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DETAINED

8 Attorneys for Petitioner Elena Samoilova
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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

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14 In the matter of:

) Case Number: '26CV1616 CAB MSB

15)
16) **ELENA SAMOILOVA**

) A-Number 

17) **v.**
18) **CHRISTOPHER LAROSE,**
19) **WARDEN OF OTAY MESA**
20) **DETENTION CENTER**

) **PETITION FOR WRIT OF**
) **HABEAS CORPUS AND ORDER**
) **TO SHOW CAUSE WITHIN**
) **THREE DAYS; COMPLAINT**
) **FOR DECLARATORY RELIEF**

) Challenge to Unlawful
) Incarceration; Request for
) Declaratory Relief
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PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR DECLARATORY RELIEF

STATEMENT OF FACTS

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3 1. Petitioner Elena Samoiloova is a native and citizen of Russia. She entered the
4 United States on or about May 2, 2022, as a nonimmigrant B-2 visitor authorized to
5 remain in the United States until November 1, 2022. *See Exhibit "A"* a true and
6 correct copy of Petitioner's I-94.

7 2. Petitioner fled Russia to escape persecution by the Russian government and
8 police on account of her political opinion. As a result of this persecution, on or about
9 October 27, 2022, Petitioner timely filed Form I-589, Application for Asylum and for
10 Withholding of Removal, with USCIS as a derivative applicant to her husband Yury
11 Batishchev's asylum application. *See Exhibit "B"* a true and correct copy of USCIS
12 Form I-797 Acknowledgment of Receipt of I-589.

13 3. Petitioner has been residing and working in the United States since 2022,
14 consistently complying with federal tax filing requirements each year.

15 4. On February 19, 2026, Petitioner was detained while delivering a package from
16 Costco to a customer located at the Marine Corps Base Camp Pendleton. ICE
17 terminated Petitioner's admission without notice on the same day on February 19,
18 2026.

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20 5. That same day, ICE terminated Petitioner's admission and issued a new Notice
21 to Appear, alleging that she is an alien present in the United States who has not been
22 admitted or paroled.

23 6. Since entering the United States, Petitioner has complied with all conditions of
24 her admission. She timely filed her Form I-589 application for asylum and
25 withholding of removal, obtained work authorization, and was issued both a
26 California driver's license and a Work Authorization Card. *See Exhibit "C"* a true
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1 and correct copy of Petitioner's CA driver's license and USCIS Form I-797 Approval
2 Notice for I-765, Application for Employment Authorization.

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 March 4, 2026, at which the
6 Immigration Judge denied release based on the government's unsupported assertion
7 that Petitioner posed a flight risk. Petitioner has a husband, US citizen and friends
8 who are willing to support her. Nonetheless, immigration judge blatantly disregarded
9 all the presented evidence, deeming Petitioner as a flight risk. Petitioner intends to
10 appeal this decision as well. This conclusion was not grounded in the record.
11 Petitioner does not have any criminal record. *See Exhibit "D"* Bond Order denying
12 release.

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

18 10. The risk of an erroneous deprivation of such interest is high as Petitioner's
19 admission to the United States without providing a reason for revocation or giving
20 him an opportunity to be heard. Since DHS's initial determination that Petitioner was
21 admitted to the United States because she posed no danger to the community and was
22 not a flight risk, there is no evidence that this have been changed. She has a fixed
23 address where she'll live with her family and friends. Petitioner's continued detention
24 is arbitrary and unlawful, and she requests that this Court order her immediate
25 release from ICE custody.
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**PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR DECLARATORY RELIEF**

JURISDICTION

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3 11. As the Court has an obligation “to determine that [it has] jurisdiction before
4 proceeding to the merits” of any case, it will first address Respondents’ jurisdictional
5 argument. *Lance v. Coffman*, 549 U.S. 437, 439 (2007); *see Steel Co. v. Citizens for a*
6 *Better Env’t*, 523 U.S. 83, 94-95 (1998). For the reasons set forth below, the court
7 finds that it has jurisdiction over Petitioner’s claims.

8 12. This action arises under the Constitution of the United States and the
9 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

10 13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
11 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United
12 States Constitution (Suspension Clause).

13 14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
14 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs
15 Act, 28 U.S.C. § 1651.

16 15. Federal District courts have jurisdiction to hear habeas claims by non-citizens
17 challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.

18 16. Federal courts also have federal question jurisdiction, through the
19 Administrative Procedure Act ("APA"), to deem unlawful and to set aside agency
20 action that is arbitrary, capricious, an abuse of discretion or otherwise inconsistent
21 with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on habeas. 5 U.S.C.
22 §703, which provides that judicial review of agency action under the APA may be
23 proceeded by any applicable form of legal action, including but not limited to habeas
24 corpus. The APA affords a right of review to a person who is adversely affected or
25 harmed by agency action.
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1 VENUE

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3 17. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3)
4 and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this
5 district a California Detention Facility, Otay Mesa Detention Center. Furthermore, a
6 substantial part of the events or omissions giving rise to this action occurred and
7 continue to occur at ICE's Washington Field Office in Chantilly, Virginia, within this
8 division. No real property is involved in this action. 28 U.S.C. §1391(e).

9 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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11 18. The Court must grant the petition for writ of habeas corpus or issue an order to
12 show cause (OSC) to the Respondents “forthwith” unless Petitioner is not entitled to
13 relief. 28 U.S.C. 2243. If an OSC is issued, the Court must require Respondents to file
14 return “within three days unless good cause additional time, not exceeding twenty days,
15 is allowed.” *Id.*

16 19. Courts have long recognized the significance of the habeas statute in protecting
17 individuals from unlawful detention. The Great Writ has been referred to as “perhaps
18 the most important writ known to the constitutional law of England affording as it does
19 a swift and imperative remedy in all cases of illegal restraint or confinement. *Fay v.*
20 *Noia*, 372 U.S. 391, 400 (1963).

21 20. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because she
22 was arrested by Respondents and remains in their legal and physical custody at in
23 Imperial Regional Adult Detention Facility, California. She is under Respondent’s and
24 their agents’ direct control.

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1 **LEGAL FRAMEWORK**
2 **ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT**
3 **REVIEWING HER CUSTODY UNDER ICE POLICY VIOLATES THE**
4 **ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**

5 21. A writ of habeas corpus is "available to every individual detained within the
6 United States." Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art.
7 1, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon
8 the legality of that custody, and the traditional function of the writ is to secure release
9 from illegal custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). "Writs of habeas
10 corpus may be granted by the Supreme Court, any justice thereof, the district courts and
11 any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The
12 petitioner bears the burden of demonstrating that "[h]e is in custody in violation of the
13 Constitution or laws or treaties of the United States." Id. § 2241(c)(3).

14 22. The Court has an obligation "to determine that [it has] jurisdiction before
15 proceeding to the merits" of any case, it will first address Respondents' jurisdictional
16 argument. Lance v. Coffman, 549 U.S. 437, 439 (2007); see Steel Co. v. Citizens for a
17 Better Env't, 523 U.S. 83, 94-95 (1998). For the reasons set forth below, the Court finds
18 that it has jurisdiction over Petitioner's claims.

19 23. ICE's long-standing policy is to release non-citizens immediately following a
20 grant of asylum, relief absent exceptional circumstances.

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

3 25. The requirement that an agency follow its own policies is not "limited to rules
4 attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d
5 Cir. 1991). Even an unpublished policy binds the agency if "an examination of the
6 provision's language, its context, and any available extrinsic evidence" supports the
7 conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566
8 2d 265, 281 (D.C. Cir. 1977); see also *Morton*, 415 U.S. at 235-36 (applying *Accardi*
9 to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir.
10 1969) ("Nor does it matter that these IRS instructions to Special Agents were not
11 promulgated in something formally labeled a 'Regulation'").

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

20 27. Prejudice is generally presumed when an agency violates its own policy. See
21 *Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere
22 to its own regulations . . . is not required to make a showing of prejudice before she is
23 entitled to relief. All that need be shown is that the subject regulations were for the
24 alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813
25 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new
26 trial will produce the same verdict.")
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1 28. To remedy an Accardi violation, a court may direct the agency to properly apply
2 its policy, see *Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that
3 Defendants do what they already admit is required."), or a court may apply the policy
4 itself and order relief consistent with the policy. See *Jimenez v. Cronen*, 317 F. Supp.
5 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody
6 under ICE's standards because "it would be particularly unfair to require that
7 petitioners remain detained . . . while ICE attempts to remedy its failure").

8 29. "[T]he touchstone of 'arbitrary and capricious' review under the APA is
9 'reasoned decision-making.'" *Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061,
10 1080 (9th Cir. 2019) (quoting *State Farm*, 463 U.S. at 52). "[A]n agency's action can
11 only survive arbitrary or capricious review where it has articulated a satisfactory
12 explanation for its action including a rational connection between the facts found and
13 the choice made." *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir.
14 2023) (cleaned up). Humanitarian parole is granted "on a case-by-case basis for urgent
15 humanitarian reasons or significant public benefit," and the statute states that "when the
16 purposes of such parole shall, in the opinion of the Secretary of Homeland Security,
17 have been served the [noncitizen] shall forthwith return or be returned to the custody
18 from which she was paroled." 8 U.S.C. § 1182(d)(5)(A). Therefore, pursuant to statute,
19 "revocation should only occur when (1) the parole's purpose is served or (2) when
20 humanitarian reasons and public benefit are no longer warranted, *and* the noncitizen is
21 provided written notice." *Noori*, 2025 WL 2800149, at *13 (citing *Y-Z-L-H v. Bostock*,
22 --- F. Supp. 3d ---, 2025 WL 1898025, at *12–13 (D. Or. July 9, 2025)) (emphasis in
23 original).

24
25 30. Here, Petitioner falls into this category where ICE has failed to act as required
26 by their procedures and require intervention.

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CLAIMS FOR RELIEF

GROUND ONE

**VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE
PROCESS**

Petitioner has the right to challenge the legality of her detention

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

32. 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).

33. 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 Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023). The Due Process Clause allows Petitioner to challenge her detention.

34. 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 detention and revocation of admission without proper notice, and she is not bringing a constitutional claim with respect to the procedures governing her legal admission into the United States.

35. To the extent Respondent takes the extraordinary position that Petitioner has no due process rights at all, that is unsupported by law and would have gruesome practical consequences: “If excludable [noncitizens] were not protected by even the substantive

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1 component of constitutional due process, ... we do not see why the United States
2 government could not torture or summarily execute them. ... [W]e conclude that
3 government treatment of excludable [noncitizens] must implicate the Due Process
4 Clause of the Fifth Amendment.”. *Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th
5 Cir. 2003) (en banc); see also *Jean v. Nelson*, 472 U.S. 846, 874 (1985) (Marshall, J.,
6 dissenting) (“[T]he principle that unadmitted [noncitizens] have no constitutionally
7 protected rights defies rationality. Under this view, the Attorney General, for example,
8 could invoke legitimate immigration goals to justify a decision to stop feeding all
9 detained [noncitizens] Surely, we would not condone mass starvation.”). Thus,
10 there is no question that Petitioner has the right to challenge the constitutionality of
11 her prolonged detention under the Due Process Clause of the Fifth Amendment of the
12 Constitution.

13 36. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
14 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL
15 2084921, at *4 (“[Petitioner’s] release from ICE custody after her initial apprehension
16 reflected a determination by the government that she was neither a flight risk or a
17 danger to the community, and [Petitioner] has a strong interest in remaining at liberty
18 unless she no longer meets those criteria.”); *Noori*, 2025 WL 2800149, at *10
19 (“Petitioner is not an “arriving” noncitizen but one that has [been] present in our
20 country over a year. Her substantial amount of time indicates she is afforded the Fifth
21 Amendment’s guaranteed due process before removal.”); *Matute v. Wofford*, No. 25-
22 cv-1206-KES-SKO (HC), 2025 WL 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding
23 petitioner had a protected liberty interest in her release).
24

25 37. This Court accordingly found constitutional limits to apply to immigration
26 detention, irrespective of the underlying detention authority. *See, e.g., Karakhanyan*
27 *v. Warden of Otay Mesa Detention Center*-3:25-cv-03454-JO-MMP; *Romik*
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1 Parunakyan v. Warden of Otay Mesa Detention Center 25-cv-3739-LL-MSB; L.S. v.
2 Warden of Otay Mesa Detention Center; M.F. v. Warden of Otay Mesa Detention
3 Center 3:25-cv-3599-CAB-MSB, Vikas Kumar v. Christopher Larose, Warden, Otay
4 Mesa Detention Center et al., 25-CV-3796 JLS (DDL); Aigul Kazybayeva v. Warden,
5 Otay Mesa Detention Center 3:26-cv-00421-GPC-MMP; Dariya Karmamoldoyeva v.
6 Warden, Otay Mesa Detention Center 3:26-cv-00423-GPC-MSB; Federico Navarro
7 Perez v. Warden, Otay Mesa Detention Center 3:25-cv-02620-RBM-JLB; *Gonzalez*
8 *Salazar v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D.
9 Cal. Nov. 3, 2025); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL
10 1918679, at *7 (E.D. Cal. July 11, 2025).

11 38. Likewise, relief was granted in similar matter. *See Doe v. Becerra*, 787 F. Supp.
12 3d 1083, 1089 (E.D. Cal. 2025); *Duong v. Kaiser*, --- F. Supp. 3d ---, 2025 WL
13 2689266, at *7–10 (N.D. Cal. 2025); *Pinchi*, 2025 WL 2084921, at *5; *Gonzalez*
14 *Salazar*, 2025 WL 3063629, at *6; *Abdul Kadir v. Larose*, Case No.: 25cv1045-LL-
15 MMP, 2025 WL 2932654, at *6 (S.D. Cal. Oct. 15, 2025); *Matute v. Wofford*, No.
16 1:25-cv-01206-KES-SKO (HC), 2025 WL 2495767, at *8 (E.D. Cal. Oct. 3, 2025).

17 39. ICE has violated Petitioner's due process rights by denying her request for
18 release under bond and deeming Petitioner a flight risk without any basis.

19 40. As a remedy, this Court should conduct its own review of Petitioner's custody
20 or, at least, order ICE to review Petitioner's custody under the standard articulated
21 in ICE policy.

22 **GROUND TWO**

23 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**
24 **1231 (A)(6)**

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

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

27 42. “Freedom from imprisonment-from government custody, detention, or other
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1 forms of physical restraint-lies at the heart of liberty [Due Process Clause] protects.”
2 Zadvydas, 533 U.S. at 690.

3 43. Petitioner has an interest in remaining with her community, working and
4 continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 482
5 (“Subject to the conditions of her parole, she can be gainfully employed and is free to
6 be with family and friends and to form the other enduring attachment of normal life.”)

7 44. The risk of an erroneous deprivation of such interest is high as Petitioner’s bond
8 request was denied. Since DHS’s initial determination that Petitioner should be
9 admitted because she posed no danger to the community and was not at flight risk,
10 there is no evidence that these findings have changes. See *Saravia v. Sessions*, 280 F.
11 Supp. 3d 1168, 1760 (N.D. Cal2017).

12 45. Petitioner has no criminal record, has not been arrested or otherwise in criminal
13 trouble, had work authorization. “Once a noncitizen has been released, the law
14 prohibits federal agents from rearresting her merely because she is subject to removal
15 proceedings.” *Saravia*, 280 F. Supp. 2d at 1760. “Rather, the federal agents must be
16 able to present evidence of materially changed circumstances-namely, evidence that
17 the noncitizen is in fact dangerous or has become a flight risk..” *Id.*

18 46. Government’s interest in detaining Petitioner without notice, reasoning, and a
19 hearing is “low.” See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at
20 *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (“If the
21 government wishes to re-arrest [Petitioner] at any point, it has the power to take steps
22 toward doing so; but its interest in doing so without a hearing is low.”). Respondents
23 fail to point to any burdens on the government if it were to have provided proper notice,
24 reasoning, and a pre-deprivation hearing.

25 47. Therefore, because Respondents detained Petitioner by revoking her admission
26 in violation of the Due Process Clause, her detention is unlawful. See, e.g., *Alegria*
27
28

1 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
2 2025) (granting a TRO based on a procedural due process challenge to a revocation of
3 parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5
4 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of
5 her preexisting parole on due process grounds).¹

6 48. Petitioner's admission revocation without notification, reasoning, or further
7 denial of release on bond denied Petitioner of her due process rights. Therefore, her
8 continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately
9 released.

10 49. Furthermore, Petitioner is challenging her detention on constitutional grounds,
11 not statutory grounds. Notwithstanding the fact that she is being detained pursuant to
12 section 1225(b), Petitioner's detention is unequivocally subject to Constitutional
13 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
14 constitutional challenges to their mandatory detention. Respondent correctly states:
15 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly address
16 constitutionality arguments." U.S. Likewise, While in *Demore v. Kim*, 538 U.S. 510
17 (2003) the Supreme Court rejected a facial challenge to mandatory detention under §
18 1226(c), the Supreme Court has explicitly recognized the availability of judicial review
19 over as-applied challenges to detention, including mandatory detention. See, e.g.,
20 *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33
21 (2003) (Kennedy, J., concurring). This Court accordingly found constitutional limits
22 to apply to immigration detention, irrespective of the underlying detention authority.
23 See, e.g., *Vikas Kumar v. Christopher Larose, Warden, Otay Mesa Detention Center*
24 *et al.*, 25-CV-3796 JLS (DDL); *Aigul Kazybayeva v. Warden, Otay Mesa Detention*
25 *Center* 3:26-cv-00421-GPC-MMP; *Dariya Karmamoldoyeva v. Warden, Otay Mesa*
26 *Detention Center* 3:26-cv-00423-GPC-MSB; *Federico Navarro Perez v. Warden, Otay*
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1 Mesa Detention Center 3:25-cv-02620-RBM-JLB; *Gonzalez Salazar v. Casey*, Case
2 No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *Singh*
3 *v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal.
4 July 11, 2025). (**granting a writ of habeas corpus releasing petitioner from custody**
5 **to the conditions of her preexisting parole on due process grounds**).

6 50. This Court should so hold as well.

7
8 **GROUND THREE**
9 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**
10 **ADMINISTRATIVE PROCEDURE ACT**

11 **Petitioner’s ongoing and unreviewed detention violates her constitutional due**
12 **process rights and cannot continue without a bond hearing**

13 51. The allegations in the above paragraphs are realleged and incorporated herein.
14 Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious,
15 an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §
16 706(2)(A).

17 52. The Ninth Circuit in *Singh* stressed that “it is improper to ask the individual to
18 share equally with society the risk of error when the possible injury to the individual—
19 deprivation of liberty— is so significant[.]” See *Singh*, 638 F. 3d at 1205; *Black*, 103
20 F.4th at 157-58 (observing that where “an individual’s liberty is at stake, the Supreme
21 Court has consistently used [clear and convincing] evidentiary standard for continued
22 detention”) (internal citations omitted); *id.* at 159 (reiterating that the government bears
23 the burden of meeting this standard even where an individual is detained pursuant to
24 mandatory detention). This Court should, too, apply the heavy burden on the
25 government to justify Petitioner’s continued civil detention.

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

5 54. Thus, due process and Ninth Circuit precedent require that the government bear
6 the burden of justifying Petitioner’s ongoing detention by clear and convincing
7 evidence.

8 **PRAYER FOR RELIEF**

9 Wherefore, Petitioner respectfully requests this Court to grant the following:
10

- 11 a) Assume jurisdiction over this matter;
- 12 b) Issue an Order to Show Cause ordering Respondents to show
13 cause why this Petition should not be granted within three
14 days.
- 15 c) Or in the alternative, instruct the government bearing the
16 burden of justifying Petitioner’s ongoing detention by clear
17 and convincing evidence.
- 18 d) Declare that Petitioner’s detention violates the Due Process
19 Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- 20 e) Issue a Writ of Habeas Corpus ordering Respondents to be
21 released;
- 22 f) Award Petitioner attorney’s fees and costs under the Equal
23 Access to Justice Act, and on any other basis justified under
24 law; and

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1 detention is warranted and the conditions of her release. See, e.g., Hernandez, 872 F.3d
2 at 994 (“If the government is setting monetary bonds to ensure appearance at future
3 proceedings, there is no legitimate reason for it not to consider the individual’s
4 financial circumstances and alternative conditions of release.”).

5 54. Thus, due process and Ninth Circuit precedent require that the government bear
6 the burden of justifying Petitioner’s ongoing detention by clear and convincing
7 evidence.

8 **PRAYER FOR RELIEF**

9
10 Wherefore, Petitioner respectfully requests this Court to grant the following:

- 11 a) Assume jurisdiction over this matter;
- 12 b) Issue an Order to Show Cause ordering Respondents to show
13 cause why this Petition should not be granted within three
14 days.
- 15 c) Or in the alternative, instruct the government bearing the
16 burden of justifying Petitioner’s ongoing detention by clear
17 and convincing evidence.
- 18 d) Declare that Petitioner's detention violates the Due Process
19 Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- 20 e) Issue a Writ of Habeas Corpus ordering Respondents to be
21 released;
- 22 f) Award Petitioner attorney's fees and costs under the Equal
23 Access to Justice Act, and on any other basis justified under
24 law; and

25 ///

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g) Grant any further relief this Court deems just and proper

DATED: March 15, 2026

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner

ZOHRABYAN
LAW, APC

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