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DETAINED

8 Attorneys for Petitioner **Asif Shavez**

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

15 **In the matter of:**

) **Case Number: '26CV2386 LL JLB**

16  
17 **ASIF SHAVEZ**



18  
19 **v.**  
20 **CHRISTOPHER J. LAROSE,**  
21 **WARDEN OF OTAY MESA**  
22 **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 and**  
) **Injunctive Relief**



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**STATEMENT OF FACTS**

1. Petitioner is a native and citizen of Pakistan who entered the United States at or near Arizona, on or about March 26, 2025. He has remained in immigration detention for **over twelve (12) months** to date.
2. On March 26, 2026, an Immigration Judge denied Petitioner's asylum and withholding of removal. Upon information and belief, Petitioner already appealed that decision.
3. During his prolonged detention, Petitioner has suffered significant physical and mental health deterioration. His continued confinement has caused and continues to cause serious harm.
4. Petitioner's continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

**JURISDICTION**

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651
8. Federal District courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.
9. Federal courts also have federal question jurisdiction, through the Administrative Procedure Act ("APA"), to deem unlawful and to set aside



1 agency action that is arbitrary, capricious, an abuse of discretion or otherwise  
2 inconsistent with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on  
3 habeas. 5 U.S.C. §703, which provides that judicial review of agency action  
4 under the APA may be proceeded by any applicable form of legal action,  
5 including but not limited to habeas corpus. The APA affords a right of review  
6 to a person who is adversely affected or harmed by agency action.

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8 **VENUE**

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

16 **LEGAL FRAMEWORK**

17 **ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT**  
18 **REVIEWING HIS CUSTODY UNDER ICE POLICY VIOLATES THE**  
19 **ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.**

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

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

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

15 14. When agencies fail to adhere to their own policies as required by *Accardi*,  
16 courts typically frame the violation as arbitrary, capricious, and contrary to  
17 law under the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C.  
18 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"),  
19 or as a due process violation, see *Sameena, Inc. v. United States Air Force*,  
20 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own  
21 regulations tends to cause unjust discrimination and deny adequate notice and  
22 consequently may result in a violation of an individual's constitutional right  
23 to due process.") (internal quotations omitted).

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

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

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

16 **CLAIMS FOR RELIEF**

17 **GROUND ONE**

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

20 **Petitioner has the right to challenge the legality of his detention**

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

22 19.Petitioner has due process rights to challenge their detention. Zadvydas v.

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

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

10 21. Respondent fundamentally misapprehends Petitioner’s due process claims.  
11 Petitioner challenges his deprivation of liberty and prolonged detention, not the  
12 adequacy of the procedures the immigration laws afford his “with respect to  
13 admission. Petitioner solely challenging his ongoing detention, and he is not  
14 bringing a constitutional claim with respect to the procedures governing his  
15 legal admission into the United States.

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

6 23. ICE has violated Petitioner's due process rights by denying an individualized  
7 custody review to which he is entitled under ICE policy.

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

11 **GROUND TWO**

12 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**  
13 **1231 (A)(6)**

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

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

16 26. U.S.C. § 1231 (a)(6), as interpreted by the Supreme Court in Zadvydas,  
17 authorizes detention only for "a period reasonably necessary to bring about the  
18 alien's removal from the United States." 533 U.S. at 689, 701.

19 27. Petitioner's continued detention has become unreasonable because his removal  
20 is not reasonably foreseeable. Therefore, his ongoing confinement violates 8  
21 U.S.C. § 1231(a)(6), and he must be released. On March 26, 2026, an  
22 Immigration Judge denied Petitioner's asylum and withholding of removal.  
23 Petitioner intends to appeal that decision.

