

DETAINED

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of:

RIGAT ABRHA HAGOS

Petitioner

v.

JEREMY CASEY, WARDEN OF
IMPERIAL REGIONAL DETENTION
FACILITY

Respondents

Case Number: 26-cv-2365-JO-SBC


MOTION TO ENFORCE
JUDGMENT

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief



I. STATEMENT OF FACTS

1. Petitioner Rigat Abriha Hagos (“Petitioner”) respectfully brings this Motion to Enforce Judgment pursuant to 28 U.S.C. § 1651, challenging his prolonged and unconstitutional immigration detention under 8 U.S.C. § 1226(a).
2. Petitioner entered the United States without inspection and was detained by immigration officials on or about March 15, 2025.
3. On February 24, 2026, an Immigration Judge ordered Petitioner removed, and Petitioner timely appealed that decision to the Board of Immigration Appeals on March 17, 2026, where it remains pending.
4. Petitioner has remained continuously detained at the Imperial Regional Detention Facility.
5. Court held that 8 U.S.C. §§ 1252(g), (a)(5), and (b)(9) do not bar a collateral challenge to the legality of immigration detention. See attached **Exhibit “A”** Writ Habeas petition granted order.
6. Petitioner’s prolonged detention without a constitutionally adequate bond hearing violates the Due Process Clause of the Fifth Amendment.
7. Petitioner has now been detained for approximately fourteen (14) months. Despite diligently pursuing all available relief, his continued detention has become unreasonably prolonged and constitutionally impermissible.
8. On May 4, 2026, this Court granted Petitioner’s Petition for Writ of Habeas Corpus and found that his prolonged detention violated the Constitution. The Court required that the Government bear the burden of proof by clear and convincing evidence to establish that Petitioner is a danger to the community or a flight risk, and that the Immigration Judge consider Petitioner’s financial



1 circumstances and alternatives to detention. The Court also made clear that
2 noncompliance would require Petitioner's release.

3 9. On May 11, 2026, a bond hearing was conducted; however, the Immigration
4 Judge denied bond in a proceeding that failed to comply with this Court's
5 Order. Petitioner timely appealed the bond denial on June 1, 2026. See
6 **attached "B"** Immigration judge denial order and screenshot of bond appeal.

7
8 10. However, administrative review does not cure the constitutional deficiencies in
9 the bond proceeding or Respondents' failure to comply with this Court's Order
10 and serves only to prolong Petitioner's unlawful detention.

11 11. During his prolonged confinement, Petitioner has suffered significant and
12 worsening deterioration of his physical and mental health, including epilepsy
13 and severe depression with suicidal ideation. His continued detention has
14 caused and continues to cause irreparable harm.

15 12. The Constitution protects all persons within the United States from arbitrary
16 deprivation of liberty. Even in the immigration context, detention is subject to
17 constitutional limitations, and prolonged civil detention without adequate
18 procedural safeguards violates the Fifth Amendment. See *Zadvydas v. Davis*,
19 533 U.S. 678, 690–95 (2001). Absent intervention by this Court, Petitioner will
20 remain detained without meaningful review and in continued violation of this
21 Court's prior Order. This Court retains inherent authority to enforce its
22 judgments and ensure compliance.

23 13. Accordingly, Petitioner respectfully requests that this Court enforce its May 4,
24 2026, Order and order his immediate release from ICE custody. In the
25 alternative, Petitioner requests that Respondents be ordered to provide a
26 constitutionally compliant bond hearing within seven (7) days, at which the
27 Government bears the burden of proof by clear and convincing evidence.
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1 14. Petitioner's continued detention is arbitrary, unlawful, and in direct violation
2 of due process. Immediate judicial intervention is required.

3 **II. PETITIONER DID NOT RECEIVE A CONSTITUTIONALLY**
4 **ADEQUATE BOND HEARING**

5 15. Petitioner did not receive a constitutionally adequate bond hearing. The
6 Immigration Judge failed to conduct a meaningful individualized assessment of
7 whether Petitioner posed a danger or flight risk and instead offered a conclusory
8 determination unsupported by reasoning or evidence.

