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

9 L.B.

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.:

'26CV0182 RSH BJW

**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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28 USC §13313

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CONSTITUTIONAL PROVISIONS

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1 Petitioner L.B. (“Petitioner”) petitions this Court for a writ of habeas corpus
2 pursuant to 28 USC §2241 to remedy her unlawful detention and states as follows:
3

4 **INTRODUCTION**

- 5 1. Petitioner is a 30-year old Turkish citizen who entered the U.S. on February
6 25, 2025. Exs. 1, 2. She 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 she remains today. *Id.*
10
11 2. She expressed her fear of torture in her home country and DHS found that it
12 was “more likely than not” that she would be tortured if returned to Turkey.
13 Ex. 3. She applied for asylum, withholding of removal, and protection under
14 the Convention Against Torture on August 22, 2025. Ex. 2. To date, she has
15 not received a final hearing. *Id.*
16
17 3. Petitioner requested a bond hearing in December 2025 which was denied on
18 jurisdictional grounds on December 16, 2025 as Respondents contend that
19 she is mandatorily detained under 8 USC §1225(b). Ex. 4.
20
21 4. Petitioner has now been incarcerated for eleven months. She is entitled to
22 release as she has endured prolonged detention, which continues with no end
23 in sight, in violation of her due process rights under Amendment V of the
24 U.S. Constitution. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Nadarajah*
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27

1 v. *Gonzales*, 443 F.3d 1069, 1078-80 (9th Cir. 2006) (applying *Zadvydas* and
2 rejecting government's arguments that 8 USC §1225(b) permits indefinite
3 detention).
4

5 5. Petitioner asks that this Court issue an order to show cause ("OSC") to the
6 Respondents "forthwith," unless Petitioner is not entitled to relief. 28 USC
7 §2243. If an OSC is issued, the Court must require Respondents to file a
8 return "within three days unless for good cause additional time, not
9 exceeding twenty days, is allowed." *Id.*
10

11 6. Petitioner also asks that this Court order Respondents to produce DHS
12 documents relevant to her detention, namely any Form I-200 Warrant for
13 Arrest of Alien, and any I-286 Notice of Custody Determination, both of
14 which would indicate whether she is detained pursuant to 8 USC §1225 or
15 §1226.
16

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

23 8. As an alternative to immediate release, Petitioner requests a bond hearing
24 before this Court wherein the government must bear the burden of
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1 demonstrating by clear and convincing evidence that she is a flight risk or
2 danger to the public. If the Court declines this request, we ask for an order
3 directing that a bond hearing be held before a *neutral* arbiter¹ within 10
4 days.
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6 **JURISDICTION AND VENUE**
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8 9. Jurisdiction is proper and relief available pursuant to 28 USC §2241 (habeas
9 corpus jurisdiction), 28 USC §1331 (federal question), 28 USC §1346 (U.S.
10 as defendant), and Art. I, §9, clause 2 of the United States Constitution (the
11 Suspension Clause).
12

13 10. This Court may grant relief pursuant to 28 USC §2241, 28 USC §1651 (All
14 Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).
15

16 11. The statute 8 USC §1252(g) does not preclude jurisdiction as Petitioner is
17 not challenging a “decision or action” to “commence proceedings,
18 adjudicate cases, or execute removal orders.” See *Reno v. Am. Arab Anti-*
19 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) [quoting 8 USC
20 §1252(g)]; *Ibarra-Perez v. U.S.*, 154 F.4th 989, 996-999 (9th Cir. 2025);
21 *Chub v. Larose*, 25-cv-3513, 2025 WL 365 4008 at *1-2 (S.D. Cal. Dec. 17,
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24

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 18-21
infra.

