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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NAJMEDIN MASAR ZAKARIA,

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center;

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: 3:26-cv-02751-BJC-MMP

**FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Agency Doc. No.: 

Petitioner, NAJMEDIN MASAR ZAKARIA, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner, NAJMEDIN MASAR ZAKARIA ("Mr. Zakaria" or "Petitioner"), by and through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241,

1 et seq., to issue a Writ of Habeas Corpus ordering Mr. Zakaria's release from
2 immigration detention by the Department of Homeland Security, United States
3 Immigration and Customs Enforcement ("ICE"). Mr. Zakaria seeks immediate release
4 from custody because Respondents have held him since April 15, 2025—a
5 prolonged period. Mr. Zakaria has already had his asylum application adjudicated.
6 He has filed an appeal with the Board of Immigration Appeals. No schedule for his
7 case has been set. This will take at least a year to adjudicate. After his entry into the
8 United States, he waited a year to have his asylum application adjudicated. To his
9 dismay, on April 14, 2026, rather than allow him to have his case heard,
10 Respondents moved to pretermite his application and force him to have his case
11 heard in Uganda. The very group that persecuted him in Sudan operates in Uganda
12 as well. He has appealed this decision. This will take 6 months to a year to resolve.
13 There is no possibility of his removal in the foreseeable future. His continued
14 detention without a hearing as to flight risk and danger to the community violates
15 the U.S. Constitution and federal law.
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17 CUSTODY

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

22 PARTIES

1 3. Mr. Zakaria is a 36-year-old citizen of Sudan [REDACTED] He is
2 currently detained at the Otay Mesa Detention Center in San Diego, California.

3 4. Mr. Zakaria is currently in Respondents' legal and physical custody at the Otay
4 Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
5 corporation, operates that facility.

6 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
7 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
8 day-to-day operations of the Otay Mesa Detention Center. Respondent Christopher
9 LaRose is a custodian of Petitioner and is named in his official capacity.

10 6. Respondent U.S. Immigration Customs Enforcement is the federal agency
11 responsible for custody decisions relating to non-citizens charged with being removable
12 from the United States, including the arrest, detention, and custody status of non-citizens.
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14 JURISDICTION AND VENUE

15 7. This action arises under the United States Constitution and the Immigration
16 and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr.
17 Zakaria's detention under the INA and any inherent or plenary powers the
18 government may claim to continue holding him.

19 8. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701-706
20 (Administrative Procedure Act, "APA"); and the Suspension Clause, U.S. Const. art. I,
21 § 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
22 Jurisdiction is not limited by a petitioner's nationality, immigration status, or any
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1 other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court
2 may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5
3 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act),
4 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

5 9. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
6 Zakaria's detention. Federal district courts possess broad authority to issue writs of
7 habeas corpus when a person is held "in custody in violation of the Constitution or
8 laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority
9 extends to immigration detention challenges that survived the REAL ID Act's
10 jurisdictional restrictions. Because Mr. Zakaria seeks the traditional habeas remedy
11 of release from allegedly unlawful detention, his petition presents precisely the type
12 of threshold legality-of-detention question that § 2241 was designed to address. *See*
13 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d
14 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.
15 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See*,
16 e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of
17 Mr. Zakaria's detention.
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20 10. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)
21 because a substantial part of the events or omissions giving rise to this claim have
22 happened here, Mr. Zakaria is detained here, and his custodian resides here. Venue
23 is also proper under 28 U.S.C. § 2243 because Mr. Zakaria's immediate custodian
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1 resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004)
2 (Kennedy, J., concurring).

3 **FACTUAL BACKGROUND**

4 11. Mr. Zakaria was born in Sudan and is a citizen of Sudan. He was caught
5 between the warring factions in Sudan. Each believed he was supporting the other.

6 12. Mr. Zakaria has been attacked and beaten by government agents. He
7 was constantly threatened to make confessions against himself. As the situation
8 escalated, he realized he would only be safe if he escaped Sudan.

9 13. He made his way to Mexico and finally crossed into the United States on
10 April 15, 2025. He immediately encountered CBP officers and was taken into
11 custody. He has been in detention primarily at Otay Mesa Detention Center since
12 April 15, 2025.

13 14. Respondents initially gave Mr. Zakaria a Credible Fear Interview and
14 DHS determined that he did have a credible fear and allowed him to move forward
15 with an asylum application. His Notice to Appear was finally filed and he had 4
16 master calendar hearings prior to his individual hearing. He was finally given an
17 individual hearing on April 14, 2026, one year after he was initially detained.

18 15. At the individual hearing, to Mr. Zakaria's dismay, Respondents moved
19 to deny him an opportunity to have his case heard. Rather they insisted he be
20 removed to Uganda where he will be given an opportunity to have his asylum case
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1 heard. Mr. Zakaria has appealed this decision to the Board of Immigration Appeals.
2 This appeal was timely filed and it will take a year for it to be adjudicated.

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

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8 17. 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).

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16 18. 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.

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

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

11 21. Mr. Zakaria's continued detention without a tenable justification and
12 without a demonstration that removal is significantly likely in the reasonably
13 foreseeable future violates constitutional due process. *Zadvydas v. Davis*, 533 U.S.
14 678 (2001); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

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

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19 23. Mr. Zakaria's detention without a tenable justification violates his rights
20 under the Due Process Clause of the Fifth Amendment.

21 EXHAUSTION OF REMEDIES

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

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

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

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

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9 28. Every day that Petitioner remains detained causes him harm that
10 cannot be repaired. His continued detention puts his mental health at greater risk,
11 further warranting a finding of irreparable harm and the waiver of the prudential
12 exhaustion requirement. Mr. Zakaria cannot get the medical attention he requires
13 while he is detained.

14 29. The Court must consider this in its irreparable harm analysis of the
15 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
16 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
17 petitioner "continues to suffer significant psychological effects from his detention,
18 including anxiety caused by the threats of other inmates and two suicide attempts,"
19 in finding that petitioner would suffer irreparable harm warranting waiver of
20 exhaustion requirement).

21
22 **FIRST CAUSE OF ACTION**
23 **Fifth Amendment Due Process Violation**
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1 30. Mr. Zakaria re-alleges and incorporates by reference, as if fully set forth
2 herein, the allegations in all paragraphs above.

3 31. The Supreme Court has long recognized that the Fifth and Fourteenth
4 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
5 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
6 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
7 confined to the protection of citizens.”). As stated by the Court, the provisions of the
8 Fourteenth Amendment “are universal in their application, to all persons within the
9 territorial jurisdiction, without regard to any differences of race, of color, or of
10 nationality” *Id.* (emphasis added).

12 32. The Supreme Court has held that “even one whose presence in this
13 country is unlawful, involuntary, or transitory is entitled to that constitutional
14 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
15 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
16 (1982) (“Whatever his status under the immigration laws, an alien is surely a
17 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
18 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
19 [may not]... be deprived of life, liberty or property without due process of law.”).

21 33. As there is no final order of removal, and there doesn’t appear to be
22 one in the reasonably foreseeable future, Mr. Zakaria may not be removed from the
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1 United States. His removal is not reasonably foreseeable, and his detention no
2 longer serves any legitimate purpose under the INA.

3 34. 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 35. Applying the Banda six-factor framework here supports granting Mr.
15 Zakaria's petition.

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

20 37. The long delay to commence his removal proceedings was from the
21 department failing to enter his Notice to Appear in a timely fashion. The second long
22 delay was due to the packed court calendar. Neither delay can be attributed to Mr.
23 Zakaria.
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1 38. Mr. Zakaria has now been detained by ICE for nearly 13 months since
2 his arrival in the United States on April 15, 2025. This period is well beyond the
3 presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701.
4 Courts consistently find detention beyond this threshold triggers due process
5 scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75.

6 39. 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. Zakaria’s health conditions. Even more, this prolonged detention has
9 had a tremendous depressive effect on Mr. Zakaria.

10 40. Mr. Zakaria poses no risk of flight and no danger to the community. He
11 has no criminal history, has demonstrated compliance with all prior immigration
12 requirements, and has community support in the United States.

13 41. Mr. Zakaria’s continued detention without a tenable justification violates
14 his Fifth Amendment right to due process.
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16 PRAYER FOR RELIEF

17 Mr. Zakaria asks this Court to grant the following relief:
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- 19 1. Issue a Writ of Habeas Corpus ordering Respondents to release
20 Mr. Zakaria from custody immediately;
- 21 2. Declare the continued detention of Mr. Zakaria without a tenable
22 justification a violation of the Due Process Clause of the U.S. Constitution;
- 23 3. Order Respondents to show cause why Mr. Zakaria is being
24 subjected to unlawful and unconstitutional detention; and

1 4. In the alternative, order a bond hearing where the Respondents have the
2 burden to show by clear and convincing evidence that Mr. Zakaria is either
3 an extreme flight risk or a danger to the community;

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

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6 Dated: June 22, 2026

Respectfully submitted,

7 By: /s/ Brian J. McGoldrick
8 Brian J. McGoldrick, Esq.
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 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 22nd day of June, 2026, in San Diego, California.

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

CERTIFICATE OF SERVICE

I, Brian J. McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On June 22, 2026, I served a copy of this

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

by the method and to the parties listed below:

On June 22, 2026, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

- **Erin Dimbleby**
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