9 16. A constitutionally adequate bond hearing requires that the government bear the
10 burden of proof; that the burden be satisfied by clear and convincing evidence;
11 and that the adjudicator provide an individualized determination supported by
12 reasoned analysis, including consideration of alternatives to detention and the
13 noncitizen's ability to pay. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
14 1206–07 (9th Cir. 2022).

15 17. Those requirements were not satisfied here. Petitioner has now been detained
16 for approximately **14 months**, without receiving a constitutionally adequate
17 bond hearing, rendering her continued detention unlawful.

18 18. Although he was provided a hearing before an Immigration Judge, that
19 proceeding failed to satisfy due process because the government was not
20 required to meet the constitutionally mandated burden of proof, the decision
21 relied on unsupported assertions, and the court failed to meaningfully consider
22 alternatives to detention, Petitioner's ability to pay, and overwhelming evidence
23 of her community ties.

24 19. Despite these extraordinary humanitarian factors, Respondents continue to
25 detain Petitioner without meaningful review of whether her continued custody
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1 is justified. Her prolonged detention, under these circumstances, violates the
2 Due Process Clause of the Fifth Amendment.

3 20. Petitioner has now fully exhausted available administrative remedies by timely
4 appealing the Immigration Judge's custody determination and denial of relief to
5 the Board of Immigration Appeals. Because administrative review cannot
6 remedy the ongoing constitutional violations caused by his prolonged detention,
7 habeas relief is appropriate and necessary.

8 21. The absence of a reasoned explanation is independently sufficient to render the
9 bond determination defective. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
10 1206–07 (9th Cir. 2022). Courts in this District, including this Court, have
11 required that detention decisions be preceded by a procedurally adequate
12 hearing before a neutral adjudicator. See *Mustafa Anif Afshar v. Marin*, No. ED
13 26-cv-00308-JAK (C.D. Cal. Apr. 7, 2026) (requiring a pre-detention hearing
14 before a neutral immigration judge); *Vilca Yataco v. Warden*, No. 5:25-cv-
15 03229-JAK (C.D. Cal. Jan. 16, 2026) (prohibiting re-detention absent a hearing
16 where the government proves necessity by clear and convincing evidence).

17 22. This Court has already recognized that detention decisions must be preceded by
18 a neutral adjudicatory process sufficient to satisfy due process.

19 23. Even if the Court were to assume procedural compliance, the record contains
20 no evidence establishing that detention is necessary to mitigate flight risk or
21 danger. The government has failed to show any nexus between Petitioner's
22 continued detention and its purported purposes.

23 **III. LEGAL FRAMEWORK**

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



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

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

21 27. When agencies fail to adhere to their own policies as required by *Accardi*,
22 courts typically frame the violation as arbitrary, capricious, and contrary to law
23 under the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C.
24 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"),
25 or as a due process violation, see *Sameena, Inc. v. United States Air Force*,
26 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own
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1 regulations tends to cause unjust discrimination and deny adequate notice and
2 consequently may result in a violation of an individual's constitutional right to
3 due process.") (internal quotations omitted).

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

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

19
20 30. Here, Petitioner falls into this category where ICE has failed to act as required
21 by their procedures and require intervention.

22 **IV. CLAIMS FOR RELIEF**
23 **GROUND ONE**

24 **VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS-**
25 **FAILURE TO PROVIDE CONSTITUTIONALLY ADEQUATE**
26 **PROCEDURAL SAFEGUARDS**

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

28 32. Due process requires that continued civil detention be justified through a fair



1 procedure.

2 33. At a constitutionally adequate bond hearing: the government must bear the
3 burden of proof; the burden must be clear and convincing evidence; the
4 adjudicator must consider alternatives to detention; the adjudicator must evaluate
5 ability to pay and conditions of release.

6 34. Petitioner has been denied such a hearing.

7 35. Despite substantial evidence demonstrating that he is not a flight risk or danger
8 and strong community ties Respondents continue to detain his without
9 meaningful review.

10 36. This lack of procedural safeguards renders his detention unconstitutional.

