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

9 KAMAL ABDUL NASIR KAROKHEL,

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
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

25 Respondents.

Case No.: '25CV3751 JLS KSC

Agency Number



PETITION FOR WRIT OF HABEAS
CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING
REQUESTED

1 **INTRODUCTION**

2 1. The Taliban are a radical insurgent group that the United States,
3 alongside the legitimate government of Afghanistan, has been battling for nearly
4 20 years. In August of 2021, the Taliban successfully took over the entire country
5 when they entered and took control of Kabul, the capital of Afghanistan.
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8 2. Many Afghans worked with the United States in a myriad of ways
9 to help in the fight against the Taliban and to make Afghanistan a better place. The
10 Petitioner's family was very closely aligned with the US mission. [REDACTED]
11

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] After the country fell to the Taliban, the new rulers began a systematic
15 campaign to punish, persecute and even kill those that cooperated with the pre-
16 August 2021 government. [REDACTED]
17

18 [REDACTED] The Petitioner believed that life in Afghanistan was too dangerous for him
19 and his family. He fled first to Islamabad. He eventually made his way to Mexico.
20

21 3. On April 15, 2023, Mr. Karokhel entered the United States. He was
22 briefly held by the authorities. It was determined then he was not a flight risk and
23 not a danger to the community and he was released into the United States on his
24 own recognizance. He was also placed in an Alternative to Detention program. He
25 was given a phone and application that he used to check in with ICE on a regular
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1 basis. This lasted for about 4 months. Eventually, because of his regular check ins
2 and compliance with the system, he was released from the ATD program and ICE
3 took the phone back.
4

5 4. Respondents commenced removal proceedings against him in
6 immigration court upon his initial entry. However, on January 31, 2024, these
7 proceedings were dismissed. At the time the government was dismissing removal
8 proceedings for Afghans that qualified for Temporary Protective Status. This
9 allowed the petitioner to apply for TPS but also to proceed with their asylum
10 application with USCIS. This was a huge benefit to the petitioner because he now
11 had two chances to gain asylum. First with USCIS and if that was not approved,
12 he would have a second, *de novo* opportunity to present his asylum case to an
13 immigration judge. Subsequently the petitioner filed with USCIS and also was able
14 to obtain work authorization and proceed with his quest for asylum without any
15 further involvement of EOIR.
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21 5. On December 10, 2025, Mr. Karokhel appeared for a regularly
22 scheduled ICE check in. He arrived at 10:00 a.m. as instructed and waited until
23 nearly 4:30 p.m. when he was finally called back to see an officer. He was
24 immediately detained and eventually sent to the Otay Mesa Detention Center. He
25 was not presented with any notice that his liberty was being taken from him. He
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27

1 was not informed what had changed in his case that he was now considered a flight
2 risk or danger to the community. He was simply shackled and led off to detention.
3

4 6. Respondents now seek to eject Mr. Karokhel from his own asylum
5 case, detain him, force him to seek only defensive asylum and to remain in custody
6 for that entire process. Respondents do so based not on Mr. Karokhel's personal
7 circumstances or individualized facts, nor due to any mistake made by previously
8 dismissing his 240 removal proceedings, but because of Respondents'
9 interpretation of President Trump's whim and categorical determination that, the
10 Fifth Amendment notwithstanding, noncitizens are not entitled to due process.
11
12

13 7. But Respondents cannot evade the law so easily. The U.S.
14 Constitution requires the Respondents provide at least the rights available to him
15 when he was granted Parole and when he filed his application for asylum¹.
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18 8. Accordingly, to vindicate Petitioner's rights, this Court should grant
19 the instant petition for a writ of habeas corpus. Mr. Karokhel asks this Court to find
20 that Respondents' attempt to detain him are arbitrary and capricious and in
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25 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
26 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
27 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It
28 seems—it might say that, but if you're talking about that, then we'd have to have a million or 2
million or 3 million trials.").

1 violation of the law, and to immediately issue an order preventing his transfer out
2 of this district.

4 JURISDICTION

5 9. This action arises under the Constitution of the United States and
6 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
7

8 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
9 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
10 United States Constitution (Suspension Clause).
11

12 11. This Court may grant relief under the habeas corpus statutes, 28
13 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
14 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
15 U.S.C. § 1252(e)(2).
16
17

18 VENUE

19 12. Venue is proper because Petitioner is in Respondents' custody in
20 San Diego, California. Venue is further proper because a substantial part of the
21 events or omissions giving rise to Petitioner's claims occurred in this District,
22 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
23
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25 13. For these same reasons, divisional venue is proper under Local
26 Rule HC.1
27

1 22. Respondent Pamela Bondi is the Attorney General of the United
2 States, and as such has authority over the Department of Justice and is charged
3 with faithfully administering the immigration laws of the United States.
4

5 23. Respondent U.S. Immigration Customs Enforcement is the federal
6 agency responsible for custody decisions relating to non-citizens charged with
7 being removable from the United States, including the arrest, detention, and
8 custody status of non-citizens.
9

10 24. Respondent U.S. Department of Homeland Security is the federal
11 agency that has authority over the actions of ICE and all other DHS Respondents.
12

13 25. This action is commenced against all Respondents in their official
14 capacities.
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18 **LEGAL FRAMEWORK**

19 26. The Refugee Act of 1980, the cornerstone of the U.S. asylum
20 system, provides a right to apply for asylum to individuals seeking safe haven in
21 the United States. The purpose of the Refugee Act is to enforce the “historic policy
22 of the United States to respond to the urgent needs of persons subject to
23 persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
24 212, 94 Stat. 102 (1980).
25
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1 asylum to any noncitizen “who is physically present in the United States or who
2 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
3

4 31. Because of the life-or-death stakes, the statutory right to apply for
5 asylum is robust. The right necessarily includes the right to counsel, at no expense
6 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
7 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
8 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
9 to present evidence to establish eligibility.).
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11

12 32. Noncitizens seeking asylum are guaranteed Due Process under the
13 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
14 (1993).
15

16 33. Noncitizens who are applicants for asylum are entitled to a full
17 hearing in immigration court before they can be removed from the United States. 8
18 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
19 appellate review before the Board of Immigration Appeals of removal orders
20 entered against them and judicial review in federal court upon a petition for
21 review. 8 U.S.C. § 1252(a) *et seq.*
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1 34. Immigration detention is a form of civil confinement that
2 “constitutes a significant deprivation of liberty that requires due process
3 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
4

5 35. Immigration detention should not be used as a punishment and
6 should only be used when, under an individualized determination, a noncitizen is a
7 flight risk because they are unlikely to appear for immigration court or a danger to
8 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
9
10

11 36. Parole must be terminated upon written notice after an
12 individualized determination that the purposes no longer apply. 8 C.F.R. §
13 212.5(e)(2)(i).
14

15
16 **FACTUAL BACKGROUND**
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18 37. Petitioner is a citizen of Afghanistan. He was born  1988
19 in Afghanistan.
20

21 38. Petitioner was threatened with death in Afghanistan 
22 

23 39. On or about April 15, 2023, Petitioner entered at San Ysidro,
24 California to seek asylum. On April 15, 2023, Respondents granted his release into
25 the United States on his own recognizance, a form of parole and released him into
26
27

1 the United States, based on the individualized facts in his case, under 8 U.S.C. §
2 1182(d)(5) and released him from custody pursuant to the same statute. He was
3 also enrolled in an Alternative to Detention program which was discontinued after
4 approximately 4 months.
5

6
7 40. On or about May 31, 2023, Respondents commenced removal
8 proceedings against Petitioner under 8 U.S.C. § 1229a in San Diego, California.
9

10 41. On January 31, 2024, the court terminated his removal
11 proceedings to allow him to pursue his claims affirmatively while he enjoyed his
12 parole.
13

14 42. On information and belief, Petitioner regularly complied with and
15 appeared for ICE check-ins.
16

17 43. Petitioner applied for asylum with USCIS. He has been awaiting
18 an appointment for an interview with an asylum officer.
19

20 44. On May 2, 2024, Respondents issued work authorization to
21 Petitioner pursuant to 8 C.F.R. § 274a.12(c)(08).
22

23 45. On December 10, 2025, Mr. Karokhel was attending a regularly
24 scheduled ICE check in appointment. He arrived at 10:00 a.m. per the appointment
25 notice and waited the entire day until 4:30 p.m. He was called back to see an
26 officer and was informed that he was being put into detention.
27

1 46. He was never given a written notice that his parole was being
2 terminated. He was not given any particularized reason for why he was being
3 placed into detention. He was never presented with a warrant for his arrest. He was
4 eventually transported to Otay Mesa Detention Center. On December 11, 2025, a
5 new Notice to Appear was filed with the court. This act took jurisdiction of his
6 asylum application away from USCIS, basically denying his petition without
7 review or consideration. Mr. Karokhel must now begin his asylum application
8 process again while in detention.
9

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11
12 47. Mr. Karokhel was never presented with a warrant for his arrest.
13 The ICE agents did not provide him any process. The ICE agents did not offer him
14 any opportunity to be heard prior to arresting and detaining him.
15

16
17 48. On January 20, 2025, President Donald Trump issued several
18 executive actions relating to immigration, including “Protecting the American
19 People Against Invasion,” an executive order (EO) setting out a series of interior
20 immigration enforcement actions. The Trump administration, through this and
21 other actions, has outlined sweeping, executive branch-led changes to immigration
22 enforcement policy, establishing a formal framework for mass deportation. The
23 “Protecting the American People Against Invasion” EO instructs the DHS
24 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
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1 prioritize civil immigration enforcement procedures including through the use of
2 mass detention.

3
4 49. On information and belief, Respondents are detaining Petitioner
5 regardless of the individual facts and circumstances of his case.

6
7 50. On information and belief, Respondents are using the immigration
8 detention system as a means to punish individuals for asserting rights under the
9 Refugee Act.

10
11 51. On information and belief, Petitioner has no criminal history.

12 **CLAIMS FOR RELIEF**

13
14 **COUNT ONE**

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

16 **Procedural Due Process**

17
18 52. Petitioner restates and realleges all paragraphs as if fully set forth
19 here.

20
21 53. The Due Process Clause of the Fifth Amendment to the U.S.
22 Constitution prohibits the federal government from depriving any person of “life,
23 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
24 process protects “all ‘persons’ within the United States, including [non-citizens],
25

1 whether their presence here is lawful, unlawful, temporary, or permanent.”

2 *Zadvydas*, 533 U.S. at 693.

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

6
7 55. While asylum is a discretionary benefit, the right to apply is not. 8
8 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United
9 States or who arrives in the United States (whether or not at a designated port of
10 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

11
12 56. Because the denial of the right to apply for asylum can result in
13 serious harm or death, the statutory right to apply is robust and meaningful. It
14 includes the right to legal representation, and notice of that right, *see id.* §§
15 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of
16 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision
17 to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§
18 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a
19 decision determining removability, *see id.* § 1229a(c)(6)-(7).

20
21 57. Applying for asylum with USCIS comes with a particular benefit.
22 It allows the petitioner a second opportunity to file for asylum should USCIS deny
23 the original application. This is a substantial benefit that the respondents initially
24

1 bestowed upon the petitioner when they agreed to dismiss his initial removal
2 proceedings. The detention of petitioner and refiling of an NTA with no
3 explanation and no apparent rational, other than to put another immigrant in
4 detention was a clear violation of Mr. Karokhel’s right to due process.
5

6
7 58. Here, Petitioner was not advised by DHS that they sought to
8 terminate his affirmative application in order to place him in detention and
9 removal, depriving him of the bundle of rights associated with his pending asylum
10 application. Because of his legal interest in his pending asylum application, this
11 violated due process. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)
12 (requiring notice and an opportunity to be heard before deprivation of a legally
13 protected interest).
14
15

16
17 **COUNT TWO**

18 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

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

20
21 **Unlawful Detention**

22 59. Petitioner restates and realleges all paragraphs as if fully set forth
23 here.
24

25 60. Under the APA, a court shall “hold unlawful and set aside agency
26 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
27

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

5
6 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
7 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
8 463 U.S. 29, 43 (1983)).
9
10

11 62. To survive an APA challenge, the agency must articulate “a
12 satisfactory explanation” for its action, “including a rational connection between
13 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
14 2569 (2019) (citation omitted).
15

16 63. By categorically revoking Petitioner’s parole and transferring him
17 to Otay Mesa Detention Center without consideration of his individualized facts
18 and circumstances, Respondents have violated the APA.
19

20 64. Respondents have made no finding that Petitioner is a danger to
21 the community.
22

23 65. Respondents have made no finding that Petitioner is a flight risk.
24

25 66. By detaining the Petitioner categorically, Respondents have
26 further abused their discretion because there have been no changes to his facts or
27

1 circumstances since the agency made its initial determination to parole him into the
2 United States that support detention.

3
4 67. Respondents have already considered Petitioner’s facts and
5 circumstances and determined that he was not a flight risk or danger to the
6 community. There have been no changes to the facts that justify this revocation of
7 his parole.
8

9
10 **COUNT THREE**

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

12 **Procedural Due Process**

13
14 68. Petitioner restates and realleges all paragraphs as if fully set forth
15 here.

16
17 69. The Due Process Clause of the Fifth Amendment to the U.S.
18 Constitution prohibits the federal government from depriving any person of “life,
19 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
20 process protects “all ‘persons’ within the United States, including [non-citizens],
21 whether their presence here is lawful, unlawful, temporary, or permanent.”
22 *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.
23

24
25 70. Due process requires that government action be rational and non-
26 arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
27

1 (3) Declare that Petitioner’s detention without an individualized
2 determination violates the Due Process Clause of the Fifth Amendment;
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4 (4) Declare that Petitioner’s detention without an individualized
5 determination violates the Administrative Procedures Act;
6

7 (5) Declare that the denial of petitioner’s affirmative asylum claim by
8 detaining him and commencing new 240 removal proceedings without an
9 individualized determination to return him to 240 removal proceedings violates the
10 Due Process Clause of the Fifth Amendment;
11

12 (6) Issue a Writ of Habeas Corpus ordering Respondents to release
13 Petitioner from custody;
14

15 (7) Issue an Order prohibiting the Respondents from transferring
16 Petitioner from the district without the court’s approval;
17

18 (8) Issue an Order prohibiting the Petitioner’s re-detention without
19 notice and an individualized determination that he is a flight risk or danger to the
20 community;
21

22 (9) Issue an Order prohibiting Respondents from placing the
23 Petitioner into an Alternative to Detention program and specifically prohibiting the
24 requirement for an ankle monitor;
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1 (10) Award Petitioner attorney’s fees and costs under the Equal
2 Access to Justice Act, and on any other basis justified under law; and
3

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

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7 Dated: December 23, 2025.

/s/ Brian J. McGoldrick
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