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DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of:	**Case Number:**
Aigul Kazybayeva	**3:26-cv-00421-GPC-MMP**
Petitioner,	**PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**
v.	
Warden of Otay Mesa Detention Cen	**Hearing for Oral Argument:** **Date: February 6, 2026** **Time: 1:30 p.m.**

STATEMENT OF FACTS

1. Petitioner entered the US on 07/09/2022 with her daughter [redacted], who is also detained, and two other children and were granted parole. Petitioner has been residing and working in the US since 07/09/2022. On 11/24/2025, Petitioner and her daughter [redacted] were detained while delivering a package to an Amazon customer located at the Marine Corps Base Camp Pendleton. ICE terminated Petitioner's parole without notice on the same day on 11/24/2025.
2. On or about December 21, 2022, Petitioner applied for form I-589 Application for Asylum and for Withholding of Removal as a Lead Respondent with her three children as Rider Respondents.
3. On March 29, 2023, Immigration Judge in Santa Ana, CA ordered dismissal of their case based on prosecutorial discretion.
4. Upon dismissal of Petitioner's asylum claim on March 29, 2023, Petitioner joined her husband's asylum claim pending with the USCIS on March 16, 2024, as a derivative applicant.
5. Since entering the U.S., Petitioner has complied with all conditions of her parole, appeared for ICE check-ins, received work authorization, issued a California driver's license and a U.S. Social Security Card, and applied for asylum, as a derivative applicant to her husband's asylum claim.
6. Petitioner is entitled to a bond hearing; Petitioner has a protected liberty interest in remaining out of custody. As Petitioner has a protected liberty interest, the Due Process Clause requires procedural protections before she can be deprived of that interest. Government's revocation of Petitioner's parole without notification, reasoning, or an opportunity to heard, denied Petitioner of her due process rights.

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7. The risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without providing a reason for revocation or giving her an opportunity to be heard. Since DHS's initial determination that Petitioner be paroled because she posed no danger to the community and was not a flight risk, there is no evidence that this have been changed. She has a fixed address where she'll live with her parents and siblings.
8. Petitioner's continued detention is arbitrary and unlawful, and she requests that this Court order her immediate release from ICE custody.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.
12. Federal District courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. Zadvydas, 533 U.S. at 687.
13. Federal courts also have federal question jurisdiction, through the Administrative Procedure Act ("APA"), to deem unlawful and to set aside agency action that is arbitrary, capricious, an abuse of discretion or otherwise inconsistent with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. §703, which provides that judicial review of agency action under the APA may be proceeded by any applicable form of legal action,

1 including but not limited to habeas corpus. The APA affords a right of review
2 to a person who is adversely affected or harmed by agency action.

3 **LEGAL FRAMEWORK**
4 **ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT**
5 **REVIEWING HER CUSTODY UNDER ICE POLICY VIOLATES THE ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**
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7 14. ICE's long-standing policy is to release non-citizens immediately following a
8 grant of asylum, relief absent exceptional circumstances.

9 15. Under the Accardi doctrine, which originated in the context of an immigration
10 case and has been developed through subsequent immigration caselaw, agencies
11 are bound to follow their own rules that affect the fundamental rights of
12 individuals, even self-imposed policies and processes that limit otherwise
13 discretionary decisions. See Accardi v. Shaughnessy, 347 U.S. at 226 (holding
14 that BIA must follow its own regulations in its exercise of discretion); Morton
15 v. Ruiz, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected,
16 it is incumbent upon agencies to follow their own procedures . . . even where
17 the internal procedures are possibly more rigorous than otherwise would be
18 required.").
19

16. The requirement that an agency follow its own policies is not "limited to rules
20 attaining the status of formal regulations." Montilla v. INS, 926 F.2d 162, 167
21 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination
22 of the provision's language, its context, and any available extrinsic evidence"
23 supports the conclusion that it is "mandatory rather than merely precatory." Doe
24 v. Hampton, 566 2d 265, 281 (D.C. Cir. 1977); see also Morton, 415 U.S. at
25 235-36 (applying Accardi to violation of internal agency manual); U S. v.
26 Heffner , 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS
27 instructions to Special Agents were not promulgated in something formally
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labeled a 'Regulation' . . .").

17. When agencies fail to adhere to their own policies as required by Accardi, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, see Damus v. Nielson, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [Accardi] claims may arise under the APA"), or as a due process violation, see Sameena, Inc. v. United States Air Force , 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

18. Prejudice is generally presumed when an agency violates its own policy. See Montilla, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before she is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); Heffner, 420 F.2d at 813 ("The Accardi doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

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

20. Here, Petitioner falls into this category where ICE has failed to act as required by their procedures and require intervention.

CLAIMS FOR RELIEF

GROUND ONE

VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS

Petitioner has the right to challenge the legality of her detention

21. The allegations in the above paragraphs are realleged and incorporated herein.
22. Petitioner has due process rights to challenge their detention. Zadvydas v. Davis, 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States' "geographic borders" lack constitutional protections, all "persons" within them are protected by the Due Process Clause, regardless of immigration status); Rodriguez Diaz v. Garland, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though constitutional rights of citizens and noncitizens "are not coextensive," noncitizens are entitled to due process, including to challenge detention pending proceedings).
23. As the Ninth Circuit held, the Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. Wong v. United States, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by Wilkie v. Robbins, 551 U.S. 537 (2007); see also Padilla v. U.S. Immigr. & Customs Enf't, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023). The Due Process Clause allows Petitioner to challenge her detention.
24. Petitioner challenges her deprivation of liberty and detention, not the adequacy of the procedures the immigration laws afford her "with respect to admission. Petitioner solely challenging her ongoing detention, and she is not bringing a constitutional claim with respect to the procedures governing her legal admission into the United States.

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1 25. To the extent Respondent takes the extraordinary position that Petitioner has no
2 due process rights at all, that is unsupported by law and would have gruesome
3 practical consequences: "If excludable [noncitizens] were not protected by even
4 the substantive component of constitutional due process, … we do not see why
5 the United States government could not torture or summarily execute them. …
6 [W]e conclude that government treatment of excludable [noncitizens] must
7 implicate the Due Process Clause of the Fifth Amendment.". Rosales-Garcia v.
8 Holland, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also Jean v. Nelson,
9 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) ("[T]he principle that
10 unadmitted [noncitizens] have no constitutionally protected rights defies
11 rationality. Under this view, the Attorney General, for example, could invoke
12 legitimate immigration goals to justify a decision to stop feeding all detained
13 [noncitizens] …. Surely, we would not condone mass starvation."). Thus, there
14 is no question that Petitioner has the right to challenge the constitutionality of
15 her detention under the Due Process Clause of the Fifth Amendment of the
16 Constitution.
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18 26. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
19 a protected liberty interest in remaining out of custody *See, e.g.*, *Pinchi*, 2025
20 WL 2084921, at *4 ("[Petitioner's] release from ICE custody after her initial
21 apprehension reflected a determination by the government that she was neither
22 a flight risk or a danger to the community, and [Petitioner] has a strong interest
23 in remaining at liberty unless she no longer meets those criteria."); Noori, 2025
24 WL 2800149, at *10 ("Petitioner is not an "arriving" noncitizen but one that has
25 [been] present in our country over a year. This substantial amount of time
26 indicates he is afforded the Fifth Amendment's guaranteed due process before
27 removal."); Matute v. Wofford, No. 25-cv-1206-KES-SKO (HC), 2025 WL
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1 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty
2 interest in his release).
3 27. ICE has violated Petitioner's due process rights by denying her an
4 individualized custody review to which she is entitled under ICE policy.
5 28. As a remedy, this Court should conduct its own review of Petitioner's custody
6 or, at least, order ICE to review Petitioner's custody under the standard
7 articulated in ICE policy.
8 **GROUND TWO**
9 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. § 1231**
10 **(A)(6)**
11 **Mandatory detention is subject to constitutional limits**
12 29. The allegations in the above paragraphs are realleged and incorporated
13 herein.
14 30. "Freedom from imprisonment-from government custody, detention, or other
15 forms of physical restraint-lies at the heart of liberty [Due Process Clause]
16 protects." Zadvydas, 533 U.S. at 690.
17 31. Petitioner has an interest in remaining with her community, working and
18 continuing the process od seeking asylum. See Morrissey, 408 U.S. 471 at 482
19 ("Subject to the conditions of her parole, he can be gainfully employed and is
20 free to be with family and friends and to form the other enduring attachment of
21 normal life.")
22 32. The risk of an erroneous deprivation of such interest is high as Petitioner's parole
23 was revoked without providing her a reason for revocation or giving her an
24 opportunity being heard. Since DHS's initial determination that Petitioner
25 should be paroled because she posed no danger to the community and was not
26 at flight risk, there is no evidence that these findings have changes. See Saravia
27 v. Sessions, 280 F. Supp. 3d 1168, 1760 (N.D. Cal2017).
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33. Petitioner has no criminal record, has not been arrested or otherwise in criminal trouble, has work authorization, and is working towards asylum status as a derivative applicant to her husband's asylum claim. "Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." Saravia, 280 F. Supp. 2d at 1760. "Rather, the federal agents must be able to present evidence of materially changed circumstances-namely, evidence that the noncitizen is in fact dangerous or has become a flight risk.." *Id.*

34. Government's interest in detaining Petitioner without notice, reasoning, and a hearing is "low." *See Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). Respondents fail to point to any burdens on the government if it were to have provided proper notice, reasoning, and a pre-deprivation hearing.

35. Therefore, because Respondents detained Petitioner by revoking her parole in violation of the Due Process Clause, her detention is unlawful. *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of her preexisting parole on due process grounds).1

36. Petitioner's parole without notification, reasoning, or an opportunity to be heard, denied Petitioner of her due process rights. Therefore, her continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately released.

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37. Furthermore, Petitioner is challenging her detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that she is being detained pursuant to section 1225(b), Petitioner's detention is unequivocally subject to Constitutional limits. The Supreme Court has not precluded noncitizens from bringing as-applied constitutional challenges to their mandatory detention. Respondent correctly states: Jennings v. Rodriguez, 583 U.S. 281 (2018) "did not explicitly address constitutionality arguments." U.S. Likewise, While in Demore v. Kim, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention under § 1226(c), the Supreme Court has explicitly recognized the availability of judicial review over as-applied challenges to detention, including mandatory detention. See, e.g., Nielsen v. Preap, 586 U.S. 392, 420 (2019); Demore v. Kim, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly found constitutional limits to apply to immigration detention, irrespective of the underlying detention authority. See, e.g., Karakhanyan v. Warden of Otay Mesa Detention Center-3:25-cv-03454-JO-MMP; Romik Parunakyan v. Warden of Otay Mesa Detention Center 25-cv-3739-LL-MSB; L.S. v. Warden of Otay Mesa Detention Center; M.F. v. Warden of Otay Mesa Detention Center 3:25-cv-3599-CAB-MSB, Vikas Kumar v. Christopher Larose, Warden, Otay Mesa Detention Center et al., 25-CV-3796 JLS (DDL).

38. This Court should so hold as well.

GROUND THREE

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT

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

39. The allegations in the above paragraphs are realleged and incorporated herein.

Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

40. The Mathews test is the appropriate test for this Court to use to evaluate the constitutionality of Petitioner's detention. Mathews v. Eldridge, 424 U.S. 319 (1976). The Mathews test is routinely applied by district courts across the Ninth Circuit, including this Court, to determine whether due process requires neutral review of a noncitizen's custody. Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a "flexible test" broad enough to account for government interests when evaluating due process claims in the immigration detention context); see, e.g., Abduraimov, 2025 WL 2912307 and Maksim, 2025 WL 2879328.

41. The Mathews test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. 424 U.S. at 335. Each Mathews factor weighs in Petitioner's favor. Petitioner has been residing and working in the US since 07/09/2022 and were granted parole upon arrival. Since entering the U.S., Petitioner has complied with all conditions of her parole, appeared for ICE check-ins, received work authorization, issued a California driver's license and a U.S. Social Security Card, and applied for asylum. On 11/24/2025, ICE terminated Petitioner's and her daughter [redacted] parole without notice.

42. Petitioner has a profound liberty interest. Petitioner has a weighty interest in her own liberty, the core privacy interest at stake here. Zadvydas, 533 U.S. at 690 ("Freedom from imprisonment...lies at the heart of the liberty [the Due Process

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Clause] protects."). Petitioner's 13 months of detention limits of the brief detention contemplated in Demore, 538 U.S. at 530-31. See also Lopez v. Garland, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) ("As detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.") (internal citation omitted).

43. The second prong of the Mathews test, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards, also weighs heavily in Petitioner's favor. 424 U.S. at 335. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." Diouf v. Napolitano (Diouf II), 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner "does not have a statutory right to a bond hearing or the right to seek additional bond hearings. . . the risk of erroneous deprivation as Petitioner's time in detention lengthens is not insignificant," and the probable value of additional procedural safeguards is exceedingly high. Eliazar G.C., No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *7 (E.D. Cal. Mar. 5, 2025); Tonoyan v. Andrews, 2025 WL 3013684 at *4 ("Given that Petitioner has been held without a bond hearing for almost a year, and it is not clear when detention will end, the risk of erroneous deprivation weighs in favor of granting a bond hearing.").

44. Here, Petitioner has no criminal record, has not been arrested or otherwise in criminal trouble, has work authorization, and is working towards asylum status as a derivative applicant to his husband's asylum claim

45. As such, Petitioner's release, or in the alternative, a bond hearing before a neutral decisionmaker is the only appropriate procedural safeguard to protect against the risk of erroneous deprivation because it provides both the noncitizen and the government with an opportunity to present witness testimony or evidence and

1 be heard before a neutral body. Anything less would not comport with due
2 process. In particular, "the discretionary parole system available to § 1225(b)
3 detainees is not sufficient to overcome the constitutional concerns raised by
4 mandatory detention because the parole process is purely discretionary and its
5 results are unreviewable by IJs and "release decisions are based on humanitarian
6 considerations and the public interest." Abduraimov, 2025 WL 2912307, at *6
7 (citing Rodriguez v. Robbins (Rodriguez II), 715 F.3d 1127, 1144 (9th Cir. 2013)
8 (internal quotations omitted). The parole process "is not a constitutionally
9 adequate substitute for a bond hearing particularly since it does not test the
10 necessity of detention, does not afford the noncitizen an in-person adversarial
11 hearing before a neutral decisionmaker where she or she may present witness
12 testimony or evidence, does not require the ICE detention officer [to] make any
13 factual findings or provide their reasoning, and there is no apparent right to an
14 administrative appeal." Abduraimov, 2025 WL 2912307, at *6 (citing Padilla v.
15 U.S. Immigr. & Customs Enf't, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023).
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17 46. Any internal review of Petitioner's detention or request for discretionary parole
18 by DHS cannot satisfy the requirements for due process because DHS is the very
19 authority that is detaining her. Where a custody review is conducted by the very
20 same agency that is detaining the individual, that agency reviewing its own
21 actions cannot be held to a neutral standard. As such, Petitioner must be afforded
22 a hearing before a neutral arbiter in order for her ongoing, detention to comply
23 with due process.
24 47. Petitioner faces prolonged detention for an indefinite period of time pending the
25 final adjudication of her asylum claim, her pending appeal with the Board of
26 Immigration Appeal, and possible appeal in the 9th Circuit Court depending on
27 BIA decision. This Court has recognized that "it is difficult to ascertain an
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endpoint to removal proceedings, but it is clear proceedings could take a substantial amount of time," and "[i]t is unknown when the IJ will decide the application for relief." Idiev v. Warden, et al., No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at *5 (E.D. Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party "has other avenues available for relief including an appeal to the BIA and a petition for review to the Ninth Circuit Court of Appeals." Id. See, e.g., Abduraimov, 2025 WL 2912307 (where the government appealed the IJ's grant of asylum and the BIA remanded back to the IJ); A.E., 2025 WL 1424382 (where the government appealed the IJ's grant of asylum, the IJ denied all relief on remand, and the noncitizen appealed to the BIA).

48. Because "it is not clear when detention will end, the risk of erroneous deprivation weights in favor of granting a bond hearing." A.E., 2025 WL 1424382, at *5; Doe v. Andrews, No. 1:25- CV-00506-SAB-HC, 2025 WL 2590392, *7 (E.D. Cal. Sept. 8, 2025) (noting that "[a]lthough future events are difficult to predict, the [c]ourt nevertheless finds that...possible remand to the immigration court for further factfinding or possible judicial review by the Ninth Circuit will be sufficiently lengthy such that [the delay] factor weighs in favor of Petitioner"), report and recommendation adopted, No. 1:25-CV-00506-KES-SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); Abduraimov, 2025 WL 2912307, *8 ("appeal to BIA and potential Ninth Circuit review 'may take up to two years or longer' and 'favors granting petitioner a bond hearing') (citing Banda v. McAleenan, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The risk of erroneous deprivation of Petitioner's liberty interest and the probably value of a bond hearing is exceptionally high. Therefore, the second Mathews factor also weighs in favor of granting Petitioner immediate release, or in the alternative a bond hearing.

49. The third Mathews factor also supports Petitioner: the government interest is weak here because the interest at stake "is the ability to detain Petitioner without providing her a bond hearing, not whether the government may continue to detain her" at all. Lopez-Reyes v. Bonnar, 362 F. Supp. 3d 762, 777 (N.D. Cal. Jan. 29, 2019) (emphasis in original). As the government has conceded in similar cases, the cost of providing such a bond hearing is minimal. Id.; Singh v. Barr, Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 ("The government has not offered any indication that a second bond hearing would have outside effects on its coffers."); Marroquin Ambriz v. Barr, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did not contest "that the cost of conducting a bond hearing, to determine whether the continued detention of Petitioner is justified, is minimal"). Holding a hearing at which Respondents must justify Petitioner's continued detention thus actually "promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." See Velasco-Lopez v. Decker, 978 F.3d 842, 854 (2d Cir. 2020) (emphasis added); id. at n.11; Hernandez-Lara v. Lyons, 10 F.4th 19, 33 (1st Cir. 2021) ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.").
50. In sum, there is no question that all three Mathews factors favor Petitioner. Contrary to Respondent's claim, Petitioner's detention does not pass constitutional muster and requires that this Court immediately order her a bond hearing.
51. At a bond hearing, the government must bear the burden of justifying Petitioner's ongoing detention. Where a custody hearing is warranted as a

1 procedural safeguard against unreasonable detention, it is well established that
2 the government bears the burden of justifying continued confinement by clear
3 and convincing evidence. Singh v. Holder, 638 F.3d 1196, 1204 (9th Cir. 2011)
4 ("[D]ue process places a heightened burden of proof on the State in civil
5 proceedings in which the individual interests at stake...are both particularly
6 important and more substantial than mere loss of money."). See e.g. Lopez, 631
7 F. Supp. 3d 870, n.3 (specifically noting that that Singh provided guidance as to
8 the procedural requirements for bond hearings and that the government must
9 prove by clear and convincing evidence that a noncitizen is a flight risk. or
10 danger to the community to justify denying bond) (internal quotations omitted);
11 Eliazar G.C., 2025 WL 711190, *10 (E.D. Cal. Mar. 5, 2025) (stating that the
12 Court will follow the "overwhelming majority of courts" to hold that the
13 government must justify continued mandatory detention by clear and convincing
14 evidence that the noncitizen is a flight risk or a danger to the community);
15 Maksim, 2025 WL 2879328, * 6 (same); Abduraimov, 2025 WL 2912307, *11
16 (same); Idiev, 2025 WL 3089349, *7 (same); Tonoyan, 2025 WL 3013684, *5
17 (same).
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19 52. The Ninth Circuit in Singh stressed that "it is improper to ask the individual to
20 share equally with society the risk of error when the possible injury to the
21 individual—deprivation of liberty— is so significant[.]" See Singh, 638 F. 3d at
22 1205; Black, 103 F.4th at 157-58 (observing that where "an individual's liberty
23 is at stake, the Supreme Court has consistently used [clear and convincing]
24 evidentiary standard for continued detention") (internal citations omitted); id. at
25 159 (reiterating that the government bears the burden of meeting this standard
26 even where an individual is detained pursuant to mandatory detention). This
27 Court should, too, apply the heavy burden on the government to justify
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1 Petitioner's continued civil detention without a bond hearing.

2 53. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
3 to detention and Petitioner's financial circumstances in determining whether
4 further detention is warranted and the conditions of her release. See, e.g.,
5 Hernandez, 872 F.3d at 994 ("If the government is setting monetary bonds to
6 ensure appearance at future proceedings, there is no legitimate reason for it not
7 to consider the individual's financial circumstances and alternative conditions
8 of release.").

9 54. Thus, due process and Ninth Circuit precedent require that the government bear
10 the burden of justifying Petitioner's ongoing and detention by clear and
11 convincing evidence.

12

13 **CONCLUSION**

14 55.For the foregoing reasons, this Court should issue a Writ of Habeas Corpus
15 ordering Petitioner's release within 14 days, or in the alternative, to order the
16 Government schedule a hearing before a neutral adjudicator at which they must
17 establish by clear and convincing evidence that Petitioner presents a risk of
18 flight or danger, even after considering alternatives to detention that could
19 mitigate any risk that she presents, to justify her continued confinement. If the
20 government cannot meet its burden, the adjudicator must order Petitioner's
21 release on appropriate conditions of supervision, taking into account
22 Petitioner's ability to pay a bond.
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24 DATED: January 30, 2026 Respectfully submitted

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27 Naira Zohrabyan
Attorney for Petitioner

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CERTIFICATE OF SERVICE

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

DATED: January 30, 2026

Respectfully submitted

Naira Zohrabyan
Attorney for Petitioner
Zohrabyan Law, APC