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

19 38. As the Ninth Circuit held, the Due Process Clause applies to noncitizens
20 regardless of whether they are “seeking admission” or are “admitted” under
21 immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004),
22 abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also
23 *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D.
24 Wash. 2023). The Due Process Clause allows Petitioner to challenge his
25 detention.
26

27 39. Petitioner challenges his deprivation of liberty and detention, not the adequacy
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1 of the procedures the immigration laws afford his “with respect to admission.
2 Petitioner solely challenging his detention, and he is not bringing a constitutional
3 claim with respect to the procedures governing his legal admission into the
4 United States.

5 40.To the extent Respondent takes the extraordinary position that Petitioner has no
6 due process rights at all, that is unsupported by law and would have gruesome
7 practical consequences: “If excludable [noncitizens] were not protected by even
8 the substantive component of constitutional due process, ... we do not see why
9 the United States government could not torture or summarily execute them. ...
10 [W]e conclude that government treatment of excludable [noncitizens] must
11 implicate the Due Process Clause of the Fifth Amendment.”. *Rosales-Garcia v.*
12 *Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*,
13 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) (“[T]he principle that
14 unadmitted [noncitizens] have no constitutionally protected rights defies
15 rationality. Under this view, the Attorney General, for example, could invoke
16 legitimate immigration goals to justify a decision to stop feeding all detained
17 [noncitizens] Surely, we would not condone mass starvation.”). Thus, there
18 is no question that Petitioner has the right to challenge the constitutionality of
19 his prolonged detention under the Due Process Clause of the Fifth Amendment
20 of the Constitution.
21

22 41.Courts throughout this Circuit granted Motion to Enforce Judgment after
23 Petitioner was **unreasonably deemed a flight risk after a bond hearing**. See,
24 e.g., *Tiboko-Tfiuh v. Noem* (3:26-cv-01215).

25 GROUND TWO

26 **Mandatory detention is subject to constitutional limits-Prolonged** 27 **Detention**

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



1 43. Petitioner's continued detention without a bond hearing violates the Fifth
2 Amendment.

3 44. Petitioner has a fundamental liberty interest in freedom from physical restraint.
4 That interest is substantial and ongoing.

5 45. The risk of erroneous deprivation is exceptionally high because Petitioner has
6 not received a constitutionally sufficient hearing before a neutral
7 decisionmaker. No mechanism currently exists to test whether his continued
8 detention is justified.

9 46. The government's interest in avoiding such a hearing is minimal. Providing a
10 bond hearing imposes little administrative burden while ensuring
11 constitutionally required protections.

12 47. Under the Due Process Clause, prolonged detention, especially approaching or
13 exceeding several months, requires an individualized determination of
14 necessity.

15 48. "Freedom from imprisonment—from government custody, detention, or other
16 forms of physical restraint—lies at the heart of liberty [Due Process Clause]
17 protects." *Zadvydas*, 533 U.S. at 690.

18 49. Petitioner has an interest in remaining with his community, working and
19 continuing the process of seeking cancellation of removal. See *Morrissey*, 408
20 U.S. 471 at 482 ("Subject to the conditions of his parole, he can be gainfully
21 employed and is free to be with family and friends and to form the other enduring
22 attachment of normal life.")

23 50. Government's interest in detaining Petitioner without notice, reasoning, and a
24 hearing is "low." See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
25 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
26 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the
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1 power to take steps toward doing so; but its interest in doing so without a hearing
2 is low.”). Respondents fail to point to any burdens on the government if it were
3 to have provided proper notice, reasoning, and a pre-deprivation hearing.

4 51. Government’s actions denied Petitioner of his due process rights. Therefore, his
5 continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately
6 released.

7 52. Furthermore, Petitioner is challenging his detention on constitutional grounds,
8 not statutory grounds. Notwithstanding the fact that he is being detained pursuant
9 to section 1226(a), Petitioner’s detention is unequivocally subject to
10 Constitutional limits. The Supreme Court has not precluded noncitizens from
11 bringing as-applied constitutional challenges to their mandatory detention.
12 Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not
13 explicitly address constitutionality arguments.” U.S. Likewise, While in *Demore*
14 *v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
15 mandatory detention under § 1226(c), the Supreme Court has explicitly
16 recognized the availability of judicial review over as-applied challenges to
17 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
18 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
19 concurring).

20
21 53. Furthermore, Petitioner’s continued detention has become unreasonable because
22 his removal is not reasonably foreseeable. Therefore, his ongoing confinement
23 violates 8 U.S.C. § 1231(a)(6), and he must be released.

