

3:26-cv-00121-DMS-SBC Dadak v. LaRose et al

Dana M. Sabraw, presiding

Steve B. Chu, referral

Date filed: 01/08/2026

Date of last filing: 01/16/2026

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/09/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/12/2026	 Order Setting Briefing Schedule - Habeas Corpus
<u>3</u>	<i>Filed & Entered:</i> 01/14/2026	 Notice of Appearance
<u>4</u>	<i>Filed & Entered:</i> 01/16/2026	 Return to Petition
<u>5</u>	<i>Filed & Entered:</i> 01/16/2026	 Traverse

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 EMRE DADAK,

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
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

25 Respondents.

Case No.: '26CV0121 DMS SBC

Agency Number: A 

PETITION FOR WRIT OF HABEAS
CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING
REQUESTED

1 INTRODUCTION

2 1. Emre DADAK, born [REDACTED] is a member of an ethnic
3 minority, the Kurds, in Turkey. He grew up in Turkey where he suffered such
4 persecution that he could no longer remain in Turkey safely. He was discriminated
5 against in school, at work and every other social aspect of life in Turkey. He
6 believed he could no longer live in Turkey and he made his way to the United
7 States. On November 4, 2023 he entered the United States and presented himself to
8 the authorities.
9

10 2. He entered the United States on November 4, 2023. He was
11 detained for approximately 6 days and then he was paroled by release on
12 recognizance (OREC). He was paroled into the United States on November 10,
13 2023.
14

15 3. Mr. Dadak began his life in the United States after he was released.
16 He received work authorization, found a place to live and integrated himself into
17 the local community. In the year and a half he has lived here he has established
18 himself financially as well. He filed his I-589 application for Asylum on January
19 25, 2024.
20

21 4. On October 31, 2025, Mr. Dadak was driving north on the 5
22 interstate freeway from San Diego to San Francisco. He became hungry and found
23

1 a McDonalds on his mobile app and decided to stop in for something to eat. When
2 he exited the 5 Freeway, the offramp led him directly into the line to enter Camp
3 Pendleton. The McDonalds is about a quarter mile down the road past the entrance.
4 The mobile app doesn't let the driver know they are entering a military base. Once
5 he realized they were in line to enter the base, there was no ability to turn around.
6
7 When he arrived to the guard booth he explained that he was trying to go to a
8 restaurant and didn't realize it was on base. He asked if he could simply turn
9 around and go back the way he came. The guard asked to see his ID. Mr. Dadak
10 asked the guard if they could turn around and be on their way. This was about 2:00
11 p.m. The officer there looked at his driver's license and asked if he had a green
12 card. Since he did not have one he asked him to pull over to the side of the road.
13
14
15

16
17 5. The guard explained that his supervisor needed to come speak to
18 him and told him he had to wait. He asked several times if he was free to go. He
19 was told he could not leave. He presented proof of his work authorization and his
20 pending asylum application. No base personal ever explained what law he had
21 violated that allowed them to hold him their prisoner. They simply asserted that
22 since he didn't have a green card he had to wait. After about an hour ICE officers
23 arrived. He was told that he would be detained and his asylum hearing would be
24 sped up by being in detention. They the put him in handcuffs, leg irons and waist
25
26
27

1 restraint, as though he were a violent criminal. He was then led to an ICE vehicle
2 and transported to the ICE facility in downtown San Diego. From there he ended
3 up at Otay Mesa Detention Center. He was not told why he was arrested. He was
4 not told what law he had violated. He was not advised of his Miranda rights. With
5 no cause and no explanation and no warrant he was put in the ICE vehicle and
6 transferred to the ICE facility in downtown San Diego. He was then transferred to
7 the Otay Mesa facility.
8
9
10

11 6. One of the benefits that petitioner enjoyed with parole has been his
12 ability to work, to go to school and to more actively participate in his asylum
13 application process. Suddenly, with no notice, no neutral determination that there
14 has been a change in circumstances, Respondents seek to revoke Mr. Dadak parole
15 and force him to remain in custody for the duration of his application process.
16 Respondents do so based not on Mr. Dadak's personal circumstances but because of
17 Respondents' interpretation of President Trump's whim and categorical
18 determination that, the Fifth Amendment notwithstanding, noncitizens are not
19 entitled to due process.
20
21
22
23
24
25
26
27
28

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. Dadak 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

13
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).
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 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).

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

8 **PARTIES**

9 17. Emre Dadak (“Petitioner”) is a 25-year-old citizen of Turkey born
10  He is currently a resident of San Diego, California, and is present
11 within the state of California as of the time of the filing of this petition.

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

15 19. Respondent Daniel A. Brightman is the Field Office Director for
16 the San Diego Field Office, Immigration and Customs Enforcement and Removal
17 Operations (“ICE”). The San Diego Field Office is responsible for local custody
18 decisions relating to non-citizens charged with being removable from the United
19 States, including the arrest, detention, and custody status of non- citizens. The San
20 Diego Field Office’s area of responsibility includes San Diego, California and the
21 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
22 Petitioner.

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
12 30. Although a grant of asylum may be discretionary, the right to
13 apply for asylum is not. The Refugee Act broadly affords a right to apply for
14 asylum to any noncitizen “who is physically present in the United States or who
15 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
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.).
24
25
26
27

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

13 34. Immigration detention is a form of civil confinement that
14 “constitutes a significant deprivation of liberty that requires due process
15 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
16
17

18 35. Immigration detention should not be used as a punishment and
19 should only be used when, under an individualized determination, a noncitizen is a
20 flight risk because they are unlikely to appear for immigration court or a danger to
21 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
22

23 36. Parole must be terminated upon written notice after an
24 individualized determination that the humanitarian purposes no longer apply. 8
25 C.F.R. § 212.5(e)(2)(i).
26
27

1
2
3 **FACTUAL BACKGROUND**

4 37. Petitioner is an ethnic minority Kurd and citizen of Turkey. He
5 was born  in 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, and just for being
9 a Kurd. Even listening to Kurdish music would bring condemnation and threats
10 and assaults.
11

12 39. On November 10, Petitioner was paroled into the United States to
13 seek asylum. This release was based on the individualized facts in his case
14 determined during his initial detention after he entered the United States.
15

16 40. He was also issued an NTA and placed in 240 removal
17 proceedings.
18

19 41. He has attended all scheduled hearings in connection with his
20 removal proceedings.
21

22 42. On information and belief, Petitioner continues to meet all the
23 requirements of his parole.
24

25 43. Petitioner applied for asylum on January 25, 2024.
26
27

1 44. Respondents issued work authorization to Petitioner pursuant to 8
2 C.F.R. § 274a.12(c)(08).
3

4 45. On October 31, 2025, Mr. Dadak was driving north on the 5
6 Freeway toward San Francisco. He was hungry and decided to stop for food in
7 Oceanside. He looked for a McDonalds on his mobile device. There is a
8 McDonalds on the Camp Pendleton Base about one half mile past the gate
9 entrance. Unfortunately, mobile apps don't warn about base entrances. He
10 followed the app off the freeway and suddenly found himself in line to enter Camp
11 Pendleton. When he arrived at the entry gate the gate guard did not allow him to
12 turn around but asked him to pull to the side. Mr. Dadak complied. There is a small
13 office there and two men were working and he asked them if he could leave. They
14 told him to wait, that someone else wanted to interview him. About an hour after
15 he arrived, ICE agents showed up and took him into custody.
16
17
18

19 46. The ICE officers arrived, cuffed and shackled him and then put
20 him in their vehicle, and transported him to their downtown San Diego holding
21 area. He was never given a written notice that his parole was being terminated. He
22 was not given any particularized reason for why he was being placed into
23 detention. He was never presented with a warrant for his arrest. He was never
24 given any Miranda warnings. He was eventually transported to Otay Mesa
25
26
27
28

1 Detention Center. Mr. Dadak must now continue his asylum application process
2 while in detention.
3

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

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

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

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

12 **Unlawful Detention**

13 52. Petitioner restates and realleges all paragraphs as if fully set forth
14 here.
15

16 53. Under the APA, a court shall “hold unlawful and set aside agency
17 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
18

19 54. An action is an abuse of discretion if the agency “entirely failed to
20 consider an important aspect of the problem, offered an explanation for its decision
21 that runs counter to the evidence before the agency, or is so implausible that it
22 could not be ascribed to a difference in view or the product of agency expertise.”
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
26
27

1 community when they granted him parole. There have been no changes to the facts
2 that justify this revocation of his parole.
3

4 **COUNT TWO**

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

6 **Procedural Due Process**

7
8 61. Petitioner restates and realleges all paragraphs as if fully set forth
9 here.
10

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

18
19 63. Due process requires that government action be rational and non-
20 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
21

22 64. While the government has discretion to detain individuals under 8
23 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
24 discretion is not “unlimited” and must comport with constitutional due process. *See*
25 *Zadvydas*, 533 U.S. at 698.
26
27

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

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

21 70. Mr. Dadak, at the moment of the arrest by Respondents, was
22 lawfully present based on the Respondents' prior grant of release and parole. He
23 did not receive any judicial determination of probable cause for his arrest or
24 continued detention by Respondents.

1 (4) Declare that Petitioner’s warrantless arrest and detention
2 constitutes an unreasonable and unlawful seizure in violation of the Fourth
3 Amendment;
4

5 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
6 Petitioner from custody;
7

8 (6) Issue an Order prohibiting the Respondents from transferring
9 Petitioner from the district without the court’s approval;
10

11 (7) Issue and Order prohibiting the Respondents from enrolling the
12 Petitioner in any Alternative to Detention program, specifically barring them from
13 requiring an ankle monitor;
14

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

16 Dated: January 8, 2026

17 /s/ Brian J. McGoldrick
18 BRIAN J. MCGOLDRICK, ESQ.
19 CASB # 169104
20 attorney@brianmgoldrick.com
21 4916 Del Mar Avenue
22 San Diego, CA 92107
23 Telephone: +1 619-675-2366
24 *Attorney for Petitioner*