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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Samir Aghar,

10 Petitioner,

11 vs.

12 Fred Figueroa, Warden, Eloy Detention
13 Center;

14 John Cantu, Phoenix Field Office Director,
15 U.S. Immigration and Customs Enforcement;

16 Pamela Jo Bondi, Attorney General of the
United States;

17 Kristi Noem, Secretary of Homeland
18 Security; and

19 Robert F. Kennedy, Jr., Secretary of Health
and Human Services,

20 Respondents.
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No. 2:25-cv-3147-PHX-KML (CDB)

**Amended Petition for a Writ of Habeas
Corpus Under 28 U.S.C. § 2241**

22 Petitioner Samir Aghar now files this amended petition for a writ of habeas corpus under
23 28 U.S.C. § 2241. This amended petition is filed as a matter of right within 21 days of the
24 respondents' answer to the petition. *See* Fed. R. Civ. P. 15(a)(1)(B) (amendment permitted once
25 as a matter of course within 21 days after service of a responsive pleading); *Mayle v. Felix*, 545
26 U.S. 644, 655 (2005) (Rule 15 applies in habeas proceedings). This amended petition supersedes
27 the original petition filed on August 28, 2025. (Dkt. #1) *See Hal Roach Studios, Inc. v. Richard*
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Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (explaining that “an amended pleading supersedes the original”).¹

Technical Data

1. Mr. Aghar is challenging the validity of his detention in immigration custody. His A number is .
2. Mr. Aghar is challenging the decision of the Bureau of Immigration and Customs Enforcement to detain him while his asylum case progresses through the immigration courts, contrary to the statutes that required ICE to find the least restrictive placement for him once he turned 18 years old.
3. Mr. Aghar was taken into immigration custody in April 2025 after he turned 18 and no longer qualified for placement in the juvenile immigration foster-care system. He has a claim for asylum, withholding of removal, and protection under the Convention Against Torture pending with the immigration court in Eloy, Arizona. An immigration judge there denied him a bond hearing for lack of jurisdiction, citing the Board of Immigration Appeals’s precedential decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). (EOIR-69) Mr. Aghar thus has no administrative remedies available to him to exhaust.

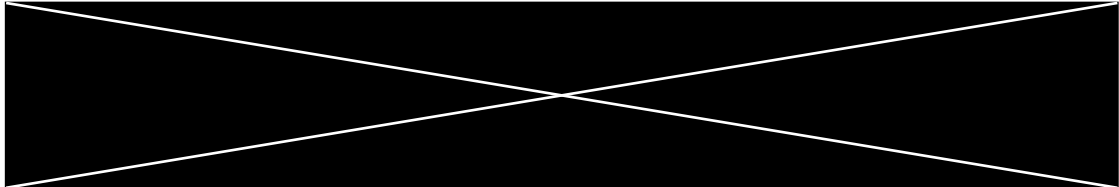
Parties, Jurisdiction, and Venue

4. Petitioner Samir Aghar is a native and citizen of Afghanistan. He came to the United States as an unaccompanied alien child and, after U.S. Border Patrol apprehended him, immediately requested asylum and related relief. After he aged out of the juvenile system, he was transferred to respondents’ custody. The immigration courts are adjudicating his claim for asylum and related forms of relief.

¹ Along with this document, Mr. Aghar is filing for the record portions of his immigration court record maintained by the Executive Office for Immigration Review. These documents will be filed separately under seal. These documents, consisting of 70 pages, will be submitted as a single pdf file. An index will be available for the public docket. The documents will be referenced here as “EOIR-xxx,” where xxx is the pdf page of the filing.

- 1 5. Respondent Fred Figueroa is the Warden of the Eloy Detention Center, where Mr. Aghar
2 is being detained. He is Mr. Aghar's immediate legal custodian and thus a proper
3 respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
- 4 6. Respondent John Cantu is the Phoenix Field Office Director for U.S. Immigration and
5 Customs Enforcement. He is responsible for Mr. Aghar's detention, and thus a legal
6 custodian of Mr. Aghar.
- 7 7. Respondents Pamela Jo Bondi and Kristi Noem are, respectively, the Attorney General of
8 the United States and the Secretary of Homeland Security. As such, they are responsible
9 for maintaining the immigration detention system. They are thus legal custodians of Mr.
10 Aghar and proper respondents in this matter.
- 11 8. Respondent Robert F. Kennedy, Jr., is the Secretary of Health and Human Services. In
12 this capacity, he oversees the Office of Refugee Resettlement. The Office of Refugee
13 Resettlement is the agency that, "through a network of shelters and programs, provides
14 care and services to all unaccompanied alien children referred to ORR by other federal
15 agencies, as required by the Homeland Security Act of 2002 and the Trafficking Victims
16 Protection Reauthorization Act of 2008 (TVPPRA)." As further described below,
17 Respondent Kennedy thus has information that bears on Respondent Noem's decision
18 not to place Mr. Aghar with a sponsor and instead to jail him when he turned 18.
- 19 9. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment
20 Act, 28 U.S.C. § 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Administrative
21 Procedures Act, 5 U.S.C. § 701 *et seq.*; and the Fifth Amendment to the United States
22 Constitution.
- 23 10. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a
24 substantial part of the events or omissions giving rise to the claims set forth herein
25 occurred in this district.

Background

11. Mr. Aghar was born in 2007 in Panjshir Province, Afghanistan. He is  His native language is Dari, though he is proficient in English.
- a. From 2001 to 2021, there were multiple armed conflicts taking place in Afghanistan. The primary such conflict was between the Taliban and the government of the Islamic Republic of Afghanistan, a government that was “backed by the US and an international military coalition.” European Union Agency on Asylum (EUAA), *Country Guidance: Afghanistan*, at 14 (May 2024). During the same period of time, the Taliban was engaged in armed conflicts with other domestic militia groups. *Id.*
- b. United States forces signed a peace agreement with the Taliban in 2020, and after that the United States was “less involved in direct conflict in Afghanistan.” *Id.* The Taliban, in turn, “intensified their attacks against the Afghan National Defence and Security Forces (ANDSF), launching their final offensive on 1 May 2021, on the same day as international forces initiated their withdrawal.” *Id.* The United States formally withdrew its military presence on August 15, 2021; President Ashraf Ghani fled the country, and the Taliban took control of the country and declared itself the winner of the conflict. *Id.*
- c. “Since the Taliban takeover, several armed groups, including the NRF [National Resistance Front], have been resisting the Taliban by force.” *Id.* “The NRF is led from headquarters located in Tajikistan, and most of the group’s members are ethnic Tajiks. Based on its own account, NRF emerged in Panjshir Province and Andarab District of neighbouring Baghlan Province. NRF was formed after the Taliban conquered Kabul in mid-August 2021.” *Id.* at 22.
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between 1996 and 2001 and announced an interim government.” *Id.* “The Taliban have announced their intention to govern through ‘a strong Islamic government,’ based on their principles, religion, and culture. Their interim government has been ‘modelled on the same system’ as in the 1990s, with both a spiritual leader and a prime minister heading the government, and with a decision-making structure that can be described as a religious theocracy. The Taliban have further stated that ‘nothing should be against Islamic values’ under their rule and have issued numerous instructions calling on people to observe Islamic law (*sharia*).” *Id.* at 14–15. “The human rights situation has gradually deteriorated, and sources have described Afghanistan as developing into a theocratic police state, which is ruled through an atmosphere of fear and abuse.” *Id.* at 15.

- b. “Human rights violations by the *de facto* authorities or by Taliban members included intimidation, ill-treatment, excessive use of force, arbitrary arrests, incommunicado detention, use of torture in detention, killings, abductions, enforced disappearances and corporal and capital punishments, including following a *de facto* court judgment.” *Id.* at 19.
- c. “It was reported that Taliban forces had engaged in the beating and arbitrary arrests of civilians in Panjshir who were accused of supporting the NRF. Individuals originating from Panjshir province have also been arrested in Kabul City for suspected links to NRF.” *Id.* at 35–36.
- d. “The Taliban have reportedly conducted reprisal attacks, including arbitrary arrests and killings of civilians in areas associated with resistance groups, mostly in Panjshir Province, but also in the provinces Baghlan, Takhar and in Daykundi. Individuals originating from Panjshir Province have, according to several sources, been arrested in Kabul City for suspected links to NRF.” *Id.* at 70. According to the EUAA, these acts “are of such severe nature that they amount to persecution (e.g. abduction, collective punishments, torture, execution).” *Id.* The “individual

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7 e. Mr. Aghar and his family have personally

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12 13. In October 2023, fearing Mr. Aghar's father sent him
13 and his younger brother to the United States to seek asylum. They fled Afghanistan for
14 Turkey and then for Mexico. (EOIR-40) In the early morning hours of October 28, 2023,
15 a Border Patrol agent encountered Mr. Aghar and his brother approximately two miles
16 west of the port of entry in San Ysidro, California, and approximately 100 yards north of
17 the international border. (EOIR-2) He claimed a credible fear of persecution or torture if
18 returned to Afghanistan. (EOIR-1) The Border Patrol agents issued a notice to appear and
19 kept him in temporary custody pending placement with the Office of Refugee
20 Resettlement. (EOIR-3)

- 21 a. The Border Patrol was required to "notify the Department of Health and Human
22 Services within 48 hours upon the apprehension or discovery of an
23 unaccompanied alien child." 8 U.S.C. § 1232(b)(2)(A). Border Patrol complied
24 with this requirement for Mr. Aghar and his brother. (EOIR-3)
- 25 b. The Border Patrol was also required to transfer Mr. Aghar and his brother to HHS
26 custody within 72 hours after determining that they were unaccompanied alien
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children. 8 U.S.C. § 1232(b)(3). Border Patrol complied with this requirement as well. (EOIR-3)

c. The Department of Health and Human Services was required to then “promptly place[]” Mr. Aghar and his brother “in the least restrictive setting that is in the[ir] best interest.” 8 U.S.C. § 1232(c)(2)(A). “Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)), if a suitable family member is not available to provide care.” *Id.*

d. Mr. Aghar and his brother were taken into the custody of the Office of Refugee Resettlement of the Department of Health and Human Services and placed in foster care for unaccompanied alien children. (EOIR-16)

14. On March 27, 2024, Mr. Aghar was served with a superseding notice to appear at the foster home where he was living in Surprise, Arizona. (EOIR-5) He was alleged to be removable under 8 U.S.C. § 1182(a)(6)(A)(i) because he was a noncitizen who was present in the United States without being admitted or paroled after inspection. This document initiated removal proceedings pursuant to § 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a(a)(1) and 8 C.F.R. § 1239.1(a).² *See generally Pereira v. Sessions*, 585 U.S. 198, 205–06 (2018) (explaining that a notice to appear “charged Pereira as removable for overstaying his visa, informed him that removal proceedings were being initiated against him, and provided him with information about the conduct of the hearing and the consequences for failing to appear”) (cleaned up).

15. On July 5, 2024, with the assistance of *pro bono* counsel from the Florence Immigrant & Refugee Rights Project, Mr. Aghar filed an application for asylum with U.S. Citizenship

² “Because (unlike several other titles) title 8 of the U.S. Code has not been enacted as positive law, I will generally refer to the underlying section numbers of the INA, although I will also provide the corresponding citation to title 8.” *Mendez-Colin v. Garland*, 50 F.4th 942, 943 (9th Cir. 2022) (Collins, J., dissenting from denial of rehearing en banc). This document will follow Judge Collins’s convention when referring directly to provisions of the Immigration and Nationality Act. For the convenience of the reader, a useful conversion chart is available [here](#).

1 and Immigration Services. (EOIR-8) Because of this filing, on August 2, 2024, the
2 removal proceedings initiated in March 2024 were administratively closed. (EOIR-11)
3 Ultimately USCIS denied Mr. Aghar's application for asylum.

4 16. In April 2025, on the very day that Mr. Aghar turned 18 years old, ICE agents arrested
5 him at the foster home in Tucson, Arizona, where he was living. (EOIR-15) They took
6 him into immigration custody to be jailed while his asylum application was being
7 processed. He is presently detained at the Eloy Detention Center in Eloy, Arizona.

8 a. Once an unaccompanied alien child "reaches 18 years of age and is transferred to
9 the custody of the Secretary of Homeland Security, the Secretary shall consider
10 placement in the least restrictive setting available after taking into account the
11 alien's danger to self, danger to the community, and risk of flight." 8 U.S.C.
12 § 1232(c)(2)(B). "Such aliens shall be eligible to participate in alternative to
13 detention programs, utilizing a continuum of alternatives based on the alien's
14 need for supervision, which may include placement of the alien with an individual
15 or an organizational sponsor, or in a supervised group home." *Id.*

16 b. In fact a sponsor was available for Mr. Aghar. As of May 14, 2024, Matthew
17 House had offered to provide support for Mr. Aghar once he was released from
18 detention after he turned 18. (EOIR-59)

19 i. On its website, Matthew House explains, "Since 2021, we have been
20 dedicated to providing housing, education, and support services to help
21 families build new lives in the East Valley. Our journey has been filled with
22 inspiring stories of resilience and hope, as we work together to build and
23 create opportunities for a brighter future." It goes on, "We exist to build
24 bridges between refugee and immigrant families and their new
25 communities. Matthew House builds bridges via housing subsidies,
26 language and tutoring programs, cultural mentorship and employment
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1 coaching that create opportunities for families to fully engage and
2 contribute to their new homes.”

3 ii. In a letter drafted by Leisa McDonald, Executive Director of Matthew
4 House in Arizona, she confirmed: “Matthew House provides housing
5 subsidies, employment programs, tutoring for K-12 students, financial
6 literacy training and case management services to ensure newly arrived
7 refugees and immigrants are able to navigate their new home. Our program
8 will provide housing for Samir, help him enroll in school, connect him with
9 community support members and work with him to secure employment
10 once he has employment authorization and a social security number. Until
11 he is authorized to work, our organization will provide financial assistance
12 to meet housing, food and other critical support needs.

13 iii. “Several young people in our program know Samir and we trust their
14 relationship with him and that he is not a flight risk. He wants to be in
15 Arizona his brother who is still in [VisionQuest’s] shelter in Tucson and
16 he wants to go to school and be around his friends.

17 iv. “While he will be living independently, there are other Matthew House
18 families residing in the same complex to provide support and oversight as
19 needed. Our case manager will be in regular contact with Samir upon his
20 and we will ensure that he understands and follows all U.S. laws and
21 regulations.

22 v. “Our desire is to help Samir become a productive community member as
23 he pursues his asylum case.” (EOIR-59)

24 c. On February 13, 2025, the Office of Refugee Resettlement appointed the Young
25 Center for Immigrant Children’s Rights to serve as Mr. Aghar’s child advocate
26 under 8 U.S.C. § 1232(c)(6). (EOIR-61) Three months later, when Deborah Lee,
27 the Young Center’s appointed child advocate, informed the immigration judge
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1 before whom Mr. Aghar's case was pending, about the history of his case, she
2 wrote, "the Department of Homeland Security has not provided specific evidence
3 to show that Samir is a danger to himself, the community, or national security.
4 Instead, Matthew House has found that he would be a good candidate for their
5 program and offered to provide him services if he is released from detention. In
6 addition, Samir was at two long-term foster care placements (LTFC) from
7 December 2023 to April 2025. LTFC programs can be community-based foster
8 care or a community-based group home. In his most recent LTFC program in
9 Tucson, Arizona, Samir regularly attended the local high school, religious
10 services, and participated in school activities such as prom. Samir would not be a
11 danger to himself, the community, or national security if released on bond to
12 Matthew House, which is the least restrictive setting for Samir." (EOIR-62)

- 13 d. Ms. Lee continued, "Samir is also not a flight risk because he wishes to continue
14 to seek asylum with the assistance of his attorney, which provides a pathway for
15 Samir to seek safety in the United States. We understand from his attorney... that
16 he will receive support from Matthew House of Arizona in the form of housing
17 and access to legal counsel if he is released on bond. Having legal representation
18 and pending applications for relief are known to be two strong protective factors
19 against flight risk. Data shows that non-detained immigrants who have filed
20 applications for relief and those who are represented by an attorney almost never
21 fail to appear for their scheduled court hearings." (EOIR-62)
- 22 e. Despite the lack of evidence that Mr. Aghar either poses a flight risk or a danger,
23 and despite the evidence that a willing sponsor was available for Mr. Aghar,
24 Respondent Noem decided to jail him once he turned 18.
- 25 f. "When an alien previously determined to have been a UAC [unaccompanied alien
26 child] is no longer a UAC because he or she turns 18 years old, relevant ORR and
27 ICE procedures shall apply." 8 C.F.R. § 236.3(d)(3).
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- i. “DHS will make and record prompt and continuous efforts on its part toward the release of a minor who is not a UAC.” 8 C.F.R. § 236.3(j)(1).
- ii. “If a minor who is not a UAC is subject to pending removal proceedings under section 240 of the Act, DHS will consider whether to release the minor pursuant to section 212(d)(5) or section 236(a), and the implementing regulations in 8 CFR 212.5 and § 235.3, as applicable.” 8 C.F.R. § 236.3(j)(3).
- iii. “The parole of minors who are not UACs who are detained pursuant to section 235(b)(1)(B)(ii) of the Act or § 235.3(c) of this chapter will generally serve an urgent humanitarian reason warranting release on parole if DHS determines that detention is not required to secure the minor’s timely appearance before DHS or the immigration court, or to ensure the minor’s safety and well-being or the safety of others.” 8 C.F.R. § 236.3(j)(4).
- iv. But Mr. Aghar is not being detained under INA § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii) (parallel citation), or 8 C.F.R. § 235.3(c), because he is not in expedited removal proceedings (which are ordinarily reserved for arriving aliens who are adults). The notice to appear issued on March 27, 2024, accuses him of being “an alien present in the United States who has not been admitted or paroled.” (EOIR-5)
- v. “The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” INA § 212(d)(5)(A); 8 U.S.C. § 1182(d)(5)(A).

vi. But the regulations governing parole of aliens from custody do not allow for releasing aliens like Mr. Aghar from detention. These regulations only allow for parole of arriving aliens, not aliens already present in the United States. *See* 8 C.F.R. § 212.5(b) (citing 8 C.F.R. § 235.3(b) and (c), which apply only to arriving aliens in expedited removal proceedings).

vii. There is no rational basis for allowing for parole of an arriving unaccompanied alien child into the United States for urgent humanitarian reasons but not for allowing parole of an unaccompanied alien child already present in the United States who has turned 18 since his arrival in the United States.

17. On May 8, 2025, an immigration judge in Phoenix, Arizona, reopened the removal proceedings that had previously been closed. (EOIR-31) The judge also transferred the proceedings to the immigration court in Eloy, Arizona, where Mr. Aghar is being detained. (EOIR-29) The notice to appear issued in March 2024 was amended on July 10, 2025, to include a charge that Mr. Aghar was inadmissible (and is thus removable) under 8 U.S.C. § 1182(a)(7)(A)(i)(I) because he was not in possession of a valid entry document when he entered the United States.

18. On June 10, 2025, Mr. Aghar filed an asylum application with the Eloy Immigration Court. (EOIR-34) That application is set for a final merits hearing on November 17, 2025.

19. Meanwhile, on July 7, 2025, Mr. Aghar filed a request for a bond hearing with the immigration judge. (EOIR-48) The judge denied the request four days later for lack of jurisdiction, citing *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). (EOIR-69)

20. Afghanistan currently has no diplomatic presence in the United States.

a. According to a notice published in the *Federal Register*, “Effective at 12:00 P.M. March 16, 2022, the Embassy of Afghanistan and Afghanistan’s consular posts at Beverly Hills, CA and New York, NY formally ceased conducting diplomatic and consular activities in the United States. A protecting power or other agent charged

with responsibility for the property of said missions has not been requested, nor approved by the Secretary of State.” Determination Pursuant to the Foreign Missions Act, 87 Fed. Reg. 30323, 30323 (May 18, 2022).

- b. This notice has not been rescinded since it was issued.
- c. As such, it is currently impossible to obtain travel documents necessary to return Afghan citizens to Afghanistan if they are ordered removed to that country.
- d. It further does not appear that diplomatic relations between the government of the United States and the government of Afghanistan under the Taliban will resume in the foreseeable future.

Grounds for Relief

Ground One: Mr. Aghar’s detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no possibility that he will be removed to Afghanistan if his asylum proceedings should result in his being ordered removed to that country.

- 21. Respondents’ statutory authority to detain Mr. Aghar appears to stem from both 8 U.S.C. § 1226(a) and 8 U.S.C. § 1232(c)(2)(B). Under § 1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” Pending such a decision, respondents may “continue to detain the arrested alien,” or may release him on either bond or conditional parole. 8 U.S.C. § 1226(a)(1), (2). And under § 1232(c)(2)(B), respondents must “consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.”
- 22. To the extent that these statutes, read together, authorize indefinite detention of an unaccompanied alien child who turns 18 while his removal proceedings are pending, they are unconstitutional. Under the canon of constitutional avoidance, they must instead be interpreted as not authorizing indefinite detention.
 - a. “A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the

Government to deprive any person of liberty without due process of law. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.”

Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 82 (1992)) (cleaned up).

b. To be sure, “detention under § 1226(a) is discretionary and the necessity of detention can be reviewed” by an immigration judge and the Board of Immigration Appeals. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Here, however, the immigration courts and the BIA have said that they have no authority even to consider releasing Mr. Aghar on bond or parole, citing *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

c. But *Q. Li* concerned bond eligibility for an alien detained under 8 U.S.C. § 1225, not § 1226. Mr. Aghar is not being detained under § 1225, because he is not now and was never in expedited removal proceedings described in § 1225(b). Because he was apprehended as an unaccompanied alien child, it was required that he be “placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).” 8 U.S.C. § 1232(a)(5)(D). Pursuant to this requirement, he was served with notices to appear twice—first in October 2023, when he first came to the United States, and later in March 2024. The second notice was amended in July 2025, after Mr. Aghar turned 18.

d. Respondents Bondi and Noem are thus subjecting Mr. Aghar to indefinite detention under 8 U.S.C. § 1226.

23. Whether a “set of particular circumstances amounts to detention within or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority.” *Zadvydas*, 533 U.S. at 699. If “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. After six months in detention, once “the

alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” he is entitled to release from detention. *Id.* at 701.

24. This rule applies with equal force to aliens like Mr. Aghar who are detained under § 1226(a). *Prieto-Romero*, 534 F.3d at 1062.

a. The “Attorney General’s detention authority under § 1226(a) [is] limited to the period reasonably necessary to bring about an alien’s removal from the United States.” *Id.* at 1063. When a detained alien in removal proceedings is “unremovable because the destination country will not accept him or his removal is barred by our own laws,” that alien’s detention is not authorized by § 1226(a). *Cf. Prieto-Romero*, 534 F.3d at 1063 (explaining that detention was authorized by § 1226(a) where the destination country routinely accepts its own citizens for removal).

b. Here, Mr. Aghar’s detention is not authorized by § 1226(a). Even if he is ultimately ordered removed to Afghanistan, that removal cannot be accomplished now, and there is no likelihood that it could be accomplished in the foreseeable future. Because Afghanistan has no diplomatic presence in the United States, ICE will be unable to obtain travel documents for him. *Cf., e.g., Glushchenko v. DHS*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021) (explaining how detainee refused to cooperate with ICE’s request to the Russian consulate for travel documents).

25. Thus Mr. Aghar’s detention is not authorized by statute and violates the Due Process Clause of the Fifth Amendment.

Ground Two: The decision to jail Mr. Aghar when he turned 18 was arbitrary and capricious, in violation of the Administrative Procedures Act, because there was no evidence before Respondent Noem that was sufficient to allow her to conclude that Mr. Aghar is a flight risk or a danger.

26. Under the Administrative Procedures Act, this Court may “hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

- 1 27. When an unaccompanied alien child “reaches 18 years of age and is transferred to the
2 custody of the Secretary of Homeland Security, the Secretary shall consider placement in
3 the least restrictive setting available after taking into account the alien’s danger to self,
4 danger to the community, and risk of flight. Such aliens shall be eligible to participate in
5 alternative to detention programs, utilizing a continuum of alternatives based on the
6 alien’s need for supervision, which may include placement of the alien with an individual
7 or an organizational sponsor, or in a supervised group home.” 8 U.S.C. § 1232(c)(2)(B).
- 8 28. Respondent Noem had no evidence that Mr. Aghar posed any risk of flight or any danger
9 to the community when she decided to jail Mr. Aghar when he turned 18.
- 10 29. Respondent Noem had evidence that a willing sponsor, Matthew House, was available for
11 Mr. Aghar, and information about the sponsor suggested that Matthew House would be a
12 less restrictive environment for Mr. Aghar than jail.
- 13 30. Respondent Noem’s decision to disregard this evidence was arbitrary and capricious.
14 Under 5 U.S.C. § 706(2)(A), this Court should set it aside and order Mr. Aghar released
15 from detention.

16 **Ground Three: Mr. Aghar’s detention in immigration custody violates the Due**
17 **Process Clause of the Fifth Amendment because he is being denied a**
 bond hearing before a neutral decisionmaker.

- 18 31. As Mr. Aghar has explained, his detention is unreasonably prolonged because there is no
19 significant likelihood of his removal to Afghanistan in the reasonably foreseeable future.
20 That fact violates the Due Process Clause as articulated in *Zadvydas*.
- 21 32. Following a precedential decision of the Board of Immigration Appeals, *see Matter of Q*,
22 *Li*, 29 I. & N. Dec. 66 (BIA 2025), an immigration judge has denied Mr. Aghar a bond
23 hearing for lack of jurisdiction. Neither the Supreme Court nor the Ninth Circuit have
24 determined whether the Due Process Clause of the Fifth Amendment permits indefinite
25 detention without a bond hearing.
- 26 a. As previously explained, Mr. Aghar’s present detention in immigration custody is
27 authorized by § 1226(a), as limited by the constraints of the Due Process Clause of
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1 the Fifth Amendment. *See Prieto-Romero*, 534 F.3d at 1062–63. The Court in
2 *Zadvydas* noted that detention authorized by statute in other contexts must carry
3 “adequate procedural protections.” *Id.* at 690 (citing *United States v. Salerno*, 481
4 U.S. 739, 746 (1987)). But the sole procedural protections afforded to aliens whose
5 detention is authorized by § 1226(a) “are found in administrative proceedings,
6 where the alien bears the burden of proving that he is not dangerous, without...
7 significant later judicial review.” *Zadvydas*, 533 U.S. at 692 (citing 8 C.F.R.
8 § 241.4(d)(1) (2001)). The question whether those procedural protections were
9 adequate to vindicate the unremovable alien’s liberty interest in indefinite
10 detention was “strong enough to raise a serious question as to whether” indefinite
11 detention without an individualized hearing before a neutral decisionmaker was
12 consistent with the requirements of due process. *Id.* at 696.

- 13 b. Whether due process requires that unremovable aliens subject to indefinite
14 detention under § 1226(a) to receive a bond hearing before a neutral
15 decisionmaker remains an open question even after *Zadvydas*.
- 16 c. In 2011, the Ninth Circuit, following the constitutional-avoidance reasoning of
17 *Zadvydas*, held that 8 U.S.C. § 1231 implicitly requires bond hearings for
18 unremovable aliens who have been detained for six months or longer. *Diouf v.*
19 *Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011). With reasoning parallel to that in
20 *Zadvydas*, the Ninth Circuit held that “prolonged detention under § 1231(a)(6),
21 without adequate procedural protections, would raise serious constitutional
22 concerns. To address those concerns, we apply the canon of constitutional
23 avoidance and construe § 1231(a)(6) as requiring an individualized bond hearing,
24 before an immigration judge, for aliens facing prolonged detention under that
25 provision. Such aliens are entitled to release on bond unless the government
26 establishes that the alien is a flight risk or will be a danger to the community.” *Id.*
27 (citations omitted). Because the court in *Diouf* relied on a rule of statutory
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1 interpretation to reach its result—the constitutional avoidance canon—it did not
2 reach the question whether the Due Process Clause required such hearings. *See*
3 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199 (9th Cir. 2022).

- 4 d. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court expressly
5 avoided the due-process question as well. That case involved detention of other
6 classes of aliens under different provisions of the Immigration and Nationality Act
7 than did *Zadvydas*. *See* 583 U.S. at 299–300. On remand from the Supreme Court,
8 the Ninth Circuit in *Rodriguez v. Marin* observed that the Supreme Court “chose
9 to answer only the question whether the statutory text itself included a limit on
10 prolonged detention or a requirement of individual bond hearings. In an opinion
11 authored by Justice Alito, the Court concluded that as a matter of statutory
12 construction, the only exceptions to indefinite detention were those expressly set
13 forth in the statutes or related regulations.” 909 F.3d 252, 255 (9th Cir. 2018).
- 14 e. Because the Supreme Court in *Rodriguez* had not squarely addressed § 1231, the
15 Ninth Circuit held that the requirement of holding bond hearings for unremovable
16 aliens detained under § 1231 imposed in *Diouf* remained good circuit law in the
17 wake of the Supreme Court’s decision. *Aleman Gonzalez v. Barr*, 955 F.3d 762, 777
18 (9th Cir. 2020). Because the Supreme Court in *Rodriguez* had not expressly
19 addressed § 1231, the Ninth Circuit reasoned that *Diouf* had not been implicitly
20 overruled by the Supreme Court in *Rodriguez*. *Aleman Gonzalez*, 955 F.3d at 777–
21 79.
- 22 f. The Supreme Court reversed the Ninth Circuit’s constitutional-avoidance
23 holding in *Aleman Gonzalez* two years later. *See Johnson v. Arteaga-Martinez*, 596
24 U.S. 573 (2022). “*Zadvydas*,” the Court said, “does not require, and *Jennings* [*v.*
25 *Rodriguez*] does not permit, the... application of the canon of constitutional
26 avoidance.” *Id.* at 582.
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g. Before the Supreme Court in *Arteaga-Martinez*, the detained aliens also argued that due process forbids “prolonged detention without an individualized hearing, before a neutral adjudicator, at which the detainee has a meaningful opportunity to participate.” *Id.* at 583. The Supreme Court expressly decided not to address this argument. “We are a court of review, not of first view. The courts below did not reach *Arteaga-Martinez*’s constitutional claims because they agreed with him that the statute required a bond hearing. We leave them for the lower courts to consider in the first instance.” *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005)) (cleaned up).

33. Mr. Aghar thus contends that the Due Process Clause requires that he receive a bond hearing before a neutral decisionmaker because there is no significant likelihood of his being removed in the reasonably foreseeable future.

a. “[T]he majority of courts across the country” to address this question agree. *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020). District courts have therefore ordered bond hearings for migrants detained under various statutes. *See id.* (ordering bond hearing for immigrant detained under 8 U.S.C. § 1225(b)); *Arechiga v. Archambeault*, No. 23-CV-600, 2023 WL 5207589, at *3 (D. Nev. Aug. 11, 2023) (same, and collecting cases); *Santos v. Warden, Pike County Correctional Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (same, for detention under 8 U.S.C. § 1226(c)); *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *7 (S.D. Cal. Jan. 9, 2023) (same); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (same, and collecting cases).

b. These courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged. But they disagree about what factors to use when assessing whether a particular migrant’s detention has reached that point. *Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying the various approaches).

1 c. Accordingly, if this Court rejects Mr. Aghar's bid for *Zadvydas* relief under *Prieto-*
2 *Romero*, this Court will have to determine what factors govern a post-removal-
3 order due process claim. These will likely be similar to the kinds of due process
4 concerns that animate *Zadvydas* itself. *See* 533 U.S. 678, 690–95 (2001). For
5 example, this Court might consider how long the government has been trying to
6 remove Mr. Aghar, whether ICE's removal efforts will likely succeed in the
7 reasonably foreseeable future, and whether Mr. Aghar is responsible for the
8 government's inability to remove him. Here, these factors all favor Mr. Aghar.

9 d. ICE will not be able to obtain travel documents for Mr. Aghar because
10 Afghanistan has no diplomatic presence in the United States and will not have any
11 such presence for the foreseeable future. A sponsor is willing and able to take Mr.
12 Aghar into his custody. He is represented by *pro bono* counsel in his parallel
13 removal proceedings, and has every incentive to attend them because of his fear of
14 persecution or torture if he should return to Afghanistan.

15 34. Accordingly, even if Mr. Aghar were not entitled to *Zadvydas* relief, he would still be
16 entitled to a bond hearing. His continued detention without such a hearing thus violates
17 the Due Process Clause.
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Prayer for Relief

35. Mr. Aghar is being illegally detained, in violation of the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act. He respectfully asks the Court to:
- a. order the government to answer this petition;
 - b. permit him to file a reply in support;
 - c. allow him to conduct discovery in support of his claims for relief;
 - d. convene an evidentiary hearing, if necessary to resolve disputed facts;
 - e. order Respondents to release him from their custody under supervision; and
 - f. grant any other relief that is just and practicable.

Respectfully submitted:

October 3, 2025.

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s/Keith J. Hilzendeger
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