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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAIRO BALMORE CHICAS GUEVARA,



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. **'26CV3501 GPC DEB**

Agency No.



**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 THEREOF PURSUANT TO 28 U.S.C. § 2241**

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1 **TABLE OF AUTHORITIES**

2 **Supreme Court Cases**

- 3
- 4 • *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).
- 5 • *Zadvydas v. Davis*, 533 U.S. 678 (2001).
- 6

7 **Courts of Appeals Cases**

- 8 • *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004).
- 9 • *Laing v. Ashcroft*, 370 F.3d 994 (9th Cir. 2004).
- 10 • *Gordon v. County of Orange*, 888 F.3d 1118 (9th Cir. 2018).
- 11

12 **Statutes & Regulations**

- 13 • 28 U.S.C. § 2241.
- 14 • Immigration and Nationality Act (INA) § 236(a), 8 U.S.C. § 1226(a).
- 15 • Immigration and Nationality Act (INA) § 240, 8 U.S.C. § 1229a.
- 16 • 8 C.F.R. § 1003.19.
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1 **PART ONE: PETITION FOR A WRIT OF HABEAS CORPUS**

2 **I. INTRODUCTION**

3
4 Petitioner Jairo Balmore Chicas Guevara (“Petitioner”), a 24-year-old native and citizen of
5 El Salvador, is currently subjected to unlawful civil immigration detention by U.S.
6 Immigration and Customs Enforcement (ICE) at the Otay Mesa Detention Center within this
7 judicial district. Petitioner is placed in standard removal proceedings under Section 240 of
8 the Immigration and Nationality Act (INA). Despite explicit factual designations on his
9 Form I-862 (Notice to Appear) confirming that he is an unadmitted noncitizen present in the
10 United States—and explicitly **not** an “arriving alien”—the Executive Office for Immigration
11 Review (EOIR) systematically refuses to exercise statutory bond jurisdiction over
12 individuals in his exact procedural category.

13
14 Because forcing Petitioner to seek a custody redetermination hearing before an Immigration
15 Judge is legally futile, his only avenue to challenge his detention rests with this Court.
16 Furthermore, because civil detention cannot legally be punitive, Petitioner’s continuous
17 confinement under severe, life-threatening medical conditions—specifically brittle trauma-
18 induced epilepsy, severe post-traumatic cognitive deficits, a vulnerable compromised
19 airway, and extreme jaw structural instability—violates his right to be free from punitive
20 conditions of confinement under the Due Process Clause of the Fifth Amendment.
21 Accordingly, Petitioner seeks immediate intervention and release under safe, non-custodial
22 monitoring.

23 **II. JURISDICTION AND VENUE**

- 24
25 1. Jurisdiction is conferred upon this Court by 28 U.S.C. § 2241 (habeas corpus), 28
26 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), and Article I,
27 Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
28

1 2. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(b)(2)
2 because Petitioner is physically detained at the Otay Mesa Detention Center within
3 this judicial district.

4 3. Respondent Rodney Richmond is the Field Office Director for the San Diego Field
5 Office of ICE and acts as the legal custodian overseeing Petitioner's detention.

6
7 **III. PARTIES**

8 4. **Petitioner Jairo Balmore Chicas Guevara** (A-Number: ) is a 24-year-
9 old national of El Salvador currently held in civil immigration detention at the Otay
10 Mesa Detention Center.

11 5. **Respondent Todd Blanche** is the Acting Attorney General of the United States. In
12 this capacity, he is the head of the Department of Justice, administers the EOIR, and
13 holds ultimate responsibility for the implementation of the immigration laws.

14 6. **Respondent Markwayne Millin** is the Secretary of the Department of Homeland
15 Security. In this capacity, he directs the operations of ICE and is a legal custodian of
16 the Petitioner.

17 7. **Respondent Patrick Divver** is the San Diego Field Office Director for ICE
18 Enforcement and Removal Operations (ERO). He has direct administrative authority
19 over the detention of noncitizens in San Diego County and is an immediate custodian
20 of the Petitioner.

21 8. **Respondent Warden** is the administrative head of the Otay Mesa Detention Center
22 (operated by CoreCivic) and is the immediate physical custodian of the Petitioner.

