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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 FARZAD KARAMI,  
11  
12 Plaintiff,

13 vs.

14 CHRISTOPHER LAROSE, warden of  
15 Otay Mesa Detention Center  
16 SIDNEY AKI, San Diego Field Office  
17 Director, Immigration and Customs  
18 Enforcement and Removal Operations  
19 ("ICE/ERO");  
20 TODD LYONS, Acting Director of  
21 Immigration Customs Enforcement  
22 ("ICE");  
23 KRISTI NOEM, Secretary of the  
24 Department of Homeland Security  
25 ("DHS");  
26 PAMELA BONDI, Attorney General of  
27 the United States,  
28 U.S. DEPARTMENT OF HOMELAND  
SECURITY;  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT;

Respondents.

Case No.: '25CV2983 BJC BJW

Agency Number: A 

PETITION FOR WRIT OF HABEAS  
CORPUS

## INTRODUCTION

1. Iran is an Islamic Republic that enforces a very strict form of Sharia Law upon its citizens. This includes laws that prohibit Muslims from converting to other religions. The penalty for a Muslim man who converts to another religion is death. There is a huge social stigma associated with conversion as well.

2. The petitioner was raised in Iran as a Muslim man. Several years ago he became interested in Christianity. Muslim converts must be very secretive about their interests in other religions. Mr. Karami began reaching out online for other Christians in Iran and in Turkey. He eventually went to Turkey to be secretly baptized. When he returned to Iran a family member discovered that he had converted and threatened him that if he didn't deny his new faith he would turn him in to the authorities. Mr. Karami sought legal counsel and even his attorney was not able to assist him for fear of also being penalized. His advice was for Mr. Karami to leave Iran or his life would be in danger. Mr. Karami realized with his own family members against him he needed to leave Iran and seek asylum here in the United States. He was able to get to Venezuela and then made his way to Mexico and crossed into the United States.

3. After he crossed, Mr. Karami waited for Border Patrol and was then taken into custody on September 23, 2023. He was detained for 2 days. It was determined that he was not a danger and not a flight risk so was paroled on his own

1 recognizance on September 25, 2023. It was also determined that he should be  
2 placed in 240 removal proceedings and not 235 expedited removal. A Notice to  
3 Appear was issued and 240 removal proceedings were initiated.  
4

5 4. Mr. Karami attended all his immigration hearings. He filed for  
6 asylum on September 5, 2024. His case was set for an individual hearing on May  
7 6, 2025 with IJ Najjar. However, that date was moved to June 6, 2025 and then his  
8 case was assigned to another IJ. The new IJ wanted to have a Master Calendar  
9 hearing rather than an Individual Hearing so the June 6 date was changed to a  
10 Master Calendar and then moved again to June 27, 2025 with IJ Penalosa.  
11  
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13 5. On June 27, 2025, petitioner and counsel appeared, ready to have  
14 his asylum petition set once again for an Individual Hearing. However, without any  
15 prior notice, counsel for DHS made a motion to dismiss his removal proceedings.  
16 The motion was not granted. Counsel was given 10 days to respond and a hearing  
17 was set for July 15, 2025 on the off chance that the motion to dismiss was not  
18 granted. As counsel and Mr. Karami exited the courtroom we were surrounded by  
19 masked, armed ICE agents and other law enforcement personnel. Someone asked if  
20 he was Farzad Karami and he said yes. He was immediately told to turn around  
21 and put his hands behind his back. He was then put into handcuffs. Counsel asked  
22 to see a warrant for his arrest. Mr. Karami was led to the elevator and taken to the  
23 basement. Counsel was not allowed in the elevator with him but had to take a  
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1 separate elevator. Counsel asked again for the warrant and was given one. The  
2 administrative warrant is attached as an exhibit. Approximately 30 minutes later,  
3  
4 after Mr. Karami was booked, he was allowed to confer with counsel through a  
5 glass booth and hand-held phone.

