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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Zhongyi SHENG,

11 Petitioner,

12 v.

13 Christopher J. LAROSE, Senior Warden,
14 Otay Mesa Detention Center, San Diego,
California;
15 Patrick DIVVER, Field Office Director,
16 San Diego Office of Detention and
Removal, U.S. Immigrations and Customs
17 Enforcement; U.S. Department of
Homeland Security;
18 Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement,
19 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
20 Executive Office for Immigration Review;
Markwayne MULLIN, Secretary, U.S.
21 Department of Homeland Security;
22 Todd Blanche, Acting Attorney General
of the United States;

23 Respondents.

Case No.: '26CV2737 RSH VET

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

6 1. Petitioner, ZHONGYI SHENG (“Mr. Sheng” or “Petitioner”), a Chinese asylum
7 seeker, by and through his undersigned counsel, hereby petitions this Court under 28
8 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Sheng’s release
9 from immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement (“ICE”). Mr. Sheng seeks immediate release
11 from custody because Respondents have held him since October 29, 2025—a prolonged
12 period—even though he has hired counsel and has acted diligently to have his asylum
13 application heard by an immigration judge (“IJ”), and his proceedings have been
14 continued through no fault of his own. Alternatively, Mr. Sheng seeks an order releasing
15 him from custody under minimum bond of \$1,500.00, or directing an immediate bond
16 hearing before a neutral decisionmaker where DHS bears the burden of justifying Mr.
17 Sheng’s continued detention by clear and convincing evidence and where alternatives to
18 detention and Mr. Sheng’s ability to pay a bond are considered
19

20 2. Order Respondents to show cause why Mr. Sheng is being subjected to unlawful
21 and unconstitutional detention

22 3. His continued detention without a hearing as to flight risk and danger to the
23 community violates the U.S. Constitution and federal law.
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1 **CUSTODY**

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

5 **PARTIES**

6 5. Mr. Sheng is a 39-year-old citizen of China, born in Zhuzhou City, Hunan
7 Province. He is currently detained at the Otay Mesa Detention Center in San Diego,
8 California. Mr. Sheng is seeking asylum in the United States due to persecution on
9 account of his political. His wife and child are presently residing in the United States, and
10 he has also developed extensive community ties in the United States.

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

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

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

3 9. 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 detaining
7 Mr. Sheng. Respondent Lyons has custodial authority over Mr. Sheng, who names him in
8 his official capacity.

9
10 10. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
11 responsibility for overseeing the operation of the immigration courts and the Board of
12 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
13 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
14 removal proceedings, including for custody redeterminations in bond hearings. She is
15 sued in her official capacity.

16 11. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in his
17 official capacity. DHS is the federal agency responsible for enforcing immigration laws
18 and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent
19 Blanche has ultimate custodial authority over Mr. Sheng, who names her in his official
20 capacity.

21
22 12. Respondent Todd Blanche is the Acting Attorney General of the United States and
23 the most senior official in the U.S. Department of Justice (DOJ) and is named in his
24 official capacity. He is responsible for the Immigration and Nationality Act’s

1 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
2 Executive Office for Immigration Review, the office that administers Mr. Sheng's
3 removal proceedings and is responsible for adjudicating Mr. Sheng's asylum application.
4 Mr. Sheng names his in her official capacity.

5 JURISDICTION AND VENUE

6 13. This action arises under the United States Constitution and the Immigration and
7 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Sheng's
8 detention under the INA and any inherent or plenary powers the government may claim
9 to continue holding him.
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11 14. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
12 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
13 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
14 Jurisdiction is not limited by a petitioner's nationality, immigration status, or any other
15 classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant
16 relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706
17 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001
18 (Declaratory Judgment Act), and 2241 (habeas corpus).
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20 15. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
21 Sheng's detention. Federal district courts possess broad authority to issue writs of habeas
22 corpus when a person is held “in custody in violation of the Constitution or laws or
23 treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to
24 immigration detention challenges that survived the REAL ID Act's jurisdictional

1 restrictions. Because Mr. Sheng seeks the traditional habeas remedy of release from
2 allegedly unlawful detention, his petition presents precisely the type of threshold legality-
3 of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S.
4 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020)
5 (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are
6 not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S.
7 678, 687 (2001). No court has ruled on the legality of Mr. Sheng's detention.

