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

9 E.S.
10 Petitioner/Plaintiff,
11 vs.
12 CHRISTOPHER J. LAROSE, Warden, Otay
13 Mesa Detention Center; DANIEL
14 BRIGHTMAN, Field Office Director, San
15 Diego Office of Detention and Removal;
16 TODD M. LYONS, Acting Director, U.S.
17 Immigration and Customs Enforcement; and
18 PAMELA BONDI, Attorney General, U.S.
19 Department of Justice; and KRISTI NOEM,
20 Secretary, U.S. Department of Homeland
21 Security

22 Respondents/Defendants.

Case No.:
'25CV3783 AGS JLB

**PETITION FOR A WRIT
OF HABEAS CORPUS
AND ORDER TO SHOW
CAUSE WITHIN THREE
DAYS; COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

TABLE OF AUTHORITIES

CASES

AbdulKadir v. Larose, No. 25-cv-1-45, 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025) 11, 12, 13, 14
Addington v. Texas, 441 U.S. 418 (1979)9
Amado v. U.S. DOJ, 25-cv-2687, 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025) 11, 12
Banda v. McAleenan, 385 F. Supp. 3d 1099, 1117-18 (W.D. Wash. 2019) 11, 12, 13, 14
Belqasim v. Bostock, No. 2:25-cv-01282, 2025 WL 3466971 (W.D. Wash. Oct. 28, 2025)13
Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973).....4
Cabral v. Decker, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018).....13
Centeno-Ortiz v. Culley, 11-cv-1970, 2012 WL 170123 (S.D. Cal. Jan. 19, 2012)11
Chub v. Larose, 25-cv-3513, 2025 WL 365 4008 (S.D. Cal. Dec. 17, 2025)4
Clark v. Martinez, 543 U.S. 371 (2005)10
Constantinovici v. Bondi, 25-cv-2405, 2025 WL 2898985 (S.D. Cal, Oct. 10, 2025).....4
Demore v. Kim, 538 U.S. 510, 517 (2003)..... 5, 10
Diouf v. Napalitano, 634 F.3d 1081 (9th Cir. 2011)12
Doe v. Garland, 109 F.4th 1188 (9th Cir. 2024).....6
Gao v. Larose, 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27, 2025) 4, 11
Hamdi v. Rumsfeld, 542 U.S. 507 (2004)4
Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017) 7, 17
I.N.S. v. St. Cyr, 533 U.S. 289 (2001).5
Ibarra-Perez v. U.S., 154 F.4th 989 (9th Cir. 2025).....4
Jackson v. Indiana, 406 U.S. 715, 738 (1972).....17
Jamal A. v. Whitaker, 358 F. Supp. 3d 853 (D. Minn. 2019) 12, 13
Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020) 11, 12, 14
Laing v. Ashcroft, 370 F.3d 994 (9th Cir. 2004)7
Martinez v. Clark, 124 F.4th 775 (9th Cir. 2024)15
Masood v. Barr, No. 19-CV-07623-JD, 2020 WL 95633 (N.D. Cal. Jan. 8, 2020)13
Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025).....8
Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)8
McCarthy v. Madigan, 503 U.S. 140 (1992).....7
Nadarajah v. Gonzales, 443 F.3d 1069 (9th 2006)10
Preiser v. Rodriguez, 411 U.S. 475 (1973).4
Reno v. Am. Arab Anti-Discrimination Comm., 525 U.S. 471 (1999)3
Reno v. Flores, 507 U.S. 292 (1993)10
Rodriguez v. Marin, 909 F.3d 252 (9th Cir. 2018)10
Sadeqi v. Larose, 25-cv-2587, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025)..... 11, 12
Sajous v. Decker, No. 18-CV-2447, 2018 WL 2357266 (S.D.N.Y. May 23, 2018)15
Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011)15
Vasquez-Rodriguez v. Garland, 7 F.4th 888 (9th Cir. 2021)8
Wallace v. Green, 16-CV-5324, 2016 WL 11979045 (D. N.J. Oct. 24, 2016)13
Zadvydas v. Davis, 533 U.S. 678 (2001) passim

