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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 BISRAT GIDEY DERBEW,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, warden of
14 Otay Mesa Detention Center;
15 PATRICK DIVVER, San Diego Field
16 Office Director, Immigration and Customs
17 Enforcement and Removal Operations
18 ("ICE/ERO");
19 TODD LYONS, Acting Director of
20 Immigration Customs Enforcement
21 ("ICE");
22 MARKWAYNE MULLIN, Secretary of
23 the Department of Homeland Security
24 ("DHS");
25 Attorney General of the United States,
26 U.S. DEPARTMENT OF HOMELAND
27 SECURITY;
28 U.S. IMMIGRATION AND CUSTOMS
29 ENFORCEMENT;

30 Respondents.

Case No.: '26CV2803 JAO DEB

**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 BISRAT GIDEY DERBEW 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

5 INTRODUCTION


6 1. Petitioner, BISRAT GIDEY DERBEW ("Mr. Derbew" 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. Derbew's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Derbew seeks immediate
11 release from custody because Respondents have held him since September 10,
12 2025—a prolonged period. Mr. Derbew waited almost eight months to have his
13 asylum application adjudicated. On March 4, 2026 he was denied all relief and
14 ordered removed. He timely filed an appeal with the BIA and continues to await
15 their decision. After his entry into the United States, he was given and passed a
16 credible fear interview. His Notice to Appear was entered on October 8, 2025. His
17 individual hearing was scheduled for March 4, 2026. Respondents refused to allow
18 him to have his asylum application heard. Rather, they had him ordered removed to
19 Uganda where they claim he can have his asylum application heard. His appeal was
20 timely filed. He has never had a bond hearing because he entered without inspection
21 and the current position of the immigrations courts is that they lack jurisdiction to
22 conduct a bond hearing. He has been detained for 10 months. There is no possibility
23
24

1 of his removal in the foreseeable future. His continued detention without a hearing
2 as to flight risk and danger to the community violates the U.S. Constitution and
3 federal law.

4 **CUSTODY**

5 2. Mr. Derbew is currently in Respondents' legal and physical custody. They are
6 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. Derbew is a 22-year-old citizen of Ethiopia  He is
11 currently in Respondents' legal and physical custody at the Otay Mesa Detention
12 Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that
13 facility.
14

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

20 5. Respondent Patrick Divver is the Acting Field Office Director of ICE in San
21 Diego, California and is named in his official capacity. ICE is the component of the
22 DHS that is responsible for detaining and removing noncitizens according to
23
24

1 immigration law and oversees custody determinations. In his official capacity, he is
2 the legal custodian of Petitioner.

3 6. 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. Derbew. Respondent Lyons has custodial authority over Mr. Derbew,
8 who names him in his official capacity.
9

10 7. Respondent, Markwayne Mullin, is the Secretary of the DHS and is named in
11 her official capacity. DHS is the federal agency responsible for enforcing
12 immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R.
13 § 2.1. Respondent Noem has ultimate custodial authority over Mr. Derbew, who
14 names her in her official capacity.
15

16 8. Respondent Attorney General of the United States is the most senior official in
17 the U.S. Department of Justice (DOJ) and is named in her/his official capacity.
18 She/He is responsible for the Immigration and Nationality Act’s implementation and
19 enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for
20 Immigration Review, the office that administers Mr. Derbew’s removal proceedings
21 and is responsible for adjudicating Mr. Derbew’s asylum application. Mr. Derbew
22 names her in her official capacity.
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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. Derbew seeks the traditional habeas
4 remedy of release from allegedly unlawful detention, his petition presents precisely
5 the type of threshold legality-of-detention question that § 2241 was designed to
6 address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v.*
7 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-
8 12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C.
9 § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on
10 the legality of Mr. Derbew’s detention.
11

12 14. 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. Derbew is detained here, and his custodian resides here. Venue
15 is also proper under 28 U.S.C. § 2243 because Mr. Derbew’s immediate custodian
16 resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004)
17 (Kennedy, J., concurring).
18

19 **FACTUAL BACKGROUND**

20 15. Mr. Derbew was born in Ethiopia. He is a member of the Tigray ethnic
21 minority. This group has been historically persecuted in Ethiopia. Mr. Derbew was
22 identified several times by the authorities as Tigray and was severely persecuted.
23 He was able to escape and fled to the United States to seek asylum here.
24

1 16. He made his way to Mexico and finally crossed into the United States on
2 September 10, 2025. He immediately encountered CBP officers and was taken into
3 custody. He was taken into custody and given a credible fear interview, which he
4 passed. He was sent to Otay Mesa Detention Center and has been in detention since
5 September 10, 2025.

6
7 17. Mr. Derbew's Notice to Appear was finally filed on October 8, 2025. His
8 final hearing was scheduled on March 23, 2026. However, Respondents decided to deny
9 Mr. Derbew even the opportunity to have his asylum case heard here in the United States.
10 They moved to have him removed to Uganda pursuant to an A.C.A. On March 4, 2026 he
11 was denied all forms of relief and ordered removed to Uganda. He has timely filed an
12 appeal with the BIA. Appeals are currently taking anywhere from 6 months to a year for
13 adjudication.

14 18. There is no end in sight to Mr. Derbew' detention ... not because he is a
15 flight risk or a threat to the community. That has never been determined. He has
16 never had a bond hearing because the Immigration Courts currently hold that they
17 do not have jurisdiction to hold bond hearings for detainees such as Mr. Derbew. He
18 remains in detention because the administration insists that all people that lack a
19 green card or citizenship must be detained.
20

21 19. On July 8, 2025, the Department of Homeland Security ("DHS")
22 instituted a notice titled "Interim Guidance Regarding Detention Authority for
23 Applicants for Admission" (the "Notice") requiring, in general, that anyone arrested
24 in the United States and charged with being inadmissible to be considered an

1 “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
2 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
3 § 1226(a).

4 20. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
5 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
6 the Notice unlawful under the Administrative Procedures Act but did not issue a
7 final judgment. On December 18, 2025, however, the *Bautista* court entered final
8 judgement. *Bautista*, ECF No. 94.

9 21. Mr. Derbew thought to ask for a bond but IJ’s have consistently ruled
10 that they do not have jurisdiction to redetermine the conditions of custody over
11 individuals who have been apprehended shortly after entering the United States and
12 who have been processed under Section 235(b)(1) expedited removal statute, and
13 who have been placed in removal proceedings. Even after *Maldonado, supra*, was
14 decided, Immigration Judges have still held that they do not have jurisdiction to
15 conduct bond hearings. Recently this case was once again put on hold pending
16 appeal.
17

18 22. Mr. Derbew has come to believe that his detention will have no end. The
19 only end seems to be that he finally breaks down and agrees to travel to Uganda
20 where he will be once again placed in prison to begin this process again. There is no
21 other logical explanation for what is currently going on.

22 23. Mr. Derbew’s continued detention without a tenable justification and
23 without a demonstration that removal is significantly likely in the reasonably
24

1 foreseeable future violates constitutional due process. Zadvydas v. Davis, 533 U.S.
2 678 (2001); Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

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

6 25. Mr. Derbew's detention without a tenable justification violates his rights
7 under the Due Process Clause of the Fifth Amendment.

9 EXHAUSTION OF REMEDIES

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

19 27. Exhausting administrative remedies here is futile because Respondents
20 contend Mr. Derbew is subject to mandatory detention even in the face of
21 *Maldonado, supra*. As such, any request for a hearing is a crap shoot. Moreover,
22 immigration judges in this district claim to have no jurisdiction to conduct a custody
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24

1 redetermination hearing as to individuals procedurally situated like Mr. Derbew.
2 Indeed, in contravention to the INA and long-standing precedent and practice, the
3 Board of Immigration Appeals and Attorney General have deemed no noncitizen
4 eligible for bond before an immigration judge (with the exception of only
5 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
6 administrative remedies would be entirely futile.
7

8 28. Recently, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-
9 SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA
10 has asserted that bond hearings are now available. However, after the final decision
11 in *Maldonado* was entered, DHS sent out a directive to Immigration Judges to ignore
12 this case and continue to deny jurisdiction. On or about Feb 18, 2026, *Maldonado*
13 was stayed pending appeal. There currently is no possibility for petitioner to have a
14 bond hearing.

15 29. Moreover, no statutory exhaustion requirements apply to Petitioner's
16 claim of unlawful custody in violation of his due process rights, and there are no
17 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*
18 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile
19 exercise because the agency does not have jurisdiction to review" constitutional
20 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)
21 (same).
22

23 30. More importantly, every day that Petitioner remains detained causes
24 him harm that cannot be repaired. His continued detention puts his mental health at

1 greater risk, further warranting a finding of irreparable harm and the waiver of the
2 prudential exhaustion requirement. He cannot get the medical attention he requires
3 while he is detained.

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

11
12 **FIRST CAUSE OF ACTION**
13 **Fifth Amendment Due Process Violation**

14 32. Mr. Derbew re-alleges and incorporates by reference, as if fully set forth
15 herein, the allegations in the preceding paragraphs.

16 33. The Supreme Court has long recognized that the Fifth and Fourteenth
17 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
18 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
19 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
20 confined to the protection of citizens.”). As stated by the Court, the provisions of the
21 Fourteenth Amendment “are universal in their application, to all persons within the
22 territorial jurisdiction, without regard to any differences of race, of color, or of
23 nationality” *Id.* (emphasis added).
24

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

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

14 36. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
15 District granted habeas relief in a substantially similar case, applying a six-factor
16 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
17 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
18 duration of future detention; (3) conditions of detention; (4) delays in the removal
19 proceedings caused by the detainee; (5) delays in the removal proceedings caused
20 by the government; and (6) the likelihood that the removal proceedings will result
21 in a final order of removal. The court determined that prolonged detention, when
22 considered alongside other due process concerns, can rise to the level of a
23 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.
24

1 37. Applying the Banda six-factor framework here supports granting Mr.
2 Derbew's petition.

3 38. The final factor—finality—strongly supports the grant of this habeas
4 petition. Mr. Derbew has been languishing in detention for over 8 months with no
5 end in sight.

6 39. There were no delays in his case that can be attributed to Mr. Derbew.
7

8 40. Mr. Derbew has now been detained by ICE for nearly 8 months since his
9 arrival in the United States on September 10, 2025. This period is well beyond the
10 presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701.
11 Courts consistently find detention beyond this threshold triggers due process
12 scrutiny. *See Kydrali*, 499 F.Supp. 3d at 774–75.

13 41. Conditions of confinement also raise constitutional concerns as the
14 medical treatment available at the Otay Mesa Detention Center is not adequate to
15 address Mr. Derbew's health conditions.

16 42. Mr. Derbew poses no risk of flight and no danger to the community. He
17 has no criminal history, has demonstrated compliance with all prior immigration
18 requirements, and has community support in the United States.

19 43. Mr. Derbew's continued detention without a tenable justification
20 violates his Fifth Amendment right to due process.
21

22 **PRAYER FOR RELIEF**

23 Mr. Derbew asks this Court to grant the following relief:
24

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 3rd day of May, 2026, in San Diego, California.

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