

1 Brian J. McGoldrick (California #169104)
2 Counsel for the Petitioner
3 4916 Del Mar Avenue
4 San Diego, CA 92107
5 (619) 675-2366
6 attorney@brianmcgoldrick.com

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

9 ABOLFAZL SOLEIMANI,
10
11 Plaintiff,

12 vs.

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

Respondents.

Case No.: '25CV3082 DMS DEB

Agency Number: 

PETITION FOR WRIT OF HABEUS
CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING
REQUESTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1. The government of Iran is a repressive regime that does not tolerate dissent. In particular, the regime does not tolerate protest or dissent around the matter of the arrest and death of Mahsa Amini. Ms. Amini was arrested for not wearing the hijab, a head covering that all women in Iran are required to wear. The regime also does not allow religious freedom. If a Muslim man in Iran converts to Christianity, the penalty is death.

2. As set out more fully in the attached declaration, the petitioner, Abolfazl Soleimani, supported the protests around the death of Ms. Amini along with his brother. They both were detained and beaten at some point for their participation. Eventually they both left Iran for fear of their lives. The petitioner made the long journey from Iran, through South America and arrived in Mexico. While in Mexico Mr. Soleimani applied for admission through the CBP One phone app. However, his smugglers did not allow him to wait and transported him at gunpoint to the border and forced him to cross into the United States.

3. The petitioner was detained at the border and then transferred to a detention center in Louisiana. After about a month there the authorities determined that he was not a flight risk nor a danger to society. On September 6, 2024, they elected to grant him parole into the United States. Since that time Mr. Soleimani

1 has been creating a life for himself here in California. He filed for asylum; he
2 received a work permit.
3

4 4. Upon his release he was also given a Notice to Appear which
5 commenced Section 240 removal proceedings. The government elected not to
6 commence removal under section 235, expedited removal. He attended all his court
7 hearings and attended any ICE check ins that were required. He was following all
8 the rules.
9
10

11 5. On June 6, 2025, petitioner and a friend named Erhan, were driving
12 home from Home Depot. They had been shopping but forgot their debit card and
13 were returning to retrieve it. They stopped at the stop sign down the street from
14 their home. Suddenly, without any warning, an unmarked car pulled in front of
15 them to block their car. Masked men jumped out of the car and with their guns
16 drawn began shouting at them to get out of the vehicle. Petitioner was shocked and
17 immediately afraid for his life. He had no idea what was happening. The masked
18 men walked to the car and again shouted for them to get out of the car. The
19 petitioner was so frightened he just froze. Then the masked men broke the car
20 windows and dragged them both out of the car. Mr. Soleimani was handcuffed and
21 put into the unmarked vehicle, as was his friend Erhan.
22
23
24
25
26
27
28

1 date.” *Exhibit 1*. There was no notice given. ICE has chosen to ignore their own
2 clearly stated procedures. Petitioner was simply driving home when he was
3 suddenly swarmed by masked armed men, dragged out of the car, shackled and
4 thrown into detention. Respondents now seek to detain Mr. Soleimani not because
5 of a change in his personal circumstances or individualized facts but because of
6 Respondents’ interpretation of President Trump’s whim and categorical
7 determination that, the Fifth Amendment notwithstanding, noncitizens are not
8 entitled to due process¹.

9
10
11
12 8. But Respondents cannot evade the law so easily. The U.S.
13 Constitution requires the Respondents provide at least the rights available to him
14 when he was granted Parole and when he filed his application for asylum.
15

16
17 9. Accordingly, to vindicate Petitioner’s rights, this Court should grant
18 the instant petition for a writ of habeas corpus. Mr. Soleimani asks this Court to
19 find that Respondents’ attempt to detain him are arbitrary and capricious and in
20

21
22
23
24
25 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
26 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrumpinterviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
27 deserve due process under the Fifth Amendment, President Trump replied “I don’t know. It
28 seems—it might say that, but if you’re talking about that, then we’d have to have a million or 2
million or 2 million trials.”).

