

JON M. SANDS
Federal Public Defender
DANIEL L. KAPLAN #021158
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700
dan_kaplan@fd.org
Counsel for Petitioner

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

Mehrad Asadieidivand,

Petitioner,

vs.

Ghulam Rasool, ICE Enforcement and
Removal Operations Phoenix Supervisory
Detention and Deportation Officer;
Justin Smith, ICE Enforcement and Removal
Operations Phoenix Assistant Field Office
Director;
John Cantu, ICE Enforcement and Removal
Operations Phoenix Field Office Director;
Marcos Charles, ICE Acting Executive
Associate Director, Enforcement and
Removal Operations; and
Kristi Noem, United States Secretary of
Homeland Security,
Pamela Bondi, Attorney General of the
United States,
Respondents.

No.


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

Introduction

Mehrad Asadieidivand (me-ROD Asadi-EYE-divand) fled Iran to the United States so he could worship Christ in peace and safety—having been harassed, persecuted, and physically attacked in Iran for his faith. He presented himself to federal agents at a port of entry, was found

to have a credible fear of persecution, and filed an asylum claim that is still pending. In the meantime, Mehrad was released from detention and lived for years in this country, complying with all of its rules and following all of its laws, without so much as a traffic ticket. Then suddenly, in May of this year, he was set upon by ICE agents and re-detained, on the basis of a blanket policy devoid of individualized analysis or reasoning that ICE described as “Trump’s law”—a practice that blatantly violates the statutes governing immigration, agency action generally, and the Constitution. Unless “Trump’s law” has nullified actual law, this deeply unlawful action cannot stand.

Technical Data

1. Petitioner Mehrad Asadieidivand is challenging the validity of his detention in immigration custody. His Alien Registration Number is .
2. Mehrad is challenging the decision made by U.S. Immigration and Customs Enforcement (ICE) in Phoenix, Arizona, that a prior release order issued on August 3, 2022, is revoked and that he be returned to detention during the pendency of his asylum case, as well as decisions made in Florence, Arizona, including on June 12, 23, and 24 of 2025, that he would not be paroled or otherwise released from detention.
3. Mehrad was arrested on May 31, 2025, and detained at the Florence Service Processing Center, 3250 North Pinal Parkway, Florence, AZ 85132. He has repeatedly sought release through administrative means, but has been informed definitively that such relief will not be granted.

Parties, Jurisdiction, and Venue

4. Petitioner Mehrad Asadieidivand is a citizen of Iran and applicant for asylum in the United States. He is being detained at the Florence Service Processing Center, 3250 North Pinal Parkway, Florence, AZ 85132.
5. Respondent Ghulam Rasool is an ICE Enforcement and Removal Operations Phoenix Supervisory Detention and Deportation Officer. His address is Florence Service Processing Center, 3250 North Pinal Parkway, Florence, AZ 85132.

6. Respondent Justin Smith is the U.S. Immigration and Customs Enforcement Phoenix Field Office Director in charge of the Florence Service Processing Center. His address is 3250 North Pinal Parkway, Florence, AZ 85132.
7. Respondent John Cantu is the ICE Enforcement and Removal Operations Phoenix Field Office Director. His address is 2035 North Central Avenue, Phoenix, AZ 85004.
8. Respondent Marcos Charles is the ICE Acting Executive Associate Director, Enforcement and Removal Operations. His address is 500 12th St SW, Washington, DC 20536.
9. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). Her address is Office of the Secretary, MS 0525 Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, DC 20528-0525.
10. Respondent Pamela Bondi is the Attorney General of the United States. Her address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.
11. By virtue of their positions, all of the Respondents have the authority to release Mehrad from detention, and thus are his legal custodians and proper respondents in this case.
12. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.
13. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

Background

14. Mehrad Asadiedivand was born in 1986 in Masjed Soleyman, a small city in west-central Iran. (Ex. A (Declaration of Mehrad Asadiedivand) at 1.)
15. Into his mid-30s, Mehrad had a good life in Iran. He earned a bachelor's degree in Animal Science Engineering. He ran a business selling construction materials. He pursued his

interests in singing (recording and selling CDs of himself), and bodybuilding, working as a trainer at a gym. He satisfied his obligatory military service by serving as an Army nurse for 18 months. (*Id.*)

