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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KIBRON NEGASH ALAZAR,

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center
PATRICK DIVVER, San Diego Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO");
TODD LYONS, Acting Director of
Immigration Customs Enforcement
("ICE");
MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security
("DHS");
ACTING Attorney General of the United
States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: 3:26-cv-01388-DMS-BJW

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

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


4
5 **INTRODUCTION**

6 1. Petitioner, KIBRON NEGASH ALAZAR ("Mr. Alazar" or "Petitioner"), by and
7 through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241,
8 et seq., to issue a Writ of Habeas Corpus ordering Mr. Alazar's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Alazar seeks immediate release
11 from custody because Respondents have held him since May 27, 2025—a prolonged
12 period. Mr. Alazar has already had his asylum application adjudicated. He has filed
13 an appeal with the Board of Immigration Appeals. No schedule for his case has been
14 set. This will take at least a year to adjudicate. After his entry into the United States,
15 he was scheduled for several master calendar hearings. His final hearing date was
16 December 30, 2025. Unfortunately, the Immigration Judge denied his request for
17 asylum. He has appealed this decision. This will take 6 months to a year to resolve.
18 There is no possibility of his removal in the foreseeable future. His continued
19 detention without a hearing as to flight risk and danger to the community violates
20 the U.S. Constitution and federal law.

21
22 **CUSTODY**

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

4 **PARTIES**

5
6 3. Mr. Alazar is a 37-year-old citizen of Eritrea born  He is
7 currently detained at the Otay Mesa Detention Center in San Diego, California.

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

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

16
17 6. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in San
18 Diego, California and is named in his official capacity. ICE is the component of the
19 DHS that is responsible for detaining and removing noncitizens according to
20 immigration law and oversees custody determinations. In his official capacity, he is
21 the legal custodian of Petitioner.

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

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

5 8. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in
6 his official capacity. DHS is the federal agency responsible for enforcing immigration
7 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.
8 Respondent Mullin has ultimate custodial authority over Mr. Alazar, who names him
9 in her official capacity.
10

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

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

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

JURISDICTION AND VENUE

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2 12. This action arises under the United States Constitution and the
3 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to
4 challenge Mr. Alazar’s detention under the INA and any inherent or plenary powers
5 the government may claim to continue holding him.
6

7 13. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§
8 701–706 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S.
9 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States
10 Constitution. Jurisdiction is not limited by a petitioner’s nationality, immigration
11 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008).
12 The Court may grant relief under the Suspension Clause; the Fifth and Eighth
13 Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651
14 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).
15

16 14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
17 Mr. Alazar’s detention. Federal district courts possess broad authority to issue writs
18 of habeas corpus when a person is held “in custody in violation of the Constitution
19 or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority
20 extends to immigration detention challenges that survived the REAL ID Act’s
21 jurisdictional restrictions. Because Mr. Alazar seeks the traditional habeas remedy
22 of release from allegedly unlawful detention, his petition presents precisely the type
23 of threshold legality-of-detention question that § 2241 was designed to address. *See*
24

1 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d
2 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.
3 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. See,
4 e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of
5 Mr. Alazar's detention.

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

13 FACTUAL BACKGROUND

14 16. Mr. Alazar was born in Eritrea. Eritrea is a repressive country that does
15 not tolerate any dissent of any kind. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] he was able to flee the country and come to the United States
19 seeking asylum.

20 17. He made his way to Mexico and finally crossed into the United States on
21 May 27, 2025. He immediately encountered CBP officers and was taken into
22 custody. He has been in detention primarily at Otay Mesa Detention Center since
23 May 27, 2025.
24

1 18. Respondents initially gave Mr. Alazar an interview and DHS determined
2 that he did have a credible fear and allowed him to move forward with an asylum
3 application. His Notice to Appear was filed and after several master calendar
4 hearings he was given an individual hearing on December 30, 2025.

5 19. At the individual hearing the Immigration Judge denied all relief to Mr.
6 Alazar. Mr. Alazar has appealed this decision to the Board of Immigration Appeals.
7 This appeal has been pending since January 2026 with no schedule set and no end in
8 sight. It will take a year for it to be adjudicated.

9 20. There is no end in sight to Mr. Alazar' detention ... not because he is a
10 flight risk or a threat to the community. That has never been determined. He
11 remains in detention because the administration insists that all people that lack a
12 green card or citizenship must be detained.

13 21. On July 8, 2025, the Department of Homeland Security ("DHS")
14 instituted a notice titled "Interim Guidance Regarding Detention Authority for
15 Applicants for Admission" (the "Notice") requiring, in general, that anyone arrested
16 in the United States and charged with being inadmissible to be considered an
17 "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
18 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
19 § 1226(a).

20 22. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
21 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
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23
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1 the Notice unlawful under the Administrative Procedures Act but did not issue a
2 final judgment. On December 18, 2025, however, the *Bautista* court entered final
3 judgement. *Bautista*, ECF No. 94. Subsequent to this an appeal was filed by the
4 Department and the case was put on hold pending the outcome of the appeal.

5 23. Mr. Alazar thought to ask for a bond but IJ's have consistently ruled
6 that they do not have jurisdiction to redetermine the conditions of custody over
7 individuals who have been apprehended shortly after entering the United States and
8 who have been processed under Section 235(b)(1) expedited removal statute, and
9 who have been placed in removal proceedings. Even after *Maldonado, supra*, was
10 decided, Immigration Judges have still held that they do not have jurisdiction to
11 conduct bond hearings. So, at this point in San Diego getting a bond is only available
12 by order of the District Court through a Writ of Habeas Corpus.

13
14 24. Mr. Alazar has come to believe that his detention will have no end. The
15 only end seems to be that he finally breaks down and agrees to voluntary departure.
16 There is no other logical explanation for what is currently going on.

17
18 25. Mr. Alazar's continued detention without a tenable justification and
19 without a demonstration that removal is significantly likely in the reasonably
20 foreseeable future violates constitutional due process. *Zadvydas v. Davis*, 533 U.S.
21 678 (2001); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

22 26. The government has failed to effectuate Mr. Alazar's removal within a
23 reasonable period of time or present any evidence that his removal is significantly
24 likely to occur in the reasonably foreseeable future.

1 27. Mr. Alazar's detention without a tenable justification violates his rights
2 under the Due Process Clause of the Fifth Amendment.

3 **EXHAUSTION OF REMEDIES**

4 28. For habeas claims, exhaustion of administrative remedies is prudential,
5 not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential
6 exhaustion requirement if "administrative remedies are inadequate or not
7 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
8 injury will result, or the administrative proceedings would be void." *Id.* (quoting
9 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks
10 omitted)). Petitioner asserts that exhaustion should be waived because
11 administrative remedies are (1) futile and (2) his continued detention results in
12 irreparable harm.
13

14 29. Exhausting administrative remedies here is futile because Respondents
15 contend Mr. Alazar is subject to mandatory detention even in the face of *Maldonado*,
16 *supra*. As such, any request for a hearing will be denied for lack of jurisdiction.
17 Immigration judges in this district claim to have no jurisdiction to conduct a custody
18 redetermination hearing as to individuals procedurally situated like Mr. Alazar.
19 Indeed, in contravention to the INA and long-standing precedent and practice, the
20 Board of Immigration Appeals and Attorney General have deemed no noncitizen
21 eligible for bond before an immigration judge (with the exception of only
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1 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
2 administrative remedies would be entirely futile.

3 30. Briefly, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
4 BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA had
5 asserted that bond hearings are now available. However, the ninth circuit has stayed
6 the final decision pending appeal. No remedy is available at this time.

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

15 32. Every day that Petitioner remains detained causes him harm that
16 cannot be repaired. His continued detention puts his mental health at greater risk,
17 further warranting a finding of irreparable harm and the waiver of the prudential
18 exhaustion requirement. Mr. Alazar cannot get the medical attention he requires
19 while he is detained.
20

21 33. The Court must consider this in its irreparable harm analysis of the
22 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
23 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
24 petitioner "continues to suffer significant psychological effects from his detention,

1 including anxiety caused by the threats of other inmates and two suicide attempts,”
2 in finding that petitioner would suffer irreparable harm warranting waiver of
3 exhaustion requirement).

4
5 **FIRST CAUSE OF ACTION**
6 **Fifth Amendment Due Process Violation**

7 34. Mr. Alazar re-alleges and incorporates by reference, as if fully set forth
8 herein, the allegations in all paragraphs above.

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

17 36. The Supreme Court has held that “even one whose presence in this
18 country is unlawful, involuntary, or transitory is entitled to that constitutional
19 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
20 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
21 (1982) (“Whatever his status under the immigration laws, an alien is surely a
22 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
23

1 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
2 [may not]... be deprived of life, liberty or property without due process of law.”).

3 37. As there is no final order of removal, and there doesn’t appear to be
4 one in the reasonably foreseeable future, Mr. Alazar may not be removed from the
5 United States. His removal is not reasonably foreseeable, and his detention no
6 longer serves any legitimate purpose under the INA.

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

18
19 39. Applying the *Banda* six-factor framework here supports granting Mr.
20 Alazar’s petition.

21 40. The final factor—finality—strongly supports the grant of this habeas
22 petition. Mr. Alazar has been languishing in detention for over 11 months with no
23 end in sight.
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1 41. Mr. Alazar has not caused any unreasonable delay. The longest delay to
2 date is waiting for the BIA to set a schedule on the case.

3 42. Mr. Alazar has now been detained by ICE for nearly 11 months since his
4 arrival in the United States on May 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.
8

9 43. 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. Alazar’s health conditions. Even more, this prolonged detention has had
12 a tremendous depressive effect on Mr. Alazar.

13 44. Mr. Alazar poses no risk of flight and no danger to the community. He
14 has no criminal history, has demonstrated compliance with all prior immigration
15 requirements, and has community support in the United States.
16

17 45. Mr. Alazar’s continued detention without a tenable justification
18 violates his Fifth Amendment right to due process.

19 **PRAYER FOR RELIEF**

20 Mr. Alazar asks this Court to grant the following relief:

- 21 1. Issue a Writ of Habeas Corpus ordering Respondents to release
22 Mr. Alazar from custody immediately;
23 2. Declare the continued detention of Mr. Alazar without a tenable
24

1 justification a violation of the Due Process Clause of the U.S. Constitution;

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

4 4. Grant any other relief that may be fit and proper.

5 Dated: April 27, 2026

Respectfully submitted,

6 By: /s/ Brian J. McGoldrick
7 Brian J. McGoldrick, Esq.
8 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

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2 I am submitting this verification on behalf of the Petitioner because I am
3 Petitioner's attorney. I have discussed with the Petitioner the events described in
4 the Petition. Based on those discussions, I hereby verify that the factual statements
5 made in the attached Petition for Writ of Habeas Corpus are true and correct to the
6 best of my knowledge.
7

8 Executed on this 27th day of April, 2026, in San Diego, California.

9
10 /s/ Brian J. McGoldrick
11 Brian J. McGoldrick, Esq.
12 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I, Brian J McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On April 27, 2026, I served a copy of this

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

by the method and to the parties listed below:

On April 27, 2026, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

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/s/Brian J McGoldrick
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