Law Office of Robert Ferretti
Robert Ferretti – SBN: 269434
1901 1st Avenue, Ste. 202
San Diego, California 92101
Tel: (619) 370–4817
Fax: (619) 239–0629
Email: ferrettiatlaw@gmail.com

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANASTASIIA STEPURA,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, SENIOR WARDEN, OTAY MESA DETENTION CENTER,

GREGORY J ARCHAMBEAULT, ACTING ICE FIELD OFFICE DIRECTOR, SAN DIEGO FIELD OFFICE

KRISTI NOEM, SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; AND,

PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES,

IN THEIR OFFICIAL CAPACITIES

Respondents.

Case No. '25CV3718 LL DDL

PETITION FOR WRIT OF HABEAS CORPUS

1
2 **INTRODUCTION**

3 1. Petitioner Anastasiia Stepura (hereinafter "Ms. Stepura" or "Petitioner") by and through
4 undersigned counsel, hereby files this petition for writ of habeas corpus to compel her immediate
5 release from the custody of the Department of Homeland Security ("DHS") or in the alternative
6 order a custody redetermination hearing before an Immigration Judge ("IJ").
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8 2. Ms. Stepura was unlawfully detained during an adjustment of status interview at the
9 United States Citizenship and Immigration Service ("USCIS") without first being provided a due
10 process hearing to determine whether her incarceration meets any purpose. Ms. Stepura must be
11 released from custody unless and until the DHS proves to a neutral adjudicator by clear and
12 convincing evidence that she presents a danger and/or flight risk.
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14 3. Ms. Stepura has an approved Form I-130, meaning that the USCIS has recognized her
15 marital relationship to a U.S. citizen as legitimate, the first step in applying for adjustment of
16 status to obtain lawful permanent residency. She now has a pending Form I-485 with the USCIS
17 allowing her to apply for adjustment of status under 8 U.S.C. § 1255(a). Ms. Stepura satisfies all
18 legal requirements to have her Form I-485 approved and it would violate her right to due process
19 to remove her before her application is adjudicated by the USCIS.
20
21 4. Ms. Stepura seeks a writ of habeas corpus prohibiting Respondents from deporting her
22 before a decision on her pending Form I-485 application for adjustment of status, for which she
23 is prima facie eligible under 8 U.S.C. § 1255(a), is made by the USCIS.
24
25 5. Ms. Stepura seeks a writ of habeas corpus because she is now an "arriving alien", as
26 defined by 8 C.F.R. §§ 1.2., in removal proceedings with the Otay Mesa Immigration Court. As
27 an arriving alien, the IJ has no jurisdiction to adjudicate her Form I-485 or redetermine her
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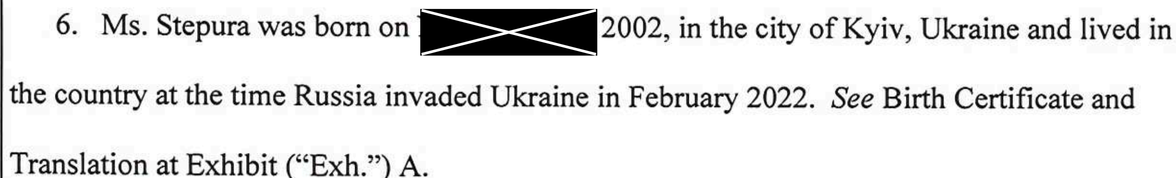
custody status. 8 CFR § 1245.2; 8 C.F.R. § 1003.19(h)(2)(i). It is therefore imperative that she be released from DHS custody to pursue her adjustment of status application with the USCIS and for which she wholly qualifies.

FACTUAL BACKGROUND



6. Ms. Stepura was born on [redacted] 2002, in the city of Kyiv, Ukraine and lived in the country at the time Russia invaded Ukraine in February 2022. *See* Birth Certificate and Translation at Exhibit ("Exh.") A.

7. On May 14, 2023, Ms. Stepura came to the United States under the "Uniting for Ukraine ("U4U")" program that granted humanitarian parole to Ukrainians who were displaced on account of the war with Russia. She received humanitarian parole under the initiative with an expiration date of May 12, 2025. *See* Form I-94 at Exh B.

8. While on humanitarian parole Ms. Stepura received employment authorization and began working full-time at Home Goods as a supervisor. *See* Work Authorization Card and Proof of Employment at Exh C.

9. Ms. Stepura met US citizen ("USC") Mr. James Amparan. The couple fell in love and married on February 8, 2025, in San Diego, California.

10. On January 28, 2025, pursuant to Executive Order 14159 the Trump administration suspended the Uniting for Ukraine program.

11. On May 7, 2025, Ms. Stepura's husband filed an adjustment of status application on her behalf with the USCIS. On December 10, 2025, the Form I-130 Petition for Alien Relative was approved. The Form I-485 Application for Adjustment of Status is currently pending. *See* Form I-130 Approval Notice and Receipt Notice for Form I-485 at Exh D.

12. On December 10, 2025, Ms. Stepura and her husband attended her adjustment of status interview at the USCIS. *See* Interview Notice at Exh E. Ms. Stepura's parole expired on May 12, 2025, making her an arriving alien without authorization on the date of her interview but still eligible for adjustment of status.[1]

13. On the date of her interview, Ms. Stepura became one of the latest victims in the government's unprecedented weaponization of the immigration laws to ensnare immigrants who show up for their USCIS interview in reliance on the American promise of a fair process but are instead met with handcuffs. Ms. Stepura was unexpectedly detained by ICE and transferred to the Otay Mesa detention center in Otay, California. The DHS then issued a Notice to Appear placing Ms. Stepura in removal proceedings with the Otay Mesa Immigration Court. *See* Notice to Appear at Exh F.

14. Ms. Stepura is in immigration detention—and faces the prospect of removal—because she was seized by ICE while following the very instructions that the government gave her for applying to become a lawful permanent resident, a benefit for which she is prima facie eligible. In effect, the government's left hand beckoned her forward, and its right hand grabbed her.

15. Her immigration detention is civil and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. But DHS did not arrest and detain Ms. Stepura—who demonstrably poses no risk of absconding from

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[1] Under the plain terms of the statute, an arriving alien is eligible for adjustment only if the alien was inspected and either admitted, paroled or approved as a VAWA self-petitioner. 8 U.S.C. § 1255(a). Although a parole entry is not an admission, someone who is granted humanitarian parle pursuant to Immigration and Nationality Act ("INA") Section 212(d)(5)(A) meets the threshold requirements to adjust status under INA Section 245(a).

immigration proceedings nor danger to the community—for either of these reasons. Instead, as part of its broader enforcement campaign, the DHS detained Ms. Stepura to strip her of her procedural rights, force her to forfeit her adjustment of status application, and pressure her into fast-track removal.

16. Without this Court's intervention, the government will continue to detain Ms. Stepura and undertake efforts remove her, in violation of federal law, federal regulations, and due process—and at great risk to her already-traumatized husband and family members.

17. Unless habeas relief is granted, she faces removal and continued separation from her U.S. citizen husband, family, and friends.

18. Ms. Stepura's recent arrest and detention have already caused her substantial harm, including the emotional trauma of a sudden custodial arrest when she has been compliant with every legal requirement since her entry into the US. Moreover, her detention is highly prejudicial to her chance of success in having her Form I-485 approved. The privation of her liberty greatly complicates her ability to pursue her adjustment of status application and causes difficulty communicating with counsel.

19. The Constitution protects Ms. Stepura—and every other person present in this country—from arbitrary deprivations of her liberty and guarantees her due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

20. 15. Ms. Stepura respectfully seeks a writ of habeas corpus ordering the government to immediately release her from ongoing, unlawful detention, and prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decision-maker. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this Court order the government not to transfer Ms. Stepura outside of the district, or remove her, for the duration of this proceeding

JURISDICTION & VENUE

21. This Court has jurisdiction under 28 U.S.C. § 2241 to hear this petition for a writ of habeas corpus because Petitioner is presently detained within this judicial district under color of federal authority, and the petition challenges the legality of that custody.

22. Jurisdiction is also proper under 28 U.S.C. § 1331, which confers federal question jurisdiction over claims arising under the Constitution, the Immigration and Nationality Act (INA), and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.

