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

10 ALY EGHAILAS,
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 TODD BLANCHE, Attorney General of
27 the United States,
28 U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV3759 BAS MSB

Agency Number:



PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

1. Aly EGHAILAS (“Mr. Eghailas” or “Petitioner”) is a 19-year-old man from Mauritania. He suffered abuse, neglect and abandonment as a minor in Mauritania. As a minor he fled his country and made his way to the southern border of the United States of America.

2. He entered the United States on January 27, 2024 as a minor. He was immediately apprehended and processed. He was held by Respondents in a shelter for approximately 3 months. Once it was determined he was not a flight risk or a danger to the community, he was released to his sponsor’s care on after a home study done 4/17/2024. Later that year, when he reached the age of majority, Respondents chose not to redetain Petitioner and thereby granted conditional parole in the United States by release on his own recognizance. Respondents commenced removal proceedings against him by issuing an NTA on January 27, 2024 but this was terminated and an I-589 petition was filed with USCIS. For the last two years Mr. Eghailas has developed ties to the community, had steady work, and patiently waited for his opportunity to have his asylum case adjudicated.

3. On December 12, 2025, Mr. Eghailas was returning to his home in Detroit. He was passing through Rochester, NY and was looking for a place to stay. He was standing in front of a building that he believed might be a hotel. He walked inside to ask for help. He had actually walked into the Marshall’s office.

1 When he asked for help, he was met with handcuffs. The Marshalls decided that he
2 should be turned over to ICE and not be allowed to leave. He was held against his
3 will until ICE agents were able to take custody of him. He was initially transferred
4 to Batavia Detention Center. He was there for about 5 months. While he was there
5 his immigration attorney had his new NTA dismissed because his case was still the
6 jurisdiction of USCIS and not EOIR. DHS appealed that decision. He was about to
7 have a bond hearing when he was suddenly moved to Louisiana. From there he
8 was moved to Arizona and then finally to Otay Mesa where he remains today.

12 Respondents did not conduct a pre-detention hearing. Respondents did not make an
13 individualized determination that the petitioner was a flight risk or a danger to the
14 community. Respondents continue to detain him based not on his personal
15 circumstances or individualized facts, but because of Respondents' interpretation
16 of President Trump's whim and categorical determination that, the Fifth
17 Amendment notwithstanding, noncitizens are not entitled to due process.

21 4. But Respondents cannot evade the law so easily. The law which
22 they purport to detain the petitioners does not authorize their actions and the U.S.

1 Constitution requires the Respondents provide at least the rights available to him
2 when he was paroled into the United States and he qualified for SIJS¹.
3

4 5. Accordingly, to vindicate Petitioner's rights, this Court should grant
5 the instant petition for a writ of habeas corpus. The petitioner asks this Court to
6 find that Respondents' attempts to detain him are arbitrary and capricious and in
7 violation of the law, and to immediately issue an order preventing his transfer out
8 of this district.
9
10

11 JURISDICTION

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

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

19 8. This Court may grant relief under the habeas corpus statutes, 28
20 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
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25
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-](https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514)
28 [interviewed-meet-press-mod-rcna203514](https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514) (in response to a question whether noncitizens
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 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
2 U.S.C. § 1252(e)(2).
3

4 **VENUE**

5 9. Venue is proper because Petitioner is in Respondents' custody in
6 San Diego County, California. Venue is further proper because a substantial part
7 of the events or omissions giving rise to Petitioner's claims occurred in this
8 District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
9
10

11 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

12 10. The Court must grant the petition for writ of habeas corpus or
13 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
14 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
15 must require Respondents to file a return "within three days unless for good cause
16 additional time, not exceeding twenty days, is allowed." *Id.*
17
18

19 11. Courts have long recognized the significance of the habeas statute
20 in protecting individuals from unlawful detention. The Great Writ has been
21 referred to as "perhaps the most important writ known to the constitutional law of
22 England, affording as it does a swift and imperative remedy in all cases of illegal
23 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).
24
25

26 12. Petitioner is "in custody" for the purpose of § 2241 because he
27 was arrested and detained by Respondents.
28

PARTIES

13. Aly Eghailas is a 19-year-old citizen of Mauritania. 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 San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The San Diego Field Office area of responsibility includes the Otay Mesa Detention Center. Respondent Patrick Divver is a legal custodian of Petitioners.

16. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

17. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Mullin is a

1 legal custodian of Petitioner and is charged with faithfully administering the
2 immigration laws of the United States.
3

4 18. Respondent Todd Blanche is the Attorney General of the United
5 States has authority over the Department of Justice and is charged with faithfully
6 administering the immigration laws of the United States.
7

8 19. Respondent U.S. Immigration Customs Enforcement is the federal
9 agency responsible for custody decisions relating to non-citizens charged with
10 being removable from the United States, including the arrest, detention, and
11 custody status of non-citizens.
12

13 20. Respondent U.S. Department of Homeland Security is the federal
14 agency that has authority over the actions of ICE and all other DHS Respondents.
15

16 21. This action is commenced against all Respondents in their official
17 capacities.
18

19 20 21 **LEGAL FRAMEWORK**

22 22. The INA prescribes three basic forms of detention for the vast
23 majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §
24 1229a or they can be released on Parole.
25

26 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in §
27 1229a removal proceedings before an IJ. Individuals covered by § 1226(a)
28

1 detention are generally entitled to a bond hearing at the outset of their detention,
2 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been
3 arrested, charged with, or convicted of certain crimes are subject to mandatory
4 detention. See 8 USC§ 1226(a).

5
6
7 24. Second, the INA provides for mandatory detention of noncitizens
8 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
9 and for other noncitizen applicants for admission to the U.S. who are deemed not
10 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).

11
12 25. Last, the INA provides for detention of noncitizens who have been
13 ordered removed, including individuals in withholding-only proceedings. See 8
14 USC § 1231. (a)— (b).

15
16 26. Alternatively, noncitizens can be granted parole rather than be
17 detained. 8 U.S.C. § 1226(a)(2)(B). The regulations for granting parole and
18 revocation of parole are found at 8 CFR § 212.5,

19
20
21 27. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a)
22 and 1225(b)(2) and the revocation of parole.

23
24 28. The detention provisions at § 1226(a) and § 1225(b)(2) were
25 enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
26 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302—03, 110 Stat,
27 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently
28

1 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
2 (2025).
3

4 29. Following the enactment of the IIRIRA, EOIR drafted new
5 regulations applicable to proceedings before immigration judges explaining that, in
6 general people who entered the country without inspection — also referred to as
7 being “present without admission” - were not considered detained under § 1225
8 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
9 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
10 Proceedings; Asylum Procedures, 62 Fed. Reg, 10312, 10323 (Mar_6, 1997).
11
12

13 30. Thus, in the decades that followed, most people who entered
14 without inspection and were placed in standard § 1229a removal proceedings
15 received bond hearings before IJs, unless their criminal history rendered them
16 ineligible. That practice was consistent with many more decades of prior practice,
17 in which noncitizens who were not deemed “arriving” were entitled to a custody
18 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see*
19 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
20 “restates” the detention authority previously found at § 1252(a)).
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25 31. This practice both pre- and post-enactment of IIRIRA is consistent
26 with the fact that noncitizens present within the United States — as opposed to
27 noncitizens present at a border and seeking admission - have constitutional rights.
28

1 “[T]he Due Process Clause applies to all ‘persons’ within the United States,
2 including aliens, whether their presence here is lawful, unlawful, temporary, or
3 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

4
5 32. On July 8, 2025, ICE, “in coordination with” the Department of
6 Justice, announced a new policy that rejected the well-established understanding of
7 the statutory framework and reversed decades of practice.

8
9 33. The new policy, entitled “Interim Guidance Regarding Detention
10 Authority for Applicants for Admission, claims that all noncitizens present within
11 the United States who entered without inspection shall now be deemed “applicants
12 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
13 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
14 apprehended, and affects those who have resided in the United States for months,
15 years, and even decades.

16
17 34. In a May 22, 2025 unpublished decision by the Board of
18 Immigration Appeals (BIA), EOIR adopted this same position. That decision holds
19 that all noncitizens who entered the United States without admission or parole and
20 who are present within the United States are considered applicants for admission
21 and ineligible for IJ bond hearings. That was further affirmed by the BIA in *Yajure*
22 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). There the BIA held that Immigration
23 Judges do not have jurisdiction in these cases. This makes it impossible for
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1 noncitizens who have entered at a port of entry or entered without inspection to
2 apply for a bond and are all subject to mandatory detention.
3

4 35. ICE and EOIR have adopted this position even though federal
5 courts have rejected this exact conclusion. For example, after an IJ in the Tacoma,
6 Washington immigration court stopped providing bond hearings for persons who
7 entered the United States without inspection and who have since resided here, the
8 U.S. District Court for the Western District of Washington found that such a
9 reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
10 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez*
11 *Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL_1193850 (W.D. Wash. Apr_24,
12 2025); see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 1208256 9WL 299, at
13 *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).
14 Courts in the Central District have reached the same conclusion. See *Maldonado*
15 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July
16 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (TRO issued
17 after DHS adopted “Interim Guidance Regarding Detention Authority for
18 Applicants for Admission.”); *Ceja Gonzalez, et al. v. Noem, et al.*, No. 5:25-cv-
19 02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting Ex Parte
20 Application for TRO and OSC, Dkt,1 2 (Same).
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1 36. DHS’s and EOIR’s interpretation defy the INA. As the *Rodriguez*
2 *Vazquez* court explained, the plain text of the statutory provisions demonstrates
3 that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a)
4 applies by default to all persons “pending a decision on whether the [noncitizen] is
5 to be removed from the United States.” *Rodriguez Vazquez*, 2025 WL.1193850 at
6 *12. *See also Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July
7 28, 2025) Order Granting Temporary Restraining Order, Dkt14 .at 9 (“[T]he Court
8 finds that the potential for Petitioners’ continued detention without an initial bond
9 hearing would cause immediate and irreparable injury, as this violates statutory
10 rights afforded under § 1226(a).”); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM
11 (C.D. Cal. August 13, 2025), Order Granting Ex Parte Application for TRO and
12 OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.)
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18 37. Other portions of the text of § 1226 also explicitly apply to people
19 charged as being inadmissible, including those who entered without inspection.
20 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible
21 individuals makes clear that, by default, inadmissible individuals not subject to
22 subparagraph (E)(1) are afforded a bond hearing under subsection (a). As the
23 *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific
24 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the
25 statute generally applies. *Rodriguez Vazquez*, W20L25 1193850, at *12 (citing
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27
28

1 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
2 (2010)).
3

4 38. Section 1226 therefore leaves no doubt that it applies to
5 noncitizens who are present without admission and who face charges in removal
6 proceedings of being inadmissible to the United States.
7

8 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of
9 entry or who recently entered the United States and are encountered at or near the
10 border. The statute’s entire framework is premised on inspections at the border of
11 people who are “seeking admission” to the United States. 8 U.S.C. §
12 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
13 detention scheme applies ““at the Nation’s borders and ports of entry, where the
14 Government must determine whether a[] [noncitizen] seeking to enter the country
15 is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
16
17

18 40. Accordingly, the mandatory detention provision of § 1225(b)(2)
19 does not apply to people like Petitioner who have already entered, were released
20 and were residing in the United States at the time they were apprehended.
21

22 41. Immigration detention should not be used as a punishment and
23 should only be used when, under an individualized determination, a noncitizen is a
24 flight risk because they are unlikely to appear for immigration court or a danger to
25 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
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1 42. Once a determination has been made that a noncitizen should not
2 be detained, they may be released on conditional parole or humanitarian parole.
3
4 The regulations for revocation of that parole are set out in 8 CFR § 212.5(e).
5 Specifically, this revocation must be

6
7 ***On notice.*** In cases not covered by paragraph (e)(1) of this section,
8 upon accomplishment of the purpose for which parole was authorized or when in
9 the opinion of one of the officials listed in paragraph (a) of this section, neither
10 humanitarian reasons nor public benefit warrants the continued presence of the
11 alien in the United States, parole shall be terminated upon written notice to the
alien and he or she shall be restored to the status that he or she had at the time of
parole. 8 CFR § 212.5(e)(2)(i)

12 **FACTUAL BACKGROUND**

13
14 43. Petitioner is a citizen of Mauritania. Petitioner was subject to
15 abuse, neglect and abandonment. He made his way to Mexico as a minor and
16 finally to the border with the United States.
17

18 44 He entered the United States on January 27, 2024 as a minor. He
19 was immediately apprehended and processed. He was held by Respondents in a
20 shelter for approximately 3 months. Once it was determined he was not a flight risk
21 or a danger to the community, he was released to his sponsor's care on after a
22 home study done 4/17/2024. Later that year, when he reached the age of majority,
23 Respondents chose not to redetain Petitioner and thereby granted conditional
24 parole in the United States by release on his own recognizance. Respondents
25 commenced removal proceedings against him by issuing an NTA on January 27,
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1 2024 but this was terminated and an I-589 petition was filed with USCIS. For the
2 last two years Mr. Eghailas has developed ties to the community, had steady work,
3 and patiently waited for his opportunity to have his asylum case adjudicated.
4

5 45. On or about January 27, 2024, Respondents commenced removal
6 proceedings against Petitioner under 8 U.S.C. § 1229a. These proceedings were
7 dismissed.
8

9 46. Petitioner filed his asylum application with USCIS which is still
10 pending.
11

12 47. On information and belief, Petitioner regularly complied with and
13 appeared for ICE check-ins whether in person or electronic check-in.
14

15 48. Respondents issued work authorization to petitioner as well.
16

17 49. On December 12, 2025, Mr. Eghailas was returning to his home in
18 Detroit. He was passing through Rochester, NY and was looking for a place to
19 stay. He was standing in front of a building that he believed might be a hotel. He
20 walked inside to ask for help. He had actually walked into the Marshall's office.
21 When he asked for help, he was met with handcuffs. The Marshalls decided that he
22 should be turned over to ICE and not be allowed to leave. He was held against his
23 will until ICE agents were able to take custody of him. He was initially transferred
24 to Batavia Detention Center. He was there for about 5 months. While he was there
25 his immigration attorney had his new NTA dismissed because his case was still the
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1 jurisdiction of USCIS and not EOIR. DHS appealed that decision. He was about to
2 have a bond hearing when he was suddenly moved to Louisiana. From there he
3 was moved to Arizona and then finally to Otay Mesa where he remains today.
4

5 50. He was not presented with a judicial warrant when he was
6 detained. He was not trying to flee or to cause harm when he was detained. He was
7 not charged with any crime that might lead the officers to have probable cause to
8 detain him. He was not given notice that his parole was being revoked. He was not
9 given a pre-detention hearing to determine if the facts of his release had changed
10 such that he was now a flight risk or that he was a danger to the community. He
11 was deprived of his liberty for no other reason than that the President of the United
12 States had decided that he and millions of others like him should no longer be free.
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17 51. On January 20, 2025, President Donald Trump issued several
18 executive actions relating to immigration, including “Protecting the American
19 People Against Invasion,” an executive order (EO) setting out a series of interior
20 immigration enforcement actions. The Trump administration, through this and
21 other actions, has outlined sweeping, executive branch-led changes to immigration
22 enforcement policy, establishing a formal framework for mass deportation. The
23 “Protecting the American People Against Invasion” EO instructs the DHS
24 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
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1 prioritize civil immigration enforcement procedures including through the use of
2 mass detention.
3

4 52. The January 2025 Designation does not state that it applies to
5 noncitizens who were in the United States before its effective date.
6

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

11 54. On information and belief, Petitioner has no criminal history.
12

13 **CLAIMS FOR RELIEF**

14 **COUNT ONE**

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

16 **Procedural Due Process**

17 55. Petitioner restates and realleges all paragraphs as if fully set forth
18 here.
19

20 56. The government's effective revocation of parole violated
21 procedural due process. The Fifth Amendment guarantees that "[n]o person shall
22 be ... deprived of life, liberty, or property, without due process of law." U.S. Const.
23 Amend. V. To determine a violation of procedural due process, courts weigh the
24 traditional factors of (1) the private interest at issue, (2) the risk of erroneous
25 deprivation of that interest through the procedures used, and (3) the government's
26
27
28

1 interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors
2 easily weigh in Mr. Eghailas’ favor.
3

4 57. First, the private interest at issue is the Petitioner’s deprivation of
5 liberty—i.e., remaining on parole, rather than being detained. *See Morrissey v.*
6 *Brewer*, 408 U.S. 471, 482-483 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690
7 (2001) (“Freedom from imprisonment—from government custody, detention, or
8 other forms of physical restraint—lies at the heart of the liberty that [the Due
9 Process] Clause protects.”). Not only is Petitioner’s general liberty interest
10 substantial, he has an added interest in remaining out of custody so he can work
11 with his attorney to prepare his asylum case. What’s more, Petitioner’s work
12 authorization is contingent on his parole status, and revocation of parole will
13 directly impact the ability to provide for himself. Thus, the first factor weighs
14 heavily in Petitioner’s favor.
15

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

3 59. Finally, any government interest in revoking Petitioner's parole is
4 minimal. The Petitioner has complied with all their check-in requirements, has no
5 criminal history, has timely applied for asylum, and does not represent a danger or
6 a flight risk. All the government need do is comply with its *own decision* to grant
7 him parole. Thus, the *Mathews v. Eldrige* factors weigh heavily in Petitioners
8 favor, and this revocation of parole violates procedural due process.
9

10 11 **COUNT TWO**

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

13 **Not in Accordance with Law and in Excess of Statutory Authority**

14 **Unlawful Detention**

15
16 60. Petitioners restate and reallege all paragraphs as if fully set forth
17 here.
18

19 61. Under the APA, a court shall “hold unlawful and set aside agency
20 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
21

22 62. An action is an abuse of discretion if the agency “entirely failed to
23 consider an important aspect of the problem, offered an explanation for its decision
24 that runs counter to the evidence before the agency, or is so implausible that it
25 could not be ascribed to a difference in view or the product of agency expertise.”
26

27 *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
28

1 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
2 463 U.S. 29, 43 (1983)).
3

4 63. To survive an APA challenge, the agency must articulate “a
5 satisfactory explanation” for its action, “including a rational connection between
6 the facts found and the choice made.” *Dep't of Com. v. New York*, 139 S. Ct. 2551,
7 2569 (2019) (citation omitted).
8

9 64. By categorically revoking Petitioner’s parole and transferring
10 them to a Detention Center without consideration of his individualized facts and
11 circumstances, Respondents have violated the APA.
12

13 65. Respondents have made no finding that Petitioner is a danger to
14 the community.
15

16 66. Respondents have made no finding that Petitioner is a flight risk.
17

18 67. By detaining the Petitioner categorically, Respondents have
19 further abused their discretion because there have been no changes to his facts or
20 circumstances since the agency made its initial determination to parole him into the
21 United States that support detention.
22

23 68. Respondents have already considered Petitioner’s facts and
24 circumstances and determined that he was not a flight risk or danger to the
25 community. There have been no changes to the facts that justify this revocation of
26 their parole.
27
28

ORDERING A BOND HEARING IS NOT THE APPROPRIATE RELIEF

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

70. Ordering a bond hearing because he is no longer deemed subject to mandatory detention rewards the government's unlawful behavior. First, it legitimizes his detention. Second, it allows the government to detain without a prior determination of a change in individual circumstances regarding flight risk and danger. Third, it requires the petitioner to prove that he is not a flight risk or a danger to the community, something the government already determined when they released him. Fourth, it requires the petitioner to pay a fee to the parties that unlawfully detained him in order to be released from his unlawful detention.

1 71. Upon release from Otay Mesa it is the custom of ICE to immediately
2 place detainees in Alternative to Detention Programs and affix an ankle monitor to
3 them. As the name of the program indicates, this is just another form of detention
4 that is made without any determination that there has been a change in
5 circumstances such that Mr. Eghailas' movements must now be restricted to a 75-
6 mile radius and monitored with an ankle monitor. Mr. Eghailas should be returned
7 to his predetention status. This should also include the return to him of any and all
8 documents and/or identification cards and work authorization cards in his
9 possession when he was detained. This court has authority to order more than just
10 release in a habeas action. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008).
11 Barring Alternative to Detention and return of documents seized are part and
12 parcel of returning Petitioner to the state he was in when he was detained.
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18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner respectfully requests this Court to grant the
20 following:
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- 22 (1) Assume jurisdiction over this matter;
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24 (2) Issue an Order to Show Cause ordering Respondents to show
25 cause why this Petition should not be granted within three days;
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1 (3) Declare that Petitioners' re-detention without a prior
2 individualized determination violates the Due Process Clause of the Fifth
3 Amendment and the Administrative Procedures Act;

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

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

8 (6) Issue an Order prohibiting the Respondents from enrolling the
9 Petitioner in an Alternative to Detention program and specifically prohibiting the
10 placement of an ankle monitor upon his release;

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

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

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

16 Dated: June 26, 2026

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