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

<p>MIR ABDUL ZABIH AZIZI, <i>Petitioner,</i> v. JEREMY CASEY, Facility administrator at the Imperial Regional Detention Facility, PATRICK DIVVER, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and TODD BLANCHE, Acting U.S. Attorney General.</p>	<p>VERIFIED EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS, ORDER TO SHOW CUASE WITHIN THREE DAYS AND COMPLAINT FOR DECLARATORY RELIEF</p> <p><u>'26CV2677 DMS GC</u></p>
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PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C.

§2241

INTRODUCTION

Mir Abdul Zabih Azizi has been detained pending his immigration proceedings for 16 months. Originally from Afghanistan, Mr. Azizi fled his country in 2024 after he was threatened and physically harmed by the Taliban who took over the country after the U.S. withdrew in 2021. He was granted protection under the Convention Against Torture (CAT) by an immigration judge on October 20, 2025. However, rather than release him, the government has appealed the grant to the BIA. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. §1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia J.). Because Mr. Azizi was granted deferral of removal under CAT, which gives him permission to remain in the United States and apply for employment authorization, this Court should order his immediate release. *See* 8 C.F.R. §1208.17; 8 C.F.R. §241.5 In the alternative, this Court should order the government to provide Mr. Azizi with an individualized bond hearing at which the burden is on the government to establish through clear and convincing evidence that Mr. Azizi is a danger or a flight risk if released.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§

2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is presently in custody under the authority of the United States and challenges his detention as in violation of the Constitution, laws, or treaties of the United States.

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

Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Azizi is detained at the Imperial Regional Detention Facility in Calexico, California.

REQUIREMENTS OF 28 U.S.S. § 2243

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

Court have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England,

affording as it does a *swift* and imperative remedy in all cases of illegal restraint and confinement. *Fay v. Noia*, 372 U.S. 391, 400 (1963) (overruled on other grounds by *Wainwright v. Sykes*, 433 U.S. 72 (1977)) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

1. Petitioner Mir Abdul Zabih Azizi is currently detained by Respondents in the Imperial Regional Detention Facility.
2. Respondent Jeremy Casey is the facility administrator at the Imperial Regional Detention Facility in San Diego, California where Petitioner is currently detained. He is thus Petitioner’s immediate custodian and is sued in his official capacity.
3. Respondent Patrick Divver is the Director of ICE’s San Diego Field Office, which has jurisdiction over ICE detention facilities in San Diego and Imperial County, including the Imperial Regional Detention Center, and is thus Petitioner’s immediate custodian. He is sued in his official capacity.

4. Respondent Todd Lyons is the Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.
5. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Mr. Mullin is the ultimate legal custodian of Petitioner. He is sued in his official capacity.
6. Respondent Todd Blanche is the Acting Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals and the Immigration Courts. Mr. Blanche shares responsibility for implementation and enforcement of the immigration laws with Respondent Noem. Mr. Blanche is a legal custodian of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

Petitioner Mir Abdul Zabih Azizi is a citizen of Afghanistan. He applied for admission to the United States via the CBP One application at the Calexico Port of Entry on October 23, 2024, and has been detained at the Imperial Regional Detention Facility since that date. Ex. A. CBP One is a mobile application through

which noncitizens could request an appointment to present themselves at designated ports of entry. Mr. Azizi fled Afghanistan in 2024 after being threatened by the Taliban on account of [REDACTED] Ex. C. From 2019 until June of 2024, Mr. Azizi owned and operated a sign-making business in Afghanistan called [REDACTED]. *Id.* When the Taliban rose to power in 2021, they began a campaign of oppression and terror against [REDACTED]. *Id.* In May 2023, after Mr. Azizi demanded payment for a banner that he had made for the Taliban, several Taliban members severely beat him, leaving him unconscious. *Id.* Mr. Azizi also supported women and girls' education before and after the Taliban took over in Afghanistan, which was against the Taliban's orders. *Id.* In March 2024, the Taliban shuttered Mr. Azizi's store after Mr. Azizi refused to provide them services. *Id.* In June 2024, the Taliban returned and seized his printing equipment and machinery as well as his computers. *Id.* The computers contained materials he used to support education for women and girls. *Id.*

Fearing for his life and safety, Mr. Azizi fled Afghanistan in 2024. *Id.* After he left, he learned that the Taliban had come to his family home twice in July 2024 searching for him and they also searched for him at his shop. *Id.* The Taliban left what appeared to be two letters identifying him by name, referring to his cooperation with the previous government and his promotion of democracy. *Id.*

The letters stated that the Mujahadin of the Islamic Emirate was prosecuting him for being against the government and the Islamic Emirate.

Mr. Azizi applied for entry into the United States via CBP1 on October X, 2024. The government filed a notice to Appear charging him as an arriving alien. After arriving in the United States Mr. Azizi applied for asylum, withholding of removal and protection under the Convention Against Torture (CAT). The immigration judge granted him deferral of removal under CAT on October 28, 2025, finding that it was more likely than not that he would be tortured by the Taliban if he is deported to Afghanistan. Exs. B, C. The government has appealed the grant of deferral of removal under CAT to the BIA and Mr. Azizi remains in custody, where he has been for the past 16 months.