23. The APA authorizes this Court to hold unlawful and set aside agency action that is "not in accordance with law" or "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C). Ms. Stepura's continued detention constitutes such unlawful agency action.

24. Venue lies properly in this District under 28 U.S.C. § 1391(e) and § 2241(d) because Ms. Stepura is detained at an immigration detention facility within this District and Respondents are officers or employees of the United States acting in their official capacities within this District.

PARTIES

25. Petitioner ANASTASIA STEPURA is a 23-year-old citizen and national of Ukraine who is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154 and within the jurisdiction of this Court.

26. Respondent CHRISTOPHER J. LAROSE is the Senior Warden of the of the Otay Mesa Detention Center. Respondent is a legal custodian of Ms. Stepura.

27. Respondent GREGORY J ARCHAMBEAULT is the Field Office Director of U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations (ERO) for San Diego, California, which exercises supervisory authority over Ms. Stepura's detention and removal proceedings.

28. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security, responsible for the administration and enforcement of federal immigration laws.

29. Respondent PAM BONDI is the Attorney General of the United States and has ultimate supervisory authority over the Department of Justice and the immigration courts.

REQUIREMENTS OF 28 U.S.C. § 2243

30. The habeas statute requires courts to act swiftly in reviewing unlawful detention. Under 28 U.S.C. § 2243, the court must "forthwith" grant the writ or issue an order to show cause unless it appears from the petition that the petitioner is not entitled to relief.

31. If an order to show cause is issued, the statute directs that the respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* This statutory framework underscores the urgency of habeas relief, reflecting the historic role of the Great Writ as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

LEGAL STANDARD

32. Writs of habeas corpus may be granted by the Supreme Court, any justice thereof,

1 the district courts, and any circuit judge within their respective jurisdictions." 28 U.S.C. §
2 2241(a). A prisoner prevails in her petition for writ of habeas corpus if she shows that "[she] is in
3 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
4 2241(c)(3). The writ of habeas corpus is "available to every individual detained within the
5 United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004).
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7 **EXHUASTION OF REMEDIES**

8 33. There is no requirement to exhaust, because no other forum exists in which Petitioner can
9 raise the claims herein. There is no statutory exhaustion requirement prior to challenging the
10 constitutionality of an arrest or detention or challenging a policy under the Administrative
11 Procedure Act. Prudential exhaustion is not required here because it would be futile, and
12 Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of
13 [their] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further exhaustion
14 requirements would be unreasonable.
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16 **LEGAL FRAMEWORK**

17 **Due Process Requires that the Government Afford Petitioner a Bond Hearing**

18 34. Civil immigration detention is limited by both substantive and procedural due process.
19 35. The Immigration and Nationality Act authorizes the civil immigration detention of
20 individuals pending removal proceedings. Section 1226(a), the "general" detention provision,
21 authorizes ICE to detain a noncitizen "pending a decision on whether [he] is to be removed from
22 the United States," while allowing the government to release the noncitizen on bond of at least
23 $1,500 or on conditional parole. 8 U.S.C. § 1226(a). Individuals detained under § 1226(a) are
24 entitled to a bond hearing before an IJ at which they can seek release. *See* 8 C.F.R. § 1003.19; 8
25 C.F.R. § 1236.1.
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36. Section 1226(c), on the other hand, categorically requires the detention of noncitizens who are deportable for certain criminal convictions. 8 U.S.C. § 1226(c). Individuals detained under § 1226(c) are not eligible for a bond hearing before an IJ. Nonetheless, detention under these sections must comport with the Due Process Clause. The "Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Id.* at 690; *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

37. Due process has a substantive and a procedural component. Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Substantive due process prohibits civil detention that is punitive in purpose or in effect, including detention that is unreasonably prolonged. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (nature and duration of confinement must "bear some reasonable relation" to its purpose); *Salerno*, 481 U.S. at 747 n.4 (detention may become "excessively prolonged, and therefore punitive"). Procedural due process, on the other hand, ensures that there are "adequate procedural protections" to protect an individual's interests. *Zadvydas*, 533 U.S. at 690.

38. When considering due process challenges, courts should first consider whether the government's deprivation of liberty violates substantive due process. Only if the detention passes muster in that inquiry does the court consider a procedural due process claim. *See Huynh*

v. Reno, 56 F. Supp. 2d 1160, 1162 n.3 (W.D. Wash. 1999) (citing *Salerno*, 481 U.S. at 746) ("[O]nly when a restriction on liberty survives substantive due process scrutiny does the further question of whether the restriction is implemented in a procedurally fair manner become ripe for consideration.").

I. Immigration Detention Violates Substantive Due Process if it is Punitive, Meaning Excessive or Unnecessary in Relation to its Purpose.

39. There is no requirement to exhaust, because no other forum exists in which Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the Substantive due process that prohibits civil detention that is punitive. Civil detention that has a non-punitive purpose may nevertheless be unconstitutionally punitive if it is "'excessive in relation to [its non-punitive] purpose,' or is 'employed to achieve objectives that could be accomplished in so many alternative and less harsh methods[.]'" *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (internal citations omitted). These principles apply to immigration detention; indeed, in proceedings elsewhere "the government has conceded 'that mandatory detention under [section] 1226(c) without a bond hearing violates the Due Process Clause when it becomes unreasonably prolonged in relation to its purpose[.]'" *Reid*, 17 F.4th at 8.

40. Prolonged immigration detention may become unconstitutionally punitive in three ways.

41. First, civil detention becomes unconstitutionally punitive when it becomes excessive in duration. "[F]or detention to remain reasonable," greater justification is needed "as the period of [] confinement grows." *Zadvydas*, 533 U.S. at 701; *id.* at 690("A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem"); *see also, e.g., Salerno*, 481 U.S. at 747 n.4 (1987) (recognizing there may be a "point at which detention in a particular case might become excessively prolonged, and therefore punitive, in relation to Congress'

regulatory goal"); *Jackson*, 406 U.S. at 733 (expressing "substantial doubt" that statutes authorizing pretrial detention of incompetent criminal defendants "could survive constitutional scrutiny if interpreted to authorize indefinite commitment"); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (upholding "short-term confinement with a limited purpose;" however, "by the same token, the duration of the confinement must be strictly limited" to adhere to due process). Ms. Stepura has been detained at the Otay Mesa Detention Facility since December 10, 2025. While her detention has not been prolonged in terms of days confined, her confinement for even one day is unconstitutionally punitive because it serves no purpose; she is neither a flight risk nor a danger to society and she is prima facie eligible for the immigration benefit for which she seeks, namely, adjustment of status to that of a lawful permanent residence with her approved Form I-130 and qualifying Form I-485.

42. Second, civil immigration detention is not constitutionally permissible unless it is reasonably related to the purpose of preventing danger to the community or flight risk. *Demore v. Kim*, 538 U.S. 510, 515 (2003); *see also Zadvydas*, 533 U.S. at 690. In *Demore*, the Supreme Court rejected a facial due process challenge to mandatory detention under Section 1226(c) and upheld "brief" mandatory detention on the misinformed understanding that it lasts "an average … of 47 days" in the "vast majority" of removal cases and otherwise rarely exceeds five months. *Demore*, 538 U.S. at 529-30.5 Yet *Demore* did not disturb the longstanding principle that civil detention cannot be punitive and did not consider the constitutionality of prolonged § 1226(c) detention—let alone the prolonged detention at issue in this case. Where an individual does not pose a danger to the community or a flight risk, continued civil detention does not reasonably serve a legitimate government interest and is, therefore, punitive. Ms. Stepura's detention does not serve a legitimate government interest. Ms. Stepura has no criminal record, and Respondents

cannot show that she is a flight risk. Moreover, she is prima facie eligible for adjustment of status to that of a lawful permanent resident.

43. Third, civil detention is punitive if its purpose can be achieved through "less harsh" alternatives to physical custody. *Cf. Jones*, 393 F.3d at 934 (recognizing that a restriction is punitive where it is aimed at an objective that could be accomplished in alternative, less harsh ways). Thus, the availability of alternatives to incarceration is relevant to the determination of whether civil detention is unlawfully punitive. The Ninth Circuit has also explained that conditions of civil detention are presumed to be punitive when they are indistinguishable from those of criminal pretrial custody. *Jones*, 393 F.3d at 934.

44. Ms. Stepura's detention is punitive and serves no legitimate purpose. She had never been previously incarcerated, and her detention is particularly troubling and unfounded given that ICE had already determined that she was neither a flight risk nor a danger to society when she was granted parole upon her lawful entry into the United States.

45. In sum, prolonged civil immigration detention is unconstitutionally punitive when (1) the duration of the detention exceeds the bounds permitted by due process to achieve the limited purposes of civil confinement, (2) a person poses no significant risk of flight or danger to the community, or (3) restrictions short of physical custody are sufficient to mitigate any risk a detained person poses.

II. Even When Not Punitive, Prolonged Immigration Detention Without an Individualized Bond Hearing Violates Procedural Due Process.

46. Even if not punitive, "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest

in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)); *see also Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018) ("The Court's first conclusion is essentially conceded by the Government: that prolonged detention under § 1226(c) without providing [a noncitizen] with a bond hearing will—at some point—violate the right to due process.").

47. To satisfy procedural due process, non-punitive detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure the detention serves the government's legitimate goals. *See, e.g., Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008) ("We hold that the government may not detain a legal permanent resident such as Casas for a prolonged period without providing him a neutral forum in which to contest the necessity of his continued detention."), *abrogated on other grounds as recognized by Avilez v Garland*, 69 F.4th 525, 533-34 (9th Cir. 2023); *see also Salerno*, 481 U.S. at 750-51.

Respondents Violated the Administrative Procedures Act ("APA") when they Detained Petitioner Prior to Adjudicating her Adjustment of Status Application

48. Under the APA, an agency action may be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

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49. The APA provides for judicial review of final agency action. 5 U.S.C. 702. It states that a person "suffering [a] legal wrong because of agency action," or "adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review." *Id.* Only non-monetary relief—such as injunctive or declaratory relief—is available. *Id.* The reviewing court must either "compel agency action unlawfully withheld or unreasonably delayed," or "hold unlawful and set aside agency action, findings, and conclusions" that violate any one of six factors. 5 U.S.C. § 706.

50. The APA has been used to remedy unlawful action by immigration agencies in various types of immigration cases including adjustment of status applications (court determined that USCIS' determination that the noncitizen was inadmissible and thus ineligible for adjustment was arbitrary, capricious, or otherwise not in accordance with law. *Duron v. Nielsen*, 491 F. Supp. 3d 256, 267 (S.D. Tex. 2020).

51. The APA states that a person who is "suffering [a] legal wrong because of agency action," or who is "adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. "[A]gency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Thus, for example, an agency action may include the denial of a visa petition or an application for adjustment. *See, e.g.*, *Duron v. Nielsen*, 491 F. Supp. 3d at 262. It can also include the agency's failure to adjudicate a visa petition or adjustment application. U.S.C. § 706(1) ("The reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed").

52. The challenged agency action must be final to be subject to review. The APA states that:

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> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. 5 U.S.C. § 704.

53. Generally, two conditions must be satisfied for agency action to be "final": (1) the action must mark the consummation of the agency's decision-making process and cannot be of a mere tentative or interlocutory nature; and (2) the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. *Bennett v. Spear,* 520 U.S. 154, 177-78 (1997).

54. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, 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. 260 (1954) (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.").

55. 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 F.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' . . .").

56. 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).

57. 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 he 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.").

I. Petitioner's arrest and detention violates the APA and amounts to a final decision, effectively denying her Form I-485 because, as an arriving alien, the IJ does not have jurisdiction to adjudicate the application

58. Pursuant to the process established by *Uniting for Ukraine,* U.S.-based individuals who agreed to provide financial support to Ukrainian citizens and their immediate family members (supporters) were able to initiate a process that ultimately allowed those Ukrainian citizens and their immediate family members (Ukrainian beneficiaries) to seek advance authorization to

1 travel to the United States for the purpose of seeking parole into the United States at a U.S. port
2 of entry. *See* INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (permitting parole of a
3 noncitizen into the United States for urgent humanitarian reasons or significant public benefit);
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5 59. parole under INA § 212(d)(5)(A) is considered permission to enter the United States.
6 Although a parole entry is not an admission, someone who is granted parole pursuant to INA §
7 212(d)(5)(A) meets the threshold requirements to adjust status under INA § 245(a), which
8 requires that the person be "inspected and admitted or paroled."
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10 60. The statutory scheme granting adjustment of status to someone married to a U.S. citizen
11 who overstayed their visa and is therefore "out of status" is found under INA Sec. 245. [8 U.S.C.
12 1255]. An alien who has overstayed a visa can obtain a green card based on a marriage to a U.S.
13 citizen if all other eligibility requirements are met.
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15 61. It is indisputable that Ms. Stepura was paroled into the United States under this provision
16 and under the plain terms of section 1255(a), she is eligible for adjustment of status regardless of
17 whether her parole status ended or was revoked later." *Bona v. Gonzales*, 425 F.3d 663 (9th Cir.
18 2005).
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20 62. By detaining Ms. Stepura at her USCIS interview for adjustment of status, the USCIS and
21 ICE have abandoned its prior policy and practice of not detaining applicants for adjustment of
22 status, baring a material change in the applicant's circumstances rendering them ineligible, who
23 may be out of status at the time of the interview but otherwise qualify for the benefit. *See*
24 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for*
25 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).
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27 63. DHS's new policy arrogates to itself the unilateral authority to revoke the qualifying
28 beneficiary's opportunity to seek adjustment of status without respect to whether anything has

1 happened that has converted the individual into a flight risk or danger to the community and
2 without involving any neutral arbiter.

3 64. Because Respondents have denied Ms. Stepura the opportunity to have her adjustment of
4 status application adjudicated by placing her under DHS custody without any rational
5 individualized fact-finding or consideration of the effects of altering their prior practice, they have
6 acted arbitrarily and capriciously in violation of the APA.
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8 65. Respondents have failed to follow their own regulations in attempting to remove Ms.
9 Stepura in violation of the APA and their decision to deny her the opportunity to have her
10 adjustment of status application decided and attempt to remove her from the US constitute
11 adequate and independent grounds by which her confinement is unlawful.
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13 66. By arbitrarily detaining Ms. Steptura without making the requisite findings and
14 without considering her individualized facts and circumstances, Respondents have violated
15 the INA and federal regulations. *See Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL
16 1284720, at *17 (W.D.N.Y. May 2, 2025) (granting habeas relief after finding ICE violated 8
17 C.F.R. § 241.4(*l*) when it did not afford petitioner an informal interview or an opportunity
18 to respond to the reasons for revocation); *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023
19 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (noting that notwithstanding ICE's discretion to
20 execute a removal order, ICE "cannot remove" a noncitizen—even one subject to a final removal
21 order—"in any manner [it] please[s]"); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993)
22 ("[W]hen a regulation is promulgated to protect a fundamental right derived from the
23 Constitution or a federal statute, and [the government] fails to adhere to it, the challenged
24 deportation proceeding is invalid and a remand to the agency is required"—even in the absence
25 of a showing of prejudice.).
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CLAIMS FOR RELIEF
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Count 1
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Violation of Substantive Due Process
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67. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of
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this Petition as if fully set forth herein.
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68. The Due Process Clause of the Fifth Amendment protects all "person[s]" from
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deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom
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from imprisonment—from government custody, detention, or other forms of physical restraint—
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lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.
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69. Immigration detention is constitutionally permissible only when it furthers the
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government's legitimate goals of ensuring the noncitizen's appearance during removal
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proceedings and preventing danger to the community. *See id*
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70. Ms. Stepura is not a flight risk or danger to the community. Respondents' detention of
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Ms. Stepura is therefore unjustified and unlawful. Accordingly, she is being detained in violation
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of the Due Process Clause of the Fifth Amendment.
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71. Moreover, Ms. Stepura's detention is punitive as it bears no "reasonable relation" to any
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legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly
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"nonpunitive in purpose and effect"). Here, the purpose of Ms. Stepura's detention appears to
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be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to
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incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas and make the
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adjustment of status application process as burdensome as possible for people like Ms. Stepura.
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Count 2

Violation of Procedural Due Process

72. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

73. As part of the liberty protected by the Due Process Clause, Ms. Stepura has a weighty liberty interest in being released from DHS custody. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

74. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

75. Ms. Stepura's detention without a pre-deprivation hearing violated due process. After almost three years of living in the US after her authorized, lawful entry under the U4U program and following all the regulatory requirements to adjust her status to that of a lawful permanent resident through an approved Form I-130 petition filed by her US citizen husband on her behalf

and for which she is prima facie eligible, Respondents detained her with no notice, no explanation of the justification of the detention, and no opportunity to contest her detention before a neutral adjudicator before being taken into custody.

76. Ms. Stepura has a profound personal interest in her liberty. Because she received no procedural protections, the risk of erroneous deprivation is high, and the government has no legitimate interest in detaining her without a hearing. Bond hearings are conducted as a matter of course in immigration proceedings, and nothing in Ms. Stepura's record suggests that she would abscond or endanger the community before a bond hearing could be carried out. *See, e.g.*, *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *4 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020) (finding unsubstantiated "government's concern that delay in scheduling a hearing could exacerbate flight risk or danger unsubstantiated" given, *inter alia*, strong family ties).

Count 3

Violation of the Immigration and Nationality Act and Applicable Regulations

77. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

78. The INA does not condemn individuals who live in the United States unlawfully. Instead, it allows these individuals, if otherwise eligible, to adjust their status through marriage to a US citizen if they can demonstrate that they were inspected and admitted or paroled into the US.

79. These regulations thus allow an otherwise eligible individual who is married to a U.S. citizen—and who lives in the United States unlawfully—to demonstrate the bona fide nature of her marriage, prove her eligibility for required waivers, if required, to adjust her status to that of a lawful permanent resident.

80. Ms. Stepura was abruptly detained by ICE after she presented herself for an interview as part of this process. ICE's efforts to remove Petitioner without allowing her to follow these procedures violates the INA and applicable regulations.

Count 4

Violation of the Administrative and Procedures Act

81. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

82. The Administrative Procedures Act (APA) forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang* v. *Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

83. Ms. Stepura's detention and any efforts to remove her under the facts alleged here, including facts showing that she was seized after a USCIS interview while availing herself of the adjustment of status process created under the INA, are and would be arbitrary and capricious under the APA.

84. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. See 5 U.S.C. § 553. The DHS has for decades followed these rulemaking procedures to establish the legal process for adjustment of status. ICE's sudden decision to prohibit some noncitizens from pursuing the process created by these regulations—a prohibition accomplished in this case by detaining and attempting to remove Ms. Stepura during

her efforts to legalize her status—improperly alters these substantive rules without notice-and-comment rulemaking, in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;
b. Issue a writ of habeas corpus directing Respondents to immediately release Ms. Stepura from custody under 8 U.S.C. § 1225(b)(2)(A), as her detention is unlawful under the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;
c. In the alternative, order Respondents to provide Mr. Stepura with a prompt and constitutionally adequate bond hearing before a neutral decisionmaker pursuant to 8 U.S.C. § 1226(a), at which the Government bears the burden to justify continued detention by clear and convincing evidence;
d. Award attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable authority; and
e. Grant such other and further relief as the Court deems just and proper.

DATED: December 22, 2025

Respectfully Submitted,

Robert Ferretti, Esq. – SBN: 269434
Law Office of Robert Ferretti
1901 1st Ave, Ste. 202
San Diego, CA 92101
(619) 370-4817
ferrettiatlaw@gmail.com

Exhibit F

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

DOB: [redacted] 2002

Event No: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: ANASTASIIA STEPURA currently residing at:

See Continuation Page Made a Part Hereof (619) 671-8700

(Number, street, city, state and ZIP code) (Area code and phone number)

☒ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of UKRAINE and a citizen of UKRAINE;

3. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act; and/or

4. You are an immigrant not in possession of a valid unexpired passport, or other suitable travel document, or document of identity and nationality.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

7488 CALZADA DE LA FUENTE, SAN DIEGO, CALIFORNIA 92154. OTAY MESA DETENTION CENTER

(Complete Address of Immigration Court, including Room Number, if any)

on December 23, 2025 at 8:00 am to show why you should not be removed from the United States based on the
(Date) *(Time)*

charge(s) set forth above. JAMES ORRELL - SDDO

(Signature and Title of Issuing Officer)

Date: December 11, 2025 San Diego, California

(City and State)

EOIR – 1 of 4