6  
7 6. At no time were Mr. Karami or his counsel, Brian McGoldrick,  
8 given any written notice that his parole was being terminated. Neither Mr. Karami  
9 nor Mr. McGoldrick were told how or why a determination had been made that he  
10 was now deemed a flight risk and/or a danger to society.  
11

12 7. Counsel filed an opposition to the motion to dismiss on July 1,  
13 2025. However, the court granted the motion to dismiss on July 14, 2025. Mr.  
14 Karami had repeatedly expressed a fear of return to Iran so was granted a Credible  
15 Fear Interview. Counsel had filed G-28 with the department however, he was told  
16 there was no record of his representation and so was not allowed to participate in  
17 the CFI. The result of the CFI was positive and Mr. Karami was issued a new  
18 Notice to Appear which was entered on August 8, 2025 and put back in section  
19 240 removal proceedings.  
20  
21

22 8. On June 27, 2025 Respondents sought to have Mr. Karami's 240  
23 removal proceedings terminated and to somehow cancel his parole so he could be  
24 placed into 235 Expedited Removal proceedings and deport him. Respondents did  
25 so based not on Mr. Karami's personal circumstances or individualized facts, nor  
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1 due to any mistake or change in circumstances as alleged in their oral motion to  
2 dismiss but because of Respondents' interpretation of President Trump's whim and  
3 categorical determination that, the Fifth Amendment notwithstanding, noncitizens  
4 are not entitled to due process.  
5

6  
7 9. But Respondents cannot evade the law so easily. The U.S.  
8 Constitution requires the Respondents provide at least the rights available to him  
9 when he was granted Parole and when he filed his application for asylum<sup>1</sup>.  
10

11 10. Accordingly, to vindicate Petitioner's rights, this Court should  
12 grant the instant petition for a writ of habeas corpus. Mr. Karami asks this Court to  
13 find that Respondents' attempt to detain him are arbitrary and capricious and in  
14 violation of the law, and to immediately issue an order preventing his transfer out  
15 of this district.  
16  
17

18 **JURISDICTION**

19 11. This action arises under the Constitution of the United States and

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

13. This Court may grant relief under the habeas corpus statutes, 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 Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

## VENUE

14. Venue is proper because Petitioner is in Respondents' custody in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

13. For these same reasons, divisional venue is proper under Local  
5Rule HC.1

## REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

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

18. Petitioner is “in custody” for the purpose of § 2241 because he is arrested and detained by Respondents.

## PARTIES

19. Farzad Karami (“Petitioner”) is a 36-year-old citizen of Iran. He is a resident of San Diego, California, and is present within the state of California as of the time of the filing of this petition.

20. Respondent Christopher Larosse is the Warden of the Otay Mesa Detention Center and is a legal custodian of Petitioner.

21. Respondent Sydney Aki is the Field Office Director for the San Diego Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The San Diego Field Office's area of responsibility includes San Diego, California and the



1 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of  
2 Petitioner.  
3

4 22. Respondent Todd Lyons is the acting director of U.S. Immigration  
5 and Customs Enforcement, and he has authority over the actions of respondent  
6 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of  
7 Petitioner.  
8

9 23. Respondent Kristi Noem is the Secretary of the Department of  
10 Homeland Security (DHS) and has authority over the actions of all other DHS  
11 Respondents in this case, as well as all operations of DHS. Respondent Noem is a  
12 legal custodian of Petitioner and is charged with faithfully administering the  
13 immigration laws of the United States.  
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16 24. Respondent Pamela Bondi is the Attorney General of the United  
17 States, and as such has authority over the Department of Justice and is charged  
18 with faithfully administering the immigration laws of the United States.  
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21 25. Respondent U.S. Immigration Customs Enforcement is the federal  
22 agency responsible for custody decisions relating to non-citizens charged with  
23 being removable from the United States, including the arrest, detention, and  
24 custody status of non-citizens.  
25

26 26. Respondent U.S. Department of Homeland Security is the federal  
27 agency that has authority over the actions of ICE and all other DHS Respondents.  
28



1           27. This action is commenced against all Respondents in their official  
2 capacities.  
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### 5                                   **LEGAL FRAMEWORK**

6           28. The Refugee Act of 1980, the cornerstone of the U.S. asylum  
7 system, provides a right to apply for asylum to individuals seeking safe haven in  
8 the United States. The purpose of the Refugee Act is to enforce the “historic policy  
9 of the United States to respond to the urgent needs of persons subject to  
10 persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-  
11 212, 94 Stat. 102 (1980).  
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15           29. The “motivation for the enactment of the Refugee Act” was the  
16 United Nations Protocol Relating to the Status of Refugees, “to which the United  
17 States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,  
18 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory  
19 meaning to our national commitment to human rights and humanitarian concerns.’”  
20 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).  
21  
22

23           30. The Refugee Act established the right to apply for asylum in the  
24 United States and defines the standards for granting asylum. It is codified in  
25 various sections of the INA.  
26  
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1           31. The INA gives the Attorney General or the Secretary of Homeland  
2 Security discretion to grant asylum to noncitizens who satisfy the definition of  
3 “refugee.” Under that definition, individuals generally are eligible for asylum if  
4 they have experienced past persecution or have a well-founded fear of future  
5 persecution on account of race, religion, nationality, membership in a particular  
6 social group, or political opinion and if they are unable or unwilling to return to  
7 and avail themselves of the protection of their homeland because of that  
8 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).  
9  
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11           32. Although a grant of asylum may be discretionary, the right to  
12 apply for asylum is not. The Refugee Act broadly affords a right to apply for  
13 asylum to any noncitizen “who is physically present in the United States or who  
14 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).  
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18           33. Because of the life-or-death stakes, the statutory right to apply for  
19 asylum is robust. The right necessarily includes the right to counsel, at no expense  
20 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the  
21 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in  
22 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant  
23 to present evidence to establish eligibility.).  
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1 34. Noncitizens seeking asylum are guaranteed Due Process under the  
2 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306  
3 (1993).  
4


5 35. Noncitizens who are applicants for asylum are entitled to a full  
6 hearing in immigration court before they can be removed from the United States. 8  
7 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative  
8 appellate review before the Board of Immigration Appeals of removal orders  
9 entered against them and judicial review in federal court upon a petition for  
10 review. 8 U.S.C. § 1252(a) *et seq.*  
11  
12

13 36. Immigration detention is a form of civil confinement that  
14 “constitutes a significant deprivation of liberty that requires due process  
15 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).  
16  
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18 37. Immigration detention should not be used as a punishment and  
19 should only be used when, under an individualized determination, a noncitizen is a  
20 flight risk because they are unlikely to appear for immigration court or a danger to  
21 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).  
22

23 38. Parole must be terminated upon written notice after an  
24 individualized determination that the purposes no longer apply. 8 C.F.R. §  
25 212.5(e)(2)(i).  
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**FACTUAL BACKGROUND**

39. Petitioner is a citizen of Iran. He was born  1989 in Iran.

40. Petitioner had secretly become Christian and was threatened with exposure by a family member which could ultimately lead to his death. As a result he left Iran and made his way to the United States to seek Asylum.

41. On or about September 23, 2023, petitioner was able to enter the United States. He was apprehended, detained for a period of time, and then, after a determination he was not a flight risk or a danger, he was released into the United States on his own recognizance.

42. On or about September 25, 2023, Respondents commenced removal proceedings against Petitioner under 8 U.S.C. § 1229a in Santa Ana, California.

43. A motion to change venue was made and the case was transferred to the court in San Diego, California.

44. On information and belief, Petitioner regularly complied with and appeared for ICE check-ins.

45. Petitioner applied for asylum with EOIR on September 5, 2024. With the assistance of counsel, petitioner filed all supporting documents required, attending all his hearings and was set for an individual hearing on his asylum claim for May 6, 2025.

1           46. On June 27, 2025, Mr. Karami was attending his regularly  
2 scheduled Master Calendar Hearing when, without notice, the government attorney  
3 made a motion to dismiss his removal proceedings. The motion was based on 1) a  
4 purported change in circumstance and 2) the contention that the original NTA was  
5 improvidently issued. Counsel objected to the motion and pointed out to the court  
6 this was just a ruse so that ICE could detain him when we exited the courtroom and  
7 place him in section 235 Expedited Removal. This would deny his right to have his  
8 asylum application heard and would immediately subject him to removal with little  
9 judicial oversight. He would no longer be able to have a fair opportunity to present  
10 his case. The court did NOT dismiss his case. Counsel was given 10 days to  
11 respond to the motion to dismiss as is required in the Immigration Court Practice  
12 Manual. As petitioner and counsel exited the courtroom, Mr. Karami was still in  
13 240 removal proceedings.

19           47. As Mr. Karami and Mr. McGoldrick exited the courtroom masked  
20 gunmen surrounded them, asked Mr. Karami his name and then placed him in  
21 handcuffs. He was never given a written notice that his parole was being  
22 terminated. He was not given any particularized reason for why he was being  
23 placed into detention. He was eventually transported to Otay Mesa Detention  
24 Center. The detailed record of arrest, attached as an exhibit, states "On June 27,  
25 2025 the immigration judge dismissed his case without prejudice." This is  
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1 completely untrue. When Mr. Karami was arrested he was still in 240 removal  
2 proceedings. He was not subject to Section 235 Expedited Removal. The agents  
3 had no cause to arrest him.  
4

5 48. After his arrest in a further act to deny Mr. Karami his right to  
6 counsel, the officers attempted to interview him outside the presence of counsel.  
7 The Record of Sworn Statement dated June 27, 2025 and attached as an exhibit,  
8 purports to be made pursuant to Section 235(b)(1) of the act. The officers purport  
9 to be acting pursuant to Section 235 Expedited Removal when that was not  
10 possible because his 240 removal proceedings had not been terminated.  
11  
12

13 49. The ICE agents did not provide him any process. The ICE agents  
14 did not offer him any opportunity to be heard prior to arresting and detaining him.  
15 They did not provide him with any particularized determination as to why his  
16 liberty was being denied and his parole cancelled.  
17  
18

19 50. On January 20, 2025, President Donald Trump issued several  
20 executive actions relating to immigration, including "Protecting the American  
21 People Against Invasion," an executive order (EO) setting out a series of interior  
22 immigration enforcement actions. The Trump administration, through this and  
23 other actions, has outlined sweeping, executive branch-led changes to immigration  
24 enforcement policy, establishing a formal framework for mass deportation. The  
25 "Protecting the American People Against Invasion" EO instructs the DHS  
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1 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to  
2 prioritize civil immigration enforcement procedures including through the use of  
3 mass detention.  
4

5 51. On information and belief, Respondents are detaining Petitioner  
6 regardless of the individual facts and circumstances of his case.  
7

8 52. On information and belief, Respondents are using the immigration  
9 detention system as a means to punish individuals for asserting rights under the  
10 Refugee Act.  
11

12 53. On information and belief, Petitioner has no criminal history.  
13

## 14 **CLAIMS FOR RELIEF**

### 15 **COUNT ONE**

#### 16 **Violation of Fifth Amendment Right to Due Process**

#### 17 **Procedural Due Process**

18 54. Petitioner restates and realleges all paragraphs as if fully set forth  
19 here.  
20  
21

22 55. The Due Process Clause of the Fifth Amendment to the U.S.  
23 Constitution prohibits the federal government from depriving any person of “life,  
24 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due  
25 process protects “all ‘persons’ within the United States, including [non-citizens],  
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1 whether their presence here is lawful, unlawful, temporary, or permanent.”

2 *Zadvydas*, 533 U.S. at 693.

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

6  
7 57. While asylum is a discretionary benefit, the right to apply is not. 8  
9 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United  
10 States or who arrives in the United States (whether or not at a designated port of  
11 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

12 58. Because the denial of the right to apply for asylum can result in  
13 serious harm or death, the statutory right to apply is robust and meaningful. It  
14 includes the right to legal representation, and notice of that right, *see id.* §§  
15 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of  
16 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision  
17 to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§  
18 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a  
19 decision determining removability, *see id.* § 1229a(c)(6)-(7).  
20  
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22 59. Expedited removal, in contrast, severely limits the availability of  
23 such rights. Interviews occur on an exceedingly fast timeline; review of a negative  
24 interview decision by an immigration judge must occur within seven days of the  
25 decision. *See* 8 C.F.R. § 1003.42.  
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1           60. While there is a right to “consult” with an attorney or another  
2 person about the credible fear interview process, see 8 U.S.C. § 1225(b)(1)(B)(iv)  
3 and 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not  
4 unreasonably delay the process.” The consultant may be “present” during the  
5 interview but may only make a “statement” at the end of the interview if permitted  
6 by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited  
7 removal may present evidence “if available”, *id.*—often an impossibility given the  
8 fast timeline and the default of detention during the process. See generally Heidi  
9 Altman, et. al., Seeking Safety from Darkness: Recommendations to the Biden  
10 Administration to Safeguard Asylum Rights in CBP Custody, Nov. 21, 2024,  
11 [https://www.nilc.org/wpcontent/uploads/2024/11/NILC\\_CBP-Black-Hole-](https://www.nilc.org/wpcontent/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf)  
12 [Report\\_112124.pdf](https://www.nilc.org/wpcontent/uploads/2024/11/NILC_CBP-Black-Hole-Report_112124.pdf) (describing the obstruction of access to counsel for people  
13 undergoing credible fear screenings in Customs and Border Protection custody).  
14

15           61. Review of a negative credible fear decision by an immigration  
16 judge is limited. “A credible fear review is not as exhaustive or in-depth as an  
17 asylum hearing in removal proceedings,” and there is no right to submit evidence,  
18 as it may be admitted only at “the discretion of the immigration judge.”  
19 Immigration Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a credible  
20 fear interview and affirmance by a judge, removal is a near certainty; the  
21 immigrant is ineligible for other forms of relief from removal.  
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62. In sum, applying for asylum in removal proceedings comes with a panoply of greater protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at \*29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy far more robust due process protections [than those in expedited removal] because Congress has conferred additional statutory rights on them.”).

63. Here, Petitioner was not advised by DHS that they sought to terminate his proceedings in order to place him in expedited removal, depriving him of the bundle of rights associated with his pending asylum application. Because of his legal interest in his pending asylum application, this violated due process. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

## COUNT TWO

### Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

#### Not in Accordance with Law and in Excess of Statutory Authority

#### Unlawful Detention

64. Petitioner restates and realleges all paragraphs as if fully set forth here.

1           65. Under the APA, a court shall “hold unlawful and set aside agency  
2 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).  
3

4           66. 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  
10 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,  
11 463 U.S. 29, 43 (1983)).  
12

13           67. To survive an APA challenge, the agency must articulate “a  
14 satisfactory explanation” for its action, “including a rational connection between  
15 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,  
16 2569 (2019) (citation omitted).  
17

18           68. By categorically revoking Petitioner’s parole and transferring him  
19 to Otay Mesa Detention Center without consideration of his individualized facts  
20 and circumstances, Respondents have violated the APA.  
21

22           69. Respondents have made no finding that Petitioner is a danger to  
23 the community.  
24

25           70. Respondents have made no finding that Petitioner is a flight risk.  
26  
27  
28

71. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial determination to release him into the United States that support detention.

72. Respondents have already considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his parole.

**COUNT THREE**

### **Violation of Fifth Amendment Right to Due Process**

## Illegal Retroactive Application of Expedited Removal Designation

73. Petitioner restates and realleges all paragraphs as if fully set forth here.

74. Administrative rules “will not be construed to have retroactive effect unless their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a “new provision attaches new legal consequences to events completed before its enactment” the new provision is not retroactive unless it is unmistakably clear.

75. Applying the January 2025 expedited removal designation to

1 Petitioner's September 23, 2023 entry to the United States to seek asylum would  
2 attach new legal consequences including the loss of significant rights related to his  
3 right to seek asylum.  
4

## 5 **COUNT FOUR**

### 6 **Violation of Fifth Amendment Right to Due Process**

#### 7 **Procedural Due Process**

8  
9 76. Petitioner restates and realleges all paragraphs as if fully set forth  
10 here.  
11

12 77. The Due Process Clause of the Fifth Amendment to the U.S.  
13 Constitution prohibits the federal government from depriving any person of "life,  
14 liberty, or property, without due process of law." U.S. Const. Amend. V. Due  
15 process protects "all 'persons' within the United States, including [non-citizens],  
16 whether their presence here is lawful, unlawful, temporary, or permanent."  
17  
18 *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.  
19

20 78. Due process requires that government action be rational and non-  
21 arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).  
22

23 79. While the government has discretion to detain individuals under 8  
24 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this  
25 discretion is not "unlimited" and must comport with constitutional due process. See  
26  
27 *Zadvydas*, 533 U.S. at 698.  
28

1 80. Here, Respondents have chosen to revoke Petitioner's release in  
2 an arbitrary manner and not based on a rational and individualized determination  
3 of whether he is a safety or flight risk, in violation of due process. Because no  
4 individualized custody revocation has been made and no circumstances have  
5 changed to make Petitioner a flight risk or a danger to the community,  
6 Respondents' revocation of Petitioner's release violates his right to procedural due  
7 process.  
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9  
10

## 11 COUNT FIVE

### 12 Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

#### 13 Not in Accordance with Law and in Excess of Statutory Authority Violation of

#### 14 8 U.S.C. § 1225(b)

15  
16 81. Petitioner restates and realleges all paragraphs as if fully set forth  
17 here.  
18

19 82. Under the APA, a court “shall . . . hold unlawful . . . agency  
20 action” that is “not in accordance with law;” “contrary to constitutional right;” “in  
21 excess of statutory jurisdiction, authority, or limitations;” or “without observance  
22 of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).  
23  
24

25 83. Congress has made it clear that the expedited removal statute does  
26 not apply and may not be applied to individuals who were “paroled” into the  
27 United States. 8 U.S.C. § 1225(b).  
28



1 84. Petitioner is not amenable to nor may he be subjected to expedited  
2 removal because he is not “arriving in the United States” as he has been physically  
3 present for almost two years.  
4

5 85. Petitioner is not amenable to nor may he be subjected to expedited  
6 removal under the January 2025 designation because he was paroled. 8 U.S.C.  
7 §1225(b)(1)(A)(iii)(II) (limiting expedited removal designations only to  
8 individuals who “has not been admitted or paroled into the United States”).  
9  
10

11 86. Because Petitioner is not subject to the designation, Respondents’  
12 use of the January 2025 designation to detain him is unlawful.  
13  
14

15 **PRAYER FOR RELIEF**

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

19 (1) Assume jurisdiction over this matter;  
20

21 (2) Issue an Order to Show Cause ordering Respondents to show  
22 cause why this Petition should not be granted within three days;  
23

24 (3) Declare that Petitioner’s detention without an individualized  
25 determination violates the Due Process Clause of the Fifth Amendment;  
26

27 (4) Declare that Respondents’ application of the January 2025  
28 Designation to petitioner is illegal;

1 (5) Issue a Writ of Habeas Corpus ordering Respondents to release  
2 Petitioner from custody;  
3

4 (6) Issue an Order prohibiting the Respondents from transferring  
5 Petitioner from the district without the court's approval;  
6

7 (7) Award Petitioner attorney's fees and costs under the Equal Access  
8 to Justice Act, and on any other basis justified under law; and  
9

10 (8) Grant any further relief this Court deems just and proper.  
11

12 Dated: November 3, 2025.

/s/ Brian J. McGoldrick  
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