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*Pro Bono Attorneys for Petitioner*

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

M.M.,  
Petitioner,

vs.

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

Respondents.

Case No. '26CV2346 BJC BJW

**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 M.M.<sup>1</sup>, will, and hereby  
5 does, 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 M.M. out of this district, declare his detention unlawful, and release him from custody  
9 immediately.

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

25 \_\_\_\_\_  
26 <sup>1</sup> “M.M.” 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 M.M.'s ongoing detention violates his due process rights and is contrary to law.  
2 Accordingly, M.M. seeks a temporary restraining order enjoining Respondents from  
3 continuing to detain him. M.M. 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.

10  
11  
12  
13 Dated: April 13, 2026

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

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
STATEMENT OF FACTS .....	2
STANDARD OF REVIEW .....	3
ARGUMENT .....	4
I.    Petitioner Is Likely to Succeed on the Merits of His Claim. ....	4
A.    M.M.’s Fifth Amendment Claims Are Likely to Succeed on the Merits. ....	5
B.    M.M.’s Administrative Procedure Act Claim Is Likely to Succeed on the Merits.....	10
II.   M.M. Is Actively Suffering Irreparable Harm. ....	11
III.  The Balance of the Equities and Public Interest Factors Weigh in M.M.’s Favor.....	12
IV.  Prudential Exhaustion Is Not Required.....	13
V.   M.M. Is Entitled to a Bond Hearing Under 8 U.S.C. § 1226.....	13
CONCLUSION.....	14
CERTIFICATE OF SERVICE.....	16

**INTRODUCTION**

1  
2 Despite having filed a well-supported affirmative application for asylum and  
3 entering the United States on a valid F-1 student visa in 2022, and despite having no  
4 criminal record and having strong ties to his local community, Petitioner M.M. is being  
5 unlawfully detained in the custody of Immigration and Customs Enforcement (“ICE”)  
6 at the Otay Mesa Detention Center (“OMDC”). Respondents have not clearly identified  
7 the statutory basis for M.M.’s detention, but regardless of whether they purport to detain  
8 him under 8 U.S.C. § 1225 or 8 U.S.C. § 1226, his continued detention is unlawful.  
9 M.M. seeks his immediate release under appropriate conditions from his unlawful  
10 incarceration in ICE custody.


11 M.M. is a 22-year-old asylum applicant with no criminal history, whether in the  
12 United States or otherwise. He has lived in the United States for over three years and  
13 has built a large community in San Diego. He has attended school, independently  
14 pursued computer science studies, became engaged to another United States student and  
15 green card holder, and had steady employment in the United States, including working  
16 as a cashier and as a delivery driver.

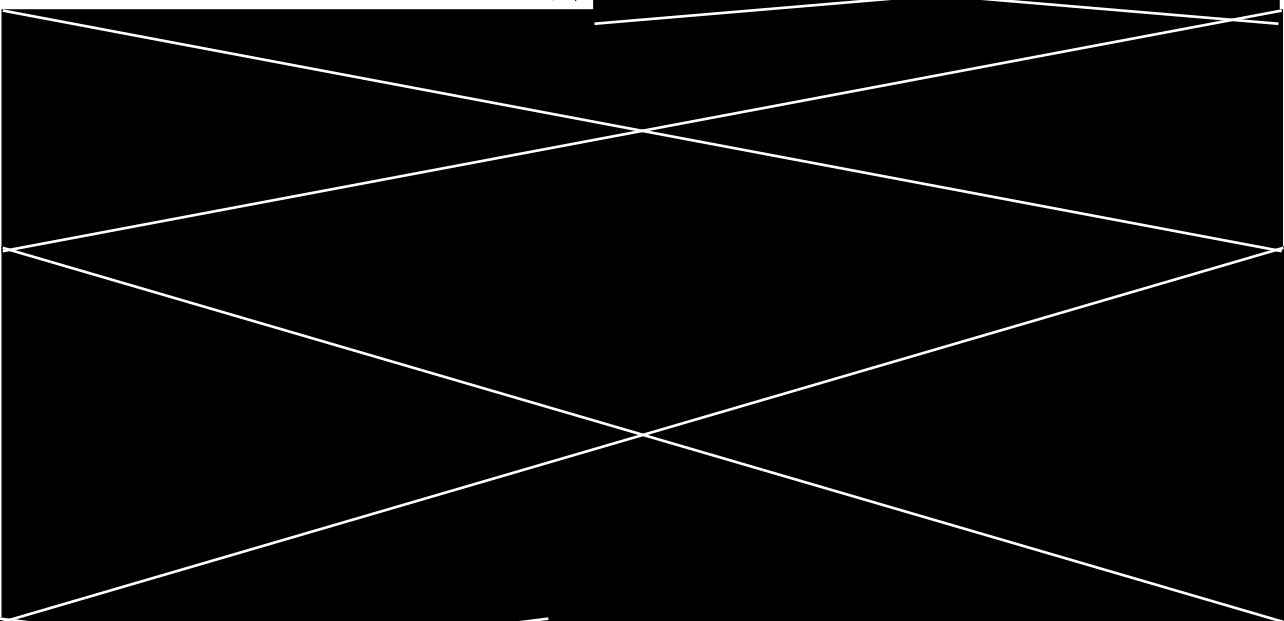
17 ICE did not have a warrant for M.M.’s arrest. Rather, the agents targeted him  
18 while he was lawfully working as a delivery driver pursuant to a valid employment  
19 authorization document. ICE lacked reasonable suspicion for his arrest.


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

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

**STATEMENT OF FACTS<sup>2</sup>**

1  
2 M.M. is a citizen of Afghanistan who was born in Daykundi, Afghanistan.  
3 Petitioner was forced to flee Afghanistan based on past persecution and a reasonable  
4 fear of future persecution because he (1) 

5 

15  Around April 2022, M.M. and his sister fled  
16 Afghanistan, waiting in Pakistan until they had received their F-1 visas. M.M. arrived  
17 in the United States in late September 2022 and started in-person classes at a private  
18 high school in California shortly thereafter.

19 M.M. applied for asylum with USCIS on May 17, 2023. In the acknowledgment  
20 of receipt, Respondents informed him that he may remain in the United States until his  
21 asylum application has been adjudicated. His next step in the process is an asylum  
22 interview with USCIS. Respondents issued M.M. a work authorization document  
23 pursuant to 8 C.F.R. § 274a.12(c)(8) that is valid from November 15, 2023, through  
24 November 14, 2028.

25 \_\_\_\_\_  
26 <sup>2</sup> 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 M.M. has resided in the United States for more than three years and has adjusted  
2 well to life in this country. He was eager to work and support himself, and has enjoyed  
3 steady employment, including as a delivery driver. M.M. has built a strong community  
4 in San Diego and has no criminal history.

5 On the evening of April 10, 2026, M.M. was working as a delivery driver and  
6 attempted to drop off a delivery at Camp Pendleton in San Diego County, California.  
7 When he arrived at the entry gate, a guard denied him entry and requested his  
8 identification. M.M. complied and provided his I-94 and explained that he had a pending  
9 asylum application. Despite producing valid identification, M.M. was detained at Camp  
10 Pendleton.

11 M.M. was able to inform his sister that he was detained, and she contacted M.M.'s  
12 attorneys. Later that night, M.M.'s attorneys attempted to locate M.M. On the morning  
13 of April 11, 2026, M.M.'s attorneys spoke to officials at Otay Mesa Detention Center  
14 who confirmed that M.M. had been there from 1:00am to 3:00am that day. M.M. later  
15 spoke to his attorneys stating that he was at ICE's downtown San Diego holding facility  
16 located at 880 Front Street, San Diego, California, and that they would be transferring  
17 him to Otay Mesa Detention Center. Later that day, M.M. was transferred to Otay Mesa  
18 Detention Center, where he remains detained.

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

### 23 STANDARD OF REVIEW

24 A temporary restraining order is warranted where a Petitioner establishes that (1)  
25 he is likely to succeed on the merits of his claim; (2) he will suffer irreparable harm  
26 absent relief; (3) the balance of the equities tips in his favor; and (4) an injunction is in  
27 the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.

1 2011) (citing *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008)); *see also*  
2 *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 839 n.7  
3 (2001) (applying preliminary injunction standard to a temporary restraining order).<sup>3</sup>  
4 Where the government is the Respondent, the balance of the equities and public interest  
5 factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

6 **ARGUMENT**

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

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

22 M.M.'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 <sup>3</sup> If Respondents respond to this motion for a TRO, M.M. 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 “is in custody in  
3 violation of the Constitution or laws or treaties of the United States.” 8 U.S.C. § 2241(c).  
4 M.M.’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 M.M.’s. *See, e.g., Noori v. Larose*,  
7 No. 25-cv-03006-BAS-MMP, 2025 WL 3295386, at \*4 (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 a 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. M.M.’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. amend.  
28

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

4 The Fifth Amendment’s due process rights extend to noncitizens seeking asylum,  
5 like M.M. *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 implicitly determined that Petitioner is neither a danger nor a  
3 flight risk in connection with granting his F-1 student visa and his employment  
4 authorization. And Petitioner has done nothing that would warrant disturbing those  
5 findings. He has demonstrated his commitment to following the proper immigration  
6 procedures by lawfully entering the United States on a F-1 student visa, attending all  
7 scheduled immigration appointments, such as his biometrics appointment, and timely  
8 filing his asylum application within one year of his arrival into the United States. Nor  
9 does he pose any danger to the community. Petitioner has no criminal history or any  
10 record of prior violent or dangerous behavior. Throughout his time in the United States,  
11 Petitioner has obtained and held employment, pursued his education both in community  
12 colleges and through independent studies, with his sister, has built a community of  
13 friends and neighbors, and is engaged to a United States student and green card holder.  
14 Respondents’ detention of Petitioner violates his due process rights.

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

1 Procedural Due Process: M.M.’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 based  
6 on his pending asylum application, “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, 1238–44 (S.D. Cal. 2019) (applying the *Mathews* test where petitioners were  
19 detained under § 1225(a)(1)); *Lozada v. Larose, et al.*, No. 25CV3614-LL-KSC, 2026  
20 WL 184205, at \*2–3 (S.D. Cal. Jan. 23, 2026) (applying the *Mathews* test where the  
21 petitioner was detained under § 1226(a) and ordering respondents to “immediately  
22 release 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, 851–52 (2d Cir. 2020)  
5 (finding, in assessing the first *Mathews* factor, that “[t]he deprivation he experienced  
6 while incarcerated was, on any calculus, substantial. He was locked up in jail. He could  
7 not maintain employment...[t]he use of a cell phone was prohibited, and he had no  
8 access 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*, No. 21-CV-04136-BLF, 2021 WL 2400981, at \*4 (N.D. Cal. June 11, 2021)  
12 (citation omitted).

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

20 Third, the government’s interest in detaining Petitioner, when the government  
21 *itself* granted Petitioner’s F-1 student visa and employment authorization, is both vague  
22 and minimal, especially in contrast to the significant liberty interest at stake for  
23 Petitioner. Any government interest, for example, in ensuring Petitioner’s attendance  
24 for his asylum case has already been secured by the grant of his employment  
25 authorization documents. It is “always in the public interest to prevent the violation of  
26 a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
27 2012); see *Rodriguez v. Robbins*, 715 F.3d 1127, 1145–46 (9th Cir. 2013). Conversely,  
28

1 the cost of providing an individualized review is low, and the longer Petitioner remains  
2 detained, the weaker the government's interest in detaining him without this review  
3 becomes. *See Zadvydas*, 533 U.S. at 701. Thus, the government's substantially weak  
4 interest in detaining Petitioner does not outweigh Petitioner's substantial liberty interest  
5 and the risk of erroneous 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. M.M.'s Administrative Procedure Act Claim Is Likely to Succeed on**  
10 **the 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 disregarding Petitioner's pending asylum application and  
23 transferring him to OMDC without consideration of his individualized facts and  
24 circumstances, Respondents have violated the APA. Respondents have made no finding  
25 that Petitioner is a danger to the community. Respondents have made no finding that  
26 Petitioner is a flight risk. By categorically detaining Petitioner, Respondents have  
27 further abused their discretion because there have been no changes to his facts or  
28

1 circumstances since the agency made its initial determination to grant him entry into the  
2 United States on his F-1 visa that support detention.

3 Respondents have already considered Petitioner’s facts and circumstances and  
4 granted him his F-1 visa and employment authorization. There have been no changes to  
5 those facts justifying his detention.

6 \* \* \*

7 M.M. is likely to succeed on his constitutional claims, warranting a temporary  
8 restraining order until his habeas petition can be decided.

9 **II. M.M. Is Actively Suffering Irreparable Harm.**

10 A TRO is appropriate where a petitioner demonstrates that they face irreparable  
11 harm, *Sessions*, 872 F.3d at 994, and “for which there is no adequate legal remedy,”  
12 *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). For the reasons  
13 explained *supra*, Respondents have violated M.M.’s constitutional and statutory rights.  
14 Since M.M.’s detention without cause on April 10, he has already suffered irreparable  
15 harm.

16 The Ninth Circuit has explained that it “is well established that the deprivation of  
17 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*  
18 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted); *see also Moreno Galves*  
19 *v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020), *aff’d in part, vacated in*  
20 *part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th  
21 Cir. 2022) (finding detention constitutes “a loss of liberty that is . . . irreparable.”).  
22 Courts have further found that “if Petitioner is correct on the merits of his habeas  
23 petition, then Petitioner has already been unlawfully deprived” of his rights and “each  
24 additional day that Petitioner is detained without a [lawful] bond hearing would cause  
25 him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05391, 2017 WL  
26 4355182, at \*3 (N.D. Cal. Oct. 2, 2017) (cleaned up); *Cortez v. Sessions*, 318 F. Supp.

1 3d 1134, 1139 (N.D. Cal. 2018) (petitioner “suffers potentially irreparable harm every  
2 day that he remains in custody without a [bond] hearing”) (citation omitted).

3 For the reasons above, M.M. is facing ongoing irreparable harm that will continue  
4 absent relief from this Court.

5 **III. The Balance of the Equities and Public Interest Factors Weigh in M.M.’s**  
6 **Favor.**

7 When the government is a party involved in an application for a TRO, the balance  
8 of the equities and the public interest factors merge. *Nken*, 556 U.S. at 435. Where  
9 granting an injunction will not “substantially injure the other parties,” the balance of  
10 equities tips in the movant’s favor. *Id.* at 434. Additionally, a petitioner’s “likelihood  
11 of success on the merits of a constitutional claim also tips the merged third and fourth  
12 factors decisively in his favor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

13 Respondents will suffer no harm if this Court issues a TRO because the  
14 Government “cannot suffer harm from an injunction that merely ends an unlawful  
15 practice.” *Rodriguez*, 715 F.3d at 1145; *see also Zepeda v. I.N.S.*, 753 F.2d 719, 727  
16 (9th Cir. 1983) (government “cannot reasonably assert that it is harmed in any legally  
17 cognizable sense by being enjoined from constitutional violations”); *cf. Ramirez v. U.S.*  
18 *Immigr. & Customs Enf’t*, 310 F. Supp. 3d 7, 33 (D.D.C. 2018) (“The public interest  
19 surely does not cut in favor of permitting an agency to fail to comply with a statutory  
20 mandate.”). Where, like here, a noncitizen’s detention “is inconsistent with federal law,  
21 . . . the balance of hardships and public interest factors weigh in favor of a preliminary  
22 injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash.  
23 2019); *see Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

24 Because Respondents face no harm from M.M.’s release and governmental  
25 compliance with the Constitution and laws benefits the public interest, the balance of  
26 the equities and the public interest here weigh strongly in favor of M.M.’s requested  
27 injunctive relief.  
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1 **IV. Prudential Exhaustion Is Not Required.**

2 Because the habeas statute (28 U.S.C. § 2241) “does not specifically require  
3 petitioners to exhaust direct appeals before filing petitions for habeas corpus,”  
4 exhaustion “is a prudential requirement” that “a court has discretion to waive.” *Estrada-*  
5 *Samayoa v. Cruz*, No. 1:25-CV-01565-EFB (HC), 2025 WL 3268280, at \*7 (E.D. Cal.  
6 Nov. 24, 2025) (citation omitted). Exhaustion of remedies is not required when resort  
7 to such remedies “would be a futile gesture.” *Sessions*, 872 F.3d at 988. Because the  
8 BIA recently held that § 1225 applies broadly to individuals “present in the United States  
9 who ha[ve] not been admitted,” *In re Yajure Hurtado*, 29 I&N Dec. 216, 2025 WL  
10 2674169, 221, 229 (BIA 2025), it would be futile for M.M. to resort to the BIA for relief.  
11 Exhaustion is not required where “irreparable injury will result.” *Sessions*, 872 F.3d at  
12 988 . Every day that M.M. remains at OMDC is one in which his statutory and  
13 constitutional rights are being violated. *See Section II supra*. Exhaustion is also not  
14 required when “requiring resort to the administrative remedy may occasion undue  
15 prejudice to subsequent assertion of a court action.” *McCarthy v. Madigan*, 503 U.S.  
16 140, 146–47 (1992), *superseded on other grounds as stated in Booth v. Churner*, 532  
17 U.S. 731, 739–41 (2001). Additionally, because the issues presented are questions of  
18 statutory interpretation, they are “unlikely to require agency consideration to generate a  
19 proper record to reach a proper decision.” *Maldonado Bautista v. Santacruz*, No. 5:25-  
20 cv-01873 (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt.  
21 14 at 11.

22 **V. M.M. Is Entitled to a Bond Hearing Under 8 U.S.C. § 1226.**

23 Congress has only authorized civil detention of noncitizens in removal  
24 proceedings for specific, non-punitive purposes. *Zadvydas*, 533 U.S. at 690. 8 U.S.C.  
25 § 1225 provides for mandatory detention pending removal when a noncitizen is initially  
26 apprehended while arriving at the border. *See, e.g.*, 8 U.S.C. § 1225(b)(1); §  
27 1225(b)(2)(A). Because M.M. has been living in the United States since his arrival on  
28

1 an F-1 student visa in late September 2022, he is not an “arriving alien” and, therefore,  
2 not subject to mandatory detention under § 1225.

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

8 To the extent M.M. is being detained under § 1226, he has a right to be released  
9 on bond if he can show that he is not a threat to his community or a flight risk, which  
10 the U.S. government implicitly agreed he is not when it approved both his employment  
11 authorization and F-1 student visa.

### 12 CONCLUSION

13 M.M.’s compelling and urgent situation exceeds the minimum standard for  
14 requesting temporary relief. This Court should therefore:

- 15 1. Grant the relief as plead in the habeas petition;
- 16 2. Declare M.M.’s detention in Respondents’ custody unlawful under the INA and  
17 the Due Process Clause of the Fifth Amendment of the United States Constitution;
- 18 3. Enjoin Respondents from causing Petitioner any greater harm during the  
19 pendency of this litigation and his immigration court case, such as by transferring  
20 him anywhere outside of the jurisdiction of the Southern District of California and  
21 away from his counsel;
- 22 4. Order M.M. released; and
- 23 5. If the government seeks to re-detain M.M., require it to provide no less than seven  
24 (7) days’ notice to petitioner and hold a pre-deprivation bond hearing before a  
25 neutral arbiter pursuant to section 1226(a) and its implementing regulations, at  
26 which petitioner’s eligibility for bond must be considered.

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Dated: April 13, 2026

Respectfully submitted,

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

**CERTIFICATE OF SERVICE**

I, Neema Jalali, 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 April 13, 2026 at approximately 2:30 PM PT, my colleague Kelly Gregg emailed U.S. Attorneys Adam Gordon at Adam.Gordon@usdoj.gov, Erin Dimpleby at Erin.Dimpleby@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: April 13, 2026

Respectfully submitted

By: Neema Jalali  
Neema Jalali  
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