

1 **BACKGROUND**

2 Petitioner is a native and citizen of Iran. He became a lawful permanent resident in 1985, but
3 was placed in deportation proceedings in Texas for convictions in California and Texas. In 1997,
4 Petitioner's applications for relief from deportation were denied by an Immigration Judge ("IJ"). The
5 IJ's decision was affirmed by the Board of Immigration Appeals ("BIA"), and Petitioner's appeal to
6 the Fifth Circuit Court of Appeals was dismissed for lack of jurisdiction. Petitioner was deported in
7 1998.

8 At some point after deportation, Petitioner reentered the United States. In 2005, he was
9 apprehended near San Diego and placed in removal proceedings. After these proceedings commenced,
10 DHS discovered the 1997 deportation order and sought to terminate the Petitioner's removal
11 proceedings. The IJ terminated the removal proceedings and Petitioner was released from custody.
12 Petitioner challenged the termination of his removal proceedings, but the IJ's decision was affirmed
13 by the BIA and the Ninth Circuit Court of Appeal dismissed the petition for review. Petitioner filed
14 the instant Petition shortly after the Ninth Circuit dismissed his petition for review. DHS has not yet
15 sought to reinstate the 1997 deportation order.

16 **DISCUSSION**

17 Section 2241 includes a custody requirement. 28 U.S.C. § 2241(c) (prohibiting the extension
18 of a writ of habeas corpus "to a prisoner unless . . . [h]e is in custody"). While "the use of habeas
19 corpus has not been restricted to situations in which the applicant is in actual physical custody," it does
20 not extend as far as Petitioner seeks to take it here. *Justices of Boston Municipal Court v. Lyndon*, 466
21 U.S. 294, 300 (1984). Courts have extended the boundaries of "in custody" to include those: held on
22 unchallenged charges facing new challenged charges; subject to conditions of pretrial release; released
23 on personal recognizance; and required to attend rehabilitation classes. *Id.* at 300-01 (personal
24 recognizance); *Wilson v. Belleque*, 554 F.3d 816, 822 (9th Cir. 2009) (detained based on unchallenged
25 charges facing new charges); *Means v. Navajo Nation*, 432 F.3d 924, 928 (9th Cir. 2005) (pretrial
26 release); *Dow v. Circuit Court of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 2001) (classes). In each
27 instance, the petitioner is subject to some restrictions or conditions in exchange for release from
28 physical custody.