16. After 2017, however, Mehrad made a decision that caused his life in Iran to become unbearably threatening, dangerous, and violent. His “crime” was accepting Jesus Christ into his life. (*Id.*)
17. In the Islamic Republic of Iran, converting to Christianity can be a capital offense. As the U.S. Department of State noted in its *Iran 2023 International Religious Freedom Report*, in Iran, “Sharia as interpreted by the government considers conversion from Islam to be apostasy, a crime punishable by death.” (*Iran 2023 International Religious Freedom Report* at 9 (U.S. Dept. of State, Offc. of Int’l Religious Freedom (2023) (*available at* <https://www.state.gov/wp-content/uploads/2024/04/547499-IRAN-2023-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> (last visited July 14, 2025).) Proselytization of religions other than Islam may be punished by up to 10 years in prison. (*Id.*) Religious minorities are often detained incommunicado, denied counsel, and tortured into false confessions. (*Id.* at 2.) Travelers to Iran are warned that “[f]ormer Muslims who have converted to other religions, as well as persons who encourage Muslims to convert, are subject to arrest and possible execution.” (*Iran International Travel Information, Local Laws & Special Circumstances* (U.S. Dept. of State) (*available at* <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Iran.html> (last visited July 14, 2025).)
18. In 2018, Mehrad was baptized at St. Joseph’s Assyrian-Chaldean Catholic Cathedral in Tehran. (Ex. B (Baptism and confirmation certificate).) Moved by the importance of Christianity in his life, Mehrad began speaking about his faith on social media. (Ex. A at 1; Ex. C (Credible Fear Interview) at 10.)
19. At that point, Mehrad’s life began to disintegrate rapidly. His employer was pressed into firing him. (Ex. A at 1; Ex. C at 7.) Armed thugs confronted him on the street, challenging

him for failing to observe an Islamic ritual. (Ex. A at 1; Ex. C at 8.) One of them swung a machete at his head; he raised his arm to shield himself and sustained a deep laceration in his forearm, sending him to the hospital where he remained for two days and received 30 stitches. (Ex. A at 1; Ex. C at 8.)

20. Mehrad reported the attack to the police. Even though the attack was on video, they did nothing. Instead, Mehrad suddenly found that he was the one being charged, with insulting Islam. A hearing on his charge was set for June of 2022. Mehrad knew that if he stayed in Iran he could face decades in prison, and possibly execution. (Ex. A at 2; Ex. C at 8–10.)
21. On May 8, 2022, after hiding from authorities for weeks, Mehrad fled Iran. He worked his way through Brazil and Bolivia to Mexico. (Ex. A at 2; Ex. C at 5.)
22. Mehrad did not attempt to sneak into the United States. Instead, on May 22, 2022, he “approached the pedestrian turnstile at Calexico West Port of Entry” and presented himself to a Customs and Border Protection Officer (CBPO). (Ex. D (Record of Deportable/Inadmissible Alien)) at 2; Ex. A at 2; Ex. C at 5.) Early documents in Mehrad’s file suggest that he told the CBPO he was a U.S. citizen (Ex. D at 2)—but he later explained in his credible fear interview that the CBPO had simply misunderstood his spotty English, and the interviewer found him credible. (Ex. C at 11, 15.) Lying to the CBPO about his citizenship would have been odd and pointless because moments later, as he approached the primary inspection booth, he “claimed Iran citizenship and claimed credible fear.” (Ex. D at 2.)
23. Mehrad was escorted to the Admissibility Enforcement Unit, where he explained that he had fled Iran to escape persecution based on his Christian faith. (*Id.*; Ex. A at 2.) Pursuant to the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1), Mehrad was placed in expedited removal proceedings, and a credible fear interview was scheduled to evaluate his request for religious asylum. (Ex. D at 2; Ex. C.)

24. Three weeks later, Mehrad had his credible fear interview. (Ex. C.) He passed with flying colors. (*Id.* at 15–17.) He told the interviewer how he had been harassed, threatened, attacked, and criminally charged in Iran, because he became a Christian. (*Id.* at 1–14.) He explained that what the Calexico CBPO had interpreted as him claiming that he was “born in Dallas and had lost his documents” had actually been him explaining that he had a brother in Dallas—which he did, and that he had lost his Iranian passport. (*Id.* at 11; Ex. A at 2.)
25. The interviewer found Mehrad’s testimony credible, noting that it was “detailed, consistent, and plausible.” (Ex. C at 15.) She found a significant possibility that in a full hearing he would be able to establish that “would be persecuted in the future on account of a protected characteristic” if he were returned to Iran. (*Id.* at 16.)
26. Mehrad was initially detained as his removal case and asylum application proceeded. The INA provides that an asylum-seeker who presents himself at a border crossing and is found to have a credible fear of persecution “shall be detained” for further consideration of his asylum application. 8 U.S.C. § 1225(b)(1)(B)(ii). This is a prophylactic measure, to ensure that the applicant does not evade authorities or commit crimes while his application is under review. *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).
27. However, the statute also provides that the DHS Secretary may “parole”—*i.e.*, release from detention—an asylum-seeker “on a case-by-case basis for urgent humanitarian reasons or significant public benefit”:

The Secretary of Homeland Security 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, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A). (Subparagraph (B) applies where a noncitizen might instead be admitted as a refugee; section 1184(f) relates to crewmembers of ships and planes.)

28. A regulation and an ICE Directive further develop the criteria governing parole determinations.

29. The regulation identifies the officials who may make parole decisions on the DHS Secretary's behalf, 8 C.F.R. § 212.5(a), and specifies that parole may be appropriate for asylum-seekers who "present neither a security risk nor a risk of absconding":

(b) Parole from custody. The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding:

* * * *

(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section.

8 C.F.R. § 212.5(b) (subsections referencing noncitizens with medical conditions, pregnant women, minors, and witnesses omitted). (Section 235(b) of the INA is codified as 8 U.S.C. § 1225(b), discussed above.)

30. The ICE Directive fleshes out the meaning of the term "public interest" as used in the regulation. ICE Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* par. 4.4 (Dec. 8, 2009) (ICE Dir. 11002.1) (*available at* https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf (last visited July 14, 2025)); *see Y-Z-L-H v. Bostock et al.*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *12-*13 (D. Or. July 9, 2025) (noting applicability of ICE Dir. 11002.1). The Directive specifies that, "[i]n determining whether detained arriving aliens found to have a credible fear should be paroled from custody, DRO [ICE Detention and Removal Operations] shall proceed in accordance with the terms of this directive." ICE Dir. 11002.1 par. 6.1. The Directive provides that parole is generally in the "public interest"

when an asylum-seeker establishes his identity and that he presents neither a flight risk nor a danger:

Each alien's eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 or this directive), parole the alien on the basis that his or her continued detention is not in the public interest.

Id. par. 6.2 (final sentence describing documentation requirements omitted). (Paragraph 8.3 elaborates upon the specific showings required in connection with identity, flight risk, and danger. *Id.* par. 8.3.) The Directive also requires DRO to provide the asylum-seeker with "written notification of the parole decision, including a brief explanation of the reasons for any decision to deny parole." *Id.* par. 6.5. If parole is denied, DRO must further advise the asylum-seeker that he may request redetermination of the decision "based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding." *Id.*

31. ICE initially denied Mehrad parole. A notification dated July 12, 2022, articulated two reasons for the denial. (Ex. E (Notification Declining to Grant Parole).) First, the notification stated that Mehrad failed to establish "to ICE's satisfaction" that he was not a flight risk. (*Id.* at 1.) Second, notwithstanding the earlier finding crediting Mehrad's credible-fear-interview testimony—in which he explained that he had not told the Calexico CBPO that he was a U.S. citizen (Ex. C at 11)—the notification repeated this allegation (Ex. E at 2). The notification did not question Mehrad's showing as to his identity, or his showing that he was "not a danger to the community or U.S. security." (*Id.* at 1–2.) A subsequent notice dated two weeks later, August 1, 2022, dropped the allegation that Mehrad had lied to the CBPO, repeated that he had failed to show he was not a flight risk, and added the claim that he had failed to establish his identity. (Ex. F

(Interim Notice Declining Parole) at 1.) The following day, August 2, 2022, Mehrad invoked his right to request a re-determination of the denial of parole. (*Id.* at 2.)

32. The day after that, August 3, 2022, ICE dropped its objections to Mehrad's release, and ordered him released on \$10,000 bond, referencing "section 236 of the [INA] and part 236 of title 8, Code of Federal Regulations." (Ex. G (Notice of Custody Determination) at 1.) (Section 236 of the INA is codified as 8 U.S.C. § 1226.) This reference appeared to conflict with *Matter of M-S-*, 27 I. & N. Dec. 509 (U.S. Att'y Gen. 2019), in which the Attorney General ruled that an asylum-seeker who has been found to have a credible fear of persecution is ineligible for release on bond, and could be administratively released only pursuant to the parole provision in 8 U.S.C. § 1182(d)(5).
33. Two days later, on August 5, 2022, Mehrad acknowledged receipt of the bond notification, and confirmed that he did not request review by an immigration judge. (Ex. G at 1.) Four days after that, on August 9, 2022, Mehrad was released from detention. (*Id.* at 2.)
34. For the next two years, nine months, and 22 days, Mehrad was a model member of American society. He obeyed the laws of this country, without so much as a speeding ticket. (Ex. A at 2-3; Ex. H (Declaration of Rebecca Cheaves) at 2.) He enjoyed freely and opening practicing the religion that had caused him to be persecuted and attacked in Iran. He obtained an employment authorization and a limited-term driver's license, and worked long hours as an Uber driver. (Ex. A at 2-3.) He paid taxes. (*Id.* at 3.) He got engaged, to Delia Marquez, a legal permanent resident from Mexico. (*Id.*) He complied with all the rules of his release, promptly notifying ICE of every change of address. (*Id.* at 2.)
35. In the meantime, Mehrad's asylum case proceeded. He filed a formal asylum application. A full hearing was calendared in Texas for April of 2026. (*Id.* at 3; Ex. H at 6.)
36. And then, on May 31, 2025, everything changed. Mehrad heard a knock at the door of his Phoenix apartment, and a voice telling him that someone had crashed into his car in the

parking lot. He rushed out to check his car, only to be set upon and arrested by a band of ICE agents. They called him by an unfamiliar name that sounded Russian, and accused him of having missed a court date in California. He told them—correctly—that he hadn’t missed any court dates, and that his hearing was set for April of 2026 in Texas. They detained him anyway. (Ex. A at 3.)

37. Mehrad was brought to the Florence Service Processing Center, an immigration detention facility in Florence, Arizona. An ICE officer told him that he “should not be here.” Distraught at his sudden and inscrutable loss of liberty, he began a hunger strike. (*Id.*)
38. On June 9, 2025, ICE formally canceled Mehrad’s bond. (Ex. I (Notice – Immigration Bond Canceled).)
39. On June 10, 2025, the government filed a complaint in this Court seeking a temporary restraining order (TRO) allowing it to force-feed Mehrad, which the Court granted. *United States v. Asadieidivand*, No. 25-cv-02011-SPL—DMF (Doc. 6). On the same day, Mehrad’s fiancée Delia reached out to immigration lawyer Rebecca Cheaves, who agreed to represent Mehrad. (Ex. H at 1.)
40. Over the next few days, Ms. Cheaves repeatedly reached out to ICE officials, attempting to learn why Mehrad had been re-detained. (*Id.* at 1–7.) Florence Detention Center Deportation Officer Robert E. Jones, Jr. confirmed that Mehrad was being detained, but confessed to having no idea as to why. (*Id.* at 2.)
41. On June 12, 2025, Mehrad ended his hunger strike. *United States v. Asadieidivand*, No. 25-cv-02011-SPL—DMF (Doc. 10 at 1). In a phone call the same day, Ms. Cheaves pressed Officer Jones to explain ICE’s refusal to release Mehrad. (Ex. H at 3–5.) Officer Jones stated that ICE had erred in releasing Mehrad on bond, because he was eligible only for parole, and that Mehrad “should have” instead been granted parole in 2022. (*Id.* at 3.) When Ms. Cheaves responded that the error was not Mehrad’s fault, and urged Officer Jones to parole Mehrad now, Officer Jones responded: “Well, Mehrad is now in custody

under a new administration where we don't give paroles to anyone anymore under Trump's law." (*Id.*) Ms. Cheaves continued to press Officer Jones to explain why Mehrad would not be paroled. (*Id.* at 3–4.) Officer Jones responded, "ICE halted all paroles and bonds now," and Mehrad would have to see an Immigration Judge. (*Id.* at 4.) Ms. Cheaves reminded him of his assertion that Mehrad was ineligible for bond. (*Id.*) Officer Jones responded, "Well then, he has to stay here." (*Id.*)

42. Later that day, Ms. Cheaves sent Officer Jones an email formally requesting that Mehrad be paroled. (*Id.* at 4–5.) Officer Jones replied that he would forward the request to his supervisor. (*Id.* at 5) When Ms. Cheaves asked him the next day whether a decision had been made, Officer Jones responded simply, "My supervisor advised that ICE will not release Mehrad on parole at this time." (*Id.*)
43. On June 17, 2025, this Court dismissed the force-feeding case on the government's motion. *United States v. Asadieidivand*, No. 25-cv-02011-SPL—DMF (Doc. 12). On the same date, Ms. Cheaves appeared on Mehrad's behalf at a hearing in immigration court in Florence, Arizona, where Mehrad's asylum case had been transferred. (Ex. H at 5.) She learned that Mehrad, still unable to find any reason for hope or optimism, had begun a second hunger strike. (*Id.*) The immigration judge scheduled a hearing on Mehrad's asylum claim for September 22, 2025, in Florence, Arizona. (*Id.*)
44. On June 23, 2025, the government filed a second complaint for a force-feeding TRO, which the Court granted. *United States v. Asadieidivand*, No. 25-cv-02165-SPL—DMF (Doc. 5). In the same Order, the Court appointed counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A(a)(2)(B), "to assist [Mehrad] in preparing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241," in addition to representing him in the TRO case. *Id.* at 3. Undersigned counsel entered his appearance in the TRO case pursuant to the Court's Order, filed a reponse to the TRO motion, and subsequently confirmed that he was assisting Mehrad in preparing a habeas corpus petition. *Id.* (Docs.

8, 10, 13). The Court later granted the parties' stipulation to dismiss the second TRO when Mehrad resumed eating. *Id.* (Doc. 15).

45. Also on June 23, 2025, Ms. Cheaves emailed another parole request to Officer Jones. (Ex. H at 5.) Officer Jones responded simply: "Management has advised that he would not be released on parole at this time." (*Id.*)

46. Since being re-detained, Mehrad has lost his car, his apartment, much of his body weight, and the peaceful, productive, law-abiding life he was living when he was set upon by ICE agents. (Ex. A at 3.) But he retains his faith in the United States, and still hopes for the freedom and safety that he came here to find. (*Id.* at 4.)

Grounds for Relief

Claim 1: Administrative Procedure Act, 5 U.S.C. § 706(2)

47. Mehrad restates and realleges all preceding paragraphs as if fully set forth here.

48. The Administrative Procedure Act, 5 U.S.C. § 706(2) (APA), requires the Court to "hold unlawful and set aside agency action" that is (*inter alia*): "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law[.]"

49. "[T]he touchstone of arbitrary and capricious review under the APA is reasoned decisionmaking.'" *Y-Z-L-H*, 2025 WL 1898025, at *11 (*quoting Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061, 1080 (9th Cir. 2019) (internal quotation marks omitted)). "[A]n agency's action can only survive arbitrary or capricious review where it has articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Id.* (*quoting All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023)). "A court 'may not infer an agency's reasoning from mere silence,'" *id.* (*quoting Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008)), "because 'it makes no difference what [an agency] may have had in mind but

failed to express; an administrative agency is not allowed to change direction without some explanation of what it is doing and why.’” *Id.* (quoting *Int’l Union, UAW v. NLRB*, 802 F.2d 969, 973–74 (7th Cir. 1986)). “An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). In addition, an agency’s failure to “‘adhere firmly to self-adopted rules by which the interests of others are to be regulated,’” is “unlawful and thus actionable under [the APA].” *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336–37 (D.D.C. 2018) (quoting *Mass. Fair Share v. Law Enf’t Assistance Admin.*, 758 F.2d 708, 711 (D.C. Cir. 1985)).

50. ICE’s re-detention of Mehrad violates the APA in virtually every manner imaginable.
51. In 2022, the agency recognized that Mehrad was an appropriate candidate for release, and determined to release him. (Ex. G.) In doing so, the agency referenced the bond release provisions of INA § 236 (*i.e.*, 8 U.S.C. § 1226) and 8 C.F.R. part 236, which *Matter of M-S* deemed inapplicable in this context, rather than the parole release provision of 8 U.S.C. 1182(d)(5), which *Matter of M-S* deemed applicable (Ex. G at 1)—but this is immaterial, because as applied to Mehrad, the pertinent factors were essentially the same: a sufficient showing of identity, lack of flight risk, and lack of danger. *See* 8 U.S.C. § 1226(c)(4); 8 C.F.R. § 236.1(c)(3), (c)(8); 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b); ICE Dir. 11002.1, par. 6.2. Moreover, in either context, the agency’s release determinations must be made on a case-by-case basis. 8 U.S.C. § 1226(c)(4) (identifying factors with respect to “the alien”); 8 C.F.R. § 236.1(c)(3) (same), (c)(8) (same); 8 U.S.C. § 1182(d)(5)(A) (parole may be granted “only on a case-by-case basis”); 8 C.F.R. § 212.5(b) (same); ICE Dir. 11002.1, par. 6.2 (parole determinations must be “based on the facts of the individual alien’s case”); *see also Doe v. Noem*, No. 25-1384, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (noting that “[c]ommon sense suggests” that “parole *given* only on a case-by-case basis is to be *terminated* only on such a basis”) (emphases added).

52. In 2025, the agency suddenly reversed this decision—and then persistently refused to reconsider its reversal—in the most lawless and arbitrary fashion imaginable. In defiance of the applicable statutes, regulations, and directive, the agency reversed its release decision without identifying any change of circumstances having any particular relevance to Mehrad. (Ex. A at 3–4; Ex. H at 2–7; Ex. I.) Indeed, the agents’ comments to him suggest that they may have mistaken him for an entirely different individual. (Ex. A at 3.) The agency then steadfastly refused to release him—again without identifying any change of circumstances or conducting any individualized review—attributing its refusal to a blanket policy it described as “Trump’s law.” (Ex. H at 3.)
53. “Trump’s law” cannot displace actual law. This is arbitrary and unlawful agency action in its purest form. Pursuant to the APA, it must be set aside. *See Y-Z-L-H*, 2025 WL 1898025, at *14 (granting habeas corpus petition pursuant to APA and barring detention of asylum-seeker whose release was summarily revoked via mass DHS email); *Doe v. Noem*, No. 1:25-CV-10495-IT, 2025 WL 1099602 (D. Mass. Apr. 14, 2025) (staying, as violative of the APA, premature revocation without case-by-case review of parole granted to noncitizens from certain countries); *Damus*, 313 F. Supp. 3d at 343 (finding that asylum-seekers had demonstrated likelihood of success on claim that ICE was failing to comply with ICE Directive 11002.1 by systematically denying parole).

**Claim 2: Fifth Amendment Due Process Clause—
Right to Non-Arbitrary Release Determination**

54. Mehrad restates and realleges all preceding paragraphs as if fully set forth here.
55. The Fifth Amendment’s Due Process Clause provides that “[n]o person shall be . . . deprived of life, liberty, or property without due process of law.” Mehrad is a “person,” and the Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By physically detaining him, Respondents are depriving Mehrad of bodily “liberty.” *United States v. Salerno*, 481 U.S. 739, 748–51

(1987). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Indeed, even the dissenters in *Zadvydas*—who refused to join the majority’s holding construing the pertinent section of the INA to require bond hearings—confirmed that noncitizens “stopped at the border” are “entitled to be free from detention that is arbitrary or capricious.” *Zadvydas*, 533 U.S. at 720–21 (Kennedy, J., dissenting, joined by Rehnquist, C.J.).

56. Once he was released, Mehrad had a constitutionally protected liberty interest in remaining out of custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019). This is not, of course, to suggest that Respondents lost the ability to re-detain him—only that they could not extinguish his liberty in an “arbitrary or capricious” manner. *Zadvydas*, 533 U.S. at 720–21 (Kennedy, J., dissenting).
57. The role of discretion in the decision to release Mehrad did not nullify this obligation, because “the fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest.” *Ortega*, 415 F. Supp. 3d at 969.
58. Assuming ICE erred in releasing Mehrad pursuant to an inapplicable regulatory framework, *Matter of M-S-*, 27 I. & N. Dec. at 518–19, this, too, would not nullify his constitutionally protected liberty interest. Even erroneously granted liberty is constitutionally protected where (a) the error is not attributable to the releasee, (b) the error amounted to more than simple neglect, and (c) under the circumstances, extinguishing the releasee’s liberty would be “unequivocally inconsistent with fundamental principles of liberty and justice.” *United States v. Martinez*, 837 F.2d 861, 864 (9th Cir. 1988) (internal quotation marks omitted).
59. These circumstances are present here. (a) Assuming ICE erred, it plainly was not Mehrad’s fault—in fact, when it happened, he was in the process of pursuing release under the framework that the Attorney General specified as appropriate for noncitizens in his position. *Matter of M-S-*, 27 I. & N. Dec. at 518–19. (Exs. E & F.) (b) It was more than

“simple neglect” for ICE in 2022 to invoke a legal framework that the Attorney General declared inapplicable in 2019—let alone to do so at the *same time* that it was conducting a parallel review under the legal framework that the Attorney General identified as the appropriate one. (c) Extinguishing Mehrad’s liberty would be unequivocally inconsistent with fundamental principles of liberty and justice, because during the two years, nine months, and 22 days of liberty that followed his release, Mehrad was model member of the community, obeying all of this country’s laws, complying with every requirement placed upon him, working, and paying taxes. (Ex. A at 2–3.) He built a peaceful, law-abiding life, got engaged, and continued following the law and rules to pursue sanctuary from the religious persecution he still hopes to escape. (*Id.* at 2–4.) See *Johnson v. Williford*, 682 F.2d 868, 870–73 (9th Cir. 1982) (returning erroneously paroled habeas petitioner to custody would violate fundamental principles of liberty and justice where petitioner had made an “excellent” adjustment to parole, living with his wife and children, running a business, reporting to his parole officer, and keeping his court appearances).

60. It follows that Respondents’ arbitrary and capricious extinguishment of Mehrad’s liberty violated his Fifth Amendment right to due process.

**Claim 3: Fifth Amendment Due Process Clause—
Right to Bond Hearing**

61. Mehrad restates and realleges all preceding paragraphs as if fully set forth here.
62. In *Jennings v. Rodriguez*, the Supreme Court majority held that the INA provisions governing the detention of asylum-seekers could not be construed as entitling asylum-seekers to bond hearings, overruling the Ninth Circuit’s holding that such a construction is required by the doctrine of constitutional avoidance. *Jennings*, 583 U.S. at 286. The majority’s holding did not rest on any finding that the denial of bond hearings raised no constitutional problem to be avoided—instead, the Court simply found that statute’s language rendered the Ninth Circuit’s construction “implausible.” *Id.* at 296. In fact, the

majority expressly declined to address any constitutional question relating to the denial of bond hearings to asylum-seekers. *Id.* at 312.

63. Justice Breyer, however, addressed the constitutional question in his dissenting opinion. He did so to explain his disagreement with the majority's *interpretive* holding, and because that holding is the law of the land, this Court must follow it. But because the majority expressly declined to address the *constitutional* question, this Court is free to apply Justice Breyer's reasoning to the question of whether a person in Mehrad's position is entitled to a bond hearing as a constitutional matter. It should do so, because Justice Breyer makes a compelling case.
64. As noted above, the Fifth Amendment's Due Process Clause protects Mehrad against arbitrary and capricious deprivations of his liberty. *Jennings*, 583 U.S. at 330 (Breyer, J., dissenting).
65. Justice Breyer's reasoning illustrates why the Due Process Clause entitles Mehrad to a bond hearing before a neutral decisionmaker. The Clause "foresees eligibility for bail as part of 'due process.'" *Id.* (Breyer, J., dissenting). Bail, which "limits the Government's ability to deprive a person of his physical liberty where doing so is not needed to protect the public or to assure his appearance at, say, a trial or the equivalent," is "basic to our system of law." *Id.* at 330–31 (Breyer, J., dissenting) (citation and internal quotation marks omitted). It is an integral part of the "settled usages and modes of proceeding existing in the common and statute law of England," which the Due Process Clause codifies and protects. *Id.* at 332 (Breyer, J., dissenting) (internal quotation marks omitted). And because there is no reasonable basis for treating asylum-seekers worse than others to whom bail is available—including criminal defendants, criminal appellants, civilly committed citizens, noncitizens who sneaked into the country, and noncitizen criminals who have been ordered removed—refusing bail to asylum-seekers is fundamentally arbitrary. *Id.* at 337 (Breyer, J., dissenting).

66. It follows that it is not only Respondents’ arbitrary and capricious extinguishment of Mehrad’s liberty interest, but *also* their failure to provide him with a bond hearing before a neutral decisionmaker, that violates his Fifth Amendment right to due process. *See Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172–74 (W.D. Wash. 2023) (holding that asylum-seekers had sufficiently alleged that denial of bond hearings before neutral decisionmakers violated their Fifth Amendment right to due process).

Claim 4: Fifth Amendment Equal Protection

67. Mehrad restates and realleges all preceding paragraphs as if fully set forth here.
68. As noted above, Mehrad is protected by the Fifth Amendment’s Due Process Clause. The Due Process Clause incorporates the Fourteenth Amendment’s Equal Protection Clause against the federal government, *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), and Fifth Amendment equal protection claims are subject to “precisely the same” analysis as Fourteenth Amendment equal protection claims, *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975).
69. The Equal Protection Clause prohibits invidious discrimination on the basis of nationality. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 202 (2023). “[I]t is ‘hostility to . . . race and nationality’ ‘which in the eye of the law is not justified.’” *Id.* (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 368–369, 373–374 (1886)). Restrictions that unjustifiably subject nationals of a particular country to special burdens and penalties violate this guarantee. *Yick Wo*, 118 U.S. at 374.
70. Unlawful “hostility” to a particular nationality is patently evident in a press release issued by DHS three weeks after Mehrad’s arrest. The June 24, 2025 release, titled, “ICE Arrests 11 Iranian Nationals Illegally in the U.S. Over the Weekend,” proclaims that ICE fulfilled its “commitment to keeping known and suspected terrorists out of American communities” by arresting 11 Iranian nationals illegally in the United States. (Ex. J (DHS Press Release) at 1.)

71. The release goes on to identify the 11 arrestees—one of whom is Mehrad’s brother Mehrzad Asadi Eidivand—and in doing so confirms that the arrests were motivated by invidious discrimination against Iranian nationals, rather than any commitment to arresting “known or suspected terrorists.” Only two of the arrestees are identified as having any purported connection to terror or extremism—one is described as being “listed” as a “**known or suspected terrorist**” (*id.* at 2–3), and the other as a former member of the Islamic Revolutionary Guard Corps with “**admitted connections to Hezbollah**” (*id.* at 3). As for the other nine, one is not alleged to have committed any crime (but is being processed for expedited removal) (*id.*), and the rest are identified as having committed non-terrorism-related crimes ranging from petty theft to driving on a suspended license. One of them is said to have had an Iranian Army identification card in his possession (*id.* at 1)—but since military service is compulsory for males between 18 and 49 in Iran, this is unremarkable. *Country Policy and Information Note/Iran: Military service* at 7 (U.K. Home Office Nov. 2022) (*available at* <https://www.gov.uk/government/publications/iran-country-policy-and-information-notes/country-policy-and-information-note-military-service-iran-november-2022-accessible> (last visited July 14, 2025)).
72. The significance of this extraordinary document should not be underestimated. On its face, it makes a showing of invidious discrimination that under different circumstances might have required months of discovery and close analysis. The release effectively confirms that ICE has resolved to treat Iranian noncitizens as presumptively “suspected terrorists” and arrest and detain them, regardless of whether they have any known or suspected connection to terrorism—or even to criminal activity. The release thus confirms ICE’s policy of invidious discrimination against Iranian nationals, in connection with its arrest practices mere weeks after it arrested Mehrad.
73. This ICE document indicates that Mehrad’s arrest was not only arbitrary, capricious, and contrary to the governing statute, regulations, and directive—but also motivated by

individious national origin-based discrimination in violation of the equal protection component of the Fifth Amendment's Due Process Clause. *Yick Wo*, 118 U.S. at 374.

Prayer for Relief

In light of the facts and law set forth above, Mehrad respectfully asks the Court to:

- a. order Respondents to file an answer to this petition;
- b. permit him to file a reply to the answer;
- c. authorize him to conduct discovery in order to support his claims for relief;
- d. if necessary, convene an evidentiary hearing to resolve disputed facts, *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009);
- e. order Respondents to release him from custody, subject to any necessary and appropriate conditions; and/or
- f. grant any other relief that is just and practicable.

Respectfully submitted:

July 15, 2025

JON M. SANDS
Federal Public Defender

s/Daniel L. Kaplan
DANIEL L. KAPLAN
Assistant Federal Public Defender
Counsel for Petitioner