STATUTES

28 USC §13313
 28 USC §13463
 28 USC §13914
 28 USC §16513
 28 USC §2201-023
 28 USC §2241 passim
 28 USC §22432

1 28 USC §241220
 8 USC §1103(a)6
 2 8 USC §1225 passim
 8 USC §1226.....11
 3 8 USC §1252(g)3

4 **CONSTITUTIONAL PROVISIONS**

5 U.S. Const., Art I, § 9, clause. 2.....3,4
 6 U.S. Const., Amend. V..... passim

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1 Petitioner E.S. (“Petitioner”) petitions this Court for a writ of habeas corpus
2 pursuant to 28 USC §2241 to remedy his unlawful detention and states as follows:
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4 **INTRODUCTION**

- 5 1. Petitioner is a 24-year old Russian citizen and Ukrainian native who
6 presented himself at the U.S./Mexico border in accordance with a CBP One
7 appointment¹ on September 27, 2024. He was charged as an arriving alien,
8 taken into DHS custody, and detained at Otay Mesa Detention Center
9 (“OMDC”) where he remains today. Ex. 1.
10
11 2. He later applied for Asylum, Withholding of Removal, and protection under
12 the Convention Against Torture based on his fear of persecution and torture
13 due to his sexual orientation, political opinion, and nationality/ethnicity. Ex.
14
15 2. The Immigration Judge (“IJ”) denied all relief on May 30, 2025, and
16 Petitioner appealed to the Board of Immigration Appeals (“BIA”) on June 9,
17 2025. Ex. 3. That appeal remains pending.
18
19 3. Petitioner requested a bond hearing on October 10, 2025, but the IJ denied
20 his request on October 17, 2025, stating that as “an arriving noncitizen,” he
21 was “subject to mandatory jurisdiction [sic] pursuant to Section
22 235(b)(2)(A) [8 USC §1225].” Ex. 4.
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26 ¹ CBP One is an app through which persons in Mexico can make an appointment to present themselves at the U.S.
27 border in an orderly fashion to state their intention to apply for asylum in the U.S.

1 4. On June 20, 2025, Petitioner submitted a request for parole to Immigration
2 & Custody Enforcement (“ICE”) by both email and postal mail. We
3 received no acknowledgement or response of any kind. Ex. 5.
4

5 5. Petitioner has now been incarcerated for 15 months without an
6 individualized bond hearing. He is entitled to release as he has endured
7 prolonged detention which continues with no end in sight in violation of his
8 due process rights under Amend. V of the U.S. Constitution. *See Zadvydas v.*
9 *Davis*, 533 U.S. 678 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1078-
10 80 (9th Cir. 2006) (applying *Zadvydas* and rejecting government’s arguments
11 that §1225(b) permits indefinite detention).
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14 6. Petitioner asks that this Court issue an order to show cause (“OSC”) to the
15 Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 USC
16 §2243. If an OSC is issued, the Court must require Respondents to file a
17 return “within three days unless for good cause additional time, not
18 exceeding twenty days, is allowed.” *Id.*
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21 7. Petitioner also requests a writ of habeas corpus ordering his immediate
22 release from detention and prohibiting re-arrest without a pre-detention
23 hearing to contest such arrest before a neutral adjudicator at which the
24 government must show by clear and convincing evidence that he is a flight
25 risk or a public danger.
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1 8. As an alternative to immediate release, Petitioner requests a bond hearing
2 before this Court wherein the government must bear the burden of
3 demonstrating by clear and convincing evidence that he is a flight risk or
4 danger to the public. If the Court declines this request, we ask for an order
5 directing that a bond hearing be held before a *neutral* arbiter² within 7 days.
6
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8 **JURISDICTION AND VENUE**