1 **IV. STATEMENT OF FACTS**

2 **A. Procedural History, Factual Classification, and Jurisdictional Futility**

- 3
- 4 9. On April 15, 2026, the Department of Homeland Security issued a Form I-862,
- 5 Notice to Appear, placing Petitioner into standard removal proceedings under INA §
- 6 240.
- 7 10. In the official charging document, **I-862** (Exhibit A), Respondents left the checkbox
- 8 indicating "*You are an arriving alien*" completely **blank**. Instead, Respondents
- 9 formally checked the box stating: "**You are an alien present in the United States**
- 10 **who has not been admitted or paroled.**"
- 11 11. On the continuation sheet of the NTA, Respondents charged Petitioner under **INA §**
- 12 **212(a)(6)(A)(i)** as an alien present without being admitted or paroled.
- 13 12. Allegation #3 of the **I-862** explicitly asserts that Petitioner entered the United States
- 14 near Calexico, California, on or about **September 14, 2019**. He has remained
- 15 continuously present inside the United States for nearly seven years.
- 16 13. Petitioner's case is currently pending before the Otay Mesa Immigration Court, with
- 17 a Master Calendar hearing scheduled for June 24, 2026, at 1:00 PM PT, as detailed in
- 18 **Notice of hearing (Exhibit C)** and verified by **the EOIR Automated Case**
- 19 **Information (Exhibit B)**.
- 20 14. Despite having explicit statutory authority over unadmitted individuals detained
- 21 under INA § 236(a), Immigration Judges within the Otay Mesa Immigration Court
- 22 maintain a rigid operational practice of declaring a total lack of jurisdiction over
- 23 bond requests for individuals who entered without inspection, treating them
- 24 effectively as arriving aliens. Forcing Petitioner to file a bond motion before the
- 25 Immigration Judge is completely futile and cannot serve as a bar to federal review.
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1 **B. Substantial Community Ties and Absence of Flight Risk**

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3 15. As documented in **his proof of income and employment (Exhibit D)** Petitioner has
4 deep roots in the local community and is a stable, long-term member of the
5 California agricultural workforce.

6 16. His uninterrupted history of manual labor for regional employers such as 
7  spans multiple years,
8 proving he possesses substantial economic and stable ties to the jurisdiction and is
9 not a flight risk.

10 **C. Severe, Life-Threatening Medical Vulnerabilities**

11
12 17. As established in **Jairo Chicas Guevara. Medical Records (Exhibit E)** Petitioner
13 possesses severe, chronic medical vulnerabilities that standard civil detention
14 facilities are completely unequipped to monitor or manage safely.

15 18. **Brittle Seizure Disorder:** Petitioner has an active history of severe seizures dating
16 back to a catastrophic 2021 pedestrian accident where he was run over by a car,
17 resulting in a traumatic brain injury and a 9-day coma. To prevent breakthrough
18 grand mal seizures, he requires strict, uninterrupted adherence to a high-dosage anti-
19 epileptic regimen 

20 
21 19. **Severe Airway Vulnerability:** Due to severe past seizure complications and
22 subsequent respiratory failure, Petitioner underwent an emergency **tracheostomy**,
23 leaving a visible structural scar on his neck. Any unmanaged breakthrough seizure in
24 a standard detention cell carries an imminent, life-threatening risk of immediate
25 airway obstruction, asphyxiation, and death.

26 20. **Cognitive and Memory Deficits:** As a direct result of his 2021 cerebral trauma,
27 facility medical records document that Petitioner suffers from severe short-term
28 memory deficits, telling medical staff through an interpreter that he is "a forgetter

1 after [the] MVA" and admits to a pattern of forgetting his critical medication.
2 Confining an individual who requires strict medication adherence but lacks the
3 cognitive capacity to track his own dosing layout constitutes an extreme medical
4 hazard.

5 **21. Recent Catastrophic Jaw Dislocation:** On March 4, 2026, Petitioner suffered an
6 agonizing **bilateral anterior dislocation of his temporomandibular joints (TMJ)**.
7 CT maxillofacial scans confirmed that his lower jaw completely displaced from the
8 skull joints, requiring emergency manual reduction under acute sedation at
9 Bakersfield Memorial Hospital. He was discharged with strict orders to restrict all
10 meals to a soft/liquid diet and to place a hand under his jaw when yawning or
11 coughing to prevent an immediate, painful structural recurrence. During subsequent
12 clinical encounters at the facility, Petitioner has continued to report extreme physical
13 distress, documenting pain levels as high as a **10 out of 10**.
14
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16 **V. CLAIMS FOR RELIEF**
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18 **COUNT I: VIOLATION OF FIFTH AMENDMENT DUE PROCESS**

19 **(Unlawful Custody Classification & Failure to Provide an Administrative Forum)**
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21 22. Petitioner incorporates paragraphs 1 through 21 as if fully set forth herein.

