
3:26-cv-00122-BJC-MMP Yilmaz v. LaRose et al
Benjamin J. Cheeks, presiding
Michelle M. Pettit, referral
Date filed: 01/08/2026
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History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed:</i> 01/08/2026 <i>Entered:</i> 01/09/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/13/2026	 Motion for TRO
<u>3</u>	<i>Filed & Entered:</i> 01/16/2026	 Order
<u>4</u>	<i>Filed & Entered:</i> 01/21/2026	 Notice of Appearance

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

9 HALUK YILMAZ,
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.: '26CV0122 BJC MMP

Agency Number: A 

PETITION FOR WRIT OF HABEAS
CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING
REQUESTED

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INTRODUCTION

1. Haluk YILMAZ, born  is a young man from Turkey.

He has participated in human rights campaigns and supports the LGBTQIA community. When his peers discovered his support for sexual minorities he was ostracized and then threatened. Life became harder and harder for him. He lost his job and endured many threats to his safety. Eventually he was discriminated against in school, at work and every other social aspect of life in Turkey. He believed he could no longer live in Turkey and he made his way to the United States. On May 29, 2024 he entered the United States and presented himself to the authorities.

2. He entered the United States on May 29, 2024 near Tecate. He was detained for approximately 2 days. It was determined that he was not a danger to the community and not a flight risk and was paroled by release on recognizance (OREC). He was paroled into the United States on May 30, 2024. *See Exhibit A.*

3. Mr. Yilmaz began his life in the United States after he was released. He received work authorization, found a place to live and integrated himself into the local community. In the year and a half he has lived here he has established himself financially as well. He filed his I-589 application for Asylum on December 5, 2024.

1 told again that they both needed to wait. The supervisor then took his picture and
2 his fingerprints. He was told once again that he must wait. He asked again why he
3 was being detained. He was simply told to wait. At approximately 8:00 p.m. ICE
4 officers arrived. He and Sebahattin were both put into handcuffs and told they were
5 being sent to detention. He asked again why he was being detained. He was not
6 told why he was arrested. He was not told what law he had violated. He was not
7 advised of his Miranda rights. With no cause and no explanation and no warrant he
8 was put in the ICE vehicle and transferred to the ICE facility in downtown San
9 Diego. He was then transferred to the Otay Mesa facility.
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14 6. One of the benefits that petitioner enjoyed with parole has been his
15 ability to work, to go to school and to more actively participate in his asylum
16 application process. Suddenly, with no notice, no neutral determination that there
17 has been a change in circumstances, Respondents seek to revoke Mr. Yilmaz
18 parole and force him to remain in custody for the duration of his application
19 process. Respondents do so based not on Mr. Yilmaz' personal circumstances but
20 because of Respondents' interpretation of President Trump's whim and categorical
21 determination that, the Fifth Amendment notwithstanding, noncitizens are not
22 entitled to due process.
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1 7. But Respondents cannot evade the law so easily. The U.S.
2 Constitution requires the Respondents provide at least the rights available to him
3 when he was granted parole and when he filed his application for asylum¹.
4

5 8. Accordingly, to vindicate Petitioner’s rights, this Court should grant
6 the instant petition for a writ of habeas corpus. Mr. Yilmaz asks this Court to find
7 that Respondents’ attempt to detain him are arbitrary and capricious and in
8 violation of the law, and to immediately issue an order preventing his transfer out
9 of this district.
10
11

12 JURISDICTION

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14 9. This action arises under the Constitution of the United States and
15 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
16

17 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
18 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
19 United States Constitution (Suspension Clause).
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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 11. This Court may grant relief under the habeas corpus statutes, 28
2 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
3 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
4 U.S.C. § 1252(e)(2).
5

6
7 **VENUE**

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

13
14 13. For these same reasons, divisional venue is proper under Local
15 Rule HC.1

16 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

17
18 14. The Court must grant the petition for writ of habeas corpus or
19 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
20 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
21 must require Respondents to file a return "within three days unless for good cause
22 additional time, not exceeding twenty days, is allowed." *Id.*
23

24
25 15. Courts have long recognized the significance of the habeas statute
26 in protecting individuals from unlawful detention. The Great Writ has been
27

