

1 Mario Portugal, SBN 337525
2 Global Law Group San Diego, P.C
3 1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

4 Attorney for Petitioner Kevin Rodrigues Macedo

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

10
11 Kevin RODRIGUES MACEDO

CASE NO: '26CV2544 JO MSB

12 Petitioner,

13 FILE NO. 

14 vs.

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

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

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

25 Respondents-Defendants.
26
27

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

1 Petitioner Kevin Rodrigues Macedo (“hereinafter, MR. RODRIGUES
2 MACEDO) petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to
3 remedy Respondents’ detaining him unlawfully, and states as follows:

4 **INTRODUCTION**

5
6 1. Petitioner Kevin Rodrigues Macedo (“MR. RODRIGUES MACEDO”) is a
7 Brazilian asylum seeker detained at Otay Mesa Detention Center in San Diego,
8 California. He was persecuted in Brazil on account of his religion and political
9 opinion by police officers and members of a militant organization. The persecution he
10 suffered in Brazil included being detained and threatened by Brazilian authorities for
11 preaching about the Christian faith and for reporting the attacks from Petitioner’s
12 Hindu counterparts.

13 2. On or about 07/08/2023, MR. RODRIGUES MACEDO entered the
14 United States. He sought asylum.

15 3. Respondents commenced removal proceedings against him in
16 immigration court, entitling him to pursue his application for asylum and related
17 relief.

18 4. Since then, Petitioner has attended his immigration court hearings. On or
19 about 03/16/2026, he filed a Form I-589 Application for Asylum, Withholding of
20 Removal, and protection under the Convention Against Torture with the immigration
21 court.

22 5. Since approximately mid-May 2025, DHS has implemented a
23 coordinated practice of leveraging immigration detention to strip people like MR.
24 RODRIGUES MACEDO of their substantive and procedural rights and pressure
25 them into deportation.¹ Immigration detention is civil and thus is permissible for only

26
27 ¹ Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice->

1 two reasons: to ensure a noncitizen's appearance at immigration hearings and to
2 prevent danger to the community. But DHS did not arrest and detain MR.

3 RODRIGUES MACEDO, who demonstrably poses no risk of absconding from
4 immigration proceedings or danger to the community, for either
5 of these reasons.

6 6. In immigration court, noncitizens have the right to pursue claims for
7 relief from removal (including asylum), be represented by counsel, gather and present
8 evidence, and pursue appeals. 8 U.S.C. § 1229(a).

9 7. Respondents now seek to keep MR. RODRIGUES MACEDO detained
10 without a meaningful opportunity to seek a bond or custody redetermination hearing.
11 See 8 U.S.C. § 1225. Respondents do so based not on MR. RODRIGUES
12 MACEDO's personal circumstances or individualized facts. Due to his detention,
13 MR. RODRIGUES MACEDO is at risk of being transferred away from the Southern
14 District of California while he remains in the Respondents' physical and legal
15 custody.

16 8. But Respondents cannot evade due process requirements so easily. The
17 U.S. Constitution requires the Respondents to provide at least the rights available to
18 him when he filed his application for asylum.

19 9. The Constitution protects MR. RODRIGUES MACEDO, and every
20 other person present in this country, are guaranteed against arbitrary deprivations of
21 their liberty and guarantees due process of law. The government's power over
22 immigration is broad, but as the Supreme Court has declared, it "is subject to
23 important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
24 "Freedom from bodily restraint has always been at the core of the liberty protected by
25

26 [agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9](#) (last visited September 12, 2025) ("The exact number of arrests is unclear, but footage shows agents
27 detaining people immediately after court appearances.").

1 the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*,
2 504 U.S. 71, 80 (1992).

3 10. MR. RODRIGUES MACEDO seeks declaratory and injunctive relief to
4 compel his immediate release from the immigration jail where he has been held by
5 DHS since being unlawfully detained on or about 11/25/2025, without first being
6 provided a due process hearing to determine whether his incarceration is justified.

7 11. Absent review in this Court, no other neutral adjudicator will examine
8 MR. RODRIGUES MACEDO’s plight: Respondents will continue, unchecked, to
9 detain him unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due
10 process. MR. RODRIGUES MACEDO appeared before the Otay Mesa Immigration
11 Court within Otay Mesa Detention Center in San Diego, California.