9 9. Jurisdiction is proper and relief available pursuant to 28 USC §2241 (habeas
10 corpus jurisdiction), 28 USC §1331 (federal question), 28 USC §1346 (U.S.
11 as defendant), and Art. I, §9, clause 2 of the United States Constitution (the
12 Suspension Clause.
13

14 10. This Court may grant relief pursuant to 28 USC §2241, 28 USC §1651 (All
15 Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).
16

17 11. The statute 8 USC §1252(g) does not preclude jurisdiction as Petitioner is
18 not challenging a “decision or action” to “commence proceedings,
19 adjudicate cases, or execute removal orders.” *Reno v. Am. Arab Anti-*
20 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) [quoting 8 USC
21 §1252(g)]. *See Ibarra-Perez v. U.S.*, 154 F.4th 989 (9th Cir. 2025);
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26 ² Petitioner is rightly concerned that immigration judges cannot be neutral in this current Administration, as they
27 are employees of the executive branch and risk termination if they rule against DHS or otherwise demonstrate that
they are not fully onboard with the President’s immigration agenda.

1 *Constantinovici v. Bondi*, 25-cv-2405, 2025 WL 2898985 (S.D. Cal, Oct. 10,
2 2025); *Chub v. Larose*, 25-cv-3513, 2025 WL 365 4008 (S.D. Cal. Dec. 17,
3 2025); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27,
4 2025).

5
6 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
7 484, 493-500 (1973), venue lies in the United States District Court for the
8 Southern District of California, the district in which Petitioner is detained.
9

10 13. Venue is also proper in this Court pursuant to 28 USC §1391(e) because
11 Petitioner is detained in this District, Respondents are employees, officers,
12 and agencies of the United States, and a substantial part of the events or
13 omissions giving rise to the claims occurred in this District.
14

15
16 **CUSTODY AND REQUIREMENTS OF 28 USC §2241**

17 14. The Constitution guarantees that the writ of habeas corpus is “available to
18 every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542
19 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, clause. 2). “The essence
20 of habeas corpus is an attack by a person in custody upon the legality of that
21 custody, and . . . the traditional function of the writ is to secure release from
22 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).
23

24 15. A writ of habeas corpus may be granted to a petitioner who demonstrates
25 that he is in custody in violation of the Constitution or federal law. 28 USC
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1 §2241(c)(3). Historically, “the writ of habeas corpus has served as a means
2 of reviewing the legality of Executive detention, and it is in that context that
3 its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301
4 (2001).
5

6 16. A district court's habeas jurisdiction includes challenges to immigration-
7 related detention. *Zadvydas v. Davis*, 533 U.S. at 687; *see also Demore v.*
8 *Kim*, 538 U.S. 510, 517 (2003).
9

10 17. Petitioner is in custody for the purpose of 28 USC §2241 because he was
11 arrested by Respondents and remains in their legal and physical custody at
12 Otay Mesa Detention Center in San Diego, California. He is under
13 Respondents' direct control.
14
15

16 **PARTIES**

17 18. Petitioner is a 24-year-old citizen of Russia and native of Ukraine detained
18 by Respondents since September 27, 2024. He is currently imprisoned at
19 OMDC under the direct control of Respondents.
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21 19. Respondent Christopher J. LaRose (“LaRose”), named in his official
22 capacity, is the Warden of OMDC. He oversees the day-to-day operations
23 of, and the confinement of non-citizens detained at, the facility. He is the
24 immediate physical custodian of Petitioner. He acts at the direction of
25 Respondents Brightman, Lyons, and Noem. He is a proper Respondent in
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1 this habeas petition under current Ninth Circuit law. *Doe v. Garland*, 109
2 F.4th 1188, 1197 (9th Cir. 2024).

