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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAEID ZAREI,

Petitioner,

v.

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

Respondents.

Case No.: '26CV0308 GPC MMP

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

3 **INTRODUCTION**

4
5 1. Petitioner, SAEID ZAREI ("Mr. Zarei" or "Petitioner"), by and through his
6 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to
7 issue a Writ of Habeas Corpus ordering Mr. Zarei's release from immigration
8 detention by the Department of Homeland Security, United States Immigration and
9 Customs Enforcement ("ICE"). Mr. Zarei seeks immediate release from custody
10 because Respondents have held him since March 27, 2025—a prolonged period. Mr.
11 Zarei has been waiting almost a year to have his asylum application adjudicated.
12 After his apprehension he was moved from one detention center to another. This
13 lasted from March 27 until October when he was brought to Otay Mesa Detention
14 Center.

15
16 2. He was originally detained on March 27, 2025 and held at Otay Mesa for a few
17 weeks. He was then sent to Arizona for about 2 months. From there he went to
18 Louisiana for a month, then to Mississippi for one and a half months and then finally,
19 in October he was brought to Otay Mesa Detention Center. No NTA was ever entered
20 while he was being moved from location to location for six months. Once he arrived
21 at Otay Mesa again he was finally given a Credible Fear Interview. He was found to
22 have a Credible Fear and he was put into section 240 removal proceedings. He had
23 two Master Calendar Hearings. His initial master was October 30, 2025 and another
24


1 December 19, 2025. At that hearing he was given the next individual hearing on the
2 judge's calendar of May 11, 2026. Mr. Zarei has already been waiting 11 months to
3 have his first day of testimony. He will not actually have his first day until May 11,
4 2026. That will be 14 months of detention.

5 3. Mr. Zarei has not sought release via bond as this is futile. After the ruling of
6 the district court in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, -
7 -- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), it was thought that
8 bond relief would become possible. However, since then many Immigration Judges
9 continue to assert they have no jurisdiction. To make matters worse, DHS has
10 directed trial attorneys to appeal any bond that is granted. Request for release on
11 bond is futile. There is no possibility of his removal in the foreseeable future. His
12 continued detention without a hearing as to flight risk and danger to the community
13 violates the U.S. Constitution and federal law.

14 **CUSTODY**

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

18 **PARTIES**

19 5. Mr. Zarei is a 35-year-old citizen of Iran born  He is currently
20 detained at the Otay Mesa Detention Center in San Diego, California.

1 6. Mr. Zarei is currently in Respondents' legal and physical custody at the Otay
2 Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
3 corporation, operates that facility.

4 7. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
5 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
6 day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of
7 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a
8 custodian of Petitioner and is named in his official capacity.
9

10 8. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in
11 San Diego, California and is named in his official capacity. ICE is the component of
12 the DHS that is responsible for detaining and removing noncitizens according to
13 immigration law and oversees custody determinations. In his official capacity, he is
14 the legal custodian of Petitioner.

15 9. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
16 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
17 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
18 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
19 detaining Mr. Zarei. Respondent Lyons has custodial authority over Mr. Zarei, who
20 names him in his official capacity.
21

22 10. Respondent Kristi NOEM is the Secretary of the DHS and is named in her
23 official capacity. DHS is the federal agency responsible for enforcing immigration
24 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.

1 Respondent Noem has ultimate custodial authority over Mr. Zarei, who names her in
2 her official capacity.

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

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

14 13. Respondent U.S. Department of Homeland Security is the federal agency
15 that has authority over the actions of ICE and all other DHS Respondents.
16

17 JURISDICTION AND VENUE

18 14. This action arises under the United States Constitution and the
19 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to
20 challenge Mr. Zarei's detention under the INA and any inherent or plenary powers
21 the government may claim to continue holding him.

22 15. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§
23 701-706 (Administrative Procedure Act, "APA"); and the Suspension Clause, U.S.
24

1 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States
2 Constitution. Jurisdiction is not limited by a petitioner’s nationality, immigration
3 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008).
4 The Court may grant relief under the Suspension Clause; the Fifth and Eighth
5 Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651
6 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).
7

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

22 17. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)
23 because a substantial part of the events or omissions giving rise to this claim have
24 happened here, Mr. Zarei is detained here, and his custodian resides here. Venue is

1 also proper under 28 U.S.C. § 2243 because Mr. Zarei’s immediate custodian resides
2 in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J.,
3 concurring).

4 **FACTUAL BACKGROUND**

5 18. Mr. Zarei was born in Iran into a Muslim household. Iran is a very
6 conservative Sunni Muslim nation. Conversion to Christianity in Iran is a crime. The
7 penalty for conversion and apostasy is severe and can result in death¹. Mr. Zarei
8 was secretly meeting with a Christian home church in Tehran via the internet. He
9 eventually disclosed to his fiancé that he was becoming Christian. She in turn told
10 her family. One of her family members reported Mr. Zarei to the authorities. The
11 authorities detained and tortured Mr. Zarei. Once released Mr. Zarei realized he
12 must flee Iran or he would be put to death.
13

14 19. He made his way to Mexico and finally crossed into the United States. On
15 March 27, 2025, he was taken into custody by CBP officers. Once in custody he
16 expressed his desire to seek asylum and his fear of return to Iran. The government
17 should have given him a credible fear interview at that point and, if he was found to
18 have a credible fear, he should have been put into 240 removal proceedings. That
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20 ¹ Sharia as interpreted by the government considers conversion from Islam to be apostasy, a crime
21 punishable by death. Although apostasy is not codified in the penal code, the code instructs judges to
22 rely on the constitution and fatwas in cases of apostasy, and the constitution instructs judges in general
23 to pass judgments based on “authoritative Islamic sources and authentic fatwas,” rather than dismissing
24 a case for lack of a codified crime or sentence. A judge may issue the death penalty to someone accused
of apostasy under other charges, such as “enmity against God,” “corruption on earth,” “insulting the
Prophet Muhammad,” and “outrage against high-ranking officials.” The only known execution of an
Iranian Christian specifically on the charge of apostasy occurred in 1990.

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1 did not immediately happen. Instead, Mr. Zarei was subjected to a dizzying number
2 of transfers. Immediately after his apprehension he was briefly sent to Otay Mesa
3 Detention Facility. From there he was sent to a facility in Arizona. He spent two
4 months there. From Arizona he was sent to a facility in Louisiana for a month. After
5 that he was sent to a facility in Mississippi for one and a half months. From there, in
6 October 2025, he was finally sent back to Otay Mesa Detention Center. This time he
7 was finally given a credible fear interview, which he passed. On October 19, 2025,
8 the department finally issued a Notice to Appear. The NTA was entered on the
9 docket on October 21, 2025, which initiated his 240 removal proceedings. This was
10 a delay of nearly seven months just to get his case started.
11

12 20. Mr. Zarei had two master calendar hearings. One October 30, 2025 and
13 another December 19, 2025. At the second hearing IJ Grande set his individual
14 hearing to adjudicate his asylum application for May 11, 2025. This was another 7
15 month delay on the part of the government
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17 21. Individual hearings are where the asylum application is actually
18 adjudicated with testimony and cross examination. Each Individual hearing in
19 the detention court system is only 2 hours long. Mr. Zarei's case will take much
20 longer than that so he can expect his case to be continued for at least 2 times.
21 Once for more testimony and once for closing and disposition by the judge. Based
22 on IJ Grande's current calendar that will be another 14 months after the May 11,
23 2026 date. Mr. Zarei can expect his case to be finally decided in July of 2027.
24

1 22. There is no end in sight to Mr. Zarei' detention ... not because he is a
2 flight risk or a threat to the community. That has never been determined. He
3 remains in detention because the administration insists that all people that lack a
4 green card or citizenship must be detained.

5 23. On July 8, 2025, the Department of Homeland Security ("DHS")
6 instituted a notice titled "Interim Guidance Regarding Detention Authority for
7 Applicants for Admission" (the "Notice") requiring, in general, that anyone arrested
8 in the United States and charged with being inadmissible to be considered an
9 "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
10 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
11 § 1226(a).

12 24. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
13 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
14 the Notice unlawful under the Administrative Procedures Act but did not issue a
15 final judgment. On December 18, 2025, however, the *Bautista* court entered final
16 judgement. *Bautista*, ECF No. 94.

17 25. Mr. Zarei has not asked for a bond hearing because IJ's have
18 consistently ruled that they do not have jurisdiction to redetermine the conditions
19 of custody over individuals who have been apprehended shortly after entering the
20 United States and who have been processed under Section 235(b)(1) expedited
21 removal statute, and who have been placed in removal proceedings. Even after
22 *Maldonado, supra*, was decided, Immigration Judges have still held that they do not
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1 have jurisdiction to conduct bond hearings. So, at this point in San Diego getting a
2 bond is a game of roulette based on which judge is assigned to your request. Just last
3 week it has been reported that DHS has instructed trial attorneys for the
4 government to appeal all bonds. This effectively makes getting released on bond
5 impossible.

6
7 26. Mr. Zarei has come to believe that his detention will have no end. The
8 only end seems to be that he finally breaks down and agrees to voluntary departure.
9 There is no other logical explanation for what is currently going on.

10 27. Mr. Zarei's continued detention without a tenable justification and
11 without a demonstration that removal is significantly likely in the reasonably
12 foreseeable future violates constitutional due process. *Zadvydas v. Davis*, 533 U.S.
13 678 (2001); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

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

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18 29. Mr. Zarei's detention without a tenable justification violates his rights
19 under the Due Process Clause of the Fifth Amendment.

20 EXHAUSTION OF REMEDIES

21 30. For habeas claims, exhaustion of administrative remedies is prudential,
22 not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential
23 exhaustion requirement if "administrative remedies are inadequate or not
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1 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
2 injury will result, or the administrative proceedings would be void.” *Id.* (quoting
3 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks
4 omitted)). Petitioner asserts that exhaustion should be waived because
5 administrative remedies are (1) futile and (2) his continued detention results in
6 irreparable harm.
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8 31. Exhausting administrative remedies here is futile because Respondents
9 contend Mr. Zarei is subject to mandatory detention even in the face of *Maldonado*,
10 *supra*. As such, any request for a hearing is a crap shoot. Moreover, immigration
11 judges in this district claim to have no jurisdiction to conduct a custody
12 redetermination hearing as to individuals procedurally situated like Mr. Zarei.
13 Indeed, in contravention to the INA and long-standing precedent and practice, the
14 Board of Immigration Appeals and Attorney General have deemed no noncitizen
15 eligible for bond before an immigration judge (with the exception of only
16 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
17 administrative remedies would be entirely futile.
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19 32. 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 33. On January 10, 2026, counsel is informed that DHS has directed all
2 attorneys to reserve appeal for all bond hearings. So, even when the district court
3 directs the Immigration court to conduct a bond hearing and bars them from
4 asserting lack of jurisdiction, DHS will appeal the bond, effectively shutting down
5 any possibility for release on bond.

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

13 35. More importantly, every day that Petitioner remains detained causes
14 him harm that cannot be repaired. His continued detention puts his mental health at
15 greater risk, further warranting a finding of irreparable harm and the waiver of the
16 prudential exhaustion requirement.

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

3 **FIRST CAUSE OF ACTION**
4 **Fifth Amendment Due Process Violation**

5 37. Mr. Zarei re-alleges and incorporates by reference, as if fully set forth
6 herein, the allegations in paragraphs 1-36 above.

7 38. The Supreme Court has long recognized that the Fifth and Fourteenth
8 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
9 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
10 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
11 confined to the protection of citizens.”). As stated by the Court, the provisions of the
12 Fourteenth Amendment “are universal in their application, to all persons within the
13 territorial jurisdiction, without regard to any differences of race, of color, or of
14 nationality” *Id.* (emphasis added).

15 39. The Supreme Court has held that “even one whose presence in this
16 country is unlawful, involuntary, or transitory is entitled to that constitutional
17 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
18 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
19 (1982) (“Whatever his status under the immigration laws, an alien is surely a
20 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
21 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
22 [may not]... be deprived of life, liberty or property without due process of law.”).
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1 40. As there is no final order of removal, and there doesn't appear to be
2 one in the reasonably foreseeable future, Mr. Zarei may not be removed from the
3 United States. His removal is not reasonably foreseeable, and his detention no
4 longer serves any legitimate purpose under the INA.

5 41. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
6 District granted habeas relief in a substantially similar case, applying a six-factor
7 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
8 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
9 duration of future detention; (3) conditions of detention; (4) delays in the removal
10 proceedings caused by the detainee; (5) delays in the removal proceedings caused
11 by the government; and (6) the likelihood that the removal proceedings will result
12 in a final order of removal. The court determined that prolonged detention, when
13 considered alongside other due process concerns, can rise to the level of a
14 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

15 42. Applying the *Banda* six-factor framework here supports granting Mr.
16 Zarei's petition.

17 43. The final factor—finality—strongly supports the grant of this habeas
18 petition. Mr. Zarei has been languishing in detention for over 10 months with no end
19 in sight.

20 44. The initial seven month delay was due to the government moving Mr.
21 Zarei around the country. The seven month delay to commence his individual
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1 hearing is also the result of the department by having so many people in detention
2 that their calendars are too full.

3 45. Mr. Zarei has now been detained by ICE for nearly 10 months since he
4 was originally taken into custody on March 27, 2025. This period is well beyond the
5 presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701.
6 Courts consistently find detention beyond this threshold triggers due process
7 scrutiny. See *Kydyrali*, 499 F.Supp. 3d at 774–75.
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9 46. Conditions of confinement also raise constitutional concerns as the
10 medical treatment available at the Otay Mesa Detention Center is not adequate to
11 address Mr. Zarei’s deteriorating mental health conditions.

12 47. Mr. Zarei poses no risk of flight and no danger to the community. He has
13 no criminal history, has demonstrated compliance with all prior immigration
14 requirements, and has community support in the United States.

15 48. Mr. Zarei’s continued detention without a tenable justification violates
16 his Fifth Amendment right to due process.
17

18 **PRAYER FOR RELIEF**

19 Mr. Zarei asks this Court to grant the following relief:

- 20 1. Issue a Writ of Habeas Corpus ordering Respondents to release
21 Mr. Zarei from custody immediately;
22 2. Declare the continued detention of Mr. Zarei without a tenable
23 justification a violation of the Due Process Clause of the U.S. Constitution;
24

1 3. Alternatively, order an immediate bond hearing before a neutral
2 decisionmaker where DHS bears the burden of justifying Mr. Zarei’s
3 continued detention by clear and convincing evidence and where
4 alternatives to detention and Mr. Zarei’s ability to pay a bond are
5 considered

6 4. Order Respondents to show cause why Mr. Zarei is being
7 subjected to unlawful and unconstitutional detention; and

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

9 Dated: January 18, 2026

 Respectfully submitted,

10 By: /s/ Brian J. McGoldrick
11 Brian J. McGoldrick, Esq.
 Attorney for Petitioner

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 18th day of January, 2026, in San Diego, California.

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

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