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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OBIDKHON ESHONOV,

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center
PATRICK DIVVER, San Diego Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO");
TODD LYONS, Acting Director of
Immigration Customs Enforcement
("ICE");
MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security
("DHS");
TODD BLANCHE, Acting Attorney
General of the United States;
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV4235 DMS SBC

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

Agency Doc. No.: A



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

4 INTRODUCTION

5
6 1. Petitioner, OBIDKHON ESHONOV ("Mr. Eshonov" or "Petitioner"), by and
7 through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241,
8 et seq., to issue a Writ of Habeas Corpus ordering Mr. Eshonov's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Eshonov seeks immediate
11 release from custody because Respondents have held him since November 28,
12 2025—a prolonged period. After his entry into the United States, he was transferred
13 to the Otay Mesa Detention Center and allowed to have his case to move forward. He
14 filed all his required documents and was prepared to have his asylum application
15 heard. Mr. Eshonov's asylum hearing was held on May 13, 2026. The court denied
16 all relief requested at that hearing. On June 11, 2026 the BIA received his appeal. His
17 appeal will take at least another 6 months to a year. This will be anywhere from 14
18 to 20 months. There is no possibility of his removal in the foreseeable future. The
19 purpose of immigration is to ensure the detainee appears at all his hearings. There
20 will be no hearings in the foreseeable future as he awaits the decision on his appeal.
21 There is no purpose for his detention during this period. His continued detention
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1 without a hearing as to flight risk and danger to the community violates the U.S.
2 Constitution and federal law.

3 **CUSTODY**

4 2. Mr. Eshonov is currently in Respondents' legal and physical custody. They are
5 detaining him at the Otay Mesa Detention Center in San Diego, California. He is
6 under Respondents' and their agents' direct control.
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8 **PARTIES**

9 3. Mr. Eshonov is a 42-year-old citizen of Uzbekistan born  He
10 is currently detained at the Otay Mesa Detention Center in San Diego, California.

11 4. Mr. Eshonov is currently in Respondents' legal and physical custody at the
12 Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
13 corporation, operates that facility.
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15 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
16 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
17 day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of
18 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a
19 custodian of Petitioner and is named in his official capacity.

20 6. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in San
21 Diego, California and is named in his official capacity. ICE is the component of the
22 DHS that is responsible for detaining and removing noncitizens according to
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1 immigration law and oversees custody determinations. In his official capacity, he is
2 the legal custodian of Petitioner.

3 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
4 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
5 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
6 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
7 detaining Mr. Eshonov. Respondent Lyons has custodial authority over Mr. Eshonov,
8 who names him in his official capacity.
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10 8. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in
11 her official capacity. DHS is the federal agency responsible for enforcing
12 immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R.
13 § 2.1. Respondent Noem has ultimate custodial authority over Mr. Eshonov, who
14 names her in her official capacity.
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16 9. Respondent Todd BLANCHE is the Acting Attorney General of the United
17 States and the most senior official in the U.S. Department of Justice (DOJ) and is
18 named in his official capacity. He is responsible for the Immigration and Nationality
19 Act’s implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and
20 oversees the Executive Office for Immigration Review, the office that administers
21 Mr. Eshonov’s removal proceedings and is responsible for adjudicating Mr.
22 Eshonov’s asylum application. Mr. Eshonov names him in his official capacity.
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10. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

11. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

JURISDICTION AND VENUE

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

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

14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr. Eshonov's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the

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

20 16. Mr. Eshonov was born in Uzbekistan. In 2024 country-wide human
21 rights abuses were reported by the department of state and other human rights
22 organizations¹.
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24 ¹ Significant human rights issues included credible reports of: arbitrary or unlawful killings; torture or
cruel, inhuman, or degrading treatment or punishment; involuntary or coercive psychological practices;

1 17. Mr. Eshonov has been living with the horror of this unrest and believed
2 if he stayed, his life would be forfeit. As the situation escalated, he realized he would
3 only be safe if he escaped Uzbekistan.

4 18. He made his way to Mexico and finally crossed into the United States on
5 November 28, 2025. He immediately encountered CBP officers and was taken into
6 custody. He has been in detention at Otay Mesa Detention Center since October 23,
7 2025.

8 19. On or about 12/15/2025, Respondents filed a Notice to Appear which
9 commenced Petitioner's removal proceedings. He filed all the required documents
10 and attended all hearings. On May 13, 2026, he finally had his application heard.
11 Unfortunately, the court did not grant any relief to Mr. Eshonov. He timely filed an
12 appeal with the Board of Immigration Appeals. This was received on June 11, 2026.

13 20. There are no further hearings for which Mr. Eshonov's appearance is
14 required. There is no end in sight to Mr. Eshonov's detention ... not because he is a
15 flight risk or a threat to the community. That has never been determined. He
16 remains in detention because the administration insists that all people that lack a
17 green card or citizenship must be detained.
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23 arbitrary arrest or detention; transnational repression against individuals in another country; serious
24 restrictions on freedom of expression and media freedom, including violence or threats of violence
against journalists, unjustified arrests or prosecutions of journalists, and censorship; and prohibiting
independent trade unions or significant or systematic restrictions on workers' freedom of association.
Uzbekistan 2024 Human Rights Report, US Department of State.

1 21. On July 8, 2025, the Department of Homeland Security (“DHS”)
2 instituted a notice titled “Interim Guidance Regarding Detention Authority for
3 Applicants for Admission” (the “Notice”) requiring, in general, that anyone arrested
4 in the United States and charged with being inadmissible to be considered an
5 “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
6 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
7 § 1226(a).
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9 22. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
10 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
11 the Notice unlawful under the Administrative Procedures Act but did not issue a
12 final judgment. On December 18, 2025, however, the *Bautista* court entered final
13 judgement. *Bautista*, ECF No. 94.

14 23. Mr. Eshonov did not try to ask for a bond because IJ’s have consistently
15 ruled that they do not have jurisdiction to redetermine the conditions of custody
16 over individuals who have been apprehended shortly after entering the United
17 States and who have been processed under Section 235(b)(1) expedited removal
18 statute, and who have been placed in removal proceedings. Even after *Maldonado*,
19 *supra*, was decided, Immigration Judges have still held that they do not have
20 jurisdiction to conduct bond hearings. So, at this point in San Diego getting a bond is
21 a game of roulette based on which judge is assigned to your request.
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1 24. Mr. Eshonov has come to believe that his detention will have no end.
2 The only end seems to be that he finally breaks down and agrees to voluntary
3 departure. There is no other logical explanation for what is currently going on.

4 25. Mr. Eshonov's continued detention without a tenable justification and
5 without a demonstration that removal is significantly likely in the reasonably
6 foreseeable future violates constitutional due process. Zadvydas v. Davis, 533 U.S.
7 678 (2001); Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

8 26. The government has failed to effectuate Mr. Eshonov's removal within a
9 reasonable period of time or present any evidence that his removal is significantly
10 likely to occur in the reasonably foreseeable future.

11 27. Mr. Eshonov's detention without a tenable justification violates his
12 rights under the Due Process Clause of the Fifth Amendment.

13 EXHAUSTION OF REMEDIES

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

3 29. Exhausting administrative remedies here is futile because Respondents
4 contend Mr. Eshonov is subject to mandatory detention. Since March of 2026,
5 Immigration Courts in the Southern District have been stayed from implementing
6 the holding of *Maldonado, supra*. As such, any attempts to exhaust administrative
7 remedies would be entirely futile.

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

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17 31. More importantly, every day that Petitioner remains detained causes
18 him harm that cannot be repaired. His continued detention puts his mental health at
19 greater risk, further warranting a finding of irreparable harm and the waiver of the
20 prudential exhaustion requirement. He cannot get the medical attention he requires
21 while he is detained.

22 32. The Court must consider this in its irreparable harm analysis of the
23 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
24 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the

1 petitioner "continues to suffer significant psychological effects from his detention,
2 including anxiety caused by the threats of other inmates and two suicide attempts,"
3 in finding that petitioner would suffer irreparable harm warranting waiver of
4 exhaustion requirement).

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6 **FIRST CAUSE OF ACTION**
7 **Fifth Amendment Due Process Violation**

8 33. Mr. Eshonov re-alleges and incorporates by reference, as if fully set
9 forth herein, the allegations in paragraphs 1-32 above.

10 34. The Supreme Court has long recognized that the Fifth and Fourteenth
11 Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or
12 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
13 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not
14 confined to the protection of citizens."). As stated by the Court, the provisions of the
15 Fourteenth Amendment "are universal in their application, to all persons within the
16 territorial jurisdiction, without regard to any differences of race, of color, or of
17 nationality" *Id.* (emphasis added).

18 35. The Supreme Court has held that "even one whose presence in this
19 country is unlawful, involuntary, or transitory is entitled to that constitutional
20 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]"
21 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
22 (1982) ("Whatever his status under the immigration laws, an alien is surely a
23 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S.

1 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
2 [may not]... be deprived of life, liberty or property without due process of law.”).

3 36. As there is no final order of removal, and there doesn’t appear to be
4 one in the reasonably foreseeable future, Mr. Eshonov may not be removed from the
5 United States. His removal is not reasonably foreseeable, and his detention no
6 longer serves any legitimate purpose under the INA.

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8 37. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
9 District granted habeas relief in a substantially similar case, applying a six-factor
10 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
11 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
12 duration of future detention; (3) conditions of detention; (4) delays in the removal
13 proceedings caused by the detainee; (5) delays in the removal proceedings caused
14 by the government; and (6) the likelihood that the removal proceedings will result
15 in a final order of removal. The court determined that prolonged detention, when
16 considered alongside other due process concerns, can rise to the level of a
17 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

18
19 38. Applying the *Banda* six-factor framework here supports granting Mr.
20 Eshonov’s petition.

21 39. The final factor—finality—strongly supports the grant of this habeas
22 petition. Mr. Eshonov has been languishing in detention for over 8 months with no
23 end in sight.
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1 40. No delay is attributable to Mr. Eshonov. He was ready to defend his
2 application since he arrived. The case has been adjudicated by the immigration
3 court and now there is only the long wait for the appeal process.

4 41. Mr. Eshonov has now been detained by ICE for nearly 8 months since
5 his arrival in the United States on November 28, 2025. This period is well beyond
6 the presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at
7 701. Courts consistently find detention beyond this threshold triggers due process
8 scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75. The likely length of Mr. Eshonov’s
9 detention is extreme if he is forced to remain detained during the appeal process.
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11 42. Conditions of confinement also raise constitutional concerns as the
12 medical treatment available at the Otay Mesa Detention Center is not adequate to
13 address Mr. Eshonov’s health conditions.

14 43. Mr. Eshonov poses no risk of flight and no danger to the community. He
15 has no criminal history, has demonstrated compliance with all prior immigration
16 requirements, and has community support in the United States.
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18 44. Mr. Eshonov’s continued detention without a tenable justification
19 violates his Fifth Amendment right to due process.

20 PRAYER FOR RELIEF

21 Mr. Eshonov asks this Court to grant the following relief:

- 22 1. Issue a Writ of Habeas Corpus ordering Respondents to release
23 Mr. Eshonov from custody immediately or, in the alternative, order
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1 Respondents to conduct a custody redetermination hearing before a
2 neutral third party where Respondents bear the burden, by clear and
3 convincing evidence, to show that Petitioner is either a flight risk or a
4 danger to the community;

5 2. Declare the continued detention of Mr. Eshonov without a tenable
6 justification a violation of the Due Process Clause of the U.S. Constitution;

7 3. Order Respondents to show cause why Mr. Eshonov is being
8 subjected to unlawful and unconstitutional detention; and

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

10 Dated: July 24, 2026

Respectfully submitted,

11 By: /s/ Brian J. McGoldrick
12 Brian J. McGoldrick, Esq.
13 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 24th day of July, 2026, in San Diego, California.

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