3
4 20. Respondent Daniel Brightman (“Brightman”) is the Field Office Director of
5 ICE Enforcement and Removal Operations (“ERO”), a federal law
6 enforcement agency within DHS in San Diego, California. ERO is a division
7 of ICE that manages and oversees the immigration detention system. He is
8 the legal custodian of Petitioner and is named in his official capacity.

9
10 21. Respondent Todd M. Lyons (“Lyons”) is the Acting Director for ICE and is
11 named in his official capacity. He is responsible for ICE’s policies,
12 practices, and procedures, including those relating to the detention of non-
13 citizens charged with being removable from the U.S. As Acting Director of
14 ICE, Lyons is the legal custodian of Petitioner.

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17 22. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
18 authority over the actions of all other DHS Respondents in this case, as well
19 as all operations and federal agencies of DHS, including ICE. In her capacity
20 as Secretary of DHS, Respondent Noem is charged with faithfully
21 administering the immigration and naturalization laws of the United States. 8
22 USC §1103(a). Noem is the legal custodian of Petitioner and is named in her
23 official capacity.
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1 23. Respondent Pamela Bondi (“Bondi”) is the Attorney General of the United
2 States and the most senior official in the U.S. Department of Justice (“DOJ”)
3 which encompasses the BIA and the immigration courts as sub-units of the
4 Executive Office of Immigration Review (“EOIR”). In this capacity, she has
5 the authority to interpret immigration laws and adjudicate removal and
6 custody cases. As the head of EOIR, she supervises Immigration Judges,
7 including those who preside at OMD, and can instruct an IJ to hold a bond
8 hearing. Respondent Bondi is the legal custodian of Petitioner and is named
9 in her official capacity.
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13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 24. There is no statutory requirement to exhaust administrative remedies when
15 noncitizens challenge the lawfulness of their detention. 28 USC §2241.
16 Moreover, "The exhaustion requirement is prudential, rather than
17 jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988
18 (9th Cir. 2017).
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21 25. Prudential exhaustion cannot be required when it would be futile and result
22 in irreparable harm. See *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)
23 (superseded by statute on unrelated grounds). Here, “pursuit of
24 administrative remedies would be a futile gesture,” and “irreparable injury
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1 will result." *Hernandez*, at 988 [quoting *Laing v. Ashcroft*, 370 F.3d 994,
2 1000 (9th Cir. 2004)].

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4 26. Nevertheless, Petitioner, through immigration counsel, filed a motion for
5 custody redetermination with the immigration court on October 10, 2025
6 which was denied by the court on October 17 in a brief order stating that the
7 immigration court lacked of jurisdiction over Petitioner's bond request under
8 INA §235(b)(2)(A) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
9 2025), as he is an arriving alien.

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12 27. Further, on June 20, 2025, Petitioner, through counsel, submitted a parole
13 request to DHS which was not acknowledged or adjudicated.

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15 28. Although Petitioner could have appealed the IJ's order to the Board of
16 Immigration Appeals ("BIA"), the gesture would have been a futile owing to
17 the BIA's 2025 precedential decision in *Matter of Q. Li*, 29 I&N Dec. 66
18 (BIA 2025) which held that arriving aliens (such as Petitioner) are detained
19 pursuant to INA §235(b) [8 USC §1225(b)] and are thus ineligible for bond.
20

21 29. Petitioner cannot be expected to endure the very harm he seeks to avoid by
22 appealing the IJ's decision to the BIA and waiting many more months for a
23 decision that is a foregone conclusion. *See Vasquez-Rodriguez v. Garland*, 7
24 F.4th 888, 896 (9th Cir. 2021) ("[W]here the agency's position on the
25 question at issue appears already set, and it is very likely what the result of
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1 recourse to administrative remedies would be, such recourse would be futile
2 and is not required.”)

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4 30. Every day that Petitioner remains in detention violates his due process right
5 to liberty and constitutes irreparable harm. See *Addington v. Texas*, 441 U.S.
6 418, 425 (1979) (“This Court repeatedly has recognized that civil
7
8 commitment for any purpose constitutes a significant deprivation of liberty
9 that requires due process protection.”). To date, Petitioner has already been
10 detained for over 15 months.

11
12 31. Absent a federal court order, the immigration court will not conduct a bond
13 hearing for Petitioner. There is no adequate procedure or administrative
14 remedy to address his detention excepting a writ of habeas corpus which is
15 now the sole avenue to vindicate his constitutional rights and restore his
16 liberty. Without this Court’s intervention, he faces indefinite detention
17 without the opportunity for release on bond.
18
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20 **LEGAL FRAMEWORK**

21 32. Petitioner seeks release as his prolonged, indefinite detention under 8 USC
22 §1225 violates his due process rights guaranteed by Amendment V of the
23 U.S. Constitution. See *Zadvydas v. Davis*, (“[a] statute permitting indefinite
24 detention of [a noncitizen] would raise a serious constitutional problem
25 [under] . . . [t]he Fifth Amendment’s Due Process Clause.”)
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1 **A. A bond hearing is required when detention is unreasonably**
2 **prolonged in violation of Amendment V of the U.S. Constitution**

3 33. Petitioner’s continued detention violates the due process rights guaranteed
4 by the Fifth Amendment to the U.S. Constitution which provides that no
5 person shall be “deprived of life, liberty, or property, without due process of
6 law.” “Freedom from imprisonment—from government custody, detention,
7 or other forms of physical restraint—lies at the heart of the liberty that [the
8 Due Process] Clause protects.” *Zadvydas*, at 678.

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11 34. These rights are bestowed not only on citizens, but “It is well established
12 that the Fifth Amendment entitles aliens to due process of law in deportation
13 proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) [citing *Reno v.*
14 *Flores*, 507 U.S. 292, 306 (1993), *Clark v. Martinez*, 543 U.S. 371, 378
15 (2005) (applying the holding in *Zadvydas* to noncitizens who have not been
16 admitted to the US).

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19 35. The Ninth Circuit has stated, “We have grave doubts that any statute that
20 allows for arbitrary prolonged detention without any process is
21 constitutional. . . . Arbitrary civil detention is not a feature of our American
22 government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018);
23 *Zadvydas*, at 693.

1 36. The Ninth Circuit, as well as this Court, has specifically held that
2 noncitizens, like the Petitioner, detained pursuant to 8 USC §1225(b) are
3 entitled to bond hearings when the length of detention becomes
4 unreasonable or prolonged. *See Nadarajah v. Gonzales*, 443 F.3d 1069,
5 1078-80 (9th 2006) (applying *Zadvydas* and rejecting government’s
6 arguments that §1225(b) permits indefinite detention); *Kydyrali v. Wolf*, 499
7 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (“[T]he Court joins the majority of
8 courts across the country in concluding that an unreasonably prolonged
9 detention under 8 USC §1225(b) without an individualized bond hearing
10 violates due process.”); *Centeno-Ortiz v. Culley*, 11-cv-1970, 2012 WL
11 170123 (S.D. Cal. Jan. 19, 2012) (“[T]he Court concludes that the same
12 constitutional concerns that underpin prolonged detention under Sections
13 1226 (a) and 1231(a)(6) are also present in a prolonged detention under
14 Section 1225(b)(2)(A).”); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633
15 (S.D. Cal. Sept. 26, 2025); *Amado v. U.S. DOJ*, 25-cv-2687, 2025 WL
16 3079052 (S.D. Cal. Nov. 4, 2025); *AbdulKadir v. Larose*, No. 25-cv-1-45,
17 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025); *Sadeqi v. Larose*, 25-cv-2587,
18 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025).

B. Factors to consider when evaluating prolonged detention

37. There is no bright line rule for when detention is prolonged. Rather, the constitutional question of whether the length of detention is unreasonable is fact-dependent and requires a circumstance specific multi-factor analysis.

