

1 Brian J. McGoldrick (California #169104)
2 Counsel for Petitioner
3 4916 Del Mar Avenue
4 San Diego, CA 92107
5 (619) 675-2366
6 attorney@brianmcgoldrick.com

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

9 MUHAMMET RESUL YILDIZ,
10
11 Petitioners,

12 vs.

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

Respondents.

Case No.: '26CV3815 DMS AHG

Agency Number: 

PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

1
2
3 1. Muhammet Resul YILDIZ (“Mr. Yildiz” or “Petitioner”) is a 24-
4 year-old man from Turkey. He was very involved there with democracy and
5 fighting corruption. Eventually, he suffered abuse at the hands of the government.
6 Fearing for his life he fled Turkey and came to the United States to seek asylum.
7

8 2. He entered the United States on January 25, 2024. He was
9 immediately apprehended and processed. He was held by Respondents for a short
10 time, about three days. Once it was determined he was not a flight risk or a danger
11 to the community, he was released on his own recognizance. Respondents
12 commenced removal proceedings against him by issuing a Notice to Appear. Mr.
13 Yildiz went on to file his asylum application, obtain work authorization under
14 category C8, Exhibit A, and integrate himself into his community.
15
16
17

18 3. Mr. Yildiz works for Spark delivery service. On June 16, 2026,
19 between 8 and 9 p.m., as Mr. Yildiz was delivering near the southern border,
20 somewhere near Chula Vista, he came upon a highway checkpoint. When he
21 approached the kiosk, he was asked for his ID. He was then asked if he had a green
22 card. He said no and explained that he had a pending asylum application, work
23 authorization, and was legally going about his business. The officer instructed him
24 to pull over and wait. He was given no other explanation. After about an hour, ICE
25 agents approached him. He was handcuffed and taken to the San Diego Downtown
26
27
28

1 ICE office. He was held there for 3 days. After processing there he was taken to
2 Otay Mesa Detention Center where he remains today. Respondents did not conduct
3 a pre-detention hearing. Respondents did not make an individualized determination
4 that the petitioner was a flight risk or a danger to the community. Respondents
5 continue to detain him based not on his personal circumstances or individualized
6 facts, but because of Respondents' interpretation of President Trump's whim and
7 categorical determination that, the Fifth Amendment notwithstanding, noncitizens
8 are not entitled to due process.
9
10
11

12 4. But Respondents cannot evade the law so easily. The law which
13 they purport to detain the petitioners does not authorize their actions and the U.S.
14 Constitution requires the Respondents provide at least the rights available to him
15 when he was granted conditional parole into the United States.
16
17

18 5. Accordingly, to vindicate Petitioner's rights, this Court should grant
19 the instant petition for a writ of habeas corpus. The petitioner asks this Court to
20 find that Respondents' attempts to detain him are arbitrary and capricious and in
21 violation of the law, and to immediately issue an order preventing his transfer out
22 of this district.
23
24

25 JURISDICTION

26 6. This action arises under the Constitution of the United States and
27 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
28

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

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

VENUE

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

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

1 referred to as “perhaps the most important writ known to the constitutional law of
2 England, affording as it does a swift and imperative remedy in all cases of illegal
3 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

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

8 **PARTIES**

9 13. Muhammet Resul Yildiz is a 24-year-old citizen of Turkey. He is
10 currently detained at Otay Mesa Detention Center and is present within the state of
11 California as of the time of the filing of this petition.

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

16 15. Respondent, Patrick Divver, is the San Diego Field Office
17 Director, Immigration and Customs Enforcement and Removal Operations. The
18 San Diego Field Office is responsible for local custody decisions relating to non-
19 citizens charged with being removable from the United States, including the arrest,
20 detention, and custody status of non- citizens. The San Diego Field Office area of
21 responsibility includes the Otay Mesa Detention Center. Respondent Patrick
22 Divver is a legal custodian of Petitioners.

24 16. Respondent Todd Lyons is the acting director of U.S. Immigration
25 and Customs Enforcement, and he has authority over the actions of respondent

1 Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of
2 Petitioner.
3

4 17. Respondent Markwayne Mullin is the Secretary of the Department
5 of Homeland Security (DHS) and has authority over the actions of all other DHS
6 Respondents in this case, as well as all operations of DHS. Respondent Mullin is a
7 legal custodian of Petitioner and is charged with faithfully administering the
8 immigration laws of the United States.
9
10

11 18. Respondent Todd Blanche, is Acting Attorney General of the
12 United States and has authority over the Department of Justice and is charged with
13 faithfully administering the immigration laws of the United States.
14

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

21 20. Respondent U.S. Department of Homeland Security is the federal
22 agency that has authority over the actions of ICE and all other DHS Respondents.
23

24 21. This action is commenced against all Respondents in their official
25 capacities.
26
27
28

LEGAL FRAMEWORK

1 22. The INA prescribes three basic forms of detention for the vast
2 majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §
3 1229a or they can be released on Parole.
4

5 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in §
6 1229a removal proceedings before an IJ. Individuals covered by § 1226(a)
7 detention are generally entitled to a bond hearing at the outset of their detention,
8 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been
9 arrested, charged with, or convicted of certain crimes are subject to mandatory
10 detention. See 8 USC§ 1226(a).
11
12

13 24. Second, the INA provides for mandatory detention of noncitizens
14 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
15 and for other noncitizen applicants for admission to the U.S. who are deemed not
16 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).
17
18

19 25. Last, the INA provides for detention of noncitizens who have been
20 ordered removed, including individuals in withholding-only proceedings. See 8
21 USC § 1231. (a)— (b).
22

23 26. Alternatively, noncitizens can be granted parole rather than be
24 detained. 8 U.S.C. § 1226(a)(2)(B). The regulations for granting parole and
25 revocation of parole are found at 8 CFR § 212.5,
26
27
28

1 27. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a)
2 and 1225(b)(2) and the revocation of parole.
3

4 28. The detention provisions at § 1226(a) and § 1225(b)(2) were
5 enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
6 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302—03, 110 Stat,
7 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently
8 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
9 (2025).
10

11 29. Following the enactment of the IIRIRA, EOIR drafted new
12 regulations applicable to proceedings before immigration judges explaining that, in
13 general people who entered the country without inspection — also referred to as
14 being “present without admission” - were not considered detained under § 1225
15 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
16 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
17 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar_6, 1997).
18
19
20
21

22 30. Thus, in the decades that followed, most people who entered
23 without inspection and were placed in standard § 1229a removal proceedings
24 received bond hearings before IJs, unless their criminal history rendered them
25 ineligible. That practice was consistent with many more decades of prior practice,
26 in which noncitizens who were not deemed “arriving” were entitled to a custody
27
28

1 hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see
2 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
3 “restates” the detention authority previously found at § 1252(a)).
4

5 31. This practice both pre- and post-enactment of IIRIRA is consistent
6 with the fact that noncitizens present within the United States — as opposed to
7 noncitizens present at a border and seeking admission - have constitutional rights.
8 “{T}he Due Process Clause applies to all ‘persons’ within the United States,
9 including aliens, whether their presence here is lawful, unlawful, temporary, or
10 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
11

12 32. On July 8, 2025, ICE, “in coordination with” the Department of
13 Justice, announced a new policy that rejected the well-established understanding of
14 the statutory framework and reversed decades of practice.
15

16 33. The new policy, entitled “Interim Guidance Regarding Detention
17 Authority for Applicants for Admission, claims that all noncitizens present within
18 the United States who entered without inspection shall now be deemed “applicants
19 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
20 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
21 apprehended, and affects those who have resided in the United States for months,
22 years, and even decades.
23
24
25
26
27
28

1 34. In a May 22, 2025 unpublished decision by the Board of
2 Immigration Appeals (BIA), EOIR adopted this same position. That decision holds
3 that all noncitizens who entered the United States without admission or parole and
4 who are present within the United States are considered applicants for admission
5 and ineligible for IJ bond hearings. That was further affirmed by the BIA in *Yajure*
6 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). There the BIA held that Immigration
7 Judges do not have jurisdiction in these cases. This makes it impossible for
8 noncitizens who have entered at a port of entry or entered without inspection to
9 apply for a bond and are all subject to mandatory detention.
10

11 35. ICE and EOIR have adopted this position even though federal
12 courts have rejected this exact conclusion. For example, after an IJ in the Tacoma,
13 Washington immigration court stopped providing bond hearings for persons who
14 entered the United States without inspection and who have since resided here, the
15 U.S. District Court for the Western District of Washington found that such a
16 reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
17 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez*
18 *Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL_1193850 (W.D. Wash. Apr_24,
19 2025); see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 1208256 9WL 299, at
20 *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).
21 Courts in the Central District have reached the same conclusion. See *Maldonado*
22

1 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July
2 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (TRO issued
3 after DHS adopted “Interim Guidance Regarding Detention Authority for
4 Applicants for Admission.”); *Ceja Gonzalez, et al. v. Noem, et al.*, No. 5:25-cv-
5 02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting Ex Parte
6 Application for TRO and OSC, Dkt. 12 (Same).
7
8

9
10 36. DHS’s and EOIR’s interpretation defy the INA. As the *Rodriguez*
11 *Vazquez* court explained, the plain text of the statutory provisions demonstrates
12 that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a)
13 applies by default to all persons “pending a decision on whether the [noncitizen] is
14 to be removed from the United States.” *Rodriguez Vazquez*, 2025 WL.1193850 at
15 *12. *See also Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July
16 28, 2025) Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court
17 finds that the potential for Petitioners’ continued detention without an initial bond
18 hearing would cause immediate and irreparable injury, as this violates statutory
19 rights afforded under § 1226(a).”); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM
20 (C.D. Cal. August 13, 2025), Order Granting Ex Parte Application for TRO and
21 OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.)
22
23
24
25

26 37. Other portions of the text of § 1226 also explicitly apply to people
27 charged as being inadmissible, including those who entered without inspection.
28

1 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible
2 individuals makes clear that, by default, inadmissible individuals not subject to
3 subparagraph (E)(11) are afforded a bond hearing under subsection (a). As the
4 Rodriguez Vazquez court explained, “[w]hen Congress creates “specific
5 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the
6 statute generally applies. *Rodriguez Vazquez*, W20L25 1193850, at *12 (citing
7 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
8 (2010)).
9
10
11

12 38. Section 1226 therefore leaves no doubt that it applies to
13 noncitizens who are present without admission and who face charges in removal
14 proceedings of being inadmissible to the United States.
15

16 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of
17 entry or who recently entered the United States and are encountered at or near the
18 border. The statute’s entire framework is premised on inspections at the border of
19 people who are “seeking admission” to the United States. 8 U.S.C. §
20 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
21 detention scheme applies ““at the Nation’s borders and ports of entry, where the
22 Government must determine whether a[] [noncitizen] seeking to enter the country
23 is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
24
25
26
27
28

1 40. Accordingly, the mandatory detention provision of § 1225(b)(2)
2 does not apply to people like Petitioner who have already entered, were released
3 and were residing in the United States at the time they were apprehended.
4

5 41. Immigration detention should not be used as a punishment and
6 should only be used when, under an individualized determination, a noncitizen is a
7 flight risk because they are unlikely to appear for immigration court or a danger to
8 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
9
10

11 42. Once a determination has been made that a noncitizen should not
12 be detained, they may be released on conditional parole or humanitarian parole.
13 The regulations for revocation of that parole are set out in 8 CFR § 212.5(e).
14 Specifically, this revocation must be
15

16 ***On notice.*** In cases not covered by paragraph (e)(1) of this section,
17 upon accomplishment of the purpose for which parole was authorized or when in
18 the opinion of one of the officials listed in paragraph (a) of this section, neither
19 humanitarian reasons nor public benefit warrants the continued presence of the
20 alien in the United States, parole shall be terminated upon written notice to the
21 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)

22 FACTUAL BACKGROUND

23 43. Muhammet Resul YILDIZ (“Mr. Yildiz” or “Petitioner”) is a 24-
24 year-old man from Turkey. He suffered abuse at the hands of the government.
25 Fearing for his life he fled Turkey and came to the United States to seek asylum.
26
27
28

1 44.. He entered the United States on January 25, 2024. He was
2 immediately apprehended and processed. He was held by Respondents for a short
3 time, about three days. Once it was determined he was not a flight risk or a danger
4 to the community, he was released on his own recognizance. Respondents
5 commenced removal proceedings against him by issuing a Notice to Appear. Mr.
6 Yildiz went on to file his asylum application, obtain work authorization under
7 category C8, Exhibit A, and integrate himself into his community.
8
9
10

11 45. Shortly after his entry, Respondents commenced removal
12 proceedings against Petitioner under 8 U.S.C. § 1229a.
13

14 46. Petitioner filed for asylum within the one-year requirement.

15 47. On information and belief, Petitioner regularly complied with and
16 appeared for ICE check-ins whether in person or electronic check-in.
17

18 48. Respondents issued work authorization to petitioner as well.

19 49. Mr. Yildiz works for Spark delivery service. On June 16, 2026,
20 between 8 and 9 p.m., as Mr. Yildiz was delivering near the southern border,
21 somewhere near Chula Vista, he came upon a highway checkpoint. When he
22 approached the kiosk he was asked for his ID. He was then asked if he had a green
23 card. He said no and explained that he had a pending asylum application, work
24 authorization, and was legally going about his business. The officer instructed him
25 to pull over and wait. He was given no other explanation. After about an hour, ICE
26
27
28

1 agents approached him. He was handcuffed and taken to the San Diego Downtown
2 ICE office. He was held there for 3 days. After processing there he was taken to
3 Otay Mesa Detention Center 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.
13
14
15

16 51. On January 20, 2025, President Donald Trump issued several
17 executive actions relating to immigration, including “Protecting the American
18 People Against Invasion,” an executive order (EO) setting out a series of interior
19 immigration enforcement actions. The Trump administration, through this and
20 other actions, has outlined sweeping, executive branch-led changes to immigration
21 enforcement policy, establishing a formal framework for mass deportation. The
22 “Protecting the American People Against Invasion” EO instructs the DHS
23 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
24
25
26
27
28

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
18 55. Petitioner restates and realleges all paragraphs as if fully set forth
19 here.
20

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

1 interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors
2 easily weigh in Mr. Yildiz’ 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 2024, 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 asylum
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
27
28

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 **COUNT TWO**

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

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

13 **Unlawful Detention**

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

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

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

24 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
25
26
27
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 him
10 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. Yildiz' 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. Yildiz 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.

71. Upon release from Otay Mesa it is the custom of ICE to immediately place detainees in Alternative to Detention Programs and affix an ankle monitor to

1 them. As the name of the program indicates, this is just another form of detention
2 that is made without any determination that there has been a change in
3 circumstances such that Mr. Yildiz's movements must now be restricted to a 75-
4 mile radius and monitored with an ankle monitor. Mr. Yildiz should be returned to
5 his predetention status. This should also include the return to him of any and all
6 documents and/or identification cards and work authorization cards in his
7 possession when he was detained. This court has authority to order more than just
8 release in a habeas action. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008).
9 Barring Alternative to Detention and return of documents seized are part and
10 parcel of returning Petitioner to the state he was in when he was detained.
11
12
13
14

15 PRAYER FOR RELIEF

16 WHEREFORE, Petitioner respectfully requests this Court to grant the
17 following:
18

- 19 (1) Assume jurisdiction over this matter;
- 20 (2) Issue an Order to Show Cause ordering Respondents to show
21 cause why this Petition should not be granted within three days;
22 (3) Declare that Petitioners' re-detention without a prior
23 individualized determination violates the Due Process Clause of the Fifth
24 Amendment and the Administrative Procedures Act;
25
26
27
28

1 (4) Issue an Order prohibiting the Respondents from transferring
2 Petitioner from the district without the court's approval;
3

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

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

11 (7) Order that the Petitioners may not be re-detained without further
12 order of this court;
13

14 (8) Award Petitioner attorney's fees and costs under the Equal Access
15 to Justice Act, and on any other basis justified under law; and
16

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

18 Dated: June 30, 2026

/s/ Brian J. McGoldrick
BRIAN J. MCGOLDRICK, ESQ.
attorney@brianmccgoldrick.com
4916 Del Mar Avenue
San Diego, CA 92105
Telephone: +1 619-675-2366
Attorney for Petitioner