22 23. The Due Process Clause of the Fifth Amendment guarantees that civil immigration
23 detention must be accompanied by fair, accessible administrative procedures. While
24 8 C.F.R. § 1003.19(h)(2)(i)(B) strips Immigration Judges of bond jurisdiction over
25 "arriving aliens," Petitioner is legally classified on his NTA as a noncitizen present
26 without admission under INA § 236(a), meaning the Immigration Court retains clear
27 statutory jurisdiction over his custody status.
28

1 24. Because the local Immigration Court systematically refuses to exercise its legal
2 jurisdiction over individuals in Jairo's exact procedural category, Petitioner has no
3 accessible administrative forum to challenge his detention. Forcing him to pursue a
4 remedy that does not exist in practice constitutes an unconstitutional deprivation of
5 his liberty without Due Process.

6
7 **COUNT II: VIOLATION OF FIFTH AMENDMENT DUE PROCESS**

8 **(Unlawful Conditions of Confinement Amounting to Punishment and Deliberate**
9 **Indifference)**

10
11 25. Petitioner incorporates paragraphs 1 through 21 as if fully set forth herein.

12 26. Because Petitioner is a civil immigration detainee and has not been convicted of any
13 crime, the conditions of his confinement are governed by the Due Process Clause of
14 the Fifth Amendment, which forbids the government from subjecting civil detainees
15 to conditions that amount to punishment.

16 27. A condition of confinement amounts to unconstitutional punishment when
17 detention officials act with objective deliberate indifference to a detainee's serious
18 medical needs, or when the physical environment exposes the detainee to a
19 substantial risk of grievous bodily harm or death.

20 28. Respondents are fully aware of Petitioner's severe clinical profile: brittle trauma-
21 induced epilepsy, an emergency tracheostomy history, cognitive memory lapses,
22 and severe jaw instability that has recently caused a bilateral joint dislocation and
23 agonizing pain.

24 29. Holding a civil detainee with these compound vulnerabilities in a standard detention
25 facility—where he cannot receive the constant medical supervision required to
26 manage his airway safety, his cognitive dosing needs, and his strict soft-diet
27 restrictions—exposes him to an imminent, severe medical crisis. Because his
28 continued detention actively threatens his life and physical integrity, it transcends

1 administrative necessity and constitutes unlawful punishment in direct violation of
2 the Fifth Amendment.

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5 **VI. PRAYER FOR RELIEF**

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7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 1. **Assume jurisdiction** over this matter;
9 2. **Exempt Petitioner** from any requirement to exhaust administrative remedies due to
10 complete administrative futility;
11 3. **Declare** that Petitioner is detained under the statutory framework of INA § 236(a)
12 and is legally eligible for a bond determination;
13 4. **Issue a Writ of Habeas Corpus** ordering Respondents to immediately release
14 Petitioner from physical custody under safe, non-punitive humanitarian conditions,
15 or, alternatively, order Respondents to provide Petitioner with an individualized bond
16 hearing within 7 days where the burden is placed squarely on the government to
17 justify his continued detention;
18 5. **Award Petitioner** reasonable attorney's fees and costs under the Equal Access to
19 Justice Act (EAJA); and
20 6. **Grant** such other and further relief as the Court deems just and proper.
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PART TWO: MEMORANDUM OF POINTS AND AUTHORITIES

I. THE EXHAUSTION REQUIREMENT MUST BE WAIVED ON GROUND OF CATEGORICAL ADMINISTRATIVE FUTILITY

Respondents will argue that this Court must dismiss this Petition because Petitioner has failed to file a motion for custody redetermination before an Immigration Judge under 8 C.F.R. § 1003.19. This argument fails as a matter of law. While federal courts routinely enforce prudential exhaustion of administrative remedies in habeas actions under 28 U.S.C. § 2241, exhaustion is not a jurisdictional prerequisite, and the requirement may be waived where the administrative process is demonstrably futile. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

Seeking relief before the lower court is entirely futile in Jairo's case. The Otay Mesa Immigration Court maintains a systemic, categorical operational policy of denying jurisdiction over bond motions filed by unadmitted noncitizens who entered without inspection, routinely treating them as if they were restricted arriving aliens. Because the administrative agency operates under a predetermined, unyielding stance, forcing Counsel to file a bond motion would result in a reflexive jurisdictional rejection. Due process does not compel a severely ill detainee to endure a meaningless administrative loop while facing active physical endangerment. Exhaustion is futile, and judicial review is properly anchored here.

