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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Hamed ADABI MOTLAGH,

12 Petitioner,

13 v.

14 Patrick, DIVVER, Field Office Director
15 of Enforcement and Removal
16 Operations, San Diego Field Office,
17 Immigration and Customs Enforcement;
18 Todd M. LYONS, Acting Director, U.S.
19 Immigration and Customs Enforcement;
20 Markwayne MULLIN, Secretary, U.S.
21 Department of Homeland Security; U.S.
22 DEPARTMENT OF HOMELAND
23 SECURITY; Todd BLANCE, U.S.
24 Attorney General; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; Christopher J. LAROSE,
Warden of Otay Mesa Detention Facility,

Respondents.

Case No. '26CV2931 JAO MSB

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner, Hamed Adabi Motlagh, has been detained pending his immigration proceedings for 14 months since on or about March 6, 2025. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. §1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

Petitioner’s detention is not reasonably foreseeable. On January 28, 2026, Petitioner’s application for withholding of removal was granted. The Department of Homeland Security reserved appeal. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years. Petitioner’s detention is not reasonably foreseeable. Petitioner is from Iran, a country with which the United States does not have relations and is currently at war with. Petitioner was granted withholding of removal on January 28, 2026. The Department of Homeland Security reserved appeal. The appeal period lapsed on February 27, 2026 and no appeal was filed. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years.

JURISDICTION

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California.

- 1 2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
2 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the
3 United States Constitution (the Suspension Clause).
- 4 3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
5 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §
6 1651.
- 7 4. The federal district courts have jurisdiction under Section 2241 to hear
8 habeas claims by individuals challenging the lawfulness of their detention by
9 ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).
- 10
- 11

12 VENUE

- 13 5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
14 484, 493- 500 (1973), venue lies in the United States District Court for the
15 Southern District of California, the judicial district in which Petitioner
16 currently is detained.
- 17 6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
18 Respondents are employees, officers, and agencies of the United States, and
19 because a substantial part of the events or omissions giving rise to the claims
20 occurred in the Southern District of California.
- 21

22 REQUIREMENTS OF 28 U.S.C. § 2243

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1 7. The Court must grant the petition for writ of habeas corpus or issue an order
2 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is
3 not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must
4 require respondents to file a return “within three days unless for good cause
5 additional time, not exceeding twenty days is allowed.” *Id.*

6
7 8. Habeas corpus is “perhaps the most important writ known to the
8 constitutional law . . . affording as it does a *swift* and imperative remedy in
9 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
10 (1963) (emphasis added). “The application for the writ usurps the attention
11 and displaces the calendar of the judge or justice who entertains it and
12 receives prompt action from him within the four corners of the application.”
13 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

14
15 **PARTIES**

16 9. Petitioner, Hamed Adabi Motlagh, is currently detained by Respondents in
17 the Otay Mesa Detention Facility. He was granted withholding of removal
18 on January 28, 2026 and has been detained since March 6, 2025, nearly 14
19 months.

20
21 10. Respondent Patrick Divver (“Divver”) is the Director of the San Diego
22 Field Office of ICE’s Enforcement and Removal Operations division. As
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1 such, Divver is Petitioner's immediate custodian and is responsible for
2 Petitioner's detention and removal. He is named in his official capacity.

3 11. Respondent Markwayne Mullin is the Secretary of the Department of
4 Homeland Security. He is responsible for the implementation and
5 enforcement of the Immigration and Nationality Act (INA), and oversees
6 ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate
7 custodial authority over Petitioner and is sued in his official capacity
8

9 12. Respondent Todd Lyons is the Director of ICE. He is responsible for the
10 administration of ICE and the implementation and enforcement of the
11 immigration laws, including immigrant detention. As such, Mr. Lyons is a
12 legal custodian of Petitioner. He is sued in his official capacity.
13

14 13. Respondent Todd Blanche is the Acting Attorney General of the United
15 States. He is responsible for the Department of Justice, of which the
16 Executive Office for Immigration Review and the immigration court system
17 it operates is a component agency. He is sued in his official capacity.
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19 14. Respondent Christopher LaRose ("LaRose") is the Senior Warden at the
20 Otay Mesa Detention Center as Warden of the, where Petitioner is detained.
21 He has immediate physical custody of Petitioner. He is sued in his official
22 capacity.
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STATEMENT OF FACTS

Petitioner, Hamed Adabi Motlagh, is a 33-year-old native and citizen of Iran and was born [REDACTED]. Petitioner experienced harm, mistreatment, and threats in Iran due to his religion. In 2024 and 2025, Petitioner was threatened, detained, and tortured by Iranian officials. Because of these threats and torture, Petitioner left Iran to seek protection in the United States. He entered the United States on or about March 2025, without inspection. He immediately presented himself to Immigration Officials and was detained. He was issued a Notice to Appear on July 1, 2025, after he established a credible fear of persecution,

The Immigration Judge granted his application for withholding of removal on January 28, 2025. The Department of Homeland Security reserved appeal. The appeal period has lapsed and no appeal as filed. Petitioner has no further hearings scheduled.

LEGAL FRAMEWORK

A. Prolonged Detention

II. The Fifth Amendment's Due Process Clause prohibits prolonged immigration detention without a bond hearing

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. "[N]early all district courts

1 that have considered the issue agree that prolonged mandatory detention pending
2 removal proceedings, without a bond hearing, will—at somepoint—violate the
3 right to due process.” *Id.* (cleaned up) (collecting cases). These courts have taken
4 their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the
5 Supreme Court applied the constitutional avoidance canon to hold that persons
6 detained following a final removal order may not be subjected to indefinite
7 detention. *Id.* at 699. Though *Zadvydas*’s holding rests on statutory rather than
8 constitutional grounds, the Court justified its constitutional avoidance approach by
9 describing the serious due process concerns that indefinite detention would
10 occasion:
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13 A statute permitting indefinite detention of an alien would raise a
14 serious constitutional problem. The Fifth Amendment’s Due Process
15 Clause forbids the Government to ‘depriv[e]’ any ‘person ...
16 of ...liberty ... without due process of law.’ Freedom from
17 imprisonment—from government custody, detention, or other forms of
18 physical restraint—lies at the heart of the liberty that that Clause
19 protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this
20 Court has said that government detention violates that Clause unless the
21 detention is ordered in a criminal proceeding with adequate procedural
22 protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or,
23 in certain special and ‘narrow’ nonpunitive ‘circumstances,’ *Foucha*,
24 *supra*, at 80, where a special justification, such as harm-threatening
mental illness, outweighs the ‘individual’s constitutionally protected
interest in avoiding physical restraint.’ *Kansas v. Hendricks*, 521 U.S.
346, 356 (1997).

As the Ninth Circuit put it in *Jennings v. Rodriguez*’s 583 U.S. 281, 297
(2018) wake, these considerations raise “grave doubts that any statute that allows

1 for arbitrary prolonged detention without any process is constitutional or that those
2 who founded our democracy precisely to protect against the government's arbitrary
3 deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252,
4 256 (9th Cir. 2018). The same concerns have led district courts to conclude that
5 immigrants cannot be detained indefinitely without bond hearings pending their
6 immigration proceedings.
7

8 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during "the
9 removal period," which is defined as the 90-day period beginning on "the latest" of
10 either "[t]he date the order of removal becomes administratively final"; "[i]f the
11 removal order is judicially reviewed and if a court orders a stay of the removal of
12 the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen] is
13 detained or confined (except under an immigration process), the date the
14 [noncitizen] is released from detention or confinement."
15

16 Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal
17 period" of noncitizens who have been ordered removed and are deemed to be a risk
18 of flight or danger, the Supreme Court has recognized limits to such continued
19 detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of
20 the Constitution's demands, limits [a noncitizen's] post-removal-period detention
21 to a period reasonably necessary to bring about that [noncitizen's] removal from
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1 the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably
2 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

