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

18 S.A.,
19 Petitioner,

20 vs.

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

Respondents.

Case No. '26CV0592 LL DEB

**PETITIONER'S NOTICE OF
MOTION; EX PARTE MOTION
FOR A TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION;
AND MEMORANDUM OF
POINTS AUTHORITIES IN
SUPPORT THEREOF**

1 NOTICE OF MOTION AND MOTION FOR A TEMPORARY RESTRAINING
2 ORDER OR PRELIMINARY INJUNCTION

3 PLEASE TAKE NOTICE as soon as it may be heard in the United States District
4 Court for the Southern District of California, that Petitioner S.A.¹, will, and hereby does,
5 move this Court for a temporary restraining order pursuant to Federal Rule of Civil
6 Procedure 65(b) or, in the alternative, for a preliminary injunction pursuant to Federal
7 Rule of Civil Procedure 65(a) that requires Respondents to be enjoined from transferring
8 S.A. out of this district, declare his detention unlawful, and release him from custody
9 immediately.

10 Although S.A. has committed no crime and is entitled to remain in the United
11 States while his asylum application remains pending, S.A. is being unlawfully detained
12 at the Otay Mesa Detention Center. His detention violates substantive and procedural
13 due process because he is being deprived of liberty without due process. While it is
14 unclear whether Respondents purport to detain Petitioner under 8 U.S.C. § 1225 or 8
15 U.S.C. § 1226, either would be unlawful. To the extent Respondents contend that S.A.
16 is subject to mandatory detention under § 1225, that position fails because S.A. is not an
17 “arriving alien” within the meaning of the statute and governing regulations. To the
18 extent Respondents assert discretionary detention authority pursuant to § 1226,
19 continued detention is likewise unlawful because it cannot satisfy the constitutional
20 standard governing civil immigration detention: S.A. poses no risk of flight and no
21 danger to the community. Accordingly, regardless of the statutory provision
22 Respondents invoke, S.A.’s continued detention is unlawful, and he must be released
23 immediately or, at a minimum, afforded a prompt bond hearing.

24
25 _____
26 ¹ “S.A.” is a pseudonym. Because this matter will require public filing of documents
27 related to Petitioner’s asylum claim, he requests leave to proceed under pseudonym.
28 Once the case is docketed, Petitioner will make an appropriate motion to that effect.

1 S.A.'s ongoing detention violates his due process rights and is contrary to law.
2 Accordingly, S.A. seeks a temporary restraining order enjoining Respondents from
3 continuing to detain him. S.A. also seeks an order prohibiting Respondents from
4 relocating Petitioner outside of the Southern District of California pending final
5 resolution of this litigation.

6 The motion is respectfully submitted based on this Notice of Motion; the
7 Memorandum of Points and Authorities in support filed herewith; the Proposed Order;
8 the pleadings, records, and papers on file in this action; oral argument of counsel; and
9 any other matters as may be properly considered by the Court.

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Dated: January 29, 2026

Respectfully submitted,
By: /s/ Neema Jalali
Neema Jalali
GIBSON, DUNN & CRUTCHER LLP
Pro Bono Attorneys for Petitioner

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INTRODUCTION

1
2 Despite having filed a well-supported affirmative application for asylum,
3 presenting himself for inspection through the CBP One Program, and being paroled into
4 the United States in 2023, and despite having no criminal record and having strong ties
5 to his local community, Petitioner S.A. is being unlawfully detained in the custody of
6 Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center
7 (“OMDC”). Respondents have not clearly identified the statutory basis for S.A.’s
8 detention, but regardless of whether they purport to detain him under 8 U.S.C. § 1225
9 or 8 U.S.C. § 1226, his continued detention is unlawful. S.A. seeks his immediate
10 release under appropriate conditions from his unlawful incarceration in ICE custody.

11 S.A. is a 26-year-old asylum applicant with no criminal history. He has lived in
12 the United States for three years and has built a large community in San Diego. He has
13 a consistent employment history in the United States and has worked as a cashier in a
14 local butcher’s shop in San Diego, a Lyft rideshare driver, and an Amazon delivery
15 driver. He has also enrolled at a local community college to further his education and
16 take English as a Second Language (ESL) classes.

17 ICE did not have a warrant for S.A.’s arrest. Rather, the agents targeted him while
18 he was lawfully working as a ride-share driver pursuant to a valid employment
19 authorization document. ICE lacked reasonable suspicion for his arrest.

20 S.A. has committed no crime and is entitled to remain in the United States while
21 his asylum application remains pending. Respondents’ detention of S.A. is unlawful
22 under the Fifth Amendment and lacks any valid legal basis, including because it is not
23 based on S.A.’s personal circumstances or individualized facts.

24 Yet S.A. remains detained by ICE at OMDC. Therefore, S.A. respectfully
25 requests that this Court end his indefinite incarceration and issue a temporary restraining
26 order enjoining Respondents from continuing to detain S.A.

STATEMENT OF FACTS²

1
2 S.A. is a citizen of Afghanistan and Russia who was born in 1999, in Kabul,
3 Afghanistan. He fled Afghanistan after being threatened with death by the Taliban due
4 to his sister's refusal to marry a local Taliban member. Fearing for his safety, S.A. left
5 Afghanistan and arrived in Russia in January 2019. While living in Russia, S.A. was
6 subjected to discrimination on the basis of his race and national origin and was
7 repeatedly threatened with violence and extortion by a gang in Moscow. He reported
8 the extortion to Russian police, but they failed to provide protection and instead took
9 actions suggesting cooperation with the gang members. Again fearing for his life, S.A.
10 fled Russia on January 27, 2023, traveling to Mexico, where he stayed for less than a
11 month while preparing to seek asylum in the United States.

12 S.A. registered through the CBP One Program and was processed at the border in
13 San Diego, California, on February 19, 2023, to seek asylum. On that same date,
14 Respondents granted him humanitarian parole and released him into the United States.
15 On or about February 19, 2023, Respondents commenced removal proceedings against
16 S.A. in immigration court in San Diego, California. On September 15, 2023, the
17 Immigration Court granted the Department of Homeland Security's motion to terminate
18 the proceedings without prejudice so that S.A. could file his asylum application directly
19 with the Department of Homeland Security in the first instance, in a less formal and less
20 adversarial setting. S.A. applied for asylum with USCIS on January 18, 2024. In the
21 acknowledgment of receipt, Respondents informed him that he may remain in the United
22 States until his asylum application is decided. His next step in the process is an asylum
23 interview with USCIS. On August 23, 2024, Respondents issued S.A. a work
24 authorization document pursuant to 8 C.F.R. § 274a.12(c)(8).

25 _____
26 ² Petitioner incorporates the facts stated in his Petition for Writ of Habeas Corpus to
27 the present motion for a temporary restraining order.
28

1 S.A. has resided in the United States for nearly three years and has adjusted well
2 to life in this country. He was eager to work and support himself, and has enjoyed steady
3 employment, including as a cashier at a local butcher shop in San Diego, as a Lyft
4 rideshare driver, and as an Amazon delivery driver. He has also enrolled at a local
5 community college, where he is furthering his education and taking English as a Second
6 Language classes. S.A. has built a strong community in San Diego and has no criminal
7 history.

8 On the morning of January 26, 2026, S.A. was working as a rideshare driver and
9 attempted to drop off passengers at Camp Pendleton in San Diego County, California.
10 When he arrived at the entry gate, a guard denied him entry and requested his
11 identification. S.A. complied and provided his driver's license and work authorization
12 permit. Despite producing valid identification, the guard instructed S.A. to remain in
13 his vehicle for questioning regarding his immigration status. S.A. was detained at Camp
14 Pendleton for approximately two and a half hours. He was then transported to ICE's
15 downtown San Diego holding facility located at 880 Front Street, San Diego, California.

16 Approximately one and a half hours after S.A.'s arrival at the holding facility, his
17 legal counsel appeared and presented a valid Form G-28 but was not permitted to speak
18 with S.A. or to obtain any information regarding his status. Later that night, on January
19 26, 2026, S.A. was transferred to Otay Mesa Detention Center, where he remains
20 detained.

21 ICE did not have a warrant for S.A.'s arrest. Respondents are detaining S.A.
22 without regard to the individual facts and circumstances of his case and are using the
23 immigration detention system as a means to punish individuals like S.A. for asserting
24 their rights under the Refugee Act.

25 STANDARD OF REVIEW

26 A temporary restraining order is warranted where a Petitioner establishes that (1)
27 he is likely to succeed on the merits of his claim; (2) he will suffer irreparable harm

1 absent relief; (3) the balance of the equities tips in his favor; and (4) an injunction is in
2 the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
3 2011) (citing *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008)); *see also*
4 *Stuhlberg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 839 n.7
5 (2001) (applying preliminary injunction standard to a temporary restraining order).³
6 Where the government is the Respondent, the balance of the equities and public interest
7 factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

8 ARGUMENT

9 S.A.'s petition is likely to succeed on the merits because Respondents lack lawful
10 authority to continue detaining him. Although Respondents have not clearly identified
11 the statutory basis for S.A.'s detention, continued custody is unlawful whether
12 Respondents purport to detain him under 8 U.S.C. § 1225 or 8 U.S.C. § 1226. As set
13 forth below, S.A. is not subject to mandatory detention under § 1225 and is
14 constitutionally entitled to an individualized bond hearing. Respondents also cannot
15 justify discretionary detention, as S.A. poses no danger to the community and no risk of
16 flight. S.A. is suffering ongoing and irreparable harm as a result of his unlawful
17 detention. The balance of the equities and the public interest strongly favor his
18 immediate release, where the Government has no legitimate interest in continued
19 detention and may rely on alternatives to detention to address any asserted concerns.
20 Accordingly, S.A. has satisfied the requirements for a temporary restraining order.

21 I. Petitioner Is Likely to Succeed on the Merits of His Claim.

22 S.A.'s habeas petition is likely to succeed on the merits because his ongoing
23 detention is unlawful. The Constitution guarantees that the writ of habeas corpus is
24 "available to every individual detained within the United States," *Hamdi v. Rumsfeld*,
25 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2), including for

26 _____
27 ³ If Respondents respond to this motion for a TRO, S.A. requests the Court grant a
28 preliminary injunction instead of a TRO.

1 immigration-related detention, *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). A writ
2 under 28 U.S.C. § 2241 may issue if, among other things, a person “in custody in
3 violation of the Constitution or laws or treaties of the United States.” 8 U.S.C. § 2241(c).
4 S.A.’s ongoing detention is in violation of both the U.S. Constitution and U.S. law.

5 Multiple courts in this District have found as much for other noncitizens detained
6 by Respondents in circumstances nearly identical to S.A.’s. *See, e.g., Noori v. Larose*,
7 No. 25-cv-03006-BAS-MMP, 2025 WL 3295386, at *3 (S.D. Cal. Nov. 26, 2025)
8 (granting habeas petition for asylum applicant detained after dropping off rideshare
9 passengers at Camp Pendleton despite committing no crime); *Mirzaie v. Larose*, No. 25-
10 cv-02568-JO-KSC (S.D. Cal. Jan. 15, 2026) (granting habeas petition for asylum
11 applicant detained after attempting to make delivery at Camp Pendleton despite
12 committing no crime).

13 The Constitution guarantees that the writ of habeas corpus is “available to every
14 individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525
15 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related
16 detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The “historic purpose of the
17 writ” of habeas corpus is “to relieve detention by executive authorities without judicial
18 trial.” *Zadvydas*, 533 U.S. at 699 (cleaned up).

19 A writ under 28 U.S.C. § 2241 may issue if, among other things, a person “is in
20 custody under or by color of the authority of the United States” or is “in custody in
21 violation of the Constitution or laws or treaties of the United States.” 8 U.S.C. § 2241(c).
22 A habeas court’s role is at its “most extensive in cases of pretrial and noncriminal
23 detention,” especially “where there ha[s] been little or no previous judicial review of the
24 cause for detention.” *Boumediene v. Bush*, 553 U.S. 723, 780 (2008).

25 **A. S.A.’s Fifth Amendment Claims Are Likely to Succeed on the Merits.**

26 “The Fifth Amendment’s Due Process Clause states that, “[n]o person shall be . .
27 . deprived of life, liberty, or property, without due process of law.” U.S. CONST.

1 AMEND. V. Accordingly, in the United States, “liberty is the norm, and detention prior
2 to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481
3 U.S. 739, 755 (1987).

4 The Fifth Amendment’s due process rights extend to noncitizens seeking asylum,
5 like S.A. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Indeed, Due Process “protections
6 apply to all ‘persons’ within the United States, including [noncitizens], whether their
7 presence here is lawful, unlawful, temporary, or permanent, and to immigration
8 detention as well as criminal detention.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th
9 Cir. 2017) (cleaned up). For noncitizens in immigration detention, “[f]reedom from
10 imprisonment—from government custody, detention, or other forms of physical
11 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at
12 690.

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

19 Because “[a]rbitrary civil detention is not a feature of our American government,”
20 *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), detention is only permissible “in
21 certain special and narrow non-punitive circumstances,” where a “special justification”
22 asserted by the government “outweighs the individual’s constitutionally protected
23 interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (cleaned up). The
24 Supreme Court has recognized two such legitimate justifications: where a detainee poses
25 a flight risk from removal proceedings or is a danger to the community. *See id.* at 690–
26 91.

1 No such “special justification” or compelling governmental interest exists here.
2 Respondents have already twice determined that Petitioner is neither a danger nor a
3 flight risk in connection with his parole into the country and subsequent termination of
4 Petitioner’s initial removal proceedings. And Petitioner has done nothing that would
5 warrant disturbing those findings. He has demonstrated his commitment to following
6 the proper immigration procedures by lawfully entering the United States through the
7 CBP One Program, attending all scheduled immigration court hearings, and timely filing
8 his asylum application after being paroled into the United States. Nor does he pose any
9 danger to the community. Petitioner has no criminal history or any record of prior
10 violent or dangerous behavior. Throughout his time in the United States, Petitioner has
11 obtained and held employment, enrolled in a local community college to broaden his
12 education and improve his English, and built a community of friends and neighbors.
13 Respondents’ detention of Petitioner violates his due process rights.

14 This Court has the authority to order Petitioner’s release to remedy the violation
15 of his substantive due process rights. The federal habeas statute directs district courts to
16 “hear and determine the facts” of a habeas petition and to “dispose of the matter as law
17 and justice require.” 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775
18 (1987) (explaining that as far back as the nineteenth century, “the Court interpreted the
19 predecessor of § 2243 as vesting a federal court ‘with the largest power to control and
20 direct the form of judgment to be entered in cases brought up before it on habeas
21 corpus’”) (quoting *In re Bonner*, 151 U. S. 242, 261 (1894)). In immigration habeas
22 cases, including in this Circuit, courts regularly order release upon determining that
23 detention violates substantive due process. *See, e.g., Ekeh v. Gonzales*, 197 F. App’x
24 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Nguyen v.*
25 *Fasano*, 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why
26 the petitioner should not be released).

1 Procedural Due Process: S.A.’s detention also violates procedural due process, which
2 requires “adequate procedural protections” to ensure that the government’s asserted
3 justification for physical confinement “outweighs the [incarcerated] individual’s
4 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at
5 690 (internal citation omitted). Because Petitioner had a protected liberty interest once
6 he was released on humanitarian parole, “the Due Process Clause requires procedural
7 protections before he can be deprived of that interest”. *Noori v. Larose*, No. 25-cv-
8 03006-BAS-MMP, 2025 WL 3295386, at *3 (S.D. Cal. Nov. 26, 2025) (citing *Mathews*
9 *v. Eldridge*, 424 U.S. 319, 334-35 (1976)) (finding that ICE violated an Afghan asylum
10 applicant’s procedural due process rights by detaining him at Camp Pendleton “despite
11 [h]is humanitarian parole”).

12 *Mathews* instructs courts to balance three factors to determine whether procedural
13 due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous
14 deprivation of that interest through the procedures used, and the probable value, if any,
15 of additional procedural safeguards; and, (3) the government’s interest, including fiscal
16 and administrative burdens that additional or substitute procedural requirements entail.
17 *Mathews*, 424 U.S. at 335; *see also Cancino Castellar v. McAleenan*, 388 F. Supp. 3d
18 1218, 1237 (S.D. Cal. 2019) (applying the *Mathews* test where petitioners were detained
19 under § 1225(a)(1)); *Lozada v. Larose, et al.*, No. 25CV3614-LL-KSC, 2026 WL
20 184205, at *2 (S.D. Cal. Jan. 23, 2026) (applying the *Mathews* test where the petitioner
21 was detained under § 1226(c) and ordering respondents to “immediately release
22 Petitioner from custody subject only to the conditions of his preexisting parole”).

23 First, Petitioner has a recognizable liberty interest in avoiding unnecessary
24 detention. *Lozada*, 2026 WL 184205 at *2 (finding that “having been previously
25 released on humanitarian parole, Petitioner had a protected liberty interest in remaining
26 free from detention”); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal.
27 2025) (“Even individuals who face significant constraints on their liberty or over whose
28

1 liberty the government wields significant discretion retain a protected interest in their
2 liberty.”) (citations omitted). Petitioner is being held at a detention center in the same
3 conditions as criminal inmates and without reliable means to contact family, friends, or
4 legal counsel. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (finding,
5 in assessing the first *Mathews* factor, that “[t]he deprivation he experienced while
6 incarcerated was, on any calculus, substantial. He was locked up in jail. He could not
7 maintain employment...[t]he use of a cell phone was prohibited, and he had no access
8 to the internet or email and limited access to the telephone.”). Petitioner “has an
9 overwhelming interest here—regardless of the length of his immigration detention—
10 because ‘any length of detention implicates the same’ fundamental rights.” *Perera v.*
11 *Jennings*, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation omitted).

12 Second, there is a high risk of erroneous deprivation of Petitioner’s liberty
13 interest, as Petitioner was detained without an opportunity to be heard. *Gonzalez Salazar*
14 *v. Casey*, No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3,
15 2025); see also *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL
16 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where Petitioner “has not received any
17 bond or custody redetermination hearing,” the “risk of an erroneous deprivation of
18 liberty is high”).

19 Third, the government’s interest in detaining Petitioner, after DHS *itself* moved
20 to terminate removal proceedings so that Petitioner could file his asylum application
21 directly before USCIS, is both vague and minimal, especially in contrast to the
22 significant liberty interest at stake for Petitioner. Any government interest, for example,
23 in ensuring Petitioner’s attendance for his immigration case has already been secured by
24 the necessary finding for his grant of parole that he presents neither a security nor a flight
25 risk. It is “always in the public interest to prevent the violation of a party’s constitutional
26 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); see *Rodriguez v.*
27 *Robbins*, 715 F.3d 1127, 1145–46 (9th Cir. 2013). Conversely, the cost of providing an
28

1 individualized review is low, and the longer Petitioner remains detained, the weaker the
2 government's interest in detaining him without this review becomes. *See Zadvydas*, 533
3 U.S. at 701. Thus, the government's substantially weak interest in detaining Petitioner
4 does not outweigh Petitioner's substantial liberty interest and the risk of erroneous
5 deprivation of that liberty.

6 Under *Mathews*, Petitioner's civil detention violates his due process rights. He
7 must therefore be released pending consideration and resolution of his application for
8 asylum.

9 **B. S.A.'s Administrative Procedure Act Claim Is Likely to Succeed on the
10 Merits.**

11 Under the APA, a court shall "hold unlawful and set aside agency action" that is
12 an abuse of discretion. 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the
13 agency "entirely failed to consider an important aspect of the problem, offered an
14 explanation for its decision that runs counter to the evidence before the agency, or is so
15 implausible that it could not be ascribed to a difference in view or the product of agency
16 expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
17 (quoting *Motor Vehicle Mfrs. Ass'n of US., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
18 U.S. 29, 43 (1983)). To survive an APA challenge, the agency must articulate "a
19 satisfactory explanation" for its action, "including a rational connection between the
20 facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569
21 (2019) (citation omitted).

22 By categorically revoking Petitioner's humanitarian parole and transferring him
23 to OMDC without consideration of his individualized facts and circumstances,
24 Respondents have violated the APA. Respondents have made no finding that Petitioner
25 is a danger to the community. Respondents have made no finding that Petitioner is a
26 flight risk. By categorically detaining Petitioner, Respondents have further abused their
27 discretion because there have been no changes to his facts or circumstances since the
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1 agency made its initial determination to parole him into the United States that support
2 detention.

3 Respondents have already considered Petitioner’s facts and circumstances and
4 determined that he was not a flight risk or danger to the community when they granted
5 him humanitarian parole. There have been no changes to those facts justifying this
6 revocation of his parole.

7 **C. S.A. Is Entitled to a Bond Hearing Under 8 U.S.C. § 1226.**

8 Congress has only authorized civil detention of noncitizens in removal
9 proceedings for specific, non-punitive purposes. *Zadvydas*, 533 U.S. at 690. 8 U.S.C.
10 § 1225 provides for mandatory detention pending removal when a noncitizen is initially
11 apprehended while arriving at the border. *See, e.g.*, 8 U.S.C. § 1225(b)(1); §
12 1225(b)(2)(A). Because S.A. has been living in the United States since his release on
13 humanitarian parole on February 19, 2023, he is not an “arriving alien” and, therefore,
14 not subject to mandatory detention under § 1225.

15 In contrast, 8 U.S.C. § 1226(a) authorizes the detention of certain noncitizens who
16 are already in the country pending an IJ’s decision in removal proceedings. Such
17 detention is discretionary, and individuals detained under Section 1226(a) are (with a
18 few exceptions not relevant here) generally entitled to a bond hearing at the outset of
19 their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

20 To the extent S.A. is being detained under § 1226, he has a right to be released on
21 bond if he can show—as he did when applying for parole—that he is not a threat to his
22 community or a flight risk.

23 * * *

24 S.A. is likely to succeed on his constitutional claims, warranting a temporary
25 restraining order until his habeas petition can be decided.

1 **II. S.A. Is Actively Suffering Irreparable Harm.**

2 A TRO is appropriate where a petitioner demonstrates that they face irreparable
3 harm—i.e., harm that is “immediate”—absent relief, *Caribbean Marine Servs. Co. v.*
4 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988), and “for which there is no adequate legal
5 remedy,” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). For
6 the reasons explained *supra*, Respondents have violated S.A.’s constitutional and
7 statutory rights. Since S.A.’s detention without cause on January 26, he has already
8 suffered irreparable harm.

9 The Ninth Circuit has explained that it “is well established that the deprivation of
10 constitutional rights unquestionably constitutes irreparable injury.” *Melendres v.*
11 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *see also Moreno Galves v. Cuccinelli*, 492
12 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020), *aff’d in part, vacated in part on other*
13 *grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022)
14 (finding detention constitutes “a loss of liberty that is . . . irreparable.”). Courts have
15 further found that “[i]f Petitioner is correct on the merits of his habeas petition, then
16 Petitioner has already been unlawfully deprived” of his rights and “each additional day
17 that Petitioner is detained without a [lawful] bond hearing would cause him harm that
18 cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05391, 2017 WL 4355182, at *3
19 (N.D. Cal. Oct. 2, 2017) (cleaned up); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139
20 (N.D. Cal. 2018).

21 For the reasons above, S.A. is facing ongoing irreparable harm that will continue
22 absent relief from this Court.

23 **III. The Balance of the Equities and Public Interest Factors Weigh in S.A.’s**
24 **Favor.**

25 When the government is a party involved in an application for a TRO, the balance
26 of the equities and the public interest factors merge. *Nken*, 556 U.S. at 435. Where
27 granting an injunction will not “substantially injure the other parties,” the balance of
28

1 equities tips in the movant’s favor. *Id.* at 434. Additionally, a petitioner’s “likelihood
2 of success on the merits of a constitutional claim also tips the merged third and fourth
3 factors decisively in his favor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

4 Respondents will suffer no harm if this Court issues a TRO because the
5 Government “cannot suffer harm from an injunction that merely ends an unlawful
6 practice.” *Rodriguez*, 715 F.3d at 1145; *see also Ramirez*, 310 F.Supp.3d at 33; *cf.*
7 *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Where, like here, a noncitizen’s
8 detention “is inconsistent with federal law, . . . the balance of hardships and public
9 interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v.*
10 *Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019); *see Valle del Sol Inc. v.*
11 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

12 Because Respondents face no harm from S.A.’s release and governmental
13 compliance with the Constitution and laws benefits the public interest, the balance of
14 the equities and the public interest here weigh strongly in favor of S.A.’s requested
15 injunctive relief.

16 **IV. Prudential Exhaustion Is Not Required.**

17 Because the habeas statute (28 U.S.C. § 2241) “does not specifically require
18 petitioners to exhaust direct appeals before filing petitions for habeas corpus,”
19 exhaustion “is a prudential requirement” that “a court has discretion to waive.” *Acevedo-*
20 *Carranza*, 371 F.3d at 541. “Exhaustion of remedies is not required when resort to such
21 remedies would be futile.” *Id.* at 541–42. Because the BIA recently held that § 1225
22 applies broadly to individuals “present in the United States who ha[ve] not been
23 admitted,” *In re Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025), it would be futile
24 for S.A. to resort to the BIA for relief. Exhaustion is not required where “irreparable
25 injury will result.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Every day
26 that S.A. remains at OMDC is one in which his statutory and constitutional rights are
27 being violated. *See supra* [Irreparable harm]. Exhaustion is also not required when

1 “requiring resort to the administrative remedy may occasion undue prejudice to
2 subsequent assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140, 146–47
3 (1992), *superseded on other grounds as stated in Booth v. Churner*, 532 U.S. 731, 739–
4 41 (2001). Additionally, because the issues presented are questions of statutory
5 interpretation, they are “unlikely to require agency consideration to generate a proper
6 record to reach a proper decision.” *Maldonado Bautista et al. v. Santacruz, et al.*, No.
7 5:25-cv-01873 (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order,
8 Dkt. 14 at 11.

9 CONCLUSION

10 S.A.’s compelling and time-sensitive situation exceeds the minimum standard for
11 requesting temporary relief. This Court should therefore:

12 Grant the relief as plead in the habeas petition;

13 Declare S.A.’s detention in Respondents’ custody unlawful under the INA and the
14 Due Process Clause of the Fifth Amendment of the United States Constitution;

15 Enjoin Respondents from causing Petitioner any greater harm during the pendency
16 of this litigation and his immigration court case, such as by transferring him
17 anywhere outside of the jurisdiction of the Southern District of California and away
18 from his counsel;

19 Order S.A. released;

20 If the government seeks to re-detain S.A., require it to provide no less than seven (7)
21 days’ notice to petitioner and hold a pre-deprivation bond hearing before a neutral
22 arbiter pursuant to section 1226(a) and its implementing regulations, at which
23 petitioner’s eligibility for bond must be considered.

24
25 Dated: January 29, 2026

Respectfully submitted,

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By: /s/ Neema Jalali
Neema Jalali
GIBSON, DUNN & CRUTCHER LLP
Pro Bono Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Neema Jalil, declare as follows:

I am an adult over the age of eighteen and a resident of the state of California. The information set forth herein is true and correct of my personal knowledge and if asked to testify thereto, I would do so competently.

Pursuant to Federal Rule of Civil Procedure 65(b), I hereby certify that on January 29, 2026 at approximately 11:30 P.M., my colleague Kelly Gregg emailed U.S. Attorneys Adam Gordon at Adam.Gordon@usdoj.gov, Erin Dimbleby at Erin.Dimbleby@usdoj.gov, and Janet Cabral at Janet.Cabral@usdoj.gov with actual notice that Petitioner is filing this motion, along with electronic copies of the habeas petition and the brief accompanying this motion, via email before completing this electronic filing.

DATED: January 29, 2026

Respectfully submitted

By: /s/ Neema Jalali
Neema Jalali
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