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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Fahad Gohar Petitioner, v. Christopher J. LAROSE, et al. Respondents.	Case No. **'26CV4109 BTM DDL** Agency No. [redacted] **PETITION FOR WRIT OF HABEAS CORPUS AND FOR ORDER TO SHOW CAUSE**

I.INTRODUCTION

1. Petitioner Fahad Gohar ("Mr. Gohar") by and through his undersigned counsel, Deva F. Robbins, hereby files this Petition for Writ of Habeas Corpus and for Order to Show Cause seeking his immediate release from immigration detention. Petitioner's continued detention under 8 U.S.C. § 1225(b)(1) has become unreasonably prolonged and violates the Due Process Clause of the Fifth Amendment. See *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

2. Petitioner is a 21-year-old Pakistani national, from the Khyber Pakhtunkhwa region of Pakistan.

3. Petitioner entered the United States, received humanitarian parole, and was later detained in Buffalo Federal Detention for attempting to cross to Canada on February 11, 2026 and has been detained ever since. He was transferred from Buffalo Detention Center to Louisiana Detention Center, then to Arizona Detention Center, and Finally Otay Mesa Detention Center.

4. Petitioner's application for Employment Authorization was approved on November 6, 2025. Petitioner's application for Asylum, Withholding of Removal under 8 U.S.C. § 1231 (b)(3), Withholding of Removal under the Convention Against Torture, and Deferral of Removal under the Convention Against Torture, and bond application were denied on May 5, 2026.

5. Petitioner submitted an appeal to the Board of Immigration Appeals on April 22, 2026.

6. Petitioner has been detained at Otay Mesa for five months. There is no evidence that he poses a danger to the community or constitutes a flight risk. Nevertheless, Petitioner is categorically barred from seeking a bond hearing due to his classification as an arriving alien under 8 U.S.C. § 1225(b)(1).

7. Unreasonably prolonged detention without the opportunity to seek a bond hearing violates the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 690.

8. Petitioner seeks a writ of habeas corpus directing his immediate release or,

alternatively, a bond hearing before an immigration judge.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).

10. Petitioner is in custody under federal authority and challenges his detention as unconstitutional and unlawful.

11. A federal prisoner challenging the execution of his or her sentence, rather than the legality of the sentence itself, may file a petition for writ of habeas corpus in the district of his confinement pursuant to 28 U.S.C. § 2241. *See* 28 U.S.C. § 2241(a).

12. The aid of this Court is further invoked under 28 U.S.C. §§ 2201-2, authorizing a declaratory judgment and any further necessary and proper relief.

9. Venue is proper because Petitioner is detained in the Otay Mesa Detention Center, which is located within the Southern District of California, and Respondent LaRose is his immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

10. Petitioner hereby files this Petition for Writ of Habeas Corpus and Order to Show Cause to compel his immediate release from the Otay Mesa Detention Center where he has been held by the U.S. Department of Homeland Security ("DHS") after being transferred multiple times since being detained on February 12, 2026.

11. Petitioner is a 21-year-old Pakistani national who has been granted Employment Authorization. He has an appeal pending at the Board of Immigration Appeals (BIA). He is detained at Otay Mesa detention center.

12. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. Respondent LaRose is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent LaRose has immediate physical custody of the Petitioner. He is being sued in his official capacity.

13. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Archambeault is being sued in his official capacity.

14. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner and is being sued in his official capacity.

15. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"). As Secretary of DHS, Secretary Mullin is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Mullin is being sued in his official capacity.

16. Respondent Todd Blanche is the Acting Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates his responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA).

IV. EXHAUSTION OF REMEDIES

17. With regard to habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Liang v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

18. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review constitutional claims"); *In re Indefinite Det. Cases*, 83 F.Supp. 2d 1098,1099 (C.D.Cal. 2000)(same).

19. Petitioner has been detained since February 12, 2026, and is not eligible to request a bond hearing.[1] Petitioner presented himself at a port of entry, where he stated his intent to seek asylum, and was subsequently admitted into the United States as an "arriving alien." As arriving alien, Petitioner is subject to "mandatory detention" under 8 U.S.C. § 1225(b)(1).

20. Petitioner requested a bond hearing but was denied on May 5, 2026, due to a lack of jurisdiction, and any further pursuit of administrative remedies would be futile. Petitioner has therefore exhausted his administrative remedies to the extent required by law, and his only remedy lies with this Court.

V. STATEMENT OF FACTS

21. Petitioner is a Pakistani national [redacted] He first entered the United States on March 8, 2024, at the Otay Mesa Port of Entry. He was then released on humanitarian parole on May 19, 2024. He was detained again on February 12, 2026 and transferred from the Buffalo Detention Center to the Louisiana Detention Center, to the Arizona Detention. Center, and finally to the Otay Mesa Detention Center.

22. Petitioner escaped political and ethnic persecution in Pakistan on November 1, 2023.

13. Petitioner's application for Asylum, Withholding of Removal under 8 U.S.C. § 1231 (b)(3), Withholding of Removal under the Convention Against Torture, and

[1] Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. Dec. 18, 2025), applies only to certain noncitizens who entered without inspection.

Deferral of Removal under the Convention Against Torture, and bond application were denied in an order on May 5, 2026.

23. Petitioner submitted an appeal to the BIA on May 26, 2026.

24. Petitioner remains detained, despite the fact that bond could be posted and there is no evidence that Petitioner is a flight risk or a danger to the community.

25. Even if a bond hearing was available to Petitioner, "[j]udges are finding that the [bond] hearings they're ordering — conducted by immigration judges who work for the Trump administration — have been fundamentally flawed or even pre-cooked, designed to result in findings of "danger to the community" or "flight risk" without a fair consideration of the evidence." Cheney, K. (2026) Judges keep ordering immigration hearings — but say the results are often a sham. https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660.

26. Petitioner now seek habeas relief because his detention under 8 U.S.C. § 1225(b)(1) has become unreasonably prolonged, thus triggering the need for additional process.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

27. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 423 (1979).

28. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas*, 533 U.S. at 690.

29. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

30. The Immigration and Nationality Act ("INA") establishes various procedures through which individuals may be detained pending a decision on whether or not the

noncitizen is to be removed. 8 U.S.C. § 1226(a).

31. Individuals like Petitioner are applicants for admission detained under 8 U.S.C. § 1225 do not have a statutory or regulatory right to a bond hearing before an immigration judge. Nor are they eligible for an administrative bond from DHS under 8 U.S.C. § 1226(a).

32. At some point, an immigration detainee's prolonged mandatory detention becomes unconstitutional. *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025).

33. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *see also Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement).

34. In determining whether detention has become unreasonable, courts evaluate factors including "the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government." *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022).

VII. CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

35. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

36. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [noncitizens] whether his presence here is lawful,

unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (2001); accord *Flores*, 507 U.S. at 306.

37. Due process requires that government action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

38. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. See, *Zadvydas*, 533 U.S. at 698.

39. By detaining Petitioner for over five months without any individualized determination of flight risk or danger to the community, Respondents have violated his procedural due process rights.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
Substantive Due Process

40. Petitioner incorporates the allegations in the paragraphs above as though fully set out herein.

41. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

42. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. CONST. Amend. V. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause. This vital liberty interest is at stake when an individual is subject to detention by the federal government.

43. "Neither the Ninth Circuit nor the Supreme Court have provided guidance regarding the point at which an immigration detainee's prolonged mandatory detention becomes unconstitutional." *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025).

44. "Nearly all district courts that have considered [the constitutionality of prolonged mandatory detention] agree that prolonged mandatory detention pending

removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Singh v. Barr*, 400 F. Supp. 3d1005 (S.D. Cal. 2019) (internal quotation marks and citations omitted) (cleaned up) (collecting cases).

45. Courts have found detention over six months without a bond hearing weighs towards a finding that detention has become unreasonable. *See, e.g., Guatam v. Corr. Corp of Am.*, No. 3:25-CV-3600-JES-DEB, 2026 WL 25846, at *4 (S.D. Cal. Jan. 5, 2026) (finding that one-year detention weighed in favor of granting a bond hearing); *Sadeqi*, 809 F. Supp. 3d at 1095 (finding that eleven month detention without a bond hearing "absent meaningful rebuttal by [r]espondents" was unreasonable and violated due process); *Amado*, 2025 WL 3079052, at *5 ("Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable."). Petitioner's detention at almost ten months weighs in favor of finding that his detention has become unreasonable.

46. Under the civil-detention framework set out in *Zadvydas,* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

47. Petitioner's continued detention, absent any showing of flight risk or danger to the community, is excessive in relation to the government's interest, and bears no reasonable, non-punitive relationship to any legitimate governmental aim.

48. The lack of meaningful review or opportunity for release renders his detention unconstitutionally arbitrary.

49. Respondents have read 8 U.S.C. § 1225 to preclude release of Petitioner on bond while his case is on appeal. However, the INA establishes an alternative mechanism for release: parole under 8 U.S.C. § 1182. All noncitizens who are applicants for admission are eligible for parole under 8 U.S.C. § 1182 (d)(5)(A).

50. Petitioner is likely to remain in detention absent intervention by this Court,

because Petitioner has no other means of securing release pending the adjudication of his asylum appeal. See *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018); see also *id.* at 302 (holding that § 235(b)'s detention provisions apply "throughout the completion of applicable proceedings and not just until the moment those proceedings begin").

COUNT THREE
Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)
Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 CFR § 1236.1(c)(9)

51. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

52. Under the Administrative Procedure Act ("APA"), a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

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

54. To survive an APA challenge, the agency must articulate "a satisfactory explanation for its action," "including a rational connection between the facts found and the choice made." *Dept. of Com. v. New York*, 139 S.Ct. 2551, 2569 (2019)(citation omitted).

55. By preventing Petitioner from requesting bond without any consideration of his individualized facts and circumstances, Respondents have violated the APA.

56. By detaining Petitioner categorically, Respondents have further abused his discretion because no evidence has been presented demonstrating that Petitioner poses a danger to the community or is a flight risk.

COUNT FOUR
Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 CFR § 1236.1(c)(9)

57. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

63. Under the APA, a court "shall [...] hold unlawful [...] agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A-D).

64. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F.Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also, *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 f.3d 550, 555 (9th Cir. 2016)(invalidating agency action because it was taken by an unauthorized official).

65. Because Petitioner has been categorically prevented from requesting a bond hearing, Respondent's detention of Petitioner is not in accordance with law and is in excess of statutory authority.

66. Respondent's prolonged detention of Petitioner serves no lawful purpose, because as the length of detention grows, the likelihood that civil confinement is serving a lawful purpose must necessarily decrease. *See Zadvydas*, 533 U.S. 678, 701 (2001).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Order Respondents to show cause why the writ should not be granted as to Petitioner within three days, and set a hearing on this petition within five days of the return, as required by 28 U.S.C. § 2243;

3) Enjoin Respondents from transferring Petitioner out of the Jurisdiction during the

pendency of the habeas petition;

4) Issue a writ of habeas corpus requiring Respondents to immediately release Petitioner from custody, under reasonable conditions of supervision;

5) Order Respondents to return all of Petitioner's belongings, including identification documents;

6) In the alternative, order Respondent's to hold a bond hearing before an immigration judge within seven days;

7) Grant costs and attorney's fees in this action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412;

8) Grant any other and further relief which this Court deems just and proper.

Respectfully submitted this 16th day of July, 2026.

/s/Deva F. Robbins
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U.S.C § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner' attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge and belief.

Dated: July 16, 2026

Respectfully Submitted,

Pro bono counsel for the Petitioner