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6 **Abebe Alemnew Mengistu**

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8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Abebe Alemnew Mengistu,

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12 Petitioner,

13 v.

14 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
15 Diego Field Office, Immigration and Customs
Enforcement; et al,

16 Respondents.
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Case No. **'26CV3667 DMS MMP**

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

1 Petitioner Abebe Alemnew Mengistu, through counsel, petitions for a writ of habeas
2 corpus under 28 U.S.C. § 2241 and alleges:

3 **I. INTRODUCTION**

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- 5 1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because he is detained by
6 federal immigration authorities at the Otay Mesa Detention Center and is being held in
7 violation of the Constitution and laws of the United States.
- 8 2. Respondents' continued detention of Petitioner without a constitutionally adequate,
9 meaningful, and individualized custody determination violates the Due Process Clause of
10 the Fifth Amendment and exceeds the permissible limits of civil immigration detention.
- 11 3. Petitioner is an Ethiopian asylum seeker. He is Amhara and Christian. He fled Ethiopia
12 after suffering and fearing persecution, detention, torture, and other serious harm.
- 13 4. Petitioner entered or presented in the United States at or near Otay Mesa, California, on
14 or about September 8, 2025, seeking protection. He has remained detained at Otay Mesa
15 Detention Center since that time.
- 16 5. Petitioner filed an application for asylum, withholding of removal, and protection under
17 the Convention Against Torture.
- 18 6. On March 10, 2026, the Immigration Judge granted DHS's motion to pretermitt
19 Petitioner's Form I-589 applications based on the safe-third-country / Asylum
20 Cooperative Agreement theory involving Uganda and ordered Petitioner removed to
21 Uganda.
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1 7. Petitioner timely appealed that decision to the Board of Immigration Appeals. The BIA
2 received the appeal on March 28, 2026. The appeal remains pending.

3 8. Petitioner does not ask this Court to review the merits of the Immigration Judge's
4 removal order, decide his asylum claim, decide the safe-third-country issue, or substitute
5 its judgment for the immigration courts on the merits of his protection applications. This
6 Petition challenges only Petitioner's present physical confinement and the lack of
7 constitutionally adequate custody process.

8 9. Petitioner has now been detained without a meaningful individualized bond hearing. His
9 detention is expected to continue for an unknown period while the BIA appeal remains
10 pending and while any further proceedings continue.

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12 10. The length of detention, the uncertain future duration, the restrictive conditions at Otay
13 Mesa Detention Center, and Petitioner's pending appeal make continued detention
14 without a constitutionally adequate bond hearing unreasonable.

15 11. Petitioner requests expedited issuance of an Order to Show Cause under 28 U.S.C. §
16 2243; an order directing Respondents to release Petitioner; or, in the alternative, an order
17 requiring Respondents to provide a prompt constitutionally adequate custody hearing
18 before a neutral adjudicator at which the Government bears the burden of proving by
19 clear and convincing evidence that continued detention is necessary because Petitioner
20 presents a danger or flight risk and that no less restrictive alternative would reasonably
21 address those concerns.

1 **II. JURISDICTION AND VENUE**

2 12. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is “in custody”
3 under color of federal authority within this judicial district and alleges that such custody
4 violates the Constitution and laws of the United States.

5 13. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.

6 14. Venue is proper in this District because Petitioner is detained at Otay Mesa Detention
7 Center in San Diego, California, within the Southern District of California.

8 15. This Petition challenges Petitioner’s present physical confinement and the legality of
9 Respondents’ continuing custody over him. Petitioner does not seek review of the merits
10 of his removal order, his asylum application, his withholding application, his CAT
11 application, or the merits of the safe-third-country issue now pending before the BIA.

12 **III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243**

13 16. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show
14 Cause “forthwith” unless it appears from the petition that Petitioner is not entitled to
15 relief.

16 17. Habeas corpus is the traditional mechanism for testing the legality of executive detention
17 and securing release from unlawful custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484
18 (1973).

19 18. The writ is available to every person detained within the United States. *Hamdi v.*
20 *Rumsfeld*, 542 U.S. 507, 525 (2004).

1 19. Petitioner's detention is ongoing, severe, and time-sensitive. He remains confined while
2 his BIA appeal remains unresolved, and continued detention substantially interferes with
3 his ability to communicate with counsel, gather evidence, and protect his rights.

