

DETAINED

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) Case Number: '26CV2320 JLS JLB

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) 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 and
-) Injunctive Relief

1

STATEMENT OF FACTS

1. Petitioner is a native and citizen of the People's Republic of China. She lawfully entered the United States on or about July 3, 2023, on a B-2 visitor visa at or near the San Francisco Port of Entry. See Exhibit "A" (Passport Visa Page and I-94).
2. Petitioner fled the People's Republic of China to escape persecution by China government authorities on account of her political opinion and religion. As a result of this persecution, Petitioner submitted her Application for Asylum (Form I-589) on or about June 27, 2024.
3. 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."
4. On or about July 19, 2024, Petitioner appeared for her biometrics appointment, during which she provided fingerprints and other required biometric information in support of her asylum application. See Exhibit "B" Notice of Biometrics Appointment.
5. Petitioner has resided in the United States for nearly three (3) years.
6. Petitioner resides at [REDACTED] and upon her release from detention, she intends to continue residing there with her husband and child.
7. On or about March 16, 2026, she was arrested by U.S. Immigration and Customs Enforcement (ICE).



1 8. On March 16, 2026, Petitioner's car broke down and was parked at the Irvine
2 Spectrum Center in Irvine, California. Petitioner waited at that location for a tow
3 truck to arrive. After the tow truck arrived, Petitioner drove another vehicle and
4 followed the tow truck to an auto repair shop. Petitioner arrived in the San
5 Marcos area in the early afternoon. Thereafter, Petitioner scheduled an
6 appointment at a dealership in Santa Margarita and began driving to that location,
7 using a navigation application to obtain directions. While en route, Petitioner
8 believed she might be traveling in the wrong direction and exited the freeway to
9 confirm the address. During that process, Petitioner realized that she was near
10 Camp Pendleton.

11 9. Petitioner is currently detained at the Otay Mesa Detention Center in, San Diego
12 CA .

13 10. Petitioner has no criminal history. She possesses a valid Social Security number
14 and has been lawfully authorized to work in the United States, demonstrating
15 consistent compliance with U.S. law and a strong record of responsibility. **See**
16 **Exhibit "C" (Approval Notice EAD)**

17 11. Petitioner's scheduled master calendar hearing is currently set for May 7, 2026.

18 12. During her prolonged detention, Petitioner has suffered significant physical and
19 mental health deterioration. Her continued confinement has caused and
20 continues to cause serious harm.

21 13. Respondents now seek to keep Petitioner detained without a meaningful
22 opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225. Respondents do so
23 based not on Petitioner's personal circumstances or individualized facts.

24 14. But Respondents cannot evade due process requirements so easily. The U.S.
25 Constitution requires the Respondents provide at least the rights available to her
26 when she filed her application.
27
28



ZOHRABYAN
LAW, APC



1 15. The Constitution protects Petitioner, and every other person present in this
2 country- from arbitrary deprivations of her liberty and guarantees her due process
3 of law. The government's power over immigration is broad, but as the Supreme
4 Court has declared, it "is subject to important constitutional limitations"
5 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint
6 always been at the core of the liberty protected by the Due Process Clause from
7 arbitrary governmental action" *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

8 16. Petitioner seeks declaratory and injunctive relief to compel her immediate
9 release from the immigration jail where he has been held by DHS since being
10 unlawfully detained on March 16, 2026, without first being provided a due
11 process hearing to determine whether her incarceration is justified.

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

18 18. The risk of an erroneous deprivation of such interest is high as Petitioner's parole
19 was revoked without providing a reason for revocation or giving an opportunity
20 to be heard. Since DHS's initial determination that Petitioner be paroled because
21 she posed no danger to the community and was not a flight risk, there is no
22 evidence that this have been changed.

23 19. Absent review in this Court, no other neutral adjudicator will examine
24 Petitioner's rights: Respondents will continue-unchecked-to detain her
25 unlawfully under 8 U.S.C. § 1225 (b)(1), INA § 235 (b)(1), without due process.
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1 20. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus
2 to release Petitioner from detention within 10 days unless Respondents schedule
3 a hearing before an IJ where: (1) to continue detention, the government must
4 establish by clear and convincing evidence that Petitioner presents a risk of flight
5 or danger, even after consideration of alternatives to detention that could mitigate
6 any risk that Petitioner's release would present; and (2) if the government cannot
7 meet its burden, the IJ shall order Petitioner's release on appropriate conditions
8 of supervision, taking into account Petitioner's ability to pay a bond.

9 21. Petitioner's continued detention is arbitrary and unlawful, and she requests that
10 this Court order her immediate release from ICE custody.
11

12 JURISDICTION

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

15 23. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
16 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
17 United States Constitution (Suspension Clause).
18

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

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

24 26. Federal courts also have federal question jurisdiction, through the
25 Administrative Procedure Act ("APA"), to deem unlawful and to set aside
26 agency action that is arbitrary, capricious, an abuse of discretion or otherwise
27 inconsistent with law. 5 U.S.C. § 706(2)(A). APA claims are cognizable on
28



1 habeas. 5 U.S.C. §703, which provides that judicial review of agency action
2 under the APA may be proceeded by any applicable form of legal action,
3 including but not limited to habeas corpus. The APA affords a right of review
4 to a person who is adversely affected or harmed by agency action.

5
6 **VENUE**

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

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

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

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

26 30.Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because he
27 was arrested by Respondents and remains in their legal and physical custody at
28

Otay Mesa Detention Center, in California. She is under Respondent's and their agents' direct control.

PARTIES

31. Petitioner is a native and citizen of the People's Republic of China. She lawfully entered the United States on or about July 3, 2023, on a B-2 nonimmigrant visitor visa at or near the San Francisco Port of Entry.

32. Petitioner fled the People's Republic of China to escape persecution by Chinese government authorities on account of her political opinion and religious beliefs. As a result of this persecution, Petitioner filed an Application for Asylum (Form I-589) on or about June 27, 2024.

33. On or about July 19, 2024, Petitioner appeared for her scheduled biometrics appointment and provided fingerprints and other required biometric information in support of her asylum application.

34. Petitioner has continuously resided in the United States for nearly three (3) years.

35. Petitioner resides at [REDACTED] and upon her release from immigration detention, she intends to continue residing there with her husband and child.

36. On or about March 16, 2026, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE").

37. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California.

38. Petitioner has no criminal history. She possesses a valid Social Security number and has been lawfully authorized to work in the United States, demonstrating consistent compliance with U.S. law and a strong record of responsibility.



1 39. Petitioner's master calendar hearing before the Immigration Court is currently
2 scheduled for May 7, 2026.

3 40. Petitioner has resided in the United States for nearly three (3) years.

4 41. Petitioner resides at [REDACTED]
5 [REDACTED] and upon her release from detention, she intends to continue residing
6 there with her husband and child.

7 42. On or about March 16, 2026, she was arrested by U.S. Immigration and Customs
8 Enforcement (ICE).

9 43. On March 16, 2026, Petitioner's car broke down and was parked at the Irvine
10 Spectrum Center in Irvine, California. Petitioner waited at that location for a tow
11 truck to arrive. After the tow truck arrived, Petitioner drove another vehicle and
12 followed the tow truck to an auto repair shop. Petitioner arrived in the San
13 Marcos area in the early afternoon. Thereafter, Petitioner scheduled an
14 appointment at a dealership in Santa Margarita and began driving to that location
15 using a navigation application to obtain directions. While en route, Petitioner
16 believed she might be traveling in the wrong direction and exited the freeway to
17 confirm the address. During that process, Petitioner realized that she was near
18 Camp Pendleton.
19

20 44. Petitioner is currently detained at the Otay Mesa Detention Center in, San Diego
21 CA.

22 45. Respondent has revoked Petitioner's release on recognizance Petitioner without
23 proper notice.

