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DETAINED

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT

10 Hatim Abdel Mongy Abdala Baker

11 Petitioner,

12 v.

13 Adam Gordon, Field Office Director of
14 Enforcement and Removal Operations,
15 Southern District Field Office, Immigration and
16 Customs Enforcement; Kristi NOEM,
17 Secretary, U.S. Department of Homeland
18 Security; U.S. DEPARTMENT OF
19 HOMELAND SECURITY; Pamela BONDI,
20 U.S. Attorney General; EXECUTIVE OFFICE
21 FOR IMMIGRATION REVIEW; Christopher
22 J. LaRose, Senior Warden of Otay Mesa
23 Detention Center

24 Respondents.

Case No. '25CV3539 CAB SBC

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2241**

Hon.
United States District Judge

Date Of Hearing:
Time Of Hearing

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INTRODUCTION

1. Petitioner Hatim Abdel Mongy Abdalla Bakr is a 58-year-old long-term resident of the United States who has been unlawfully detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center ("OMDC") on or around September 6, 2025—now exceeding over 90 days. Petitioner was paroled in as an arriving alien on or around April 8, 2005. He has no prior removal or deportation orders, owns a business in New York City, pays taxes annually since 2010, and supports his U.S.-citizen family, including a 17-year-old son with severe mental health issues exacerbated by his detention. He has a pending I-130 petition through his U.S.-citizen family and is actively preparing a Form EOIR-42B application for cancellation of removal under INA § 240A(b).
2. Petitioner's detention violates the Fifth Amendment Due Process Clause because it is unconstitutionally prolonged and punitive given his serious medical vulnerabilities, including a pre-detention diagnosis of prostate cancer requiring surgical removal, a history of two open-heart surgeries, Type 2 diabetes, hypertension, and benign prostatic hyperplasia ("BPH") with worsening urinary symptoms—all inadequately managed at OMDC. Since detention, Petitioner has lost at least 18 pounds (documented in medical records), demonstrating rapid deterioration in a facility with a well-documented history of substandard medical care for chronic conditions like cancer and cardiac disease. **TAB B.**
3. OMDC's failure to provide timely specialist care, diagnostic testing (e.g., PSA levels, urology consult, biopsy), or surgical intervention—coupled with Petitioner's daily reliance on six medications for his conditions—constitutes deliberate indifference to his serious medical needs, rendering his detention punitive and a violation of substantive due

1 process. This is particularly acute considering Petitioner's short-term detention under INA
2 § 1226(a), where no bond hearing has been provided despite clear humanitarian factors.

- 3 4. Petitioner's continued detention also inflicts irreparable harm on his U.S.-citizen family,
4 including his 17-year-old son, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] These family hardships, combined
8 with Petitioner's strong community ties, outweigh any flight risk or danger, which is
9 negligible given his compliance history.

- 10 5. Petitioner seeks immediate temporary release on his own recognizance or the lowest
11 possible bond, pending a full bond redetermination hearing before an Immigration Judge.

12 This relief is warranted under the Fifth Amendment and the principles articulated in
13 *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as interpreted by the Ninth Circuit in cases
14 like *Rodriguez Diaz v. Garland*, 53 F.4th 1269 (9th Cir. 2022), and district court grants in
15 medically urgent § 2241 petitions at OMD.

16 **JURISDICTION AND VENUE**

- 17 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (federal habeas
18 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the U.S.
19 Constitution (Suspension Clause). Petitioner is in custody in violation of the Fifth
20 Amendment Due Process Clause and federal law, including INA § 1226(a), 8 U.S.C. §
21 1226(a). See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (habeas available to challenge
22 prolonged immigration detention); *Jennings*, 583 U.S. at 289 (due process limits apply
23 post-statutory detention).

1 7. This Court may grant relief under 28 U.S.C. §§ 2241 et seq., the Declaratory Judgment
2 Act, 28 U.S.C. §§ 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and INA § 1226(a).
3 See *Demore v. Kim*, 538 U.S. 510, 517 (2003) (habeas jurisdiction over § 1226
4 detention).

5 8. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(e)
6 because Petitioner is detained at OMDC in San Diego, and a substantial part of the events
7 giving rise to his claims—his ongoing detention and inadequate medical care—occur
8 here. See *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (immediate custodian rule for
9 habeas venue).

10 9. Petitioner has exhausted available administrative remedies: He requested a custody
11 redetermination from ICE, which was denied on November 7, 2025, for lack of
12 jurisdiction, and no bond legitimate hearing has been provided despite eligibility under §
13 1226(a). Further exhaustion is futile given OMDC's systemic deficiencies. See *Roman v.*
14 *Wolf*, 977 F.3d 935, 941 (9th Cir. 2020) (exhaustion not required where futile). TAB A.

