

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASRA ZAREI,
Petitioner

v.

Christopher LAROSE, Senior Warden, Otay
Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security;

Todd LYONS, Acting Director, U.S. Immigration
and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of
the United States

Respondents.

Case No.: '26CV2932 JAO AHG

Agency File No: 

**PETITION FOR WRIT OF
HABEAS CORPUS AND
REQUEST FOR ORDER TO
SHOW CAUSE WITHIN THREE
DAYS**

INTRODUCTION

1. Petitioner, Asra Zarei  is a native and citizen of Iran who entered the United States without inspection on or about March 11, 2025. She was immediately taken into custody by U.S. immigration authorities and has remained continuously detained by Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center since that time. Petitioner has now been detained for over one year.

2. Petitioner has never been afforded a bond hearing before a neutral adjudicator. The Immigration Court has determined that it lacks jurisdiction to conduct a custody redetermination under INA § 235(b), and as a result, no decisionmaker has ever evaluated whether Petitioner’s continued detention is necessary to serve any legitimate governmental purpose.

3. On April 07, 2026, the Immigration Judge granted Petitioner Withholding of Removal under INA § 241(b)(3), thereby prohibiting her removal to Iran based on her fear of persecution by the Iranian government. Although asylum was denied pursuant to the Circumvention of Lawful Pathways Rule applicable to certain southern border entrants, Petitioner has appealed that determination to the Board of Immigration Appeals. On May 7, 2026, the United States District Court for the Northern District of California reaffirmed its prior order vacating that Rule and concluded that the termination of lawful pathways further confirmed the Rule’s unlawfulness. See *East Bay Sanctuary Covenant v. Trump*, No. 18-cv-06810-JST (N.D. Cal. May 7, 2026).

4. Petitioner nevertheless remains detained pursuant to INA § 235(b), despite the absence of any defined endpoint to her confinement. Her continued detention is therefore not tied to any predictable timeline and may persist for many additional months while appellate proceedings remain pending. Moreover, ongoing armed conflict and instability involving Iran further underscore the uncertainty surrounding the duration and resolution of proceedings in this case.

5. Petitioner’s detention has now become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment. Civil immigration detention is constitutionally permissible only insofar as it bears a reasonable relation to its limited purposes—ensuring appearance at proceedings and protecting the community. At this stage, however, Petitioner’s

1 continued detention is no longer meaningfully connected to those purposes. Instead, it has
2 become effectively indefinite, imposed without any individualized determination of necessity.

3 6. Federal courts, including courts within this District, have recognized that prolonged
4 detention under INA § 235(b) without a bond hearing may violate due process. As detention
5 extends beyond one year—particularly where proceedings remain ongoing and no endpoint is in
6 sight—continued confinement without procedural safeguards becomes constitutionally
7 impermissible.

8 7. Absent habeas relief, Petitioner faces continued detention for an indeterminate period
9 while exercising her statutory right to appeal. The Constitution does not permit such prolonged
10 deprivation of liberty without an individualized determination. Petitioner therefore respectfully
11 requests that this Court issue a writ of habeas corpus ordering Respondents to provide her with a
12 prompt bond hearing before an immigration judge, at which the Government bears the burden of
13 proving by clear and convincing evidence that continued detention is justified. In the alternative,
14 if such a hearing is not provided, Petitioner requests immediate release.

15 **JURISDICTION AND VENUE**

16 8. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody
17 of the Department of Homeland Security within this District and challenges the legality of that
18 custody.

19 9. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises
20 under the Constitution and laws of the United States, including the Immigration and Nationality
21 Act and the Due Process Clause of the Fifth Amendment.

22 10. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
23 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence
24 proceedings, adjudicate cases, or execute removal orders," not independent challenges to
25 unlawful detention. See *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471,
26 482 (1999). Likewise, § 1252(b)(9) does not foreclose habeas review of detention claims that are
27
28

1 independent of, and collateral to, removal proceedings. See *Jennings v. Rodriguez*, 583 U.S. 281,
2 293 (2018).

3 11. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is
4 detained at the Otay Mesa Detention Center in San Diego County, California, which lies within
5 the jurisdiction of this Court.