24 28. Petitioner is challenging his prolonged detention on constitutional grounds, not  
25 statutory grounds. Notwithstanding the fact that he is being detained pursuant to  
26 section 1225(b), Petitioner's detention is unequivocally subject to Constitutional  
27 limits. The Supreme Court has not precluded noncitizens from bringing as-  
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1 applied constitutional challenges to their mandatory detention. Respondent  
2 correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not explicitly  
3 address constitutionality arguments.” U.S. Response at 3. While in *Demore v.*  
4 *Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to  
5 mandatory detention under § 1226(c), the Supreme Court has explicitly  
6 recognized the availability of judicial review over as-applied challenges to  
7 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.  
8 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,  
9 concurring). Courts in this district have accordingly found constitutional limits  
10 to apply to immigration detention, irrespective of the underlying detention  
11 authority. See, e.g., *Tesfaye Alemu Gebregziabher V. Sixto Marrero* , Case 26-  
12 cv-2004-JES-MSB; *Synthia Engonwei Munoh Warden, Otay Mesa Detention*  
13 *Center*, Case 26-CV-1773 JLS (DDL); *Fuad Abdulielil Ahmed V. Sixto Marrero*  
14 *Case 26-cv-01170-BAS-MMP*; *Maksim Lastin v. Warden, Imperial Regional*  
15 *Detention Facility 26-cv-974-RSH-DDL*; *Natalia Lastina V. Warden of Imperial*  
16 *Regional Detention Facility 3:26-cv-00975-TWR-VET*; *Karakhyan v.*  
17 *Warden of Otay Mesa Detention Center-3:25-cv-03454-JO-MMP*; *Romik*  
18 *Parunakyan v. Warden of Otay Mesa Detention Center 25-cv-3739-LL-MSB*;  
19 *L.S. v. Warden of Otay Mesa Detention Center*; *M.F. v. Warden of Otay Mesa*  
20 *Detention Center 3:25-cv-3599-CAB-MSB*; *Miganush Ogandzhanyan V.*  
21 *Warden Of Otay Mesa Detention Center 26cv0093 DMS MSB*; *Ter Ogannisian*  
22 *Geros v. Warden Of Otay Mesa Detention Center 26-CV-91 JLS (AHG)*; *Emanuel*  
23 *Ter-Ogannisian v. Warden Of Otay Mesa Detention Center 26cv0124 DMS*  
24 *JLB*; *L.S. v. Warden of Otay Mesa Detention Center*; *Naira Kirakosyan v.*  
25 *Warden of Otay Mesa Detention Center 26-cv-315-JO-DDL*. (**granting a writ**  
26 **of habeas corpus after Court determined that Petitioner’s detention without**  
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1 **a bond hearing has become unreasonable and violates due process).**

2 29. This Court should so hold as well.

3 30. Petitioner has now been detained for over twelve (12) months. This prolonged  
4 and indeterminate detention is arbitrary, excessive in duration, and  
5 unconstitutional.

6 **GROUND THREE**

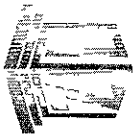
7 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**  
8 **ADMINISTRATIVE PROCEDURE ACT**

9 **Petitioner's ongoing and unreviewed detention violates his constitutional due**  
10 **process rights and cannot continue without a bond hearing**

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

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

27 33. The Mathews test for procedural due process claims balances: (1) the private  
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1 interest threatened by governmental action; (2) the risk of erroneous deprivation  
2 of such interest and the value of additional or substitute safeguards; and (3) the  
3 government interest. 424 U.S. at 335. Each Mathews factor weighs in  
4 Petitioner’s favor. Petitioner’s detention of 12 months and counting without any  
5 neutral review is a violation of his procedural due process rights and requires  
6 this court to order a hearing before a neutral adjudicator to evaluate whether the  
7 government can justify his ongoing detention.

8 34. Petitioner has a profound liberty interest. Petitioner has a weighty interest in his  
9 own liberty, the core privacy interest at stake here. *Zadvydas*, 533 U.S. at 690  
10 (“Freedom from imprisonment...lies at the heart of the liberty [the Due Process  
11 Clause] protects.”). Petitioner’s 14 months of detention with a granted asylum”  
12 limit of the brief detention contemplated in *Demore*, 538 U.S. at 530-31. See  
13 also *Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) (“As  
14 detention continues past a year, courts become extremely wary of permitting  
15 continued custody absent a bond hearing.”) (internal citation omitted).

16 35. The second prong of the Mathews test, the risk of erroneous deprivation of such  
17 interest through the procedures used, and the probable value of additional  
18 procedural safeguards, also weighs heavily in Petitioner’s favor. 424 U.S. at  
19 335. “[T]he risk of an erroneous deprivation of liberty in the absence of a  
20 hearing before a neutral decisionmaker is substantial.” *Diouf v. Napolitano*  
21 (*Diouf II*), 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner “does not  
22 have a statutory right to a bond hearing or the right to seek additional bond  
23 hearings. . . the risk of erroneous deprivation as Petitioner’s time in detention  
24 lengthens is not insignificant,” and the probable value of additional procedural  
25 safeguards is exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC,  
26 2025 WL 711190, at \*7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025  
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1 WL 3013684 at \*4 (“Given that Petitioner has been held without a bond hearing  
2 for almost a year, and it is not clear when detention will end, the risk of  
3 erroneous deprivation weighs in favor of granting a bond hearing.”). In this  
4 case, Petitioner has been deprived of his liberty in civil detention for 12 months.  
5 Because he is subject to mandatory detention pursuant to section 1225(b), he  
6 does not have the statutory right to request a bond hearing and therefore lacks  
7 access to an appropriate procedural safeguard that would protect against the risk  
8 of erroneous deprivation, absent intervention from this Court.

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

3 37. Any internal review of Petitioner’s detention or request for discretionary parole  
4 by DHS cannot satisfy the requirements for due process because DHS is the  
5 very authority that is detaining him. Where a custody review is conducted by  
6 the very same agency that is detaining the individual, that agency reviewing its  
7 own actions cannot be held to a neutral standard. As such, Petitioner must be  
8 afforded a hearing before a neutral arbiter in order for his ongoing, prolonged  
9 detention to comply with due process.

10 38. Contrary to Respondent’s assertions, Petitioner faces prolonged detention for  
11 an indefinite period of time pending the final adjudication of his asylum claim.  
12 This Court has recognized that “it is difficult to ascertain an endpoint to removal  
13 proceedings, but it is clear proceedings could take a substantial amount of  
14 time,” and “[i]t is unknown when the IJ will decide the application for relief.”  
15 *Idiev v. Warden, et al.*, No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at  
16 \*5 (E.D. Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party “has  
17 other avenues available for relief including an appeal to the BIA and a petition  
18 for review to the Ninth Circuit Court of Appeals.” *Id.* See, e.g., *Abduraimov*,  
19 2025 WL 2912307 (where the government appealed the IJ’s grant of asylum  
20 and the BIA remanded back to the IJ); *A.E.*, 2025 WL 1424382 (where the  
21 government appealed the IJ’s grant of asylum, the IJ denied all relief on remand,  
22 and the noncitizen appealed to the BIA).

23  
24 39. Here, On March 26, 2026, an Immigration Judge denied Petitioner’s asylum  
25 and withholding of removal. Petitioner intends to appeal that decision.

26 40. Petitioner has been in detention for 12 months, and Petitioner’s removal is not  
27 reasonably foreseeable, as it depends entirely on the outcome of his merits  
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1 appeal and any subsequent review that may follow. Accordingly, his continued  
2 detention is arbitrary, prolonged, and constitutionally unreasonable.

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

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

21  
22 43. The third Mathews factor also supports Petitioner: the government interest is  
23 weak here because the interest at stake “is the ability to detain Petitioner without  
24 providing him a bond hearing, not whether the government may continue to  
25 detain him” at all. Lopez-Reyes v. Bonnar, 362 F. Supp. 3d 762, 777 (N.D. Cal.  
26 Jan. 29, 2019) (emphasis in original). As the government has conceded in  
27 similar cases, the cost of providing such a bond hearing is minimal. Id.; Singh  
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1 v. Barr, Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at \*12 (“The  
2 government has not offered any indication that a second bond hearing would  
3 have outside effects on its coffers.”); Marroquin Ambriz v. Barr, 420 F. Supp.  
4 3d 953, 964 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the  
5 parties did not contest “that the cost of conducting a bond hearing, to determine  
6 whether the continued detention of Petitioner is justified, is minimal”). Holding  
7 a hearing at which Respondents must justify Petitioner’s continued detention  
8 thus actually “promotes the Government’s interest—one we believe to be  
9 paramount—in minimizing the enormous impact of incarceration in cases  
10 where it serves no purpose.” See Velasco-Lopez v. Decker, 978 F.3d 842, 854  
11 (2d Cir. 2020) (emphasis added); id. at n.11; Hernandez-Lara v. Lyons, 10 F.4th  
12 19, 33 (1st Cir. 2021) (“[L]imiting the use of detention to only those noncitizens  
13 who are dangerous or a flight risk may save the government, and therefore the  
14 public, from expending substantial resources on needless detention.”).

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

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

12  
13 46. The Ninth Circuit in Singh stressed that “it is improper to ask the individual to  
14 share equally with society the risk of error when the possible injury to the  
15 individual—deprivation of liberty— is so significant[.]” See Singh, 638 F. 3d  
16 at 1205; Black, 103 F.4th at 157-58 (observing that where “an individual’s  
17 liberty is at stake, the Supreme Court has consistently used [clear and  
18 convincing] evidentiary standard for continued detention”) (internal citations  
19 omitted); *id.* at 159 (reiterating that the government bears the burden of meeting  
20 this standard even where an individual is detained pursuant to mandatory  
21 detention). This Court should, too, apply the heavy burden on the government  
22 to justify Petitioner’s continued civil detention without a bond hearing.

23 47. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives  
24 to detention and Petitioner’s financial circumstances in determining whether  
25 further detention is warranted and the conditions of his release. See, e.g.,  
26 Hernandez, 872 F.3d at 994 (“If the government is setting monetary bonds to  
27 ensure appearance at future proceedings, there is no legitimate reason for it not  
28



1 to consider the individual’s financial circumstances and alternative conditions  
2 of release.”).

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

6 **PRAYER FOR RELIEF**

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

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

20  
21  
22 DATED: April 15, 2026,

Respectfully submitted



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Naira Zohrabyan  
Attorney for Petitioner

