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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MALIK SAIR JAN,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LaROSE, Warden of
Otay Mesa Detention Center; **DANIEL**
BRIGHTMAN, Director of the U.S.
Immigration and Customs Enforcement
San Diego Field Office; **DAVID**
VENTURELLA, Acting Director of U.S.
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of
the U.S. Department of Homeland
Security; and **TODD BLANCHE**,
Attorney General of the United States in
their official capacities

Respondents-Defendants,

Case No. **'26CV3443 JLS BJW**
ROA #

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

Challenge to Unlawful Incarceration; Request for
Declaratory and Injunctive Relief

1 Petitioner MALIK SAIR JAN petitions this Court for a writ of habeas corpus under 28 U.S.C.
2 section 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

3 **I. INTRODUCTION**

4 1. Petitioner Malik Sair Jan ("Petitioner") is a citizen of Afghanistan who entered the
5 United States on January 9, 2024. DHS subsequently detained him at the Otay Mesa Detention Center
6 ("OMDC"), where he remains confined today.

7 2. Petitioner applied for asylum, withholding of removal, and protection under the
8 Convention Against Torture based upon his fear of persecution and torture if returned to Afghanistan.
9 On December 23, 2024, the Immigration Judge granted Petitioner's application for deferral of removal
10 under the Convention Against Torture after finding that Petitioner established it was more likely than
11 not that he would be tortured if returned to Afghanistan. DHS appealed, and the Board of Immigration
12 Appeals later remanded the matter for further proceedings.

13 3. Petitioner has now been continuously detained for approximately two and one-half
14 years. Despite the extraordinary length of his detention, his immigration proceedings remain
15 unresolved and there is no meaningful end to his confinement in sight.

16 4. On January 21, 2026, the United States District Court for the Southern District of
17 California granted Petitioner's prior habeas petition and ordered Respondents to provide Petitioner
18 with an individualized bond hearing within fourteen days. (See Akel Decl., Ex. 3.)

19 5. Pursuant to that Order, Petitioner received a custody redetermination hearing before
20 the Immigration Court on January 26, 2026. The Immigration Judge denied release, finding that
21 Petitioner had not met his burden of demonstrating that he was not a danger to the community or a
22 flight risk. (See Akel Decl., Ex. 4.) Petitioner remains detained more than five months later.

23 6. Petitioner's continued detention violates the Due Process Clause of the Fifth
24 Amendment. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069,
25 1078-80 (9th Cir. 2006).

26 7. Petitioner respectfully requests that this Court issue a writ of habeas corpus ordering
27 his release, or alternatively order a constitutionally adequate bond hearing at which the Government
28 bears the burden of proving by clear and convincing evidence that continued detention is justified.

II. JURISDICTION, AND VENUE

8. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 2241 (habeas corpus jurisdiction), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (United States as defendant), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act).

10. The jurisdiction-stripping provision contained in 8 U.S.C. § 1252(g) does not apply because Petitioner does not challenge any decision to commence proceedings, adjudicate removal charges, or execute a removal order. Rather, Petitioner challenges the constitutionality of his continued detention. *Reno v. Am. Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *Ibarra-Perez v. U.S.*, 154 F.4th 989 (9th Cir. 2025); *Chub v. Larose*, 25-cv-3513, 2025 WL 3654008 (S.D. Cal. Dec. 17, 2025); *Constantinovici v. Bondi*, 25-cv-2405, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27, 2025).

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of California because Petitioner is detained within this District.

12. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because Petitioner is detained within this District, Respondents are officers, employees, and agencies of the United States, and a substantial part of the events and omissions giving rise to the claims occurred within this District.

III. REQUIREMENTS OF 28 U.S.C. § 2241

13. The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

14. A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

1 Historically, “the writ of habeas corpus has served as a means of reviewing the legality of Executive
2 detention, and it is in that context that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S.
3 289, 301 (2001).

4 15. A district court’s habeas jurisdiction includes challenges to immigration detention.
5 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); see also *Demore v. Kim*, 538 U.S. 510, 517 (2003).

6 16. Petitioner is in custody for purposes of 28 U.S.C. § 2241 because he remains detained
7 at the Otay Mesa Detention Center in San Diego, California. Respondents exercise legal and physical
8 custody over Petitioner and continue to confine him despite the extraordinary length of his detention.