12 12. For the reasons outlined below, MR. RODRIGUES MACEDO’s arrest
13 and inability to contest his arbitrary detention violate his statutory and constitutional
14 rights, including Due Process protections under the U.S. Constitution. MR.
15 RODRIGUES MACEDO respectfully requests that this Court should grant the instant
16 petition for a writ of habeas corpus, without any bond requirement, and for
17 declaratory and injunctive relief, to prevent such harms from recurring. MR.
18 RODRIGUES MACEDO also asks this Court to find that the Respondents’ attempts
19 to detain, transfer, and deport him are arbitrary and capricious and in violation of the
20 law, and to immediately issue an order preventing his transfer out of this district.

21 **JURISDICTION**

22 13. This action arises under the Constitution of the United States and the
23 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

24 14. This court has subject matter jurisdiction under 28 U.S.C. § 2241
25 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of
26 the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as
27 defendant), and 28 U.S.C. § 1651 (All Writs Act).

1 15. Federal district courts have jurisdiction to hear habeas claims brought by
2 noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538
3 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention
4 challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-L-H v.*
5 *Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same);
6 *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D.
7 Cal. Aug. 21, 2025) (same).

8 16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
9 2241, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs
10 Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

11 VENUE

12 17. Venue is proper because Petitioner is in Respondents' legal and physical
13 custody at Otay Mesa Detention Center in San Diego, California. Venue is further
14 proper because a substantial part of the events or omissions giving rise to Petitioner's
15 claims occurred in this District, where Petitioner is now in Respondents' legal and
16 physical custody, including his current and ongoing detention under the legal and
17 physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28
18 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition
19 must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't*
20 *of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal.
21 Feb. 5, 2019) (district of confinement is the preferable forum even if the Court
22 otherwise has personal jurisdiction). For these same reasons, venue should be found
23 proper under Local Civil Rule HC.1.

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

25 18. The Court must grant the petition for writ of habeas corpus or issue an
26 order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not
27 entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require

1 Respondents to file a return “within three days unless for good cause additional time,
2 not exceeding twenty days, is allowed.” *Id.*

3 19. Courts have long recognized the significance of the habeas statute in
4 protecting individuals from unlawful detention. The Great Writ has been referred to
5 as “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 or
7 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

8 20. MR. RODRIGUES MACEDO is “in custody” for the purpose of 28
9 U.S.C. § 2241 because he was arrested by Respondents and remains in their legal and
10 physical custody at Otay Mesa Detention Center in San Diego, California. He is
11 under the Respondents’ and their agents’ direct control.

12 **PARTIES**

13 21. MR. RODRIGUES MACEDO (“Petitioner”) is a 25-year-old citizen and
14 national of Brazil. He left Brazil in July 2023 and came to the USA on or about
15 August 7, 2023 to seek asylum, withholding of removal, or protection under the
16 Convention Against Torture after fleeing persecution in Brazil on account of his
17 political opinion by Brazilian government authorities. The persecution he suffered in
18 Brazil included being detained, assaulted, and receiving multiple death threats by
19 Brazilian authorities for refusing to participate in government corruption and for
20 possessing knowledge of unlawful activities by government officials. He has had no
21 departures since his arrival. He is not married. He has no children. He has no criminal
22 convictions. Since the arrest on or about 11/25/2025, MR. RODRIGUES MACEDO
23 has remained in Respondents’ custody.

24 22. MR. RODRIGUES MACEDO is currently residing in Respondents’
25 custody at Otay Mesa Detention Center in San Diego, California, as of the time of the
26 filing of this petition.

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

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

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

20 26. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
21 authority over the actions of all other DHS Respondents in this case, as well as all
22 operations and federal agencies of DHS, including ICE. In her capacity as Secretary
23 of DHS, Respondent Noem is charged with faithfully administering the immigration
24 and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Noem is
25 a custodian of MR. RODRIGUES MACEDO and is named in her official capacity.

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

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

6 29. This action is commenced against Respondents LaRose, Divver, Lyons,
7 and Noem (collectively, "Respondents"), all in their official capacities.

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 30. Petitioner has no administrative remedies to exhaust.

10 31. MR. RODRIGUES MACEDO was detained on or about November 25,
11 2025, and taken into Respondents' custody. Since that time, Respondents have
12 continued to detain him without providing a meaningful opportunity to challenge his
13 detention or seek release through a custody redetermination hearing.

14 32. Therefore, a writ of habeas corpus is the sole avenue to vindicate MR.
15 RODRIGUES MACEDO's constitutional, statutory, and regulatory rights and restore
16 his liberty.

17 **LEGAL FRAMEWORK**

18 33. The Refugee Act of 1980, the cornerstone of the U.S. asylum system,
19 provides a right to apply for asylum to individuals seeking safe haven in the United
20 States. The purpose of the Refugee Act is to enforce the "historic policy of the United
21 States to respond to the urgent needs of persons subject to persecution in their
22 homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

23 34. The "motivation for the enactment of the Refugee Act" was the United
24 Nations Protocol Relating to the Status of Refugees, "to which the United States had
25 been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987).
26 The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our
27

1 national commitment to human rights and humanitarian concerns.” *Duran v. INS*,
2 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

3 35. The Refugee Act established the right to apply for asylum in the United
4 States and defined the standards for granting asylum. It is codified in various sections
5 of the INA.

6 36. The INA gives the Attorney General or the Secretary of Homeland
7 Security discretion to grant asylum to noncitizens who satisfy the definition of
8 “refugee.” Under that definition, individuals generally are eligible for asylum if they
9 have experienced past persecution or have a well-founded fear of future persecution
10 on account of race, religion, nationality, membership in a particular social group, or
11 political opinions, and if they are unable or unwilling to return to and avail
12 themselves of the protection of their homeland because of that persecution or fear. 8
13 U.S.C. § 1101(a)(42)(A).

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

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

24 39. Noncitizens seeking asylum are guaranteed Due Process under the Fifth
25 Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

26 40. Noncitizens seeking asylum are entitled to due process protections in
27 connection with their removal proceedings, including a meaningful opportunity to be

1 heard and to seek review of adverse determinations. These protections do not permit
2 the government to detain individuals indefinitely without an individualized
3 determination justifying continued detention.

4 41. Asylum is not an admission to the United States, and an applicant for
5 asylum, while they must be physically present in the United States to apply, need not
6 apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147
7 (BIA 2013).

8 42. Moreover, following enactment of the IIRIRA, EOIR drafted regulations
9 explaining that, in general, non-citizens who entered the country without inspection
10 were not considered detained under 8 U.S.C. § 1225. *See* Inspection and Expedited
11 Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal
12 Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather,
13 such non-citizens were instead detained under § 1226(a). *See id.*

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

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

1 45. On information and belief, MR. RODRIGUES MACEDO alleges that
2 the Respondents detained him for the purpose of divesting him of his due process
3 rights in his properly filed asylum application.

4 46. On information and belief, Respondents did not afford Petitioner due
5 process before revoking his release from custody, depriving him of his liberty
6 interest, and placing him in detention within Respondents' legal and physical
7 custody.

8 47. On information and belief, Respondents are using the immigration
9 detention system, including extra-territorial transfer and detention, as a means to
10 punish individuals for asserting rights under the Refugee Act.

11 **FACTUAL BACKGROUND**

12 48. Petitioner is 25-year-old citizen and national of Brazil.

13 49. MR. RODRIGUES MACEDO was persecuted in Brazil on account of
14 his political opinion and his knowledge of corruption within the Brazilian
15 government.

16 50. While living in Brazil, Petitioner worked for a political organization and
17 witnessed corruption, including the laundering of public funds, bribery of police
18 officers, and abuse of governmental authority by government officials. After refusing
19 to participate in these unlawful activities, he became a target of threats, harassment,
20 and violence, including being assaulted and receiving multiple death threats.

21 51. Petitioner was falsely accused of crimes by the same individuals who
22 persecuted him in an effort to silence him and prevent him from exposing corruption.
23 As a result, he went into hiding and suffered severe anxiety and fear for his life. After
24 this, he fled Brazil on or about July 21, 2023, and traveled through Mexico before
25 entering the United States on or about August 7, 2023.

1 52. MR. RODRIGUES MACEDO attended one or more master calendar
2 hearings. On September 3, 2025, he filed an asylum application with the immigration
3 court.

4 53. The DHS started this removal proceeding on or about January 5, 2024.

5 54. Respondents alleged he was inadmissible to the United States.

6 55. On or about September 3, 2025, Petitioner filed his Form I-589 asylum
7 application. On or about April 8, 2026, Petitioner filed an Amended I-589 asylum
8 application.

9 56. On or about November 25, 2025, Petitioner was detained at the Otay
10 Mesa Detention Center. Thereafter, Petitioner sought a bond hearing before the
11 Immigration Court, which was scheduled for April 13, 2026. At or around that time,
12 the Immigration Judge determined that the Court lacked jurisdiction to conduct a
13 custody redetermination hearing, and Petitioner's request for bond was subsequently
14 withdrawn. As a result, Petitioner remains detained without any meaningful
15 opportunity to challenge his continued detention.

16 57. MR. RODRIGUES MACEDO remains in Respondents' legal and
17 physical custody at Otay Mesa Detention Center, in San Diego, California.

18 **CAUSES OF ACTION**

19 **COUNT ONE**

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

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

24 59. The Due Process Clause of the Fifth Amendment to the U.S.
25 Constitution prohibits the federal government from depriving any person of "life,
26 liberty, or property, without due process of law." U.S. Const. Amend. V. Due process
27 protects "all 'persons' within the United States, including [non-citizens], whether

1 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
2 U.S. at 693.

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

5 61. While asylum is a discretionary benefit, the right to apply is not. 8
6 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United States
7 or who arrives in the United States (whether or not at a designated port of arrival . . .),
8 irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

9 62. Because the denial of the right to apply for asylum can result in serious
10 harm or death, the statutory right to apply is robust and meaningful. It includes the
11 right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362,
12 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* §
13 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration
14 Appeals and to the federal circuit courts, *see id.* §§ 1229a(c)(5), 1252(b); and the
15 right to request reopening or reconsideration of a decision determining removability,
16 *see id.* § 1229a(c)(6)-(7).

17 63. In sum, applying for asylum in removal proceedings comes with a
18 panoply of greater protections when compared with seeking asylum in expedited
19 removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at
20 *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy far
21 more robust due process protections [than those in expedited removal] because
22 Congress has conferred additional statutory rights on them.”).

23 64. Moreover, MR. RODRIGUES MACEDO has a vital liberty interest in
24 remaining free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP,
25 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-
26 CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-
27 citizen that ICE released from custody after initial apprehension “has a substantial

1 private interest in remaining out of custody” which includes an interest in
2 “...obtaining necessary medical care, [and] maintaining her relationships in the
3 community...”). While on release from DHS custody, MR. RODRIGUES MACEDO
4 was building his emotional support system in Massachusetts, which helped him cope
5 with the emotional trauma he suffered in Brazil.

6 65. Even if the initial decision to release a non-citizen on from DHS custody
7 is discretionary, “...after that individual is released from custody, he has a protected
8 liberty interest in remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006
9 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v.*
10 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24,
11 2025)).

12 66. Here, the government has not identified any materially changed
13 circumstances that would warrant detaining MR. RODRIGUES MACEDO after he
14 submitted his Asylum Application (Form I-589), declaration, and corroborating
15 evidence to the immigration Court.

16 COUNT TWO

17 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in** 18 **Accordance with Law and in Excess of Statutory Authority Violation of 8** 19 **C.F.R. § 239.2(c)**

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

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

26 69. Once a removal proceeding has been initiated, regulations enumerate the
27 reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In

1 considering a motion to dismiss, the Immigration Judge must make “an informed
2 adjudication . . . based on an evaluation of the factors underlying the [DHS] motion.”
3 *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

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

10 71. Under the APA, an agency must provide “reasoned explanation for its
11 action” and “may not depart from a prior policy sub silentio or simply disregard rules
12 that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515
13 (2009). At the time of his detention, MR. RODRIGUES MACEDO had just entered
14 the United States. On information and belief, Respondents’ intent was to eliminate
15 the due process rights available to Petitioner in removal proceedings under section
16 240 of the INA, deprive him of his liberty interest despite no evidence of material
17 changed circumstances, or for some other purposes not supported by law. See *Pinchi*
18 *v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
19 2025) (“Detention for its own sake, to meet an administrative quota, or because the
20 government has not yet established constitutionally required pre-detention procedures
21 is not a legitimate government interest.”).

22 72. In deciding to detain MR. RODRIGUES MACEDO, Respondents
23 further violated the APA by “entirely fail[ing] to consider an important aspect of the
24 problem” – namely, the important procedural rights that Petitioner relied on in §
25 1229a immigration court proceedings. See *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.*
26 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see also *Dep't of Homeland*
27 *Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that

1 rescission of immigration policy without considering “particular reliance interests” is
2 arbitrary and capricious in violation of the APA).

3 73. The arbitrary and capricious detention of MR. RODRIGUES MACEDO
4 was not made in furtherance of an enumerated reason set forth in the regulations and
5 causes MR. RODRIGUES MACEDO irreparable harm. For these reasons, the Court
6 should find that the decision to detain MR. RODRIGUES MACEDO is arbitrary,
7 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

8 **COUNT THREE**

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

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

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

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

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

1 78. The INA provides that Respondents may release an individual from
2 apprehension or custody based on an individualized determination of their danger and
3 flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24
4 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the
5 custody determination may be made only when warranted by an individual's specific
6 facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

7 79. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9,
8 2025), the Court explained the process of discretionary release from custody in
9 immigration cases and noted that before revoking the release, the non-citizen must be
10 given written notice of the impending revocation, which must include a cogent
11 description of the reasons. Under the APA, non-citizens are entitled to determinations
12 related to their release revocations that are not arbitrary, capricious or an abuse of
13 discretion. *See id.* at *10.

14 80. By categorically revoking MR. RODRIGUES MACEDO's release from
15 DHS custody, and detaining him without notice or consideration of his individualized
16 facts and circumstances, Respondents have violated the INA, implementing
17 regulations, and the APA.

18 81. Respondents have made no finding that Petitioner is a danger to the
19 community.

20 82. Respondents have made no finding that Petitioner is a flight risk.

21 83. On information and belief, by detaining MR. RODRIGUES MACEDO
22 categorically and without notice, Respondents have further abused their discretion
23 because, since the agency made its initial custody determination, on information and
24 belief, there have been no changes to MR. RODRIGUES MACEDO's specific facts
25 or circumstances that support his detention or the revocation of his release from
26 custody on his own recognizance.

1 84. Respondents have already considered MR. RODRIGUES MACEDO's
2 facts and circumstances and determined that he was not a flight risk or danger to the
3 community. On information and belief, there have been no changes to the facts of
4 MR. RODRIGUES MACEDO's proceedings that justify this revocation of his release
5 from DHS custody.

6 **COUNT FOUR**

7 **Violation of the Fourth Amendment of the Constitution**

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

10 86. The Fourth Amendment protects "[t]he right of the people to be secure
11 in their persons . . . against unreasonable searches and seizures." U.S. Const. amend.
12 IV. The Supreme Court has recognized that immigration arrests and detentions are
13 "seizures" within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468
14 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but
15 the Fourth Amendment still applies to the "seizure" of the person).

16 87. The Fourth Amendment requires that arrests entail a neutral, judicial
17 determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).
18 That neutral, judicial determination can occur either before the arrest, in the form of a
19 warrant, or promptly afterward, in the form of a prompt judicial probable cause
20 determination. *See id.* Arrest and detention of a person, including of a noncitizen,
21 absent a neutral judicial determination of probable cause violates the Fourth
22 Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500
23 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention,
24 which includes weekends, unless there is a bona fide emergency or other
25 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57
26 (1991).

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

6 89. MR. RODRIGUES MACEDO, at the moment of his arrest and detention
7 by Respondents, did not receive any judicial determination of probable cause for his
8 arrest or continued detention by Respondents.

9 90. The Government cannot salvage this seizure by invoking generalized
10 immigration enforcement interests. The Fourth Amendment’s reasonableness inquiry
11 is fact-specific and demands individualized justification for both the arrest and the
12 extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84
13 (1975); *Gerstein*, 420 U.S. at 114. MR. RODRIGUES MACEDO did not pose any
14 danger to any person in the community at large.

15 91. Respondents’ warrantless arrest of MR. RODRIGUES MACEDO
16 constitutes an unreasonable and unlawful seizure in violation of the Fourth
17 Amendment.

18 **COUNT FIVE**

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

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

23 93. The government may not deprive a person of life, liberty, or property
24 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—
25 from government custody, detention, or other forms of physical restraint—lies at the
26 heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690
27 (2001).

1 94. MR. RODRIGUES MACEDO has a fundamental interest in liberty and
2 being free from official restraint.

3 95. The government's detention of Petitioner without a notice or an
4 opportunity to be heard before detention violates his right to due process.

5 96. The government's detention of Petitioner without a meaningful bond and
6 custody redetermination hearing to determine whether he is a flight risk or danger to
7 others violates his right to due process.

8 **PRAYER FOR RELIEF**

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

- 10 (1) Assume jurisdiction over this matter;
- 11 (2) Issue an Order to Show Cause ordering Respondents to show cause why
12 this Petition should not be granted within three days;
- 13 (3) Declare that Petitioner's detention without an individualized
14 determination violates the Due Process Clause of the Fifth Amendment;
- 15 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
16 redetermination hearing violates the INA, APA, and Due Process;
- 17 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
18 Petitioner from custody;
- 19 (6) Issue an Order prohibiting the Respondents from transferring Petitioner
20 from this district without the Court's approval;
- 21 (7) Issue an Order requiring Respondents to provide a bond and custody
22 redetermination hearing within 14 days to meaningfully consider his eligibility
23 for release from DHS custody;
- 24 (8) Grant such further relief as the Court deems just, equitable, and
25 appropriate; and
- 26 (9) Grant any and all other further relief this Court deems just or proper.
- 27

1 Dated: April 22, 2026,

Respectfully submitted,

2
3 /s/ Mario Portugal
4 Mario Portugal
5 Attorney for Petitioner
6 Kevin Rodrigues Macedo
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