Elizabeth Rojas Luis, Esq.
La Maestra, CHC
4060 Fairmount Ave.
San Diego, CA 92105
erojas@lamaestra.org
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NURULLAH SAMAR

Petitioner,

v.

CHRISTOPHER LAROSE, Senior Warden, Otay Mesa Detention Center; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; PATRICK DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; TODD BLANCHE, Attorney General, U.S. Department of Justice,

Respondents.

Case No. '26CV4433 JLS DEB

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Nurullah Samar, A# [redacted] is a citizen and national of Turkey.

2. Petitioner entered the United States on January 30, 2026, through the San Ysidro Port of Entry.

3. Petitioner spoke to an immigration official and informed them that he was seeking asylum.

4. Petitioner was placed in custody, given a Credible Fear Interview, then was transferred to the Otay Mesa Detention Center.

5. Petitioner then applied for asylum before the Otay Mesa Immigration Court on May 7, 2026.

6. On July 30, 2026, Petitioner had his Individual Hearing at 10:00 am. A two-hour time slot was allocated for Petitioner. However, Petitioner's hearing began 45 minutes late and was stopped and postponed because of time restraints.

7. Petitioner's new hearing is scheduled for August 27, 2026.

8. Petitioner has been in detention for 6 months now.

9. The Due Process Clause of the Fifth Amendment forbids such arbitrary and prolonged detention. Respondents have not justified Petitioners continued detention at a hearing before a neutral decision maker where the government bears the burden to demonstrate why Petitioner poses a danger or flight risk.

10. Accordingly, Petitioner petitions this Court for a writ of habeas corpus to vindicate his right to due process and to seek relief from continued arbitrary detention

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center in San Diego, California, which is within the jurisdiction of this District.

14. Venue is further proper because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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) (emphasis added).

17. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

18. Petitioner is a citizen and national of Turkey. Petitioner is currently detained at the Otay Mesa Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent, Christopher Larose, is the Warden of the Otay Mesa Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Larose is a legal custodian of Petitioner.

20. Respondent, Todd Lyons, is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

21. Respondent, Patrick Divver, is the Field Office Director for the San Diego Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent Divver is a legal custodian of Petitioner.

22. Respondent Todd Blanche is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

23. This action is commenced against all Respondents in their official capacities.

STATEMENT OF FACTS

24. Petitioner is a thirty-four-year-old [redacted] from Turkey. He was born on July 31, 1992, in the city of Diyarbakir, located in southeastern Turkey, where [redacted]

[redacted]

25. [redacted]

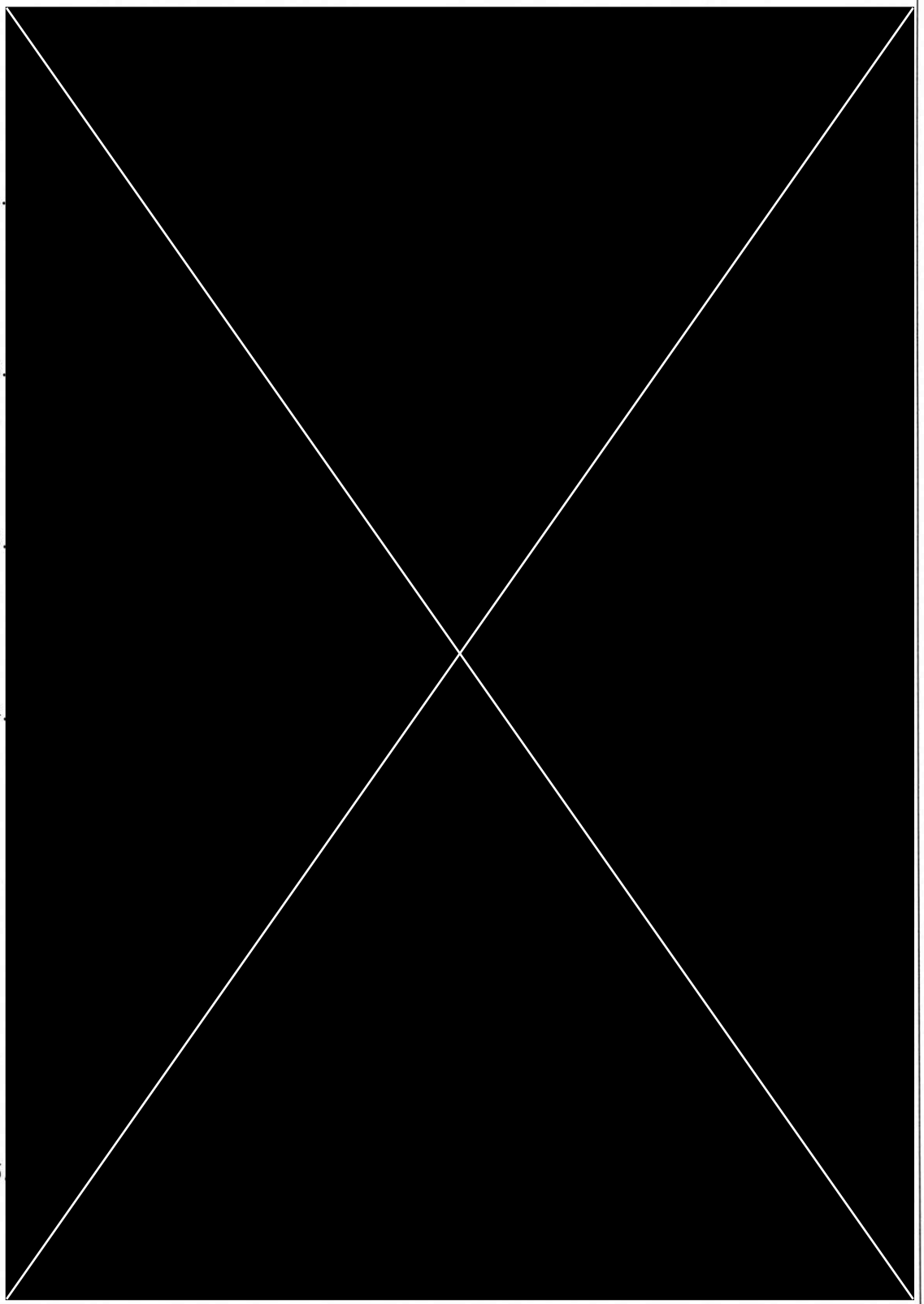
26. [redacted]

27. [redacted]

28. [redacted]

29. After years of the mistreatment, Petitioner had enough and decided to move to the city of İzmir, located in the western part of the country. However, when Petitioner arrived in İzmir, instead of things improving, the situation became the opposite and worsened. Petitioner was harassed by police continuously.

30. [redacted]



36. [redacted]

37. [redacted]

38. [redacted]

39. Petitioner eventually fled the country on January 18, 2026. At first, Petitioner was considering going to Europe, but since it was close to Turkey and Petitioner knew that both the Turkish police and his relatives could easily find him there, he decided to go as far away as possible to a safe place. This decision brought Petitioner to the United States.

40. Petitioner took a plane from Turkey to Morocco. From Morocco, he took another plane to Brazil. From Brazil he took a plane to Cancun, Mexico, with a layover in Colombia. From Cancun, he flew to Mexico City, Mexico, then to Tijuana, Mexico. He stayed in Tijuana for one night before entering the United States on January 30, 2026. His travel took approximately 12 days. Once he reached the San Ysidro Port of Entry, Petitioner was transferred to the Otay Mesa Detention Center.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

41. Petitioner re-alleges and incorporates by reference the paragraphs above.

42. 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.

43. The Due Process Clause requires the government to establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's prolonged detention is justified by clear and convincing evidence of flight risk or danger, even after consideration of whether alternatives to detention could sufficiently mitigate that risk.

44. In Zadvydas v. Davis, the Supreme Court rejected the government's argument that its immigration powers permit it to indefinitely detain noncitizens after the conclusion of removal proceedings. Id. at 695. Since then, the government has repeated that same argument to justify prolonged, indefinite detention pending removal proceedings.

45. Each time, federal courts have roundly rejected it. Every Court of Appeals to consider prolonged detention under INA § 236(c), 8 U.S.C. § 1226(c)—a statute that, like § 1225(b) mandates detention of inadmissible noncitizens pending removal proceedings—holds it limited to a reasonable period by the Due Process Clause. See Sopo v. U.S. Attorney Gen., 825 F.3d 1199 (11th Cir. 2016); Reid v. Donelan, 819 F.3d 486 (1st Cir. 2016); Lora v. Shanahan, 804 F.3d 601 (2d Cir. 2015); Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015); Diop v. ICE/Homeland Sec., 656 F.3d 221 (3d Cir.2011); Ly v. Hansen, 351 F.3d 263 (6th Cir. 2003). None of these decisions distinguishes between previously admitted and inadmissible noncitizens. Instead, they find that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings.

46. In the Second and Ninth Circuits, the reasonable period of § 1226(c) mandatory detention pending removal proceedings ends at six months. Lora, 804 F.3d at 613; Rodriguez, 804 F.3d at 1065. The remaining circuits to have addressed the issue hold detention unreasonable sometime after six months, depending on the facts and circumstances of the case, with nine months "straining any common-sense definition of a limited or brief civil detention." Chavez-Alvarez v. Warden York Cty. Prison, 783 F.3d 469, 477 (3d Cir. 2015).

47. Petitioner's detention has become prolonged as he has been detained for 6 months and faces months of continued detention while his asylum remains pending.

48. For these reasons Petitioner's ongoing prolonged detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 235(b), 8 U.S.C. § 1225(b)

49. Petitioner re-alleges and incorporates by reference the paragraphs above.

50. Under the statutory interpretation doctrine of constitutional avoidance, the Court should construe § 1225(b) as limited to a reasonably brief period, extendable only if the government shows justification for detention at a bond hearing.

51. Though the government's interpretation of § 1225(b) as permitting indefinite mandatory detention is unconstitutional, "[w]hen the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Crowell v. Benson, 285 U.S. 22, 62

(1932); see also Zadvydas, 533 U.S. 678 at 689 (citing Crowell). This doctrine of statutory interpretation is known as constitutional avoidance.

52. "[T]he Supreme Court has instructed that, where one possible application of a statute raises constitutional concerns, the statute as a whole should be construed through the prism of constitutional avoidance." Rodriguez v. Robbins, 715 F.3d 1127, 1141 (citing Clark v. Martinez, 543 U.S. 371, 380 (2005)). "Thus, the dispositive question is not whether the government's reading of § 1225(b) is permissible in some (or even most) cases, but rather whether there is any single application of the statute that calls for a limiting construction." Id.

53. In Martinez, the Court analyzed § 1231(a)(6), a statute it had previously read as a matter of constitutional avoidance to limit mandatory detention after the conclusion of removal proceedings to a presumptively reasonable period of six months. Zadvydas v. Davis, 533 U.S. 678. The same statute applied to both admitted and inadmissible noncitizens, but the government argued that the same limit on detention did not apply to inadmissible noncitizens because they were not entitled to the same constitutional protections. Martinez, 543 U.S. at 380.

54. The text of the statute did not distinguish between the two classes, however, and "[t]o give these same words a different meaning for each category would be to invent a statute rather than interpret one." Id. at 378. Because the same statutory text applied to both groups, and detention for more than six months raised constitutional concerns for at least the admitted noncitizens, every noncitizen subject to the statute was entitled to the same reading limiting mandatory detention. "The lowest common denominator, as it were, must govern." Id. at 380.

55. The government reads § 1225(b) to permit the prolonged detention without a bond hearing of all "arriving aliens," 8 C.F.R. § 1.2., including asylum seekers and certain lawful permanent residents ("LPR") who depart the country and seek admission upon their return. INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (identifying LPRs classified as arriving aliens when returning to the United States after travel abroad); 8 C.F.R. § 1003.19(h)(2)(i)(B) (depriving an immigration judge of jurisdiction over a bond hearing for arriving aliens in removal proceedings).

56. The only Court of Appeals to address detention under § 1225(b) holds that it becomes unreasonably prolonged at six months. Rodriguez, 715 F.3d at 1144. Such a bright-line limit follows the practice of both the Supreme Court and Second Circuit of limiting mandatory immigration detention to the presumptively reasonable period of six months. Zadvydas, 533 U.S. at 701 ("We do have reason to believe . . . that Congress previously doubted the constitutionality of detention for more than six months."); Lora v. Shanahan, 804 F.3d 601, 616 (2d Cir. 2015) ("[W]e hold that[] in order to avoid the constitutional concerns raised by indefinite detention, an immigrant . . . must be afforded a bail hearing before an immigration judge within six months of his or her detention." This Court should therefore find that petitioner, whose mandatory detention exceeds six months, is entitled to a bond hearing.

57. Petitioner's detention is also unreasonably prolonged based on the facts and circumstances of his case, including the overall length of his detention, the promptness of proceedings, the complexity of the case, the reasonable foreseeability of continued, lengthy litigation, and the conditions of confinement. Chavez-Alvarez v. Warden York Cty. Prison,

783 F.3d 469, 474-478 (outlining factors that govern when mandatory detention becomes prolonged).

58. Moreover, delay caused by "individual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish, can nevertheless result in the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." Diop v. ICE/Homeland Sec., 656 F.3d 221, 223.

59. The reasonableness of ongoing detention must also consider "whether an alien challenges aspects of the Government's case that present real issues, for example: a genuine factual dispute; poor legal reasoning; reliance on a contested legal theory; or the presence of a new legal issue." It is impermissible to "effectively punish these aliens for choosing to exercise their legal right to challenge the Government's case against them by rendering the corresponding increase in time of detention as reasonable." Chavez-Alvarez, 783 F.3d at 476.

60. The reasonable foreseeability of continued, lengthy litigation is also relevant to whether Petitioner's current detention is constitutional. Id. at 477-78 (noting that the government "could have reasonably predicted that [the noncitizen's] appeal would take a substantial amount of time, making his already lengthy detention considerably longer").

61. Under either a bright-line rule or the facts and circumstances of this case, petitioner's continued detention is unreasonably prolonged. This Court should therefore conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the Court considers alternatives to detention that could mitigate flight risk. See Leslie v. Attorney Gen. of U.S., 678 F.3d 265, 271 (3d Cir. 2012) (stating that "Leslie's appeal will be remanded to the District Court

with instructions to conduct an individualized bond hearing as required by Diop"); Rodriguez, 804 F.3d 1060, 1086-89 (outlining constitutionally adequate procedural protections at a prolonged detention bond hearing). In the alternative, the Court should order an immigration judge to conduct the bond hearing.

PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;
2) Issue a Writ of Habeas Corpus ordering respondents to release petitioner immediately, on reasonable conditions of supervision if necessary;
3) In the alternative, conduct a bond hearing or remand to the immigration judge for a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered;
4) In the alternative, hold that petitioner's detention is governed by 8 U.S.C. § 1226(a), entitling petitioner to a bond hearing upon request before an immigration judge;
5) Award petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and
6) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Elizabeth Rojas

Counsel for Petitioner

Dated: August 3, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Nurullah Samar, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 3, 2026

Elizabeth Rojas Luis

Elizabeth Rojas Luis, Esq.

Dated: August 3, 2026