

1 Brian J. McGoldrick (California #169104)
2 Counsel for the Petitioner
3 4916 Del Mar Avenue
4 San Diego, CA 92107
5 (619) 675-2366
6 attorney@brianmcgoldrick.com

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

9 BURHANETTIN TUNA OZCAN,
10 Plaintiff,

11 vs.

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

Case No.: '26CV0002 LL MMP

Agency Number: A 

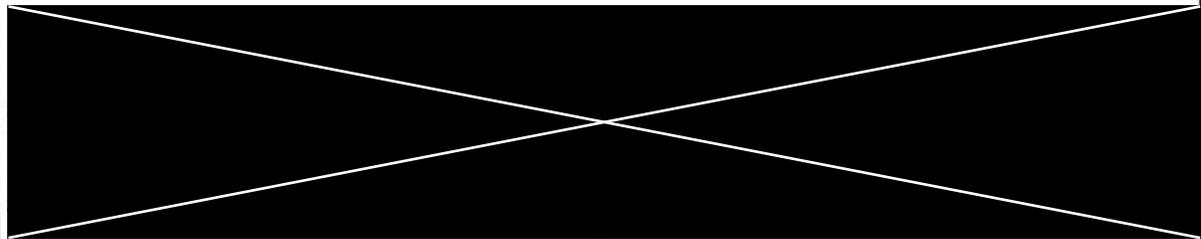
PETITION FOR WRIT OF HABEUS
CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING
REQUESTED

1 **INTRODUCTION**

2 1. Turkey is a country that has been slowly deteriorating in terms of
3 human rights and the protection of religious minorities. There are reports of
4 extrajudicial killings, repression of minority groups and other human rights abuses.
5 *See generally*, Türkiye (Turkey) 2024 Human Rights Report, U.S. Department of
6 State.
7
8



9
10
11
12
13
14  Mr.

15 Ozcan is a member of this religious minority. He experienced so much persecution
16 in Turkey he decided he was not safe to remain there. As a result, he made the
17 painful choice to leave his family and countrymen and flee to the United States.
18

19 3. Mr. Ozcan eventually made his way to Mexico and then crossed
20 into the United States of America. He was detained for three days. During this
21 time, it was determined by the Respondents that he was not a flight risk and not a
22 danger to the community and was granted conditional parole under INA §
23 236(a)(2)(B) Conditional Parole. See Exhibit A. This release does not have a time
24 limit or an expiration date and was in effect on the day Mr. Ozcan was detained.
25
26
27

1 4. Respondents commenced removal proceedings against him in
2 immigration court upon his initial entry. He filed his application for asylum with
3 EOIR on September 05, 2023.
4

5 5. Originally, the petitioner was fitted with an Alternative to Detention
6 Device. He was given a phone to use to check in with ICE. However, after
7 approximately one year the Respondents determined that even this minor
8 monitoring was no longer necessary. Without warning or notice, the Respondents
9 suddenly changed their mind. On Sunday, November 23, 2025 at about 12:00 p.m.
10 Mr. Ozcan went to Cocina 35 in downtown San Diego to pick up a door dash order
11 that he was to deliver. Suddenly 4 or 5 masked men surrounded his car. They asked
12 him his name and then ordered him out of the car. They immediately handcuffed
13 him, placing him under arrest. He was not presented with a warrant; he was not
14 told what crime he may have committed or what change in circumstances had
15 occurred that the Respondents determined he was either a flight risk or a danger to
16 the community. He was then taken to the downtown San Diego ICE office for
17 booking. He was transferred back and forth from the holding facility to Otay Mesa
18 Detention Center for three days. Finally, he was housed at the Otay Mesa
19 Detention Center where he remains today.
20
21
22
23
24
25
26
27
28

1 6. Mr. Ozcan was not presented with a warrant for his arrest when he
2 was detained. Mr. Ozcan was not given any notice that his parole was being
3 revoked. Mr. Ozcan did not have a hearing with a disinterested third party to
4 determine whether circumstances had changed such that he was now a flight risk or
5 a danger to society. Based on information and belief, Mr. Ozcan did not miss any
6 ICE check ins and did not miss any of his court hearings. Mr. Ozcan was not
7 detained because of any change in his circumstances but because of Respondents'
8 interpretation of President Trump's whim and categorical determination that, the
9 Fifth Amendment notwithstanding, noncitizens are not entitled to due process.
10

11 7. But Respondents cannot evade the law so easily. The U.S.
12 Constitution requires the Respondents provide at least the rights available to him
13 when he was granted Parole and when he filed his application for asylum¹.
14

15 8. Accordingly, to vindicate Petitioner's rights, this Court should grant
16 the instant petition for a writ of habeas corpus. Mr. Ozcan asks this Court to find
17 that Respondents' attempt to detain him are arbitrary and capricious and in
18

19
20
21
22
23
24
25 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
26 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
27 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It
28 seems—it might say that, but if you're talking about that, then we'd have to have a million or 2
million or 3 million trials.").

1 violation of the law, and to immediately issue an order preventing his transfer out
2 of this district.

4 JURISDICTION

5 9. This action arises under the Constitution of the United States and
6 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
7

8 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
9 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
10 United States Constitution (Suspension Clause).
11

12 11. This Court may grant relief under the habeas corpus statutes, 28
13 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
14 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
15 U.S.C. § 1252(e)(2).
16
17

18 VENUE

19 12. Venue is proper because Petitioner is in Respondents' custody in
20 San Diego, California. Venue is further proper because a substantial part of the
21 events or omissions giving rise to Petitioner's claims occurred in this District,
22 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
23
24

25 13. For these same reasons, divisional venue is proper under Local
26 Rule HC.1
27

1 19. Respondent Daniel A. Brightman is the Field Office Director for
2 the San Diego Field Office, Immigration and Customs Enforcement and Removal
3 Operations (“ICE”). The San Diego Field Office is responsible for local custody
4 decisions relating to non-citizens charged with being removable from the United
5 States, including the arrest, detention, and custody status of non- citizens. The San
6 Diego Field Office’s area of responsibility includes San Diego, California and the
7 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
8
9
10
11 Petitioner.

12 20. Respondent Todd Lyons is the acting director of U.S. Immigration
13 and Customs Enforcement, and he has authority over the actions of respondent
14 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
15
16
17 Petitioner.

18 21. Respondent Kristi Noem is the Secretary of the Department of
19 Homeland Security (DHS) and has authority over the actions of all other DHS
20 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
21 legal custodian of Petitioner and is charged with faithfully administering the
22 immigration laws of the United States.
23
24
25
26
27

1 27. The “motivation for the enactment of the Refugee Act” was the
2 United Nations Protocol Relating to the Status of Refugees, “to which the United
3 States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,
4 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory
5 meaning to our national commitment to human rights and humanitarian concerns.’”
6
7 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

9 28. The Refugee Act established the right to apply for asylum in the
10 United States and defines the standards for granting asylum. It is codified in
11 various sections of the INA.
12

13 29. The INA gives the Attorney General or the Secretary of Homeland
14 Security discretion to grant asylum to noncitizens who satisfy the definition of
15 “refugee.” Under that definition, individuals generally are eligible for asylum if
16 they have experienced past persecution or have a well-founded fear of future
17 persecution on account of race, religion, nationality, membership in a particular
18 social group, or political opinion and if they are unable or unwilling to return to
19 and avail themselves of the protection of their homeland because of that
20 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
21
22
23
24

25 30. Although a grant of asylum may be discretionary, the right to
26 apply for asylum is not. The Refugee Act broadly affords a right to apply for
27

1 asylum to any noncitizen “who is physically present in the United States or who
2 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
3

4 31. Because of the life-or-death stakes, the statutory right to apply for
5 asylum is robust. The right necessarily includes the right to counsel, at no expense
6 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
7 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
8 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
9 to present evidence to establish eligibility.).
10
11

12 32. Noncitizens seeking asylum are guaranteed Due Process under the
13 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
14 (1993).
15

16 33. Noncitizens who are applicants for asylum are entitled to a full
17 hearing in immigration court before they can be removed from the United States. 8
18 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
19 appellate review before the Board of Immigration Appeals of removal orders
20 entered against them and judicial review in federal court upon a petition for
21 review. 8 U.S.C. § 1252(a) *et seq.*
22
23
24
25
26
27

1 34. Immigration detention is a form of civil confinement that
2 “constitutes a significant deprivation of liberty that requires due process
3 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
4

5 35. Immigration detention should not be used as a punishment and
6 should only be used when, under an individualized determination, a noncitizen is a
7 flight risk because they are unlikely to appear for immigration court or a danger to
8 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
9
10

11 36. Parole must be terminated upon written notice after an
12 individualized determination that the humanitarian purposes no longer apply. 8
13 C.F.R. § 212.5(e)(2)(i).
14

15
16 **FACTUAL BACKGROUND**
17

18 37. Petitioner is a citizen of Turkey. He was born  in
19 Turkey.
20

21 38. Petitioner was beaten and threatened with death in Turkey by both
22 religious and state authorities.
23

24 39. On or about March 4, 2023, Respondents granted him parole and
25 released him on his own recognizance into the United States, based on the
26
27

1 individualized facts in his case, under 8 U.S.C. § 1182(d)(5) and released him from
2 custody pursuant to the same statute. *See* Exhibit A.
3

4 40. On or about March 15, 2023, Respondents commenced removal
5 proceedings against Petitioner under 8 U.S.C. § 1229a.
6

7 41. Petitioner appeared for all his regularly scheduled court hearings
8 in immigration court.
9

10 42. On information and belief, Petitioner regularly complied with and
11 appeared for ICE check-ins.
12

13 43. Petitioner applied for asylum with EOIR on September 5, 2023.
14 That petition is currently being adjudicated in the immigration court.

15 44. Subsequently, Respondents issued work authorization to Petitioner
16 pursuant to 8 C.F.R. § 274a.12(c)(08).
17

18 45. On November 23, 2025, after living and working in the United
19 States for over 2 years, Mr. Ozcan went to downtown San Diego to pick up a door
20 dash delivery he was supposed to pick up. Instead, he was surrounded by masked
21 men, ordered out of his car and summarily arrested.
22

23 46. His captors then took him downtown to the San Diego holding
24 area. He was never given a written notice that his parole was being terminated. He
25 was not given any particularized reason for why he was being placed into
26
27

1 detention. He was never presented with a warrant for his arrest. He was eventually
2 transported to Otay Mesa Detention Center. Mr. Ozcan must now begin his
3 asylum application process again while in detention.
4

5 47. Mr. Ozcan was never presented with a warrant for his arrest. The
6 ICE agents did not provide him any process. The ICE agents did not offer him any
7 opportunity to be heard prior to arresting and detaining him.
8

9 48. On January 20, 2025, President Donald Trump issued several
10 executive actions relating to immigration, including “Protecting the American
11 People Against Invasion,” an executive order (EO) setting out a series of interior
12 immigration enforcement actions. The Trump administration, through this and
13 other actions, has outlined sweeping, executive branch-led changes to immigration
14 enforcement policy, establishing a formal framework for mass deportation. The
15 “Protecting the American People Against Invasion” EO instructs the DHS
16 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
17 prioritize civil immigration enforcement procedures including through the use of
18 mass detention.
19
20
21
22

23 49. On information and belief, Respondents are detaining Petitioner
24 regardless of the individual facts and circumstances of his case.
25
26
27

1 50. On information and belief, Respondents are using the immigration
2 detention system as a means to punish individuals for asserting rights under the
3 Refugee Act.
4

5 51. On information and belief, Petitioner has no criminal history.
6

7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**

9 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

10 **Not in Accordance with Law and in Excess of Statutory Authority**

11 **Unlawful Detention**

12 52. Petitioner restates and realleges all paragraphs as if fully set forth
13 here.
14

15 53. Under the APA, a court shall “hold unlawful and set aside agency
16 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
17

18 54. An action is an abuse of discretion if the agency “entirely failed to
19 consider an important aspect of the problem, offered an explanation for its decision
20 that runs counter to the evidence before the agency, or is so implausible that it
21 could not be ascribed to a difference in view or the product of agency expertise.”
22
23

24 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
25

1 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
2 463 U.S. 29, 43 (1983)).
3

4 55. To survive an APA challenge, the agency must articulate “a
5 satisfactory explanation” for its action, “including a rational connection between
6 the facts found and the choice made.” *Dep't of Com. v. New York*, 139 S. Ct. 2551,
7 2569 (2019) (citation omitted).
8

9 56. By categorically revoking Petitioner’s parole and transferring him
10 to Otay Mesa Detention Center without consideration of his individualized facts
11 and circumstances, Respondents have violated the APA.
12

13 57. Respondents have made no finding that Petitioner is a danger to
14 the community.
15

16 58. Respondents have made no finding that Petitioner is a flight risk.
17

18 59. By detaining the Petitioner categorically, Respondents have
19 further abused their discretion because there have been no changes to his facts or
20 circumstances since the agency made its initial determination to parole him into the
21 United States that support detention.
22

23 60. Respondents have already considered Petitioner’s facts and
24 circumstances and determined that he was not a flight risk or danger to the
25 community when they granted him humanitarian parole. There have been no
26

1 changes to the facts that justify this revocation of his parole. And as the document
2 issuing his parole clearly states, “Failure to comply with the conditions of this
3 order may result in revocation of your release and your arrest and detention by the
4 Immigration and Customs Enforcement.” *See* Exhibit A. No determination of any
5 kind was made in this case and the government is ignoring its own procedures.
6
7

8 **COUNT TWO**

9 **Violation of Fifth Amendment Right to Due Process**

10 **Procedural Due Process**

11
12 61. Petitioner restates and realleges all paragraphs as if fully set forth
13 here.
14

15 62. The Due Process Clause of the Fifth Amendment to the U.S.
16 Constitution prohibits the federal government from depriving any person of “life,
17 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
18 process protects “all ‘persons’ within the United States, including [non-citizens],
19 whether their presence here is lawful, unlawful, temporary, or permanent.”
20 *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.
21
22

23 63. Due process requires that government action be rational and non-
24 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
25
26
27

1 hearing rather than release. However, Petitioner asserts that his arrest and detention
2 was unlawful *ab initio*. Petitioner should not be forced to pay a ransom to be
3 released from an unlawful detention. He is not held pursuant to 1225 or 1226. He is
4 unlawfully detained and should be released forthwith and returned to the status he
5 held prior to his detention.
6
7

8 ///

9 ///

10 ///

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Declare that Petitioner’s detention without an individualized determination violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act;

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

(4) Issue an Order prohibiting the Respondents from enrolling the Petitioner in Alternative to Detention and requiring an ankle monitor;

(5) Grant any further relief this Court deems just and proper.

Dated: January 1, 2026

/s/ Brian J. McGoldrick
BRIAN J. MCGOLDRICK, ESQ.
CASB # 169104
attorney@brianmgoldrick.com
4916 Del Mar Avenue
San Diego, CA 92107
Telephone: +1 619-675-2366
Attorney for Petitioner

EXHIBIT A

TSA

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Release on Recognizance

File No: ~~XXXXXXXXXX~~

Date: March 4, 2023

Alien: OZCAN, Burhanettin Tuna

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

You must report for any hearing or interview as directed by the Immigration and Customs Enforcement or the Executive Office for Immigration Review.

You must surrender for removal from the United States if so ordered.

You must report in (person) to Non-Detained Office (973) 645-3666
(Name and Title of Case Officer), Deportation Officer

At 970 Broad Street., 11th Floor on 03/16/23 at 10:00 a.m.
Newark, NJ 07102 (Location of ICE Office) (Day of each week or month) (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

You must not change your place of residence without first securing written permission from the officer listed above.

You must not violate any Local, State, or Federal laws or ordinances.

You must assist the Immigration and Customs Enforcement in obtaining any necessary travel document.

Other: Your first reporting date will be 03/16/23@ 10:00 A.M.

See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Immigration and Customs Enforcement.

Alien's Rt Index

(Signature of ICE Official)
John Barile, SDDO
Enforcement and Removal Operations/SND
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read)(had interpreted and explained to me in the SPANISH Language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the ICE may revoke my release without further notice.

Kravchuk, N./DO
(Signature of ICE Official Serving Order)

X [Signature]
(Signature of Alien)

March 4, 2023
(Date)

Cancellation of Order

I hereby cancel this order of release because: The alien failed to comply with the conditions of release.

The alien was taken into custody for removal.

(Signature of ICE Canceling Order)

(Date)

EOIR - 1 of 2