

STATEMENT OF FACTS

1. Petitioner is a native of Kyrgyzstan and citizen of Russia entered the United States on October 25, 2024, along with her husband, Mikhail Furtsev (See Notice of Related Case filed by DHS) and remained in custody as of today.
2. On April 8, 2025, Immigration Judge Mark Sameit granted Petitioner's asylum under section 208 of INA. On May 9, 2025, DHS filed an appeal on October 10, 2025, the Board of Immigration Appeals (BIA) remanded Petitioner's case back to Judge Mark Sameit. Petitioner's asylum grant was not rescinded. Petitioner was granted asylum once; there is no issue of 90 days waiting period. While DHS filed an appeal, Respondent was unreasonably detained since November 3, 2024, and there is no flight or security risk.
3. Petitioner's merits hearing is currently set on March 10, 2026.
4. Petitioner was granted an asylum once, and continued detention until March 10, 2026, is unreasonable.
5. Petitioner has been detained since October 25, 2024, over 14 months as of today with a granted asylum. Due to prolonged detention, Respondent has been experiencing physical and mental issues.
6. Petitioner's continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

LEGAL FRAMEWORK

ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT REVIEWING HER CUSTODY UNDER ICE POLICY VIOLATES THE ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.

17. ICE's long-standing policy is to release non-citizens immediately following a grant of asylum, relief absent exceptional circumstances.
18. Under the Accardi doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals,

even self-imposed policies and processes that limit otherwise discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

19. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 2d 265, 281 (D.C. Cir. 1977); see also *Morton*, 415 U.S. at 235-36 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .").
20. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"), or as a due process violation, see *Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).
21. Prejudice is generally presumed when an agency violates its own policy. See *Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before she is entitled to relief. All that need be shown is that the subject regulations

were for the alien's benefit and that the INS failed to adhere to them."); Heffner, 420 F.2d at 813 ("The Accardi doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

22. To remedy an Accardi violation, a court may direct the agency to properly apply its policy, see *Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or a court may apply the policy itself and order relief consistent with the policy. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").
23. Here, Petitioner falls into this category where ICE has failed to act as required by their procedures and require intervention.

CLAIMS FOR RELIEF

GROUND ONE

VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS

Petitioner has the right to challenge the legality of his detention

24. The allegations in the above paragraphs are realleged and incorporated herein.
25. Petitioner has due process rights to challenge her detention. *Zadvydas v. Davis*, 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States' "geographic borders" lack constitutional protections, all "persons" within them are protected by the Due Process Clause, regardless of immigration status); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though constitutional rights of citizens and noncitizens "are not coextensive," noncitizens are entitled to due process, including to challenge detention pending proceedings).
26. As the Ninth Circuit held, the Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other

grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023). The Due Process Clause allows Petitioner to challenge his detention.

27. Respondent fundamentally misapprehends Petitioner's due process claims. Petitioner challenges her deprivation of liberty and prolonged detention, not the adequacy of the procedures the immigration laws afford him "with respect to admission. Petitioner solely challenging her ongoing detention, and she is not bringing a constitutional claim with respect to the procedures governing his legal admission into the United States.
28. Most of the cases Respondent cites do not even analyze due process claims against detention; instead, they challenge congressional line-drawing in the substantive rules governing admission and deportation. See *id.* (citing *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 117-18 (2020) (noncitizen sought review of constitutionality of admission procedures applied to him, but "did not ask to be released"); *Landon v. Plasencia*, 459 U.S. 21, 35-37 (1982) (due process analysis addressed only adequacy of procedures in exclusion hearing); *Kleindienst v. Mandel*, 408 US 753, 769-70 (1972) (noncitizen was abroad and did not bring a detention claim); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 211-13 (1953) (due process analysis addressed only right to admission); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (same)). "None of these cases concerned a challenge to prolonged immigration detention and none of the issues raised in these cases are implicated in the instant proceeding." *Abduraimov v. Andrews*, No. 1:25- CV-00843-EPG-HC, 2025 WL 2912307, at *5 (E.D. Cal. Oct. 14, 2025).
29. To the extent Respondent takes the extraordinary position that Petitioner has no due process rights at all, that is unsupported by law and would have gruesome practical consequences: "If excludable [noncitizens] were not protected by even the substantive component of constitutional due process, ... we do not see why the United States government could not torture or summarily execute them. ... [W]e conclude that government treatment of excludable [noncitizens] must implicate the

Due Process Clause of the Fifth Amendment.”. *Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*, 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) (“[T]he principle that unadmitted [noncitizens] have no constitutionally protected rights defies rationality. Under this view, the Attorney General, for example, could invoke legitimate immigration goals to justify a decision to stop feeding all detained [noncitizens] Surely, we would not condone mass starvation.”). Thus, there is no question that Petitioner has the right to challenge the constitutionality of his prolonged detention under the Due Process Clause of the Fifth Amendment of the Constitution.

30. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.
31. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

GROUND TWO

VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. § 1231 (A)(6)

Mandatory detention is subject to constitutional limits

32. The allegations in the above paragraphs are realleged and incorporated herein.
33. 8 U.S.C. § 1231 (a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.
34. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, her continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately released.
35. Petitioner is challenging her prolonged detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that he is being detained pursuant to section 1225(b), Petitioner's detention is unequivocally subject to Constitutional limits. The Supreme Court has not precluded noncitizens from bringing as-applied

constitutional challenges to their mandatory detention. Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not explicitly address constitutionality arguments.” U.S. Response at 3. While in *Demore v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention under § 1226(c), the Supreme Court has explicitly recognized the availability of judicial review over as-applied challenges to detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). Courts in this district have accordingly found constitutional limits to apply to immigration detention, irrespective of the underlying detention authority. See, e.g., *Karakhanyan v. Warden of Otay Mesa Detention Center-3:25-cv-03454-JO-MMP*. This Court should so hold as well.

36. Here, Petitioner is bringing an as-applied constitutional claim to challenge her 14 months of prolonged detention. Respondent does not cite any persuasive authority to suggest that Petitioner may not bring an as-applied challenge to her detention, and her claim is not precluded by Supreme Court precedent in *Jennings* and *Demore*.
37. There is no precedent that precludes this Court from reviewing Petitioner’s as applied constitutional claim. As such, this Court must review the constitutionality of Petitioner’s prolonged mandatory detention of over 14 months and counting.

GROUND THREE

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT

Petitioner’s ongoing and unreviewed detention violates his constitutional due process rights and cannot continue without a bond hearing

38. The allegations in the above paragraphs are realleged and incorporated herein. Courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
39. ICE has deviated from its own policy in continuing to detain Petitioner after she was granted immigration relief, without determining whether exceptional circumstances

warrant her continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

40. The Mathews test is the appropriate test for this Court to use to evaluate the constitutionality of Petitioner's prolonged detention. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Mathews test is routinely applied by district courts across the Ninth Circuit, including this Court, to determine whether due process requires neutral review of a noncitizen's custody. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a "flexible test" broad enough to account for government interests when evaluating due process claims in the immigration detention context); see, e.g., *Abduraimov*, 2025 WL 2912307 and *Maksim*, 2025 WL 2879328. Respondents offer "no valid alternative to the Mathews framework nor [do they] demonstrate[e] that Mathews is inapplicable here." *Jensen v. Garland*, No. 5:21-c-v- 01195-CAS (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023).
41. The Mathews test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. 424 U.S. at 335. Each Mathews factor weighs in Petitioner's favor. Petitioner's detention of over 14 months and counting without any neutral review is a violation of her procedural due process rights and requires this court to order a hearing before a neutral adjudicator to evaluate whether the government can justify his ongoing detention.
42. Petitioner has a profound liberty interest. Petitioner has a weighty interest in his own liberty, the core privacy interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment...lies at the heart of the liberty [the Due Process Clause] protects."). Petitioner's 14 months of detention with a granted asylum" limit of the brief detention contemplated in *Demore*, 538 U.S. at 530-31. See also *Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) ("As detention continues past a year, courts become extremely wary of permitting continued custody absent a bond

hearing.”) (internal citation omitted).

43. The second prong of the Mathews test, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards, also weighs heavily in Petitioner’s favor. 424 U.S. at 335. “[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, 1092 (9th Cir. 2011). When a petitioner “does not have a statutory right to a bond hearing or the right to seek additional bond hearings. . . the risk of erroneous deprivation as Petitioner’s time in detention lengthens is not insignificant,” and the probable value of additional procedural safeguards is exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684 at *4 (“Given that Petitioner has been held without a bond hearing for almost a year, and it is not clear when detention will end, the risk of erroneous deprivation weighs in favor of granting a bond hearing.”). In this case, Petitioner has been deprived of her liberty in civil detention for over 14 months with granted asylum. Because she is subject to mandatory detention pursuant to section 1225(b), she does not have the statutory right to request a bond hearing and therefore lacks access to an appropriate procedural safeguard that would protect against the risk of erroneous deprivation, absent intervention from this Court.
44. Here, a bond hearing before a neutral decisionmaker is the only appropriate procedural safeguard to protect against the risk of erroneous deprivation because it provides both the noncitizen and the government with an opportunity to present witness testimony or evidence and be heard before a neutral body. Anything less would not comport with due process. In particular, “the discretionary parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention because the parole process is purely discretionary and its results are unreviewable by IJs and “release decisions are based on humanitarian considerations and the public interest.” *Abduraimov*, 2025

WL 2912307, at *6 (citing *Rodriguez v. Robbins* (*Rodriguez II*), 715 F.3d 1127, 1144 (9th Cir. 2013) (internal quotations omitted). The parole process “is not a constitutionally adequate substitute for a bond hearing particularly since it does not test the necessity of detention, does not afford the noncitizen an in-person adversarial hearing before a neutral decisionmaker where he or she may present witness testimony or evidence, does not require the ICE detention officer [to] make any factual findings or provide their reasoning, and there is no apparent right to an administrative appeal.” *Abduraimov*, 2025 WL 2912307, at *6 (citing *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023) (internal quotation marks omitted). Respondent’s reliance on *Navarrete-Leiva* is misplaced, as *Navarrete-Leiva* grossly overstates the due process provided by ICE’s parole review process in this regard. *Navarrete- Leiva v. U.S. Attorney General, et al.*, No. 1:24-cv-00938-SKO, 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024).

45. Any internal review of Petitioner’s detention or request for discretionary parole by DHS cannot satisfy the requirements for due process because DHS is the very authority that is detaining him. Where a custody review is conducted by the very same agency that is detaining the individual, that agency reviewing its own actions cannot be held to a neutral standard. As such, Petitioner must be afforded a hearing before a neutral arbiter in order for her ongoing, prolonged detention to comply with due process.
46. Contrary to Respondent’s assertions, Petitioner faces prolonged detention for an indefinite period of time pending the final adjudication of her asylum claim. This Court has recognized that “it is difficult to ascertain an endpoint to removal proceedings, but it is clear proceedings could take a substantial amount of time,” and “[i]t is unknown when the IJ will decide the application for relief.” *Idiev v. Warden, et al.*, No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at *5 (E.D. Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party “has other avenues available for relief including an appeal to the BIA and a petition for review to the Ninth Circuit

Court of Appeals.” Id. See, e.g., *Abduraimov*, 2025 WL 2912307 (where the government appealed the IJ’s grant of asylum and the BIA remanded back to the IJ); *A.E.*, 2025 WL 1424382 (where the government appealed the IJ’s grant of asylum, the IJ denied all relief on remand, and the noncitizen appealed to the BIA).

47. Because “it is not clear when detention will end, the risk of erroneous deprivation weighs in favor of granting a bond hearing.” *A.E.*, 2025 WL 1424382, at *5; *Doe v. Andrews*, No. 1:25- CV-00506-SAB-HC, 2025 WL 2590392, *7 (E.D. Cal. Sept. 8, 2025) (noting that “[a]lthough future events are difficult to predict, the [c]ourt nevertheless finds that...possible remand to the immigration court for further factfinding or possible judicial review by the Ninth Circuit will be sufficiently lengthy such that [the delay] factor weighs in favor of Petitioner”), report and recommendation adopted, No. 1:25-CV-00506-KES-SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); *Abduraimov*, 2025 WL 2912307, *8 (“appeal to BIA and potential Ninth Circuit review ‘may take up to two years or longer’ and ‘favors granting petitioner a bond hearing’”) (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The risk of erroneous deprivation of Petitioner’s liberty interest and the probably value of a bond hearing is exceptionally high. Therefore, the second Mathews factor also weighs in favor of granting Petitioner a bond hearing.
48. The third Mathews factor also supports Petitioner: the government interest is weak here because the interest at stake “is the ability to detain Petitioner without providing him a bond hearing, not whether the government may continue to detain him” at all. *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. Jan. 29, 2019) (emphasis in original). As the government has conceded in similar cases, the cost of providing such a bond hearing is minimal. Id.; *Singh v. Barr*, Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (“The government has not offered any indication that a second bond hearing would have outside effects on its coffers.”); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019) (noting in the

context of a §1226(a) detention, the parties did not contest “that the cost of conducting a bond hearing, to determine whether the continued detention of Petitioner is justified, is minimal”). Holding a hearing at which Respondents must justify Petitioner’s continued detention thus actually “promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (“[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.”).

49. In sum, there is no question that all three Mathews factors favor Petitioner. Contrary to Respondent’s claim, Petitioner’s prolonged detention does not pass constitutional muster and requires that this Court immediately order him a bond hearing.
50. At a bond hearing, the government must bear the burden of justifying Petitioner’s ongoing and prolonged detention. Where a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention, it is well established that the government bears the burden of justifying continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake...are both particularly important and more substantial than mere loss of money.”). See e.g. *Lopez*, 631 F. Supp. 3d 870, n.3 (specifically noting that that *Singh* provided guidance as to the procedural requirements for bond hearings and that the government must prove by clear and convincing evidence that a noncitizen is a flight risk. or danger to the community to justify denying bond) (internal quotations omitted); *Eliazar G.C.*, 2025 WL 711190, *10 (E.D. Cal. Mar. 5, 2025) (stating that the Court will follow the “overwhelming majority of courts” to hold that the government must justify continued mandatory detention by clear and convincing evidence that the noncitizen is a flight risk or a

danger to the community); Maksim, 2025 WL 2879328, * 6 (same); Abduraimov, 2025 WL 2912307, *11 (same); Idiev, 2025 WL 3089349, *7 (same); Tonoyan, 2025 WL 3013684, *5 (same).

51. The Ninth Circuit in *Singh* stressed that “it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant[.]” See *Singh*, 638 F. 3d at 1205; *Black*, 103 F.4th at 157-58 (observing that where “an individual’s liberty is at stake, the Supreme Court has consistently used [clear and convincing] evidentiary standard for continued detention”) (internal citations omitted); *id.* at 159 (reiterating that the government bears the burden of meeting this standard even where an individual is detained pursuant to mandatory detention). This Court should, too, apply the heavy burden on the government to justify Petitioner’s continued civil detention without a bond hearing.
52. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives to detention and Petitioner’s financial circumstances in determining whether further detention is warranted and the conditions of her release. See, e.g., *Hernandez*, 872 F.3d at 994 (“If the government is setting monetary bonds to ensure appearance at future proceedings, there is no legitimate reason for it not to consider the individual’s financial circumstances and alternative conditions of release.”).
53. Thus, due process and Ninth Circuit precedent require that the government bear the burden of justifying Petitioner’s ongoing and prolonged detention by clear and convincing evidence.

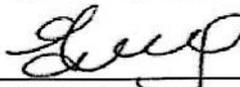
CONCLUSION

For the foregoing reasons, this Court should issue a Writ of Habeas Corpus ordering Petitioner’s release within 14 days, unless the Government schedules a hearing before a neutral adjudicator at which they must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after

considering alternatives to detention that could mitigate any risk that she presents, to justify her continued confinement. If the government cannot meet its burden, the adjudicator must order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

DATED: January 8, 2026

Respectfully submitted



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Attorney for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this **PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** using the CM/ECF system.

DATED: January 8, 2026

Respectfully submitted



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