9 17. Petitioner remains incarcerated notwithstanding a custody redetermination hearing
10 conducted on January 26, 2026, at which the Immigration Judge denied release and ordered Petitioner
11 to remain detained. (See Akel Decl, Ex. 4.) Petitioner therefore continues to suffer the ongoing
12 deprivation of liberty that forms the basis of this habeas action.

13 IV. PARTIES

14 18. Petitioner Malik Sair Jan (“Petitioner” or “Mr. Jan”) is a citizen and national of
15 Afghanistan. He is currently detained at the Otay Mesa Detention Center in San Diego County,
16 California. Mr. Jan has remained continuously detained by immigration authorities since January
17 2024.

18 19. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. He
19 is responsible for the day-to-day operations, of, and the confinement of non-citizens detained at the
20 facility. He is the immediate physical custodian of Petitioner. As such, Mr. LaRose is a legal custodian
21 of Mr. Jan. He is sued in his official capacity.

22 20. Respondent Daniel Brightman is the Field Office Director of Ice Enforcement and
23 Removal Operations, which is a division of ICE that manages and oversees the immigration detention
24 system. As such, Mr. Brightman is a legal custodian of Mr. Jan. He is sued in his official capacity.

25 21. Respondent David Venturella is the Director of ICE. He is responsible for the
26 administration of ICE and the implementation and enforcement of the immigration laws, including
27 immigrant detention. As such, Mr. Venturella is a legal custodian of Mr. Jan. He is sued in his official
28 capacity.

1 22. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
2 Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the
3 implementation and enforcement of the immigration laws. As such, Mr. Mullin is the ultimate legal
4 custodian of Mr. Jan. He is sued in his official capacity.

5 23. Respondent Todd Blanche is the Acting Attorney General of the United States and
6 head of the Department of Justice, which encompasses the Board of Immigration Appeals and the
7 Immigration Courts. Mr. Blanche shares responsibility for implementation and enforcement of the
8 immigration laws with Respondent Mullin. Mr. Blanche is a legal custodian of Mr. Jan. He is sued in
9 his official capacity.

10 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 24. There is no statutory requirement that noncitizens exhaust administrative remedies
12 before seeking habeas relief challenging the legality of their detention. See 28 U.S.C. § 2241.
13 Moreover, exhaustion in immigration habeas proceedings is prudential rather than jurisdictional.
14 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

15 25. Prudential exhaustion should not be required where administrative remedies would be
16 futile or where requiring exhaustion would result in irreparable harm. See *McCarthy v. Madigan*, 503
17 U.S. 140, 146-48 (1992); *Hernandez*, 872 F.3d at 988.

18 26. Petitioner has nevertheless pursued available administrative remedies relating to his
19 detention. In May 2024, Petitioner sought a custody redetermination hearing before the Immigration
20 Court. The Immigration Judge determined that she lacked jurisdiction because Petitioner was
21 detained pursuant to 8 U.S.C. § 1225(b)(1).

22 27. Following the District Court's January 21, 2026 Order granting habeas relief and
23 directing Respondents to provide an individualized bond hearing, Petitioner received a custody
24 redetermination hearing on January 26, 2026. The Immigration Judge denied release, finding that
25 Petitioner had not met his burden of demonstrating that he was not a danger to the community or a
26 flight risk. (See Akel Decl., Ex. 4.)

27 28. Requiring Petitioner to pursue further administrative remedies would be futile. The
28 constitutional issue presented in this case is not whether Petitioner should prevail on the facts before

1 an Immigration Judge. Rather, the issue is whether Petitioner's nearly two-and-one-half years of
2 detention comports with due process where the burden was placed on Petitioner to justify release
3 rather than on the Government to justify continued detention.

4 29. The Immigration Court lacks authority to grant the constitutional relief requested
5 herein. Likewise, the Board of Immigration Appeals cannot resolve Petitioner's constitutional
6 challenge to the legality of his prolonged detention under the Fifth Amendment.

7 30. Petitioner cannot be expected to endure continued confinement while pursuing
8 additional administrative proceedings that cannot provide the relief sought. See *Vasquez-Rodriguez*
9 *v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (exhaustion not required where resort to administrative
10 remedies would be futile).

11 31. Every additional day of Petitioner's confinement constitutes an ongoing deprivation of
12 liberty and irreparable harm. See *Addington v. Texas*, 441 U.S. 418, 425 (1979). Petitioner has now
13 been detained continuously since January 9, 2024, a period approaching two and one-half years.

14 32. Accordingly, any prudential exhaustion requirement is satisfied, excused, or otherwise
15 inapplicable.

16 VI. LEGAL FRAMEWORK

17 33. Petitioner seeks release from detention, or alternatively a constitutionally adequate
18 bond hearing, because his continued detention violates the Due Process Clause of the Fifth
19 Amendment. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

20 A. Due Process Limits Prolonged Immigration Detention

21 34. The Fifth Amendment provides that no person shall be deprived of liberty without due
22 process of law. Freedom from physical restraint lies at the core of the liberty interests protected by
23 the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

24 35. These protections extend to noncitizens. *Demore v. Kim*, 538 U.S. 510, 523 (2003);
25 *Clark v. Martinez*, 543 U.S. 371, 378 (2005).

26 36. The Ninth Circuit has repeatedly recognized that prolonged immigration detention
27 raises serious constitutional concerns. See *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018);
28 *Zadvydas*, 533 U.S. at 693.

1 37. The Ninth Circuit, as well as this Court, have specifically held that noncitizens
 2 detained pursuant to 8 U.S.C. § 1225(b) are entitled to due process protections when detention
 3 becomes unreasonable or prolonged. See *Nadarajah v. Gonzales*, 443 F.3d 1069, 1078-80 (9th Cir.
 4 2006); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Centeno-Ortiz v. Culley*, 11-cv-
 5 1970, 2012 WL 170123 (S.D. Cal. Jan. 19, 2012); *Gao v. Larose*, 25-cv-2084, 2025 WL 2770633
 6 (S.D. Cal. Sept. 26, 2025); *Amado v. U.S. DOJ*, 25-cv-2687, 2025 WL 3079052 (S.D. Cal. Nov. 4,
 7 2025); *AbdulKadir v. Larose*, No. 25-cv-145, 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025).

8 **B. Factors Used To Evaluate Prolonged Detention**

9 38. There is no bright-line rule establishing when immigration detention becomes
 10 constitutionally excessive. Rather, courts conduct a fact-specific inquiry considering the totality of
 11 the circumstances. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-18 (W.D. Wash. 2019).

12 39. Banda identifies six relevant factors: (1) the total length of detention to date; (2) the
 13 likely duration of future detention; (3) the conditions of detention; (4) delays attributable to the
 14 detainee; (5) delays attributable to the Government; and (6) the likelihood that removal proceedings
 15 will result in a final order of removal. *Banda*, 385 F. Supp. 3d at 1118.

16 40. The first factor is considered the most important. Id. Petitioner has now been detained
 17 continuously since January 9, 2024, for approximately twenty-nine months. This period far exceeds
 18 the periods found constitutionally problematic in *AbdulKadir*, *Gao*, and *Amado*.

19 41. The second factor likewise favors Petitioner. His immigration proceedings remain
 20 unresolved and additional administrative and judicial review remain possible. As a result, Petitioner's
 21 detention is likely to continue for many more months, if not longer.

22 42. The third factor favors Petitioner because his detention is functionally
 23 indistinguishable from penal confinement. See *Kydyrali*, 499 F. Supp. 3d at 772.

24 43. The fourth and fifth factors do not justify Petitioner's continued detention. While some
 25 delay has occurred during the normal course of litigation, Petitioner has consistently pursued
 26 available relief and has not engaged in dilatory conduct warranting nearly two-and-one-half years of
 27 confinement.

1 44. The sixth factor likewise favors Petitioner. Petitioner continues to pursue substantial
2 defenses to removal. Indeed, an Immigration Judge previously granted protection under the
3 Convention Against Torture after finding that Petitioner established it was more likely than not that
4 he would be tortured if returned to Afghanistan.

5 **C. Due Process Requires the Government to Justify Continued Detention**

6 45. As detention becomes prolonged, due process requires an individualized
7 determination regarding whether continued detention is necessary.

8 46. On January 26, 2026, Petitioner received a custody redetermination hearing. The
9 Immigration Judge denied release because Petitioner "has not met his burden of demonstrating he is
10 not a danger to the community or a flight risk." (See Akel Decl. Ex. 4.)

11 47. The January 26, 2026 hearing was conducted pursuant to this Court's January 21, 2026
12 Order granting Petitioner's prior habeas petition and directing Respondents to provide an
13 individualized bond hearing. (See Akel Decl., Ex. 3). Although Respondents complied with the Order
14 by providing a hearing, the hearing did not result in Petitioner's release and instead placed the burden
15 on Petitioner to prove that continued detention was unwarranted.

16 48. The constitutional problem remains unresolved because the burden was placed on
17 Petitioner rather than the Government. More than five months later, Petitioner remains detained.

18 49. The Ninth Circuit has made clear that due process requires the Government to justify
19 continued detention by clear and convincing evidence. *Martinez v. Clark*, 124 F.4th 775, 786 (9th
20 Cir. 2024) (citing *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011)).

21 50. Although the January 26, 2026 hearing satisfied the District Court's prior Order
22 requiring a bond hearing, Petitioner's continued detention remains unconstitutional because the
23 hearing placed the burden on Petitioner and he has now remained detained for more than five
24 additional months.

25 **VII. FACTUAL BACKGROUND**

26 51. Petitioner is a citizen and native of Afghanistan. Petitioner entered the United States
27 on or about January 9, 2024, seeking protection from persecution and torture in Afghanistan. DHS
28 subsequently served Petitioner with a Notice to Appear on January 31, 2024, charging him as

1 removable and placing him into removal proceedings. (See Akel Decl., Ex. 1.) Since January 9, 2024,
2 Petitioner has remained continuously detained.

3 52. Petitioner applied for asylum, withholding of removal, and protection under the
4 Convention Against Torture ("CAT"). Petitioner fears persecution and torture if returned to
5 Afghanistan.

6 53. On December 23, 2024, the Immigration Judge granted Petitioner's application for
7 deferral of removal under the Convention Against Torture after finding that Petitioner established it
8 was more likely than not that he would be tortured if returned to Afghanistan.

9 54. DHS appealed that decision to the Board of Immigration Appeals. The Board
10 subsequently remanded the matter for further proceedings. Petitioner's immigration case remains
11 pending and unresolved. As a result, Petitioner remains detained while his immigration proceedings
12 continue.

13 55. Throughout his detention, Petitioner has sought release from custody through
14 available administrative and judicial avenues. In May 2024, Petitioner requested a custody
15 redetermination hearing before the Immigration Court. The Immigration Judge determined that the
16 Immigration Court lacked jurisdiction because Petitioner was detained pursuant to 8 U.S.C. §
17 1225(b).

18 56. Petitioner subsequently sought habeas corpus relief in federal court challenging the
19 legality of his prolonged detention. On January 21, 2026, the United States District Court for the
20 Southern District of California granted Petitioner's habeas petition and ordered Respondents to
21 provide an individualized bond hearing within fourteen days. (See Akel Decl., Ex. 3.)

22 57. Pursuant to the District Court's Order, Petitioner received a custody redetermination
23 hearing on January 26, 2026. The hearing occurred more than twenty-four months after Petitioner's
24 detention began. Petitioner has now remained detained for more than five additional months after that
25 hearing.

26 58. At that hearing, the Immigration Judge denied release and ordered that Petitioner
27 remain detained because Petitioner "has not met his burden of demonstrating he is not a danger to the
28 community or a flight risk." (See Akel Decl., Ex. 4.) Petitioner therefore remained detained following

1 the January 2026 custody hearing and continues to be incarcerated at the Otay Mesa Detention Center
2 more than five months later.

3 59. Petitioner has now been continuously detained since January 9, 2024. His detention
4 has lasted approximately twenty-nine months. During this period, Petitioner has remained confined
5 in a secure detention facility under conditions materially similar to penal incarceration. There is no
6 definite end date for Petitioner's detention. Additional immigration proceedings and potential appeals
7 remain possible. Consequently, Petitioner's detention is likely to continue absent intervention from
8 this Court.

9 60. The duration of Petitioner's confinement now substantially exceeds the periods of
10 detention found constitutionally problematic in numerous immigration detention cases within the
11 Ninth Circuit and the Southern District of California.

