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

9 M.J.

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.:

'26CV0017 DMS VET

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

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1 Petitioner M.J. (“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:
3

4 **INTRODUCTION**

- 5 1. Petitioner is a 36-year old Afghani citizen who entered the U.S. on January
6 9, 2024. Exs. 1 & 2. He was encountered by the Department of Homeland
7 Security (“DHS”), charged as an alien present in the U.S. who has not been
8 admitted or paroled, and detained at Otay Mesa Detention Center
9 (“OMDC”) where he remains today. *Id.*
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 political opinion. Ex. 3. The Immigration Judge (“IJ”) denied
14 asylum, but granted deferral of removal under the Convention Against
15 Torture on December 23, 2024. DHS appealed to the Board of Immigration
16 Appeals (“BIA”), and the BIA remanded to the IJ for further fact-finding on
17 August 1, 2025. *Id.*
18
19 3. Petitioner requested a bond hearing in May 2024. On May 17, 2024, the IJ
20 determined that she had no jurisdiction to entertain the bond request as
21 Petitioner was detained pursuant to INA §235(b)(1). [8 USC §1225(b)(1)].
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23 Ex. 4.
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1 4. Petitioner has now been incarcerated for *two years*. He is entitled to release
2 as he has endured prolonged detention which continues with no end in sight
3 in violation of his due process rights under Amendment V of the U.S.
4 Constitution. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Nadarajah v.*
5 *Gonzales*, 443 F.3d 1069, 1078-80 (9th Cir. 2006) (applying *Zadvydas* and
6 rejecting government’s arguments that §1225(b) permits indefinite
7 detention).
8

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10 5. Petitioner asks that this Court issue an order to show cause (“OSC”) to the
11 Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 USC
12 §2243. If an OSC is issued, the Court must require Respondents to file a
13 return “within three days unless for good cause additional time, not
14 exceeding twenty days, is allowed.” *Id.*
15

16
17 6. Petitioner also requests a writ of habeas corpus ordering his immediate
18 release from detention and prohibiting re-arrest without a pre-detention
19 hearing to contest such arrest before a neutral adjudicator at which the
20 government must show by clear and convincing evidence that he is a flight
21 risk or a public danger.
22

23
24 7. As an alternative to immediate release, Petitioner requests a bond hearing
25 before this Court wherein the government must bear the burden of
26 demonstrating by clear and convincing evidence that he is a flight risk or
27

1 danger to the public. If the Court declines this request, we ask for an order
2 directing that a bond hearing be held before a *neutral* arbiter¹ within 14
3 days.
4

5 **JURISDICTION AND VENUE**

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

11 9. This Court may grant relief pursuant to 28 USC §2241, 28 USC §1651 (All
12 Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).
13

14 10. The statute 8 USC §1252(g) does not preclude jurisdiction as Petitioner is
15 not challenging a “decision or action” to “commence proceedings,
16 adjudicate cases, or execute removal orders.” *Reno v. Am. Arab Anti-*
17 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) [quoting 8 USC
18 §1252(g)]; *Ibarra-Perez v. U.S.*, 154 F.4th 989 (9th Cir. 2025); *Chub v.*
19 *Larose*, 25-cv-3513, 2025 WL 365 4008 (S.D. Cal. Dec. 17, 2025);
20 *Constantinovici v. Bondi*, 25-cv-2405, 2025 WL 2898985 (S.D. Cal, Oct. 10,
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25 ¹ Petitioner is rightly concerned that immigration judges cannot be neutral under this current Administration, as
26 they are employees of the executive branch (the Department of Justice) and risk termination if they rule against DHS
27 or otherwise demonstrate that they are not fully onboard with the President’s immigration agenda. See pages 16-18
infra.

1 2025); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27,
2 2025).

3
4 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
5 484, 493-500 (1973), venue lies in the United States District Court for the
6 Southern District of California, the district in which Petitioner is detained.

