

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Nina Avakian,

Petitioner,

No. CV 26-00104 PHX SHD (CDB)

v.

**REPORT AND
RECOMMENDATION**

Christopher Howard, Acting Warden, Eloy
Detention Center, John E. Cantu, Field
Office Director, ICE ERO Phoenix Field
Office, Todd Lyons, Acting Director of
U.S. Immigration and Customs
Enforcement, Pamela Jo Bondi, Attorney
General of the United States, Kristi Noem,
Secretary of Homeland Security,

Respondents.

TO THE HONORABLE SHARAD H. DESAI:

Petitioner Nina Avakian, who is represented by counsel, seeks release from detention pursuant to 28 U.S.C. § 2241.

I. Background

Petitioner was born in Baku, Azerbaijan, in 1958. (ECF No. 4-2 at 3). Petitioner entered the United States at the Calexico Port of Entry on December 16, 2024, with her husband and other family members. (ECF No. 4-2 at 1). She has been continuously detained by the Department of Homeland Security since entering the United States; initially she was detained at the Imperial Regional Adult Detention Facility in Calexico, California, and since at least February of 2025 she has been detained at the Eloy Detention Center in Arizona. (ECF No. 4-2 at 1; ECF No. 4-3). Accordingly, as of February 16, 2026, Petitioner has been detained for fourteen months.

1 An Immigration Judge (“IJ”) described Petitioner’s immigration proceedings as
 2 follows:

3 On February 13, 2025, the Department of Homeland Security
 4 (“Department” or “DHS”) served the above named Lead Respondent [Nina
 5 Avakian] with a Notice to Appear (“NTA”) (Form I-862), alleging therein
 6 that Respondent: (1) is not a citizen or a national of the United States; (2) is
 7 a native and citizen of Azerbaijan; (3) applied for admission at or near
 8 Calexico, California, on or about December 15, 2024; and (4) did not then
 9 possess or present a valid immigrant visa, reentry permit, border crossing
 10 identification card, or other valid document. Exh. 1.¹

11 Based on these allegations, the Department charged [Petitioner] as
 12 subject to removal from the United States pursuant to INA § 212(a)(7)(i)(I),
 13 as an immigrant who at the time of admission, is not in possession of a valid
 14 unexpired immigrant visa, reentry permit, border crossing card, or other valid
 15 entry document required by the Act, and a valid unexpired passport, or other
 16 suitable travel document, or document of identity and nationality as required
 17 under the regulations issued by the Attorney General under section 211(a) of
 18 the Act. *Id.* The Department filed the NTA with the Eloy Immigration Court
 19 on February 21, 2025, hereby initiating removal proceedings against
 20 [Petitioner] and vesting this Court with jurisdiction. *Id.*; *see also* 8 C.F.R.
 21 § 1003.14(a) (2019).

22 At a hearing held on February 3, 2025, [Petitioner] admitted the four
 23 factual allegations set forth in the NTA and declined to designate a country
 24 of removal. Exh. 1. Based on [Petitioner’s] admissions, the Court sustained
 25 the charge of inadmissibility and *directed Russia as the country of removal,*
 26 *with Azerbaijan designated as the alternate county. Id., see also* INA
 27 § 240(c)(1)(A); 8 C.F.R. § 1240.10(c), (f). Respondent then indicated her
 28 intent to apply for relief from removal in the form of asylum and withholding

¹ There is no Form I-862 or other Notice to Appear, placing Petitioner in removal proceedings, in the record before the Court. A Notice to Appear is the charging document the Department of Homeland Security (“DHS”) uses to establish jurisdiction over a noncitizen’s removal proceedings by the Executive Office for Immigration Review (“EOIR”), which oversees the nation’s immigration courts. Immigration enforcement agencies within DHS, such as Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”), are responsible for issuing an I-862, or another form of notice to appear, to the noncitizen. The issuance of this form transfers the case from administrative processing within DHS to the adjudicatory phase of a noncitizen’s status under the authority of an Immigration Judge (“IJ”). This transition officially designates the noncitizen as a “respondent” in removal proceedings under section 240 of the Immigration and Nationality Act (“INA”). A notice to appear is in effect a summons, requiring the noncitizen/respondent to appear at a specified time and location to answer the government’s allegations of a basis for removal.

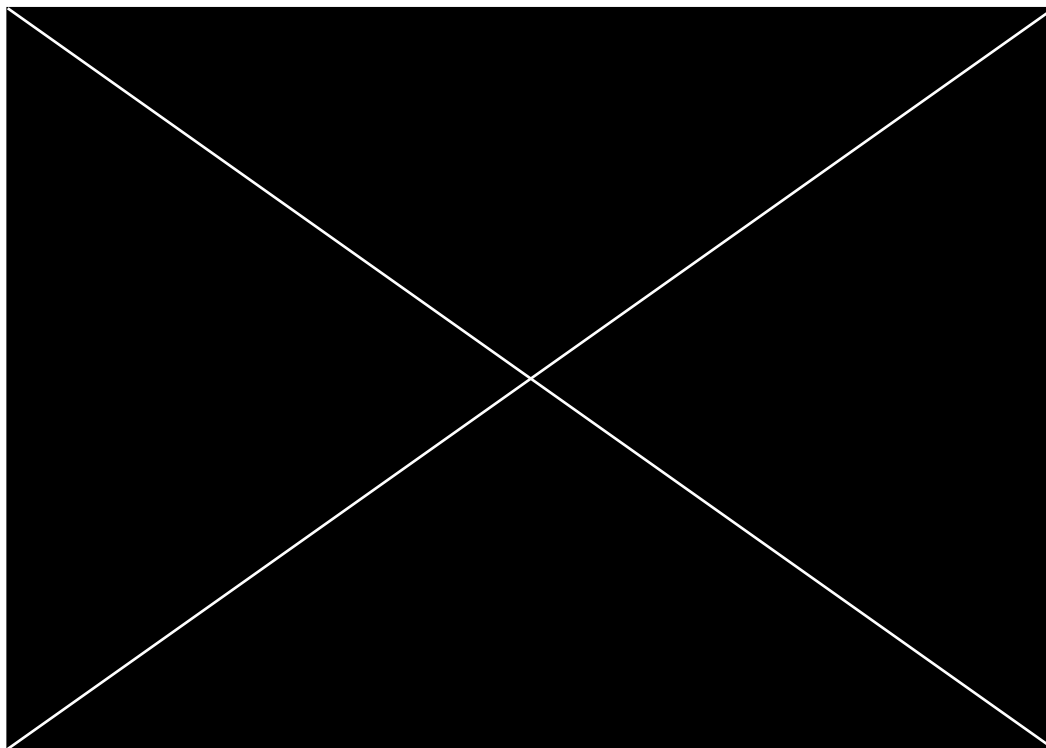
1 of removal under the INA, as well as protection under Article III of the
2 United Nations Convention Against Torture ("CAT").

3 (ECF No. 4-3 at 1-2) (emphasis added).

4 After being served with a NTA Petitioner's husband filed an application for asylum
5 and withholding of removal. (ECF No. 4-3 at 2). Petitioner's immigration case and her
6 husband's immigration case were consolidated on March 13, 2025; DHS did not object to
7 the consolidation of the two cases. (ECF No. 4-7).

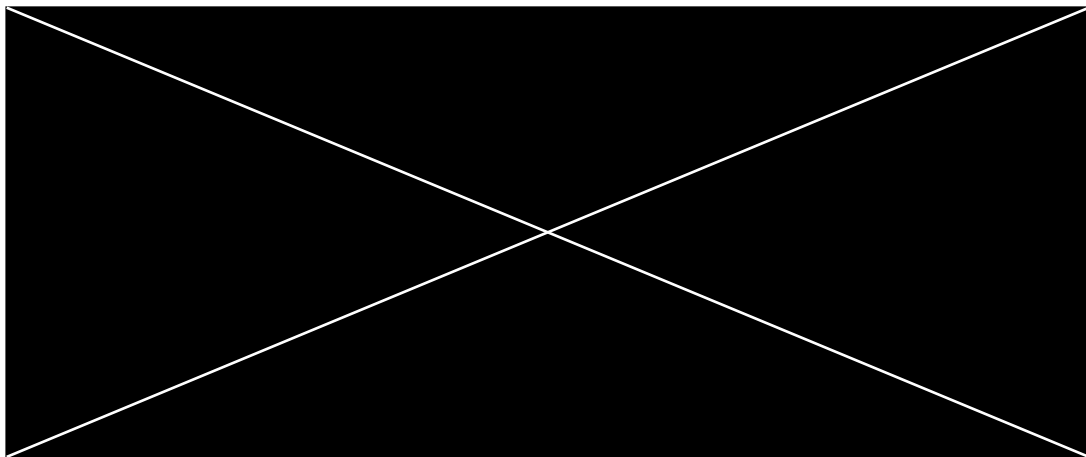
8 At separate hearings held on October 21 and November 14, 2025, Petitioner and her
9 husband testified in support of their applications for asylum and withholding of removal.
10 (ECF No. 4-3 at 1-2).

11 In a decision issued on December 19, 2025, the IJ denied Petitioner's application
12 for asylum, granted her application for withholding of removal, and held in abeyance
13 Petitioner's request for relief pursuant to the Convention Against Torture ("CAT"). (ECF
14 No. 4-3 at 1-2). The IJ found as follows:

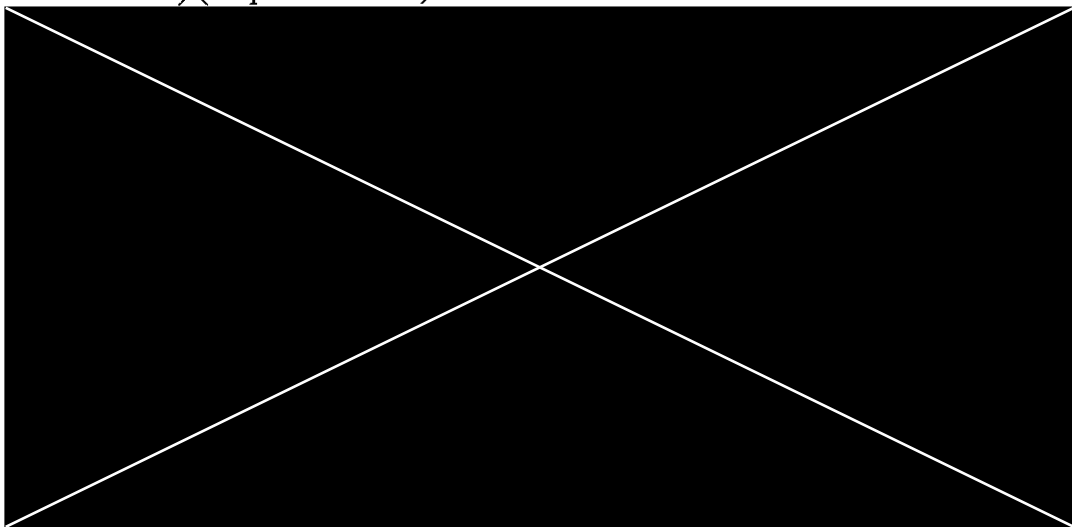


28 ² Transnistria is a landlocked breakaway state internationally recognized as part of
Moldova, under military occupation by Russia.

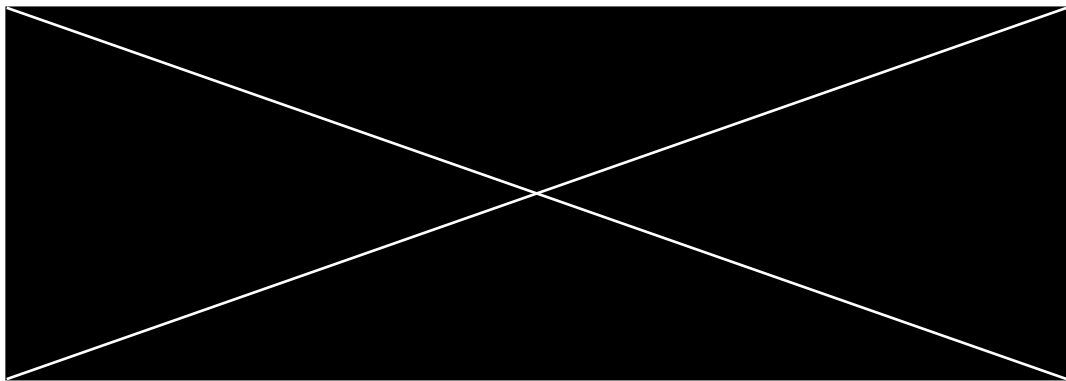
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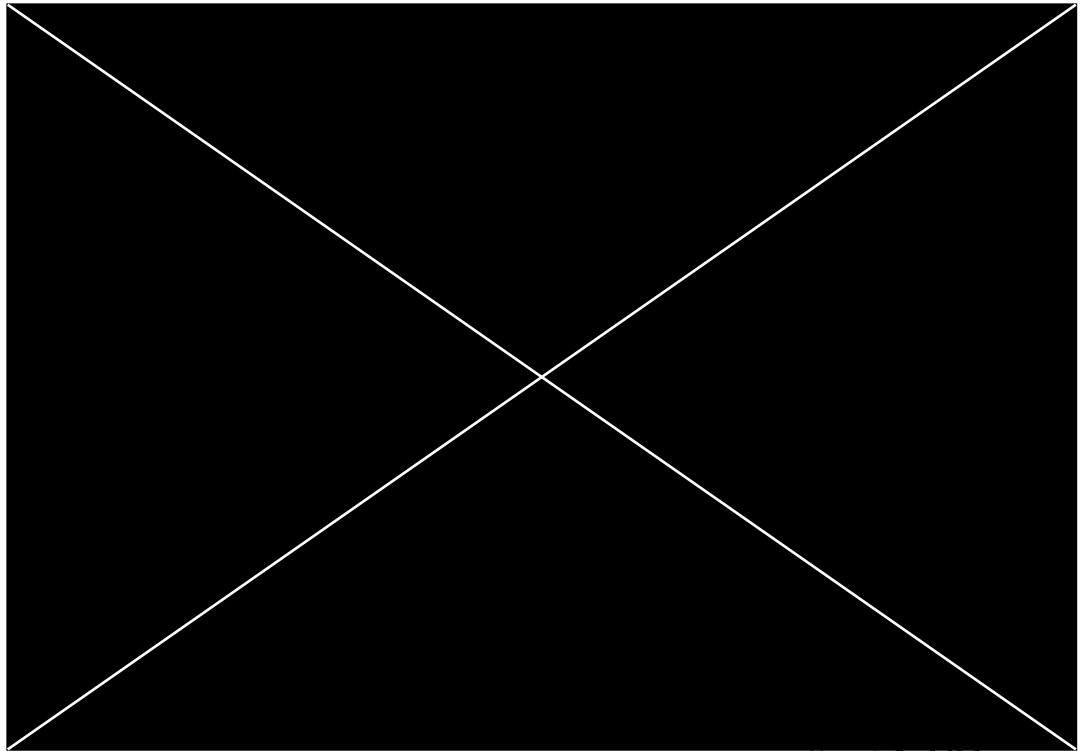
(ECF No. 4-3 at 3) (emphasis added).



(ECF No. 4-3 at 4).



(ECF No. 4-3 at 5).



On December 1, 2024, Respondents, Milana and [Milana's] children flew from Moscow to Cuba [and later traveled to Mexico]. ... Also, while Respondents were already in Mexico, they learned that summons[es], ordering both Respondents to appear for interrogations on December 15, 2024, were delivered to Respondents' Moscow apartment On December 15, while in Mexico, ... Andrei, who had recently undergone heart surgery, became very ill. [Petitioner] testified that despite being registered to CBP-1, Respondents, [REDACTED] and her three children crossed the U.S. border at Calexico Port of Entry.

(ECF No. 4-3 at 6).

Because Petitioner and her family crossed the border in December of 2024, and because they crossed the border prior to their scheduled CBP-1 appointment, they were subject to the "Circumvention of Lawful Pathways Rule." The Rule was issued by the DHS and the Department of Justice to incentivize noncitizens to discourage immigrants from coming into the United States other than through a port of entry at a specified time.

Under the final rule, noncitizens who cross the southwest land border ... without authorization after traveling through another country, and without having (1) availed themselves of an existing lawful process, (2) presented at a port of entry at a pre-scheduled time using the CBP One app, or (3) been denied asylum in a third country through which they traveled, are presumed

ineligible for asylum unless they meet certain limited exceptions. Noncitizens can rebut this presumption based on exceptionally compelling circumstances Noncitizens in expedited removal who are subject to and do not rebut the rebuttable presumption would be screened for whether there is a reasonable possibility they will face persecution or torture in the designated country of removal. The rebuttable presumption may apply to migrants of any nationality who enter the United States at the southwest land border ... without authorization after traveling through at least one other country *The rebuttable presumption is also time-limited, to address the urgent need to respond to and prevent the influx of migrants expected following the lifting of the Title 42 public health Order in the absence of a such a rule. It would apply only to those who enter the United States during the 24 month period after the rule's effective date.*

Noncitizens who cross the southwest land border or adjacent coastal borders of the United States without authorization after traveling through a third country will be presumed ineligible for asylum unless they, or a member of their family with whom they are traveling, meet one of three exceptions:

They were provided authorization to travel to the United States pursuant to a DHS-approved parole process;

They used the CBP One app to schedule a time and place to present at a port of entry, or they presented at a port of entry without using the CBP One app and established that it was not possible to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or

They applied for and were denied asylum in a third country en route to the United States. ...

Noncitizens can rebut the presumption of asylum ineligibility in exceptionally compelling circumstances, including if they demonstrate that, at the time of their unauthorized entry, they or a member of their family with whom they were traveling:

Faced an acute medical emergency;

Faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or

Were a victim of a severe form of trafficking...

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Fact Sheet: Circumvention of Lawful Pathways Final Rule (2023), <https://www.dhs.gov/archive/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>, last visited Feb. 23, 2026 (emphasis added). See also Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31358 (May 16, 2023).

1 The IJ who conducted the hearing regarding Petitioner's applications for asylum
 2 and withholding of removal, and Petitioner's application for protection under the CAT,
 3 found and concluded: "Based on the consistency, detail, specificity, and plausibility of
 4 Petitioner's testimony, and her in-court demeanor, testimonial evidence and documentary
 5 evidence," there was no basis to enter an adverse credibility finding. (ECF No. 4-2 at 8).

6 The IJ noted:

7 ... More specifically, *DHS only significantly challenged*
 8 *Respondents' [credibility] regarding the issue of the applicability of the*
 9 *Circumvention of Legal Pathways Rule*. There were inconsistencies between
 10 the documentary evidence (credible fear interview and Respondents'
 11 declaration) and witness testimony as to whether there was an exception.
 12 However, the Court finds that these are not sufficient to support an adverse
 13 credibility finding. Instead, the Court finds that Respondents' testimony was
 14 credible.

15 (ECF No. 4-2 at 8) (emphasis added). The IJ continued:

16 To qualify for asylum under INA § 208, a respondent must establish
 17 that: (1) his application was timely filed; (2) he is not barred from relief; (3)
 18 he is a refugee within the meaning of INA § 101(a)(42)(A); and (4) he merits
 19 asylum in the exercise of discretion. *See* INA §§ 208(a)(2)(B), (b)(1)(A),
 20 (b)(2); *Matter of Acosta*, 19 I&N Dec. 211, 218-19 (BIA 1985), *modified on*
 21 *other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987);
 22 8 C.F.R. § 1208.13(a).

23 (ECF No. 4-3 at 9). With regard to their applications for asylum, the IJ found that Petitioner
 24 and her husband met the criteria for asylum, i.e., they were "refugees" within the meaning
 25 of INA § 101(a)(42)(A), their applications were timely, and they merited asylum as a
 26 matter of discretion. (*Id.*). However, the IJ concluded they were barred from granting
 27 Petitioner and her husband asylum at that time, because of the Circumvention of Lawful
 28 Pathways rule. (ECF No. 4-2 at 9-11).³

³ The enforceability of the Circumvention of Lawful Pathways rule's curtailment of eligibility for asylum has wended a tortuous path through the federal courts. This includes, at one point, a prohibition on its application followed by a stay of the order prohibiting its application. *See East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545, 548-551 (9th Cir. 2025) (mem.) (VanDyke, Circuit Judge, concurring in the judgment and discussing issues regarding

1 The IJ found and concluded:

2 With regard to bars from relief, DHS contends that Respondents are
3 ineligible for asylum under the Circumvention of Lawful Pathways rule
4 (CLP). *See* 8 C.F.R. § 1208.33(a); Circumvention of Lawful Pathways, 88
5 Fed. Reg. 31314 (May 16, 2023) (Final rule). The CLP creates a rebuttable
6 presumption of asylum ineligibility. This presumption of ineligibility applies
7 to noncitizens who enter the United States from Mexico at the southwest land
8 border or adjacent coastal borders without documents and:

- 9 (i) Enters between May 11, 2023, and May 11, 2025;
- 10 (ii) Subsequent to the end of implementation of the CDC Title 42
11 public health Order; and
- 12 (iii) After the noncitizen traveled through a country other than the
13 noncitizen's country of citizenship, nationality, or, if stateless, last
14 habitual residence, that is a party to the 1951 United Nations
15 Convention relating to the Status of Refugees or the 1967 Protocol
16 relating to the Status of Refugees.

17 8 C.F.R. § 1208.33(a)(1).

18 Respondents entered the United States from Mexico at the southwest land
19 border on December 15, 2024, after traveling from Russia to Cuba. []
20 Therefore, the presumption of ineligibility applies to the Respondent[s].

21 (ECF No. 4-3 at 9).

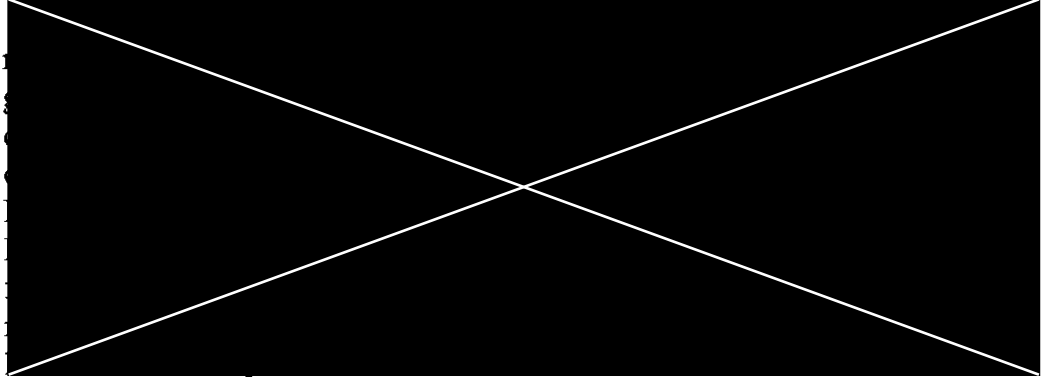
22 For a noncitizen to rebut the presumption of ineligibility, they must
23 demonstrate, by a preponderance of the evidence, that exceptionally
24 compelling circumstances exist, including if at the time of entry, the
25 noncitizen, or a family member with whom he is traveling: (A) faced an acute
26 medical emergency; (B) faced an imminent and extreme threat to life or
27 safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
28 (C) satisfied the definition of "victim 1208.33(a)(3). As discussed below,
none of these are applicable in this case.

However, a noncitizen can also rebut the presumption under the
family unity subsection of the CLP, which states:

In removal proceedings under section 240 of the Act, where a
principal asylum applicant is eligible for withholding of removal under
section 241(b)(3) of the Act or withholding of removal under § 1208.16(c)(2)
and would be granted asylum but for the presumption in paragraph (a)(1) of
this section, and where an accompanying spouse or child as defined in section
208(b)(3)(A) of the Act does not independently qualify for asylum or other
protection from removal or the principal asylum applicant has a spouse or

"organizational standing"). *See also East Bay Sanctuary Covenant v. Biden*, No. 18-CV-06810, 2023 WL 4943384, at *1 (N.D. Cal. Aug. 1, 2023), and its progeny.

1 child who would be eligible to follow to join that applicant as described in
2 section 208(b)(3)(A) of the Act, the presumption shall be deemed rebutted as
3 an exceptionally compelling circumstance in accordance with paragraph
4 (a)(3) of this section.
5 8 C.F.R. § 1208.33(c).



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11 The Court finds that there is no exception based on an acute medical
12 emergency. More specifically, the sudden illness was due to the Respondents
13 and their family witnessing stabbing near their hotel. Additionally,
14 Respondents failed to present any evidence to demonstrate that the medical
15 attention they claimed was necessary was not available in Mexico, or any
16 evidence demonstrating  sudden illness was an acute medical
17 emergency.

18 Second, Respondents claim that have demonstrated a “family unit”
19 exception to the CLP Rule. More specifically, Respondents argue that at least
20 one respondent clearly meets the standard for withholding of removal and
21 CAT, and, but for CLP Rule, would merit asylum on the merits. Further
22 Respondents argue that the other spouse is an accompanying spouse within
23 INA § 208(b)(3)(A), and according to § 1208.13(c), that is exactly the
24 scenario in which the limitation must yield to “exceptionally compelling
25 circumstances” in order to avoid splitting the family.

26 *DHS did not challenge their eligibility for withholding of removal and*
27 *only addressed the applicability of CLP Rule in the context of asylum. ...*
28 Respondents both established their eligibility for withholding of removal
under section 241(b)(3). The Court finds that Respondent do not qualify for
a “family unit” exception because ... the CLP Rule states it applies to a
spouse “who is not independently eligible for asylum or other protection
from removal or have a spouse or child abroad who they could petition to
bring to the United States.” ... because both Respondents are eligible for
withholding of removal that qualifies as “other protection from removal.”
Accordingly, Respondent[s] do not qualify for a “family unit” exception.

(ECF No. 4-3 at 10-11) (emphasis added).

1 With regard to the applications for withholding of removal, the IJ found and
2 concluded:

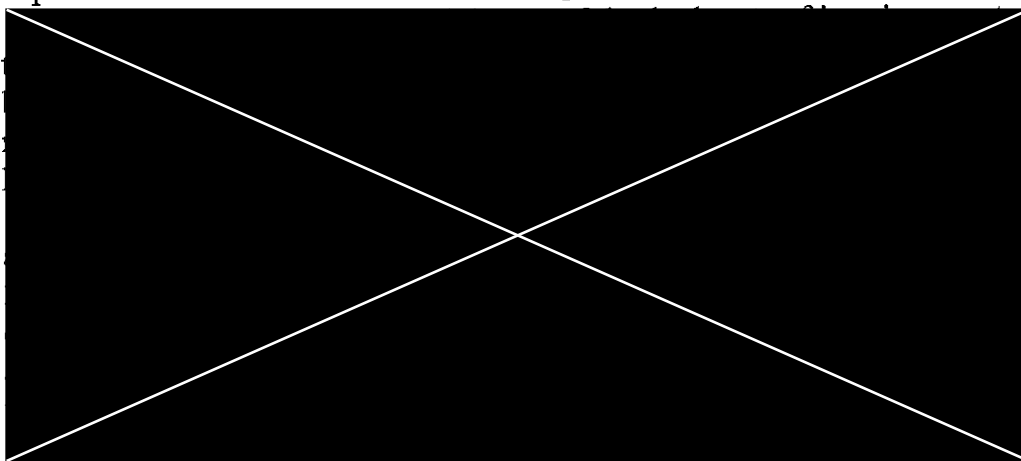
3 In order to qualify for withholding of removal, a respondent must
4 demonstrate that his life or freedom would be threatened in the country of
5 removal, because of his race, religion, nationality, membership in a particular
6 social group, or political opinion. INA § 241(b)(3)(A); 8 C.F.R.
7 § 1208.16(b). A respondent must establish a “clear probability” of
8 persecution, meaning that it is “more likely than not” that he will be
9 persecuted on account of one of the protected grounds. ... 8 C.F.R.
10 § 1208.16(b)(2).

11 *The “clear probability” standard required for withholding of removal*
12 *is more stringent than the “well-founded fear” standard for asylum. Navas,*
13 *217 F.3d at 663. However, the nexus standard for withholding removal is*
14 *lower than that of asylum. See Garcia v. Wilkinson, 988 F.3d 1136, 1146-47*
15 *(9th Cir. 2021) (iterating the important distinction between “one central*
16 *reason” for asylum and “a reason” for withholding of removal) ...*

17 To establish “eligibility for asylum based on past persecution, [a
18 respondent] must show: (1) an incident, or incidents, that rise to the level of
19 persecution; (2) that is ‘on account of’ one of the statutorily protected
20 grounds; and (3) is committed by the government or forces the government
21 is either ‘unable or unwilling’ to control.” *Navas v. INS*, 217 F.3d 646, 655–
22 56 (9th Cir. 2000).

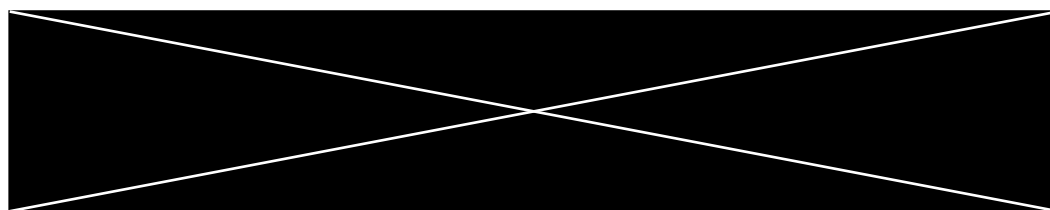
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24 To determine whether the Respondents experiences in *Russia* rise to
25 the level of persecution, the Court considers the “cumulative effect” of
26 incidents alleged. *Salguero Sosa v. Garland*, 55 F.4th 1213, 1218 (9th Cir.
27 2022); *Sharma*, 9 F.4th at 1061. The Court finds the harm the Respondent
28 experienced in Russia rises to the level required for persecution.



(ECF No. 4-3 at 11-12) (emphasis added).

1 The IJ further found:



5 Based on the record, the Court finds that the Respondents provided
6 sufficient evidence to establish that [they] held a political opinion and that
7 [their] political opinion was one central reason for [their] persecution in
Russia.

8 (ECF No. 4-3 at 13). The ILJ also concluded Petitioner “suffered harm from the Russian
9 government” and that her “claims are supported by country conditions evidence
10 documenting widespread institutional corruption and police involvement in serious
11 crimes.” (*Id.*). The ALJ found:

12 Based on the Respondents’ testimony, declarations and the country
13 condition reports, the Court finds that Respondent[s] established that the
14 source of [their] persecution in Russia was by the government and
15 individuals which the government is unable or unwilling to control.
16 Accordingly, the Respondents established past persecution on account of
17 political opinion and race. *Sowe v. Mukasey*, 538 F.3d 1281, 1285 (9th Cir.
2008) (“U.S. Department of State country reports are the most appropriate
and perhaps the best information on political situations in foreign nations”).

18 (ECF No. 4-3 at 15).

19 The IJ further found and concluded that “[h]aving shown that [she] suffered past
20 persecution,” Petitioner “benefits from a rebuttable presumption of a well-founded fear of
21 future persecution. *See* 8 C.F.R. § 1208.13(b)(1).” (*Id.*).

22 The IJ also determined that, based on the record, “DHS did not establish by a
23 preponderance of the evidence that there has been a fundamental change in circumstances
24 such that the Respondents’ life or freedom would not be threatened on account of
25 Respondents’ political opinion” and, accordingly, DHS failed to rebut the presumption of
26 well-founded fear and, therefore, as a matter of law Petitioner and her husband each had a
27 “well-founded fear of future persecution in Russia and are eligible for withholding of
28 removal.” (*Id.*).

1 The IJ then analyzed Petitioner and her husband's claims regarding removal to
 2 Azerbaijan, and concluded the harm they "experienced in Azerbaijan rises to the level
 3 required for persecution." (*Id.*). The IJ determined both Petitioner and her husband were
 4 eligible for withholding of removal to Azerbaijan because they had an objectively
 5 reasonable fear of future persecution if being removed to Azerbaijan, i.e., the record
 6 established it was more likely than not that they would be persecuted in Azerbaijan based
 7 on [REDACTED] The IJ noted DHS did not challenge the
 8 record evidence of this finding, and also noting the findings of the United States
 9 Department of State in its Azerbaijan 2023 Human Rights Report. (ECF No. 4-3 at 18).
 10 Accordingly, the IJ found that based on all of the record evidence, as a matter of law both
 11 Petitioner and her husband were entitled to withholding of removal to Azerbaijan. (ECF
 12 No. 4-3 at 19).

13 With regard to relief from removal pursuant to the CAT, the IJ stated: "Because
 14 Respondents have been granted withholding of removal under section 241(b)(3) of the
 15 INA, the Court will not reach a decision on this application and will hold their request for
 16 CAT protection in abeyance." (ECF No. 4-3 at 19-20).⁴

18 ⁴ An award of asylum has a discretionary element, whereas withholding of removal and
 19 CAT protection are mandatory if the elements of the test are met, however the requirements to be
 20 granted withholding of removal and CAT protection are higher than those for asylum. And
 21 withholding of removal and CAT protection provide more limited benefits than asylum.
 22 Withholding of removal ("non-refoulment") prohibits removal to a country where the applicant's
 23 life or freedom would be threatened based on their status as a member of a protected group.
 24 Protection from removal based on the CAT is mandatory when the noncitizen makes the requisite
 25 showing of being in danger of torture if removed to the designated country. However, to be entitled
 26 to protection under the CAT, the noncitizen must show that the feared harm meets the definition
 27 of "torture," i.e., an intentional unlawful infliction of severe physical or mental suffering or pain,
 28 with the consent of a public official, for purposes such as punishment, obtaining a confession,
 intimidation, or discrimination. The main advantage of CAT protection is that, with the exception
 of commission of a serious crime, none of the bars to asylum prevent a noncitizen from being
 granted this form of relief. Additionally, both withholding of removal and protection under the
 CAT do not prevent removal to a third country, albeit the Ninth Circuit Court of Appeals has held
 that removal to a third country requires a noncitizen be provided with procedural due process prior
 to removal to that specific third country. *See, e.g., Refugee & Immigrant Ctr. for Educ. & Legal
 Servs. v. Noem*, 793 F. Supp. 3d 19, 45-46 (D.D.C. 2025).

1 On January 27, 2025, Petitioner appealed the IJ's decision with regard to the denial
2 of asylum to the Board of Immigration Appeals ("BIA"). DHS did not appeal the IJ's
3 decision granting withholding of removal.⁵ On appeal to the BIA, Petitioner asserted:

4 The Immigration Judge (IJ) erred as a matter of law in denying asylum under
5 the CLP [Circumvention of Lawful Pathways] The IJ applied an incorrect
6 legal standard by effectively requiring proof that medical care was
7 unavailable in Mexico in a broad sense, rather than applying the regulatory
8 inquiry focused on whether an acute medical emergency existed at the time
9 of entry. *See* 8 C.F.R. §§ 1208.33(a)(3)(i)(A), 1208.35(a)(2)(i). The IJ also
10 mischaracterized key testimony by treating the stabbing incident and
11 Andrei's symptoms as legally insufficient or unrelated.... The IJ further erred
12 in rejecting the family unity exception. The decision misinterprets 8 C.F.R.
13 § 1208.13(c) by concluding that the exception is unavailable where both
14 spouses were granted withholding of removal. Finally, the IJ committed
15 factual error by selectively relying on portions of a credible fear interview
16 while disregarding contrary evidence and the limitations of a screening
17 interview conducted under compromised conditions.

18 As a result, the denial of asylum rests on legal error and clearly erroneous
19 factual findings. Respondents respectfully request reversal or remand.

20 (ECF No. 4-4 at 3).

21 On or about December 22, 2025, Petitioner's counsel contacted ICE and asked that
22 she be paroled from detention under an order of supervision, noting her age and lack of any
23 criminal history, and providing documentation that Petitioner's sister, a United States
24 citizen, would provide housing, food, and transportation for Petitioner if she was released.
25 (ECF No. 4-6 at 3). ICE responded that: "At the least, we will continue detention until the
26 appeal period is over. At that time, we re-assess [Petitioner's] detention. [sic]" (ECF No.
27 4-6 at 1).

28 Petitioner filed her § 2241 petition on January 8, 2026. Petitioner's husband filed a
§ 2241 petition in the United States District Court for the Southern District of California
on January 9, 2026, seeking injunctive relief. In an order issued January 20, 2026, the relief

⁵ The EOIR case information website notes an appeal was received by the BIA on December 27, 2025, and that the appeal is "currently pending," and "[n]o brief due date exists at this time" with regard to either party. EOIR Automated Case Information, *available at* <https://acis.eoir.justice.gov/en/caseInformation>, *last visited* Feb. 23, 2026.

sought in Petitioner's husband's § 2241 action was granted, and DHS waived appeal of the decision releasing Mr. Avakian on bond.⁶ (ECF No. 15-2).

⁶ The pleadings in Mr. Avakian's Southern District of California § 2241 case are sealed. However, the order granting relief is not sealed and it states:

The Court held oral argument on January 20, 2026. For the reasons stated on the record, the Court GRANTS the petition for writ of habeas corpus [Dkt. 1] and ORDERS as follows:

1. Respondents, within seven (7) days of this order, SHALL provide Petitioner with an individualized bond hearing before a neutral immigration judge where the Government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot reasonably be addressed by bond or conditional release. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Respondents SHALL NOT deny Petitioner's bond on the basis that 8 U.S.C. § 1225(b) requires or authorizes mandatory detention. If continued detention is not warranted, the immigration judge must consider Petitioner's financial circumstances and alternatives to bond in setting conditions of release. *See Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017).

2. Respondents SHALL file a declaration attesting to the occurrence of the bond hearing by the close of the next business day after the bond hearing. If no hearing occurs within seven (7) days of this order, Petitioner SHALL be released from Respondents' custody by noon on the eighth (8) day following this order.

In aid of the Court's jurisdiction to enforce its injunctions under the All Writs Act ("AWA"), 28 U.S.C. § 1651, if Petitioner is released either by the immigration judge or because no bond hearing occurred within seven (7) days of this order, the Court further ORDERS as follows:

1. Respondents SHALL NOT redetain Petitioner during the pendency of his removal proceedings (until a final order of removal is issued) on the basis that 8 U.S.C. § 1225(b) requires or authorizes mandatory detention without an individualized bond hearing.

2. Respondents SHALL NOT redetain Petitioner during the pendency of his removal proceedings (until a final order of removal is issued) on the basis that such a re-detention would "restart the clock" and nullify this Court's finding that detention of an unconstitutionally prolonged duration has already occurred.

3. Respondents SHALL file advance notice on this docket if they seek to redetain Petitioner, explaining the grounds on which Respondents believe Petitioner should be redetained. *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) (recognizing that the Act empowers federal courts to impose affirmative obligations on parties or third parties where "necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained"). Once that notice has been docketed, Respondents SHALL NOT redetain Petitioner for a period of at least 48 hours from the time of that docketing.

(ECF No. 15-1). *See also Radzh Avakian v. Marrero*, 2:26-cv-126 (S.D. Cal Jan. 20, 2026), at ECF No. 13. Mr. Avakian received a custody redetermination hearing pursuant to 8 C.F.R. § 1236 on

II. Claims for Relief

In her § 2241 petition Petitioner challenges the legality of her continued civil detention in the absence of a “constitutionally adequate” and “individualized” procedure for determining whether her continued detention is warranted. (ECF No. 1 at 8). Petitioner contends that the Fifth Amendment’s Due Process Clause does not allow the detention of a noncitizen in removal proceedings for an indeterminate period of time without an individualized hearing, such as a bond hearing, to determine whether continued detention is necessary to achieve the government’s interests. (ECF No. 1 at 7). Petitioner notes she has been granted withholding of removal and asserts her detention “has crossed the line from administrative to unconstitutionally prolonged and punitive.” (ECF No. 1 at 2).

Petitioner also contends:

... Because the Petitioner is classified as an ‘arriving alien’ under 8 U.S.C. § 1225(b), she is categorically barred by regulation from seeking a bond hearing before an Immigration Judge. In the absence of any meaningful, neutral custody hearing mechanism, the Fifth Amendment requires this Court to provide a judicial remedy to ensure her detention remains consistent with due process.

(ECF No. 1 at 2).

Respondents argue that because Petitioner is not under a final order of removal, i.e., her appeal regarding the denial of asylum has not been resolved, she is not entitled to release from detention because detention under § 1225(b) is mandatory. (ECF No. 10).

III. Analysis of Claims for Relief

The right to be free from physical restraint by the government is “at the heart of the liberty” guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The proper procedural protections from unwarranted detention are an administrative proceeding, followed by judicial review. *Id.* at 692. Although “detention during deportation proceedings [is] a

January 27, 2026, at which time an IJ ordered he be released from custody under a \$2,000 bond. (ECF No. 15-2).

1 constitutionally valid aspect of the deportation process,” *Demore v. Kim*, 538 U.S. 510,
2 523 (2003), such detention must still comport with the detainee’s right to due process.

3 Respondents contend Petitioner’s continued detention, for any period of time until
4 the BIA resolves her appeal and any judicial review of that decision occurs, is mandatory
5 and authorized by 8 U.S.C. § 1225(b). However, the federal courts have repeatedly held
6 that even statutorily-authorized detention of a noncitizen in removal proceedings must
7 comport with due process, as evaluated by the federal courts pursuant to their power to
8 award writs of habeas corpus. *See Boumediene v. Bush*, 553 U.S. 723, 797 (2008) (holding
9 that habeas corpus applies to detainees who were classified as enemy combatants and held
10 at Guantanamo Bay, and stating “few exercises of judicial power are as legitimate or
11 necessary as the responsibility to hear challenges to the authority of the Executive to
12 imprison a person.”), *cited in Chekhovskii v. Scott*, No. 2:25-cv-02550, 2026 WL 353265,
13 at *3-4 (W.D. Wash. Feb. 9, 2026). The Ninth Circuit Court of Appeals has repeatedly
14 recognized that prolonged civil immigration detention without meaningful individualized
15 safeguards raises serious constitutional concerns and warrants relief when detention
16 becomes unreasonable as applied to a particular individual. *See Rodriguez v. Robbins*, 715
17 F.3d 1127, 1142-44 (9th Cir. 2013); *Tijani v. Willis*, 430 F.3d 1241, 1247-49 (9th Cir.
18 2005).

19 What is distinguishable about Petitioner’s circumstance is that although her order
20 of removal will become “final” at the conclusion of her administrative proceedings and any
21 judicial appeal, regardless of the outcome of that appeal Petitioner will still not be
22 removable to either Russia or Azerbaijan because she has been granted withholding of
23 removal, an award of relief DHS does not contest. Moreover, no final decision has been
24 rendered regarding Petitioner’s application for relief from removal pursuant to CAT, which
25 prevents removal to a country where Petitioner is likely to face torture, i.e., Azerbaijan or
26 Russia, the only two countries designated in the order of removal. Bearing this in mind,
27 although 8 U.S.C. § 1225(b), the statute under which Petitioner is detained, provides that a
28 noncitizen who is not under a final order of removal “shall” be detained pending the

1 termination of their removal proceedings, the federal courts have repeatedly held that
2 noncitizens in the United States have a federal constitutional right to both substantive and
3 procedural due process of law, which requires that at some point their continued detention
4 must bear a reasonable relationship to the purpose for which they are detained. *See, e.g.,*
5 *Trejo v. Warden of ERO El Paso E. Montana*, No. 25-cv-401, 2025 WL 2992187, at *3-5
6 (W.D. Tex. Oct. 24, 2025). Presumably, the purpose for which Petitioner is detained is to
7 ensure that she will not attempt to evade any final order of removal or become a danger to
8 society if she is released. The evidence before the Court indicates that Petitioner has no
9 reason to evade any final order of removal, as she has already been granted withholding of
10 removal and, absent procedural due process, she may not be removed to a third country.
11 *See Vashchuk v. Bondi*, No. 2:26-cv-00177, 2026 WL 381163, at *2-6 (W.D. Wash. Feb.
12 11, 2026), *citing, e.g., Ibarra-Perez v. United States*, 154 F.4th 989, 1000 (9th Cir. 2025),
13 *and Andriasian v. Immigration & Naturalization Serv.*, 180 F.3d 1033, 1041 (9th Cir.
14 1999). Moreover, Petitioner's sister, a naturalized United States citizen, and her son, a
15 lawful resident, have agreed to provide her with housing and financial support, thus she
16 will not become a burden on the American taxpayer. Petitioner has committed no crime,
17 and she did not attempt to evade inspection when she appeared at a port of entry.

18 There is no statutory requirement that a detained noncitizen, whose order of removal
19 is not final and who has been granted withholding of removal, be given a hearing regarding
20 continuation of their detention. However, the United States Constitution's Due Process
21 Clause, which is applicable to all individuals within the United States, does not allow for
22 indefinite detention of a noncitizen who is not a danger to the citizens of the United States.
23 The Ninth Circuit Court of Appeals, citing the United States Supreme Court's opinion in
24 *United States v. Salerno*, 481 U.S. 739, 755 (1987), has expressed "grave doubts that any
25 statute that allows for arbitrary prolonged detention without any process is constitutional
26 or that those who founded our democracy precisely to protect against the government's
27 arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252,
28 256-57 (9th Cir. 2018).

1 Although the Ninth Circuit has yet to espouse a position on whether, or when, due
 2 process requires a bond hearing for noncitizens detained under 8 U.S.C. § 1225(b), the
 3 First, Second, and Third Circuit Courts of Appeal have concluded that “the Due Process
 4 Clause imposes some form of ‘reasonableness’ limitation upon the duration of detention”
 5 under the mandatory detention provisions of 8 U.S.C. § 1226(c), which governs the
 6 detention of “criminal aliens” during the pendency of their removal proceedings. *Reid v.*
 7 *Donelan*, 17 F.4th 1, 7 (1st Cir. 2021). *See also Black v. Decker*, 103 F.4th 133, 138 (2d
 8 Cir. 2024) (“conclud[ing] that a noncitizen’s constitutional right to due process precludes
 9 his unreasonably prolonged detention under section 1226(c) without a bond hearing”);
 10 *German Santos v. Warden Pike Cnty Corr. Facility*, 965 F.3d 203, 209-10 (3rd Cir. 2020)
 11 (holding that pursuant to *Demore* and *Jennings v. Rodriguez*, 583 U.S. 281 (2018),
 12 noncitizens detained pursuant to § 1226(c) can bring as-applied challenges to their
 13 detention, and their right to due process affords them a bond hearing once detention
 14 becomes unreasonable). Additionally, “essentially all district courts that have considered
 15 the issue agree that prolonged mandatory detention [pursuant to §1226(c)] pending removal
 16 proceedings, without a bond hearing, will—at some point—violate the right to due
 17 process.” *Martinez v. Clark*, No. 18-cv-1669, 2019 WL 5968089, at *6 (W.D. Wash.
 18 May 23, 2019) (internal quotations omitted), *report and recommendation adopted*, 2019
 19 WL 5962685 (W.D. Wash. Nov. 13, 2019). Logically, if due process affords *criminal*
 20 aliens under orders of removal a bond hearing if their detention becomes “unreasonable,”
 21 notwithstanding that their detention is mandatory, then non-criminal aliens should also be
 22 afforded this due process protection.

23 Various federal district courts within the jurisdiction of the Ninth Circuit Court of
 24 Appeals have concluded that prolonged detention under § 1225(b), without a bond hearing,
 25 violates the detainee’s right to due process. *See, e.g., Sadeqi v. LaRose*, ___ F. Supp. 3d
 26 ___, No. 25-CV-2587, 2025 WL 3154520, at *2-4 (S.D. Cal. Nov. 12, 2025);⁷ *Kydyrali v.*

27
 28 ⁷ This Court agrees with the majority position that a petitioner detained under
 Section 1225(b)(1) may assert a due process challenge to prolonged mandatory
 detention without a bond hearing. This Court likewise agrees with those district

1 *Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (“[T]he Court joins the majority of courts
 2 across the country in concluding that an unreasonably prolonged detention under 8 U.S.C.
 3 § 1225(b) without an individualized bond hearing violates due process.”); *Banda v.*
 4 *McAleenan*, 385 F. Supp. 3d 1099, 1117 (W.D. Wash. 2019); *Prabhpreet v. Larose*, No.
 5 26-cv-393, 2026 WL 310192, at *2-3 (S.D. Cal. Feb. 5, 2026); *Maksin v. Warden, Golden*
 6 *State Annex*, No. 25-cv-00955, 2025 WL 2879328, at *3 (E.D. Cal. Oct. 9, 2025); *Abdul-*
 7 *Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-00098, 2025 WL
 8 2099343, at *6 (E.D. Cal. July 25, 2025).

9 Absent the availability of § 2241 relief, in circumstances similar to Petitioner’s the
 10 government could detain a noncitizen for an indeterminate period of time provided there
 11 was no final order of removal, regardless of whether the detainee had been awarded relief
 12 from removal. This does not conform to the Constitution’s guarantee of due process to
 13 individuals present in the United States of America. It is recommended that the Court join
 14 the federal District Courts and Circuit Courts of Appeal that have concluded or suggested
 15 that prolonged mandatory detention pending the finality of removal proceedings, without
 16 a bond hearing, will at some point violate the detainee’s right to due process of law. *See*
 17 *Rodriguez*, 909 F.3d at 256; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021)

18 courts that interpret *Thuraissigiam* as circumscribing an arriving alien’s due
 19 process rights to admission, rather than limiting that person’s ability to challenge
 20 detention. *See A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025) (“Nowhere
 21 in [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens being held
 22 under § 1225(b) may be held indefinitely and unreasonably with no due process
 23 implications, nor that such aliens have no due process rights whatsoever.”);
 24 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
 25 (E.D. Cal. Aug. 21, 2025) (“Although the Supreme Court has described Congress’s
 26 power over the ‘policies and rules for exclusion of aliens’ as ‘plenary,’ and held
 27 that this court must generally ‘defer to Executive and Legislative Branch
 28 decisionmaking in that area,’ it is well-established that the Due Process Clause
 stands as a significant constraint on the manner in which the political branches may
 exercise their plenary authority’—through detention or otherwise.”) (citations
 omitted); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023) (“The
 holding in *Thuraissigiam* does not foreclose Plaintiffs’ due process claims which
 seek to vindicate a right to a bond hearing with certain procedural protections.”).
Sadeqi v. LaRose, ___ F. Supp. 3d ___, No. 25-cv-2587, 2025 WL 3154520, at *2-4 (S.D. Cal.
 Nov. 12, 2025).

1 (“The government’s exercise of its power to detain immigrants pending removal ‘is subject
 2 to important constitutional limitations,’” *quoting Zadvydas*, 533 U.S. at 695); *Castro v.*
 3 *United States Dep’t of Homeland Sec.*, 835 F.3d 422, 449 n.32 (3rd Cir. 2016) (“This is
 4 not to say that the political branches’ power over immigration is limitless in all respects.
 5 We doubt, for example, that Congress could authorize, or that the Executive could engage
 6 in, the indefinite, hearingless detention of an alien simply because the alien was
 7 apprehended shortly after clandestine entrance.”); *Tavurov v. Noem*, ___ F. Supp. 3d ___,
 8 2026 WL 323054, at *4 (W.D. Wash. Feb. 6, 2026); *Tenemasa-Lema v. Hyde*, ___ F. Supp.
 9 3d ___, 2025 WL 3280555, at *7 n.18 (D. Mass. Nov. 25, 2025); *A.L. v. Oddo*, 761 F.
 10 Supp. 3d 822, 825-26 (W.D. Pa. 2025) (“This Court finds that an arriving alien such as
 11 Petitioner has a constitutional due process right to a bond hearing once his detention
 12 becomes unreasonable to the same extent as an alien who is subject to removal under
 13 § 1226(c).”); *Leke v. Hott*, 521 F. Supp. 3d 597, 603 n.8 (E.D. Va. 2021);⁸ *Mbalivoto v.*
 14 *Holt*, 527 F. Supp. 3d 838, 851 (E.D. Va. 2020); *Kydyrali*, 499 F. Supp. 3d at 772;
 15 *Mashchenko v. Rokosky*, No. 25-cv-12387, 2026 WL 185204, at *3 (D.N.J. Jan. 25, 2026);
 16 *Baishymyrov v. Warden of Golden State Annex Det. Facility*, No. 25-cv-01658, 2026 WL
 17 145644, at *6 (E.D. Cal. Jan. 20, 2026); *Sufiiarov v. Warden, Otay Mesa Det. Ctr.*, No. 25-

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 19 ⁸ In support of this conclusion, in *Leke* at footnote 8 the Eastern District of Virginia cites
 the following cases:

20 *See also Kouadio v. Decker*, 352 F. Supp. 3d 235, 241 (S.D.N.Y. 2018) (34-month
 21 detention of arriving alien without bond hearing violates due process); *Kydyrali v.*
 22 *Wolf*, 499 F. Supp. 3d 768, 772, No. 3:20-cv-539 (S.D. Cal. 2020) (27-month
 23 detention of arriving alien without bond hearing violates due process); *Pierre v.*
 24 *Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (23-month detention of arriving
 25 alien without bond hearing violates due process); *Mbalivoto v. Holt*, No.1:20-cv-
 26 827 at 5 (Dkt. 22) (E.D. Va. Aug. 11, 2020) (22-month detention of arriving alien
 27 without bond hearing violates due process); *Jamal A. v. Whitaker*, 358 F. Supp. 3d
 28 853, 859 (D. Minn. 2019) (19-month detention of arriving alien without bond
 hearing violates due process); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 442–43
 (D. N.J. 2019) (same); *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 930
 (W.D. Wash. 2020) (18-month detention of arriving alien without bond hearing
 violates due process); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1177 (W.D.
 Wash. 2019) (17-month detention of arriving alien without bond hearing violates
 due process); *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018) (10-month
 detention of arriving alien without bond hearing violates due process).

1 cv-03265, 2026 WL 26079, at *3 (S.D. Cal. Jan. 5, 2026) (“The Court agrees with those
 2 courts that have found a noncitizen detained under § 1225(b) for a prolonged period
 3 without an individualized bond hearing may assert a constitutional right to due process.”);
 4 *Gao v. LaRose*, No. 25-cv-2084, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025);
 5 *Abdul-Samed*, 2025 WL 2099343, at *6; *Arechiga v. Archambeault*, No. 23-cv-0600, 2023
 6 WL 5207589, at *3 (D. Nev. Aug. 11, 2023).

7 The Ninth Circuit Court of Appeals has not provided the lower courts with guidance
 8 regarding the point at which an immigration detainee’s prolonged mandatory detention
 9 without a bond hearing becomes unconstitutional. The District Courts within the Ninth
 10 Circuit’s jurisdiction have generally applied the test stated in *Banda v. McAleenan*, 385 F.
 11 Supp. 3d 1099, 1117 (W.D. Wash. 2019) in this circumstance, *see, e.g., Prabhpreet v.*
 12 *LaRose*, No. 26-cv-393, 2026 WL 310192, at *3 (S.D. Cal. Feb. 5, 2026), although some
 13 courts have instead applied the test stated in *Mathews v. Eldridge*, 424 U.S. 319, 335
 14 (1976), *see, e.g., Tigranyan v. Warden of Cal. City Detention*, No. 25-cv-01554, 2026 WL
 15 91765, at *5-7 (E.D. Cal. Jan. 13, 2026). Under either test, Petitioner is entitled to a bond
 16 hearing at which the government must bear the burden of proof as to whether Petitioner is
 17 a flight risk or a danger to the community.

18 The *Banda* court considered the following six factors when determining whether
 19 continued detention under § 1225(b) without a bond hearing violated the detainee’s due
 20 process rights:

21 (1) the total length of detention to date; (2) the likely duration of future
 22 detention; (3) the conditions of detention; (4) delays in the removal
 23 proceedings caused by the detainee; (5) delays in the removal proceedings
 24 caused by the government; and (6) the likelihood that the removal
 proceedings will result in a final order of removal.

25 385 F. Supp. 3d at 1118, *citing Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858–59 (D.
 26 Minn. 2019). *See also Kydyrali*, 499 F. Supp. 3d at 773-74; *Prabhpreet*, 2026 WL 310192,
 27 at *2-3; *Sadeqi*, 2025 WL 3154520, at *3; *Amado v. United States Dep’t of Just.*, No. 25-
 28

1 cv-2687, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025); *Kadir v. LaRose*, 25-cv-1045,
2 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025).

3 With regard to the total length of detention to date, Petitioner has now been detained
4 for 14 months. Although the length of Petitioner's detention does not, by itself, establish
5 prolonged detention in violation of due process, neither does that length of detention
6 insulate Petitioner's case from constitutional review. The federal district courts have
7 ordered a bond hearing where a petitioner was subject to mandatory detention for a
8 comparable length of time. *See, e.g., Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D.
9 Cal. 2022) ("Petitioner has been in immigration detention ... approximately one year.
10 District court have found shorter lengths of detention ... without a bond hearing to be
11 unreasonable.") (collecting cases); *Amado*, 2025 WL 3079052, at *5 ("Courts have found
12 detention over seven months without a bond hearing weighs toward a finding that it is
13 unreasonable.") (collecting cases); *Tonoyan v. Andrews*, No. 25-cv-00815, 2025 WL
14 3013684, at *4 (E.D. Cal. Oct. 28, 2025) ("Petitioner has been detained approximately 11
15 months. This period ... qualifies as prolonged."); *Gao*, 2025 WL 2770633, at *5 ("The
16 Court finds that Petitioner's detention for over 10 months without a bond hearing, in the
17 context of the specific circumstances described above, has become unreasonable and
18 violates due process."). The Court may reasonably conclude that the first *Banda* factor
19 weighs in favor of Petitioner.⁹

20 The second *Banda* factor concerns the likely duration of future detention. It will
21 likely take more than a year for the BIA to reach a decision regarding the IJ's denial of
22 asylum and, should Petitioner exercise her right to appeal any negative decision by the BIA
23 on that issue to the Ninth Circuit Court of Appeals, a decision from that court could take
24 up to two years. *See Banda*, 385 F. Supp. 3d at 1119 (finding this factor weighed in the
25 petitioner's favor where a petitioner who had "only recently" appealed the IJ's denial of
26

27 ⁹ Notably, an Article III judge considering the detention of Petitioner's husband, with
28 whom her removal proceedings were consolidated, determined that Petitioner's husband was
entitled to a bond hearing. Although the Court is not bound by this decision, it does weigh in favor
of granting the instant § 2241 petition.

1 his case to the BIA faced a process that could “take up to two years or longer”); *Barraza*
2 *v. ICE Field Off. Dir.*, No. 23-cv-1271, 2023 WL 9600946, at *6 (W.D. Wash. Dec. 8,
3 2023), *report and recommendation adopted*, 2024 WL 518945 (W.D. Wash. Feb. 9, 2024)
4 (citing the Ninth Circuit Court of Appeals website’s timeline for appeals and noting a
5 petitioner who filed their petition for review in the Ninth Circuit a few months prior could
6 be facing two years or more of additional time in custody); *Hong v. Mayorkas*, 20-cv-1784,
7 2021 WL 8016749, at *4 (W.D. Wash., June 8, 2021) (finding this factor favored petitioner
8 because they faced “an additional 15 to 38 months” in detention where they were at the
9 “earliest stages” of pursuing a petition for review before the Ninth Circuit Court of
10 Appeals). Additionally, Petitioner was denied asylum pursuant to the Circumvention of
11 Legal Pathways rule, and the validity of the rule’s prohibition on eligibility for asylum is
12 under legal challenge; the complexity of the issues regarding the rule would presumably
13 delay the resolution of any judicial review. *See East Bay Sanctuary Covenant v. Trump*,
14 134 F.4th 545 (mem.) (9th Cir. 2025). Therefore, the second *Banda* factor also weighs in
15 favor of Petitioner.

16 The third factor to be considered examines the conditions of detention. “The more
17 that the conditions under which the noncitizen is being held resemble penal confinement,
18 the stronger the argument that [the noncitizen] is entitled to a bond hearing.” *Barraza*, 2023
19 WL 9600946, at *6 (internal quotations omitted).

20 Petitioner is being detained at the Eloy Detention Center in Arizona. The Eloy
21 facility opened in 1994 and was designed to imprison people in criminal custody. *See* U.S.
22 DEP’T OF HOMELAND SEC., IMMIGR. & CUSTOMS ENFORCEMENT OFF. OF PRO. RESP.,
23 INSPECTIONS, & DETENTION OVERSIGHT, OFF. OF DETENTION OVERSIGHT COMPLIANCE
24 INSPECTION, ENFORCEMENT & REMOVAL OPERATIONS, PHX. FIELD OFF., ELOY DET.
25 CENTER (2013), *available at*: [https://www.ice.gov/doclib/foia/odo-compliance-](https://www.ice.gov/doclib/foia/odo-compliance-inspections/eloyDetentionCenterEloyAzNov5_7_2013.pdf)
26 [inspections/eloyDetentionCenterEloyAzNov5_7_2013.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/eloyDetentionCenterEloyAzNov5_7_2013.pdf). (last visited Feb. 23, 2026).
27 The facility has since evolved into an ICE detention facility. Concerns have been raised
28 with regard to the conditions of confinement at the Eloy Detention Center.

Between August 2022 and May 2023, [the Office for Civil Rights and Civil Liberties] opened 11 complaint investigations involving noncitizens in ICE custody at Eloy. The allegations raised concerns related to medical care, *excessive lockdowns*, unsanitary living conditions, inadequate access to showers and recreation, and unhygienic food service operations. As a result of these complaints, CRCL conducted a multidisciplinary investigation at Eloy in September 2023 to examine the facility and assess issues raising civil rights and civil liberties concerns. Findings and Recommendations On April 4, 2024, CRCL issued ICE an Onsite Recommendation Memorandum based on its investigation conducted with the assistance of contract subject matter experts. *The memo included 24 recommendations in the general areas of conditions of detention, medical care, mental health care, and environmental health and safety.*

U.S. DEP'T OF HOMELAND SEC., OFF. FOR CIVIL RIGHTS & CIVIL LIBERTIES, SUMMARY OF CRCL'S RECOMMENDATIONS & ICE'S RESPONSE, ELOY DET. CENTER (2024), *available at*: <https://www.documentcloud.org/documents/25866584-24-1216-crcl-close-summary-ice-eloy-detention-center-508/#document> (last visited Feb. 23, 2026) (emphasis added).

Additionally, Petitioner has medical conditions which require medication and monitoring. Petitioner does not have family in Arizona; her citizen sister and her lawful resident son reside in Kansas, and her husband, her daughter, and her grandchildren are probably not in Arizona. Accordingly, Petitioner's detention isolates her from her family. The Court may reasonably conclude that the third *Banda* factor weighs in favor of Petitioner.

The fourth and fifth *Banda* factors examine the delays in the removal proceedings caused by the detainee and delays in the removal proceedings caused by the government. There is no evidence that either Petitioner or the government have delayed Petitioner's removal proceedings.

The sixth prong of the *Banda* test considers the likelihood that Petitioner's removal proceedings will result in a final order of removal. It is not certain that Petitioner's removal proceedings will result in a final order of removal. A close reading of the IJ's decision indicates that Petitioner has met the requirements for a grant of asylum, but for the application of the Circumvention of Legal Pathways rule. Should the application of that

1 rule be abrogated by a federal court, Petitioner may ultimately be granted asylum.
2 Moreover, as previously noted, even if the denial of asylum is affirmed, Petitioner has been
3 granted withholding of removal and even if her order of removal becomes final it is
4 unlikely she will be removed in the foreseeable future.

5 Notably, one of the *Matthews* factors is consideration of “the Government’s interest,
6 including the function involved and the fiscal and administrative burdens that the additional
7 or substitute procedural requirement,” i.e., a bond hearing, “would entail.” 424 U.S. at 335.
8 The government’s interest in Petitioner’s detention is to ensure that Petitioner appears for
9 all of her immigration proceedings, and that she does not become a danger to the
10 community or a burden on the community. There is no reasonable likelihood that if
11 Petitioner is released from detention on bond the government’s interests will be thwarted.
12 Petitioner’s citizen sister and her lawful resident son have advised, and established, that
13 they are willing and able to provide Petitioner with housing, subsistence, medical care, and
14 transportation. (ECF No. 4-5; ECF No. 4-6). Petitioner has no interest in not appearing for
15 her immigration proceedings, given that she has been awarded relief from removal and
16 potentially relief pursuant to CAT provided that she adheres to the requirements imposed
17 by the government.

18 IV. Conclusion

19 Petitioner’s detention for over 14 months without a bond hearing, under the
20 circumstances and equities of this case, has become unreasonable and violates Petitioner’s
21 Fifth Amendment right to due process of law. Petitioner is entitled to a prompt and
22 individualized bond hearing, at which Respondents must justify her continued detention by
23 a showing of clear and convincing evidence that Petitioner would likely flee or pose a
24 danger to the community if released.

25 Accordingly,

26 **IT IS RECOMMENDED** that the amended petition for habeas relief pursuant to
27 § 2241 (ECF No. 4) be **granted**, and the Court order that within seven (7) days of the date
28 her petition is granted she be given a bond hearing before a neutral adjudicator at which

1 hearing the government must bear the burden of showing that Petitioner should not be
2 released on bond because she is a flight risk or a danger to the community.

3 This recommendation is not an order that is immediately appealable to the Ninth
4 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
5 Appellate Procedure, should not be filed until entry of the District Court's judgment. Rule
6 72(b), Federal Rules of Civil Procedure, provides that the parties shall have fourteen (14)
7 days from the date of service of a copy of this recommendation within which to file specific
8 written objections with the Court. Pursuant to Rule 7.2(e)(3) of the Local Rules of Civil
9 Procedure for the United States District Court for the District of Arizona, objections to the
10 Report and Recommendation may not exceed ten (10) pages in length. Failure to timely
11 file objections to any factual or legal determinations of the Magistrate Judge will be
12 considered a waiver of a party's right to de novo appellate consideration of the issues. *See*
13 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

14 Dated this 23rd day of February, 2026.

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Camille D. Bibles
United States Magistrate Judge