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

10 SHARMAKE SIYAD,
11
12 Plaintiff,

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.: '26CV3011 JES MSB

Agency Number: 

PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE

INTRODUCTION

1
2 1. Sharmake SIYAD, born [REDACTED] is an immigrant from
3
4 Somalia. His village was attacked by [REDACTED] and his family was targeted as
5 well. His family shop was bombed, his uncle was killed and he spent 4 to 5 months
6 in hospital. He and his family fled to another village but [REDACTED] showed up
7 there, abducted his wife and three daughters and shot his father. His father
8 subsequently died. He and his son fled Somalia and applied for asylum with the
9 United States.
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12 2. Mr. Siyad was able to make his way to the border with the United
13 States. He entered on February 15, 2024 and was briefly held in custody.
14 Respondents determined that he was not a flight risk nor a danger to the
15 community and they granted him conditional parole through release on his own
16 recognizance on February 16, 2024. See Exhibit A.
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19 3. Mr. Siyad continued his life in the United States after his release on
20 parole. He filed for asylum. He received work authorization. He found a place to
21 live and integrated himself into the local community. In the more than two years he
22 has lived here he began to establish himself financially as well. When Mr. Siyad
23 attended his initial removal proceedings it was determined that he qualified for
24 TPS. A motion was made to terminate his case in 2024. Subsequently, Mr. Siyad
25 filed for TPS and for Asylum with USCIS in June 2024.
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1 4. In March, 2025, Mr. Siyad received a notice from ICE directing
2 him to come to a local office for an ICE check-in. When he arrived at the check-in
3 in April he was handed a new Notice to Appear with a hearing date of May 27,
4 2025. This issuance of a new NTA took jurisdiction from USCIS and returned it to
5 EOIR. That meant he had to restart his asylum process through the courts. When
6 Mr. Siyad appeared for his hearing with IJ Simpson on May 27, 2025 in the San
7 Diego Immigration Court, ICE had just begun a new campaign to wait outside
8 courtroom doors and when noncitizens exited the courtroom they were swarmed,
9 placed in handcuffs, dragged down the hall to the elevator, taken to the basement
10 and booked. This is exactly what happened to Mr. Siyad.

15 5. He was not told what law he had violated. He was not presented
16 with a warrant. He was not told what individualized assessment had been done to
17 determine he was now a flight risk or a danger to the community. He was not
18 advised of his Miranda rights. He was never given notice prior to his detention.
19 With no cause and no explanation and no warrant he was put into detention and
20 ultimately transferred to the Otay Mesa Detention Center.

23 6. One of the benefits that petitioner enjoyed with his liberty has been
24 his ability to work and to more actively participate in his asylum application
25 process. Suddenly, with no notice, no neutral determination that there has been a
26 change in circumstances, Respondents seek to revoke Mr. Siyad' liberty and force
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28

1 him to remain in custody for the duration of his application process. This also
2 cancels his work authorization. Respondents seek to make Mr. Siyad continue with
3 this asylum process behind bars. Respondents do all of this based not on Mr.
4 Siyad's personal circumstances but because of Respondents' interpretation of
5 President Trump's whim and categorical determination that, the Fifth Amendment
6 notwithstanding, noncitizens are not entitled to due process.
7

8
9 7. But Respondents cannot evade the law so easily. The U.S.
10 Constitution requires the Respondents provide at least the rights available to him
11 when he was granted parole and when he filed his application for asylum¹.
12

13
14 8. Accordingly, to vindicate Petitioner's rights, this Court should grant
15 the instant petition for a writ of habeas corpus. Mr. Siyad asks this Court to find
16 that Respondents' attempt to detain him are arbitrary and capricious and in
17 violation of the law, and to immediately issue an order preventing his transfer out
18 of this district.
19

20 JURISDICTION

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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-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 3 million trials.").

10. 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).

11. 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

12. Venue is proper because Petitioner is in Respondents' custody in Imperial, 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).

13. For these same reasons, divisional venue is proper under Local Rule HC.1

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

14. 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

1 must require Respondents to file a return “within three days unless for good cause
2 additional time, not exceeding twenty days, is allowed.” *Id.*
3

4 15. Courts have long recognized the significance of the habeas statute
5 in protecting individuals from unlawful detention. The Great Writ has been
6 referred to as “perhaps the most important writ known to the constitutional law of
7 England, affording as it does a swift and imperative remedy in all cases of illegal
8 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
9
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11 16. Petitioner is “in custody” for the purpose of § 2241 because he is
12 arrested and detained by Respondents.
13

14 PARTIES

15 17. Sharmake Siyad (“Petitioner”) is a 40-year-old citizen of Somalia
16 born [REDACTED] He is currently a resident of San Diego, and is present
17 within the state of California as of the time of the filing of this petition.
18

19 18. Respondent Christopher LaRose is the Warden of the Otay Mesa
20 Detention Center and is a legal custodian of Petitioner.
21

22 19. Respondent Patrick Divver is the Field Office Director for the San
23 Diego Field Office, Immigration and Customs Enforcement and Removal
24 Operations (“ICE”). The San Diego Field Office is responsible for local custody
25 decisions relating to non-citizens charged with being removable from the United
26 States, including the arrest, detention, and custody status of non- citizens. The San
27
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1 Diego Field Office's area of responsibility includes San Diego, California and the
2 Otay Mesa Detention Center. Respondent Patrick Divver is a legal custodian of
3
4 Petitioner.

5 20. Respondent Todd Lyons is the acting director of U.S. Immigration
6 and Customs Enforcement, and he has authority over the actions of respondent
7
8 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
9
10 Petitioner.

11 21. Respondent Markwayne Mullin of the Department of Homeland
12 Security (DHS) has authority over the actions of all other DHS Respondents in this
13
14 case, as well as all operations of DHS. Respondent Noem is a legal custodian of
15
16 Petitioner and is charged with faithfully administering the immigration laws of the
17
18 United States.

19 22. Respondent Acting Attorney General of the United States has
20
21 authority over the Department of Justice and is charged with faithfully
22
23 administering the immigration laws of the United States.

24 23. Respondent U.S. Immigration Customs Enforcement is the federal
25
26 agency responsible for custody decisions relating to non-citizens charged with
27
28 being removable from the United States, including the arrest, detention, and
custody status of non-citizens.

1 24. Respondent U.S. Department of Homeland Security is the federal
2 agency that has authority over the actions of ICE and all other DHS Respondents.
3

4 25. This action is commenced against all Respondents in their official
5 capacities.
6

7 LEGAL FRAMEWORK

8 26. The Refugee Act of 1980, the cornerstone of the U.S. asylum system,
9 provides a right to apply for asylum to individuals seeking safe haven in the United
10 States. The purpose of the Refugee Act is to enforce the “historic policy of the
11 United States to respond to the urgent needs of persons subject to persecution in
12 their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102
13 (1980).
14
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16 27. The “motivation for the enactment of the Refugee Act” was the
17 United Nations Protocol Relating to the Status of Refugees, “to which the United
18 States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424,
19 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory
20 meaning to our national commitment to human rights and humanitarian concerns.’”
21 *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
22
23

24 28. The Refugee Act established the right to apply for asylum in the
25 United States and defines the standards for granting asylum. It is codified in
26 various sections of the INA.
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28

1 29. The INA gives the Attorney General or the Secretary of Homeland
2 Security discretion to grant asylum to noncitizens who satisfy the definition of
3 “refugee.” Under that definition, individuals generally are eligible for asylum if
4 they have experienced past persecution or have a well-founded fear of future
5 persecution on account of race, religion, nationality, membership in a particular
6 social group, or political opinion and if they are unable or unwilling to return to
7 and avail themselves of the protection of their homeland because of that
8 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
9

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12 30. Although a grant of asylum may be discretionary, the right to
13 apply for asylum is not. The Refugee Act broadly affords a right to apply for
14 asylum to any noncitizen “who is physically present in the United States or who
15 arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
16
17

