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

9 **BAHRI TEKLEMARIAM SEMERE,**
10 **Plaintiff,**

11 vs.

12 **JEREMY CASEY, Warden of Imperial**
13 **Regional Detention Center;**
14 **PATRICK DIVVER, San Diego Field**
15 **Office Director, Immigration and**
16 **Customs Enforcement and Removal**
17 **Operations (“ICE/ERO”);**
18 **TODD LYONS, Acting Director of**
19 **Immigration Customs Enforcement**
20 **(“ICE”);**
21 **MARKWAYNE MULLIN, Secretary of**
22 **the Department of Homeland Security**
23 **(“DHS”);**
24 **ACTING Attorney General of the United**
25 **States,**
26 **U.S. DEPARTMENT OF HOMELAND**
27 **SECURITY;**
28 **U.S. IMMIGRATION AND CUSTOMS**
ENFORCEMENT;
Respondents.


Case No.: '26CV3073 LEK DDL

Agency Number: 

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE**

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INTRODUCTION

1. Bahri Teklemariam SEMERE,  is a citizen of Eritrea. Eritrea is a brutal regime with a very severe conscription policy. Citizens can spend years trapped in forced military service. Any attempt to leave is met with severe reprisals from the government. Mr. Semere fled Eritrea to escape its repressive regime. After years of travel through Africa, South America and Central America, he finally made his way to the southern border of the United States. On February 18, 2023 he entered the United States.

2. Mr. Semere was initially detained for several weeks at the border. During that time he made it known that he was afraid to return to his home country and was seeking asylum in the United States. Respondents vetted Mr. Semere at that time and determined that he was neither a flight risk nor a danger to the community. Accordingly, he was granted conditional parole and released into the United States on his own recognizance.

3. Mr. Semere began his life in the United States after he was released. He filed for asylum. He received work authorization. He found a place to live and integrated himself into the local community at Ft. Washington, Maryland. In the more than three years he has lived here he has established himself financially as well.

1 4. In April, 2025, Mr. Semere was contacted by ICE and told to attend
2 a check-in. When he arrived, he was informed that he was going to have to wear an
3 electronic monitor. Previously he had been doing check-ins with a phone app and
4 in-person check-ins. On October 30, 2025, Mr. Semere was called in for yet
5 another ICE check-in. When he arrived, to his complete surprise and dismay, he
6 was placed under arrest and told he was being detained. The officers did not
7 provide any documents regarding his arrest. They did not make a determination
8 that he was suddenly a flight risk or a danger to the community. He was simply put
9 in hand cuffs and then put in detention.
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11 5. He was then booked and kept at the Baltimore detention facility for
12 several days and was then transported to the Broward Detention facility in Florida.
13 Suddenly, last Saturday, May 9, 2026, he was flown from Florida to California and
14 was placed in the Imperial Detention Center. He was not told why he was arrested.
15 He was not told what law he had violated. With no cause and no explanation and
16 no warrant he was put into detention.
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18 6. One of the benefits that petitioner enjoyed with his release on
19 parole has been his ability to work and to more actively participate in his asylum
20 application process. Suddenly, with no notice, no neutral determination that there
21 has been a change in circumstances, Respondents seek to revoke Mr. Semere's
22 bond and force him to remain in custody for the duration of his application process.
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1 This also cancels his work authorization. Respondents do all of this based not on
2 Mr. Semere's personal circumstances but because of Respondents' interpretation
3 of President Trump's whim and categorical determination that, the Fifth
4 Amendment notwithstanding, noncitizens are not entitled to due process.
5

6
7 7. But Respondents cannot evade the law so easily. The U.S.
8 Constitution requires the Respondents provide at least the rights available to him
9 when he was granted bond and when he filed his application for asylum¹.
10

11 8. Accordingly, to vindicate Petitioner's rights, this Court should grant
12 the instant petition for a writ of habeas corpus. Mr. Semere asks this Court to find
13 that Respondents' attempt to detain him are arbitrary and capricious and in
14 violation of the law, and to immediately issue an order preventing his transfer out
15 of this district.
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18 **JURISDICTION**

19 9. This action arises under the Constitution of the United States and
20 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
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26 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
27 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
28 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 3 million trials.").

1 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
2 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
3 United States Constitution (Suspension Clause).
4

5 11. This Court may grant relief under the habeas corpus statutes, 28
6 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
7 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
8 U.S.C. § 1252(e)(2).
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11 VENUE

12 12. Venue is proper because Petitioner is in Respondents' custody in
13 Imperial, California. Venue is further proper because a substantial part of the
14 events or omissions giving rise to Petitioner's claims occurred in this District,
15 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
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18 13. For these same reasons, divisional venue is proper under Local
19 Rule HC.1
20

21 REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

22 14. The Court must grant the petition for writ of habeas corpus or
23 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
24 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
25 must require Respondents to file a return "within three days unless for good cause
26 additional time, not exceeding twenty days, is allowed." *Id.*
27
28

1 Otay Mesa Detention Center. Respondent Daniel A. Brightman is a legal custodian
2 of Petitioner.
3

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

9 21. Respondent Markwayne Mullin is the Secretary of the Department
10 of Homeland Security (DHS) and has authority over the actions of all other DHS
11 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
12 legal custodian of Petitioner and is charged with faithfully administering the
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14 immigration laws of the United States.
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16 22. Respondent Acting Attorney General of the United States has
17 authority over the Department of Justice and is charged with faithfully
18
19 administering the immigration laws of the United States.
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21 23. Respondent U.S. Immigration Customs Enforcement is the federal
22 agency responsible for custody decisions relating to non-citizens charged with
23
24 being removable from the United States, including the arrest, detention, and
25 custody status of non-citizens.

26 24. Respondent U.S. Department of Homeland Security is the federal
27 agency that has authority over the actions of ICE and all other DHS Respondents.
28

1 “refugee.” Under that definition, individuals generally are eligible for asylum if
2 they have experienced past persecution or have a well-founded fear of future
3 persecution on account of race, religion, nationality, membership in a particular
4 social group, or political opinion and if they are unable or unwilling to return to
5 and avail themselves of the protection of their homeland because of that
6 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
7

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9 30. Although a grant of asylum may be discretionary, the right to
10 apply for asylum is not. The Refugee Act broadly affords a right to apply for
11 asylum to any noncitizen “who is physically present in the United States or who
12 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
13
14

15 31. Because of the life-or-death stakes, the statutory right to apply for
16 asylum is robust. The right necessarily includes the right to counsel, at no expense
17 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
18 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
19 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
20 to present evidence to establish eligibility.).
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23 32. Noncitizens seeking asylum are guaranteed Due Process under the
24 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
25 (1993).
26
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1 33. Noncitizens who are applicants for asylum are entitled to a full
2 hearing in immigration court before they can be removed from the United States. 8
3 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
4 appellate review before the Board of Immigration Appeals of removal orders
5 entered against them and judicial review in federal court upon a petition for
6 review. 8 U.S.C. § 1252(a) *et seq.*
7
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9 34. Immigration detention is a form of civil confinement that
10 “constitutes a significant deprivation of liberty that requires due process
11 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
12
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14 35. Immigration detention should not be used as a punishment and
15 should only be used when, under an individualized determination, a noncitizen is a
16 flight risk because they are unlikely to appear for immigration court or a danger to
17 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
18

19 36. Granting parole confers its own Due Process rights. Parole may
20 only be revoked after notice and an individualized determination that the
21 noncitizen has become a flight risk or a danger to the community. Revocation is
22 only automatic under certain conditions, such as failure to appear for a hearing.
23 This did not happen in this case. Mr. Semere did not violate the terms of his bond
24 and Respondents had no cause to return him to detention.
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28 **FACTUAL BACKGROUND**

1 37. Petitioner is a citizen of Eritrea.

2 38. Petitioner feared persecution in Eritrea. His life is at risk for
3
4 having escaped the country and he fled the repressive government there. He
5 eventually made his way to the southern border and entered the United States on
6 February 18, 2023.
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8 39. Petitioner was initially detained at the border for several weeks. It
9 was determined at that time that he had a fear of return to his country of origin. He
10 was vetted by Respondents and it was determined that he was not a flight risk or a
11 danger to the community. Respondents decided to release him on conditional
12 parole through release on his own recognizance.
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15 40. He was issued an NTA but it is not clear if it was ever recorded.

16 41. He has attended all scheduled check-ins, interviews and
17
18 appointments.

19 42. On information and belief, Petitioner continues to meet all the
20 requirements of his bond.
21

22 43. Petitioner applied for asylum within one year of his entry into the
23 United States.
24

25 44. Respondents issued work authorization to Petitioner pursuant to 8
26 C.F.R. § 274a.12(c)(08).
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28

1 45. In April, 2025, Mr. Semere was contacted by ICE and told to
2 attend a check-in. When he arrived, he was informed that he was going to have to
3 wear an electronic monitor. Previously he had been doing check-ins with a phone
4 app and in-person check-ins. On October 30, 2025, Mr. Semere was called in for
5 yet another ICE check-in. When he arrived, to his complete surprise and dismay,
6 he was placed under arrest and told he was being detained. The officers did not
7 provide any documents regarding his arrest. They did not make a determination
8 that he was suddenly a flight risk or a danger to the community. He was simply put
9 in hand cuffs and then put in detention.
10

11 46. He was then booked and kept at the Baltimore detention facility
12 for several days and was then transported to the Broward Detention facility in
13 Florida. Suddenly, last Saturday, May 9, 2026, he was flown from Florida to
14 California and was placed in the Imperial Detention Center. He was not told why
15 he was arrested. He was not told what law he had violated. With no cause and no
16 explanation and no warrant he was put into detention.
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18 47. Mr. Semere was never presented with a warrant for his arrest. The
19 ICE agents did not provide him any process. The ICE agents did not offer him any
20 opportunity to be heard prior to arresting and detaining him.
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22 48. On January 20, 2025, President Donald Trump issued several
23 executive actions relating to immigration, including “Protecting the American
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1 People Against Invasion,” an executive order (EO) setting out a series of interior
2 immigration enforcement actions. The Trump administration, through this and
3 other actions, has outlined sweeping, executive branch-led changes to immigration
4 enforcement policy, establishing a formal framework for mass deportation. The
5 “Protecting the American People Against Invasion” EO instructs the DHS
6 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
7 prioritize civil immigration enforcement procedures including through the use of
8 mass detention.
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12 49. On information and belief, Respondents are detaining Petitioner
13 regardless of the individual facts and circumstances of his case.
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15 50. On information and belief, Respondents are using the immigration
16 detention system as a means to punish individuals for asserting rights under the
17 Refugee Act.
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19 51. On information and belief, Petitioner has no criminal history.
20

21 **CLAIMS FOR RELIEF**

22 **COUNT ONE**

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 **Unlawful Detention**
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1 52. Petitioner restates and realleges all previous paragraphs as if fully
2 set forth here.

3
4 53. Under the APA, a court shall “hold unlawful and set aside agency
5 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

6
7 54. An action is an abuse of discretion if the agency “entirely failed to
8 consider an important aspect of the problem, offered an explanation for its decision
9 that runs counter to the evidence before the agency, or is so implausible that it
10 could not be ascribed to a difference in view or the product of agency expertise.”

11
12 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
13
14 (*quoting Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
15 463 U.S. 29, 43 (1983)).

16
17 55. To survive an APA challenge, the agency must articulate “a
18 satisfactory explanation” for its action, “including a rational connection between
19 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
20 2569 (2019) (citation omitted).

21
22 56. By categorically revoking Petitioner’s bond and transferring him
23 to a Detention Center without consideration of his individualized facts and
24 circumstances, Respondents have violated the APA.

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26 57. Respondents have made no finding that Petitioner is a danger to
27 the community.
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1 58. Respondents have made no finding that Petitioner is a flight risk.

2 59. By detaining the Petitioner categorically, Respondents have
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4 further abused their discretion because there have been no changes to his facts or
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6 circumstances since the agency made its initial determination to grant him a bond
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8 that support detention.

9 60. Respondents have already considered Petitioner's facts and
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11 circumstances and determined that he was not a flight risk or danger to the
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13 community when they granted him conditional parole. There have been no changes
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15 to the facts that justify this revocation of his liberty.

16 **COUNT TWO**

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

18 **Procedural Due Process**

19 61. Petitioner restates and realleges all paragraphs as if fully set forth
20
21 here.

22 62. The Due Process Clause of the Fifth Amendment to the U.S.
23
24 Constitution prohibits the federal government from depriving any person of "life,
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26 liberty, or property, without due process of law." U.S. Const. Amend. V. Due
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28 process protects "all 'persons' within the United States, including [non-citizens],
whether their presence here is lawful, unlawful, temporary, or permanent."
Zadvydas, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

1 flight risk or a danger to the community. He was simply swept up in this
2 administrations scheme to lock up all immigrants without green cards.
3

4 67. Ordering a bond hearing because he is no longer deemed subject to
5 mandatory detention rewards the government's unlawful behavior. First, it
6 legitimizes his detention. Second, it allows the government to detain without a
7 prior determination of a change in individual circumstances regarding flight risk
8 and danger. Third, it requires the petitioner to prove that he is not a flight risk or a
9 danger to the community, something the government already determined when
10 they released him. Fourth, it requires the petitioner to pay a fee to the parties that
11 unlawfully detained him in order to be released from his unlawful detention.
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15 68. Upon release from Otay Mesa it is the custom of ICE to immediately
16 place detainees in Alternative to Detention Programs and affix an ankle monitor to
17 them. As the name of the program indicates, this is just another form of detention
18 that is made without any determination that there has been a change in
19 circumstances such that Mr. Isaev's movements must now be restricted to a 75-
20 mile radius and monitored with an ankle monitor. Mr. Isaev should be returned to
21 his predetention status. This should also include the return to him of any and all
22 documents and/or identification cards and work authorization cards in his
23 possession when he was detained. Courts examining the issue have found that use
24 of a GPS ankle monitor constitutes custody for the purposes of habeas corpus and
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1 due process. *N- N- v. McShane*, No. CV 25-5494, 2025 WL 3143594, at *3 (E.D.
2 Pa. Nov. 10, 2025) (finding the assertion that use of an ankle monitor did not
3 constitute custody “not [] persuasive in the slightest”); *Orellana Juarez v. Moniz*,
4 788 F. Supp. 3d 61, 68 (D. Mass. 2025) (finding habeas petitioner subject to 24/7
5 GPS device on his ankle “remains in custody in violation of the Due Process
6 Clause of the Fifth Amendment”); *Campbell v. Almodovar*, No. 1:25-CV-09509
7 (JLR), 2025 WL 3626099, at *1 (S.D.N.Y. Dec. 15, 2025) (“any form of re-
8 detention — including electronic monitoring and mandatory reporting — violates
9 Petitioner’s due process rights”). Many courts in this jurisdiction have also
10 prohibited use of an ankle monitor after release. ICE’s use of a GPS monitor and
11 other measures instead of a ball and chain makes no difference.

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16 69. Upon release ICE also refuses to return all the documents that were
17 confiscated upon detention. In particular they do not return government ID’s and
18 work authorization cards. This also creates a huge burden on the detainee and is
19 another form of extended detention. It prevents the petitioner from being able to
20 travel and to work. Trying to get a copy of the work authorization card is costly
21 and time consuming. It serves no purpose for Respondents to retain those
22 documents. Petitioner requests this court also order the return of all his documents
23 taken upon his detention. *Boumediene et al. v. Bush* 553 U. S. 723, 729 (2008)
24 (...the habeas court must have the power to order the conditional release of an
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1 individual unlawfully detained. But more may be required depending on the
2 circumstances.)
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4
5 WHEREFORE, Petitioner respectfully requests this Court to grant the
6 following:
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8 (1) Assume jurisdiction over this matter;

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

12 (3) Declare that Petitioner's detention without a prior individualized
13 determination violates the Due Process Clause of the Fifth Amendment and the
14 Administrative Procedures Act;
15

16 (4) Issue a Writ of Habeas Corpus ordering Respondents to release
17 Petitioner from custody;
18

19 (5) Issue an Order prohibiting the Respondents from transferring
20 Petitioner from the district without the court's approval;
21

22 (6) Issue an Order prohibiting the Respondents from enrolling the
23 Petitioner in any Alternative to Detention program, specifically barring them from
24 requiring an ankle monitor and returning all documents confiscated at his
25 detention;
26

27 ///
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1 (7) Grant any further relief this Court deems just and proper.

2 Dated: May 16, 2026

3 /s/ Brian J. McGoldrick
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