

1 Cara Jobson (CSB #218400)
2 Wiley & Jobson
3 P.O. Box 459
4 Berkeley, CA 94701
5 Tel.: (415) 627-9161
6 cara@wileyjobson.com

7 Attorney for Plaintiff

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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Case No.
3:25-cv-03272-BTM-MMP
AMENDED PETITION FOR
WRIT OF HABEAS CORPUS

A.V.V.

Petitioner

v.

CHRISTOPHER J. LAROSE,
Otay Mesa Detention Facility;
GREGORY J. ARCHAMBEAULT,
Acting Field Office Director, U.S.
Immigration and Customs
Enforcement; TODD M. LYONS,
Acting Director, U.S. Immigration
and Customs Enforcement; KRISTI
NOEM, Secretary of U.S. Department
Of Homeland Security; PAM
BONDI, Attorney General of the
United States,

Respondents.

1 1. Petitioner, A.V.V., petitions this Court for a writ of habeas corpus under 28
2 U.S.C. § 2241 to remedy his unlawful detention by Respondents. This is an
3 amended petition to include Counts Three and Four, claims under the
4 Administrative Procedures Act (APA). Petitioner states as follows:
5

6 **INTRODUCTION**

- 7 2. Petitioner, A.V.V.¹, by and through undersigned counsel, hereby files this
8 petition for writ of habeas corpus to compel his immediate release from the
9 immigration jail where he has been held by the U.S. Department of Homeland
10 Security (DHS) since being detained on May 30, 2025, without first being
11 provided a hearing to determine whether his incarceration is justified.
12
13 3. Petitioner was paroled by Respondents over three years ago. There has been no
14 change in his circumstances and Petitioner was provided no notice and
15 opportunity to respond prior to being re-detained.
16
17 4. After arresting Petitioner in May, ICE did not set bond and Petitioner is unable
18 to obtain review of his custody by an IJ, pursuant to the Board's decision in
19 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
20
21 5. DHS has taken the position that any noncitizen who entered without a visa is
22 ineligible for a bond hearing. This is contrary to law and a drastic change from
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25

26 ¹ A separate motion to proceed with pseudonym is filed concurrently with this
petition.

1 decades of precedent and procedure. Because of the government's extreme
2 (and unlawful) position in violation of the Immigration and Nationality Act
3 ("INA") and the U.S. constitution, Petitioner has no remedy to assert his liberty
4 interest other than by means of this habeas petition.
5

6 JURISDICTION

- 7 6. This action arises under the Constitution of the United States and the
8 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
9
10 7. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
11 corpus), 28 U.S.C. § 1331 (federal question), the Administrative Procedures
12 Act, and Article I, § 9, cl. 2 of the United States Constitution (Suspension
13 Clause).
14
15 8. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
16 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs
17 Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. §
18 1252(e)(2).
19

20 VENUE

- 21
22 9. Venue is proper because Petitioner is in Respondents' custody in an
23 immigration detention facility in Otay Mesa, California, which is within the
24 jurisdiction of the Southern District of California. Respondents are employees
25 or officers of the United States, acting in their official capacity. There is no real
26

1 property involved in this action. For these reasons, venue is proper before this
2 court. 28 U.S.C. § 1391(e).

3 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

4
5 10. The court must grant the petition for writ of habeas corpus or issue an order to
6 show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not
7 entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the court must require
8 Respondents to file a return “within three days unless for good cause additional
9 time, not exceeding twenty days, is allowed.” *Id.*

10
11 11. Courts have long recognized the significance of the habeas statute in protecting
12 individuals from unlawful detention. The Great Writ has been referred to as
13 “perhaps the most important writ known to the constitutional law of England,
14 affording as it does a swift and imperative remedy in all cases of illegal
15 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

16
17
18 12. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is an
19 immigration facility detained by Respondents.

20 **PARTIES**

21
22 13. Petitioner A.V.V. resides in Reseda, California and is currently detained at the
23 Otay Mesa Detention Center.

24
25 14. Respondent Krisi Noem is the Secretary of the Department of Homeland
26 Security (“DHS”) and is sued in her official capacity. The Secretary of

1 Homeland Security is charged with the administration and enforcement of
2 immigration laws. 8 U.S.C. § 1103(a).

3 15. Respondent Pamela Bondi is the Attorney General of the United States and is
4 sued in her official capacity as the head of the Department of Justice. The
5 Attorney General is responsible for the fair administration of the laws of the
6 United States.
7

8 16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and
9 Customs Enforcement (ICE) and is sued in his official capacity. ICE is
10 responsible for the detention of Petitioner.
11

12 17. Gregory J. Archambeault is the Field Office Director for U.S. Immigration and
13 Customs Enforcement (ICE) Enforcement and Removal Operations in San
14 Diego, California, which covers the Otay Mesa Detention Center, and is sued
15 in his official capacity. In his official capacity, he is a legal custodian of
16
17
18 Petitioner.

19 18. Christopher J. LaRose is the Warden of the Otay Mesa Detention Center where
20 Petitioner is being held and is sued in his official capacity. Respondent LaRose
21 oversees the day-to-day operations of the Otay Mesa Detention Facility and
22 acts at the direction of Respondents Noem, Bondi, and Lyons. LaRose is the
23
24
25
26 custodian of Petitioner.

STATEMENT OF FACTS

1
2 19. A.V.V. is a 31-year-old native and citizen of Nicaragua. He entered the United
3 States without inspection on October 1, 2022. The same day, U.S. Customs and
4 Border Protection (“CBP”) detained Mr. A.V.V. in the Hidalgo, Texas area and
5 then paroled Mr. A.V.V. into the United States pursuant to INA 212(d)(5). See
6 Exhibit A, Form I-213, created by DHS on May 30, 2025, upon Petitioner’s
7 recent arrest.
8

9
10 20. On or about May 25, 2024, Petitioner affirmatively filed a form I-589,
11 Application for Asylum and Withholding, with US Citizenship and
12 Immigration Services (“USCIS”). USCIS accepted the application.
13

14 21. In his asylum application, Petitioner asserts that he and his family in Nicaragua
15 were actively politically opposed to the dictatorship of Sandinista party leader,
16 Daniel Ortega.
17

18 22. The US Department of State reports significant human rights issues in
19 Nicaragua, including credible reports of arbitrary or unlawful killings,
20 including extrajudicial killings; enforced disappearance; torture or cruel in
21 human or degrading treatment or punishment by prison guards and parapolice.
22 The report further notes Ortega “carried out a campaign of harassment,
23 intimidation, and violence towards perceived enemies of the regime.” (Exhibit
24
25
26

1 D) The OSAC security report indicates that “[i]ntense repression and
2 persecution of opposition groups has continued.” (Exhibit D).

3 23. The Immigration and Nationality Act provides a statutory right to apply for
4 asylum regardless of immigration status. 8 U.S.C. § 1158(a)(1).
5

6 24. A.V.V. has no criminal record. U.S. Citizenship and Immigration Services
7 granted him an Employment Authorization Document (“work permit”) with
8 five years validity based on the pending asylum case, and A.V.V. works in
9 construction. Ex. A (Form 213); Ex. C (work permit.)
10

11 25. On May 30, 2025, two and a half years after paroling A.V.V. into the United
12 States, after his asylum application had been pending for over a year, and while
13 legally authorized to work by USCIS, ICE arrested Petitioner. He was arrested
14 when he appeared for a check-in at the Los Angeles ICE office.
15

16 26. According to the the I-213, when Petitioner was re-detained on May 30, 2025,
17 DHS records checks did not indicate any prior criminal history or derogatory
18 information apart from the initial CBP encounter. Ex. A.
19

20 27. He was initially detained and awaiting an asylum hearing in the jurisdiction of
21 the Central District, but after more than five months in detention, ICE moved
22 him to the Otay Mesa detention facility in the Southern District.
23

24 //

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26

LEGAL FRAMEWORK

DETENTION

1
2
3
4 28. The Immigration and Nationality Act (INA) prescribes three basic forms of
5 detention for noncitizens in removal proceedings.

6
7 29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-
8 expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C.
9 § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the
10 outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while
11 noncitizens who have been arrested, charged with, or convicted of certain
12 crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

13
14 30. Second, the INA provides for mandatory detention of noncitizens subject to
15 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
16 seeking admission referred to under § 1225(b)(2).

17
18 31. Lastly, the Act also provides for detention of noncitizens who have been
19 previously ordered removed, including individuals in withholding-only
20 proceedings, see 8 U.S.C. § 1231(a)–(b).

21
22 32. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

23
24 33. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of
25 the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
26 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582

1 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier
2 this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

3 34. Following enactment of the IIRIRA, EOIR drafted new regulations explaining
4 that, in general, people who entered the country without inspection were not
5 considered detained under § 1225 and that they were instead detained under §
6 1226(a). See Inspection and Expedited Removal of Aliens; Detention and
7 Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62
8 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
9
10

11 35. Thus, in the decades that followed, most people who entered without
12 inspection—unless they were subject to some other detention authority—
13 received bond hearings. That practice was consistent with many more decades
14 of prior practice, in which noncitizens who were not deemed “arriving” were
15 entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C.
16 § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting
17 that § 1226(a) simply “restates” the detention authority previously found at §
18 1252(a)).
19
20
21

22 36. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
23 rejected well-established understanding of the statutory framework and reversed
24 decades of practice. The new policy, entitled “Interim Guidance Regarding
25 Detention Authority for Applicants for Admission,” claims that all persons who
26

1 entered the United States without inspection shall now be subject to mandatory
2 detention provision under § 1225(b)(2)(A). The policy applies regardless of when
3 a person is apprehended and affects those who have resided in the United States
4 for months, years, and even decades.

5
6 37. On September 5, 2025, the BIA adopted this same position in a published
7 decision, *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025). There, the
8 Board held that all noncitizens who entered the United States without
9 admission or parole are subject to detention under § 1225(b)(2)(A) and are
10 ineligible for IJ bond hearings.
11

12 38. Since Respondents adopted their new policies, dozens of federal courts have
13 rejected their new interpretation of the INA's detention authorities. Courts have
14 likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of
15 the statute as ICE. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D.
16 Wash. 2025).²
17
18
19
20

21 ² See also, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7,
22 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238
23 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL
24 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-
25 DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25
26 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-
cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*,
No. 5:25-cv-01789- ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v.*
Hyde, No. 25-11631- BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No.
25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*,
No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v.*

1 39. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because
2 it defies the INA. The plain text of the statutory provisions demonstrates that §
3 1226(a), not § 1225(b), applies to people like Petitioner.

4
5 40. Section 1226(a) applies by default to all persons “pending a decision on
6 whether the [noncitizen] is to be removed from the United States.” These
7 removal hearings are held under § 1229a, which “decid[e] the inadmissibility
8 or deportability of a[] [noncitizen].”
9

10 41. The text of § 1226 also explicitly applies to people charged as being
11 inadmissible, including those who entered without inspection. See 8 U.S.C. §
12 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that,
13 by default, such people are afforded a bond hearing under subsection (a).
14
15 Section 1226 therefore leaves no doubt that it applies to people who face
16

17
18 _____
19 Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Kostak v. Trump,
20 No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v.
21 Bondi, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27,
22 2025) Lopez-Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D.
23 Mich. Aug. 29, 2025); Vasquez Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431
24 (S.D. Cal. Sept. 3, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025
25 WL 2591530 (C.D. Cal. Sept. 8, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL
26 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL
2607924 (D. Mass. Sept. 9, 2025); see also, e.g., Palma Perez v. Berg, No. 8:25CV494, 2025 WL
2531566, at *29 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a)
and not §1225(b)(2) authorizes detention); Jacinto v. Trump, No. 4:25-cv-03161-JFB-RCC, 2025
WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); Anicasio v. Kramer, No. 4:25-cv-03158-
JFB- RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025); Cortez-Hernandez v. Noem, 3:25-
cv-03112-JES-DDL(S.D. Cal. November 21, 2025) (same).

1 charges of being inadmissible to the United States, including those who are
2 present without admission or parole.

3 42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
4 recently entered the United States. The statute's entire framework is premised
5 on inspections at the border of people who are "seeking admission" to the
6 United States. 8 U.S.C. § 1225(b)(2)(A).

