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15 *Pro Bono Attorneys for Petitioner*

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

18 M.M.,

19 Petitioner,

20 vs.

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

Respondents.


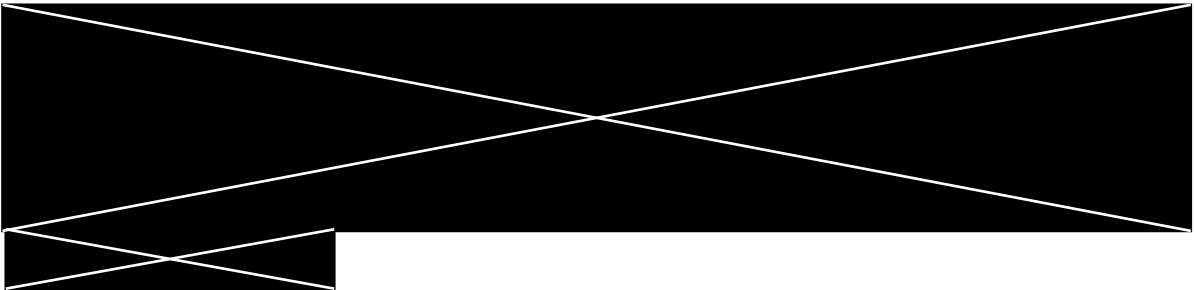
Case No. '26CV2346 BJC B JW

**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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3 1. Petitioner M.M. is a 22-year-old asylum applicant with no criminal history who is
4 being unlawfully detained by Immigration and Customs Enforcement (“ICE”) at the
5 Otay Mesa Detention Center (“OMDC”). Petitioner has a compelling and well-
6 supported affirmative application for asylum. He lawfully entered the United States
7 on an F-1 student visa in 2022 that was not set to expire until September 12, 2023.
8 He filed affirmatively for asylum on May 17, 2023, while his student visa was still
9 valid. He was detained while lawfully working as a food delivery driver pursuant
10 to a valid employment authorization document, which he was carrying on his person
11 at the time of his unlawful detention.
- 12 2. Petitioner was forced to flee Afghanistan based on past persecution and a reasonable
13 fear of future persecution because he (1) 
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- 19 3. In the spring of 2022, Petitioner and his sister (the “M’s”) escaped to Islamabad,
20 Pakistan, to attend an interview to receive F-1 student visas and plan their travel to
21 the United States. They both received in advance invitations to attend a private high
22 school in California, on full scholarship. After the M’s received their F-1 student
23 visas, they left Pakistan for the United States, and, shortly after, started in-person
24 classes at the high school.
- 25 4. Petitioner timely filed his affirmative application for asylum in May 2023, and has
26 since received lawful employment authorization in November 2023.
- 27 5. Petitioner is an ambitious young adult who graduated high school, is attending
28 community college, has received an internship related to his studies for the summer,

1 and is taking additional computer science courses to improve his skills. He has been
2 adjusting well to life in the United States and has built a large community in San
3 Diego for whom he cares deeply. In January 2026, he got engaged to his fiancée,
4 who is a college student in Sacramento and a green-card holder.

5 6. Petitioner is a hard worker and active contributor to the economy. After receiving
6 work authorization, Petitioner began working several jobs in the service industry
7 and the gig economy. Most recently, he has been employed as a cashier and as a
8 delivery driver. In connection with this role, on the evening of April 10, 2026, he
9 accepted a request to deliver and attempted to drop off an order to a user located at
10 Marine Corps Base Camp Pendleton (“Camp Pendleton”) in San Diego County,
11 California. When he arrived at the entry gate, a guard denied him entry and
12 requested his identification. M.M. complied and provided his I-94 and explained
13 that he had a pending asylum application. Despite producing valid identification,
14 M.M. was detained at Camp Pendleton.

15 7. M.M. was able to inform his sister that he was detained, and she contacted M.M.’s
16 attorneys. Later that night, M.M.’s attorneys attempted to locate M.M. On the
17 morning of April 11, 2026, M.M.’s attorneys spoke to officials at OMDC who
18 confirmed that M.M. had been there from 1:00 am to 3:00 am that day. M.M. later
19 spoke to his attorneys and stated that he was at ICE’s downtown San Diego holding
20 facility located at 880 Front Street, San Diego, California, and that they would be
21 transferring him to OMDC. Later that day, M.M. was transferred to OMDC, where
22 he remains detained.

23 8. Petitioner has committed no crime and is entitled to remain in the United States
24 while his asylum application remains pending. To the extent Respondents contend
25 that M.M. is subject to mandatory detention under § 1225, that position fails because
26 M.M. is not an “arriving alien” within the meaning of the statute and governing
27 regulations. To the extent Respondents assert discretionary detention authority
28 pursuant to § 1226, continued detention is likewise unlawful because it cannot

1 satisfy the constitutional standard governing civil immigration detention: M.M.
2 poses no risk of flight and no danger to the community. Regardless of whether
3 Petitioner is being detained under 8 U.S.C. § 1225 or § 1226, Respondents'
4 detention of Petitioner is unlawful, including under relevant statutory law and under
5 the Fifth Amendment.

- 6 9. Therefore, Petitioner respectfully requests that this Court (1) find that Respondents'
7 attempts to detain him are arbitrary, capricious, and in violation of the law, and (2)
8 end his indefinite incarceration by issuing a writ of habeas corpus immediately
9 ordering his release.

10 **JURISDICTION**
11

12 10. This action arises under the Constitution of the United States and the Immigration
13 and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

14 11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
15 § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and art. 1 § 9, cl. 2 of
16 the United States Constitution (the Suspension Clause); *INS v. St. Cyr*, 533 U.S.
17 289, 300 (2001).

18 12. This Court may grant relief under 28 U.S.C. §§ 2241 and 2243 (habeas corpus), 28
19 U.S.C. §§ 2201–02 (declaratory relief), 28 U.S.C. § 1651 (All Writs Act), Fed. R.
20 Civ. P. 65 (injunctive relief), U.S. Const. amend. V, the Fifth Amendment, 5 U.S.C.
21 §§ 551 et seq., the Administrative Procedure Act ("APA").

22 **VENUE**
23

24 13. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
25 §§ 1391(b) and (e) because a substantial part of the events giving rise to the claims
26 in this action took place in this district. Furthermore, Petitioner is detained at the
27 OMDC, which is located in this judicial district.
28

PARTIES

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3 14. Petitioner M.M. has been detained by Respondents at the OMDC in San Diego,
4 California since April 10, 2026. He is a 22-year-old asylum seeker, a college
5 student, and a respected, loved member of his community.

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

9 16. Respondent Patrick Divver appears to be the ICE San Diego ERO Field Office
10 Director. OMDC is located within the jurisdiction of the ICE San Diego ERO Field
11 Office, which has legal authority over all individuals in ICE custody there. As Field
12 Office Director, Mr. Divver is a custodian of Petitioner with legal authority to
13 produce and release Petitioner. Respondent Divver is sued in his official capacity.

14 17. Respondent Todd M. Lyons is the Acting Director of ICE, a component agency of
15 the United States DHS. ICE is responsible for enforcing United States immigration
16 laws, including the detention of alleged noncitizens in removal proceedings, which
17 the agency chooses to accomplish through imprisonment and the removal of
18 noncitizens with final removal orders. As ICE's Acting Director, Respondent
19 Lyons is a custodian of Petitioner, with authority to produce and release him.
20 Respondent Lyons is sued in his official capacity.

21 18. Respondent Markwayne Mullin is the Secretary of the United States DHS. He is
22 responsible for overseeing DHS and its sub-agency, ICE, and has ultimate
23 responsibility for the detention of noncitizens in civil immigration custody.
24 Respondent Mullin is a legal custodian of Petitioner. Respondent Mullin is sued in
25 his official capacity.
26
27
28

EXHAUSTION

1
2
3 19. Because the habeas statute (28 U.S.C. § 2241) “does not specifically require
4 petitioners to exhaust direct appeals before filing petitions for habeas corpus,”
5 exhaustion in this case “is a prudential requirement” that “a court has discretion to
6 waive.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).
7 “Exhaustion of remedies is not required when resort to such remedies would be
8 futile.” *Id.* at 541–42. Nor is it required where “irreparable injury will result.”
9 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). These exceptions warrant
10 waiving any prudential exhaustion requirement here.

11 20. Futility. Exhaustion would be futile for Petitioner. It is not clear whether
12 Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225 or § 1226.
13 However, to the extent that Respondents contend that Petitioner is subject to
14 mandatory detention under 8 U.S.C. § 1225 (which he is not), they will not consider
15 any request to release him, and he therefore has no alternative mechanism that
16 provides a genuine opportunity for relief. *See* 8 U.S.C. § 1225(b) (providing for
17 mandatory detention pending removal). Even if Respondents are detaining
18 Petitioner pursuant to 8 U.S.C. § 1226, exhaustion would nevertheless be futile
19 because Respondents will likely contend they “may continue to detain” M.M.
20 “pending a decision” regarding his removal. *See* 8 U.S.C. § 1226(a)(1).

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

1 cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL
2 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (cleaned up); *Cortez v. Sessions*, 318 F.
3 Supp. 3d 1134, 1139 (N.D. Cal. 2018).

4 **FACTUAL AND PROCEDURAL BACKGROUND**

5
6 22. Petitioner is a citizen of Afghanistan. He was born on [REDACTED], in Daykundi,
7 Afghanistan.

8 23. Petitioner fled Afghanistan because he was in grave danger of violence or death by
9 the Taliban in Afghanistan because he (1) [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 24. Specifically, among other things, certain members of Petitioner’s family, as
16 applicable, (1) [REDACTED]

17 [REDACTED]

18 Petitioner thus has a well-founded fear that he would experience the same
19 persecution for his familial relations as well as his support of political ideologies
20 that are in tension with those of the Taliban (e.g., women’s rights).

21 25. While still experiencing persecution in Afghanistan, Petitioner found an online
22 application for a private high school in California. The M’s applied to the school
23 online and met virtually with the school’s director in March 2022. The school
24 accepted the M’s’ applications on full scholarship.

25 26. Thereafter, the M’s traveled to Islamabad, Pakistan, to attend an interview to
26 receive F-1 student visas and plan their travel to the United States. They stayed at
27 Hostel City in Islamabad from around April 2022 until September 2022. They
28 remained on visas while in Pakistan and are not entitled to return for lawful

1 residence purposes. The M's did not apply for refugee or asylum status while there
2 because they always intended to travel to the United States for their education, and
3 since March 2022, they had been in communication with the director of the high
4 school they attended after arriving in the United States. After the M's received their
5 F-1 student visas, they left Pakistan for the United States on a flight to San
6 Francisco, which had a brief layover in Qatar. From San Francisco, the M's traveled
7 to San Diego. They arrived in the United States in late September 2022, and started
8 in-person classes at the high school shortly after. Both M.M. and his sister
9 successfully graduated. M.M.'s sister is now attending university in Connecticut,
10 and M.M. attends a local community college, where he is excelling academically.

11 27. Petitioner applied for asylum with USCIS on May 17, 2023, while still in lawful F-
12 1 status. The next step in his asylum case is to attend an interview with USCIS.
13 That interview has not yet been scheduled.

14 28. After entering the United States, Respondents issued an employment authorization
15 document to Petitioner pursuant to 8 C.F.R. § 274a.12(c)(8).

16 29. Petitioner is an ambitious young adult who aspires to continue his education. He
17 has now lived in the United States for almost four years, and he has been adjusting
18 very well in the United States. Since he arrived in the United States, he has worked
19 as a cashier and has also worked as a delivery driver. He is an excellent student at
20 community college, independently takes computer science courses outside of school
21 to improve his skills, and has developed his English to a proficient level through his
22 education and participation in the community. He has built a large community in
23 San Diego, and cares deeply about his friends and community.

24 30. During the evening of April 10, 2026, Petitioner, in his capacity as a delivery driver,
25 attempted to make a delivery to users located within Camp Pendleton in San Diego
26 County, California. When he arrived at the entry gate, a guard denied him entry
27 and requested his identification. Petitioner complied and provided his I-94 and
28

1 explained that he had a pending asylum application. Despite producing valid
2 identification, Petitioner was detained at Camp Pendleton.

3 31. Petitioner was able to inform his sister that he was detained, and she contacted
4 Petitioner's attorneys. Later that night, Petitioner's attorneys attempted to locate
5 Petitioner. On the morning of April 11, 2026, Petitioner's attorneys spoke to
6 officials at OMDC who confirmed that Petitioner had been there from 1:00 am to
7 3:00 am that day. Petitioner later spoke to his attorneys stating that he was at ICE's
8 downtown San Diego holding facility located at 880 Front Street, San Diego,
9 California, and that they would be transferring him to OMDC. Later that day,
10 Petitioner was transferred to OMDC, where he remains detained.

11 32. Petitioner has no criminal history. Petitioner entered this country on a lawful
12 student visa and has, at all times since entering this country, maintained lawful
13 status.

14 LEGAL FRAMEWORK

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

16 33. The Constitution guarantees that the writ of habeas corpus is "available to every
17 individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507,
18 525 (2004) (citing U.S. Const. art. I, § 9, cl. 2). This includes immigration-related
19 detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

20 34. The "historic purpose of the writ" of habeas corpus is "to relieve detention by
21 executive authorities without judicial trial." *Zadvydas*, 533 U.S. at 699 (cleaned
22 up).

23 35. A writ under 28 U.S.C. § 2241 may be issued if, among other things, a person "is
24 in custody under or by color of the authority of the United States" or is "in custody
25 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.
26 § 2241(c). Petitioner is "in custody" for the purpose of Section 2241 because he is
27 being detained by Respondents.
28

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

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

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

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

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

17 41. 8 U.S.C. § 1225 provides for mandatory detention pending removal when a
18 noncitizen is apprehended while arriving at the border. *See, e.g.*, 8 U.S.C. §
19 1225(b)(1) (authorizing mandatory detention of those who are subject to expedited
20 removal for being apprehended upon arrival near the border or for being unable to
21 show that they have been physically present in the United States for more than two
22 years until a determination has been made as to whether they have a credible fear
23 of persecution); § 1225(b)(2)(A) (anyone alleged to be an “applicant for admission”
24 who is “seeking admission” and whom an “examining immigration officer
25 determines . . . is not clearly and beyond a doubt entitled to be admitted.”).

26 42. In contrast, 8 U.S.C. § 1226(a) authorizes the detention of certain noncitizens who
27 are already in the country pending an IJ’s decision in removal proceedings. Such
28 detention is discretionary, and individuals detained under Section 1226(a) are (with

1 a few exceptions not relevant here) entitled to a bond hearing at the outset of their
2 detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Discretionary detention is only
3 appropriate where a noncitizen is found to be a flight risk from removal proceedings
4 or is a danger to the community. *Zadvydas*, 533 U.S. at 690-91.

5 **ARGUMENT**

6
7 **I. ICE’s Continued Detention of Petitioner Violates His Substantive Due
8 Process Rights Under the Fifth Amendment**

9 43. Respondents have violated and continue to violate Petitioner’s substantive due
10 process rights.

11 44. The Fifth Amendment’s Due Process Clause states that, “[n]o person shall be . . .
12 deprived of life, liberty, or property, without due process of law.” U.S. Const.
13 amend. V. Accordingly, in the United States, “liberty is the norm, and detention
14 prior to trial or without trial is the carefully limited exception.” *U.S. v. Salerno*, 481
15 U.S. 739, 755 (1987).

16 45. The Fifth Amendment’s due process rights extend to noncitizens seeking asylum.
17 *Reno v. Flores*, 507 U.S. 292, 306 (1993). Indeed, Due Process “protections apply
18 to all ‘persons’ within the United States, including [noncitizens], whether their
19 presence here is lawful, unlawful, temporary, or permanent, and to immigration
20 detention as well as criminal detention.” *Hernandez v. Sessions*, 872 F.3d 976, 990
21 (9th Cir. 2017) (cleaned up). For noncitizens in immigration detention, “[f]reedom
22 from imprisonment—from government custody, detention, or other forms of
23 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*,
24 533 U.S. at 690.

25 46. The Supreme Court “repeatedly has recognized that civil commitment *for any*
26 *purpose* constitutes a significant deprivation of liberty that requires due process
27 protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added); *see*
28 *also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (“civil detainees retain

1 greater liberty protections than individuals detained under criminal process,” and
2 therefore they enjoy constitutional protections “at least as great as those afforded
3 to” criminal detainees).

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

12 48. Petitioner has consistently demonstrated that he is not a flight risk but rather that
13 he is committed to following the proper immigration procedures, including by
14 lawfully entering the United States with an F-1 visa, attending all scheduled
15 interviews related to his F-1 visa and his biometrics appointment, and timely filing
16 his asylum application after lawfully entering the United States.

17 49. Nor does Petitioner pose any danger to the community. Petitioner has absolutely
18 no criminal history, whether in the United States or otherwise, nor any record of
19 prior violent or dangerous behavior. Throughout his time in the United States,
20 Petitioner followed all applicable laws and rules, including obtaining work
21 authorization before beginning employment. Further, he has obtained and held
22 employment, enrolled in a local community college to broaden his education and
23 improve his English, independently studies to improve his computer science skills,
24 is engaged to a United States green-card holder, and has built a strong community
25 of friends and neighbors. Respondents’ detention of Petitioner thus violates his due
26 process rights.

27 50. This Court has the authority to order Petitioner’s release to remedy the violation of
28 his substantive due process rights. The federal habeas statute directs district courts

1 to “hear and determine the facts” of a habeas petition and to “dispose of the matter
2 as law and justice require.” 28 U.S.C. § 2243; *see also* *Hilton v. Braunskill*, 481
3 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, “the
4 Court interpreted the predecessor of § 2243 as vesting a federal court ‘with the
5 largest power to control and direct the form of judgment to be entered in cases
6 brought up before it on habeas corpus’” (quoting *In re Bonner*, 151 U.S. 242, 261
7 (1894))). In immigration habeas cases, including in this Circuit, courts regularly
8 order release upon determining that detention violates substantive due process. *See,*
9 *e.g., Ekeh v. Gonzales*, 197 F. App’x 637, 638 (9th Cir. 2006) (ordering supervised
10 release pursuant to *Zadvydas*); *see also* *Nguyen v. Fasano*, 84 F. Supp. 2d 1099,
11 1113 (S.D. Cal. 2000) (issuing order to show cause why the petitioner should not
12 be released).

13
14 **II. ICE’s Continued Detention of Petitioner Violates His Procedural Due
15 Process Rights Under the Fifth Amendment**

16 a. Procedural Due Process is Not Satisfied Under 8 U.S.C. § 1226.

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

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

26 53. Because Petitioner obtained a protected liberty interest once he entered the United
27 States on a lawfully obtained F-1 student visa and timely filed an application for
28 asylum, “the Due Process Clause requires procedural protections before he can be

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

6 54. *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 Lozada v. Larose*, No.
12 25CV3614-LL-KSC, 2026 WL 184205, at *2–3 (S.D. Cal. Jan. 23, 2026) (applying
13 the *Mathews* test where the petitioner was detained under § 1226(a) and ordering
14 respondents to “immediately release Petitioner from custody subject only to the
15 conditions of his preexisting parole”).

16 55. Under *Mathews*, Petitioner’s civil detention violates his due process rights. He
17 must therefore be released pending consideration and resolution of his application
18 for asylum.

19 56. **First**, Petitioner has a recognizable liberty interest in avoiding unnecessary
20 detention. *Lozada*, 2026 WL 184205, at *2 (finding that “having been previously
21 released on humanitarian parole, Petitioner had a protected liberty interest in
22 remaining free from detention”); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025,
23 1032 (N.D. Cal. 2025) (“Even individuals who face significant constraints on their
24 liberty or over whose liberty the government wields significant discretion retain a
25 protected interest in their liberty.”) (citations omitted). Petitioner is being held at a
26 detention center in the same conditions as criminal inmates and without reliable
27 means to contact family, friends, or legal counsel. *See Velasco Lopez v. Decker*,
28 978 F.3d 842, 851 (2d Cir. 2020) (finding, in assessing the first *Mathews* factor, that

1 “[t]he deprivation he experienced while incarcerated was, on any calculus,
2 substantial. He was locked up in jail. He could not maintain employment...[t]he use
3 of a cell phone was prohibited, and he had no access to the internet or email and
4 limited access to the telephone.”). Petitioner “has an overwhelming interest here—
5 regardless of the length of his immigration detention—because ‘any length of
6 detention implicates the same’ fundamental rights.” *Perera v. Jennings*, No. 21-
7 CV-04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation
8 omitted).

9 57. **Second**, there is a high risk of erroneous deprivation of Petitioner’s liberty interest,
10 as Petitioner was detained without any opportunity to be heard. *Gonzalez Salazar*
11 *v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3,
12 2025); *see also Singh v. Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025)
13 (finding that where Petitioner “has not received any bond or custody
14 redetermination hearing,” the “risk of an erroneous deprivation of liberty is high”
15 (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5
16 (E.D. Cal. May 16, 2025))).

17 58. **Third**, Respondents’ interest in detaining Petitioner is both vague and minimal,
18 especially in contrast to the significant liberty interest at stake for Petitioner. Any
19 government interest—for example, in ensuring Petitioner’s attendance for his
20 immigration case—is speculative, given that Petitioner entered the United States
21 legally, complied with all immigration requirements on a timely basis, and presents
22 neither a security nor a flight risk.

23 59. 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). Conversely, the
25 cost of providing an individualized review is low, and the longer Petitioner remains
26 detained, the weaker Respondents’ interest in detaining him without this review
27 becomes. *See Zadvydas*, 533 U.S. at 701. Thus, Respondents’ substantially weak
28

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

3 b. Procedural Due Process Is Not Satisfied Under 8 U.S.C. § 1225.

4 60. Any argument by Respondents—including based on the Interim Guidance *Matter*
5 *of Yajure Hurtado*—that Petitioner is detained under § 1225 is contrary to hundreds
6 of decisions of federal courts around the country, not to mention decades of practice.
7 *See, e.g., Castro v. Larose*, No. 26-CV-01547-BAS-MSB, 2026 WL 821058, at *1
8 (S.D. Cal. Mar. 25, 2026) (reasserting the court’s rejection of *Yajure Hurtado*
9 despite the Ninth Circuit’s stay of *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
10 BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026) and affirming that “[a petitioner
11 that entered the United States several years ago] is not subject to mandatory
12 detention under Section 1225”); *Garcia v. LaRose*, No. 25CV2936-BTM-MMP,
13 2025 WL 3248746, at *2 (S.D. Cal. Nov. 20, 2025) (citing *Torres v. Barr*, 976 F.3d
14 918, 926 (9th Cir. 2020) (en banc)) (rejecting *Yajure Hurtado* and ruling that § 1225
15 refers to “actual applications for admissions”); *Rodriguez-Acurio v. Almodovar*, 811
16 F. Supp. 3d 274, 311 (E.D.N.Y. 2025) (finding that the premise of *Yajure*
17 *Hurtado*—that detention of noncitizens arrested while residing in the United States
18 is governed by 8 U.S.C. § 1225(b)(2)(A) rather than § 1226(a)—is “not
19 persuasive”); *Romero v. Francis*, No. 25-CV-8112 (JGK), 2025 WL 3110459, at *3
20 (S.D.N.Y. Nov. 6, 2025) (same); *Villa v. Normand*, No. 5:25-CV-89, 2025 WL
21 3095969, at *10 (S.D. Ga. Nov. 4, 2025) (same); *see United States v. Gambino-*
22 *Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (explaining that the court already “rejected
23 the view that an alien remains in a perpetual state of applying for admission”); *see*
24 *also Cordero Pelico v. Kaiser*, No. 25-CV-07286-EMC, 2025 WL 2822876, at *9
25 (N.D. Cal. Oct. 3, 2025) (declining to follow *Yajure Hurtado* because, under *Loper*
26 *Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024), “[*Yajure Hurtado*] is entitled
27 to little deference”); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565,
28 at *5 (W.D. Ky. Sept. 19, 2025) (“[B]ecause it is the responsibility of the court to

1 decide whether the law means what the agency says[,] the Court disagrees with the
2 holding of *Matter of Yajure* [*Hurtado*] and declines to follow it.”) (internal
3 quotation marks omitted).

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

7 **III. Respondents’ Detention of Petitioner Violates the Administrative
8 Procedure Act - 5 U.S.C. § 706(2)(A).**

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

11 63. An action is an abuse of discretion if the agency “entirely failed to consider an
12 important aspect of the problem, offered an explanation for its decision that runs
13 counter to the evidence before the agency, or is so implausible that it could not be
14 ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of*
15 *Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor*
16 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
17 (1983)).

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

22 65. Further, under the APA, a “court shall . . . hold unlawful and set aside agency action
23 . . . found to be . . . not in accordance with law.” 5 U.S.C. § 706(2)(A). Petitioner’s
24 detention is not authorized under either 8 U.S.C. § 1225 (mandatory detention) or 8
25 U.S.C. § 1226 (discretionary detention). He did not enter the United States without
26 inspection; he has never been in removal proceedings (until now); he has never
27 previously been detained or granted a bond hearing or released on his own
28 recognizance.

- 1 66. By categorically ignoring that Petitioner lawfully entered the United States as a
2 result of being granted an F-1 visa (and is lawfully permitted to remain having
3 timely applied for asylum) and transferring him to OMDC without consideration of
4 his individualized facts and circumstances, Respondents have violated the APA.
5 67. Respondents have made no finding that Petitioner is a danger to the community,
6 and Respondents have made no finding that Petitioner is a flight risk.

7
8 **CLAIMS FOR RELIEF**

9 **FIRST CLAIM**

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

11 **(Substantive Due Process)**

- 12 68. Petitioner repeats and realleges the allegations above and incorporates them by
13 reference here.
14 69. The Due Process Clause of the Fifth Amendment forbids the government from
15 depriving any “person” of liberty “without due process of law.” U.S. Const.
16 Amend. V.
17 70. The Supreme Court has recognized two legitimate interests that may be served by
18 civil immigration detention: preventing flight from removal proceedings and
19 protecting the community from danger. *Zadvydas*, 533 U.S. at 690–91.
20 71. Neither is present here, where Petitioner’s detention is untethered to any legitimate
21 government interest. Petitioner is not a threat to the community or a flight risk.
22 Indeed, Petitioner has no criminal record nor any history of violent or dangerous
23 behavior that would make him a threat to the community, and he has at all times
24 complied with immigration laws of the United States, including by appearing at
25 prior immigration court hearings. For these reasons, Petitioner’s ongoing detention
26 violates due process.

27 **SECOND CLAIM**

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

(Procedural Due Process)

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

73. Petitioner has a protected interest to be free from detention, including because he entered this country on a valid student visa and timely filed a still-pending asylum application.

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

THIRD CLAIM

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

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

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

77. Respondents’ detention of Petitioner is arbitrary and capricious. Respondents’ detention of Petitioner violates the INA and the Fifth Amendment.

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Grant the petition and issue a writ of habeas corpus commanding Petitioner’s

1 immediate release from Respondents' custody under reasonable conditions of
2 supervision, and ordering that Respondents may not re-detain him absent a violation
3 of those conditions proven by ICE at a pre-deprivation hearing, or, in the alternative,
4 order Respondents to provide Petitioner with a bond hearing at the earliest possible
5 date but in any event no later than five (5) days from issuance of the order (8 U.S.C.
6 § 1226);

- 7 c. Enjoin Respondents from causing Petitioner any greater harm during the pendency
8 of this litigation and his immigration court case, such as by transferring him out of
9 this District and away from his community and his pro bono counsel;
- 10 d. Declare Petitioner's detention in Respondents' custody unlawful under the INA and
11 the Due Process Clause of the Fifth Amendment of the United States Constitution;
- 12 e. Award Petitioner reasonable attorneys' fees, costs, and other disbursements in this
13 action permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on
14 any other basis justified under law;
- 15 f. Grant such further relief as the Court deems just and proper.

16
17 Respectfully submitted on April 13, 2026

18 /s/Neema Jalali

19 Neema Jalali

20 GIBSON, DUNN & CRUTCHER LLP

21 *Pro Bono Attorney for Petitioner*

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: April 13, 2026

/s/ Neema Jalali

Neema Jalali

GIBSON, DUNN & CRUTCHER LLP

Pro Bono Attorney for Petitioner

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