1 violation of the law, and to immediately issue an order preventing his transfer out
2 of this district.

3 4 JURISDICTION

5 10. This action arises under the Constitution of the United States and
6 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
7

8 11. This court has subject matter jurisdiction under 28 U.S.C. § 2241
9 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
10 United States Constitution (Suspension Clause).
11

12 12. This Court may grant relief under the habeas corpus statutes, 28
13 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
14 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
15 U.S.C. § 1252(e)(2).
16
17

18 VENUE

19 13. Venue is proper because Petitioner is in Respondents' custody in
20 San Diego, California. Venue is further proper because a substantial part of the
21 events or omissions giving rise to Petitioner's claims occurred in this District,
22 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
23
24

25 14. For these same reasons, divisional venue is proper under Local
26 Rule HC.1
27

1 28. The “motivation for the enactment of the Refugee Act” was the
2 United Nations Protocol Relating to the Status of Refugees, “to which the United
3 States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,
4 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory
5 meaning to our national commitment to human rights and humanitarian concerns.’”
6
7 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

9 29. The Refugee Act established the right to apply for asylum in the
10 United States and defines the standards for granting asylum. It is codified in
11 various sections of the INA.
12

13 30. The INA gives the Attorney General or the Secretary of Homeland
14 Security discretion to grant asylum to noncitizens who satisfy the definition of
15 “refugee.” Under that definition, individuals generally are eligible for asylum if
16 they have experienced past persecution or have a well-founded fear of future
17 persecution on account of race, religion, nationality, membership in a particular
18 social group, or political opinion and if they are unable or unwilling to return to
19 and avail themselves of the protection of their homeland because of that
20 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
21
22
23
24

25 31. Although a grant of asylum may be discretionary, the right to
26 apply for asylum is not. The Refugee Act broadly affords a right to apply for
27

1 asylum to any noncitizen “who is physically present in the United States or who
2 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

3
4 32. Because of the life-or-death stakes, the statutory right to apply for
5 asylum is robust. The right necessarily includes the right to counsel, at no expense
6 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
7 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
8 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
9 to present evidence to establish eligibility.).
10
11

12 33. Noncitizens seeking asylum are guaranteed Due Process under the
13 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
14 (1993).

15
16 34. Noncitizens who are applicants for asylum are entitled to a full
17 hearing in immigration court before they can be removed from the United States. 8
18 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
19 appellate review before the Board of Immigration Appeals of removal orders
20 entered against them and judicial review in federal court upon a petition for
21 review. 8 U.S.C. § 1252(a) *et seq.*
22
23
24
25
26
27

1 35. Immigration detention is a form of civil confinement that
2 “constitutes a significant deprivation of liberty that requires due process
3 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
4

5 36. Immigration detention should not be used as a punishment and
6 should only be used when, under an individualized determination, a noncitizen is a
7 flight risk because they are unlikely to appear for immigration court or a danger to
8 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
9
10

11 37. Humanitarian Parole must be terminated upon written notice after
12 an individualized determination that the humanitarian purposes no longer apply. 8
13 C.F.R. § 212.5(e)(2)(i).
14
15

16 **FACTUAL BACKGROUND**
17

18 38. Petitioner is a citizen of Iran. He was born  in Iran.

19 39. Petitioner was threatened with death in Iran by the Police in Iran.
20

21 40. On or about August 14, 2024, petitioner entered the United States
22 to seek asylum. He was detained over a month and was then granted parole on
23 September 6, 2024 based on the individualized facts in his case, under 8 U.S.C. §
24 1182(d)(5) and released him from custody pursuant to the same statute.
25
26
27

1 41. Upon his release, Respondents commenced removal proceedings
2 against Petitioner under 8 U.S.C. § 1229a. These proceedings were being held in
3 the Los Angeles Immigration Court when he was detained and are now proceeding
4 in the Otay Mesa Immigration Court in San Diego, California.
5

6 42. On September 6, 2024 the government granted Mr. Soleimani
7 parole which allowed him to establish a life for himself here in the United States
8 while he went through the asylum process.
9
10

11 43. On information and belief, Petitioner regularly complied with and
12 appeared for ICE check-ins.
13

14 44. Petitioner applied for asylum with EOIR on January 20, 2025. The
15 next step in his case is to attend an asylum hearing.
16

17 45. On June 6, 2025, Mr. Soleimani was returning to his home when
18 his car was blocked by another unmarked car. Masked men with guns drawn
19 jumped out of the car and demanded he and his friend get out. Mr. Soleiman was
20 frightened and didn't know who they were, what they wanted and what he should do.
21 The men then broke the windows of their vehicle and dragged them out of the car.
22 Mr. Soleimani was put in handcuffs. He let the officers know he was not well and
23 asked for water. He was ignored and then he passed out. When he came to, he was
24 in the hospital, surrounded by 3 armed men. He was then taken to a Los Angeles
25
26
27

1 holding facility for 5 days. At the end of the 5 days, he was transported to Otay
2 Mesa Detention Center where he has been ever since.
3

4 46. Mr. Soleimani was not engaged in any illegal activity the day he
5 was taken. The officers that took him did not allege they were looking for a
6 criminal. They did not explain why they stopped the car or what their legal basis
7 was for stopping them, threatening him with their guns, handcuffing him or
8 arresting him. He was never given a Miranda warning. He was never presented
9 with a warrant. Mr. Soleimani remains in custody. The ICE agents, if that is who
10 they were, did not provide him any process. The agents did not offer him any
11 opportunity to be heard prior to arresting and detaining him.
12
13
14

15 47. On January 20, 2025, President Donald Trump issued several
16 executive actions relating to immigration, including “Protecting the American
17 People Against Invasion,” an executive order (EO) setting out a series of interior
18 immigration enforcement actions. The Trump administration, through this and
19 other actions, has outlined sweeping, executive branch-led changes to immigration
20 enforcement policy, establishing a formal framework for mass deportation. The
21 “Protecting the American People Against Invasion” EO instructs the DHS
22 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
23
24
25
26
27
28

1 prioritize civil immigration enforcement procedures including through the use of
2 mass detention.
3

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

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

11 50. On information and belief, Petitioner has no criminal history.
12

13 CLAIMS FOR RELIEF

14 COUNT ONE

15 Violation of the Fourth Amendment to the Constitution

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

19 52. The Fourth Amendment protects “[t]he right of the people to be
20 secure in their persons ... against unreasonable searches and seizures.” U.S. Const.
21 Amend. IV. The Supreme Court has recognized that immigration arrests and
22 detentions are “seizures” within the meaning of the Fourth Amendment. *INS v*
23 *Lopez-Mendoza*, 468 U.S. 1032, 1044f (1984) (acknowledging that deportation
24
25
26
27
28

1 proceedings are civil, but the Fourth Amendment still applies to the “Seizure” of
2 the person.)

3
4 53. The Fourth Amendment requires that arrests entail a neutral,
5 judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114
6 (1975). That neutral, judicial determination can occur either before the arrest in the
7 form of a warrant, or promptly afterward, in the form of a prompt judicial probable
8 cause determination. *Id.* Arrest and detention of a person, including of a
9 noncitizen, absent a neutral judicial determination of probable cause violates the
10 Fourth Amendment of the Constitution. *Id.* See also *Cnty. Of Riverside v*
11 *McLaughlan*, 500 U.S. 44, 57 (1991). This determination must occur within 48
12 hours of detention, which includes weekends, unless there is a bona fide
13 emergency or other extraordinary circumstances. *Id.*

14
15
16
17
18 54. Congress enacted a strong preference that immigration arrests be
19 based on warrants. See *Arizona v. United States*, 567 U.S. 387, 407-08 (2012). The
20 Immigration and Nationality Act thus provides immigration officers with only
21 limited authority to conduct warrantless arrests. See 8 C.F.R § 287.8(c)(2)(ii).

22
23
24 55. Mr. Soleimani, at the moment of the arrest by Respondents, was
25 lawfully present based on the Respondents’ prior grant of release and parole. He

1 did not receive any judicial determination of probable cause for his arrest or
2 continued detention by Respondents.

3
4 56. The Government cannot salvage this seizure by invoking
5 generalized immigration enforcement interests. The Fourth Amendment’s
6 reasonableness inquiry is fact-specific and demands individualized justification for
7 both the arrest and the extended detention. See *United States v Brignoni-Ponce*,
8 422 U.S. 873, 882-84 (1975). *Gerstein*, 420 U.S. at 114. Mr. Soleimani was
9 granted release from DHS custody in 2024 and did not pose any danger to any
10 person in the community at large.
11
12

13
14 57. Respondents’ warrantless arrest of Mr. Soleimani constitutes an
15 unreasonable and unlawful seizure in violation of the Fourth Amendment.
16

17 **COUNT TWO**

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

19 **Not in Accordance with Law and in Excess of Statutory Authority**

20 **Unlawful Detention**

21
22 58. Petitioner restates and realleges all paragraphs as if fully set forth
23 here.
24

25 59. Under the APA, a court shall “hold unlawful and set aside agency
26 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
27

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

10
11 61. To survive an APA challenge, the agency must articulate “a
12 satisfactory explanation” for its action, “including a rational connection between
13 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
14 2569 (2019) (citation omitted).
15

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

20 63. Respondents have made no finding that Petitioner is a danger to
21 the community.
22

23 64. Respondents have made no finding that Petitioner is a flight risk.
24

25 65. By detaining the Petitioner categorically, Respondents have
26 further abused their discretion because there have been no changes to his facts or
27

1 circumstances since the agency made its initial determination to parole him into the
2 United States that support detention.

3
4 66. Respondents have already considered Petitioner’s facts and
5 circumstances and determined that he was not a flight risk or danger to the
6 community when they granted him parole. There have been no changes to the facts
7 that justify this revocation of his parole.
8

9
10 **COUNT THREE**

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

12 **Procedural Due Process**

13
14 67. Petitioner restates and realleges all paragraphs as if fully set forth
15 here.

16
17 68. The Due Process Clause of the Fifth Amendment to the U.S.
18 Constitution prohibits the federal government from depriving any person of “life,
19 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
20 process protects “all ‘persons’ within the United States, including [non-citizens],
21 whether their presence here is lawful, unlawful, temporary, or permanent.”
22 *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.
23

24
25 69. Due process requires that government action be rational and non-
26 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
27

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

4 (4) Declare that Petitioner’s warrantless arrest and detention
5 constitutes an unreasonable and unlawful seizure in violation of the Fourth
6 Amendment;
7

8 (5) Declare that Petitioner’s detention was an abuse of discretion,
9 arbitrary and capricious and violates the Administrative Procedure Act – 5 U.S.C.
10 706(2)(A)
11

12 (6) Issue a Writ of Habeas Corpus ordering Respondents to release
13 Petitioner from custody and prohibit any redetention without further order of this
14 court;
15

16 (7) Issue an Order prohibiting the Respondents from transferring
17 Petitioner from the district without the court’s approval;
18

19 (8) Grant any further relief this Court deems just and proper.
20
21

22 Dated: November 10, 2025.

/s/ Brian J. McGoldrick
BRIAN J. MCGOLDRICK, ESQ.
CASB # 169104
attorney@brianmgoldrick.com
4916 Del Mar Avenue
San Diego, CA 92107
Telephone: +1 619-675-2366
Attorney for Petitioner