

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

Yassine Kour

Petitioner,

v.

Respondent Warden of Imperial Regional
Detention Facility, *in their official capacity as*
Warden of Cimarron Correction Facility,

Todd Lyons, *in his official capacity as Acting*
Director of Immigration and Custom
Enforcement;

Markwayne Mullin, *in his official capacity as*
Secretary of the United States Department of
Homeland Security;

Pamela Bondi, *in her official capacity as*
Attorney General of the United States.

Respondents.

Civil Action No.: '26CV2317 JO SBC

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Petitioner, Yassine Kour, by and through undersigned counsel. and files this
Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief against
Respondents allege as follows:

NATURE OF ACTION

1. Petitioner, Yassine Kour, (hereinafter referred to as “Petitioner”) brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; and Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause).
2. Mr. Kour’s continued immigration detention violates the Immigration and Nationality Act (“INA”), the Due Process Clause of the Fifth Amendment, and applicable federal law. He has been detained by DHS since January 1, 2025, and his civil detention has now become unreasonably prolonged.
3. Pursuant to this Court’s habeas authority, Petitioner respectfully requests that the Court order Respondents to provide him with a prompt, individualized custody hearing before a neutral decisionmaker, or, in the alternative, order his immediate release from custody.
4. Petitioner has been continuously detained by DHS since January 1, 2025, at Imperial Regional Detention Facility in Calexico, California. Although he sought custody review, the immigration court concluded that it lacked jurisdiction to conduct a bond hearing under *Matter of Yajure Hurtado*, and Petitioner therefore remains in prolonged civil detention without any meaningful individualized custody determination as to whether his continued detention is justified.
5. Petitioner is a citizen of Morocco and fled because of his imminent persecution.
6. Petitioner has been detained for over fourteen months.
7. Petitioner faces irreparable injury that cannot later be cured.
8. Petitioner hereby seeks a Petition for Writ of Habeas Corpus to immediately release him from detention by ICE.
9. Without this Court’s intervention, Respondents will continue to unlawfully detain Mr. Kour, in violation of federal law, federal regulations, and due process, and at great harm to Petitioner.

JURISDICTION

10. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701.
11. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, 5 U.S.C §§ 702 and 706 and Rule 57 of the Federal Rules of Civil Procedure.
12. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. §§ 702 and 706, and Rule 65 of the Federal Rules of Civil Procedure.
13. Petitioner’s current detention as enforced by Respondents constitutes a “severe restraint on Petitioner’s individual liberty,” such that Petitioner is “in custody in violation, of the laws of the United States.” *Hensley v. Municipal Court*, 411 U.S. 345,351 (1973); 28 U.S.C. § 2241.
14. While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1). (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241(d) to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of Immigration and Customs Enforcement’s (“ICE”) conduct. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-517 (2003); *Zadvydas v. Davis*, 533 U.S. 678,687 (2001).
15. This Court has jurisdiction over all Respondents, each of whom is a proper respondent under 28 U.S.C. § 2243.

VENUE

16. Pursuant to 28 U.S.C. § 1391(e), venue is proper within this district on the following grounds: this is a civil action in which (1) Respondents are officers of the United States acting in their official capacity or an agency of the United States; (2) Petitioner is detained in this judicial district; and (3) a substantial part of the acts or omissions giving rise to the claim occurred in this judicial district.

17. No binding precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in the Southern District of California. *See* 28 U.S.C. § 2241.

EXHAUSTION OF REMEDIES

18. No exhaustion requirement applies to the constitutional claims raised in this Petition, because no administrative agency exists to entertain Petitioner's constitutional challenges. *See Howell v. INS*, 72 F.3d 288,291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994).

PARTIES

19. Petitioner Yassine Kour ("Petitioner") is a Moroccan national, residing in Calexico, California at the Imperial Regional Detention Facility.

20. Respondent Markwayne Mullin, in his official capacity as Secretary of the United States Department of Homeland Security (DIIS), is responsible for the enforcement of the immigration laws of the United States, including the detention of noncitizens.

21. Respondent Pamela Bond, in her official capacity as Attorney General of the United States Department of Justice (DOJ), is the chief law enforcement officer of the federal government and oversees matters related to immigration courts and legal interpretations of immigration law.

LEGAL FRAMEWORK

Petitioner's Detention Is Governed by 8 U.S.C. § 1226, Not § 1225

22. Petitioner's continued detention is not authorized by law because Respondents are detaining him under the wrong statutory provision.

