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4 *Attorney for Petitioner A.S.*

5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA

7 A.S.¹,

Petitioner-Plaintiff,

8 vs.

9 CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
10 PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
11 Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
12 Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
13 and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

14 Respondents-Defendants.

Case No.: **'25CV2876 RBM VET**

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

15
16 ¹ Petitioner will move this Court for leave to proceed under a pseudonym (using
the initials A.S.).

18 PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 Parole dated June 6, 2022 (granting parole under INA section 212).

2 3. Respondents commenced removal proceedings against A.S. in
3 immigration court, entitling him to present his asylum claim with the due process
4 rights under 8 U.S.C. § 1229a.

5 4. Respondent's removal proceedings were terminated on December 12,
6 2022.

7 5. Since then, Petitioner has diligently attended every required ICE
8 check in and complied with all requirements of the release on parole. He filed a
9 Form I-589 Application for Asylum, Withholding of Removal, and protection
10 under the Convention Against Torture on or about March 20, 2023 within the
11 one-year filing deadline. Mr. A.S. Form I-589 is currently pending with U.S.
12 Citizenship and Immigration Services ("USCIS").

13 6. On or about October 2, 2025 U.S. Department of Homeland Security
14 ("DHS") agents detained Mr. A.S. near San Diego.

15 7. Mr. A.S.'s arrest is part of a new, nationwide DHS strategy of
16 sweeping up people who have complied with all terms of their release from DHS
17 custody. Since approximately mid-May 2025, DHS has implemented a coordinated
18 practice of leveraging immigration detention to strip people like Mr. A.S. of their
substantive and procedural rights and pressure them into deportation or else face

1 confinement in overcrowded and dangerous conditions within U.S. immigration
2 detention.² Immigration detention is civil, and thus is permissible for only two
3 reasons: to ensure a noncitizen's appearance at immigration hearings and to
4 prevent danger to the community. But DHS did not arrest and detain Mr. A.S.
5—who demonstrably poses no risk of absconding from immigration proceedings or
6 danger to the community—for either of these reasons.

7 8. In immigration court, noncitizens have the right to pursue claims for
8 relief from removal (including asylum), be represented by counsel, gather and
9 present evidence, and pursue appeals. 8 U.S.C. § 1229(a).

10 9. Despite apprehending him without notice or due process, placing him
11 at risk of being transferred away from the Southern District of California while he
12 remains in Respondents' physical and legal custody, Respondents now seek to keep
13 Mr. A.S. detained without a meaningful opportunity to seek a bond or custody
14 redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based not on Mr.
15 A.S.'s personal circumstances or individualized facts.

16 ² American Immigration Counsel, Trump Administration Deadlier for ICE
17 Detainees Than COVID-19 Pandemic, (Oct. 17, 2025),
18 <https://www.americanimmigrationcouncil.org/blog/trump-deadlier-for-ice-detainees-than-covid-19-pandemic/> (last visited Oct. 23, 2025) (“The administration’s push for mass detentions and deportations has led to overcrowding as most facilities now exceed their contractual capacity. Across detention centers, overcrowding has resulted in dire and inhumane conditions.”).

1 informed the Respondent that he was likely not eligible for bond because he is an
2 arriving noncitizen.

3 14. Mr. A.S. intends to get married with his U.S. citizen fiancée while in
4 custody. The Immigration Judge informed him that he is not eligible for adjustment
5 of status to a permanent residency in immigration court because DHS has exclusive
6 jurisdiction to adjudicate Applications for adjustment of status for arriving aliens.

7 15. For the reasons outlined below, Mr. A.S.'s arrest and inability to
8 contest his arbitrary detention violate his statutory and constitutional rights,
9 including Due Process protections under the U.S. Constitution. Mr. A.S.
10 respectfully requests that this Court should grant the instant petition for a writ of
11 habeas corpus, without any bond requirement, and for declaratory and injunctive
12 relief, to prevent such harms from recurring. Mr. A.S. also asks this Court to find
13 that Respondents' attempts to detain, transfer, and deport him are arbitrary and
14 capricious and in violation of the law, and to immediately issue an order preventing
15 his transfer out of this district.

16 JURISDICTION

17 16. This action arises under the Constitution of the United States and the
18 Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

19 17. This court has subject matter jurisdiction under 28 U.S.C. § 2241

1 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of
2 the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as
3 defendant), and 28 U.S.C. § 1651 (All Writs Act).

4 18. Federal district courts have jurisdiction to hear habeas claims brought
5 by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*,
6 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration
7 detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same);
8 *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9,
9 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

10 19. This Court may grant relief under the habeas corpus statutes, 28
11 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 Court's inherent equitable powers.

12 VENUE

13 20. Venue is proper because Petitioner is in Respondents' legal and
14 physical custody at Otay Mesa Detention Center in San Diego, California. Venue is
15 further proper because a substantial part of the events or omissions giving rise to
16 Petitioner's claims occurred in this District, where Petitioner is now in
Respondents' legal and physical custody, including his current and ongoing

1 detention under the legal and physical custody of Respondent LaRose, warden of
2 Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S.
3 426, 443 (2004) (habeas petition must be addressed to the federal district court of
4 confinement); *Wairimu v. Dir., Dep't of Homeland Sec.*, No.
5 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district
6 of confinement is the preferable forum even if the Court otherwise has personal
7 jurisdiction). For these same reasons, venue should be found proper under Local
8 Civil Rule HC.1.

8 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

9 21. The Court must grant the petition for writ of habeas corpus or issue an
10 order to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is
11 not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require
12 Respondents to file a return “within three days unless for good cause additional
13 time, not exceeding twenty days, is allowed.” *Id.*

14 22. Courts have long recognized the significance of the habeas statute in
15 protecting individuals from unlawful detention. The Great Writ has been referred
16 to as “perhaps the most important writ known to the constitutional law of England,
17 affording as it does a swift and imperative remedy in all cases of illegal restraint or
18 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

1 LaRose is responsible for the day-to-day operations and confinement of
2 non-citizens detained at that facility. He acts at the direction of Respondents
3 Divver, Lyons, and Noem. LaRose is a custodian of Mr. A.S. and is named in his
4 official capacity.

5 27. Respondent Patrick Divver ("Divver") is the Field Office Director of
6 ICE in San Diego, California. He acts at the direction of Respondents Lyons and
7 Noem. ICE is responsible for local custody decisions relating to non-citizens
8 charged with being removable from the U.S., including the arrest, detention,
9 custody status, and removal of non-citizens. The San Diego Field Office's area of
10 responsibility includes San Diego and Imperial Counties in California. Respondent
11 Divver is a custodian of Mr. A.S. and is named in his official capacity.

12 28. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and
13 he has authority over the actions of Respondents LaRose and Divver. ICE is
14 responsible for local custody decisions relating to non-citizens charged with being
15 removable from the U.S., including the arrest, detention, custody status, and
16 removal of non-citizens. Respondent Lyons is a custodian of Mr. A.S. and is named
17 in his official capacity.

18 29. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has
authority over the actions of all other DHS Respondents in this case, as well as all

1 operations and federal agencies of DHS, including ICE. In her capacity as
2 Secretary of DHS, Respondent Noem is charged with faithfully administering the
3 immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a).
4 Respondent Noem is a custodian of Mr. A.S. and is named in her official capacity.

5 30. Respondent ICE is responsible for local custody decisions relating to
6 non-citizens charged with being removable from the U.S., including the arrest,
7 detention, custody status, and removal of non-citizens.

8 31. Respondent DHS is the federal agency that has authority over the
9 actions of ICE and all other DHS Respondents.

10 32. This action is commenced against Respondents LaRose, Divver,
11 Lyons, and Noem (collectively, "Respondents") all in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12 33. Petitioner has no administrative remedies to exhaust.

13 34. Mr. A.S. received a new NTA which was filed before the Otay Mesa
14 Immigration Court to re-initiate his INA section 240 immigration proceedings
15 while he remains detained at Otay Mesa Detention Center.

16 35. On October 16, 2025, during his first master calendar hearing in
17 detention since his arrest, the Otay Mesa Immigration Court and counsel for DHS
18 confirmed that Mr. A.S. would not be eligible for adjustment of status in

1 immigration court. As such, Mr. A.S.'s continued unlawful detention in
2 Respondents' custody cannot be challenged by way of bond proceedings before an
3 Immigration Judge. Mr. A.S. is also challenging the unlawfulness of Respondents'
4 decision to detain him, independent of any decision made by any Immigration
5 Judge in removal proceedings.

6 36. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr.
7 A.S.'s constitutional, statutory, and regulatory rights and restore his liberty.

8 **FACTUAL BACKGROUND**

9 37. Mr. A.S. is a twenty-three year old citizen of Russia.

10 38. Mr. A.S. fled Russia after persecution against him and his family was
11 reignited after Russian full scale military invasion to Ukraine. Mr. A.S. suffered
12 physical violence, arrest, persecution and intimidation by Russian government
13 forces, on account of his political opinion against the war in Ukraine, nationality,
14 religious beliefs, and particular social group membership.

15 39. Based on persecution by Russian government forces, Mr. A.S.
16 suffered severe physical and emotional distress. Mr. A.S. was 19 years old when he
17 fled Russia.

18 40. On or about April 17, 2022, Mr. A.S. was admitted into the United
States. U.S. Customs and Border Protection ("CBP") issued him an I-94 admitting

1 Mr. A.S. into the U.S. **Exhibit A**, CBP I-94 (showing Mr. A.S.'s date of entry and
2 admission of April 17, 2022).

3 41. Respondents' initial NTA dated April 19, 2022, charged Mr. A.S. with
4 removal under INA 212 (a)(7)(A)(i)(I) based on the individualized facts in his
5 case. **Exhibit B**, DHS Custody Redetermination in April 2022, at 2 (including a
6 Notice to Appear dated April 19, 2022).

7 42. On or about April 20, 2022, DHS issued a Notice of Custody
8 Determination indicating that Mr. A.S. was being detained under INA section 236.
9 **Exhibit B**, DHS Custody Redetermination in April 2022, at 1, 10.

10 43. On or about May 9, 2022, Mr. A.S. also suffered sexual harassment
11 within ICE detention. On information and belief, Mr. A.S. fears further trauma and
12 emotional distress while re-detained in an ICE detention facility.

13 44. On or about June 6, 2022, Respondents released Mr. A.S. from
14 custody on parole. **Exhibit C**, Conditions of Release on Parole dated June 6, 2022,
15 at 1 (granting parole under INA section 212).

16 45. On or about December 9, 2022, DHS exercised prosecutorial
17 discretion to dismiss A.S.'s INA section 240 proceedings in immigration court.
18 **Exhibit D**, DHS Correspondence dated December 9, 2022 (agreeing to dismiss
immigration court proceedings).

1 46. On or about December 12, 2022, the San Diego Immigration Court
2 granted A.S.'s unopposed motion to dismiss INA section 240 proceedings. **Exhibit**
3 **E**, Order of the Immigration Judge dated December 12, 2022 (dismissing removal
4 immigration court proceedings).

5 47. Thus, on or about March 20, 2023, A.S. applied for asylum
6 affirmatively before USCIS. **Exhibit F**, USCIS Form I-797C, Receipt Notice dated
7 April 7, 2023.

8 48. On or about October 2, 2025, Respondents detained A.S. while he was
9 working with a lawful work authorization and commenced removal proceedings
10 against him under INA section 240 in San Diego, California.

11 49. Mr. A.S. intends to get married with his U.S. citizen fiancée while in
12 custody. The Immigration Judge informed him that he is not eligible for adjustment
13 of status to a permanent residency in immigration court because DHS has exclusive
14 jurisdiction to adjudicate Applications for adjustment of status for arriving aliens.

15 50. At an immigration court hearing on October 16, 2026, the
16 Immigration Judge and counsel for Respondents indicated that Mr. A.S. would not
17 be eligible for adjustment of status in immigration court. Mr. N.A. remains in
18 Respondents' legal and physical custody at Otay Mesa Detention Center, in San
19 Diego, California.

LEGAL FRAMEWORK

51. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

52. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

53. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

54. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if

1 they have experienced past persecution or have a well-founded fear of future
2 persecution on account of race, religion, nationality, membership in a particular
3 social group, or political opinions and if they are unable or unwilling to return to
4 and avail themselves of the protection of their homeland because of that
5 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

6 55. Although a grant of asylum may be discretionary, the right to apply
7 for asylum is not. The Refugee Act broadly affords a right to apply for asylum to
8 any noncitizen “who is physically present in the United States or who arrives in the
9 United States[.]” 8 U.S.C. § 1158(a)(1).

10 56. Because of the life-or-death stakes, the statutory right to apply for
11 asylum is robust. The right necessarily includes the right to counsel, at no expense
12 to the government, see 8 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the
13 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
14 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
15 to present evidence to establish eligibility.).

16 57. Noncitizens seeking asylum are guaranteed Due Process under the
17 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
18 (1993).

58. Moreover, following enactment of the IIRIRA, EOIR drafted

1 regulations explaining that, in general, non-citizens who entered the country
2 without inspection were not considered detained under 8 U.S.C. § 1225 or
3 automatically subject to expedited removal. *See* Inspection and Expedited
4 Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal
5 Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
6 Rather, such non-citizens were instead detained under § 1226(a). *See id.*

7 59. Thus, in the decades that followed, most people who entered without
8 inspection—unless they were subject to some other detention authority—received
9 bond hearings. That practice was consistent with many more decades of prior
10 practice, in which noncitizens who were not deemed “arriving” were entitled to a
11 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
(1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
12 simply “restates” the detention authority previously found at § 1252(a)).

13 60. Immigration detention should not be used as a punishment and should
14 only be used when, under an individualized determination, a noncitizen is a flight
15 risk because they are unlikely to appear for immigration court or a danger to the
16 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17 61. On January 20, 2025, President Donald Trump issued several
18 executive actions relating to immigration, including “Protecting the American

1 People Against Invasion,” an executive order (EO) setting out a series of interior
2 immigration enforcement actions. The Trump administration, through this and
3 other actions, has outlined sweeping, executive branch-led changes to immigration
4 enforcement policy, establishing a formal framework for mass deportation. The
5 “Protecting the American People Against Invasion” EO instructs the DHS
6 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
7 prioritize civil immigration enforcement procedures including through the use of
8 mass detention.

9 62. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin
10 Huffman issued for public inspection and effective immediately a designation
11 expanding the scope of expedited removal to apply nationwide and to certain
12 noncitizens who are unable to prove they have been in the country continuously for
13 two years. On January 24, 2025, DHS published a Notice that expanded the
14 application of expedited removal. Office of the Secretary, Dep’t of Homeland
15 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January
16 2025 Designation”). The designation was “effective on” January 21, 2025.

17 63. The January 2025 Designation expands the pool of noncitizens who
18 can be subjected to the summary removal process substantially to include
19 noncitizens who are apprehended anywhere in the United States and who have not

1 been in the United States continuously for more than two years. *Id.* at 8140.

2 64. The January 2025 Designation does not state that it applies to
3 noncitizens who were in the United States before its effective date.

4 65. On information and belief, Mr. A.S. avers that Respondents concealed
5 the basis for dismissal from the immigration court and Mr. A.S. because the
6 purpose was to divest him of his due process rights in his properly filed asylum
7 application.

8 66. On information and belief, Respondents did not afford Petitioner due
9 process before revoking his parole, depriving him of his liberty interest, and
10 placing him in detention within Respondents' legal and physical custody.

11 67. On information and belief, Respondents are using the immigration
12 detention system, including extra-territorial transfer and detention, as a means to
13 punish individuals for asserting rights under the Refugee Act.

14 CAUSES OF ACTION

15 COUNT ONE

16 **Violation of Fifth Amendment Right to Due Process – Substantive and 17 Procedural Due Process, U.S. Const. Amend. V.**

18 68. Petitioner restates, realleges, and incorporates by reference each and
every allegation in the paragraphs above as if fully set forth herein.

1 69. The Due Process Clause of the Fifth Amendment to the U.S.
2 Constitution prohibits the federal government from depriving any person of “life,
3 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
4 process protects “all ‘persons’ within the United States, including [non-citizens],
5 whether their presence here is lawful, unlawful, temporary, or permanent.”
6 *Zadvydas*, 533 U.S. at 693.

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

9 71. While asylum is a discretionary benefit, the right to apply is not. 8
10 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United
11 States or who arrives in the United States (whether or not at a designated port of
12 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

13 72. Because the denial of the right to apply for asylum can result in
14 serious harm or death, the statutory right to apply is robust and meaningful. It
15 includes the right to legal representation, and notice of that right, *see id.* §§
16 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of
17 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision
18 to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§
1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a

1 decision determining removability, *see id.* § 1229a(c)(6)-(7).

2 73. Expedited removal, in contrast, severely limits the availability of such
3 rights. Interviews occur on an exceedingly fast timeline; review of a negative
4 interview decision by an immigration judge must occur within seven days of the
5 decision. *See* 8 C.F.R. § 1003.42.

6 74. While there is a right to “consult” with an attorney or another person
7 about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) and 8
8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not
9 unreasonably delay the process.” The consultant may be “present” during the
10 interview but may only make a “statement” at the end of the interview if permitted
11 by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
12 removal may present evidence “if available”, *id.*—often an impossibility given the
13 fast timeline and the default of detention during the process. *See generally* Heidi
14 Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden*
15 *Administration to Safeguard Asylum Rights in CBP Custody*, National Immigration
16 Law Center, (Nov. 21, 2024),
17 [https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
18 [the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/) (last visited
Oct 20, 2025) (describing the obstruction of access to counsel for people

1 undergoing credible fear screenings in Customs and Border Protection custody).

2 75. Review of a negative credible fear decision by an immigration judge
3 is limited. “A credible fear review is not as exhaustive or in-depth as an asylum
4 hearing in removal proceedings,” and there is no right to submit evidence, as it
5 may be admitted only at “the discretion of the immigration judge.” Immigration
6 Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a credible fear interview
7 and affirmance by a judge, removal is a near certainty; the immigrant is ineligible
8 for other forms of relief from removal.

9 76. In sum, applying for asylum in removal proceedings comes with a
10 panoply of greater protections when compared with seeking asylum in expedited
11 removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at
12 *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy
13 far more robust due process protections [than those in expedited removal] because
14 Congress has conferred additional statutory rights on them.”).

15 77. Moreover, Mr. A.S. has a vital liberty interest in remaining free from
16 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at
17 *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
18 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE released
from custody after initial apprehension “has a substantial private interest in

1 remaining out of custody” which includes an interest in “...obtaining necessary
2 medical care, [and] maintaining her relationships in the community...”). While on
3 release from DHS custody, Mr. A.S. contributed to the U.S. economy by working
4 and paying taxes.

5 78. Even if the initial decision to release a non-citizen on from DHS
6 custody is discretionary, “...after that individual is released from custody she has a
7 protected liberty interest in remaining out of custody.” *Garcia v. Andrews*, No.
8 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025)
9 (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D.
10 Cal. July 24, 2025)).

11 79. Here, Mr. A.S. was paroled by DHS over three years ago. Moreover,
12 the immigration judge terminated his removal proceedings because continuation of
13 the proceedings was no longer in the best interest of the government. See 8 CFR
14 Section 1239.2(c). DHS counsel agreed to the dismissal of the proceedings.
15 **Exhibit D**, DHS Correspondence dated December 9, 2022 (agreeing to dismiss
16 immigration court proceedings). On or about October 2, 2025 DHS agents arrested
17 Mr. A.S. depriving him of his liberty interest and the bundle of rights associated
18 with his original pending asylum application in violation of due process. See
generally *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an

1 opportunity to be heard before deprivation of a legally protected interest). Nor has
2 the government identified any materially changed circumstances that would
3 warrant detaining Mr. A.S. over three years after he submitted his Asylum
4 Application (Form I-589), declaration, and corroborating evidence to the USCIS.
5 *See Exhibit F*, USCIS Form I-797C, Receipt Notice dated April 7, 2023.

6 **COUNT TWO**

7 **Violation of Fifth Amendment Right to Due Process – Procedural Due
8 Process, U.S. Const. Amend. V.**

9 80. Petitioner restates, realleges, and incorporates by reference each and
10 every allegation in the paragraphs above as if fully set forth herein.

11 81. The government may not deprive a person of life, liberty, or property
12 without due process of law. U.S. Const. amend. V. “Freedom from
13 imprisonment—from government custody, detention, or other forms of physical
14 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*
15 *Davis*, 533 U.S. 678, 690 (2001).

16 82. Mr. A.S. has a fundamental interest in liberty and being free from
17 official restraint.

18 83. The government’s detention of Petitioner without an notice or an
opportunity to be heard before detention violates his right to due process.

1 84. The government's detention of Petitioner without a meaningful bond
2 and custody redetermination hearing to determine whether he is a flight risk or
3 danger to others violates his right to due process.

4 **COUNT THREE**

5 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
6 **Accordance with Law and in Excess of Statutory Authority Violation of 8**
7 **C.F.R. § 239.2(c)**

8 85. Petitioner restates, realleges, and incorporates by reference each and
9 every allegation in the paragraphs above as if fully set forth herein.

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

14 87. Once a removal proceeding has been initiated, regulations enumerate
15 the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In
16 considering a motion to dismiss, the Immigration Judge must make “an informed
17 adjudication . . . based on an evaluation of the factors underlying the [DHS]
18 motion.” Matter of G-N-C-, 22 I&N Dec. 281, 284 (BIA 1998).

19 88. The initiation of expedited removal proceedings is not an enumerated

1 ground upon which a removal proceeding may be dismissed.

2 89. It is a well-established administrative principle that “agency action
3 taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v.*
4 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*,
5 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs.,*
6 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
taken by unauthorized official).

7 90. Under the APA, an agency must provide “reasoned explanation for its
8 action” and “may not depart from a prior policy sub silentio or simply disregard
9 rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S.
10 502, 515 (2009). At the time of his arrest, Mr. A.S. had been released from DHS
11 custody for over three years. His subsequent detention without notice or an
12 opportunity to be heard unlawfully deprives him of his liberty interest. *See Pinchi*
13 *v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
14 2025) (“Detention for its own sake, to meet an administrative quota, or because the
government has not yet established constitutionally required pre-detention
procedures is not a legitimate government interest.”).

15 91. In deciding to detain Mr. A.S., Respondents further violated the APA
16 by “entirely fail[ing] to consider an important aspect of the problem” – namely, the

1 important procedural rights that Petitioner relied on in § 1229a immigration court
2 proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
3 *Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the*
4 *Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of
5 immigration policy without considering “particular reliance interests” is arbitrary
6 and capricious in violation of the APA).

7 92. The arbitrary and capricious arrest of Mr. A.S., despite his valid
8 release and parole from DHS custody, was not made in furtherance of an
9 enumerated reason set forth in the regulations and causes Mr. A.S. irreparable
10 harm. *See Exhibit C*. For these reasons, the Court should find that the decision to
11 detain Mr. A.S. is arbitrary, capricious, and unsupported by substantial evidence.
12 *See* 5 U.S.C. § 706(2)(A), (E).

13 COUNT FOUR

14 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in** 15 **Accordance with Law and in Excess of Statutory Authority, Unlawful** 16 **Detention**

17 93. Petitioner restates, realleges, and incorporates by reference each and
18 every allegation in the paragraphs above as if fully set forth herein.

94. Under the APA, a court shall “hold unlawful and set aside agency

1 action..." that is "... (A) arbitrary, capricious, an abuse of discretion, or otherwise
2 not in accordance with law; (B) contrary to constitutional right, power, privilege, or
3 immunity..." 5 U.S.C. § 706(2)(A)-(B).

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

10 96. To survive an APA challenge, the agency must articulate "a
11 satisfactory explanation" for its action, "including a rational connection between
12 the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752,
773 (2019) (citation omitted).

13 97. The INA provides that Respondents may, as they did in 2022 in
14 Petitioner's case, release an individual from apprehension or custody based on an
15 individualized determination of their danger and flight risk. *See* 8 U.S.C. §
16 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA
2006). After such a release decision is made, a revocation of the custody

1 determination may be made only when warranted by an individual's specific facts
2 and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

3 98. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9,
4 2025) issued less than a week before Mr. A.S. arrest on or about October 4, 2025,
5 the Court explained the process of discretionary release from custody in
6 immigration cases and noted that before revoking the release, the non-citizen must
7 be given written notice of the impending revocation, which must include a cogent
8 description of the reasons. Under the APA, non-citizens are entitled to
9 determinations related to their release revocations that are not arbitrary, capricious
10 or an abuse of discretion. *See id.* at *10.

11 99. By categorically revoking Mr. A.S. 's release from DHS custody, and
12 detaining his without notice or consideration of his individualized facts and
13 circumstances, Respondents have violated the INA, implementing regulations, and
14 the APA.

15 100. Respondents have made no finding that Petitioner is a danger to the
16 community.

17 101. Respondents have made no finding that Petitioner is a flight risk
18 because, in fact, he never violated the terms of his parole.

19 102. On information and belief, by detaining Mr. A.S. categorically and

1 without notice, Respondents have further abused their discretion because, since the
2 agency made its initial custody determination, on information and belief, there
3 have been no changes to Mr. A.S. 's specific facts or circumstances that support the
4 revocation of his parole from custody.

5 103. Respondents have already considered Mr. A.S. 's facts and
6 circumstances and determined that he was not a flight risk or danger to the
7 community. On information and belief, there have been no changes to the facts of
8 Mr. A.S.'s proceedings that justify this revocation of his release from DHS custody.
9 The fact that Mr. A.S. has previously been granted parole Respondents under the
10 same facts and circumstances shows that Respondents do not consider Mr. A.S., on
11 an individualized basis, to be a danger to the community or a flight risk.

12 **COUNT FIVE**

13 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
14 **Accordance with Law and in Excess of Statutory Authority, Violation of 8**
15 **U.S.C. § 1225(b)**

16 104. Petitioner restates, realleges, and incorporates by reference each and
17 every allegation in the paragraphs above as if fully set forth herein.

18 105. Under the APA, a court shall “hold unlawful and set aside agency
action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise

1 not in accordance with law; (B) contrary to constitutional right, power, privilege, or
2 immunity...” 5 U.S.C. § 706(2)(A)-(B).

3 106. Congress has made it clear that the expedited removal statute does not
4 apply and may not be applied to individuals who were “paroled” into the United
5 States. 8 U.S.C. § 1225(b). It further applies to the non-citizens seeking admission.
6 *Id.* § 1225(b)(2).

7 107. Mr. A.S. is not amenable to, nor may he be subjected to, expedited
8 removal because he was immediately placed into INA section 240 proceedings
9 upon encountering DHS officers in 2022, and 2025. *See* 8 U.S.C. §
10 1225(b)(1)(A)(iii)(II), 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring
11 “reasonable opportunity” to explain a non-citizen’s status); *see also* **Exhibit B**.

12 108. Because Mr. A.S. is not subject to the January 2025 Designation,
13 Respondents’ use of the January 2025 designation to detain him while his INA
14 section 240 proceedings were ongoing is unlawful arbitrary, capricious, and
15 unlawful.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner respectfully requests this Court to grant the
18 following:

- 19 (1) Assume jurisdiction over this matter;

- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that Respondents' application of the January 2025 Designation to Petitioner is illegal;
- (5) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- (8) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;
- (9) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and

1 (11) Grant any and all other further relief this Court deems just or proper.

2 Dated: October 24, 2025 Respectfully Submitted,

3
4 /s/ Kristin Ghazaryan

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11 *Attorney for Petitioner A.S.*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Kristina Ghazaryan, represent Petitioner, A.S., and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Executed on October 24, 2025, in Los Angeles, California.

/s/ Kristin Ghazaryan

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