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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 Ismail Orhan DOGAN,

14 Petitioner,

15 v.

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

19 Daniel A. BRIGHTMAN, 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,
25 Immigration and Customs Enforcement,
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.: '25CV3525 DMS BJW

**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 ISMAIL ORHAN DOGAN 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
5 **INTRODUCTION**

6 1. Petitioner, ISMAIL ORHAN DOGAN (“Mr. Dogan” 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. Dogan’s release from immigration
9 detention by the Department of Homeland Security, United States Immigration and
10 Customs Enforcement (“ICE”). Mr. Dogan seeks immediate release from custody
11 because Respondents have held him since January 6, 2025—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.
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17 **CUSTODY**

18 2. Mr. Dogan 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.
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22 **PARTIES**

23 3. Mr. Dogan is a 27-year-old citizen of Turkey, born in Istanbul, Turkey. He is
24 currently detained at the Otay Mesa Detention Center in San Diego, California. Mr.
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1 Dogan is seeking asylum in the United States due to persecution on account of his
2 political opinion.

3 4. Mr. Dogan 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.

11 6. Respondent Daniel A. BRIGHTMAN is the 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. Dogan. Respondent Lyons has custodial authority over Mr. Dogan, 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. Dogan, who names her in her official capacity.
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13 10. Respondent Pam BONDI is the Attorney General of the United States and the
14 most senior official in the U.S. Department of Justice (DOJ) and is named in her official
15 capacity. She is responsible for the Immigration and Nationality Act's implementation
16 and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for
17 Immigration Review, the office that administers Mr. Dogan's removal proceedings and is
18 responsible for adjudicating Mr. Dogan's asylum application. Mr. Dogan names her in
19 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. Dogan's
23 detention under the INA and any inherent or plenary powers the government may claim
24 to continue holding him.
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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).

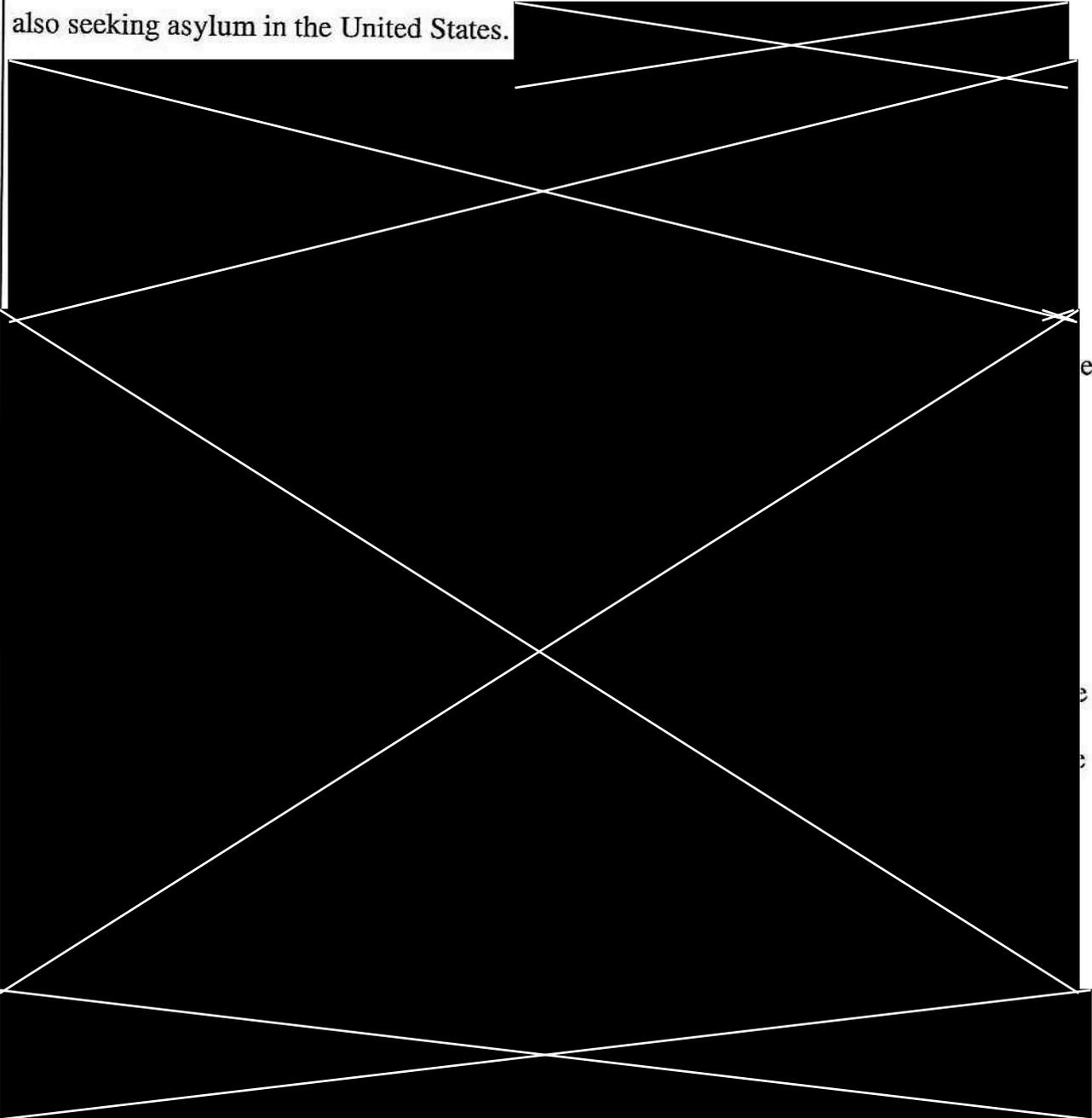
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10 13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
11 Dogan’s detention. Federal district courts possess broad authority to issue writs of habeas
12 corpus when a person is held “in custody in violation of the Constitution 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. Dogan 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. Dogan’s detention.

