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Detained

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 In the Matter of:)

File No.: **'25CV3746 GPC SBC**

11 **BABAVEISI, Shoja**)



12)
13 Petitioner,)

**Consolidated Petition for Writ of
Habeas Corpus, Injunction and Order To
Show Cause Within Three Days**

14)
15 v.)

16)
17 CHRISTOPHER J. LAROSE, Senior)
18 Warden, Otay Mesa Detention Center;)
19 PATRICK DIVVER, Field Office)
20 Director, San Diego Office of Detention)
21 and Removal, U.S. Immigration and)
22 Customs Enforcement; TODD M.)
23 LYONS, Acting Director, U.S.)
24 Immigration and Customs Enforcement,)
25 U.S. Department of Homeland Security;)
26 and KRISTI NOEM, Secretary,)
27 U.S. Department of Homeland Security)

28 Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

PETITIONER'S PETITION FOR WRIT OF HABEAS
In the Matter of Shoja BABAVEISI


1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
3 release Petitioner from detention.

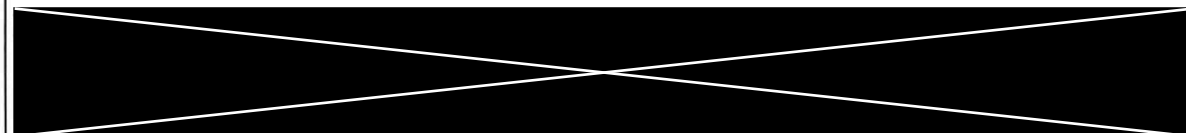

4
5 **INTRODUCTION**

6 1. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) at the Otay
7 Mesa Detention Center pending removal proceedings since or about July 2, 2025.

8 2. Petitioner entered the United States at or near Roma, Texas, on or about March 18,
9 2025, seeking asylum.

10 3. Petitioner is a citizen of Iran who entered the United States through the Southern
11 Border, out of fear for his life.

12 4. Petitioner fled Iran due to persecution for his participation in the protests 

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14 
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16  Petitioner fears being killed in Iran for his political opinions and
17 involvement in protests.

18
19 5. On September 8, 2025, Petitioner filed an I-589 Application for Asylum and for
20 Withholding of Removal.

21 6. Petitioner now challenges his continued detention, which has caused significant
22 hardship to him and his family, and seeks relief to avoid persecution in Iran.

23
24 **JURISDICTION**

25 7. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center.

26 8. This action arises under the Due Process Clause of the Fifth Amendment of the U.S.
27 Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas
28

1 corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative
2 Procedure Act. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
3 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
4 § 1651.
5

6 VENUE

7 9. Venue is proper in this District because this is the district in which Petitioner was
8 confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).
9

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

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

20 11. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he was arrested
21 by Respondents and remains in their legal and physical custody at Otay Mesa Detention center
22 in Otay Mesa, California. He is under Respondents’ and their agents’ direct control.
23

24 STATEMENT OF FACTS

25 12. Petitioner is a 27-year-old citizen and national of Iran. Petitioner is a citizen of Iran who
26 entered the United States through the Southern Border, in or near Roma, Texas. Mr. Babaveisi
27
28

1 filed an I-589 asylum application on or about September 8, 2025, stating his grounds for
2 seeking asylum.

3 13. Petitioner believes he will be imprisoned, tortured, and killed if he returns to Iran due to
4 his political opinion and participation in opposition to the Iranian government.


5 14. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center pending
6 immigration removal proceedings. Petitioner remains detained at Otay Mesa Detention Center.

7 15. Petitioner was detained in DHS custody since or about July 2, 2025. Petitioner is still in
8 DHS custody and requests release.

9 16. Petitioner poses no danger or flight risk.

10 17. Petitioner has no past criminal history.

11 18. Petitioner has a fear to return to Iran where public officials have beaten and threatened
12 Petitioner because of Mr. Babaveisi's participation in opposition movements against the Iranian
13 government. He was shot at with live rounds, beaten, and arrested for participating in a protest

14  Petitioner was diagnosed with suicidal tendencies at the
15 detention center due to the severe harm inflicted during and prior to detention by the
16 Respondents.

17 19. On July 2, 2025, Mr. Babaveisi was detained.

18 20. Petitioner has been detained since or about July 2, 2025.

19 **PARTIES**

20 21. Mr. Babaveisi ("Petitioner") is a 27-year-old citizen and national Iran. He came to the
21 USA out of fear for his life. He has no criminal convictions. Since the arrest on or about July 2,
22 2025, Mr. Babaveisi has remained in Respondents' custody.

1 22. Mr. Babaveisi is currently residing in Respondents' custody at Otay Mesa Detention
2 Center in San Diego, California, as of the time of the filing of this petition.

3 23. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa
4 Detention Center in San Diego, California, where Mr. Babaveisi is detained. LaRose is
5 responsible for the day-to-day operations and confinement of non-citizens detained at that
6 facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a
7 custodian of Mr. Babaveisi and is named in his official capacity.
8

9 24. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego,
10 California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for
11 local custody decisions relating to non-citizens charged with being removable from the U.S.,
12 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field
13 Office's area of responsibility includes San Diego and Imperial Counties in California.
14 Respondent Divver is a custodian of Mr. Babaveisi and is named in his official capacity.
15

16 25. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority
17 over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
18 decisions relating to non-citizens charged with being removable from the U.S., including the
19 arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian
20 of Mr. Babaveisi and is named in his official capacity.
21

22 26. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over the
23 actions of all other DHS Respondents in this case, as well as all operations and federal agencies
24 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with
25 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
26
27
28

1 1103(a). Respondent Noem is a custodian of Mr. Babaveisi and is named in her official
2 capacity.

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

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

9 29. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem
10 (collectively, “Respondents”) all in their official capacities.
11

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 30. The IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who
14 entered the country without inspection were not considered detained under 8 U.S.C. § 1225 or
15 automatically subject to expedited removal. *See* Inspection and Expedited Removal of Aliens,
16 Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62
17 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under §
18 1226(a). *See id.*
19

20 31. Thus, in the decades that followed, most people who entered without inspection—unless
21 they were subject to some other detention authority—received bond hearings. That practice was
22 consistent with many more decades of prior practice, in which noncitizens who were not
23 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8
24 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
25 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
26
27
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1 32. Immigration detention should not be used as a punishment and should only be used
2 when, under an individualized determination, a noncitizen is a flight risk because they are
3 unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533
4 U.S. 678, 690 (2001).

5
6 33. On information and belief, Mr. Babaveisi alleges that Respondents detained him for the
7 purpose of divesting him of his due process rights in his credible fear determination hearing.

8 34. Petitioner has demonstrated good moral character while being in the United States.

9 35. On information and belief, Respondents are using the immigration detention system,
10 including extra-territorial transfer and detention, as a means to punish individuals for asserting
11 rights.
12

13 LEGAL ARGUMENT

14 36. Courts have recognized the significance of the habeas statute in protecting individuals
15 from unlawful detention, which affords “a swift and imperative remedy in all cases of illegal
16 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963); *see also Yong v. INS*, 208
17 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination
18 of petitions).
19

20 37. The Court must grant the petition for writ of habeas corpus or issue an order to show
21 cause to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.
22

23 38. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of
24 law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*
25 *Flores*, 507 U.S. 292, 306 (1993)).

26 39. Due process requires “adequate procedural protections” to ensure that the government’s
27 asserted justification for physical confinement “outweighs the individual's constitutionally
28

1 protected interest in avoiding physical restraint.” *Zadvydus, v. Davis*, 533 U.S. 678, 690 (2001)
2 (internal quotation marks omitted).

3
4 40. In the immigration context, the Supreme Court has recognized two valid purposes for
5 civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*;
6 *Demore*, 538 U.S. at 528.

7 41. The test for procedural due process claims, the *Mathews* test balances: (1) the private
8 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
9 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
10 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No.
11 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
12 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
13 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting
14 cases doing the same). Here, each factor weighs in Petitioner’s favor, and Petitioner’s release is
15 justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no
16 danger to the community, nor is a flight risk.