6 **PARTIES**

7 12. Petitioner, Asra Zarei , is a native and citizen of Iran who is
8 currently and continuously detained at the Otay Mesa Detention Center in San Diego, California.

9 13. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
10 Center.

11 14. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
12 Security (DHS).

13 15. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
14 Enforcement (ICE).

15 16. Respondent Todd Blanche is the Acting Attorney General of the United States and
16 the head of the U.S. Department of Justice (DOJ).

17 17. All Respondents are named in their official capacities.

18 **FACTS**

19 18. Petitioner, Asra Zarei () is a native and citizen of Iran who entered
20 the United States without inspection on or about March 11, 2025, near the southern border.

21 19. Upon entry, Petitioner was immediately taken into custody by U.S. immigration
22 authorities, referred for a credible fear determination, and subsequently transferred to the custody
23 of Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center in San
24 Diego County, California, where she has remained continuously detained since that time.

25 20. Following a positive credible fear determination, the Department of Homeland
26 Security placed Petitioner in removal proceedings pursuant to INA § 240. Petitioner timely filed
27
28

1 an application for asylum and withholding of removal based on her well-founded fear of
2 persecution in Iran.

3 21. On April 07, 2026, the Immigration Judge granted Petitioner Withholding of
4 Removal under INA § 241(b)(3), thereby prohibiting her removal to Iran based on her fear of
5 persecution by the Iranian government.

6 22. Although the Immigration Judge granted Withholding of Removal, the Immigration
7 Judge denied Petitioner's application for asylum based, at least in part, on application of the
8 Circumvention of Lawful Pathways Rule applicable to certain southern border entrants.
9 Petitioner timely appealed the denial of asylum to the Board of Immigration Appeals.

10 23. On May 7, 2026, the United States District Court for the Northern District of
11 California reaffirmed its prior order vacating the Circumvention of Lawful Pathways Rule and
12 concluded that the termination of lawful pathways further confirmed the Rule's unlawfulness.
13 See *East Bay Sanctuary Covenant v. Trump*, No. 18-cv-06810-JST (N.D. Cal. May 7, 2026).

14 24. At no point during her detention has Petitioner been afforded a bond hearing before a
15 neutral adjudicator.

16 25. When Petitioner sought a custody redetermination, the Immigration Judge denied
17 jurisdiction, concluding that Petitioner is detained pursuant to INA § 235(b) and that the
18 Immigration Court lacks authority to conduct a bond hearing in her case.

19 26. As a result, Petitioner has been categorically denied any individualized determination
20 of whether her continued detention is necessary to serve any legitimate governmental purpose.

21 27. Petitioner has no criminal history whatsoever. She has never been charged with,
22 arrested for, or convicted of any crime in the United States or abroad.

23 28. Petitioner has now been detained for over one year without any opportunity to seek
24 release on bond.

25 29. Petitioner remains detained pursuant to INA § 235(b) even though the Immigration
26 Court has granted her Withholding of Removal protecting her from removal to Iran, with no
27 defined endpoint to her confinement.

30. The length of Petitioner's detention is the result of the ordinary course of immigration proceedings, including adjudicatory delays inherent in the system, and not due to any dilatory conduct on her part.

REQUIREMENTS OF 28 U.S.C. § 2243

31. Under 28 U.S.C. § 2243, the Court must either grant the petition for writ of habeas corpus or issue an Order to Show Cause ("OSC") directing Respondents to respond, unless it appears from the petition that Petitioner is not entitled to relief. The statute further provides that any return shall be made "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

32. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. As the Supreme Court explained, the Great Writ is "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

33. The statutory design makes clear that habeas corpus must remain a swift remedy. "The statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit has expressly cautioned against undue delay that would frustrate the remedial purpose of habeas corpus, warning against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.* at 1121.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

34. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement where "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d

1 994, 1000 (9th Cir. 2004)). Petitioner respectfully submits that exhaustion should be excused
2 here because administrative remedies are futile and because her continued detention results in
3 irreparable harm.

4 35. Exhaustion here would be futile. When Petitioner sought custody redetermination, the
5 Immigration Judge denied jurisdiction, concluding that she is detained pursuant to INA § 235(b)
6 and that the Immigration Court lacks authority to conduct a bond hearing in her case.
7 Immigration Judges in this district have consistently held that they lack authority to conduct
8 bond hearings for individuals placed in § 240 proceedings after establishing credible fear. ICE
9 likewise maintains that Petitioner is subject to detention under INA § 235(b) and therefore
10 categorically ineligible for release absent parole. Accordingly, any attempt to exhaust
11 administrative remedies would serve no purpose and should be excused.

12 36. More importantly, every additional day Petitioner remains detained inflicts
13 irreparable harm that cannot be remedied after the fact. Her prolonged confinement causes
14 significant psychological and emotional harm and increases vulnerability to institutional trauma.
15 Courts have recognized that such ongoing deprivation of liberty constitutes irreparable injury
16 warranting waiver of prudential exhaustion. See *De Paz Sales v. Barr*, No. 19-CV-07221-KAW,
17 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020).

18 **CLAIM FOR RELIEF**

19 **COUNT 1**

20 **Violation of the Due Process Clause of the Fifth Amendment**

21 37. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
22 herein.

23 38. The Fifth Amendment to the United States Constitution provides that “[n]o person
24 shall be deprived of life, liberty, or property, without due process of law.”

25 39. Freedom from physical restraint lies at the core of the liberty protected by the Due
26 Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

1 40. Civil immigration detention is constitutionally permissible only when reasonably
2 related to legitimate governmental objectives, such as ensuring appearance at proceedings or
3 protecting the community. Detention that becomes unreasonably prolonged without an
4 individualized determination of necessity violates due process.

5 41. Petitioner has now been detained for over one year without ever receiving a bond
6 hearing before a neutral adjudicator. At no point has any decisionmaker evaluated whether her
7 continued detention is necessary to serve any legitimate governmental purpose.

8 42. Even though the Immigration Court granted Petitioner Withholding of Removal
9 protecting her from removal to Iran, Petitioner continues to be detained pursuant to INA § 235(b)
10 with no defined endpoint to her confinement.

11 43. Petitioner's continued detention is not the result of any dilatory conduct on her part,
12 but rather the ordinary course of immigration proceedings and adjudicatory delays inherent in the
13 system.

14 44. At this stage, Petitioner's detention has become unreasonably prolonged and is no
15 longer reasonably related to its regulatory purposes. Instead, it has become effectively indefinite
16 and imposed without any individualized procedural safeguards.

17 45. Courts in this District have found that detention under 8 U.S.C. § 1225(b) may
18 become constitutionally impermissible well before one year. In *Sarna v. LaRose*, No. 3:26-cv-
19 00921-TWR-MSB (S.D. Cal. Mar. 5, 2026), the Court held that detention of approximately 9.5
20 months without an individualized bond hearing was unreasonably prolonged and violated due
21 process, ordering a bond hearing within fourteen days. Courts in this District have likewise
22 repeatedly granted habeas relief under materially similar circumstances, ordering prompt bond
23 hearings where detention under § 1225(b) became unreasonably prolonged. See, e.g.,
24 *Kunakbaeva v. Warden*, No. 26-cv-660-RSH-JLB (S.D. Cal. Mar. 2, 2026); *Skapenko v. LaRose*,
25 No. 26-cv-2168-RSH-DDL (S.D. Cal. Apr. 15, 2026) ; *Faizi v. LaRose*, No. 25-cv-2974-JO-
26 MSB (S.D. Cal. Apr. 24, 2026); *Sadeqi v. LaRose*, No. 25-cv-2587 (S.D. Cal. 2025); *Shahin v.*
27 *LaRose*, No. 26-cv-2591-AGS-MSB (S.D. Cal. May 1, 2026); *Acha v. LaRose*, No. 26-cv-2532-

1 AGS-JLB (S.D. Cal. Apr. 28, 2026). In *Kunakbaeva*, the Court expressly rejected the
2 government's argument that noncitizens detained under § 1225(b) possess no due process rights
3 beyond those provided by Congress and held that prolonged detention without an individualized
4 bond hearing may violate due process. Courts in this District have likewise recognized that
5 prolonged detention under § 1225(b) becomes constitutionally problematic where detention
6 continues for many months during the ordinary course of removal proceedings and anticipated
7 appellate review. See *Faizi v. LaRose*, No. 25-cv-2974-JO-MSB (S.D. Cal. Apr. 24, 2026). In
8 *Shahin* and *Acha*, the government expressly conceded that prolonged detention under § 1225(b)
9 warranted a bond hearing at which the government bears the burden of proving, by clear and
10 convincing evidence, that continued detention is justified because the petitioner poses either a
11 danger to the community or a flight risk. Here, Petitioner has been detained for over one year, far
12 exceeding the period found constitutionally impermissible in *Sarna*.

13 46. The Government's failure to provide Petitioner with a bond hearing at which it bears
14 the burden of proving, by clear and convincing evidence, that continued detention is justified
15 violates the Due Process Clause of the Fifth Amendment.

16 COUNT 2

17 Violation of the Immigration and Nationality Act (INA)

18 47. Petitioner incorporates by reference the allegations set forth in the preceding
19 paragraphs.

20 48. The Immigration and Nationality Act authorizes detention under 8 U.S.C. § 1225(b)
21 for the limited purpose of facilitating inspection, removal proceedings, and adjudication of
22 claims for relief.

23 49. Although § 1225(b) authorizes detention in certain circumstances, the statute must be
24 applied in a manner consistent with constitutional limitations. See *Jennings v. Rodriguez*, 583
25 U.S. 281 (2018) (recognizing that constitutional challenges to prolonged detention remain
26 available).

1 50. As applied to Petitioner, continued detention for over one year without any
2 opportunity for individualized bond consideration exceeds the permissible scope and purpose of
3 the statute.

4 51. Moreover, Petitioner's detention no longer bears a reasonable relation to the
5 regulatory purposes underlying § 1225(b), particularly where Petitioner has already been granted
6 Withholding of Removal protecting her from removal to Iran and remains detained while
7 appellate proceedings continue.

8 52. Construed in a manner consistent with due process, § 1225(b) does not authorize
9 unreasonably prolonged detention without an individualized determination of necessity before a
10 neutral decisionmaker.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests that this Court:

13 A) Assume jurisdiction over this matter;

14 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
15 District while these proceedings are pending;

16 C) Declare that Petitioner's continued detention without an individualized custody determination
17 violates the Immigration and Nationality Act and the Due Process Clause of the Fifth
18 Amendment;

19 D) Issue a writ of habeas corpus ordering Respondents to provide Petitioner with a prompt bond
20 hearing before an Immigration Judge, at which the Government bears the burden of proving, by
21 clear and convincing evidence, that continued detention is necessary because Petitioner poses
22 either a flight risk or a danger to the community, and at which the Immigration Judge has
23 authority to order release;

24 E) In the alternative, order Petitioner's immediate release if such a bond hearing is not provided
25 within a reasonable time set by the Court;

26 F) Award Petitioner attorney's fees and costs, including under the Equal Access to Justice Act
27 ("EAJA"), 28 U.S.C. § 2412, to the extent applicable and authorized by law; and

1 G) Grant such other and further relief as the Court deems just and proper.

2 Respectfully submitted,

3
4
5
6
7
8 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

9 Alex Monsalve Law Firm, PC

10 240 Woodlawn Ave, Suite 9

11 Chula Vista, CA 91910

12 Phone: (619) 777-6796

13 Email: info@alexmonsalvelawfirm.com

14 Counsel for Petitioner

15 Dated: May 09, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner during multiple personal interviews conducted at the Otay Mesa Detention Center, my review of certain immigration records and proceedings, including the Notice to Appear and Immigration Court records, and communications with Petitioner's immigration counsel.

Based on those communications, records, and my investigation of this matter, and to the best of my knowledge, information, and belief, the factual statements contained in this Petition accurately reflect Petitioner's circumstances and the procedural history of her detention.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner

Dated: May 09, 2026