Hernando De Cima, Esq. (SBN 361132)
DE CIMA LAW
105 N Rose st #109
Escondido, CA 92027
Tel: (858) 525-5578
Fax: (760) 418-6462
Email: hernando@decimalaw.com

Attorney for: Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FAISAL FUSEINI ([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. **'26CV4712 DMS JAC**

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

I. INTRODUCTION

1. Petitioner **FAISAL FUSEINI** (A# [redacted]4), a noncitizen native and citizen of Ghana, brings this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing, unlawful detention by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.
2. Petitioner has been continuously detained in civil immigration custody since **January 8, 2026**—over seven months without a constitutionally adequate bond hearing.
3. On August 14, 2026, Immigration Judge Eugene H. Robinson Jr. issued an Order denying Petitioner's Motion for Custody Redetermination for lack of jurisdiction under *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), ruling that because Petitioner was previously placed in expedited removal/credible fear proceedings prior to Section 240 removal proceedings, the Immigration Court is without jurisdiction to grant bond.
4. Petitioner's prolonged detention since January 8, 2026, paired with the Immigration Court's refusal to exercise bond jurisdiction, violates the Immigration and Nationality Act ("INA"), Fifth Amendment Procedural and Substantive Due Process, Eighth Amendment Excessive Bail principles, and binding Ninth Circuit precedent in ***Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026)**, ***Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)**, and ***Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)**.
5. Petitioner respectfully requests that this Court issue an order directing Respondents to immediately release him on reasonable bond or conditional supervision, or, in the alternative, order the Immigration Court to conduct an individualized bond hearing under INA § 236(a) and *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this Petition under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. § 1651 (All Writs Act), and Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause).
7. Venue is proper in the U.S. District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(e) because Petitioner is physically detained at the Otay Mesa Detention Center in San Diego, California, within this judicial district (*see Rumsfeld v. Padilla*, 542 U.S. 426 (2004)).

III. PARTIES

8. **Petitioner FAISAL FUSEINI** (A# [redacted]) is a noncitizen native and citizen of Ghana currently held in civil immigration detention by ICE at the Otay Mesa Detention Center.
9. **Respondent Markwayne Mullin** is the Secretary of the U.S. Department of Homeland Security and has ultimate statutory oversight over civil immigration detention.
10. **Respondent Todd Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE") and oversees the execution of immigration detention operations.
11. **Respondent Patrick Divver** is the San Diego Field Office Director for ICE Enforcement and Removal Operations ("ERO") and serves as Petitioner's legal custodian.
12. **Respondent Warden, Otay Mesa Detention Center**, is the immediate physical custodian responsible for Petitioner's day-to-day confinement at the facility.
13. **Respondent Todd Blanche** is the Attorney General of the United States and oversees the Executive Office for Immigration Review ("EOIR") and the Immigration Courts.

IV. STATEMENT OF FACTS

14. Petitioner entered the United States on December 11, 2021. He expressed fear of return to Ghana and successfully established a Credible Fear of Persecution under 8 C.F.R. § 208.30.
15. On February 15, 2022, DHS vacated the expedited removal order and placed Petitioner into full Section 240 removal proceedings via a Notice to Appear.
16. Petitioner has been continuously detained in ICE custody since **January 8, 2026**.
17. On January 14, 2026, an Immigration Judge issued an order of removal in Petitioner's proceedings. Petitioner timely appealed that order to the Board of Immigration Appeals ("BIA") on February 2, 2026. Pursuant to 8 C.F.R. § 1241.1(a), Petitioner's removal order is not administratively final while his BIA appeal remains actively pending.
18. On August 14, 2026—after **over seven months of continuous incarceration**—Immigration Judge Eugene H. Robinson Jr. denied Petitioner's request for bond redetermination, stating: "Denied, because Matter of M-S- applies... As such, this Court is without jurisdiction to grant a bond."
19. Petitioner poses zero threat to public safety (no criminal record) and zero flight risk, possessing strong ties including a U.S. Citizen biological brother (Mohammed Fuseini-Zebah) who serves as his primary sponsor with confirmed housing and employment.

V. STATEMENT OF EXHAUSTION AND FUTILITY

20. **Administrative Exhaustion Is Not Statutorily Required:** The habeas statute, 28 U.S.C. § 2241, contains no statutory administrative exhaustion requirement (*Laing v. Ashcroft*, 370 F.3d 994, 997–98 (9th Cir. 2004)).
21. **Prudential Exhaustion Is Excused for Futility:** While courts may apply prudential exhaustion, exhaustion is excused here because appealing the IJ's bond denial to the

BIA would be entirely futile (*see El Rescate Legal Servs., Inc. v. EOIR*, 959 F.2d 742, 747 (9th Cir. 1991)). The BIA is an administrative body bound by Attorney General precedent in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). The BIA has no legal authority to overrule Executive precedent or declare it unconstitutional under Ninth Circuit law.

22. In contrast, this Court is bound by the decisions of the U.S. Court of Appeals for the Ninth Circuit, including ***Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026)**, ***Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)**, and ***Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)**. Requiring Petitioner to remain detained while awaiting BIA appellate review would exacerbate his already prolonged detention without any meaningful administrative remedy.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of INA § 236(a) and Binding Ninth Circuit Precedent in Rodriguez Vazquez v. Bostock)

23. Petitioner re-alleges paragraphs 1–22.
24. Under Section 236(a) of the INA, 8 U.S.C. § 1226(a), the Attorney General and Immigration Judges possess statutory discretion to release noncitizens on bond or conditional parole during the pendency of removal proceedings.
25. In ***Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026),** the Ninth Circuit squarely held that noncitizens residing in the interior of the United States placed in Section 240 removal proceedings are governed by INA § 236(a) [8 U.S.C. § 1226(a)] and are statutorily entitled to a bond hearing before an Immigration Judge, regardless of whether they were initially subjected to a credible fear interview upon entrance.

26. By relying on *Matter of M-S-* to disclaim bond jurisdiction over Petitioner, Respondents violated INA § 236(a) and binding Ninth Circuit law.

SECOND CLAIM FOR RELIEF

(Violation of Fifth Amendment Procedural Due Process — Unlawful & Prolonged Detention Since January 8, 2026)

27. Petitioner re-alleges paragraphs 1–26.
28. The Fifth Amendment's Due Process Clause forbids civil immigration detention that is arbitrary, prolonged, or lacking individualization (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring)).
29. Petitioner has been continuously detained since **January 8, 2026**—exceeding seven months of civil confinement without a constitutionally adequate bond hearing (*see Casas-Castrillon v. DHS*, 535 F.3d 942, 950 (9th Cir. 2008)).
30. Denying Petitioner a bond hearing based on an administrative rule (*Matter of M-S-*) deprives him of procedural due process by enforcing prolonged civil detention without a contemporaneous, individualized finding by a neutral decisionmaker that he poses a flight risk or danger to the community (*Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).
31. Under ***Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)**, procedural due process requires an individualized hearing where the government bears the burden of proof by clear and convincing evidence, and where the adjudicator considers the noncitizen's financial resources and alternative non-monetary conditions of release.

THIRD CLAIM FOR RELIEF

(Violation of Fifth Amendment Substantive Due Process — Unconstitutional & Punitive Confinement)

32. Petitioner re-alleges paragraphs 1–31.

33. Substantive due process protects individuals from civil detention that is excessive or punitive in relation to its permissible, non-punitive regulatory purpose (*Kansas v. Hendricks*, 521 U.S. 346, 361 (1997); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

34. Petitioner's ongoing detention since January 8, 2026, has crossed the threshold of reasonableness. Where Petitioner has no criminal record, poses zero danger, has strong U.S. Citizen family ties, and has an active BIA appeal pending, his continued incarceration serves no legitimate government purpose and operates as unconstitutional punishment (*see Wong Wing v. United States*, 163 U.S. 228, 237 (1896)).

FOURTH CLAIM FOR RELIEF

(Violation of Eighth Amendment Prohibition Against Excessive Bail)

35. Petitioner re-alleges paragraphs 1–34.

36. The Eighth Amendment to the U.S. Constitution guarantees that "Excessive bail shall not be required" (*Carlson v. Landon*, 342 U.S. 524, 545 (1952)).

37. The prohibition against excessive bail applies to civil immigration custody where conditions imposed or categorical denials of release operate as an absolute prohibition of liberty without regulatory justification (*B stack v. City of Los Angeles*, 872 F.3d 976, 992 (9th Cir. 2017)).

