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

17 M.M.,  
18 Petitioner,

19 vs.

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

Respondents.

Case No. 3:26-cv-02346-BJC-BJW

**PETITIONER'S REPLY IN  
SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS**

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**INTRODUCTION**

Justice delayed is justice denied, but delay is what Respondents ask from this Court. M.M.’s detention was illegal the moment it began and remains illegal today. Respondents argue that this Court does not have jurisdiction to rule on that illegality, claiming that, instead, M.M. must file a separate bond motion with the immigration court, compile additional evidence from community and family members, wait for that motion to be scheduled and heard by the immigration court, and wait to receive a ruling from the immigration court before this Court can order him released. Not so. This Court is well within its authority to review the circumstances of M.M.’s detention and determine whether it was and is lawful. It was and is not. The Court should therefore issue a writ of habeas corpus requiring M.M.’s immediate release.

**ARGUMENT**

M.M.’s petition explained why his detention is unlawful and unconstitutional under either 8 U.S.C. § 1225 or 8 U.S.C. § 1226 because, at that time it was unclear on which authority Respondents would rely for their abrupt detention of M.M. Respondents have since correctly conceded that M.M. could not be detained under § 1225, given that he entered the United States lawfully on a student visa, has no criminal history of any kind, and has complied with all aspects of his immigration case to date.

That concession simplifies matters—leaving the Court to consider only that (I) Respondents’ detention of M.M. under 8 U.S.C. § 1226 violates M.M.’s Fifth Amendment due process rights and the Administrative Procedure Act and (II) the prudential exhaustion requirement does not bar M.M.’s petition or require M.M. to first seek bond in immigration court before filing for habeas relief.

- I. Respondents’ detention of M.M. under 8 U.S.C. § 1226 is unconstitutional and unlawful.**
  - A. Respondents’ detention of M.M. under § 1226 violates the Fifth Amendment.**

The Fifth Amendment’s due process guarantee extends to noncitizens seeking asylum, like M.M. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Due process “protections

1 apply to all ‘persons’ within the United States, including [noncitizens], whether their  
2 presence here is lawful, unlawful, temporary, or permanent, and to immigration  
3 detention as well as criminal detention.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th  
4 Cir. 2017) (cleaned up). For noncitizens in immigration detention, “[f]reedom from  
5 imprisonment—from government custody, detention, or other forms of physical  
6 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533  
7 U.S. 678, 690 (2001). Accordingly, M.M. has a Fifth Amendment right to “due process  
8 of law” *before* he is detained. U.S. Const. amend. V. Respondents’ return does not  
9 engage with the substance of M.M.’s constitutional claims. But Respondents’ detention  
10 of M.M. violates both (1) M.M.’s right to *substantive* due process under the Fifth  
11 Amendment and (2) M.M.’s right to *procedural* due process under the Fifth  
12 Amendment.

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

22 M.M. does not fit the Supreme Court’s test for discretionary detention under  
23 § 1226. Respondents have already implicitly determined that M.M. is neither a danger  
24 nor a flight risk when they granted his F-1 student visa and his employment  
25 authorization. And M.M. has done nothing to warrant disturbing those findings; the only  
26 reason he has been sitting in a detention center for weeks on end instead of studying,  
27 working, spending time with family, and contributing to his community is because he  
28

1 attempted to make a delivery drop-off to Camp Pendleton. This definitionally cannot be  
2 sufficient to meet Respondents' burden to detain.

3 M.M. is not a flight risk, as he has demonstrated his commitment to following  
4 immigration procedures by lawfully entering the United States on a F-1 student visa,  
5 attending all scheduled immigration appointments, such as his biometrics appointment,  
6 and timely filing his asylum application within one year of his arrival into the United  
7 States—and his entire immediate family (and his fiancée) are in California, where his  
8 immigration court proceedings are taking place. Nor does he pose any danger to the  
9 community. M.M. has no criminal history or any record of violent or dangerous  
10 behavior. Throughout his time in the United States, M.M. has obtained and held  
11 employment, pursued his education both in community college and through independent  
12 studies, has built a community of friends and neighbors, and is engaged to a United  
13 States student and green card holder. Respondents' detention of M.M. violates his  
14 substantive due process right not to be detained without a determination that he poses a  
15 flight risk or is a danger to his community.

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

1           **Procedural Due Process.** M.M.’s detention also violates his Fifth Amendment  
2 right to procedural due process, which requires that an individual detained under § 1226  
3 receive “adequate procedural protections” to ensure that the government’s asserted  
4 justification for physical confinement “outweighs the [incarcerated] individual’s  
5 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at  
6 690 (internal citation omitted). Because M.M. has a protected liberty interest based on  
7 his timely filed asylum application, “the Due Process Clause requires procedural  
8 protections *before* he can be deprived of that interest”. *Noori v. Larose*, No. 25-CV-  
9 03006-BAS-MMP, 2025 WL 3295386, at \*3 (S.D. Cal. Nov. 26, 2025) (emphasis  
10 added) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976)) (finding that ICE  
11 violated an Afghan asylum applicant’s procedural due process rights by detaining him  
12 at Camp Pendleton despite his immigration status).

13           *Mathews* instructs courts to balance three factors to determine whether procedural  
14 due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous  
15 deprivation of that interest through the procedures used, and the probable value, if any,  
16 of additional procedural safeguards; and, (3) the government’s interest, including fiscal  
17 and administrative burdens that additional or substitute procedural requirements entail.  
18 *Mathews*, 424 U.S. at 335; *see also Cancino Castellar v. McAleenan*, 388 F. Supp. 3d  
19 1218, 1238–44 (S.D. Cal. 2019) (applying the *Mathews* test where petitioners were  
20 detained under § 1225(a)(1)); *Lozada v. Larose, et al.*, No. 25CV3614-LL-KSC, 2026  
21 WL 184205, at \*2–3 (S.D. Cal. Jan. 23, 2026) (applying the *Mathews* test where the  
22 petitioner was detained under § 1226(a)).

23           **First**, M.M. has a protected liberty interest in avoiding unnecessary detention.  
24 *See Hernandez*, 872 F.3d at 994 (“[T]he government’s discretion to incarcerate non-  
25 citizens is always constrained by the requirements of due process.”); *Xu v. Bondi*, No.  
26 26-cv-1765-GPC-DEB, 2026 WL 836667, at \*3 (S.D. Cal. Mar. 26, 2026) (granting  
27 habeas petition, explaining “Petitioner has a private interest in remaining free, which  
28 developed over the more than three years he resided in the United States”); *see also*

1 *Zadvydas*, 533 U.S. at 693 (“the Due Process Clause applies to all ‘persons’ within the  
2 United States, including aliens, whether their presence here is lawful, unlawful,  
3 temporary, or permanent”). M.M. is being held at a detention center in the same  
4 conditions as criminal inmates and without the ability to meaningfully consult with legal  
5 counsel, let alone his family, friends, and emotional support system. *See Velasco Lopez*  
6 *v. Decker*, 978 F.3d 842, 851–52 (2d Cir. 2020). M.M. “has an overwhelming interest  
7 here—regardless of the length of his immigration detention—because ‘any length of  
8 detention implicates the same’ fundamental rights.” *Perera v. Jennings*, 2021 WL  
9 2400981, at \*4 (N.D. Cal. June 11, 2021).

10 **Second**, there is a high risk of erroneous deprivation of M.M.’s liberty interest, as  
11 M.M. was detained without an individualized determination that detention was lawful  
12 and constitutional under § 1226 because M.M. was a flight risk<sup>1</sup> or a risk to his  
13 community. *See, e.g., Esquivel Pacheco v. LaRose*, --- F.Supp.3d ---, 2026 WL 242300,  
14 at \*6 (S.D. Cal. Jan. 29, 2026) (finding risk of erroneous deprivation where “the record  
15 contains no indication that DHS reassessed Petitioner’s flight risk or danger to the  
16 public”). And by detaining M.M. after admitting him under a student visa and after  
17 M.M.’s timely asylum application, Respondents also breached the “implicit promise”  
18 they made to M.M. that he would enjoy his liberty so long as he did nothing to forfeit it.  
19 *See Morrissey v. Brewer*, 408 U.S. 471 482 (2001).

20 **Third**, the government’s interest in detaining M.M., when the government *itself*  
21 granted M.M.’s F-1 student visa and employment authorization, is both vague and  
22 minimal, especially in contrast to the significant liberty interest at stake for M.M. It is  
23 “always in the public interest to prevent the violation of a party’s constitutional rights.”  
24 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *see Rodriguez v. Robbins*, 715  
25 F.3d 1127, 1145–46 (9th Cir. 2013). Conversely, the cost of providing an individualized

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26 <sup>1</sup> At the time of detention, there were no proceedings pending against M.M. from which  
27 he could have absconded: he was detained on April 10, but the Notice to Appear  
28 initiating removal proceedings against him for the very first time was not filed until the  
following day on April 11.

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

5 Under *Mathews*, M.M.’s detention without a process to determine that he should  
6 have been detained in the first place violates his right to procedural due process. The  
7 Court should order M.M.’s immediate release.

8 **B. Respondents’ detention of M.M. violates the APA.**

9 Respondents say their detention of M.M. is not reviewable under the APA, but  
10 courts regularly apply the APA to review decisions to detain noncitizens when ruling on  
11 habeas petitions. *See, e.g., Calel v. LaRose*, No. 3:25-cv-02883-GPC-JLB, 2025 WL  
12 3171898, at\*3-\*6 (S.D. Cal. Nov. 13, 2025) (granting habeas petition, finding detention  
13 was unlawful under the APA); *Saadi v. LaRose*, No. 26-cv-1779-GPC-JLB, 2026 WL  
14 892831, at \*6 (S.D. Cal. Mar. 30, 2026) (granting habeas petition in part because  
15 decision to detain Lyft driver at Camp Pendleton violated the APA). This Court has  
16 jurisdiction under the APA to review actions “taken . . . to remove a[ noncitizen] from  
17 the United States.” *Hernandez v. Scott*, 2026 WL 933361, at \*3-\*4 (W.D. Wash. Apr.  
18 7, 2026) (rejecting similar argument that the court lacked jurisdiction under the APA to  
19 consider challenge to detention decision in habeas petition). And M.M. has the right to  
20 challenge “the constitutionality of his custody . . . [in] a petition to the appropriate court  
21 that includes the consolidated reasons that his detention is purportedly unlawful.”  
22 *Torres v. Noem*, 2026 WL 234076, at \*3 (W.D. Wash. Jan. 29, 2026) (rejecting argument  
23 that court lacked jurisdiction over APA claim in habeas petition). The decision to detain  
24 M.M. was an agency action that must live up to the APA’s requirements—and must be  
25 set aside if it does not.

26 Respondents claim to have discretionarily detained M.M. under § 1226, but the  
27 facts show their detention decision was an abuse of discretion. Under the APA, a court  
28 shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C.

1 § 706(2)(A). An action is an abuse of discretion if the agency “entirely failed to consider  
2 an important aspect of the problem, offered an explanation for its decision that runs  
3 counter to the evidence before the agency, or is so implausible that it could not be  
4 ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home*  
5 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs.*  
6 *Ass’n of US., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To survive  
7 an APA challenge, the agency must articulate “a satisfactory explanation” for its action,  
8 “including a rational connection between the facts found and the choice made.” *Dep’t*  
9 *of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

10 By categorically disregarding M.M.’s pending asylum application and detaining  
11 him without consideration of his individualized facts and circumstances, Respondents  
12 have violated the APA. Respondents have made no finding that M.M. is a danger to the  
13 community or that he is a flight risk. Instead, Respondents illegally and summarily  
14 detained M.M. as they have others whose rideshare, delivery, or other similar job  
15 brought them to Camp Pendleton.<sup>2</sup> By automatically detaining M.M., and making no

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16  
17 <sup>2</sup> See, e.g., *Zapata Velasquez v. Noem*, No. 26-cv-0746-BJC-MMP, 2026 WL 1005077  
18 (S.D. Cal. Apr. 14, 2026) (this Court granting habeas petition for delivery driver detained  
19 at Camp Pendleton); *Chavarro Velez v. Warden, Otay Mesa Det. Ctr.*, No. 3:26-cv-  
20 01889-JES-MSB, 2026 WL 972759 (S.D. Cal. Apr. 10, 2026) (granting habeas petition  
21 for individual detained at Camp Pendleton); *Saadi v. LaRose*, No. 26-cv-1770-GPC-  
22 JLB, 2026 WL 892831 (S.D. Cal. Mar. 30, 2026) (granting habeas petition for Lyft  
23 driver detained at Camp Pendleton); *Askarov v. LaRose*, No. 26-cv-1806-JES-DDL,  
24 2026 WL 898317 (S.D. Cal. Mar. 30, 2026) (granting habeas petition for Uber driver  
25 detained at Camp Pendleton); *Malyshko v. Larose*, No. 3:26-cv-1728-JES-MSB, 2026  
26 WL 849301 (S.D. Cal. Mar. 27, 2026) (granting habeas petition for individual who asked  
27 to use the bathroom at Camp Pendleton); *Cayar v. Warden, Otay Mesa Det. Ctr.*, No.  
28 3:26-cv-01431-RBM-DDL, 2026 WL 833904 (S.D. Cal. Mar. 26, 2026) (granting  
habeas petition for truck driver detained at Camp Pendleton); *Dasdemir v. LaRose*, No.  
26-cv-01617-BAS-AHG, 2026 WL 810067 (S.D. Cal. Mar. 24, 2026) (granting habeas  
petition for Uber driver detained at Camp Pendleton); *Isoev v. Larose*, No. 26-cv-1361-  
JES-DDL, 2026 WL 776308 (S.D. Cal. Mar. 19, 2026) (granting habeas petition for  
Uber driver detained at Camp Pendleton); *Aliyev v. LaRose*, No. 3:26-cv-01119-CAB-  
JLB, 2026 WL 699818 (S.D. Cal. Mar. 12, 2026) (granting habeas petition for Uber  
driver detained at Camp Pendleton); *Astafev v. Warden, Otay Mesa Det. Ctr.*, No. 3:26-  
cv-00313-RBM-AHG, 2026 WL 654247 (S.D. Cal. Mar. 9, 2026) (granting habeas  
petition for rideshare driver detained at Camp Pendleton); *Darji v. LaRose*, No. 26-cv-  
529-JLS-DEB, 2026 WL 323076 (S.D. Cal. Feb. 6, 2026) (granting habeas petition for

(Cont’d on next page)

1 individualized determinations about M.M. *before* detaining him, Respondents have  
2 further abused their discretion because there have been no changes to M.M.’s facts or  
3 circumstances that support detention since the agency made its initial determination to  
4 grant him entry into the United States on his F-1 visa. The Court should grant M.M.’s  
5 petition on the basis that his detention violates the APA.

6 **II. Respondents’ exhaustion argument is meritless.**

7 Respondents’ exhaustion argument boils down to a core claim that they can force  
8 M.M. to go through bond procedures before he can challenge the legality of his  
9 detention—even if the detention itself is illegal, and thus there is no basis to require  
10 M.M. to seek bond in the first place. Respondents correctly concede M.M. is entitled to  
11 a bond hearing in immigration court. M.M.’s petition sought an order for a bond hearing  
12 as secondary relief, given Respondents’ policy of seeking *mandatory* detention of  
13 noncitizens already in the U.S. (like M.M.) under 8 U.S.C. § 1225 to deny them a bond  
14 hearing. But the primary relief M.M. seeks is release without being forced to undergo  
15 the costly and risky process of seeking bond in immigration court—it flips M.M.’s rights  
16 on their head to require him to pay to be released from detention when he never should  
17 have been detained.

18 \_\_\_\_\_  
19 individual detained at Camp Pendleton while looking for a bathroom off the freeway);  
20 *Esquivel Pacheco v. LaRose*, --- F.Supp.3d ---, 2026 WL 242300 (S.D. Cal. Jan 29,  
21 2026) (granting habeas petition for individual detained while working at Camp  
22 Pendleton); *Modrekiladze v. LaRose*, No. 26-cv-271-JES-DEB, 2026 WL 242041 (S.D.  
23 Cal. Jan 29, 2026) (granting habeas petition for individual detained while making  
24 delivery to Camp Pendleton); *Moskovyan v. Noem*, No. 3:25-cv-03537-RBM-AHG,  
25 2026 WL 63472 (S.D. Cal. Jan. 8, 2026) (granting habeas petition for Lyft driver  
26 detained at Camp Pendleton); *Kumar v. LaRose*, No. 25-cv-3796-JLS-DDL, 2026 WL  
27 40873 (S.D. Cal. Jan. 6, 2026) (granting habeas petition for DoorDash driver detained  
28 at Camp Pendleton); *Naveen v. LaRose*, No. 25-cv-3689-JLS-AHG, 2025 WL 3771900  
(S.D. Cal. Dec. 30, 2025) (granting habeas petition for Uber driver detained at Camp  
Pendleton); *Vats v. LaRose*, No. 25-cv-3684-JLS-KSC, 2025 WL 3760383 (S.D. Cal.  
Dec. 29, 2025) (granting habeas petition for individual detained when he accidentally  
approached a gate of Camp Pendleton); *Mohammadi v. LaRose*, No. 3:25-cv-3450-JES-  
BJW, 2025 WL 3731737 (S.D. Cal. Dec. 26, 2025) (granting habeas petition for Uber  
driver detained at Camp Pendleton); *Deniz v. LaRose*, No. 3:25-cv-3588-CAB-DEB,  
2025 WL 3719320 (S.D. Cal. Dec. 23, 2025) (granting habeas petition for individual  
who accidentally turned toward a gate at Camp Pendleton); *Noori v. LaRose*, No. 25-cv-  
03006-BAS-MMP, 2025 WL 3295386 (S.D. Cal. Nov. 26, 2025) (granting habeas  
petition for rideshare driver detained at Camp Pendleton).

1 The need to avoid this exact kind of injustice and to give teeth to “The Great Writ  
2 of Liberty” is why the habeas statute (28 U.S.C. § 2241) gives this Court “discretion to  
3 waive” the requirement that M.M. exhaust his administrative remedies before seeking  
4 habeas relief. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).  
5 “Exhaustion of remedies is not required when resort to such remedies would be futile.”  
6 *Id.* at 541–42. Nor is it required where “irreparable injury will result.” *Laing v. Ashcroft*,  
7 370 F.3d 994, 1000 (9th Cir. 2004). In M.M.’s case, both futility and irreparable harm  
8 support waiving any need for administrative exhaustion. This Court should exercise this  
9 discretion to decline to require that M.M. seek release on bond before challenging the  
10 legality and constitutionality of his detention.

11 **Seeking release from the immigration court would be futile.** Seeking a bond  
12 hearing would be futile to address M.M.’s irreparable harms from being unlawfully and  
13 unconstitutionally detained because a bond hearing in immigration court will not address  
14 M.M.’s constitutional or APA challenges, and so cannot redress the injuries M.M.  
15 pleaded. *See Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (“[I]t is settled that  
16 the immigration judge and [the BIA] lack jurisdiction to rule upon the constitutionality  
17 of the Act and the regulations.”); *see also Bekhoev v. Marin*, 2026 WL 719162, at \*2  
18 (C.D. Cal. Mar. 12, 2026) (rejecting argument petitioner must first seek bond, as a bond  
19 hearing would not address “challenges [to] the constitutionality of his detention”). That  
20 is why prudential exhaustion is not required for challenges to the constitutionality of  
21 agency action, “such that the question of the adequacy of the administrative remedy is  
22 for all practical purposes identical with the merits of the plaintiff’s lawsuit.” *McCarthy*  
23 *v. Madigan*, 503 U.S. 140, 148 (1992) (citation modified).

24 **Exhaustion is not required because M.M. is suffering ongoing irreparable**  
25 **harm.** M.M. need not exhaust administrative remedies because “if [he] is correct on the  
26 merits of his habeas petition, then [he] has already been unlawfully deprived” of his  
27 rights and “each additional day that Petitioner is detained . . . would cause him harm that  
28 cannot be repaired.” *Villalta v. Sessions*, 2017 WL 4355182, at \*3 (N.D. Cal. Oct. 2,

1 2017) (cleaned up); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018).  
2 M.M. suffers irreparable harm to his constitutionally protected liberty interest every day  
3 he remains detained—not to mention the harm he suffers from missed school and lost  
4 income. *Hernandez*, 872 F.3d at 993 (“Freedom from imprisonment is at the ‘core of  
5 the liberty protected by the Due Process Clause.’” (quoting *Foucha v. Louisiana*, 504  
6 U.S. 71, 80 (1992))).

7 Respondents cite no truly analogous authority for their attempt to strip this Court  
8 of jurisdiction on exhaustion grounds. And this Court has rejected this argument from  
9 the government when granting other habeas petitions. *See, e.g.*, ECF 10, *Zuo v. Velarde*,  
10 No. 26-cv-0765-BJC-SBC (S.D. Cal. Feb 24, 2026); ECF 8, *Singh v. Brightman*, No.  
11 26-cv-00233-BJC-VET (S.D. Cal. Feb. 10, 2026); ECF 7, *Yilmaz v. LaRose*, 26-cv-  
12 00122-BJC-MMP (S.D. Cal. Jan. 27, 2026). And even when the government hasn’t  
13 made this jurisdiction-stripping argument, this Court has regularly granted habeas  
14 petitions where the petitioner could seek (or was already seeking) bond in parallel—and  
15 has not found any exhaustion problem. *See, e.g.*, *Zambrano Aldama v. Mullin*, No. 26-  
16 cv-0897-BJC-JLB, 2026 WL 962657, at \*1 (S.D. Cal. Apr. 9, 2026) (granting immediate  
17 release where government conceded entitlement for bond hearing); *Singh v. Noem*, No.  
18 26-cv-1081-BJC-DDL, 2026 WL 686313, at \*1 (S.D. Cal. Mar. 11, 2026) (same); *Alkan*  
19 *v. U.S. Immigration and Customs Enforcement*, No. 26-cv-0672-BJC-DDL, 2026 WL  
20 559776, at \*1 (S.D. Cal. Feb. 27, 2026) (same); *Singh v. Bondi*, No. 26-cv-0399-BJC-  
21 JLB, 2026 WL 842067, at \*1-\*2 (S.D. Cal. Feb. 4, 2026) (same).

22 The Court has the authority to, and should, address M.M.’s urgent claims without  
23 applying an ineffectual exhaustion requirement.

### 24 CONCLUSION

25 The Court should grant M.M.’s habeas petition and order Respondents to release  
26 M.M. immediately and to not re-detain him without a finding supported by evidence that  
27 M.M. is a flight risk or a danger to his community.

1 Dated: April 27, 2026

Respectfully submitted,

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3 By: Neema Jalali

4 Neema Jalali  
5 GIBSON, DUNN & CRUTCHER LLP  
6 *Pro Bono Attorneys for Petitioner*  
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