7
8 12. Venue is also proper in this Court pursuant to 28 USC §1391(e) because
9 Petitioner is detained in this District, Respondents are employees, officers,
10 and agencies of the United States, and a substantial part of the events or
11 omissions giving rise to the claims occurred in this District.
12

13 **CUSTODY AND REQUIREMENTS OF 28 USC §2241**

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

22 14. A writ of habeas corpus may be granted to a petitioner who demonstrates
23 that he is in custody in violation of the Constitution or federal law. 28 USC
24 §2241(c)(3). Historically, “the writ of habeas corpus has served as a means
25 of reviewing the legality of Executive detention, and it is in that context that
26
27

1 its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301
2 (2001).

3
4 15. A district court's habeas jurisdiction includes challenges to immigration-
5 related detention. *Zadvydas v. Davis*, 533 U.S. at 687; *see also Demore v.*
6 *Kim*, 538 U.S. 510, 517 (2003).

7
8 16. Petitioner is in custody for the purpose of 28 USC §2241 because he was
9 arrested by Respondents and remains in their legal and physical custody at
10 Otay Mesa Detention Center in San Diego, California. He is under
11 Respondents' direct control.
12

13 **PARTIES**

14 17. Petitioner is a 36-year-old citizen of Afghanistan detained by Respondents
15 since January 9, 2024. He is currently imprisoned at OMDC under the direct
16 control of Respondents.
17

18 18. Respondent Christopher J. LaRose (“LaRose”), named in his official
19 capacity, is the Warden of OMDC. He oversees the day-to-day operations
20 of, and the confinement of non-citizens detained at, the facility. He is the
21 immediate physical custodian of Petitioner. He acts at the direction of
22 Respondents Brightman, Lyons, and Noem. He is a proper Respondent in
23 this habeas petition under current Ninth Circuit law. *Doe v. Garland*, 109
24 F.4th 1188, 1197 (9th Cir. 2024).
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1 19. Respondent Daniel Brightman (“Brightman”) is the Field Office Director of
2 ICE Enforcement and Removal Operations (“ERO”), a federal law
3 enforcement agency within DHS in San Diego, California. ERO is a division
4 of ICE that manages and oversees the immigration detention system. He is
5 the legal custodian of Petitioner and is named in his official capacity.
6

7
8 20. Respondent Todd M. Lyons (“Lyons”) is the Acting Director for ICE and is
9 named in his official capacity. He is responsible for ICE’s policies,
10 practices, and procedures, including those relating to the detention of non-
11 citizens charged with being removable from the U.S. As Acting Director of
12 ICE, Lyons is the legal custodian of Petitioner.
13

14 21. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
15 authority over the actions of all other DHS Respondents in this case, as well
16 as all operations and federal agencies of DHS, including ICE. In her capacity
17 as Secretary of DHS, Respondent Noem is charged with faithfully
18 administering the immigration and naturalization laws of the United States. 8
19 USC §1103(a). Noem is the legal custodian of Petitioner and is named in her
20 official capacity.
21
22

23
24 22. Respondent Pamela Bondi (“Bondi”) is the Attorney General of the United
25 States and the most senior official in the U.S. Department of Justice (“DOJ”)
26 which encompasses the BIA and the immigration courts as sub-units of the
27

1 Executive Office of Immigration Review (“EOIR”). In this capacity, she has
2 the authority to interpret immigration laws and adjudicate removal and
3 custody cases. As the head of EOIR, she supervises Immigration Judges,
4 including those who preside at OMDC, and can instruct an IJ to hold a bond
5 hearing. Respondent Bondi is the legal custodian of Petitioner and is named
6 in her official capacity.
7

8
9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 23. There is no statutory requirement to exhaust administrative remedies when
11 noncitizens challenge the lawfulness of their detention. 28 USC §2241.

12 Moreover, "The exhaustion requirement is prudential, rather than
13 jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988
14 (9th Cir. 2017).
15

16
17 24. Prudential exhaustion cannot be required when it would be futile and result
18 in irreparable harm. See *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)
19 (superseded by statute on unrelated grounds). Here, “pursuit of
20 administrative remedies would be a futile gesture,” and “irreparable injury
21 will result.” *Hernandez*, at 988 [quoting *Laing v. Ashcroft*, 370 F.3d 994,
22 1000 (9th Cir. 2004)].
23

24
25 25. Nevertheless, Petitioner, through immigration counsel, filed a motion for
26 custody redetermination with the immigration court in May 2024, but the IJ
27

1 found that she had no jurisdiction over the request, because Petitioner was
2 detained pursuant to INA §235(b)(1). [8 USC §1225(b)(1)]. Ex. 4.

