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15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA

18 F.B.,

19 Petitioner,

20 v.

21 Kristi Noem, Secretary, Department of
Homeland Security; Pam Bondi, Attorney
22 General; Immigration and Customs
Enforcement; Todd Lyons, Acting Director,
23 Immigration and Customs Enforcement;
Gregory J. Archambeault, Field Office
24 Director of the San Diego Field Office of
U.S. Immigration and Customs
25 Enforcement; and David R. Rivas, Warden,
San Luis Regional Detention Center,

26 Respondents.
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Case No.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Oral Argument Requested

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TABLE OF AUTHORITIES

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Cases

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Henriquez v. Garland,
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Hernandez v. Sessions,
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INTRODUCTION

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3 1. Petitioner F.B., her husband, and their four-year-old daughter are Russian
4 foreign nationals escaping the threat of political violence in Russia. (Declaration of F. B. in
5 Support of Petition for Habeas Corpus (“F.B. Decl.”) ¶ 2.)

6 2. In October 2023, Respondents Department of Homeland Security (“DHS”)
7 paroled Petitioner and her family into the United States to seek asylum after the family
8 presented themselves at an appointment with immigration officials and passed all
9 background checks. Petitioner and her family timely filed for asylum thereafter. (*Id.* ¶¶ 6-
10 7.)

11 3. From the moment she entered the United States, Petitioner has always
12 complied with this country’s immigration laws. (*Id.* ¶ 26.) She has no criminal history of
13 any kind. (*Id.*) She has attended all court hearings and complied with all monitoring
14 requirements, including all appointments with Immigration and Customs Enforcement
15 (“ICE”). (*Id.*)

16 4. On October 16, 2024, Petitioner and her family appeared for an ICE check-
17 in. (*Id.* ¶¶ 10-11.) Without explanation, ICE separated Petitioner from her family and
18 detained her, leaving Petitioner’s husband a single parent to their then three-year-old
19 daughter. (*Id.* ¶¶ 10-11.) At the time of her arrest, Petitioner was still in valid parole status.
20 ICE officers presented no warrant for Petitioner’s arrest and did not provide an explanation
21 for her arrest and detention. (*Id.* ¶ 10; Declaration of Laura Lively Babashoff in Support of
22 Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order (“Lively
23 Decl.”) ¶ 4.)

24 5. Petitioner was first detained at Otay Mesa Detention Facility in San Diego,
25 CA. (F.B. Decl. ¶ 12; Lively Decl. ¶ 4.) On May 29, 2025, however, ICE transferred
26 Petitioner to the San Luis Regional Detention Center in San Luis, Arizona. (F.B. Decl.
27 ¶ 14; Lively Decl. ¶ 4.) This transfer to a facility over 200 miles away from her home has
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1 prevented Petitioner from in-person visits with her family. (F.B. Decl. ¶ 14.) Petitioner has
2 thus not seen or held her daughter since May 2025.¹ (*Id.*)

3 6. On March 13, 2025, an immigration judge granted Petitioner's asylum
4 application for the first time. (*Id.* ¶ 13; Lively Decl, Ex. B (First Asylum Order).)
5 Respondent Department of Homeland Security ("DHS") appealed that decision to the Board
6 of Immigration Appeals ("BIA") and continued to detain Petitioner pending the appeal.
7 (F.B. Decl. ¶ 13.)

8 7. On September 10, 2025, the BIA remanded Petitioner's case back to an
9 immigration judge for further development of the record. (Lively Decl., Ex. C (Order of
10 Remand).)

11 8. After remand and further fact finding, on October 20, 2025, an immigration
12 judge *again* granted Petitioner's application for asylum. (*Id.*, Ex. D; F.B. Decl. ¶ 24.) Once
13 more, Respondent DHS reserved its right to appeal, and on Friday, November 14, 2025,
14 filed a Notice of Appeal to the BIA. (Lively Decl. ¶ 10; F.B. Decl. ¶ 24.)

15 9. Petitioner has been detained in immigration custody for over a year, despite
16 having been granted asylum twice and even though she presents no flight risk or danger to
17 the community. Petitioner has never been afforded a hearing before a neutral adjudicator
18 to consider whether she is either a flight risk or a danger to the community.

19 10. This Petition and Complaint challenge Petitioner's arrest and detention by
20 Respondents, which are unlawful for at least the following reasons: (a) Petitioner presents
21 no danger or flight risk and, therefore, cannot be held under immigration laws as a matter
22 of law under the Due Process Clause under the Fifth Amendment to the United States
23 Constitution; and (b) she has been in prolonged federal detention without an individualized

24 ¹ On July 29, 2025, United States Border Patrol agents arrested Petitioner's husband, and
25 detained him and their then three-year-old daughter without issuing him a warrant or
26 explaining the reason for his arrest. (F.B. Decl. ¶ 15.) Three days after his detention, and
27 without consent or advance notice, ICE separated Petitioner's husband from their daughter
28 and is currently detaining him in Adelanto, California. (*Id.*) A separate petition for
Petitioner's husband is currently pending in the Central District of California, titled *Islam*
Dhzatdoev v. Noem, et al., Case No. 8:25-CV-01713-SSS-AJR (hereinafter, "I.D.
Petition.").

1 determination of her danger to the community or flight risk in violation of the Due Process
2 Clause of the Fifth Amendment.

3 11. Petitioner respectfully requests that this Court issue a writ of habeas corpus,
4 determine that Petitioner's detention is not justified because Respondents have not
5 established by clear and convincing evidence that Petitioner presents either a flight risk or
6 a danger to the community in light of available alternatives to detention, and order
7 Petitioner's release, with appropriate conditions of supervision, if necessary, taking into
8 account Petitioner's ability to pay a bond.

9 12. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus
10 and order Petitioner's release within 7 days unless Respondents schedule a hearing before
11 an Immigration Judge within 7 days where: (1) to continue Petitioner's detention,
12 Respondents must establish by clear and convincing evidence that Petitioner presents a risk
13 of flight or danger to the community, even after consideration of alternatives to detention
14 that could mitigate any risk that Petitioner's release would present; and (2) if the
15 government cannot meet its burden, the immigration judge shall order Petitioner's release
16 on appropriate conditions of supervision, taking into account Petitioner's ability to pay a
17 bond.

18 JURISDICTION AND VENUE

19 13. This Court has subject matter jurisdiction under the habeas corpus statutes,
20 28 U.S.C. § 2241 et seq., the Suspension Clause of the Constitution, and under 28 U.S.C. §
21 1331 because this action arises under federal law, including the Immigration and Nationality
22 Act ("INA"), 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 551 et seq.

23 14. This Court may grant the requested relief pursuant to the Declaratory
24 Judgment Act, 28 U.S.C. § 2201 et seq., and the habeas corpus statutes, 28 U.S.C. § 2241
25 et seq.

26 15. Venue properly lies within the District of Arizona under 28 U.S.C. § 1391,
27 because this is a civil action in which Respondents are agencies and officers of the United
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1 States, Petitioner is currently detained in this district, and because a substantial part of the
2 events or omissions giving rise to this action occurred in the district.

3 **PARTIES**

4 16. Petitioner is currently detained at San Luis Regional Detention Center in San
5 Luis, Arizona. (F.B. Decl. ¶ 14.)

6 17. Respondent Kristi Noem is the Secretary of DHS and is sued in her official
7 capacity. The DHS Secretary is charged with the administration and enforcement of
8 immigration laws. 8 U.S.C. § 1103(a).

9 18. Respondent Pam Bondi is the Attorney General of the United States and is
10 sued in her official capacity as the head of the Department of Justice. The Attorney General
11 is responsible for the fair administration of the laws of the United States.

12 19. Respondent ICE is the agency responsible for the detention of noncitizens,
13 and the transfer or removal of Petitioner outside of this judicial district.

14 20. Respondent Todd Lyons is the Acting Director of ICE, and is sued in his
15 official capacity. Respondent Lyons leads ICE, which is the agency responsible for the
16 detention of noncitizens, and the transfer or removal of Petitioner outside of this judicial
17 district.

18 21. Respondent Gregory J. Archambeault is responsible for the San Diego Field
19 Office Director of ICE, which has administrative jurisdiction over Petitioner's case.
20 Respondent Archambeault is a legal custodian of Petitioner and is named in his official
21 capacity.

22 22. Respondent David R. Rivas, Warden of the San Luis Regional Detention
23 Center, is sued in his official capacity as the immediate custodian at the facility where
24 Petitioner is detained.

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FACTS

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2 23. Petitioner, her husband, and their four-year-old daughter are Russian foreign
3 nationals who fled Russia, escaping the threat of political persecution and violence. (F.B.
4 Decl. ¶ 2.)

5 24. In October 2023, the family presented themselves at the San Ysidro,
6 California Port of Entry through a pre-scheduled United States Customs and Border
7 Protection (“CBP”) One appointment. (*Id.* ¶ 3.) The family had waited several months in
8 Mexico in order to comply with all of the procedural requirements of their entry and to
9 ensure they did not cross the border into the United States without authorization. (*Id.*) CBP
10 conducted the customary fingerprinting, interviews, and background checks and decided to
11 release the family from custody after two days. (*Id.*) The family was issued Notices to
12 Appear, placed into removal proceedings under 8 U.S.C. 1225(b), and granted parole until
13 October 23, 2024. (*Id.* ¶ 6.)

14 25. Petitioner’s husband applied for asylum in April 2024, listing Petitioner and
15 their child as derivatives on his application. (*Id.* ¶ 7.) In June 2024, Petitioner also filed
16 for asylum as a principal applicant, listing her husband and their child as derivatives on her
17 application. (*Id.*)

18 26. Petitioner and her family have diligently complied with all immigration-
19 related requirements since their parole into the United States, including attending all check-
20 ins with ICE and court hearings. (*Id.* ¶¶ 4, 26.) Petitioner was designated as the person in
21 the family unit responsible for complying with their monitoring requirements. (*Id.* ¶ 4.)

22 27. Approximately one year into her parole, while still in valid parole status,
23 Petitioner received a letter to attend an in-person check-in on October 15, 2024. (*Id.* ¶ 8.)
24 This was unusual as she had never previously received a letter requesting an in-person
25 check-in. (*Id.*) Petitioner and her family appeared for the check-in and were asked to return
26 the following day. (*Id.*)

1 28. On October 16, 2024, Petitioner and her family again appeared at the check-
2 in. (*Id.*) This time, Petitioner was separated from her husband and their child. (*Id.* ¶¶ 9-
3 10.) At no time did ICE provide Petitioner with a warrant or explanation for her arrest. (*Id.*
4 ¶ 10.) She pleaded with the officers to allow her to speak with her family, but they took her
5 into custody without allowing her an opportunity to say goodbye to her husband or her
6 daughter. (*Id.* ¶ 11.)

7 29. Petitioner's husband later told Petitioner that an ICE officer said that an
8 "error" in the system led to her arrest, and that if Petitioner's husband transferred monitoring
9 responsibility over to himself, Petitioner could be released. (*Id.* ¶ 10.)

10 30. Instead, after spending the entire day in custody, Petitioner was transferred to
11 the Otay Mesa Detention Center in San Diego, California, where she remained detained
12 until May 29, 2025. (*Id.* ¶¶ 11-12.)

13 31. While detained at Otay Mesa, Petitioner's husband and their child visited
14 Petitioner weekly. (*Id.* ¶ 12.) Otay Mesa permitted contact visits, so Petitioner was able to
15 hug and hold her then three-year-old daughter. (*Id.*)

16 32. After several months in detention, on March 13, 2025, Immigration Judge
17 Mark Sameit granted Petitioner's application for asylum. (*Id.* ¶ 13; Lively Decl. Ex. B
18 (First Asylum Order).) This grant of asylum typically confers asylum status to all
19 immediate family members who are derivatives on that application, which would include
20 Petitioner's husband and daughter.²

21 33. However, on April 9, 2025, Respondent DHS filed an appeal of Petitioner's
22 grant of asylum. DHS continued to detain Petitioner throughout the entirety of that appeal.
23 (F.B. Decl. ¶ 13.)

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27 ² Petitioner's husband and their child also have pending asylum applications before the
28 immigration court. Their hearings on these applications, through no fault of their own,
have been continued a number of times by the immigration court.

1 34. On May 29, 2025, while her appeal remained pending, Petitioner was
2 transferred without notice from Otay Mesa to the San Luis Regional Detention Center in
3 San Luis, Arizona. (*Id.* ¶ 14.)

4 35. The next day, on May 30, 2025, Petitioner appeared by video for a scheduled
5 bond hearing. (*Id.*) Petitioner was denied bond because Immigration Judge Paula Dixon
6 found that she was an “arriving alien” under INA Section 235 and, therefore, the Court
7 lacked jurisdiction to order her release. (*See* Lively Decl. Ex. A (Order Denying Bond).)
8 Immigration Judge Dixon did not evaluate Petitioner’s flight risk or danger to the
9 community in reaching this decision. (*See id.*)

10 36. Petitioner did not appeal her bond denial to the BIA, understanding she had
11 no legal basis to argue that she was entitled to release on bond as an “arriving alien” under
12 INA Section 235.

13 37. Shortly after her transfer, Petitioner made a written request to be transferred
14 back to Otay Mesa so that she could see her family. (F.B. Decl. ¶ 14.) ICE denied her
15 request and she remains detained at San Luis this day. (*Id.*) Because the facility is over
16 200 miles away from her home, Petitioner’s family has not been able to visit her in-person.
17 (*Id.*) Petitioner has thus not seen or held her daughter since May 2025. (*Id.*)

18 38. In late July 2025, Petitioner’s husband was arrested at their family home in
19 Irvine, California, along with their young daughter. (*Id.* ¶ 15.) ICE first transported
20 Petitioner’s husband and their daughter to the Federal Building at 300 North Los Angeles
21 Street, Los Angeles, California, then to Texas, and then later returned them to California
22 where ICE separated Petitioner’s husband from their daughter. Petitioner’s husband is
23 currently detained at the Adelanto Detention Facility in Adelanto, California. (*Id.*) ICE
24 redesignated Petitioner’s daughter, who only speaks Russian, as an unaccompanied minor
25 and placed her in Office of Refugee Resettlement (“ORR”) custody. (*Id.* ¶ 16.)

26 39. On September 10, 2025, the BIA remanded Petitioner’s case back to an
27 immigration judge for further development of the record. (*Id.* ¶ 23; Lively Decl. Ex. C

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1 (Remand Order.) On October 20, 2025, Immigration Judge Mark Sameit granted
2 Petitioner's application for asylum a second time. (F.B. Decl. ¶ 24; Lively Decl., Ex. D
3 (Second Asylum Order).) DHS again reserved the right to appeal and, on Friday, November
4 14, 2025, filed a Notice of Appeal to the BIA. (F.B. Decl. ¶ 24; Lively Decl. ¶ 10.)

5 40. Petitioner has suffered greatly due to her prolonged detention and separation
6 from her family, and her mental health has deteriorated. (F.B. Decl. ¶ 22.) She experiences
7 panic attacks, has difficulty sleeping, and is struggling with anxiety and depression.³ (*Id.*)

8 41. Petitioner's daughter has exhibited increased signs of lasting emotional
9 damage. (*Id.* ¶¶ 20-21.) She regularly cries on the phone when they speak, asking when
10 her mom can come home. (*Id.* ¶ 21.) Witnessing her daughter's suffering has been
11 profoundly painful for Petitioner. (*Id.*)

12 42. Petitioner came to this country seeking asylum protection from political
13 persecution and an immigration judge has granted her request for asylum protection twice.
14 Yet, Petitioner remains detained and in removal proceedings, and Respondents have
15 provided no process for, or evidence of, an individualized finding that she is a flight risk or
16 danger to society to justify her continued detention.

17 43. The facts indicate just the opposite: Petitioner has no criminal history, she has
18 been fingerprinted multiple times and has passed all background checks, she was granted
19 parole into the United States nearly two years ago, and she has complied with all
20 immigration-related monitoring requirements and court hearings since then.

21 44. Petitioner faces indefinite detention in light of DHS's decision to again appeal
22 an immigration judge's successive decision granting her asylum.

23 45. Respondents take the position that the Immigration Court lacks jurisdiction
24 and authority to provide Petitioner with a bond hearing to determine whether Petitioner's
25 detention is justified and there is no other statutory or regulatory pathway for Petitioner to

26 _____
27 ³ From when Petitioner's daughter was separated from her father on August 1, 2025, until
28 October 31, 2025, when she was finally released to close family friends who could
sponsor her, Petitioner's daughter was living in a foster home with strangers with whom
she could not communicate because she only speaks Russian.

1 seek a bond hearing before a neutral decisionmaker. *See Matter of Q. Li*, 29 I&N Dec. 66,
2 69 (BIA 2025) (individuals deemed “arriving aliens” and detained under section 235(b) are
3 ineligible for release on bond because detention is mandated until removal proceedings are
4 concluded). Absent intervention by this Court, Petitioner cannot and will not be provided
5 with a bond hearing by a neutral decisionmaker to assess the propriety of her continued
6 detention.

7 46. Petitioner has representation in her removal proceedings and her counsel is
8 located in Southern California. Petitioner’s habeas counsel is located in Los Angeles,
9 California.

10 47. Prior to her detention, Petitioner had a strong community of support in
11 Southern California, including longtime friends in Irvine, California, with whom her
12 daughter is currently living. (*Id.* ¶ 5.)

13 **CLAIMS FOR RELIEF**

14 **COUNT ONE**

15 **Violation of the Fifth Amendment to the U.S. Constitution**

16 ***Procedural Due Process***

17 48. Petitioner repeats, re-alleges, and incorporates by reference each and every
18 allegation in the preceding paragraphs as if fully set forth herein.

19 49. Respondents have deprived Petitioner of her liberty without any legitimate
20 purpose in violation of her due process rights under the Fifth Amendment.

21 50. The government may not deprive any person of life, liberty, or property
22 without due process of law. U.S. Const. amend. V.

23 51. “Freedom from imprisonment—from government custody, detention, or
24 other forms of physical restraint—lies at the heart of the liberty that [the Due Process]
25 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26 52. The Due Process Clause applies to all “person[s],” including noncitizens,
27 within the United States, “whether their presence here is lawful, unlawful, temporary, or
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1 permanent.” *Id.* at 693; *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) (“It is well established
2 that the Fifth Amendment entitles aliens to due process of law in the context of removal
3 proceedings.”) (internal quotation marks and citation omitted).

4 53. Moreover, “an individual already enjoying certain forms of conditional
5 release has a protected liberty interest in retaining them.” *Borchers v. Belcher*, No. CV 11-
6 1018-PHX-DGC, 2012 WL 1231742, at *5 (D. Ariz. Mar. 9, 2012) (citing *Morrissey v.*
7 *Brewer*, 408 U.S. 471, 482 (1972)). A noncitizen released from custody pending removal
8 proceedings—like Petitioner, who was paroled at the government’s discretion into the
9 United States and remained at liberty for nearly a year—has a specific and protected liberty
10 interest in remaining out of custody. *See, e.g., Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-
11 BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025) (collecting cases). Indeed, “even
12 when an initial decision to detain or release an individual is discretionary, the government’s
13 subsequent release of the individual from custody creates ‘an implicit promise’ that the
14 individual’s liberty will be revoked only if they fail to abide by the conditions of their
15 release. *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal.
16 Aug. 22, 2025) (quoting *Morrissey*, 408 U.S. at 482) (“The parolee has relied on at least
17 an implicit promise that parole will be revoked only if he fails to live up to the parole
18 condition.”)

19 54. Like any civil detention, immigration detention violates the Due Process
20 Clause if it is not reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 690
21 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *see also Demore v. Kim*, 538 U.S.
22 510, 527 (2003) (immigration detention must “bear[] a reasonable relation to the purpose
23 for which the individual was committed”) (quoting *Zadvydas*, 533 U.S. at 690).

24 55. In the immigration context, the Supreme Court has recognized only two valid
25 purposes for civil detention: (1) to mitigate the risk of flight and (2) prevent danger to the
26 community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

1 56. Petitioner presents neither a flight risk nor any danger. The government
2 cannot contend that Petitioner presents a flight risk given that she has always complied with
3 monitoring requirements, appeared for all ICE appointments, and attended all court hearings
4 without incident before her detention. (F.B. Decl. ¶ 6; *Cf. Reno v. Flores*, 507 U.S. 292,
5 301–02 (1993) (holding that due process “forbids the government to infringe certain
6 ‘fundamental’ liberty interests at all, no matter what process is provided, unless the
7 infringement is narrowly tailored to serve a compelling state interest”).) Petitioner also
8 does not present any danger. She has no criminal history, she has passed all background
9 checks, she has repeatedly submitted fingerprints to confirm these facts, and she has
10 complied with all immigration-related requirements. (F.B. Decl. ¶¶ 3, 6.)

11 57. Respondents’ decision to re-detain Petitioner, without having to demonstrate
12 that she failed to abide by the conditions of her release, is not reasonably related to a
13 statutory purpose. *See Zadvydas*, 533 U.S. at 690.

14 58. Petitioner also came to the United States seeking protection from persecution,
15 has been granted asylum twice, and has a vested interest in continuing meaningful
16 participation in her removal case in the United States to obtain the relief she seeks. While
17 the government has appealed that ruling, at this juncture it is clear that neither release nor
18 removal are imminent. *Id.* at 701 (strength of liberty interest increases as period of
19 confinement grows); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir. 2005)
20 (ordering the “immediate release” of detainee who had won asylum twice but remained
21 detained pending government’s appeal).

22 59. At a bare minimum, “the Due Process Clause includes protection against
23 unlawful or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy,
24 J., dissenting).

25 60. Where, as here, an individual has lived in complete compliance with all
26 applicable laws and previously been determined to present neither a flight risk nor danger,
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1 suddenly arresting and imprisoning them is paradigmatically arbitrary, and a violation of
2 the most basic protections of the Due Process Clause.

3 **COUNT TWO**

4 **Violation of the Fifth Amendment to the U.S. Constitution**

5 ***Prolonged Detention***

6 61. Petitioner repeats, re-alleges, and incorporates by reference each and every
7 allegation in the preceding paragraphs as if fully set forth herein.

8 62. As a civil detainee, Petitioner is entitled to greater liberty protections than
9 individuals detained under criminal processes. *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.
10 2004). “At a bare minimum, . . . an individual detained under civil process—like an
11 individual accused but not convicted of a crime—cannot be subjected to conditions that
12 amount to punishment.” *Id.*

13 63. The Due Process Clause protects citizens and noncitizens, including both
14 removable and inadmissible noncitizens. *Zadvydas*, 533 U.S. at 721 (Kennedy, J.,
15 dissenting) (“[B]oth removable and inadmissible aliens are entitled to be free from
16 detention that is arbitrary or capricious.”).

17 64. Due process therefore requires “adequate procedural protections” to ensure
18 that the government’s asserted justification for physical confinement “outweighs the
19 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690
20 (internal quotations omitted). Even for deprivations of liberty far less serious than
21 imprisonment, the Due Process Clause requires that individuals receive notice and an
22 opportunity to be heard in a meaningful manner and time before the government may
23 deprive them of liberty. *E.g., Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

24 65. Where a noncitizen has been detained for a prolonged period or is pursuing a
25 substantial defense to removal or claim to relief, due process requires an individualized
26 determination that such a significant deprivation of liberty is warranted. *Demore*, 538 U.S.
27 at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to [Petitioner’s] risk
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1 of flight and dangerousness” may be warranted “if the continued detention became
2 unreasonable or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972)
3 (holding that detention beyond the “initial commitment” requires additional safeguards);
4 *Hutto v. Finney*, 437 U.S. 678, 686 (1978) (holding that, in the Eighth Amendment context,
5 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
6 constitutional standards”).

7 66. Detention without an individual determination of flight risk and danger to the
8 community is unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529-
9 30 (upholding only “brief” detentions under Section 1226(c), which last “roughly a month
10 and a half in the vast majority of cases in which it is invoked, and about five months in the
11 minority of cases in which the alien chooses to appeal”); *Zadvydas*, 533 U.S. at 701
12 (“Congress previously doubted the constitutionality of detention for more than six
13 months”).

14 67. Petitioner has been detained for nearly 400 days—since October 16, 2024—
15 without a bond hearing to evaluate her flight risk and danger to the community. She was
16 denied bond on May 30, 2025, solely on the basis that the Immigration Judge lacked
17 jurisdiction to order her release based on her status as an “arriving alien” under Section 235
18 of the INA, without any individualized determination as to her flight risk or danger to the
19 community. (*See Lively Decl. Ex. A (Order Denying Bond)*; *see also Matter of Q. Li*, 29
20 I&N Dec. 66, at 69 (BIA 2025) (individuals deemed “arriving aliens” and detained under
21 section 235(b) are ineligible for release on bond because detention is mandated until
22 removal proceedings are concluded.) Petitioner’s prolonged detention without an
23 individualized determination is presumptively unconstitutional.

24 68. Petitioner’s detention, without *any* individualized review, is also
25 unreasonable under the *Mathews v. Eldridge* due process test which balances: (1) the private
26 interest threatened by governmental action; (2) the risk of erroneous deprivation of such
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1 interest and the value of additional or substitute safeguards; and (3) the government interest.
2 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

3 69. Here, each factor weighs in Petitioner’s favor, requiring this Court to
4 promptly hold a hearing to evaluate whether the Government can justify their ongoing
5 detention.

6 70. First, Petitioner indisputably has a strong liberty interest in being free from
7 detention—the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 (“Freedom
8 from imprisonment . . . lies at the heart of the liberty [the Due Process Clause] protects.”).
9 Petitioner’s private interest is particularly strong because she has been detained for over a
10 year, and neither release nor removal are imminent. *Id.* at 701 (strength of liberty interest
11 increases as period of confinement grows). Moreover, her liberty interest is particularly
12 profound because she is separated from her young daughter. *See Landon v. Plasencia*, 459
13 U.S. 21, 34 (1982) (in applying the first *Mathews* factor, weighing the right to “rejoin
14 [one’s] immediate family” as “rank[ing] high among the interests of” a detainee).

15 71. Second, Petitioner is at great risk of erroneous deprivation of this liberty
16 without an individualized evidentiary hearing. No neutral evaluation has been conducted
17 regarding whether the government can justify Petitioner’s detention. Indeed, Petitioner has
18 already been subject to an erroneous deprivation of her liberty, particularly in light of the
19 fact that she has twice been granted asylum after significant factfinding. “[T]he risk of an
20 erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker
21 is substantial.” *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011).

22 72. Third, the government’s interest is very low in continuing to detain Petitioner
23 without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest
24 at stake here is not the government’s ability to continue to detain Petitioner, but rather the
25 government’s ability to continue to detain her indefinitely, for months on end, without any
26 individualized review. *See Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019);
27 *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June
28

1 14, 2022). The cost of providing an individualized inquiry is minimal. *See Henriquez*,
2 2022 WL 2132919, at *5. The government has repeatedly conceded this fact. *See Reyes v.*
3 *Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005,
4 1021 (S.D. Cal. 2019); *Ambriz*, 420 F. Supp. 3d at 964.

5 73. *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this result.
6 In *Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen
7 who had *already received an initial bond hearing* and remained the Ninth Circuit applied
8 the *Mathews* test to hold that the detention of a noncitizen detained under a different
9 detention statute, 8 U.S.C. § 1226(a), did not violate procedural due process. 53 F.4th at
10 1195. Unlike section 1225(b), section 1226(a) mandates that detained individuals receive
11 an individualized bond hearing at the outset of detention and provides for further bond
12 hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19(e). The panel's
13 decision in *Diaz* was predicated on the immediate and ongoing availability of this
14 administrative process under § 1226(a). 53.F.4th at 1202 ("Section 1226(a) and its
15 implementing regulations provide extensive procedural protections that are unavailable
16 under other detention provisions . . .").

17 74. Unlike the petitioner in *Diaz*, Petitioner has no statutory access to
18 individualized review of her detention, as acknowledged by the Immigration Judge who
19 denied her bond solely based on lack of jurisdiction. (*See* Lively Decl. Ex. A (Order
20 Denying Bond); *see also Matter of Q. Li*, 29 I&N Dec. 66, at 69 (BIA 2025) (individuals
21 deemed "arriving aliens" and detained under section 235(b) are ineligible for release on
22 bond because detention is mandated until removal proceedings are concluded).)

23 75. Even if a bond hearing is not required after six months in every case, at a
24 minimum, due process requires a bond hearing after detention has become unreasonably
25 prolonged without explanation. *See Diop v. U.S. Immigr. & Customs Enf't. / Homeland*
26 *Sec.*, 656 F.3d 221, 234 (3d Cir. 2011). Courts that apply a reasonableness test have
27 considered three main factors in determining whether detention is reasonable. First, courts
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1 have evaluated whether the noncitizen has raised a “good faith” challenge to removal—that
2 is, the challenge is “legitimately raised” and presents “real issues.” *Chavez-Alvarez v.*
3 *Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a
4 “function of the length of the detention,” with detention presumptively unreasonable if it
5 lasts six months to a year. *Id.* at 477-78; *accord Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199,
6 1217-18 (11th Cir. 2016). Third, courts have considered the likelihood that detention will
7 continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention
8 unreasonable after ninth months of detention, when the parties could “have reasonably
9 predicted that Chavez–Alvarez’s appeal would take a substantial amount of time, making
10 his already lengthy detention considerably longer”); *Reid*, 819 F.3d at 500.

11 76. Petitioner’s challenge to removal is presumptively reasonable, as she has
12 twice been granted asylum by an Immigration Judge. (F.B. Decl. ¶¶ 13, 24; Lively Decl.
13 Exs. B, D (First and Second Asylum Orders).)

14 77. On the other hand, Petitioner’s detention is presumptively unreasonable
15 because she has been detained for more than a year and twice the amount of time considered
16 to be a “reasonable” length of detention. *See, e.g., Diouf II*, 634 F.3d at 1091-92.

17 78. Respondents have not offered any indication of when Petitioner might be
18 released. Petitioner is informed, believes, and thereupon alleges that Respondents will
19 continue to detain Petitioner and appeal the matter until and unless they have exhausted all
20 appeals or a final order of removal is entered.

21 79. It is also unlikely that further proceedings will result in a final order of
22 removal. Though the government has filed a Notice of Appeal of Petitioner’s *second* grant
23 of asylum, it remains likely that Petitioner will continue to meet her burden of establishing
24 sufficient fear of persecution if returned to Russia.

25 80. At a prolonged detention bond hearing, due process requires certain minimal
26 protections to ensure that a noncitizen’s detention is warranted: the government must bear
27 the burden of proof by clear and convincing evidence to justify continued detention, taking
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1 into consideration available alternatives to detention; and if the government cannot meet its
2 burden, the noncitizen's ability to pay a bond must be considered in determining the
3 appropriate conditions of release. *See Singh v. Holder*, 638 F. 3d 1196, 1203 (9th Cir.
4 2011); *Hernandez v. Sessions*, 872 F. 3d 976, 990 (9th Cir. 2017 (when determining the
5 appropriate conditions of release for immigration detainees, due process requires
6 "consideration of financial circumstances and alternative conditions of release").

7 81. To justify prolonged immigration detention, the government must bear the
8 burden of proof by clear and convincing evidence that the noncitizen is a danger or flight
9 risk. *See Singh*, 638 F.3d at 1203.

10 82. Petitioner poses no flight risk and is not a danger to the community. Indeed,
11 Respondents paroled her into the United States upon that determination and nothing has
12 changed since then. Petitioner has no criminal history, has complied with all immigration-
13 related requirements, and has submitted to fingerprinting and background checks,
14 illustrating that she is not a flight risk. (F.B. Decl. ¶¶ 3, 6.)

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Petitioner prays that this Court grant the following relief:

- 17 (1) Exercise jurisdiction over this matter;
- 18 (2) Declare that Petitioner's arrest and detention are unlawful;
- 19 (3) Order the immediate release of Petitioner pending her removal proceedings
20 so that she may be reunited with her daughter;
- 21 (4) Or, alternatively, order Petitioner's release within 7 days unless Defendants
22 schedule a bond hearing before an immigration judge within 7 days where: (1) to continue
23 detention, the government must establish by clear and convincing evidence that Petitioner
24 presents a risk of flight or danger, even after consideration of alternatives to detention that
25 could mitigate any risk that Petitioner's release would present; and (2) if the government
26 cannot meet its burden, the immigration judge order Petitioner's release on appropriate
27 conditions of supervision, taking into account Petitioner's ability to pay a bond.

28

1 (5) Award costs and reasonable attorney fees incurred under this action under 28
2 U.S.C. § 2412 et seq. (Equal Access to Justice Act); and

3 (6) Grant any further relief that this Court may deem just and proper.
4

5 Dated: November 17, 2025

MORRISON & FOERSTER LLP

6
7 By: /s/ Laura Lively Babashoff
Laura Lively Babashoff

8 *Attorney for Petitioner*
9 F.B.

10 Dated: November 17, 2025

PUBLIC COUNSEL

11
12
13 By: /s/Jana Whalley
Jana Whalley

14 *Attorney for Petitioner*
15 F.B.
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VERIFICATION

I, F.B., am the Petitioner in this action. I know the contents of the Petition for Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Petition") and the facts alleged therein. The facts alleged are true to my own knowledge, except as to those matters which are alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in San Luis, Arizona, on November 17, 2025.

BY: 
F.B.

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): F.B. , ;

Defendant(s): **Kristi Noem , Secretary, Department of Homeland Security; Pam Bondi , Attorney General; Immigration and Customs Enforcement , ; Todd Lyons , Acting Director, Immigration and Customs Enforcement; Gregory J. Archambeault , Filed Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement; David R. Rivas , Warden, San Luis Regional Detention Center;**

County of Residence: Outside the State of Arizona

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Yuma

Plaintiff's Atty(s):

Defendant's Atty(s):

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IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

II. Basis of Jurisdiction:

2. U.S. Government Defendant

III. Citizenship of Principal Parties(Diversity Cases Only)

Defendant:- **N/A**

IV. Origin : **1. Original Proceeding**
V. Nature of Suit: **463 Alien Detainee**

VI. Cause of Action: **Petitioner challenges her ongoing detention under 28 USC 2241 et seq and the Fifth Amendment to the US Constitution.**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: Laura Lively Babashoff

Date: 11/17/2025

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.