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

10 ELÍAS PABLO-MATÍAS,
11
12 Petitioners,

13 vs.

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

Respondents.

Case No.: **'26CV2930 LEK MMP**

Agency Number:



PETITION FOR WRIT OF HABEUS
CORPUS

INTRODUCTION

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3 1. Guatemala is a dangerous country that has been overrun by
4 corruption, a breakdown in Civil Society and terrorized by gang activity. Mr.
5 Pablo-Matías was under constant threat from gangs as a teen-ager in Guatemala.
6
7 He believed his only choices were to either join one of the gangs or flee the
8 country. The local and federal government were powerless to help him avoid this
9 fate. The fact that he belongs to a persecuted indigenous community, the Mayan-
10 Mam, made it even more difficult for him to find a solution. While still a minor at
11 17 years of age, he left Guatemala and arrived at the border of the United States.
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14 2. He entered the United States near Huntsville, Texas on January 14,
15 2022. He was immediately apprehended and processed at the Rio Grande
16 processing center. Once it was determined he was a minor, he was transferred to
17 the Southwest Key Resettlement Agency for Unaccompanied Minors. After he
18 aged out, he was granted parole in the United States by release on his own
19 recognizance and welcomed into the United States by Respondents. Respondents
20 commenced removal proceedings against him in immigration court on June 1,
21 2022. However, USCIS retains original jurisdiction over asylum claims of minors.
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23 As a result, on August 26, 2022 his removal proceedings were terminated.
24
25 Previously, on June 27, 2022, he had filed his asylum case with USCIS. He
26 attended his asylum interview on 10/13/2023. Mr. Pablo-Matías was granted work
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1 authorization on 10/25/2023. For 3 ½ years Mr. Pablo-Matías developed ties to the
2 community, had steady work, and patiently waited for USCIS to make a final
3 decision on his asylum application.
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5 3. On January 14, 2026, Mr. Pablo-Matías was on the road with his
6 employer, North County Scaffold. They had a job they were working in Dana
7 Point. As they headed north on Interstate 5, they were directed into the truck weigh
8 station. Petitioner was asked for his ID. He was then instructed to exit the vehicle.
9 He was asked if he had a green card and he said no. He was told that since he did
10 not have a current case with EOIR he was being arrested. The other workers and
11 the truck were released. Mr. Pablo-Matías was handcuffed. He was then
12 transported to a processing center and ultimately incarcerated at Otay Mesa
13 Detention Center. Respondents did not conduct a pre-detention hearing.
14 Respondents did not make an individualized determination that the petitioner was a
15 flight risk or a danger to the community. Respondents continue to detain him
16 based not on his personal circumstances or individualized facts, but because of
17 Respondents' interpretation of President Trump's whim and categorical
18 determination that, the Fifth Amendment notwithstanding, noncitizens are not
19 entitled to due process.
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26 4. But Respondents cannot evade the law so easily. The law which
27 they purport to detain the petitioners does not authorize their actions and the U.S.
28

1 Constitution requires the Respondents provide at least the rights available to him
2 when he was paroled into the United States and he filed his application for
3 asylum¹.
4

5 5. Accordingly, to vindicate Petitioner's rights, this Court should grant
6 the instant petition for a writ of habeas corpus. The petitioner asks this Court to
7 find that Respondents' attempts to detain him are arbitrary and capricious and in
8 violation of the law, and to immediately issue an order preventing his transfer out
9 of this district.
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11

12 JURISDICTION

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14 6. This action arises under the Constitution of the United States and
15 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
16

17 7. This court has subject matter jurisdiction under 28 U.S.C. § 2241
18 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
19 United States Constitution (Suspension Clause).
20

21 8. This Court may grant relief under the habeas corpus statutes, 28
22 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
23

24
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-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
28 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

1 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. Petitioners are "in custody" for the purpose of § 2241 because
27 they are arrested and detained by Respondents.
28

PARTIES

13. Elías Pablo-Matías is a 22-year-old citizen of Guatemala. He is a resident of Oceanside, California, 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

1 Respondents in this case, as well as all operations of DHS. Respondent Mullin is a
2 legal custodian of Petitioner and is charged with faithfully administering the
3 immigration laws of the United States.
4

5 18. Respondent Acting Attorney General of the United States has
6 authority over the Department of Justice and is charged with faithfully
7 administering the immigration laws of the United States.
8

9 19. Respondent U.S. Immigration Customs Enforcement is the federal
10 agency responsible for custody decisions relating to non-citizens charged with
11 being removable from the United States, including the arrest, detention, and
12 custody status of non-citizens.
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15 20. Respondent U.S. Department of Homeland Security is the federal
16 agency that has authority over the actions of ICE and all other DHS Respondents.
17

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

22 LEGAL FRAMEWORK

23 22. The INA prescribes three basic forms of detention for the vast
24 majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §
25 1229a or they can be released on Parole.
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1 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in §
2 1229a removal proceedings before an IJ. Individuals covered by § 1226(a)
3 detention are generally entitled to a bond hearing at the outset of their detention,
4 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been
5 arrested, charged with, or convicted of certain crimes are subject to mandatory
6 detention. See 8 USC§ 1226(a).
7

8 24. Second, the INA provides for mandatory detention of noncitizens
9 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
10 and for other noncitizen applicants for admission to the U.S. who are deemed not
11 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).
12
13

14 25. Last, the INA provides for detention of noncitizens who have been
15 ordered removed, including individuals in withholding-only proceedings. See 8
16 USC § 1231. (a)— (b).
17

18 26. Alternatively, noncitizens can be granted parole rather than be
19 detained. 8 U.S.C. § 1226(a)(2)(B). The regulations for granting parole and
20 revocation of parole are found at 8 CFR § 212.5,
21

22 27. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a)
23 and 1225(b)(2) and the revocation of parole.
24

25 28. The detention provisions at § 1226(a) and § 1225(b)(2) were
26 enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
27
28

1 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302—03, 110 Stat,
2 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently
3 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
4 (2025).
5

6
7 29. Following the enactment of the IIRIRA, EOIR drafted new
8 regulations applicable to proceedings before immigration judges explaining that, in
9 general people who entered the country without inspection — also referred to as
10 being “present without admission” - were not considered detained under § 1225
11 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
12 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
13 Proceedings; Asylum Procedures, 62 Fed. Reg, 10312, 10323 (Mar_6, 1997).
14

15
16 30. Thus, in the decades that followed, most people who entered
17 without inspection and were placed in standard § 1229a removal proceedings
18 received bond hearings before IJs, unless their criminal history rendered them
19 ineligible. That practice was consistent with many more decades of prior practice,
20 in which noncitizens who were not deemed “arriving” were entitled to a custody
21 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see*
22 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
23 “restates” the detention authority previously found at § 1252(a)).
24
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28 31. This practice both pre- and post-enactment of IIRIRA is consistent

1 with the fact that noncitizens present within the United States — as opposed to
2 noncitizens present at a border and seeking admission - have constitutional rights.
3
4 “[T]he Due Process Clause applies to all ‘persons’ within the United States,
5 including aliens, whether their presence here is lawful, unlawful, temporary, or
6 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
7

8 32. On July 8, 2025, ICE, “in coordination with” the Department of
9 Justice, announced a new policy that rejected the well-established understanding of
10 the statutory framework and reversed decades of practice.
11

12 33. The new policy, entitled “Interim Guidance Regarding Detention
13 Authority for Applicants for Admission, claims that all noncitizens present within
14 the United States who entered without inspection shall now be deemed “applicants
15 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
16 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
17 apprehended, and affects those who have resided in the United States for months,
18 years, and even decades.
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22 34. In a May 22, 2025 unpublished decision by the Board of
23 Immigration Appeals (BIA), EOIR adopted this same position. That decision holds
24 that all noncitizens who entered the United States without admission or parole and
25 who are present within the United States are considered applicants for admission
26 and ineligible for IJ bond hearings. That was further affirmed by the BIA in *Yajure*
27
28

1 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). There the BIA held that Immigration
2 Judges do not have jurisdiction in these cases. This makes it impossible for
3 noncitizens who have entered at a port of entry or entered without inspection to
4 apply for a bond and are all subject to mandatory detention.
5

6
7 35. ICE and EOIR have adopted this position even though federal
8 courts have rejected this exact conclusion. For example, after IJ in the Tacoma,
9 Washington immigration court stopped providing bond hearings for persons who
10 entered the United States without inspection and who have since resided here, the
11 U.S. District Court for the Western District of Washington found that such a
12 reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to
13 noncitizens who are not apprehended upon arrival to the United States. *Rodriguez*
14 *Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL_1193850 (W.D. Wash. Apr_24,
15 2025); see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 1208256 9WL 299, at
16 *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).
17 Courts in the Central District have reached the same conclusion. See *Maldonado*
18 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July
19 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (TRO issued
20 after DHS adopted “Interim Guidance Regarding Detention Authority for
21 Applicants for Admission.”); *Ceja Gonzalez, et al. v. Noem, et al.*, No. 5:25-cv-
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1 02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting Ex Parte
2 Application for TRO and OSC, Dkt, 1 2 (Same).
3