1 2025); *Constantinovici v. Bondi*, 25-cv-2405, 2025 WL 2898985 at *3(S.D.
2 Cal. Oct. 10, 2025); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633, at *2
3 (S.D. Cal. Sept. 27, 2025).
4

5 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
6 484, 493-500 (1973), venue lies in the United States District Court for the
7 Southern District of California, the district in which Petitioner is detained.
8

9 13. Venue is also proper in this Court pursuant to 28 USC §1391(e) because
10 Petitioner is detained in this District, Respondents are employees, officers,
11 and agencies of the United States, and a substantial part of the events or
12 omissions giving rise to the claims occurred in this District.
13

14 **CUSTODY AND REQUIREMENTS OF 28 USC §2241**
15

16 14. The Constitution guarantees that the writ of habeas corpus is “available to
17 every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542
18 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, clause. 2). “The essence
19 of habeas corpus is an attack by a person in custody upon the legality of that
20 custody, and . . . the traditional function of the writ is to secure release from
21 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).
22

23 15. A writ of habeas corpus may be granted to a petitioner who demonstrates
24 that he is in custody in violation of the Constitution or federal law. 28 USC
25 §2241(c)(3). Historically, “the writ of habeas corpus has served as a means
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1 of reviewing the legality of Executive detention, and it is in that context that
2 its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301
3 (2001).
4

5 16.A district court's habeas jurisdiction includes challenges to immigration-
6 related detention. *Zadvydas v. Davis*, 533 U.S. at 687; see also *Demore v.*
7 *Kim*, 538 U.S. 510, 517 (2003).
8

9 17.Petitioner is in custody for the purpose of 28 USC §2241 because she was
10 arrested by Respondents and remains in their legal and physical custody at
11 Otay Mesa Detention Center in San Diego, California. She is under
12 Respondents’ direct control.
13

14 **PARTIES**

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16 18.Petitioner is a 30-year-old citizen of Turkey detained by Respondents since
17 February 25, 2025. Exs. 1, 2. She is currently imprisoned at OMDC under
18 the direct control of Respondents. Ex. 2.
19

20 19.Respondent Christopher J. LaRose (“LaRose”), named in his official
21 capacity, is the Warden of OMDC. He oversees the day-to-day operations
22 of, and the confinement of non-citizens detained at, the facility. He is the
23 immediate physical custodian of Petitioner. He acts at the direction of
24 Respondents Brightman, Lyons, and Noem. He is a proper Respondent in
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1 this habeas petition under current Ninth Circuit law. *Doe v. Garland*, 109
2 F.4th 1188, 1197 (9th Cir. 2024).

3
4 20. Respondent Daniel Brightman (“Brightman”) is the Field Office Director of
5 ICE Enforcement and Removal Operations (“ERO”), a federal law
6 enforcement agency within DHS in San Diego, California. ERO is a division
7 of ICE that manages and oversees the immigration detention system. He is
8 the legal custodian of Petitioner and is named in his official capacity.

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

15
16
17 22. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
18 authority over the actions of all other DHS Respondents in this case, as well
19 as all operations and federal agencies of DHS, including ICE. In her capacity
20 as Secretary of DHS, Respondent Noem is charged with faithfully
21 administering the immigration and naturalization laws of the United States. 8
22 USC §1103(a). Noem is the legal custodian of Petitioner and is named in her
23 official capacity.
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1 23. Respondent Pamela Bondi (“Bondi”) is the Attorney General of the United
2 States and the most senior official in the U.S. Department of Justice (“DOJ”)
3 which encompasses the BIA and the immigration courts as sub-units of the
4 Executive Office of Immigration Review (“EOIR”). In this capacity, she has
5 the authority to interpret immigration laws and adjudicate removal and
6 custody cases. As the head of EOIR, she supervises Immigration Judges,
7 including those who preside at OMDC, and can instruct an IJ to hold a bond
8 hearing. Respondent Bondi is the legal custodian of Petitioner and is named
9 in her official capacity.
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13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 24. There is no statutory requirement to exhaust administrative remedies when
15 noncitizens challenge the lawfulness of their detention. 28 USC §2241.
16 Moreover, "The exhaustion requirement is prudential, rather than
17 jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988
18 (9th Cir. 2017).
19
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21 25. Prudential exhaustion cannot be required when it would be futile and result
22 in irreparable harm. See *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)
23 (superseded by statute on unrelated grounds). Here, “pursuit of
24 administrative remedies would be a futile gesture,” and “irreparable injury
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1 will result." *Hernandez*, 872 F.3d at 988 [quoting *Laing v. Ashcroft*, 370
2 F.3d 994, 1000 (9th Cir. 2004)].

3
4 26. Nevertheless, Petitioner, through immigration counsel, filed a motion for
5 custody redetermination with the immigration court in December 2025, but
6 the IJ declined jurisdiction, because she deemed Petitioner detained pursuant
7 to 8 USC §1225(b)(1) and thus ineligible for bond. Ex. 4.

8
9 27. Seeking review at the Board of Immigration Appeals ("BIA") would have
10 been a futile gesture owing to the Attorney General's precedential decisions
11 in *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019) and *Matter of Yajure*
12 *Hurtado*, 29 I&N 216 (BIA 2025). *Matter of M-S-* held that noncitizens
13 detained pursuant to 8 USC §1225(b)(1) are ineligible for bond, and *Yajure*
14 *Hurtado* held that noncitizens present in the U.S. without being admitted or
15 paroled are likewise.
16
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18 28. Petitioner cannot be expected to endure the very harm he seeks to avoid by
19 appealing the IJ's decision to the BIA and waiting many more months for a
20 decision that is a foregone conclusion. See *Vasquez-Rodriguez v. Garland*, 7
21 F.4th 888, 896 (9th Cir. 2021) ("[W]here the agency's position on the
22 question at issue appears already set, and it is very likely what the result of
23 recourse to administrative remedies would be, such recourse would be futile
24 and is not required.")
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1 29. Every day that Petitioner remains in detention violates her due process right
2 to liberty and constitutes irreparable harm. See *Addington v. Texas*, 441 U.S.
3 418, 425 (1979) (“This Court repeatedly has recognized that civil
4 commitment for any purpose constitutes a significant deprivation of liberty
5 that requires due process protection.”). To date, Petitioner has already been
6 incarcerated for 11 months.
7

8
9 30. There is no adequate procedure or administrative remedy to address her
10 detention excepting a writ of habeas corpus which is now the sole avenue to
11 vindicate her constitutional rights and restore her liberty. Without this
12 Court’s intervention, she faces indefinite detention without the opportunity
13 for release on bond.
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16 **LEGAL FRAMEWORK**

17 31. Petitioner seeks release as her prolonged, indefinite detention under 8 USC
18 §1225 violates her due process rights guaranteed by Amendment V of the
19 U.S. Constitution.
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21 **A. A bond hearing is required when detention is unreasonably**
22 **prolonged in violation of Amendment V of the U.S. Constitution**

23 32. Petitioner’s continued detention violates the due process rights guaranteed
24 by the Fifth Amendment to the U.S. Constitution which provides that no
25 person shall be “deprived of life, liberty, or property, without due process of
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1 law.” “Freedom from imprisonment—from government custody, detention,
2 or other forms of physical restraint—lies at the heart of the liberty that [the
3 Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 678.
4

5 33. These rights are bestowed not only on citizens, but “It is well established
6 that the Fifth Amendment entitles aliens to due process of law in deportation
7 proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) [citing *Reno v.*
8 *Flores*, 507 U.S. 292, 306 (1993)], *Clark v. Martinez*, 543 U.S. 371, 378
9 (2005) (applying the holding in *Zadvydas* to noncitizens who have not been
10 admitted to the US).
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13 34. The Ninth Circuit likewise has stated, “We have grave doubts that any
14 statute that allows for arbitrary prolonged detention without any process is
15 constitutional. . . . Arbitrary civil detention is not a feature of our American
16 government.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018);
17 *Zadvydas* at 693.
18
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20 35. Noncitizens, like the Petitioner, detained pursuant to 8 USC §1225(b) are
21 entitled to bond hearings when the length of detention becomes
22 unreasonable or prolonged. *See Nadarajah v. Gonzales*, 443 F.3d at 1078-
23 80 (9th 2006) (applying *Zadvydas* and rejecting government’s arguments that
24 §1225(b) permits indefinite detention); *Kydyrali v. Wolf*, 499 F. Supp. 3d
25 768, 772 (S.D. Cal. 2020) (“[T]he Court joins the majority of courts across
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1 the country in concluding that an unreasonably prolonged detention under 8
2 USC §1225(b) without an individualized bond hearing violates due
3 process.”); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633, at *3 (S.D. Cal.
4 Sept. 26, 2025); *Amado v. U.S. DOJ*, 25-cv-2687, 2025 WL 3079052, at *4
5 (S.D. Cal. Nov. 4, 2025); *AbdulKadir v. Larose*, No. 25-cv-1-45, 2025 WL
6 2932654, at *3 (S.D. Cal. Oct. 15, 2025); *Sadeqi v. Larose*, 25-cv-2587,
7 2025 WL 3154520, at *2 (S.D. Cal. Nov. 12, 2025).

