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6 Attorney for Petitioner,
7 **Gevork Guyumdzhyan,**

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Case No. **'26CV0269 TWR B JW**

11 **GEVORK GUYUMDZHYAN,**
12 **Petitioner,**

13 **PETITION FOR WRIT OF HABEAS CORPUS**
14 **AND INJUNCTIVE**
15 **RELIEF**

16 Gregory J. Archambeault, San Diego Field Office Director
17 U.S. Immigration and Customs Enforcement;
18 Madison Sheahan, Deputy Director
19 U.S. Immigration and Customs Enforcement;
20 Kristi Noem, Secretary of the U.S. Department of
21 Homeland Security, and Pam Bondi,
22 Attorney General of the United States,
23 DOE 1 Warden of Otay Mesa Detention Center
24 in their official capacities,

25 **[CAT GRANTED]**

26 **A#** 

27 **Respondents.**

28 **PETITION FOR WRIT OF HABEAS CORPUS**
29 **AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

30 **INTRODUCTION**

31 1. Petitioner Gevork Guyumdzhyan ("Petitioner"), a 60 year old stateless individual,
32 respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and
33 moves for an emergency Temporary Restraining Order ordering his immediate release
34 from immigration detention. The Petitioner has been detained by the Department of
35 Homeland Security ("DHS") since September 19, 2024. He suffers from severe medical

1 conditions, including degenerative arthritis, chronic foot pain and edema, hypertension,
2 prediabetes, migraines, and a history of hepatitis C. His medical condition is deteriorating
3 due to inadequate treatment at the Otay Mesa Detention Center.

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5 2. On September 25, 2025, the Immigration Judge denied Petitioner's deferral of removal
6 under the Convention Against Torture ("CAT"). On October 22, 2025, Petitioner filed an
7 appeal with the Board of Immigration Appeals ("BIA").

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9 3. In prior removal proceedings, on October 6, 2005, the Immigration Judge granted
10 Petitioner's Application for Withholding of Removal to Armenia. Although on July 1st,
11 2025, Department of Homeland ("DHS") filed a motion to reopen seeking to reopen and
12 terminate his prior grant of withholding of removal, on September 11, 2025, the
13 Immigration Judge denied DHS's motion.

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15 4. Because the Petitioner is stateless, has a grant withholding of removal, and a pending
16 appeal before the BIA, his removal is legally and practically impossible. As a result,
17 Petitioner's continued detention lacks any lawful purpose.

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19 5. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), immigration detention is unconstitutional
20 when removal is not reasonably foreseeable. Here, removal is not possible. Petitioner's
21 prolonged and indefinite detention violates the Immigration and Nationality Act ("INA"),
22 the Administrative Procedure Act ("APA"), and the Fifth Amendment.

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24 6. The Petitioner respectfully seeks a Temporary Restraining Order ("TRO") due to his
25 rapidly worsening health and the irreparable harm he is suffering.

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JURISDICTION

7. This action arises under the Constitution of the United States, the INA, 8 U.S.C. §§ 1101
et seq., and the APA, 5 U.S.C. §§ 701 et seq. This Court has habeas corpus jurisdiction

1 pursuant to 28 U.S.C. §§ 2241 et seq.; Art. I, § 9, Cl. 2 of the United States Constitution
2 (the “Suspension Clause”), and 28 U.S.C. § 1331, as Petitioner is presently in custody
3 under the color of the authority of the United States, and such custody is in violation of
4 the Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S.
5 678 (2001). This Court may grant relief pursuant to the Declaratory Judgment Act, 28
6 U.S.C. §§ 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

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- 9 8. Use of the Writ of Habeas Corpus to challenge detention by U.S. Immigration and
10 Customs Enforcement (“ICE”) is available after the REAL ID Act of 2005, Pub. L. No.
11 109-13, 119 Stat. 231 (May 11, 2005) (“REAL ID Act”). Section 106(c) of Title I of the
12 REAL ID Act, amending INA § 242(a)(2)(A), (B), and (C), and § 242(g), although
13 limiting habeas jurisdiction, applies only to those challenges to a “final administrative
14 order of removal.” *Nnadika v. Att’y Gen. of the United States*, 484 F.3d 626, 632 (3d Cir.
15 2007) (holding that the proper venue for a habeas petition challenging detention remains
16 with the district court).
- 17
- 18 9. The Petitioner has exhausted his administrative remedies to the extent required by law,
19 and his only remedy is by way of this judicial action. Following the termination of the
20 removal proceedings and the denial of the sought relief, Petitioner has no viable
21 administrative review available.

22

23 **VENUE**

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- 25 10. Venue is properly with this Court pursuant to 18 U.S.C. § 1391(e) because Respondents
26 are employees or officers of the United States or under contract with the United States,
27 acting in their official capacity, and an agency of the United States, and Petitioner is
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1 under their control; because Petitioner is detained Otay Mesa, which is under the
2 jurisdiction of this District; because a substantial part of the events or omissions giving
3 rise to the claim occurred in this District; and because the government's decision to hold
4 Petitioner in custody and his administrative proceedings occurred in this District.
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6 **PARTIES**

7 11. Petitioner, Gevork Guyumdzhyan, is a 60 year old native and citizen of USSR, who was
8 formerly a Lawful Permanent Resident of the United States. He is currently in custody in
9 Otay Mesa, California.
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11 12. Respondent, Gregory J. Archambeault, is the Field Office Director at the U.S.
12 Immigration and Customs Enforcement, San Diego Field Office. ICE is the component of
13 the DHS responsible for detaining and removing aliens according to U.S. immigration
14 law. In his official capacity, he is the legal custodian of Petitioner.
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16 13. Respondent, Todd M. Lyons, is the Acting Director of the U.S. Immigration and Customs
17 Enforcement. In his official capacity, he is the legal custodian of Petitioner.

18 14. Respondent, Kristi Noem, is the Secretary of the U.S. Department of Homeland Security.
19 She is responsible for the administration of ICE and the enforcement of INA. In her
20 official capacity, she is the legal custodian of Petitioner.
21

22 15. Respondent, Pam Bondi is the Attorney General of the United States. She is responsible
23 for administration of the Executive Office of Immigration Review, which includes the
24 U.S. Immigration Courts and the BIA.
25

26 16. Respondent DOE 1 is the Warden of Otay Mesa Detention Center in San Diego,
27 California, where Petitioner is currently detained. He is a legal custodian of Petitioner and
28 is names in his official capacity. Respondent DOE 2 is sued under said fictitious

1 name given the unavailability of public information regarding his or her identity. On
2 information and belief, DOE 2 is believed to be agent or employee of other Respondent.
3 Upon discover of the identity of Respondent DOE 2, Petitioner will seek leave to amend
4 this Petition to provide the correct name.
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6 **STATEMENT OF FACTS**

7 17. The Petitioner is a stateless, native and former citizen of USSR. (**Exh. A** – Copy of
8 Petitioner’s USSR Passport Biographical Page). He was paroled into the United States on
9 May 9, 1990. (**Exh. B** – Petitioner’s Notice to Appear dated September 18, 2024). On
10 November 19, 1991, Petitioner became Lawful Permanent Resident of the United States
11 until his first removal order on October 6, 2005. Following his entry, Petitioner has never
12 departed the United States.
13

14 18. During the pendency of removal proceedings initiated in 2024¹, DHS produced two (2)
15 documents to sustain the challenged allegation that Petitioner is a citizen of Republic of
16 Armenia. First, DHS produced the October 6, 2005, removal order where Immigration
17 Judge Rose Peters ordered Petitioner removed to Armenia. (**Exh. C** – 10/06/2005
18 Immigration Judge’s Removal Order). Second, DHS also produced Memorandum of
19 Creation of Record of Lawful Permanent Residence which lacks any assertion including
20 the word “Armenia” but instead provides that Petitioner’s country of birth and last
21 residence as “USSR.” (**Exh. D** - Memorandum of Creation of Record of Lawful
22 Permanent Residence). None of these documents, however, established Petitioner’s
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28 ¹ Petitioner was placed in removal proceedings twice. First, in 2005 and second, in 2024.

1 alienage by clear and convincing evidence. 8 USCA § 1229(a); *Rosa v. Bondi*, 144 F.4th
2 37 (1st Cir. 2025)

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4 19. Furthermore, on September 11, 2025, the Immigration Judge Christine Stancill, denied
5 DHS's Motion to Reopen and terminate Petitioner's prior grant of withholding of
6 removal issued October 6, 2005. (**Exh. E** – 09/11/2025 Immigration Judge's Order on
7 Motion). DHS did not appeal or renew its motion.

8
9 20. Thereafter, on September 25, 2025, the Immigration Judge denied Petitioner's deferral
10 of removal under CAT. Petitioner subsequently filed a timely appeal before the BIA on
11 October 22, 2025, which is currently pending. (**Exh. F** – BIA Appeal Receipt).

12 21. Accordingly, as a matter of law, DHS cannot execute Petitioner's removal for three (3)
13 reasons. First, Petitioner's pending appeal before the BIA stays his removal. Second,
14 Petitioner's standing grant of Withholding of Removal from 2005, stays any removal
15 efforts to Armenia. Third, Petitioner's statelessness makes both removal orders entered
16 against him inexecutable.
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18 22. Despite the foregoing, Petitioner has remained in immigration custody for 16 months. As
19 a result, his medical condition, which includes—degenerative arthritis, chronic foot pain
20 and edema, hypertension, prediabetes, migraines, and history of hepatitis C, continues to
21 deteriorate. (**Exh. G** – Documents Relating to Petitioner's Medical Condition).
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23 **CAUSES OF ACTION**

24 **COUNT ONE**
25 **(SUBSTANTIVE DUE PROCESS)**

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27 23. The allegations contained in paragraphs 1 through 22 above are repeated and realleged as
28 though fully set forth herein.

- 1 24. All persons residing in the United States are protected by the Due Process Clause of the
2 Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *Plyler v. Doe*,
3 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976); *Yamataya v. Fisher*, 189
4 U.S. 86 (1903); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002); *Wilson v.*
5 *Zeithern*, 265 F. Supp. 2d 628, 634 (E.D. Va. 2003) (noting that “aliens who have entered
6 the country through proper channels and have been granted legal permanent resident
7 status ... therefore enjoy a more robust liberty interest under the Due Process Clause”).
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10 25. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ...
11 deprived of life, liberty or property, without due process of law.” U.S. Const. amend. V.
12 “Freedom from bodily restraint has always been at the core of the liberty protected by the
13 Due Process clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S.
14 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at
15 stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690
16 (“A statute permitting indefinite detention of an alien would raise a serious constitutional
17 problem.”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10 (D.N.J. 1999) (holding that, in
18 analyzing due process in the immigration context, the first factor in the procedural due
19 process analysis, “the petitioner’s private interest in his physical liberty, must be
20 accorded the utmost weight”).
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23 26. Petitioner’s continued detention violates substantive due process by depriving him of his
24 fundamental liberty interest in remaining free from detention. Government detention
25 violates an individual’s fundamental liberty interest unless the detention is “narrowly
26 tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 302 (1993);
27 *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). Non-punitive detention must
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1 present a “special justification” that outweighs the “individual’s constitutionally
2 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. No such
3 special justification exists in Petitioner’s case, because removal is not reasonably
4 foreseeable considering his statelessness, pending appeal before the BIA, and his
5 standing Withholding of Removal order. Therefore, his ongoing confinement is arbitrary,
6 punitive, and medically dangerous. *See Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC,
7 2025 WL 2590392, at *7 (E.D. Cal. Sept. 8, 2025) (finding that pending BIA appeal of
8 CAT deferral and “possible remand to the immigration court for further factfinding or
9 possible judicial review by the Ninth Circuit will be sufficiently lengthy such that this
10 factor weighs in favor” of granting petitioner a bond hearing due to likely unreasonably
11 prolonged detention).

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14 27. The Supreme Court held in *Zadvydas*, that immigration detention under 8 U.S.C. §
15 1231(a)(6) is constitutionally permissible only for a “period reasonably necessary to
16 bring about that alien’s removal,” and that once removal is no longer reasonably
17 foreseeable, “the statute, read in light of the Constitution’s demands, limits an alien’s
18 post-removal-period detention to a period reasonably necessary to bring about that alien’s
19 removal,” 533 U.S. 678. at 699. Petitioner’s circumstances fall squarely within *Zadvydas*:
20 removal to Armenia is legally impossible because of a pending appeal which prevents
21 removal, statelessness, and a 2005 Withholding of Removal order which prevents
22 removal to Armenia. Detention therefore no longer serves any purpose related to removal
23 and is unlawful.

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26 28. The Ninth Circuit has repeatedly applied *Zadvydas* to persons who have received
27 immigration relief or who otherwise cannot be removed. In *Nadarajah v. Gonzales*, 443
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1 F.3d 1069 (9th Cir. 2006), the Ninth Circuit ordered the release of a CAT-protected
2 detainee because detention became unauthorized once removal was no longer a realistic
3 possibility. The court held that the immigration laws “do not permit indefinite and
4 potentially permanent detention,” and emphasized that CAT protection makes removal
5 “not reasonably foreseeable” as a matter of law. *Id.* at 1080.
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7 29. The same principle applies here: Petitioner’s 2005 Withholding of Removal protection
8 prohibits removal to Armenia. Moreover, Petitioner’s pending appeal before the BIA
9 further prevents the execution of both removal orders. Thus, his continued detention is
10 purposeless.
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12 30. Additional Ninth Circuit precedent confirms that detention pending agency appeals is
13 tightly constrained. In *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), the court
14 upheld detention only because removal remained “practically attainable” and the
15 government was actively pursuing removal to the designated country. By contrast, the
16 court in *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005), rejected detention where removal
17 proceedings were prolonged and removal was uncertain. Whereas here, the government
18 cannot actively pursue removal, detention cannot satisfy the statutory requirement that it
19 be tethered to a removal purpose.
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22 31. The Petitioner’s detention also violates the Fifth Amendment’s Due Process Clause
23 because it is no longer civil in nature but punitive. When detention continues for reasons
24 unrelated to removal—such as administrative delay caused by the government’s litigation
25 choices—its purpose becomes indistinguishable from punishment, which the Constitution
26 does not allow. The Ninth Circuit held in *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir.
27 2011), that prolonged detention under § 1231(a)(6) raises “serious constitutional
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1 concerns” and requires heightened procedural protections. Here, Petitioner has received
2 none. Further, *Zadvydas* makes clear that indefinite civil confinement, especially of
3 individuals with no realistic prospect of removal, violates due process. 533 U.S. at 690.

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5 32. Detention is also unlawful because ICE has failed to comply with its regulatory
6 obligation to consider parole for individuals with urgent humanitarian needs. Under 8
7 C.F.R. § 212.5(b)(1)–(2), ICE must favor release where continued detention is not in the
8 public interest or where an individual presents serious medical concerns. Petitioner’s age,
9 60, and medical conditions qualify as urgent humanitarian factors requiring explicit
10 consideration. ICE is required to make individualized parole determinations, yet it has
11 either failed to do so.
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14 **COUNT TWO**
15 **(PROCEDURAL DUE PROCESS)**

16 33. The allegations contained in paragraphs 1 through 32 above are repeated and realleged as
17 though fully set forth herein.

18 34. Under the Due Process Clause, a foreign national is entitled to be heard at a meaningful
19 time and in a meaningful manner before deprivation of liberty occurs. *Matthews v.*
20 *Eldridge*, 424 U.S. 319, 334 (1976). The process that is due depends on the private
21 interest affected by the official action, the risk of erroneous deprivation of that interest,
22 the value of additional or substitute procedural safeguards, and the government’s interest,
23 including fiscal and administrative burdens that additional or substitute procedural
24 requirements would impose. *Id.* at 335.
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26
27 35. In the case at bar, procedural due process requires a custody hearing before an
28 independent and impartial adjudicator, not simply by an ICE employee. *See Morrissey v.*

1 *Brewer*, 408 U.S. 471, 486-87 (1972); *Castro-Cortez v. INS*, 239 F.3d 1037 (9th Cir.
2 2001); *Cabrera-Rojas v. Reno*, 999 F. Supp. 493, 496-97 (S.D.N.Y. 1998); *Ekekhon v.*
3 *Aljets*, 979 F. Supp. 640 (N.D. Ill. 1997); *St. John v. McElroy*, 917 F. Supp. 243, 249-51
4 (S.D.N.Y. 1996).

5
6 36. ICE's actions constitute arbitrary and capricious agency conduct in violation of the APA,
7 5 U.S.C. § 706(2). Agencies must articulate a rational basis for detention decisions. See
8 *Judulang v. Holder*, 565 U.S. 42, 53 (2011). Continued detention of a stateless individual
9 who cannot be removed, without consideration of alternatives to detention or the
10 humanitarian parole regulation, is arbitrary, unsupported by evidence, and contrary to
11 law. Courts have invalidated immigration detention decisions where the agency "entirely
12 failed to consider an important aspect of the problem" or relied on factors Congress did
13 not intend. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
14 (1983). By refusing to evaluate Petitioner for parole, ignoring his statelessness, the
15 standing grant of Withholding of Removal to Armenia, and the pending appeal before the
16 BIA, ICE's conduct meets this standard for APA relief.

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19 37. The private interest affected by the continued detention after the CAT appeal is of the
20 highest importance, namely, a fundamental liberty interest in being free from physical
21 restraint.
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23 **IRREPARABLE INJURY**

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25 38. The Petitioner has been detained for more than 16 months. He is suffering and will
26 continue to suffer irreparable injury because of Respondents' actions. Every day that he is
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1 held in custody, considering his medical conditions and the legal disposition of his case,
2 amount to irreparable injury.
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4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 39. Petitioner has exhausted all remedies that are legally required or available to him, and
6 any further exhaustion would be futile, unavailable, or inadequate to remedy his ongoing
7 unlawful detention. Although 28 U.S.C. § 2241 does not contain an explicit statutory
8 exhaustion requirement, courts in the Ninth Circuit recognize a prudential exhaustion
9 doctrine that applies only when administrative review can meaningfully resolve the
10 petitioner’s claim or when Congress has designated a specific statutory exhaustion
11 pathway. See *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). Because
12 Petitioner challenges the legality of his continued detention—rather than the IJ’s CAT
13 decision, Petitioner’s appeal of that decision, or the merits of his underlying removal
14 order—there exists no administrative tribunal with jurisdiction to adjudicate the
15 lawfulness of his confinement. Immigration courts and the BIA lack authority to order his
16 release from post-order detention under § 1231(a), and thus any expectation of
17 administrative exhaustion would be improper.
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21 **EQUAL ACCESS TO JUSTICE ACT**

22 40. If he prevails, Petitioner will seek attorney’s fees and costs under the Equal Access to
23 Justice Act (“EAJA”), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
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PRAYER FOR RELIEF

PRAYER FOR RELIEF WHEREFORE, the Petitioner prays that this Honorable Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Grant Petitioner a writ of habeas corpus directing Respondents to immediately release Petitioner from custody while he awaits for his removal order to become final;
3. Grant attorney’s fees and costs of court to Petitioner under the Equal Access to Justice Act (“EAJA”); and
4. Grant such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted 16th day of January 2026.

By counsel,

/s/ Mher Cholakhyan
Mher Cholakhyan
CA State Bar: 322605

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EXHIBITS

Exh. A: Copy of Petitioner’s USSR Passport Biographical Page..... 1-4

Exh. B: Petitioner’s Notice to Appear dated September 18, 2024..... 5-8

Exh. C: 10/06/2005 Immigration Judge’s Removal Order.....9-10

Exh. D: Memorandum of Creation of Record of Lawful Permanent Residence11

Exh. E: 09/11/2025 Immigration Judge’s Order on Motion..... 12-15

Exh. F: BIA Appeal Receipt..... 16-18

Exh. G: Documents Relating to Petitioner’s Medical Condition..... 19-39