4 36. DHS's and EOIR's interpretation defy the INA. As the *Rodriguez*
5 *Vazquez* court explained, the plain text of the statutory provisions demonstrates
6 that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a)
7 applies by default to all persons "pending a decision on whether the [noncitizen] is
8 to be removed from the United States." *Rodriguez Vazquez*, 2025 WL.1193850 at
9
10 *12. See also *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif July
11 28, 2025) Order Granting Temporary Restraining Order, Dkt14 .at 9 ("[T]he Court
12 finds that the potential for Petitioners' continued detention without an initial bond
13 hearing would cause immediate and irreparable injury, as this violates statutory
14 rights afforded under § 1226(a)."); *Ceja Gonzalez*, No. 5:25-cv-02054-ODW-BFM
15 (C.D. Cal. August 13, 2025), Order Granting Ex Parte Application for TRO and
16 OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.)
17
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19
20

21 37. Other portions of the text of § 1226 also explicitly apply to people
22 charged as being inadmissible, including those who entered without inspection.
23 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible
24 individuals makes clear that, by default, inadmissible individuals not subject to
25 subparagraph (E)(1) are afforded a bond hearing under subsection (a). As the
26 *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific
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28

1 exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the
2 statute generally applies. *Rodriguez Vazquez*, W20L25 1193850, at *12 (citing
3 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
4 (2010)).
5

6
7 38. Section 1226 therefore leaves no doubt that it applies to
8 noncitizens who are present without admission and who face charges in removal
9 proceedings of being inadmissible to the United States.
10

11 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of
12 entry or who recently entered the United States and are encountered at or near the
13 border. The statute’s entire framework is premised on inspections at the border of
14 people who are “seeking admission” to the United States. 8 U.S.C. §
15 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
16 detention scheme applies ““at the Nation’s borders and ports of entry, where the
17 Government must determine whether a[] [noncitizen] seeking to enter the country
18 is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
19
20
21

22 40. Accordingly, the mandatory detention provision of § 1225(b)(2)
23 does not apply to people like Petitioner who have already entered, were released
24 and were residing in the United States at the time they were apprehended.
25

26 41. Immigration detention should not be used as a punishment and
27 should only be used when, under an individualized determination, a noncitizen is a
28

1 flight risk because they are unlikely to appear for immigration court or a danger to
2 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
3

4 42. Once a determination has been made that a noncitizen should not
5 be detained, they may be released on conditional parole or humanitarian parole.
6

7 The regulations for revocation of that parole are set out in 8 CFR § 212.5(e).

8 Specifically, this revocation must be
9

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

17 **FACTUAL BACKGROUND**

18 43. Petitioner is a citizen of Guatemala. Petitioner was repeatedly
19 threatened in Guatemala and believed his only option was to leave the country and
20 seek a safe haven in the United States. He made his way to Mexico and finally to
21 the border with the United States.

22 44. On January 14, 2022, Petitioner entered the United States near
23 Huntsville, Texas. He was processed at the Rio Grande Processing Center where it
24 was determined he was an Unaccompanied Minor. He was then released and
25 placed with the Southwest Key Resettlement Agency for Unaccompanied Minors.
26 He was there for almost 3 months until he turned 18. Respondents then determined
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1 that he was not a flight risk or a danger to the community and they paroled him
2 into the United States by release on his own recognizance, under 8 U.S.C. §
3 1182(d)(5) and released them from custody pursuant to the same statute.
4

5 45. On or about June 1, 2022, Respondents commenced removal
6 proceedings against Petitioner under 8 U.S.C. § 1229a. However, USCIS retains
7 original jurisdiction over asylum for minors.
8

9 46. Petitioner filed his asylum application on June 27, 2022.
10 Accordingly, on August 26, 2022 the court terminated his removal proceedings.
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. Petitioner has his asylum interview before an asylum officer at the
16 Tustin Asylum Office on 10/13/2023.
17

18 49. Respondents issued work authorization to Petitioners pursuant to 8
19 C.F.R. § 274a.12(c)(8) on 10/25/2023. His application number is 
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21 50. On January 14, 2026, Mr. Pablo-Matías was on the road with his
22 employer, North County Scaffold. They had a job they were working in Dana
23 Point. As they headed north on Interstate 5, they were directed into the truck
24 weigh-in station. Petitioner was asked for his ID. He was then instructed to exit the
25 vehicle. He was asked if he had a green card and he said no. He was told that since
26 he did not have a current case with EOIR he was being arrested. The other workers
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1 and the truck were released. Mr. Pablo-Matías was handcuffed. He was then
2 transported to a processing center and ultimately incarcerated at Otay Mesa
3 Detention Center. Respondents did not conduct a pre-detention hearing.
4 Respondents did not make an individualized determination that the petitioner was a
5 flight risk or a danger to the community.
6
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8 51. He was not presented with a judicial warrant when he was
9 detained (although counsel is informed one was presented to him after he was
10 detained and sent to a processing center.) He was not trying to flee or to cause
11 harm when he was detained. He was not charged with any crime that might lead
12 the officers to have probable cause to detain him. He was not given notice that his
13 parole was being revoked. He was not given a pre-detention hearing to determine if
14 the facts of his release had changed such that he was now a flight risk or that he
15 was a danger to the community. He was deprived of his liberty for no other reason
16 than that the President of the United States had decided that he and millions of
17 others like him should no longer be free. To add insult to injury, when USCIS
18 received notice that Mr. Pablo-Matías had been detained, they suddenly decided to
19 deny his asylum application. The denial letter is submitted as an exhibit. Also,
20 even though USCIS retained jurisdiction, before the denial, in conjunction with his
21 arrest, DHS recorded a second Notice to Appear, commencing removal
22 proceedings while USCIS still retained jurisdiction.
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52. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

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

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

55. On information and belief, Petitioner have no criminal history.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

1 56. Petitioner restates and realleges all paragraphs as if fully set forth
2 here.

3
4 57. The government's effective revocation of parole violated
5 procedural due process. The Fifth Amendment guarantees that "[n]o person shall
6 be ... deprived of life, liberty, or property, without due process of law." U.S. Const.
7 Amend. V. To determine a violation of procedural due process, courts weigh the
8 traditional factors of (1) the private interest at issue, (2) the risk of erroneous
9 deprivation of that interest through the procedures used, and (3) the government's
10 interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors
11 easily weigh in Mr. Pablo-Matías' favor.
12
13
14

15 58. First, the private interest at issue is the Petitioner's deprivation of
16 liberty—i.e., remaining on parole, rather than being detained. *See Morrissey v.*
17 *Brewer*, 408 U.S. 471, 482–483 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690
18 (2001) ("Freedom from imprisonment—from government custody, detention, or
19 other forms of physical restraint—lies at the heart of the liberty that [the Due
20 Process] Clause protects."). Not only is Petitioner's general liberty interest
21 substantial, he has an added interest in remaining out of custody so he can work
22 with his attorney to prepare his asylum case. What's more, Petitioner's work
23 authorization is contingent on his parole status, and revocation of parole and
24 cancellation of his asylum application with USCIS will directly impact the ability
25 to provide for himself. Thus, the first factor weighs heavily in Petitioner's favor.
26

27 59. Second, the procedures the agency used to determine whether to
28 revoke Petitioner's parole presented a high risk of erroneous deprivation of liberty.

1 To date, the agency's actions surrounding Petitioner's parole have completely
2 failed to comply with the statute, the regulations, and even the agency's own
3 decision. After granting Petitioner parole in 2022, the agency inexplicably revoked
4 this parole upon his arrest. It did so even though Petitioner had attended all his
5 check-in appointments, had no criminal history, and had timely filed his asylum
6 application. The agency did not claim that "the purposes of such parole . . . have
7 been served," 8 U.S.C. § 1182(d)(5)(A), nor that the "humanitarian reasons" for
8 their parole no longer existed, 8 C.F.R. § 212.5(e)(2)(i). Because consideration of
9 any of these factors should have led to a different result, the risk of erroneous
10 deprivation of Petitioner's parole without these procedures was high, and this
11 factor weighs heavily in his favor.
12

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

20 COUNT TWO

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

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

23 Unlawful Detention

24
25 61. Petitioners restate and reallege all paragraphs as if fully set forth
26 here.
27
28

1 62. Under the APA, a court shall “hold unlawful and set aside agency
2 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
3

4 63. An action is an abuse of discretion if the agency “entirely failed to
5 consider an important aspect of the problem, offered an explanation for its decision
6 that runs counter to the evidence before the agency, or is so implausible that it
7 could not be ascribed to a difference in view or the product of agency expertise.”
8 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
9
10 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
11 463 U.S. 29, 43 (1983)).
12

13 64. To survive an APA challenge, the agency must articulate “a
14 satisfactory explanation” for its action, “including a rational connection between
15 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
16 2569 (2019) (citation omitted).
17
18

19 65. By categorically revoking Petitioner’s parole and transferring
20 them to a Detention Center without consideration of his individualized facts and
21 circumstances, Respondents have violated the APA.
22

23 66. Respondents have made no finding that Petitioner is a danger to
24 the community.
25

26 67. Respondents have made no finding that Petitioner is a flight risk.
27
28

1 68. By detaining the Petitioner categorically, Respondents have
2 further abused their discretion because there have been no changes to his facts or
3 circumstances since the agency made its initial determination to parole him into the
4 United States that support detention.
5

6 69. Respondents have already considered Petitioner's facts and
7 circumstances and determined that he was not a flight risk or danger to the
8 community. There have been no changes to the facts that justify this revocation of
9 their parole.
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11 70. Respondents, by their own motion, originally sought to have Mr.
12 Pablo-Matías' removal proceedings terminated in 2022 because USCIS retained
13 jurisdiction over his relief sought. This was because he entered as an
14 unaccompanied minor. On January 22, 2026, Respondents initiated new removal
15 proceedings while USCIS still had jurisdiction. Conveniently, USCIC denied the
16 application a few weeks later. Petitioner contends this was a coordinated action to
17 deprive him of any rights or relief that was available to him when he first entered
18 the country. This was arbitrary and capricious and also violates the APA.
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23 **ORDERING A BOND HEARING IS NOT THE APPROPRIATE RELIEF**
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25 71. Many courts recently have been ordering a bond hearing as an
26 alternative avenue for relief. If Mr. Pablo-Matías's detention was unlawful, *ab*
27 *initio*, he should not be required to post a bond and, in effect, pay a ransom to be
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1 released from this illegal detention. Nothing indicates that Mr. Pablo-Matías has
2 somehow become a flight risk or a danger to the community. He was not detained
3 at the checkpoint because he was suddenly a flight risk or a danger to the
4 community. When ICE put him in handcuffs, they did not assert that they had
5 suddenly determined he was a flight risk or a danger to the community. He was
6 simply swept up in this administrations scheme to lock up all immigrants without
7 green cards.
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11 72. Ordering a bond hearing because he is no longer deemed subject to
12 mandatory detention rewards the government's unlawful behavior. First, it
13 legitimizes his detention. Second, it allows the government to detain without a
14 prior determination of a change in individual circumstances regarding flight risk
15 and danger. Third, it requires the petitioner to prove that he is not a flight risk or a
16 danger to the community, something the government already determined when
17 they released him. Fourth, it requires the petitioner to pay a fee to the parties that
18 unlawfully detained him in order to be released from his unlawful detention.
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22 73. Upon release from Otay Mesa it is the custom of ICE to immediately
23 place detainees in Alternative to Detention Programs and affix an ankle monitor to
24 them. As the name of the program indicates, this is just another form of detention
25 that is made without any determination that there has been a change in
26 circumstances such that Mr. Pablo-Matías's movements must now be restricted to
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1 a 75-mile radius and monitored with an ankle monitor. Mr. Pablo-Matías should be
2 returned to his predetention status. This should also include the return to him of
3 any and all documents and/or identification cards and work authorization cards in
4 his possession when he was detained. This court has authority to order more than
5 just release in a habeas action. See *Boumediene v. Bush*, 553 U.S. 723, 779–80
6 (2008). Barring Alternative to Detention and return of documents seized are part
7 and parcel of returning Petitioner to the state he was in when he was detained.
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11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioners respectfully requests this Court to grant
13 the following:
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15 (1) Assume jurisdiction over this matter;

16 (2) Issue an Order to Show Cause ordering Respondents to show
17 cause why this Petition should not be granted within three days;
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19 (3) Declare that Petitioners' re-detention without an individualized
20 determination violates the Due Process Clause of the Fifth Amendment and the
21 Administrative Procedures Act;
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23 (4) Declare that Petitioners' arrest and detention was unlawful as a
24 violation of their rights against unreasonable search and seizure as guaranteed in
25 the Fourt Amendment;
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1 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
2 Petitioner from custody and all his property seized at his arrest be returned to him;
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4 (6) Issue an Order prohibiting the Respondents from transferring
5 Petitioner from the district without the court's approval;
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7 (7) Order that the Petitioners may not be re-detained without further
8 order of this court;
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10 (8) Award Petitioner attorney's fees and costs under the Equal Access
11 to Justice Act, and on any other basis justified under law; and
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13 (8) Grant any further relief this Court deems just and proper.
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15 Dated: May 8, 2026

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