

1 Hernando De Cima, Esq. (SBN 361132)
2 **DE CIMA LAW**
3 105 N Rose st #109
4 Escondido, CA 92027
5 Tel: (858) 525-5578
6 Fax: (760) 418-6462
7 Email: hernando@decimalaw.com

8 Attorney for: Petitioner

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **MILTON OMAR LOPEZ-PINEDA,**



12 *Petitioner,*

13 vs.

14 **MARKWAYNE MULLIN**, Secretary, U.S.
15 Department of Homeland Security;
16 **TODD LYONS**, Acting Director, U.S.
17 Immigration and Customs Enforcement;
18 **PATRICK DIVVER**, San Diego Field Office
19 Director, ICE;
20 **WARDEN, OTAY MESA DETENTION**
21 **CENTER**; and
22 **TODD BLANCHE**, Attorney General of the
23 United States.

24 *Respondents.*

25) Case No. 3:26-cv-02374-CAB-AHG

26) Agency No. 

27) **EX PARTE EMERGENCY**
28) **APPLICATION FOR TRO AND STAY**
) **OF REMOVAL PROCEEDINGS**

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES**

) **EXPEDITED RELIEF REQUESTED**

) **FILING DEADLINE: APRIL 28TH, 2026**

29 **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND**
30 **STAY OF REMOVAL PROCEEDINGS**

EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL PROCEEDINGS

EXPEDITED RELIEF REQUESTED ----- FILING DEADLINE APRIL 28, 2026

I. APPLICATION FOR EMERGENCY RELIEF

Petitioner **MILTON OMAR LOPEZ-PINEDA** ("Petitioner"), through counsel, hereby moves this Court *ex parte* for a Temporary Restraining Order (TRO) and a Stay of Removal Proceedings. Petitioner has a pending Petition for Writ of Habeas Corpus filed on April 15, 2026.

Petitioner faces an imminent deadline of **April 28, 2026**, to submit a Form I-589 (Application for Asylum) in the underlying removal proceedings. Petitioner respectfully requests that this Court:

1. **Stay** the April 28, 2026, filing deadline for Form I-589;
2. **Stay** all further removal proceedings against Petitioner; and
3. **Restrain** Respondents from continuing to detain Petitioner without an individualized bond hearing until this Court rules on the merits of the pending habeas petition.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is a twenty-one-year-old native and citizen of Honduras. He entered the United States without inspection on March 24, 2018, as a thirteen-year-old minor. Since his entry, he has resided continuously in the interior for seven years, establishing deep community and familial roots. He is married to an LPR and is the father of three minor U.S. citizen children (ages 5, 3, and 10 months). His wife filed a Form I-130 on his behalf in August 2024

(Receipt #:  which remains pending.

1 On February 22, 2026, ICE Fugitive Operations arrested Petitioner in Escondido, CA. On
2 March 2, 2026, an Immigration Judge (IJ) denied bond redetermination, finding the court
3 lacked jurisdiction under *Matter of Q-Li-* because Petitioner was "detained upon entry and
4 subsequently released" seven years ago. Milton has never before been in I-589 proceedings,
5 making this his first and only opportunity to seek asylum. His continued unlawful
6 mandatory detention prevents the adequate preparation of this critical application by the
7 April 28 deadline.

8
9
10 **III. LEGAL STANDARD**

11 In the Ninth Circuit, a petitioner seeking a TRO must demonstrate: (1) a likelihood of
12 success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of equities
13 tips in his favor; and (4) that an injunction is in the public interest.

14
15
16 **IV. ARGUMENT**

17 **A. Likelihood of Success on the Merits**

18
19 Petitioner is likely to succeed on the merits of his habeas petition. The IJ committed a pure
20 error of law by classifying an interior resident of seven years as an "arriving alien" ineligible
21 for bond. Petitioner is a "Present Without Admission" (PWA) alien entitled to a bond
22 hearing under **INA § 236(a)**.

23 **B. Irreparable Injury**

24
25 Missing the April 28 asylum deadline would result in a permanent loss of Petitioner's
26 statutory right to seek asylum, a catastrophic injury. Furthermore, ongoing detention is a
27 continuing deprivation of physical liberty, which federal courts recognize as a severe harm,
28 especially when "grave doubts" exist regarding prolonged detention without process.

1 **C. Balance of Hardships and Public Interest**

2
3 The balance of hardships tips sharply in Petitioner’s favor. He is a primary provider and
4 father with **no criminal record**. The hardship to his family—including his three young
5 children—outweighs any government interest in maintaining a no-bond detention policy
6 based on a jurisdictional error.

7
8 **V. CONCLUSION**

9
10 Petitioner respectfully requests that this Court grant an immediate stay of the April 28
11 deadline and order a constitutionally sufficient individualized bond hearing.

