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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of

OWEN MUKIIBI KIWANA)
)
Petitioner)
)
vs.)
CHRISTOPHER G. LAROSE, in his)
official capacity as Warden of CCA)
Detention facility, DANIEL)
BRIGHTMAN, in his official capacity)
as Field Office Director of the)
Immigration & Customs Enforcement)
and Removal Operations San Diego)
Field Office; KRISTI NOEM, in her)
official capacity as Secretary of the)
Department of Homeland Security;)
U.S. DEPARTMENT OF)
HOMELAND SECURITY;)
)
Respondents,)
_____)

Case No. '25CV3678 JES SBC

Agency No. 

PETITION FOR HABEAS CORPUS

1 I. INTRODUCTION

2 1. Since October 30, 2025, Petitioner OWEN MUKIIBI KIWANA, (Hereinafter
3 “Petitioner” or “Mr. Mukiibi”) a citizen of Uganda, has been detained at the CCA
4 Detention facility in Otay Mesa, California under the custody of the U.S.
5 Department of Homeland Security’s Immigration and Customs Enforcement
6 (“ICE”), specifically its Enforcement and Removal Operations “ERO”) division.

7 For ease of reference, ICE will be used throughout this submission to refer to ICE
8 and its ERO division.

9 2. Petitioner’s physical detention initially occurred after a Notice to Appear was
10 issued on November 5, 2009. An immigration judge (“IJ”) granted Petitioner’s
11 application for Deferral of Removal under the Convention
12 Against Torture (“CAT”) on June 29, 2010. The government did not
13 appeal the decision and it is a final order.

14 3. Mr. Mukiibi is diagnosed with schizophrenia and takes regular
15 medication under a psychiatrist’s care to control his symptoms. His
16 psychiatrist is located in San Diego, California.

17 4. In approximately July of 2010, Mr. Mukiibi was released from ICE
18 custody and attended regular check-in appointments under an Order of
19 Supervision (“OSUP”) for approximately fifteen years.

20 5. Since 2009, Mr. Mukiibi was compliance with regular ICE check-ins
21 per the original OSUP from then to October 30, 2025.

22 6. Mr. Mukiibi missed an ICE appointment and when he discovered his
23 error, appeared to check in on October 30, 2025. On this day he was
24 taken into custody and was detained at the CCA Detention facility in
25 Otay Mesa, California.

26 7. Petitioner has been detained cumulatively for more than six months
27 and requests release from detention as there has been no change in his
28 circumstance or new factors warranting detention. *Infra* “Section VII.”

29 8. Respondents’ continued custody of Petitioner, and the conditions thereof,
30 violate the Fifth Amendment because the conditions constitute punishment,
31 or, alternatively, are excessive relative to their regulatory
32 purpose. *Infra* “Section VII.”

33 **II. CUSTODY**

34 9. Mr. Mukiibi is detained at the CCA Federal Detention Center in Otay
35 Mesa, California since October 30, 2025. He is under the direct control of
36 Respondents and in custody for habeas purposes. *Infra* “Section VII.”

37
38 **III. JURISDICTION AND VENUE**

39 10. This action arises under the Constitution of the United States and the
40 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

41 11. Jurisdiction is proper under 28 U.S.C § 2241 (habeas corpus); 28
42 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); U.S.
43 Const. art. I, § 9, cl. 2 (the Suspension Clause); and 5 U.S.C. § 702
44 (Administrative Procedure Act)

45 12. Venue lies in this District under 28 U.S.C. § 1391(e) and § 2241(d)
46 because Petitioner is detained within this District, and the immediate
47 custodian is located in this District. Additionally, all the events giving
48 rise to the claims in this action took place in the Southern District of
49 California. All material decisions regarding Mr. Mukiibi's detention have
50 been made at the ICE's San Diego Field Office, located within San
51 Diego, California.

52 **IV. EXHAUSTION**

53 13. Mr. Mukiibi has exhausted administrative remedies. He has
54 written and called ICE agents with no response. He cannot be
55 placed in removal proceedings because his grant of deferral under
56 CAT is final. Exhaustion for habeas claims is prudential, not
57 jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir.
58 2004). The prudential exhaustion requirement may be waived if
59 "administrative remedies are inadequate or not efficacious,

60 pursuit of administrative remedies would be a futile gesture, [or]
61 irreparable injury will result...” *Id.* at 1000.

62 14. Administrative remedies would be futile, inadequate, and not
63 efficacious for Mr. Mukiibi. Exhausting his constitutional claim
64 would be futile because the agency does not have the authority to rule
65 on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th
66 Cir. 1996) (per curiam) (“the inability of the INS to adjudicate the
67 constitutional claim completely undermines most, if not all, of the
68 purposes underlying exhaustion”).

69 15. Even if exhaustion were not futile, waiver is warranted because Mr.
70 Mukiibi’s claim presents purely legal issues, and no purpose is
71 served by requiring an administrative appeal. *See Hernandez v. Sessions*,
72 872 F.3d 976, 988-989 (9th Cir. 2017).

73 16. Exhaustion of remedies at the BIA is not required because
74 post-order custody matters fall squarely under ICE’s jurisdiction. Mr.
75 Mukiibi has suffered irreparable harm in the form of continued increased
76 custody conditions that antagonize his schizophrenia and cause great
77 emotional distress to his family in the United States.

78

V.PARTIES

79 17. Petitioner, **OWEN MUKIIBI KIWANA** is a citizen of Uganda who
80 immigrated to the United States as a legal permanent resident when he
81 was approximately seven – years of age. He has resided in the U.S. since
82 his entry.

83 18. Because of an assault crime he committed in December of 2005, he
84 was placed in the criminal justice system and ultimately, after treatment
85 in a mental hospital, found to be guilty of California Penal Code §245(a),
86 assault with a deadly weapon, a felony, and sentenced to two years of
87 custody.

88 19. Because of his conviction, he was taken into ICE custody and held
89 for approximately eight months. His legal permanent residency was
90 terminated, and he was granted Deferral of Removal under the CAT.
91 He was placed on supervision by the San Diego, California ICE office
92 and checked in yearly for approximately fifteen years. On October 30,
93 2025, he was again detained by respondents at his ICE appointment and
94 has been in custody for approximately two months.


95 20. Respondent, **CHRISTOPHER G. LAROSE**, is the Warden and has
96 control of the CCA Detention Center in Otay Mesa, California where
97 Petitioner is currently being detained.

98 21. Respondent, **DANIEL A. BRIGHTMAN**, is the Field Office
99 Director for the San Diego Field Office of the U.S. Immigration and
100 Customs Enforcement (“ICE”), Enforcement and Removal Operations
101 (“ERO”), a component of the Department of Homeland Security
102 (“DHS”). Respondent Brightman maintains his office in San Diego,
103 California, within this judicial district. The San Diego Field Office is
104 responsible for carrying out ICE’s immigration enforcement and removal
105 operations in San Diego, therefore Respondent Brightman is a legal
106 custodian of Petitioner and is sued in his official capacity.

107 22. Respondent, **KRISTI NOEM**, is the Secretary of the
108 Department of Homeland Security, an agency of the United States. She is
109 responsible for the administration and enforcement of the
110 immigration laws. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal
111 custodian of Petitioner and is sued in her official capacity.

112 23. Respondent Department of Homeland Security (DHS) is the federal
113 agency responsible for implementing and enforcing the INA,
114 including the detention and removal of noncitizens.

115 VI. FACTUAL ALLEGATIONS

116 24. Mr. Mukiibi is 31 years old and was born in Kampala, Uganda (date of birth
117 ). In 1985, at the age of seven, Mr. Mukiibi immigrated to the

118 United States as a Lawful Permanent Resident (LPR).

119 25. His mother, Lucie Mukiibi, and father, Steven Mukiibi, are U.S. citizens

120 (USCs). He is close to his mother and uncle, who is also a United States citizen.

121 Mr. Mukiibi grew up in San Diego, California and graduated from James Madison

122 High School in San Diego in 1997. After high school he worked at the Navy

123 Exchange in Lemoore, and later worked at Burger King, Little Cesar's, and K-

124 Mart. He has maintained his LPR status for 25 years and only left the United States

125 once, when he spent the summer of 1994 with his aunt, uncle, and cousins in

126 Toronto, Canada. He began studies at San Diego City College in the fall of 2009.

127 26. Mr. Mukiibi has not returned to Uganda since he left as a seven-year-old child.

128 He has few memories of Uganda and is unfamiliar with the country. He recalls that

129 Uganda was in a state of war when he was a child. He remembers seeing soldiers

130 in the streets, and recalls a time when he and others had to hide from soldiers

131 patrolling near his home.

132 27. When Mr. Mukiibi reached late adolescence, he was diagnosed with a serious

133 mental illness. 


134  He spent time at the California Youth Authority between 1995 and

135 1999. Mr. Mukiibi "carries a diagnosis of Schizophrenia, Undifferentiated Type,

136 and Polysubstance Dependence. Mr. Mukiibi "has displayed signs and symptoms

137 of auditory hallucinations (including hallucinations commanding him to harm

138 others), visual hallucinations, disorganized thought and speech, paranoid ideation,
139 grandiose and persecutory delusions, and impaired insight and judgment.”

140 According to his doctors and his criminal record, “Mr. Mukiibi has a history of
141 engaging in violent assaults on others while unmedicated. His records reveal his
142 criminal activity was influenced by his psychiatric symptoms. Mr. Mukiibi
143 currently takes  to treat his schizophrenia and is administered
144 this medication while detained. He is on social security disability benefits.

145 29. On or about December 24, 2005, Mr. Mukiibi was arrested after he allegedly
146 struck a man with a beer bottle. On December 29, 2005, a San Diego County
147 Superior Court judge ordered Mr. Mukiibi’s referral to a medical/psychiatric unit,
148 pursuant to California (CA) Penal Code (PC) §1328/1372. *See* Criminal
149 Documents, attached. On January 25, 2006, a Superior Court judge found Mr.
150 Mukiibi was “not mentally competent to stand trial” and ordered that Mr. Mukiibi
151 be “committed to Patton State Hospital, or such other institution as may be directed
152 by the Director, State Department of Health, for care and treatment” pursuant to
153 CA PC §§1370 and 1372(a)(2), for three years.

154 30. On June 12, 2006, a Superior Court judge acknowledged a finding that Mr.
155 Mukiibi was mentally competent under CA PC 1372, and ordered him to the San
156 Diego County Sheriff’s custody on June 16, 2006. *Id.* On June 16, 2006, the judge
157 entered an order finding Mr. Mukiibi mentally competent to stand trial, noting his

158 return to court after he had been “committed to a state hospital for care and
159 treatment of the mentally incompetent”. *Id.* On July 3, 2006, Mr. Mukiibi pleaded
160 guilty to felony violation of California Penal Code §§245(a)(1) and 1192.7(c)(23)
161 (assault with a deadly weapon).

162 31. On August 10, 2006, a Superior Court judge found “diagnostic and treatment
163 services” were required under CA PC 1203.03, and ordered Mr. Mukiibi to the
164 Southern Reception Guidance Center, in Chino, California “for a period of
165 observation and diagnosis not to exceed 90 days. The Superior Court received a
166 diagnostic report from the Chino center on November 13, 2006. On November 28,
167 2006, the Superior Court judge sentenced Mr. Mukiibi to two years. He was
168 credited 454 days for time served and PC §4019 credits. He was returned to the
169 Sheriff’s custody. On April 17, 2007, Mr. Mukiibi was released on parole from
170 Duel Vocational Institute to Atascadero State Hospital. He remained at Atascadero
171 and received treatment there until he was released to the San Diego County
172 Forensic Conditional Release Program (CONREP) on July 23, 2008. He continued
173 to receive outpatient treatment from CONREP until he was arrested by
174 immigration authorities, removed from CONREP, and placed in immigration
175 custody at the CCA detention center in approximately November of 2009.

176 32. On June 29, 2010, the IJ granted Deferral of Removal under Article III of the
177 CAT finding the lack of psychiatric care in Uganda will cause Mr. Mukiibi to

178 experience schizophrenic behaviors. His inability to work will land him in the
179 streets. The general cultural beliefs that schizophrenic behavior is a sign of the bad
180 spirits or the devil and will result in the Ugandan government targeting him based
181 on his mental disability.

182 33. After his release from custody in 2010, Petitioner has been living in the United
183 States complying with annual check-ins for fifteen years. He has lived a crime-
184 free life and regularly sees his psychiatrist and consumes his medication.

185 34. On October 30, 2025, Petitioner attended his ICE check-in appointment. He
186 mixed up the date and when he discovered his error he immediately reported. He
187 was taken into custody where he remains today.

188 35. It is believed Respondent's are trying to removal Petitioner to his
189 country of origin. This is evidenced in a newspaper article on a Ugandan
190 website stating "US govt labels Ugandans 'worst of the worst' in vicious
191 deportation blitz" The article states "The three Ugandans, all convicted
192 of violent crimes and major felonies in the United States, were identified
193 on a public database released Wednesday by the U.S. Department of
194 Homeland Security or DHS. The deportees are Mukiibi Kiwana,
195 convicted of aggravated assault in California. . ." See,
196 [https://www.ugstandard.com/us-govt-labels-ugandans-worst-of-the-](https://www.ugstandard.com/us-govt-labels-ugandans-worst-of-the-worst-in-vicious-deportation-blitz/)
197 [worst-in-vicious-deportation-blitz.](https://www.ugstandard.com/us-govt-labels-ugandans-worst-of-the-worst-in-vicious-deportation-blitz/)

198 36. Against privacy rights of immigrants seeking asylum in the U.S., the
199 article indicates DHS has informed the Ugandan government of their
200 intent to remove the Petitioner to his country of origin where he has
201 proven he faces torture. See, § C.F.R. §208.6.

202 37. Furthermore, it is believed respondents desire to remove Petitioner to
203 another country without due process of law and without notice to legal
204 counsel. Mr. Mukiibi has been informed by an officer at CCA he is going
205 to be removed to Uganda without any legal notification to Petitioner nor
206 counsel.

207 VII. LEGAL ARGUMENT

208 38. A federal district court can grant a writ of habeas corpus if the Petitioner "is in
209 custody in violation of the Constitution or laws or treaties of the United States." 28
210 U.S.C. § 2241. It is well established that the Fifth Amendment entitles non-citizens
211 to process of law in deportation proceedings. *Demore v. Kim*, 538 U.S. 510, 523
212 (2003). The Due Process Clause of the Fifth Amendment forbids the government
213 from depriving any "person" of liberty without due process of law. U.S. Const.
214 amend. V.

215 39. Individuals in custody of a facility run by respondents are clearly eligible to file
216 a petition for habeas corpus.

217 40. The Ninth Circuit has held that a final deportation order subjects
218 a noncitizen to a restraint on liberty sufficient to place the noncitizen “in
219 custody.” *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995).
220 Here, Petitioner was found by an IJ to face torture if removed to Uganda. The
221 decision granting Deferral of Action under CAT is final.

222 41. Individuals under an order of supervision are considered in custody for
223 habeas purposes. “As the Supreme Court recently noted, physical detention
224 (or here, physical detention be federal, rather than state, authority) is no
225 longer required for a petitioner to meet the custody requirement and obtain
226 habeas relief.” *Rosales v. Bureau of Immig. & Custodms Enf’t*, 426 F. 3d 733,
227 735 (5th Cir. 2005) citing *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S. Ct. 2711,
228 2719, 159 L.Ed.2d 513 (2004). (“[O]ur understanding of custody has
229 broadened to include restraints short of physical confinement[.]; See also,
230 *Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.Ed.2d 285
231 (1963)(Recognizing that restraining on liberty other than physical
232 confinement may constitute custody for habeas purposes).

233 42. Petitioner has been under an OSUP since July of 2010 until October 30,
234 2025, when he was placed in custody. Therefore, Petitioner’s custody is
235 governed by 8 U.S.C. § 1231(a) because he has a final order of removal to
236 Uganda but cannot be removed there due to his grant of deferral of removal

237 under the CAT. Post-order custody is limited by §1231(a)(6) and
238 implementing regulations, 8 C.F.R. §§ 241.4–241.5. Accordingly, this Court
239 has jurisdiction over this habeas action.

240 43. Respondents have subjected Petitioner to prolonged custody for more than six
241 months. See, *Zadvydas, infra*. Mr. Mukiibi was detained from November of 2009
242 to approximately July of 2010. He then was placed under the custody of OSUP,
243 ordered to check in every year for fifteen years. He now has been detained for two
244 months after his check in on October 30, 2025.

245 44. Because removal to Uganda is barred and removal to another
246 country is unforeseeable, any continued detention or increased
247 restrictions violates the Due Process Clause (*Zadvydas*, 533 U.S. at
248 699; *Diouf II*, 634 F.3d at 1086–87).

249 45. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme
250 Court found the due process rights of noncitizens held during and after a
251 removal period. *Zadvydas* concerned a resident noncitizen who could not
252 be deported because none of the relevant countries would accept him. *Id.*
253 at 684. Because indefinite detention without adequate safeguards could
254 violate noncitizens' due process rights, the Supreme Court established a
255 presumption of six months as a reasonable period of detention while an
256 order of removal is carried out. *Id.* at 701. After that period elapses, a

257 noncitizen who “provides good reason to believe that there is no
258 significant likelihood of removal in the reasonably foreseeable future”
259 must be released, unless the government can “respond with evidence
260 sufficient to rebut that showing.” *Id.* Respondents have not made any such
261 showing or provided any rebuttal evidence as to why Petitioner must
262 remain in custody.

263 46. A civil detainee's confinement is unconstitutional under the Fifth Amendment
264 if his conditions of confinement "amount to punishment." *Bell v. Wolfish*, 441 U.S.
265 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell*,
266 441 U.S. at 535); *accord Bent v. Barr*, 445 F. Supp. 3d 408, 413-14 (N.D. Cal.
267 2020). "[P]unitive conditions may be shown (1) where the challenged restrictions
268 are expressly intended to punish, or (2) where the challenged restrictions serve an
269 alternative, non-punitive purpose but are nonetheless excessive in relation to the
270 alternative purpose, . . . or are employed to achieve objectives that could be
271 accomplished in so many alternative and less harsh methods." *Jones*, 393 F.3d at
272 932, *also Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.Ed. 2d
273 285 (1963) (recognizing that restraints on liberty other than physical confinement
274 may constitute custody for habeas purposes.).

275 47. Petitioner was released after a grant of Deferral of Removal under the
276 CAT in July of 2010. He has committed no criminal offenses since his

277 conviction in 2006. There is no reason to subject him to prolonged
278 detention a second time, facing removal to an unknown country other
279 than Uganda. Even worse, he is facing removal to Uganda, a country
280 where he has demonstrated he will face torture upon return. See, *Article*,
281 *supra*.

282 48. Accordingly, the increase in custody conditions violates the Fifth
283 Amendment because such post final punishment does not serve a purpose
284 other than to punish Mr. Mukiibi under the Fifth Amendment's Due
285 Process clause as well as 8 U.S.C. § 1231(a)(6) post-final order custody
286 limits, especially if it for the purpose of removing him to Uganda or
287 another country without any safeguards in place. Arbitrary or punitive re-
288 detention is unlawful under the Due Process Clause and controlling
289 precedent.

290 **IIX. PRAYER FOR RELIEF**

291 WHEREFORE, Petitioner respectfully prays this Court grant the following
292 relief:

- 293 1) Assume jurisdiction over this habeas action;
- 294 2) Issue a Writ of Habeas Corpus ordering Petitioner's
295 immediate release from custody without any Order of Supervision,

296 and enjoin re-detention absent a constitutionally adequate pre-
297 deprivation hearing;

298 3) Alternatively, issue an Order to Show Cause directing
299 Respondents to justify any continued placement under an Order of
300 Supervision and any threatened re-detention;

301 4) Declare that any continued or threatened deprivation
302 of Petitioner's liberty – including re-detention after his grant of
303 deferral of removal under the Convention Against Torture – violates
304 8 U.S.C. § 1231, its implementing regulations and the Due Process

305 5) Enjoin Respondents from taking any action that would
306 subject Petitioner to additional harm during the pendency of this
307 litigation or related immigration proceedings;

308 6) Award reasonable costs and attorneys' fees under the Equal
309 Access to Justice Act, 28 U.S.C. § 2412, or on any other basis justified under
310 law. and

311 7) Grant such further relief as the Court deems just and proper.

312 Date: December 16, 2025

313 Respectfully submitted,

314 /s/ Karla L. KRAUS

315 *Attorney for Petitioner*

1 **VERIFICATION BY SOMEONE ACTING PETITIONER’S BEHALF**

2 **PURSUANT TO 28 U.S.C. §2242**

3
4 I am submitting this verification on behalf of the Petitioner because I am one of the
5 Petitioner’s attorneys. I have discussed with the Petitioner the events described in
6 this Petition. Based on those discussions, I hereby verify that the statements made
7 in the attached Petition for Writ of Habeas Corpus are true and correct to the best
8 of my knowledge.

9
10
11 Date: December 18, 2025

Respectfully submitted,

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13
14
15 /s/ Karla L. Kraus

16 _____

17 Karla L. Kraus

18 Attorney at Law

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20 *Attorney for the Petitioner*

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22