

1 **Jessie Agatstein**  
2 Cal. Bar No. 319817  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 Jessie\_Agatstein@fd.org

9 Attorneys for Mr. Hormoz Zadeh<sup>1</sup>

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 MOHAMMAD HORMOZ ZADEH,

Case No.: 26-cv-2756-LL-GC

13 Petitioner,

14 v.

**Amended Petition for Writ  
of  
Habeas Corpus**

15 MARKWAYNE MULLIN, Secretary of  
16 the Department of Homeland Security,  
17 TODD BLANCHE, Acting Attorney  
18 General, TODD M. LYONS, Acting  
19 Director, Immigration and Customs  
20 Enforcement, JESUS ROCHA, Acting  
21 Field Office Director, San Diego Field  
22 Office, CHRISTOPHER LAROSE,  
23 Warden at Otay Mesa Detention Center,

**[Civil Immigration Habeas,  
28 U.S.C. § 2241]**

24 Respondents.

25  
26  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the amended petition pursuant to  
28 this Court's orders dated April 29, 2026, and April 16, 2026. Mr. Hormoz Zadeh's  
financial eligibility for representation is included in a sworn statement attached to  
this amended petition.

1 **I. Introduction**

2 The “Attorney General’s detention authority under [8 U.S.C.] § 1226(a) [i]s  
3 limited to the ‘period reasonably necessary to bring about [an] alien’s removal  
4 from the United States.’” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir.  
5 2008). As a result, the statute does “not authoriz[e] detention once removal is no  
6 longer reasonably foreseeable.” *Id.* at 1064. This is not a common issue while  
7 removal proceedings are pending; at the end of the proceeding, it is at least  
8 somewhat reasonable to foresee that the person will be removed. *See id.*

9 But sometimes it is not reasonable to foresee that. The Ninth Circuit has  
10 held that an immigrant who “has been awarded asylum twice,” but is detained  
11 while the government appeals for a second time, has “a powerful indication of the  
12 improbability of his foreseeable removal, by any objective measure.” *Nadarajah*  
13 *v. Gonzales*, 446 F.3d 1069, 1081 (9th Cir. 2006). In that circumstance, § 1226(a)  
14 does not authorize detention. *Prieto-Romero*, 534 F.3d at 1063–65. The proper  
15 remedy is thus “immediate release, subject to terms and conditions to be set by  
16 [ICE].” *Nadarajah*, 446 F.3d at 1084.

17 An immigration judge has now twice determined that Mr. Hormoz Zadeh is  
18 eligible for asylum. An IJ has also now twice exercised discretion to grant him  
19 asylum. Exhibits A and B (July 14, 2025, and March 24, 2026, asylum grants).  
20 But Mr. Hormoz Zadeh is still detained under 8 U.S.C. § 1226(a). He is detained  
21 while the government, yet again, appeals his grant of asylum to the BIA. Exhibit  
22 D (government appeal).

23 Because Mr. Hormoz Zadeh’s removal is no longer reasonably foreseeable,  
24 his detention is not authorized under 8 U.S.C. § 1226(a). This Court should order  
25 his immediate release on conditions set by ICE.

26 **II. Facts and case history**

27 Mohammad Hormoz Zadeh came to the United States from Iran in 2017 for  
28 graduate school at NYU. He did well academically, graduated, and began a

1 promising career in finance. But he could not go home to Iran: While an  
2 undergraduate there, he had been arrested, suspended from university, detained in  
3 solitary confinement, and threatened with death for publishing political opposition  
4 magazines. He faced a future possibility of targeted government violence for a  
5 second, independent reason. He timely applied for asylum. *See* Exhibit A at 4–5,  
6 9–12; Exhibit B at 3–4.

7 In 2021 and 2022, Mr. Hormoz Zadeh developed a mental health condition.  
8 He began posting inflammatory comments online. He was never charged and has  
9 expressed deep remorse for his online comments. In fall 2023, he received a  
10 formal diagnosis. Also in fall 2023, ICE arrested him under 8 U.S.C. § 1226(a),  
11 charged him with a notice to appear, and moved his asylum case from  
12 consideration within USCIS to before an immigration judge in removal  
13 proceedings. Exhibit A at 9–12.

14 An immigration judge initially ordered Mr. Hormoz Zadeh released on a  
15 \$5,000 bond under § 1226(a). But DHS appealed, and on remand from the BIA,  
16 the immigration judge ordered him detained under § 1226(a). Mr. Hormoz Zadeh  
17 self-surrendered at an ICE check-in in New York on February 25, 2025. Exhibit C  
18 ¶¶ 1–3. He was eventually brought to the Otay Mesa Detention Center, where he  
19 is currently detained. *Id.* ¶ 4.

20 On July 14, 2025, an immigration judge granted Mr. Hormoz Zadeh  
21 asylum. Exhibit B. The immigration judge explained that Mr. Hormoz Zadeh,  
22 “while he was a student in Iran,” had “published several issues of an anti-  
23 government, anti-corruption magazine in 2010.” *Id.* at 4. He was suspended from  
24 university for his political activities, and 2011, was “arrested by Iranian  
25 intelligence and held for 16 days because of the publication of his magazines.” *Id.*  
26 He was not allowed to return to university. After fleeing Iran and completing  
27 college in North Cyprus, he returned to Iran for two weeks to secure his student  
28 visa to attend graduate school in the United States. *Id.* at 5. Once in the United

1 States, he continued speaking out vocally against the Iranian government. *Id.* The  
2 immigration judge also explained in detail his consideration of Mr. Hormoz  
3 Zadeh’s online posts, and that they stopped in 2023, “coincid[ing] with  
4 respondent’s diagnosis . . . in November of 2023.” *Id.* at 7. The judge detailed  
5 Mr. Hormoz Zadeh’s significant voluntary efforts in stabilize his mental health  
6 and seek treatment, as well as his likely ability to successfully manage his  
7 symptoms moving forward “due to his above average intelligence, academic  
8 aptitude, prior benefit and compliance, and good psychological insight.” *Id.* at 8.  
9 The judge exercised his discretion and found him “deserving of asylum.” *Id.*

10 DHS appealed and kept Mr. Hormoz Zadeh detained. On February 2, 2026,  
11 the BIA remanded the case for further factual findings and legal analysis to be  
12 incorporated directly into the immigration judge’s oral decision, rather than only  
13 in “pre-decisional statements made on the record.” Exhibit F at 3. It “offer[ed] no  
14 opinion as to the ultimate outcome of these proceedings.” *Id.*

15 On March 24, 2026, the immigration judge issued a fourteen-page written  
16 decision, also incorporating his previous oral decision, granting asylum for the  
17 second time. Exhibit A. The decision explained that when Mr. Hormoz Zadeh was  
18 “suspended, arrested, detained, threatened with death, and forced to confess to  
19 crimes for publication of political opposition magazines” in Iran, he suffered “past  
20 persecution.” *Id.* at 4. There was evidence that he had a well-founded fear of  
21 future persecution: “[T]he treatment of political dissidents in Iran is worsening.”  
22 *Id.* at 7. Further, the decision explained that he had a well-founded fear of “future  
23 persecution in Iran” for a second, independent reason. *Id.* at 8–10. In describing  
24 his exercise of discretion in granting asylum, the immigration judge was clear that  
25 Mr. Hormoz Zadeh’s “history of online threats in the United States is a significant  
26 negative factor.” *Id.* at 11. But, the immigration judge noted, “The Court has  
27 considered such events carefully and determined that they closely correlate to  
28 [Mr. Hormoz Zadeh’s] period of unregulated mental health.” *Id.* He was also

1 never “charged or convicted of any criminal offense,” and the judge found that his  
2 “sincere apology and recognition of his mental health struggles suggest that such  
3 behavior is unlikely to recur.” *Id.* The judge also noted that “significant equities  
4 weigh in favor of granting asylum”:

5 [Mr. Hormoz Zadeh] has resided in the United States for nearly  
6 nine years. He arrived in the United States as a student attending  
7 NYU and did not circumvent ordinary lawful procedures to enter  
8 the country. While at NYU, [he] did well academically and  
9 obtained his master’s degree in financial engineering. Prior to his  
10 mental health issues, [he] had a promising career in finance,  
11 completing his curriculum practical training at a firm in Times  
12 Square. He was also featured in the Wall Street Journal and  
13 interviewed by a popular finance Podcast on Youtube regarding  
14 the unprecedented short sale of Gamestop stock. From October  
15 2024 until he was re-detained, Respondent was also gainfully  
16 employed at [a café].

17 Additionally, weighing heavily in the Court’s consideration is [his]  
18 significant effort to manage his mental health. [He] has a history of  
19 voluntary . . . treatment and compliance with his medication, as  
20 well as a designated social worker, psychologist, and care  
21 coordination plan . . . .

22 Furthermore, a substantial factor in the Court’s assessment is the  
23 fact that Respondent is in danger of future persecution in Iran . . . .

24 *Id.* at 11–12.

25 Last month, DHS again appealed. Exhibit D. No briefing schedule has been  
26 set. Exhibit E.

27 In the most recent quarter of 2026 for which data are available, the median  
28 BIA appeal for a detained person took about seven months. Exhibit G. This is  
nearly double the median time it took to complete an appeal two years ago. *Id.*  
Mr. Hormoz Zadeh remains detained at Otay Mesa Detention Center.

### 29 **III. This Court has jurisdiction.**

30 This Court has jurisdiction to consider Mr. Hormoz Zadeh’s claim of  
31 unlawful detention under 28 U.S.C. § 2241.

32 The government’s occasional argument otherwise, that 8 U.S.C. § 1252(g)  
strips this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by

1 the Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL  
2 3126821, \*1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*  
3 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument  
4 “would eliminate judicial review of immigration [detainees’] claims of unlawful  
5 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial  
6 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,  
7 No. 25-cv-2422-RBM, 2025 WL 2898977, \*3 (S.D. Cal. Oct. 10, 2025)  
8 (collecting cases agreeing on this jurisdictional point).

9 **IV. Mr. Hormoz Zadeh’s detention violates § 1226(a) and due process**  
10 **because he has been twice granted asylum, demonstrating his removal**  
11 **is not significantly likely in the reasonably foreseeable future.**

12 Under 8 U.S.C. § 1226(a), any noncitizen “may be arrested and detained  
13 pending a decision on whether the alien is to be removed from the United States.”  
14 “[P]ending such decision, the Attorney General . . . may continue to detain the  
15 arrested alien.” *Id.* Or he can release them on bond or conditional parole. *Id.*

16 Mr. Hormoz Zadeh has been subject to detention under § 1226(a) for the  
17 last 15 months. He will continue to be for the duration of the government’s newly  
18 filed appeal to the BIA. So far, in 2026, BIA appeals have taken a median time of  
19 seven months—and the time has continued to rise. Exhibit G.

20 The Ninth Circuit has construed § 1226(a) to contain the same limitation  
21 against indefinite detention the Supreme Court has adopted as to the similarly  
22 worded post-removal-order statute § 1231(a)(6).

23 In *Prieto-Romero*, 534 F.3d at 1062–65, the Ninth Circuit considered  
24 § 1226(a)’s provision that “the Attorney General . . . may continue to detain the  
25 arrested alien,” “pending a decision.” The Ninth Circuit explained that *Zadvydas*  
26 *v. Davis*, 533 U.S. 678 (2001), informed how to interpret this provision.

27 In *Zadvydas*, the Supreme Court considered language in § 1231(a)(6) that is  
28 markedly similar to § 1226(a): that a noncitizen “may be detained beyond the  
removal period.” § 1231(a)(6). The Court held that this “may be detained”

1 provision lacked “any clear indication of congressional intent to grant the  
2 Attorney General the power to hold indefinitely in confinement an alien ordered  
3 removed.” *Zadvydas*, 533 U.S. at 697. It noted that the “word ‘may’ is  
4 ambiguous.” *Id.* It contrasted that language in § 1231(a)(6) with statutes “that  
5 require detention of criminal aliens during removal proceedings.” *Id.* (emphasis in  
6 original). So, “interpreting the statute to avoid a serious constitutional threat, [the  
7 Court] conclude[d] that, once removal is no longer reasonably foreseeable,  
8 continued detention is no longer authorized by statute.” *Id.* at 699.

9 Applying *Zadvydas* to § 1226(a), the Ninth Circuit held that, “without clear  
10 congressional direction to the contrary, we conclude that § 1226(a), like  
11 § 1231(a)(6), also does not authorize indefinite detention.” *Prieto-Romero*, 534  
12 F.3d at 1063. The Court thus, “[c]onsistent with *Zadvydas*, . . . construe[d] the  
13 Attorney General’s detention authority under § 1226(a) as limited to the ‘period  
14 reasonably necessary to bring about [an] alien’s removal from the United States,’  
15 even if continued detention in any particular litigant’s case would not pose a  
16 constitutional problem.” *Id.*

17 In the majority of cases, the Ninth Circuit explained, even long detentions  
18 under § 1226(a) would remain authorized under this rule. When an immigrant’s  
19 “removal has . . . been delayed by his pursuit of judicial review of his  
20 administratively final removal order,” his detention is not “*indefinite* in the sense  
21 that the Supreme Court found constitutionally problematic in *Zadvydas*.” *Prieto-*  
22 *Romero*, 534 F.3d at 1063. For example, in *Prieto-Romero*, there was “no  
23 evidence that [the noncitizen] [wa]s unremovable because the destination country  
24 w[ould] not accept him or his removal [wa]s barred by our own laws.” *Id.* “There  
25 [wa]s nothing, such as a lack of a repatriation agreement with his home country or  
26 a finding that he merit[ed] mandatory relief from removal, that would prevent  
27 [his] removal to Mexico if he [wa]s ultimately unsuccessful in his petition for  
28 review.” *Id.* at 1065.

1 But, the Ninth Circuit held, there *is* a class of cases in which detention *does*  
2 become impermissibly indefinite under § 1226(a): when a noncitizen is granted  
3 asylum twice but remains detained while the government repeatedly appeals.  
4 *Prieto-Romero*, 534 F.3d at 1064.

5 The Ninth Circuit pointed to a prior case, in which the noncitizen had been  
6 awarded “‘asylum twice, as well as protection under the Convention Against  
7 Torture,’ and yet his detention continued for over five years while the government  
8 appealed the outcome of these agency proceedings.” *Id. Prieto-Romero* held that  
9 in that unusual circumstance—a demonstration of “the likely impossibility of  
10 removal,” proven by being twice-granted asylum—“the alien’s continued  
11 detention was not authorized by statute.” 534 F.3d at 1064.

12 Even though the government had appealed the noncitizen’s second grant of  
13 asylum, the noncitizen “had successfully demonstrated that there was no  
14 significant likelihood of removal in the reasonably foreseeable future.” *Id.* “[A]s a  
15 result of the asylum and CAT findings, ‘the government is not entitled to remove  
16 [the noncitizen] to [his home country], and no other country has been identified to  
17 which [the noncitizen] might be removed,’ thus forming a ‘powerful indication of  
18 the improbability of his foreseeable removal.’” *Id.* (quoting *Nadarajah*, 443 F.3d  
19 at 1081–82). In this circumstance, detention is not authorized by § 1226(a): It is  
20 not “consistent with the implicit limitation that *Zadvydas* requires [the court] to  
21 read into the Attorney General’s statutory detention authority.” *Prieto-Romero*,  
22 534 F.3d at 1065.

23 *Prieto-Romero* remains good law. The Ninth Circuit recently held it was  
24 “not free to disregard *Prieto-Romero*’s quite explicit holding” as to another issue  
25 the case resolved. *Avilez v. Garland*, 69 F.4th 525, 537 (9th Cir. 2023). The Ninth  
26 Circuit’s prior interpretations of other immigration detention statutes § 1225(b)  
27 and § 1226(c) were overruled by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). But  
28 *Prieto-Romero*’s interpretation of § 1226(a) was not. *See Avilez*, 69 F.4th at 529–

1 31, 535–57; *see id.* at 538–41 (Berzon, J., concurring) (explaining that, while  
2 much of older Ninth Circuit precedent regarding the interpretation of immigration  
3 statutes has been overruled by *Jennings*, courts remain “bound” by *Prieto-*  
4 *Romero*’s interpretation of § 1226(a)).

5 As a result, as *Prieto-Romero* held, Mr. Hormoz Zadeh’s detention is no  
6 longer authorized under § 1226(a). He has now been twice granted asylum. *See*  
7 Exhibits A, B. He has thus successfully demonstrated there is no significant  
8 likelihood of removal in the reasonably foreseeable future. He has “powerful[ly]  
9 indicat[ed] . . . the improbability of his foreseeable removal,” as he has shown that  
10 the government is not likely to be able to “lawfully remove” him. *Prieto-Romero*,  
11 534 F.3d at 1064. This Court should order his “release, subject to conditions to be  
12 set by ICE.” *Nadarajah*, 443 F.3d at 1084.

13 **V. This Court must hold an evidentiary hearing on any disputed facts.**

14 Resolution of a prolonged-detention habeas petition may require an  
15 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.  
16 Hormoz Zadeh hereby requests such a hearing on any material, disputed facts.

17 **VI. Prayer for relief**

18 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 19 1. Order and enjoin Respondents to immediately release Petitioner from  
20 custody subject to conditions set by Respondents; and  
21 2. Order all other relief that the Court deems just and proper.

22

23

Respectfully submitted,

24

25 Dated: May 19, 2026

*s/ Jessie Agatstein*

26

Federal Defenders of San Diego, Inc.

27

Attorneys for Mr. Hormoz Zadeh

28

Email: [jessie\\_agatstein@fd.org](mailto:jessie_agatstein@fd.org)