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5 Attorney for Petitioner  
6 EVELIO JAVIER SILVESTRE-SILVESTRE

7 UNITED STATE DISTRICT COURT  
8 SOUTHER DISTRICT OF CALIFORNIA

9 EVELIO JAVIER SILVESTRE-  
10 SILVESTRE,

11 Plaintiff,

12 v.

13 CHRISTOPHER J. LAROSE, Senior  
14 Warden, Otay Mesa Detention Center;  
15 DANIEL A. BRIGHTMAN, San Diego  
16 Field Office Director, Immigration and  
17 Customs Enforcement and Removal  
18 Operations ("ICE/ERO"); TODD M.  
19 LYONS, Acting Director of Immigration  
20 Customs Enforcement ("ICE"); U.S.  
21 Immigration and Customs Enforcement;  
22 KRISTI NOEM, Secretary of the  
23 Department of Homeland Security  
24 ("DHS"); U.S. Department of Homeland  
25 Security; and PAMELA BONDI,  
26 Attorney General of the United States,

27 Respondents.  
28 .

CASE NO.: '26CV1471 DMS MSB

PETITION FOR WRIT OF HABEAS  
CORPUS AND ORDER TO SHOW  
CAUSE WITHIN THREE DAYS;  
COMPLAINT FOR DECLARATORY  
RELIEF

Challenge to Unlawful Incarceration;  
Request for Declaratory and Injunctive  
Relief

SIG  
STERGER LAW GROUP  
P.C. 03/09/26

1 Petitioner Evelio Javier Silvestre-Silvestre petitions this Court for a writ of  
2 habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him  
3 unlawfully, and states as follows:

4 **INTRODUCTION**

- 5
- 6 1. Petitioner Evelio Javier Silvestre-Silvestre ("Petitioner" or "Mr. Silvestre-  
7 Silvestre") is a twenty-six-year-old, Mayan Guatemalan, asylum seeker detained  
8 at Oaty Mesa Detention Center in San Diego, California. He was persecuted in  
9 Guatemala including suffering severe economic deprivation, discrimination and  
10 fear of future persecution based on his race.
- 11
- 12 2. On or about July 24, 2016, Petitioner entered, as an unaccompanied minor, at or  
13 near Sasabe, Arizona. Respondents arrested and detained Petitioner with Health  
14 and Human Services.
- 15
- 16 3. Petitioner was released from custody to a family member.
- 17
- 18 4. On or about April 17, 2018, Respondents initiated removal proceedings against  
19 Petitioner under 8 U.S.C. §1229a.
- 20
- 21 5. Respondents alleged that Petitioner is an alien present in the United States  
22 without being admitted or paroled, or who arrived in the United States at a time  
23 or place other than as designated by the Attorney General pursuant to  
24 212(a)(6)(A)(i) of the Immigration and Nationality Act.
- 25
- 26 6. Petitioner applied for asylum before the San Diego Immigration Court on or about  
27 May 10, 2019.
- 28
7. On January 13, 2022, after a hearing on the merits a removal order was issued.

1 8. On March 28, 2022, an appeal was filed before the Board of Immigration Appeals.  
2 That appeal remains pending as of this filing.

3 9. On January 7, 2026, Mr. Silvestre-Silvestre was arrested and detained by  
4 Immigration and Customs Enforcement (ICE) officers despite there being no  
5 evidence of any change in his individual circumstances or current bond.  
6

7 10. Immigration detention is civil in nature and it's permissible only to ensure a  
8 noncitizen's appearance at immigration proceedings or to protect the community  
9 from danger. DHS did not arrest or detain Mr. Silvestre-Silvestre for either of  
10 these legitimate purposes as he plainly poses neither a flight risk nor a danger to  
11 the community.  
12

### 13 JURISDICTION

14 11. This action arises under the Constitution of the United States and the  
15 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.  
16

17 12. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
18 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States  
19 Constitution (Suspension Clause).  
20

21 13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et.  
22 seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28  
23 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).  
24

### 25 VENUE

26 14. Venue is proper because Petitioner is in Respondents' custody in Otay Mesa,  
27 California Venue is further proper because a substantial part of the events or  
28

1 omissions giving rise to Petitioner’s claims occurred in this District, where  
2 Petitioner is now in Respondent’s custody. 28 U.S.C. § 1391(e).

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

8  
9 16. Petitioner is “in custody” for the purpose of § 2241 because Petitioner was arrested  
10 and is detained by Respondents.

11  
12 **PARTIES**

13  
14 17. Petitioner is a 26-year-old citizen of Guatemala. Petitioner is present within the  
15 state of California at the time of the filing of this petition.

16 18. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa  
17 Detention Center in San Diego, California, where Mr. Silvestre-Silvestre is  
18 detained. LaRose is responsible for the day-to-day operations and confinement of  
19 noncitizens detained at that facility. He acts at the direction of Respondents  
20 Brightman, Lyons, and Noem. LaRose is a custodian of Mr. Silvestre-Silvestre,  
21 and is named in his official capacity.

22  
23  
24 19. Respondent, Daniel A. Brightman, is the Field Office Director for the San Diego  
25 Field Office, Immigration and Customs Enforcement and Removal Operations  
26 (“ICE”). The San Diego Field Office is responsible for local custody decisions  
27 relating to non-citizens charged with being removable from the United States,  
28

1 including the arrest, detention, and custody status of noncitizens. The San Diego  
2 Field Office's area of responsibility includes San Diego and Imperial Counties in  
3 California. Respondent Daniel Brightman is a legal custodian of Petitioner.

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

9 21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security  
10 (DHS) and has authority over the actions of all other DHS Respondents in this  
11 case, as well as all operations of DHS. Respondent Noem is a legal custodian of  
12 Petitioner and is charged with faithfully administering the immigration laws of  
13 the United States.  
14

15 22. Respondent Pamela Bondi is the Attorney General of the United States, and as  
16 such has authority over the Department of Justice and is charged with faithfully  
17 administering the immigration laws of the United States.  
18

19 23. Respondent U.S. Immigration Customs Enforcement is the federal agency  
20 responsible for custody decisions relating to non-citizens charged with being  
21 removable from the United States, including the arrest, detention, and custody  
22 status of non-citizens.  
23

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

27 25. This action is commenced against all Respondents in their official capacities.  
28

LEGAL FRAMEWORK

1  
2  
3 26. Immigration detention should not be used as a punishment and should only be  
4 used when, under an individualized determination, a noncitizen is a flight risk  
5 because they are unlikely to appear for immigration court or a danger to the  
6 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7  
8 27. Noncitizens in immigration proceedings are entitled to Due Process under the  
9 Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306  
10 (1993).

11  
12 28. The Immigration and Nationality Act (INA) sets the rules for detaining  
13 noncitizens while the government decides whether they are removable. See 8  
14 U.S.C. § 1226(a).

15  
16 29. Custody determinations for individuals in 1229a removal proceedings are  
17 governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he  
18 does not present a danger to persons or property and is not a flight risk. *Zadvydas*  
19 *v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

20  
21 30. Custody determinations under § 1226(a) are individualized and based on the facts  
22 presented in those cases. Unlike § 1226(c), which can provide for categorical  
23 determinations for detention regardless of flight risk or safety risks, § 1226(a)  
24 requires a case-by-case review of the facts and circumstances.

25  
26 31. Once a determination to release an individual from custody is made, the release  
27 order may be revisited when the facts or circumstances warrant revocation or  
28 reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody,

1 the Attorney General may take that individual back into custody by revoking the  
2 individual's release when the facts and circumstances warrant it.

3 32. Revocation and return to custody is authorized only based on individualized facts  
4 and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are  
5 limited in nature and may only be made by certain authorized officials. 8 C.F.R. §  
6 1236.1(c)(9).  
7

### 8 FACTUAL BACKGROUND

9 33. Petitioner, Mr. Silvestre-Silvestre, fled a fear of persecution in his home country of  
10 Guatemala and entered the United States of America, as an unaccompanied  
11 minor, seeking protection as a refugee under its asylum laws.  
12

13 34. On or about August 16, 2016, on information and belief, based on the  
14 individualized facts of Petitioner's case, the Office of Refugee Resettlement a sub-  
15 office of the Department of Health and Human Services released the Petitioner  
16 under §235 of the William Wilberforce Trafficking Victims Protection  
17 Reauthorization Act ("TVPRA") of 2008.  
18

19 35. Respondents commenced removal proceedings against Petitioner in immigration  
20 court, entitling Petitioner to present an asylum claim with the due process rights  
21 under 8 U.S.C. § 1229a.  
22

23 36. While released from ICE, he remained free for close to ten years. During that  
24 time, Petitioner Silvestre-Silvestre complied with all the court and legal timelines  
25 in pursuing immigration relief.  
26  
27  
28

1 37. ICE detained Mr. Silvestre-Silvestre for no articulated reason or basis at his ICE  
2 check-in appointment.

3 38. Mr. Silvestre-Silvestre is being detained without explanation.

4 39. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant  
5 petition for a writ of habeas corpus. Petitioner asks this Court to find that  
6 Respondents' attempts to detain the Petitioner are arbitrary and capricious and in  
7 violation of the law, and to immediately issue an order releasing Petitioner from  
8 ICE custody.  
9  
10

11 **CLAIMS FOR RELIEF**

12 **COUNT ONE**

13 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**  
14 **Abuse of Discretion**  
15 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**  
16

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

18 41. Under the APA, a court shall “hold unlawful and set aside agency action” that is  
19 an abuse of discretion. 5 U.S.C. § 706(2)(A).  
20

21 42. An action is an abuse of discretion if the agency “entirely failed to consider an  
22 important aspect of the problem, offered an explanation for its decision that runs  
23 counter to the evidence before the agency, or is so implausible that it could not be  
24 ascribed to a difference in view or the product of agency expertise.” *Nat'l Ass'n of*  
25 *Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*  
26 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).  
27  
28

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1 43. To survive an APA challenge, the agency must articulate “a satisfactory  
2 explanation” for its action, “including a rational connection between the facts  
3 found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569  
4 (2019) (citation omitted).

5  
6 44. By categorically revoking Petitioner’s release without consideration of his  
7 individualized facts and circumstances, Respondents have violated the APA.

8 45. By detaining the Petitioner categorically, Respondents have further abused their  
9 discretion because there have been no changes to his facts or circumstances since  
10 the agency made its initial custody determinations that support the revocation of  
11 his release from custody.

12  
13 46. Respondents have already considered Petitioner’s facts and circumstances and  
14 determined that he was not a flight risk or danger to the community. There have  
15 been no changes to the facts that justify this revocation of his release on his own  
16 recognizance.

17  
18 47. The fact that Petitioner has already been granted release by Respondents under  
19 the same facts and circumstances shows that Respondents do not consider him, on  
20 an individualized basis, to be a danger to the community or a flight risk.

21  
22 **COUNT TWO**

23 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**  
24 **Not in Accordance with Law and in Excess of Statutory Authority**  
25 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1003.19(e)**

26 48. Petitioner restates and realleges all paragraphs as if fully set forth here.  
27  
28

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

6 50. Under INA § 236(a), 8 U.S.C. § 1226(a), the Attorney General is authorized to  
7 release a noncitizen from custody on bond or conditional parole pending removal  
8 proceedings. Once a bond determination has been made by an Immigration Judge  
9 pursuant to 8 C.F.R. § 1003.19(a), that determination constitutes an exercise of  
10 the Attorney General’s delegated adjudicatory authority through EOIR. Nothing  
11 in the statute or regulations authorizes DHS to unilaterally override, nullify, or  
12 disregard a bond determination issued by an Immigration Judge following a bond  
13 redetermination hearing. Accordingly, once EOIR has exercised its exclusive  
14 jurisdiction to set bond, DHS may only seek modification of that custody  
15 determination through the procedures set forth in 8 C.F.R. § 1003.19(e), rather  
16 than through administrative revocation by enforcement officers. It is a well-  
17 established administrative principle that “agency action taken without lawful  
18 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F.  
19 Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79  
20 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d  
21 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by  
22 unauthorized official).  
23  
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1 51. On information and belief, Respondents have revoked or are revoking Petitioner's  
2 prior custody determination as a result of a categorical policy prepared by and  
3 implemented by unidentified government officials in Washington, not through the  
4 individual exercise of discretion required by law or by the individuals enumerated  
5 by regulation to do so.  
6

7 52. Because Petitioner's revocation of release from custody has been made or will be  
8 categorically directed by government officials not authorized by law to make this  
9 determination, Respondents' detention of Petitioner is not in accordance with law  
10 and in excess of statutory authority.  
11

12  
13 **COUNT THREE**

14 **Violation of Fifth Amendment Right to Due Process**  
15 **Procedural Due Process**

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

17 54. The Due Process Clause of the Fifth Amendment to the U.S. Constitution  
18 prohibits the federal government from depriving any person of "life, liberty, or  
19 property, without due process of law." U.S. Const. Amend. V. Due process protects  
20 "all 'persons' within the United States, including [non-citizens], whether their  
21 presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S.  
22 at 693; accord *Flores*, 507 U.S. at 306. 62. Due process requires that government  
23 action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th  
24 Cir. 2007).  
25  
26  
27  
28

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

5  
6 56. Here, Respondents have chosen to revoke Petitioner’s release on bond in an  
7 arbitrary 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 due  
12 process.

13  
14  
15 **PRAYER FOR RELIEF**

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

- 17  
18 1. Assume jurisdiction over this matter;  
19 2. Issue an Order to Show Cause ordering Respondents to show cause why this  
20 Petition should not be granted within three days;  
21 3. Declare that Petitioner’s detention while released on bond without an  
22 individualized determination violates the Due Process Clause of the Fifth  
23 Amendment;  
24 4. Declare that Petitioner’s revocation of parole from custody was made in  
25 violation of statute and regulation;  
26 5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner  
27  
28

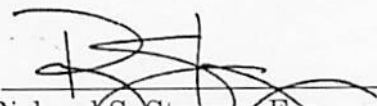
from custody;

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7. Grant any further relief this Court deems just and proper.

Date: 03/09/2026

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By:   
Richard S. Stenger, Esq.  
Attorney for Petitioner  
Evelio Javier Silvestre-Silvestre

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