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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. 26-cv-03632-CAB-JAC

Agency No. 

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RESPONSE TO
HABEAS CORPUS PETITION**

**PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE TO HABEAS
CORPUS PETITION**

Petitioner Eduardo Aguilar Lopez, by and through his counsel of record, Hernando De Cima, Esq., hereby submits this Traverse to Respondents' Response to the Petition for Writ of Habeas Corpus filed on June 29, 2026.

I. INTRODUCTION & POINTS OF AGREEMENT

Petitioner notes and welcomes Respondents' concession and explicit non-opposition to the core relief requested in the Petition. Specifically, Respondents acknowledge that controlling prior decisions within the Southern District of California govern this matter. Accordingly, Respondents agree that the appropriate relief is for this Court to grant the Petition and order an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a).

Because both parties now agree that Petitioner's mandatory detention under an "arriving alien" classification cannot look to insulate itself from neutral administrative custody review under district precedent, the only remaining points of contention concern the operational parameters of the ordered hearing: (1) the timeframe within which the hearing must occur, and (2) the applicable constitutional burden of proof.

II. ARGUMENT

A. The Court Should Order the Bond Hearing Safely Within Seven (7) Days, Rather Than the Requested Fourteen (14) Days

1 In their response, Respondents request a period of 14 days from the issuance of the Court's
2 order to conduct the bond hearing, citing heavy caseloads and staffing levels. Petitioner
3 respectfully requests that this Court order the hearing to be held within seven (7) days, as
4 originally requested in the Petition.

5
6 Petitioner has been held in continuous physical civil confinement at the Imperial Regional
7 Adult Detention Facility since June 2026. Every single day of ongoing detention represents
8 a severe deprivation of his fundamental right to bodily liberty. Given that Respondents do
9 not oppose the underlying legal entitlement to a hearing, any prolonged delay further
10 exacerbates the procedural and substantive due process harms already suffered by Petitioner.
11 A 7-day turnaround provides an expedited remedy while leaving sufficient time for
12 administrative processing.

13 **B. Due Process Mandates That the Government Bear the Burden of Proof by Clear**
14 **and Convincing Evidence**

15
16 Although Respondents cite *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) to
17 argue that the burden rests on the detainee under 8 U.S.C. § 1226(a), that decision does not
18 insulate the specific detention framework here from constitutional scrutiny. *Rodriguez Diaz*
19 addressed a standard statutory framework, but it did not override the core constitutional
20 protections that govern absolute deprivations of physical liberty under the Fifth
21 Amendment's Due Process Clause.

22 **1. Freedom from Bodily Restraint is a Fundamental Right Requiring Heightened**
23 **Scrutiny**

24
25 Freedom from arbitrary physical confinement lies at the absolute pinnacle of protected
26 liberty interests. The Supreme Court has repeatedly affirmed that in civil commitment and
27 detention proceedings, "the government's interest in detaining an individual is strictly
28

1 limited" and "liberty is the norm, and detention without trial is the carefully limited
 2 exception". Because Petitioner's fundamental right to bodily liberty is at stake, any
 3 regulatory mechanism that forces an incarcerated individual to prove their way out of
 4 detention is inherently suspect and fails the requirement of narrow tailoring.

5 6 **2. The Mathews v. Eldridge Balancing Test Strongly Favors Shifting the Burden**

7 Applying the mandatory three-part balancing test established in *Mathews v. Eldridge*, 424
 8 U.S. 319 (1975), procedural due process demands that the government carry the evidentiary
 9 burden:

- 10
11 • **The Private Interest Affected:** Petitioner's interest is the total avoidance of physical
 12 incarceration. It is difficult to conceive of a civil interest more profound.
- 13 • **The Risk of an Erroneous Deprivation:** Forcing an incarcerated noncitizen—who
 14 faces severe structural, linguistic, and logistical barriers while detained at the
 15 Imperial Regional Adult Detention Facility—to compile affirmative evidence
 16 proving a negative (i.e., that they are *not* a danger or flight risk) creates an
 17 unacceptably high risk of erroneous, permanent detention.
- 18 • **The Government's Administrative Burden:** The government suffers zero
 19 institutional harm by being forced to articulate its reasons for detaining an individual.
 20 The Department of Homeland Security possesses sole custody of the Petitioner's
 21 immigration and background files. It is the government that chose to arrest him in
 22 June 2026; therefore, the government must be the party required to justify that severe
 23 exercise of executive power.

1 **3. Ninth Circuit Precedent Establishes Clear and Convincing Evidence as the**
2 **Constitutional Floor**

3
4 The Ninth Circuit has explicitly held that where a noncitizen faces prolonged civil
5 confinement, the Constitution steps in to place the burden squarely on the government. In
6 *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), the court made clear that due process
7 requires the government to prove by **clear and convincing evidence** that a detainee is a
8 flight risk or a danger to the community before continuous detention can be justified.

9 While the government attempts to distinguish *Singh* by leaning on the "arriving alien" label
10 and the statutory text of § 1225(b)(2) or § 1226(a), the *constitutional* baseline remains
11 unchanged: an administrative label cannot be used to strip away a human being's core
12 procedural due process protections.

13
14 Because the government has not made an individualized showing that Petitioner poses any
15 flight or safety risk, forcing him to bear the burden of proof at his upcoming hearing violates
16 both substantive and procedural due process. This Court should exercise its habeas authority
17 to direct that the government carry the burden of proof by clear and convincing evidence.

18
19
20 **III. CONCLUSION & PRAYER FOR RELIEF**

21 Because there is no longer a dispute as to whether Petitioner is entitled to an individualized
22 custody redetermination, Petitioner respectfully requests that this Court **GRANT** the
23 Petition for Writ of Habeas Corpus and issue an order:
24

- 25 1. Directing Respondents to provide Petitioner with an individualized bond hearing
26 before an Immigration Judge pursuant to 8 U.S.C. § 1226(a);
27
28

2. Requiring that such a hearing be scheduled and held expeditiously within seven (7) days of this Court's order;
3. Directing that the burden of proof at said hearing be placed squarely on Respondents to demonstrate by clear and convincing evidence that Petitioner's continued detention is strictly necessary; and
4. Granting any further relief this Court deems just and proper.

Dated: 6/30/2026

Respectfully submitted,

/s/Hernando De Cima
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1 **CERTIFICATE OF SERVICE**

2
3 I, Hernando De Cima, certify that on 6/30/2026, I filed the foregoing with the Clerk of the
4 Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the
5 Southern District of California.

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10 Dated: 6/30/2026

11 Respectfully submitted,

12
13 /s/Hernando De Cima
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**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 Eduardo Aguilar Lopez on 6/30/2026:

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