4 **IV. PARTIES**

5 20. Petitioner Abebe Alemnew Mengistu is a native and citizen of Ethiopia. His A-Number is



7 He is detained by DHS and ICE at Otay Mesa Detention Center in San
8 Diego, California.

9 21. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal
10 Operations, San Diego Field Office. In that official capacity, he is responsible for
11 Petitioner's immigration custody and continued detention within this District. He is sued
12 in his official capacity only.

13 22. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. He has
14 day-to-day physical custody of Petitioner and is sued in his official capacity only.

15 23. Respondent U.S. Department of Homeland Security is the federal agency responsible for
16 implementing and enforcing the Immigration and Nationality Act, including detention
17 and removal.

18 24. Respondent U.S. Immigration and Customs Enforcement is the federal agency
19 responsible for Petitioner's immigration custody and continued detention.
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21 **V. FACTUAL BACKGROUND**

22 26. Petitioner is a native and citizen of Ethiopia.

23 27. Petitioner is Amhara and Christian.
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1 28. Petitioner fled Ethiopia after suffering and fearing persecution, detention, torture, and
2 serious harm.

3 29. Petitioner entered or presented in the United States at or near Otay Mesa, California, on
4 or about September 8, 2025, seeking protection.

5 30. Petitioner has been detained at Otay Mesa Detention Center since approximately
6 September 8, 2025.

7 31. Petitioner is not serving a criminal sentence. His detention is civil immigration detention.

8 32. Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal,
9 also seeking protection under the Convention Against Torture.

10 33. Petitioner's application is based on his fear of persecution, torture, and other serious
11 harm.

12 34. DHS moved to pretermite Petitioner's Form I-589 applications under the safe-third-
13 country / Asylum Cooperative Agreement framework, arguing that Petitioner could be
14 removed to Uganda.

15 35. Petitioner opposed DHS's motion and submitted evidence, including his declaration and
16 Uganda-specific country-conditions evidence.

17 36. The submitted evidence addressed arbitrary arrest, detention in unofficial facilities,
18 torture, repression of perceived political opponents, lack of accountability, Uganda's
19 refusal to grant refugee status to Ethiopian nationals, and the collapse or insufficiency of
20 refugee protection infrastructure.
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1 37. On March 10, 2026, the Immigration Judge granted DHS's motion to pretermi
2 titioner's asylum, withholding of removal, and CAT claims and ordered Petitioner
3 removed to Uganda.

4 38. Petitioner appealed to the Board of Immigration Appeals. The BIA received the appeal on
5 March 28, 2026.

6 39. Petitioner's BIA appeal remains pending.

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8 40. Petitioner's appeal challenges the Immigration Judge's order granting DHS's motion to
9 pretermi his protection applications under the safe-third-country / ACA bar.

10 41. Petitioner argues before the BIA that the Immigration Judge misapplied the law and
11 failed to properly consider evidence that he would likely face persecution, torture,
12 refoulement, or lack of meaningful protection if removed to Uganda.

13 42. Petitioner remains detained at Otay Mesa Detention Center while the BIA appeal is
14 pending.

15 43. Petitioner has now been detained for approximately nine months.

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17 44. Petitioner has not received a constitutionally adequate individualized bond hearing at
18 which the Government was required to justify his continued detention by clear and
19 convincing evidence.

20 45. Petitioner's future detention is uncertain. The BIA appeal may take additional months. If
21 the BIA remands, proceedings may continue before the Immigration Court. If the BIA
22 dismisses the appeal, further review may be sought before the Ninth Circuit. There is no
23 definite end date to Petitioner's detention.
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1 46. Petitioner's detention at Otay Mesa Detention Center is restrictive and resembles penal
2 confinement. He is confined in a secure detention facility even though his detention is
3 civil, not criminal.

4 47. Continued detention substantially burdens Petitioner's ability to communicate with
5 counsel, gather evidence, assist in his appeal, prepare any remand proceedings, and
6 protect his rights.

7 48. Petitioner does not pose a danger to the community or a flight risk that would justify
8 continued detention without constitutionally adequate process.