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10 36. The cases of *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206 (1953) and
11 *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) do not
12 dictate otherwise. In *Mezei*, the “Supreme Court recognized Mezei’s
13 exclusion for security reasons as different from noncitizens who may be
14 released from detention on bond.” See *Sufiiarov v. Warden, Otay Mesa*
15 *Detention Center*, 3:25-cv-3265, 2026 WL 26079, at *4 (S.D. Cal. Jan. 5,
16 2026). *Thurissigiam* is also easily distinguishable as the case pertained to a
17 “noncitizen’s right to challenge *admission* not detention.” *Id.*
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22 **B. Factors to consider when evaluating prolonged detention**

23 37. There is no bright line rule for when detention becomes prolonged. Rather,
24 the constitutional question of whether the length of detention is unreasonable
25 is fact-dependent and requires a circumstance specific multi-factor analysis.
26

1 38. This Court has utilized the *Banda v. McAleenan*, 385 F. Supp, 3d 1099,
2 1117-18 (W.D. Wash. 2019) six factors most frequently,² but has embraced
3 the three-factor *Lopez v. Garland*, 631 F. Supp. 870, 879 (E.D. Cal. 2022)
4 test as well.³ As the *Lopez* factors⁴ are subsumed within the *Banda* ones
5 (specifically factors 1, 2, 4, and 5), we will analyze all six of the *Banda*
6 factors as doing so will cover both tests.
7

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9 39. The *Banda* court articulated six factors that determine how long is too long.
10 The factors are: (1) the total length of detention to date; (2) the likely
11 duration of future detention; (3) the conditions of detention; (4) delays in the
12 removal proceedings caused by the detainee; (5) delays in the removal
13 proceedings caused by the government; and (6) the likelihood that the
14 removal proceedings will result in a final order of removal. *Banda*, 385 F.
15 Supp. at 1117-18 [quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–
16 59 (D. Minn. 2019)].
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20 40. Of these six factors, the total length of detention to date is considered the
21 most important. *Id.* To date, Petitioner has been in detention for eleven
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² See e.g., *AbdulKadir v. Larose*, 2025 WL 2932654, *at 4 (S.D. Cal. Oct. 15, 2025); *Kydyrali v. Wolf*, 499 F. Supp
25 3d at 772 (S.D. Cal. 2020); *Sadeqi v. Larose*, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025).

26 ³ See e.g., *Sanchez-Rivera v. Matuszewski*, 22-cv-1357, 2023 WL 139801, at *6 (S.D. Cal., Jan. 9, 2023); *Sufiiarov*
27 *v. Warden*, 2026 WL 26079, at *4.

28 ⁴ Length of detention to date; likely duration of future detention, delays in removal proceedings caused by Petitioner
and the Government. *Lopez v. Garland*, 631 Fed. Supp. at 879.

