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16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 S.A.,  
19  
20 Petitioner,  
21  
22 vs.  
23  
24 CHRISTOPHER J. LAROSE, Warden,  
25 Otay Mesa Detention Center;  
26 GREGORY J. ARCHAMBEAULT, San  
27 Diego Field Office Director; TODD M.  
28 LYONS, Acting Director of U.S.  
Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary of the U.S.  
Department of Homeland Security,  
Respondents.


Case No. '26CV0592 LL DEB

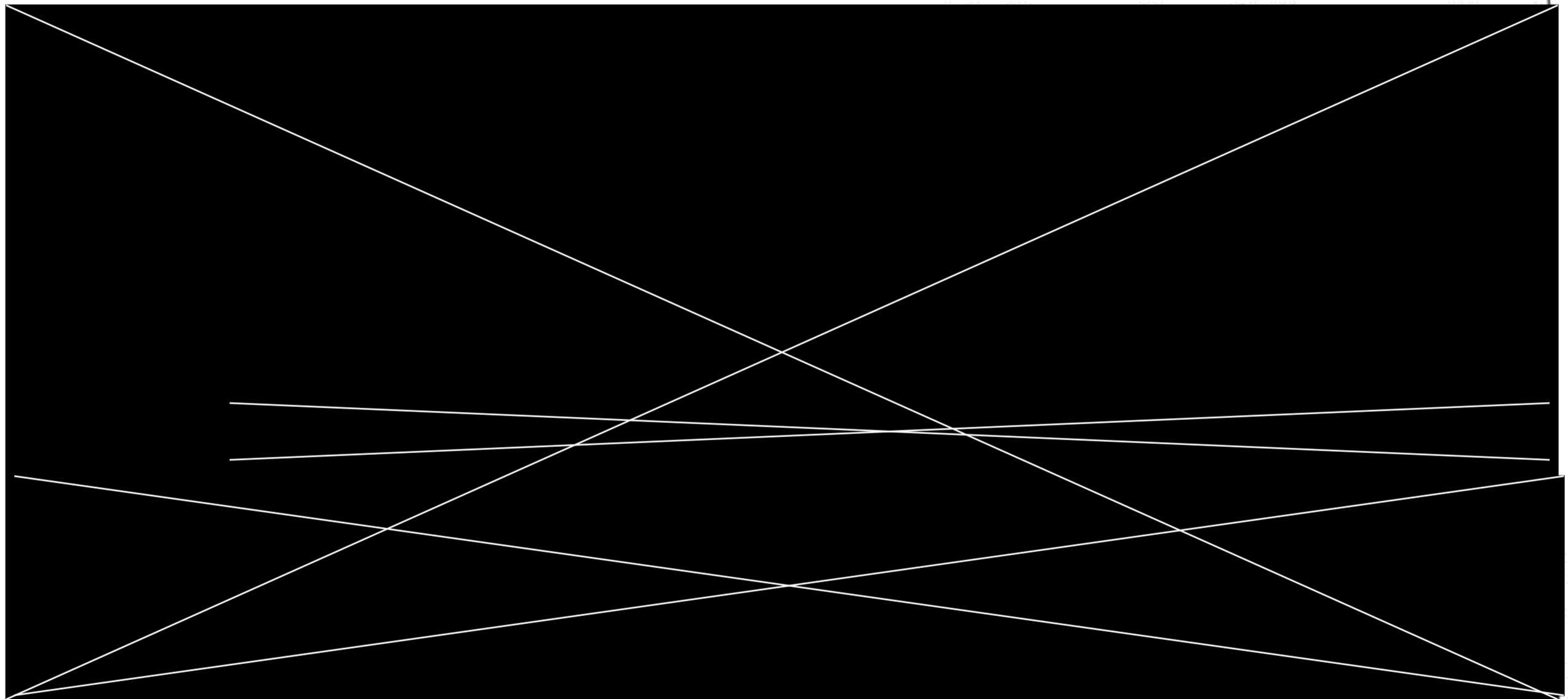
**COMPLAINT AND VERIFIED  
PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT TO  
28 U.S.C. § 2241**

**ORAL ARGUMENT REQUESTED**

**EXPEDITED HEARING  
REQUESTED**

**INTRODUCTION**

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1. Petitioner S.A. is a 26-year-old asylum applicant with no criminal history who is being unlawfully detained by Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center (“OMDC”). Petitioner has a compelling and well-supported affirmative application for asylum. He presented himself for inspection through the CBP One Program and was paroled into the United States in 2023. He filed affirmatively for asylum in January 2024. He was detained while lawfully working as a ride-share driver pursuant to a valid employment authorization document.
2. Petitioner was forced to flee Afghanistan based on past persecution and a reasonable fear of future persecution because of his association with close family members, as well as his imputed political and religious beliefs. Specifically, 



