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

9 **KEROLOS GERAWI,**
10 **Plaintiff,**

11 vs.

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

Respondents.

Case No.: '25CV3352 JES MMP

Agency Number: 

**PETITION FOR WRIT OF HABEAS
CORPUS**

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INTRODUCTION

1. The Arab Republic of Egypt is a mostly Islamic Republic that tolerates some other religious groups, such as the Coptic Christian Church, under very strict conditions. However, Islam is the state religion. Converting from Islam in many countries is a capital offence. While Egypt has no laws prohibiting it, in practice it is not tolerated. There is a huge social stigma associated with conversion.

2. The petitioner is a Coptic Christian from Egypt. The Coptic Church is an ancient sect of Christianity that survives in Egypt. Mr. Gergawi was working in a shop in his home town when a Muslim woman in the shop asked a few general questions about the Copts and their practices. Mr. Gergawi tried his best to answer her questions. The woman left and he thought nothing more of the incident until her brothers showed up at the shop accusing him of proselytizing their sister. They attacked him physically. The incident escalated after he went to the police and it became clear that her family and friends were going to kill him and the police would not intervene. He moved to another place but still the family found out where he was. His only solution was to leave Egypt and come to the United States and seek safety through asylum here. He was able to make his way to Mexico and crossed into the United States.

1 3. After he crossed, Mr. Gergawi waited for Border Patrol and was
2 then taken into custody on April 12, 2024. He was detained for 1 day. It was
3 determined that he was not a danger and not a flight risk so was paroled on his own
4 recognizance on April 13, 2024. It was also determined that he should be placed in
5 240 removal proceedings and not 235 expedited removal. A Notice to Appear was
6 issued and 240 removal proceedings were initiated.
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8 4. Mr. Gergawi attended all his immigration hearings. He filed for
9 asylum in due course. His case was set for a hearing on June 30, 2025 with IJ
10 Simpson. The petitioner appeared however, his counsel was not able to attend.
11 Judge Simpson was going to reset the matter when the government moved to
12 dismiss the removal proceedings. It was made clear that when Mr. Gergawi walked
13 out the courtroom door he would be apprehended by ICE agents and taken into
14 custody. Mr. Gergawi did not want his case dismissed so the IJ gave him the 10
15 days required by the Immigration Court Practice Manual to respond to the motion
16 to dismiss through his attorney. As Mr. Gergawi exited the courtroom he was
17 surrounded by masked, armed ICE agents and other law enforcement personnel.
18 He was immediately told to turn around and put his hands behind his back. He was
19 then put into handcuffs. Mr. Gergawi was led to the elevator and taken to the
20 basement. On information and belief, Mr. Gergawi was not presented with a
21 warrant. After being booked in the basement of the building at 880 Front Street,
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1 San Diego, California, Mr. Gergawi was eventually transferred to Otay Mesa
2 Detention Center where he is today.
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4 6. At no time were Mr. Gergawi or his counsel given any written
5 notice that his parole was being terminated. Mr. Gergawi was not told how or why
6 a determination had been made that he was now deemed a flight risk and/or a
7 danger to society.
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9 7. His counsel filed an opposition to the motion to dismiss. However,
10 the court granted the motion to dismiss on July 9, 2025. Mr. Gergawi had
11 repeatedly expressed a fear of return to Egypt so was granted a Credible Fear
12 Interview. The result of the CFI was positive and Mr. Gergawi was issued a new
13 Notice to Appear which was entered on July 20, 2025 and put back in section 240
14 removal proceedings.
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18 8. On June 30, 2025 Respondents sought to have Mr. Gergawi's 240
19 removal proceedings terminated and to somehow cancel his parole so he could be
20 placed into 235 Expedited Removal proceedings and deport him. Respondents did
21 so based not on Mr. Gergawi's personal circumstances or individualized facts, nor
22 due to any mistake or change in circumstances as alleged in their oral motion to
23 dismiss but because of Respondents' interpretation of President Trump's whim and
24 categorical determination that, the Fifth Amendment notwithstanding, noncitizens
25 are not entitled to due process.
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1 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
2 U.S.C. § 1252(e)(2).
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4 **VENUE**

5 14. Venue is proper because Petitioner is in Respondents' custody in
6 San Diego, California. Venue is further proper because a substantial part of the
7 events or omissions giving rise to Petitioner's claims occurred in this District,
8 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
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11 13. For these same reasons, divisional venue is proper under Local
12 5Rule HC.1
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14 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

15 16. The Court must grant the petition for writ of habeas corpus or
16 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
17 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
18 must require Respondents to file a return "within three days unless for good cause
19 additional time, not exceeding twenty days, is allowed." *Id.*
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22 17. Courts have long recognized the significance of the habeas statute
23 in protecting individuals from unlawful detention. The Great Writ has been
24 referred to as "perhaps the most important writ known to the constitutional law of
25 England, affording as it does a swift and imperative remedy in all cases of illegal
26 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).
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1 18. Petitioner is “in custody” for the purpose of § 2241 because he is
2 arrested and detained by Respondents.
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4 **PARTIES**

5 19. Kerolos Gergawi (“Petitioner”) is a 26-year-old citizen of Egypt.
6 He is a resident of San Diego, California, and is present within the state of
7 California as of the time of the filing of this petition.
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9 20. Respondent Christopher Larosse is the Warden of the Otay Mesa
10 Detention Center and is a legal custodian of Petitioner.
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12 21. Respondent Sydney Aki is the Field Office Director for the San
13 Diego Field Office, Immigration and Customs Enforcement and Removal
14 Operations (“ICE”). The San Diego Field Office is responsible for local custody
15 decisions relating to non-citizens charged with being removable from the United
16 States, including the arrest, detention, and custody status of non- citizens. The San
17 Diego Field Office’s area of responsibility includes San Diego, California and the
18 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
19 Petitioner.
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23 22. Respondent Todd Lyons is the acting director of U.S. Immigration
24 and Customs Enforcement, and he has authority over the actions of respondent
25 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
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1 the United States. The purpose of the Refugee Act is to enforce the “historic policy
2 of the United States to respond to the urgent needs of persons subject to
3 persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
4 212, 94 Stat. 102 (1980).
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7 29. The “motivation for the enactment of the Refugee Act” was the
8 United Nations Protocol Relating to the Status of Refugees, “to which the United
9 States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,
10 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory
11 meaning to our national commitment to human rights and humanitarian concerns.’”
12 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
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15 30. The Refugee Act established the right to apply for asylum in the
16 United States and defines the standards for granting asylum. It is codified in
17 various sections of the INA.
18

19 31. The INA gives the Attorney General or the Secretary of Homeland
20 Security discretion to grant asylum to noncitizens who satisfy the definition of
21 “refugee.” Under that definition, individuals generally are eligible for asylum if
22 they have experienced past persecution or have a well-founded fear of future
23 persecution on account of race, religion, nationality, membership in a particular
24 social group, or political opinion and if they are unable or unwilling to return to
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1 and avail themselves of the protection of their homeland because of that
2 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
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4 32. Although a grant of asylum may be discretionary, the right to
5 apply for asylum is not. The Refugee Act broadly affords a right to apply for
6 asylum to any noncitizen “who is physically present in the United States or who
7 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
8

9 33. Because of the life-or-death stakes, the statutory right to apply for
10 asylum is robust. The right necessarily includes the right to counsel, at no expense
11 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
12 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
13 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
14 to present evidence to establish eligibility.).
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18 34. Noncitizens seeking asylum are guaranteed Due Process under the
19 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
20 (1993).
21

22 35. Noncitizens who are applicants for asylum are entitled to a full
23 hearing in immigration court before they can be removed from the United States. 8
24 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
25 appellate review before the Board of Immigration Appeals of removal orders
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1 entered against them and judicial review in federal court upon a petition for
2 review. 8 U.S.C. § 1252(a) *et seq.*
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4 36. Immigration detention is a form of civil confinement that
5 “constitutes a significant deprivation of liberty that requires due process
6 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
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8 37. Immigration detention should not be used as a punishment and
9 should only be used when, under an individualized determination, a noncitizen is a
10 flight risk because they are unlikely to appear for immigration court or a danger to
11 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
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13 38. Parole must be terminated upon written notice after an
14 individualized determination that the purposes no longer apply. 8 C.F.R. §
15 212.5(e)(2)(i).
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19 **FACTUAL BACKGROUND**

20 39. Petitioner is a citizen of Egypt. He was born  in
21 Egypt.
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23 40. Petitioner is a member of the ancient minority Coptic Christian
24 Church in Egypt. He was repeatedly threatened and beaten by Muslims who
25 accused him of trying to convert a Muslim woman. When he went to the police he
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1 was given no safety and he was exposed to even more attacks. As a result he left
2 Egypt and made his way to the United States to seek Asylum.
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4 41. On or about April 12, 2024, petitioner was able to enter the United
5 States. He was apprehended, detained for a period of time. On April 13, 2024, after
6 a determination he was not a flight risk or a danger, he was released into the United
7 States on his own recognizance.
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9 42. On or about April 13, 2024, Respondents commenced removal
10 proceedings against Petitioner under 8 U.S.C. § 1229a in Texas.
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12 43. A motion to change venue was made and the case was transferred
13 to the court in San Diego, California.
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15 44. On information and belief, Petitioner regularly complied with and
16 appeared for ICE check-ins.
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18 45. Petitioner applied for asylum with EOIR. With the assistance of
19 counsel, petitioner filed all supporting documents required, attending all his
20 hearings.
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22 46. On June 30, 2025, Mr. Gergawi was attending his regularly
23 scheduled Master Calendar Hearing when, without notice, the government attorney
24 made a motion to dismiss his removal proceedings. The motion was based on a
25 purported change in circumstance and the contention that the original NTA was
26 improvidently issued. This was just a ruse so that ICE could detain him when we
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1 exited the courtroom and place him in section 235 Expedited Removal. This would
2 deny his right to have his asylum application heard and would immediately subject
3 him to removal with little judicial oversight. He would no longer be able to have a
4 fair opportunity to present his case. The court did NOT dismiss his case. Counsel
5 was given 10 days to respond to the motion to dismiss as is required in the
6 Immigration Court Practice Manual. When Mr. Gergawi exited the courtroom he
7 was still in 240 removal proceedings.

11 47. As Mr. Gergawi exited the courtroom masked gunmen surrounded
12 him and placed him in handcuffs. He was never given a written notice that his
13 parole was being terminated. He was not given any particularized reason for why
14 he was being placed into detention. He was eventually transported to Otay Mesa
15 Detention Center. Attached as an exhibit is a Notice and Order of Expedited
16 Removal. It is dated June 30, 2025 and signed by Philip Goode Jr, DO. This is
17 claimed as the basis of Mr. Gergawi's arrest and detention, that he was
18 immediately subject to Expedited Removal. This was impossible. When Mr.
19 Gergawi was arrested he was still in 240 removal proceedings. Those proceedings
20 were not terminated until July 9, 2025. He was not subject to Section 235
21 Expedited Removal. The agents had no cause to arrest him.

26 48. On July 18, 2025 Mr. Gergawi was given a Credible Fear
27 Interview, which he passed. On July 20, 2025 a new NTA was entered and Mr.
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1 Gergawi was returned to regular 240 removal proceedings. Clear evidence that
2 there was not mistake in issuing his original NTA and his previous proceedings
3 should never have been dismissed.
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5 49. The ICE agents did not provide him any process. The ICE agents
6 did not offer him any opportunity to be heard prior to arresting and detaining him.
7 They did not provide him with any particularized determination as to why his
8 liberty was being denied and his parole cancelled.
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11 50. On January 20, 2025, President Donald Trump issued several
12 executive actions relating to immigration, including “Protecting the American
13 People Against Invasion,” an executive order (EO) setting out a series of interior
14 immigration enforcement actions. The Trump administration, through this and
15 other actions, has outlined sweeping, executive branch-led changes to immigration
16 enforcement policy, establishing a formal framework for mass deportation. The
17 “Protecting the American People Against Invasion” EO instructs the DHS
18 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
19 prioritize civil immigration enforcement procedures including through the use of
20 mass detention.
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25 51. On information and belief, Respondents are detaining Petitioner
26 regardless of the individual facts and circumstances of his case.
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1 52. On information and belief, Respondents are using the immigration
2 detention system as a means to punish individuals for asserting rights under the
3 Refugee Act.
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5 53. On information and belief, Petitioner has no criminal history.
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7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**

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

10 **Procedural Due Process**

11 54. Petitioner restates and realleges all paragraphs as if fully set forth
12 here.
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15 55. The Due Process Clause of the Fifth Amendment to the U.S.
16 Constitution prohibits the federal government from depriving any person of “life,
17 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
18 process protects “all ‘persons’ within the United States, including [non-citizens],
19 whether their presence here is lawful, unlawful, temporary, or permanent.”
20 *Zadvydas*, 533 U.S. at 693.
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22 56. Due process requires that government action be rational and non-
23 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
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25 57. While asylum is a discretionary benefit, the right to apply is not. 8
26 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United
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1 States or who arrives in the United States (whether or not at a designated port of
2 arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*
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4 58. Because the denial of the right to apply for asylum can result in
5 serious harm or death, the statutory right to apply is robust and meaningful. It
6 includes the right to legal representation, and notice of that right, *see id.* §§
7 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of
8 asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision
9 to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§
10 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a
11 decision determining removability, *see id.* § 1229a(c)(6)-(7).
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15 59. Expedited removal, in contrast, severely limits the availability of
16 such rights. Interviews occur on an exceedingly fast timeline; review of a negative
17 interview decision by an immigration judge must occur within seven days of the
18 decision. See 8 C.F.R. § 1003.42.
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21 60. While there is a right to “consult” with an attorney or another
22 person about the credible fear interview process, see 8 U.S.C. § 1225(b)(1)(B)(iv)
23 and 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not
24 unreasonably delay the process.” The consultant may be “present” during the
25 interview but may only make a “statement” at the end of the interview if permitted
26 by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
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1 removal may present evidence “if available”, *id.*—often an impossibility given the
2 fast timeline and the default of detention during the process. See generally Heidi
3 Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden*
4 *Administration to Safeguard Asylum Rights in CBP Custody*, Nov. 21, 2024,
5 [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)
6 [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
7 undergoing credible fear screenings in Customs and Border Protection custody).
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11 61. Review of a negative credible fear decision by an immigration
12 judge is limited. “A credible fear review is not as exhaustive or in-depth as an
13 asylum hearing in removal proceedings,” and there is no right to submit evidence,
14 as it may be admitted only at “the discretion of the immigration judge.”
15 *Immigration Court Practice Manual*, Chpt. 7.4(d)(4)(E). After denial of a credible
16 fear interview and affirmance by a judge, removal is a near certainty; the
17 immigrant is ineligible for other forms of relief from removal.
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21 62. In sum, applying for asylum in removal proceedings comes with a
22 panoply of greater protections when compared with seeking asylum in expedited
23 removal. *See Immigrant Defenders Law Center v Mayorkas*, 2023 WL 3149243, at
24 *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy
25 far more robust due process protections [than those in expedited removal] because
26 Congress has conferred additional statutory rights on them.”).
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1 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
2 463 U.S. 29, 43 (1983)).
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4 67. To survive an APA challenge, the agency must articulate “a
5 satisfactory explanation” for its action, “including a rational connection between
6 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
7 2569 (2019) (citation omitted).
8

9 68. By categorically revoking Petitioner’s parole and transferring him
10 to Otay Mesa Detention Center without consideration of his individualized facts
11 and circumstances, Respondents have violated the APA.
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13 69. Respondents have made no finding that Petitioner is a danger to
14 the community.
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16 70. Respondents have made no finding that Petitioner is a flight risk.
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18 71. By detaining the Petitioner categorically, Respondents have
19 further abused their discretion because there have been no changes to his facts or
20 circumstances since the agency made its initial determination to release him into
21 the United States that support detention.
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23 72. Respondents have already considered Petitioner’s facts and
24 circumstances and determined that he was not a flight risk or danger to the
25 community. There have been no changes to the facts that justify this revocation of
26 his parole.
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1 **COUNT THREE**

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

3 **Illegal Retroactive Application of Expedited Removal Designation**

4 73. Petitioner restates and realleges all paragraphs as if fully set forth
5 here.
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8 74. Administrative rules “will not be construed to have retroactive
9 effect unless their language requires this result.” *Landgraf v. USI Film Products*,
10 511 U.S. 244, 272 (1994). When a “new provision attaches new legal
11 consequences to events completed before its enactment” the new provision is not
12 retroactive unless it is unmistakably clear.
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15 75. Applying the January 2025 expedited removal designation to
16 Petitioner’s April 12, 2024 entry to the United States to seek asylum would attach
17 new legal consequences including the loss of significant rights related to his right
18 to seek asylum.
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21 **COUNT FOUR**

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

23 **Procedural Due Process**

24 76. Petitioner restates and realleges all paragraphs as if fully set forth
25 here.
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1 77. 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; accord *Flores*, 507 U.S. at 306.
7

8 78. Due process requires that government action be rational and non-
9 arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
10

11 79. While the government has discretion to detain individuals under 8
12 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
13 discretion is not “unlimited” and must comport with constitutional due process. See
14 *Zadvydas*, 533 U.S. at 698.
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17 80. Here, Respondents have chosen to revoke Petitioner’s release in
18 an arbitrary manner and not based on a rational and individualized determination
19 of whether he is a safety or flight risk, in violation of due process. Because no
20 individualized custody revocation has been made and no circumstances have
21 changed to make Petitioner a flight risk or a danger to the community,
22 Respondents’ revocation of Petitioner’s release violates his right to procedural due
23 process.
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COUNT FIVE

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

**Not in Accordance with Law and in Excess of Statutory Authority Violation of
8 U.S.C. § 1225(b)**

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

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

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

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

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

1 86. Because Petitioner is not subject to the designation, Respondents'
2 use of the January 2025 designation to detain him is unlawful.
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5 **PRAYER FOR RELIEF**

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7 WHEREFORE, Petitioner respectfully requests this Court to grant the
8 following:

9 (1) Assume jurisdiction over this matter;

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

13
14 (3) Declare that Petitioner's detention without an individualized
15 determination violates the Due Process Clause of the Fifth Amendment;

16
17 (4) Declare that Respondents' application of the January 2025
18 Designation to petitioner is illegal;

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20 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
21 Petitioner from custody;

22
23 (6) Issue an Order prohibiting the Respondents from transferring
24 Petitioner from the district without the court's approval;

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

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

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Dated: November 28, 2025.

/s/ Brian J. McGoldrick
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