

1 Jose Torres, Esq. 362715  
Moonveil Legal, PC  
2 7546 Parkway Dr. Apt. 1U  
La Mca, California 91942  
3 Office: 619.573.1138  
4 Fax: 619.694.5180  
Email: [jose@moonveilfirm.com](mailto:jose@moonveilfirm.com)

5 *Counsel for*  
6 **Almali Samet**

7  
8  
9  
10 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT

11 Almali Samet,

12  
13 Petitioner,

Case No. **3:26-cv-00360-RBM-MMP**

14 v.

**FIRST AMENDED PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

15 Patrick Divver, Field Office Director of  
Enforcement and Removal Operations, San  
16 Diego Field Office, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
17 DEPARTMENT OF HOMELAND  
SECURITY; Pamela BONDI, U.S. Attorney  
18 General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; Christopher J.  
19 LaRose, Warden of Otay Mesa Detention  
Center,

20 Respondents.  
21  
22  
23  
24

1 Petitioner Almali Samet, through counsel, petitions for a writ of habeas corpus under 28  
2 U.S.C. § 2241 and alleges:

### 3 I. INTRODUCTION

- 4 1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because Petitioner is in  
5 federal immigration custody and is being detained in violation of the Constitution and  
6 laws of the United States.
- 7 2. Petitioner previously sought relief based on enforcement of classwide declaratory relief  
8 issued in *Maldonado Bautista v. Santacruz*. Respondents now contend that Petitioner is  
9 not a member of that certified class. This First Amended Petition therefore pleads  
10 independent statutory and constitutional grounds establishing habeas jurisdiction and  
11 entitlement to relief regardless of class membership.
- 12 3. Respondents' continued detention of Petitioner without a prompt and individualized  
13 custody determination violates the Immigration and Nationality Act, the Administrative  
14 Procedure Act, and the Due Process Clause of the Fifth Amendment.
- 15 4. Petitioner requests (a) expedited issuance of an Order to Show Cause pursuant to 28  
16 U.S.C. § 2243; (b) an order requiring a prompt individualized custody hearing (or other  
17 prompt individualized custody determination) with appropriate procedural safeguards; (c)  
18 release unless Respondents carry the applicable burden to justify continued detention;  
19 and (d) any further relief the Court deems just and proper.

### 20 II. JURISDICTION AND VENUE

- 21 5. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody"  
22 under color of federal authority within this judicial district and alleges that such custody  
23 violates the Constitution and laws of the United States.
- 24

- 1 6. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 2 7. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
- 3 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 4 8. Venue is proper in this District because Petitioner is detained within this District.

### 5 **III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243**

- 6 9. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show
- 7 Cause “forthwith” unless it appears from the petition that Petitioner is not entitled to
- 8 relief.
- 9 10. Habeas corpus is a fundamental mechanism for testing the legality of executive detention
- 10 and provides a swift and imperative remedy for unlawful restraint of liberty.
- 11 11. Petitioner files it pursuant to Fed. R. Civ. P. 15(a) and the applicable Local Rule
- 12 governing amended pleadings, and, to the extent required, pursuant to the Court’s leave.

### 13 **IV. PARTIES**

- 14 12. Petitioner Almali Samet is detained by the Department of Homeland Security (“DHS”),
- 15 through Immigration and Customs Enforcement (“ICE”), at OMDL.
- 16 13. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s
- 17 Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s
- 18 immediate custodian and is responsible for Petitioner’s detention and removal. He is
- 19 named in his official capacity.
- 20 14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
- 21 responsible for the implementation and enforcement of the Immigration and Nationality
- 22 Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem
- 23 has ultimate custodial authority over Petitioner and is sued in her official capacity.
- 24

1 15. Respondent Department of Homeland Security (DHS) is the federal agency responsible  
2 for implementing and enforcing the INA, including the detention and removal of  
3 noncitizens.

4 16. Respondent Pamela Bondi is the Attorney General of the United States. She is  
5 responsible for the Department of Justice, of which the Executive Office for Immigration  
6 Review and the immigration court system it operates is a component agency. She is sued  
7 in her official capacity.

8 17. Respondent Executive Office for Immigration Review (EOIR) is the federal agency  
9 responsible for implementing and enforcing the INA in removal proceedings, including  
10 for custody redeterminations in bond hearings.

11 18. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the Otay  
12 Mesa Detention Center, where Petitioner is detained. He has immediate physical custody  
13 of Petitioner. He is sued in his official capacity.

14 **V. FACTUAL BACKGROUND**

15 19. Petitioner incorporates by reference all preceding paragraphs.

16 20. Petitioner is a citizen of the Republic of Türkiye.

17 21. DHS has alleged Petitioner entered the United States on or about October 16, 2024,  
18 without admission or parole.

19 22. DHS records reflect that, in or about January 2025, U.S. Citizenship and Immigration  
20 Services (“USCIS”) issued Petitioner a notice stating that DHS records indicated  
21 Petitioner had been placed in expedited removal proceedings and issued a Form I-860,  
22 and that Petitioner’s Form I-589 asylum application filed on November 28, 2024 was  
23 dismissed or terminated.  
24

1 23. DHS initially placed Petitioner in expedited removal proceedings under INA § 235(b)(1)  
2 (8 U.S.C. § 1225(b)(1)).

3 24. DHS later vacated the expedited removal order and issued a Form I-862 Notice to Appear  
4 dated January 21, 2025, placing Petitioner in removal proceedings under INA § 240 (8  
5 U.S.C. § 1229a).

6 25. Petitioner filed an asylum application on November 28, 2024. USCIS later  
7 administratively closed the asylum office proceedings and referred the case to the  
8 Immigration Court.

9 26. After release from prior custody, Petitioner was re-detained on or about December 30,  
10 2025, and remains detained at OMDC.

11 27. Executive Office for Immigration Review (“EOIR”) records reflect that Petitioner’s  
12 removal case is pending before the Otay Mesa Immigration Court, with a Master  
13 Calendar hearing scheduled for February 6, 2026 (in person) before Immigration Judge  
14 Guy G. Grande. No final Immigration Judge decision has issued.

15 28. Respondents’ Return asserts that Petitioner is not within the certified class definition  
16 in *Maldonado Bautista v. Santacruz* because DHS records reflect apprehension upon  
17 entry.

18 29. Petitioner has not received an individualized bond hearing that meaningfully considers  
19 whether continued detention is justified and, if not, what conditions of release are  
20 appropriate.

## 21 VI. LEGAL FRAMEWORK

22 30. Immigration detention is civil and nonpunitive and may be used only where necessary to  
23 serve legitimate regulatory purposes.

1 31. Noncitizens in removal proceedings are entitled to due process protections under the Fifth  
2 Amendment.

3 32. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations  
4 must be individualized and must meaningfully consider flight risk and danger.

5 33. Even where DHS invokes authority to revoke a prior release under 8 U.S.C. § 1226(b),  
6 such revocation must be based on individualized facts and exercised only by officials  
7 authorized by regulation. 8 C.F.R. § 1236.1(c)(9).

8 **VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)**

9 **Ground One: Violation of the Administrative Procedure Act (APA) Abuse of**  
10 **Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)**

11 34. Petitioner incorporates by reference all preceding paragraphs.

12 35. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,  
13 including custody maintained in violation of the Constitution or laws of the United States.  
14 Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et  
15 seq. to the extent Respondents' custody decision constitutes reviewable agency action  
16 and no other adequate remedy provides complete relief.

17 36. Under the APA, a reviewing court must "hold unlawful and set aside agency action"  
18 found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
19 with law." 5 U.S.C. § 706(2)(A).

20 37. Agency action is arbitrary and capricious where the agency fails to consider an important  
21 aspect of the problem, offers an explanation that runs counter to the evidence, or reaches  
22 a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S.*,

1 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders*  
2 *v. Defs. of Wildlife*, 551 U.S. 644 (2007).

3 38. To satisfy APA review, the agency must provide a reasoned explanation reflecting a  
4 rational connection between facts found and choices made. *Dep't of Com. v. New York*,  
5 139 S. Ct. 2551 (2019).

6 39. Petitioner was previously released from immigration custody and later re-detained. On  
7 information and belief, Respondents re-detained Petitioner and/or revoked Petitioner's  
8 prior release determination without a reasoned, individualized assessment of Petitioner's  
9 current circumstances, and without providing a meaningful custody determination  
10 adequate to test whether confinement remains necessary.

11 40. On information and belief, Respondents' re-detention and continued detention operate in  
12 practice as a categorical denial of individualized custody review (including by treating  
13 parole as the only release mechanism, refusing neutral custody redetermination, or  
14 otherwise maintaining detention without an individualized custody analysis), rather than  
15 a reasoned exercise of discretion on Petitioner's facts.

16 41. If Respondents contend Petitioner's prior release was revoked pursuant to 8 U.S.C. §  
17 1226(b), then the revocation had to be the product of an individualized exercise of  
18 discretion within the limits set by statute and the implementing regulation, including the  
19 requirement that revocation authority be exercised only by the official(s) authorized  
20 under 8 C.F.R. § 1236.1(c)(9).

21 42. By re-detaining Petitioner and maintaining custody without a reasoned, individualized  
22 revocation decision and without procedures adequate to test the necessity of confinement  
23  
24

1 as applied, Respondents acted arbitrarily and capriciously and abused discretion in  
2 violation of 5 U.S.C. § 706(2)(A).

3 43. Petitioner is entitled to habeas and APA relief setting aside the unlawful revocation/re-  
4 detention decision as applied and ordering a prompt, individualized custody  
5 determination by a neutral decisionmaker

6 **Ground Two: Violation of the Administrative Procedure Act (APA) Not in**  
7 **Accordance with Law / In Excess of Statutory Authority / Without Observance of**  
8 **Procedure Required by Law Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. §**  
9 **1236.1(c)(9).**

10 44. Petitioner realleges and incorporates all preceding paragraphs.

11 45. The APA requires a court to set aside agency action that is “not in accordance with law,”  
12 “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of  
13 procedure required by law.” 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §  
14 706(2)(D).

15 46. To the extent Respondents purported to revoke a prior release determination under 8  
16 U.S.C. § 1226(b), that revocation had to be (a) made on an individualized basis and (b)  
17 made by the official(s) authorized to exercise revocation authority under 8 C.F.R. §  
18 1236.1(c)(9).

19 47. On information and belief, Petitioner’s custody posture has been determined, directed, or  
20 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker  
21 rather than an individualized revocation decision by an authorized official consistent with  
22 8 C.F.R. § 1236.1(c)(9).

23  
24

1 48. As a result, Respondents' re-detention and continued detention are not in accordance with  
2 law, are in excess of statutory authority, and/or were taken without observance of  
3 required procedure, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5  
4 U.S.C. § 706(2)(D).

5 49. Petitioner is entitled to habeas and APA relief ordering Respondents to cure these legal  
6 defects and provide a prompt, individualized custody determination consistent with  
7 governing law

8 **Ground Three: Violation of the Fifth Amendment Procedural Due Process (As-**  
9 **Applied Challenge to Continued Civil Detention Without a Constitutionally**  
10 **Adequate Custody Determination).**

11 50. Petitioner realleges and incorporates all preceding paragraphs.

12 51. The Due Process Clause prohibits the federal government from depriving any person of  
13 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.  
14 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).

15 52. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation  
16 to impose an automatic schedule of bond hearings; however, as-applied constitutional  
17 challenges to immigration detention remain cognizable on the merits. *Jennings v.*  
18 *Rodriguez*, 138 S. Ct. 830 (2018).

19 53. Petitioner is detained during pending removal proceedings and has not received a prompt,  
20 individualized custody hearing before a neutral adjudicator at which release on bond or  
21 conditions may be meaningfully considered.

22 54. Because immigration detention is civil and nonpunitive, due process requires procedures  
23 adequate to ensure detention remains justified as applied. At minimum, due process  
24

1 requires a meaningful opportunity to contest the factual and legal basis for continued  
2 confinement and to obtain an individualized determination whether continued detention  
3 remains justified. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

4 55. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)  
5 Petitioner’s private liberty interest is substantial, (b) the risk of erroneous deprivation is  
6 high absent an individualized, neutral custody determination, and (c) the Government’s  
7 interests can be served through less restrictive alternatives and conditions of release  
8 where appropriate.

9 56. Continued detention without a prompt, individualized, constitutionally adequate custody  
10 determination violates the Due Process Clause as applied and warrants habeas relief  
11 under 28 U.S.C. § 2241.

12 **Ground Four: Unlawful detention under the INA—Petitioner is detained (or must**  
13 **be treated as detained) under 8 U.S.C. § 1226(a) and is entitled to a bond hearing.**

14 57. Where a noncitizen is placed into removal proceedings under INA § 240 after the  
15 credible-fear process, DHS may contend detention is governed by 8 U.S.C. §  
16 1225(b)(1)(B)(ii), which provides that the noncitizen “shall be detained” for further  
17 consideration of the application for asylum. *Jennings v. Rodriguez*, 583 U.S. 281  
18 (2018); *Matter of M-S*, 27 I. & N. Dec. 509 (A.G. 2019). Petitioner contests  
19 Respondents’ asserted custody authority as applied and seeks a constitutionally adequate  
20 custody determination.

21 58. Prior to policy changes associated with *Matter of M-S*, 27 I. & N. Dec. 509 (A.G. 2019),  
22 many noncitizens initially placed in expedited removal but later placed in INA § 240  
23 proceedings after a credible-fear finding were, as a matter of agency practice, permitted  
24

1 to seek custody redeterminations before an Immigration Judge. *Matter of M-S-, 27 I. & N.*  
2 *Dec. 509 (A.G. 2019).*

3 59. In *Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019)*, relying on the Supreme Court's  
4 statutory analysis in *Jennings v. Rodriguez, 583 U.S. 281 (2018)*, the Attorney General  
5 concluded that certain noncitizens described in 8 U.S.C. § 1225(b)(1)(B)(ii) are subject to  
6 mandatory detention during the pendency of INA § 240 proceedings and are not entitled  
7 to Immigration Judge bond hearings under 8 U.S.C. § 1226(a). Under that regime, release  
8 is generally limited to DHS parole for "urgent humanitarian reasons or significant public  
9 benefit." 8 U.S.C. § 1182(d)(5)(A).

10 60. By contrast, where DHS detains a noncitizen under discretionary detention authority in 8  
11 U.S.C. § 1226(a), the statute authorizes detention "pending a decision on whether the  
12 alien is to be removed," and authorizes discretionary release on bond or conditional  
13 parole, with custody redetermination procedures implemented by regulation. 8 U.S.C. §  
14 1226(a).

15 61. Here, DHS has issued a Form I-862 Notice to Appear and EOIR has docketed the matter  
16 in the Otay Mesa Immigration Court; no final Immigration Judge decision has issued.  
17 Based on that procedural posture, Respondents' continued confinement is occurring  
18 during pending INA § 240 proceedings.

19 62. DHS records further reflect that any prior expedited removal order was vacated.  
20 Petitioner pleads in the alternative that, if Respondents are no longer proceeding under 8  
21 U.S.C. § 1225(b)(1)(B)(ii), then detention is governed by 8 U.S.C. § 1226(a), and the  
22 discretionary-release framework must be made available.

1 63. Petitioner is currently in formal INA § 240 removal proceedings. Respondents  
2 nevertheless maintain that Petitioner is detained without access to Immigration Judge  
3 bond review.

4 64. Respondents may contend that custody is governed by 8 U.S.C. § 1225(b)(1)(B)(ii), as  
5 construed in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and as applied by the Attorney  
6 General in *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), such that no Immigration  
7 Judge bond hearing is available absent parole. Petitioner challenges (a) Respondents'  
8 asserted custody authority as applied on these facts and (b) the constitutionality of  
9 continued bondless detention without a meaningful, individualized custody  
10 determination.

11 65. Petitioner therefore seeks an order under 28 U.S.C. § 2241 requiring Respondents to  
12 provide a prompt, individualized custody determination before a neutral adjudicator that  
13 meaningfully considers whether continued civil confinement remains justified and, if not,  
14 what conditions of release would reasonably address flight risk or danger. *Jennings v.*  
15 *Rodriguez*, 583 U.S. 281 (2018).

16 66. In the alternative, if the Court determines that Petitioner's detention is governed by 8  
17 U.S.C. § 1226(a), Petitioner seeks an order requiring Respondents to provide the custody  
18 redetermination process available under that discretionary detention authority, including a  
19 bond hearing.

20 **Ground Five: Due Process—continued civil detention without an individualized**  
21 **bond hearing violates the Fifth Amendment**

22 67. The Supreme Court has rejected attempts to impose periodic bond-hearing requirements  
23 through a statutory “constitutional avoidance” construction of the INA’s detention  
24

1 provisions, making clear that statutory interpretation alone will not supply an automatic  
2 bond-hearing schedule. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

3 68. At the same time, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) did not resolve the merits  
4 of as-applied due process challenges to civil immigration detention and left constitutional  
5 adjudication to proceed on the merits in individual cases.

6 69. Where DHS is detaining a noncitizen under 8 U.S.C. § 1226(a), that statute authorizes  
7 detention “pending a decision on whether the alien is to be removed,” and authorizes  
8 discretionary release on bond or conditional parole. 8 U.S.C. § 1226(a).

9 70. Regardless of whether Respondents invoke 8 U.S.C. § 1225(b)(1)(B)(ii) or 8 U.S.C. §  
10 1226(a), prolonged civil immigration detention without a meaningful, individualized  
11 custody determination raises serious due process concerns requiring fact-specific  
12 adjudication. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

13 71. Petitioner has not received any individualized custody hearing before a neutral  
14 adjudicator at which release on bond or conditions may be meaningfully considered.

15 72. Because civil immigration detention is nonpunitive, Petitioner asserts that the Due  
16 Process Clause requires, at minimum, a meaningful opportunity to contest the factual and  
17 legal basis for continued confinement and to obtain an individualized determination  
18 whether continued detention remains justified as applied. *Mathews v. Eldridge*, 424 U.S.  
19 319 (1976).

20 73. Accordingly, the Petition states a cognizable as-applied due process claim for habeas  
21 relief requiring a prompt individualized custody determination, consistent with *Jennings*  
22 *v. Rodriguez*, 583 U.S. 281 (2018), which separates statutory interpretation from  
23 constitutional adjudication.  
24

1 **VIII. REQUEST FOR RELIEF**

2 74. Petitioner respectfully requests that the Court:

3 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to  
4 respond forthwith;

5 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;

6 C. Order Respondents to provide a prompt, individualized custody determination before a  
7 neutral adjudicator that meaningfully considers whether continued detention is justified  
8 and, if not, what conditions of release would reasonably address flight risk or danger;

9 D. In the alternative, order Petitioner released unless Respondents provide such a custody  
10 determination within a time certain set by the Court;

11 E. Award Petitioner attorneys' fees and costs to the extent permitted by law, including  
12 under 28 U.S.C. § 2412; and

13 F. Grant such other and further relief as the Court deems just and proper.

14  
15 DATED this January 30, 2026.

16  
17 /s/ Jose Torres

18 Jose Torres

19 Counsel for Petitioner