BRYNNA BOLT (CA SBN 339378)
bbolt@immdef.org
ALISON STEFFEL (CA SBN 346370)
asteffel@immdef.org
ALVARO M. HUERTA (CA SBN 274787)
ahuerta@immdef.org
IMMIGRANT DEFENDERS LAW CENTER
634 S. Spring St., 10th Fl.
Los Angeles, CA 90014
Telephone: (213) 340-6583
Facsimile: (213) 282-3133

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

L.J., Petitioner, vs. CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; GREGORY J. ARCHAMBEAULT, San Diego Field Office Director; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, Respondents.	Case No. **AMENDED COMPLAINT AND VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner L.J. ("Ms. J"),[1] is being unlawfully detained in the custody of Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center ("OMDC") based on a removal order that cannot be executed. She has no pending removal proceedings or judicial review in her immigration case.

2. Petitioner seeks her immediate release under appropriate conditions from her unlawful and indefinite incarceration in ICE custody. Ms. J is a 38-year-old Mozambique national who has lived in the

[1] "L. J." is a pseudonym. Because this matter will require public filing of documents related to Petitioner's asylum claim, U visa, and health, she requests leave to proceed under pseudonym. Once the case is docketed, Petitioner will make an appropriate motion to that effect.

United States for almost nine years. She was released from ICE detention in 2017, after receiving a final order of removal. She was re-detained on October 30, 2024.

3. ICE re-detained Ms. J without notice and without following its own procedures. For six months, Respondents have attempted to remove Ms. J, but ICE has been, and remains, unable to remove her through no fault of Ms. J's. Under well-settled Supreme Court precedent, ICE may not continue to imprison her indefinitely under these circumstances. As the government is not able to effectuate Ms. J's removal, they have no interest in her ongoing incarceration.

4. Over twenty years ago, in 2001, the Supreme Court set six months as the presumptively reasonable post-removal-order period of detention for immigration authorities to effectuate a removal. *Zadvydas v. Davis,* 533 U.S. 678 (2001). After six months, if the non-citizen provides "good reason to believe" her removal is not significantly likely, the Immigration and Nationality Act ("INA") does not authorize ICE to continue detention unless it proves, through admissible evidence, there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.*

5. On October 30, 2024, Respondents informed Ms. J that they were re-detaining her, not because they believed there was any significant likelihood that they would be able to remove her but solely based on her final order of removal.

6. Removals to Mozambique are exceedingly rare. The United States has repatriated only a handful of Mozambique nationals in the last few years, and only three in FY 2024.[2]

7. Although ICE has claimed to Ms. J that they are taking steps to effectuate her removal, the agency has not provided Ms. J, or her immigration attorney, with any evidence that they will be able to do so in the reasonably foreseeable future. ICE can provide no date certain by when Ms. J's removal will take place.

8. Based on this history, described in more detail below, there is more than "good reason to believe" that there is no significant likelihood that ICE will effectuate Ms. J's removal in the reasonably foreseeable future. *Zadvydas,* 533 U.S. at 701. Based on this and on the lengthy duration of her post-order

[2] Petitioner requests that the Court take judicial notice of Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024* (Dec. 19, 2024), *available at* https://www.ice.gov/doclib.eoy/iceAnnualReportFY2024.pdf. The Appendix to this report is attached to this petition as Exh. 10.

confinement, her continued incarceration is unauthorized by statute unless ICE can provide evidence establishing that her removal is imminent. With no actual plans for her removal, it cannot do so.

9. In addition to the statutory violation under *Zadvydas* stemming from her re-detention, Ms. J's overall period of incarceration without constitutionally adequate safeguards also violates her due process rights. ICE has imprisoned her for more than 16 months in total since she first arrived in the United States and requested our country's protection through our asylum and related laws—with her latest period of confinement exceeding six months as of April 30, 2025. She is not dangerous or a significant flight risk. In 2017, the immigration court agreed, ordering that Ms. J be released on bond. Upon information and belief, ICE also made a finding that there was not a significant likelihood of her removal to Mozambique. However, ICE re-detained Ms. J without notice or an opportunity to contest the reasons for her re-detention, in violation of ICE's own regulations that prescribe the procedures to revoke release of noncitizens with final orders of removal. *See* 8 C.F.R. §§ 241.13, 241.4.

10. The conditions of Ms. J's confinement, her prolonged and indefinite incarceration, and the specter of being deported to a country where she was sexually abused and persecuted for her religious beliefs have taken a severe toll on her physical and mental health. Ms. J has additionally suffered from illness and medical neglect while incarcerated at OMDC.

11. ICE is currently unable to effectuate Ms. J's removal and has no reason to continue detaining Ms. J away from her U.S. citizen husband and community. Ms. J has an immigration attorney and is in the process of applying for immigration relief. She should be allowed to do so free from the limitations that continued detention places on her liberty.

12. Therefore, Ms. J respectfully requests that this Court end her indefinite incarceration and issue a writ of habeas corpus ordering her release.

JURISDICTION

13. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal questions). This Court also has jurisdiction pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); *INS v. St. Cyr*, 533 U.S. 289 (2001).

14. Administrative exhaustion is a prudential, rather than a jurisdictional requirement for habeas review under 2241. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).

15. This Court may grant relief under 28 U.S.C. §§ 2241 and 2243 (habeas corpus), 28 U.S.C. §§ 2201-02 (declaratory relief), 28 U.S.C. § 1651 (all writs act), Fed. R. Civ. P 65 (injunctive relief), the Fifth Amendment, and 5 U.S.C. §§ 500 et seq., the Administrative Procedure Act ("APA").

VENUE

16. Venue is proper in the Southern District of California pursuant to 28 U.S.C. §§ 1391(b) and (e) because a substantial part of the events giving rise to the claims in this action took place in this district. Furthermore, Petitioner is detained at the Otay Mesa Detention Center, which is located in this judicial district. All material decisions have been made at the San Diego Field Office of Immigration and Customs Enforcement ("ICE"), which is located in this judicial district.

PARTIES

17. Petitioner Ms. J is a Mozambique national who has been detained by Respondents at the OMDC in San Diego, California since October 30, 2024. She is 38 years old and married to a United States citizen.