15 **REQUIREMENTS OF 28 U.S.C. § 2241, 2243**

16 10. The Court must grant the petition forthwith or issue an Order to Show Cause ("OSC")
17 unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC issues, Respondents
18 must file a return within three days, unless extended for good cause not exceeding 20
19 days. *Id.*

20 11. Habeas corpus is the "swift and imperative remedy" for unlawful detention. *Fay v. Noia*,
21 372 U.S. 391, 400 (1963). Petitioner's 90+ days of detention—marked by medical
22 deterioration and family harm—demands immediate judicial intervention, as recognized
23 in Ninth Circuit precedents limiting short-term detention when conditions are punitive.
24

1 *See, e.g., *Jennings*, 583 U.S. at 300 (due process balancing applies); *Yong v. I.N.S.*, 208
2 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3 **PARTIES**

4 12. Petitioner Hatim Abdel Mongy Abdala Baker is a citizen of Egypt who has been
5 in immigration detention since September 09, 2025. Petitioner requested review of his custody
6 by an IJ. On November 07, 2025, Petitioner was denied bond by an IJ at the Otay Mesa
7 Immigration Court because Petitioner was deemed an “arriving alien.” Petitioner has resided in
8 the United States since the year 2000.

9 13. Respondent Adam Gordon is the Director of the Southern District Field Office of
10 ICE’s Enforcement and Removal Operations division. As such, Adam Gordon is Petitioner’s
11 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in
12 his official capacity.

13 14. Respondent Kristi Noem is the Secretary of the Department of Homeland
14 Security. She is responsible for the implementation and enforcement of the Immigration and
15 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
16 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

17 15. Respondent Department of Homeland Security (DHS) is the federal agency
18 responsible for implementing and enforcing the INA, including the detention and removal of
19 noncitizens.



20 16. Respondent Pamela Bondi is the Attorney General of the United States. She is
21 responsible for the Department of Justice, of which the Executive Office for Immigration Review
22 and the immigration court system it operates is a component agency. She is sued in her official
23 capacity.


1 17. Respondent Executive Office for Immigration Review (EOIR) is the federal
2 agency responsible for implementing and enforcing the INA in removal proceedings, including
3 for custody redeterminations in bond hearings.

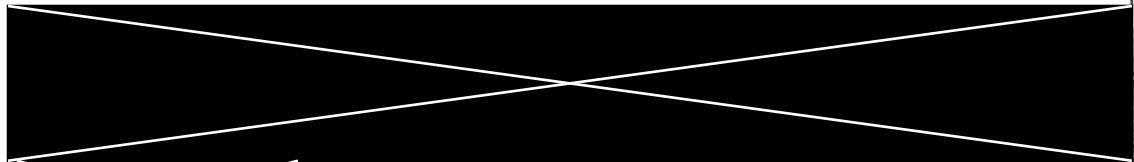

4 18. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the
5 Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody
6 of Petitioner. He is sued in his official capacity.

7 **STATEMENT OF THE FACTS**

8 19. Petitioner, a native and citizen of Egypt, has resided continuously in the United States for
9 over 20 years. He owns a commissary business in New York City with more than
10 \$20,000 in monthly expenses, has paid federal and state taxes every year since 2010, and
11 financially supports a handicapped child in his community.

12 20. Petitioner has one minor criminal conviction more than twelve years old: a February
13 2013 misdemeanor retail-theft offense in Lehigh County, Pennsylvania 
14  resolved the same month with bail posted and no
15 incarceration imposed. This dated, non-violent offense does not constitute a crime
16 involving moral turpitude, and is vastly outweighed by Petitioner's decades of law-
17 abiding conduct and community contributions.

18 21. Petitioner suffers from prostate cancer (surgery scheduled pre-detention), two prior open-
19 heart surgeries, Type 2 diabetes mellitus (E11.9), essential hypertension (I10), and benign
20 prostatic hyperplasia (N40.0) with difficulty initiating urinary stream (R39.198). 

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1 22. Since detention, Petitioner’s weight has fallen from 199 lbs (September 12, 2025) to 181
2 lbs (November 18, 2025)—an 18-pound loss in 67 days—with family reporting over 26
3 pounds total. Such rapid weight loss in a post-open-heart-surgery patient is life-
4 threatening.

5 23. OMDC has provided no oncology or urology referral despite clear need. This pattern of
6 deliberate indifference is consistent with ongoing *Fraihat* non-compliance at Otay Mesa.
7 *See Fraihat v. ICE*, 16 F.4th 613 (9th Cir. 2021) (addresses reckless disregard of health
8 risks by ICE).

9 Legal Argument

10 I. Continued Detention Violates Petitioner’s Substantive Due Process

11 24. The Fifth Amendment forbids the government from depriving any person of liberty
12 without due process of law. Immigration detention, even when civil in nature, becomes
13 punitive—and therefore unconstitutional—when it is excessive in relation to its
14 regulatory purpose or when it is accompanied by conditions that shock the conscience.

15 25. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), reaffirmed that the
16 Due Process Clause continues to impose substantive limits on the length and conditions
17 of immigration detention even after the statutory scheme has been satisfied.

18 26. In the Ninth Circuit, courts evaluating due-process challenges to § 1226(a) detention of
19 less than six months apply a fact-specific, multi-factor balancing test derived from
20 *Mathews v. Eldridge*, 424 U.S. 319 (1976), and refined in *Rodriguez Diaz v. Garland*, 53
21 F.4th 1269 (9th Cir. 2022), and *Zepeda-Rivas v. Jennings*, 116 F.4th 943 (9th Cir. 2024).

22 The factors are:

- 23 a. Total length of detention to date;
- 24 b. Likely duration of future detention;
- c. Conditions of detention;

1 d. Delays caused by detainee or the government; and


2 e. Likelihood that the proceedings will result in a final removal order



3 27. Length of detention (90+ days and counting): While the Ninth Circuit has declined to set
4 a bright-line rule for detention under six months, it has repeatedly held that detention
5 becomes constitutionally suspect far sooner when combined with serious medical
6 vulnerability or extreme family hardship.

7 28. Likely future duration: Petitioner's removal proceedings will continue for many months
8 while his I-130 and EOIR-42B cancellation application are adjudicated. Continued
9 detention for the foreseeable future is therefore probable absent judicial intervention.

10 29. Conditions of detention / medical care: Petitioner is a Tier-1 high-risk individual under
11 the *Fraihat* permanent injunction (prostate cancer, serious cardiac history, diabetes).
12 OMDC has failed to provide any urology referral, PSA testing, biopsy, or surgical
13 intervention despite documented rapid deterioration and doubling of Tamsulosin. This is
14 deliberate indifference under *Estelle v. Gamble*, 429 U.S. 97 (1976), and *Bell v. Wolfish*,
15 441 U.S. 520 (1979).

16 30. The 18 pound weight loss in a post-open-heart-surgery patient is objectively life-
17 threatening.

18 31. Extreme family hardship: 

19 
20  constitutes irreparable harm of the highest order. Courts in this district
21 routinely grant immediate release in such circumstances.

22 32. No delay attributable to Petitioner; all delay is governmental.

23 33. Likelihood of removal: Petitioner has a colorable cancellation of removal claim (20+
24 years residence, U.S.-citizen son with exceptional hardship, good moral character).
Removal is far from certain.

1 34. Balancing these factors, continued detention is unconstitutional. Release on recognizance
2 or minimal bond is the least restrictive means to serve any legitimate government interest.

3 **II. Detention Violates the *Fraihat v. ICE* Permanent Injunction and Section 504 of**
4 **the Rehabilitation Act**

5 35. Petitioner falls within multiple high-risk categories under the *Fraihat* permanent
6 injunction (cancer, serious heart conditions, diabetes). *Fraihat v. ICE*, No. 5:19-cv-
7 01546-JGB-SHK (C.D. Cal., permanent injunction entered Apr. 20, 2020, still in force).

8 36. OMDC's failure to provide timely specialist care or surgical intervention violates the
9 injunction's mandatory risk-assessment and release provisions.

10 37. Respondents' actions also discriminate against Petitioner on the basis of disability in
11 violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

12 38. For the same reasons, Respondents are in violation of the Americans with Disabilities Act
standards incorporated into the *Fraihat* framework

13 **III. Immediate Temporary Release Pending Full Hearing Is Warranted**

14 39. This Court has inherent authority and routinely exercises it to order temporary release
15 pending a full habeas hearing when the petitioner demonstrates (1) a high probability of
16 success on the merits and (2) irreparable injury absent immediate relief. See *Mazurek v.*
17 *Armstrong*, 520 U.S. 968, 972 (1997); *Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020).

18 40. Both requirements are satisfied here. Temporary release on Petitioner's own
19 recognizance or the lowest bond the Court deems appropriate is necessary to prevent
20 imminent, life-threatening harm to Petitioner and catastrophic harm to his minor U.S.-
21 citizen son.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 24 a. Assume jurisdiction over this matter;

- 1 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
2 Petitioner;
- 3 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release
4 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within
5 seven days;
- 6 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
7 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
8 law; and
- 9 e. Grant any other and further relief that this Court deems just and proper.

10 Respectfully submitted,

11
12 /s/ Morris Jacob Wilner

Dated: December 10, 2025

13 Morris J. Wilner

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15 WILNER & O'REILLY, APLC

16 Attorney for Petitioner, Hatim Abdel Mongy Abdalla Bakr

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