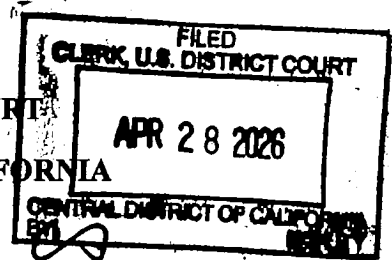


THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA



fee due

KUANDYKULY, ARSEN

Petitioner,

v.

CHRISTOPHER J. LAROSE, in his official capacity as

the Senior Warden of the Otay Mesa Detention Center,

PATRICK LECHLEITNER, Acting Director,

U.S. Immigration and Customs Enforcement.

KRISTI NOEM, Secretary,

U.S. Department of Homeland Security,

Respondents.

CV 26-4680-DOC-ADS

Case No.: _____

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

1. Petitioner KUANDYKULY, ARSEN is in the physical custody of the Respondents at the Otay Mesa Detention Center. This case challenges Petitioner's unlawful and unconstitutional prolonged civil immigration detention. Petitioner respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his unlawful and unconstitutional prolonged civil immigration detention. Petitioner has been detained by the U.S. Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California for over 16 months, without any individualized determination of whether his continued detention is justified.
2. Petitioner applied for admission at Otay Mesa, California on December 16, 2024, and, after passing a credible fear interview, Respondent was inspected by the Patrol officer before entering the U.S. Respondent was Referred to full removal proceedings before the Immigration Court pursuant to INA § 240, 8 U.S.C. § 1229a. He has no criminal record of any kind.
3. Petitioner's continued detention — now exceeding one year — without any reasonable assessment of determination whether Petitioner's release would pose any security or safety concerns violates the Due Process Clause of the Fifth Amendment to the United States Constitution. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), explicitly declined to resolve the constitutional question of whether prolonged detention

under § 1225(b) comports with due process, leaving that question open. This Court should answer it in the negative. No civil detention of over one year — of a person with no criminal record, a pending asylum claim, and no individualized finding of dangerousness or flight risk — can be squared with the constitutional guarantee of liberty.

Petitioner respectfully requests that this Court issue a writ of habeas corpus ordering Respondents to release from its custody, or order that government must bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified.

II. JURISDICTION

This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(1) and (c)(3), which grants federal district courts authority to issue writs of habeas corpus on behalf of persons held "in custody under or by color of the authority of the United States" or "in custody in violation of the Constitution or laws or treaties of the United States."

The Supreme Court in *INS v. St. Cyr*, 533 U.S. 289 (2001), confirmed that § 2241 habeas jurisdiction extends to immigration detainees challenging the legality of their detention.

Although the REAL ID Act of 2005 eliminated habeas review of final orders of removal, it did not eliminate habeas jurisdiction over challenges to the fact or duration of detention itself.

Petitioner does not challenge his underlying removal proceedings; he challenges only the

constitutionality of his prolonged civil detention without an individualized hearing. See *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Furthermore, the Supreme Court in *DHS v. Thuraissigiam*, 591 U.S. 12 (2020), while limiting habeas in the context of challenges to removal proceedings, expressly preserved the traditional core of habeas corpus — challenging the fact and duration of detention. Petitioner's claim falls squarely within that preserved core.

Venue is proper in this District because Petitioner is detained at Otay Mesa Detention Center, located in San Diego, California, within the Southern District of California. See 28 U.S.C. § 2241(d); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must be filed in district where detainee is confined).

III. PARTIES

Petitioner KUANDYKULY, ARSEN is a native and citizen of KAZAKSTAN. He is currently detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154. He is in the custody of the Respondents and brings this petition in his own name.

Respondent CHRISTOPHER J. LAROSE is the Warden of Otay Mesa Detention Center and has immediate custody of Petitioner. The Warden is the proper respondent in this habeas action. See *Padilla*, 542 U.S. at 435.

Respondent Patrick Lechleitner is the Acting Director of U.S. Immigration and Customs Enforcement, an agency within the Department of Homeland Security responsible for Petitioner's detention.

Respondent Kristi Noem is the Secretary of the Department of Homeland Security, which is the agency with overall responsibility for immigration enforcement and detention. All Respondents are sued in their official capacities.

IV. FACTUAL BACKGROUND

A. Petitioner's Entry and Credible Fear Determination

Petitioner ARSEN KUANDYKULY entered the United States inspected by the Border Patrol officer on or about December 16, 2024, near Otay Mesa, California. He was apprehended by U.S. Customs and Border Protection placed in expedited removal proceedings pursuant to INA § 1225(b)(1).

Petitioner expressed a fear of persecution if returned to KAZAKHSTAN. An asylum officer conducted a credible fear interview, and the asylum officer determined that Petitioner demonstrated a credible fear of persecution within the meaning of INA § 235(b)(1)(B)(v), 8 U.S.C. § 1225(b)(1)(B)(v). As a result, Petitioner was referred to the Immigration Court for full removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a.

B. Prolonged Detention Without Individualized Hearing

Since December 17, 2024, Petitioner has been held in civil immigration detention at Otay Mesa Detention Center — a period now exceeding 16 months. Petitioner has no criminal record whatsoever, has no prior deportations, and has consistently complied with all requirements of his detention.

On March 19, 2026, Petitioner was granted INA Withholding of Removal by Honorable Judge Obrien, Leah in Otay Mesa Immigration Court in California. There is no imminent prospect of removal to third country by DHS.

C. Petitioner's Personal Circumstances

Petitioner has his cousin, YERASSYL MURAT, U.S. Permanent Resident, who is willing and able to support Respondent financially and economically providing shelter and food. He poses no danger to the community and no meaningful flight risk. He has demonstrated commitment to his legal case and compliance with all lawful requirements throughout his prolonged detention.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Generally, a petitioner must exhaust available administrative remedies before seeking habeas relief. However, exhaustion is excused where: (1) available administrative remedies are inadequate to provide effective relief; (2) pursuing administrative remedies would be futile; or (3) the petitioner has been denied an opportunity to present his claim administratively. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

Here, exhaustion is excused for multiple independent reasons. First, the claim here is constitutional in nature — whether prolonged detention without an individualized hearing violates due process. Administrative bodies, including the BIA, lack authority to adjudicate constitutional claims or to invalidate the statutes they administer. See *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1292 (10th Cir. 2001).

Second, On March 19, 2026, Petitioner was granted INA Withholding of Removal by Honorable Judge Obrien, Leah in Otay Mesa Immigration Court in California. There is no imminent prospect of removal to third country by DHS.

Third, the delay inherent in any BIA appeal would further extend an already unconstitutionally prolonged detention, itself constituting irreparable harm to Petitioner's liberty.

VI. LEGAL ARGUMENT

ARGUMENT

A. The Fifth Amendment Due Process Clause Prohibits Prolonged Civil Detention Following Immigration Court's Approval of INA Withholding of Removal.

The Due Process Clause of the Fifth Amendment provides that no person shall be "deprived of . . . liberty . . . without due process of law." U.S. Const. amend. V. This protection extends to noncitizens present in the United States. *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

Freedom from physical restraint "has always been at the core of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil detention is subject to substantive due process limitations and may not be punitive. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). When the government detains an individual civilly, it must tether that detention to a regulatory purpose and must not allow detention to become so prolonged as to be punitive. See *Zadvydas*, 533 U.S. at 690.

The Supreme Court has consistently required procedural safeguards commensurate with the significance of the liberty interest at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In the detention context, those safeguards require a minimum an individualized hearing at which the government must justify continued confinement. See *Foucha*, 504 U.S. at 80; *United States v. Salerno*, 481 U.S. 739, 747 (1987).

B. Petitioner's Prolonged Detention Under § 1225(b) Violates Due Process As Applied to Him.

Even accepting that § 1225(b) detention is constitutionally permissible at its outset, the detention of Petitioner for over one year — without any third country designation for his removal or without any individualized determination whether Petitioner poses a flight risk or danger — has become unconstitutional as applied. See *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011) ("[W]hen detention crosses the six-month threshold . . . and release or removal is not imminent, the private interest at stake is profound.").

The constitutional analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), weighs three factors: (1) the private interest affected; (2) the risk of erroneous deprivation through the existing procedures and the probable value of additional procedural safeguards; and (3) the government's interest. All three factors favor Petitioner here.

First, the private interest is at its constitutional apex — physical liberty. Petitioner has been confined for over a year in a detention facility, deprived of his freedom. This interest is "fundamental." *Foucha*, 504 U.S. at 80.

Second, the risk of erroneous deprivation is high. Since Respondent's detention and following the grant of INA Withholding of Removal order there has been no assessment of whether Petitioner actually poses any risk or danger. The categorical application of mandatory detention

to every detainee without regard to individual circumstances, guarantees that some who do not pose risks will be detained — including Petitioner, who has no criminal record, no prior deportations, has had fully complied with all proceedings, and his application for Withholding of Removal was granted.

D. DHS v. Thuraissigiam Does Not Bar Petitioner's Habeas Claim.

Respondents will likely rely on *DHS v. Thuraissigiam*, 591 U.S. 12 (2020), to argue that habeas is unavailable. That reliance is misplaced. *Thuraissigiam* involved a petitioner who used habeas to seek expanded procedural rights in his credible fear proceedings — in essence, to obtain a more favorable decision in his removal proceedings. The Supreme Court held that habeas could not be used to expand substantive rights in removal proceedings beyond what Congress authorized.

Petitioner here seeks nothing of the kind. On March 19, 2026, Petitioner was granted INA Withholding of Removal by Honorable Judge Obrien, Leah in Otay Mesa Immigration Court in California. There is no imminent prospect of removal to third country by DHS.

That is the traditional, core function of the writ of habeas corpus stretching back to its origins. The Supreme Court in *Thuraissigiam* expressly recognized this distinction and preserved habeas for challenges to "the fact or duration of confinement." 591 U.S. at 38. Petitioner's claim falls squarely within this preserved territory.

F. The Government Bears the Burden of Proof That Petitioner is a Security Risk or Danger to the Community.

Should this Court order Petitioner's release, fundamental fairness and constitutional due process require that the government bear the burden of justifying continued detention by clear and convincing evidence. Where liberty is at stake in civil proceedings, the burden of proof must rest with the party seeking deprivation of that liberty. *Addington v. Texas*, 441 U.S. 418, 427 (1979).

In the immigration context, placing the burden on the detained individual to prove he is not a danger or flight risk inverts the constitutional default and creates an unacceptable risk of erroneous deprivation. The government is the party with access to the information supporting detention; the government is the party seeking to maintain detention; and the government is the party whose regulatory interests are served by detention. It should bear the burden. See *Diouf*, 634 F.3d at 1092; *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

VII. REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus ordering Petitioner to be immediately released from

Respondents' custody, and

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

Respectfully submitted,

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KUANDYKULY ARSEN/, pro se
Petitioner