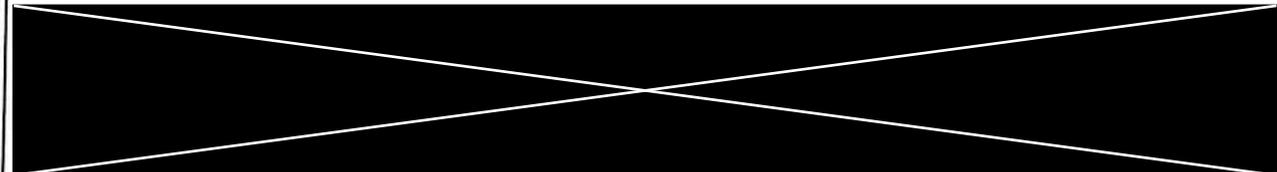
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23 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
24 substantial part of the events or omissions giving rise to this claim have happened here,
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1 Mr. Dogan is detained here, and his custodian resides here. Venue is also proper under 28
2 U.S.C. § 2243 because Mr. Dogan's immediate custodian resides in this District. See
3 *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).
4

5 **FACTUAL BACKGROUND**

6 15. Mr. Dogan is a 27-year-old married man born in Istanbul, Turkey. His spouse is
7 also seeking asylum in the United States.





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3 17. Mr. Dogan arrived in the U.S. on January 6, 2025 by entering without inspection
4 through the U.S.-Mexico border at or near San Ysidro, California, where he flagged
5 down U.S. immigration officials and expressed a fear of returning to Turkey and
6 requested asylum. He was ultimately transferred to the Otay Mesa Detention Center
7 where he has been detained ever since.
8

9 18. On March 24, 2025, an asylum officer interviewed Mr. Dogan and determined that
10 he did not have a credible fear of persecution in Turkey.

11 19. On April 8, 2025, an IJ reviewed the asylum officer's negative credible fear
12 determination and affirmed it and ordered his expedited removal.

13 20. On April 15, 2025, Mr. Dogan submitted a request for reconsideration to USCIS
14 asylum office.

15 21. On May 29, 2025, the government issued Mr. Dogan a Notice to Appear before an
16 immigration judge on June 9, 2025, effectively vacating the expedited removal order.
17

18 22. At his first Master Calendar hearing on June 9, 2025, the IJ adjourned the
19 proceedings to June 24, 2025 for Mr. Dogan to enter pleadings and file his relief
20 application.

