Brian J. McGoldrick – 169104
Law Office of Brian J. McGoldrick
4916 Del Mar Avenue
San Diego, CA 92107
619-675-2366
attorney@brianmcgoldrick

Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SABHTU MERHAWI,

Petitioner,

vs.

CHRISTOPHER LAROSE, warden of Otay Mesa Detention Center;
PATRICK DIVVER, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE");
MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS");
ACTING Attorney General of the United States,
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents.

Case No.: '26CV4463 RSH AHG

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

Agency Doc. No.: [redacted]

## INTRODUCTION

1. Sabhtu MERHAWI (Mr. Merhawi or Petitioner) is a 28-year-old citizen of Eritrea. He and his family [redacted] He spent most of his life in Saudi Arabia, [redacted] He lost his residency there and was going to be forced to return to Eritrea. Eritrea also does not recognize [redacted]. Mr. Merhawi believed he would be severely persecuted and possibly killed if he returned to Eritrea. He decided he needed to flee Saudi Arabia and find a safe country where he would not be persecuted.

2. He eventually found himself at the southern border of the United States of America. On July 22, 2026, he and another noncitizen entered the United States without inspection. They immediately encountered CBP officers. Mr. Merhawi explained that he had entered the U.S. with the hope of filing for asylum. Over the next 11 days he had a Credible Fear Interview, with a negative finding. He requested judicial review and, on July 29, 2026, the Immigration Judge found his fear of return to Eritrea to be credible. However, the Immigration Judge ordered him removed to Costa Rica, advising Mr. Merhawi that he could file for asylum there.

3. Upon a positive credible fear finding Mr. Merhawi should have been placed into Section 240 removal proceedings. Instead, he was moved to Otay Mesa Detention Center where he is informed he will be removed to Costa Rica.

## CUSTODY

4. Mr. Merhawi is currently in Respondents' legal and physical custody. They are detaining him at the Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control.

**PARTIES**

5. Mr. Merhawi is a 28-year-old citizen of Eritrea born [redacted]. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

6. Mr. Merhawi is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

7. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

8. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

9. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,

and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Mr. Merhawi. Respondent Lyons has custodial authority over Mr. Merhawi, who names him in his official capacity.

10. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in his official capacity. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent MULLIN has ultimate custodial authority over Mr. Merhawi, who names him in his official capacity.

11. Respondent Todd BLANCHE is the Acting Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He is responsible for the Immigration and Nationality Act's implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for Immigration Review, the office that administers Mr. Merhawi's removal proceedings and is responsible for adjudicating Mr. Merhawi's asylum application. Mr. Merhawi names him in his official capacity.

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

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

## JURISDICTION AND VENUE

14. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Merhawi's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

15. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706 (Administrative Procedure Act, "APA"); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited by a petitioner's nationality, immigration status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

16. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr. Merhawi's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "he is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; (28 U.S.C. § 2241(c)(2))or "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because Mr. Merhawi seeks

the traditional habeas remedy of review of his unlawful detention, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of Mr. Merhawi's detention.

17. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here, Mr. Merhawi is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Mr. Merhawi's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

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

18. 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.*

19. 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).

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

**FACTUAL BACKGROUND**

21. Mr. Merhawi is a citizen of Eritrea. He and his family spent most of their lives in Saudi Arabia. [redacted] in Saudi Arabia and in Eritrea. Mr. Merhawi and his family [redacted]

22. Residency in Saudi Arabia for foreign nationals is dependent on a work sponsor. Once a resident loses their job, they lose their sponsor and their right to remain in Saudi Arabi. Mr. Merhawi had lost his residency and was facing deportation to Eritrea. He believes he will be severely persecuted and perhaps killed if he returns to Eritrea because of [redacted]. As his probably deportation loomed, he realized he would only be safe if he escaped.

23. He eventually made his way to Chile. He was not allowed to remain there and he made his way to Mexico and finally crossed into the United States on July 22, 2026. He immediately encountered CBP officers and was taken into custody.

24. Respondents initially held Mr. Merhawi for 11 days in a CBP detention facility known only to Mr. Merhawi as 'barracks 5'. The was the identifier on his wristband. He was in a room with many other detainees. He was given a mattress to

sleep on the floor. He was fed crackers, biscuits and small sandwiches. He was not allowed to use the phone.

25. On July 23, 2026, a day after his detention, he was scheduled to have a credible fear interview. He did not have an attorney and asked for one. His interview was delayed a day and he was given a list of pro bono attorneys to call. An attorney from Casa Cornelia agreed to assist him the following day during his interview. On July 24, 2026, he, the attorney and the asylum officer participated in a telephonic interview. At some point during the call the attorney was disconnected from the interview. At the end of the interview the officer announced that he would be given a negative finding. Mr. Merhawi requested judicial review of the negative finding.

26. On July 29, 2026 upon review, an IJ reversed the DHS and determined that he did have a credible fear of return to Eritrea. However, rather than initiate Section 240 removal proceedings the Immigration Judge announced that Mr. Merhawi would be removed to Costa Rica. Mr. Merhawi objected. He had no connection to Costa Rica, he knew nothing about Costa Rica except that it is in Central America and he was sure he would be in danger there. The Immigration Judge informed Mr. Merhawi that he was the only decision maker in this hearing, that his decision was unreviewable and he was ordering him removed to Costa Rica. Two days later Mr. Merhawi was moved from the CBP center and brought to Otay Mesa Detention Center. He has been informed that his removal is imminent.

**LEGAL FRAMEWORK**

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

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

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

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

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

32. Noncitizens in Expedited Removal that express a fear of return to their country of origin are entitled to a Credible Fear Interview. 8 U.S. Code § 1225 (b)(1)(A)(ii).

33. Noncitizens that are found to have a credible fear "shall be detained for further consideration of the application for asylum." 8 U.S. Code § 1225 (b)(1)(B)(ii).

**FIRST CAUSE OF ACTION**
**Fifth Amendment Due Process Violation**

34. Mr. Merhawi re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

35. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court, the provisions of the Fourteenth Amendment "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality" Id. (emphasis added).

36. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz.*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

37. Mr. Merhawi was found to have a credible fear of return. Mr. Merhawi may not be removed from the United States. The Immigration Court has no jurisdiction to order his removal without first allowing him to have him to have his asylum claim heard. This is a violation of his rights to Due Process.

38. This right has not been extinguished by the Supreme Court's ruling in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020). In that case the petitioner was alleging that the Expedited Removal regulations, in particular that the regulations themselves could not be reviewed, were unconstitutional and a denial of his right to due process. Here, Mr. Merhawi is not contesting the regulations of Expedited Removal. Rather, Mr. Merhawi asserts that the Respondents are refusing to follow their own regulations. Once the court found his fear to be credible, he should have been put into Section 240 removal proceedings and allowed to have his asylum claim heard.

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

39. Petitioner restates and reallege all paragraphs as if fully set forth here.

40. 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).

41. 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*, 551U.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)).

42. 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).

43. By finding that Petitioner had a positive credible fear of return to Eritrea but then ordering his removal to Costa Rica, Respondents have violated the APA. Respondents are required by their own regulations to put Mr. Merhawi into Section 240 removal proceedings and allow him to have his asylum case adjudicated.

**COUNT THREE**

**Respondents actions violate the Accardi Doctrine and are invalid.**

44. The Accardi doctrine refers to a legal principle that mandates government agencies to adhere to their own established rules and procedures. Originating from the Supreme Court case, *U.S. ex rel Accardi v. Shaughnessy,* 347 U.S. 260 (1954) this doctrine asserts that if an agency does not follow its own regulations, its actions may be deemed invalid. Consequently, failing to provide necessary procedural safeguards can lead to the invalidation of the agency's final decisions.

45. 8 U.S. Code § 1225 (b)(1)(B)(ii) sets out that if Mr. Merhawi is found to have a credible fear, the proper procedure is to put him in Section 40 removal proceedings and allow him to prosecute his claim for asylum. Ordering him removed to Costa Rica is a direct violation of this rule and is, therefore, invalid.

**PRAYER FOR RELIEF**

Mr. Merhawi asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering the recission of his order of removal to Costa Rica;

2. Declare the continued detention of Mr. Merhawi for the purpose to remove him to Costa Rica and deprive him of his right to have his asylum case heard a violation of the Due Process Clause of the U.S. Constitution, a violation of the Administrative Procedures Act and a violation of the Accardi Doctrine;

3. Order Respondents to provide copies of the Immigration Judge's order of July 29, 2026 and provide a transcript of that hearing to all parties;

4. Order Respondents to show cause why Mr. Merhawi is being subjected to unlawful and unconstitutional detention and why he is not in Section 240 removal proceedings; and

5. Grant any other relief that may be fit and proper.

Dated: August 4, 2026

Respectfully submitted,

By: /s/ Brian J. McGoldrick
Brian J. McGoldrick, Esq.
Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 4th day of August, 2026, in San Diego, California.

*/s/ Brian J. McGoldrick*
Brian J. McGoldrick, Esq.
Attorney for Petitioner