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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAWAD GHOLAMI,
ALI REZA GHOLAMI,
Petitioners,

vs.

CHRISTOPHER CHESTNUT, warden
of California City Detention Center;
MINGA WOFFORD, Administrator of
Mesa Verde ICE Detention Center;
SERGIO ALBARRAN, San Francisco
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations ("ICE/ERO");
TODD LYONS, Acting Director of
Immigration Customs Enforcement
("ICE");
KRISTI NOEM, Secretary of the
Department of Homeland Security
("DHS");
PAMELA BONDI, Attorney General of
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;
Respondents.

Case No.:

Agency Number:

PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

1. The Taliban are a radical insurgent group that the United States, alongside the legitimate government of Afghanistan, has been battling for nearly 20 years. In August of 2021, the Taliban successfully took over the entire country when they entered and took control of Kabul, the capital of Afghanistan. The United States government worked diligently for several days to evacuate their allies but, ultimately, left hundreds of thousands behind. Jawad Gholami and Ali Reza Gholami, who are brothers, were among those left behind. They went into hiding with their family in Herat but as the search for those who assisted the US Mission and their families intensified by the Taliban they realized they needed to flee. The brothers fled Afghanistan and came to the United States to seek asylum.

2. The brothers were invited to seek entry into the United States via the CBP One Application. They came to their appointment on January 23, 2024. After their inspection it was determined they were not a flight risk nor a risk to society and were both granted Humanitarian Parole and welcomed into the United States by Respondents pursuant to 8 U.S.C. § 1226(a) *See* Exhibit A; they then applied for asylum before the U.S. Immigration authorities in July of 2024. Respondents commenced removal proceedings against them in immigration court, entitling them to present their asylum claims with the attendant due process rights

1 under 8 U.S.C. § 1229a. Yet, in a deceptive sleight of hand Respondents have
2 detained them.
3

4 3. On September 08, 2025, the Gholami brothers, along with a third
5 brother who was not detained, went to their local ICE office to request copies of
6 their passports to submit as required evidence in their asylum hearings. The first
7 brother, Mohammad Ali Ghulami, went to the desk to make the request. ICE
8 accommodated him and he went to the car. Jawad Gholami and Ali Reza Gholami
9 went into the office to make the same request. However, ICE immediately
10 handcuffed them and detained them. Respondents did not conduct a pre-detention
11 hearing. Respondents did not make an individualized determination that the
12 petitioners were a flight risk or a danger to the community. Respondents continue
13 to detain them based not on their personal circumstances or individualized facts,
14 but because of Respondents' interpretation of President Trump's whim and
15 categorical determination that, the Fifth Amendment notwithstanding, noncitizens
16 are not entitled to due process.
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22 4. But Respondents cannot evade the law so easily. The law which
23 they purport to detain the petitioners does not authorize their actions and the U.S.
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1 Constitution requires the Respondents provide at least the rights available to them
2 when they filed their applications for asylum¹.
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4 5. Accordingly, to vindicate Petitioner's rights, this Court should grant
5 the instant petition for a writ of habeas corpus. The Gholamis asks this Court to
6 find that Respondents' attempts to detain them are arbitrary and capricious and in
7 violation of the law, and to immediately issue an order preventing their transfer
8 out of this district.
9
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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).
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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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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 Petitioners are in Respondents' custody in
6 Kern County, California. Venue is further proper because a substantial part of the
7 events or omissions giving rise to Petitioner's claims occurred in this District,
8 where Petitioners are now in Respondent's custody. 28 U.S.C. § 1391(e).
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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.*
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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
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26 12. Petitioners are "in custody" for the purpose of § 2241 because
27 they are arrested and detained by Respondents.
28

PARTIES

13. Ali Reza Gholami ("Petitioner 01") is a 20-year-old citizen of Afghanistan. He is a resident of Mojave, California, currently detained at Mesa Verde Detention Center and is present within the state of California as of the time of the filing of this petition.

14. Jawad Gholami ("Petitioner 02") is a 27-year-old citizen of Afghanistan. He is a resident of Mojave, California, currently detained at the California City Detention Center and is present within the state of California as of the time of the filing of this petition.

15. Respondent Minga Wofford is the Administrator of the Mesa Verde Detention Center and is a legal custodian of Petitioner 01.

16. Respondent Christopher Chestnut is the warden of the California City Detention Center and is the legal custodian of Petitioner 02.

17. Respondent, Sergio Albarran, is the San Francisco Field Office Director, Immigration and Customs Enforcement and Removal Operations. The San Francisco 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 Francisco Field Office area of responsibility includes Kern County California and both the

1 California City Detention Center and the Mesa Verde Detention Center.

2 Respondent Sergio Albarran is a legal custodian of Petitioners.

3
4 18. Respondent Todd Lyons is the acting director of U.S. Immigration
5 and Customs Enforcement, and he has authority over the actions of respondent
6 Sergio Albarran and ICE in general. Respondent Lyons is a legal custodian of
7 Petitioner.

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9 19. Respondent Kristi Noem is the Secretary of the Department of
10 Homeland Security (DHS) and has authority over the actions of all other DHS
11 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
12 legal custodian of Petitioner and is charged with faithfully administering the
13 immigration laws of the United States.

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15 20. Respondent Pamela Bondi is the Attorney General of the United
16 States, and as such has authority over the Department of Justice and is charged
17 with faithfully administering the immigration laws of the United States.

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

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

1 23. This action is commenced against all Respondents in their official
2 capacities.
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5 **LEGAL FRAMEWORK**
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7 24. The INA prescribes three basic forms of detention for the vast
8 majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §
9 1229a or they can be released on Parole.
10

11 25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in §
12 1229a removal proceedings before an IJ. Individuals covered by § 1226(a)
13 detention are generally entitled to a bond hearing at the outset of their detention,
14 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been
15 arrested, charged with, or convicted of certain crimes are subject to mandatory
16 detention. See 8 USC§ 1226(a).
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19 26. Second, the INA provides for mandatory detention of noncitizens
20 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
21 and for other noncitizen applicants for admission to the U.S. who are deemed not
22 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).
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25 27. Last, the INA provides for detention of noncitizens who have been
26 ordered removed, including individuals in withholding-only proceedings. See 8
27 USC § 1231. (a)— (b).
28

1 28. Alternatively, noncitizens can be granted parole rather than be
2 detained. 8 U.S.C. § 1226(a)(2)(B). The regulations for granting parole and
3 revocation of parole are found at 8 CFR § 212.5,
4

5 29. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a)
6 and 1225(b)(2) and the revocation of parole.
7

8 30. The detention provisions at § 1226(a) and § 1225(b)(2) were
9 enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
10 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302—03, 110 Stat,
11 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently
12 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
13 (2025).
14

15 31. Following the enactment of the IIRIRA, EOIR drafted new
16 regulations applicable to proceedings before immigration judges explaining that, in
17 general people who entered the country without inspection — also referred to as
18 being “present without admission” - were not considered detained under § 1225
19 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
20 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
21 Proceedings; Asylum Procedures, 62 Fed. Reg, 10312, 10323 (Mar_6, 1997).
22

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

8
9 33. This practice both pre- and post-enactment of IIRIRA is consistent
10 with the fact that noncitizens present within the United States — as opposed to
11 noncitizens present at a border and seeking admission - have constitutional rights.
12 “{T}he Due Process Clause applies to all ‘persons’ within the United States,
13 including aliens, whether their presence here is lawful, unlawful, temporary, or
14 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
15
16

17 34. On July 8, 2025, ICE, “in coordination with” the Department of
18 Justice, announced a new policy that rejected the well-established understanding of
19 the statutory framework and reversed decades of practice.
20
21

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

3
4 36. In a May 22, 2025 unpublished decision by the Board of
5 Immigration Appeals (BIA), EOIR adopted this same position. That decision holds
6 that all noncitizens who entered the United States without admission or parole and
7 who are present within the United States are considered applicants for admission
8 and ineligible for IJ bond hearings. That was further affirmed by the BIA in *Yajure*
9 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). There the BIA held that Immigration
10 Judges do not have jurisdiction in these cases. This makes it impossible for
11 noncitizens who have entered at a port of entry or entered without inspection to
12 apply for a bond and are all subject to mandatory detention.
13

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

2
3 39. Other portions of the text of § 1226 also explicitly apply to people
4 charged as being inadmissible, including those who entered without inspection.
5 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible
6 individuals makes clear that, by default, inadmissible individuals not subject to
7 subparagraph (E)(1) are afforded a bond hearing under subsection (a). As the
8 Rodriguez Vazquez court explained, “[w]hen Congress creates “specific
9 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the
10 statute generally applies. *Rodriguez Vazquez*, W20L25 1193850, at *12 (citing
11 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
12 (2010)).
13
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15

16 40. Section 1226 therefore leaves no doubt that it applies to
17 noncitizens who are present without admission and who face charges in removal
18 proceedings of being inadmissible to the United States.
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21 41. By contrast, § 1225(b) applies to people arriving at U.S. ports of
22 entry or who recently entered the United States and are encountered at or near the
23 border. The statute’s entire framework is premised on inspections at the border of
24 people who are “seeking admission” to the United States. 8 U.S.C. §
25 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
26 detention scheme applies ““at the Nation’s borders and ports of entry, where the
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1 Government must determine whether a[] [noncitizen] seeking to enter the country
2 is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
3

4 42. Accordingly, the mandatory detention provision of § 1225(b)(2)
5 does not apply to people like Petitioners who have already entered and were
6 residing in the United States at the time they were apprehended.
7

8 43. Immigration detention should not be used as a punishment and
9 should only be used when, under an individualized determination, a noncitizen is a
10 flight risk because they are unlikely to appear for immigration court or a danger to
11 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
12

13 44. Once a determination has been made that a noncitizen should not
14 be detained they may be released on conditional parole or, as in this case,
15 humanitarian parole. The regulations for revocation of that parole are set out in 8
16 CFR § 212.5(e). Specifically, this revocation must be
17

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

25 **FACTUAL BACKGROUND**

26 45. Petitioners are citizens of Afghanistan, living in Herat and are
27 members of ethnic Hazara minority and the Shi’a religious minority.
28

1 46. Petitioners were threatened with death in Afghanistan by the
2 Taliban and other terrorists in Afghanistan.
3

4 47. On or about January 23, 2024, Petitioners came to the port of entry
5 San Ysidro, California to seek asylum. On January 23, 2024, Respondents granted
6 them both humanitarian parole and welcomed them into the United States, based
7 on the individualized facts in each case, under 8 U.S.C. § 1182(d)(5) and released
8 them from custody pursuant to the same statute.
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11 48. On or about January 23, 2024, Respondents commenced removal
12 proceedings against Petitioners under 8 U.S.C. § 1229a.
13

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

17 50. Petitioners applied for asylum before the Van Nuys Immigration
18 Court on July 2, 2024.

19 51. Respondents issued work authorization to Petitioners pursuant to 8
20 C.F.R. § 274a.12(c)(8).
21

22 52. Petitioners were preparing the evidence files for their respective
23 asylum hearings which includes a complete copy of the passport. This is not just
24 the pages with stamps but every single page whether stamped or blank. They drove
25 to the ICE office that held their passports. When they went to request their
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1 passports, each of them was led into another room where they were immediately
2 detained.
3

4 53. They were not presented with a judicial warrant when they were
5 detained. They were not trying to flee or to cause harm when they were detained.
6 They were not charged with any crime that might lead the officers to have probable
7 cause to detain them. They were not given notice that their parole was being
8 revoked. They were not given a pre-detention hearing to determine if the facts of
9 their release had changed such that they were now a flight risk or that they were a
10 danger to the community. They were deprived of their liberty for no other reason
11 than that the President of the United States had decided that they and millions of
12 others like them should no longer be free.
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16 54. 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
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1 prioritize civil immigration enforcement procedures including through the use of
2 mass detention.
3

4 55. 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 56. 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 57. On information and belief, Petitioners have 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 58. Petitioners restate and reallege all paragraphs as if fully set forth
18 here.
19

20 59. 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
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1 interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors
2 easily weigh in Mr. Soleimani’s favor.
3

4 60. First, the private interest at issue is the Gholamis’ 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 Petitioners’ general liberty interest
10 substantial, they have an added interest in remaining out of custody so they can
11 work with their attorney to prepare their asylum cases. What’s more, Petitioners’
12 work authorizations are contingent on their parole status, and revocation of parole
13 will directly impact the ability to provide for themselves and their families. Thus,
14 the first factor weighs heavily in Petitioners’ favor.
15

16 61. Second, the procedures the agency used to determine whether to
17 revoke Petitioners’ parole presented a high risk of erroneous deprivation of liberty.
18 To date, the agency’s actions surrounding Petitioners’ parole have completely
19 failed to comply with the statute, the regulations, and even the agency’s own
20 decision. After granting Petitioners parole in January 2024, the agency
21 inexplicably revoked this parole four months before it expired. It did so even
22 though Petitioners had attended all their check-in appointments, had no criminal
23 history, and had timely filed asylum applications. The agency did not claim that
24 “the purposes of such parole . . . have been served,” 8 U.S.C. § 1182(d)(5)(A), nor
25 that the “humanitarian reasons” for their parole no longer existed, 8 C.F.R. §
26 212.5(e)(2)(i). Because consideration of any of these factors should have led to a
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1 different result, the risk of erroneous deprivation of Petitioners' parole without
2 these procedures was high, and this factor weighs heavily in his favor.

3
4 62. Finally, any government interest in revoking Petitioners' parole is
5 minimal. The Gholamis have complied with all their check-in requirements, have
6 no criminal history, have timely applied for asylum, and do not represent a danger
7 or a flight risk. All the government need do is comply with its *own decision* to
8 grant them parole until at least January 22, 2026. Thus, the *Mathews v. Eldrige*
9 factors weigh heavily in Petitioners favor, and this revocation of parole violates
10 procedural due process.

11 12 **COUNT TWO**

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

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

15 **Unlawful Detention**

16
17 63. Petitioner restates and realleges all paragraphs as if fully set forth
18 here.

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

22
23 65. An action is an abuse of discretion if the agency “entirely failed to
24 consider an important aspect of the problem, offered an explanation for its decision
25 that runs counter to the evidence before the agency, or is so implausible that it
26 could not be ascribed to a difference in view or the product of agency expertise.”
27
28

1 *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
2
3 (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
4 463 U.S. 29, 43 (1983)).

5 66. To survive an APA challenge, the agency must articulate “a
6
7 satisfactory explanation” for its action, “including a rational connection between
8 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
9 2569 (2019) (citation omitted).

10
11 67. By categorically revoking Petitioners’ parole and transferring
12 them to a Detention Center without consideration of their individualized facts and
13 circumstances, Respondents have violated the APA.
14

15 68. Respondents have made no finding that Petitioners are a danger to
16 the community.
17

18 69. Respondents have made no finding that Petitioners are a flight risk
19 because, in fact, they were arrested while appearing at an ICE office.
20

21 70. By detaining the Petitioners categorically, Respondents have
22 further abused their discretion because there have been no changes to their facts or
23 circumstances since the agency made its initial determination to parole them into
24 the United States that support detention.
25

26 71. Respondents have already considered Petitioners’ facts and
27 circumstances and determined that they were not a flight risk or danger to the
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1 community. There have been no changes to the facts that justify this revocation of
2 their parole.
3

4 **COUNT THREE**

5 **Violation of Fourth Amendment constraint against unreasonable search and**
6 **seizure.**
7

8 72. Petitioners restate and reallege all paragraphs as if fully set forth
9 here.
10

11 73. The Fourth Amendment protects “[t]he right of the people to be
12 secure in their persons ... against unreasonable searches and seizures.” U.S. Const.
13 Amend. IV. The Supreme Court has recognized that immigration arrests and
14 detentions are “seizures” within the meaning of the Fourth Amendment. *INS v*
15 *Lopez-Mendoza*, 468 U.S. 1032, 1044f (1984) (acknowledging that deportation
16 proceedings are civil, but the Fourth Amendment still applies to the “Seizure” of
17 the person.)
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21 74. The Fourth Amendment requires that arrests entail a neutral,
22 judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114
23 (1975). That neutral, judicial determination can occur either before the arrest in the
24 form of a warrant, or promptly afterward, in the form of a prompt judicial probable
25 cause determination. *Id.* Arrest and detention of a person, including of a
26 noncitizen, absent a neutral judicial determination of probable cause violates the
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1 Fourth Amendment of the Constitution. *Id.* See also *Cnty. Of Riverside v*
2 *McLaughlan*, 500 U.S. 44, 57 (1991). This determination must occur within 48
3 hours of detention, which includes weekends, unless there is a bona fide
4 emergency or other extraordinary circumstances. *Id.*

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7 75. Congress enacted a strong preference that immigration arrests be
8 based on warrants. See *Arizona v. United States*, 567 U.S. 387, 407-08 (2012). The
9 Immigration and Nationality Act thus provides immigration officers with only
10 limited authority to conduct warrantless arrests. See 8 C.F.R § 287.8(c)(2)(ii).

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12 76. Both Jawad Gholami and Ali Reza Gholami, at the moment of the
13 arrest by Respondents, were lawfully present based on the Respondents' prior
14 grant of release and parole. They did not receive any judicial determination of
15 probable cause for their arrest or continued detention by Respondents.

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18 77. The Government cannot salvage this seizure by invoking
19 generalized immigration enforcement interests. The Fourth Amendment's
20 reasonableness inquiry is fact-specific and demands individualized justification for
21 both the arrest and the extended detention. See *United States v Brignoni-Ponce*,
22 422 U.S. 873, 882-84 (1975). *Gerstein*, 420 U.S. at 114. Petitioners were granted
23 release from DHS custody in 2024 and did not pose any danger to any person in
24 the community at large.

78. Respondents' warrantless arrest of Petitioners constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Declare that Petitioners' re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act;

(4) Declare that Petitioners' arrest and detention was unlawful as a violation of their rights against unreasonable search and seizure as guaranteed in the Fourt Amendment;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release
Petitioner from custody;

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

1 (7) Order that the Petitioners may not be re-detained without further
2 order of this court;
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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
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7 (8) Grant any further relief this Court deems just and proper.
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9 Dated: November 24, 2025.

/s/ Brian J. McGoldrick
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