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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ULUGBEK SADATOVICH KHALIYAROV, *Petitioner,* v. CHRISTOPHER J. LAROSE, Facility leader at the Otay Mesa Detention Center, PATRICK DIVVER, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and TODD BLANCHE, Acting U.S. Attorney General.	**VERIFIED EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS, ORDER TO SHOW CAUSE WITHIN THREE DAYS AND COMPLAINT FOR DECLARATORY RELIEF** **'26CV3190 CAB JAC**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241

INTRODUCTION

Ulugbek Sadatovich Khaliyarov has been detained for the duration of his immigration proceedings, now over 14 months. Originally from Uzbekistan, Mr. Khaliyarov fled his country after he was severely beaten and his partner murdered after other members of their village discovered that they were part of the LGBTQ community. He was granted withholding of removal by an immigration judge on February 26, 2026. However, even though the government did not appeal the grant of withholding, the government has continued to keep Mr. Khaliyarov in custody. This Court should "join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U..S.C. §1225(b) without an individualized bond hearing violates due process." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia J.). Because Mr. Khaliyarov was granted withholding of removal, which gives him permission to remain in the United States and apply for employment authorization, this Court should order his immediate release. *See* 8 C.F.R. §1208.17; 8 C.F.R. §241.5 In the alternative, this Court should order the government to provide Mr. Khaliyarov with an individualized bond hearing at which the burden is on the government to establish through clear and convincing evidence that Mr. Khaliyarov is a danger or a flight risk if released.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Petitioner is presently in custody under the authority of the United States and challenges his detention as in violation of the Constitution, laws, or treaties of the United States.

The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Khaliyarov is detained at the Otay Mesa Detention Center in San Diego, California.

REQUIREMENTS OF 28 U.S.S. § 2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days is allowed." *Id.*

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint and confinement. *Fay v. Noia*, 372 U.S. 391, 400 (1963) (overruled on other grounds by *Wainwright v. Sykes,* 433 U.S. 72 (1977)) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

1. Petitioner Ulugbek Sadatovich Khaliyarov is currently detained by Respondents in the Otay Mesa Detention Center.
2. Respondent Christopher J. LaRose is the facility leader at the Otay Mesa Detention Center in San Diego, California where Petitioner is currently detained. He is thus Petitioner's immediate custodian and is sued in his official capacity.
3. Respondent Patrick Divver is the Director of ICE's San Diego Field Office, which has jurisdiction over ICE detention facilities in San Diego and Imperial

County, including the Imperial Regional Detention Center, and is thus Petitioner's immediate custodian. He is sued in his official capacity.

4. Respondent Todd Lyons is the Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.
5. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Mr. Mullin is the ultimate legal custodian of Petitioner. He is sued in his official capacity.
6. Respondent Todd Blanche is the Acting Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals and the Immigration Courts. Mr. Blanche shares responsibility for implementation and enforcement of the immigration laws with Respondent Mullin. Mr. Blanche is a legal custodian of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

Petitioner Ulugbek Sadatovich Khaliyarov is a citizen of Uzbekistan. He entered the United States without inspection in order to present himself to

immigration authorities and seek asylum on February 6, 2025 near San Luis, Arizona and has been detained at the Otay Mesa Detention Center since that date. Ex. A. Mr. Khaliyarov fled Uzbekistan in 2019 after he and his partner were violently attacked for being gay men. The attack was so severe that his partner died from the beatings. Fearing for his life, Mr. Khaliyarov booked a flight to Russia to escape. From 2019 until January of 2024, Mr. Khaliyarov lived in Russia as a migrant with temporary status. Throughout his time there, he faced constant harassment for his sexual orientation, particularly after he entered into a new relationship. He and his partner had to move around constantly due to the threats and harassment received from neighbors. In January 2024, Mr. Khaliyarov was stopped by police and all of his documents were seized except for his passport, which he had left in his home. The police tried to force him to sign a contract agreeing to fight in the frontlines in Ukraine. When he refused, he was beaten and detained. After he was released, he and his partner knew that they had to flee. They fled to Cuba shortly after, where they received a temporary visa. From there, they traveled through multiple countries until they reached Mexico. After arriving in Mexico, they heard that they would have to use the CBPOne application to get an appointment in order to seek asylum in the United States. They downloaded the application and followed all instructions, but they never received an appointment.

Finally, in order to seek safety, they decided to cross and present themselves to seek asylum in February 2025.

The government filed a Notice to Appear (NTA) on July 7, 2025, charging Mr. Khaliyarov with being present in the United States without having been admitted or paroled. After arriving in the United States Mr. Khaliyarov applied for asylum, withholding of removal and protection under the Convention Against Torture (CAT). Recognizing that he would face persecution or death if he were to be returned to Uzbekistan, the immigration judge granted him withholding of removal on February 26, 2026. The judge denied asylum based on the circumvention of lawful pathways bar because he did not enter the U.S. through CBP One. However, at the time he entered the U.S., CBP One had been shut down by the Trump Administration. For this reason, Mr. Khaliyarov has appealed the denial of asylum. The government has not appealed the grant of withholding of removal to the BIA, but Mr. Khaliyarov remains in custody, where he has been for the past 14 months.

LEGAL FRAMEWORK

I. The Fifth Amendment's Due Process Clause prohibits prolonged immigration detention without a bond hearing

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory

authority to detain immigrants without bond hearings. Mr. Khaliyarov is detained under one such statute, 8 U.S.C. §1225(b). "Section 1225 applies to 'applicants for admission' – noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have not been admitted.'" *Banda v. McAleenan*, 383 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It "applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation." *Id.* That includes persons who, like Mr. Khaliyarov, are detained in the United States and make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).

But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose "any limit on the length of detention." 583 U.S. 281, 297 (2018). *Jennings* did not address whether prolonged, mandatory detention without bond hearings violates

due process. *Id.* at 312. 2.

"In the wake of *Jennings*, district courts have grappled with how to address due process challenges to prolonged mandatory detention under § 1225(b)." *Banda*, 385 F. Supp. 3d at 1116. But after a full evaluation, "[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Id.* (cleaned up) (collecting cases).

These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Supreme Court applied the constitutional avoidance canon to hold that persons detained following a final removal order may not be subjected to indefinite detention. *Id.* at 699. Though *Zadvydas's* holding rests on statutory rather than constitutional grounds, the Court justified its constitutional avoidance approach by describing the serious due process concerns that indefinite detention would occasion:

> A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that that Clause

> protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and 'narrow' nonpunitive 'circumstances,' *Foucha, supra*, at 80, where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'
>
> *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

As the Ninth Circuit put it in *Jennings'* wake, these considerations raise "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin,* 909 F.3d 252, 256 (9th Cir. 2018). The same concerns have led district courts to conclude that immigrants cannot be detained indefinitely without bond hearings pending their immigration proceedings.

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Khaliyarov would prevail under any standard.

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular individual's detention has reached that point. *Sanchez-Rivera v. Matusewski,* No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal. Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have

"conclude[d]...that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Mr. Khaliyarov would automatically qualify, as he has been detained for over 14 months.

Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5-6 (surveying different approaches). Courts generally agree that the relevant factors include:

(1) "the total length of detention to date,"

(2) "the likely duration of future detention," and

(3) The delays in the removal proceedings caused by the petitioner and the government."

Id. Some courts also consider:

(4) "the conditions of detention," and

(5) "the likelihood that the removal proceedings will result in a different final order."

Id.; but see Lopez v. Garland, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding that the fourth and fifth factors and "not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires

a bond hearing"); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with *Lopez*).[1] Mr. Khaliyarov would prevail under any of these factors tests.

First, the "most important factor," the length of detention, favors Mr. Khaliyarov. *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, "[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a person who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker,* 358 F. Supp. 3d. 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings for persons detained between nine and eleven months, significantly shorter than Mr. Khaliyarov's over 14 months in detention. *See Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) ("approximately eleven months"); *Brissett v. Decker,* 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v. Decker,* No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) ("More than nine months").

Second, Mr. Khaliyarov has reason to anticipate significant future detention during the appellate process. Even though the government did not appeal the grant

[1] Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the individual is not being removed due to criminal convictions.

of withholding of removal, Mr. Khaliyarov has appealed the denial of asylum. The government seeks to continue his detention until a third country for removal can be found while he only has the protection of withholding of removal to Uzbekistan. Therefore, he anticipates continued detention at least until a decision is reached by the BIA. A BIA appeal itself can take between five and seven months, and afterward a petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All told, "[t]his process may take up to two years or longer." *Id.* Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Mr. Khaliyarov. *Abdul Kadir v. LaRose,* No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).

Third, Mr. Khaliyarov moved forward expeditiously. He retained counsel as soon as possible. His attorney did not request any continuances. He filed his asylum application on August 15, 2025. The case was decided on February 26, 2026. The whole process from detention to decision took about 12 months.

Fourth, Mr. Khaliyarov's conditions of confinement weigh in favor of a bond hearing. At Otay Mesa Detention Center, detainees are locked up behind concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rule. Accordingly, Mr. Khaliyarov's, "confinement at

[IRDC] is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). In addition, Mr. Khaliyarov's mental health has deteriorated since he has been in custody. He has experienced severe trauma which caused him to flee Uzbekistan and seek safe haven in the United States. At this point, he has been separated from his partner and detained for over 14 months while he litigates his asylum claim. Due to all of these experiences, he now suffers from severe depression and anxiety, which have been significantly exacerbated in detention. He currently struggles to trust anyone, including his attorney and medical staff, and experiences frequent episodes where he is unable to stop crying. At this time, he also reports intense pain in his right side in the area of his ribs.

Fifth, in a reasoned decision, the immigration judge found Mr. Khaliyarov credible and, given the facts in his case, that it is more likely than not that Mr. Khaliyarov will face persecution or even death if he is deported to Uzbekistan. Moreover, the immigration judge denied asylum based on CLP and the government had shut down CBP One and made it impossible for Mr. Khaliyorov to apply for asylum by making a CPB One appointment. Thus, it is unlikely that Mr. Khaliyarov's appeal will result in a different final order, unless it is to say that he should have been granted asylum rather than withholding of removal.

Under any test, then, Mr. Khaliyarov should prevail. The Court should order his immediate release given that he was granted withholding of removal. But at the very least, he is entitled to a bond hearing and an individualized finding as to whether he is a flight risk or a danger to the community.

PRAYER FOR RELIEF

For the foregoing reasons, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Mr. Khaliyarov without a bond hearing. Accordingly, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter.
2. Order that Petitioner shall not be transferred outside the Southern District of California.
3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Khaliyarov. Mr. Khaliyarov was granted withholding of removal, which gives him permission to remain in the United States and apply for employment authorization. In the alternative, the Court should order Respondents to provide Mr. Khaliyarov with a bond hearing within seven days where the burden of proof is on the government to establish through clear and convincing evidence that Mr. Khaliyarov is a danger or a flight risk if released. *See Sadeqi v. LaRose* No. 25-cv-2587-RSH-BJW, 2025 WL

3154520, at *4 (S.D. Cal. Nov. 12, 2025) (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)) ("Petitioner is entitled to a prompt and individualized bond hearing, at which Respondents must justify her continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released."). The Court should further require the government to provide him with a bond hearing before a "fair, neutral, and open-minded immigration judge." *Domingos v. Casey*, No. 3:26-cv-01151-BTM-JLB, 2026 LX 176120, at *9 (S.D. Cal. Mar. 23, 2026).

4. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

5. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

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Pro Bono Counsel for Petitioner

Dated: May 22, 2026

VERIFICATION BY ATTORNEY ACTING ON MR. KHALIYAROV'S BEHALF PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of Mr. Khaliyarov because I am his attorney. As Mr. Khaliyarov's attorney, 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.

Dated: May 22, 2026 By: /s/ Cassandra Lopez