1 months. The Ninth Circuit in *Diouf v. Napalitano*, 634 F.3d 1081, 1091-92
2 (9th Cir. 2011) held that “When detention crosses the six-month threshold
3 and release or removal is not imminent, the private interests at stake are
4 profound.”
5

6 41. This Court has found that detention for periods between 10 and 13 months
7 are unreasonable. *See AbdulKadir*, 2025 WL 2932654, at *5 (13 months);
8 *Sadeqi v. Larose*, 2025 WL 3154520, *4 (11 months); *Gao v. Larose*, 2025
9 WL 2770633, *5 (10 months); *Amado v. U.S. Dept. of Justice*, 2025 WL
10 3079052, *5 (13 months); *Akbar v. Larose*, 3:25-cv-3510, 2026 WL 36079,
11 at *3-4 (S.D. Cal. Jan. 6, 2026) (13 months); *Markosian v. Bondi*, 3:25-cv-
12 3494, 2026 WL 25850, *3 (S.D. Cal. Jan. 5, 2026) (1 year); *Guatam v.*
13 *Correctional Corp of America*, 3:25-cv-3600, 2026 WL 25846, at *4 (S.D.
14 Cal. Jan. 5, 2026) (1 year); *Sufiarirov v. Warden*, 2026 WL 26079, *4 (1
15 year).
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20 42. Other jurisdictions have recognized that even shorter periods can be
21 considered prolonged. *See e.g., Masood v. Barr*, No. 19-CV-07623-JD, 2020
22 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Cabral v.*
23 *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)
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1 (seven months). Having been detained now for eleven months, Petitioner
2 has surpassed these thresholds.

3
4 43. The second factor requires consideration of the “anticipated duration of all
5 removal proceedings – including administrative and judicial appeals.” *Banda*
6 385 F. Supp. 3d at 1119 (quoting *Jamal A.*, 358 F. Supp. 3d at 859). In
7 addition to the almost one year that Petitioner has already been incarcerated,
8 her future detention will most likely stretch on for years during the final
9 adjudication of her case.
10

11
12 44. Her case is currently before the IJ, and it is most probable that the non-
13 prevailing party will appeal to the BIA, and if necessary, file a Petition for
14 Review to the Ninth Circuit. Any resulting remand would only further
15 extend Petitioner’s already prolonged detention. Petitioner’s procedural
16 posture is similar to the petitioner in *Guatam* where this Court noted that
17 “Petitioner’s removal is not even yet final, so the Court finds even more
18 reason to find that this factor falls in his favor.” 2026 WL 25846, at *5.
19

20
21 45. Like *Guatam*, Petitioner has not yet even had her final hearing with the IJ.
22 Though she currently has a hearing before the immigration court in January
23 2026, that hearing is a mere scheduling hearing, not a final merits date. Ex.
24 2. Her habeas petition, then, is even stronger than that in the recent case of
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1 *Sufiarov*, wherein the Court, in granting petitioner’s habeas petition, noted
2 that:

3
4 although there is a merits’ hearing on February 25, 2026, that is no
5 indication that Petitioner’s detention will end on that date.
6 Although it is unclear when removal proceedings will conclude, it
7 will likely be a substantial amount of time because it is unknown
8 how long a decision on his asylum application will take, and either
side may appeal an unfavorable ruling. *Sufiarov*, 2026 WL
26079, at *5.

9 46. District Courts in the Ninth Circuit have acknowledged that an appeal to the
10 BIA and a Petition for Review to the Circuit Court “may take up to two
11 years or longer.” See *Banda*, 385 F. Supp. 3d at 1119 (citing *Jamal A.* at
12 860); *AbdulKadir v. Larose*, 2025 WL 2932654, at *5 (future detention can
13 last several more months or even years during the adjudication of
14 Respondents’ appeal to the BIA); *Belqasim v. Bostock*, No. 2:25-cv-01282,
15 2025 WL 3466971, at *7 (W.D. Wash. Oct. 28, 2025) (“many more months
16 and potentially years in detention” likely during pendency of removal
17 proceedings).
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21 47. Significant increases in what are already protracted adjudication times are
22 anticipated. First, the BIA currently faces a backlog of over 200,000 cases.
23 Ex. 5. Second, as this Administration has reduced the number of BIA
24 judges from 28 to 15, the backlog is expected to escalate even further. Ex. 6.
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1 48. The third *Banda* factor also weighs in favor of Petitioner as “[t]he more that
2 the conditions under which the [noncitizen] is being held resemble penal
3 confinement, the stronger his argument that he is entitled to a bond hearing.”
4 In this case, Petitioner’s detention is “indistinguishable from penal
5 confinement,” just as it was in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773
6 (S.D. Cal. 2020). In both cases, the petitioners were housed by Core Civic,
7 Inc. at OMDC. As recently recognized by this Court in *AbdulKadir v.*
8 *Larose*, 2025 WL 2932654, at *5, immigration detainees at OMDC are
9 “locked up behind razor wire and concrete walls in a secured facility,”
10 forced to wear “a color-coded prisoner jump suit,” forbidden from accessing
11 the internet, guarded at all times by “armed guards authorized to inflict
12 punishment for violations of rules,” and restricted in access to outdoor space
13 and visitation.
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18 49. The conditions of confinement have worn on Petitioner who is experiencing
19 severe anxiety and depression. Ex. 2. There is constant noise from the guards
20 speaking loudly on their walkie-talkies, keys and chains rattling, and the
21 slamming and locking of heavy metal doors. She suffers panic attacks when
22 she hears doors opening, because she is afraid that someone is coming to
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1 send her to another prison/state⁵ or remove her from the U.S. even though
2 she has a pending case. She never feels safe, especially in the bathroom
3 where she feels particularly vulnerable when she showers. *Id.* The persistent
4 noise and fear keep her from sleeping which has affected her well-being.
5

6 50. The fourth and fifth factors concern delays in the removal proceedings
7 caused by Petitioner or the government. The Petitioner has caused no delays,
8 other than her immigration counsel needing to cancel a December 2025
9 master calendar hearing due to COVID. The hearing was reset for January
10 2026. *Id.*
11

12
13 51. Respondents, though, have delayed the case repeatedly by moving her to
14 other facilities (OMDC to Arizona, back to OMDC, Arizona again, then
15 OMDC), cancelling hearings, and reassigning her from one judge to another.
16 It took four months for her to receive an initial hearing with an IJ. *Id.* On one
17 occasion, she was present and ready to proceed with a hearing, but after
18 waiting for some time, she was told that her hearing was canceled, and she
19 was returned to her cell without explanation. There were further
20 postponements, because her IJ left her employment and Petitioner had to be
21 assigned to a different judge. *Id.* This led to her merits hearing being
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26 ⁵ She has twice been sent to a facility in Arizona. When she returned to OMDC after 3-4 months in Arizona, her
27 mother and sister who had been with her at OMDC had been deported from the U.S.

1 canceled, and Petitioner being placed back on the master hearing calendar
2 for January 2026. Petitioner has now been informed that her current judge
3 will only be on detail at OMDC until the end of February 2026. *Id.* Thus, it
4 is almost certain that she will be handed off to another IJ which will require
5 yet another master calendar hearing before a final merits' hearing can occur.

6
7
8 52. The final *Banda* factor concerns the likelihood that the removal proceedings
9 will result in a final order of removal and requires that the Court consider
10 "whether the noncitizen has asserted any defenses to removal." *Banda*, 385
11 F. Supp, 3d at 1120. "[W]here a noncitizen has asserted a good faith
12 challenge to removal, 'the categorical nature of the detention will become
13 increasingly unreasonable.'" *Id.*, citing *Sajous v. Decker*, No. 18-CV-2447,
14 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018).

15
16
17 53. In the current case, DHS has already found that "[Y]ou established it is more
18 likely than not that you will be tortured" in Turkey. Ex. 3. Thus, it can
19 hardly be said that Petitioner has failed to assert a "good faith challenge to
20 removal."

21
22
23 **C. What remedy is appropriate?**

24 54. The Ninth Circuit dictates that where detention has become prolonged, a
25 bond hearing is required at which the burden of proof is on the government
26

1 to justify detention by clear and convincing evidence. *Martinez v. Clark*, 124
2 F.4th 775, 786 (9th Cir. 2024) [noting that due process requires “the
3 government to prove dangerousness or risk of flight by clear and convincing
4 evidence” at a bond hearing for noncitizens subject to prolonged detention.
5 (citing *Singh v. Holder*, 638 F.3d 1196, 1200, 1205 (9th Cir. 2011))].
6

7
8 55. Although a bond hearing before a neutral arbiter is the usual remedy for
9 prolonged detention, Petitioner is rightly concerned that she will not receive
10 an impartial hearing before the immigration court. Immigration judges are
11 at-will employees that fall within the ambit of the Department of Justice,
12 rather than the judiciary branch.
13

14 56. As amply demonstrated by the litigation in *Maldonado Baustista v.*
15 *Santacruz*, 5:25-cv-1873, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025), the
16 immigration courts can no longer be considered neutral adjudicators.
17 Rather, they are under the legal authority of the Attorney General/
18 Department of Justice who is a Respondent in this case. The Department of
19 Justice is not impartial and should not be given the authority to decide
20 whether Petitioner must remain incarcerated.
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22

23
24 57. The *Maldonado Bautista* decision states that it is “troubling” that the
25 Respondents in that action, including the DOJ, directed “IJs that they should
26 *disregard* this Court’s orders.” *Id.* at *5. The Court referred to a DOJ memo
27

1 instructing IJs to “hold the position that *Yajure Hurtado* remains good law.”

2 *Id.*

3
4 58. Further, a DOJ memo from August 2025 reminded immigration judges that
5 the Attorney General sets policy for the immigration courts, and that a
6 “determination and ruling by the Attorney General with respect to all
7 questions of law *shall* be controlling.” Ex. 7. The memo, ironically titled
8 “Adjudicator Independence and Impartiality,”⁶ explicitly warns that IJs are
9 “inferior officers subject to both appointment and removal by the Attorney
10 General,” and that the President may remove those who “disobey his
11 commands,” and “those who exercise their discretion in a way that is not
12 intelligent or wise, those who have different views of policy. . . and those in
13 whom he has simply lost confidence.” IJs with “statistically improbable
14 outcome metrics” (high grant rates) “warrant[] close examination and
15 potential action.” *Id.*

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20 59. Since President Trump took office, 1 in 7 immigration judges have been
21 fired, often for ideological/political differences. Ex. 8. These mass
22 terminations serve as a dire warning to the remaining judges and further
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26 _____
27 ⁶ DOJ Memo to EOIR, Adjudicator Independence and Impartiality, Aug. 22, 2025, PM 25-42.
28 Ex. 7.

1 erode their neutrality and independence. It is not possible for IJs to exercise
2 independent and impartial judgment when their jobs are on the line.

3
4 60. To fill these vacancies, DHS is recruiting for “Deportation Judges,” and
5 military attorneys with no prior immigration experience are being appointed.

6 Exs. 9. It is difficult to perceive how immigration judges recruited by DHS
7 as “deportation judges” can be considered neutral, particularly where the
8 DOJ is a party to this action.

9
10 61. In such a climate, it is highly dubious that Petitioner would receive a fair
11 bond hearing before a truly independent adjudicator. Moreover, it makes
12 little sense for the Executive Branch to sit as both party to and adjudicator of
13 a bond hearing.

14
15 62. Accordingly, we request an order of immediate release, or in the alternative,
16 a bond hearing presided over by this Court.

17
18 63. Should this Court decline to order immediate release or preside over a bond
19 hearing, we request an order directing Respondents to hold a bond hearing
20 within 10 days at which the burden of proof is on the government to justify
21 detention by clear and convincing evidence of danger or flight. We further
22 ask that the order instruct the IJ to consider financial circumstances
23 regarding ability to pay bond and alternative conditions of release as
24 required by *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).

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1 64. As summed up by the Supreme Court in *Zadvydas* immigration detention
2 should not be used punitively, but only where there has been an
3 individualized assessment of flight risk or danger to community. *Zadvydas v.*
4 *Davis* at 690, citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). As
5 Petitioner has not been provided this assessment, his detention violates his
6 due process rights.
7
8

9 **FACTUAL BACKGROUND**

10 65. Petitioner is a 30-year old citizen of Turkey detained by Respondents since
11 February 25, 2025 when she entered the U.S. Exs. 1, 2. She has been
12 imprisoned ever since. Ex. 2.
13

14 66. DHS found that it was “more likely than not” that she would be tortured if
15 returned to Turkey. Ex. 3. She then applied for asylum, withholding of
16 removal, and protection under the Convention Against Torture. Ex. 2.
17

18 67. Petitioner requested a bond hearing in December 2025, but on December 16,
19 2025, the IJ held that it lacked jurisdiction to hear the request as Petitioner
20 was detained under 8 USC §1225(b)(1). Ex. 4.
21

22 68. Petitioner’s merits’ hearing has not occurred despite almost one year in
23 custody due to continuances attributable to the government. Her hearings
24 were delayed due to the DHS transferring her from OMDC to Arizona, back
25 to OMDC, then to Arizona again, and back to OMDC. Ex. 2. One scheduled
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1 hearing did not occur for reasons unknown to Petitioner who waited with
2 many other detainees that day for the judge to arrive and call their cases. *Id.*
3
4 The IJ never appeared and the detainees were returned to their cells without
5 explanation. *Id.*

6 69. Although Petitioner received a final merits' date, it was cancelled when her
7 IJ left the court in October 2025. *Id.* To date, it has not been rescheduled.
8
9 Petitioner has now been informed that her current judge will only be on
10 detail at OMDC until the end of February 2026. *Id.* Thus, it is almost certain
11 that she will be handed off to another IJ which will require yet another
12 master calendar hearing before a final merits' hearing is set.
13

14
15 **CAUSE OF ACTION -- COUNT ONE**
16 **Petitioner's Detention Violates Her Fifth Amendment Right to Due Process**

17 70. Petitioner incorporates by reference the allegations of fact set forth in the
18 preceding paragraphs.

19
20 71. The Government may not deprive a person of life, liberty, or property
21 without due process of law. U.S. Constitution, Amendment V. "Freedom
22 from imprisonment -- from government custody, detention, or other forms of
23 physical restraint -- lies at the heart of the liberty that Clause protects."
24
25 *Zadvydas v. Davis*, at 690. Due process protects "all 'persons' within the
26

1 United States, including [non-citizens], whether their presence here is
2 lawful, unlawful, temporary, or permanent.” *Id.* at 693.

3
4 72. Petitioner has a fundamental interest in liberty and being free from official
5 restraint. Respondents’ prolonged detention of Petitioner serves no
6 legitimate purpose and violates her right to Due Process.
7

8 **PRAYER FOR RELIEF**

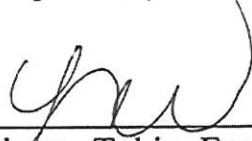
9
10 71. WHEREFORE, Petitioner respectfully asks that this Court take
11 jurisdiction over this matter and grant the following relief:

- 12 a. Issue an Order to Show Cause requiring Respondents to respond within three
13 days;
14
15 b. Issue a Writ of Habeas Corpus ordering Petitioner’s immediate release as
16 there is no allegation that she is a flight risk or a danger to society. In the
17 alternative, we ask that this Court conduct a bond hearing at which
18 Respondents must show by clear and convincing evidence that Petitioner is a
19 flight risk or poses a danger to the community. Should this Court not so
20 order, we ask that Respondents be directed to provide Petitioner a bond
21 hearing before a *neutral* arbiter within 10 days at which Respondents must
22 show by clear and convincing evidence that Petitioner is a flight risk or
23 poses a danger to the community;
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- c. Enjoin Respondents from transferring Petitioner out of this Court’s jurisdiction during the pendency of this action;
- d. Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
- e. Award Petitioners’ attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 USC §2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court deems just and proper.

Date: January 8, 2026

Respectfully submitted,



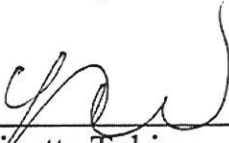
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VERIFICATION PURSUANT TO 28 USC 2242

I am submitting this verification on behalf of the Petitioner because I am

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

6
7
8 Executed on this 8st day of January, 2026, in San Diego, California.

9
10 
11 _____
12 Linette Tobin
13 Attorney for Petitioner
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