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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO AGUILAR LOPEZ



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. **'26CV3632 CAB JAC**

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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PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Eduardo Aguilar Lopez, by and through his counsel of record, Hernando de Cima, Esq., respectfully petitions this Court for a Writ of Habeas Corpus to release him from unlawful and unconstitutional civil custody, or in the alternative, to order Respondents to immediately provide him with an individualized constitutional bond hearing before an Immigration Judge where the government bears the burden of proof.

In support of this Petition, Petitioner alleges as follows:

I. PRELIMINARY STATEMENT

1. Petitioner Eduardo Aguilar Lopez ("Petitioner") is a citizen of Mexico who was recently taken into physical custody by the Department of Homeland Security (DHS) in June 2026. He is currently subjected to mandatory civil detention without any opportunity for an individualized custody or bond hearing.
2. Petitioner is classified by DHS as an "arriving alien" based on a Notice to Appear (NTA) issued on January 16, 2024. Under current regulations—specifically 8 C.F.R. § 1003.19(h)(2)(i)(B)—the Immigration Judge (IJ) is entirely stripped of jurisdiction to conduct a custody redetermination or bond hearing for arriving aliens.
3. Because the Executive Office for Immigration Review (EOIR) categorically denies bond hearings to arriving aliens for lack of jurisdiction, any attempt to seek a bond from the IJ is legally futile. Petitioner has no available administrative forum within the Executive Office for Immigration Review to challenge the lawfulness or necessity of his physical confinement.
4. Total deprivation of liberty by executive decree, completely insulated from neutral administrative or judicial review, violates both the substantive and procedural components of the Due Process Clause of the Fifth Amendment of the United States

1 Constitution. Petitioner files this Writ of Habeas Corpus to bypass this jurisdictional
2 vacuum and secure his constitutional protections.

3
4 **II. JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this action under 28 U.S.C. § 2241 (habeas corpus),
6 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 701, et seq. (Administrative
7 Procedure Act), and Article I, Section 9, Clause 2 of the United States Constitution
8 (the Suspension Clause).

9 9. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) and
10 28 U.S.C. § 2241(d) because Petitioner is currently detained at the Imperial Regional
11 Adult Detention Facility in Calexico, California, which lies within this judicial
12 district, and Respondents reside or conduct business within this district.

13
14 **III. PARTIES**

15 10. **Petitioner Eduardo Aguilar Lopez** ([REDACTED]) is a native and citizen of
16 Mexico currently detained in the immediate physical custody of ICE at the Imperial
17 Regional Adult Detention Facility.

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

21 12. **Respondent Markwayne Millin** is the Secretary of the Department of Homeland
22 Security. In this capacity, he directs the operations of ICE and is a legal custodian of
23 the Petitioner.

24 13. **Respondent Field Office Director** is the El Centro Field Office Director for ICE
25 Enforcement and Removal Operations (ERO). He has direct administrative authority
26 over the detention of noncitizens in Imperial County and is an immediate custodian
27 of the Petitioner.
28

1 14. **Respondent Warden** is the Facility Director/Warden of the Imperial Regional Adult
2 Detention Facility and is the immediate physical custodian of Petitioner.

3
4 **IV. STATEMENT OF FACTS**

5 15. On January 16, 2024, Petitioner arrived at the San Ysidro Port of Entry and applied
6 for admission into the United States. On that date, DHS issued a Notice to Appear
7 ("NTA.pdf") charging him with inadmissibility under INA § 212(a)(7)(A)(i)(I) and
8 classifying him as an "arriving alien".

9 16. Petitioner's removal proceedings are active and pending before the Los Angeles
10 Immigration Court. His Individual (Merits) Hearing is explicitly scheduled for
11 August 24, 2026, at 1:00 PM before Immigration Judge Christine E. Stancill.

12 17. In June 2026, DHS placed Petitioner into continuous physical detention at the
13 Imperial Regional Adult Detention Facility at 1572 Gateway Road, Calexico, CA
14 92231, where he remains confined.

