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

10 ANIBAL ROMERO CHAVEZ,
11
12 Petitioners,

13 vs.

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

Respondents.

Case No.: '26CV3365 RSH DDL

Agency Number: 

PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

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3 1. Anibal ROMERO CHAVEZ (“Mr. Romero Chavez” or
4 “Petitioner”) is a 22-year-old man from Guatemala. He suffered abuse, neglect and
5 abandonment as a minor in Guatemala. As a minor he traveled through central
6 America and made his way to the southern border.
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8 2. He entered the United States on March 17, 2021 as a minor. He was
9 immediately apprehended and processed. He was held by Respondents for
10 approximately 2 months. Once it was determined he was not a flight risk or a
11 danger to the community, he was released to his older brother’s care on May 7,
12 2021. See Exhibit A. Later that year, when he reached the age of majority,
13 Respondents chose not to redetain Petitioner and thereby granted conditional
14 parole in the United States by release on his own recognizance. Respondents
15 commenced removal proceedings against him by issuing an NTA on March 22,
16 2021, but this was never recorded or prosecuted. He filed for SIJS which was
17 ultimately granted. Mr. Romero Chavez was granted work authorization. In May of
18 this year he filed and I-485 requesting a green card, for which he is eligible. For
19 more than 5 years Mr. Romero Chavez developed ties to the community, had
20 steady work, and patiently waited for his opportunity to adjust his status.
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26 3. On April 28, 2026, Mr. Romero Chavez was working on a job site
27 near Juno, Florida, that was subject to an ICE raid. He was asked if he had a green
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1 card and he said no. He was told that he must be taken into custody. Mr. Romero
2 Chavez was handcuffed. He was then transported to a processing center and
3 ultimately incarcerated at Detention Center in Florida. Subsequently he was
4 transferred across the country to the Otay Mesa Detention Center where he remains
5 today. Respondents did not conduct a pre-detention hearing. Respondents did not
6 make an individualized determination that the petitioner was a flight risk or a
7 danger to the community. Respondents continue to detain him based not on his
8 personal circumstances or individualized facts, but because of Respondents'
9 interpretation of President Trump's whim and categorical determination that, the
10 Fifth Amendment notwithstanding, noncitizens are not entitled to due process.
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15 4. But Respondents cannot evade the law so easily. The law which
16 they purport to detain the petitioners does not authorize their actions and the U.S.
17 Constitution requires the Respondents provide at least the rights available to him
18 when he was paroled into the United States and he qualified for SIJS¹.
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21 5. Accordingly, to vindicate Petitioner's rights, this Court should grant
22 the instant petition for a writ of habeas corpus. The petitioner asks this Court to
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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 2 million trials.").

1 find that Respondents' attempts to detain him are arbitrary and capricious and in
2 violation of the law, and to immediately issue an order preventing his transfer out
3 of this district.
4

5 JURISDICTION

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

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

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14 8. This Court may grant relief under the habeas corpus statutes, 28
15 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
16 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
17 U.S.C. § 1252(e)(2).
18

19 VENUE

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21 9. Venue is proper because Petitioner is in Respondents' custody in
22 San Diego County, California. Venue is further proper because a substantial part
23 of the events or omissions giving rise to Petitioner's claims occurred in this
24 District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
25

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

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

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

12. Petitioner is “in custody” for the purpose of § 2241 because he was arrested and detained by Respondents.

PARTIES

13. Anibal Romero Chavez is a 22-year-old citizen of Guatemala. He is currently detained at Otay Mesa Detention Center and is present within the state of California as of the time of the filing of this petition.

14. Respondent Christopher LaRose is the warden of the Otay Mesa Detention Center and is the legal custodian of Petitioner.

15. Respondent, Patrick Divver, is the San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations. The

1 San Diego Field Office is responsible for local custody decisions relating to non-
2 citizens charged with being removable from the United States, including the arrest,
3 detention, and custody status of non- citizens. The San Diego Field Office area of
4 responsibility includes the Otay Mesa Detention Center. Respondent Patrick
5 Divver is a legal custodian of Petitioners.
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8 16. Respondent Todd Lyons is the acting director of U.S. Immigration
9 and Customs Enforcement, and he has authority over the actions of respondent
10 Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of
11 Petitioner.
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13 17. Respondent Markwayne Mullin is the Secretary of the Department
14 of Homeland Security (DHS) and has authority over the actions of all other DHS
15 Respondents in this case, as well as all operations of DHS. Respondent Mullin is a
16 legal custodian of Petitioner and is charged with faithfully administering the
17 immigration laws of the United States.
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20 18. Respondent Acting Attorney General of the United States has
21 authority over the Department of Justice and is charged with faithfully
22 administering the immigration laws of the United States.
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25 19. Respondent U.S. Immigration Customs Enforcement is the federal
26 agency responsible for custody decisions relating to non-citizens charged with
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1 being removable from the United States, including the arrest, detention, and
2 custody status of non-citizens.
3

4 20. Respondent U.S. Department of Homeland Security is the federal
5 agency that has authority over the actions of ICE and all other DHS Respondents.
6

7 21. This action is commenced against all Respondents in their official
8 capacities.
9

10 11 **LEGAL FRAMEWORK**

12 22. The INA prescribes three basic forms of detention for the vast
13 majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §
14 1229a or they can be released on Parole.
15

16 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in §
17 1229a removal proceedings before an IJ. Individuals covered by § 1226(a)
18 detention are generally entitled to a bond hearing at the outset of their detention,
19 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been
20 arrested, charged with, or convicted of certain crimes are subject to mandatory
21 detention. See 8 USC§ 1226(a).
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25 24. Second, the INA provides for mandatory detention of noncitizens
26 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
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1 and for other noncitizen applicants for admission to the U.S. who are deemed not
2 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).
3

4 25. Last, the INA provides for detention of noncitizens who have been
5 ordered removed, including individuals in withholding-only proceedings. See 8
6 USC § 1231. (a)— (b).
7

8 26. Alternatively, noncitizens can be granted parole rather than be
9 detained. 8 U.S.C. § 1226(a)(2)(B). The regulations for granting parole and
10 revocation of parole are found at 8 CFR § 212.5,
11

12 27. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a)
13 and 1225(b)(2) and the revocation of parole.
14

15 28. The detention provisions at § 1226(a) and § 1225(b)(2) were
16 enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
17 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302—03, 110 Stat,
18 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently
19 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
20
21 (2025).
22

23 29. Following the enactment of the IIRIRA, EOIR drafted new
24 regulations applicable to proceedings before immigration judges explaining that, in
25 general people who entered the country without inspection — also referred to as
26 being “present without admission” - were not considered detained under § 1225
27
28

1 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
2 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
3 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar_6, 1997).
4

5 30. Thus, in the decades that followed, most people who entered
6 without inspection and were placed in standard § 1229a removal proceedings
7 received bond hearings before IJs, unless their criminal history rendered them
8 ineligible. That practice was consistent with many more decades of prior practice,
9 in which noncitizens who were not deemed “arriving” were entitled to a custody
10 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see*
11 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
12 “restates” the detention authority previously found at § 1252(a)).
13
14

15 31. This practice both pre- and post-enactment of IIRIRA is consistent
16 with the fact that noncitizens present within the United States — as opposed to
17 noncitizens present at a border and seeking admission - have constitutional rights.
18 “{T}he Due Process Clause applies to all ‘persons’ within the United States,
19 including aliens, whether their presence here is lawful, unlawful, temporary, or
20 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
21
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25 32. On July 8, 2025, ICE, “in coordination with” the Department of
26 Justice, announced a new policy that rejected the well-established understanding of
27 the statutory framework and reversed decades of practice.
28

1 33. The new policy, entitled “Interim Guidance Regarding Detention
2 Authority for Applicants for Admission, claims that all noncitizens present within
3 the United States who entered without inspection shall now be deemed “applicants
4 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
5 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
6 apprehended, and affects those who have resided in the United States for months,
7 years, and even decades.
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11 34. In a May 22, 2025 unpublished decision by the Board of
12 Immigration Appeals (BIA), EOIR adopted this same position. That decision holds
13 that all noncitizens who entered the United States without admission or parole and
14 who are present within the United States are considered applicants for admission
15 and ineligible for IJ bond hearings. That was further affirmed by the BIA in *Yajure*
16 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). There the BIA held that Immigration
17 Judges do not have jurisdiction in these cases. This makes it impossible for
18 noncitizens who have entered at a port of entry or entered without inspection to
19 apply for a bond and are all subject to mandatory detention.
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23 35. ICE and EOIR have adopted this position even though federal
24 courts have rejected this exact conclusion. For example, after an IJ in the Tacoma,
25 Washington immigration court stopped providing bond hearings for persons who
26 entered the United States without inspection and who have since resided here, the
27
28

1 U.S. District Court for the Western District of Washington found that such a
2 reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
3 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez*
4 *Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL_1193850 (W.D. Wash. Apr_24,
5 2025); see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 1208256 9WL 299, at
6 *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).
7
8 Courts in the Central District have reached the same conclusion. See *Maldonado*
9 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July
10 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (TRO issued
11 after DHS adopted “Interim Guidance Regarding Detention Authority for
12 Applicants for Admission.”); *Ceja Gonzalez, et al. v. Noem, et al.*, No. 5:25-cv-
13 02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting Ex Parte
14 Application for TRO and OSC, Dkt,1 2 (Same).

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19 36. DHS’s and EOIR’s interpretation defy the INA. As the *Rodriguez*
20 *Vazquez* court explained, the plain text of the statutory provisions demonstrates
21 that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a)
22 applies by default to all persons “pending a decision on whether the [noncitizen] is
23 to be removed from the United States.” *Rodriguez Vazquez*, 2025 WL.1193850 at
24 *12. See also *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July
25 28, 2025) Order Granting Temporary Restraining Order, Dkt14 .at 9 (“[T]he Court

1 finds that the potential for Petitioners’ continued detention without an initial bond
2 hearing would cause immediate and irreparable injury, as this violates statutory
3 rights afforded under § 1226(a).”); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM
4 (C.D. Cal. August 13, 2025), Order Granting Ex Parte Application for TRO and
5 OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.)
6
7

8 37. Other portions of the text of § 1226 also explicitly apply to people
9 charged as being inadmissible, including those who entered without inspection.
10 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible
11 individuals makes clear that, by default, inadmissible individuals not subject to
12 subparagraph (E)(11) are afforded a bond hearing under subsection (a). As the
13 Rodriguez Vazquez court explained, “[w]hen Congress creates “specific
14 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the
15 statute generally applies. *Rodriguez Vazquez*, W20L25 1193850, at *12 (citing
16 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
17 (2010)).
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22 38. Section 1226 therefore leaves no doubt that it applies to
23 noncitizens who are present without admission and who face charges in removal
24 proceedings of being inadmissible to the United States.
25

26 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of
27 entry or who recently entered the United States and are encountered at or near the
28

1 border. The statute's entire framework is premised on inspections at the border of
2 people who are "seeking admission" to the United States. 8 U.S.C. §
3 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
4 detention scheme applies "at the Nation's borders and ports of entry, where the
5 Government must determine whether a[] [noncitizen] seeking to enter the country
6 is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
7

8
9 40. Accordingly, the mandatory detention provision of § 1225(b)(2)
10 does not apply to people like Petitioner who have already entered, were released
11 and were residing in the United States at the time they were apprehended.
12

13
14 41. 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 42. Once a determination has been made that a noncitizen should not
20 be detained, they may be released on conditional parole or humanitarian parole.
21 The regulations for revocation of that parole are set out in 8 CFR § 212.5(e).
22 Specifically, this revocation must be
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24

25 ***On notice.*** In cases not covered by paragraph (e)(1) of this section,
26 upon accomplishment of the purpose for which parole was authorized or when in
27 the opinion of one of the officials listed in paragraph (a) of this section, neither
28 humanitarian reasons nor public benefit warrants the continued presence of the
alien in the United States, parole shall be terminated upon written notice to the

1 alien and he or she shall be restored to the status that he or she had at the time of
2 parole. 8 CFR § 212.5(e)(2)(i)

3 **FACTUAL BACKGROUND**

4 43. Petitioner is a citizen of Guatemala. Petitioner was subject to
5 abuse, neglect and abandonment. He made his way to Mexico as a minor and
6 finally to the border with the United States.
7

8 44. He entered the United States on March 17, 2021 as a minor. He
9 was immediately apprehended and processed. He was held by Respondents for
10 approximately 2 months. Once it was determined he was not a flight risk or a
11 danger to the community, he was released to his older brother's care on May 7,
12 2021. See Exhibit A. Later that year, when he reached the age of majority,
13 Respondents chose not to redetain Petitioner and thereby granted conditional
14 parole in the United States by release on his own recognizance. Respondents
15 commenced removal proceedings against him by issuing an NTA on March 22,
16 2021, but this was never recorded or prosecuted. He filed for SIJS which was
17 ultimately granted. Mr. Romero Chavez was granted work authorization. In May of
18 this year he filed and I-485 requesting a green card, for which he is eligible. For
19 more than 5 years Mr. Romero Chavez developed ties to the community, had
20 steady work, and patiently waited for his opportunity to adjust his status.
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1 45. On or about March 22, 2021, Respondents commenced removal
2 proceedings against Petitioner under 8 U.S.C. § 1229a. These proceedings were
3 never prosecuted.
4

5 46. Petitioner filed his SIJS application which was approved.
6

7 47. On information and belief, Petitioner regularly complied with and
8 appeared for ICE check-ins whether in person or electronic check-in.
9

10 48. Respondents issued work authorization to petitioner as well.
11

12 49. On April 28, 2026, Mr. Romero Chavez was working on a job site
13 near Juno, Florida, that was subject to an ICE raid. He was asked if he had a green
14 card and he said no. He was told that he must be taken into custody. Mr. Romero
15 Chavez was handcuffed. He was then transported to a processing center and
16 ultimately incarcerated at Detention Center in Florida. Subsequently he was
17 transferred across the country to the Otay Mesa Detention Center where he remains
18 today.
19

20 50. He was not presented with a judicial warrant when he was
21 detained. He was not trying to flee or to cause harm when he was detained. He was
22 not charged with any crime that might lead the officers to have probable cause to
23 detain him. He was not given notice that his parole was being revoked. He was not
24 given a pre-detention hearing to determine if the facts of his release had changed
25 such that he was now a flight risk or that he was a danger to the community. He
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1 was deprived of his liberty for no other reason than that the President of the United
2 States had decided that he and millions of others like him should no longer be free.
3

4 51. On January 20, 2025, President Donald Trump issued several
5 executive actions relating to immigration, including “Protecting the American
6 People Against Invasion,” an executive order (EO) setting out a series of interior
7 immigration enforcement actions. The Trump administration, through this and
8 other actions, has outlined sweeping, executive branch-led changes to immigration
9 enforcement policy, establishing a formal framework for mass deportation. The
10 “Protecting the American People Against Invasion” EO instructs the DHS
11 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
12 prioritize civil immigration enforcement procedures including through the use of
13 mass detention.
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18 52. The January 2025 Designation does not state that it applies to
19 noncitizens who were in the United States before its effective date.
20

21 53. On information and belief, Respondents are using the immigration
22 detention system, including extra-territorial transfer and detention, as a means to
23 punish individuals for asserting rights under the Refugee Act.
24

25 54. On information and belief, Petitioner has no criminal history.
26

27 CLAIMS FOR RELIEF

28 COUNT ONE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

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

56. The government's effective revocation of parole violated procedural due process. The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. To determine a violation of procedural due process, courts weigh the traditional factors of (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors easily weigh in Mr. Romero Chavez' favor.

57. First, the private interest at issue is the Petitioner's deprivation of liberty—i.e., remaining on parole, rather than being detained. *See Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). Not only is Petitioner's general liberty interest substantial, he has an added interest in remaining out of custody so he can work with his attorney to prepare his asylum case. What's more, Petitioner's work authorization is contingent on his parole status, and revocation of parole will

1 directly impact the ability to provide for himself. Thus, the first factor weighs
2 heavily in Petitioner's favor.

3 58. Second, the procedures the agency used to determine whether to
4 revoke Petitioner's parole presented a high risk of erroneous deprivation of liberty.
5 To date, the agency's actions surrounding Petitioner's parole have completely
6 failed to comply with the statute, the regulations, and even the agency's own
7 decision. After granting Petitioner parole in 2021, the agency inexplicably revoked
8 this parole upon his arrest. It did so even though Petitioner had attended all his
9 check-in appointments, had no criminal history, and had timely filed his SIJS
10 application. The agency did not claim that "the purposes of such parole . . . have
11 been served," 8 U.S.C. § 1182(d)(5)(A), nor that the "humanitarian reasons" for
12 their parole no longer existed, 8 C.F.R. § 212.5(e)(2)(i). Because consideration of
13 any of these factors should have led to a different result, the risk of erroneous
14 deprivation of Petitioner's parole without these procedures was high, and this
15 factor weighs heavily in his favor.
16

17 59. Finally, any government interest in revoking Petitioner's parole is
18 minimal. The Petitioner has complied with all their check-in requirements, has no
19 criminal history, has timely applied for asylum, and does not represent a danger or
20 a flight risk. All the government need do is comply with its *own decision* to grant
21 him parole. Thus, the *Mathews v. Eldridge* factors weigh heavily in Petitioners
22 favor, and this revocation of parole violates procedural due process.
23

24 COUNT TWO

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

26 Not in Accordance with Law and in Excess of Statutory Authority

Unlawful Detention

60. Petitioners restate and reallege all paragraphs as if fully set forth here.

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

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

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

64. By categorically revoking Petitioner’s parole and transferring them to a Detention Center without consideration of his individualized facts and circumstances, Respondents have violated the APA.

1 65. Respondents have made no finding that Petitioner is a danger to
2 the community.

3
4 66. Respondents have made no finding that Petitioner is a flight risk.

5 67. By detaining the Petitioner categorically, Respondents have
6 further abused their discretion because there have been no changes to his facts or
7 circumstances since the agency made its initial determination to parole him into the
8 United States that support detention.
9

10
11 68. Respondents have already considered Petitioner's facts and
12 circumstances and determined that he was not a flight risk or danger to the
13 community. There have been no changes to the facts that justify this revocation of
14 their parole.
15

16 **ORDERING A BOND HEARING IS NOT THE APPROPRIATE RELIEF**
17

18 69. Many courts recently have been ordering a bond hearing as an
19 alternative avenue for relief. If Mr. Romero Chavez' detention was unlawful, *ab*
20 *initio*, he should not be required to post a bond and, in effect, pay a ransom to be
21 released from this illegal detention. Nothing indicates that Mr. Romero Chavez has
22 somehow become a flight risk or a danger to the community. He was not detained
23 at the checkpoint because he was suddenly a flight risk or a danger to the
24 community. When ICE put him in handcuffs, they did not assert that they had
25 suddenly determined he was a flight risk or a danger to the community. He was
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1 simply swept up in this administrations scheme to lock up all immigrants without
2 green cards.
3

4 70. 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 71. 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. Romero Chavez' movements must now be restricted
20 to a 75-mile radius and monitored with an ankle monitor. Mr. Romero Chavez
21 should be returned to his predetention status. This should also include the return to
22 him of any and all documents and/or identification cards and work authorization
23 cards in his possession when he was detained. This court has authority to order
24 more than just release in a habeas action. See *Boumediene v. Bush*, 553 U.S. 723,
25
26
27
28

1 779–80 (2008). Barring Alternative to Detention and return of documents seized
2 are part and parcel of returning Petitioner to the state he was in when he was
3 detained.
4

5 **PRAYER FOR RELIEF**

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

9 (1) Assume jurisdiction over this matter;
10

11 (2) Issue an Order to Show Cause ordering Respondents to show
12 cause why this Petition should not be granted within three days;
13

14 (3) Declare that Petitioners' re-detention without a prior
15 individualized determination violates the Due Process Clause of the Fifth
16 Amendment and the Administrative Procedures Act;
17

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

21 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
22 Petitioner from custody and all his property seized at his arrest be returned to him;
23

24 (6) Issue an Order prohibiting the Respondents from enrolling the
25 Petitioner in an Alternative to Detention program and specifically prohibiting the
26 placement of an ankle monitor upon his release;
27

1 (7) Order that the Petitioners may not be re-detained without further
2 order of this court;

3
4 (8) Award Petitioner attorney's fees and costs under the Equal Access
5 to Justice Act, and on any other basis justified under law; and

6
7 (9) Grant any further relief this Court deems just and proper.

8 Dated: June 2, 2026

/s/ Brian J. McGoldrick
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