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6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 Mizanur RAHMAN,

11 Petitioner,

12 v.

13 Christopher J. LAROSE, Senior Warden,
14 Otay Mesa Detention Center, San Diego,
California;

15 Daniel A. BRIGHTMAN, Field Office
16 Director, San Diego Office of Detention
and Removal, U.S. Immigrations and
17 Customs Enforcement; U.S. Department
of Homeland Security;

18 Todd M. LYONS, Acting Director,
19 Immigration and Customs Enforcement,
U.S. Department of Homeland Security;

20 Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
21 Kristi NOEM, Secretary, U.S. Department
of Homeland Security;

22 Pam BONDI, Attorney General of the
United States;

23 Respondents.
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Case No.: '26CV0630 BAS BLM

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

4 INTRODUCTION

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6 1. Petitioner, MIZANUR RAHMAN (“Mr. Rahman” or “Petitioner”), a Bangladeshi
7 asylum seeker, by and through his undersigned counsel, hereby petitions this Court under
8 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Rahman’s
9 release from immigration detention by the Department of Homeland Security, United
10 States Immigration and Customs Enforcement (“ICE”). Mr. Rahman seeks immediate
11 release from custody because Respondents have held him since November 29, 2024—a
12 prolonged period—even though he has hired counsel and has acted diligently to have his
13 asylum application heard by an immigration judge (“IJ”), and his proceedings have been
14 continued through no fault of his own. His continued detention without a hearing as to
15 flight risk and danger to the community violates the U.S. Constitution and federal law.

16 CUSTODY

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18 2. Mr. Rahman is currently in Respondents’ legal and physical custody. They are
19 detaining him at the Otay Mesa Detention Center in San Diego, California. He is under
20 Respondents’ and their agents’ direct control.

21 PARTIES

22 3. Mr. Rahman is a 47-year-old citizen of Bangladesh, born in Munshganj,
23 Bangladesh. He is currently detained at the Otay Mesa Detention Center in San Diego,
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1 California. Mr. Rahman is seeking asylum in the United States due to persecution on
2 account of his political opinion.

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

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

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

16 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
17 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
18 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
19 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
20 Mr. Rahman. Respondent Lyons has custodial authority over Mr. Rahman, who names
21 him in his official capacity.
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1 8. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
2 responsibility for overseeing the operation of the immigration courts and the Board of
3 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
4 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
5 removal proceedings, including for custody redeterminations in bond hearings. She is
6 sued in her official capacity.

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

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

19 **JURISDICTION AND VENUE**

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

1 12. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
2 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
3 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.

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

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

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

1 Mr. Rahman is detained here, and his custodian resides here. Venue is also proper under
2 28 U.S.C. § 2243 because Mr. Rahman's immediate custodian resides in this District. See
3 *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

4 **FACTUAL BACKGROUND**

5 15. Mr. Rahman is a 47-year-old citizen of Bangladesh, born in Munshganj,
6 Bangladesh. Mr. Rahman is seeking asylum in the United States due to persecution on
7 account of his political opinion.

8 16. Mr. Rahman fled Bangladesh after being threatened and harmed by members of the
9 Bangladesh Awami League party on multiple occasions because Mr. Rahman was a
10 supporter and field worker for the Liberal Democratic Party, which is a rival party to the
11 current ruling Bangladesh Awami League party.

12 17. Mr. Rahman arrived in the U.S. on November 29, 2024 by entering without
13 inspection through the U.S.-Mexico border at or near San Ysidro, California, where he
14 flagged down U.S. immigration officials and expressed a fear of returning to Bangladesh
15 and requested asylum. After being issued an administrative expedited removal order, Mr.
16 Rahman was referred for a credible fear interview before an asylum officer. He was
17 ultimately transferred to the Otay Mesa Detention Center where he has been detained
18 ever since.

19 20 18. On January 21, 2025, almost two months after his detention, an asylum officer
21 interviewed Mr. Rahman and found him to be credible and made a positive credible fear
22 determination.
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1 19. On January 30, 2025, the government issued Mr. Rahman a Notice to Appear
2 before an immigration judge on February 11, 2025, effectively vacating the expedited
3 removal order.

4 20. At his first Master Calendar hearing on February 11, 2025, the IJ adjourned the
5 proceedings to March 26, 2025 for Mr. Rahman to retain counsel and prepare to enter
6 pleadings.

7 21. At the March 26, 2025 hearing, Mr. Rahman appeared with counsel who entered
8 pleadings on behalf of Mr. Rahman. The Immigration Judge (“IJ”) then adjourned the
9 proceedings to April 23, 2025, to provide Mr. Rahman and his counsel time to prepare
10 and file his asylum application.

11 22. On April 23, 2025, pursuant to an unopposed motion by Mr. Rahman’s counsel,
12 the IJ provided an additional two weeks to Mr. Rahman’s counsel to finalize and file his
13 asylum application. The basis for this additional time was that although Mr. Rahman and
14 his counsel had been diligently working and had completed the asylum application, the
15 Otay Mesa Detention Center visitation was extremely backlogged for VAV appointments
16 (which counsel is only allowed to schedule for one hour per day), Mr. Rahman’s counsel
17 was unable to schedule a meeting with Mr. Rahman as well as a Bengali interpreter due
18 to the facility’s video appointment system being down during those times. The IJ
19 adjourned the hearing to May 28, 2025.
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21 23. On May 13, 2025, Mr. Rahman filed his completed asylum application and on May
22 23, 2025, he filed his initial supporting evidence.
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1 24. At the May 28, 2025 master calendar hearing, the IJ reviewed Mr. Rahman's
2 application and evidence for completeness and accepted them and set the matter for an
3 individual merits hearing on August 12, 2025.

4 25. On July 18, 2025, Mr. Rahman retained new counsel and on the same date,
5 requested a short continuance in order for his new counsel to prepare for the individual
6 merits hearing. On July 30, 2025, the IJ vacated the individual merits hearing and instead
7 reset the matter to another Master Calendar hearing on August 28, 2025.

8 26. At the August 28, 2025 master calendar hearing, the hearing was reset the matter to
9 yet another master calendar hearing on September 16, 2025. On September 16, 2025, the
10 IJ set the matter for an individual hearing to take place on November 13, 2025. However,
11 prior to the November 13, 2025 hearing, Respondent's counsel was notified by the
12 immigration court staff that that hearing would be vacated due to reassignment of the
13 matter to another IJ due to the abrupt firing of the previously assigned IJ. The matter was
14 later scheduled for an individual merits hearing to take place before the newly assigned
15 IJ on December 2, 2025. However, on December 2, 2025, when Mr. Rahman appeared
16 with his counsel who had flown in from New York for the hearing, they were told that
17 that the hearing had been converted to a master calendar hearing and that no individual
18 merits hearing would take place on that date. The newly assigned IJ advised Mr. Rahman
19 and his counsel that she needs to review the file and familiarize herself as the matter had
20 been reassigned to her in the middle of proceedings. She then set the matter to another
21 individual merits hearing to take place on February 4, 2026.
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1 27. Mr. Rahman has not moved for a custody redetermination because the IJ's in this
2 jurisdiction have consistently ruled that they do not have jurisdiction to redetermine the
3 conditions of custody over individuals who have been apprehended shortly after entering
4 the United States and who have been processed under Section 235(b)(1) expedited
5 removal statute, and who have been placed in removal proceedings following a positive
6 credible fear determination by an asylum officer.

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8 28. While in detention, due to his prolonged detention, Mr. Rahman suffers from
9 depression, anxiety, sadness, loss of appetite and weight, and guilt due to having been
10 separated from his family for such an extended period of time. There is no adequate,
11 proper and available treatment in the detention facility to address Mr. Rahman's
12 symptoms.

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

17 30. The government has failed to effectuate Mr. Rahman's removal within a
18 reasonable period of time or present any evidence that his removal is significantly likely
19 to occur in the reasonably foreseeable future.

20 31. Mr. Rahman's detention without a tenable justification violates his rights under the
21 Due Process Clause of the Fifth Amendment.

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EXHAUSTION OF REMEDIES

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2 32. Mr. Rahman has exhausted all administrative remedies, and no further ones are
3 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
4 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
5 prudential exhaustion requirement if “administrative remedies are inadequate or not
6 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
7 injury will result, or the administrative proceedings would be void.” *Id.* (quoting Laing v.
8 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

9
10 Petitioner asserts that exhaustion should be waived because administrative remedies are
11 (1) futile and (2) his continued detention results in irreparable harm.

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

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23 34. Moreover, no statutory exhaustion requirements apply to Petitioner’s claim of
24 unlawful custody in violation of his due process rights, and there are no administrative

1 remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
2 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because
3 the agency does not have jurisdiction to review” constitutional claims); In re Indefinite
4 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

5 35. More importantly, every day that Petitioner remains detained causes him harm
6 that cannot be repaired. His continued detention puts his physical and mental health at
7 greater risk, further warranting a finding of irreparable harm and the waiver of the
8 prudential exhaustion requirement. As explained above, Mr. Rahman has been suffering
9 from depression, anxiety, sadness, loss of appetite and weight, and guilt due to having
10 been separated from his family for such an extended period of time. There is no adequate,
11 proper and available treatment in the detention facility to address Mr. Rahman’s
12 symptoms.
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14 36. The Court must consider this in its irreparable harm analysis of the effects on
15 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
16 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to
17 suffer significant psychological effects from his detention, including anxiety caused by
18 the threats of other inmates and two suicide attempts,” in finding that petitioner would
19 suffer irreparable harm warranting waiver of exhaustion requirement).
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FIRST CAUSE OF ACTION
Fifth Amendment Due Process Violation

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

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

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

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

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

14 42. Applying the Banda six-factor framework here supports granting Mr. Rahman's
15 petition.

16 43. The final factor—finality—strongly supports the grant of this habeas petition and
17 request for a bond hearing. Mr. Rahman is statutorily eligible to apply for asylum, and
18 until that application is finally adjudicated, he cannot be removed from the United States.
19 Thus, the only prospect for removal from the United States would be a speculative, and
20 not factually unsupported prospect of removal to a third country.

21 44. Almost all delays in this case are attributable to the government. Mr. Rahman
22 promptly applied for asylum at the border, he has timely attended all of his interviews
23 and court hearings. Although Respondent did request two short continuances, one two-
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1 week extension of time to file his complete asylum application pursuant to an unopposed
2 motion, and later, another short continuance due to retention of new counsel (pursuant to
3 his statutory, due process and access to counsel rights). As mentioned above, the basis for
4 the two-week additional time to file his asylum application was that although Mr.
5 Rahman and his counsel had been diligently working and had completed the asylum
6 application, the Otay Mesa Detention Center visitation was extremely backlogged for
7 VAV appointments (which counsel is only allowed to schedule for one hour per day), Mr.
8 Rahman's counsel was unable to schedule a meeting with Mr. Rahman as well as a
9 Bengali interpreter due to the facility's video appointment system being down during
10 those times. The matter was then reset by the IJ to several subsequent hearings, and then
11 the IJ was abruptly fired and the matter was then reassigned to the newly assigned IJ.
12 Other than the aforementioned two short requests, Mr. Rahman has not requested any
13 other continuances in his case and has retained counsel at a very early stage of his case to
14 represent him. The majority of his hearings were rescheduled or continued multiple times
15 due to the actions of the government.
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17 45. Mr. Rahman has now been detained by ICE for over fourteen months since his
18 arrival in the United States on November 29, 2024. His continued individual hearing will
19 not take place until February 4, 2025, and in the event he is granted asylum, the
20 government will likely appeal and if he is denied asylum and ordered removed by the IJ,
21 he will appeal before the BIA as a matter of his right, and the appeal of his case to the
22 BIA is estimated to take several months if not over a year. And in the event that the BIA
23 affirms the IJ, then Mr. Rahman will petition for review with the Ninth Circuit Court of
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1 Appeals and if the BIA reverses the IJ, then his case will be remanded back to a new IJ
2 which will take several additional months if not over a year. This period is well beyond
3 the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701.
4 Courts consistently find detention beyond this threshold triggers due process scrutiny.
5 See Kydyrali, 499 F.Supp. 3d at 774–75.

6 46. Conditions of confinement also raise constitutional concerns as the medical
7 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
8 Rahman’s health conditions.

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

12 48. Mr. Rahman’s continued detention without a tenable justification violates his Fifth
13 Amendment right to due process.

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PRAYER FOR RELIEF

Mr. Rahman asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Rahman from custody immediately;
2. Declare the continued detention of Mr. Rahman without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
3. Alternatively, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Mr. Rahman’s continued detention by clear and convincing evidence and where alternatives to detention and Mr. Rahman’s ability to pay a bond are considered
4. Order Respondents to show cause why Mr. Rahman is being subjected to unlawful and unconstitutional detention; and
5. Grant any other relief that may be fit and proper.

Dated: February 2, 2026

Respectfully submitted,

By: /s/ Bashir Ghazialam

Bashir Ghazialam

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner’s attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner’s immigration file. Based on said review and 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 February 2, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner