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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RENÉ MULUH NDIKUM

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.: '26CV4793 LL JAC

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

Agency Doc. No.: [redacted]

Petitioner, RENÉ MULUH NDIKUM, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner, RENÉ MULUH NDIKUM ("Mr. Ndikum" or "Petitioner"), by and through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Ndikum's release from immigration detention by the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"). Mr. Ndikum seeks immediate release from custody because Respondents have held him since January 22, 2026—a prolonged period. Mr. Ndikum has already had his asylum application adjudicated. He has filed an appeal with the Board of Immigration Appeals. No schedule for his case has been set. This will take at least a year to adjudicate. After his entry into the United States, he was first given a Credible Fear Interview, which he passed. On January 30, 2026, his case was allowed move forward. Since then, he has filed all his required documents. His final hearing was held June 3, 2026. Mr. Ndikum provided his testimony but the Immigration Judge denied him relief on his asylum claim, ordered him removed to Cameroon, but then ordered his withholding of removal based on the Convention Against Torture. He has appealed this decision on June 25, 2026. This will take 6 months to a year to resolve. There is no possibility of his removal in the foreseeable future. His continued detention without a hearing as to

flight risk and danger to the community violates the U.S. Constitution and federal law.

CUSTODY

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

PARTIES

3. Mr. Ndikum is a 29-year-old citizen of Cameroon, born [redacted]. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

4. Mr. Ndikum is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

6. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to

immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271, and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Mr. Ndikum. Respondent Lyons has custodial authority over Mr. Ndikum, who names him in his official capacity.

8. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in his official capacity. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Mullin has ultimate custodial authority over Mr. Ndikum, who names him in her official capacity.

9. Respondent Todd BLANCHE, ACTING Attorney General of the United States is the most senior official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He is responsible for the Immigration and Nationality Act's implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for Immigration Review, the office that administers Mr. Ndikum's removal proceedings and is responsible for adjudicating Mr. Ndikum's asylum application. Mr. Ndikum names him in his official capacity.

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. Ndikum'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. Ndikum'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

Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because Mr. Ndikum seeks the traditional habeas remedy of release from allegedly unlawful detention, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of Mr. Ndikum's detention.

15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here, Mr. Ndikum is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Mr. Ndikum's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

FACTUAL BACKGROUND

16. Mr. Ndikum was born in Cameroon and is a citizen of Cameroon. [redacted] His life is now in danger

[redacted] He realized he could not safely remain in Cameroon and fled the country.

17. He made his way to Mexico and finally crossed the border near Tijuana, on January 22, 2026. He was taken into custody. He has been in detention primarily at Otay Mesa Detention Center since that time.

18. Respondents initially gave Mr. Ndikum a Credible Fear Interview and DHS determined that he did have a credible fear and allowed him to move forward with an asylum application. On January 30, 2026 his Notice to Appear was finally filed and his first Master Calendar was set. He was given an individual hearing on June 3, 2026.

19. At the individual hearing the Immigration Judge determined that Petitioner did not qualify for Asylum and his application was denied. However, the court did grant him Withholding of Removal to Cameroon based on the Convention Against Torture. Mr. Ndikum has appealed this decision to the Board of Immigration Appeals. This appeal was timely filed and it will take a year for it to be adjudicated.

20. There is no end in sight to Mr. Ndikum' detention ... not because he is a flight risk or a threat to the community. That has never been determined. He remains in detention because the administration insists that all people that lack a green card or citizenship must be detained.

21. On July 8, 2025, the Department of Homeland Security ("DHS") instituted a notice titled "Interim Guidance Regarding Detention Authority for

Applicants for Admission" (the "Notice") requiring, in general, that anyone arrested in the United States and charged with being inadmissible to be considered an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C. § 1226(a).

22. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared the Notice unlawful under the Administrative Procedures Act but did not issue a final judgment. On December 18, 2025, however, the *Bautista* court entered final judgement. *Bautista*, ECF No. 94. Subsequent to this an appeal was filed by the Department and the case was put on hold pending the outcome of the appeal.

23. Mr. Ndikum has not had a bond hearing because IJ's have consistently ruled that they do not have jurisdiction to redetermine the conditions of custody over individuals who have been apprehended shortly after entering the United States and who have been processed under Section 235(b)(1) expedited removal statute, and who have been placed in removal proceedings. Even after *Maldonado, supra*, was decided, Immigration Judges have still held that they do not have jurisdiction to conduct bond hearings.

24. Mr. Ndikum has come to believe that his detention will have no end. The only end seems to be that he finally breaks down and agrees to removal. There is no other logical explanation for what is currently going on.

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

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

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

EXHAUSTION OF REMEDIES

28. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "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 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

29. Exhausting administrative remedies here is futile because Respondents contend Mr. Ndikum is subject to mandatory detention even in the face of

Maldonado, supra. As such, any request for a hearing will be denied for lack of jurisdiction. Immigration judges in this district claim to have no jurisdiction to conduct a custody redetermination hearing as to individuals procedurally situated like Mr. Ndikum. Indeed, in contravention to the INA and long-standing precedent and practice, the Board of Immigration Appeals and Attorney General have deemed no noncitizen eligible for bond before an immigration judge (with the exception of only noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust administrative remedies would be entirely futile.

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

31. Every day that Petitioner remains detained causes him harm that cannot be repaired. His continued detention puts his mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. Mr. Ndikum cannot get the medical attention he requires while he is detained.

32. The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-

07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

FIRST CAUSE OF ACTION
Fifth Amendment Due Process Violation

33. Mr. Ndikum re-alleges and incorporates by reference, as if fully set forth herein, the allegations in all paragraphs above.

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

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

'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

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

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

38. Applying the Banda six-factor framework here supports granting Mr. Ndikum's petition.

39. The final factor—finality—strongly supports the grant of this habeas petition. Mr. Ndikum has been languishing in detention for 7 months with no end in sight.

40. There have been no significant delays in the administration of his case so this factor is neutral in the analysis.

41. Mr. Ndikum has now been detained by ICE for 7 months since his arrival in the United States on January 22, 2026. This period is beyond the presumptively reasonable six-month period set forth in *Zadvydas, 533 U.S.* at 701. Courts consistently find detention beyond this threshold triggers due process scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75.

42. Conditions of confinement also raise constitutional concerns as the medical treatment available at the Otay Mesa Detention Center is not adequate to address Mr. Ndikum's health conditions. Even more, this prolonged detention has had a tremendous depressive effect on Mr. Ndikum.

43. Mr. Ndikum poses no risk of flight and no danger to the community. He has no criminal history, has demonstrated compliance with all prior immigration requirements, and has community support in the United States.

44. Mr. Ndikum's continued detention without a tenable justification violates his Fifth Amendment right to due process.

PRAYER FOR RELIEF

Mr. Ndikum asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Ndikum from custody immediately or, in the alternative, to order a bond hearing wherein the Respondents bear the burden of proof to show by clear and convincing evidence that Mr. Ndikum is either a flight risk or

a danger to the community;

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

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

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

Dated: August 21, 2026

Respectfully submitted,

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

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 21st day of August, 2026, in San Diego, California.

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