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DETAINED

8 Attorneys for Petitioner **Kseniia Rumiantseva**

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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 **In the matter of:**

) **Case Number: '26CV2214 JO DEB**

16 )  
17 )  
18 **KSENIIA RUMIANTSEVA**



19 )  
20 )  
21 **v.**

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

22 **CHRISTOPHER J. LAROSE,**  
23 **WARDEN OF OTAY MESA**  
24 **DETENTION CENTER**

) **Challenge to Unlawful Incarceration;**  
) **Request for Declaratory and**  
) **Injunctive Relief**

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**STATEMENT OF FACTS**

1. Petitioner is a native and citizen of Russia, who entered the United States at San Ysidro a port of entry on September 22, 2024, and remained in custody as of today, for **eighteen 18 months** now. **See Exhibit A is indeed the Notice to Appear (NTA).**
2. Petitioner is diagnosed with and treated from Epilepsy and is diagnosed with and treated for suicidal depression. Petitioner was drugged during her merits hearing on June 18, 2025, by oxcarbazepine and sertraline leading to Petitioner's inability to provide meaningful testimony and, subsequently, denial of her asylum claim where she was represented proper. Petitioner appealed on July 3, 2025, and has been detained as of today. **See Exhibit B, which includes the Immigration Judge's order and the filing receipt for the appeal.**
3. As a result, Petitioner has now been detained for nearly eighteen (18) months in total and for nearly nine (9) months since the Appeal without meaningful progress in her appeal.
4. During her prolonged detention, Petitioner has suffered significant physical and mental health deterioration. Her continued confinement has caused and continues to cause serious harm.
5. Petitioner's continued detention is arbitrary and unlawful, and she requests that this Court order her immediate release from ICE custody.
6. On December 30, 2025, Petitioner filed another petition under case 3-25-cv-03844-AGS-DEB, which was denied.
7. Circumstances have changed as the detention has become unreasonably prolonged.



**JURISDICTION**

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- 3 8. This action arises under the Constitution of the United States and the
- 4 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
- 5 9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
- 6 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
- 7 United States Constitution (Suspension Clause).
- 8 10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
- 9 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-
- 10 Writs Act, 28 U.S.C. § 1651
- 11 11. Federal District courts have jurisdiction to hear habeas claims by non-citizens
- 12 challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.
- 13 12. Federal courts also have federal question jurisdiction, through the
- 14 Administrative Procedure Act ("APA"), to deem unlawful and to set aside
- 15 agency action that is arbitrary, capricious, an abuse of discretion or otherwise
- 16 inconsistent with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on
- 17 habeas. 5 U.S.C. §703, which provides that judicial review of agency action
- 18 under the APA may be proceeded by any applicable form of legal action,
- 19 including but not limited to habeas corpus. The APA affords a right of review
- 20 to a person who is adversely affected or harmed by agency action.
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**VENUE**

- 23
- 24 13. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3)
- 25 and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this
- 26 district a Otay Mesa Detention Center. Furthermore, a substantial part of the
- 27 events or omissions giving rise to this action occurred and continue to occur at
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1 ICE's Washington Field Office in Chantilly, Virginia, within this division. No  
2 real property is involved in this action. 28 U.S.C. §1391(e).

3 **LEGAL FRAMEWORK**

4 **ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT**  
5 **REVIEWING HER CUSTODY UNDER ICE POLICY VIOLATES THE**  
6 **ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**

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

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

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

3 17. When agencies fail to adhere to their own policies as required by Accardi,  
4 courts typically frame the violation as arbitrary, capricious, and contrary to law  
5 under the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C.  
6 2018) ("It is clear, moreover, that [Accardi] claims may arise under the APA"),  
7 or as a due process violation, see *Sameena, Inc. v. United States Air Force*,  
8 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own  
9 regulations tends to cause unjust discrimination and deny adequate notice and  
10 consequently may result in a violation of an individual's constitutional right to  
11 due process.") (internal quotations omitted).

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

19 19. To remedy an Accardi violation, a court may direct the agency to properly  
20 apply its policy, see *Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply  
21 ordering that Defendants do what they already admit is required."), or a court  
22 may apply the policy itself and order relief consistent with the policy. See  
23 *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail  
24 hearing to review petitioners' custody under ICE's standards because "it would  
25 be particularly unfair to require that petitioners remain detained . . . while ICE  
26 attempts to remedy its failure").  
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20. Here, Petitioner falls into this category where ICE has failed to act as required by their procedures and require intervention.

