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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Zulquarnain AKBAR,

12 Petitioner,

13 v.

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;

17 Daniel A. BRIGHTMAN, Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigrations and
20 Customs Enforcement; U.S. Department
21 of Homeland Security;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce 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.: '25CV3510 RSH VET

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

4 INTRODUCTION

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6 1. Petitioner, ZULQUARNAIN AKBAR (“Mr. Akbar” or “Petitioner”), by and
7 through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et
8 seq., to issue a Writ of Habeas Corpus ordering Mr. Akbar’s release from immigration
9 detention by the Department of Homeland Security, United States Immigration and
10 Customs Enforcement (“ICE”). Mr. Akbar seeks immediate release from custody because
11 Respondents have held him since November 21, 2024—a prolonged period—even
12 though he has hired counsel and has acted diligently to have his asylum application heard
13 by an immigration judge (“IJ”), and his proceedings have been continued through no fault
14 of 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. Akbar 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. Akbar is a 49-year-old citizen of Pakistan, born in Gujranwala, Pakistan. He is
23 currently detained at the Otay Mesa Detention Center in San Diego, California. Mr.
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1 Akbar is seeking asylum in the United States due to persecution on account of his Shia
2 religion.

3 4. Mr. Akbar 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 Brightman, Lyons and Noem. Respondent Christopher LaRose is a
10 custodian of Petitioner and is named in his official capacity.
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12 6. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San
13 Diego, California and is named in his official capacity. ICE is the component of the DHS
14 that is responsible for detaining and removing noncitizens according to immigration law
15 and oversees custody determinations. In his official capacity, he is the legal custodian of
16 Petitioner.

17 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
18 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
19 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
20 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
21 Mr. Akbar. Respondent Lyons has custodial authority over Mr. Akbar, who names him in
22 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. Akbar, 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. Akbar's removal proceedings and is
17 responsible for adjudicating Mr. Akbar's asylum application. Mr. Akbar names her in her
18 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. Akbar'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).

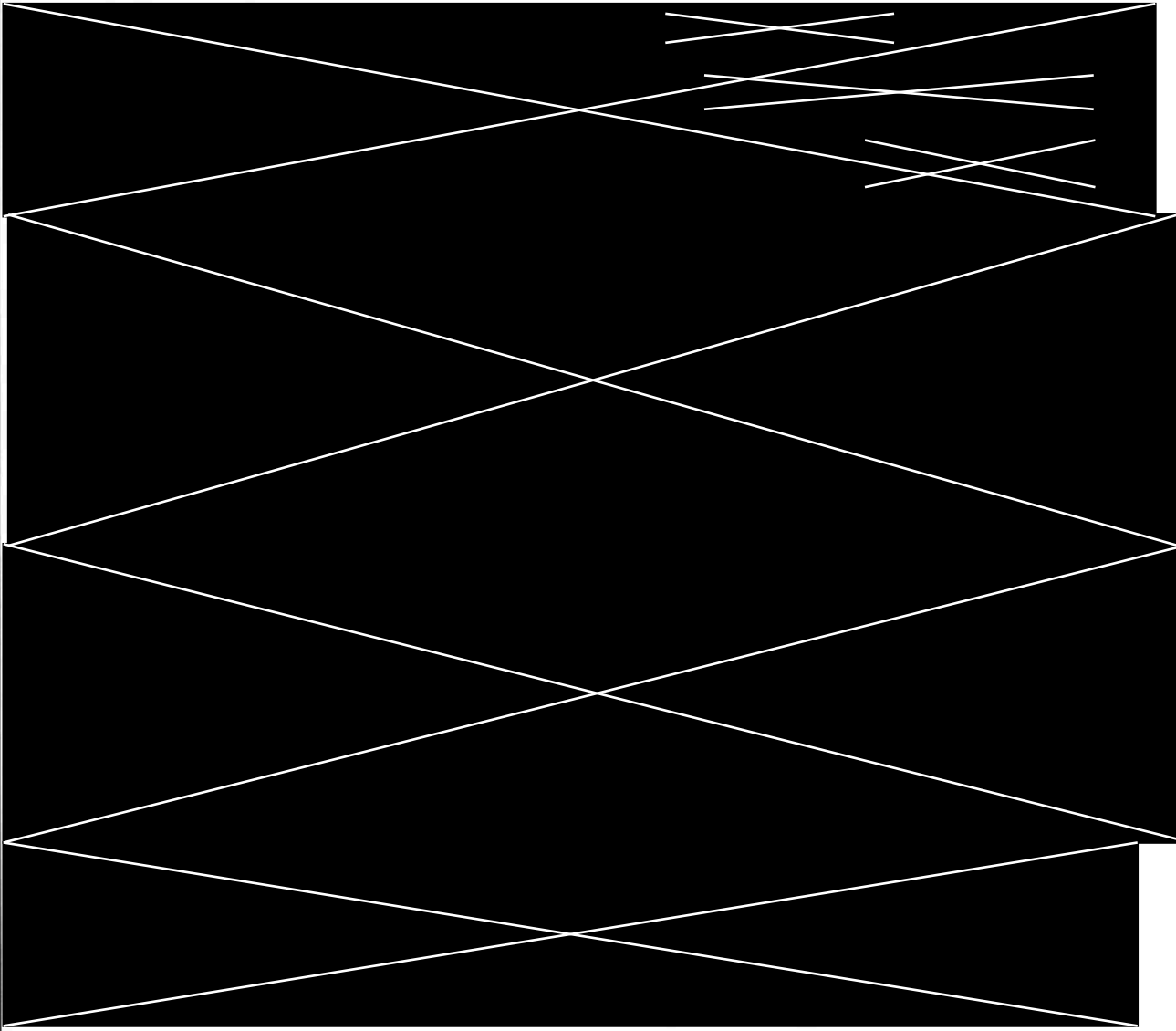
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10 13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
11 Akbar’s detention. Federal district courts possess broad authority to issue writs of habeas
12 corpus when a person is held “in custody in violation of the Constitution 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. Akbar 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. Akbar’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. Akbar is detained here, and his custodian resides here. Venue is also proper under 28
2 U.S.C. § 2243 because Mr. Akbar'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. Akbar was born in Gujranwala, Pakistan to 

