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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OSAMA MAKHLOUF,

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center
DANIEL A. BRIGHTMAN, San Diego
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations (“ICE/ERO”);
TODD LYONS, Acting Director of
Immigration Customs Enforcement
(“ICE”);
KRISTI NOEM, Secretary of the
Department of Homeland Security
(“DHS”);
PAMELA BONDI, Attorney General of
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV2636 LEK JLB

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

4 INTRODUCTION

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6 1. Petitioner, OSAMA MAKKLOUF ("Mr. Makhlof" 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. Makhlof's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Makhlof seeks immediate
11 release from custody because Respondents have held him since June 5, 2025—a
12 prolonged period. Mr. Makhlof has already had his asylum application adjudicated.
13 He has filed an appeal with the Board of Immigration Appeals. No schedule for his
14 case has been set. This will take at least a year to adjudicate. After his entry into the
15 United States, he was first given a CAT interview followed by his Credible Fear
16 Interview. It was not until September 4, 2025, nearly 3 months after his entry, that a
17 court finally allowed his case to move forward. Since then he has filed all his
18 required documents. His final hearing date was February 18, 2026. Mr. Makhlof
19 had already been waiting 8 months to have his first day of testimony. Unfortunately,
20 the Immigration Judge denied his request for asylum asserting that Christians are
21 now safe under the new Syrian president, a former terrorist leader that massacred
22 whole villages of Christians. He has appealed this decision. This will take 6 months
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1 to a year to resolve. There is no possibility of his removal in the foreseeable future.
2 His continued detention without a hearing as to flight risk and danger to the
3 community violates the U.S. Constitution and federal law.

4 **CUSTODY**

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

9 **PARTIES**

10 3. Mr. Makhlouf is a 38-year-old citizen of Syria born  He is
11 currently detained at the Otay Mesa Detention Center in San Diego, California.

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

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

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

3 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
4 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
5 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
6 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
7 detaining Mr. Makhlouf. Respondent Lyons has custodial authority over Mr.
8 Makhlouf, who names him in his official capacity.

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

15 9. Respondent ACTING Attorney General of the United States is the most senior
16 official in the U.S. Department of Justice (DOJ) and is named in his/her official
17 capacity. He is responsible for the Immigration and Nationality Act’s
18 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
19 Executive Office for Immigration Review, the office that administers Mr. Makhlouf’s
20 removal proceedings and is responsible for adjudicating Mr. Makhlouf’s asylum
21 application. Mr. Makhlouf names her in her official capacity.
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10. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

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

JURISDICTION AND VENUE

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

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

14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr. Makhoul's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the

1 Constitution or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and
2 this authority extends to immigration detention challenges that survived the REAL
3 ID Act’s jurisdictional restrictions. Because Mr. Makhoulf seeks the traditional
4 habeas remedy of release from allegedly unlawful detention, his petition presents
5 precisely the type of threshold legality-of-detention question that § 2241 was
6 designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-*
7 *Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d
8 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction
9 under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court
10 has ruled on the legality of Mr. Makhoulf’s detention.
11

12 15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)
13 because a substantial part of the events or omissions giving rise to this claim have
14 happened here, Mr. Makhoulf is detained here, and his custodian resides here.
15 Venue is also proper under 28 U.S.C. § 2243 because Mr. Makhoulf’s immediate
16 custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52
17 (2004) (Kennedy, J., concurring).
18

19 **FACTUAL BACKGROUND**

20 16. Mr. Makhoulf was born in Syria. He and his family belong to the
21 Christian minority there. Mr. Makhoulf and his family have spent years being
22 discriminated against and persecuted by Syrian society and the government. The
23 United States State Department has documented these abuses in its annual reports
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1 on religious freedom. *See generally* United States Commission on International
2 Religious Freedom.

3 17. Mr. Makhoulf has been attacked and beaten by vigilantes in his
4 hometown demanding that he abandon his faith and convert to Sunni Islam. He has
5 also been persecuted by the local authorities. After the final overthrow of the Assad
6 regime there, the very terrorist leaders that had persecuted his family and his
7 village became the leader of Syria. As the situation escalated, he realized he would
8 only be safe if he escaped Syria.
9

10 18. He made his way to Mexico and finally crossed into the United States on
11 June 5, 2025. He immediately encountered CBP officers and was taken into custody.
12 He has been in detention at Otay Mesa Detention Center since June 5, 2025.

13 19. Respondents initially gave Mr. Makhoulf a CAT interview and then a
14 Credible Fear Interview. DHS determined that he did have a credible fear and
15 allowed him to move forward with an asylum application. His Notice to Appear was
16 finally filed and his first Master Calendar was 09/04/2025 with a follow up on
17 10/02/ 2025 and another on 10/16/2025, three months after his initial detention.
18 He was finally given an individual hearing on February 18, 2026.
19

20 20. At the individual hearing the Immigration Judge determined that Syria
21 was no longer a dangerous place for Christians and that Mr. Makhoulf no longer
22 qualified for asylum. Mr. Makhoulf has appealed this decision to the Board of
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1 Immigration Appeals. This appeal has only just been filed and it will take a year for it
2 to be adjudicated.

3 21. There is no end in sight to Mr. Makhoulf's detention ... not because he is a
4 flight risk or a threat to the community. That has never been determined. He
5 remains in detention because the administration insists that all people that lack a
6 green card or citizenship must be detained.

7
8 22. On July 8, 2025, the Department of Homeland Security ("DHS")
9 instituted a notice titled "Interim Guidance Regarding Detention Authority for
10 Applicants for Admission" (the "Notice") requiring, in general, that anyone arrested
11 in the United States and charged with being inadmissible to be considered an
12 "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
13 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
14 § 1226(a).

15
16 23. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
17 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
18 the Notice unlawful under the Administrative Procedures Act but did not issue a
19 final judgment. On December 18, 2025, however, the *Bautista* court entered final
20 judgement. *Bautista*, ECF No. 94. Subsequent to this an appeal was filed by the
21 Department and the case was put on hold pending the outcome of the appeal.

22 24. Mr. Makhoulf tried to ask for a bond but IJ's have consistently ruled
23 that they do not have jurisdiction to redetermine the conditions of custody over
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1 individuals who have been apprehended shortly after entering the United States and
2 who have been processed under Section 235(b)(1) expedited removal statute, and
3 who have been placed in removal proceedings. Even after *Maldonado, supra*, was
4 decided, Immigration Judges have still held that they do not have jurisdiction to
5 conduct bond hearings. So, at this point in San Diego getting a bond is a game of
6 roulette based on which judge is assigned to your request.

7
8 25. Mr. Makhoulf has come to believe that his detention will have no end.
9 The only end seems to be that he finally breaks down and agrees to voluntary
10 departure. There is no other logical explanation for what is currently going on.

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

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

18
19 28. Mr. Makhoulf's detention without a tenable justification violates his
20 rights under the Due Process Clause of the Fifth Amendment.

21 EXHAUSTION OF REMEDIES

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

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

20 31. Briefly, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
21 BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA had
22 asserted that bond hearings are now available. However, the ninth circuit has stayed
23 the final decision pending appeal. No remedy is available at this time.
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1 32. Moreover, no statutory exhaustion requirements apply to Petitioner's
2 claim of unlawful custody in violation of his due process rights, and there are no
3 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*
4 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile
5 exercise because the agency does not have jurisdiction to review" constitutional
6 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)
7 (same).

9 33. Every day that Petitioner remains detained causes him harm that
10 cannot be repaired. His continued detention puts his mental health at greater risk,
11 further warranting a finding of irreparable harm and the waiver of the prudential
12 exhaustion requirement. Mr. Makhoulf cannot get the medical attention he requires
13 while he is detained.

14 34. The Court must consider this in its irreparable harm analysis of the
15 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
16 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
17 petitioner "continues to suffer significant psychological effects from his detention,
18 including anxiety caused by the threats of other inmates and two suicide attempts,"
19 in finding that petitioner would suffer irreparable harm warranting waiver of
20 exhaustion requirement).

22 **FIRST CAUSE OF ACTION**
23 **Fifth Amendment Due Process Violation**
24

1 35. Mr. Makhlouf re-alleges and incorporates by reference, as if fully set
2 forth herein, the allegations in all paragraphs above.

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

11
12 37. The Supreme Court has held that “even one whose presence in this
13 country is unlawful, involuntary, or transitory is entitled to that constitutional
14 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
15 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
16 (1982) (“Whatever his status under the immigration laws, an alien is surely a
17 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
18 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
19 [may not]... be deprived of life, liberty or property without due process of law.”).

20
21 38. As there is no final order of removal, and there doesn’t appear to be
22 one in the reasonably foreseeable future, Mr. Makhlouf may not be removed from
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1 the United States. His removal is not reasonably foreseeable, and his detention no
2 longer serves any legitimate purpose under the INA.

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

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

16 41. The final factor—finality—strongly supports the grant of this habeas
17 petition. Mr. Makhoulf has been languishing in detention for over 10 months with no
18 end in sight.

20 42. The long delay to commence his removal proceedings was from the
21 department repeatedly alleging he did not have a credible fear of persecution. That
22 delay cannot be attributed to Mr. Makhoulf.

23 43. Mr. Makhoulf has now been detained by ICE for nearly 10 months since
24 his arrival in the United States on June 5, 2025. This period is well beyond the

1 presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701.
2 Courts consistently find detention beyond this threshold triggers due process
3 scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75.

4 44. Conditions of confinement also raise constitutional concerns as the
5 medical treatment available at the Otay Mesa Detention Center is not adequate to
6 address Mr. Makhlouf's health conditions.

7 45. Mr. Makhlouf poses no risk of flight and no danger to the community.
8 He has no criminal history, has demonstrated compliance with all prior immigration
9 requirements, and has community support in the United States.

10 46. Mr. Makhlouf's continued detention without a tenable justification
11 violates his Fifth Amendment right to due process.

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14 PRAYER FOR RELIEF

15 Mr. Makhlouf asks this Court to grant the following relief:

- 16 1. Issue a Writ of Habeas Corpus ordering Respondents to release
17 Mr. Makhlouf from custody immediately;
- 18 2. Declare the continued detention of Mr. Makhlouf without a tenable
19 justification a violation of the Due Process Clause of the U.S. Constitution;
- 20 3. Order Respondents to show cause why Mr. Makhlouf is being
21 subjected to unlawful and unconstitutional detention; and
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1 4. Grant any other relief that may be fit and proper.

2 Dated: April 25, 2026

Respectfully submitted,

3 By: /s/ Brian J. McGoldrick

4 Brian J. McGoldrick, Esq.

5 Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on 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 25th day of April, 2026, in San Diego, California.

/s/ Brian J. McGoldrick
Brian J. McGoldrick, Esq.
Attorney for Petitioner