38. In *Banda v. McAleenan*, the court articulated six factors that determine how long is too long. 385 F. Supp. 3d 1099, 1117-18 (W.D. Wash. 2019). The *Banda* factors have been employed numerous times by this Court. See e.g., *AbdulKadir v. Larose*, No. 25-cv-1-45, (S.D. Cal. Oct. 15, 2025)]; *Kydyrali*, at 772 (S.D. Cal. 2020); *Sadeqi v. Larose*, 25-cv-2587, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025).

39. The six factors are: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Banda*, at 1118 (quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–59 (D. Minn. 2019)).

40. Of these six factors, the total length of detention to date is considered the most important. *Id.* To date, Petitioner has been in detention for fifteen months. The Ninth Circuit in *Diouf v. Napalitano*, 634 F.3d 1081 (9th Cir.

1 2011) held that “When detention crosses the six-month threshold and release
2 or removal is not imminent, the private interests at stake are profound.”

3
4 41. This Court has found that detention for periods between 10 and 13 months
5 are unreasonable. *See Abdulkadir* (13 months); *Sadeqi v. Larose* (11
6 months); *Gao v. Larose* (10 months); *Amado v. U.S. Dept. of Justice* (13
7 months). Other jurisdictions have recognized that even shorter periods can
8 be unreasonably prolonged. *See e.g., Masood v. Barr*, No. 19-CV-07623-JD,
9 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral*
10 *v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months);
11 *Wallace v. Green*, 16-CV-5324, 2016 WL 11979045 (D. N.J. Oct. 24, 2016)
12 (seven months). Having been detained now for 15 months, Petitioner has far
13 surpassed these thresholds.

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17 42. The second factor requires consideration of the “anticipated duration of all
18 removal proceedings – including administrative and judicial appeals.”
19 *Banda*, at 1119 (quoting *Jamal A.*, 358 F. Supp. 3d at 859). In addition to
20 the 15 months that Petitioner has already been incarcerated, his future
21 detention will last for many more months, and most likely years, during the
22 final adjudication of his case at the BIA, as well as a potential Petition for
23 Review to the Ninth Circuit, and any resulting remand. Ex. 6 (showing
24 current BIA backlog of over 200,000 appeals). *See Id.* (finding an appeal to
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1 the BIA and subsequent judicial review “may take up to two years or
2 longer”); *AbdulKadir v. Larose* (future detention can last several more
3 months or even years during the adjudication of Respondents’ appeal to the
4 BIA); *Belqasim v. Bostock*, No. 2:25-cv-01282, 2025 WL 3466971 (W.D.
5 Wash. Oct. 28, 2025) (“many more months and potentially years in
6 detention” likely during pendency of removal proceedings). As this
7 Administration has reduced the number of BIA judges from 28 to 15, we can
8 anticipate significant increases in what are already protracted adjudication
9 times. Ex. 7.

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13 43. The third *Banda* factor also weighs in favor of Petitioner as “[t]he more that
14 the conditions under which the [noncitizen] is being held resemble penal
15 confinement, the stronger his argument that he is entitled to a bond hearing.”
16 In this case, Petitioner’s detention is “indistinguishable from penal
17 confinement,” just as it was in *Kydyrali*. In both cases, the petitioners were
18 housed by Core Civic, Inc. at OMDC. As recently recognized by this Court
19 in *AbdulKadir v. Larose*, at *5, immigration detainees at OMDC are “locked
20 up behind razor wire and concrete walls in a secured facility,” forced to wear
21 “a color-coded prisoner jump suit,” forbidden from accessing the internet,
22 guarded at all times by “armed guards authorized to inflict punishment for
23 violations of rules, and have restricted access to outdoor space and visitation.
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1 44. The fourth and fifth factors concern delays in the removal proceedings
2 caused by Petitioner or the government. As neither party has caused
3 significant delays, these factors are neutral.
4