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

14 **FACTUAL BACKGROUND**

15 17. Mr. Sheng is a 39-year-old citizen of China, born in Zhuzhou City, Hunan
16 Province. Mr. Sheng is seeking asylum in the United States due to persecution on account
17 of his political opinion.

18 18. Mr. Sheng initially arrived in the United States on or about September 19, 2022
19 and was admitted on a B-2 Visitor Visa. On April 25, 2023, Mr. Sheng timely filed his
20 asylum application with the United States Citizenship and Immigration Services
21 (USCIS), where the application remained pending. While his affirmative asylum
22 application was pending, Mr. Sheng applied for and was granted employment
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1 authorization and a social security card. He was gainfully employed as an Uber driver in
2 Los Angeles, California, supporting himself and his family.

3 19. Mr. Sheng timely filed his application for asylum, attended his biometrics
4 appointment, and otherwise obeyed all laws of the United States. Before his incarceration
5 on October 29, 2025, Mr. Sheng's immigration proceeding was pending before the Los
6 Angeles Asylum Office. Venue was subsequently changed to the Otay Mesa Immigration
7 Court following Mr. Sheng's re-detention.

8
9 20. On October 29, 2025, Mr. Sheng was working as an Uber rideshare driver and
10 picked up a passenger in Irvine, California. The passenger's destination was in San Diego
11 near the U.S. – Mexico border. After dropping off the passenger, relying on his GPS and
12 Uber App, Mr. Sheng turned around to return north toward Los Angeles. While driving
13 back, he was stopped and detained by ICE officers. The government alleges that Mr.
14 Sheng had exited the U.S. and was seeking reentry into the U.S. at the time and place
15 where he was detained. Mr. Sheng denies any knowledge of actually "exiting" the U.S.
16 and "entering" Mexico. However, for the purposes of this petition, Mr. Sheng is claiming
17 a "prolonged detention" argument and not challenging his designation as an "arriving
18 alien." Nor is he waiving the argument.

19 21. Mr. Sheng has no criminal record and had attended all of his immigration hearings
20 and appointments. Mr. Sheng had been living in the United States for over three years,
21 during which he not only timely filed his asylum application and obtained his work
22 permit, but he has also been working to support himself and his family. He has also
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1 developed community ties here in the United States, has obeyed all laws of the United
2 States and has no criminal record.

3 22. When Mr. Sheng was arrested on October 29, 2025, his immigration proceedings
4 were pending before the Los Angeles Asylum Office.

5 23. On November 21, 2025, the government issued Mr. Sheng a Notice to Appear
6 (NTA) before an immigration judge (IJ) on September 29, 2025. When that NTA was
7 filed on November 24, 2025 with the immigration court, the Court rescheduled Mr.
8 Sheng's initial appearance to December 4, 2025.

9 24. On December 2, 2025, Mr. Sheng moved for a custody redetermination hearing for
10 the IJ. The IJ denied the motion based on the grounds that Mr. Sheng is an "arriving
11 alien" and that the IJ lacks jurisdiction to redetermine his custody.

12 25. At his first Master Calendar hearing on December 11, 2025, Mr. Sheng appeared
13 before the IJ. Although Mr. Sheng had counsel for his affirmative asylum application
14 which was pending before the Los Angeles Asylum Office, that counsel had not been
15 retained to represent Mr. Sheng in his detained removal proceedings and therefore, was
16 not notified of Mr. Sheng's hearing. The IJ therefore continued the hearing to January 7,
17 2026. At that hearing, Mr. Sheng appeared with his primary attorney of record's associate
18 who appeared on behalf of Mr. Sheng's primary counsel informing the IJ that Mr.
19 Sheng's primary attorney was on military deployment and that the associate was
20 appearing on the primary attorney's behalf. The IJ then reset the proceedings to March 6,
21 2026 for pleadings and identification of relief.
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1 26. On February 10, 2026, Mr. Sheng and his counsel were notified that the March 6,
2 2026 hearing date was vacated and the matter was reset to March 12, 2026.

3 27. On March 5, 2026, Mr. Sheng and his counsel were notified again that the March
4 12, 2026 hearing date was vacated and the matter was reset to March 17, 2026 and the
5 proceedings were abruptly reassigned to another IJ.

6 28. Prior to appearing at the March 17, 2026 hearing, Mr. Sheng filed his relief
7 (asylum) application as well as his personal statement. When Mr. Sheng appeared with
8 his primary counsel on March 17, 2026 before the newly assigned, the IJ took pleadings,
9 however, the IJ was unable to access Mr. Sheng's relief application due to technical
10 issues and was therefore unable to set the matter for a final individual merits hearing on
11 that date. The IJ reset the matter for another master calendar hearing on April 22, 2026.

12 29. On April 22, 2026, the matter was not heard and it was rescheduled again to April
13 24, 2026.

14 30. At the April 24, 2026 master calendar hearing, the IJ reset the matter to an
15 individual calendar hearing on June 3, 2026.

16 31. Mr. Sheng has not moved for any further custody redetermination because the IJ's
17 in this jurisdiction have consistently ruled that they do not have jurisdiction to
18 redetermine the conditions of custody over individuals who have been apprehended at the
19 border or shortly after entering the United States.
20

21 32. Since being detained on October 29, 2025, Mr. Sheng has been suffering from
22 anxiety, depression and sudden mood swings, as well as lack of appetite and sleep. He
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1 has also been experiencing extreme guilt as he is no longer able to work and provide for
2 his family.

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

7
8 34. The government has failed to effectuate Mr. Sheng's removal within a reasonable
9 period of time or present any evidence that his removal is significantly likely to occur in
10 the reasonably foreseeable future.

11 35. Mr. Sheng's detention without a tenable justification violates his rights under the
12 Due Process Clause of the Fifth Amendment.

13 EXHAUSTION OF REMEDIES

14 36. Mr. Sheng has exhausted all administrative remedies, and no further ones are
15 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
16 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
17 prudential exhaustion requirement if "administrative remedies are inadequate or not
18 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
19 injury will result, or the administrative proceedings would be void." *Id.* (quoting Laing v.
20 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

21
22 Petitioner asserts that exhaustion should be waived because administrative remedies are
23 (1) futile and (2) his continued detention results in irreparable harm.

1 37. Exhausting administrative remedies here is futile because Respondents contend
2 Mr. Sheng is subject to mandatory detention. As such, no request to release him from
3 custody would be considered by ICE and Mr. Sheng's repeated requests for parole release
4 have been denied. Moreover, immigration judges in this district claim to have no
5 jurisdiction to conduct a custody redetermination hearing as to individuals procedurally
6 situated like Mr. Sheng. Indeed, in contravention to the INA and long-standing precedent
7 and practice, the Board of Immigration Appeals and Attorney General have deemed no
8 noncitizen eligible for bond before an immigration judge (with the exception of only
9 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
10 administrative remedies would be entirely futile.
11

12 38. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
13 unlawful custody in violation of his due process rights, and there are no administrative
14 remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
15 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
16 the agency does not have jurisdiction to review" constitutional claims); In re Indefinite
17 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
18

19 39. More importantly, every day that Petitioner remains detained causes him harm
20 that cannot be repaired. His continued detention puts his physical and mental health at
21 greater risk, further warranting a finding of irreparable harm and the waiver of the
22 prudential exhaustion requirement. As explained above, Mr. Sheng has been suffering
23 from depression, anxiety, sadness, loss of appetite and weight, and guilt due to having
24

1 been separated from his family for such an extended period of time. There is no adequate,
2 proper and available treatment in the detention facility to address Mr. Sheng's symptoms.

3 40. The Court must consider this in its irreparable harm analysis of the effects on
4 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
5 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to
6 suffer significant psychological effects from his detention, including anxiety caused by
7 the threats of other inmates and two suicide attempts," in finding that petitioner would
8 suffer irreparable harm warranting waiver of exhaustion requirement).

9
10 **FIRST CAUSE OF ACTION**
11 **Fifth Amendment Due Process Violation**

12 41. Mr. Sheng re-alleges and incorporates by reference, as if fully set forth herein, the
13 allegations in paragraphs 1-40 above.

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

22 43. The Supreme Court has held that "even one whose presence in this country is
23 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
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1 Process Clauses of the Fifth and Fourteenth Amendments]” Mathews v. Diaz, 426 U.S.
2 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) (“Whatever his status
3 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
4 term.”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“Persons within the
5 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
6 property without due process of law.”).

7
8 44. As there is no final order of removal, and there doesn’t appear to be one in the
9 reasonably foreseeable future, Mr. Sheng may not be removed from the United States.
10 His removal is not reasonably foreseeable, and his detention no longer serves any
11 legitimate purpose under the INA.

12 45. In Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District
13 granted habeas relief in a substantially similar case, applying a six-factor balancing test
14 first articulated in Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which
15 considers: (1) total length of detention to date; (2) likely duration of future detention; (3)
16 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
17 delays in the removal proceedings caused by the government; and (6) the likelihood that
18 the removal proceedings will result in a final order of removal. The court determined that
19 prolonged detention, when considered alongside other due process concerns, can rise to
20 the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at
21 773.

22
23 46. Applying the Banda six-factor framework here supports granting Mr. Sheng’s
24 petition.

1 47. The final factor—finality—strongly supports the grant of this habeas petition and
2 request for release or a bond hearing. Mr. Sheng is statutorily eligible to apply for
3 asylum, and until that application is finally adjudicated, he cannot be removed from the
4 United States. Thus, the only prospect for removal from the United States would be a
5 speculative, and not factually unsupported prospect of removal to a third country.

6 48. Almost all delays in this case are attributable to the government. Mr. Sheng
7 promptly applied for asylum after lawfully entering the United States, he has timely
8 attended all of his interviews and court hearings and has timely complied with the IJ's
9 filing deadlines.

10 49. Mr. Sheng has now been detained by ICE for over six months since his detention
11 on October 29, 2025. His continued individual hearing will not take place until June 3,
12 2026, and in the event he is granted asylum, the government will likely appeal and if he is
13 denied asylum and ordered removed by the IJ, he will appeal before the BIA as a matter
14 of his right, and the appeal of his case to the BIA is estimated to take several months if
15 not over a year. And in the event that the BIA affirms the IJ, then Mr. Sheng will petition
16 for review with the Ninth Circuit Court of Appeals and if the BIA reverses the IJ, then his
17 case will be remanded back to a new IJ which will take several additional months if not
18 over a year. This period is well beyond the presumptively reasonable six-month period
19 set forth in Zadvydas, 533 U.S. at 701. Courts consistently find detention beyond this
20 threshold triggers due process scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.
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1 50. Conditions of confinement also raise constitutional concerns as the medical
2 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
3 Sheng's health conditions.

4 51. Mr. Sheng poses no risk of flight and no danger to the community. He has no
5 criminal history, has demonstrated compliance with all prior immigration requirements,
6 and has community support in the United States.

7 52. Mr. Sheng's continued detention without a tenable justification violates his Fifth
8 Amendment right to due process.
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10 **PRAYER FOR RELIEF**

11 Mr. Sheng asks this Court to grant the following relief:

- 12 1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr.
13 Sheng from custody immediately;
- 14 2. Declare the continued detention of Mr. Sheng without a tenable
15 justification a violation of the Due Process Clause of the U.S. Constitution;
- 16 3. Alternatively, order Mr. Sheng's release from custody under
17 minimum bond of \$1,500.00;
- 18 4. Alternatively, direct an immediate bond hearing before a neutral
19 decisionmaker where DHS bears the burden of justifying Mr. Sheng's
20 continued detention by clear and convincing evidence and where alternatives
21 to detention and Mr. Sheng's ability to pay a bond are considered
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1 5. Order Respondents to show cause why Mr. Sheng is being subjected to
2 unlawful and unconstitutional detention; and

3 6. Grant any other relief that may be fit and proper.
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5 Dated: April 30, 2026

Respectfully submitted,

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7 By: /s/ Bashir Ghazialam
8 Bashir Ghazialam

9 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 one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and 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 April 30, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner