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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 MOHAMMAD BAYANI,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, warden of
14 Otay Mesa Detention Center
15 DANIEL A. BRIGHTMAN, San Diego
16 Field Office Director, Immigration and
17 Customs Enforcement and Removal
18 Operations (“ICE/ERO”);
19 TODD LYONS, Acting Director of
20 Immigration Customs Enforcement
21 (“ICE”);
22 KRISTI NOEM, Secretary of the
23 Department of Homeland Security
24 (“DHS”);
PAMELA BONDI, Attorney General of
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV0266 JES VET

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

Agency Doc. No. 

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

4
5 **INTRODUCTION**

6 1. Petitioner, MOHAMMAD BAYANI ("Mr. Bayani" or "Petitioner"), by and
7 through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241,
8 et seq., to issue a Writ of Habeas Corpus ordering Mr. Bayani's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Bayani seeks immediate release
11 from custody because Respondents have held him since 5 January 2025—a
12 prolonged period. Mr. Bayani has had his asylum application set for final hearing
13 three times. One delay was due to his attorney's illness. The hearing was reset for
14 three months later with IJ Paula Dixon. However, IJ Dixon was removed and the case
15 was reset with IJ Anderson. IJ Anderson set a final hearing for 13 March 2026.
16 However, IJ Anderson announced that she would be reassigned before then so the
17 matter would be assigned to another judge. This will require another master
18 calendar hearing with the new judge and a new final hearing date will be set. There
19 is no possibility of his removal in the foreseeable future. His continued detention
20 without a hearing as to flight risk and danger to the community violates the U.S.
21 Constitution and federal law.

22
23 **CUSTODY**
24

1 2. Mr. Bayani is currently in Respondents' legal and physical custody. They are
2 detaining him at the Otay Mesa Detention Center in San Diego, California. He is
3 under Respondents' and their agents' direct control.
4

5 **PARTIES**

6 3. Mr. Bayani is a 43-year-old citizen of Iran. He is currently detained at the Otay
7 Mesa Detention Center in San Diego, California.

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

11 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
12 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
13 day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of
14 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a
15 custodian of Petitioner and is named in his official capacity.
16

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

22 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
23 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
24

1 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
2 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
3 detaining Mr. Bayani. Respondent Lyons has custodial authority over Mr. Bayani,
4 who names him in his official capacity.

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

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

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

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

JURISDICTION AND VENUE

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

6
7 13. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§
8 701–706 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S.
9 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States
10 Constitution. Jurisdiction is not limited by a petitioner’s nationality, immigration
11 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008).
12 The Court may grant relief under the Suspension Clause; the Fifth and Eighth
13 Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651
14 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

15
16 14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
17 Mr. Bayani’s detention. Federal district courts possess broad authority to issue writs
18 of habeas corpus when a person is held “in custody in violation of the Constitution
19 or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority
20 extends to immigration detention challenges that survived the REAL ID Act’s
21 jurisdictional restrictions. Because Mr. Bayani seeks the traditional habeas remedy
22 of release from allegedly unlawful detention, his petition presents precisely the type
23 of threshold legality-of-detention question that § 2241 was designed to address. *See*
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1 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d
2 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.
3 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See*,
4 e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of
5 Mr. Bayani's detention.

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

12 **FACTUAL BACKGROUND**

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14 16. Mr. Bayani is a citizen of Iran, an Islamic Republic. The fact that Mr.
15 Bayani was born into Islam prohibits him from adopting any other religious belief.
16 In Iran, conversion to Christianity is punishable by death. Several years before he
17 left Iran, Mr. Bayani became interested in converting to Christianity.

18
19 17. It became known in the community that Mr. Bayani was no longer an
20 adherent of Islam. He started to receive threats from neighbors and from the
21 religious police in Iran. Eventually he realized neither he nor his family were safe if
22 he remained in Iran. As a result, he fled Iran and came to the United States to seek
23 asylum.
24

1 18. Mr. Bayani entered the United States on January 5, 2025. He
2 immediately encountered CBP officers and was taken into custody. He has been in
3 detention at Otay Mesa Detention Center since January 5, 2025.

4 19. Initially Respondents issued Mr. Bayani form I-860 and an Order of
5 Removal under Section 235(b)(1) of the Act, Expedited Removal. Mr. Bayani
6 expressed a fear of return to his country of origin and was given a Credible Fear
7 Interview. He was found to have a credible fear. On 2 March 2025, Form I-862,
8 Notice to Appear was issued and Mr. Bayani was placed in Section 240 Removal
9 Proceedings. None of the documents issued to date indicate that Mr. Bayani is a
10 flight risk or a danger to the community.

12 20. Mr. Bayani requested a bond hearing. However, his request for bond
13 was denied by IJ Grande on 15 December 2025. IJ Grande ruled that he does not
14 have jurisdiction to redetermine the conditions of custody over individuals who
15 have been apprehended shortly after entering the United States and who have been
16 processed under Section 235(b)(1) expedited removal statute, and who have been
17 placed in removal proceedings.

19 21. Mr. Bayani filed his asylum application on 17 May 2025.

20 22. At his next Master Calendar hearing the IJ issued a scheduling order
21 setting the matter for an individual hearing on 2 October 2025. Mr. Bayani's counsel
22 became sick and was not able to appear for the October hearing and the matter was
23 reset for an individual hearing on 2 January 2026.

1 23. Before the January date, IJ Dixon, the judge appointed to his case, left the
2 bench. A new judge was assigned, IJ Anderson and she reset the matter for a final
3 hearing on 13 March 2026. However, she announced from the bench that she would
4 be reassigned before that date. As a result, the case will be assigned to yet another
5 judge, who will have to conduct another master calendar hearing at which point the
6 case will be assigned another final hearing date, months in the future.

7
8 24. Mr. Bayani's continued detention without a tenable justification and
9 without a demonstration that removal is significantly likely in the reasonably
10 foreseeable future violates constitutional due process. *Zadvydas v. Davis*, 533 U.S.
11 678 (2001); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

12 25. The government has failed to effectuate Mr. Bayani's removal within a
13 reasonable period of time or present any evidence that his removal is significantly
14 likely to occur in the reasonably foreseeable future.

15 26. Mr. Bayani's detention without a tenable justification violates his rights
16 under the Due Process Clause of the Fifth Amendment.

17 EXHAUSTION OF REMEDIES

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19 27. On 15 December 2025 IJ Grande ruled that he did not have jurisdiction
20 to hear Mr. Bayani's bond request. Mr. Bayani has exhausted all administrative
21 remedies, and no further ones are available. Furthermore, for habeas claims,
22 exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*,
23 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
24

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

7
8 28. Exhausting administrative remedies here is futile because Respondents
9 contend Mr. Bayani is subject to mandatory detention. As such, no request to release
10 him from custody would be considered by ICE. Moreover, immigration judges in this
11 district claim to have no jurisdiction to conduct a custody redetermination hearing
12 as to individuals procedurally situated like Mr. Bayani. Indeed, in contravention to
13 the INA and long-standing precedent and practice, the Board of Immigration
14 Appeals and Attorney General have deemed no noncitizen eligible for bond before
15 an immigration judge (with the exception of only noncitizens who entered the U.S.
16 on a visa). As such, any attempts to exhaust administrative remedies would be
17 entirely futile.

18
19 29. Recently, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-
20 SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA
21 has asserted that bond hearings are now available. However, after the final decision
22 in *Maldonado* was entered, DHS sent out a directive to Immigration Judges to ignore
23 this case and continue to deny jurisdiction. IJ Begovich has already denied several
24 bond requests claiming, once again, lack of jurisdiction.

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

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9 31. More importantly, every day that Petitioner remains detained causes
10 him harm that cannot be repaired. His continued detention puts his mental health at
11 greater risk, further warranting a finding of irreparable harm and the waiver of the
12 prudential exhaustion requirement.

13 32. The Court must consider this in its irreparable harm analysis of the
14 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
15 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
16 petitioner “continues to suffer significant psychological effects from his detention,
17 including anxiety caused by the threats of other inmates and two suicide attempts,”
18 in finding that petitioner would suffer irreparable harm warranting waiver of
19 exhaustion requirement).

21 **FIRST CAUSE OF ACTION**
22 **Fifth Amendment Due Process Violation**

23 33. Mr. Bayani re-alleges and incorporates by reference, as if fully set forth
24 herein, the allegations in the previous paragraphs.

1 34. The Supreme Court has long recognized that the Fifth and Fourteenth
2 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
3 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
4 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
5 confined to the protection of citizens.”). As stated by the Court, the provisions of the
6 Fourteenth Amendment “are universal in their application, to all persons within the
7 territorial jurisdiction, without regard to any differences of race, of color, or of
8 nationality” *Id.* (emphasis added).

10 35. The Supreme Court has held that “even one whose presence in this
11 country is unlawful, involuntary, or transitory is entitled to that constitutional
12 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
13 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
14 (1982) (“Whatever his status under the immigration laws, an alien is surely a
15 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
16 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
17 [may not]... be deprived of life, liberty or property without due process of law.”).

19 36. As there is no final order of removal, and there doesn’t appear to be
20 one in the reasonably foreseeable future, Mr. Bayani may not be removed from the
21 United States. His removal is not reasonably foreseeable, and his detention no
22 longer serves any legitimate purpose under the INA.

23 37. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
24 District granted habeas relief in a substantially similar case, applying a six-factor

1 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
2 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
3 duration of future detention; (3) conditions of detention; (4) delays in the removal
4 proceedings caused by the detainee; (5) delays in the removal proceedings caused
5 by the government; and (6) the likelihood that the removal proceedings will result
6 in a final order of removal. The court determined that prolonged detention, when
7 considered alongside other due process concerns, can rise to the level of a
8 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

10 38. Applying the *Banda* six-factor framework here supports granting Mr.
11 Bayani's petition.

12 39. The final factor—finality—strongly supports the grant of this habeas
13 petition. Mr. Bayani has been waiting over a year just to have this asylum
14 application adjudicated. The 13 March 2026 date will be 14 months after his
15 detention began. This hearing date is just a place holder as IJ Anderson will be
16 reassigned and this case will have yet another final hearing date assigned. That will
17 be many months in the future.

18 40. Nearly all delays in this case are attributable to the government, and
19 only one are attributable to Mr. Bayani. Even that was a delay due to illness and was
20 not an intentional or superfluous delay. He promptly applied for asylum after his
21 credible fear interview; he has timely attended all of his interviews and court
22 hearings. His individual hearing was initially scheduled in October 2025. It was reset
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1 for January 2026, then reset again for March 2026. It will be reset again for another
2 date even further in the future.

3 41. Mr. Bayani has now been detained by ICE for more than twelve months
4 since his arrival in the United States on January 5, 2025. This period is well beyond
5 the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at
6 701. Courts consistently find detention beyond this threshold triggers due process
7 scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

8 42. Mr. Bayani poses no risk of flight and no danger to the community. He
9 has no criminal history, has demonstrated compliance with all prior immigration
10 requirements, and has community support in the United States.

11 43. Mr. Bayani’s continued detention without a tenable justification
12 violates his Fifth Amendment right to due process.
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16 **PRAYER FOR RELIEF**

17 Mr. Bayani asks this Court to grant the following relief:

- 18 1. Issue a Writ of Habeas Corpus ordering Respondents to release
19 Mr. Bayani from custody immediately;
- 20 2. Declare the continued detention of Mr. Bayani without a tenable
21 justification a violation of the Due Process Clause of the U.S. Constitution;
- 22 3. Alternatively, order an immediate bond hearing before a neutral
23 decisionmaker where DHS bears the burden of justifying Mr. Bayani’s
24 continued detention by clear and convincing evidence and where

1 alternatives to detention and Mr. Bayani's ability to pay a bond are
2 considered;

3 4. Order Respondents to show cause why Mr. Bayani is being
4 subjected to unlawful and unconstitutional detention; and

5 5. Grant any other relief that may be fit and proper.
6
7

8 Dated: January 16, 2026

Respectfully submitted,

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10 By: /s/ Brian J. McGoldrick
11 Brian J. McGoldrick, Esq.
12 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this 16th day of January, 2026, in San Diego, California.

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