5 45. The final *Banda* factor concerns the likelihood that the removal proceedings
6 will result in a final order of removal and requires that the Court consider
7 “whether the noncitizen has asserted any defenses to removal.” *Banda*, at
8 1120. “[W]here a noncitizen has asserted a good faith challenge to removal,
9 ‘the categorical nature of the detention will become increasingly
10 unreasonable.’” *Id.* citing *Sajous v. Decker*, No. 18-CV-2447, 2018 WL
11 2357266, at *11 (S.D.N.Y. May 23, 2018).
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14 46. In the current case, the IJ found that the Petitioner is a gay man, yet she
15 inexplicably denied asylum despite homosexuality being criminalized in
16 Russia and punishable by up to 12 years in prison. As Petitioner has asserted
17 a meritorious appeal to the BIA (Ex. 3), this factor should also weigh in his
18 favor.
19
20

21 **C. What remedy is appropriate?**
22

23 47. The Ninth Circuit dictates that where detention has become prolonged, a
24 bond hearing is required at which the burden of proof is on the government
25 to justify detention by clear and convincing evidence. *Martinez v. Clark*, 124
26 F.4th 775, 786 (9th Cir. 2024) [noting that due process requires “the
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1 government to prove dangerousness or risk of flight by clear and convincing
2 evidence” at a bond hearing for noncitizens subject to prolonged detention
3 (citing *Singh v. Holder*, 638 F.3d 1196, 1200, 1205 (9th Cir. 2011)).
4

5 48. At no point have Respondents asserted any national security, danger to
6 community, or flight risk concerns pertaining to Petitioner who has no
7 criminal record or other indicia of dangerousness.
8

9 49. Although a bond hearing before a neutral arbiter is the usual remedy for
10 prolonged detention, Petitioner is rightly concerned that she will not receive
11 an impartial hearing before the immigration court. Immigration judges are
12 at-will employees that fall within the ambit of the Department of Justice,
13 rather than the judiciary branch
14

15
16 50. Since President Trump took office, 1 in 7 immigration judges have been
17 fired, often due to politically motivated reasons, such as grant rates. Ex.8.
18 The mass terminations serve as a warning to the remaining judges and
19 further erode their neutrality and independence.
20

21 51. Further, the Administration is filling the vacant immigration judge posts
22 with a substantial number of military attorneys that have no prior
23 immigration experience, and the recruitment ads (published by the DHS,
24 rather than the DOJ) dub the positions “Deportation Judges” instead of
25 immigration judges. Ex. 9. In such a climate, it is highly dubious that
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1 Petitioner would receive a fair bond hearing before a truly independent
2 adjudicator.

3
4 52. Accordingly, we seek immediate release, or in the alternative, a bond
5 hearing presided over by this Court, rather than before the Immigration
6 Court. The Immigration Court can no longer be considered unbiased, and it
7 makes little sense for the Executive Branch to sit as both party to and
8 adjudicator of a bond hearing, particularly when bucking the
9 Administration's immigration agenda is grounds for a judge's termination.

10
11 53. Should this Court not be inclined to order immediate release or preside over
12 a bond hearing, we request an order directing Respondents to hold a bond
13 hearing within 10 days at which the burden of proof is on the government to
14 justify detention by clear and convincing evidence of flight risk or danger.
15 We further ask that the order instruct the IJ to consider financial
16 circumstances regarding ability to pay bond and alternative conditions of
17 release as required by *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir.
18 2017).

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22 54. As summed up by the Supreme Court in *Zadvydas* immigration detention
23 should not be used punitively, but only where there has been an
24 individualized assessment of flight risk or danger to community. *Zadvydas*,
25 at 690, citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). As Respondents
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1 have never asserted that Petitioner is a danger or flight risk, his continued
2 detention serves no legitimate purpose, and he must be released.

3 4 **FACTUAL BACKGROUND**

5 55. Petitioner is a 24-year old citizen of Russia and native of Ukraine detained by
6 Respondents since September 27, 2024 when he entered the U.S. Ex. 1. He
7 has been imprisoned at Otay Mesa Detention Center ever since.

8
9 56. He applied for Asylum, Withholding of Removal, and protection under the
10 Convention Against Torture based on his fear of persecution and torture due
11 to his sexual orientation, political opinion, and nationality/ethnicity. Ex. 2.
12 The Immigration Judge (“IJ”) denied all relief on May 30, 2025, and
13 Petitioner appealed to the Board of Immigration Appeals (“BIA”) on June 9,
14 2025. Ex. 3. That appeal remains pending.

15
16
17 57. Petitioner requested a bond hearing on October 10, 2025, but the IJ denied
18 his request on jurisdictional grounds on October 17, 2025, stating that as “an
19 arriving noncitizen,” he was “subject to mandatory jurisdiction [sic]
20 pursuant to Section 235(b)(2)(A) [8 USC §1225(b)(2)(A)].” Ex. 4.

21
22 58. Petitioner also submitted a request for parole to Immigration & Custody
23 Enforcement (“ICE”) by both email and postal mail. Ex. 5. We received no
24 acknowledgement or response of any kind.
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1 59. Currently, Petitioner faces unlawful, indefinite detention with no opportunity
2 to be heard on bond.

3
4 **CAUSE OF ACTION -- COUNT ONE**
5 **Petitioner's Detention Violates His Fifth Amendment Right to Due Process**

6 60. Petitioner incorporates by reference the allegations of fact set forth in the
7 preceding paragraphs.

8
9 61. The Government may not deprive a person of life, liberty, or property
10 without due process of law. U.S. Constitution Amendment V. "Freedom
11 from imprisonment -- from government custody, detention, or other forms of
12 physical restraint -- lies at the heart of the liberty that Clause protects."
13 *Zadvydas v. Davis*, at 690. Due process protects "all 'persons' within the
14 United States, including [non-citizens], whether their presence here is
15 lawful, unlawful, temporary, or permanent." *Id.* at 693.

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18 62. Petitioner has a fundamental interest in liberty and being free from official
19 restraint. Respondents' prolonged detention of Petitioner serves no
20 legitimate purpose and violates his right to Due Process.


21
22
23 **PRAYER FOR RELIEF**

24 78. WHEREFORE, Petitioner respectfully asks that this Court take
25 jurisdiction over this matter and grant the following relief:
26

- 1 a. Issue an Order to Show Cause requiring Respondents to respond within three
- 2 days;
- 3
- 4 b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner
- 5 forthwith. In the alternative, order a bond hearing before this Court, or direct
- 6 Respondents to provide Petitioner a bond hearing before a *neutral* arbiter
- 7 within 7 days at which Respondents must show by clear and convincing
- 8 evidence that Petitioner is a flight risk or poses a danger to the community;
- 9
- 10 c. Enjoin Respondents from transferring Petitioner out of this Court's
- 11 jurisdiction during the pendency of this action;
- 12
- 13 d. Enjoin Respondents from re-detaining Petitioner unless his re-detention is
- 14 ordered at a custody hearing before a neutral arbiter in which the
- 15 government bears the burden of proving, by clear and convincing evidence,
- 16 that Petitioner is a flight risk or danger to the community;
- 17
- 18 e. Award Petitioners' attorney's fees and costs under the Equal Access to
- 19 Justice Act ("EAJA"), as amended, 28 USC §2412, and on any other basis
- 20 justified under law; and
- 21
- 22 f. Grant any other and further relief that this Court deems just and proper.
- 23

24 Date: December 24, 2025

Respectfully submitted,

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Linette Tobin, Esq.

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Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 USC 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. Based on those discussions, 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 and abilities.

Executed on this 24th day of December 2025, in San Diego, California.



Linette Tobin
Attorney for Petitioner