3
4 In determining the reasonableness of detention, the Supreme Court
5 recognized that, if a person has been detained for longer than six months following
6 the initiation of their removal period, their detention is presumptively unreasonable
7 unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s
8 due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen
9 “provides good reason to believe that there is no significant likelihood of removal
10 in the reasonably foreseeable future, the Government must respond with evidence
11 sufficient to rebut that showing.” *Id.*

13 The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that
14 there be “adequate procedural protections” to ensure that the government’s
15 asserted justification for a noncitizen’s physical confinement “outweighs the
16 ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.*
17 at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the
18 immigration context, the Supreme Court only recognizes two purposes for civil
19 detention: preventing flight and mitigating the risks of danger to the community.
20 *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not
21 detain a noncitizen based on any other justification.
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1 The first justification of preventing flight, however, is “by definition . . . weak
2 or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at
3 690. Thus, where removal is not reasonably foreseeable and the flight prevention
4 justification for detention accordingly is “no longer practically attainable, detention
5 no longer ‘bears [a] reasonable relation to the purpose for which the individual
6 [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As
7 for the second justification of protecting the community, “preventive detention
8 based on dangerousness” is permitted “only when limited to specially dangerous
9 individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at
10 690–91.
11

12
13 Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court
14 should hold continued detention unreasonable and no longer authorized by statute.”
15 *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should
16 consider the risk of the [noncitizen’s] committing further crimes as a factor
17 potentially justifying the confinement within that reasonable removal period.” *Id.*
18 at 700. At a minimum, detention is unconstitutional and not authorized by statute
19 when it exceeds six months and deportation is not reasonably foreseeable. *See*
20 *Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the
21 constitutionality of detention for more than six months” and, therefore, requiring
22 the opportunity for release when deportation is not reasonably foreseeable and
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1 detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386
2 (2005).

3
4 **III. Courts have reached different conclusions about when immigration**
5 **detention becomes indefinitely prolonged, but Petitioner would**
6 **prevail under any standard**

7 Though courts agree that due process mandates a bond hearing when detention
8 grows unreasonably prolonged, they disagree about how to assess whether a
9 particular individual's detention has reached that point. *Sanchez-Rivera v.*
10 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal.
11 Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have
12 "conclude[d]...that detention becomes prolonged after six months and entitles [a
13 petitioner] to a bond hearing." *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019
14 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would
15 automatically qualify, as he has been detained for 14 months. Additionally,
16 Petitioner's detention is not reasonably foreseeable. Petitioner is from Iran, a
17 country with which the United States does not have relations and is currently at
18 war with. Petitioner was granted withholding of removal on January 28, 2026.
19 The Department of Homeland Security reserved appeal. The appeal period lapsed
20 on February 27, 2026 and no appeal was filed.
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1 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
2 WL 139801, at *5-6 (surveying different approaches). Courts generally agree
3 that the relevant factors include:

- 4 (1) “the total length of detention to date,”
5
6 (2) “the likely duration of future detention,” and
7
8 (3) The delays in the removal proceedings caused by the petitioner and the
9 government.”

10 *Id.* Some courts also consider:

- 11 (1) “the conditions of detention,” and
12
13 (2) “the likelihood that the removal proceedings will result in a different
14 final order.”

15 *Id.*; but see *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
16 that the fourth and fifth factors and “not particularly suited to assisting the Court in
17 determining whether detention has become unreasonable and due process requires
18 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with
19 *Lopez*).¹ Petitioner would prevail under any of these factors tests.
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23 ¹ Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-*
24 *Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the
individual is not being removed due to criminal convictions.

1 First, the “most important factor,” the length of detention, favors Petitioner.
2 *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear
3 in mind the context: The detention that is being examined here is the detention of a
4 person who has never been found to pose a danger to the community or to be likely
5 to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn.
6 2019). With that context, courts have granted bond hearings for persons detained
7 between nine and eleven months, shorter than Petitioner’s 11 months in detention.
8 *See Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-RSL-MLP, 2024 WL 1683797,
9 at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-
10 1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
11 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
12 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5
13 (S.D.N.Y. Aug. 20, 2018) (“More than nine months”).
14
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16 Second, Petitioner has reason to anticipate significant future detention
17 during his removal proceedings. The Department of Homeland Security has not
18 filed an appeal following Petitioner’s grant of withholding of removal on January
19 28, 2026. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take
20 up to two years or longer.” *Id.* Petitioner’s continued detention cannot be
21 reasonably related to the purpose of effectuating removal. Because “Petitioner’s
22 future detention can last several more months or even years[,]” this factor favors
23
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1 Petitioner. *Abdul Kadir v. LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654,
2 at *5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).

3 Third, Petitioner did not delay his asylum proceedings, but moved forward
4 expeditiously. He has complied every filing deadline and never filed a motion to
5 continue. He was ultimately granted relief by the Immigration Judge.

7 Fourth, Petitioner conditions of confinement weigh in favor of a bond
8 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor
9 wire and concrete walls in a secured facility, forced to wear a color-coded prisoner
10 jump suit, forbidden from accessing the internet, restricted access to outdoor space,
11 restricted on visitation, and guarded at all times with armed guards authorized to
12 inflict punishment for violations of rule.” *Abdul Kadir*, 2025 WL 2932654, at *5.
13 “Petitioner’s confinement at OMDC is ‘indistinguishable from penal
14 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
15 Supp. 3d at 773).

17 Fifth, the removal proceedings have already resulted in a favorable result for
18 Petitioner, a grant of withholding of removal. Under any test, then, Petitioner is
19 entitled to a bond hearing and an individualized finding as to whether he is a flight
20 risk or a danger to the community.

22 **CLAIM FOR RELIEF**

23 **COUNT ONE**

Violation of Fifth Amendment Right to Due Process

15. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

16. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

17. Petitioner has been detained by Respondents for 14 months.

18. Petitioner’s removal order became administratively final on January 28, 2026. The removal period began on that day and thus elapsed on April 28, 2026.

19. Petitioner’s prolonged detention is not likely to end in the reasonably foreseeable future. The United States does not have relations with Iran the countries are currently at war. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

20. For these reasons, Petitioner’s ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1231(a)

1 21. Petitioner re-alleges and incorporates by reference the paragraphs above as
2 though fully set forth herein.

3 22. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes
4 detention “beyond the removal period” only for the purpose of effectuating
5 removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce
6 removal is no longer reasonably foreseeable, continued detention is no
7 longer authorized by statute.”). Because Petitioner’s removal is not
8 reasonably foreseeable, his detention does not effectuate the purpose of the
9 statute and is accordingly not authorized by § 1231(a).
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12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 14 a. Assume jurisdiction over this matter;
- 15 b. Declare that Petitioner’s ongoing prolonged detention violates the Due
16 Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);
- 17 c. Order that Petitioner shall not be transferred outside the Southern
18 District of California.
- 19 d. Issue a writ of habeas corpus requiring that Respondents release
20 Petitioner immediately;
- 21 e. Alternatively, issue a writ of habeas corpus requiring Respondents to
22 release Petitioner unless they provide a bond hearing within seven
23 days where the government bears the burden of establishing that
24 petitioner poses a risk of flight or danger;

- 1 f. Order that Respondents shall not re-detain or continue to detain
- 2 Petitioner absent a material change in circumstances;
- 3 g. Order that Respondents shall provide Petitioner's counsel with
- 4 advance written notice of their position in advance of any bond
- 5 hearing; and
- 6 h. Award Petitioner attorney's fees and costs under the Equal Access to
- 7 Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other
- 8 basis justified under law; and
- 9 i. Grant any other and further relief that this Court deems just and
- 10 proper.

11
12 DATED this 8 of May 2026

Respectfully Submitted:

13
14 /s/ Tina Malek

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