1 referred to as “perhaps the most important writ known to the constitutional law of
2 England, affording as it does a swift and imperative remedy in all cases of illegal
3 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
4

5 16. Petitioner is “in custody” for the purpose of § 2241 because he is
6 arrested and detained by Respondents.
7

8 PARTIES

9 17. Haluk Yilmaz (“Petitioner”) is a 27-year-old citizen of Turkey
10 born  He is currently a resident of San Diego, California, and is
11 present within the state of California as of the time of the filing of this petition.
12

13 18. Respondent Christopher Larose is the Warden of the Otay Mesa
14 Detention Center and is a legal custodian of Petitioner.
15

16 19. Respondent Daniel A. Brightman is the Field Office Director for
17 the San Diego Field Office, Immigration and Customs Enforcement and Removal
18 Operations (“ICE”). The San Diego Field Office is responsible for local custody
19 decisions relating to non-citizens charged with being removable from the United
20 States, including the arrest, detention, and custody status of non- citizens. The San
21 Diego Field Office’s area of responsibility includes San Diego, California and the
22 Otay Mesa Detention Center. Respondent Daniel A. Brightman is a legal custodian
23 of Petitioner.
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1 20. Respondent Todd Lyons is the acting director of U.S. Immigration
2 and Customs Enforcement, and he has authority over the actions of respondent
3 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
4 Petitioner.
5

6 21. Respondent Kristi Noem is the Secretary of the Department of
7 Homeland Security (DHS) and has authority over the actions of all other DHS
8 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
9 legal custodian of Petitioner and is charged with faithfully administering the
10 immigration laws of the United States.
11

12 22. Respondent Pamela Bondi is the Attorney General of the United
13 States, and as such has authority over the Department of Justice and is charged
14 with faithfully administering the immigration laws of the United States.
15

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

21 24. Respondent U.S. Department of Homeland Security is the federal
22 agency that has authority over the actions of ICE and all other DHS Respondents.
23

1 29. The INA gives the Attorney General or the Secretary of Homeland
2 Security discretion to grant asylum to noncitizens who satisfy the definition of
3 “refugee.” Under that definition, individuals generally are eligible for asylum if
4 they have experienced past persecution or have a well-founded fear of future
5 persecution on account of race, religion, nationality, membership in a particular
6 social group, or political opinion and if they are unable or unwilling to return to
7 and avail themselves of the protection of their homeland because of that
8 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
9
10

11 30. Although a grant of asylum may be discretionary, the right to
12 apply for asylum is not. The Refugee Act broadly affords a right to apply for
13 asylum to any noncitizen “who is physically present in the United States or who
14 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
15
16
17

18 31. Because of the life-or-death stakes, the statutory right to apply for
19 asylum is robust. The right necessarily includes the right to counsel, at no expense
20 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
21 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
22 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
23 to present evidence to establish eligibility.).
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1 32. Noncitizens seeking asylum are guaranteed Due Process under the
2 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
3 (1993).

4
5 33. Noncitizens who are applicants for asylum are entitled to a full
6 hearing in immigration court before they can be removed from the United States. 8
7 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
8 appellate review before the Board of Immigration Appeals of removal orders
9 entered against them and judicial review in federal court upon a petition for
10 review. 8 U.S.C. § 1252(a) *et seq.*

11
12 34. Immigration detention is a form of civil confinement that
13 “constitutes a significant deprivation of liberty that requires due process
14 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

15
16 35. Immigration detention should not be used as a punishment and
17 should only be used when, under an individualized determination, a noncitizen is a
18 flight risk because they are unlikely to appear for immigration court or a danger to
19 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

20
21 36. Parole must be terminated upon written notice after an
22 individualized determination that the humanitarian purposes no longer apply. 8
23 C.F.R. § 212.5(e)(2)(i).

1
2
3 **FACTUAL BACKGROUND**

4 37. Petitioner is a citizen of Turkey. He was born  in
5 Turkey and is currently a citizen of Turkey.