9 49. Any legitimate government interest can be addressed through less restrictive alternatives,
10 including release on bond, supervision, reporting requirements, electronic monitoring,
11 and compliance with all immigration-court and ICE conditions.
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13 **VI. LEGAL FRAMEWORK**

14 50. Immigration detention is civil and nonpunitive. It may be imposed only to serve
15 legitimate regulatory purposes, such as ensuring appearance at immigration proceedings
16 and protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*
17 *Flores*, 507 U.S. 292, 306 (1993).
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19 51. Civil detention becomes constitutionally problematic when it is excessive in relation to its
20 regulatory purpose or when it continues without adequate procedural safeguards. The
21 Due Process Clause does not permit the Government to detain a person for a prolonged
22 and indefinite period without a meaningful opportunity to contest whether continued
23 detention is necessary.
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1 52. Noncitizens in removal proceedings are entitled to the protections of the Fifth
2 Amendment Due Process Clause. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
3 510, 523 (2003). At minimum, due process requires a meaningful opportunity to be heard
4 before a neutral decisionmaker at a meaningful time and in a meaningful manner.

5 53. The Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), held that
6 the immigration detention statutes may not be rewritten through statutory interpretation to
7 require automatic periodic bond hearings. *Jennings* did not foreclose as-applied
8 constitutional challenges to prolonged immigration detention.

9 54. The Ninth Circuit has recognized that prolonged immigration detention claims require a
10 practical, fact-specific due process analysis. *Rodriguez Diaz v. Garland*, 53 F.4th 1189
11 (9th Cir. 2022). The constitutional inquiry considers the actual circumstances of
12 detention, including the length of confinement, the likely future duration of detention, the
13 reasons for delay, and the adequacy of the procedures already provided.

14 55. The controlling procedural due process framework is *Mathews v. Eldridge*, 424 U.S. 319
15 (1976). Under *Mathews*, courts balance: (1) the private interest affected; (2) the risk of
16 erroneous deprivation under the procedures used and the probable value of additional
17 safeguards; and (3) the Government's interest.

18 56. Petitioner's private interest is substantial. Physical liberty is the most basic interest
19 protected by the Constitution. Petitioner has been detained since approximately
20 September 8, 2025, for about nine months, while pursuing protection claims and a
21 pending BIA appeal. His continued detention separates him from the community, restricts
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1 his freedom, and limits his ability to communicate with counsel, gather evidence, and
2 assist in his own case.

3 57. The risk of erroneous deprivation is high because Petitioner has remained detained for
4 many months without a constitutionally adequate individualized custody hearing.
5 Petitioner has not received a hearing at which the Government was required to prove, by
6 clear and convincing evidence, that continued detention is necessary because he presents
7 a danger to the community or a flight risk.

8 58. The probable value of additional safeguards is substantial. A constitutionally adequate
9 bond hearing would require the Government to identify the lawful basis for continued
10 custody, present evidence supporting any alleged danger or flight risk, and address
11 whether bond or less restrictive alternatives would reasonably serve the Government's
12 interests.

13 59. The Government has legitimate interests in ensuring appearance at immigration
14 proceedings and protecting the community. Those interests, however, do not justify
15 prolonged detention without adequate process. They can be protected through an
16 individualized bond hearing and, where appropriate, conditions of release such as bond,
17 supervision, reporting requirements, electronic monitoring, and compliance with all
18 immigration-court and ICE conditions.

19 60. Courts evaluating prolonged immigration detention commonly consider several factors,
20 including: (1) the total length of detention to date; (2) the likely duration of future
21 detention; (3) the conditions of detention; (4) delays in the removal proceedings caused
22 by the detainee; (5) delays in the removal proceedings caused by the Government; and (6)
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1 the likelihood that removal proceedings will result in a final order of removal. *Kydyrali v.*
2 *Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020); *Gao v. LaRose*, 805 F. Supp. 3d 1106,
3 1111 (S.D. Cal. 2025).

4 61. The total length of detention is often the most important factor. Detention lasting many
5 months without a constitutionally adequate bond hearing weighs strongly in favor of
6 habeas relief. Here, Petitioner has been detained for approximately nine months.