LEGAL FRAMEWORK

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

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Mr. Azizi is detained under one such statute, 8 U.S.C. §1225(b). "Section 1225 applies to 'applicants for admission' – noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have not been admitted.'" *Banda v. McAleenan*, 383 F. Supp. 3d

1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That includes persons who, like Mr. Azizi, are detained in the United States and make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).

But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not address whether prolonged, mandatory detention without bond hearings violates due process. *Id.* at 312. 2.

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

Banda, 385 F. Supp. 3d at 1116. But after a full evaluation, “[n]early all district

courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up) (collecting cases).

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

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e] any ‘person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’ nonpunitive

‘circumstances,’ *Foucha, supra*, at 80, where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’

Kansas v. Hendricks, 521 U.S. 346, 356 (1997).

As the Ninth Circuit put it in *Jennings*’ wake, these considerations raise “grave doubts that any statute that allows for arbitrary prolonged detention

without any process is constitutional or that those who founded our democracy

precisely to protect against the government’s arbitrary deprivation of liberty

would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

The same concerns have led district courts to conclude that immigrants cannot be detained indefinitely without bond hearings pending their immigration proceedings.

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

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a

particular individual’s detention has reached that point. *Sanchez-Rivera v.*

Matusewski, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal.

Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have

“conclude[d]...that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Mr. Azizi would automatically qualify, as he has been detained for 16 months.

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

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

Id. Some courts also consider:

- (4) “the conditions of detention,” and
- (5) “the likelihood that the removal proceedings will result in a different final order.”

Id.; *but see Lopez v. Garland* 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding that the fourth and fifth factors and “not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires

a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with *Lopez*).¹ Mr. Azizi would prevail under any of these factors tests.

First, the “most important factor,” the length of detention, favors Mr. Azizi. *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a person who has never been found to pose a danger to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings for persons detained between nine and eleven months, significantly shorter than Mr. Azizi’s 16 months in detention. *See Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) (“More than nine months”).

Second, Mr. Azizi has reason to anticipate significant future detention during the appellate process. A BIA appeal itself can take between five and seven months, and afterward a petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F.

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

Supp. 3d at 1119. All told, “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s future detention can last several more months or even years[,]” this factor favors Mr. Azizi. *Abdul Kadir v. LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).

Third, Mr. Azizi moved forward expeditiously. He retained counsel on January 26, 2025. His attorney requested two continuances, once to complete the I-589 and the second to give him more time to obtain Mr. Azizi’s medical records. In addition, his attorney was concerned about Mr. Azizi’s competency. He filed his asylum application on April 10, 2025, and filed a revised version on May 17, 2025. The case was decided on October 28, 2025. The whole process from detention to decision took about 12 months.

Fourth, Mr. Azizi’s conditions of confinement weigh in favor of a bond hearing. At Imperial Regional Detention Center, detainees are locked up behind concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rule. Accordingly, Mr. Azizi’s, “confinement at [IRDC] is ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). In addition, Mr. Azizi’s health has deteriorated since he has been in custody. He has experienced severe

trauma which caused him to flee Afghanistan and seek safe haven in the United States. He has now been detained for 16 months while he litigates his asylum claim. He has struggled with depression and has been taking medication to address this issue. He is also unable to sleep without taking sleep medication. Detention has exacerbated both of these health issues.

Fifth, in a reasoned decision, the immigration judge found Mr. Azizi credible and, given the facts in his case, that it is more likely than not that Mr. Azizi will be tortured if he is deported to Afghanistan. Ex. C. Thus, it is unlikely that the government's appeal will result in a different final order.

Under any test, then, Mr. Azizi should prevail. The Court should order his immediate release given that he was granted Deferral of Removal under CAT. But at the very least, he is entitled to a bond hearing and an individualized finding as to whether he is a flight risk or a danger to the community.

PRAYER FOR RELIEF

For the foregoing reasons, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Mr. Azizi without a bond hearing.

Accordingly, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter.

2. Order that Petitioner shall not be transferred outside the Southern District of California.
3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Azizi. Mr. Azizi was granted deferral of removal under CAT, which gives him permission to remain in the United States and apply for employment authorization. In the alternative, the Court should order Respondents to provide Mr. Azizi with a bond hearing within seven days where the burden of proof is on the government to establish through clear and convincing evidence that Mr. Azizi is a danger or a flight risk if released. *See Sadeqi v. LaRose* No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *4 (S.D. Cal. Nov. 12, 2025) (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)) (“Petitioner is entitled to a prompt and individualized bond hearing, at which Respondents must justify her continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released.”). The Court should further require the government to provide him with a bond hearing before a “fair, neutral, and open-minded immigration judge.” *Domingos v. Casey*, No. 3:26-cv-01151-BTM-JLB, 2026 LX 176120, at *9 (S.D. Cal. Mar. 23, 2026).
4. Award reasonable attorney’s fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

5. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

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Pro Bono Counsel for Petitioner

Dated: April 27, 2026

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

I am submitting this verification on behalf of Mr. Azizi because I am his attorney. As Mr. Azizi's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 27, 2026

By: /s/ Cassandra Lopez