38. By categorically denying bond jurisdiction under *Matter of M-S-* and refusing to consider Petitioner's financial resources, ability to pay, or non-monetary alternatives to detention under *Hernandez v. Sessions*, Respondents violate the Eighth Amendment.

VII. MEMORANDUM OF POINTS AND AUTHORITIES

A. Petitioner Is Detained Under INA § 236(a) as a Matter of Law

Under 8 C.F.R. § 1241.1(a), an order of removal is not administratively final while an appeal is pending before the BIA. Because Petitioner's removal order was timely appealed on February 2, 2026, he remains in ongoing Section 240 removal proceedings (*Casas-Castrillon v. DHS*, 535 F.3d 942, 948 (9th Cir. 2008)).

In ***Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026)**, the Ninth Circuit explicitly rejected the government's mandatory detention theory under INA § 235(b)(2) for unadmitted noncitizens residing in the interior who are placed in removal proceedings, even if they were given a credible fear interview upon entrance. The Ninth Circuit affirmed that such individuals are detained under INA § 236(a) [8 U.S.C. § 1226(a)] and are legally entitled to an individualized bond redetermination hearing before an Immigration Judge.

B. Petitioner's Prolonged Detention Since January 8, 2026, Violates Due Process

Petitioner has been incarcerated since **January 8, 2026.** Civil immigration detention becomes constitutionally suspect as it grows in length (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011)). Under established Ninth Circuit jurisprudence, prolonged detention without an individualized custody hearing before a neutral magistrate where the government proves danger or flight risk by clear and convincing evidence violates the Fifth Amendment Due Process Clause (*Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The government cannot justify holding Petitioner for over seven months without offering him a forum to prove that his release poses no threat or flight risk.

C. The Immigration Court Erred in Disclaiming Jurisdiction Under *Matter of M-S-*

Immigration Judge Robinson's August 14, 2026 Order relied on *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), to find a total lack of bond jurisdiction. However, administrative decisions of the Executive Branch cannot override binding Circuit precedent (*Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 982 (2005)). In the Ninth Circuit, *Bostock* governs, rendering the application of *Matter of M-S-* to deny bond jurisdiction a direct violation of federal law.

D. Application of *Hernandez v. Sessions*, *Singh v. Holder*, and the Eighth Amendment

Under binding Ninth Circuit precedent in ***Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)** and ***Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)**, procedural due process and fundamental fairness require that when evaluating custody under INA § 236(a), adjudicators **must consider the noncitizen's financial circumstances and ability to pay**, as well as **alternative non-monetary conditions of release** (such as electronic monitoring or reporting requirements).

Furthermore, prolonged detention without an individualized bond hearing violates both Fifth Amendment substantive due process and Eighth Amendment principles against excessive bail (*Carlson v. Landon*, 342 U.S. 524, 545 (1952)). Categorically denying bond jurisdiction or setting a monetary bond that operates as an absolute barrier to release violates these constitutional guarantees. Petitioner poses zero threat to public safety and presents no flight risk, supported by his U.S. Citizen primary sponsor brother, Mohammed Fuseini-Zebah.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. **GRANT** the Petition for a Writ of Habeas Corpus;
2. **DECLARE** that Petitioner's continued detention since January 8, 2026, is governed by INA § 236(a) [8 U.S.C. § 1226(a)] and that the Immigration Court's refusal of bond jurisdiction under *Matter of M-S-* violates the INA, Fifth Amendment Procedural and Substantive Due Process, and the Eighth Amendment;
3. **ORDER** Respondents to immediately release Petitioner under reasonable conditions or conditional parole under INA § 236(a)(2)(B);
4. **IN THE ALTERNATIVE, ORDER** Respondents to provide Petitioner with an individualized bond redetermination hearing before an Immigration Judge within fourteen (14) days, pursuant to INA § 236(a), *Hernandez v. Sessions*, *Singh v. Holder*, and the Eighth Amendment, where the government bears the burden of proving flight risk or danger by clear and convincing evidence;
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 and further relief as the Court deems just and proper.

Dated: 8/17/2026

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

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: 8/17/2026

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

X. CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 8/17/2026, 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: 8/17/2026

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

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 8/17/2026:

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