7
8 43. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply
9 to people like Petitioner who are alleged to have entered the United States
10 without admission or parole.
11

12 13 **RIGHT TO APPLY FOR ASYLUM**

14 44. Immigration detention should not be used as a punishment and should only be
15 used when, under an individualized determination, a noncitizen is a flight risk
16 because they are unlikely to appear in immigration court or a danger to the
17 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
18

19 45. Noncitizens in immigration proceedings are entitled to Due Process under the
20 Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
21 (1993).
22

23 46. The Immigration and Nationality Act (INA) establishes various procedures
24 through which individuals may be detained pending a decision on whether the
25 noncitizen is to be removed. 8 U.S.C. § 1226(a).
26

1 47. Removal proceedings described in section 240 of the INA are used to
2 determine whether individuals, such as Petitioner, should be removed from the
3 United States. See 8 U.S.C. § 1229a.

4
5 48. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides
6 a right to apply for asylum to individuals seeking safe haven in the United
7 States. The purpose of the Refugee Act is to enforce the “historic policy of the
8 United States to respond to the urgent needs of persons subject to persecution
9 in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94
10 Stat. 102 (1980).

11
12 49. The “motivation for the enactment of the Refugee Act” was the United Nations
13 Protocol Relating to the Status of Refugees, “to which the United States had
14 been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33
15 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory
16 meaning to our national commitment to human rights and humanitarian
17 concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

18
19
20 50. The Refugee Act established the right to apply for asylum in the United States
21 and defines the standards for granting asylum, as codified in the INA.

22
23 51. The INA gives the Attorney General or the Secretary of Homeland Security
24 discretion to grant asylum to noncitizens who satisfy the definition of
25 “refugee.” Under that definition, individuals generally are eligible for asylum if
26

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 opinion 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).

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

12
13 **RE-DETENTION WITHOUT CHANGE IN CIRCUMSTANCES**

14
15 53. Immigration detention is a form of civil confinement that “constitutes a
16 significant deprivation of liberty that requires due process protection.”
17 *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

18
19 54. Once a determination to release an individual from custody is made, the release
20 order may be revisited when the facts or circumstances warrant revocation or
21 reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in
22 custody, the Attorney General may take that individual back into custody by
23 revoking the individual’s release when the facts and circumstances warrant it.
24
25
26

1 55. Revocation and return to custody are authorized only based on individualized
2 facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation
3 decisions are limited in nature and may only be made by certain authorized
4 officials. 8 C.F.R. § 1236.1(c)(9).
5

6 56. The purpose of Petitioner's parole has not been served as he is still an asylum
7 seeker and the human rights conditions in Nicaragua remain abysmal,
8 especially for opponents of the dictatorship. Revocation of parole requires an
9 individualized determination and notice, neither of which occurred here.
10

11 57. Individuals have a liberty interest under the Due Process Clause of the Fifth
12 Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,
13 146-152 (1997) (holding that individuals placed in a pre-parole program
14 created to reduce prison overcrowding have a protected liberty interest
15 requiring pre-deprivation process).
16
17

18 **CLAIMS FOR RELIEF**

19 **COUNT ONE**

20 **Violation of the INA**

21
22 58. Petitioner incorporates by reference the allegations of fact set forth in the
23 preceding paragraphs.
24

25 59. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
26 all noncitizens residing in the United States who are subject to the grounds of

1 inadmissibility. As relevant here, it does not apply to those who previously
2 entered the country and have been residing in the United States prior to being
3 apprehended and placed in removal proceedings by Respondents. Such
4 noncitizens are detained under § 1226(a), unless they are subject to §
5 1225(b)(1), § 1226(c), or § 1231.
6

7 60. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
8 continued detention and violates the INA.
9

10 **COUNT TWO**

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

12
13 61. Petitioner incorporates by reference the allegations of fact set forth in the
14 preceding paragraphs.

15
16 62. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
17 prohibits the federal government from depriving any person of “life, liberty, or
18 property, without due process of law.” Due process protects “all ‘persons’
19 within the United States, including [non-citizens], whether their presence here
20 is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693;
21 accord *Flores*, 507 U.S. at 306.
22

23
24 63. Due process requires that government action be rational and non-arbitrary. See
25 *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
26

1 64. While the government has discretion to detain individuals under 8 U.S.C. §
2 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
3 discretion is not “unlimited” and must comport with constitutional due process.
4 See *Zadvydas*, 533 U.S. at 698.
5

6 65. Here, Respondents have chosen to revoke Petitioner’s release in an arbitrary
7 manner and not based on a rational and individualized determination of
8 whether he is a safety or flight risk, in violation of due process. Because no
9 individualized custody revocation has been made and no circumstances have
10 changed to make Petitioner a flight risk or a danger to the community,
11 Respondents’ revocation of Petitioner’s release violates his right to procedural
12 due process.
13
14

15
16 **COUNT THREE**

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

19 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**
20

21 66. Petitioner incorporates by reference the allegations of fact set forth in the
22 preceding paragraphs.

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

1 68. The “touchstone of ‘arbitrary and capricious’ review” is “reasoned decision
2 making.” *Altera Corp. & Subsidiaries v. Comm’r of Internal Revenue*, 926
3 F.3d 1061, 1080 (9th Cir. 2019)(quoting *Motor Vehicles Mfrs. Ass’n v. State*
4 *Farm Mut. Auto. Ins. Co*, 463 U.S. 29, 52 (1983)).

5
6 69. To survive an APA challenge, the agency must articulate “a satisfactory
7 explanation” for its action, “including a rational connection between the facts
8 found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569
9 (2019) (citation omitted).

10
11 70. By categorically revoking Petitioner’s parole which was granted for
12 humanitarian reasons under 8 U.S.C. § 1182(d)(5)(A) without consideration of
13 his individualized facts and circumstances, Respondents have violated the
14 APA.

15
16 71. By detaining and transferring the Petitioner categorically, Respondents have
17 further abused their discretion because there have been no changes to his facts
18 or circumstances since the agency made its initial custody determinations that
19 support the revocation of his release from custody.

20
21
22 72. Respondents have already considered Petitioner’s facts and circumstances and
23 determined that he was not a flight risk or danger to the community. There
24 have been no changes to the facts that justify this revocation of his release on
25 his own recognizance. The fact that Petitioner has already been granted release
26

1 by Respondents under the same facts and circumstances shows that
2 Respondents do not consider him, on an individualized basis, to be a danger to
3 the community or a flight risk.
4

5 **COUNT FOUR**

6 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
7 **Accordance with Law and in Excess of Statutory Authority Violation of 8**
8 **U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

9 73. Petitioner incorporates by reference the allegations of fact set forth in the
10 preceding paragraphs.
11

12 74. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not
13 in accordance with law;” “contrary to constitutional right;” “in excess of
14 statutory jurisdiction, authority, or limitations;” or “without observance of
15 procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
16

17 75. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may
18 revoke a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a
19 noncitizen under the initial warrant. In implementing this statutory provision, 8
20 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody
21 may only be carried out in the “discretion of the district director, acting district
22 director, deputy district director, assistant district director for investigations,
23 assistant district director for detention and deportation, or officer in charge
24 (except foreign).”
25
26

1 76. It is a well-established administrative principle that “agency action taken
2 without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v.*
3 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v.*
4 *NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant*
5 *Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency
6 action because it was taken by unauthorized official).
7

8
9 77. On information and belief, Respondents have revoked or are revoking
10 Petitioner’s prior custody determination as a result of a categorical policy
11 prepared by and implemented by unidentified government officials in
12 Washington, not through the individual exercise of discretion required by law
13 or by the individuals enumerated by regulation to do so.
14

15 78. Because Petitioner’s revocation of release from custody has been made or will
16 be categorically directed by government officials not authorized by law to
17 make this determination, Respondents’ detention of Petitioner is not in
18 accordance with law and in excess of statutory authority.
19
20

21 **PRAYER FOR RELIEF**

22 Petitioner requests that this court:

- 23
24 (1) Accept jurisdiction over this action;
25 (2) Issue the writ of habeas corpus and order Respondents to show cause,
26

1 within three days of Petitioner filing this petition, why the relief he seeks
2 should not be granted; and set a hearing on this matter within five days of
3 Respondents' return on the order to show cause (see 28 U.S.C. § 2243);

4 (3) Order Petitioner's immediate release;

5
6 (4) Award reasonable attorney's fees and costs under the Equal Access to
7 Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable
8 law; and grant any other relief that the court may deem just and proper.
9

10 Date: November 26, 2025

Respectfully submitted,

11 /s/ Cara Jobson

12 _____
13 Cara Jobson
14 Wiley & Jobson
15 Attorney for Plaintiff
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