21 23. On June 16, 2025, prior to his next hearing, Mr. Dogan filed his written pleadings
22 and on June 23, 2025, he filed his asylum application.
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1 24. On June 24, 2025, the IJ adjourned the proceedings to July 17, 2025, for a further
2 Master Calendar hearing and ordered Mr. Dogan to file his declaration and supporting
3 evidence, which he did on July 14, 2025.

4 25. On July 17, 2025 hearing, adjourned to August 27, 2025 for both parties to file
5 additional evidence, including corroborating and country conditions. Mr. Dogan filed his
6 additional evidence prior to that scheduled date.

7
8 26. At the August 27, 2025 hearing, the IJ set the matter for an individual merits
9 hearing for December 16, 2025.

10 27. However, in about November 2025, the proceedings were assigned to a new IJ as
11 the previous IJ was abruptly terminated from her position and the matter was reset once
12 again to a Master Calendar hearing for December 2, 2025.

13 28. At the December 2, 2025 hearing before the newly assigned IJ, the IJ reset the
14 proceedings to another Individual merits hearing for February 2, 2025.

15 29. Mr. Dogan has not moved for a custody redetermination because the IJ's in this
16 jurisdiction have consistently ruled that they do not have jurisdiction to redetermine the
17 conditions of custody over individuals who have been apprehended shortly after entering
18 the United States and who have been processed under Section 235(b)(1) expedited
19 removal statute, and who have been placed in removal proceedings following a positive
20 credible fear determination by an asylum officer.

21
22 30. While in detention, Mr. Dogan has developed severe teeth pain caused by an
23 infection in the roots. The pain has been getting progressively worse, he cannot chew on
24 one side, and he is having trouble sleeping. Radiographic imaging has revealed four
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1 posterior teeth with advanced dental caries, and the decay has progressed to a level where
2 the dental pulp is likely compromised or soon will be, requiring root canal therapy and
3 proper restoration to preserve them. However, in the facility, the only treatment option
4 provided when pain or infection develops is extraction. Despite multiple medical
5 requests, the only treatment he has received is basic pain medication, which is not
6 helping. He is increasingly worried that the infection may worsen and lead to more
7 serious complications if left untreated.
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9 31.. Moreover, due to his prolonged detention, Mr. Dogan also suffers from
10 depression and anxiety, one of the symptoms being grinding his teeth while sleeping,
11 further aggravating his teeth condition, for which there is no adequate treatment in the
12 detention facility.

13 32. Mr. Dogan's continued detention without a tenable justification and without a
14 demonstration that removal is significantly likely in the reasonably foreseeable future
15 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
16 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).
17

18 33. The government has failed to effectuate Mr. Dogan's removal within a reasonable
19 period of time or present any evidence that his removal is significantly likely to occur in
20 the reasonably foreseeable future.

21 34. Mr. Dogan's detention without a tenable justification violates his rights under the
22 Due Process Clause of the Fifth Amendment.

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EXHAUSTION OF REMEDIES

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2 35. Mr. Dogan has exhausted all administrative remedies, and no further ones are
3 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
4 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
5 prudential exhaustion requirement if “administrative remedies are inadequate or not
6 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
7 injury will result, or the administrative proceedings would be void.” *Id.* (quoting Laing v.
8 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

9
10 Petitioner asserts that exhaustion should be waived because administrative remedies are
11 (1) futile and (2) his continued detention results in irreparable harm.

12 36. Exhausting administrative remedies here is futile because Respondents contend
13 Mr. Dogan is subject to mandatory detention. As such, no request to release him from
14 custody would be considered by ICE and Mr. Dogan’s repeated requests for parole
15 release have been denied. Moreover, immigration judges in this district claim to have no
16 jurisdiction to conduct a custody redetermination hearing as to individuals procedurally
17 situated like Mr. Dogan. Indeed, in contravention to the INA and long-standing precedent
18 and practice, the Board of Immigration Appeals and Attorney General have deemed no
19 noncitizen eligible for bond before an immigration judge (with the exception of only
20 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
21 administrative remedies would be entirely futile.

22
23 37. Moreover, no statutory exhaustion requirements apply to Petitioner’s claim of
24 unlawful custody in violation of his due process rights, and there are no administrative
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1 remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
2 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because
3 the agency does not have jurisdiction to review” constitutional claims); In re Indefinite
4 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

5
6 38. More importantly, every day that Petitioner remains detained causes him harm
7 that cannot be repaired. His continued detention puts his physical and mental health at
8 greater risk, further warranting a finding of irreparable harm and the waiver of the
9 prudential exhaustion requirement. As explained above, Mr. Dogan has been suffering
10 from teeth pain and decay as well as depression and anxiety while in detention, for which
11 there is no adequate treatment for Mr. Dogan in the detention facility.

12 39. The Court must consider this in its irreparable harm analysis of the effects on
13 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
14 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to
15 suffer significant psychological effects from his detention, including anxiety caused by
16 the threats of other inmates and two suicide attempts,” in finding that petitioner would
17 suffer irreparable harm warranting waiver of exhaustion requirement).
18

19 **FIRST CAUSE OF ACTION**
20 **Fifth Amendment Due Process Violation**

21 40. Mr. Dogan re-alleges and incorporates by reference, as if fully set forth herein, the
22 allegations in paragraphs 1-39 above.

23 41. The Supreme Court has long recognized that the Fifth and Fourteenth
24 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
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1 removable aliens, must be afforded due process protection. See Yick Wo v. Hopkins, 118
2 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to
3 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
4 Amendment “are universal in their application, to all persons within the territorial
5 jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.*
6 (emphasis added).
7

8 42. The Supreme Court has held that “even one whose presence in this country is
9 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
10 Process Clauses of the Fifth and Fourteenth Amendments]” Mathews v. Diaz, 426 U.S.
11 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) (“Whatever his status
12 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
13 term.”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“Persons within the
14 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
15 property without due process of law.”).
16

17 43. As there is no final order of removal, and there doesn’t appear to be one in the
18 reasonably foreseeable future, Mr. Dogan may not be removed from the United States.
19 His removal is not reasonably foreseeable, and his detention no longer serves any
20 legitimate purpose under the INA.

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

7
8 45. Applying the Banda six-factor framework here supports granting Mr. Dogan's
9 petition.

10 46. The final factor—finality—strongly supports the grant of this habeas petition and
11 request for a bond hearing. Mr. Dogan is statutorily eligible to apply for asylum, and until
12 that application is finally adjudicated, he cannot be removed from the United States.
13 Thus, the only prospect for removal from the United States would be a speculative, and
14 not factually unsupported prospect of removal to a third country.

15 47. All delays in this case are attributable to the government, and none whatsoever
16 are attributable to Mr. Dogan. He promptly applied for asylum at the border, he has
17 timely attended all of his interviews and court hearings. He has never requested any
18 continuances in his case and has retained counsel at a very early stage of his case to
19 represent him. His individual hearing rescheduled on multiple occasions due to the
20 actions of the government, including by DHS and EOIR.

21
22 48. Mr. Dogan has now been detained by ICE for almost one year since his arrival in
23 the United States on January 6, 2025. His continued individual hearing will not take place
24 until February 2, 2025, and in the event his is granted asylum, the government will likely
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1 appeal and if he is denied asylum and ordered removed by the IJ, he will appeal before
2 the BIA as a matter of his right, and the appeal of his case to the BIA is estimated to take
3 several months if not over a year. And in the event that the BIA affirms the IJ, then Mr.
4 Dogan will petition for review with the Ninth Circuit Court of Appeals and if the BIA
5 reverses the IJ, then his case will be remanded back to a new IJ which will take several
6 additional months if not over a year. This period is well beyond the presumptively
7 reasonable six-month period set forth in Zadvydas, 533 U.S. at 701. Courts consistently
8 find detention beyond this threshold triggers due process scrutiny. See Kydyrali, 499
9 F.Supp. 3d at 774–75.

11 49. Conditions of confinement also raise constitutional concerns as the medical
12 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
13 Dogan’s health conditions.

14 50. Mr. Dogan poses no risk of flight and no danger to the community. He has no
15 criminal history, has demonstrated compliance with all prior immigration requirements,
16 and has community support in the United States.

18 51. Mr. Dogan’s continued detention without a tenable justification violates his Fifth
19 Amendment right to due process.

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PRAYER FOR RELIEF

Mr. Dogan asks this Court to grant the following relief:

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

Dated: December 11, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

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 have reviewed his immigration file. Based on those discussions and review of his file, 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 11, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner