

Cassandra Lopez
Al Otro Lado
511 E. San Ysidro Blvd. #333
San Ysidro, CA 92173
Telephone: (619) 730-5891
Cassandra.l@alotrolado.org
Attorneys for Mr. Saber Safinejad

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

<p>SABER SAFINEJAD</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>CHRISTOPHER LAROSE, Facility senior warden at the Otay Mesa Detention Facility, DANIEL A. BRIGHTMAN, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, and PAM BONDI, U.S. Attorney General.</p>	<p>AMENDED VERIFIED EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS, ORDER TO SHOW CUASE WITHIN THREE DAYS AND COMPLAINT FOR DECLARATORY RELIEF</p> <p><u>'26CV0531 JES AHG</u></p>
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**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C.
§2241**

INTRODUCTION

Saber Safinejad has been detained pending his immigration proceedings and his Board of Immigration Appeals (“BIA”) appeal for approximately 11 months and one week. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. §1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia J.).

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is presently in custody under the authority of the United States and challenges his detention as in violation of the Constitution, laws, or treaties of the United States.

The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Safinejad is detained at the Otay Mesa Detention Facility in San Diego, California.

REQUIREMENTS OF 28 U.S.S. § 2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days is allowed.” *Id.*

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint and confinement. *Fay v. Noia*, 372 U.S. 391, 400 (1963) (overruled on other grounds by *Wainwright v. Sykes*, 433 U.S. 72 (1977)) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES


1. Petitioner Dr. Saber Safinejad is currently detained by Respondents in the Otay Mesa Detention Facility.

2. Respondent Christopher LaRose is the senior warden at the Otay Mesa Detention Facility in San Diego, California where Petitioner is currently detained. He is thus Petitioner's immediate custodian and is sued in his official capacity.
3. Respondent Daniel A. Brightman is the Director of ICE's San Diego Field Office, which has jurisdiction over ICE detention facilities in San Diego and Imperial County, including the Otay Mesa Detention Facility, and is thus Petitioner's immediate custodian. He is sued in his official capacity.
4. Respondent Todd Lyons is the Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.
5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Mr. Petitioner. She is sued in her official capacity.
6. Respondent Pam Bondi is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals and the Immigration Courts. Ms. Bondi shares responsibility for

implementation and enforcement of the immigration laws with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Petitioner. She is sued in her official capacity.

STATEMENT OF FACTS

Petitioner, Dr. Saber Safinejad, is a native and citizen of Iran. He entered the United States on or about February 20, 2025, and expressed a fear that if he was deported to Iran he would be tortured or killed by the Iranian government. He was placed in immigration detention at that time and has remained detained since.

Dr. Safinejad was born on  in Qoom, Iran, to a Kurdish family. He completed a doctorate in veterinary medicine and worked as a veterinarian in Tehran. From childhood, he experienced ethnic discrimination due to his Kurdish ethnicity. In 2021, he joined an underground Christian church. He also experienced harm, mistreatment, and threats in Iran due to his Christianity. The Islamic Revolutionary Guard Corps (IRGC) arrested Dr. Safinejad during a raid of his church. After his arrest, Dr. Safinejad was beaten and tortured by the IRGC. He was struck in the chest with a rifle butt which resulted in a fractured sternum which required surgery. At that time, the IRGC threatened to kill him if he did not renounce his Christianity.

In 2022, Mr. Safinejad was again targeted by the IRGC, this time for being Kurdish. The IRGC beat him with a baton, breaking his hand. In 2024, the IRGC arrested two members of Dr. Safinejad's church because of their religion. Shortly thereafter, Dr. Safinejad fled Iran fearing for his life and safety. After he left, the IRGC interrogated his father. They accused Dr. Safinejad of insulting the Prophet Mohammed and acts against national security. They demanded information about him and threatened to imprison his father if he concealed Dr. Safinejad's whereabouts.

After arriving in the United States, Mr. Safinejad applied for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). On January 8, 2026, the immigration judge denied asylum, withholding of removal and CAT protection, and ordered Dr. Safinejad removed to Iran. Dr. Safinejad filed a Notice of Appeal with the Board of Immigration Appeals (BIA) on January 22, 2026.

LEGAL FRAMEWORK

I. The Fifth Amendment's Due Process Clause prohibits prolonged immigration detention without a bond hearing

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Dr. Safinejad is detained

under one such statute, 8 U.S.C. §1225(b). “Section 1225 applies to ‘applicants for admission’ – noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United States but have not been admitted.” *Banda v. McAleenan*, 383 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.*

That includes persons who, like Dr. Safinejad, are detained in the United States and make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not address whether prolonged, mandatory detention without bond hearings violates

due process. *Id.* at 312. 2.

“In the wake of *Jennings*, district courts have grappled with how to address due process challenges to prolonged mandatory detention under § 1225(b).”

Banda, 385 F. Supp. 3d at 1116. But after a full evaluation, “[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up) (collecting cases).

These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Supreme Court applied the constitutional avoidance canon to hold that persons detained following a final removal order may not be subjected to indefinite detention. *Id.* at 699. Though *Zadvydas*’s holding rests on statutory rather than constitutional grounds, the Court justified its constitutional avoidance approach by describing the serious due process concerns that indefinite detention would occasion:

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e] any ‘person ... of ... liberty ... without due process of law.’ Freedom from

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

As the Ninth Circuit put it in *Jennings*’ wake, these considerations raise “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). The same concerns have led district courts to conclude that immigrants cannot be detained indefinitely without bond hearings pending their immigration proceedings.

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Dr. Safinejad would prevail under any standard.

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular individual's detention has reached that point. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal. Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have “conclude[d]...that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Dr. Safinejad would automatically qualify, as he has been detained for more than 11 months.

Other courts have adopted a various factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5-6 (surveying different approaches). Courts generally agree that the relevant factors include:

- (1) “the total length of detention to date,”
- (2) “the likely duration of future detention,” and
- (3) The delays in the removal proceedings caused by the petitioner and the government.”

Id. Some courts also consider:

- (4) “the conditions of detention,” and

(5) “the likelihood that the removal proceedings will result in a different final order.”

Id.; but see *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding that the fourth and fifth factors and “not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with *Lopez*).¹ Dr. Safinejad would prevail under any of these factors tests.

First, the “most important factor,” the length of detention, favors Dr. Safinejad. *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a person who has never been found to pose a danger to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings for persons detained between nine and eleven months, comparable to Dr. Safinejad’s more than 11 months in detention. See *Ashemuke v. ICE Filed Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*,

¹ Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the individual is not being removed due to criminal convictions.

324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) (“More than nine months”).

Second, Dr. Safinejad has reason to anticipate significant future detention during his appellate process. A BIA appeal itself can take between five and seven months, and afterward a petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s future detention can last several more months or even years[,]” this factor favors Dr. Safinejad. *Abdul Kadir v. LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025) (Lopez, J.).

Third, Dr. Safinejad did not delay his asylum proceedings, but moved forward expeditiously. The whole process from detention to decision took about eleven months. For the first several months after he was detained, Mr. Safinejad worked to find an attorney, a task made more difficult by his detention. His attorney, Akel Areeg, was assigned the case in August 2025 by a San Diego County program that provides free legal services for detained immigrants in San Diego. Mr. Safinejad did not have an attorney before Ms. Areeg was assigned to his case. Ms. Areeg appeared in court for the first time as Mr. Safinejad’s counsel at a master calendar hearing on September 3, 2025, and trial date was set at that time. Mr. Safinejad went forward with his individual hearing on January 8, 2026. At no

point did Attorney Areeg request a continuance in this case, and she went forward with the individual hearing on the first date set by the Immigration Court, approximately four months after she was assigned the case.

Fourth, Dr. Safinejad's conditions of confinement weigh in favor of a bond hearing. At Otay Mesa Detention Center, detainees are "locked up behind razor wire and concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rule." *Abdul Kadir*, 2025 WL 2932654, at *5. Accordingly, "Petitioner's confinement at OMDC is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

Fifth, there is a likelihood that Dr. Safinejad's appeal will result in a different final order. The immigration judge found that Mr. Safinijad was not credible based on mistakes made by the interpreter during his credible fear interview. The judge found that Mr. Safinejad's trial testimony was inconsistent with his credible fear interview. However, those inconsistencies had to do with translation issues and confusion about the Iranian calendar during the credible fear interview. On appeal, Mr. Safinejad will raise the following issues:

- 1) Whether the IJ's adverse credibility determination is clearly erroneous and not supported by the totality of the circumstances, where the IJ relied on perceived inconsistencies without meaningfully engaging Respondent's explanations and the record as a whole.
- 2) Whether the IJ erred by treating the fear interview record as reliable basis for adverse credibility where translation problems and interview features undermine reliability.
- 3) Whether interpretation problems denied Respondent a full and fair hearing and prejudiced the outcome, requiring remand.

Under any test, then, Dr. Safinejad is entitled to a bond hearing and an individualized finding as to whether he is a flight risk or a danger to the community.

PRAYER FOR RELIEF

For the foregoing reasons, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Dr. Safinejad without a bond hearing. Accordingly, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter.
2. Order that Petitioner shall not be transferred outside the Southern District of California.

3. Issue a Writ of Habeas Corpus ordering Respondents to immediately provide Dr. Safinejad with a bond hearing.
4. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
5. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

Cassandra Lopez

Litigation
Director
AL OTRO LADO
Phone: (619) 730-5891
Email:
Cassandra.l@alotrolado.org

Pro Bono Counsel for Petitioner

Dated: January 28, 2026

**VERIFICATION BY ATTORNEY ACTING ON MR.
OLUWADARE'S BEHALF PURSUANT TO 28 U.S.C. §2242**

I am submitting this verification on behalf of Dr. Safinejad because I am his attorney. As Dr. Safinejad's attorney, 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.

Dated: January 27, 2026

By: /s/ Cassandra Lopez