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11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

13 Mahdi ELIKAEI,

14 Petitioner,

15 v.

16 Christopher J. LAROSE, Senior Warden,
17 Otay Mesa Detention Center, San Diego,
18 California;
19 Joseph FREDEN, Acting Field Office
20 Director, San Diego Office of Detention
21 and Removal, U.S. Immigrations and
22 Customs Enforcement; U.S. Department
23 of Homeland Security;
24 Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
Srice OWEN, Acting Director for
Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security;
Pam BONDI, Attorney General of the
United States;

Respondents.

Case No.: '25CV3219 DMS AHG

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Agency Doc. No.:



1 Petitioner MAHDI ELIKAEI petitions this Court for a writ of habeas corpus under
2 28 U.S.C. § 2241 to remedy Respondents’ detaining her unlawfully, and states as
3 follows:

4 **INTRODUCTION**

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6 1. Petitioner, MAHDI ELIKAEI (“Mr. Elikaei” or “Petitioner”), by and through his
7 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue
8 a Writ of Habeas Corpus ordering Mr. Elikaei’s release from immigration detention by
9 the Department of Homeland Security, United States Immigration and Customs
10 Enforcement (“ICE”). Mr. Elikaei seeks immediate release from custody because
11 Respondents have held him since January 1, 2025—a prolonged period—even though he
12 has hired counsel and has acted diligently to have his asylum application heard by an
13 immigration judge (“IJ”), and his proceedings have been continued through no fault of
14 his own. His continued detention without a hearing as to flight risk and danger to the
15 community violates the U.S. Constitution and federal law.

16 **CUSTODY**

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18 2. Mr. Elikaei is currently in Respondents’ legal and physical custody. They are
19 detaining him at the Otay Mesa Detention Center in San Diego, California. He is under
20 Respondents’ and their agents’ direct control.

21 **PARTIES**

22 3. Mr. Elikaei is a 37-year-old citizen of Iran, born in Tehran, Iran. He is currently
23 detained at the Otay Mesa Detention Center in San Diego, California. Mr. Elikaei is
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1 seeking asylum in the United States due to persecution on account of his religion and
2 political opinion/

3 4. Mr. Elikaei is currently in Respondents' legal and physical custody at the Otay
4 Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
5 corporation, operates that facility.

6 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
7 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
8 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
9 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of
10 Petitioner and is named in his official capacity.

11 6. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San
12 Diego, California and is named in his official capacity. ICE is the component of the DHS
13 that is responsible for detaining and removing noncitizens according to immigration law
14 and oversees custody determinations. In his official capacity, he is the legal custodian of
15 Petitioner.

16 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
17 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
18 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
19 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
20 Mr. Elikaei. Respondent Lyons has custodial authority over Mr. Elikaei, who names him
21 in his official capacity.
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1 8. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
2 responsibility for overseeing the operation of the immigration courts and the Board of
3 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
4 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
5 removal proceedings, including for custody redeterminations in bond hearings. She is
6 sued in her official capacity.

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8 9. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official
9 capacity. DHS is the federal agency responsible for enforcing immigration laws and
10 granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem
11 has ultimate custodial authority over Mr. Elikaei, who names her in her official capacity.

12 10. Respondent Pam BONDI is the Attorney General of the United States and the
13 most senior official in the U.S. Department of Justice (DOJ) and is named in her official
14 capacity. She is responsible for the Immigration and Nationality Act's implementation
15 and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for
16 Immigration Review, the office that administers Mr. Elikaei's removal proceedings and is
17 responsible for adjudicating Mr. Elikaei's asylum application. Mr. Elikaei names her in
18 her official capacity.

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20 **JURISDICTION AND VENUE**

21 11. This action arises under the United States Constitution and the Immigration and
22 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Elikaei's
23 detention under the INA and any inherent or plenary powers the government may claim
24 to continue holding her.