17
18
19 **CAUSES OF ACTION**

20 **COUNT ONE**

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

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

25 43. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
26 federal government from depriving any person of “life, liberty, or property, without due process
27 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,
28

1 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
2 permanent.” *Zadvydas*, 533 U.S. at 693.

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

5
6 45. Moreover, Mr. Babaveisi has a vital liberty interest in remaining free from DHS
7 custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal.
8 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June
9 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
10 apprehension “has a substantial private interest in remaining out of custody” which includes an
11 interest in “...obtaining necessary medical care, [and] maintaining her relationships in the
12 community...”). While on release from DHS custody, Mr. Babaveisi was building his emotional
13 support system.
14

15 46. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
16 “...after that individual is released from custody, he has a protected liberty interest in remaining
17 out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7
18 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
19 2084921, at *3 (N.D. Cal. July 24, 2025)).
20

21 47. Here, Mr. Babaveisi was detained in a hasty manner. He has no prior criminal
22 conviction. He came to the U.S. to seek asylum and to escape the torture he endured in Iran. *See*
23 *generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity
24 to be heard before deprivation of a legally protected interest). Nor has the government identified
25 any materially changed circumstances that would warrant detaining Mr. Babaveisi. Lastly, Mr.
26
27
28

1 Babaveisi was diagnosed with suicidal tendencies at the detention center due to the severe harm
2 suffered during and prior to detention by the Respondents.

3
4 **COUNT TWO**

5 **Violation of Fifth Amendment Right to Due Process -**

6 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.**

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

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

13 50. The January 2025 designation does not unmistakably apply to individuals who entered
14 the United States prior to its effective date and were already in removal proceedings. The
15 designation’s language thus does not “require that it be applied retroactively.” *See INS v. St Cyr*,
16 533 U.S. 289, 291 (2001).

17 51. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. §
18 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive
19 effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320,
20 328, n.4 (1997) (requiring statutory language to be “so clear that it could sustain only one
21 interpretation”).

22 52. Accordingly, Respondents unlawfully subjected Mr. Babaveisi to indefinite detention.
23
24
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28

COUNT THREE

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 C.F.R. § 239.2(c)

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

54. 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).

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

56. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

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

58. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy sub silentio or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief,

1 Respondents’ intent was to eliminate the due process rights available to Petitioner in removal
2 proceedings under section 240 of the INA, deprive him of his liberty interest despite no
3 evidence of material changed circumstances, or for some other purposes not supported by law.
4
5 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
6 2025) (“Detention for its own sake, to meet an administrative quota, or because the government
7 has not yet established constitutionally required pre-detention procedures is not a legitimate
8 government interest.”).

9 59. In deciding to detain Mr. Babaveisi, Respondents further violated the APA by “entirely
10 fail[ing] to consider an important aspect of the problem” – namely, the important procedural
11 rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle*
12 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also*
13 *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding
14 that rescission of immigration policy without considering “particular reliance interests” is
15 arbitrary and capricious in violation of the APA).
16
17

18 60. The arbitrary and capricious detention of Mr. Babaveisi was not made in furtherance of
19 an enumerated reason set forth in the regulations and causes Mr. Babaveisi irreparable harm.
20 For these reasons, the Court should find that the decision to detain Mr. Babaveisi is arbitrary,
21 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).
22

23 **COUNT FOUR**

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

26 61. Petitioner restates, realleges, and incorporates by reference each and every allegation in
27 the paragraphs above as if fully set forth herein.
28

1 62. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
2 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
3 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).
4

5 63. An action is an abuse of discretion if the agency “entirely failed to consider an important
6 aspect of the problem, offered an explanation for its decision that runs counter to the evidence
7 before the agency, or is so implausible that it could not be ascribed to a difference in view or the
8 product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
9 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
10 463 U.S. 29, 43 (1983)).
11

12 64. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for
13 its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
14 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).
15

16 65. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
17 explained the process of discretionary release from custody in immigration cases and noted that
18 before revoking the release, the non-citizen must be given written notice of the impending
19 revocation, which must include a cogent description of the reasons. Under the APA, non-
20 citizens are entitled to determinations related to their release revocations that are not arbitrary,
21 capricious or an abuse of discretion. *See id.* at *10.
22

23 66. By detaining Mr. Babaveisi without notice or consideration of his individualized facts
24 and circumstances, Respondents have violated the INA, implementing regulations, and the
25 APA.

26 67. Respondents have made no finding that Petitioner is a danger to the community.

27 68. Respondents have made no finding that Petitioner is a flight risk.
28

1 69. On information and belief, by detaining Mr. Babaveisi categorically and without notice,
2 Respondents have further abused their discretion because, since the agency made its initial
3 custody determination, on information and belief, there have been no changes to Mr Babaveisi's
4 specific facts or circumstances that support his detention.
5

6 **COUNT FIVE**

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

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

11 71. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
12 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
13 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

14 72. Congress has made it clear that the expedited removal statute does not apply and may
15 not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It
16 further applies to the non-citizens seeking admission. Id. § 1225(b)(2).
17

18 73. Because Mr. Babaveisi is not subject to the January 2025 Designation, Respondents’ use
19 of the January 2025 designation to detain him while his INA section 240 proceedings were
20 ongoing is unlawful arbitrary, capricious, and unlawful.
21

22 **COUNT SIX**

23 **Violation of the Fourth Amendment of the Constitution**

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

26 75. The Fourth Amendment protects “[t]he right of the people to be secure in their persons .
27 . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has
28 recognized that immigration arrests and detentions are “seizures” within the meaning of the

1 Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
2 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
3 person).

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

14
15 77. Congress enacted a strong preference that immigration arrests be based on warrants. *See*
16 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act
17 thus provides immigration officers with only limited authority to conduct warrantless arrests. 8
18 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8
19 C.F.R. § 287.8(c)(2)(ii).

20
21 78. Mr. Babaveisi did not receive any judicial determination of probable cause for his arrest
22 or continued detention by the Respondents.

23
24 79. The Government cannot salvage this seizure by invoking generalized immigration
25 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and
26 demands individualized justification for both the arrest and the extended detention. *See United*
27 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr.
28

1 Babaveisi did not pose any danger to any person in the community at large, and in fact, has a
2 fear of returning to his home country for fear of death from the gangs threatening him and his
3 colleagues in his line of work.

4
5 80. Respondents' arrest of Mr. Babaveisi constitutes an unreasonable and unlawful seizure
6 in violation of the Fourth Amendment.

7 **COUNT SEVEN**

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

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

12 82. The government may not deprive a person of life, liberty, or property without due
13 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government
14 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
15 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
16

17 83. Mr. Babaveisi has a fundamental interest in liberty and being free from official restraint.

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

20
21 85. The government's detention of Petitioner without a meaningful bond and custody
22 redetermination hearing to determine whether he is a flight risk or danger to others violates his
23 right to due process.

24 **PRAYER FOR RELIEF**

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

26 (1) Assume jurisdiction over this matter;
27
28

- 1 (2) Issue an Order to Show Cause ordering Respondents to show cause why this
- 2 Petition should not be granted within three days;
- 3 (3) Declare that Petitioner's detention without an individualized determination
- 4 violates the Due Process Clause of the Fifth Amendment;
- 5 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
- 6 redetermination hearing violates the INA, APA, and Due Process;
- 7 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
- 8 custody;
- 9 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
- 10 district without the Court's approval;
- 11 (7) Issue an Order requiring Respondents to provide a bond and custody
- 12 redetermination hearing within 14 days to meaningfully consider his eligibility for
- 13 release from DHS custody;
- 14 (8) Grant Petitioner's injunctive relief to obtain all medical records regarding
- 15 suicidal diagnosis based on the conditions at the detention center.
- 16 (9) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal
- 17 Access to Justice Act, and on any other basis justified under law;
- 18 (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 19 (11) Grant any and all other further relief this Court deems just or proper.
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26 Respectfully Submitted,

27 /S/ Mario Portugal
28 Mario Portugal, Esq.
Attorney for the Petitioner