12 **Respectfully submitted,**

13
14 Dated: April 21, 2026

15
16 Respectfully submitted,

17 //s//Hernando De Cima
18 **Hernando De Cima, Esq**
19 105 N Rose St Ste 109
20 Escondido, Ca 92027
21 hernando@decimalaw.com
22 858-525-5578
23 *Attorney for Petitioner*
24
25
26
27
28

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

MILTON OMAR LOPEZ-PINEDA [REDACTED], Petitioner,

v. **MARKWAYNE MULLIN**, et al., Respondents.

Case No. 3:26-cv-02374-CAB-AHG

Agency No. [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND STAY OF REMOVAL PROCEEDINGS

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT.....7

II. RELEVANT FACTS AND PROCEDURAL HISTORY.....7

III. LEGAL STANDARD.....8

IV. ARGUMENT.....8

A. Petitioner is Likely to Succeed on the Merits of the Habeas Petition.....8

B. Missing the April 28 Deadline Constitutes Irreparable Injury.....8

C. Serious Legal Questions Exist Regarding Detention Without Process.....9

D. The Balance of Hardships Tips Sharply in Petitioner’s Favor.....9

V. CONCLUSION.....9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Federal Cases

- *Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir. 2020)
- *Clark v. Martinez*, 543 U.S. 371 (2005)
- *Garcia v. Noem*, No. 25-CV-2180-DMS-MMP (S.D. Cal. 2025)
- *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)
- *Zadvydas v. Davis*, 533 U.S. 678 (2001)

Statutes

- 8 U.S.C. § 1226(a) (INA § 236(a))
- 28 U.S.C. § 2241
- 28 U.S.C. § 2243

1 **I. PRELIMINARY STATEMENT**

2
3 Petitioner **MILTON OMAR LOPEZ-PINEDA** ("Petitioner") seeks emergency relief to
4 prevent an imminent and irreparable violation of his fundamental statutory and
5 constitutional rights. Petitioner filed a Petition for Writ of Habeas Corpus on April 15, 2026,
6 challenging his mandatory detention without an individualized bond hearing. While that
7 Petition is pending, the clock continues to run on a terminal filing deadline in the underlying
8 removal proceedings: **April 28, 2026**, for the submission of Form I-589 (Application for
9 Asylum).

10 Unlike his brother Edwin, Petitioner has never been in asylum proceedings before and this is
11 his first—and potentially only—opportunity to seek such relief. His continued unlawful
12 mandatory detention at the Otay Mesa Detention Center, predicated on a profound
13 jurisdictional error by the Immigration Court, effectively prevents Petitioner and his counsel
14 from adequately preparing this complex application. This Court must stay the April 28
15 deadline and the underlying removal proceedings to ensure that the eventual adjudication of
16 Petitioner's habeas claims is not rendered moot by a procedural default of his right to seek
17 protection from persecution.

18
19
20 **II. RELEVANT FACTS**

21 Petitioner is a twenty-one-year-old native and citizen of Honduras. He entered the United
22 States on March 24, 2018, near Rio Grande City, Texas, as a thirteen-year-old
23 unaccompanied minor. For the past seven years, Petitioner has resided continuously in the
24 interior of the United States, fathering three United States citizen children and marrying a
25 Lawful Permanent Resident. He has **no criminal history**.

26
27 On February 22, 2026, ICE Fugitive Operations re-arrested Petitioner at-large in Escondido,
28 California. On March 2, 2026, Immigration Judge Mark Sameit denied Petitioner's request

1 for a custody redetermination, finding the court lacked jurisdiction under *Matter of Q-Li-* .
2 Consequently, Petitioner is being held in mandatory, no-bond detention. The Immigration
3 Court has set a firm deadline of **April 28, 2026**, for Petitioner to file his first-ever
4 application for asylum.

5
6
7 **III. LEGAL STANDARD**

8 In the Ninth Circuit, a request for a discretionary stay or TRO is evaluated under the
9 standard for preliminary injunctive relief. Petitioner must show either: (1) a probability of
10 success on the merits and the possibility of irreparable injury, or (2) that serious legal
11 questions are raised and the balance of hardships tips sharply in his favor.

12
13
14 **IV. ARGUMENT**

15 **A. Petitioner is Likely to Succeed on the Merits of the Habeas Petition**

16
17 As detailed in the pending Petition, the Immigration Court committed a severe statutory
18 misclassification. District courts retain the authority to review DHS's misapplication of
19 detention frameworks. Petitioner is not an "arriving alien" ; he is an interior resident who
20 was arrested at-large and is thus entitled to an individualized bond hearing under **INA §**
21 **236(a)**. The IJ's reliance on *Matter of Q-Li-* to find a jurisdictional bar is a pure error of law
22 that this Court has jurisdiction to correct.

23 **B. Missing the April 28 Deadline Constitutes Irreparable Injury**

24
25 The loss of a fundamental statutory right to seek asylum is a per se irreparable injury. If the
26 April 28 deadline passes without a filing, Petitioner will be permanently barred from
27 seeking relief, potentially resulting in his removal to a country where he may face
28

1 persecution. Furthermore, ongoing detention constitutes a continuing deprivation of physical
2 liberty.