3
4 26. Seeking review at the Board of Immigration Appeals (“BIA”) would have
5 been a futile gesture owing to the Attorney General’s 2019 precedential
6 decision in *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019) which held that
7 noncitizens (such as Petitioner) detained pursuant to INA §235(b)(1) [8 USC
8 §1225(b)(1)] are ineligible for bond.

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

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20 28. Every day that Petitioner remains in detention violates his due process right
21 to liberty and constitutes irreparable harm. *See Addington v. Texas*, 441 U.S.
22 418, 425 (1979) (“This Court repeatedly has recognized that civil
23 commitment for any purpose constitutes a significant deprivation of liberty
24 that requires due process protection.”). To date, Petitioner has already been
25 incarcerated for two long years.
26
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1 29. There is no adequate procedure or administrative remedy to address his
2 detention excepting a writ of habeas corpus which is now the sole avenue to
3 vindicate his constitutional rights and restore his liberty. Without this
4 Court's intervention, he faces indefinite detention without the opportunity
5 for release on bond.
6

7
8 **LEGAL FRAMEWORK**

9 30. Petitioner seeks release as his prolonged, indefinite detention under 8 USC
10 §1225 violates his due process rights guaranteed by Amendment V of the
11 U.S. Constitution. *See Zadvydas v. Davis*, (“[a] statute permitting indefinite
12 detention of [a noncitizen] would raise a serious constitutional problem
13 [under] . . . [t]he Fifth Amendment’s Due Process Clause.”)
14

15
16 **A. A bond hearing is required when detention is unreasonably
17 prolonged in violation of Amendment V of the U.S. Constitution**

18 31. Petitioner’s continued detention violates the due process rights guaranteed
19 by the Fifth Amendment to the U.S. Constitution which provides that no
20 person shall be “deprived of life, liberty, or property, without due process of
21 law.” “Freedom from imprisonment—from government custody, detention,
22 or other forms of physical restraint—lies at the heart of the liberty that [the
23 Due Process] Clause protects.” *Zadvydas*, at 678.
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1 32. These rights are bestowed not only on citizens, but “It is well established
2 that the Fifth Amendment entitles aliens to due process of law in deportation
3 proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) [citing *Reno v.*
4 *Flores*, 507 U.S. 292, 306 (1993), *Clark v. Martinez*, 543 U.S. 371, 378
5 (2005) (applying the holding in *Zadvydas* to noncitizens who have not been
6 admitted to the US).
7

8
9 33. The Ninth Circuit has stated, “We have grave doubts that any statute that
10 allows for arbitrary prolonged detention without any process is
11 constitutional. . . . Arbitrary civil detention is not a feature of our American
12 government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018);
13 *Zadvydas*, at 693.
14

15
16 34. The Ninth Circuit, as well as this Court, has specifically held that
17 noncitizens, like the Petitioner, detained pursuant to 8 USC §1225(b) are
18 entitled to bond hearings when the length of detention becomes
19 unreasonable or prolonged. *See Nadarajah v. Gonzales*, 443 F.3d 1069,
20 1078-80 (9th 2006) (applying *Zadvydas* and rejecting government’s
21 arguments that §1225(b) permits indefinite detention); *Kydyrali v. Wolf*, 499
22 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (“[T]he Court joins the majority of
23 courts across the country in concluding that an unreasonably prolonged
24 detention under 8 USC §1225(b) without an individualized bond hearing
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1 violates due process.”); *Centeno-Ortiz v. Culley*, 11-cv-1970, 2012 WL
2 170123 (S.D. Cal. Jan. 19, 2012) (“[T]he Court concludes that the same
3 constitutional concerns that underpin prolonged detention under Sections
4 1226 (a) and 1231(a)(6) are also present in a prolonged detention under
5 Section 1225(b)(2)(A).”); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633
6 (S.D. Cal. Sept. 26, 2025); *Amado v. U.S. DOJ*, 25-cv-2687, 2025 WL
7 3079052 (S.D. Cal. Nov. 4, 2025); *AbdulKadir v. Larose*, No. 25-cv-1-45,
8 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025); *Sadeqi v. Larose*, 25-cv-2587,
9 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025).

