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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 SELIM KIRBOGA,  
10  
11 Plaintiff,

12 vs.

13 CHRISTOPHER LAROSE, warden of  
14 Otay Mesa Detention Center  
15 DANIEL A. BRIGHTMAN, San Diego  
16 Field Office Director, Immigration and  
17 Customs Enforcement and Removal  
18 Operations (“ICE/ERO”);  
19 TODD LYONS, Acting Director of  
20 Immigration Customs Enforcement  
21 (“ICE”);  
22 KRISTI NOEM, Secretary of the  
23 Department of Homeland Security  
24 (“DHS”);  
25 PAMELA BONDI, Attorney General of  
26 the United States,  
27 U.S. DEPARTMENT OF HOMELAND  
28 SECURITY;  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT;


Respondents.

Case No.: 3:25-cv-03706-GPC-DDL

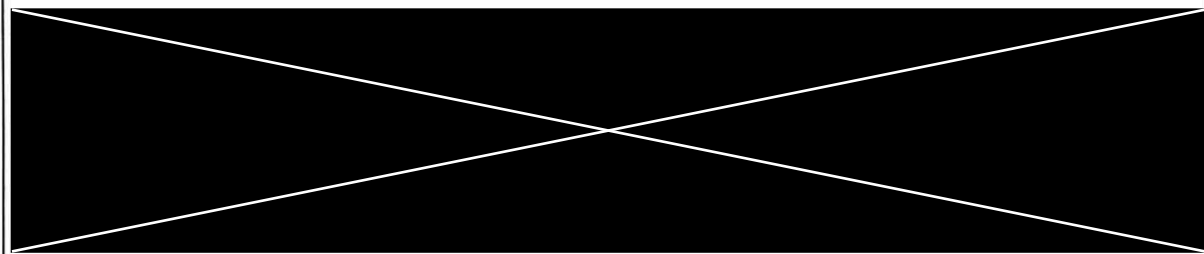
TRAVERSE TO PETITION FOR  
WRIT OF HABEAS CORPUS

1 **STATEMENT OF FACTS**

2 Turkey is an Islamic Republic that enforces a racist agenda upon  
3 many of its religious and ethnic minorities. This includes a preference for Sunni  
4 Islam and the Turkish language. Kurds are not allowed to go to Kurdish schools,  
5 play Kurdish music or even publicly speak the Kurdish language. There is a huge  
6 social stigma associated with anyone that does not embrace the Sunni Turkish  
7 majority.  
8 majority.

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11 The petitioner was born in Turkey to a Kurdish family and  
12 community. He has experienced persecution since he was a small boy 

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28 He finally realized there was  
no place safe for him in Turkey and he made his way to the United States.

After he crossed into the United States, Mr. Kirboga waited for  
Border Patrol and was then taken into custody on or about June 2, 2024. He was  
briefly detained. It was determined that he was not a danger and not a flight risk so

1 was paroled on his own recognizance on June 2, 2024. See Exhibit A ECF 1-2<sup>1</sup> It  
2 was also determined that he should be placed in 240 removal proceedings and not  
3 235 expedited removal. A Notice to Appear was issued and 240 removal  
4 proceedings were initiated.  
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7 On May 27, 2025, petitioner appeared for a regularly scheduled  
8 hearing with the immigration court. At that hearing the government moved to  
9 dismiss his proceedings. This motion was not granted. The government then  
10 purported detain Mr. Kirboga pursuant to Expedited Removal proceedings. As set  
11 out more fully in the Petition, this was impossible due to the regular removal  
12 proceedings not being dismissed. It was impossible for Mr. Kirboga to be in both  
13 regular 240 removal proceedings and 235 expedited removal at the same time.  
14 The government's response does not refute the statement of facts and any  
15 refutation is therefore waived.  
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19 **The Petitioner was illegally detained and must be released.**

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21 The government's response alleges that, pursuant to *Maldonado Bautista v.*  
22 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.R.D. ----, 2025 WL 3289861  
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27 <sup>1</sup> "The subject does not appear to be a threat to national security, border security, or public  
28 safety. The subject was released from the custody of the Department of Homeland Security  
(DHS) by "Order of Recognizance" (O.R. ) pending their immigration hearing. This release was  
authorized through proper channels in accordance with San Diego Sector protocols."

1 (C.D. Cal. Nov. 20, 2025) “Petitioner is detained under 8 U.S.C. § 1226(a) and is  
2 entitled to an order from this Court directing a bond hearing be held pursuant to 8  
3 U.S.C. § 1226(a).” ECF 5 p.2. However, Mr. Kirboga’s detention was and remains  
4 unlawful *ab initio*, not pursuant to any statute. Ordering a bond hearing is not the  
5 appropriate remedy for an illegal detention. Rather, his immediate release is the  
6 appropriate relief.  
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10 The process for revoking Mr. Kirboga’s parole is that it must be  
11 terminated upon written notice after an individualized determination that the  
12 humanitarian purposes no longer apply. 8 C.F.R. § 212.5(e)(2)(i). However, the  
13 government’s arrest and detention of Mr. Kirboga was not authorized under color  
14 of any law. His arrest and detention were a violation of his right to due process  
15 guaranteed by the Fifth Amendment to the Constitution and was a violation of the  
16 Administrative Procedures Act.  
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19 Claim one of the Petition sets out in detail that Mr. Kirboga’s detention  
20 under Expedited Removal Procedures was a violation of Due Process because the  
21 government could not have acted under 235 since his 240 proceedings had not  
22 been terminated. Mr. Kirboga does not dispute that the government has to right to  
23 terminate or initiate proceedings. Mr. Kirboga asserts that the government did not  
24 use a lawful process to do this. As such, this issue is not barred.  
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1 Claim two of the Petition set out in detail how his detention was a violation  
2 of the APA because the government did not follow its own rules regarding  
3 revocation of parole. The government's response is silent on this issue. As a result  
4 the government has waived any defense to this claim. The appropriate remedy for  
5 this violation of the APA is not a bond hearing. The appropriate remedy is Mr.  
6 Kirboga's immediate release from custody.  
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9 Claim four of the Petition set out in detail how his detention was a violation  
10 of due process because the government did not follow its own procedural rules  
11 regarding revocation of parole. In addition, the government did not afford the  
12 petitioner any pre-detention notice or hearing regarding the termination of his  
13 liberty interest he had accrued during the time he was on parole. The government's  
14 response is silent on these issues. As a result the government has waived any  
15 defense to this claim. The appropriate remedy for this violation of due process is  
16 not a bond hearing. The appropriate remedy is Mr. Kirboga's immediate release  
17 from custody.  
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22 If Mr. Kirboga's detention was unlawful, *ab initio*, he should not be required  
23 to post a bond and, in effect, pay a ransom to be released from this illegal  
24 detention. Nothing in the government's response indicates that Mr. Kirboga has  
25 somehow become a flight risk or a danger to the community.  
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1 In addition, the current practice at Otay Mesa Detention Center is, upon  
2 release, to immediately enroll detainees in an Alternative to Detention program and  
3 put an ankle monitor on them before their actual release. This is also done without  
4 any individualized consideration of whether the detainee is a potential flight risk or  
5 a danger to the community. Mr. Kirboga had been at liberty for quite a while prior  
6 to his detention and should not be enrolled in any ATD program and especially  
7 should not be forced to wear an ankle monitor.  
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## 11 CONCLUSION

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15 Petitioner respectfully requests this Court to grant the following:

16 (1) Declare that Petitioner's detention without an individualized  
17 determination violates the Due Process Clause of the Fifth Amendment and the  
18 Administrative Procedures Act;

19 (2) Issue a Writ of Habeas Corpus ordering Respondents to release  
20 Petitioner from custody;

21 (3) Issue and Order prohibiting the Respondents from enrolling the  
22 Petitioner in any Alternative to Detention program, specifically barring them from  
23 requiring an ankle monitor;

24 (4) In the alternative, order a bond hearing for the Petitioner.  
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1 (5) Grant any further relief this Court deems just and proper.

2 Dated: December 31, 2025.

3 /s/ Brian J. McGoldrick  
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9 *Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I, Brian J. McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On December 31, 2025, I served a copy of this

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by the method and to the parties listed below:

On December 31, 2025, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

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*Pro Bono* Counsel for Respondent