3. Petitioner escaped to Russia while experiencing this persecution. While he was there, the Russian government forced his close friends and acquaintances, also immigrants, into military service in Russia’s war against Ukraine. One friend who was conscripted into service called to warn Petitioner to escape from Russia before he was conscripted as well. Petitioner was also stalked, assaulted, and extorted by Russian gangs when he tried to make money to support himself. He went to the

1 police with recorded evidence of these gang interactions, but the police deleted the  
2 evidence from his phone and refused to investigate.

3 4. Petitioner eventually fled to Mexico, where he registered through the CBP One  
4 Program and was processed at the border in San Diego, California in February 2023,  
5 to seek asylum. On February 19, 2023, he was granted humanitarian parole by  
6 Respondents, and he was released into the United States.

7 5. Respondents commenced removal proceedings against Petitioner in immigration  
8 court in San Diego, California upon his entry into the country, but on September 15,  
9 2023, the court granted a motion by the Department of Homeland Security (“DHS”)  
10 to terminate the proceedings without prejudice so that Petitioner could file his  
11 asylum application directly before the United States Citizenship and Immigration  
12 Services (“USCIS”). Petitioner timely filed his affirmative application for asylum  
13 in January 2024, and Respondents issued him a work authorization card in August  
14 2024.

15 6. Petitioner is an ambitious young adult who aspires to continue his education and  
16 become an engineer. He has been adjusting well to life in the United States and has  
17 built a large community in San Diego whom he cares for deeply. He has also  
18 maintained consistent employment and enrolled at a local community college.

19 7. After receiving work authorization, Petitioner began working as a rideshare driver.  
20 On January 26, 2026, he accepted a request to drive passengers to Marine Corps  
21 Base Camp Pendleton (“Camp Pendleton”) in San Diego County, California. When  
22 he arrived at Camp Pendleton’s entry gate, the gate guard requested his  
23 identification and refused to let him enter the base to drop off his passengers.  
24 Petitioner immediately provided his driver’s license and work authorization permit,  
25 but the guard instructed him to wait in his vehicle for questioning regarding his  
26 immigration status. He was held prisoner at Camp Pendleton for approximately two  
27 and a half hours before being transported to ICE’s downtown San Diego holding  
28 area at 880 Front Street, San Diego, California 92101.

1 8. Although Petitioner’s legal counsel arrived at the holding area approximately one  
2 and a half hours after Petitioner arrived, counsel was not permitted to speak with  
3 Petitioner or obtain any information about his status and condition. On the night of  
4 January 26, 2026, Petitioner was transported to Otay Mesa Detention Center.  
5 Petitioner’s counsel has not been able to determine whether Respondents purport to  
6 detain Petitioner pursuant to 8 U.S.C. § 1225 (mandatory detention) or 8 U.S.C. §  
7 1226 (discretionary detention).

8 9. Petitioner has committed no crime and is entitled to remain in the United States  
9 while his asylum application remains pending. Regardless of whether Petitioner is  
10 being detained under 8 U.S.C. § 1225 or § 1226 Respondents’ detention of  
11 Petitioner is unlawful under the Fifth Amendment and lacks any valid legal basis,  
12 including because it is not based on Petitioner’s personal circumstances or  
13 individualized facts.

14 10. Therefore, Petitioner respectfully requests that this Court (1) find that Respondents’  
15 attempts to detain him are arbitrary, capricious, and in violation of the law and (2)  
16 end his indefinite incarceration by issuing a writ of habeas corpus immediately  
17 ordering his release.

### 18 JURISDICTION

19  
20 11. This action arises under the Constitution of the United States and the Immigration  
21 and Nationality Act (“INA”), 8 U.S.C. § 1101 et. seq.

22 12. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.  
23 § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Art. 1 § 9, cl. 2 of  
24 the United States Constitution (the Suspension Clause); *INS v. St. Cyr*, 533 U.S.  
25 289, 300 (2001).

26 13. This Court may grant relief under 28 U.S.C. §§ 2241 and 2243 (habeas corpus), 28  
27 U.S.C. §§ 2201–02 (declaratory relief), 28 U.S.C. § 1651 (All Writs Act), Fed. R.  
28

1 Civ. P 65 (injunctive relief), U.S. CONST. AMEND. V, the Fifth Amendment, 5  
2 U.S.C. §§ 500 et seq., the Administrative Procedure Act (“APA”).

3 **VENUE**

4  
5 14. Venue is proper in the Southern District of California pursuant to 28 U.S.C.  
6 §§ 1391(b) and (e) because a substantial part of the events giving rise to the claims  
7 in this action took place in this district. Furthermore, Petitioner is detained at the  
8 Otay Mesa Detention Center, which is located in this judicial district.

9 **PARTIES**

10  
11 15. Petitioner S.A. has been detained by Respondents at the OMDC in San Diego,  
12 California since January 26, 2026. He is 26 years old.

13 16. Respondent Christopher J. LaRose is the Warden of the OMDC, where Petitioner is  
14 currently detained. Respondent LaRose has physical custody over Petitioner.  
15 Respondent LaRose is sued in his official capacity.

16 17. Respondent Gregory J. Archambeault is the Field Office Director for the San Diego  
17 Field office of ICE. OMDC is located within the jurisdiction of the ICE San Diego  
18 Field Office, which has legal authority over all individuals in ICE custody there.  
19 As Acting Field Office Director, Mr. Archambeault is a custodian of Petitioner with  
20 legal authority to produce and release Petitioner. Respondent Archambeault is sued  
21 in his official capacity.

22 18. Respondent Todd M. Lyons is the Acting Director for ICE, a component agency of  
23 the United States DHS. ICE is responsible for enforcing United States immigration  
24 laws, including the detention of alleged noncitizens in removal proceedings, which  
25 the agency chooses to accomplish through imprisonment and the removal of  
26 noncitizens with final removal orders. As ICE’s Acting Director, Respondent  
27 Lyons is a custodian of Petitioner, with authority to produce and release him.  
28 Respondent Lyons is sued in his official capacity.

1 19. Respondent Kristi Noem is the Secretary of the United States DHS. She is  
2 responsible for overseeing DHS and its sub-agency, ICE, and has ultimate  
3 responsibility for the detention of noncitizens in civil immigration custody.  
4 Respondent Noem is a legal custodian of Petitioner. Respondent Noem is sued in  
5 her official capacity.

6  
7 **EXHAUSTION**

8 20. Because the habeas statute (28 U.S.C. § 2241) “does not specifically require  
9 petitioners to exhaust direct appeals before filing petitions for habeas corpus,”  
10 exhaustion in this case “is a prudential requirement” that “a court has discretion to  
11 waive.” *Acevedo-Carranza*, 371 F.3d at 541. “Exhaustion of remedies is not  
12 required when resort to such remedies would be futile.” *Id.* at 541–42. Nor is it  
13 required where “irreparable injury will result.” *Laing v. Ashcroft*, 370 F.3d 994,  
14 1000 (9th Cir. 2004). These exceptions warrant waiving any prudential-exhaustion  
15 requirement here.

16 21. Futility. Exhaustion would be futile for Petitioner. It is not clear whether  
17 Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225 or § 1226.  
18 However, to the extent that Respondents contend that Petitioner is subject to  
19 mandatory detention under 8 U.S.C. § 1225 (which he is not), then they will not  
20 consider any request to release him, and he therefore has no alternative mechanism  
21 that provides a genuine opportunity for relief.

22 22. Irreparable Injury. Because Petitioner remains detained, every day that he remains  
23 at OMDC is one in which his statutory and constitutional rights are being violated.  
24 “Freedom from imprisonment is at the ‘core of the liberty protected by the Due  
25 Process Clause.’” *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017)  
26 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Petitioner need not exhaust  
27 administrative remedies because “if Petitioner is correct on the merits of his habeas  
28 petition, then Petitioner has already been unlawfully deprived” of his rights and

1 “each additional day that Petitioner is detained . . . would cause him harm that  
2 cannot be repaired.” *Villalta v. Sessions*, 2017 WL 4355182, at \*3 (N.D. Cal. Oct.  
3 2, 2017) (cleaned up); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal.  
4 2018).

5 **FACTUAL AND PROCEDURAL BACKGROUND**

6  
7 23. Petitioner is a citizen of Afghanistan and Russia. He was born on [REDACTED] 1999, in  
8 Kabul, Afghanistan.

9 24. Petitioner was threatened with death by the Taliban in Afghanistan as a result of his  
10 sister’s refusal to agree to marry a local member of the Taliban. These threats forced  
11 him to flee for his safety to Russia in January 2019.

12 25. After Petitioner arrived in Russia and obtained Russian citizenship, he was  
13 discriminated against on the basis of his race and national origin and was threatened  
14 repeatedly with violence and extortion by a gang in Moscow, Russia. Despite his  
15 complaints to the Russian police about the extortion inflicted on Petitioner by the  
16 gang members, the police did not help, and they took steps that suggested that they  
17 were working with the gang members.

18 26. Again fleeing for his safety, Petitioner left Russia on January 27, 2023, and he flew  
19 to Mexico, where he stayed for less than a month while he planned to seek asylum  
20 in the United States.

21 27. Petitioner registered through the CBP One Program and was processed at the border  
22 in San Diego, California on February 19, 2023, to seek asylum. On February 19,  
23 2023, he was granted humanitarian parole by Respondents, and he was released into  
24 the United States.

25 28. On or about February 19, 2023, Respondents commenced removal proceedings  
26 against Petitioner in immigration court in San Diego, California. On September 15,  
27 2023, the court granted the DHS’s motion to terminate the proceedings without  
28

1 prejudice so that Petitioner could file his asylum application directly before DHS in  
2 the first instance in a less formal and less adversarial environment.

3 29. Petitioner applied for asylum with USCIS on January 18, 2024. The next step in  
4 his asylum case is to attend an interview with USCIS. That interview has not yet  
5 been scheduled.

6 30. On August 23, 2024, Respondents issued a work authorization document to  
7 Petitioner pursuant to 8 C.F.R. § 247a.12(c)(8).

8 31. Petitioner is an ambitious young adult who aspires to continue his education and  
9 become an engineer. He has now lived in the United States for almost three years,  
10 and he has been adjusting very well in the United States. Since he arrived in the  
11 United States, he has worked as a cashier in a local butcher's shop in San Diego,  
12 and has also worked as a Lyft rideshare driver and an Amazon delivery driver. He  
13 has also enrolled at a local community college to further his education and is taking  
14 English as a Second Language (ESL) classes. He has built a large community in  
15 San Diego, and cares deeply about his friends and community.

16 32. On the morning of January 26, 2026, Petitioner, in his capacity as a rideshare driver,  
17 attempted to drop off passengers at Camp Pendleton in San Diego County,  
18 California. When he arrived at the entry gate, the gate guard did not allow him to  
19 proceed to drop off his passengers. The guard requested Petitioner's identification,  
20 and he complied, providing his driver's license and work authorization permit.  
21 Nevertheless, the guard then informed Petitioner that he must wait in his vehicle for  
22 questioning regarding his immigration status. He was detained at Camp Pendleton  
23 for approximately two and a half hours.

24 33. Petitioner was then transported to ICE's downtown San Diego holding area at 880  
25 Front Street, San Diego, California 92101.

26 34. Petitioner's legal counsel arrived at the holding area approximately one and a half  
27 hours later but was not permitted to speak with Petitioner or obtain any information  
28 about his status, despite presenting a valid Form G-28.

1 35. On the night of January 26, 2026, Petitioner was transported to OMDC.

2 36. Respondents are detaining Petitioner regardless of the individual facts and  
3 circumstances of his case.

4 37. Respondents are using the immigration detention system as a means to punish  
5 individuals, including Petitioner, for asserting rights under the Refugee Act.

6 38. Petitioner has no criminal history.

7 **Legal Framework**

8 **I. Law and Procedure Governing This Habeas Petition.**

9 39. The Constitution guarantees that the writ of habeas corpus is “available to every  
10 individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507,  
11 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related  
12 detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

13 40. The “historic purpose of the writ” of habeas corpus is “to relieve detention by  
14 executive authorities without judicial trial.” *Zadvydas*, 533 U.S. at 699 (cleaned  
15 up).

16 41. A writ under 28 U.S.C. § 2241 may be issued if, among other things, a person “is  
17 in custody under or by color of the authority of the United States” or is “in custody  
18 in violation of the Constitution or laws or treaties of the United States.” 8 U.S.C.  
19 § 2241(c). Petitioner is “in custody” for the purpose of Section 2241 because he is  
20 being detained by Respondents.

21 42. A habeas court’s role is at its “most extensive in cases of pretrial and noncriminal  
22 detention,” especially “where there ha[s] been little or no previous judicial review  
23 of the cause for detention.” *Boumediene v. Bush*, 553 U.S. 723, 780 (2008).

24 43. A court “entertaining an application for a writ of habeas corpus shall forthwith  
25 award the writ or issue an order directing the respondent to show cause why the writ  
26 should not be granted, unless it appears from the application that the applicant or  
27 person detained is not entitled thereto.” 28 U.S.C. § 2243.  
28

1 44. “The writ, or order to show cause shall be directed to the person having custody of  
2 the person detained. It shall be returned within three days unless for good cause  
3 additional time, not exceeding twenty days, is allowed.” *Id.*

4 45. Once the government files its return, the Court shall set a “hearing, not more than  
5 five days after the return unless for good cause additional time is allowed.” 28  
6 U.S.C. § 2243. “The court shall summarily hear and determine the facts, and  
7 dispose of the matter as law and justice require.” *Id.*

8 46. Congress has only authorized civil detention of noncitizens in removal proceedings  
9 for specific, non-punitive purposes. *Zadvydas*, 533 U.S. at 690.

10 47. 8 U.S.C. § 1225 provides for mandatory detention pending removal when a  
11 noncitizen is apprehended while arriving at the border. *See, e.g.*, 8 U.S.C. §  
12 1225(b)(1) (authorizing mandatory detention of those who are subject to expedited  
13 removal for being apprehended upon arrival near the border or for being unable to  
14 show that they have been physically present in the United States for more than two  
15 years until a determination has been made as to whether they have a credible fear  
16 of persecution); § 1225(b)(2)(A) (anyone alleged to be an “applicant for admission”  
17 who is “seeking admission” and whom an “examining immigration officer  
18 determines . . . is not clearly and beyond a doubt entitled to be admitted.”).

19 48. In contrast, 8 U.S.C. § 1226(a) authorizes the detention of certain noncitizens who  
20 are already in the country pending an IJ’s decision in removal proceedings. Such  
21 detention is discretionary, and individuals detained under Section 1226(a) are (with  
22 a few exceptions not relevant here) entitled to a bond hearing at the outset of their  
23 detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Discretionary detention is only  
24 appropriate where a noncitizen is found to be a flight risk from removal proceedings  
25 or is a danger to the community. *Zadvydas*, 533 U.S. at 690-91.

**ARGUMENT**

**II. ICE’s Continued Detention of Petitioner Violates His Substantive Due Process Rights Under the Fifth Amendment**

49. Respondents have violated and continue to violate Petitioner’s substantive due process rights.

50. The Fifth Amendment’s Due Process Clause states that, “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. CONST. AMEND. V. Accordingly, in the United States, “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Salerno*, 481 U.S. at 755.

51. The Fifth Amendment’s due process rights extend to noncitizens seeking asylum. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Indeed, Due Process “protections apply to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent, and to immigration detention as well as criminal detention.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up). For noncitizens in immigration detention, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

52. The Supreme Court “repeatedly has recognized that civil commitment *for any purpose* constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added); *see also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (“civil detainees retain greater liberty protections than individuals detained under criminal process,” and therefore they enjoy constitutional protections “at least as great as those afforded to” criminal detainees).

53. Because “[a]rbitrary civil detention is not a feature of our American government,” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), detention is only permissible

1 “in certain special and narrow non-punitive circumstances,” where a “special  
2 justification” asserted by the government “outweighs the individual’s  
3 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533  
4 U.S. at 690 (cleaned up). The Supreme Court has recognized two such legitimate  
5 justifications: where a detainee poses a flight risk from removal proceedings or is a  
6 danger to the community. *See id.* at 690–91.

7 54.No such “special justification” or compelling governmental interest exists here.  
8 Respondents have twice determined that Petitioner is neither a danger nor a flight  
9 risk, *first*, in connection with his parole into the country and *second* in its  
10 termination of Petitioner’s initial removal proceedings. *See* 8 C.F.R. § 212.5(b)  
11 (permitting parole only where the immigrant “presents neither a security risk nor a  
12 risk of absconding”). And Petitioner has done nothing that would warrant  
13 disturbing those findings.

14 55.He has consistently demonstrated that he not a flight risk but rather that he is  
15 committed to following the proper immigration procedures by lawfully entering  
16 the United States through the CBP One Program, attending all scheduled  
17 immigration court hearings, and timely filing his asylum application after being  
18 paroled into the United States.

19 56.Nor does he pose any danger to the community. Petitioner has no criminal history  
20 nor any record of prior violent or dangerous behavior. Throughout his time in the  
21 United States, Petitioner has obtained and held employment, enrolled in a local  
22 community college to broaden his education and improve his English, and built a  
23 community of friends and neighbors. Respondents’ detention of Petitioner thus  
24 violates his due process rights.

25 57.This Court has the authority to order Petitioner’s release to remedy the violation of  
26 his substantive due process rights. The federal habeas statute directs district courts  
27 to “hear and determine the facts” of a habeas petition and to “dispose of the matter  
28 as law and justice require.” 28 U.S.C. § 2243; *see also* *Hilton v. Braunskill*, 481

1 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, “the  
2 Court interpreted the predecessor of § 2243 as vesting a federal court ‘with the  
3 largest power to control and direct the form of judgment to be entered in cases  
4 brought up before it on habeas corpus’”) (quoting *In re Bonner*, 151 U. S. 242, 261  
5 (1894)). In immigration habeas cases, including in this Circuit, courts regularly  
6 order release upon determining that detention violates substantive due process. *See,*  
7 *e.g., Ekeh v. Gonzales*, 197 F. App’x 637, 638 (9th Cir. 2006) (ordering supervised  
8 release pursuant to *Zadvydas*); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D.  
9 Cal. 2000) (issuing order to show cause why the petitioner should not be released).

10 **III. ICE’s Continued Detention of Petitioner Violates His Procedural Due  
11 Process Rights Under the Fifth Amendment**

12 58. The Court need only address Petitioner’s procedural due process claim if it finds for  
13 the government on his substantive due process claim. *See Huynh*, 56 F. Supp. 2d at  
14 1162 n.3 (W.D. Wash. 1999) (“[O]nly when a restriction on liberty survives  
15 substantive due process scrutiny does the further question of whether the restriction  
16 is implemented in a procedurally fair manner become ripe for consideration.”)  
(citing *Salerno*, 481 U.S. at 746).

17 59. This Court should order Petitioner’s release because, to the extent Respondents have  
18 detained him under 8 U.S.C. § 1226, subject to discretionary detention, he does not  
19 meet the standard for detention under *Zadvydas*. Petitioner is not a flight risk and  
20 not a danger to the community, making his continued detention unjustified.

21 60. When an individual is detained pursuant to § 1226, due process requires “adequate  
22 procedural protections” to ensure that the government’s asserted justification for  
23 physical confinement “outweighs the [incarcerated] individual’s constitutionally  
24 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690  
25 (internal citation omitted).

26 61. Because Petitioner had a protected liberty interest once he was released on  
27 humanitarian parole, “the Due Process Clause requires procedural protections  
28

1 before he can be deprived of that interest”. *Noori v. Larose*, No. 25-cv-03006-BAS-  
2 MMP, 2025 WL 3295386, at \*3 (S.D. Cal. Nov. 26, 2025) (citing *Mathews v.*  
3 *Eldridge*, 424 U.S. 319, 334-35 (1976)) (finding that ICE violated an Afghan  
4 asylum applicant’s procedural due process rights by detaining him at Camp  
5 Pendleton “despite []his humanitarian parole”).

6 62. *Mathews* instructs courts to balance three factors to determine whether procedural  
7 due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous  
8 deprivation of that interest through the procedures used, and the probable value, if  
9 any, of additional procedural safeguards; and, (3) the government’s interest,  
10 including fiscal and administrative burdens that additional or substitute procedural  
11 requirements entail. *Mathews*, 424 U.S. at 335; *see also Cancino Castellar v.*  
12 *McAleenan*, 388 F. Supp. 3d 1218, 1237 (S.D. Cal. 2019) (applying the *Mathews*  
13 test where petitioners were detained under § 1225(a)(1)); *Lozada v. Larose, et al.*,  
14 No. 25CV3614-LL-KSC, 2026 WL 184205, at \*2 (S.D. Cal. Jan. 23, 2026)  
15 (applying the *Mathews* test where the petitioner was detained under § 1226(c) and  
16 ordering respondents to “immediately release Petitioner from custody subject only  
17 to the conditions of his preexisting parole”). Under *Mathews*, Petitioner’s civil  
18 detention violates his due process rights. He must therefore be released pending  
19 consideration and resolution of his application for asylum.

20 63. First, Petitioner has a recognizable liberty interest in avoiding unnecessary  
21 detention. *Lozada*, 2026 WL 184205 at \*2 (finding that “having been previously  
22 released on humanitarian parole, Petitioner had a protected liberty interest in  
23 remaining free from detention”); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025,  
24 1032 (N.D. Cal. 2025) (“Even individuals who face significant constraints on their  
25 liberty or over whose liberty the government wields significant discretion retain a  
26 protected interest in their liberty.”) (citations omitted). Petitioner is being held at a  
27 detention center in the same conditions as criminal inmates and without reliable  
28 means to contact family, friends, or legal counsel. *See Velasco Lopez v. Decker*,

1 978 F.3d 842, 851 (2d Cir. 2020) (finding, in assessing the first *Mathews* factor, that  
2 “[t]he deprivation he experienced while incarcerated was, on any calculus,  
3 substantial. He was locked up in jail. He could not maintain employment...[t]he use  
4 of a cell phone was prohibited, and he had no access to the internet or email and  
5 limited access to the telephone.”). Petitioner “has an overwhelming interest here—  
6 regardless of the length of his immigration detention—because ‘any length of  
7 detention implicates the same’ fundamental rights.” *Perera v. Jennings*, 2021 WL  
8 2400981, at \*4 (N.D. Cal. June 11, 2021) (citation omitted).

9 64. Second, there is a high risk of erroneous deprivation of Petitioner’s liberty interest,  
10 as Petitioner was detained without an opportunity to be heard. *Gonzalez Salazar v.*  
11 *Casey*, No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at \*4 (S.D. Cal. Nov. 3,  
12 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL  
13 1918679, at \*7 (E.D. Cal. July 11, 2025) (finding that where Petitioner “has not  
14 received any bond or custody redetermination hearing,” the “risk of an erroneous  
15 deprivation of liberty is high”).

16 65. Third, the government’s interest in detaining Petitioner, after DHS *itself* moved to  
17 terminate removal proceedings so that Petitioner could file his asylum application  
18 directly before USCIS, is both vague and minimal, especially in contrast to the  
19 significant liberty interest at stake for Petitioner. Any government interest, for  
20 example, in ensuring Petitioner’s attendance for his immigration case has already  
21 been secured by the necessary finding for his grant of parole that he presents neither  
22 a security nor a flight risk.

23 66. It is “always in the public interest to prevent the violation of a party’s constitutional  
24 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *see Rodriguez v.*  
25 *Robbins*, 715 F.3d 1127, 1145–46 (9th Cir. 2013). Conversely, the cost of providing  
26 an individualized review is low, and the longer Petitioner remains detained, the  
27 weaker the government’s interest in detaining him without this review becomes.  
28 *See Zadvydas*, 533 U.S. at 701. Thus, the government’s substantially weak interest

1 in detaining Petitioner does not outweigh Petitioner’s substantial liberty interest and  
2 the risk of erroneous deprivation of that liberty.

3 67. Any argument by Respondents that—including based on the Interim Guidance  
4 *Matter Yajure Hurtado*--that Petitioner is detained under § 1225 is contrary to  
5 hundreds of decisions of federal courts around the country, not to mention decades  
6 of practice. *See, e.g., Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC),  
7 2025 WL 3314420, at \*24 (E.D.N.Y. Nov. 28, 2025) (finding that the premise of  
8 *Matter Yajure Hurtado*—that detention of noncitizens arrested while residing in the  
9 United States is governed by 8 U.S.C. § 1225(b)(2)(A) rather than § 1226(a)—is “not  
10 persuasive”); *Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459, at \*3  
11 (S.D.N.Y. Nov. 6, 2025) (same); *Villa v. Normand*, No. 5:25-CV-89, 2025 WL  
12 3095969, at \*10 (S.D. Ga. Nov. 4, 2025) (same); *see also Cordero Pelico v. Kaiser*,  
13 No. 25-CV-07286-EMC, 2025 WL 2822876, at \*9 (N.D. Cal. Oct. 3, 2025)  
14 (declining to follow *Yajure Hurtado* because, under *Loper Bright Enters. v.*  
15 *Raimondo*, 603 U.S. 369, 400 (2024), “[*Matter Yajure Hurtado*] is entitled to little  
16 deference”); *Barrera v. Tindall*, No. 25-cv-541 (RGJ), 2025 WL 2690565, at \*5  
17 (W.D. Ky. Sep. 19, 2025) (“[B]ecause it is the responsibility of the court to decide  
18 whether the law means what the agency says[,] the Court disagrees with the holding  
19 of *Matter of Yajure [Hurtado]* and declines to follow it.”) (internal quotation marks  
20 omitted).

21 68. Thus, Petitioner respectfully requests that this Court confirm that the applicable  
22 detention statute in this matter is § 1226(a), and that Petitioner is entitled to  
23 immediate release or, at minimum, a bond hearing.

24 **IV. Respondents’ Detention of Petitioner Violates the Administrative  
25 Procedure Act - 5 U.S.C. § 706(2)(A).**

26 69. Under the APA, a court shall “hold unlawful and set aside agency action” that is an  
27 abuse of discretion. 5 U.S.C. § 706(2)(A).  
28

1 70. An action is an abuse of discretion if the agency “entirely failed to consider an  
2 important aspect of the problem, offered an explanation for its decision that runs  
3 counter to the evidence before the agency, or is so implausible that it could not be  
4 ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of*  
5 *Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor*  
6 *Vehicle Mfrs. Ass’n of US., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43  
7 (1983)).

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

12 72. By categorically revoking Petitioner’s humanitarian parole and transferring him to  
13 OMDC without consideration of his individualized facts and circumstances,  
14 Respondents have violated the APA.

15 73. Respondents have made no finding that Petitioner is a danger to the community.

16 74. Respondents have made no finding that Petitioner is a flight risk.

17 75. By detaining Petitioner categorically, Respondents have further abused their  
18 discretion because there have been no changes to his facts or circumstances since  
19 the agency made its initial determination to parole him into the United States that  
20 support detention.

21 76. Respondents have already considered Petitioner’s facts and circumstances and  
22 determined that he was not a flight risk or danger to the community when they  
23 granted him humanitarian parole. There have been no changes to the facts that  
24 justify this revocation of his parole.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**Violation of the Fifth Amendment to the United States Constitution**

**(Substantive Due Process)**

77. Petitioner repeats and realleges the allegations above and incorporates them by reference here.

78. 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.

79. The Supreme Court has recognized two legitimate interests that may be served by civil immigration detention: preventing flight from removal proceedings and protecting the community from danger. *Zadvydas*, 533 U.S. at 690–91.

80. Neither is present here, where Petitioner’s detention is untethered to any legitimate government interest. Respondents have already determined that Petitioner is not a threat to the community or a flight risk. Indeed, Petitioner has no criminal record nor any history of violent or dangerous behavior that would make him a threat to the community, and he has at all times complied with immigration laws of the United States, including by appearing at prior immigration court hearings. For these reasons, Petitioner’s ongoing detention violates due process.

**SECOND CLAIM**

**Violation of the Fifth Amendment to the United States Constitution**

**(Procedural Due Process)**

81. Petitioner repeats and realleges the allegations above and incorporates them by reference here.

82. Petitioner has a protected interest to be free from detention, including because he was released into the country by Respondents on humanitarian parole.

1 Petitioner’s private interest in his liberty and the risk of erroneous deprivation of his  
2 liberty far outweighs the government’s interest in detaining him when they have  
3 already determined he is neither a flight risk nor a danger. *See Mathews*, 424 U.S.  
4 at 330, 335.

5 **THIRD CLAIM**

6 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)**

7 83. Petitioner repeats and realleges the allegations above and incorporates them by  
8 reference here.

9 84. Under the Administrative Procedure Act, a court must “hold unlawful and set aside  
10 agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not  
11 in accordance with the law,” that is “contrary to constitutional right [or] power,” or  
12 that is “in excess of statutory jurisdiction, authority, or limitations, or short of  
13 statutory right.” 5 U.S.C. § 706(2)(A)-(C).

14 85. Respondents’ detention of Petitioner is arbitrary and capricious. Respondents’  
15 detention of Petitioner violates the INA and the Fifth Amendments.

16 86. Petitioner’s detention is arbitrary, capricious, an abuse of discretion, violative of the  
17 Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

18 **PRAYER FOR RELIEF**

19  
20 WHEREFORE, Petitioner respectfully requests that the Court:

- 21 a. Assume jurisdiction over this matter;
- 22 b. Grant the petition and issue a writ of habeas corpus commanding Petitioner’s  
23 immediate release from Respondents’ custody under reasonable conditions of  
24 supervision, and ordering that Respondents may not re-detain him absent a  
25 violation of those conditions proven by ICE at a pre-deprivation hearing;
- 26 c. Enjoin Respondents from causing Petitioner any greater harm during the pendency  
27 of this litigation and his immigration court case, such as by transferring him out of  
28 this District and away from his community and his pro bono counsel;

- 1 d. Declare Petitioner’s detention in Respondents’ custody unlawful under the INA  
2 and the Due Process Clause of the Fifth Amendment of the United States  
3 Constitution;  
4 e. Award Petitioner reasonable attorneys’ fees, costs, and other disbursements in this  
5 action permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on  
6 any other basis justified under law;  
7 f. Grant such further relief as the Court deems just and proper.

8  
9 Respectfully submitted on January 29, 2026

10 /s/ Neema Jalali

11 Neema Jalali

12 GIBSON, DUNN & CRUTCHER LLP

13 *Pro Bono Attorney for Petitioner*  
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**Verification Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am one of Petitioner’s attorneys. As his attorney, 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.

Dated: January 29, 2026

/s/ Neema Jalali  
Neema Jalali  
GIBSON, DUNN & CRUTCHER LLP  
*Pro Bono Attorney for Petitioner*