13 **B. Factors to consider when evaluating prolonged detention**

14
15 35. There is no bright line rule for when detention becomes prolonged. Rather,
16 the constitutional question of whether the length of detention is unreasonable
17 is fact-dependent and requires a circumstance specific multi-factor analysis.
18

19 36. In *Banda v. McAleenan*, the court articulated six factors that determine how
20 long is too long. 385 F. Supp. 3d 1099, 1117-18 (W.D. Wash. 2019). The
21 *Banda* factors have been employed numerous times by this Court. *See e.g.*,
22 *AbdulKadir v. Larose*, No. 25-cv-1-45, (S.D. Cal. Oct. 15, 2025)]; *Kydyrali*,
23 at 772 (S.D. Cal. 2020); *Sadeqi v. Larose*, 25-cv-2587, 2025 WL 3154520
24 (S.D. Cal. Nov. 12, 2025).
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1 37. The six factors are: (1) the total length of detention to date; (2) the likely
2 duration of future detention; (3) the conditions of detention; (4) delays in the
3 removal proceedings caused by the detainee; (5) delays in the removal
4 proceedings caused by the government; and (6) the likelihood that the
5 removal proceedings will result in a final order of removal. *Banda*, at 1118
6 (quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–59 (D. Minn.
7 2019).

10 38. Of these six factors, the total length of detention to date is considered the
11 most important. *Id.* To date, Petitioner has been in detention for two full
12 years. The Ninth Circuit in *Diouf v. Napalitano*, 634 F.3d 1081 (9th Cir.
13 2011) held that “When detention crosses the six-month threshold and release
14 or removal is not imminent, the private interests at stake are profound.”
15

17 39. This Court has found that detention for periods between 10 and 13 months
18 are unreasonable. *See Abdulkadir* (13 months); *Sadeqi v. Larose* (11
19 months); *Gao v. Larose* (10 months); *Amado v. U.S. Dept. of Justice* (13
20 months). Other jurisdictions have recognized that even shorter periods can
21 be considered prolonged. *See e.g., Masood v. Barr*, No. 19-CV-07623-JD,
22 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral*
23 *v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months);
24 *Wallace v. Green*, 16-CV-5324, 2016 WL 11979045 (D. N.J. Oct. 24, 2016)

1 (seven months). Having been detained now for two years, Petitioner has far
2 surpassed these thresholds.
3

4 40. The second factor requires consideration of the “anticipated duration of all
5 removal proceedings – including administrative and judicial appeals.”
6 *Banda*, at 1119 (quoting *Jamal A.*, 358 F. Supp. 3d at 859). In addition to
7 the 2 years that Petitioner has already been incarcerated, his future detention
8 will last for many more months, and most likely years, during the final
9 adjudication of his case. His case is currently before the IJ, and it is most
10 probable that the non-prevailing party will appeal to the BIA, and if
11 necessary, file a Petition for Review to the Ninth Circuit. Any resulting
12 remand would only further extend Petitioner’s already prolonged detention.
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16 41. District Courts in the Ninth Circuit have acknowledged that an appeal to the
17 BIA and a Petition for Review to the Circuit Court “may take up to two
18 years or longer.” *Id.*; *AbdulKadir v. Larose* (future detention can last several
19 more months or even years during the adjudication of Respondents’ appeal
20 to the BIA); *Belqasim v. Bostock*, No. 2:25-cv-01282, 2025 WL 3466971
21 (W.D. Wash. Oct. 28, 2025) (“many more months and potentially years in
22 detention” likely during pendency of removal proceedings).
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25 42. Significant increases in what are already protracted adjudication times are
26 anticipated. First, the BIA currently faces a backlog of over 200,000 cases.
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1 Ex. 5. Second, as this Administration has reduced the number of BIA
2 judges from 28 to 15, the backlog is expected to continue building. Ex. 6.

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4 43. The third *Banda* factor also weighs in favor of Petitioner as “[t]he more that
5 the conditions under which the [noncitizen] is being held resemble penal
6 confinement, the stronger his argument that he is entitled to a bond hearing.”
7
8 In this case, Petitioner’s detention is “indistinguishable from penal
9 confinement,” just as it was in *Kydyrali*. In both cases, the petitioners were
10 housed by Core Civic, Inc. at OMDC. As recently recognized by this Court
11 in *AbdulKadir v. Larose*, at *5, immigration detainees at OMDC are “locked
12 up behind razor wire and concrete walls in a secured facility,” forced to wear
13 “a color-coded prisoner jump suit,” forbidden from accessing the internet,
14 guarded at all times by “armed guards authorized to inflict punishment for
15 violations of rules,” and have restricted access to outdoor space and
16 visitation.
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20 44. The fourth and fifth factors concern delays in the removal proceedings
21 caused by Petitioner or the government. The Petitioner delayed his case by
22 3-4 months to find an attorney. Respondents delayed the case by the same
23 period of time to complete background checks. Once the BIA remanded the
24 case to the IJ in August 2025, Respondents caused a delay of several more
25 months. Initially, it took four months to get a hearing date due to the
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1 reduction in numbers of IJs on the bench.² His hearing date was postponed
2 by another two months when the IJ assigned to his case left the DOJ,
3 requiring assignment to another judge.
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 granted Petitioner deferral of removal under the
15 Convention Against Torture finding that it was more likely than not that he
16 would be tortured by the Taliban if removed to Afghanistan. Ex. 3. The BIA
17 remanded for further fact-finding (Ex. 3), but as the IJ already granted relief
18 once, it can hardly be said that Petitioner has failed to assert a “good faith
19 challenge to removal.”
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27 ² This Administration terminated one of every seven immigration judges in 2025.

1 **C. *What remedy is appropriate?***

2 47. The Ninth Circuit dictates that where detention has become prolonged, a
3 bond hearing is required at which the burden of proof is on the government
4 to justify detention by clear and convincing evidence. *Martinez v. Clark*, 124
5 F.4th 775, 786 (9th Cir. 2024) [noting that due process requires “the
6 government to prove dangerousness or risk of flight by clear and convincing
7 evidence” at a bond hearing for noncitizens subject to prolonged detention
8 (citing *Singh v. Holder*, 638 F.3d 1196, 1200, 1205 (9th Cir. 2011))].
9 10 11

12 48. Although a bond hearing before a neutral arbiter is the usual remedy for
13 prolonged detention, Petitioner is rightly concerned that he will not receive
14 an impartial hearing before the immigration court. Immigration judges are
15 at-will employees that fall within the ambit of the Department of Justice,
16 rather than the judiciary branch.
17

18 49. A DOJ memo from August 2025 reminded immigration judges that the
19 Attorney General sets policy for the immigration courts, and that a
20 “determination and ruling by the Attorney General with respect to all
21 questions of law *shall* be controlling.” Ex. 7. The memo, ironically titled
22 “Adjudicator Independence and Impartiality,”³ explicitly warns that IJs are
23 24

25
26 ³ DOJ Memo to EOIR, Adjudicator Independence and Impartiality, Aug. 22, 2025, PM 25-42.
27 Ex. 7.

1 “inferior officers subject to both appointment and removal by the Attorney
2 General,” and that the President may remove those who “disobey his
3 commands,” and “those who exercise their discretion in a way that is not
4 intelligent or wise, those who have different views of policy. . .and those in
5 whom he has simply lost confidence.” IJs with “statistically improbable
6 outcome metrics” (high grant rates) “warrant[] close examination and
7 potential action.” *Id.*

8
9
10 50. Since President Trump took office, 1 in 7 immigration judges have been
11 fired, often for ideological/political differences. Ex. 8. These mass
12 terminations serve as a dire warning to the remaining judges and further
13 erode their neutrality and independence. It is not possible for IJs to exercise
14 independent and impartial judgment when their jobs are on the line.

15
16
17 51. To fill these vacancies, DHS is recruiting for “Deportation Judges,” and
18 military attorneys with no prior immigration experience are being appointed.
19 Exs. 8, 9. It is difficult to perceive how immigration judges recruited by
20 DHS as “deportation judges” can be considered neutral.