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23 19. Mr. Akbar arrived in the U.S. on November 21, 2024 by entering without
24 inspection through the U.S.-Mexico border at or near San Ysidro, California, where he

1 flagged down U.S. immigration officials and expressed a fear of returning to Pakistan and
2 requested asylum. He was ultimately transferred to the Otay Mesa Detention Center
3 where he has been detained ever since.

4 20. On December 27, 2024, an asylum officer interviewed Mr. Akbar and found him
5 credible and that he had a credible fear of persecution in Pakistan.

6 21. On December 29, 2024, Respondents issued Mr. Akbar a Notice to Appear,
7 charging him as an alien present in the United States who has not been admitted or
8 paroled.

9 22. Mr. Akbar moved for a custody redetermination hearing on February 6, 2025,
10 however, the IJ declined to accept jurisdiction on the basis that individuals in expedited
11 removal proceedings are subject to mandator detention “pending a final determination of
12 credible fear of persecution and, if found not have such a fear, until removed.” Similarly,
13 other IJ’s have consistently ruled that they do not have jurisdiction to redetermine the
14 conditions of custody over individuals who have been apprehended shortly after entering
15 the United States and who have been processed under Section 235(b)(1) expedited
16 removal statute, and who have been placed in removal proceedings following a positive
17 credible fear determination by an asylum officer.

18 23. On January 7, 2025, Mr. Akbar appeared for his first master calendar hearing
19 before an Immigration Judge (“IJ”), where the proceedings were adjourned to February 5,
20 2025 to provide Mr. Akbar opportunity to retain counsel. At the February 5, 2025
21 hearing, Mr. Akbar appeared with counsel where pleadings were taken and the IJ set a
22 deadline for Mr. Akbar’s relief application to be filed, which was on or before March 13,
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1 2025, and the IJ adjourned the hearing to March 13, 2025. Mr. Akbar filed his asylum
2 application as well as supporting evidence on March 12, 2025 and appeared with his
3 counsel to the March 13, 2025 continued Master Calendar hearing. At that hearing, the IJ
4 adjourned the hearing to another Master Calendar hearing on April 24, 2025. However, at
5 that hearing, the proceedings were reassigned to another IJ and the matter was
6 rescheduled for another Master Calendar hearing on June 11, 2025, before the newly
7 assigned IJ. At the June 11, 2025, the newly assigned IJ set the matter for a final
8 individual merits hearing on August 29, 2025, which was the earliest date available on
9 the IJ's calendar.
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11 24. On August 29, 2025, the IJ took testimony and at the conclusion of the hearing, the
12 IJ denied Mr. Akbar's asylum application and ordered removal but granted his
13 application for withholding of removal. Mr. Akbar reserved appeal, and on September 10,
14 2025, Mr. Akbar timely filed his appeal with the Board of Immigration Appeals (BIA).
15 That appeal remains pending.

16 25. Despite being granted withholding of removal, Respondents have refused to
17 release Mr. Akbar from custody.

18 26. While in detention, Mr. Akbar has been suffering from diabetes, high blood
19 pressure and cholesterol for which he has been taking medication. Recently, he has been
20 feeling numbness in his left leg which he has reported to his deportation officer and
21 medical staff on several occasions, however, to date, he has not received any treatment or
22 medication. Moreover, due to his prolonged detention, Mr. Akbar also suffers from
23 depression and anxiety for which there is no adequate treatment in the detention facility.
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1 27. Mr. Akbar's continued detention without a tenable justification and without a
2 demonstration that removal is significantly likely in the reasonably foreseeable future
3 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
4 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

5 28. The government has failed to effectuate Mr. Akbar's removal within a reasonable
6 period of time or present any evidence that his removal is significantly likely to occur in
7 the reasonably foreseeable future.