24 54. On June 18, 2025, the IJ denied Petitioner’s Application for Cancellation of
25 Removal and on July 3, 2025, Petitioner timely appealed to the BIA.

26 55. BIA’s final decision may end up at least six months, which is **one year after**
27 **detention.**
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56. Petitioner is challenging his prolonged detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that he is being detained pursuant to section 1226(a), Petitioner's detention is unequivocally subject to Constitutional limits. The Supreme Court has not precluded noncitizens from bringing as-applied constitutional challenges to their mandatory detention. Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly address constitutionality arguments." U.S. Response at 3. While in *Demore v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention under § 1226(c), the Supreme Court has explicitly recognized the availability of judicial review over as-applied challenges to detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). Courts in this district have accordingly found constitutional limits to apply to immigration detention, irrespective of the underlying detention authority. See, e.g., *Gebregziabher v. Marrero*, Case 3:26-cv-02004-JES-MSB; *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *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; *Karakhanyan 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; 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).

57. This Court should so hold as well.

58. Petitioner has now been detained for fourteen (14) months and with no indication of when relief might be available. This prolonged and indeterminate detention is arbitrary, excessive in duration, and unconstitutional.

GROUND THREE
ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE
ADMINISTRATIVE PROCEDURE ACT

Petitioner's ongoing and unreviewed detention violates his constitutional due process rights and cannot continue without an adequate bond hearing

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

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

60. The Mathews test is the appropriate test for this Court to use to evaluate the constitutionality of Petitioner's prolonged detention. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Mathews test is routinely applied by district courts across the Ninth Circuit, including this Court, to determine whether due process requires neutral review of a noncitizen's custody. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a "flexible test" broad enough to account for government interests when evaluating due process claims in the immigration detention context); see, e.g., *Abduraimov*, 2025 WL



2912307 and Maksim, 2025 WL 2879328. Respondents offer “no valid alternative to the Mathews framework nor [do they] demonstrate[e] that Mathews is inapplicable here.” Jensen v. Garland, No. 5:21-c-v- 01195-CAS (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023).

61. The Mathews test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. 424 U.S. at 335. Each Mathews factor weighs in Petitioner’s favor. Petitioner’s detention of 14 months and counting without any neutral review is a violation of his procedural due process rights and requires this court to order a hearing before a neutral adjudicator to evaluate whether the government can justify his ongoing detention.

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

63. The second prong of the Mathews test, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards, also weighs heavily in Petitioner’s favor. 424 U.S. at 335. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” Diouf v. Napolitano (Diouf II), 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner “does not have a



1 statutory right to a bond hearing or the right to seek additional bond hearings. . .
2 the risk of erroneous deprivation as Petitioner's time in detention lengthens is
3 not insignificant," and the probable value of additional procedural safeguards is
4 exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL
5 711190, at *7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684
6 at *4 ("Given that Petitioner has been held without a bond hearing for almost a
7 year, and it is not clear when detention will end, the risk of erroneous deprivation
8 weighs in favor of granting a bond hearing."). In t case, Petitioner has been
9 deprived of his liberty in civil detention for 14 months. Because he is subject to
10 mandatory detention pursuant to section 1225(b), he does not have the statutory
11 right to request a bond hearing and therefore lacks access to an appropriate
12 procedural safeguard that would protect against the risk of erroneous
13 deprivation, absent intervention from this Court.

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

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

14 66. Contrary to Respondent’s assertions, Petitioner faces prolonged detention for an
15 indefinite period of time pending the final adjudication of his asylum claim. This
16 Court has recognized that “it is difficult to ascertain an endpoint to removal
17 proceedings, but it is clear proceedings could take a substantial amount of time,”
18 and “[i]t is unknown when the IJ will decide the application for relief.” Idiev v.
19 Warden, et al., No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at *5 (E.D.
20 Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party “has other
21 avenues available for relief including an appeal to the BIA and a petition for
22 review to the Ninth Circuit Court of Appeals.” Id. See, e.g., Abduraimov, 2025
23 WL 2912307 (where the government appealed the IJ’s grant of asylum and the
24 BIA remanded back to the IJ); A.E., 2025 WL 1424382 (where the government
25 appealed the IJ’s grant of asylum, the IJ denied all relief on remand, and the
26 noncitizen appealed to the BIA).
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1 67. Petitioner has been in detention for **14 months**, and Petitioner's removal is not
2 reasonably foreseeable, as it depends entirely on the outcome of his merits
3 hearing and any subsequent review that may follow. Accordingly, his continued
4 detention is arbitrary, prolonged, and constitutionally unreasonable.

5 68. Due to prolonged detention, the Respondent has been experiencing both physical
6 and mental health issues. There is no indication as to how long the proceedings
7 will continue, and, depending on the outcome of a possible appeal, the Petitioner
8 may remain in custody for an extended period of time.

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

24
25 70. The third Mathews factor also supports Petitioner: the government interest is
26 weak here because the interest at stake "is the ability to detain Petitioner without
27 providing his a bond hearing, not whether the government may continue to
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1 detain his” at all. *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal.
2 Jan. 29, 2019) (emphasis in original). As the government has conceded in similar
3 cases, the cost of providing such a bond hearing is minimal. *Id.*; *Singh v. Barr*,
4 Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (“The government
5 has not offered any indication that a second bond hearing would have outside
6 effects on its coffers.”); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964
7 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did
8 not contest “that the cost of conducting a bond hearing, to determine whether the
9 continued detention of Petitioner is justified, is minimal”). Holding a hearing at
10 which Respondents must justify Petitioner’s continued detention thus actually
11 “promotes the Government’s interest—one we believe to be paramount—in
12 minimizing the enormous impact of incarceration in cases where it serves no
13 purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)
14 (emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir.
15 2021) (“[L]imiting the use of detention to only those noncitizens who are
16 dangerous or a flight risk may save the government, and therefore the public,
17 from expending substantial resources on needless detention.”).

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

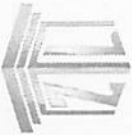
23 72. At a bond hearing, the government must bear the burden of justifying
24 Petitioner’s ongoing and prolonged detention. Where a custody hearing is
25 warranted as a procedural safeguard against unreasonably prolonged detention,
26 it is well established that the government bears the burden of justifying
27 continued confinement by clear and convincing evidence. *Singh v. Holder*, 638
28



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

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

26 74.Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
27 to detention and Petitioner’s financial circumstances in determining whether
28



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

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

9 76. Respondents’ continued detention of Petitioner without individualized review is
10 arbitrary and violates due process.

11 77. Petitioner continues to suffer irreparable harm including deterioration of his
12 physical health, risk of cancer progression, and severe emotional harm to his
13 minor child. These harms cannot be remedied after the fact.

14 78. Petitioner is likely to succeed on the merits because prolonged detention without
15 a constitutionally adequate bond hearing violates clearly established due process
16 principles under Zadvydas and Singh.

17 79. Additionally, the prolonged and indeterminate nature of his detention now
18 approximately fourteen (14) months with no clear end renders it excessive and
19 unconstitutional.
20

21 **GROUND FOUR**

22 **FAILURE TO COMPLY WITH FEDERAL COURT ORDER**

23
24 80. The District Court explicitly required that the government bear the burden of
25 proving by clear and convincing evidence that Petitioner is a danger or flight
26 risk. The Immigration Judge failed to apply this standard, instead relying on
27 unsupported assertions. This constitutes noncompliance with this Court’s order
28 and warrants enforcement.



1 81.The IJ committed clear legal and factual error in concluding that Respondent
2 poses a danger to the community and a flight risk. The Department of Homeland
3 Security (“DHS”) failed to meet its burden of proving dangerousness or flight
4 risk by clear and convincing evidence, as required by the federal court’s order
5 granting Respondent’s Petition for Writ of Habeas Corpus.

6 82.The IJ further erred in finding Respondent poses a danger to the community or a
7 flight risk such that no condition of release could ensure his appearance. The
8 record lacks individualized evidence supporting such findings. Accordingly,
9 continued detention is legally unjustified.

10 83.Binding precedent requires a threshold showing before the burden shifts to the
11 respondent. See: *Budiono v. Lynch*, 837 F.3d 1042 (9th Cir. 2016); *Kumar v.*
12 *Holder*, 728 F.3d 993 (9th Cir. 2013); *Mata-Sanguinetty v. Garland* (9th Cir.
13 2023). No such showing was made here.

