

1 Brian J. McGoldrick (California #169104)
2 Counsel for the Petitioner
3 4916 Del Mar Avenue
4 San Diego, CA 92107
5 (619) 675-2366
6 attorney@brianmcgoldrick.com

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **MOHAMMAD ZUBAIR SABER,**
10 **Plaintiff,**

11 vs.

12 **CHRISTOPHER LAROSE, warden of**
13 **Otay Mesa Detention Center**
14 **DANIEL A. BRIGHTMAN, San Diego**
15 **Field Office Director, Immigration and**
16 **Customs Enforcement and Removal**
17 **Operations (“ICE/ERO”);**
18 **TODD LYONS, Acting Director of**
19 **Immigration Customs Enforcement**
20 **(“ICE”);**
21 **KRISTI NOEM, Secretary of the**
22 **Department of Homeland Security**
23 **(“DHS”);**
24 **PAMELA BONDI, Attorney General of**
25 **the United States,**
26 **U.S. DEPARTMENT OF HOMELAND**
27 **SECURITY;**
28 **U.S. IMMIGRATION AND CUSTOMS**
ENFORCEMENT;

Respondents.

Case No.: '25CV3431 JLS DEB

Agency Number: 

**PETITION FOR WRIT OF HABEUS
CORPUS**

ORAL ARGUMENT REQUESTED

**EXPEDITED HEARING
REQUESTED**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1. The Taliban are a radical insurgent group that the United States, alongside the legitimate government of Afghanistan, has been battling for nearly 20 years. In August of 2021, the Taliban successfully took over the entire country when they entered and took control of Kabul, the capital of Afghanistan.

2. Mr. Saber was a minor in Afghanistan when the Taliban took over. His life there was a dangerous one and his family decided he should flee from Afghanistan and come to live with his relatives in the United States where he would be safe.

3. Mr. Saber eventually made his way to Mexico and waited in Mexico City for a time. Mr. Saber was a minor and did not need to wait for a CBP One appointment. He made his way into the United States to seek asylum. He was apprehended and initially kept in a facility for juveniles. The Office of Refugee Resettlement managed his case and he was eventually paroled from detention into the care of his brother on 01/20/2023. On information and belief he has attended all immigration hearings and check ins since that time.

4. Petitioner is a member of the class of noncitizens subject to the J.O.P. settlement agreement. This allowed petitioner to file his asylum case with


1 USCIS, to obtain work authorization and proceed with his quest for asylum
2 without any further involvement of EOIR.
3

4 5. On October 3, 2025, petitioner was driving home, heading north on
5 Interstate 5. He realized he needed gas and exited the 5 in Oceanside. After he
6 exited he came upon a military checkpoint on the highway in Oceanside. When he
7 approached he was asked for his ID and then was asked if he had a green card. He
8 explained that he did not have a green card but had applied for asylum, had work
9 authorization and was lawfully in the United States. Without any explanation he
10 was directed to move over to the side of the lane. He asked several times if he was
11 free to go. He was told he could not leave. The officers detaining him then took his
12 picture and his fingerprints. They also took a photo of his vehicle. He asked how
13 much longer he was being stopped and the officers just told him they needed to
14 collect more information and do an interview. No base personal ever explained
15 what law he had violated that allowed them to hold him their prisoner. He was told
16 simply to wait. He was held against his will for nearly 3 hours. He asked several
17 times during his imprisonment if he could leave but the Military Police said no. He
18 was then handcuffed and placed in the Military Police vehicle. He was not told
19 why he was arrested. He was not told what law he had violated. He was not
20 advised of his Miranda rights. Finally, ICE arrived and put him in their vehicle
21
22
23
24
25
26
27

1 referred to as “perhaps the most important writ known to the constitutional law of
2 England, affording as it does a swift and imperative remedy in all cases of illegal
3 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

4
5 16. Petitioner is “in custody” for the purpose of § 2241 because he is
6 arrested and detained by Respondents.
7

8 **PARTIES**

9
10 17. Mohammad Zubair Saber (“Petitioner”) is a 19-year-old citizen of
11 Afghanistan born  He is a resident of San Diego, California,
12 and is present within the state of California as of the time of the filing of this
13 petition.
14

15 18. Respondent Christopher Larosse is the Warden of the Otay Mesa
16 Detention Center and is a legal custodian of Petitioner.
17

18 19. Respondent Daniel A. Brightman, is the Field Office Director for
19 the San Diego Field Office, Immigration and Customs Enforcement and Removal
20 Operations (“ICE”). The San Diego Field Office is responsible for local custody
21 decisions relating to non-citizens charged with being removable from the United
22 States, including the arrest, detention, and custody status of non- citizens. The San
23 Diego Field Office’s area of responsibility includes San Diego, California and the
24
25

1 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
2 Petitioner.
3

4 20. Respondent Todd Lyons is the acting director of U.S. Immigration
5 and Customs Enforcement, and he has authority over the actions of respondent
6 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
7 Petitioner.
8

9 21. Respondent Kristi Noem is the Secretary of the Department of
10 Homeland Security (DHS) and has authority over the actions of all other DHS
11 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
12 legal custodian of Petitioner and is charged with faithfully administering the
13 immigration laws of the United States.
14
15

16 22. Respondent Pamela Bondi is the Attorney General of the United
17 States, and as such has authority over the Department of Justice and is charged
18 with faithfully administering the immigration laws of the United States.
19
20

21 23. Respondent U.S. Immigration Customs Enforcement is the federal
22 agency responsible for custody decisions relating to non-citizens charged with
23 being removable from the United States, including the arrest, detention, and
24 custody status of non-citizens.
25
26
27

1 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
2 to present evidence to establish eligibility.).
3

4 32. Noncitizens seeking asylum are guaranteed Due Process under the
5 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
6 (1993).
7

8 33. Noncitizens who are applicants for asylum are entitled to a full
9 hearing in immigration court before they can be removed from the United States. 8
10 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
11 appellate review before the Board of Immigration Appeals of removal orders
12 entered against them and judicial review in federal court upon a petition for
13 review. 8 U.S.C. § 1252(a) *et seq.*
14
15

16 34. Immigration detention is a form of civil confinement that
17 “constitutes a significant deprivation of liberty that requires due process
18 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
19
20

21 35. Immigration detention should not be used as a punishment and
22 should only be used when, under an individualized determination, a noncitizen is a
23 flight risk because they are unlikely to appear for immigration court or a danger to
24 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
25
26

1 36. Parole must be terminated upon written notice after an
2 individualized determination that the humanitarian purposes no longer apply. 8
3 C.F.R. § 212.5(e)(2)(i).
4

5
6 **FACTUAL BACKGROUND**
7

8 37. Petitioner is a citizen of Afghanistan. He was born [REDACTED]
9 [REDACTED] in Afghanistan.
10

11 38. Petitioner was threatened with death in Afghanistan by [REDACTED]
12 and other terrorists in Afghanistan.
13

14 39. On or about December 21, 2022 Petitioner entered the United
15 States to seek asylum. He was detained in a juvenile reception center. On January
16 29, 2023 Respondents granted him parole and released him into the United States,
17 based on the individualized facts in his case, under 8 U.S.C. § 1182(d)(5) and
18 released him from custody pursuant to the same statute.
19

20 40. It was determined that Petitioner is a member of the J.O.P. class of
21 unaccompanied minors and that his case is properly under the jurisdiction of
22 USCIS and not EOIR.
23

24 41. On December 12, 2024, Judge Grande granted a motion to
25 terminate his removal proceedings to allow him to pursue his claims affirmatively
26
27

1 while he enjoyed his humanitarian parole. The order dismissing case was entered
2 on December 12, 2024.

3
4 42. On information and belief, Petitioner regularly complied with and
5 appeared for ICE check-ins.

6
7 43. Petitioner applied for affirmative asylum with USCIS on
8 December 12, 2024. The acknowledgement of receipt sent to the petitioner from
9 respondents in paragraph 2 reads “You may remain in the United States until your
10 asylum application is decided.” The next step in his case is to attend an asylum
11 interview with USCIS.

12
13
14 44. Subsequently, Respondents issued work authorization to Petitioner
15 pursuant to 8 C.F.R. § 274a.12(c)(08).

16
17 45. On October 3, 2025, Mr. Saber was attempting to get gas for his
18 car in Oceanside. When he exited the freeway he was stopped at an army
19 checkpoint. This was on the highway in the city of Oceanside and NOT at the
20 Camp Pendleton entry gate. The Military officers asked for his identification and
21 then asked about his immigration status. They directed him to pull over. They took
22 his picture and his fingerprints and a picture of his car. He asked several times if he
23 could leave and the officers said no. They informed him that they were holding
24 him because he did not have a green card. Mr. Saber produced copies of his
25
26
27

1 documents and his work authorization proving that he was legally here in the
2 United States and the officers had no reason to detain him. He was held their
3 prisoner for approximately three hours.
4

5 46. Eventually the Military Police put Mr. Saber in handcuffs. When
6 ICE arrived they handed him over to the ICE officers who then put him in their
7 vehicle, and transported him to their downtown San Diego holding area. He was
8 never given a written notice that his parole was being terminated. He was not given
9 any particularized reason for why he was being placed into detention. He was
10 never presented with a warrant for his arrest. He was never given any Miranda
11 warnings. He was eventually transported to Otay Mesa Detention Center 3 days
12 later. On October 7, 2025, four days after he was detained, a new Notice to Appear
13 was filed with the court. This act took jurisdiction of his asylum application away
14 from USCIS, basically denying his petition without review or consideration. Mr.
15 Saber must now begin his asylum application process again while in detention.
16
17
18
19
20

21 47. Mr. Saber was never presented with a warrant for his arrest. The
22 ICE agents did not provide him any process. The ICE agents did not offer him any
23 opportunity to be heard prior to arresting and detaining him.
24

25 48. On January 20, 2025, President Donald Trump issued several
26 executive actions relating to immigration, including “Protecting the American
27

1 People Against Invasion,” an executive order (EO) setting out a series of interior
2 immigration enforcement actions. The Trump administration, through this and
3 other actions, has outlined sweeping, executive branch-led changes to immigration
4 enforcement policy, establishing a formal framework for mass deportation. The
5 “Protecting the American People Against Invasion” EO instructs the DHS
6 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
7 prioritize civil immigration enforcement procedures including through the use of
8 mass detention.
9
10
11

12 49. On information and belief, Respondents are detaining Petitioner
13 regardless of the individual facts and circumstances of his case.
14

15 50. On information and belief, Respondents are using the immigration
16 detention system as a means to punish individuals for asserting rights under the
17 Refugee Act.
18

19 51. On information and belief, Petitioner has no criminal history.
20

21 **CLAIMS FOR RELIEF**

22 **COUNT ONE**

23 **Violation of Fifth Amendment Right to Due Process**

24 **Procedural Due Process**

1 52. Petitioner restates and realleges all paragraphs as if fully set forth
2 here.

3
4 53. The Due Process Clause of the Fifth Amendment to the U.S.
5 Constitution prohibits the federal government from depriving any person of “life,
6 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
7 process protects “all ‘persons’ within the United States, including [non-citizens],
8 whether their presence here is lawful, unlawful, temporary, or permanent.”
9
10 *Zadvydas*, 533 U.S. at 693.

11
12 54. Due process requires that government action be rational and non-
13 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

14
15 55. While asylum is a discretionary benefit, the right to apply is not. 8
16 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United
17 States or who arrives in the United States (whether or not at a designated port of
18 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*
19

20
21 56. Because the denial of the right to apply for asylum can result in
22 serious harm or death, the statutory right to apply is robust and meaningful. It
23 includes the right to legal representation, and notice of that right, *see id.* §§
24 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of
25 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision
26
27

1 **Not in Accordance with Law and in Excess of Statutory Authority**

2 **Unlawful Detention**

3
4 59. Petitioner restates and realleges all paragraphs as if fully set forth
5 here.

6
7 60. Under the APA, a court shall “hold unlawful and set aside agency
8 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

9
10 61. An action is an abuse of discretion if the agency “entirely failed to
11 consider an important aspect of the problem, offered an explanation for its decision
12 that runs counter to the evidence before the agency, or is so implausible that it
13 could not be ascribed to a difference in view or the product of agency expertise.”

14
15 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
16 (*quoting Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
17 463 U.S. 29, 43 (1983)).

18
19 62. To survive an APA challenge, the agency must articulate “a
20 satisfactory explanation” for its action, “including a rational connection between
21 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
22 2569 (2019) (citation omitted).

1 69. The Due Process Clause of the Fifth Amendment to the U.S.
2 Constitution prohibits the federal government from depriving any person of “life,
3 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
4 process protects “all ‘persons’ within the United States, including [non-citizens],
5 whether their presence here is lawful, unlawful, temporary, or permanent.”
6 *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.

7
8
9 70. Due process requires that government action be rational and non-
10 arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

11
12 71. While the government has discretion to detain individuals under 8
13 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
14 discretion is not “unlimited” and must comport with constitutional due process. See
15 *Zadvydas*, 533 U.S. at 698.

16
17
18 72. Here, Respondents have chosen to revoke Petitioner’s release in
19 an arbitrary manner and not based on a rational and individualized determination
20 of whether he is a safety or flight risk, in violation of due process. Because no
21 individualized custody revocation has been made and no circumstances have
22 changed to make Petitioner a flight risk or a danger to the community,
23 Respondents’ revocation of Petitioner’s release violates his right to procedural due
24 process.
25
26
27

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner’s detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that the denial of petitioner’s affirmative asylum claim by detaining him and commencing new 240 removal proceedings without an individualized determination to return him to 240 removal proceedings violates the Due Process Clause of the Fifth Amendment;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from enrolling the Petitioner in any Alternative to Detention program, specifically prohibiting the requirement for an ankle monitor.

1 (7) Issue an Order prohibiting the Respondents from transferring
2 Petitioner from the district without the court's approval;
3

4 (8) Grant any further relief this Court deems just and proper.
5

6
7 Dated: December 4, 2025.

/s/ Brian J. McGoldrick
BRIAN J. MCGOLDRICK, ESQ.
CASB # 169104
attorney@brianmgoldrick.com
4916 Del Mar Avenue
San Diego, CA 92107
Telephone: +1 619-675-2366
Attorney for Petitioner