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DETAINED

8 Attorneys for Petitioner Aisara Issenova

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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14 **In the matter of:**

Case Number:

26-cv-1432-BJC-BJW

15
16 **ISSENOVA AISARA**

17 **v.**

A-Number



18 **SIXTO MARRERO, WARDEN**
19 **OF IMPERIAL REGIONAL**
20 **ADULT DETENTION FACILITY**

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN TO
PETITIONER'S PETITION
FOR WRIT OF HABEAS
CORPUS**

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24 **Challenge to Unlawful**
25 **Incarceration; Request for**
26 **Declaratory Relief**

27
28 **STATEMENT OF FACTS**

**PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN TO
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**



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1. Petitioner Aisara Issenova is a native and citizen of Kazakhstan. She entered the United States at New York City, New York, on or about February 13, 2016, as a nonimmigrant B-2 visitor authorized to remain in the United States for a temporary period not to exceed six months.

2. Petitioner fled Kazakhstan to escape persecution by the Kazakhstani government and police on account of her political opinion. Petitioner is a representative of the [REDACTED] a religious organization that is banned and actively persecuted by government authorities and law enforcement in Kazakhstan. As a result of this persecution, on or about July 2, 2016, Petitioner timely filed Form I-589, Application for Asylum and for Withholding of Removal, with USCIS.

3. Petitioner has resided and worked in the United States since 2017, consistently complying with federal tax filing requirements each year.

4. As such, Petitioner is still in the status of authorized stay. Petitioner did not accumulate unlawful presence since he timely filed Form I-589, Application for Asylum and for Withholding of Removal, with the USCIS. Per the USCIS Policy, **“Asylees and asylum applicants: Generally, time while a bona fide asylum application is pending is not counted as unlawful presence.”**

5. On January 15, 2026, ICE detained Petitioner and transferred her to the Imperial Regional Adult Detention Facility. That same day, ICE terminated Petitioner’s parole and issued a new Notice to Appear, alleging that she is an alien present in the United States who has not been admitted or paroled.

6. Since entering the United States, Petitioner has complied with all conditions of her admission. She timely filed her Form I-589 application for asylum and



1 withholding of removal, obtained work authorization, and was issued both a driver's
2 license and a United States Social Security card.

3 7. Petitioner remains willing, ready, and able to maintain lawful employment,
4 contribute to her community, and has consistently paid her federal taxes.

5 8. Petitioner appeared for a bond hearing on February 27, 2026, at which the
6 Immigration Judge denied release based on the government's unsupported assertion
7 that Petitioner posed a danger to the community. This conclusion was not grounded
8 in the record. Petitioner does not have any criminal record. Nor Respondents provided
9 any proof that Petitioner was actually dangerous to the community. The government relied
10 solely on speculative allegations regarding Petitioner's work as a commercial truck
11 driver and failed to present any evidence that Petitioner has ever operated a
12 commercial vehicle in violation of federal regulations, including those governing
13 English-language proficiency. See Exhibit C, Bond Order.

14 9. On the contrary, the Petitioner demonstrated on the records that she reads and
15 speaks the English language sufficiently to converse with the general public, that she
16 understands highway traffic signs and signals in the English language. Likewise,
17 Petitioner demonstrated that she is able to respond to official inquiries, and to make
18 entries on reports and records, as required by federal commercial driver safety
19 standards.
20

21 10. Petitioner answered all questions posed at the hearing in English, and any
22 alleged language limitations provide no lawful basis to deny release.

23 11. Petitioner has been a licensed commercial truck driver for nearly four years,
24 maintaining a clean driving record with no accidents, citations, or violations of any
25 state or federal motor carrier regulations. Nothing in the record indicates that
26 Petitioner poses any danger to the community. The Immigration Judge's reliance on
27 unsupported conjecture rather than evidence to deny bond rendered the decision
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1 arbitrary, capricious, and constitutionally deficient. Accordingly, the denial of release
2 at the February 27, 2026, hearing violated Petitioner's Fifth Amendment right to due
3 process and underscores the urgent need for this Court's intervention to remedy
4 Petitioner's unlawful detention.

5 12. On or about February 6, 2026, Petitioner's husband was granted bond and
6 released from custody. Petitioner's husband presented materially identical facts,
7 further underscoring the arbitrary nature of the government's continued detention of
8 Petitioner.

9 13. Petitioner has a protected liberty interest in remaining out of custody. As
10 Petitioner has a protected liberty interest, the Due Process Clause requires procedural
11 protections before she can be deprived of that interest. Government's revocation of
12 Petitioner's admission and continued authorized stay without notification, reasoning,
13 or an opportunity to heard, denied Petitioner of her due process rights.

14 14. The risk of an erroneous deprivation of such interest is high as Petitioner's
15 admission to the United States without providing a reason for revocation or giving
16 him an opportunity to be heard. Since DHS's initial determination that Petitioner was
17 admitted to the United States because she posed no danger to the community and was
18 not a flight risk, there is no evidence that this have been changed. She has a fixed
19 address where she'll live with her family and friends. Petitioner's continued detention
20 is arbitrary and unlawful, and she requests that this Court order her immediate
21 release from ICE custody.

22
23 **LEGAL FRAMEWORK**

24 **ICE'S CONTINUED DETENTION OF PETITIONER VIOLATES THE**
25 **ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**

26 15. Under the Accardi doctrine, which originated in the context of an
27 immigration case and has been developed through subsequent immigration caselaw,
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1 agencies are bound to follow their own rules that affect the fundamental rights of
2 individuals, even self-imposed policies and processes that limit otherwise
3 discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. at 226 (holding that
4 BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*,
5 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is
6 incumbent upon agencies to follow their own procedures . . . even where the internal
7 procedures are possibly more rigorous than otherwise would be required.").

8 16. Petitioner is still in the status of authorized stay. Petitioner did not accumulate
9 unlawful presence since she timely filed Form I-589, Application for Asylum and
10 for Withholding of Removal, with the USCIS. **Per the USCIS Policy, "Asylees and**
11 **asylum applicants: Generally, time while a bona fide asylum application is**
12 **pending is not counted as unlawful presence."**

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

15 18. The requirement that an agency follow its own policies is not "limited to
16 rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162,
17 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination
18 of the provision's language, its context, and any available extrinsic evidence"
19 supports the conclusion that it is "mandatory rather than merely precatory." *Doe v.*
20 *Hampton*, 566 2d 265, 281 (D.C. Cir. 1977); see also *Morton*, 415 U.S. at 235-36
21 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420
22 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to
23 Special Agents were not promulgated in something formally labeled a
24 'Regulation'").
25

26 19. When agencies fail to adhere to their own policies as required by *Accardi*,
27 courts typically frame the violation as arbitrary, capricious, and contrary to law under
28 the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is



1 clear, moreover, that [Accardi] claims may arise under the APA"), or as a due process
2 violation, see *Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th
3 Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust
4 discrimination and deny adequate notice and consequently may result in a violation
5 of an individual's constitutional right to due process.") (internal quotations omitted).

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

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

20 22. "[T]he touchstone of 'arbitrary and capricious' review under the APA is
21 'reasoned decision-making.'" *Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061,
22 1080 (9th Cir. 2019) (quoting *State Farm*, 463 U.S. at 52). "[A]n agency's action can
23 only survive arbitrary or capricious review where it has articulated a satisfactory
24 explanation for its action including a rational connection between the facts found and
25 the choice made." *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir.
26 2023) (cleaned up). Humanitarian parole is granted "on a case-by-case basis for urgent
27 humanitarian reasons or significant public benefit," and the statute states that "when
28



1 the purposes of such parole shall, in the opinion of the Secretary of Homeland
2 Security, have been served the [noncitizen] shall forthwith return or be returned to the
3 custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). Therefore, pursuant
4 to statute, “revocation should only occur when (1) the parole’s purpose is served or
5 (2) when humanitarian reasons and public benefit are no longer warranted, and the
6 noncitizen is provided written notice.” *Noori*, 2025 WL 2800149, at *13 (citing *Y-Z-
7 L-H v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1898025, at *12–13 (D. Or. July 9, 2025))
8 (emphasis in original).

9 **GROUND TWO**

10 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §
11 1231 (A)(6)**

12 **Mandatory detention is subject to constitutional limits**

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

14 24. “Freedom from imprisonment-from government custody, detention, or other
15 forms of physical restraint-lies at the heart of liberty [Due Process Clause] protects.”
16 *Zadvydas*, 533 U.S. at 690.

17 25. Petitioner has an interest in remaining with his community, working and
18 continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 482
19 (“Subject to the conditions of his admission, he can be gainfully employed and is free
20 to be with friends and to form the other enduring attachment of normal life.”)

21 26. The risk of an erroneous deprivation of such interest is high as Petitioner’s
22 autotomized stay without providing her a reason for revocation or giving an
23 opportunity being heard. See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D.
24 Cal2017).

25 27. Petitioner has no criminal record, has not been arrested or otherwise in criminal
26 trouble, had work authorization. “Once a noncitizen has been released, the law
27 prohibits federal agents from rearresting him merely because he is subject to removal
28



1 proceedings.” Saravia, 280 F. Supp. 2d at 1760. “Rather, the federal agents must be
2 able to present evidence of materially changed circumstances-namely, evidence that
3 the noncitizen is in fact dangerous or has become a flight risk..” *Id.*

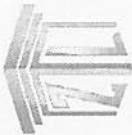
4 28. Government’s interest in detaining Petitioner without notice, reasoning, and a
5 hearing is “low.” *See Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at
6 *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (“If the
7 government wishes to re-arrest [Petitioner]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

11 29. Therefore, because Respondents detained Petitioner by revoking her authorized
12 in violation of the Due Process Clause, her detention is unlawful. *See, e.g., Alegria*
13 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
14 2025) (granting a TRO based on a procedural due process challenge to a revocation of
15 his authorized without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL
16 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to
17 the conditions of his authorized on due process grounds).

18 30. Petitioner’s revocation of authorized stay without notification, reasoning, or an
19 opportunity to be heard, denied Petitioner of her due process rights. Therefore, her
20 continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately
21 released.
22

23 31. Furthermore, Petitioner is challenging her detention on constitutional grounds,
24 not statutory grounds. Notwithstanding the fact that she is being detained pursuant to
25 section 1225(b), Petitioner’s detention is unequivocally subject to Constitutional
26 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
27 constitutional challenges to their mandatory detention. Respondent correctly states:
28

**PETITIONER’S TRAVERSE TO RESPONDENT’S RETURN TO
PETITIONER’S PETITION FOR WRIT OF HABEAS CORPUS**



1 Jennings v. Rodriguez, 583 U.S. 281 (2018) “did not explicitly address
2 constitutionality arguments.” U.S. Likewise, While in Demore v. Kim, 538 U.S. 510
3 (2003) the Supreme Court rejected a facial challenge to mandatory detention under §
4 1226(c), the Supreme Court has explicitly recognized the availability of judicial review
5 over as-applied challenges to detention, including mandatory detention. See, e.g.,
6 Nielsen v. Preap, 586 U.S. 392, 420 (2019); Demore v. Kim, 538 U.S. 510, 532-33
7 (2003) (Kennedy, J., concurring). This Court accordingly found constitutional limits
8 to apply to immigration detention, irrespective of the underlying detention authority.
9 See, e.g., Vikas Kumar v. Christopher Larose, Warden, Otay Mesa Detention Center
10 et al., 25-CV-3796 JLS (DDL); Aigul Kazybayeva v. Warden, Otay Mesa Detention
11 Center 3:26-cv-00421-GPC-MMP; Dariya Karmamoldoyeva v. Warden, Otay Mesa
12 Detention Center 3:26-cv-00423-GPC-MSB; Federico Navarro Perez v. Warden, Otay
13 Mesa Detention Center 3:25-cv-02620-RBM-JLB; *Gonzalez Salazar v. Casey*, Case
14 No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *Singh*
15 *v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal.
16 July 11, 2025). (granting a writ of habeas corpus releasing petitioner from custody
17 to the conditions of her preexisting parole on due process grounds).

18
19 32. This Court should so hold as well.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

21 33. Petitioner intends to file an appeal with the Board of Immigration Appeals.
22 Nonetheless, due to change in law, Court would say that it does not have jurisdiction.
23 The court temporarily stayed a district court’s 12/18/25 declaratory judgment
24 and 2/18/26 order which ruled that nationwide class members are entitled to a bond
25 hearing and vacated *Matter of Yajure Hurtado*, pending a ruling on the government’s
26 emergency motion for a stay pending appeal. The 12/18/25 judgment will remain
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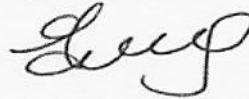
1 fully in effect in the Central District of California. (*Maldonado Bautista v. DHS*,
2 3/6/26).

3
4 **Conclusion**

5 For the foregoing reasons, this Court should issue a Writ of Habeas Corpus ordering
6 Petitioner's immediate release, or in the alternative, issue a Writ of Habeas Corpus
7 ordering Petitioner's release within 14 days, unless the Government schedules a
8 hearing before a neutral adjudicator at which they must establish by clear and
9 convincing evidence that Petitioner presents a risk of flight or danger, even after
10 considering alternatives to detention that could mitigate any risk that he presents, to
11 justify her continued confinement. If the government cannot meet its burden, the
12 adjudicator must order Petitioner's release on appropriate conditions of supervision,
13 taking into account Petitioner's ability to pay a bond.
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16 DATED: March 27, 2026

Respectfully submitted

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Naira Zohrabyan
Attorney for Petitioner
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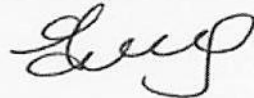


CERTIFICATE OF SERVICE

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: March 27, 2026

Respectfully submitted



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