18. Respondent Christopher J. LaRose is the Warden of the OMDC, where Petitioner is currently detained. Respondent LaRose has physical custody over Petitioner. Respondent LaRose is sued in his official capacity.

19. Respondent Gregory J. Archambeault is the Field Office Director for the San Diego Field office of ICE. OMDC is located within the jurisdiction of the ICE San Diego Field Office, which has legal authority over all individuals in ICE custody there. As Acting Field Office Director, Mr. Rocha is a custodian of Petitioner with legal authority to produce and release her. Respondent Rocha is sued in his official capacity.

20. Respondent Todd M. Lyons is the Acting Director for ICE, a component agency of the United States Department of Homeland Security ("DHS"). ICE is responsible for enforcing United States immigration laws, including the detention of alleged non-citizens in removal proceedings, which the agency chooses to accomplish through imprisonment and the removal of noncitizens with final removal

orders. As ICE's Acting Director, Respondent Lyons is a custodian of Petitioner, with authority to produce and release her. Respondent Lyons is sued in his official capacity.

21. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security. She is responsible for overseeing DHS and its sub-agency, ICE, and has ultimate responsibility for the detention of noncitizens in civil immigration custody. Respondent Noem is a legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

FACTUAL AND PROCEDURAL BACKGROUND

I. Ms. J Came to the United States Fleeing Religion and Gender-Based Violence.

22. Ms. J is a 38-year-old citizen and national of Mozambique. Exh. 1, Declaration of Ms. J ("Ms. J Decl.") at ¶ 1. Ms. J's entire family is Muslim, and she was raised Muslim until she secretly converted to Christianity at ten years old. *See id.* at ¶ 2. Throughout her life in Mozambique, Ms. J experienced discrimination and torture due to her religion and her gender. *See id.* At just 16 years old, she was the victim of sexual assault by her neighbors. *See id.* These boys threatened to harm her if she ever told anyone what happened. *Id.* Six years later, an older man kidnapped Ms. J and attempted to rape and kill her. *See id.* She luckily escaped, but the police in Mozambique never fully investigated the crime or made any arrests. *See id.* Ms. J suffered stalking and harassment by this same man for years afterwards, which only increased after her mother and father passed away in 2010 and 2012, respectively. *See id.*

23. In 2016, Ms. J fled Mozambique and came to the United States to apply for asylum in the hopes that she could finally live safely. *See id.* at ¶ 2–3; *see also* Exh. 3, Immigration Judge ("IJ") Decision at 1; Exh. 4, Form I-867A at 2. After presenting herself at the U.S.-Mexico border on September 1, 2016, Ms. J was taken into ICE custody. *See* Exh. 3, IJ Decision at 1; *see also* Exh. 4, Form I-867A at 2. Her asylum proceedings were then held at Adelanto Immigration Court and, on June 14, 2017, the IJ who heard her case denied her all forms of relief and issued a removal order. *See generally*, Exh. 3, IJ Decision. Ms. J timely appealed the decision, but her appeal was denied and her removal order became administratively final on February 1, 2019. *See generally*, Exh. 4, Board of Immigration Appeal ("BIA") Decision.

II. Ms. J Has Resided in Southern California Since Her Release on Bond in 2017.

24. Ms. J's bond hearing took place before an IJ in 2017. Ms. J Decl at ¶ 5. The IJ found that Ms. J was not a flight risk or a danger to the public and granted her bond in the amount of $4,000. *Id.* Upon information and belief, ICE also made a finding that Ms. J's removal to Mozambique was not imminently foreseeable, and she was released from ICE custody. *Id.* ICE imposed conditions upon her release, including requiring Ms. J to wear an ankle monitor as part of the Intensive Supervision Appearance Program ("ISAP"), and requiring Ms. J to attend ICE check-ins with a Deportation Officer ("DO"). *Id.* at ¶ 6. Ms. J's ankle monitor was removed after 30 days. *Id.* She attended all of her ICE check-ins as required until 2019, when her DO told her that she no longer had to report for any check-ins because she was not an enforcement priority. *Id.*

25. Ms. J resided in Southern California, specifically San Diego, after her release from ICE custody. Prior to her instant detention, she regularly attended church and gave back to the community by volunteering. She would often cook, package, and hand out food to her unhoused neighbors. She has a strong network of friends and colleagues. *See generally*, Exhs. 7–9, Letters of Support. On August 10, 2023, Ms. J married Jacob Matthew Blew, a U.S. citizen. *See* Exh. 11, Marriage Certificate.

26. Ms. J has never been convicted of or arrested for any crimes. *See* Ms. J Decl. at ¶ 15. However, while released from detention, Ms. J was herself a victim of a crime that resulted in an arrest. *See* Exhibit 2, Declaration of Andreana Sarkis ("Sarkis Decl.") at ¶ 5. Ms. J has been cooperative with law enforcement in the perpetrators' prosecution, and is *prima facie* eligible for a U visa, for which she is in the process of applying. *See id.* Ms. J is actively working with an immigration attorney at Immigrant Defenders Law Center ("ImmDef") on exploring any other eligibility for immigration relief. *Id.*

III. ICE Re-Detained Ms. J Without Any Evidence That Ms. J's Removal to Mozambique Is Reasonably Foreseeable, and She Has Remained Detained Since October 2024.

27. On October 30, 2024, Ms. J reported to the Enforcement and Removal Operations ("ERO") Field Office at 880 Front Street, San Diego, California, to inform ICE of her marriage to a U.S. citizen because her DO had previously told her to keep him informed with updates. *See* Ms. J Decl. at ¶ 8. An ICE officer at the ERO Field Office then placed Ms. J under arrest and took her back into ICE custody, without notice or an opportunity to contest her re-detention. *Id.* The only explanation ICE offered for Ms. J's re-

detention was her removal order from 2017. *Id.* Neither she nor her immigration attorney have been given any updates on when or if she will be removed. *Id.* at ¶ 13; *see also* Sarkis Decl. at ¶ 7. Nor has ICE provided Ms. J the opportunity to present evidence to contest the reasons for her re-detention. *See* Ms. J Decl. at ¶ 13. Ms. J has cooperated with all of ICE's efforts to secure travel documents, including allowing ICE to take her photo. *Id.* at ¶ 14. While an ICE officer has told her that ICE has spoken to the Mozambique consulate, Ms. J herself has had no interviews with her consulate, and she has not been shown any travel documents that would secure her return to Mozambique. *Id.* Data indicates that Mozambique has a low number of deportations from the United States and the U.S. government only removed three individuals to Mozambique in 2024.[3]

28. Ms. J has now been re-detained by ICE for over six months. *See* Ms. J Decl. at ¶ 10. While detained, Ms. J has been forced to eat stale, and sometimes expired, food. *Id.* She has suffered severe stomach pain and has been denied access to medication while in detention. *Id.* Because of this, Ms. J often skips meals and goes days without eating. *Id.* She is also suffering intense pain that keeps her from sleeping due to a bump on her leg for which, prior to her detention, a doctor told her she may need surgery. *Id.* at ¶ 12. Despite multiple requests to see a doctor, she has been denied medical treatment for her leg throughout her time in detention. *Id.* The stress of being detained has also exacerbated her already high blood pressure. *Id.* at ¶ 11. In addition to the physical toll of detention, she has had limited contact with her family, friends, and husband, causing her great emotional distress. *Id.* at ¶ 13.

LEGAL FRAMEWORK

I. Law and Procedure Governing this Habeas Petition.

29. The "historic purpose of the writ" of habeas corpus is "to relieve detention by executive authorities without judicial trial." *Zadvydas*, 533 U.S. at 699 (cleaned up).

30. A writ under 28 U.S.C. § 2241 may issue if, among other things, a person "is in custody under or by color of the authority of the United States," or is "in custody in violation of the Constitution or laws or treaties of the United States." 8 U.S.C. § 2241(c). A habeas court's role is at its "most extensive in cases of pretrial and noncriminal detention," especially "where there ha[s] been little or no previous judicial review of the cause for detention," as is the case here. *Boumediene v. Bush*, 553 U.S. 723, 780 (2008).

[3] *Supra* n. 2.

31. A court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

32. "The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

33. Once the government files its return, the Court shall set a "hearing, not more than five days after the return unless for good cause additional time is allowed." *Id.* "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." *Id.*

II. Statutes and Regulations Governing ICE Detention of Noncitizens with Final Removal Orders.

34. Section 241(a) of the INA, or 8 U.SC. § 1231(a), governs the detention, release, and removal of noncitizens ordered removed from the United States. When a noncitizen is ordered removed, the government "shall remove the [noncitizen] from the United States within a period of 90 days," referred to as the "removal period." 8 U.S.C. § 1231(a). The "removal period" begins when the removal order becomes "administratively final," unless judicial review of the order is pending and a stay of removal is in place, or the person is in non-immigration custody. 8 U.S.C. § 1231(a)(1)(B). If an individual appeals a removal order issued by the immigration court to the BIA, the order becomes administratively final upon any "determination by the Board of Immigration Appeals affirming such order." 8 U.S.C. § 1101(a)(47)(B).

35. After the expiration of the 90-day removal period, noncitizens who are not removed may be released with conditions of supervision. 8 U.S.C. § 1231(a)(3). *Id.* Alternatively, the INA authorizes an extension of the removal period if the individual fails to "make timely application" for documents or "acts to prevent" the removal, 8 U.S.C. 1231(a)(1)(C) or if the individual is inadmissible; removable under certain criminal, security, or immigration status grounds; or ICE determines the individual to be a "risk to the community or unlikely to comply with the order of removal," 8 U.S.C. § 1231(a)(6). "Continued detention under [§1231] creates the 'post-removal-period.'" *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2281 (2021).

36. ICE has its own regulations governing custody determinations for noncitizens whose removal is not imminently foreseeable with final removal orders. *See* 8 C.F.R. § 241.4; *see also* 8 C.F.R. § 241.13. 8 C.F.R. 241.4 provides regulations governing custody determinations beyond the removal period for noncitizens specified in 1231(a)(6), including inadmissible noncitizens. Under 8 C.F.R. 241.4(j)(1), ICE may release noncitizens detained beyond the removal period subject to "conditions or special conditions . . . as the Service considers appropriate in an individual case or cases." The only bases for re-detention once a noncitizen is released under 8 C.F.R. § 241.4 are if the noncitizen violates the conditions of her release, or if the Executive Associate Commissioner revokes release based on the following considerations: "(i) the purposes of release have been served; (ii) the [noncitizen] violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against a[] [noncitizen]; or (iv) the conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i-iv). Upon revocation of release, the noncitizen "will be notified of the reasons for revocation" and "will be afforded an initial informal interview promptly" after their return to custody "to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1). If the noncitizen is not released following the informal interview, ICE's Headquarters Post–Order Detention Unit ("HQPDU") Director shall schedule a further review process which "will commence with notification to the [noncitizen] of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months" after re-detention. 8 C.F.R. § 241.4(l)(3). That review will include an evaluation of "any contested facts relevant to the revocation" and a determination of whether those facts warrant re-detention. *Id.*

37. 8 C.F.R. § 241.4 also provides that for inadmissible noncitizens not released within six months of a final removal order, "all further custody determinations will be made by the Executive Associate Commissioner acting through the HQPDU." 8 C.F.R. § 241.4(c)(2), (4). The regulation lists several criteria to be met for release, including that immediate removal is "not practicable or not in the public interest" and the individual is not violent, a security risk, a "significant flight risk," or "likely to violate the conditions of release." 8 C.F.R. § 241.4(e). The regulation provides several factors for consideration in evaluating those criteria. 8 C.F.R. § 241.4(f). "If the [individual] is not recommended for release, a

Review Panel shall personally interview" him or her. 8 C.F.R. § 241.4(i). However, ICE is not required to conduct a custody review if it notifies the inadmissible noncitizen "that it is ready to execute an order of removal." 8 C.F.R. § 241.4(g)(4).

38. If at any time an inadmissible noncitizen detained under 8 C.F.R. § 241.4 submits, or the record contains, information providing a substantial reason to believe that a noncitizen's removal "is not significantly likely in the foreseeable future," ICE should follow the custody review procedures in Section 241.13, rather than those of Section 241.4. 8 C.F.R. § 241.4(i)(7). If it is determined "that there is no significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future, . . . [and] [u]nless there are special circumstances justifying continued detention, the Service shall promptly make arrangements for the release of the alien subject to appropriate conditions." 8 C.F.R. § 241.13(g)(1). Where a noncitizen has been released under 8 C.F.R. § 241.13, the procedures for revoking release are virtually identical to those outlined in 8 C.F.R. § 241.4. 8 C.F.R. § 241.13(i)(1)-(2) provides that release may be revoked for a noncitizen whose removal is not imminently foreseeable if the noncitizen "violates any conditions of release" or "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." Where ICE seeks to re-detain a noncitizen under 8 C.F.R. § 241.13(i)(2), ICE must adduce specific facts supporting "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. U.S.*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)). Upon revocation, ICE must provide the noncitizen with notice of the reasons for revocation and conduct an informal interview to evaluate "any contested facts" and whether the facts "warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3).

39. Detention under all sections of the INA, including § 241(a) (also 8 U.S.C. § 1231(a)), must comport with the Fifth Amendment's Due Process Clause, which "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Demore v. Kim*, 538 U.S. 510, 523 (2003) (same). To comport with substantive due process, immigration detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690. When considering due process challenges, courts should first consider whether the government's deprivation of liberty violates

substantive due process. Only if the deprivation passes muster in that inquiry does the court turn to the procedural due process claim. *See Zinermon v. Burch*, 494 U.S. 113, 126 (1990) (substantive due process challenges the deprivation itself, whereas procedural due process challenges only the process that accompanied it); *Huynh v. Reno*, 56 F. Supp. 2d 1160, 1162 n.3 (W.D. Wash. 1999) ("[O]nly when a restriction on liberty survives substantive due process scrutiny does the further question of whether the restriction is implemented in a procedurally fair manner become ripe for consideration.") (citing *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

40. Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing Court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E). The *Accardi* doctrine requires agencies to follow their own rules and policies. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion). *Accardi* challenges may be framed as arbitrary and capricious challenges. *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003).

ARGUMENT

III. Ms. J's Prolonged Detention Violates 8 U.S.C. § 1231 under *Zadvydas*.

41. More than 20 years ago, the Supreme Court in *Zadvydas* addressed the precise issue raised in this case—the lawfulness of indefinite detention in the post-removal period under INA § 241(a). Due to the "serious constitutional problem" with a statute "permitting indefinite detention," the Court found INA § 241(a) cannot authorize continued detention during the post-removal period if there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Accordingly, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 690, 699.

42. The *Zadvydas* decision provides guidance to courts hearing habeas petitions brought to challenge post-removal detention. The central question in such cases is whether the detention at issue "exceeds a period reasonably necessary to secure removal." *Id.* at 699. Courts "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the [individual's] presence at the

moment of removal." *Id.* The proper remedy when the length of detention exceeds reasonableness is ordering release under conditions "that are appropriate in the circumstances." *Id.*

43. Once the length of detention exceeds a presumptively reasonable "6-month-period," if the individual in custody provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with *evidence* sufficient to rebut that showing." *Id.* at 701 (emphasis added). This is exactly the position Ms. J is now in. As of April 30, 2025, she has been detained for over six months. *See* Ms. J Decl. at ¶¶ 9–10. The length of her detention by itself is therefore reason to believe that her removal is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 ("As the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").

44. Additionally, ICE has failed to provide Ms. J or her attorney with any evidence that her removal is reasonably foreseeable, such as proof that ICE has secured any travel documents for Ms. J. *See* Ms. J Decl. at ¶ 13; *see also* Sarkis Decl. at ¶ 7. ICE's own public reports also suggest that there is an exceedingly slim likelihood of ICE being able to remove Ms. J to Mozambique. Indeed, only a handful of repatriations have occurred since 2019. [4]

45. This evidence—the only evidence so far provided by either party as to the likelihood of Ms. J's removal—therefore, creates a presumption that Ms. J's imprisonment is unauthorized by the INA, shifting the burden to ICE to rebut that presumption with actual "evidence" that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701; *see also Chan v. Mayorkas*, No. 24-CV-1315 JLS (MSB), 2024 WL 5159900, at *3 (S.D. Cal. Dec. 18, 2024) ("The Court is particularly mindful that Petitioner need not demonstrate 'the absence of any prospect of removal.'") (citing *Zadvydas*, 553 U.S. at 701). The Government cannot meet this burden by arguing "good faith efforts to effectuate . . . deportation continue" or that the petitioner "failed to show that deportation will prove impossible." *Zadvydas*, 533 U.S. at 702 (internal quotations omitted). The *Zadvydas* court specifically rejecting such arguments, finding that to hold otherwise would "seemingly require [a noncitizen] seeking release to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear." *Id.* at 701.

[4] *Supra* n 2.

46. Thus, because Ms. J's removal is not reasonably foreseeable, "the court should hold continued detention unreasonable and no longer authorized by statute," id. at 699–700, and Ms. J should be released, *see Salad v. Dep't of Corr.*, No. 3:25-CV-00029-TMB-KFR, 2025 WL 732305 (D. Alaska Mar. 7, 2025) (ordering immediate release of noncitizen where the government could not show a significant likelihood of removal in the reasonably foreseeable future).

IV. ICE's Re-detention of Ms. J and Ms. J's Continued Detention Violate Her Due Process Rights Under the Fifth Amendment

47. This Court need not reach Ms. J's constitutional claims if it decides that her indefinite detention is unauthorized under *Zadvydas*. *See Califano v. Yamasaki*, 442 U.S. 682, 692 (1979) ("A court presented with both statutory and constitutional grounds to support the relief requested should usually pass on the statutory claim before considering the constitutional question."). However, in addition to the *Zadvydas* statutory violation of INA § 241(a), Ms. J's re-detention and now prolonged confinement without adequate safeguards cannot stand under the Fifth Amendment to the U.S. Constitution.

A. ICE's Re-detention of Ms. J Violated Ms. J's Substantive Due Process Rights.

48. The Fifth Amendment's Due Process Clause states that, "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. CONST. AMEND. V. Accordingly, in the United States, "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

49. Due Process "protections apply to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent, and to immigration detention as well as criminal detention." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up). For noncitizens in immigration detention, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

50. Because "[a]rbitrary civil detention is not a feature of our American government," *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil confinement is only permissible "in certain special and narrow non-punitive circumstances," where a "special justification" asserted by the government "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*,

533 U.S. at 690 (cleaned up). To find a due process violation for someone in civil confinement, a court need only balance the individual's "liberty interests in freedom from incarceration" against "the legitimate interests of the state." *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1121 (9th Cir. 2003).

51. The Supreme Court "repeatedly has recognized that civil commitment *for any purpose* constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added); *see also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) ("civil detainees retain greater liberty protections than individuals detained under criminal process," and therefore they enjoy constitutional protections "at least as great as those afforded to" criminal detainees).

52. Detention of noncitizens pursuant to INA § 241(a)—like other provisions of the INA which authorize civil immigration detention—"has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community" until such proceedings have been completed and the noncitizen has been removed. *Zadvydas*, 533 U.S. at 690 (internal quotation omitted) (citing 8 U.S.C. § 1231(a)(6)). For a noncitizen who has gone through the immigration process but cannot be repatriated to her country of origin, there are no further relevant proceedings that require her attendance and can therefore justify her detention. *See Zadvydas*, 533. U.S. at 690 ("[B]y definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best."). The only remaining proceeding that the noncitizen would need to be present for is her removal from the United States, if this removal is indeed possible. Detention that is unmoored from any possibility of removal, and therefore unjustifiable based on flight risk, becomes detention based solely on "the [noncitizen's] removable status itself[] which bears no relation to a detainee's dangerousness." *Id.* at 691–92. Such "preventive detention" is generally limited by the Due Process Clause. *See Tuan Thai v. Ashcroft*, 366 F.3d 790, 796 (9th Cir. 2004) (finding preventive detention justified by criminal convictions that did not implicate national security constitutionally impermissible).

53. ICE previously determined that Ms. J was not removable when they released her in 2017. *See* Ms. J Decl. at ¶ 5. When ICE re-detained Ms. J in October 2024, it did so without producing any new evidence showing that Ms. J would be removable to Mozambique within the reasonably foreseeable future. *See* Ms. J Decl. at ¶ 14; *see also* Sarkis Decl. at ¶ 7 (stating that ICE has not produced any evidence of travel

documents or repatriation throughout Ms. J's prolonged detention). An ICE officer even told Ms. J that she was being detained solely because of her 2017 removal order. Ms. J Decl. at ¶ 9. Ms. J's re-detention, therefore, was not connected to any "regulatory goal" which could justify it, *see Zadvydas*, 533 U.S. at 690, and deprived her of her protected liberty interest.

54. If ICE re-detained Ms. J for the sole purpose of determining whether it could secure her repatriation to Mozambique, Ms. J's re-detention would surely run afoul of the Due Process Clause. Indeed, the *Zadvydas* court specifically rejected the notion that "good faith efforts" to secure a noncitizen's repatriation are sufficient to show removal is reasonably foreseeable. Other courts have since followed suit. *See Andreasyan v. Gonzales,* 446 F. Supp. 2d 1186 (W.D. Wash. 2006) (fact that no travel documents had been produced in the eight months in which alien had been detained since the order for his removal became final militated in favor of granting habeas relief); *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (holding the likelihood of removal "does not turn on the degree of the government's good faith efforts," but rather "on whether and to what extent the government's efforts are likely to bear fruit"); *Shefqet v. Ashcroft*, No. 02-cv-7737, 2003 WL 1964290, at *5 (N.D. Ill. April 28, 2003) ("Even if [ICE] has been making regular efforts to secure Petitioner's travel document . . . at this time there must be some concrete evidence of progress. [ICE] cannot rely on good faith efforts alone.").

55. Thus, the only permissible purpose for Ms. J's re-detention would have been to effectuate her removal in the reasonably foreseeable future, rather than for the impermissible purpose of investigating whether ICE *could* repatriate her to Mozambique, a country that has accepted only a handful of nationals in recent years. *See e.g., Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL 3058096, at *6 (S.D. Cal. June 9, 2020)) (finding ICE's showing that it had obtained travel documents from the Honduran government in the past insufficient to show that petitioner's removal was reasonably foreseeable); *see also Arizona v. United States,*567 U.S. 387, 413 (2012) ("Detaining individuals solely to verify their immigration status would raise constitutional concerns."). *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I. 2014) (McConnell, J.), *aff'd in part* at 793 F.3d 208 (1st Cir. 2015) ("[T]he Fourth Amendment does not permit seizures for mere investigations.") (citing *Arizona,* 567 U.S. at 413).

56. ICE's re-detention of Ms. J, absent any evidence that her removal is reasonably foreseeable therefore violated her rights under the substantive due process clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 699–700 ("[If] removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute."). Such overreach when enforcing the nation's immigration laws is the very type of conduct from which the Due Process Clause is designed to protect noncitizens and, without more, Ms. J's re-detention and now continued detention since October 2024 is unlawful. *See Demore*, 538 U.S. at 532–33 (2003) (Kennedy, J.) (conc.) (Due Process Clause protects noncitizens against detention that "is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.").

57. Additionally, Ms. J does not need to be detained to guarantee that she would appear should ICE produce her travel documents from Mozambique to effectuate her removal. As the Supreme Court has noted, "[t]he choice . . . is not between imprisonment and the [noncitizen] 'living at large.' It is between imprisonment and supervision under release conditions that may not be violated." *Zadvydas,* 533 U.S. at 696 (internal citations omitted). In other words, even if ICE has an interest in "assuring [Ms. J's] presence at the moment of removal," *Zadvydas*, 533 U.S. at 699, this interest cannot justify continued imprisonment if there are ample alternatives to meet this objective. Such alternatives plainly exist here where Ms. J has in the past been subject to and abided by conditions of release. *See* Ms. J Decl. at ¶ 6.

B. <u>This Court Has the Authority to Order Ms. J's Release to Remedy the Violation of Her Substantive Due Process Rights.</u>

58. The federal habeas statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of § 2243 as vesting a federal court 'with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus'") (quoting *In re Bonner*, 151 U. S. 242, 261 (1894)). In immigration habeas cases, including in this Circuit, courts regularly order release upon determining that detention violates substantive due process. *See, e.g.*, *Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*);

Nguyen v. Fasano, 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why the petitioner should not be released pursuant to *Zadvydas*).

59. A bond hearing is an inadequate remedy for Ms. J's situation, because the purpose of the bond hearing—for a neutral decisionmaker to determine whether Ms. J is a "flight risk" or "danger to the community" so that her release from detention will not disrupt the status quo of proceedings—cannot be satisfied here. Even if a neutral decisionmaker determines that Ms. J is a flight risk, there are no immigration proceedings that would be disrupted, or from which Ms. J can flee, until Mozambique decides to accept her repatriation. *See Zadvydas*, 533. U.S. at 690; 8 C.F.R. § 241.13(i)(2). Any potential finding of dangerousness would then be untethered from the possibility of removal, resulting in potential indefinite detention that would violate her due process rights. *See Tuan Thai*, 366 F.3d at 796. Additionally, Ms. J already had a bond hearing in 2017, where an immigration judge determined that she is not a flight risk or danger to the public. Ms. J Decl. at ¶ 5. Ms. J has presented substantial evidence of her ties to the community and how she will comply with ICE's requirements of release. *See generally* Ms. J Decl; Exhs. 7–9. In light of ICE's violation of Ms. J's substantive due process rights, release is therefore the appropriate remedy.

C. <u>ICE's Re-detention of Ms. J Violated Ms. J's Procedural Due Process Rights.</u>

1. Ms. J Has a Protected Liberty Interest in Her Conditional Release.

60. Ms. J was released on bond after a final order of removal pursuant to 8 U.S.C. § 1231(a)(3), and for the past eight years, up until her re-detention, had exercised her freedom. *See* Ms. J Decl. ¶ 5. Ms. J retains a weighty liberty interest in her release under the Due Process Clause of the Fifth Amendment. Courts have found similar liberty interests in the context of parole where, subject to parole conditions, "[a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972) (recognizing the "nature of the interest" that a parolee has in "his continued liberty"). Given that her detention is civil, Ms. J's "liberty interest is arguably greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

61. Ms. J's release likewise "enable[d] h[er] to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and

friends and to form the enduring attachments of normal life." *See Morrissey*, 408 U.S. at 482. Since her release from custody eight years ago, Ms. J has been actively serving her community and her church, has fallen in love, and married her U.S. citizen husband. *See generally* Exhs. 7-9. Ms. J is working with an immigration attorney to file for relief in her case that would enable her to live freely in the United States. *See* Ms. J Decl. at ¶ 14. Thus Ms. J's liberty interest, protected by the Fifth Amendment, should have prevented ICE from revoking her release in a manner that was unreasonable or fundamentally unfair. *See e.g., Zadvydas* at 700; *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021) (finding a "noncitizen's liberty interest in remaining out of custody on bond was similar to the liberty interests of people on pre-parole, parole, and probation"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (Saris, C.J.) (recognizing that "[noncitizen] may no doubt be returned to custody upon a violation of [supervision] conditions,' . . . but it has never given ICE carte blanche to re-incarcerate someone without basic due process protection.") (quoting *Zadvydas*, 533 U.S. at 700).

2. ICE Deprived Ms. J of Her Procedural Due Process Rights by Failing to Follow the Regulations Governing Post-Final Removal Order Detention.

62. Prior to revoking release, the regulations implementing INA. § 241(a) provide that "the [noncitizen] will be notified of the reasons for the revocation of his or her release" and that ICE "will conduct an initial informal interview promptly after his or her return to [] custody to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). Here, ICE has provided only one reason for revoking Ms. J's release: the existence of her prior removal order. Ms. J Decl. at ¶ 8. Ms. J was given no notice of this revocation but rather was re-detained after voluntarily going to an ICE field office to inform her DO of her marriage to a U.S. citizen and her intention to adjust her immigration status. *Id.* Ms. J then never received a "prompt" interview with the opportunity to contest whether there was in fact any likelihood that she will be removed in the reasonably foreseeable future. *See* Ms. J Decl. at ¶ 8. Further, neither she nor her immigration attorney have been provided any opportunity to contest her continued detention. *Id.* at ¶ 13; *see also* Sarkis Decl. at ¶ 4. Without any evidence that ICE has provided the processes that are to be afforded to Ms. J by its own regulations, an analysis of the factors outlined in *Mathews v. Eldridge*, as described below, clearly

demonstrates that Ms. J was deprived of due process. She must therefore be afforded the opportunity to contest her revocation of release before a neutral decisionmaker.

a. Ms. J Is Entitled Under the *Mathews v. Eldridge* Balancing Test to a Hearing to Contest the Revocation of Her OSUP and Continued Detention.

63. The *Mathews v. Eldridge* test balances (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and (3) the government interest. 424 U.S. 319, 335 (1976); *see Perera v. Jennings*, 598 F. Supp. 3d 736, 745–46 (N.D. Cal. Apr. 15, 2022) (applying the *Mathews* test where the petitioner was at risk of being re-detained under § 1226(c) and holding that the petitioner was "entitled to a post-deprivation bond hearing should ICE re-detain him"). Because Ms. J has *never* received the opportunity to contest the reasons for the revocation of her release, the *Mathews* factors clearly weigh in her favor and require that this Court promptly hold a hearing to evaluate whether Respondents can justify her continued detention.

64. First, Ms. J's private interest in her liberty, the main private interest here, is "'unquestionably substantial.'" *Martinez Leiva v. Becerra,* No. 23-CV-02027-CRB, 2023 WL 3688097, at 7 (N.D. Cal. May 26, 2023) (quoting *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011). Ms. J "has an overwhelming interest here—regardless of the length of h[er] immigration detention—because 'any length of detention implicates the same' fundamental rights." *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation omitted).

65. Ms. J's private interest is particularly weighty because of the length of time she enjoyed exercising her liberty after her prior release and the depth of her ties to the United States, which must be afforded weight under the *Mathews* test. *See Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (in applying the first *Mathews* factor, weighing the right to "rejoin [one's] immediate family" as "rank[ing] high among the interests of" a detained individual with longstanding ties to the U.S.); *id.* (recognizing the "right 'to stay and live and work in this land of freedom'" (citation omitted)). Ms. J has lived freely in the United States for eight years. *See generally* Ms. J Decl. Her husband is a U.S. citizen who is also distraught by her re-detention. *See generally* Exh 7. She is deeply connected to the faith community in Southern California, and she has dedicated her life to bettering her community, *see generally* Ms. J Decl; Exhs. 7–9. She has

no criminal history, *see* Ms. J Decl. at ¶ 15, and ICE has not even required her to report to a check-in for six years, authorizing her release without any supervision requirements, *see id.* at ¶ 6. Ms. J's liberty interest in living with her spouse and continuing her work with her community overwhelmingly weighs in her favor.

66. Second, the risk of erroneous deprivation and the probable value of additional procedural safeguards also weigh heavily in Ms. J's favor. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf v. Napolitano* (*Diouf II*), 634 F.3d 1081,1091–92 (9th Cir. 2011). The risk that Ms. J specifically has been erroneously deprived of her liberty is significantly high because she has been re-detained without any individualized inquiry into whether her removal to Mozambique is reasonably foreseeable. *See Zadvydas,* 533 U.S. at 690.

67. Third, the government's interest in detaining Ms. J without presenting any evidence that her removal is reasonably foreseeable is very weak. It is "always in the public interest to prevent the violation of a party's constitutional rights." *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) ("[T]he government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented"). Conversely, the cost of providing an individualized review is low, and the longer Ms. J remains detained, the weaker the government's interest in detaining her without this review becomes. *See Zadvydas*, 533 U.S. at 701 ("As the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."). Thus, the government's substantially weak interest in detaining Ms. J without reviewing her likelihood of removal does not outweigh Ms. J's substantial liberty interest and the risk of erroneous deprivation of that liberty.

3. This Court Should Make the Determination Whether Ms. J's Re-Detention Is Justified

68. If this Court finds that ICE has violated Ms. J's procedural due process rights by revoking her release, it should hold an evidentiary hearing to determine whether it was justified in this revocation and her continued detention. The only justification for revocation would be that Ms. J's removal is reasonably foreseeable. *See Zadvydas*, 533 at 701.

69. This Court's habeas power gives it the authority to conduct evidentiary hearings and release a petitioner to bail. "[T]he federal habeas statute provides for a swift, flexible, and summary determination of [a petitioner's] claim." *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973). The statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Indeed, the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The common law gave habeas courts power to hold a hearing and release a habeas petitioner to bail even absent a statute contemplating such release. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'") (quoting *Queen v. Spilsbury*, 2 Q. B. 615 (1898)); *see also Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001) ("We hold that the federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases."). District courts regularly exercise this authority by holding evidentiary hearings on petitions for writs of habeas corpus challenging continued detention under 8 U.S.C. § 1241 and in other contexts, and these courts are at no disadvantage compared to the agency when considering evidence. *See, e.g., Salad v. Dep't of Corr.*, No. 3:25-CV-00029-TMB-KFR, 2025 WL 732305, at *2 (holding evidentiary hearings with witnesses and evidence provided by Petitioner as to likelihood of removability after DHS obtained temporary travel documents for Petitioner); *Ortega*, 415 F.Supp.3d at 969–70 (granting habeas petition requiring pre-deprivation hearing prior to re-detention of immigrant released on bond); *Jorge M-.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, *3 (enjoining ICE from re-detaining immigrant without notice and a hearing); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, *3 (N.D. Cal. June 4, 2018) (granting preliminary injunction in part because due process required pre-deprivation hearing prior to re-detention of immigrant released on bond).

70. The habeas statute also encourages swift remedy. *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954)). Ms. J has already been detained by ICE for over six months without any indication that ICE intends to provide her with an opportunity to present evidence that she will not likely be removed in the reasonably foreseeable future or

to contest ICE's evidence. *See* Ms. J Dec. at ¶ 14. This Court should hold the evidentiary hearing to determine whether ICE has cause to re-detain Ms. J based on her removal being foreseeable to ensure protection of her due process rights expeditiously.

D. Ms. J's Re-Detention, Without Reviewing Her Custody Under ICE Policy, Is Arbitrary and Capricious Under the Administrative Procedure Act.

71. Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing Court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

72. Under the *Accardi* doctrine, "an administrative agency is required to adhere to its own internal operating procedures." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). *Accardi* challenges may be framed as arbitrary and capricious challenges. *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003) (upholding *Accardi* challenge under APA § 706 and finding that "[h]aving chosen to promulgate the [] policy, the [agency] must follow that policy.

73. As discussed above, the INA specifies circumstances upon which a person may be released from ICE custody, and it does not provide for re-detention except impliedly for a violation of those terms. 8 U.S.C. § 1231(a)(6). ICE's regulations furthermore authorize the revocation of an individual's release only in certain contexts. 8 C.F.R. §§ 241.13(i), 241.4(l). As discussed *supra,* because Ms. J was released after a finding that her removal was not reasonably foreseeable, and because she has provided evidence that her removal is not reasonably foreseeable, the revocation of her release was governed by 8 C.F.R. § 241.13(i).[5] This regulation authorizes ICE to revoke a noncitizen's release only if a noncitizen "violates any of the conditions of release," or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1)-(2).

[5] If ICE argues or presents evidence that Ms. J's detention should be governed by 8 C.F.R. § 241.4, Ms. J is still entitled to notice of the reasons for the revocation of her release and an opportunity to contest facts relevant to the revocation. 8 C.F.R. § 241.4(l)(3). Ms. J has received no such opportunity. Ms. J Decl. at ¶ 14.

74. Noncitizens are furthermore guaranteed the right to a detailed explanation of the reasons for revocation of release, as well as an interview to contest the basis for the revocation. *See* 8 C.F.R. § 241.13(i)(3). However, as discussed *supra,* the government has not provided written notice to either Ms. J or her attorney of the reasons for the revocation of her release, presented any evidence of changed circumstances that would enable Ms. J to be removed to Mozambique, or conducted an interview with Ms. J giving her an opportunity to respond to the reasons for revocation. *See* Ms. J Decl. at ¶13; *see also* Sarkis Decl. at ¶ 7.

75. ICE's decision to re-detain Ms. J—who was previously found not likely to be removed and thereby released, in compliance with all conditions imposed on her release, provided no notice of or reasons for the revocation of her release, and given no interview post re-detention—must be reviewed by this Court and found to be "arbitrary, capricious, an abuse of discretion and not in accordance with the law." 5 U.S.C. §§ 706(2)(A), (E). The "procedural requirements" of 8 U.S.C. 1231(a) and its implementing regulations require "agency accountability" so that Ms. J "can respond fully and in a timely manner to an agency's exercise of authority." *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (citing *Regents*, 140 S. Ct. at 1909). this Court's intervention, Ms. J does not have any "remedy" to challenge ICE's decision and refusal to abide by its own procedures.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Immigration and Nationality Act

(Indefinite Detention)

76. Petitioner repeats and realleges all the allegations above and incorporates them by reference here.

77. The INA does not permit detention after the 90-day removal period unless removal is significantly likely to occur in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 699–701.

78. Petitioner provides good reason to believe that there is no significant likelihood of her removal in the reasonably foreseeable future, which places the burden on Respondents to demonstrate through evidence that Petitioner's removal is significantly likely to occur in the reasonably foreseeable future, a period that shrinks as the duration of Petitioner's imprisonment grows. Due to the prolonged duration of Petitioner's imprisonment, ICE must prove her removal is imminent.

79. Because ICE cannot meet its burden, its continued incarceration of Petitioner violates the INA.

SECOND CLAIM

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process)

80. Petitioner re-alleges and incorporates by reference the paragraphs above.

81. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. CONST. AMEND. V.

82. The government has two legitimate interests that may be served by civil immigration detention: preventing flight from removal proceedings and protecting the community from danger.

83. Where the interests of the government cannot be served by detention because ICE has already determined that the noncitizen is not removable in the reasonably foreseeable future and previously released the noncitizen under an Order of Supervision, ICE cannot then revoke that Order of Supervision without showing changed circumstances.

84. There are no changed circumstances. Petitioner has demonstrated that she has not violated the conditions of her release and her removal is not possible in the reasonably foreseeable future, and ICE has not rebutted that showing.

85. Petitioner's detention is untethered to any legitimate government interest, which would be amply satisfied by her release with appropriate conditions. For these reasons, Petitioner's revocation of her release and ongoing detention violates due process.

THIRD CLAIM

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process)

86. Petitioner repeats and realleges all the allegations above and incorporate them by reference here.

87. ICE failed to follow the procedures 8 C.F.R. § 241.13, or, alternatively, 8 C.F.R. § 241.4(l)(2, when re-detaining Ms. J. Her private interest in her liberty and the risk of erroneous deprivation of her liberty is far outweighs the government's interest in re-detaining her when she is neither a flight risk, a danger, nor likely to be removed in the reasonably foreseeable future. *See Mathews v. Eldridge,* 424 U.S. at 335.

88. ICE's failure to provide Ms. J with any procedural due process before re-detaining her and throughout her re-detention violates her Fifth Amendment rights.

FOURTH CLAIM

Arbitrary and Capricious Under the Administrative Procedure Act, 5 U.S.C. § 706(2)

(Accardi Violation)

89. Petitioner realleges and incorporates by reference the paragraphs above.

90. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." Under the *Accardi* doctrine, an administrative agency is required to adhere to its own internal operating procedures." *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954). *Accardi* challenges may be framed as arbitrary and capricious challenges. *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003).

91. ICE has deviated from its own regulations in re-detaining Petitioner without following any of the procedures for revocation of release and continued detention past the removal period as outlined in 8 C.F.R. § 241.13 or, the alternative, 8 C.F.R. § 241.4. ICE has neither provided Ms. J nor her attorney a written statement of its reasons for re-detaining Ms. J, nor given Ms. J or her attorney an opportunity to respond.

92. ICE's detention of Ms. J without following its own regulations and procedures is, therefore, arbitrary and capricious in violation of the APA and the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

a. Assume jurisdiction over this matter;

b. Grant the petition and issue a writ of habeas corpus commanding Petitioner's immediate release from Respondents' custody under reasonable conditions of supervision, and ordering that Respondents may not re-detain her absent a violation of those conditions proven by ICE at a pre-deprivation hearing;

c. Alternatively, promptly issue an order requiring Respondents to file a return within three days showing cause, through admissible evidence, why a writ of habeas corpus should not be issued, including, at minimum, documentary evidence demonstrating:

i. Any communications between ICE and Mozambique officials regarding Ms. J's removal;

ii. Whether and how the procedures under 8 C.F.R. 241.13 were followed, including all notices and other documents constituting the review of Ms. J's custody; and

iii. Any travel document for Ms. J that ICE purports to have in its custody

d. Enjoin Respondents from causing Petitioner any greater harm during the pendency of this litigation and her immigration court case, such as by transferring her away from her counsel;

e. Declare Petitioner's detention in Respondents' custody unlawful under the INA and the Due Process Clause of the Fifth Amendment of the United States Constitution;

f. Declare ICE's decision to revoke Ms. J's release was arbitrary and capricious and done without following the procedures outlined in 8 C.F.R. §§ 241.13(i)(3) or 241.4(l)(2).

g. Award Petitioner reasonable attorneys' fees, costs, and other disbursements in this action permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law;

h. Grant such further relief as the Court deems just and proper.

Respectfully submitted on May 27, 2025

/s/ Brynna Bolt
Brynna Bolt
Pro Bono Attorney for Petitioner

Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. As her attorney, 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.

Dated: May 27, 2025

/s/ Brynna Bolt
Brynna Bolt
Pro Bono Attorney for Petitioner