18 31. Because of the life-or-death stakes, the statutory right to apply for
19 asylum is robust. The right necessarily includes the right to counsel, at no expense
20 to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the
21 right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in
22 support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant
23 to present evidence to establish eligibility.).
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1 32. Noncitizens seeking asylum are guaranteed Due Process under the
2 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
3 (1993).
4

5 33. Noncitizens who are applicants for asylum are entitled to a full
6 hearing in immigration court before they can be removed from the United States. 8
7 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
8 appellate review before the Board of Immigration Appeals of removal orders
9 entered against them and judicial review in federal court upon a petition for
10 review. 8 U.S.C. § 1252(a) *et seq.*
11
12

13 34. Immigration detention is a form of civil confinement that
14 “constitutes a significant deprivation of liberty that requires due process
15 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
16
17

18 35. Immigration detention should not be used as a punishment and
19 should only be used when, under an individualized determination, a noncitizen is a
20 flight risk because they are unlikely to appear for immigration court or a danger to
21 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
22

23 36. Due Process requires that the government must provide notice and
24 an opportunity to be heard prior to depriving someone of their liberty.
25
26

27 **FACTUAL BACKGROUND**

1 37. Petitioner is a citizen of Somalia. He was born [REDACTED]

2 [REDACTED] in Somalia and is currently a citizen of Somalia.
3

4 38. Petitioner was persecuted in Somalia. He was repeatedly
5 threatened by terrorists and the government could not protect him from their harm.
6 He fled the country after his father was killed and his wife and daughters were
7 abducted.
8

9 39. On February 15, 2024, Petitioner was granted conditional parole
10 and release on his own recognizance into the United States. The purpose of this
11 release was to allow him to file for asylum and any other immigration relief that
12 may be available to him.
13
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15 40. When he was released he was also issued an NTA and was placed
16 in 240 removal proceedings.
17

18 41. In 2024 he was eligible for TPS. Respondents agreed that his case
19 should be dismissed so he could pursue asylum and TPS. He filed for both in 2024.
20

21 42. On information and belief, Petitioner continues to meet all the
22 requirements of his admission to the United States.
23

24 43. Petitioner applied for asylum in June 2024.

25 44. Respondents issued work authorization to Petitioner pursuant to 8
26 C.F.R. § 274a.12(c).
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1 45. In March, 2025, Mr. Siyad received a notice from ICE directing
2 him to come to a local office for an ICE check-in. When he arrived at the check-in
3 in April he was handed a new Notice to Appear with a hearing date of May 27,
4 2025. This issuance of a new NTA took jurisdiction from USCIS and returned it to
5 EOIR. That meant he had to restart his asylum process through the courts. When
6 Mr. Siyad appeared for his hearing with IJ Simpson on May 27, 2025 in the San
7 Diego Immigration Court, ICE had just begun a new campaign to wait outside
8 courtroom doors and when noncitizens exited the courtroom they were swarmed,
9 placed in handcuffs, dragged down the hall to the elevator, taken to the basement
10 and booked. This is exactly what happened to Mr. Siyad.

11 46. He was never given a written notice that his liberty was been
12 revoked prior to his arrest. He was not given any particularized reason for why he
13 was being placed into detention. He was never presented with a warrant for his
14 arrest. He was never given any Miranda warnings. He was eventually transported
15 to Otay Mesa Detention Center. Mr. Siyad was forced to defend his asylum
16 application process while in detention.

17 47. Mr. Siyad was never presented with a warrant for his arrest. The
18 ICE agents did not provide him any process. The ICE agents did not offer him any
19 opportunity to be heard prior to arresting and detaining him.

1 48. Mr. Siyad was forced to proceed with his case while in detention.
2
3 On February 5, 2026 Mr. Siyad's' asylum application was denied. He has timely
4 appealed that decision. There is no final order of removal and Mr. Siyad's
5 detention remains to be a result of his illegal arrest on May 27, 2025.
6

7 49. On January 20, 2025, President Donald Trump issued several
8 executive actions relating to immigration, including "Protecting the American
9 People Against Invasion," an executive order (EO) setting out a series of interior
10 immigration enforcement actions. The Trump administration, through this and
11 other actions, has outlined sweeping, executive branch-led changes to immigration
12 enforcement policy, establishing a formal framework for mass deportation. The
13 "Protecting the American People Against Invasion" EO instructs the DHS
14 Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to
15 prioritize civil immigration enforcement procedures including through the use of
16 mass detention.
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21 50. On information and belief, Respondents are detaining Petitioner
22 regardless of the individual facts and circumstances of his case.
23

24 51. On information and belief, Respondents are using the immigration
25 detention system as a means to punish individuals for asserting rights under the
26 Refugee Act.
27

28 52. On information and belief, Petitioner has no criminal history.

CLAIMS FOR RELIEF

COUNT ONE

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

53. Petitioner restates and realleges all previous paragraphs as if fully set forth here.

54. 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).

55. 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*, 551 U.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)).

56. 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).

1 57. By categorically revoking Petitioner's liberty and transferring him
2 to Otay Mesa Detention Center without consideration of his individualized facts
3 and circumstances, Respondents have violated the APA.
4

5 58. Respondents have made no finding that Petitioner is a danger to
6 the community.
7

8 59. Respondents have made no finding that Petitioner is a flight risk.
9

10 60. By detaining the Petitioner categorically, Respondents have
11 further abused their discretion because there have been no changes to his facts or
12 circumstances since the agency made its initial determination to admit him into the
13 United States that support detention.
14

15 61. Respondents have already considered Petitioner's facts and
16 circumstances and determined that he was not a flight risk or danger to the
17 community when they initially paroled him.
18

19 **COUNT TWO**

20 **Violation of Fifth Amendment Right to Due Process**
21 **Procedural Due Process**

22 62. Petitioner restates and realleges all paragraphs as if fully set forth
23 here.
24

25 63. The Due Process Clause of the Fifth Amendment to the U.S.
26 Constitution prohibits the federal government from depriving any person of "life,
27 liberty, or property, without due process of law." U.S. Const. Amend. V. Due
28

1 process protects “all ‘persons’ within the United States, including [non-citizens],
2 whether their presence here is lawful, unlawful, temporary, or permanent.”

3
4 *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

5 64. Due process requires that government action be rational and non-
6 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

7
8 65. While the government has discretion to detain individuals under 8
9 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
10 discretion is not “unlimited” and must comport with constitutional due process. *See*
11 *Zadvydas*, 533 U.S. at 698.

12
13 66. Here, Respondents have chosen to revoke Petitioner’s liberty in an
14 arbitrary manner and not based on a rational and individualized determination of
15 whether he is a safety or flight risk, in violation of due process. Because no prior
16 individualized custody determination was made and no circumstances have
17 changed to make Petitioner a flight risk or a danger to the community,
18 Respondents’ revocation of Petitioner’s release violates his right to procedural due
19 process.
20
21
22

23 COUNT THREE

24 Violation of the Fourth Amendment to the Constitution

25 67. Petitioner restates and realleges all paragraphs as if fully set forth
26 here.
27
28

1 68. The Fourth Amendment protects “[t]he right of the people to be
2 secure in their persons ... against unreasonable searches and seizures.” U.S. Const.
3 Amend. IV. The Supreme Court has recognized that immigration arrests and
4 detentions are “seizures” within the meaning of the Fourth Amendment. *INS v*
5 *Lopez-Mendoza*, 468 U.S. 1032, 1044f (1984) (acknowledging that deportation
6 proceedings are civil, but the Fourth Amendment still applies to the “Seizure” of
7 the person.)
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11 69. The Fourth Amendment requires that arrests entail a neutral,
12 judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114
13 (1975). That neutral, judicial determination can occur either before the arrest in the
14 form of a warrant, or promptly afterward, in the form of a prompt judicial probable
15 cause determination. *Id.* Arrest and detention of a person, including of a
16 noncitizen, absent a neutral judicial determination of probable cause violates the
17 Fourth Amendment of the Constitution. *Id.* See also *Cnty. Of Riverside v*
18 *McLaughlan*, 500 U.S. 44, 57 (1991). This determination must occur within 48
19 hours of detention, which includes weekends, unless there is a bona fide
20 emergency or other extraordinary circumstances. *Id.*
21
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25 70. Congress enacted a strong preference that immigration arrests be
26 based on warrants. See *Arizona v. United States*, 567 U.S. 387, 407-08 (2012). The
27
28

1 Immigration and Nationality Act thus provides immigration officers with only
2 limited authority to conduct warrantless arrests. See 8 C.F.R § 287.8(c)(2)(ii).
3

4 71. Mr. Siyad, at the moment of the arrest by Respondents, was
5 lawfully present based on the Respondents' prior grant of release and parole. He
6 did not receive any judicial determination of probable cause for his arrest or
7 continued detention by Respondents.
8

9 72. The Government cannot salvage this seizure by invoking
10 generalized immigration enforcement interests. The Fourth Amendment's
11 reasonableness inquiry is fact-specific and demands individualized justification for
12 both the arrest and the extended detention. See *United States v Brignoni-Ponce*,
13 422 U.S. 873, 882-84 (1975). *Gerstein*, 420 U.S. at 114. Mr. Siyad was admitted
14 into the United States in 2023 and did not pose any danger to any person in the
15 community at large.
16
17
18

19 73. Respondents' warrantless arrest of Mr. Siyad constitutes an
20 unreasonable and unlawful seizure in violation of the Fourth Amendment.
21

22 **Bond is not the appropriate remedy**

23 74. Many courts recently have been ordering a bond hearing as an
24 alternative avenue for relief. If Mr. Siyad's detention was unlawful, *ab initio*, he
25 should not be required to post a bond and, in effect, pay a ransom to be released
26 from this illegal detention. Nothing in the government's actions indicates that Mr.
27
28

1 Siyad has somehow become a flight risk or a danger to the community. He was
2 not detained at his ICE check-in because he was suddenly a flight risk or a danger
3 to the community. When ICE put him in handcuffs, they did not assert that they
4 had suddenly determined he was a flight risk or a danger to the community. He
5 was simply swept up in this administration's scheme to lock up all immigrants
6 without green cards.
7

8
9 75. Ordering a bond hearing rewards the government's unlawful
10 behavior. First, it legitimizes his detention. Second, it allows the government to
11 detain without a prior determination of a change in individual circumstances
12 regarding flight risk and danger. Third, it requires the petitioner to prove that he is
13 not a flight risk or a danger to the community, something the government already
14 determined when they released him. Fourth, it requires the petitioner to pay a fee to
15 the parties that unlawfully detained him in order to be released from his unlawful
16 detention.
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21 PRAYER FOR RELIEF

22 WHEREFORE, Petitioner respectfully requests this Court to grant the
23 following:
24

- 25 (1) Assume jurisdiction over this matter;
26
27 (2) Issue an Order to Show Cause ordering Respondents to show
28 cause why this Petition should not be granted within three days;

1 (3) Declare that Petitioner's detention without a prior individualized
2 determination violates the Due Process Clause of the Fifth Amendment and the
3 Administrative Procedures Act;
4

5 (4) Declare that Petitioner's warrantless arrest and detention
6 constitutes an unreasonable and unlawful seizure in violation of the Fourth
7 Amendment;
8

9 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
10 Petitioner from custody;
11

12 (6) Issue an Order prohibiting the Respondents from transferring
13 Petitioner from the district without the court's approval;
14

15 (7) Issue an Order prohibiting the Respondents from enrolling the
16 Petitioner in any Alternative to Detention program, specifically barring them from
17 requiring an ankle monitor;
18

19 (8) Grant any further relief this Court deems just and proper.
20

21 Dated: May 13, 2026

/s/ Brian J. McGoldrick
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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 13th day of May, 2026, in San Diego, California.

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