24 46. During her prolonged detention, Petitioner has suffered significant physical and
25 mental health deterioration. Her continued confinement has caused and
26 continues to cause serious harm.
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1 47. Respondents seek to keep Petitioner detained without providing a meaningful
2 opportunity to seek a bond hearing, in violation of due-process requirements. See
3 8 U.S.C. § 1225.

4 48. Respondents cannot evade constitutional requirements. The U.S. Constitution
5 guarantees Petitioner the same due-process protections available to her at the
6 time she filed her application for relief, including freedom from arbitrary and
7 indefinite detention.

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9 **LEGAL FRAMEWORK**

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

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

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

25
26 51. The requirement that an agency follow its own policies is not "limited to rules
27 attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167
28 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination



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
3 v. Hampton, 566 2d 265, 281 (D.C. Cir. 1977); see also Morton, 415 U.S. at
4 235-36 (applying Accardi to violation of internal agency manual); U S. v.
5 Heffner, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS
6 instructions to Special Agents were not promulgated in something formally
7 labeled a 'Regulation' . . .").

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

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

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

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

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

14 CLAIMS FOR RELIEF

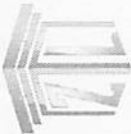
15 GROUND ONE

16 **VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE** 17 **PROCESS**

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

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

20 58. Petitioner has due process rights to challenge their detention. *Zadvydas v. Davis*,
21 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States’
22 “geographic borders” lack constitutional protections, all “persons” within them
23 are protected by the Due Process Clause, regardless of immigration status);
24 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though
25 constitutional rights of citizens and noncitizens “are not coextensive,”
26 noncitizens are entitled to due process, including to challenge detention pending
27 proceedings).



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

8 60. Petitioner challenges her deprivation of liberty and detention, not the adequacy
9 of the procedures the immigration laws afford her “with respect to admission.
10 Petitioner solely challenging her detention and revocation of release on
11 recognizance without proper notice, and she is not bringing a constitutional claim
12 with respect to the procedures governing her legal admission into the United
13 States.

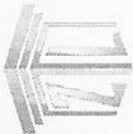
14 61. To the extent Respondent takes the extraordinary position that Petitioner has no
15 due process rights at all, that is unsupported by law and would have gruesome
16 practical consequences: “If excludable [noncitizens] were not protected by even
17 the substantive component of constitutional due process, ... we do not see why
18 the United States government could not torture or summarily execute them. ...
19 [W]e conclude that government treatment of excludable [noncitizens] must
20 implicate the Due Process Clause of the Fifth Amendment.”. *Rosales-Garcia v.*
21 *Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*,
22 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) (“[T]he principle that
23 unadmitted [noncitizens] have no constitutionally protected rights defies
24 rationality. Under this view, the Attorney General, for example, could invoke
25 legitimate immigration goals to justify a decision to stop feeding all detained
26 [noncitizens] Surely, we would not condone mass starvation.”). Thus, there
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28



1 is no question that Petitioner has the right to challenge the constitutionality of her
2 prolonged detention under the Due Process Clause of the Fifth Amendment of
3 the Constitution.

4 62. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
5 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL
6 2084921, at *4 (“[Petitioner’s] release from ICE custody after her initial
7 apprehension reflected a determination by the government that she was neither a
8 flight risk or a danger to the community, and [Petitioner] has a strong interest in
9 remaining at liberty unless he no longer meets those criteria.”); *Noori*, 2025 WL
10 2800149, at *10 (“Petitioner is not an “arriving” noncitizen but one that has
11 [been] present in our country over a year. This substantial amount of time
12 indicates she is afforded the Fifth Amendment’s guaranteed due process before
13 removal.”); *Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL
14 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty
15 interest in her release).

