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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**

ZOHRABYAN
LAW APC


14 **In the matter of:**

15
16 **ELENA SAMOILOVA**

17 **v.**

18 **CHRISTOPHER LAROSE,**
19 **WARDEN OF OTAY MESA**
20 **DETENTION CENTER**

) **Case Number:** 26-cv-01616-
) CAB-MSB

) **A-Number-** 

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

) **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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2 1. Petitioner Elena Samoilova is a native and citizen of Russia. She entered the
3 United States on or about May 2, 2022, as a nonimmigrant B-2 visitor authorized to
4 remain in the United States until November 1, 2022. *See Exhibit "A"* a true and
5 correct copy of Petitioner's I-94. ECF Docket No. 1.

6 2. Petitioner fled Russia to escape persecution by the Russian government and
7 police on account of her political opinion. As a result of this persecution, on or about
8 October 27, 2022, Petitioner timely filed Form I-589, Application for Asylum and for
9 Withholding of Removal, with USCIS as a derivative applicant to her husband Yury
10 Batishchev's asylum application. *See Exhibit "B"* a true and correct copy of USCIS
11 Form I-797 Acknowledgment of Receipt of I-589. ECF Docket No. 1.

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

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

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

21 6. As such, Petitioner is still in the status of authorized stay. Petitioner did not
22 accumulate unlawful presence since he timely filed Form I-589, Application for
23 Asylum and for Withholding of Removal, with the USCIS. Per the USCIS Policy,
24 "Asylees and asylum applicants: Generally, time while a bona fide asylum
25 application is pending is not counted as unlawful presence."
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1 7. Since entering the United States, Petitioner has complied with all conditions of
2 her admission. She timely filed her Form I-589 application for asylum and
3 withholding of removal, obtained work authorization, and was issued both a
4 California driver's license and a Work Authorization Card. *See Exhibit "C"* a true
5 and correct copy of Petitioner's CA driver's license and USCIS Form I-797 Approval
6 Notice for I-765, Application for Employment Authorization. ECF Docket No. 1.

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

9 9. Petitioner appeared for a bond hearing on March 4, 2026, at which the
10 Immigration Judge denied release based on the government's unsupported assertion
11 that Petitioner posed a flight risk. Petitioner has a husband, US citizen and friends
12 who are willing to support her. Nonetheless, immigration judge blatantly disregarded
13 all the presented evidence, deeming Petitioner as a flight risk. Petitioner intends to
14 appeal this decision as well. This conclusion was not grounded in the record.
15 Petitioner does not have any criminal record. *See Exhibit "D"* Bond Order denying
16 release. ECF Docket No. 1.

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

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

4 **LEGAL FRAMEWORK**
5 **ICE'S CONTINUED DETENTION OF PETITIONER VIOLATES THE**
6 **ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**

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

16 13. Respondents violated their own policy by detaining Petitioner and alleging
17 charges of accumulating unauthorized stay. Petitioner is still in the status of
18 authorized stay. Petitioner did not accumulate unlawful presence since she timely
19 filed Form I-589, Application for Asylum and for Withholding of Removal, with the
20 USCIS. **Per the USCIS Policy, "Asylees and asylum applicants: Generally, time**
21 **while a bona fide asylum application is pending is not counted as unlawful**
22 **presence."**

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

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

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

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

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

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

GROUND TWO

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

Mandatory detention is subject to constitutional limits

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

21. "Freedom from imprisonment-from government custody, detention, or other
 22 forms of physical restraint-lies at the heart of liberty [Due Process Clause] protects."
 23 *Zadvydas*, 533 U.S. at 690.

24 22. Petitioner has an interest in remaining with his community, working and
 25 continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 482

1 (“Subject to the conditions of his admission, he can be gainfully employed and is free
2 to be with friends and to form the other enduring attachment of normal life.”)

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

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

13 25. Government’s interest in detaining Petitioner without notice, reasoning, and a
14 hearing is “low.” See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at
15 *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (“If the
16 government wishes to re-arrest [Petitioner] at any point, it has the power to take steps
17 toward doing so; but its interest in doing so without a hearing is low.”). Respondents
18 fail to point to any burdens on the government if it were to have provided proper notice,
19 reasoning, and a pre-deprivation hearing.

20 26. Therefore, because Respondents detained Petitioner by revoking her authorized
21 in violation of the Due Process Clause, her detention is unlawful. See, e.g., *Alegria*
22 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
23 2025) (granting a TRO based on a procedural due process challenge to a revocation of
24 his authorized without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL
25 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to
26 the conditions of his authorized on due process grounds).
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1 27. Petitioner’s revocation of authorized stay without notification, reasoning, or an
2 opportunity to be heard, denied Petitioner of her due process rights. Therefore, her
3 continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately
4 released.

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

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**


3 30. Petitioner intends to file an appeal with the Board of Immigration Appeals.
4 Nonetheless, due to change in law, Court will dismiss it, alleging no jurisdiction. On
5 March 6, 2026, the court temporarily stayed a district court’s 12/18/25 declaratory
6 judgment and 2/18/26 order which ruled that nationwide class members are entitled
7 to a bond hearing and vacated *Matter of Yajure Hurtado*, pending a ruling on the
8 government’s emergency motion for a stay pending appeal. The 12/18/25 judgment
9 will remain fully in effect in the Central District of California. (*Maldonado Bautista*
10 *v. DHS*, 3/6/26). However, Petitioner is currently detained within the Southern
11 District jurisdiction., and therefore, would not be a class member for *Bautista case*
12 *purposes*.

13 **Conclusion**

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

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25 DATED: March 30, 2026

Respectfully submitted

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27 _____
Naira Zohrabyan
28 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 30, 2026

Respectfully submitted



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