21
22 52. In such a climate, it is highly dubious that Petitioner would receive a fair
23 bond hearing before a truly independent adjudicator. Moreover, it makes
24 little sense for the Executive Branch to sit as both party to and adjudicator of
25 a bond hearing, particularly when bucking the Administration’s immigration
26
27

1 agenda is grounds for a judge's termination. Further, the Immigration Court
2 can hardly be considered unbiased as the Department of Justice is a party to
3 this habeas petition.
4

5 53. Accordingly, we request an order of immediate release, or in the alternative,
6 a bond hearing presided over by this Court.
7

8 54. Should this Court decline to order immediate release or preside over a bond
9 hearing, we request an order directing Respondents to hold a bond hearing
10 within 14 days at which the burden of proof is on the government to justify
11 detention by clear and convincing evidence of danger or flight. We further
12 ask that the order instruct the IJ to consider financial circumstances
13 regarding ability to pay bond and alternative conditions of release as
14 required by *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).
15
16

17 55. As summed up by the Supreme Court in *Zadvydas* immigration detention
18 should not be used punitively, but only where there has been an
19 individualized assessment of flight risk or danger to community. *Zadvydas*,
20 at 690, citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). As Petitioner
21 has not been provided this assessment, his detention violates his due process
22 rights.
23
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FACTUAL BACKGROUND

1
2 56. Petitioner is a 36-year old citizen of Afghanistan detained by Respondents
3 since January 9, 2024 when he entered the U.S. Ex. 1. He has been imprisoned
4 at Otay Mesa Detention Center ever since.
5

6 57. He applied for Asylum, Withholding of Removal, and protection under the
7 Convention Against Torture based on his fear of persecution and torture due
8 to his political opinion. Ex. 3. The IJ granted deferral of removal under the
9 Convention Against Torture on December 23, 2024, finding that it was more
10 likely than not that Petitioner would be tortured by the Taliban if removed to
11 Afghanistan. *Id.* DHS appealed to the BIA which remanded to the IJ in
12 August 2025 with instructions to conduct further fact-finding. *Id.*
13
14

15 58. Petitioner requested a bond hearing in May 2024, but the IJ held that it
16 lacked jurisdiction to hear the request as Petitioner was detained under 8
17 USC §1225(b)(1). Ex. 4.
18
19

20 **CAUSE OF ACTION -- COUNT ONE**

21 **Petitioner's Detention Violates His Fifth Amendment Right to Due Process**

22 59. Petitioner incorporates by reference the allegations of fact set forth in the
23 preceding paragraphs.
24

25 60. The Government may not deprive a person of life, liberty, or property
26 without due process of law. U.S. Constitution, Amendment V. "Freedom
27

1 from imprisonment -- from government custody, detention, or other forms of
2 physical restraint -- lies at the heart of the liberty that Clause protects.”
3
4 *Zadvydas v. Davis*, at 690. Due process protects “all ‘persons’ within the
5 United States, including [non-citizens], whether their presence here is
6 lawful, unlawful, temporary, or permanent.” *Id.* at 693.

7
8 61. Petitioner has a fundamental interest in liberty and being free from official
9 restraint. Respondents’ prolonged detention of Petitioner serves no
10 legitimate purpose and violates his right to Due Process.
11

12 **PRAYER FOR RELIEF**

13
14 78. WHEREFORE, Petitioner respectfully asks that this Court take
15 jurisdiction over this matter and grant the following relief:
16
17 a. Issue an Order to Show Cause requiring Respondents to respond within three
18 days;
19
20 b. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner
21 forthwith. In the alternative, we ask that this Court conduct a bond hearing at
22 which Respondents must show by clear and convincing evidence that
23 Petitioner is a flight risk or poses a danger to the community. Should this
24 Court not so order, we ask that Respondents be directed to provide Petitioner
25 a bond hearing before a *neutral* arbiter within 14 days at which Respondents
26

27 20

1 must show by clear and convincing evidence that Petitioner is a flight risk or
2 poses a danger to the community;

3
4 c. Enjoin Respondents from transferring Petitioner out of this Court’s
5 jurisdiction during the pendency of this action;

6
7 d. Enjoin Respondents from re-detaining Petitioner unless his re-detention is
8 ordered at a custody hearing before a neutral arbiter in which the
9 government bears the burden of proving, by clear and convincing evidence,
10 that Petitioner is a flight risk or danger to the community;

11
12 e. Award Petitioners’ attorney’s fees and costs under the Equal Access to
13 Justice Act (“EAJA”), as amended, 28 USC §2412, and on any other basis
14 justified under law; and

15
16 f. Grant any other and further relief that this Court deems just and proper.

17
18 Date: January 1, 2026

Respectfully submitted,

19 

20 _____
21 Linette Tobin, Esq.
22 *Attorney for Petitioner*
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24 2872 Fir Street
25 San Diego, CA 92102
26 (202) 489-8351
27 linette@linettetobin.com

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VERIFICATION PURSUANT TO 28 USC 2242

1
2 I am submitting this verification on behalf of the Petitioner because I am
3 Petitioner's attorney. I have discussed with the Petitioner the events described in
4 the Petition. Based on those discussions, I hereby verify that the factual statements
5 made in the attached Petition for Writ of Habeas Corpus are true and correct to the
6 best of my knowledge and abilities.
7

8
9
10 Executed on this 1st day of January, 2026, in San Diego, California.

11
12 
13 _____
14 Linette Tobin
15 Attorney for Petitioner
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1 Linette Tobin (Bar No. #345006)
2 2872 Fir Street
3 San Diego, CA 92102
4 T: (202) 489-8351
5 E: linette@linettetobin.com
6 Counsel for Petitioner/Plaintiff

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

10 M.J..

11 Petitioner/Plaintiff,

12 vs.

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

23 Respondents/Defendants.

24 Case No.:

25 **'26CV0017 DMS VET**

26 **DECLARATION OF**
27 **LINETTE TOBIN IN**
28 **SUPPORT OF PETITION**
FOR WRIT OF HABEAS
CORPUS;
& EXHIBITS 1 - 9

1 I, Linette Tobin, do hereby declare the following:

- 2 1. I have personal knowledge of the facts set forth below and if called to
3 testify, I could and would do so competently.
- 4 2. I am the habeas attorney for Petitioner M.J. who has authorized me to file
5 this habeas petition on his behalf. See 28 U.S.C§2242 (stating a habeas
6 petition "shall be in writing signed and verified by the person for whose
7 relief it is intended or by someone acting in his behalf.")
- 8 3. I have reviewed the factual allegations in the Petition for Writ of Habeas
9 Corpus and Order to Show Cause, and Complaint for Injunctive and
10 Declaratory Relief with Petitioner. As to all matters referenced therein over
11 which he has personal knowledge, he confirmed their truth and accuracy. I
12 also confirm the accuracy of all matters referenced in the Petition that are
13 within my personal knowledge.
- 14 4. Attached hereto as Exhibit 1 is a true and correct redacted copy of
15 Petitioner's Form I-862 Notice to Appear.
- 16 5. Attached hereto as Exhibit 2 is a true and correct redacted copy of
17 Petitioner's Form I-213 Record of Deportable/Inadmissible Alien.
- 18 6. Attached hereto as Exhibit 3 is a true and correct redacted copy of the Board
19 of Immigration Appeals remand to the Immigration Judge.
- 20 7. Attached hereto as Exhibit 4 is a true and correct redacted copy of the
21 Immigration Judge's order finding no jurisdiction over bond hearing.
- 22 8. Attached hereto as Exhibit 5 is a true and correct copy of an EOIR printout
23 showing a backlog of more than 200,000 cases at the Board of Immigration
24 Appeals.
- 25 9. Attached hereto as Exhibit 6 is a true and correct copy of an April 14, 2025
26 Federal Register notice showing the reduction of Board of Immigration
27 Appeals' judges from 28 to 15.
- 28 10. Attached hereto as Exhibit 7 is a true and correct copy of an August 22,
2025 DOJ memo to immigration judges titled Adjudicator Independence and
Impartiality.

1 11. Attached hereto as Exhibit 8 is a true and correct copy of two articles by
2 Politico and Justice Connection regarding the mass termination of
3 immigration judges and their replacement by military attorneys.

4 12. Attached here as Exhibit 9 is a true and correct copy of DHS ads recruiting
5 for "Deportation Judges."

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing statements are true and correct.

8 Executed this 1st day of January 2026 in San Diego, California.

9
10 
11 Linette Tobin

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