6
7 38. Petitioner was repeatedly persecuted in Turkey. He was repeatedly
8 assaulted and his life threatened for participation in rights rallies, because of his
9 affiliation with the rights of sexual minorities.
10

11 39. On May 30, 2024, Petitioner was paroled into the United States to
12 seek asylum. This release was based on the individualized facts in his case
13 determined during interviews with the officers that were overseeing him
14

15 40. He was also issued an NTA and placed in 240 removal
16 proceedings.
17

18 41. He has attended all scheduled hearings in connection with his
19 removal proceedings.
20

21 42. On information and belief, Petitioner continues to meet all the
22 requirements of his parole.
23

24 43. Petitioner applied for asylum on December 5, 2024.

25 44. Respondents issued work authorization to Petitioner pursuant to 8
26 C.F.R. § 274a.12(c)(08).
27

1 47. Mr. Yilmaz was never presented with a warrant for his arrest. The
2 ICE agents did not provide him any process. The ICE agents did not offer him any
3 opportunity to be heard prior to arresting and detaining him.
4

5 48. On January 20, 2025, President Donald Trump issued several
6 executive actions relating to immigration, including “Protecting the American
7 People Against Invasion,” an executive order (EO) setting out a series of interior
8 immigration enforcement actions. The Trump administration, through this and
9 other actions, has outlined sweeping, executive branch-led changes to immigration
10 enforcement policy, establishing a formal framework for mass deportation. The
11 “Protecting the American People Against Invasion” EO instructs the DHS
12 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
13 prioritize civil immigration enforcement procedures including through the use of
14 mass detention.
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19 49. On information and belief, Respondents are detaining Petitioner
20 regardless of the individual facts and circumstances of his case.
21

22 50. On information and belief, Respondents are using the immigration
23 detention system as a means to punish individuals for asserting rights under the
24 Refugee Act.
25

26 51. On information and belief, Petitioner has no criminal history.
27

1 **CLAIMS FOR RELIEF**

2 **COUNT ONE**

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

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

5 **Unlawful Detention**

6 52. Petitioner restates and realleges all paragraphs as if fully set forth
7 here.

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

10 54. An action is an abuse of discretion if the agency “entirely failed to
11 consider an important aspect of the problem, offered an explanation for its decision
12 that runs counter to the evidence before the agency, or is so implausible that it
13 could not be ascribed to a difference in view or the product of agency expertise.”
14 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
15 (*quoting Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
16 463 U.S. 29, 43 (1983)).

17 55. To survive an APA challenge, the agency must articulate “a
18 satisfactory explanation” for its action, “including a rational connection between
19

1 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
2 2569 (2019) (citation omitted).

3
4 56. By categorically revoking Petitioner’s parole and transferring him
5 to Otay Mesa Detention Center without consideration of his individualized facts
6 and circumstances, Respondents have violated the APA.

7
8 57. Respondents have made no finding that Petitioner is a danger to
9 the community.

10
11 58. Respondents have made no finding that Petitioner is a flight risk.

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

16
17
18 60. Respondents have already considered Petitioner’s facts and
19 circumstances and determined that he was not a flight risk or danger to the
20 community when they granted him parole. There have been no changes to the facts
21 that justify this revocation of his parole.

22
23 **COUNT TWO**

24
25 **Violation of Fifth Amendment Right to Due Process**

26
27 **Procedural Due Process**

1 61. Petitioner restates and realleges all paragraphs as if fully set forth
2 here.

3
4 62. The Due Process Clause of the Fifth Amendment to the U.S.
5 Constitution prohibits the federal government from depriving any person of “life,
6 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
7 process protects “all ‘persons’ within the United States, including [non-citizens],
8 whether their presence here is lawful, unlawful, temporary, or permanent.”
9
10 *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

11
12 63. Due process requires that government action be rational and non-
13 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

14
15 64. While the government has discretion to detain individuals under 8
16 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
17 discretion is not “unlimited” and must comport with constitutional due process. *See*
18 *Zadvydas*, 533 U.S. at 698.

