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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NIDAL ALMASHRIKI,

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.: '26CV2682 BJC AHG

**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, NIDAL ALMASHRIKI, 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 INTRODUCTION

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

4 CUSTODY

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

9 PARTIES

10 3. Mr. AlMashriki is a 24-year-old citizen of Syria born  He is
11 currently detained at the Otay Mesa Detention Center in San Diego, California.

12 4. Mr. AlMashriki 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.
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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. AlMashriki. Respondent Lyons has custodial authority over Mr.
8 AlMashriki, who names him in his official capacity.

9
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. AlMashriki, 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.
20 AlMashriki’s removal proceedings and is responsible for adjudicating Mr.
21 AlMashriki’s asylum application. Mr. AlMashriki names him in his 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. AlMashriki'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. AlMashriki'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. AlMashriki 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. AlMashriki’s detention.
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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. AlMashriki is detained here, and his custodian resides here.
15 Venue is also proper under 28 U.S.C. § 2243 because Mr. AlMashriki’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. AlMashriki was born in Syria. He and his family belong to the
21 Christian minority there. Mr. AlMashriki 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. AlMashriki 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.
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10 18. He made his way to Mexico and finally crossed into the United States on
11 March 14, 2025. He immediately encountered CBP officers and was taken into
12 custody. He has been in detention primarily at Otay Mesa Detention Center since
13 March 14, 2025. He was twice briefly sent to the Arizona detention center but
14 returned to Otay Mesa within days.

15 19. Respondents initially gave Mr. AlMashriki a CAT interview and DHS
16 determined that he did have a credible fear and allowed him to move forward with
17 an asylum application. His Notice to Appear was finally filed and his first Master
18 Calendar was 09/04/2025 with a follow up on 10/23/2025. He was finally given an
19 individual hearing on March 12, 2026, 5 months after his last master calendar
20 hearing
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22 20. At the individual hearing the Immigration Judge determined that Syria
23 was no longer a dangerous place for Christians and that Mr. AlMashriki no longer
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1 qualified for asylum. Mr. AlMashriki has appealed this decision to the Board of
2 Immigration Appeals. This appeal has only just been filed and it will take a year for it
3 to be adjudicated.

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

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

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

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

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

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

EXHAUSTION OF REMEDIES

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

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

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

3 32. Moreover, no statutory exhaustion requirements apply to Petitioner's
4 claim of unlawful custody in violation of his due process rights, and there are no
5 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*
6 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile
7 exercise because the agency does not have jurisdiction to review" constitutional
8 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)
9 (same).
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11 33. Every day that Petitioner remains detained causes him harm that
12 cannot be repaired. His continued detention puts his mental health at greater risk,
13 further warranting a finding of irreparable harm and the waiver of the prudential
14 exhaustion requirement. Mr. AlMashriki cannot get the medical attention he
15 requires while he is detained.
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17 34. The Court must consider this in its irreparable harm analysis of the
18 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
19 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
20 petitioner "continues to suffer significant psychological effects from his detention,
21 including anxiety caused by the threats of other inmates and two suicide attempts,"
22 in finding that petitioner would suffer irreparable harm warranting waiver of
23 exhaustion requirement).
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FIRST CAUSE OF ACTION

Fifth Amendment Due Process Violation

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

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

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

38. As there is no final order of removal, and there doesn’t appear to be one in the reasonably foreseeable future, Mr. AlMashriki may not be removed from

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 AlMashriki's petition.

16 41. The final factor—finality—strongly supports the grant of this habeas
17 petition. Mr. AlMashriki has been languishing in detention for over 13 months with
18 no end in sight.

19 42. The long delay to commence his removal proceedings was from the
20 department failing to enter his Notice to Appear in a timely fashion. The second long
21 delay was due to the packed court calendar. Neither delay can be attributed to Mr.
22 AlMashriki.
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1 43. Mr. AlMashriki has now been detained by ICE for nearly 13 months
2 since his arrival in the United States on March 14, 2025. This period is well beyond
3 the presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at
4 701. Courts consistently find detention beyond this threshold triggers due process
5 scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75.

6 44. Conditions of confinement also raise constitutional concerns as the
7 medical treatment available at the Otay Mesa Detention Center is not adequate to
8 address Mr. AlMashriki's health conditions. Even more, this prolonged detention has
9 had a tremendous depressive effect on Mr. AlMashriki.
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11 45. Mr. AlMashriki poses no risk of flight and no danger to the community.
12 He has no criminal history, has demonstrated compliance with all prior immigration
13 requirements, and has community support in the United States.

14 46. Mr. AlMashriki's continued detention without a tenable justification
15 violates his Fifth Amendment right to due process.
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20 **PRAYER FOR RELIEF**

21 Mr. AlMashriki asks this Court to grant the following relief:
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- 23 1. Issue a Writ of Habeas Corpus ordering Respondents to release
24 Mr. AlMashriki from custody immediately;

1 2. Declare the continued detention of Mr. AlMashriki without a
2 tenable justification a violation of the Due Process Clause of the U.S.
3 Constitution;

4 3. Order Respondents to show cause why Mr. AlMashriki is being
5 subjected to unlawful and unconstitutional detention; and

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

7 Dated: April 27, 2026

Respectfully submitted,

8 By: /s/ Brian J. McGoldrick
9 Brian J. McGoldrick, Esq.
10 Attorney for Petitioner
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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 27th day of April, 2026, in San Diego, California.

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