12 **VIII. CLAIM FOR RELIEF**

13 **Prolonged Detention in Violation of the Fifth Amendment Due Process Clause**

14 61. Petitioner realleges and incorporates by reference paragraphs 1 through 60 as though
15 fully set forth herein.

16 62. The Due Process Clause of the Fifth Amendment prohibits the Government from
17 depriving any person of liberty without due process of law.

18 63. Immigration detention may become unconstitutional when its duration becomes
19 unreasonable or prolonged. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Nadarajah v. Gonzales*, 443
20 F.3d 1069 (9th Cir. 2006); *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019).

21 64. Petitioner's detention has now lasted approximately twenty-nine months and continues
22 to increase with each passing day. Application of the Banda factors demonstrates that Petitioner's
23 continued detention has become constitutionally excessive.

24 65. First, the length of detention strongly favors Petitioner. Nearly two-and-one-half
25 years of civil immigration detention is extraordinary and exceeds the detention periods found
26 constitutionally problematic in numerous immigration detention cases.

27 66. Second, Petitioner's detention is likely to continue. His immigration proceedings
28 remain unresolved, and additional administrative and judicial review remain possible.

1 67. Third, Petitioner's detention occurs under conditions substantially similar to penal
2 confinement.

3 68. Fourth, the duration of Petitioner's detention cannot be attributed to unreasonable
4 delay by Petitioner. Rather, Petitioner has pursued available forms of relief in an effort to obtain
5 protection from torture and secure his release from custody.

6 69. Fifth, Petitioner continues to pursue substantial defenses to removal, including claims
7 that previously resulted in a grant of protection under the Convention Against Torture.

8 70. The January 26, 2026 custody redetermination hearing did not cure the constitutional
9 deficiencies associated with Petitioner's prolonged detention. The Immigration Judge denied release
10 because Petitioner "has not met his burden of demonstrating he is not a danger to the community or
11 a flight risk." (See Akel Decl. Ex. 4.)

12 71. Due process requires the Government to justify continued detention by clear and
13 convincing evidence. *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024); *Singh v. Holder*, 638
14 F.3d 1196, 1203-05 (9th Cir. 2011).

15 72. By placing the burden on Petitioner to establish that he should be released, the January
16 26, 2026 custody hearing failed to provide the procedural protections required by due process. More
17 than five months have elapsed since that hearing, and Petitioner remains detained. Under the totality
18 of the circumstances, Petitioner's continued detention violates the Due Process Clause of the Fifth
19 Amendment.

20 73. Absent relief from this Court, Petitioner will continue to suffer an ongoing deprivation
21 of liberty in violation of the Constitution.

22 **IX. ENTITLEMENT TO RELIEF**

23 74. Although Petitioner received a custody redetermination hearing pursuant to this
24 Court's January 21, 2026 Order granting habeas relief, the Immigration Judge denied release because
25 Petitioner failed to establish that he was not a danger to the community or a flight risk. (See Akel
26 Decl., Exs. 3-4.) More than five months have elapsed since that hearing, and Petitioner remains
27 detained.
28

77. Accordingly, the Court should either order Petitioner's immediate release or, alternatively, order a constitutionally adequate custody hearing before an Immigration Judge at which the Government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is necessary because he presents a danger to the community or a flight risk.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241;
3. Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment;
4. Order Petitioner's immediate release from custody; or alternatively,
5. Order Respondents to provide Petitioner with a constitutionally adequate custody hearing within fourteen (14) days before an Immigration Judge at which the Government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is necessary because he presents a danger to the community or a flight risk;
6. Award Petitioner his reasonable attorneys' fees and costs to the extent permitted by law;

III

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1 7. Grant such other and further relief as this Court deems just and proper.

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3 Respectfully submitted,

4 Areeg Akel

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11 *Pro Bono Counsel for Petitioner*

12 Dated: June 5, 2026
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**VERIFICATION BY ATTORNEY ACTING ON MR. JAN'S BEHALF PURSUANT
TO 28 U.S.C § 2242**

I am submitting this verification on behalf of Mr. Malik Sair Jan because I am his attorney. As Mr. Jan'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: June 5, 2026

s/Areeg Akel