

1 Brian J. McGoldrick – 169104  
2 Law Office of Brian J. McGoldrick  
3 4916 Del Mar Avenue  
4 San Diego, CA 92107  
5 619-675-2366  
6 attorney@brianmcgoldrick

7 Attorneys for Petitioner

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MOHAMMAD RASH,

11 Petitioner,

12 v.

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”);  
PAMELA BONDI, Attorney General of  
the United States,  
U.S. DEPARTMENT OF HOMELAND  
SECURITY;  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT;

Respondents.

Case No.: '26CV8 LL DEB

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

Agency Doc. No.: A249-119-601

1 Petitioner MOHAMMAD RASH petitions this Court for a writ of habeas corpus  
2 under 28 U.S.C. § 2241 to remedy Respondents’ detaining him unlawfully, and states  
3 as follows:

4 **INTRODUCTION**

5  
6 1. Petitioner, MOHAMMAD RASH (“Mr. Rash” or “Petitioner”), by and through his  
7 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to  
8 issue a Writ of Habeas Corpus ordering Mr. Rash’s release from immigration  
9 detention by the Department of Homeland Security, United States Immigration and  
10 Customs Enforcement (“ICE”). Mr. Rash seeks immediate release from custody  
11 because Respondents have held him since 18 November, 2024—a prolonged period.  
12 Mr. Rash was able to have his asylum application heard and was granted  
13 withholding of removal under the Convention Against Torture (“CAT”). CAT was  
14 granted on 22 September 2025. However, DHS appealed the grant on 21 October  
15 2025 to the Board of Immigration Appeals. As of today, the transcripts have not  
16 been copied and sent to the petitioner. There is no possibility of his removal in the  
17 foreseeable future. His continued detention without a hearing as to flight risk and  
18 danger to the community violates the U.S. Constitution and federal law.

19 **CUSTODY**

20  
21 2. Mr. Rash is currently in Respondents’ legal and physical custody. They are  
22 detaining him at the Otay Mesa Detention Center in San Diego, California. He is  
23 under Respondents’ and their agents’ direct control.  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**PARTIES**

3. Mr. Rash is a 30-year-old citizen of Iran. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

4. Mr. Rash is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

6. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271, and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §

1 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is  
2 detaining Mr. Rash. Respondent Lyons has custodial authority over Mr. Rash, who  
3 names him in his official capacity.

4 8. Respondent Kristi NOEM is the Secretary of the DHS and is named in her  
5 official capacity. DHS is the federal agency responsible for enforcing immigration  
6 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.  
7 Respondent Noem has ultimate custodial authority over Mr. Rash, who names her in  
8 her official capacity.

9  
10 9. Respondent Pam BONDI is the Attorney General of the United States and the  
11 most senior official in the U.S. Department of Justice (DOJ) and is named in her  
12 official capacity. She is responsible for the Immigration and Nationality Act's  
13 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the  
14 Executive Office for Immigration Review, the office that administers Mr. Rash's  
15 removal proceedings and is responsible for adjudicating Mr. Rash's asylum  
16 application. Mr. Rash names her in her official capacity.

17  
18 10. Respondent U.S. Immigration Customs Enforcement is the federal agency  
19 responsible for custody decisions relating to non-citizens charged with being removable  
20 from the United States, including the arrest, detention, and custody status of non-citizens.

21 11. Respondent U.S. Department of Homeland Security is the federal agency  
22 that has authority over the actions of ICE and all other DHS Respondents.

23 ///

24 ///

///

## JURISDICTION AND VENUE

1  
2 12. This action arises under the United States Constitution and the  
3 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to  
4 challenge Mr. Rash’s detention under the INA and any inherent or plenary powers  
5 the government may claim to continue holding him.  
6

7 13. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§  
8 701–706 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S.  
9 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States  
10 Constitution. Jurisdiction is not limited by a petitioner’s nationality, immigration  
11 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008).  
12 The Court may grant relief under the Suspension Clause; the Fifth and Eighth  
13 Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651  
14 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).  
15

16 14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review  
17 Mr. Rash’s detention. Federal district courts possess broad authority to issue writs  
18 of habeas corpus when a person is held “in custody in violation of the Constitution  
19 or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority  
20 extends to immigration detention challenges that survived the REAL ID Act’s  
21 jurisdictional restrictions. Because Mr. Rash seeks the traditional habeas remedy of  
22 release from allegedly unlawful detention, his petition presents precisely the type of  
23 threshold legality-of-detention question that § 2241 was designed to address. *See*  
24

1 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d  
2 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.  
3 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See*,  
4 e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of  
5 Mr. Rash's detention.

6  
7 15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)  
8 because a substantial part of the events or omissions giving rise to this claim have  
9 happened here, Mr. Rash is detained here, and his custodian resides here. Venue is  
10 also proper under 28 U.S.C. § 2243 because Mr. Rash's immediate custodian resides  
11 in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J.,  
12 concurring).

### 13 **FACTUAL BACKGROUND**

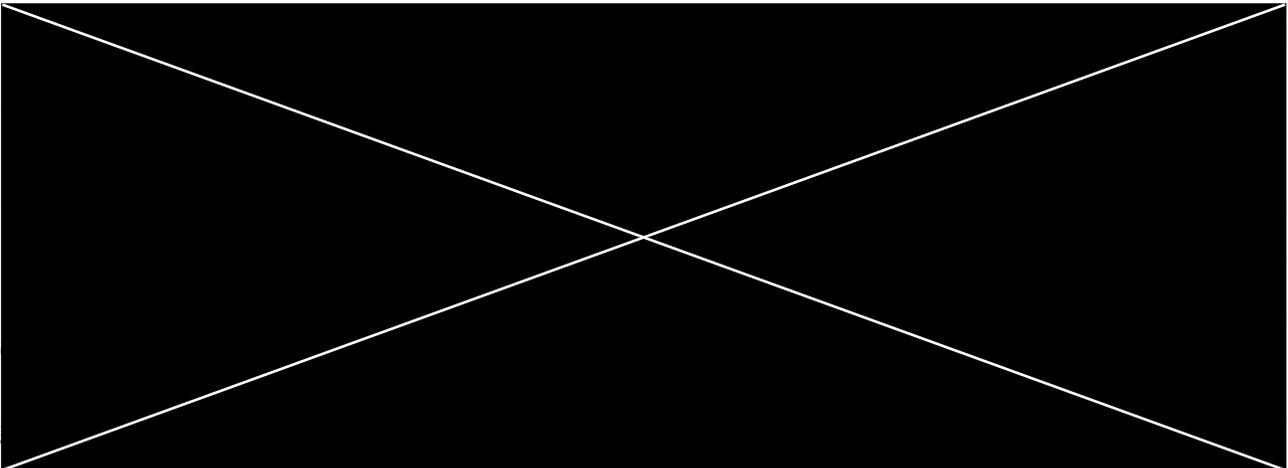
14 16. Mr. Rash was born in Kermanshah, Iran, to ethnic minority Kurdish  
15 parents. Mr. Rash and his family have spent years being discriminated against and  
16 persecuted by  The United States State Department has  
17 documented genocide and persecution in its 2024 report. *See generally* Iran 2024  
18 Human Rights Report, U.S. Department of State<sup>1</sup>.

19  
20  
21 <sup>1</sup> c. **War Crimes, Crimes against Humanity, and Evidence of Acts that May Constitute Genocide, or Conflict-Related Abuses**

22 In its March report, the UN's Independent International Fact-Finding Mission on Iran concluded that  
23 many of the government's actions in response to the Woman, Life, Freedom movement amounted to  
24 crimes against humanity. The UN's Special Rapporteur on the Situation of Human Rights in Iran  
published a report in July that characterized the government's actions in the 1980s as crimes against  
humanity and genocide, the latter committed against religious minority groups, in particular members of  
the Baha'i Faith. The U.S. government had not determined that crimes against humanity or genocide  
have occurred.

1 17. Mr. Rash has twice been detained and tortured by [REDACTED]

2 [REDACTED] In 2022 a Kurdish woman, Mahsa Amini, was arrested for not  
3 wearing the required head covering. She was subsequently beaten to death by the  
4 Iranian authorities while in detention. [REDACTED]



5  
6  
7  
8  
9  
10  
11  
12 19. After this second [REDACTED] Mr. Rash realized he  
13 needed to flee Iran or his life would be forfeit. He was able to get a visa from Iran to  
14 Brazil. From there he trekked through South and Central America until he reached  
15 Mexico. He finally crossed into the United States on 11-18-2024. He immediately  
16 encountered CBP officers and was taken into custody. He has been in detention at  
17 Otay Mesa Detention Center since November 18, 2024.

18  
19 20. Respondents issued Mr. Rash a Notice to Appear, charging him as an  
20 alien present in the United States who has not been admitted or paroled.

21 21. Mr. Rash has not moved for a bond redetermination due to the fact that  
22 IJ's have consistently ruled that they do not have jurisdiction to redetermine the

23  
24 \_\_\_\_\_  
Country Reports on Human Rights Practices for 2024 United States Department of State • Bureau of  
Democracy, Human Rights, and Labor

1 conditions of custody over individuals who have been apprehended shortly after  
2 entering the United States and who have been processed under Section 235(b)(1)  
3 expedited removal statute, and who have been placed in removal proceedings.

4 22. Mr. Rash appeared for his first master calendar hearing, represented by  
5 pro bono counsel. After taking pleadings in the case, the IJ reset the matter for  
6 another master calendar and ordered that Mr. Rash file his asylum application by  
7 that date.  
8

9 23. On April 16, 2025, Mr. Rash signed his asylum application and it was  
10 filed with the court.

11 24. At his next Master Calendar hearing the IJ issued a scheduling order  
12 setting the matter for an individual hearing on Aug 12, 2025.

13 25. There was testimony on August 12 and the hearing was continued to the  
14 next day August 13, 2025. The court at the detention center only sets 2 hour  
15 hearings so for a complicated case like Mr. Rash's, with lots of direct and cross  
16 examination, it took several hearings to complete the process. After the 13<sup>th</sup>, the  
17 case was set again on September 4 and one final hearing on September 22, 2025. At  
18 the final hearing the Immigration Judge was not able to grant asylum because Mr.  
19 Rash did not enter the United States using CBP One and did not appear to have an  
20 exceptional circumstance that would allow him to enter and qualify for asylum.  
21 However, due to his credible testimony and supporting evidence, he was granted  
22 withholding of removal under the Convention Against Torture ("CAT").  
23  
24

1 26. Mr. Rash believed that he would finally be released from detention.  
2 However, on October 21, 2025 the Department of Homeland Security filed an appeal  
3 of the grant of CAT with the BIA. To this day, the BIA has not sent copies of the  
4 record or transcripts of the hearings to Mr. Rash. He is unable to mount any sort of  
5 defence to the appeal. Most importantly, there is no end in sight. There is no  
6 indication of when the BIA will provide documents or a scheduling order. There is  
7 no foreseeable end to Mr. Rash's detention. It could be years before his appeal is  
8 adjudicated.  
9

10 27. Mr. Rash's continued detention without a tenable justification and  
11 without a demonstration that removal is significantly likely in the reasonably  
12 foreseeable future violates constitutional due process. Zadvydas v. Davis, 533 U.S.  
13 678 (2001); Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

14 28. The government has failed to effectuate Mr. Rash's removal within a  
15 reasonable period of time or present any evidence that his removal is significantly  
16 likely to occur in the reasonably foreseeable future.  
17

18 29. Mr. Rash's detention without a tenable justification violates his rights  
19 under the Due Process Clause of the Fifth Amendment.

### 20 EXHAUSTION OF REMEDIES

21 30. Mr. Rash has exhausted all administrative remedies, and no further  
22 ones are available. Furthermore, for habeas claims, exhaustion of administrative  
23 remedies is prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may  
24

1 waive the prudential exhaustion requirement if “administrative remedies are  
2 inadequate or not efficacious, pursuit of administrative remedies would be a futile  
3 gesture, irreparable injury will result, or the administrative proceedings would be  
4 void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and  
5 quotation marks omitted)). Petitioner asserts that exhaustion should be waived  
6 because administrative remedies are (1) futile and (2) his continued detention  
7 results in irreparable harm.  
8

9 31. Exhausting administrative remedies here is futile because Respondents  
10 contend Mr. Rash is subject to mandatory detention. As such, no request to release  
11 him from custody would be considered by ICE. Moreover, immigration judges in this  
12 district claim to have no jurisdiction to conduct a custody redetermination hearing  
13 as to individuals procedurally situated like Mr. Rash. Indeed, in contravention to the  
14 INA and long-standing precedent and practice, the Board of Immigration Appeals  
15 and Attorney General have deemed no noncitizen eligible for bond before an  
16 immigration judge (with the exception of only noncitizens who entered the U.S. on a  
17 visa). As such, any attempts to exhaust administrative remedies would be entirely  
18 futile.  
19

20 32. Recently, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-  
21 SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA  
22 has asserted that bond hearings are now available. However, after the final decision  
23 in *Maldonado* was entered, DHS sent out a directive to Immigration Judges to ignore  
24

1 this case and continue to deny jurisdiction. IJ Begovich has already denied several  
2 bond requests claiming, once again, lack of jurisdiction.

3 33. Moreover, no statutory exhaustion requirements apply to Petitioner's  
4 claim of unlawful custody in violation of his due process rights, and there are no  
5 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*  
6 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile  
7 exercise because the agency does not have jurisdiction to review" constitutional  
8 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)  
9 (same).  
10

11 34. More importantly, every day that Petitioner remains detained causes  
12 him harm that cannot be repaired. His continued detention puts his mental health at  
13 greater risk, further warranting a finding of irreparable harm and the waiver of the  
14 prudential exhaustion requirement. Mr. Rash has been suffering from depression  
15 and anxiety while in detention and has lost nearly 20 kg in weight.  
16

17 35. The Court must consider this in its irreparable harm analysis of the  
18 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-  
19 07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that the  
20 petitioner "continues to suffer significant psychological effects from his detention,  
21 including anxiety caused by the threats of other inmates and two suicide attempts,"  
22 in finding that petitioner would suffer irreparable harm warranting waiver of  
23 exhaustion requirement).  
24

#### FIRST CAUSE OF ACTION

### Fifth Amendment Due Process Violation

36. Mr. Rash re-alleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-30 above.

37. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.* (emphasis added).

38. The Supreme Court has held that “even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.”).

39. As there is no final order of removal, and there doesn’t appear to be one in the reasonably foreseeable future, Mr. Rash may not be removed from the

1 United States. His removal is not reasonably foreseeable, and his detention no  
2 longer serves any legitimate purpose under the INA.

3 40. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this  
4 District granted habeas relief in a substantially similar case, applying a six-factor  
5 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.  
6 Wash. 2019), which considers: (1) total length of detention to date; (2) likely  
7 duration of future detention; (3) conditions of detention; (4) delays in the removal  
8 proceedings caused by the detainee; (5) delays in the removal proceedings caused  
9 by the government; and (6) the likelihood that the removal proceedings will result  
10 in a final order of removal. The court determined that prolonged detention, when  
11 considered alongside other due process concerns, can rise to the level of a  
12 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

14 41. Applying the *Banda* six-factor framework here supports granting Mr.  
15 Rash's petition.

16 42. The final factor—finality—strongly supports the grant of this habeas  
17 petition and request for a bond hearing. Mr. Rash has been granted withholding  
18 under CAT. The Department has filed an appeal and until that is finally adjudicated,  
19 he cannot be removed from the United States. Thus, the only prospect for removal  
20 from the United States would be a speculative, and not factually unsupported  
21 prospect of removal to a third country.

23 43. All delays in this case are attributable to the government, and none  
24 whatsoever are attributable to Mr. Rash. He promptly applied for asylum at the

1 border, he has timely attended all of his interviews and court hearings. He has never  
2 requested any continuances in his case and has retained counsel at a very early  
3 stage of his case to represent him. His individual hearing was initially scheduled on  
4 August 12, 2025 and it went forward. All continuances were simply part of the  
5 individual hearing process and were not undue delays by Mr. Rash. He was granted  
6 CAT on 22 September 2025, more than 3 months ago. His continued detention is  
7 solely a result of the Department's appeal and now the BIA's delay in moving the  
8 appeal forward.  
9

10 44. Mr. Rash has now been detained by ICE for more than thirteen months  
11 since his arrival in the United States on November 18, 2024. This period is well  
12 beyond the presumptively reasonable six-month period set forth in Zadvydas, 533  
13 *U.S.* at 701. Courts consistently find detention beyond this threshold triggers due  
14 process scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.  
15

16 45. Conditions of confinement also raise constitutional concerns as the  
17 medical treatment available at the Otay Mesa Detention Center is not adequate to  
18 address Mr. Rash's health conditions.

19 46. Mr. Rash poses no risk of flight and no danger to the community. He has  
20 no criminal history, has demonstrated compliance with all prior immigration  
21 requirements, and has community support in the United States.

22 47. Mr. Rash's continued detention without a tenable justification violates  
23 his Fifth Amendment right to due process.  
24

**PRAYER FOR RELIEF**

Mr. Rash asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Rash from custody immediately;
2. Declare the continued detention of Mr. Rash without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
3. Alternatively, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Mr. Rash’s continued detention by clear and convincing evidence and where alternatives to detention and Mr. Rash’s ability to pay a bond are considered;
4. Order Respondents to show cause why Mr. Rash is being subjected to unlawful and unconstitutional detention; and
5. Grant any other relief that may be fit and proper.

Dated: January 1, 2026

Respectfully submitted,

By: /s/ Brian J. McGoldrick  
Brian J. McGoldrick, Esq.

Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 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.

Executed on this 1<sup>st</sup> day of January, 2026, in San Diego, California.

/s/ Brian J. McGoldrick  
Brian J. McGoldrick, Esq.  
Attorney for Petitioner