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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

SVETLANA ORZHEVSKAIA Petitioner, v. KRISTI NOEM, Secretary, Department of Homeland Security; PAMELA BONDI, Attorney General; GREGORY J. ARCHAMBEAULT, Field Office Director for Immigration and Customs Enforcement, San Diego Field Office, Enforcement and Removal Operations; DAVID R. RIVAS, Warden, San Luis Regional Detention Center, Respondents.	No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Petitioner is a 65-year-old foreign national seeking refugee status in the United States (diagnosed with varying pain from "bilateral genu varum deformity of the knees" aggravated by a series of bodily infirmities).[1] She has been in the civil custody of the U.S. Immigration and Customs Enforcement ("ICE") for more than 17 months (521 days as of today) since she was first taken into custody on September 26, 2024 at the Calexico port of entry ("POE"). She is now detained at the San Luis Regional Detention Center ("SLRDC") in Arizona. To enable the reader in understanding the procedural due process violations raised in this petition, Petitioner will briefly describe the initial promises made by the United States Department of Homeland Security ("DHS") to the general public before DHS allowed her to gain entry into the United States and the subsequent numerous breaches of the federal agency regarding those promises.

A. CBP One Progam

2. In 2020, the Customs and Border Protection ("CBP") a subcomponent agency of the DHS first launched a digital application as a general-purpose interface to CBP services. It later became the principal mechanism for asylum seekers to obtain ports-of-entry appointments at the southwest border beginning in January 2023. Asylum seekers had to log in during a specific daily window, submit their biographic data and

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[1] Among the registered complaints to the detention facility's medical staff include but are not limited to the following: (a) Pelvic organ prolapse, gynecological bleeding, pelvic pain, requests for gynecologist and/or hospitalization; (b) Chronically elevated blood pressure and inadequate blood pressure management; (c) Chronic knee joint pain and repeated requests for pain control (Ibuprofen/stronger analgesia); (d) Lumbar disc disease / lower back hernia with severe pain and functional limitation; (e) Peripheral edema and urinary problems associated with prolapse and/or cardiovascular issues; (f) Scalp psoriasis; (g) Adverse reactions to prescribed medications and untreated acute issues (Premarin cream, burn from boiling water while in custody, respiratory infections). *See*, Medical Records attached to the Petition as Exhibits.

photos, and compete for a fixed number of appointment slots allocated by algorithm.

B. Purpose of CBP One.

3. CBP One is best characterized in practice as a procedural and technological implementation of DHS's "inspection" and "parole" powers under INA §§ 212 and 235 which proved to be encouragingly more manageable than pursuing arresting unlawful entrants in open space across the southern border. More specifically, CBP One serves multiple functions, including: (1) Scheduling POE appointments for those seeking inspection and potential asylum processing at the southwest border; (2) Facilitating parole processing for certain nationalities (e.g., CHNV processes) by collecting advance information; and (3) Providing access to I-94 records and POE wait times, and supporting other pre-arrival processing functions. The CBP One program transformed asylum processing at POE by making a smartphone appointment system the default—and often practically required—gateway to present for inspection and seek protection at the southern border in an orderly manner.

C. Circumvention of Lawful Pathways Rule.

4. Realizing the benefits of an orderly management of applicants at the southern border DHS and CBP thereafter also promulgated the "Circumvention of Lawful Pathways" rule (effective May 11, 2023) to further induce applicants to use the CBP One program. The Circumvention of Lawful Pathways rule created a rebuttable presumption of asylum ineligibility for most noncitizens who, after traveling through another country, crossed the southwest land unlawfully or presented themselves at a POE without first using designated the "lawful pathways." A person was generally able to avoid the presumption if he or she (1) entered through an existing lawful process (such as a visa or DHS-approved parole), (2) appeared at a POE at a pre-scheduled time using the CBP One app or show they could not reasonably access it, or (3) apply for and are denied asylum in a transit country. Otherwise, non-compliant persons were barred from asylum or parole consideration but may still seek withholding of removal or CAT protection under higher standards.

D. CBP One Offered Incentives

5. The CBP One program mainly "incentivized" use of the app by making it the chosen route to preserve asylum eligibility and to access the parole processes which were otherwise denied in anticipation to those who did not want to wait for the orderly process implemented by the CBP One program. Using the CBP One app to schedule a POE inspection was explicitly listed in the regulation as a way to avoid being treated as if one had "circumvented lawful pathways," thereby materially improving the person's legal position compared to entering between ports unlawfully.

6. Individuals who successfully obtained CBP One appointments were generally inspected at POE, often processed more predictably, and—during the Biden era—frequently were paroled into the United States with NTAs instead of being summarily expelled or rapidly placed into expedited removal at the border. DHS repeatedly framed the CBP One program and the CHNV-style parole processes as "safe, orderly, and lawful" channels and emphasized that those who used them could avoid the heightened legal consequences and multi-year reentry bars associated with unlawful entry between ports and loss of consideration for parole from mandatory custody. Generally CBP One was integrated into the "humanitarian parole" process of INA § 212(d)(5) that offered up to two years of parole, work authorization, and the ability to fly directly to U.S. airports instead of undertaking irregular land crossings particularly for CHNV applicants.

7. Furthermore, public DHS messaging highlighted that those who did not use these lawful pathways could be returned to Mexico or their home countries and lose eligibility for such parole options in the future. DHS and State Department materials stressed that entering unlawfully between ports, especially after having an available lawful pathway like CBP One or CHNV, could trigger at least a five-year bar on reentry and other penalties, contrasting that with the prospect of lawful processing for those who used the app.

8. In short, the "incentives" were chiefly legal and procedural: (i) preserved

asylum eligibility, (ii) access to parole and air travel, (iii) more predictable processing at ports, and (iv) avoidance of bars and enforcement consequences that attached to unlawful entry. While in Mexico and prior to approaching the Calexico POE, Petitioner registered herself under the CBP One program and together with her adult son were confirmed as so registered on June 30, 2024.[2] **Exhibit A 1** (CBP One Registration Confirmation). DHS however did not extend Petitioner with the promised treatment that was offered through the CBP One program. She was taken into CBP and ICE custody at the outset, despite her carrying with her extensive medical records from Mexico depicting her exacerbated bilateral knee pain, which limited her functional ability to perform daily activities of normal living. *See* **Exhibits B.** Furthermore, she was taken into custody and refused to be released from custody even though the Citizenship and Immigration Services ("CIS") (another subcomponent of the DHS) informed her on October 8, 2024 that she had been "recently paroled" thereby offering her that she may obtain employment authorization benefits while her asylum processing awaited. **Exhibit A 2.**

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241(a), which provides that district courts may grant writs of habeas corpus to persons in federal custody in violation of the Constitution or laws of the United States.

10. Venue is proper in this District because Petitioner is in actual custody at the SLRDC, located in Yuma County, Arizona, within the jurisdiction of the District of Arizona, and the Warden of San Luis is a respondent in this action.

11. Petitioner satisfies all requirements for filing this Petition and has exhausted or is not required to exhaust administrative remedies insofar as ICE in

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[2] Although Petitioner traveled together with her adult son and registered together for the CBP One program (*see*, CBP One Registration Confirmation, marked as **Exhibit A**) their cases were severed by an immigration judge and were thereafter prosecuted separately.

concert with the Federal Respondents has deprived her from benefiting from the bargained exchange of abiding by CBP One program; denied her of the right to adequate medical attention while being forced to suffer bodily pains without relief (*i.e.,* "torture"); and denied her of her grant of humanitarian parole as evidenced by CIS notification that she had been granted that benefit, and where there exists no administrative remedy available to compel her release while an appeal is pending. *See* **Exhibit A 2.**

III. PARTIES AND STANDING

12. Petitioner is a Russian foreign national in the custody of the named respondents (collectively referred to as the "Federal Respondents") housed at the SLRDC at Yuma, Arizona. She is in federal custody as defined by 28 U.S.C. § 2241 since her initial CBP One entry date of September 26, 2024 and has standing to challenge the legality of her prolonged detention.

13. Respondent Kristi Noem is the Secretary of the DHS, with overall responsibility for ICE and immigration detention. She is being sued in her official capacity.

14. Respondent Pamela J. Bondi is the Attorney General ("AG") of the United States. She is being sued in her official capacity and is responsible for the detention policies and decisions challenged herein and is a proper respondent.

15. Respondent Gregory Archambeault is the Field Office Director of ICE San Diego Field Office, which has jurisdiction over ICE detention facilities in Arizona, including San Luis. He is being sued in his official capacity and is responsible for Petitioner's continued detention and is a proper respondent.

16. Respondent David R. Rivas is the Warden of San Luis Regional Detention and Support Center, located at 406 N Avenue D, San Luis, Arizona. He is being sued in his official capacity and is Petitioner's immediate legal custodian and a proper respondent in this habeas corpus action.

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IV. STATEMENT OF FACTS

A. PETITIONER'S ENTRY, INITIATION OF REMOVAL PROCEEDINGS AND CURRENT STATUS THEREOF

17. On or about June 30, 2026, Petitioner and her adult son applied for an received confirmation of registering under the CBP One program. **Exhibit A.**

18. On September 26, 2024, the Federal Respondents informed Petitioner to come to the Calexico POE by scheduling her through the CBP One app.

19. Once at the Calexico POE, Petitioner was taken into federal custody and processed for regular removal proceedings. At that time, DHS issued and personally served Petitioner with a "Notice to Appear," Form I-862, marked **Exhibit C**, charging her as inadmissible and removable under INA § 212(a)(7)(A)(i)(I) (as present in the United States without proper entry documents).

20. On September 27, 2024, DHS then filed the charging document before the immigration court thereby commencing removal proceedings under 8 U.S.C. § 1229a.

21. On November 21, 2024 Petitioner timely filed her applications for asylum, withholding of removal, and protection under the Convention Against Torture and retained private counsel to represent her in the removal proceedings.

22. Eleven months later, the immigration judge held a hearing on the applications for relief, determined that Petitioner failed to sustain her burden of proof and denied her applications for relief. Petitioner timely appeal the order of the immigration judge to the Board of Immigration Appeals. The appeal is pending.

B. LEGAL STANDARD FOR § 2241 HABEAS RELIEF

23. Under 28 U.S.C. § 2241(c)(1), a district court may grant a writ of habeas corpus to any person in custody in violation of the Constitution or laws or treaties of the United States.

24. In federal habeas proceedings, the petitioner bears the burden of proving his case by a preponderance of the evidence. *Lambert v. Blodgett*, 393 F.3d 943, 970

n.16 (9th Cir. 2004).

25. A petition for habeas relief must demonstrate that the petitioner is "in custody" and that such custody is in violation of federal law or the Constitution. Magana-Pizano v. I.N.S., 200 F.3d 603, 609 (9th Cir. 1999).

26. Petitioner satisfies both elements: she is in actual physical custody at San Luis, and his detention is unlawful as it violates the Fifth Amendment and exceeds statutory authority, as detailed below.

C. DHS IS INFLICTING PHYSICAL TORTURE ON PETITIONER BY REFUSING TO RELEASE HER DESPITE UNCONTROVERTED DIAGNOSIS REVEALING EXACERBATING KNEE PAIN AND NUMEROUS OTHER INFIRMITIES.

27. Much before she was taken into ICE custody, Petitioner had been suffering knee pain for several years resulting from a deformative knee joint condition that has been worsening without relief. A medical record dated May 12, 2023, reflects that Petitioner was examined at the Scandinavian Health Center in Moscow complaining of severe pain and limited range motion in the knee joint. An MRI was performed and reveled she had a tear of the posterior horn of the medial meniscus, degenerative changes in the right knee joint, and revealed also a partial damage to the main hip joint, in addition to other described medical complications. *See* **Exhibit B 1.**

28. A more recent medical report by another medical professional in Mexico dated December of 2023 reveals a similar diagnosis of bilateral knee pain from knee deformities with daily functional limitations. Among other things, the medical report recommends that the patient avoid prolonged walking, limit her use of stairs, and avoid exposure to cold rooms due to the risk of exacerbating pain and formation of venous thrombi and inflammatory respiratory processes. *See* **Exhibit B 2.**

29. Petitioner has also been treated while at the SLRDC with numerous other deteriorating medical conditions, some of which were highlighted earlier in this petition and which are summarized in the accompanying, "Chronological Extract Of

Medical Complaints To The San Luis Regional Detention Center's Medical Staff By Petitioner Since Her Detention." *See* **Exhibit B 3.**

30. Petitioner is constantly suffering of knee pain and regularly exposed to cold rooms at the SLRDC in Yuma, particularly at night-time where she is forced to laying-down to sleep in very hard surfaces with limited blankets or means to avoid exacerbating further knee pain. The only medicine that has been made available by the SLRDC medical staff for her pain has been providing her with ineffective generic ibuprofen pills for alleviating the varying degrees of pain suffering.[3]

31. Petitioner is a 65-year-old woman with multiple chronic and acute medical conditions, including longstanding hypertension, severe pelvic organ prolapse with abnormal gynecological bleeding and pelvic pain, osteoarthritis of the knees and spine, and anxiety disorder. Since at least September 26, 2024, DHS and its medical contractors have had actual notice of these conditions through CBP medical intake records, chronic-care documentation, and Petitioner's repeated written and oral complaints.

32. Despite that notice, ICE and its medical staff have responded to Petitioner's escalating symptoms with a pattern of delay, minimization, and non-treatment that mirrors previously documented fatal medical neglect in ICE

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[3] *See*, "Government's own experts found 'barbaric' and 'negligent' conditions in ICE detention" at https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions; *see also* "Senate report details dozens of cases of medical neglect in federal immigration detention centers" published by the Public Broadcasting System ("PBS") at https://www.pbs.org/newshour/politics/senate-report-details-dozens-of-cases-of-medical-neglect-in-federal-immigration-detention-centers; *see also* "95 Percent of Deaths in ICE Detention Could Likely Have Been Prevented With Adequate Medical Care: Report" published at https://www.aclu.org/press-releases/95-percent-of-deaths-in-ice-detention-could-likely-have-been-prevented-with-adequate-medical-care-report.

custody, including at the SLRDC in San Luis, Arizona. Human Rights Watch has chronicled the death of ICE detainee Dmitry Zyazin, who passed through San Luis, as an example of "dangerously substandard medical care": while reporting a history of heart disease and active chest-pain symptoms consistent with myocardial infarction, he was not sent to an emergency room, but instead transferred; a San Luis nurse administered nitroglycerin without a physician's order and declared him "stable for transfer," conduct independent experts have condemned as a "major breach" of nursing standards and "severely deficient" care that likely contributed to his death. (*See*, published at https://voiceofsandiego.org/2019/08/19/lawsuit-alleges-poor-medical-care-at-ice-facilities/).

33. Petitioner's medical treatment in ICE custody reflects the same systemic disregard for obvious medical risk. She has repeatedly reported severe pelvic organ prolapse and related gynecological symptoms—including organ descent, abnormal bleeding and discharge, pelvic pain, and difficulty ambulating—and has explicitly requested referral to a gynecologist, hospitalization, and corrective surgery. She lodged such complaints on at least October 15, 2024, November 11, 2024, February 23, 2025, June 6, 2025, and June 20, 2025, (see **Exhibit B 3**) yet the facility's responses uniformly "closed" her grievances as "Unfounded," merely noting that she had seen or would see a "medical provider," without arranging specialist evaluation, imaging, or definitive treatment. At no point in the grievance record is there documentation of a gynecological consultation, surgical evaluation, or a medically adequate plan to prevent worsening prolapse, hemorrhage, or infection.

34. Petitioner has similarly submitted multiple complaints regarding uncontrolled hypertension, recurrent headaches, dizziness, and medication-management lapses, again over a span of months. These complaints are particularly alarming given the well-known cardiovascular risks for a woman of Petitioner's age and history, including stroke and myocardial infarction—the same category of risk that ICE medical staff catastrophically failed to address in the Zyazin

case at San Luis, where chest-pain complaints were mishandled and transfer was prioritized over emergency care (*see* **Exhibit B 3**). Yet facility staff have largely responded to Petitioner's hypertension grievances by instructing her to submit new sick-call slips or by noting existing appointments, without meaningful documentation of diagnostic work-up (such as serial blood-pressure logs, EKGs, or laboratory assessments) or adjustment of her medical regimen to address uncontrolled readings.

35. Petitioner's musculoskeletal and pain-related complaints—chronic knee pain from osteoarthritis, back pain from spinal disease, and episodes of acute pain following minor injuries—have been treated in the same cursory fashion. Over at least eight separate requests for pain relief, the facility's pattern has been to reiterate that she may purchase over-the-counter ibuprofen or attend sick call, without providing consistent prescription-strength analgesia, physical-therapy evaluation, or assistive devices adequate to her age and disability. This approach has left Petitioner in a cycle of unmanaged pain that exacerbates her mobility limitations and the underlying pelvic and spine pathology already known to ICE.

36. In the aggregate, the medical record and grievance history show not isolated negligence but a consistent practice of disregarding serious, repeatedly documented medical needs: severe prolapse and gynecologic bleeding, uncontrolled hypertension, and debilitating chronic pain. This pattern is consistent with findings by independent experts who have concluded that ICE's medical system has, in multiple facilities, subjected detainees to preventable harm and death through delayed diagnoses, inadequate treatment, and failure to escalate clear medical emergencies—precisely the constellation of failures that contributed to the fatal outcome in Zyazin's case at San Luis. As applied to Petitioner, ICE's ongoing refusal to provide timely specialist care, effective hypertension management, and adequate pain and mobility support amounts to deliberate indifference to her serious medical needs in violation of the Fifth Amendment.

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D. DHS IS INFLICTING MENTAL TORTURE ON PETITIONER BY REFUSING TO RELEASE HER DESPITE UNCONTROVERTED GRANT OF HUMANITARIAN PAROLE UNDER INA § 212(d)(5) IN VIOLATION OF THE DUE PROCESS CLAUSE.

37. As noted earlier, on October 8, 2024 and in accordance to the regular process established and published by (DHS and CBP) CIS emailed Petitioner an email notification that she had been paroled. The notice stated in pertinent part— You are receiving this message because you were recently **paroled** into the United States. As a noncitizen **paroled** into the United States under section 212(d)(5)(A) of the Immigration and Nationality Act, you are eligible to apply for employment authorization and an Employment Authorization Document (EAD). To apply, you must file Form I-765, Application for Employment Authorization, with USCIS. If your application is approved, we will issue an EAD that you can use to show your employer that you are authorized to be employed in the United States" (bold emphasis added) *see* **Exhibit A 2.**[4]

38. Having received formal confirmation notice that she was granted parole, ICE's continued detention of Petitioner amounts to a willful and deliberate deprivation of her right to be at liberty after being granted parole status under INA § 212(d)(5) as promised by DHS under the CBP One program in violation of her due process rights under the Supreme Court's opinion in Zadvydas v. Davis, 533 U.S. 678 (2001).

V. LEGAL FRAMEWORK

A. Due Process Governs Decisions Depriving a Person's Liberty.

39. The Fifth Amendment states—"No *person* shall be . . . be deprived of life, liberty, or property, without due process of law." U.S. Cont. amend. V. (Italic

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[4] The CIS email notice is addressed to Petitioner's son Igor Orzhevskii and although both of them received the same email notice of having been paroled Petitioner's email was either lost or misplaced. Petitioner then filed a FOIA request to obtain a duplicate but the DHS released only less than 90 pages of a total of 380 of her own immigration file.

emphasis added). The text of the Fifth Amendment applies to all persons—it makes no distinction based on citizenship status or otherwise. Mathews v. Diaz, 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."); Wong Wing v. United States, 163 U.S. 228, 238 (1896) ("[A]ll persons within the territory of the United States are entitled to the protection guarant[e]ed by [the Fifth Amendment], and . . . even aliens shall not be . . . deprived of life, liberty, or property without due process of law."). "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

40. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized the following two legitimate objectives of immigration detention: (1) preventing danger to the community or (2) preventing flight prior to removal. *See* Zadvydas v. Davis, 533 U.S. at 678, 690-92 (discussing constitutional limitations on civil detention).

41. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to deprive a non-citizen from the fundamental right to be free from unlawful detention. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

42. Due process claims are analyzed "in two steps," the first of which asks whether there exists a protected liberty interest under the Due Process Clause, and the

second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989).

43. Petitioner acknowledges that even considering the general rule that due process applies to all *persons*, the Supreme Court has recognized a narrowly tailored "entry fiction" exception to accommodate the political branches to exclude applicants from admission to the United States. DHS v. Thuraissigiam, 591 U.S. 103, 108 (2020); see also Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953) who was also denied "entry" to the United States (as that term was previously defined).

44. In Thuraissigiam the Court rejected an arriving noncitizen's claim for review of the agency's removal decision, which was based on an asylum officer's finding that he lacked a credible fear of persecution. In that context, the Court stated that "an alien in respondent's position has only those rights *regarding admission* that Congress has provided by statute." 591 U.S. at 140.

45. Petitioner stands in a different legal position than Thuraissigiam and *Mezei* whom were definitively denied their applications for admission into the United States. Petitioner unlike Thuraissigiam and Mezei applied for CBP One entry benefits as offered by DHS/CBP and thereafter was paroled for humanitarian reasons and continues to pursue immigration relief in the form of asylum and other related relief.

46. When Petitioner was granted humanitarian parole on October 8, 2024, her status turned automatically into an applicant for asylum that was no longer standing outside of the United States under the entry fiction doctrine of the past, which places her in a different legal stance than the applicants in *Thuraissigiam* and *Mezei.* Petitioner's due process claim in this petition does not concern his application for "admission" at all, only the legality of her prolonged detention of 17 months, after being granted parole status.

47. Petitioner is not seeking any statutory or due process rights regarding "admission" to the United States as Thuraissigiam and others like Mezei did. Thus,

the concern that animated the entry fiction exception in the case of Thuraissigiam and *Mezei*—namely that the political branches' authority to legally admit or exclude noncitizens at the border—does not apply here. Thuraissigiam, 591 U.S. at 139–40.

48. Although Respondents will likely argue that on January 20, 2025, the Trump administration ended CBP One's use for asylum appointments and canceled pending slots, as well as ordered mass terminations of CBP Oone-related parole-statuses starting in April of 2025 via email notices, the Trump administration's order has been challenged as unlawful as mass terminations violate the INA § 212(d)(5) requiring a case-by-case review in compliance with APA standards. As such, this Court should promptly and properly differentiate and dismiss those concerns from their applicability here.

B. Petitioner Possesses a Protected Liberty Interest.

49. Even as an "arriving alien" or "applicant for admission" Petitioner possesses a significant liberty interest in freedom from prolonged civil confinement. The Supreme Court has recognized that "the Due Process Clause protects an alien subject to a final order of deportation" and that detention is a "severe restraint on individual liberty." Zadvydas, 533 U.S. at 690–91.

50. Petitioner has been detained continuously for a period in excess of 17 months, well beyond the several-month timeframe that *Demore* described when upholding 8 U.S.C. § 1226(c) detention of LPRs, and in the range where multiple district courts have found due process violations for § 1225(b) detainees.

FIRST CLAIM FOR RELIEF

Continued Detention of Petitioner Bears no Longer a Reasonable Connection to its Intended Purpose in Violation of Supreme Court Holdings

51. Petitioner incorporates by reference each of the allegations of fact set forth in the preceding paragraphs.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does no

longer apply to Petitioner who after being placed in full removal proceedings under 8 U.S.C. § 1229a was granted parole and no longer may be considered as an applicant for "admission" as a result. This is so particularly after the statutory purpose of 8 U.S.C. § 1225(b)(2) has been exhausted and her continued detention no longer bears a reasonable relation to its purpose and by now has become arbitrary. Demore v. Kim, 538 U.S. 510, 527 (2003). Having paroled and placed Petitioner under regular removal proceedings under INA § 240, DHS bares the burden to affirmatively show an ongoing INA § 235(b) designation, which absent such proof, the default is detention under INA § 236(a).

SECOND CLAIM FOR RELIEF

Continued Detention of Petitioner

Violates the 5 U.S.C. § 706(2)(A)-(C)

53. Petitioner incorporates by reference each of the allegations of fact set forth in the preceding paragraphs.

54. Under the Administrative Procedures Act, a court must "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 3 U.S.C. § 706(2)(A)-(C).

55. The Federal Respondents' continued detention of Petitioner pursuant to 8 U.S.C. § 1225(b)(2), or for that matter pursuant to any other applicable provision is arbitrary and capricious, violates the INA and the Fifth Amendment, is no longer authorized under 8 U.S.C. § 1225(b)(2) and therefore is in violation of 5 U.S.C. § 706(2).

THIRD CLAIM FOR RELIEF

Petitioner's Continued Detention

Violates the Due Process Clause of the V Amendment.

56. Petitioner incorporates by reference each of the allegations of fact set

forth in the preceding paragraphs.

57. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Fredoom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

58. Petitioner has a fundamental interest in liberty and being free from official restraint.

59. The Federal Respondents' continued detention of Petitioner by now particularly so when they "hold the keys to the jail" by their choice of ignoring to honor the grant of parole under the authority of INA § 212(d)(5) and creating the cause for depriving her of her liberty violates Petitioner's right to Due Process.

FOURTH CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

(Failure to Release Petitioner After She Received a Grant of Parole Under 8 U.S.C. § 1182(d)(5))

60. Petitioner incorporates by reference each of the allegations of fact set forth in the preceding paragraphs.

61. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. Zadvydas, 533 U.S. 678 at (2001).

62. The Immigration and Nationality Act provides the Federal Respondents with the authority to release from custody any person that has been determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) for lacking a visa or other document at the time of application for admission.

63. Under such delegated statutory authority, the DHS/CBP promulgated the

CBP One program extending the same authority to release from custody any person who so used said program to gain entry into the United States where the program was made available.

64. Notwithstanding that authority and their obligation to ensure that Petitioner was forthwith release from custody after she received the grant of humanitarian parole, the Federal Respondents have suppressed their duty to release her from custody even where her medical conditions inflict tortured physical and mental pain on the Petitioner, thereby violating Petitioner's right to Due Process.

FIFTH CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

65. Petitioner incorporates by reference each of the allegations of fact set forth in the preceding paragraphs.

66. Because Petitioner is being held without an opportunity to determine whether his release from detention presents a risk of flight or danger to the community and the Federal Respondents is declining to take any steps to effectuate its substantive obligation to ensure that his continued detention bears a reasonable relation to the purpose of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See* Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 532-33 (Kennedy, J. concurring).

67. Petitioner's continued detention considering the aforementioned facts is therefore unlawful irrespective of what detention statute may apply to purportedly authorize her detention where she was granted parole status releasing her from custody more than 17 months ago.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of Arizona;

(3) Declare that Petitioner's detention is unlawful;

(4) Order Petitioner's release on conditions the Court deems just and proper pending adjudication of this petition;

(5) Declare that the Petitioner is detained, if at all, pursuant to 8 U.S.C. § 1226 and is therefore entitled to a bond hearing upon request;

(6) Issue a preliminary injunction and Writ of Habeas Corpus ordering the Federal Respondents to release Petitioner immediately, or, in the alternative, order them to release Petitioner if he is not provided a bond hearing within seven (7) days after the Court's order;

(7) Grant attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.* where warranted as here; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ *Bernal Peter Ojeda*
Bernal Peter Ojeda
Attorney for Petitioner
Dated: March 1, 2026

Verification

I, Bernal Peter Ojeda, declare that I am admitted to practice law in the State of California and because many of the allegations contained in this Petition require legal knowledge unknown by the Petitioner, I am making this verification on his behalf. I am familiar with each of the allegations made in this Petition and know the contents thereof to be true of my own knowledge, information and belief. Therefore I execute this verification under the penalty of perjury under 28 U.S.C. § 1746, in Westlake Village, California, this March 1, 2026.

/s/ Bernal Peter Ojeda
Bernal Peter Ojeda
Attorney for Petitioner
Dated: March 1, 2026