II. PETITIONER IS DETAINED UNDER INA § 236(a) AND IS ENTITLED TO A SEPARATE CUSTODY REDETERMINATION

The statutory section governing an individual's detention establishes their precise right to an immigration bond. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), an Immigration Judge lacks jurisdiction over the custody status of an "arriving alien." However, Jairo Balmore Chicas Guevara is legally distinct from an arriving alien.

1 As shown in form **I-862 (Exhibit A)**, the Department of Homeland Security explicitly left
2 the box marked "*You are an arriving alien*" completely **blank**. Instead, DHS formally
3 marked the box indicating: "**You are an alien present in the United States who has not**
4 **been admitted or paroled.**" Furthermore, the NTA formally alleges that Petitioner arrived
5 near Calexico, California on **September 14, 2019**—nearly seven years ago—and charges
6 him under **INA § 212(a)(6)(A)(i)** as an alien present without admission or parole.

7
8 The Supreme Court and the Ninth Circuit have explicitly held that noncitizens who have
9 entered without inspection and established a life within the geographic territory of the
10 United States are protected by the Due Process Clause and are fundamentally distinct from
11 transient individuals stopped at a port of entry. Petitioner's long-standing local history is
12 further documented in **Exhibit D** showing multiple years of agricultural tax and
13 employment records with California employers like [REDACTED]

14 [REDACTED] Consequently, his detention is governed strictly by the
15 general civil provisions of **INA § 236(a)**, which explicitly empowers the Executive branch
16 to grant release on bond. The executive branch's refusal to provide an administrative forum
17 to exercise this jurisdiction constitutes a clear error of law.

18 **III. CONTINUED CONFINEMENT WITHOUT SPECIALIZED MEDICAL**
19 **SUPERVISION CONSTITUTES UNLAWFUL PUNISHMENT UNDER THE CIVIL**
20 **DUE PROCESS STANDARD**

21
22 Because civil immigration detention is administrative, it cannot legally be used as a vehicle
23 for punishment. The Ninth Circuit holds that conditions of civil custody violate the Due
24 Process Clause of the Fifth Amendment if they amount to punishment or display an
25 objective deliberate indifference to a detainee's serious medical needs. *Jones v. Blanas*, 393
26 F.3d 918, 932 (9th Cir. 2004); *Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir.
27 2018).

As documented in **Jairo Chicas Guevara's Medical Records (Exhibit E)**, Petitioner suffers from severe physical and neurological vulnerabilities that standard civil detention facilities cannot safely accommodate:

- **Active Risk of Asphyxiation:** Petitioner has a severe, post-traumatic seizure disorder managed through an active high-dosage prescription [REDACTED] [REDACTED]. His clinical history lists a prior emergency **tracheostomy**, which leaves permanent upper airway vulnerabilities. Suffering a breakthrough grand mal seizure inside an unmonitored cell creates an immediate, fatal risk of airway blockage.
- **Cognitive Incapacity for Standard Housing:** As a result of a 2021 brain trauma that induced a 9-day coma, facility notes verify that Petitioner has severe short-term memory lapses, stating he is "a forgetter after [the] MVA" and lacks the cognitive stability to track his own dosing needs.
- **Grievous Physical Trauma:** On March 4, 2026, Petitioner suffered an acute **bilateral anterior dislocation of his temporomandibular joints (TMJ)**, requiring manual joint reduction under clinical sedation at Bakersfield Memorial Hospital. He remains under strict discharge orders to consume an absolute soft/liquid diet and to limit jaw movement to prevent an immediate joint re-dislocation. The standard detention configuration is completely incapable of enforcing these specialized protections, exposing Petitioner to severe, constant pain that he has actively rated as a **10 out of 10**. Continued detention under these conditions constitutes objective punishment and violates substantive due process.

1 Dated: 6/11/2026

2
3 Respectfully submitted,

4 /s/Hernando De Cima
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9 858-525-5578
10 *Attorney for Petitioner*
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PART THREE

VERIFICATION

I, Hernando de Cima, Esq., state that I am the attorney representing Jairo Balmore Chicas Guevara, the Petitioner in this action. I make this verification on Petitioner's behalf because Petitioner is currently incarcerated at the Otay Mesa Detention Center and is unavailable to sign this document under the immediate time constraints of this filing.

I have reviewed the foregoing Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities and know the contents thereof. I declare under penalty of perjury under the laws of the United States of America that the factual representations made therein are true and correct to the best of my knowledge, information, and belief.

Executed on 6/11/2026, at San Diego, California.

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

PART FOUR

**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 Jairo Balmore Chicas Guevara on 6/11/2026:

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