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10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **ALIBEK ISLAMOV,**

14 *Petitioner,*

15 v.

16 **CHRISTOPHER J. LAROSE, Senior**
17 **Warden, Otay Mesa Detention Center, et al,**

18 *Respondents.*

19 Case No. 25-cv-03390-LL-MSB

20 **REPLY MEMORANDUM**

21 **I. INTRODUCTION**

22 1. This habeas petition challenges the detention of Mr. Islamov following an
23 extended period of lawful parole and full compliance with immigration requirements. Mr. Islamov
24 entered the United States on or about July 16, 2021, was granted parole through December 22,
25 2022, and timely filed an affirmative application for asylum on June 28, 2022. While awaiting his
26 asylum interview with USCIS, Mr. Islamov obtained employment authorization, complied with
all legal obligations, and posed no risk of flight or danger to the community. From his entry in
July 2021 until his detention on March 18, 2025, Mr. Islamov lived in the community without
detention, including an extended period of lawful parole. He was abruptly detained without any

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2 articulated reason or change in circumstances, after which his asylum application was referred to
3 the Immigration Court.

4 2. Notably, in August 2023, DHS itself moved to dismiss Petitioner’s prior removal
5 proceedings so that USCIS could continue adjudicating his asylum application—only to later
6 reverse course, file a new Notice to Appear, and detain Petitioner without any articulated
7 explanation for this change in position.

8 3. Once the government exercises its discretion to release a noncitizen from custody,
9 that individual acquires a protected liberty interest in remaining free absent a reasoned
10 explanation or materially changed circumstances. Parole may not be revoked arbitrarily or
11 without justification. *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D.
12 Or. July 9, 2025).

13 4. That principle applies squarely here. DHS affirmatively exercised its discretion to
14 release Mr. Islamov on parole in July 2021, permitting him to reside in the community rather than
15 remain in detention. Mr. Islamov relied on that decision by establishing a stable life in the United
16 States, obtaining employment authorization based on his asylum application, and complying with
17 all legal and reporting requirements imposed by USCIS.

18 5. Despite that compliance—and without identifying any violation, new information,
19 or change in circumstances—ICE abruptly reversed course and detained Mr. Islamov in March
20 2025. Under these circumstances, due process prohibits the government from re-detaining a
21 previously released individual without a reasoned explanation. See *Pinchi v. Noem*, No. 5:25-cv-
22 05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) (“once that individual is released
23 from custody, she has a protected liberty interest in remaining out of custody”); *Maklad v.*
24 *Murray*, No. 1:25-CV-00946-JLT-SAB, 2025 WL 2299376, at *5 (E.D. Cal. Aug. 8, 2025)
25 (same).
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6. Respondents contend that Mr. Islamov is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that, pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Immigration Judges lack authority to conduct bond hearings for noncitizens present in the United States without admission. Those arguments, however, do not eliminate this Court’s obligation to ensure that detention complies with due process, nor do they justify re-detention without explanation following a prolonged period of liberty.

7. Petitioner therefore respectfully requests that the Court find his detention unlawful and order his immediate release under appropriate conditions. At a minimum, the Court should order Respondents to provide Mr. Islamov with a prompt bond hearing at which an Immigration Judge can meaningfully assess whether he poses any risk of flight or danger to the community.

II. FACTUAL AND PROCEDURAL BACKGROUND

8. Petitioner entered the United States on or about July 16, 2021, in DT status. He was granted parole through December 22, 2022, as reflected in his I-94 Admission Record No.

 See *Exhibit A* to Petition for Writ of Habeas Corpus (Doc. #1).

9. On June 28, 2022, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal with USCIS. See *Exhibit B* to Petition for Writ of Habeas Corpus - Receipt Notice (Doc. #1).

10. On December 22, 2022, DHS filed a Notice to Appear (“NTA”) with the Immigration Court. The proceedings initiated by that NTA were subsequently dismissed pursuant to an Immigration Judge’s order dated August 17, 2023. See **Exhibit 1**.

11. The August 17, 2023 order in its pertinent part states among other things: “*Reason for Dismissal: DHS motion – Respondent filed an application for asylum Form I-589, with USCIS on 6-28-22, prior to the filing of the NTA (dated 12-22-22) with the Court on 12-22-22. As*

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2 *confirmed by both parties, that application is currently pending adjudication at USCIS (Receipt*
3 *No. [REDACTED] The dismissal of these proceedings will allow USCIS to continue with the*
4 *adjudication of the asylum application.”*
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6 12. Notwithstanding the expiration of Petitioner’s parole in December 2022, and in
7 light of Petitioner’s Form I-589 asylum application that was then pending with USCIS,
8 Respondents elected to dismiss the removal proceedings initiated in 2022, thereby permitting
9 USCIS to continue adjudicating the asylum application. However, despite the absence of any
10 identified violation, new information, or change in circumstances, and while the asylum
11 application remained pending at that time, Respondents subsequently detained Petitioner on
12 March 18, 2025.
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14 13. On March 18, 2025, Petitioner was served with another Notice to Appear (NTA)
15 charging him as removable under INA § 212(a)(7)(A)(i)(I) for allegedly not being in possession
16 of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry
17 document required by the Act, and a valid unexpired passport, or other suitable travel document,
18 or document of identity and nationality as required under the regulations issued by the Attorney
19 General under section 211 (a) of the Act. See *Exhibit I* to Petition for Writ of Habeas Corpus –
20 NTA (Doc. #1).
21

22 14. On March 24, 2025, USCIS forwarded Petitioner’s I-589, Application for Asylum
23 and for Withholding of Removal to EOIR. See *Exhibit J* to Petition for Writ of Habeas Corpus –
24 Notice of Forwarding to EOIR (Doc. #1).
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26 15. On March 25, 2025, Petitioner filed an Application for Temporary Protected Status
27 (TPS) as a native of the former USSR and a permanent resident of Ukraine. See *Exhibit K* to
Petition for Writ of Habeas Corpus - I-821 Application with proof of receipt (Doc. #1).

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16. Petitioner’s application for Temporary Protected Status (“TPS”) remains pending and has not yet been adjudicated. According to USCIS processing times, for Applications for Temporary Protected Status (Form I-821) adjudicated by the Service Center Operations Directorate (SCOPS), 80% of cases are completed within approximately 18.5 months. USCIS further indicates that inquiries regarding case status may not be submitted until December 31, 2026, and advises applicants not to contact the agency before that date. See **Exhibit 2**.

17. On March 29, 2025, Petitioner filed Amended Written Pleadings with the Otay Mesa Immigration Court indicating his intention to seek relief from removal in the forms of asylum, withholding of removal, protection under the Convention Against Torture (“CAT”), and Temporary Protected Status (“TPS”). See *Exhibit L* to Petition for Writ of Habeas Corpus – Written Pleadings (Doc. #1).

18. Notwithstanding the pending TPS application, the Otay Mesa Immigration Court conducted Petitioner’s individual hearing on September 17, 2025. At the conclusion of that hearing, the Immigration Judge denied Petitioner’s application for asylum on the basis of an asserted firm-resettlement bar. The Immigration Judge granted withholding of removal as to Russia but denied withholding of removal and CAT protection as to Ukraine, and ordered Petitioner removed to Ukraine. See *Exhibit M* to Petition for Writ of Habeas Corpus – Order of IJ (Doc. #1).

19. On October 14, 2025, Petitioner timely filed a Notice of Appeal with the Board of Immigration Appeals (“BIA”), where his appeal remains pending. See *Exhibit N* to Petition for Writ of Habeas Corpus – Filing Receipt for Appeal (Doc. #1).

20. DHS reserved its right to appeal but never filed an appeal within the permitted time.

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2 25. Consistent with this principle, the Supreme Court has given 8 U.S.C. § 1252(g) a
3 narrow reading, holding that it applies only to three discrete actions: the decision or action to
4 commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab*
5 *Anti-Discrimination Committee*, 525 U.S. 471, 482, 487 (1999). The Court has expressly rejected
6 an interpretation that would sweep in any claim that can be said to “arise from” those actions in a
7 generalized sense. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

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9 26. Courts therefore distinguish between challenges to removal proceedings
10 themselves—which must proceed through the petition-for-review process—and collateral
11 constitutional challenges to detention. Section 1252(g)’s jurisdictional bar does not preclude
12 habeas review of claims challenging the legality or duration of detention. See *Ozturk v. Hyde*, 136
13 F.4th 382, 396–97 (2d Cir. 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,
14 at *3 (S.D.N.Y. Aug. 26, 2025).

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16 27. The Ninth Circuit has likewise made clear that § 1252(g) does not bar due process
17 claims. *Walters v. Reno*, 145 F.3d 1032, 1037 (9th Cir. 1998); *Suil v. Schiltgen*, 213 F.3d 449,
18 453 (9th Cir. 2000). Most recently, the Ninth Circuit reaffirmed that due process claims are not
19 barred where they do not arise from the three discrete actions listed in § 1252(g), but instead
20 constitute collateral challenges to unconstitutional practices or policies. *Ibarra-Perez*, No. 24-631
21 (quoting *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 492 (1991)).

22
23 28. Here, Petitioner does not seek review of a final order of removal, nor does he
24 challenge the decision to commence proceedings, the adjudication of his removal case, or the
25 execution of a removal order. Those matters remain before the agency and are being pursued
26 through the appropriate administrative channels. Instead, Petitioner raises a collateral
27 constitutional challenge to the legality of his detention and seeks release from custody as the sole
remedy.

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29. Because Petitioner’s claims do not “arise from” any of the three discrete actions enumerated in 8 U.S.C. § 1252(g), and because habeas review of detention-based due process claims remains available, this Court retains jurisdiction to consider the Petition.

Exhaustion

30. Petitioner respectfully submits that exhaustion of administrative remedies is not required in this case and, in any event, would be futile.

31. “Exhaustion can be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). Although 28 U.S.C. § 2241 does not expressly require petitioners to exhaust direct appeals before filing a habeas petition, the Ninth Circuit generally requires, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).

32. Prudential exhaustion, however, is not absolute. The Ninth Circuit has explained that it may be required only where: (1) agency expertise is necessary to develop a proper record and reach a proper decision; (2) relaxing exhaustion would encourage deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and thereby obviate the need for judicial review. *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citing *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).

33. Courts may waive prudential exhaustion where “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Hernandez v.*

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2 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
3 Cir. 2004)).

4 34. Here, Petitioner respectfully submits that exhaustion would be futile. The Board
5 of Immigration Appeals is bound to apply its own precedential decisions, including *Matter of*
6 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA
7 2025), which hold that detention is mandatory under 8 U.S.C. § 1225(b)(2). Because the BIA
8 lacks authority to depart from its binding precedent, administrative review would not permit
9 meaningful consideration of Petitioner’s constitutional challenge to his detention.
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11 35. District courts within this Circuit have recognized that, under these circumstances,
12 exhaustion is futile. See, e.g., *Garcia v. Noem*, No. 25-CV-2180-DMS-MMP, 2025 WL 2549431,
13 at *4–5 (S.D. Cal. Sept. 3, 2025); *Valdovinos v. Noem*, No. 25-CV-2439-TWR-KSC, slip op. at
14 9 (S.D. Cal. Sept. 25, 2025).
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16 36. Accordingly, Petitioner respectfully submits that exhaustion of administrative
17 remedies is not required and should be excused as futile in this habeas proceeding.
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19 **B. Prolonged Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A) Violates Due**
20 **Process as Applied to Mr. Islamov**

21 37. Under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Immigration
22 Judges lack authority to conduct bond hearings for noncitizens treated as applicants for admission.
23 Because Mr. Islamov’s order of removal is not administratively final due to his pending appeal
24 before the Board of Immigration Appeals (“BIA”), Respondents contend that continued
25 mandatory detention is required by statute.

26 38. The dispositive question, however, is not whether § 1225(b)(2)(A) authorizes
27 detention in the abstract, but whether continued mandatory detention without any opportunity for
individualized review violates due process under the particular circumstances of this case.

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39. Respondents rely on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), to argue that Mr. Islamov, as an “arriving alien,” possesses no due process rights beyond those expressly conferred by statute.

40. *Thuraissigiam* addressed whether an arriving alien could invoke habeas to obtain expanded judicial review of an expedited removal determination—i.e., to assert additional procedural rights in the admission context. *Id.* at 107, 139–40. The Supreme Court did not hold that arriving aliens may be subjected to prolonged civil detention without constitutional constraint, nor did it foreclose due process challenges directed to detention rather than admission. District courts construing *Thuraissigiam* have consistently recognized this distinction. See, *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

41. Consistent with that understanding, courts overwhelmingly agree that prolonged mandatory detention pending removal proceedings, without an individualized bond hearing, will at some point violate due process, even for noncitizens detained under § 1225(b). *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020).

42. Courts assessing due process challenges to prolonged detention under § 1225(b) commonly consider multiple factors, including: (1) the length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays attributable to the detainee; (5) delays attributable to the government; and (6) the likelihood that removal proceedings will culminate in a final order of removal. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019); *Kydyrali*, 499 F. Supp. 3d at 773.

43. Considered together, these factors confirm that continued mandatory detention without individualized review violates due process as applied to Mr. Islamov.

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44. Mr. Islamov has been detained since March 18, 2025—more than nine months as of this filing. This is not a brief administrative hold but sustained civil confinement with no mechanism for individualized assessment.

45. Mr. Islamov’s appeal before the BIA remains pending, and if unsuccessful, he intends to seek review in the Ninth Circuit. The appellate process therefore presents a significant and indeterminate period of continued detention, rendering custody effectively open-ended absent judicial intervention.

46. Mr. Islamov remains in civil immigration detention, which is inherently restrictive. Regardless of formal classification, such confinement must be justified by individualized necessity rather than categorical rules.

47. There is no indication that Mr. Islamov has caused delay. He is exercising legal rights to seek relief and appellate review. By contrast, DHS initiated the March 2025 detention after previously moving to dismiss removal proceedings in August 2023 so USCIS could adjudicate the asylum application. The government’s reversal of course—and its decision to detain Mr. Islamov while referring the I-589 to EOIR—are not delays attributable to him.

48. Although the Immigration Judge denied asylum, the Judge granted withholding of removal as to Russia, reflecting that Mr. Islamov’s fear-based claims are not frivolous and materially affecting the practical path of removal.

49. In addition, Petitioner has a pending application for Temporary Protected Status (“TPS”), filed on March 25, 2025. Under the Immigration and Nationality Act, once Temporary Protected Status is granted, “the Attorney General...shall not remove the alien from the United States during the period in which such status is in effect,” and must authorize employment. 8 U.S.C. § 1254a(a)(1)(A)–(B). Although Petitioner’s TPS application has not yet been adjudicated, its pendency—combined with USCIS’s published processing timelines—further demonstrates

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2 that removal is not imminent and that continued detention is increasingly divorced from its
3 purported regulatory purpose.

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5 50. Beyond the multi-factor analysis, Mr. Islamov's individual history independently
6 supports relief. DHS previously exercised discretion to parole him in July 2021, permitting him
7 to live at liberty through December 22, 2022. During that time, he complied with immigration
8 requirements, obtained employment authorization, and lived in the community without incident.
9 In August 2023, DHS itself moved to dismiss removal proceedings so USCIS could continue
10 adjudicating the asylum application—only to reverse course, file a new NTA, and detain Mr.
11 Islamov in March 2025 without any articulated explanation for the change in position. These
12 circumstances demonstrate that the government's insistence on continued detention without
13 individualized review is not grounded in any demonstrated necessity.
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15 51. Because continued mandatory detention under § 1225(b)(2)(A) has become
16 unreasonable as applied to Mr. Islamov, due process warrants his immediate release from custody.
17 In the alternative, the Court should order a prompt, individualized bond hearing before a neutral
18 adjudicator, at which the government bears the burden to justify continued detention by clear and
19 convincing evidence that Mr. Islamov poses a risk of flight or a danger to the community. *Singh*
20 *v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir.
21 2024).
22

23 **Grant of Withholding of Removal as to Russia**

24 52. Since at least 2004, the government's consistent position has been to release
25 detainees when an Immigration Judge grants any form of protection. See **Exhibit 3 - U.S.**
26 **Immigration & Customs Enforcement, *Detention Policy Where an Immigration Judge Has***
27 ***Granted Asylum and ICE Has Appealed*** (Feb. 9, 2004) (memorandum from Michael J. Garcia,

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2 Assistant Secretary, to Anthony Tangeman, Deputy Executive Associate Commissioner, Office
3 of Detention and Removal Operations).

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5 53. The grant of withholding of removal has been held to weigh in favor of granting
6 habeas relief. In *A.L. v. Oddo*, the court noted that “[t]he longstanding and current policy of DHS
7 and ICE favors release of aliens who have been granted protection by an immigration judge, to
8 specifically include withholding of removal, absent exceptional circumstances such as national
9 security issues or danger to the community.” 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025). The court
10 further observed that the length of time the petitioner’s appeal of the asylum denial was likely to
11 take supported the conclusion that continued detention was unreasonable.

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13 54. Accordingly, Mr. Islamov respectfully ask this Court to order Respondents to
14 release him from custody or, at a minimum, to provide him with a custody hearing before a neutral
15 adjudicator.

16 **C. Respondents’ Claim That Detention Is Not Unconstitutionally Prolonged Is**
17 **Incorrect**

18 55. Respondents argue that Petitioner’s detention is not unconstitutionally prolonged
19 because it is “approximately nine months” and therefore shorter than detention periods in other
20 cases granting habeas relief.

21 56. Petitioner has been detained since March 18, 2025 – more than nine months -
22 without any opportunity for individualized review. While the length of detention is an important
23 consideration, courts do not require detention to reach an extreme duration before due process
24 protections attach. Rather, the constitutional inquiry turns on whether continued detention has
25 become unreasonable in light of the totality of the circumstances, including the absence of a bond
26 hearing, the likelihood of future detention, and the government’s justification for continued
27 custody. See *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019).

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57. Courts in this District and throughout the Ninth Circuit have recognized that detention in the range of seven to ten months may raise serious due process concerns where, as here, detention is mandatory, provides no opportunity for individualized review, and is likely to continue for a significant and indeterminate period. See *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772–74 (S.D. Cal. 2020); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020).

58. Moreover, Respondents’ assertion that future detention will be brief is speculative and contradicted by the record. Petitioner’s appeal before the Board of Immigration Appeals remains pending, judicial review in the Ninth Circuit is likely, he has been granted withholding of removal as to Russia, and he has a pending TPS application subject to extended USCIS processing timelines. These circumstances make continued detention potentially open-ended, a factor courts weigh heavily in favor of relief.

59. Respondents have also presented no evidence that Petitioner’s removal to Ukraine is foreseeable in the reasonably near future, such as proof that travel documents have been issued or requested, that consular communication has occurred, or that removal arrangements are underway.

60. Finally, this case is further distinguished by the government’s own prior actions. DHS previously exercised discretion to release Petitioner on parole, later moved to dismiss removal proceedings so USCIS could adjudicate his asylum application, and then reversed course and re-detained him without any articulated change in circumstances. That history underscores the absence of any demonstrated necessity for continued detention without individualized review.

61. Accordingly, even accepting Respondents’ characterization of Petitioner’s detention as approximately nine months, continued mandatory detention without a bond hearing has become unreasonable and violates due process under the circumstances of this case.

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IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order his immediate release from ICE custody under appropriate conditions. In the alternative, Petitioner requests that the Court order Respondents to provide a prompt, individualized bond hearing before an Immigration Judge, at which the government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger to the community.

Dated: December 29, 2025
New York, NY

RESPECTFULLY SUBMITTED,

/s/ Vano I. Haroutunian
Vano I. Haroutunian, Esq.
Attorney for Petitioner