14 **V. JURISDICTION EXISTS AND EXHAUSTION IS NOT**
15 **REQUIRED**

16
17 84.This Court has jurisdiction over Petitioner’s constitutional claims under 28
18 U.S.C. § 2241, which authorizes federal courts to review the legality of
19 executive detention. The writ of habeas corpus remains available to challenge
20 unlawful immigration detention, particularly where a petitioner alleges
21 violations of due process.

22 85.The Supreme Court has long recognized that habeas jurisdiction extends to
23 noncitizens challenging the legality of their detention. See *Zadvydas v. Davis*,
24 533 U.S. 678, 687 (2001) (confirming availability of habeas relief to challenge
25 post-removal-period detention); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003)
26 (recognizing habeas jurisdiction over immigration detention challenges).
27
28



Exhaustion is not Required for Constitutional Challenges

86.Exhaustion of administrative remedies is not required where a petitioner raises constitutional claims that the agency lacks authority to resolve. The Ninth Circuit has consistently held that exhaustion is prudential, not jurisdictional, and does not apply where it would be futile or inadequate.

87.In *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), the Ninth Circuit confirmed that due process challenges to bond procedures are properly brought in habeas and do not require exhaustion where the agency cannot provide the requested relief. Similarly, in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), the court held that noncitizens may seek habeas relief to challenge constitutionally deficient bond proceedings.

88.District courts across this Circuit have applied the same principle in prolonged detention cases. Where the claim is that the process itself is unconstitutional, requiring exhaustion would serve no purpose because the agency cannot cure the constitutional defect.

Exhaustion is Excused Where it Would be Futile or Inadequate

89.Even where exhaustion might otherwise apply, it is excused where administrative remedies are inadequate or futile. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004) (recognizing exceptions to exhaustion where remedies are inadequate, futile, or where irreparable harm would result).

90.Here, exhaustion is futile because Petitioner challenges the legal sufficiency of the bond hearing framework itself, not merely an individual decision. The Board of Immigration Appeals lacks authority to impose the constitutionally required burden of proof or to restructure detention proceedings to conform to due process requirements articulated in *Rodriguez-Diaz*.



1 91. Moreover, Petitioner faces ongoing and irreparable harm, including continued
2 unlawful detention and severe medical deterioration. Under such circumstances,
3 courts routinely excuse exhaustion.

4 **Courts in This District Routinely Exercise Jurisdiction Without Requiring**
5 **Exhaustion**

6 92. Courts in this District, including this Court, regularly exercise habeas
7 jurisdiction over immigration detention claims without requiring exhaustion,
8 particularly where constitutional violations are alleged.

9 93. Likewise, in *Khav v. Noem*, No. 3:26-cv-01274-JO-MMP, this Court granted
10 Motion to Enforce Judgment based on inadequate bond hearing.

11 94. These cases reflect a consistent practice: where detention violates constitutional
12 standards, federal courts do not require prolonged administrative exhaustion
13 before granting relief.

14 95. Here, Petitioner's challenge is not to the outcome of a discretionary decision,
15 but to the constitutional adequacy of the process itself. Because the agency
16 cannot remedy these constitutional violations, exhaustion is not required.

17 96. Requiring Petitioner to pursue additional administrative remedies would only
18 prolong unlawful detention and exacerbate the ongoing harm he is suffering.
19 Under settled Supreme Court and Ninth Circuit precedent, this Court should
20 exercise jurisdiction and grant relief.
21

22 **PRAYER FOR RELIEF**

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

- 25 1. Enforce its May 4, 2026, Order.
26 2. Order Petitioner's immediate release from custody; or, in the
27 alternative,
28



3. Order a constitutionally compliant bond hearing within 7 days, at which the government bears the burden of proof by clear and convincing evidence;
4. Issue an Order to Show Cause;
5. Award attorney's fees and costs; and
6. Grant any further relief the Court deems just and proper.

DATED: June 1, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner



CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this **MOTION TO ENFORCE JUDGMENT** using the CM/ECF system.

DATED: June 1, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner
Zohrabyan Law, APC

