process requires the **Government**—not the detainee—to bear the burden of proof in an immigration bond hearing by **clear and convincing evidence**. *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011).

In this case, the Immigration Judge at Ulster Immigration Court committed two grave constitutional and legal errors during the May 18, 2026 hearing:

1. **Misapplication of Law:** The IJ erroneously treated Petitioner as being subject to a "final order of removal". Because Petitioner filed a timely appeal with the BIA on December 3, 2025, the IJ's removal order was stayed and remained non-final pursuant to 8 C.F.R. § 1241.1. Petitioner's detention was governed by INA § 236(a), requiring an individualized custody assessment.
2. **Improper Burden-Shifting:** The IJ unconstitutionally required Petitioner to prove he was not a flight risk, directly violating *Singh*.

D. Violation of *Hernandez v. Sessions* and the Eighth Amendment

In *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017), the Ninth Circuit held that "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process: no person may be imprisoned merely on account of his poverty." *Hernandez* established that Due Process requires IJs and ICE officials to:

1. Consider a detainee's financial ability to post bond; and

2. Explicitly consider alternative, non-monetary conditions of release (such as electronic monitoring, GPS tracking, or intensive supervision).

The IJ in Petitioner's case failed to perform any analysis under *Hernandez*, effectively executing a categorical denial of bail. This failure violates both Procedural Due Process and the **Excessive Bail Clause of the Eighth Amendment**, which prohibits the imposition of conditions or denials of release that operate as an absolute bar to freedom without adequate, individualized necessity.

E. ICE's Cross-Country Transfer Prejudiced Petitioner and Excuses Administrative Exhaustion

While 28 U.S.C. § 2241 contains no statutory exhaustion requirement for pre-final-order immigration detention, courts may require prudential exhaustion. However, prudential exhaustion is not required where:

- Exhaustion would be **futile**;
- The administrative remedy is **inadequate**; or
- The petitioner would suffer **irreparable harm**. *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004).

First, exhaustion is **futile** because the BIA lacks jurisdiction to adjudicate constitutional challenges to its own procedures or enforce Fifth and Eighth Amendment standards.

Second, ICE severely **prejudiced** Petitioner by transferring him from New York to the Otay Mesa Detention Center in San Diego, California, following his bond denial. This transfer physically removed Petitioner thousands of miles away from his primary U.S. citizen sponsor, Mr. Yahya Ould Loud (who resides in New York), making it virtually impossible to gather localized evidence or coordinate effectively with counsel. Forcing Petitioner to

remain incarcerated while pursuing a lengthy administrative process after an unconstitutional transfer creates irreparable harm to his constitutional liberty.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. **GRANT** this Petition for Writ of Habeas Corpus;
2. **ORDER** Respondents to immediately release Petitioner from custody under reasonable, non-monetary conditions of supervision;
3. **IN THE ALTERNATIVE**, order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within 14 days, where:
    - The Government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is necessary due to flight risk or danger; and
    - The Court strictly complies with *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), by giving full consideration to Petitioner's financial resources and alternative conditions of release;
4. **GRANT** 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 this Court deems just and proper.

Dated: 8/14/2026

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

IX. ATTORNEY VERIFICATION

I, Hernando De Cima, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and the United States District Court for the Southern District of California, and I am counsel of record for the Petitioner in this action.
2. I make this verification on behalf of Petitioner pursuant to 28 U.S.C. § 2242 because Petitioner is currently detained by Respondents at the Otay Mesa facility in San Diego, California, and is therefore unavailable to sign this document directly.
3. I have prepared the foregoing Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities based on an official review of government records provided by the Department of Homeland Security and the Executive Office for Immigration Review as well as direct consultations.
4. The facts stated in the foregoing petition are true and correct to the best of my knowledge, information, and belief.

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

Dated: 8/14/2026

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

X. CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 8/14/2026, 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: 8/14/2026

Respectfully submitted,

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