**CLAIMS FOR RELIEF**

**GROUND ONE**

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

**Petitioner has the right to challenge the legality of her detention**

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

22. Petitioner has due process rights to challenge their detention. *Zadvydas v. Davis*, 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States’ “geographic borders” lack constitutional protections, all “persons” within them are protected by the Due Process Clause, regardless of immigration status); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though constitutional rights of citizens and noncitizens “are not coextensive,” noncitizens are entitled to due process, including to challenge detention pending proceedings).

23. As the Ninth Circuit held, the Due Process Clause applies to noncitizens regardless of whether they are “seeking admission” or are “admitted” under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023). The Due Process Clause allows Petitioner to challenge her detention.

24. Respondent fundamentally misapprehends Petitioner’s due process claims. Petitioner challenges her deprivation of liberty and prolonged detention, not the adequacy of the procedures the immigration laws afford her “with respect to admission. Petitioner solely challenging her ongoing detention, and she is not



1 bringing a constitutional claim with respect to the procedures governing her  
2 legal admission into the United States.

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

19  
20 26. ICE has violated Petitioner's due process rights by denying an individualized  
21 custody review to which she is entitled under ICE policy.

22 27. As a remedy, this Court should conduct its own review of Petitioner's custody  
23 or, at least, order ICE to review Petitioner's custody under the standard  
24 articulated in ICE policy.

25 **GROUND TWO**

26 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**

27 **1231 (A)(6)**

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



- 1 28. The allegations in the above paragraphs are realleged and incorporated herein.
- 2 29. U.S.C. § 1231 (a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes
- 3 detention only for "a period reasonably necessary to bring about the alien's
- 4 removal from the United States." 533 U.S. at 689, 701.
- 5 30. Petitioner's continued detention has become unreasonable because her removal
- 6 is not reasonably foreseeable. Therefore, her ongoing confinement violates 8
- 7 U.S.C. § 1231(a)(6), and she must be released. Petitioner is diagnosed with and
- 8 treated from Epilepsy and is diagnosed with and treated for suicidal depression.
- 9 Petitioner was drugged during her merits hearing on June 18, 2025, by
- 10 oxcarbazepine and sertraline leading to Petitioner's inability to provide
- 11 meaningful testimony and, subsequently, denial of her asylum claim where she
- 12 was represented proper. Petitioner appealed on July 3, 2025, BIA has not taken
- 13 any meaningful action on the appeal and Petitioner has been detained as of today.
- 14 31. Petitioner is challenging her prolonged detention on constitutional grounds, not
- 15 statutory grounds. Notwithstanding the fact that she is being detained pursuant to
- 16 section 1225(b), Petitioner's detention is unequivocally subject to Constitutional
- 17 limits. The Supreme Court has not precluded noncitizens from bringing as-
- 18 applied constitutional challenges to their mandatory detention. Respondent
- 19 correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly
- 20 address constitutionality arguments." U.S. Response at 3. While in *Demore v.*
- 21 *Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
- 22 mandatory detention under § 1226(c), the Supreme Court has explicitly
- 23 recognized the availability of judicial review over as-applied challenges to
- 24 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
- 25 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
- 26 concurring). Courts in this district have accordingly found constitutional limits
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to apply to immigration detention, irrespective of the underlying detention authority. See, e.g., Tesfaye Alemu Gebregziabher V. Sixto Marrero , Case 26-cv-2004-JES-MSB Synthia Engonwei Munoh Warden, Otay Mesa Detention Center, Case 26-CV-1773 JLS (DDL) Fuad Abdulielil Ahmed V. Sixto Marrero Case 26-cv-01170-BAS-MMP; Maksim Lastin v. Warden, Imperial Regional Detention Facility 26-cv-974-RSH-DDL; Natalia Lastina V. Warden of Imperial Regional Detention Facility 3:26-cv-00975-TWR-VET; Karakhyan v. Warden of Otay Mesa Detention Center-3:25-cv-03454-JO-MMP; Romik Parunakyan v. Warden of Otay Mesa Detention Center 25-cv-3739-LL-MSB; L.S. v. Warden of Otay Mesa Detention Center; M.F. v. Warden of Otay Mesa Detention Center 3:25-cv-3599-CAB-MSB; Miganush Ogandzhanyan V. Warden Of Otay Mesa Detention Center 26cv0093 DMS MSB; Ter Ogannisian Geros v. Warden Of Otay Mesa Detention Center 26-CV-91 JLS (AHG); Emanuel Ter-Ogannisian v. Warden Of Otay Mesa Detention Center 26cv0124 DMS JLB; L.S. v. Warden of Otay Mesa Detention Center; M.F. v. Warden of Otay Mesa Detention Center 3:25-cv-3599-CAB-MSB; Naira Kirakosyan v. Warden of Otay Mesa Detention Center 26-cv-315-JO-DDL. (**granting a writ of habeas corpus after Court determined that Petitioner’s detention without a bond hearing has become unreasonable and violates due process**).

- 32. This Court should so hold as well.
- 33. Petitioner has now been detained for nearly eighteen (18) months in total, including nearly nine (9) months since the Immigration Judge’s decision without any progress in the appellate process and with no indication of when relief might be available. This prolonged and indeterminate detention is arbitrary, excessive in duration, and unconstitutional.
- 34. On December 30, 2025, Petitioner filed another petition under case 3-25-cv-



1 03844-AGS-DEB, which was denied. Circumstances have changed as the  
2 detention has become unreasonably prolonged.

3 **GROUND THREE**  
4 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**  
5 **ADMINISTRATIVE PROCEDURE ACT**

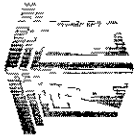
6 **Petitioner’s ongoing and unreviewed detention violates her constitutional due**  
7 **process rights and cannot continue without a bond hearing**

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

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

12 36. The Mathews test is the appropriate test for this Court to use to evaluate the  
13 constitutionality of Petitioner’s prolonged detention. *Mathews v. Eldridge*, 424  
14 U.S. 319 (1976). The Mathews test is routinely applied by district courts across  
15 the Ninth Circuit, including this Court, to determine whether due process  
16 requires neutral review of a noncitizen’s custody. *Rodriguez Diaz v. Garland*,  
17 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a “flexible test”  
18 broad enough to account for government interests when evaluating due process  
19 claims in the immigration detention context); see, e.g., *Abduraimov*, 2025 WL  
20 2912307 and *Maksim*, 2025 WL 2879328. Respondents offer “no valid  
21 alternative to the Mathews framework nor [do they] demonstrate[e] that  
22 Mathews is inapplicable here.” *Jensen v. Garland*, No. 5:21-c-v- 01195-CAS  
23 (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023).

24 37. The Mathews test for procedural due process claims balances: (1) the private  
25 interest threatened by governmental action; (2) the risk of erroneous deprivation  
26 of such interest and the value of additional or substitute safeguards; and (3) the  
27 government interest. 424 U.S. at 335. Each Mathews factor weighs in  
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1 Petitioner’s favor. Petitioner’s detention of 18 months and counting without any  
2 neutral review is a violation of her procedural due process rights and requires  
3 this court to order a hearing before a neutral adjudicator to evaluate whether the  
4 government can justify her ongoing detention.

5 38. Petitioner has a profound liberty interest. Petitioner has a weighty interest in her  
6 own liberty, the core privacy interest at stake here. *Zadvydas*, 533 U.S. at 690  
7 (“Freedom from imprisonment...lies at the heart of the liberty [the Due Process  
8 Clause] protects.”). Petitioner’s 18 months of detention limits of the brief  
9 detention contemplated in *Demore*, 538 U.S. at 530-31. See also *Lopez v.*  
10 *Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) (“As detention continues  
11 past a year, courts become extremely wary of permitting continued custody  
12 absent a bond hearing.”) (internal citation omitted).

13 39. The second prong of the *Mathews* test, the risk of erroneous deprivation of such  
14 interest through the procedures used, and the probable value of additional  
15 procedural safeguards, also weighs heavily in Petitioner’s favor. 424 U.S. at 335.  
16 “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing  
17 before a neutral decisionmaker is substantial.” *Diouf v. Napolitano (Diouf II)*,  
18 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner “does not have a  
19 statutory right to a bond hearing or the right to seek additional bond hearings. . .  
20 the risk of erroneous deprivation as Petitioner’s time in detention lengthens is  
21 not insignificant,” and the probable value of additional procedural safeguards is  
22 exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL  
23 711190, at \*7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684  
24 at \*4 (“Given that Petitioner has been held without a bond hearing for almost a  
25 year, and it is not clear when detention will end, the risk of erroneous deprivation  
26 weighs in favor of granting a bond hearing.”). In this case, Petitioner has been  
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1 deprived of her liberty in civil detention for 18 months. Because she is subject  
2 to mandatory detention pursuant to section 1225(b), she does not have the  
3 statutory right to request a bond hearing and therefore lacks access to an  
4 appropriate procedural safeguard that would protect against the risk of erroneous  
5 deprivation, absent intervention from this Court.

6 40. Here, a bond hearing before a neutral decisionmaker is the only appropriate  
7 procedural safeguard to protect against the risk of erroneous deprivation because  
8 it provides both the noncitizen and the government with an opportunity to  
9 present witness testimony or evidence and be heard before a neutral body.  
10 Anything less would not comport with due process. In particular, “the  
11 discretionary parole system available to § 1225(b) detainees is not sufficient to  
12 overcome the constitutional concerns raised by prolonged mandatory detention  
13 because the parole process is purely discretionary and its results are  
14 unreviewable by IJs and “release decisions are based on humanitarian  
15 considerations and the public interest.” *Abduraimov*, 2025 WL 2912307, at \*6  
16 (citing *Rodriguez v. Robbins (Rodriguez II)*, 715 F.3d 1127, 1144 (9<sup>th</sup> Cir. 2013)  
17 (internal quotations omitted). The parole process “is not a constitutionally  
18 adequate substitute for a bond hearing particularly since it does not test the  
19 necessity of detention, does not afford the noncitizen an in-person adversarial  
20 hearing before a neutral decisionmaker where he or she may present witness  
21 testimony or evidence, does not require the ICE detention officer [to] make any  
22 factual findings or provide their reasoning, and there is no apparent right to an  
23 administrative appeal.” *Abduraimov*, 2025 WL 2912307, at \*6 (citing *Padilla v.*  
24 *U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023).  
25  
26 41. Any internal review of Petitioner’s detention or request for discretionary parole  
27 by DHS cannot satisfy the requirements for due process because DHS is the very  
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1 authority that is detaining him. Where a custody review is conducted by the very  
2 same agency that is detaining the individual, that agency reviewing its own  
3 actions cannot be held to a neutral standard. As such, Petitioner must be afforded  
4 a hearing before a neutral arbiter in order for her ongoing, prolonged detention  
5 to comply with due process.

6 42. Contrary to Respondent’s assertions, Petitioner faces prolonged detention for an  
7 indefinite period of time pending the final adjudication of her asylum claim. This  
8 Court has recognized that “it is difficult to ascertain an endpoint to removal  
9 proceedings, but it is clear proceedings could take a substantial amount of time,”  
10 and “[i]t is unknown when the IJ will decide the application for relief.” *Idiev v.*  
11 *Warden, et al.*, No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at \*5 (E.D.  
12 Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party “has other  
13 avenues available for relief including an appeal to the BIA and a petition for  
14 review to the Ninth Circuit Court of Appeals.” *Id.* See, e.g., *Abduraimov*, 2025  
15 WL 2912307 (where the government appealed the IJ’s grant of asylum and the  
16 BIA remanded back to the IJ); *A.E.*, 2025 WL 1424382 (where the government  
17 appealed the IJ’s grant of asylum, the IJ denied all relief on remand, and the  
18 noncitizen appealed to the BIA).

19  
20 43. Here, On June 18, 2025, an Immigration Judge denied Petitioner’s asylum  
21 application (because of Petitioner was drugged by oxcarbazepine and sertraline  
22 leading to Petitioner’s inability to provide meaningful testimony and,  
23 subsequently, denial of her asylum claim where she was represented proper),  
24 and nevertheless Petitioner remain detained pursuant to the Immigration and  
25 Nationality Act (“INA”). Petitioner timely appealed that decision on July 3,  
26 2025. However, despite the passage of several months, the Board of Immigration  
27 Appeals (“BIA”) has not yet made a decision, and the case is still pending.  
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1 44. Petitioner has been in detention for 18 months, and Petitioner’s removal is not  
2 reasonably foreseeable, as it depends entirely on the outcome of her merits  
3 appeal and any subsequent review that may follow. Accordingly, her continued  
4 detention is arbitrary, prolonged, and constitutionally unreasonable.

5 45. Due to prolonged detention, Respondent has been experiencing physical and  
6 mental issues. There is no indication as to how long the appeal will take, and/or  
7 depending on outcome of the appeal, Petitioner might stay in custody longer.

8 46. Because “it is not clear when detention will end, the risk of erroneous  
9 deprivation weighs in favor of granting a bond hearing.” A.E., 2025 WL  
10 1424382, at \*5; Doe v. Andrews, No. 1:25- CV-00506-SAB-HC, 2025 WL  
11 2590392, \*7 (E.D. Cal. Sept. 8, 2025) (noting that “[a]lthough future events are  
12 difficult to predict, the [c]ourt nevertheless finds that...possible remand to the  
13 immigration court for further factfinding or possible judicial review by the Ninth  
14 Circuit will be sufficiently lengthy such that [the delay] factor weighs in favor  
15 of Petitioner”), report and recommendation adopted, No. 1:25-CV-00506-KES-  
16 SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); Abduraimov, 2025  
17 WL 2912307, \*8 (“appeal to BIA and potential Ninth Circuit review ‘may take  
18 up to two years or longer’ and ‘favors granting petitioner a bond hearing’) (citing  
19 Banda v. McAleenan, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The risk  
20 of erroneous deprivation of Petitioner’s liberty interest and the probably value  
21 of a bond hearing is exceptionally high. Therefore, the second Mathews factor  
22 also weighs in favor of granting Petitioner a bond hearing.

23  
24 47. The third Mathews factor also supports Petitioner: the government interest is  
25 weak here because the interest at stake “is the ability to detain Petitioner without  
26 providing her a bond hearing, not whether the government may continue to  
27 detain him” at all. Lopez-Reyes v. Bonnar, 362 F. Supp. 3d 762, 777 (N.D. Cal.  
28



1 Jan. 29, 2019) (emphasis in original). As the government has conceded in similar  
2 cases, the cost of providing such a bond hearing is minimal. *Id.*; *Singh v. Barr*,  
3 Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at \*12 (“The government  
4 has not offered any indication that a second bond hearing would have outside  
5 effects on its coffers.”); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964  
6 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did  
7 not contest “that the cost of conducting a bond hearing, to determine whether the  
8 continued detention of Petitioner is justified, is minimal”). Holding a hearing at  
9 which Respondents must justify Petitioner’s continued detention thus actually  
10 “promotes the Government’s interest—one we believe to be paramount—in  
11 minimizing the enormous impact of incarceration in cases where it serves no  
12 purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)  
13 (emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir.  
14 2021) (“[L]imiting the use of detention to only those noncitizens who are  
15 dangerous or a flight risk may save the government, and therefore the public,  
16 from expending substantial resources on needless detention.”).

17  
18 48. In sum, there is no question that all three Mathews factors favor Petitioner.  
19 Contrary to Respondent’s claim, Petitioner’s prolonged detention does not pass  
20 constitutional muster and requires that this Court immediately order her a bond  
21 hearing.

22 49. At a bond hearing, the government must bear the burden of justifying  
23 Petitioner’s ongoing and prolonged detention. Where a custody hearing is  
24 warranted as a procedural safeguard against unreasonably prolonged detention,  
25 it is well established that the government bears the burden of justifying  
26 continued confinement by clear and convincing evidence. *Singh v. Holder*, 638  
27 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of  
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1 proof on the State in civil proceedings in which the individual interests at  
2 stake...are both particularly important and more substantial than mere loss of  
3 money.”). See e.g. Lopez, 631 F. Supp. 3d 870, n.3 (specifically noting that that  
4 Singh provided guidance as to the procedural requirements for bond hearings  
5 and that the government must prove by clear and convincing evidence that a  
6 noncitizen is a flight risk. or danger to the community to justify denying bond)  
7 (internal quotations omitted); Eliazar G.C., 2025 WL 711190, \*10 (E.D. Cal.  
8 Mar. 5, 2025) (stating that the Court will follow the “overwhelming majority of  
9 courts” to hold that the government must justify continued mandatory detention  
10 by clear and convincing evidence that the noncitizen is a flight risk or a danger  
11 to the community); Maksim, 2025 WL 2879328, \* 6 (same); Abduraimov, 2025  
12 WL 2912307, \*11 (same); Idiev, 2025 WL 3089349, \*7 (same); Tonoyan, 2025  
13 WL 3013684, \*5 (same).

14  
15 50. The Ninth Circuit in Singh stressed that “it is improper to ask the individual to  
16 share equally with society the risk of error when the possible injury to the  
17 individual—deprivation of liberty— is so significant[.]” See Singh, 638 F. 3d at  
18 1205; Black, 103 F.4th at 157-58 (observing that where “an individual’s liberty  
19 is at stake, the Supreme Court has consistently used [clear and convincing]  
20 evidentiary standard for continued detention”) (internal citations omitted); id. at  
21 159 (reiterating that the government bears the burden of meeting this standard  
22 even where an individual is detained pursuant to mandatory detention). This  
23 Court should, too, apply the heavy burden on the government to justify  
24 Petitioner’s continued civil detention without a bond hearing.

25 51. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives  
26 to detention and Petitioner’s financial circumstances in determining whether  
27 further detention is warranted and the conditions of her release. See, e.g.,  
28



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

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

**PRAYER FOR RELIEF**

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

- a) Assume jurisdiction over this matter;
- b) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- c) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- d) Issue a Writ of Habeas Corpus ordering Respondents to be released;
- e) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- f) Grant any further relief this Court deems just and proper

DATED: April 8, 2026,

Respectfully submitted



Naira Zohrabyan

ZOHRABYAN  
LAW, APC.



Attorney for Petitioner

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