

3:26-cv-00126-JO-DDL Avakian v. Marrero et al
 Jinsook Ohta, presiding
 David D. Leshner, referral
Date filed: 01/09/2026
Date of last filing: 01/21/2026

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/09/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/09/2026	 Minute Order (No Time)
<u>3</u>	<i>Filed & Entered:</i> 01/10/2026	 Request to Appear Pro Hac Vice
<u>4</u>	<i>Filed & Entered:</i> 01/11/2026	 Supplemental Document
<u>5</u>	<i>Filed & Entered:</i> 01/11/2026 <i>Terminated:</i> 01/12/2026	 Motion for Miscellaneous Relief
<u>6</u>	<i>Filed & Entered:</i> 01/12/2026	 Order on Motion for Miscellaneous Relief
<u>7</u>	<i>Filed & Entered:</i> 01/13/2026	 Affidavit of Service
<u>8</u>	<i>Filed & Entered:</i> 01/15/2026 <i>Terminated:</i> 01/15/2026	 Motion to Supplement
<u>9</u>	<i>Filed & Entered:</i> 01/16/2026	 Return to Petition
<u>10</u>	<i>Filed & Entered:</i> 01/19/2026	 Notice (Other)
<u>11</u>	<i>Filed & Entered:</i> 01/20/2026	 Notice of Appearance
<u>12</u>	<i>Filed & Entered:</i> 01/20/2026	 Status Hearing
<u>13</u>	<i>Filed & Entered:</i> 01/20/2026	 Order
<u>14</u>	<i>Filed & Entered:</i> 01/21/2026	 Order re Pro Hac Vice Application

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

Radzh Avakian,)
Petitioner,)
v.)
) Case No. '26CV0126 JO DDL

Sixto Marrero, Warden, Imperial Regional)
Adult Detention Facility;)
Patrick Divver, Field Office Director, ICE)
ERO San Diego Field Office;)
Todd Lyons, Acting Director, U.S. Immigration)
and Customs Enforcement;)
Pamela Bondi, Attorney General, U.S.)
Department of Justice;)
Kristi Noem, Secretary, U.S. Department of)
Homeland Security,)
in their official capacities,)
Respondents.)

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241 AND EMERGENCY MOTION FOR ORDER
TO SHOW CAUSE**

COMES NOW Petitioner Radzh Avakian (A# , through undersigned counsel, and petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is unlawfully detained in ICE custody in violation of the Fifth Amendment Due Process Clause.

Petitioner does not challenge the merits of removability, the Immigration Judge's merits decision, or the pending appeal before the Board of Immigration Appeals. Petitioner challenges only the legality of continued civil detention and the absence of constitutionally adequate individualized custody procedures.

While the Supreme Court held in *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) that 8 U.S.C. § 1231(a)(6) does not statutorily mandate bond hearings, it expressly left open the constitutional question of whether the Fifth Amendment's Due Process Clause requires such procedures when detention becomes prolonged. As applied to Petitioner—an elderly detainee with serious medical vulnerabilities who has been held for over one year, separated from his spouse of over 43 years—this detention has crossed the line from administrative to unconstitutionally prolonged and punitive. Because Petitioner is classified as an “arriving alien” under 8 U.S.C. § 1225(b), he 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 his detention remains consistent with due process.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331 because Petitioner is in custody in violation of the Constitution.

2. This petition presents a freestanding challenge to detention and procedures, which lies at the core of habeas corpus and is not barred by the immigration channeling provisions. *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

3. Venue is proper because Petitioner is detained within this District and Petitioner's immediate custodian is located here. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

PARTIES

4. Petitioner Radzh Avakian is an elderly ethnic Armenian citizen of Russia detained at the Imperial Regional Adult Detention Facility, 1564 Gateway Road, Calexico, CA 92231 (Ex. A; Ex. E).

5. Respondent Sixto Marrero, Warden, Imperial Regional Adult Detention Facility is the Warden of Petitioner's place of confinement and Petitioner's immediate custodian.

6. Respondent Patrick Divver, Field Office Director, ICE ERO San Diego Field Office is the ICE Enforcement and Removal Operations Field Office Director for the field office responsible for Petitioner's detention location. This Respondent has authority to direct continued detention, transfer, or release. The field office address is 880 Front Street, Suite 2242, San Diego, CA 92101.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Petitioner and has authority to direct Petitioner's continued detention or release. His office is located at 500 12th Street SW, Washington, DC 20536.

8. Respondent Pamela Bondi is sued in her official capacity as Attorney General of the United States. She oversees the U.S. Department of Justice, including the Executive Office for Immigration Review. Her office is located at 950 Pennsylvania Avenue NW, Washington, DC 20530.

9. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S. Department of Homeland Security. She oversees implementation and

enforcement of the Immigration and Nationality Act and oversees ICE. Her office is located in Washington, DC 20528.

FACTUAL BACKGROUND

10. Petitioner is detained in ICE custody at the Imperial Regional Adult Detention Facility in Calexico, California (Ex. A). Petitioner's spouse, Nina Avakian (A# ) , remains detained separately at the Eloy Detention Center in Eloy, Arizona (Ex. C).

11. Petitioner and his spouse have been married since December 25, 1982 (Ex. B). Despite traveling together and having consolidated removal proceedings, they have been detained at separate facilities for more than one year (Ex. A; Ex. C; Ex. D). This prolonged forced separation has caused significant emotional distress to both spouses and has aggravated Petitioner's medical vulnerability.

12. On December 19, 2025, the Immigration Judge denied asylum but granted withholding of removal. Petitioner timely filed a Notice of Appeal (EOIR-26) and paid the required fee; the appeal remains pending (Ex. K).

13. Petitioner has never received any individualized custody hearing before a neutral decisionmaker with authority to order release on conditions. ICE is treating Petitioner as an arriving alien detained under 8 U.S.C. § 1225(b),

which deprives him of an IJ custody hearing; that categorical bar is what makes the due-process violation acute.

14. On February 7, 2025, Petitioner appeared for a custody redetermination hearing after filing a Motion for Bond and Custody Redetermination (Ex. F). During that hearing, the Immigration Judge orally stated that the Court lacked jurisdiction to set bond for Petitioner as an arriving alien under *Matter of Q. Li*. Following the oral ruling, counsel withdrew the bond request, and the Immigration Court entered a written order reflecting withdrawal at counsel's request (Ex. G).

15. Counsel submitted parole and release requests supported by sponsor documentation and a release plan (Ex. I; Ex. J; Ex. K; Ex. L). ICE has stated in writing that it will not consider release until the appeal period is over and that detention will continue at least until that time (Ex. I; Ex. J; Ex. K). This categorical approach results in prolonged detention without individualized process.

16. The Immigration Court consolidated Petitioner's and his spouse's removal proceedings on March 13, 2025, for good cause and without DHS opposition (Ex. D).

MEDICAL VULNERABILITY AND IRREPARABLE HARM

17. Petitioner is elderly and medically vulnerable. His health concerns are documented in the Credible Fear Interview record and related DHS evidence, including reports of high blood pressure and dizziness, chronic headaches, impaired memory and cognition (“head fog”), numbness and pain in legs and feet, and episodes of near-syncope while in detention (Ex. H; Ex. J).

18. Continued detention places Petitioner at substantial risk of irreversible harm and renders civil confinement punitive as applied.

**CLAIM ONE – FIFTH AMENDMENT DUE PROCESS
(PROLONGED DETENTION)**

19. Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

20. The Due Process Clause prohibits detention that becomes unreasonably prolonged without constitutionally adequate individualized procedures. The Supreme Court has confirmed that challenges to the legality of detention and the procedures authorizing detention remain cognizable in habeas. *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

21. The Ninth Circuit has repeatedly recognized that prolonged civil immigration detention without meaningful individualized safeguards raises serious constitutional concerns and warrants habeas relief when detention

becomes unreasonable as applied. See *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005).

22. Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's private interest in freedom from physical restraint is at its zenith. Petitioner is sixty-seven years old, has been married for over forty-three years, has been forcibly separated from his spouse by detention, and has documented medical vulnerabilities and cognitive symptoms. The risk of erroneous deprivation is extreme because the only available custody review is a discretionary parole determination made by the same agency seeking Petitioner's continued detention, and ICE has adopted a categorical policy of refusing to reconsider release until the appeal period concludes, ensuring that no individualized assessment of flight risk or danger occurs. By contrast, the Government's interests can be fully satisfied through less restrictive alternatives to detention, including release on an Order of Supervision or electronic monitoring, particularly where Petitioner has a U.S.-citizen sponsor and has already been granted withholding of removal.

23. At minimum, due process requires a prompt individualized custody hearing at which the Government bears the burden to justify continued detention by clear and convincing evidence and the decisionmaker must consider medical vulnerability and alternatives to detention.

CLAIM TWO – IN THE ALTERNATIVE, POST-ORDER

DETENTION LIMITS

24. In the alternative, to the extent Respondents contend Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6), Petitioner seeks relief grounded in the Due Process Clause and *Zadvydas v. Davis*, 533 U.S. 678 (2001), which limits post-order detention to a period reasonably necessary to effect removal and forbids detention once removal is not reasonably foreseeable. Petitioner does not claim that § 1231(a)(6) itself mandates bond-hearing procedures; the Supreme Court held that it does not. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022).

25. Because Petitioner has been granted withholding of removal to Russia, and Respondents have not identified any realistic, near-term receiving country or travel document pathway, removal is not reasonably foreseeable. Consequently, continued detention violates the narrowing construction of the statute required by the Constitution.

26. Petitioner instead requests constitutionally adequate individualized custody procedures and release where continued detention is unreasonable as applied.

27. Petitioner pleads this alternative claim without conceding that 8 U.S.C. § 1231(a)(6) governs, and without relying on alleged internal policy noncompliance as an independent basis for habeas relief.

SCOPE OF HABEAS RELIEF

28. Petitioner does not seek review of a removal order or relief that would function as a collateral attack on removal proceedings. The requested relief is limited to remedying unlawful custody and the procedures authorizing continued detention, which is the core function of habeas. *Jennings v. Rodriguez*, 583 U.S. at 293–95.

29. Petitioner does not request an order directing new asylum adjudication or other relief outside the traditional scope of habeas custody review. Cf. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020).

REQUEST FOR RELIEF

30. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to respond on an expedited basis.

31. Order Respondents to provide a prompt individualized custody hearing within fourteen (14) days before a neutral adjudicator with authority to order release, where the burden is on the Government to justify continued detention

by clear and convincing evidence, and where Petitioner's age, medical vulnerability, and the grant of withholding of removal are given significant weight.

32. In the alternative, order Petitioner's immediate release under appropriate conditions of supervision.

33. Enjoin transfer outside this District without reasonable prior notice to the Court and counsel, to preserve this Court's jurisdiction over this core habeas challenge.

34. Grant such other and further relief as the Court deems just and proper.

LIST OF EXHIBITS (incorporated)

Exhibit A — Radzh ICE detainee locator (Imperial / Calexico).

Exhibit B — Marriage Certificate (Nina and Radzh Avakian).

Exhibit C — Nina ICE detainee locator (Eloy / Arizona).

Exhibit D — EOIR Consolidation Order (03/13/2025).

Exhibit E — Record of Deportable/Inadmissible Alien / I-213 / detention record for Radzh.

Exhibit F — Motion for Bond and Custody Redetermination (filed by counsel).

Exhibit G — Immigration Judge order on custody status (withdrawn at counsel request; oral *Matter of Q. Li* bond-jurisdiction ruling stated on the record).

Exhibit H — DHS evidence packet including Credible Fear Interview notes (health concerns documented).

Exhibit I — Original parole request email/packet and ICE response (Jan. 10, 2025).

Exhibit J — Renewed parole request email/packet (Feb. 24, 2025).

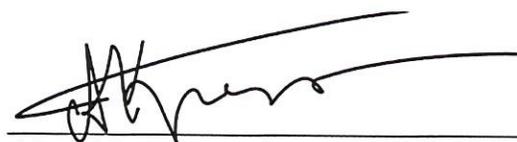
Exhibit K — Request for release on Order of Supervision (Form I-220B) (Dec. 22, 2025) and supporting documents.

Exhibit L — Additional release request packet with supporting documents (as compiled in the combined exhibit file).

VERIFICATION

I represent Petitioner and submit this verification on Petitioner's behalf. Based on client communications and review of available records, I declare under penalty of perjury that the foregoing factual statements are true and correct to the best of my knowledge, information, and belief.

Executed on January 9, 2026, in Greenwood, Indiana.



Alexei P. Krasutsky, Attorney for Petitioner

Respectfully submitted,
KRASUTSKY & HERVEY, LLC

By: 

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