3
4 **C. Serious Legal Questions Exist Regarding Prolonged Detention Without Process**

5 Federal courts acknowledge "**grave doubts**" regarding the constitutionality of arbitrary
6 prolonged detention without any meaningful process. By denying a bond hearing to a seven-
7 year resident based on a years-old border encounter, the government has created a situation
8 where Petitioner's liberty is being deprived "effectively without any process".
9

10 **D. The Balance of Hardships Tips Sharply in Petitioner's Favor**

11 The hardship to Petitioner and his family is substantial. He is the primary provider for an
12 LPR wife and three minor U.S. citizen children, including a ten-month-old infant. Missing
13 his asylum deadline would have devastating consequences for his entire family. Conversely,
14 the government faces no hardship in being required to stay a procedural deadline until a
15 jurisdictional dispute is legally resolved.
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **V. CONCLUSION**

2
3 Due process requires that Petitioner be provided with notice and a meaningful opportunity
4 to be heard. Because Petitioner's detention hinders his ability to exercise his statutory right
5 to seek protection, and because the underlying habeas claim raises serious legal questions,
6 this Court should grant an emergency TRO and stay of proceedings.

7 .Dated: April 21, 2026

8
9 Respectfully submitted,

10
11 //S//Hernando De Cima
12 **Hernando De Cima, Esq**
13 105 N Rose St Ste 109
14 Escondido, Ca 92027
15 hernando@decimalaw.com
16 858-525-5578
17 *Attorney for Petitioner*
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

2 MILTON OMAR LOPEZ-PINEDA [REDACTED] Petitioner,

3 v. MARKWAYNE MULLIN, et al., Respondents.

4 Case No. 3:26-cv-02374-CAB-AHG

5 Agency No. [REDACTED]

6
7 DECLARATION OF COUNSEL HERNANDO DE CIMA IN SUPPORT OF
8 EMERGENCY EX PARTE APPLICATION FOR TRO AND STAY
9

10 I, **Hernando De Cima**, declare as follows:

- 11 1. I am an attorney at law licensed to practice in the State of California and am counsel
12 of record for the Petitioner, **MILTON OMAR LOPEZ-PINEDA** [REDACTED]
- 13 2. I have personal knowledge of the facts stated herein, and if called as a witness, I
14 could and would testify competently thereto.
- 15 3. Petitioner is a 21-year-old native and citizen of Honduras who has resided
16 continuously in the interior of the United States for seven years since his entry as a
17 minor in 2018.
- 18 4. **Authentication of Exhibit A:** Attached hereto as **Exhibit A** is a true and correct
19 copy of the Order of Immigration Judge Mark Sameit, dated March 2, 2026. This
20 order denied Petitioner's request for a custody redetermination, erroneously finding a
21 lack of jurisdiction under *Matter of Q-Li* because Petitioner was "detained upon
22 entry and subsequently released."
- 23 5. **The Imminent Deadline:** The Immigration Court has set a terminal deadline of
24 **April 28, 2026**, for Petitioner to file his Form I-589, Application for Asylum.
25 Petitioner has never previously been in asylum proceedings, and this represents his
26 first and potentially only opportunity to seek such protection.
27

- 1 **6. Irreparable Harm:** Petitioner's continued mandatory detention at the Otay Mesa
2 Detention Center—predicated on a clear jurisdictional error—critically obstructs my
3 ability to adequately counsel him and prepare the detailed factual declarations
4 required for a meritorious asylum claim. If the April 28 deadline passes without
5 filing, Petitioner will be permanently barred from seeking relief, causing catastrophic
6 and irreparable injury to Petitioner, his Lawful Permanent Resident (LPR) spouse,
7 and his three minor U.S. citizen children.
- 8 **7. Administrative Futility:** Any further administrative request for an extension or stay
9 in the Immigration Court is futile because the Immigration Judge explicitly relied on
10 binding Board of Immigration Appeals (BIA) precedent which the Judge cannot
11 overrule.
- 12 **8. Statutory Mandate:** A Petition for Writ of Habeas Corpus (28 U.S.C. § 2241) was
13 filed on April 15, 2026. Pursuant to 28 U.S.C. § 2243, this Court must act "forthwith"
14 to resolve the underlying constitutional and statutory classification errors.

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

17
18 Executed on April 21, 2026, in Escondido, California.

19
20 **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

1 **VERIFICATION**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Hernando De Cima, declare under penalty of perjury under the laws of the United States of America that the foregoing **EX PARTE EMERGENCY APPLICATION FOR TRO AND STAY OF REMOVAL PROCEEDINGS** is true and correct to the best of my knowledge, information, and belief, based on the records and documents provided in Petitioner's immigration proceedings.

Executed on this 21st day of April 2026, in Escondido, California.

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