8 29. Mr. Akbar's detention without a tenable justification violates his rights under the
9 Due Process Clause of the Fifth Amendment.

11 EXHAUSTION OF REMEDIES

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

19 Petitioner asserts that exhaustion should be waived because administrative remedies are
20 (1) futile and (2) his continued detention results in irreparable harm.

21 31. Exhausting administrative remedies here is futile because Respondents contend
22 Mr. Akbar is subject to mandatory detention. As such, no request to release him from
23 custody would be considered by ICE and Mr. Akbar's repeated requests for bond and
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1 parole release have been denied. Moreover, immigration judges in this district claim to
2 have no jurisdiction to conduct a custody redetermination hearing as to individuals
3 procedurally situated like Mr. Akbar. Indeed, in contravention to the INA and long-
4 standing precedent and practice, the Board of Immigration Appeals and Attorney General
5 have deemed no noncitizen eligible for bond before an immigration judge (with the
6 exception of only noncitizens who entered the U.S. on a visa). As such, any attempts to
7 exhaust administrative remedies would be entirely futile.
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9 32. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
10 unlawful custody in violation of her due process rights, and there are no administrative
11 remedies that she needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
12 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
13 the agency does not have jurisdiction to review" constitutional claims); In re Indefinite
14 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

15 33. More importantly, every day that Petitioner remains detained causes him harm
16 that cannot be repaired. His continued detention puts his mental health at greater risk,
17 further warranting a finding of irreparable harm and the waiver of the prudential
18 exhaustion requirement. Mr. Akbar has been suffering from depression and anxiety while
19 in detention, for which he has been seeking treatment while in detention, and there is no
20 adequate treatment for Mr. Akbar in the detention facility.
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22 34. The Court must consider this in its irreparable harm analysis of the effects on
23 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
24 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to

1 suffer significant psychological effects from his detention, including anxiety caused by
2 the threats of other inmates and two suicide attempts,” in finding that petitioner would
3 suffer irreparable harm warranting waiver of exhaustion requirement).

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5 **FIRST CAUSE OF ACTION**
6 **Fifth Amendment Due Process Violation**

7 35. Mr. Akbar re-alleges and incorporates by reference, as if fully set forth herein, the
8 allegations in paragraphs 1-32 above.

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

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

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

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

17 40. Applying the Banda six-factor framework here supports granting Mr. Akbar’s
18 petition.
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20 41. The final factor—finality—strongly supports the grant of this habeas petition and
21 request for a bond hearing. Mr. Akbar is statutorily eligible to apply for asylum, and until
22 that application is finally adjudicated, he cannot be removed from the United States.
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1 Thus, the only prospect for removal from the United States would be a speculative, and
2 not factually unsupported prospect of removal to a third country.

3 42. All delays in this case are attributable to the government, and none whatsoever
4 are attributable to Mr. Akbar. He promptly applied for asylum at the border, he has timely
5 attended all of his interviews and court hearings. He has never requested any
6 continuances in his case and has retained counsel at a very early stage of his case to
7 represent him. His individual hearing rescheduled on multiple occasions due to the
8 actions of the government, including by DHS and EOIR.

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10 43. Mr. Akbar has now been detained by ICE for almost ten months since his arrival
11 in the United States on November 21, 2024. His appeal of his case to the BIA is
12 estimated to take several months if not over a year and in the event that the BIA affirms
13 the IJ, then Mr. Akbar will petition for review with the Ninth Circuit Court of Appeals
14 and if the BIA reverses the IJ, then his case will be remanded back to a new IJ which will
15 take several additional months if not over a year. This period is well beyond the
16 presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701. Courts
17 consistently find detention beyond this threshold triggers due process scrutiny. See
18 Kydyrali, 499 F.Supp. 3d at 774–75.

19 44. Conditions of confinement also raise constitutional concerns as the medical
20 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
21 Akbar's health conditions.
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1 45. Mr. Akbar 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 46. Mr. Akbar'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. Akbar asks this Court to grant the following relief:

- 9 1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr.
10 Akbar from custody immediately;
- 11 2. Declare the continued detention of Mr. Akbar 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 Mr. Akbar's
15 continued detention by clear and convincing evidence and where alternatives
16 to detention and Mr. Akbar's ability to pay a bond are considered
- 17 4. Order Respondents to show cause why Mr. Akbar is being subjected to
18 unlawful and unconstitutional detention; and
- 19 5. Grant any other relief that may be fit and proper.
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1 Dated: December 10, 2025

Respectfully submitted,

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3 By: /s/ Bashir Ghazialam
Bashir Ghazialam

4 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 and reviewed Petitioner's immigration file. Based on those discussions and review, 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 December 10, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner