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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 **Yonatan Mussie,**
12
13 Petitioner,

14 v.

15 **Todd Blanche**, Acting United States
16 Attorney General; **Markwayne Mullin**,
17 United States Secretary of Homeland
18 Security; **Todd M. Lyons**, Acting Director
19 of Immigration and Customs Enforcement;
20 **Patrick Divver**, San Diego Field Office
21 Director, Immigration and Customs
22 Enforcement; **Christopher J. LaRose**,
23 Senior Warden, Otay Mesa Detention
24 Center

25 Respondents.

Case No. '26CV3214 LEK JAC

Agency No. 

Petition for a Writ of Habeas Corpus

INTRODUCTION

1. Petitioner Yonatan Mussie petitions this Court to remedy his illegal detention at the Otay Mesa Detention Center (OMDC) in San Diego.

2. Mr. Mussie has been detained at OMDC pending removal proceedings since July 2025. To date, no neutral arbiter has considered whether his detention is necessary.

3. On May 14, 2026, an immigration judge granted Mr. Mussie asylum based on persecution that he has suffered on account of his political opinion in his native country of Eritrea. The Department of Homeland Security has reserved appeal of that decision. Mr. Mussie remains detained while DHS deliberates whether to file an appeal. If it does, Mr. Mussie's detention will extend longer still.

4. Mr. Mussie's unreviewed detention has become unreasonably prolonged in violation of due process. Accordingly, the Court should grant his petition for a writ of habeas corpus and order him released if Respondents do not provide him within seven days with a bond hearing at which DHS bears the burden of justifying his continued detention by clear and convincing evidence.

PARTIES

5. Petitioner Yonatan Mussie is a native and citizen of Eritrea. He has been detained at OMDC since late July 2025.

6. Respondent Todd Blanche is the Acting United States Attorney General. He is responsible for implementing and enforcing the immigration laws of the United States. Some of this authority is delegated to the Executive Office for Immigration Review, the agency that houses the immigration courts and BIA. *See* 8 C.F.R. § 1003.0(a). Acting Attorney General Blanche is a legal custodian of Mr. Mussie. He is sued in his official capacity.

7. Respondent Markwayne Mullin is the United States Secretary of Homeland Security. He is responsible for enforcing the immigration laws of the United States, including those concerning the detention of noncitizens. Mr. Mullin is a legal custodian of Mr. Mussie. He is sued in his official capacity.

8. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement. The Department of Homeland Security is ICE's parent agency. Mr. Lyons is responsible for ICE's policies, practices, and procedures, including those pertaining to the detention of noncitizens. Mr. Lyons is a legal custodian of Mr. Mussie. He is sued in his official capacity.

9. Respondent Patrick Divver is the Field Director of ICE's San Diego Field Office. The San Diego Field Office is responsible for ICE's detention operations at OMD. Field Director Divver is a legal custodian of Mr. Mussie. He is sued in his official capacity.

10. Respondent Christopher J. LaRose is the senior warden of OMD. He is employed by the private corporation CoreCivic. Warden LaRose is Mr. Mussie's immediate physical custodian. He is sued in his official capacity.

JURISDICTION & VENUE

11. 28 U.S.C. §§ 1331 and 2241, and Article I, section nine, clause two of the United States Constitution give the Court jurisdiction over this petition. The Court may grant relief pursuant to 28 U.S.C. §§ 2201, 2241, and 1651.

12. Venue is proper in the Southern District of California because Mr. Mussie is detained here. See 28 U.S.C. §§ 1391(e), 2241.

BACKGROUND

13. Mr. Mussie is a native and citizen of Eritrea. Ex. A at 1. In 2024, he fled from Eritrea after being tortured and imprisoned for his opposition to Eritrea's policy of universal mandatory indefinite conscription into the armed forces, as well as the inhumane conditions he experienced at the training camp to which he was conscripted. Ex. B at 7-11.

14. On July 12, 2025, DHS agents apprehended Mr. Mussie after he entered the United States. *See* Ex. C at 1. Because Mr. Mussie expressed a fear of return to Eritrea, he was transferred to OMD and afforded an interview with an asylum officer. *Id.*; *see* 8 U.S.C. § 1225(b)(1)(A)(ii). When the asylum officer determined that he had a credible

1 fear of persecution in Eritrea, Mr. Mussie was placed in removal proceedings in the Otay
2 Mesa Immigration Court. Ex. C at 1; 8 U.S.C. § 1225(b)(1)(B)(ii).

3 15. In immigration court, Mr. Mussie conceded removability, but sought relief
4 from removal in the form of asylum, statutory withholding of removal, and protection
5 under the UN Convention Against Torture. *See* Ex. A.

6 16. An individual calendar hearing on Mr. Mussie's asylum application was
7 scheduled for March 17, at 10:00 a.m. Declaration of Christopher Medeiros in Support of
8 Petition for Writ of Habeas Corpus, ¶ 7. Historically, the Otay Mesa Immigration Court
9 has scheduled individual calendar hearings at 8:00 a.m. and 1:00 p.m.—thus affording
10 respondents four hours per hearing. *Id.* More recently, though, the court has taken to
11 scheduling hearings at 8:00 a.m., 10:00 a.m., 1:00 p.m., and 3:00 p.m.—theoretically
12 giving respondents just two hours per hearing. *Id.* In practice, though, the 8:00 a.m. and
13 1:00 p.m. hearings fail to conclude within two hours, bleed into the next hearing slot, and
14 thus force the court to reschedule the 10:00 a.m. and 3:00 p.m. hearings. *Id.*

15 17. This is what happened at Mr. Mussie's March 17 hearing. The prior hearing
16 did not conclude before 10:00 a.m., and at approximately noon, the court informed
17 counsel for Mr. Mussie that his case would not be heard that day. *Id.*, ¶ 8. Mr. Mussie's
18 hearing was reset for April 14 at 8:00 a.m. *Id.* Counsel for Mr. Mussie requested that—
19 given the likely duration of Mr. Mussie's testimony—the court hold all four hearing slots
20 that day for Mr. Mussie, but the court informed him that the best it could do was reserve
21 the 8:00 and 10:00 a.m. slots for him. *Id.*

22 18. As predicted, Mr. Mussie's case did not conclude on April 14. *Id.*, ¶ 9. Mr.
23 Mussie's direct examination ended just before noon, causing the court to schedule
24 another individual calendar hearing for May 14 to permit cross examination and re-direct.
25 *Id.*

26 19. Mr. Mussie's case did conclude on May 14. At the end of the hearing, the IJ
27 indicated that he would grant Mr. Mussie's asylum application. *See* Ex. D (order granting
28

1 asylum). Because DHS stated that it would reserve appeal, the IJ proceeded to render an
 2 oral decision. *See id.*

3 20. As of this petition's filing, DHS has not filed a notice of appeal of the order
 4 granting Mr. Mussie asylum. *See* 8 C.F.R. § 1003.38(b) (2025) (notice of appeal to BIA
 5 must be filed within 30 days of IJ order).¹ Nonetheless, Mr. Mussie remains detained.

6 EXHAUSTION

7 21. Under some circumstances, noncitizens challenging their detention via
 8 habeas must first exhaust administrative remedies. *See Romero-Salas v. Barr*, No.
 9 20cv0073-BAS (KSC), 2020 WL 919135, at *3 (S.D. Cal. Feb. 26, 2020) (describing the
 10 administrative-exhaustion framework appurtenant to habeas petitions by detained
 11 noncitizens). That is not so here. Mr. Mussie's petition asserts one claim—that his
 12 continued unreviewed detention violates due process. And that claim cannot be advanced
 13 before the agency, which is not empowered to adjudicate constitutional claims. *See*
 14 *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005) (per curiam); *Padilla-*
 15 *Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006). Accordingly, there is no available
 16 administrative remedy that Mr. Mussie could first exhaust before seeking relief from this
 17 Court.

18 22. Alternatively, the Court should waive the prudential exhaustion requirement
 19 because attempting to exhaust before the agency the claim in this petition “would be a
 20 futile gesture.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *SEC v.*
 21 *G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)). This is because the BIA's
 22 precedential decision in *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) holds that
 23 noncitizens who, like Mr. Mussie, are detained under 8 U.S.C. § 1225(b) are not entitled
 24

25
 26
 27 ¹ The Executive Office for Immigration Review has sought, through an interim final rule, to shorten
 28 this deadline from 30 to ten days, but that provision of the IFR has been set aside by the District Court
 for the District of Columbia. *Amica Ctr. For Immigrant Rts. v. EOIR*, 2026 WL 662494, at *8, *34
 (D.D.C. 2026), *appeal filed*, No. 26-5156 (D.C. Cir. May 11, 2026).

1 to a bond hearing in immigration court. *See Amado v. DOJ*, No. 25cv2687-LL(DDL),
2 2025 WL 3079052, at *3 (S.D. Cal. Nov. 4, 2025).

3 **CAUSE OF ACTION**

4 **Violation of Due Process**

5 23. The Due Process Clause of the United States Constitution provides that
6 “[n]o person shall . . . be deprived of . . . liberty . . . without due process of law.”

7 24. While the Immigration and Nationality Act does not provide for bond
8 hearings for noncitizens, like Mr. Mussie, who are detained pursuant to 8 U.S.C. §
9 1225(b), the Fifth Amendment’s Due Process Clause does not permit their indefinite,
10 unreviewed detention. *See Campos v. LaRose*, No. 26-cv-29-RSH-JLB, 2026 WL
11 146630, at *1-2 (S.D. Cal. Jan. 30, 2026) (collecting cases).

12 25. Courts querying whether a given noncitizen’s unreviewed detention under 8
13 U.S.C. § 1225(b) has run afoul of due process consider the following factors:

14 (1) the total length of detention to date; (2) the likely duration of future
15 detention; (3) the conditions of detention; (4) delays in the removal
16 proceedings caused by the detainee; (5) delays in the removal proceedings
17 caused by the government; and (6) the likelihood that the removal proceedings
18 will result in a final order of removal.

19 26. *Id.* at *6; (citing *Kydrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020);
20 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).

21 27. As concerns factor one—“the most important factor,” *Kydrali*, 499 F. Supp.
22 3d at 774 (quoting *Banda*, 385 F. Supp. 3d at 1118)—Mr. Mussie has been detained, as
23 of the time of this petition’s filing, for over ten months. This factor thus uncontroversially
24 favors Mr. Mussie. *See, e.g., Lara v. Bondi*, No. 26-cv-1125-RSH-BJW, ECF No. 5 at 4
25 (S.D. Cal. Mar. 9, 2026) (concluding that six months of un-reviewed detention had
26 “become unreasonable and violate[d] due process”); *Tambu v. Bondi*, No. 26-cv-01481-
27 JLS-DDL, ECF No. 6 at 3 (S.D. Cal. Mar. 19, 2026) (“Petitioner’s length of detention,
28 over six months, without a bond hearing weighs in Petitioner’s favor.”)

28. As concerns factor two—assuming that DHS does in fact appeal his grant of asylum²—Mr. Mussie faces likely extensive further detention. The best-case scenario for Mr. Mussie is that the BIA affirms the IJ’s grant of asylum—in which case he will be detained only for the time that it will take the BIA to decide his appeal. If the BIA reverses and orders him removed, Mr. Mussie will be able to file a petition for review of that decision with the Ninth Circuit and seek a stay of removal. *See* 9th Cir. Gen. Order No. 6.4(c) (entitling noncitizens to an administrative stay of removal upon bringing a stay motion); *Rojas-Espinoza v. Bondi*, 160 F.4th 991, 1000 (9th Cir. 2025) (noting that it is commonplace for Ninth Circuit panels to wait to “decide any still-pending stay motion at the same time that the merits are decided”—thus allowing the administrative stay of removal to remain intact for the case’s duration); *see also Banda*, 385 F. Supp. 3d at 1119 (agency appeals followed by judicial review “may take up to two years or longer”). And if the BIA vacates the IJ’s decision and remands for further proceedings, then Mr. Mussie would remain detained for the duration of those proceedings in immigration court plus any resultant appeals or petitions for review. This factor therefore favors Mr. Mussie as well. *See Sufiiarov v. Warden*, No. 25cv3265, 2026 WL 26079, at *5 (S.D. Cal. Jan. 5, 2026); *Akbar*, 2026 WL 36079, at *7.

29. Factor three likewise strongly favors Mr. Mussie. “In considering the conditions of detention, ‘[t]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing.’” *Amado*, 2025 WL 3079052, at *6 (quoting *Banda*, 385 F. Supp. 3d at 1119). Courts in this district have already, correctly, found that detention at OMDC is “indistinguishable from penal confinement.” *Amado*, 2025 WL 3079052, at *6 (quoting *Kydrali*, 499 F. Supp. 3d at 773). And a recent report from the California Department of Justice underscores the ongoing deterioration of conditions there. *See Immigration*

² If DHS does not and instead releases him, Mr. Mussie will, of course, readily concede this petition’s mootness.

1 *Detention in California: A Review of Conditions of Confinement*, Cal. Dep't of Jus. (May
 2 2026), <https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf> (last visited
 3 May 21, 2026); *see also United States v. California*, 921 F.3d 865, 875-76, 886 (9th Cir.
 4 2019) (upholding AB 103's requirement that the Attorney General of California inspect
 5 and report on conditions in immigration-detention centers in the state). In particular, the
 6 report finds that: (1) overcrowding at OMDC has reached such critical levels that some
 7 detainees must sleep on "boats" on the floor due to the unavailability of bedspace; (2)
 8 overcrowding has also compromised the facility's cleanliness and in some housing units,
 9 the number of detainees per toilet exceeds that permissible under ICE's own published
 10 standards; (3) OMDC "is the only facility in California with a policy and practice to strip
 11 search detainees after each non-legal contact visit"; (4) according to detainee reports, "the
 12 quantity and quality of food is inadequate" at OMDC, such that detainees must
 13 "supplement meals with food purchased from the commissary"; and (5) OMDC's
 14 "medical recordkeeping practices limit the facility's ability to provide quality, consistent
 15 medical care." *Immigration Detention in California, supra*, at 117-18; Gustavo Solis,
 16 *Overcrowded conditions plague Otay Mesa and other immigrant detention facilities*,
 17 KPBS (July 28, 2025), <https://tinyurl.com/cjjm535n> (describing OMDC as "beset by
 18 overcrowding" and highlighting reports of "detainees sleeping on the floor" and
 19 "deferred medical care resulting in hospitalizations"); Cal. Dep't of Just., *Immigration*
 20 *Detention in California: A Comprehensive Review with a Focus on Mental Health* 133
 21 (Apr. 2025), <https://tinyurl.com/3z4mpe8r> (highlighting deficiencies in the provision of
 22 healthcare and mental-health care at OMDC); DHS, Office of the Inspector Gen.,
 23 *Violations of ICE Detention Standards at Otay Mesa Detention Center* 3 (Sept. 14, 2021),
 24 <https://tinyurl.com/2p7vafwh> (finding numerous "violations of ICE detention standards
 25 that compromised the health, safety, and rights of detainees"). This factor therefore
 26 similarly favors Mr. Mussie.

27 30. With respect to factor four, Mr. Mussie does not bear blame for his
 28 continued detention, as he has submitted his relief application and prepared his case with

1 admirable expediency, given the life-and-death stakes. *See Markosian v. Bondi*, No. 25-
2 cv-3494-JES-BLM, 2026 WL 25850, at *3 (S.D. Cal. Jan. 5, 2026) (declining to fault the
3 petitioner for having requested a three-month continuance because “a petitioner's pursuit
4 of defenses to removal should not be held against a determination that they are entitled to
5 due process”); *Kydrali*, 499 F. Supp. 3d at 773.

6 31. As concerns factor five, Respondents have unreasonably contributed to
7 delays in Mr. Mussie’s removal proceedings. The Otay Mesa Immigration Court’s
8 insistence upon scheduling four merits hearings per day had the entirely foreseeable
9 result of preventing Mr. Mussie’s hearing from proceeding on March 17. And its refusal
10 to set aside an entire day for Mr. Mussie’s hearing on the rescheduled date of April 14
11 resulted in a delay of a further month before his hearing finally concluded on May 14.

12 32. Lastly, factor six favors Mr. Mussie as well, because his removal
13 proceedings are likely to end favorably for him. Mr. Mussie’s asylum case was not
14 complicated: he fled from Eritrea after experiencing persecution at the hands of
15 government actors on account of his political opinion, and is thus an archetypal asylee.
16 *See* 8 U.S.C. § 1158(b)(1)(A) (citing *id.* § 1101(a)(42)(A)). As a result, DHS’s appeal of
17 the IJ’s grant is unlikely to involve questions of law. The BIA may only overturn the
18 factual findings underpinning the IJ’s grant of asylum if they are clearly erroneous. 8
19 C.F.R. § 1003.1(d)(3)(i). And, if the BIA purports to have found clear error, the Ninth
20 Circuit will be able to review whether the BIA correctly applied that standard—which
21 “does not allow the BIA to reweigh the evidence when the IJ’s account of the evidence is
22 plausible.” *Guerra v. Barr*, 974 F.3d 909, 914 (9th Cir. 2020). Because the IJ’s
23 determination that Mr. Mussie is entitled to asylum is likely to prevail once the appellate
24 dust settles, this factor also favors Mr. Mussie. *See also Kydrali*, 499 F. Supp. 3d at 774
25 (granting habeas relief even though a Ninth Circuit panel had already upheld petitioner’s
26 removal order and petitioner was seeking en banc review).

27 33. Because the relevant factors unanimously favor Mr. Mussie, the Court
28 should hold that his continued unreviewed detention does not comport with due process.

1 Accordingly, it should grant his petition for a writ of habeas corpus and order him
2 released from detention if Respondents do not provide him with a bond hearing within
3 seven days of the Court's order.

4 34. As for the procedures attendant to that bond hearing, the overwhelming
5 consensus is that—at prolonged-detention bond hearings of this sort—the government
6 should bear the burden of justifying, by clear and convincing evidence, the noncitizen's
7 continued detention. *See, e.g., Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal.
8 2025); *Kydrali*, 499 F. Supp. 3d at 774. There is no reason for this Court to depart from
9 that consensus.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Mr. Mussie prays that the Court:

- 12 a. Assume jurisdiction over this case;
13 b. Order that Respondents refrain from transferring him outside of the Southern
14 District of California while his petition remains pending;
15 c. Declare that his detention is unlawful;
16 d. Issue a writ of habeas corpus ordering Respondents to release him from
17 custody if he is not provided within seven days of the Court's order with a
18 bond hearing before an IJ at which DHS bears the burden of justifying his
19 continued detention by clear and convincing evidence.
20 e. Award his counsel attorney's fees and costs under the Equal Access to
21 Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law;
22 and
23 f. Grant all other relief that the Court deems just and proper.

24
25 Respectfully submitted,

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27 Dated: May 23, 2026

s/ Christopher Paul Kailani Medeiros

28 Christopher Paul Kailani Medeiros

Attorney for Yonatan Mussie

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