16
17 63. This Court accordingly found constitutional limits to apply to immigration
18 detention, irrespective of the underlying detention authority. *See, e.g.,*
19 *Karakhanyan v. Warden of Otay Mesa Detention Center*-3:25-cv-03454-JO-
20 *MMP*; *Romik Parunakyan v. Warden of Otay Mesa Detention Center* 25-cv-
21 *3739-LL-MSB*; *L.S. v. Warden of Otay Mesa Detention Center*; *M.F. v. Warden*
22 *of Otay Mesa Detention Center* 3:25-cv-3599-CAB-MSB, *Vikas Kumar v.*
23 *Christopher Larose, Warden, Otay Mesa Detention Center et al.*, 25-CV-3796
24 *JLS (DDL)*; *Aigul Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-
25 *00421-GPC-MMP*; *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention*
26 *Center* 3:26-cv-00423-GPC-MSB; *Dugar Dambaev v. Warden, Imperial*
27 *Detonation Center* 26-cv-1182-JO-SBC; *Roman T. v. Warden, Golden State*
28



Annex Detention Facility 1:26-cv-02385-TLN-JDP.

64. Likewise, in *Liping Zhao V. Christopher J. Larose* 26-cv-1285-JES-DDL-
(granting a writ of habeas corpus releasing petitioner from custody to the
conditions of her preexisting release on recognizance on due process
grounds).

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

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

67. ICE has violated Petitioner's due process rights by revoking Petitioner's release on recognizance, without providing her a reason for revocation or giving an opportunity being heard.

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

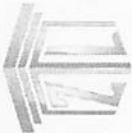
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GROUND TWO
VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. § 1231 (A)(6)

Mandatory detention is subject to constitutional limits

69. The allegations in the above paragraphs are realleged and incorporated herein.
70. “Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of liberty [Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690.
71. Petitioner has an interest in remaining with her community, working and continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 482 (“Subject to the conditions of her release on recognizance, she can be gainfully employed and is free to be with family and friends and to form the other enduring attachment of normal life.”)
72. The risk of an erroneous deprivation of such interest is high as Petitioner’s authorized stay was revoked without providing her a reason for revocation or giving an opportunity being heard. Since DHS’s initial determination that Petitioner should be released because she posed no danger to the community and was not at flight risk, there is no evidence that these findings have changes. See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal2017).
73. Petitioner has no criminal record, has not been arrested or otherwise in criminal trouble, had work authorization. “Once a noncitizen has been released, the law prohibits federal agents from rearresting her merely because she is subject to removal proceedings.” *Saravia*, 280 F. Supp. 2d at 1760. “Rather, the federal agents must be able to present evidence of materially changed circumstances-namely, evidence that the noncitizen is in fact dangerous or has become a flight risk..” *Id.*
74. Government’s interest in detaining Petitioner without notice, reasoning, and a



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

7 75. Therefore, because Respondents detained Petitioner by revoking her release on
8 recognizance in violation of the Due Process Clause, her detention is unlawful.
9 *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at
10 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process
11 challenge to a revocation of release on recognizance without a pre-deprivation
12 hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas
13 corpus releasing petitioner from custody to the conditions of her preexisting order
14 of release on recognizance on due process grounds).¹

15 76. Petitioner’s release on recognizance without notification, reasoning, or an
16 opportunity to be heard, denied Petitioner of her due process rights. Therefore, her
17 continued detention violates 8 U.S.C. § 1231(a)(6), and she must be immediately
18 released.

19 77. Furthermore, Petitioner is challenging her detention on constitutional grounds, not
20 statutory grounds. Notwithstanding the fact that she is being detained pursuant to
21 section 1225(b), Petitioner’s detention is unequivocally subject to Constitutional
22 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
23 constitutional challenges to their mandatory detention. Respondent correctly
24 states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not explicitly address
25 constitutionality arguments.” U.S. Likewise, *While in Demore v. Kim*, 538 U.S.
26 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention
27
28



1 under § 1226(c), the Supreme Court has explicitly recognized the availability of
2 judicial review over as-applied challenges to detention, including mandatory
3 detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*,
4 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly
5 found constitutional limits to apply to immigration detention, irrespective of the
6 underlying detention authority. See, e.g., *Vikas Kumar v. Christopher Larose*,
7 *Warden, Otay Mesa Detention Center et al.*, 25-CV-3796 JLS (DDL); *Aigul*
8 *Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP;
9 *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00423-
10 GPC-MSB. (granting a writ of habeas corpus releasing petitioner from
11 custody to the conditions of the preexisting parole on due process grounds).

12 78. This Court should so hold as well.

13 GROUND THREE

14 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE** 15 **ADMINISTRATIVE PROCEDURE ACT**

16 **Petitioner's ongoing and unreviewed detention violates her constitutional due**
17 **process rights and cannot continue without a bond hearing**

18 79. The allegations in the above paragraphs are realleged and incorporated herein.
19 Courts must "hold unlawful and set aside agency action" that is "arbitrary,
20 capricious, an abuse of discretion, or otherwise not in accordance with law." 5
21 U.S.C. § 706(2)(A).
22

23 80. The Ninth Circuit in *Singh* stressed that "it is improper to ask the individual to
24 share equally with society the risk of error when the possible injury to the
25 individual—deprivation of liberty—is so significant[.]" See *Singh*, 638 F. 3d at
26 1205; *Black*, 103 F.4th at 157-58 (observing that where "an individual's liberty is
27 at stake, the Supreme Court has consistently used [clear and convincing]
28 evidentiary standard for continued detention") (internal citations omitted); *id.* at



1 159 (reiterating that the government bears the burden of meeting this standard
2 even where an individual is detained pursuant to mandatory detention). This Court
3 should, too, apply the heavy burden on the government to justify Petitioner's
4 continued civil detention without a bond hearing.

5 81. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives to
6 detention and Petitioner's financial circumstances in determining whether further
7 detention is warranted and the conditions of her release. See, e.g., Hernandez, 872
8 F.3d at 994 ("If the government is setting monetary bonds to ensure appearance
9 at future proceedings, there is no legitimate reason for it not to consider the
10 individual's financial circumstances and alternative conditions of release.").

11 82. Thus, due process and Ninth Circuit precedent require that the government bear
12 the burden of justifying Petitioner's ongoing and prolonged detention by clear and
13 convincing evidence.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

15 83. Petitioner did not apply for an individual custody hearing because otherwise the
16 Court would claim that it does not have jurisdiction. The court temporarily stayed
17 a district court's 12/18/25 declaratory judgment and 2/18/26 order which ruled
18 that nationwide class members are entitled to a bond hearing and vacated *Matter*
19 *of Yajure Hurtado*, pending a ruling on the government's emergency motion for a
20 stay pending appeal. The 12/18/25 judgment will remain fully in effect in the
21 Central District of California. (*Maldonado Bautista v. DHS*, 3/6/26).

22 **PRAYER FOR RELIEF**

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

- 24 a) Assume jurisdiction over this matter;
25 b) Issue an Order to Show Cause ordering Respondents to show
26 cause why this Petition should not be granted within three
27
28

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



1 days.

- 2 c) Declare that Petitioner's detention violates the Due Process
3 Clause of the Fifth Amendment, 8 U.S.C. § 1231(a)(6);
4 d) Issue a Writ of Habeas Corpus ordering Respondents to be
5 released.
6 e) Award Petitioner attorney's fees and costs under the Equal
7 Access to Justice Act, and on any other basis justified under
8 law; and
9 f) Enjoin Respondents from re-detaining Petitioner under 8
10 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
11 travel document for her removal.
12 g) Enjoin Respondents from re-detaining Petitioner without first
13 following all procedures set forth in 8 C.F.R. §§ 241.4(l),
14 241.13(i), and any other applicable statutory and regulatory
15 procedures.
16 h) Enjoin Respondents from removing Petitioner unless they provide
17 the following process:
18 a. written notice to both Petitioner and Petitioner's counsel in a
19 language Petitioner can understand.
20 i) Grant any further relief this Court deems just and proper.

21
22
23 DATED: April 13, 2026,

Respectfully submitted



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26 Naira Zohrabyan
27 Attorney for Petitioner
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