19
20
21 65. Here, Respondents have chosen to revoke Petitioner’s parole in an
22 arbitrary manner and not based on a rational and individualized determination of
23 whether he is a safety or flight risk, in violation of due process. Because no
24 individualized custody determination has been made and no circumstances have
25 changed to make Petitioner a flight risk or a danger to the community,
26
27

1 Respondents' revocation of Petitioner's release violates his right to procedural due
2 process.
3

4 **COUNT THREE**

5 **Violation of the Fourth Amendment to the Constitution**

6 66. Petitioner restates and realleges all paragraphs as if fully set forth
7 here.
8

9 67. The Fourth Amendment protects "[t]he right of the people to be
10 secure in their persons ... against unreasonable searches and seizures." U.S. Const.
11 Amend. IV. The Supreme Court has recognized that immigration arrests and
12 detentions are "seizures" within the meaning of the Fourth Amendment. *INS v*
13 *Lopez-Mendoza*, 468 U.S. 1032, 1044f (1984) (acknowledging that deportation
14 proceedings are civil, but the Fourth Amendment still applies to the "Seizure" of
15 the person.)
16
17
18

19 68. The Fourth Amendment requires that arrests entail a neutral,
20 judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114
21 (1975). That neutral, judicial determination can occur either before the arrest in the
22 form of a warrant, or promptly afterward, in the form of a prompt judicial probable
23 cause determination. *Id.* Arrest and detention of a person, including of a
24 noncitizen, absent a neutral judicial determination of probable cause violates the
25
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1 Fourth Amendment of the Constitution. *Id. See also Cnty. Of Riverside v*
2 *McLaughlan*, 500 U.S. 44, 57 (1991). This determination must occur within 48
3
4 hours of detention, which includes weekends, unless there is a bona fide
5 emergency or other extraordinary circumstances. *Id.*
6

7 69. Congress enacted a strong preference that immigration arrests be
8 based on warrants. See *Arizona v. United States*, 567 U.S. 387, 407-08 (2012). The
9 Immigration and Nationality Act thus provides immigration officers with only
10 limited authority to conduct warrantless arrests. See 8 C.F.R § 287.8(c)(2)(ii).
11

12 70. Mr. Yilmaz, at the moment of the arrest by Respondents, was
13 lawfully present based on the Respondents' prior grant of release and parole. He
14 did not receive any judicial determination of probable cause for his arrest or
15 continued detention by Respondents.
16

17
18 71. The Government cannot salvage this seizure by invoking
19 generalized immigration enforcement interests. The Fourth Amendment's
20 reasonableness inquiry is fact-specific and demands individualized justification for
21 both the arrest and the extended detention. See *United States v Brignoni-Ponce*,
22 422 U.S. 873, 882-84 (1975). *Gerstein*, 420 U.S. at 114. Mr. Yilmaz was granted
23 release from DHS custody in 2024 and did not pose any danger to any person in
24 the community at large.
25
26

1 (7) Issue and Order prohibiting the Respondents from enrolling the
2 Petitioner in any Alternative to Detention program, specifically barring them from
3 requiring an ankle monitor;
4

5 (8) Grant any further relief this Court deems just and proper.
6

7 Dated: December 19, 2025.

/s/ Brian J. McGoldrick
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EXHIBIT A

U.S. Department of Homeland Security

Order of Release on Recognizance

File No: [Redacted]
Date: May 30, 2024
Event No: [Redacted]

Name: HALUK YILMAZ

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the 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 Department of Homeland Security or the Executive Office for Immigration Review.

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

You must report in (writing) (person) to _____ (Name and Title of Case Officer)
at As indicated on the attached OREC G-56 on _____ at _____
(Location of DHS 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 immigration officer listed above.

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

You must assist the Department of Homeland Security in obtaining any necessary travel documents.

Other: _____

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 Department of Homeland Security.

KEVIN S LEMOS
Date: 2024.05.30 10:54:40 -07:00
0690454109.CBP

(Signature of DHS Official)

(A) WATCH COMMANDER

(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 TURKISH 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 Department of Homeland Security may revoke my release without further notice.

PATRICK J NOZA
Date: 2024.05.30 11:16:17 -07:00
0956483918.CBP

(Signature of Immigration Officer Serving Order)

(Signature of Alien)

05/30/2024

(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 Immigration Officer Canceling Order) _____ (Date)