7 62. The likely duration of future detention also weighs in Petitioner's favor. Petitioner's
8 appeal remains pending before the Board of Immigration Appeals. The timing and
9 outcome of that appeal are uncertain. If the BIA remands, proceedings may continue
10 before the Immigration Court. If the BIA dismisses the appeal, further review may
11 follow. There is no definite end date to Petitioner's detention.

12 63. The conditions of confinement also weigh in Petitioner's favor. Petitioner is detained at
13 Otay Mesa Detention Center, a secure detention facility with conditions resembling penal
14 confinement, even though his detention is civil and nonpunitive.

15 64. Petitioner has pursued legitimate legal remedies, including filing protection applications,
16 opposing DHS's safe-third-country / ACA pretermission motion, and appealing the
17 Immigration Judge's order to the BIA. He should not be penalized for pursuing lawful
18 procedures available to him.

19 65. The likelihood that proceedings will result in a final removal order is uncertain because
20 Petitioner's appeal remains pending before the BIA. His removal order is not
21 administratively final in the practical sense relevant to this prolonged-detention analysis
22 because the agency appeal remains unresolved.
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66. Even assuming Respondents contend that Petitioner is detained under 8 U.S.C. § 1225(b), that statute does not authorize prolonged and indefinite detention without constitutional limits. Courts have recognized that mandatory immigration detention may become unconstitutional as applied when detention continues for many months without a meaningful individualized bond hearing. *Kydyrali*, 499 F. Supp. 3d at 772–73; *Gao*, 805 F. Supp. 3d at 1110–11.

67. Due process therefore requires a prompt individualized bond hearing before a neutral adjudicator. At that hearing, the Government must bear the burden of proving by clear and convincing evidence that Petitioner presents a danger to the community or a flight risk. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The adjudicator must also consider ability to pay and less restrictive alternatives to detention. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

68. Because Petitioner’s detention has become prolonged, his future detention is uncertain, the conditions of confinement are restrictive, and he has not received constitutionally adequate custody process, continued detention without a proper bond hearing violates the Fifth Amendment.

VII. CLAIMS FOR RELIEF

GROUND ONE: Violation of the Fifth Amendment Procedural Due Process Clause

— Unreasonably Prolonged Civil Immigration Detention Without a Constitutionally Adequate Bond Hearing

69. Petitioner realleges and incorporates all preceding paragraphs.

1 70. The Due Process Clause prohibits the federal government from depriving any person of
2 liberty without due process of law.

3 71. Petitioner brings this claim as an as-applied constitutional challenge to his continued civil
4 immigration detention.

5 72. Petitioner has been detained since approximately September 8, 2025.
6

7 73. Petitioner is not serving a criminal sentence. His detention is civil immigration detention.

8 74. Civil immigration detention may be used only for legitimate regulatory purposes, such as
9 ensuring appearance at immigration proceedings and protecting the community.

10 75. Petitioner's continued detention has become unreasonably prolonged because he remains
11 confined without a constitutionally adequate individualized bond hearing.

12 76. Petitioner has a substantial liberty interest in freedom from physical confinement.
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14 77. The length of detention weighs strongly in Petitioner's favor. Detention for many months
15 without a meaningful bond hearing creates serious due process concerns.

16 78. The likely duration of future detention also weighs in Petitioner's favor. Petitioner's
17 appeal remains pending before the Board of Immigration Appeals, and there is no certain
18 end date to his immigration proceedings or custody.

19 79. Petitioner's future detention may continue for additional months while the BIA appeal is
20 pending and while any remand, further immigration proceedings, or judicial review
21 occurs.
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1 80. The conditions of detention weigh in Petitioner's favor. Petitioner is detained at Otay
2 Mesa Detention Center, a secure detention facility with conditions resembling penal
3 confinement, even though his custody is civil and nonpunitive.

4 81. Petitioner has pursued legitimate legal remedies, including filing protection applications,
5 opposing DHS's safe-third-country / ACA pretermission motion, and appealing the
6 Immigration Judge's order to the BIA.

7 82. Petitioner should not be penalized for pursuing lawful appeal rights or for attempting to
8 protect his asylum, withholding, and CAT claims.

9 83. The likelihood that proceedings will result in a final removal order remains uncertain
10 because Petitioner's appeal remains pending before the BIA.

11 84. Continued detention without a constitutionally adequate bond hearing violates the Fifth
12 Amendment.

13 85. Petitioner is entitled to habeas relief ordering his release or, in the alternative, a prompt
14 individualized bond hearing before a neutral adjudicator.

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17 **GROUND TWO: Violation of the Fifth Amendment Procedural Due Process Clause**
18 **— Failure to Provide Adequate Safeguards Against Erroneous Detention**

19 86. Petitioner realleges and incorporates all preceding paragraphs.

20 87. Due process requires a meaningful opportunity to contest the factual and legal basis for
21 continued civil confinement before a neutral decisionmaker.

1 88. Petitioner has not received a constitutionally adequate custody hearing at which the
2 Government was required to justify his continued detention by clear and convincing
3 evidence.

4 89. The risk of erroneous deprivation is high because Petitioner remains detained by default
5 while his BIA appeal is pending, without a meaningful individualized determination that
6 detention remains necessary.

7 90. Petitioner's pending appeal challenges the Immigration Judge's March 10, 2026, order
8 granting DHS's motion to pretermitt his asylum, withholding of removal, and CAT claims
9 under the safe-third-country / ACA framework.

10 91. Petitioner submitted evidence in immigration court concerning his fear of persecution,
11 torture, refoulement, and lack of meaningful protection if removed to Uganda.

12 92. Petitioner remains detained while pursuing appellate review of whether the Immigration
13 Judge properly applied the safe-third-country / ACA bar and properly considered the
14 evidence.

15 93. A constitutionally adequate custody hearing would require the Government to identify
16 the lawful basis for continued custody, present evidence supporting any alleged danger or
17 flight risk, and address whether bond or less restrictive alternatives would reasonably
18 serve the Government's interests.

19 94. The Government's interests in ensuring appearance and protecting the community can be
20 protected through an individualized bond hearing and, where appropriate, conditions of
21 release.

1 95. Those conditions may include bond, supervision, reporting requirements, electronic
2 monitoring, and compliance with all immigration-court and ICE conditions.

3 96. Due process requires that the Government bear the burden of proving by clear and
4 convincing evidence that Petitioner presents a danger to the community or a flight risk.

5 97. Due process also requires the adjudicator to consider ability to pay and less restrictive
6 alternatives to detention.

7 98. Without these safeguards, Petitioner faces a substantial risk of erroneous and unnecessary
8 prolonged detention.

9 99. Petitioner is entitled to habeas relief ordering release or a prompt constitutionally
10 adequate custody hearing.

11
12 **GROUND THREE: Violation of 28 U.S.C. § 2241 — Custody in Violation of the**
13 **Constitution and Laws of the United States**
14

15 100. Petitioner realleges and incorporates all preceding paragraphs.

16 101. Section 2241 permits habeas relief where a person is in custody in violation of the
17 Constitution, laws, or treaties of the United States.

18 102. Petitioner is in federal immigration custody at Otay Mesa Detention Center where
19 detention has become unreasonably prolonged.

20 103. Petitioner has not received constitutionally adequate process to test whether continued
21 detention remains necessary.

22 104. Petitioner's continued detention therefore violates the Due Process Clause of the Fifth
23 Amendment.
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1 105. Because Petitioner is in custody in violation of the Constitution and laws of the United
2 States, he is entitled to habeas relief under 28 U.S.C. § 2241.

3 **IX. REQUEST FOR RELIEF**

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5 106. Petitioner respectfully requests that this Court:

6 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
7 respond forthwith;

8 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;

9 C. Order Respondents to release Petitioner immediately;

10 D. Alternatively, order Respondents to provide Petitioner with an individualized bond
11 hearing before an Immigration Judge within fourteen days;

12 E. Order that, at any bond hearing, Respondents bear the burden of proving by clear and
13 convincing evidence that Petitioner presents a danger to the community or a flight risk;

14 F. G. Order Petitioner released if Respondents fail to provide a constitutionally adequate
15 bond hearing within the time ordered by the Court;

16 H. Award reasonable attorney's fees and costs to the extent permitted by law; and

17 I. Grant any other relief the Court deems just and proper.
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20 DATED this June 23, 2026.

21 /s/ Jose Torres
22 Jose Torres
23 *Counsel for Petitioner*
24