23. The government purports to hold Petitioner under 8 U.S.C. § 1225(b) – the detention authority for certain "applicants for admission" (i.e. arriving aliens) – which mandates detention and provides no opportunity for a bond hearing.

24. However, Petitioner's detention is governed by 8 U.S.C. § 1226, the statute applicable to noncitizens who are already physically present inside the United States pending their removal proceedings.
25. Under § 1226(a), DHS has discretionary authority to arrest and detain a noncitizen during removal proceedings, but critically, § 1226(a) also expressly authorizes release on bond (or conditional parole) pending those proceedings.
26. In other words, § 1226 permits individualized custody determinations and bond hearings, whereas § 1225(b) does not.
27. Thus, if § 1226 applies to Petitioner's case, he is entitled by law to an individualized bond hearing – and by denying him any such hearing, Respondents are violating the INA.
28. The statutory framework is clear.
29. The Immigration and Nationality Act delineates two distinct detention regimes for noncitizens facing removal. Title 8 U.S.C. § 1225(b) applies to “applicants for admission” generally individuals who are encountered at the border or a port of entry, or who otherwise present themselves seeking entry into the United States.
30. This provision requires that certain such arriving aliens (for example, those who do not credibly establish a valid asylum claim or who are placed in expedited removal proceedings) be detained while their admissibility or claims are being resolved. Section 1225(b) is often referred to as a system of “mandatory detention” for arriving aliens: it does not permit release on bond at all.
31. The only avenue for an arriving alien's release is parole under 8 U.S.C. § 1182(d)(5), which is discretionary and granted only case-by-case for urgent humanitarian reasons or significant public benefit.
32. By contrast, 8 U.S.C. § 1226 governs the arrest and detention of noncitizens who are already inside the United States pending their removal proceedings.

33. Section 1226 covers any noncitizen “pending a decision on whether the alien is to be removed,” which by its terms encompasses those who entered without inspection as well as those who were paroled into the country.
34. Importantly, § 1226(a) explicitly provides that such individuals may be detained or released on bond (or conditional parole) while their proceedings are ongoing.
35. In other words, under § 1226 Congress granted the Executive broad discretion over custody, including the authority – and implicitly, the obligation – to conduct individualized determinations and release the person on bond if detention is not warranted. Put simply, § 1226 allows for bond hearings; § 1225(b) does not.
36. Petitioner’s circumstances squarely fall under § 1226, not § 1225.
37. Although Petitioner was never formally “admitted” at a port of entry, he has been physically present inside the United States since January 2025 under DHS’s supervision while his case is pending.
38. He is not an “arriving” outsider at the border – he is an individual who has lived in the U.S. for over fourteen months.
39. Therefore, § 1226 governs Petitioner’s custody, and under § 1226 his detention is unlawful.
40. Petitioner’s ongoing detention violates the INA on its face. The appropriate remedy is for this Court to order that Petitioner be immediately released.

Right to Petition for Writ of Habeas Corpus

41. A petition for a writ of habeas corpus may be brought by anyone “in *custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).
42. As the Constitution states, “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it.” *See* U.S. Const. art. I, § 9 cl. 2. Habeas corpus thus is a bedrock Constitutional right that our Founding Fathers considered to be important at the creation of our Republic. Presently, its contours are set forth in the habeas corpus statutes, which grant federal courts

jurisdiction to review the legality of a detention, and, if warranted, to order release of a petitioner. *See* 28 U.S.C. §§ 2241-2243.

43. The writ is the “fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). “The scope and flexibility of the writ - its capacity to reach all manner of illegal detention - its ability to cut through barriers of form and procedural mazes - have always been emphasized and zealously guarded by courts and lawmakers.” *Id.* Hence, “the very nature of the writ demands that it be administered with the initiative and *flexibility* essential to insure the miscarriages of justice within its reach are surfaced and corrected.” *Id.* (emphasis added).
44. Because of the vital role the writ plays in our democracy, and since the petitioner is often in custody, “usually handicapped in developing the evidence needed to support in necessary detail the facts alleged in [a] petition,” the Supreme Court has repeatedly recognized that “a habeas corpus proceeding must *not* be allowed to flounder in a ‘procedural morass’” *Price v. Johnston*, 334 U.S. 266, 269 (1948). Indeed, “[t]here is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.” *Harris*, 394 U.S. at 291-292.

Right to Due Process for Prolonged Detention

45. It is well established that the “Fifth Amendment entitles aliens to due process of Law[.]” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom of imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that the Due Process Clause protects.”

Zadvydas v Davis, 533 U.S. 678, 690 (2001); *see also Id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”).

46. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for its conduct infringing on protected interests “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted).
47. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: (1) to mitigate the risks of danger to the community; and (2) to prevent flight. *Demore*, 538 U.S. at 528.
48. Other than as punishment for a crime, due process permits the government to take away liberty only “in certain special and narrow non-punitive circumstances where a special justification outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotations omitted). Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690.
49. In the immigration context, those purposes are “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).
50. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring

their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring her appearance or protecting the community. *Zadvydas*, 533 U.S. at 699.

51. Even where detention is initially authorized under the Immigration and Nationality Act, it cannot continue indefinitely without constitutional limits. The Due Process Clause imposes substantive and procedural constraints on the government's authority to detain noncitizens for prolonged periods.
52. The Supreme Court has long recognized that civil immigration detention is permissible only for a limited duration and only insofar as it bears a reasonable relation to its underlying purposes. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because immigration detention is civil rather than punitive, it must remain tied to the government's legitimate interests. *Id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003). When detention becomes unreasonably prolonged, it ceases to serve those purposes and instead raises serious constitutional concerns.
53. The Supreme Court has identified six months as a key constitutional benchmark. In *Zadvydas*, the Court held that detention becomes presumptively unreasonable after six months, emphasizing that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." 533 U.S. at 690, 701. Courts have consistently relied on its six-month framework in evaluating the constitutionality of both prolonged pre-removal and post-removal detention.

54. Accordingly, detention exceeding six months without an individualized hearing is widely recognized as “prolonged” and triggers heightened due process protections. See, e.g., *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 478 (3d Cir. 2015) (noting that, absent unusual circumstances, detention becomes constitutionally suspect between six months and one year); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011) (holding that the reasonableness of detention is a function of its length), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

STATEMENT OF FACTS

55. Petitioner Yassine Kour (“Petitioner”) is a native of Morocco and has been in detention for over fourteen months.

56. On January 1, 2025, Petitioner entered the United States through the southern border.

57. On January 1, 2025, DHS took Petitioner into custody, and he has remained detained ever since at Imperial Regional Detention Facility in Calexico, California..

58. Petitioner has now been detained for more than fourteen months.

59. On September 12, 2025, Petitioner requested review of his custody determination.

60. On September 18, 2025, an Immigration Judge denied Respondent’s request for a custody redetermination, concluding that the court lacked jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

61. Petitioner appealed that ruling. In a November 12, 2025, bond memorandum issued to facilitate review of the appeal, an Immigration Judge reaffirmed that, under *Matter of Yajure Hurtado*, the court lacked jurisdiction to redetermine Respondent’s custody and therefore denied bond.

62. Petitioner still has not received a merits-based individualized custody determination as to whether his continued detention is justified. Through no fault of his own, Petitioner has therefore remained in prolonged civil detention for more than fourteen months.

Petitioner is Entitled to Relief

63. Petitioner is fully entitled to the relief sought and is not precluded by any other factors including criminal history.
64. The Constitution prohibits mandatory immigration detention under 8 U.S.C. 1226(c) beyond a reasonable period.
65. Petitioner has faced prolonged detention and delayed adjudication through no fault of his own. This has resulted in the prolonged, unspecified, unreasonable, and unjust detention of Petitioner for over fourteen months.

CAUSES OF ACTION

COUNT ONE

***Petitioner's Detention Violates the Immigration and Nationality Act
and Applicable Regulations***

66. Petitioner incorporates and re-alleges the foregoing paragraphs as though fully set forth herein.
67. Respondents' detention of Petitioner for fourteen months, without a judicial warrant and without presenting him "without unnecessary delay for examination" before an Immigration Judge or other judicial officer violated Respondents' authority under the Immigration and Nationality Act. 8 U.S.C. § 1357(a)(2); *Arias v. Rogers*, 676 F.2d 1139, 1142-43 (7th Cir. 1982).
68. Respondents' unlawful actions have caused and continue to cause Petitioner significant prejudice by depriving him of his liberty and exercise of his statutory and constitutional due process rights.
69. As a proximate result of Respondents' statutory violations, Petitioner is suffering and will continue to suffer a significant deprivation of his liberty without due process of law.

70. Petitioner has no adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Petitioner is necessary to prevent continued and future irreparable injury.

COUNT TWO

Petitioner's Detention Violates the Fourth Amendment of the U.S. Constitution

71. Petitioner incorporates and re-alleges the foregoing paragraphs as though fully set forth herein.

72. Respondents' actions beginning with unlawfully holding Petitioner for fourteen months without a judicial warrant or obtaining probable cause from an Immigration Judge or other detached and neutral judicial officer unreasonably deprived Petitioner of his liberty in violation of the Fourth Amendment.

73. As a proximate result of Respondents' unconstitutional arrest and detention policies, practices, acts, and omissions, Petitioner is suffering and will continue to suffer an unreasonable deprivation of his liberty without any legal recourse.

74. Petitioner has no criminal history and is not a flight risk.

75. Petitioner has no adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Petitioner is necessary to prevent continued and future irreparable injury.

COUNT THREE

Petitioner's Detention Violates Due Process Under the Fifth Amendment of the U.S. Constitution

76. Petitioner incorporates and re-allege the foregoing paragraphs as though fully set forth herein.

77. Petitioner has been detained since January 1, 2025, he sought custody redetermination, the immigration judge concluded there was no jurisdiction to provide a bond hearing on the merits under *Yajure Hurtado*, and he therefore remains in prolonged detention without any meaningful individualized custody determination..
78. Respondents' unlawful detention of Petitioner without an individualized custody determination causes Petitioner to suffer significant pain and suffering and substantial prejudice without affording him an opportunity to be heard in violation of the Due Process Clause of the Fifth Amendment.
79. As a proximate result of Respondents' unconstitutional detention, Petitioner is suffering and will continue to a significant deprivation of their liberty without due process of law as well as physical, emotional, and psychological harm.
80. Petitioner has no adequate or complete remedy at law to address the wrongs described herein. Petitioner's detention violates the Fifth Amendment Due Process Clause of the U.S. Constitution.
81. Accordingly, the injunctive and declaratory relief sought by Petitioner is necessary to prevent continued and future injury.

COUNT FOUR

*Petitioner's Detention Violates the
Administrative Procedure Act 5 U.S.C. 706(2)*

82. Petitioner incorporates and re-alleges the foregoing paragraphs as though fully set forth herein.
83. Under the Administrative Procedures Act, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing

court “shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “unsupported by substantial evidence.” 5 U.S.C. §§ 706(2)(A),(E).

84. A court reviewing agency action “must assess whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment”; it must “examin[e] the reasons for agency decisions or, as the case may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

85. Respondents’ actions are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “in excess of statutory jurisdiction, authority or limitations, or short of statutory right.” 5 U.S.C. §706(2)(C).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant them the following relief:

- A. Order Petitioner’s release from custody;
- B. Issue a Writ of Habeas Corpus ordering Petitioner’s release from immigration detention pending final resolution of this habeas proceeding;
- C. Issue a declaration that Respondents’ arrest and detention policies, practices, acts, and omissions described herein as applied to the Petitioner are unlawful and exceed Respondents’ constitutional and statutory authority in violation of 5 U.S.C. §§ 706(2)(A)—(D);
- D. Issue a declaration that Respondents’ arrest and detention policies, practices, acts, and omissions described herein are unlawful and violate Petitioner’s rights under the Fourth Amendment to the United States Constitution;
- E. Issue a declaration that Respondent’s detention policies, practices, acts, and

omissions described herein are unlawful and violate Petitioner's rights under the Fifth Amendment to the United States Constitution;

- F. Permanently enjoin Respondents, their subordinates, agents, employees, and all others acting in concert with them from subjecting Petitioner to these statutory violations and unconstitutional arrest and detention policies, practices, acts and omissions described herein, and issue injunctive relief sufficient to rectify those statutory and constitutional violations;
- G. Award compensatory and punitive damages to Petitioner for Respondents' violations of constitutional law, which caused Petitioner to suffer and continue to suffer physical and emotional harm, in an amount that is fair, just, and reasonable.

Dated: April 13, 2026

Respectfully submitted,

/s/Jonathan Aftalion

Jonathan Aftalion (SBOCA: 317235)

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Counsel for Petitioner, pro hac vice forthcoming

VERIFICATION

I, the undersigned counsel, hereby certify and declare, pursuant to 28 U.S.C. § 2242, that I am counsel for Petitioner. Because Petitioner is incarcerated and unable to sign this petition at present, I am verifying the petition on his behalf. I verify that the factual statements made in the above petition are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 13, 2026

Respectfully submitted,

/s/Jonathan Aftalion

Jonathan Aftalion (SBOCA: 317235)

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