15 18. Because federal regulations under 8 C.F.R. § 1003.19(h)(2)(i)(B) explicitly bar the
16 Immigration Court from reviewing the custody of an arriving alien, the IJ lacks
17 jurisdiction to grant a bond hearing. Any attempt to request a bond before the IJ
18 would be summarily denied on jurisdictional grounds, rendering further
19 administrative action before the EOIR legally futile.

20 19. Consequently, Petitioner is trapped in a jurisdictional void where the executive
21 branch detains him but deprives him of access to a neutral magistrate to review that
22 detention.

23
24 **V. CLAIMS FOR RELIEF**

25 **COUNT I: VIOLATION OF THE FIFTH AMENDMENT - PROCEDURAL DUE**
26 **PROCESS.** (Unconstitutional Civil Detention Without Judicial Custody Review)

27
28 20. Petitioner incorporates paragraphs 1 through 19 as if fully set forth herein.

1 21. Procedural due process requires that the government provide adequate procedural
2 safeguards—specifically, notice and a meaningful opportunity to be heard before a
3 neutral decision-maker—prior to depriving any person of a protected liberty interest.

4 22. The regulatory bar operating under 8 C.F.R. § 1003.19(h)(2)(i)(B) completely strips
5 the Immigration Court of jurisdiction over Petitioner's custody status, preventing any
6 independent magistrate or administrative judge from reviewing his detention.

7 23. Bypassing the administrative bond process is proper because the administrative
8 agency entirely lacks the legal authority to grant a hearing or provide procedural
9 recourse.

10 24. By placing Petitioner into mandatory confinement while denying him any baseline
11 tribunal or forum to contest the state's action prior to his August 24, 2026, merits
12 hearing, Respondents violate the core guarantees of procedural due process.

13
14 **COUNT II: VIOLATION OF THE FIFTH AMENDMENT – SUBSTANTIVE DUE**
15 **PROCESS . (Arbitrary and Punitive Detention Lacking Any Rational Basis)**

16 35. Petitioner realleges and incorporates by reference the allegations contained in
17 paragraphs 1 through 24.

18 36. Freedom from bodily restraint and arbitrary physical confinement lies at the absolute
19 core of the liberty protected by the Substantive Due Process Clause of the Fifth
20 Amendment of the United States Constitution.

21 37. In the civil context, the government's power to detain an individual is strictly limited.
22 Civil detention constitutes an impermissible violation of substantive due process
23 unless it is narrowly tailored to serve a compelling, non-punitive government interest,
24 such as mitigating a documented danger to the community or a demonstrated risk of
25 flight.

26 38. While the executive branch maintains broad authority to temporarily regulate the
27 border, a policy of automatic, blanket civil detention completely untethered from an
28 individualized assessment of risk is unconstitutionally arbitrary and punitive.

1 39. Under the regulatory mechanism of 8 C.F.R. § 1003.19(h)(2)(i)(B), Petitioner's
2 continuous physical confinement is mandatory, automatic, and unreviewable by an
3 Immigration Judge purely because of his administrative classification as an "arriving
4 alien". This strict bar operates completely independent of Petitioner's specific history,
5 character, lack of criminal record, or deep community ties.

6 40. Depriving an individual of physical liberty based on a rigid, administrative label—
7 while completely bypassing a substance-based inquiry into whether that individual
8 actually poses a flight risk or a danger to public safety—fails any constitutional
9 standard of narrow tailoring.

10 41. Because Respondents have incarcerated Petitioner without any showing, let alone a
11 compelling one, that his specific confinement is necessary to protect the public or
12 ensure his appearance at his August 24, 2026, trial date, his ongoing detention is
13 unconstitutionally arbitrary and violates his right to substantive due process.

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18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner respectfully requests that this Court:
20

- 21 1. Assume jurisdiction over this matter;
- 22 2. Grant the Writ of Habeas Corpus and order Respondents to immediately release
23 Petitioner from custody under reasonable conditions of supervision;
- 24 3. **IN THE ALTERNATIVE**, issue a Conditional Writ of Habeas Corpus ordering
25 Respondents to provide Petitioner with an individualized constitutional bond hearing
26 before an Immigration Judge within seven (7) days, where Respondents must prove
27 by clear and convincing evidence that Petitioner's continued detention is necessary
28 because he is a flight risk or a danger to the community;

- 1 4. Declare that Petitioner's continued detention without an individualized bond hearing
- 2 before an impartial adjudicator violates the Due Process Clause of the Fifth
- 3 Amendment; and
- 4 5. Grant such other and further relief as this Court deems just and proper.

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15 Dated: 6/19/2026

16
17 Respectfully submitted,

18 /s/Hernando De Cima
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Eduardo Aguilar Lopez ("Petitioner") is a citizen of Mexico currently held in mandatory civil immigration detention by Respondents at the Imperial Regional Adult Detention Facility. Because DHS classified Petitioner as an "arriving alien" upon his application for admission, federal regulations under 8 C.F.R. § 1003.19(h)(2)(i)(B) categorically strip the Immigration Court of jurisdiction to conduct a custody or bond hearing.

Consequently, Petitioner is trapped in an unconstitutional jurisdictional vacuum: the Executive Branch has deprived him of his physical liberty, yet insulates that deprivation from any neutral administrative review. This Memorandum demonstrates that such absolute, unreviewable civil confinement violates both the Substantive and Procedural Due Process guarantees of the Fifth Amendment. Because the administrative tribunal lacks jurisdiction to hear this claim, further administrative exhaustions are futile. This Court should intervene to order an immediate individualized bond hearing where the government bears the burden of proof.

II. STATEMENT OF FACTS

On January 16, 2024, Petitioner arrived at the San Ysidro Port of Entry and applied for admission. DHS served Petitioner with a Notice to Appear ("NTA.pdf"), classifying him as an "arriving alien" and charging him with inadmissibility under INA § 212(a)(7)(A)(i)(I). Petitioner's underlying removal proceedings remain active and are pending before the Los Angeles Immigration Court. His Individual (Merits) Hearing is explicitly scheduled for August 24, 2026, before Immigration Judge Christine E. Stancill.

In June 2026, Respondents took Petitioner into physical custody and placed him into continuous confinement at the Imperial Regional Adult Detention Facility in Calexico,

1 California. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), an Immigration Judge cannot review the
2 custody or bond status of an arriving alien. As a result, the Immigration Court lacks
3 jurisdiction to grant any custody review, leaving Petitioner incarcerated by executive decree
4 without access to a neutral magistrate.

5 6 **III. LEGAL ARGUMENT**

7 **A. Bypassing the Immigration Court is Proper Because the Administrative Remedy is** 8 **Logically and Legally Futile**

9 While federal courts generally favor the exhaustion of administrative remedies, exhaustion
10 is not required where the administrative agency lacks the authority to grant the requested
11 relief. *See McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992).

12 Here, the Executive Office for Immigration Review (EOIR) has bound its own judges via 8
13 C.F.R. § 1003.19(h)(2)(i)(B), which states that an Immigration Judge "may not redetermine
14 the conditions of custody of an alien in exclusion proceedings" or those categorized as
15 "arriving aliens." Because the Immigration Judge is legally barred from entertaining a bond
16 request, any application to the EOIR would be summarily denied for lack of jurisdiction.
17 Seeking a bond from a forum that is statutorily and regulatorily prohibited from granting it
18 is the definition of legal futility. Accordingly, judicial review via 28 U.S.C. § 2241 is the
19 only available avenue to address Petitioner's ongoing constitutional deprivation.
20

21 **B. Petitioner's Confinement Violates Substantive Due Process**

22 Freedom from bodily restraint is a fundamental liberty interest protected by the Fifth
23 Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the
24 context of civil immigration detention, confinement is unconstitutional unless it is narrowly
25 tailored to a compelling, non-punitive government interest—specifically, ensuring
26 appearance at future hearings or protecting the community from danger. *See United States v.*
27 *Salerno*, 481 U.S. 739, 747 (1987).
28

1 The regulatory scheme applied to Petitioner operates as an unconstitutional blanket
2 mandate. By automatically detaining Petitioner based solely on his technical, administrative
3 status as an "arriving alien," the government completely bypasses any individualized
4 determination of whether he actually poses a flight risk or a danger to public safety.
5 Confinement driven entirely by a rigid category, rather than individual necessity, cannot
6 survive substantive due process scrutiny. Because Respondents have failed to demonstrate
7 any tailored necessity for his physical detention, Petitioner's ongoing confinement is
8 arbitrary and punitive.

9
10 **C. Petitioner's Confinement Violates Procedural Due Process**

11 Procedural due process requires, at a minimum, notice and a meaningful opportunity to be
12 heard before a neutral decision-maker before a person can be deprived of liberty. *Mathews*
13 *v. Eldridge*, 424 U.S. 319, 333 (1975).

14 The Central and Southern Districts of California have repeatedly affirmed that the Executive
15 Branch cannot insulate its detention decisions from all neutral judicial or administrative
16 oversight. By stripping the Immigration Court of jurisdiction over Petitioner's custody under
17 8 C.F.R. § 1003.19(h)(2)(i)(B), the regulatory framework denies Petitioner any baseline
18 forum to present evidence, cross-examine witnesses, or have an independent magistrate
19 evaluate his detention. Forcing an individual to remain incarcerated at the absolute whim of
20 the detaining agency, while awaiting a merits trial months away, fundamentally offends the
21 core requirements of procedural due process.

22
23 **D. The Constitutional Remedy is an Individualized Bond Hearing Where the**
24 **Government Bears the Burden of Proof**

25 To cure these parallel constitutional violations, this Court should order that Petitioner be
26 provided an individualized custody hearing before an Immigration Judge. Furthermore,
27 because liberty is the norm and detention is the narrow exception, due process dictates that
28 the burden must be placed squarely on the government to prove by clear and convincing

evidence that Petitioner's continued detention is strictly necessary. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within fourteen (14) days, or alternatively, order his immediate release.

Dated: 6/19/2026

Respectfully submitted,

/s/Hernando De Cima
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VERIFICATION

I, Hernando De Cima, Esq., declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney licensed to practice law in the State of California and am counsel of record for the Petitioner, Eduardo Aguilar Lopez, in this action.
2. I make this verification on Petitioner's behalf because he is currently physically incarcerated by the Department of Homeland Security at the Imperial Regional Adult Detention Facility in Calexico, California. Because of his physical confinement outside the county where my law office is located, he is unavailable to review and sign this document in person.
3. I have read the foregoing Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities and know the contents thereof.
4. The facts stated in the Petition are true and correct to the best of my knowledge, information, and belief, based upon a thorough review of official Executive Office for Immigration Review (EOIR) portal data, Department of Homeland Security records, and direct legal communications with the Petitioner.

Executed on 6/19/2026, at San Diego, California.

Respectfully submitted,

/s/Hernando De Cima
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1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF CALIFORNIA**

3 **PROPOSED ORDER TO SHOW CAUSE**

4 Upon consideration of the verified Petition for a Writ of Habeas Corpus filed by Petitioner
5 Eduardo Aguilar Lopez on 6/19/2026:
6

7 **IT IS HEREBY ORDERED** that Respondents show cause before this Court why a Writ of
8 Habeas Corpus should not issue directing Petitioner's release from civil immigration custody
9 or, in the alternative, ordering Respondents to provide Petitioner with an individualized,
10 constitutional custody redetermination hearing before an Immigration Judge.

11 **IT IS FURTHER ORDERED THAT:**
12

- 13 1. Respondents shall file a Return to the Petition and Show Cause Response, including
14 any supporting briefs, declarations, or administrative records within three (3)
15 calendar days of the date of service of this Order;
16 2. Petitioner may file a Traverse/Reply to Respondents' Return on or before within two
17 (2) calendar days of the filing of Respondents' Return; and
18 3. A hearing on the Petition is scheduled before the Honorable District Court Judge on
19 _____, 2026, at ____:____.m. in Courtroom ____ of the United States District
20 Court for the Southern District of California, located at 333 West Broadway, San
21 Diego, CA 92101.
22

23 **IT IS SO ORDERED.**

24 Dated: _____, 2026
25
26

27 _____
28 **UNITED STATES DISTRICT JUDGE**