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

Ali Ghafouri,
Petitioner,

vs.

Christopher J. LAROSE, *in his official capacity as Warden of Stewart Detention Center*; Patrick DIVVER, *in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations*; Todd LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and Kristi NOEM, *in her official capacity as Secretary of Homeland Security*,

Respondents.

Case No.: '25CV2709 RSH MSB

PETITION FOR WRIT OF
HABEAS CORPUS

A# 

I. INTRODUCTION

1. Petitioner Ali Ghafouri ("Mr. Ghafouri") is a 53-year-old Iranian national who first entered the United States when he was approximately 12 years old. He has resided in the San Diego area for approximately 40 years. He has four United States citizen children, and the youngest two are minors ages 17 and 14 currently residing with Mr. Ghafouri's United States citizen

1 partner.

2 2. On June 5, 2003, an Immigration Judge ordered Mr. Ghafouri
3 removable and issued an order of removal to Iran. Immigration and Customs
4 Enforcement (“ICE”) could not effectuate the removal, so Mr. Ghafouri was
5 placed under an order of supervision (“OSUP”). The date of Mr. Ghafouri’s most
6 recent OSUP is May 16, 2016. Mr. Ghafouri has complied with all conditions
7 of his order of supervision, including periodic check-ins.
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9 3. On May 15, 2025, ICE detained Mr. Ghafouri while he appeared
10 at an ICE office for his check-in. ICE revoked the Order of Supervision,
11 although Mr. Ghafouri does not believe he received a notification of the
12 revocation. Mr. Ghafouri remains confined at Otay Mesa Detention Center in
13 San Diego, California.
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15 4. The revocation of Mr. Ghafouri’s order of supervision and his
16 continued detention violate 8 C.F.R. § 241.13(f), (i)(2), the Fifth Amendment’s
17 Due Process Clause, and the Administrative Procedure Act.
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19 5. Mr. Ghafouri therefore seeks a writ of habeas corpus directing his
20 immediate release.
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22 II. VENUE AND JURISDICTION

23 6. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. §
24 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).
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26 7. Venue lies in this Division because Mr. Ghafouri is detained in
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1 Otay Mesa Detention Center, within the San Diego Division, and Respondent
2 LaRose is his immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).
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4 III. PARTIES

5 8. Petitioner Ali Ghafouri is a 53-year-old Iranian national who
6 resides in San Diego, California. He is currently detained at the Otay Mesa
7 Detention Center in San Diego, California.
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9 9. Respondent Christopher J. LaRose is the Warden of Otay Mesa
10 Detention Center. As such, Respondent is responsible for the operation of the
11 Detention Center where Mr. Ghafouri is detained. Because ICE contracts
12 with private prisons such as Otay Mesa to house immigration detainees such
13 as Mr. Ghafouri, Respondent LaRose has immediate physical custody of the
14 Petitioner.
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17 10. Respondent Patrick Divver is the San Diego Field Office Director
18 (“FOD”) for ICE Enforcement and Removal Operations (“ERO”). As such,
19 Respondent Divver is responsible for the oversight of ICE operations at the
20 Otay Mesa Detention Center. Respondent Divver is being sued in his official
21 capacity.
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24 11. Respondent Todd Lyons is the Acting Director of Immigration
25 and Customs Enforcement (“ICE”). As such, Respondent Lyons is responsible
26 for the oversight of ICE operations. Respondent Lyons is being sued in his
27 official capacity.
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1 12. Respondent Kristi Noem is the Secretary of the Department of
2 Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary
3 Noem is responsible for the general administration and enforcement of the
4 immigration laws of the United States. Respondent Secretary Noem is being
5 sued in her official capacity.
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8 IV. EXHAUSTION OF REMEDIES

9 13. No statutory exhaustion requirement applies. Nonetheless, Mr.
10 Ghafouri has exhausted his administrative remedies to the extent required
11 by law, including a request through counsel to ICE for his release following
12 90 days of continuous detention, and his only remedy is by way of this judicial
13 action.
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16 V. STATEMENT OF FACTS

17 14. Mr. Ghafouri is an Iranian national born on  He
18 entered the United States in approximately 1984 when he was about 12 years
19 old. Mr. Ghafouri eventually became a Legal Permanent Resident ("LPR").
20 He has lived continuously in California for over forty years. He resides in San
21 Diego, California.
22

23 15. Mr. Ghafouri helps support his U.S. citizen partner and his two
24 minor U.S. citizen children A  (age 17) and K  (age 14). He also has two
25 adult U.S. citizen children ages 31 and 29. Mr. Ghafouri also has a U.S.
26 citizen mother and sister, all residing in the San Diego area.
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1 16. Mr. Ghafouri is self-employed as a car detailer. By virtue of his
2 Order of Supervision, he has been able to obtain his Employment
3 Authorization Document, although his last renewal remains pending.
4

5 17. On June 5, 2003, Mr. Ghafouri was ordered removed to Iran by
6 an immigration judge following a conviction for Possession for Sale of a
7 Controlled Substance/Transportation of Marijuana, CA H&S §§ 11378/11360.
8 Iran was designated as the country of removal.
9

10 18. ICE could not effectuate the removal order as the United States
11 did not have regular diplomatic relations with Iran, and no repatriation
12 agreement existed between the two countries. Mr. Ghafouri was eventually
13 issued an order of supervision ("OSUP"). (**Exhibit A**, Order of Supervision).
14 Mr. Ghafouri has complied with all conditions of his OSUP and has attended
15 regular check-ins with ICE.
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18 19. The United States and Iran do not currently have a repatriation
19 treaty, making removals to Iran not practically feasible except in
20 extraordinary circumstances. Mr. Ghafouri is not aware of any travel
21 documents that have been issued to him by Iran, nor of any agreements
22 between the two countries to effectuate his removal to Iran.
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25 20. On May 15, 2025, Mr. Ghafouri presented himself at the San
26 Diego ICE office for a required check-in. At that time, he was taken into ICE
27 custody. Mr. Ghafouri remains detained at Otay Mesa Detention Center. It
28

1 appeared that ICE revoked Mr. Ghafouri's OSUP.

2 21. Mr. Ghafouri was detained solely because ICE arbitrarily
3 revoked his OSUP without justification or reason in violation of their own
4 regulations under 8 C.F.R. § 241.13(f), (i)(2). Mr. Ghafouri now seeks habeas
5 relief because continued detention violates the Fifth Amendment and the
6 Administrative Procedure Act.
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9 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

10 22. Habeas corpus relief extends to a person "in custody under or by
11 color of the authority of the United States" if the person can show he is "in
12 custody in violation of the Constitution or laws or treaties of the United
13 States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P.*
14 *Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims
15 are proper under 28 U.S.C. section 2241 if they concern the continuation or
16 execution of confinement).
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20 23. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
21 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
22 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
23 in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553
24 U.S. 723, 779–80 (2008). "[W]hen the judicial power to issue habeas corpus
25 properly is invoked the judicial officer must have adequate authority to make
26 a determination in light of the relevant law and facts and to formulate and
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1 issue appropriate orders for relief, including, if necessary, an order directing
2 the prisoner's release." *Id.* at 787.

3 4 VII. CAUSES OF ACTION

5 COUNT ONE

6 UNLAWFUL DETENTION IN VIOLATION OF 8 C.F.R. SECTION 7 241.13 AND THE ADMINISTRATION PROCEDURE ACT – 5 U.S.C. § 8 706(2)(A)

9 24. Petitioner incorporates paragraphs 1 through 23 as if fully set out
10 herein.

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

13 26. An action is an abuse of discretion if the agency "entirely failed to
14 consider an important aspect of the problem, offered an explanation for its
15 decision that runs counter to the evidence before the agency, or is so
16 implausible that it could not be ascribed to a difference in view or the product
17 of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S.
18 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*
19 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

20 27. Regulation 8 C.F.R. § 241.13(i)(2), describes ICE's own
21 requirements to revoke an OSUP. Specifically, the regulation states, "[t]he
22 Service may revoke an alien's release under this section and return the alien
23 to custody if, on account of changed circumstances, the Service determines
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1 that there is a significant likelihood that the alien may be removed in the
2 reasonably foreseeable future”. 8 C.F.R. § 241.13(i)(2).
3

4 28. The regulation continues, “upon revocation, the alien will be
5 notified of the reasons for revocation of his [] release. The Service will conduct
6 an initial informal interview promptly after his [] return to Service custody to
7 afford the alien an opportunity to respond to the reasons for revocation stated
8 in the notification. The alien may submit any evidence or information that he
9 [] believes shows there is no significant likelihood he [] be removed in the
10 reasonably foreseeable future, or that he [] has not violated the order of
11 supervision. The revocation custody review will include an evaluation of any
12 contested facts relevant to the revocation and a determination whether the
13 facts as determined warrant revocation and further denial of release. 8 C.F.R.
14 § 241.13(i)(3).
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19 29. In Mr. Ghafouri’s case, ICE has not met their burden to establish
20 that there has been a change in circumstances making it likely that Mr.
21 Ghafouri will be removed in the reasonably foreseeable future. In fact, ICE
22 has not provided any reason for the revocation of Mr. Ghafouri’s OSUP.
23 Moreover, ICE did not provide Mr. Ghafouri with any notification that his
24 OSUP was going to be revoked or an opportunity to contest the revocation as
25 required by their own regulations.
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28 30. Respondents have already considered Mr. Ghafouri’s facts and

1 circumstances and agreed to release him under an OSUP. In making that
2 decision ICE determined that Mr. Ghafouri was not a flight risk or danger to
3 the community. Those circumstances have not changed. In fact, Mr. Ghafouri
4 is less of a flight risk now as he has continued to live and work in the United
5 States while out of custody since his initial release from custody, supporting
6 himself and his family. Moreover, there is no change of circumstances that
7 indicates that Mr. Ghafouri's removal is likely to happen in the foreseeable
8 future. In the five months that Mr. Ghafouri has been detained, ICE has not
9 been able to effectuate the removal order, Mr. Ghafouri has not been issued
10 any travel documents, and he has not had any contact with members of the
11 Iranian consulate or government. ICE has not met their burden to revoke Mr.
12 Ghafouri's OSUP and re-detain him.

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17 31. Detention based on an arbitrary revocation of an OSUP violates
18 the clear regulations, is "not in accordance with law," and "in excess of
19 statutory jurisdiction," under 5 U.S.C. § 706(2), entitling Petitioner to
20 immediate release. *See M.S.L. vs. Bostock*, No. 6:25-cv-01204AA, 2025 WL
21 2430267, at *15 (D. Oregon. August 21, 2025).

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24 **COUNT TWO**
25 **UNLAWFUL DETENTION IN VIOLATION OF FIFTH AMENDMENT**

26 32. Petitioner incorporates paragraphs 1 through 23 as if fully set out
27 herein.
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1 33. All persons residing in the United States are protected by the Due
2 Process Clause of the Fifth Amendment.

3
4 34. The Due Process Clause of the Fifth Amendment provides that
5 “[n]o person shall be ... deprived of life, liberty, or property, without due
6 process of law.” U.S. CONST. amend. V. Freedom from bodily restraint is at the
7 core of the liberty protected by the Due Process Clause. This vital liberty
8 interest is at stake when an individual is subject to detention by the federal
9 government.
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12 35. Due process requires that government action be rational and non-
13 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

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15 36. Under the civil-detention framework set out in *Zadvydas v.*
16 *Davis*, 533 U.S. 678 (2001), and its progeny, the Government may deprive a
17 non-citizen of physical liberty only when the confinement serves a legitimate
18 purpose—such as ensuring appearance or protecting the community—and is
19 reasonably related to, and not excessive in relation to, that purpose.
20

21 37. Once ICE found Mr. Ghafouri was not a dangerous or a flight risk,
22 and issued an OSUP and released Mr. Ghafouri from custody, the
23 Government’s lawful objectives were satisfied. Mr. Ghafouri’s re-confinement,
24 especially without any violations of his OSUP conditions or change in
25 circumstances, therefore, bears no reasonable, non-punitive relationship to
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27 any legitimate aim and is unconstitutionally arbitrary.
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38. The continued detention of Mr. Ghafouri pursuant to the arbitrary revocation of his OSUP violates his due process rights. But for intervention by this Court, Mr. Ghafouri has no means of release.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release him from custody, under reasonable conditions of supervision;
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents' custody;
- 4) Order Respondents to file a response within 3 business days of the filing of this petition;
- 5) Award attorneys' fees to Petitioner; and
- 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 13th day of October, 2025.

/s/Andrew Nietor
Attorney for Petitioner

EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF SUPERVISION

File No.: [REDACTED]

Date: 05/16/2016

Name: Ali Ghafouri

On 06/05/2003, you were ordered:
(Date of Final Order)

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal.
- ☒ That upon request of the agency, you appear for medical or psychiatric examination at the expense of the United States Government.
- ☒ That you provide information under oath about your nationality, circumstances, habits, associations and activities and such other information as the agency considers appropriate.
- ☒ That you do not travel outside state of California for more than 48 hours without first having notified
(Specify geographic limits, if any)
- ☒ This agency office of the dates and places, and obtaining approval from this agency office of such proposed travel.
- ☒ That you furnish written notice to this agency office of any change of residence or employment 48 hours prior to such change.
- ☒ That you report in person on to be determined to this agency office at:
(Day/Date/Time)
to be determined
(Reporting Address)
- ☒ That you assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.
- ☐ Other: _____
- ☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

[Signature]
(Signature of ICE Official)

Gregory J. Archambeault/FSD
(Print Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[Signature]
(Signature of ICE Official Serving Order)

[Signature]
(Signature of Alien)

05/16/2016
Date