1 12. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
2 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
3 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
4 Jurisdiction is not limited by a petitioner’s nationality, immigration status, or any other
5 classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant
6 relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706
7 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001
8 (Declaratory Judgment Act), and 2241 (habeas corpus).
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10 13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
11 Elikaei’s detention. Federal district courts possess broad authority to issue writs of habeas
12 corpus when a person is held “in custody in violation of the Constitution or laws or
13 treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to
14 immigration detention challenges that survived the REAL ID Act’s jurisdictional
15 restrictions. Because Mr. Elikaei seeks the traditional habeas remedy of release from
16 allegedly unlawful detention, his petition presents precisely the type of threshold legality-
17 of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S.
18 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020)
19 (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are
20 not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S.
21 678, 687 (2001). No court has ruled on the legality of Mr. Elikaei’s detention.
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23 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
24 substantial part of the events or omissions giving rise to this claim have happened here,

1 Mr. Elikaei is detained here, and his custodian resides here. Venue is also proper under
2 28 U.S.C. § 2243 because Mr. Elikaei's immediate custodian resides in this District. See
3 *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

4 **FACTUAL BACKGROUND**

5 15. Mr. Elikaei was born in Tehran, Iran to parents who previously worked in high
6 government positions prior to the 1979 revolution. Mr. Elikaei and his family have been
7 strong critics of the current Iranian regime and Mr. Elikaei has participated in many
8 recent protests against the government. In June 2024, Mr. Elikaei joined a house church
9 group and converted his religion from Islam to Christianity and shortly thereafter, Iranian
10 intelligence agents attacked the house church and later to his workplace looking for him,
11 forcing him to ultimately flee Iran in October 2024.

12 16. Mr. Elikaei arrived in the U.S. on January 1, 2025 by entering without inspection
13 through the U.S.-Mexico border at an unknown location, where he was immediately
14 encountered by U.S. immigration officials at which point Mr. Elikaei expressed a fear of
15 returning to Iran and requested asylum. He was ultimately transferred to the Otay Mesa
16 Detention Center where he has been detained ever since.

17 17. On March 22, 2025, an asylum officer interviewed Mr. Elikaei and found him
18 credible and that he had a credible fear of persecution in Afghanistan.

19 18. On March 24, 2025, Respondents issued Mr. Elikaei a Notice to Appear, charging
20 him as an alien present in the United States who has not been admitted or paroled.

21 19. Mr. Elikaei has not moved for a bond redetermination due to the fact that IJ's have
22 consistently ruled that they do not have jurisdiction to redetermine the conditions of
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1 custody over individuals who have been apprehended shortly after entering the United
2 States and who have been processed under Section 235(b)(1) expedited removal statute,
3 and who have been placed in removal proceedings following a positive credible fear
4 determination by an asylum officer.

5 20. On April 7, 2025, Mr. Elikaei appeared for his first master calendar hearing before
6 an Immigration Judge (“IJ”), represented by counsel. After taking pleadings in the case,
7 per his counsel’s request and since Mr. Elikaei’s asylum application and supporting
8 documents had already been filed, the IJ set the matter for a final merits hearing on
9 December 9, 2025, as at that time, that was the earliest available date that the IJ had on
10 their calendar. Then after two subsequent requests by Mr. Elikaei’s counsel, the hearing
11 was advanced to September 13, 2025.
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13 21. However, shortly thereafter, Mr. Elikaei’s counsel was notified that the
14 proceedings were reassigned to another IJ and the final individual merits hearing which
15 was previously scheduled on September 13 was vacated and the matter was reset to
16 another Master Calendar hearing. At that hearing, the IJ reset the final individual merits
17 hearing to June 3, 2025. However, on June 2, 2025, one day prior to the scheduled
18 hearing, counsel for DHS uploaded over 100 pages of documentary evidence which was
19 past the deadline that the IJ had set for the government to file their evidence. Over
20 Petitioner’s counsel’s objections, the IJ accepted the documents into evidence and also
21 over Petitioner’s counsel’s objections, the IJ continued the hearing to June 9, to provide
22 the IJ an opportunity to review the documents.
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1 22. However, on the June 9, 2025 hearing, shortly after the hearing started, it was
2 realized that the wrong interpreter had been scheduled for the hearing and the IJ
3 continued the hearing again, this time to June 16th. However, at the June 16th hearing,
4 there were technical issues with the video connection as well with the new interpreter
5 who admitted to the Court to be unable to interpret certain words and terminologies that
6 the Petitioner was using. Nevertheless, the hearing proceeded. However, after Mr.
7 Elikaei's concluded his direct examination, the IJ adjourned the hearing due to the
8 Court's time constraints. Although the IJ wanted to readjourned the hearing on the
9 following day, counsel for DHS informed the Court that they were not available on that
10 date. The IJ then offered other dates in the following three months, however, counsel for
11 DHS informed the Court that they were not available on those dates either. The hearing
12 was then reset to October 1, 2025.

14 23. However, prior to the October 1, 2025 reset date, the IJ was abruptly terminated
15 and the proceedings were reassigned again to a new judge and the matter was again reset
16 to a new Master Calendar hearing on September 1, 2025 before the new IJ. On that date,
17 the new IJ informed Petitioner's counsel that the IJ needs to review the record and reset
18 the matter for a new individual merits hearing on October 22, 2025. However on that
19 date, the IJ found Petitioner's application to be incomplete and pretermitted and ordered
20 him removed to Iran. Petitioner, through counsel, reserved appeal and has timely filed his
21 appeal before the Board of Immigration Appeals. The appeals is pending.
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1 24. While in detention, Mr. Elikaei has been suffering from depression and anxiety for
2 which he has been seeking treatment while in detention, and there is no adequate
3 treatment for Mr. Elikaei in the detention facility.

4 25. Mr. Elikaei's continued detention without a tenable justification and without a
5 demonstration that removal is significantly likely in the reasonably foreseeable future
6 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
7 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

8 26. The government has failed to effectuate Mr. Elikaei's removal within a reasonable
9 period of time or present any evidence that his removal is significantly likely to occur in
10 the reasonably foreseeable future.

11 27. Mr. Elikaei's detention without a tenable justification violates his rights under the
12 Due Process Clause of the Fifth Amendment.

14 EXHAUSTION OF REMEDIES

15 28. Mr. Elikaei has exhausted all administrative remedies, and no further ones are
16 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
17 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
18 prudential exhaustion requirement if "administrative remedies are inadequate or not
19 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
20 injury will result, or the administrative proceedings would be void." *Id.* (quoting Laing v.
21 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

22 Petitioner asserts that exhaustion should be waived because administrative remedies are
23 (1) futile and (2) his continued detention results in irreparable harm.
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1 29. Exhausting administrative remedies here is futile because Respondents contend
2 Mr. Elikaei is subject to mandatory detention. As such, no request to release him from
3 custody would be considered by ICE and Mr. Elikaei's repeated requests for parole
4 released have been denied by ICE. Moreover, immigration judges in this district claim to
5 have no jurisdiction to conduct a custody redetermination hearing as to individuals
6 procedurally situated like Mr. Elikaei. Indeed, in contravention to the INA and long-
7 standing precedent and practice, the Board of Immigration Appeals and Attorney General
8 have deemed no noncitizen eligible for bond before an immigration judge (with the
9 exception of only noncitizens who entered the U.S. on a visa). As such, any attempts to
10 exhaust administrative remedies would be entirely futile.
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12 30. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
13 unlawful custody in violation of her due process rights, and there are no administrative
14 remedies that she needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
15 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
16 the agency does not have jurisdiction to review" constitutional claims); In re Indefinite
17 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
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19 31. More importantly, every day that Petitioner remains detained causes him harm
20 that cannot be repaired. His continued detention puts his mental health at greater risk,
21 further warranting a finding of irreparable harm and the waiver of the prudential
22 exhaustion requirement. Mr. Elikaei has been suffering from depression and anxiety
23 while in detention, for which he has been seeking treatment while in detention, and there
24 is no adequate treatment for Mr. Elikaei in the detention facility.

1 32. The Court must consider this in its irreparable harm analysis of the effects on
2 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
3 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to
4 suffer significant psychological effects from his detention, including anxiety caused by
5 the threats of other inmates and two suicide attempts,” in finding that petitioner would
6 suffer irreparable harm warranting waiver of exhaustion requirement).

7
8 **FIRST CAUSE OF ACTION**
9 **Fifth Amendment Due Process Violation**

10 33. Mr. Elikaei re-alleges and incorporates by reference, as if fully set forth herein, the
11 allegations in paragraphs 1-32 above.

12 34. The Supreme Court has long recognized that the Fifth and Fourteenth
13 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
14 removable aliens, must be afforded due process protection. See Yick Wo v. Hopkins, 118
15 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to
16 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
17 Amendment “are universal in their application, to all persons within the territorial
18 jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.*
19 (emphasis added).

20 35. The Supreme Court has held that “even one whose presence in this country is
21 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
22 Process Clauses of the Fifth and Fourteenth Amendments]” Mathews v. Diaz, 426 U.S.
23 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) (“Whatever his status
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1 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
2 term.”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“Persons within the
3 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
4 property without due process of law.”).

5 36. As there is no final order of removal, and there doesn’t appear to be one in the
6 reasonably foreseeable future, Mr. Elikaei may not be removed from the United States.
7 His removal is not reasonably foreseeable, and his detention no longer serves any
8 legitimate purpose under the INA.

9 37. In Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District
10 granted habeas relief in a substantially similar case, applying a six-factor balancing test
11 first articulated in Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which
12 considers: (1) total length of detention to date; (2) likely duration of future detention; (3)
13 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
14 delays in the removal proceedings caused by the government; and (6) the likelihood that
15 the removal proceedings will result in a final order of removal. The court determined that
16 prolonged detention, when considered alongside other due process concerns, can rise to
17 the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at
18 773.

19 38. Applying the Banda six-factor framework here supports granting Mr. Elikaei’s
20 petition.

21 39. The final factor—finality—strongly supports the grant of this habeas petition and
22 request for a bond hearing. Mr. Elikaei is statutorily eligible to apply for asylum, and
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1 until that application is finally adjudicated, he cannot be removed from the United States.
2 Thus, the only prospect for removal from the United States would be a speculative, and
3 not factually unsupported prospect of removal to a third country.

4 40. All delays in this case are attributable to the government, and none whatsoever
5 are attributable to Mr. Elikaei. He promptly applied for asylum at the border, he has
6 timely attended all of his interviews and court hearings. He has never requested any
7 continuances in his case and has retained counsel at a very early stage of his case to
8 represent him. His individual hearing rescheduled on multiple occasions due to the
9 actions of the government, including by DHS and EOIR.
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11 41. Mr. Elikaei has now been detained by ICE for almost ten months since his arrival
12 in the United States on January 1, 2025. His appeal of his case to the BIA is estimated to
13 take several months if not over a year and in the event that the BIA affirms the IJ, then
14 Mr. Elikaei will petition for review with the Ninth Circuit Court of Appeals and if the
15 BIA reverses the IJ, then his case will be remanded back to a new IJ which will take
16 several additional months if not over a year. This period is well beyond the presumptively
17 reasonable six-month period set forth in Zadvydas, 533 U.S. at 701. Courts consistently
18 find detention beyond this threshold triggers due process scrutiny. See Kydyrali, 499
19 F.Supp. 3d at 774–75.
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21 42. Conditions of confinement also raise constitutional concerns as the medical
22 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
23 Elikaei’s health conditions.
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1 43. Mr. Elikaei poses no risk of flight and no danger to the community. He has no
2 criminal history, has demonstrated compliance with all prior immigration requirements,
3 and has community support in the United States.

4 44. Mr. Elikaei's continued detention without a tenable justification violates his Fifth
5 Amendment right to due process.

6 **PRAYER FOR RELIEF**

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8 Mr. Elikaei asks this Court to grant the following relief:

- 9 1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr.
10 Elikaei from custody immediately;
- 11 2. Declare the continued detention of Mr. Elikaei without a tenable
12 justification a violation of the Due Process Clause of the U.S. Constitution;
- 13 3. Alternatively, order an immediate bond hearing before a neutral
14 decisionmaker where DHS bears the burden of justifying P Mr. Elikaei's
15 continued detention by clear and convincing evidence and where alternatives
16 to detention and Mr. Elikaei's ability to pay a bond are considered
- 17 4. Order Respondents to show cause why Mr. Elikaei is being subjected
18 to unlawful and unconstitutional detention; and
- 19 5. Grant any other relief that may be fit and proper.
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Dated: November 19, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner’s attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this November 19, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner