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DETAINED

8 Attorneys for Petitioner **Omid Nazari**

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

14
15 **In the matter of:**

) **Case Number: '26CV2466 RSH AHG**

16
17 **OMID NAZARI**



18
19 **v.**

20 **SIXTO MARRERO, WARDEN OF**
21 **IMPERIAL REGIONAL ADULT**
22 **DETENTION FACILITY**

) **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**



STATEMENT OF FACTS

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1. Petitioner is a native and citizen of Iran who entered the United States at or near San Ysidro, CA, on or about January 15, 2025, seeking asylum. **See Exhibit A is indeed the Notice to Appear (NTA).**
2. He has remained in immigration detention for approximately fifteen (15) months to date.
3. Respondents commenced removal proceedings against him in immigration court, entitling him to present his claim with the due process rights under 8 U.S.C. 1299a.
4. Since then, Petitioner has diligently attended every immigration court hearing. He filed an asylum application.
5. Individual hearings have been reset multiply times. Petitioner started his merits hearing on October 24, 2025, which lasted about 3-4 hours and direct examination was concluded. 1st individual hearing: previously set October 24, 2025, was reset to December 9, 2025; 2nd individual hearing: previously set December 9, 2025, was reset to January 15, 2026; 3rd individual hearing: previously set January 15, 2026, was reset to January 29, 2026; 4th individual hearing: previously set January 29, 2026, was reset to February 10, 2026; 5th individual hearing: previously set February 10, 2026, was reset to February 24, 2026, 6th individual hearing: previously set February 24, 2026, was reset to March 24, 2026, 7th individual hearing: previously set March 24, 2026 was reset to April 7, 2026. All of these hearings lasted about 1.5 hours, except the first one which lasted about 3-4 hours. Because the time was limited, the hearings were not completed and were continued to later dates. All these times individual



1 hearings were continued and delayed at no fault on the part of Petitioner, who
2 has been detained since January 15, 2025.

3 6. Petitioner's upcoming Individual hearing is set on April 30, 2026, at 1:00 PM.

4 **See Exhibit "B" Screenshot EOIR page.**

5 7. As a result, Petitioner has now been detained for fifteen (15) months.

6 8. During his prolonged detention, Petitioner has suffered significant physical and
7 mental health deterioration. His continued confinement has caused and
8 continues to cause serious harm.

9 9. Following his military service, petitioner developed a neurological condition
10 affecting the right side of his body, causing intermittent numbness and
11 weakness. Despite multiple medical evaluations, including MRI and brain
12 imaging, no definitive diagnosis has been established. Physicians have
13 indicated that the condition may be psychosomatic and is exacerbated by stress
14 and anxiety. He has previously informed to the immigration judge of this
15 condition. While in detention, petitioner was prescribed medication for anxiety
16 and depression for approximately one year but discontinued it two months ago
17 due to significant side effects, including excessive drowsiness. Since then,
18 petitioner's condition has worsened, and he has requested further medical
19 evaluation.
20

21 10. Petitioner's continued detention is arbitrary and unlawful, and he requests that
22 this Court order his immediate release from ICE custody.

23 **JURISDICTION**

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25 11. This action arises under the Constitution of the United States and the
26 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
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1 12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
2 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
3 United States Constitution (Suspension Clause).

4 13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
5 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-
6 Writs Act, 28 U.S.C. § 1651

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

9 15. Federal courts also have federal question jurisdiction, through the
10 Administrative Procedure Act ("APA"), to deem unlawful and to set aside
11 agency action that is arbitrary, capricious, an abuse of discretion or otherwise
12 inconsistent with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on
13 habeas. 5 U.S.C. §703, which provides that judicial review of agency action
14 under the APA may be proceeded by any applicable form of legal action,
15 including but not limited to habeas corpus. The APA affords a right of review
16 to a person who is adversely affected or harmed by agency action.

17
18 **VENUE**

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20 16. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3)
21 and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within
22 this district at Imperial Regional Detention Facility. Furthermore, a substantial
23 part of the events or omissions giving rise to this action occurred and continue
24 to occur at ICE's Washington Field Office in Chantilly, Virginia, within this
25 division. No real property is involved in this action. 28 U.S.C. §1391(e).
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LEGAL FRAMEWORK

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

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

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

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



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

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

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

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

2 **CLAIMS FOR RELIEF**

3 **GROUND ONE**

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

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

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

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

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

23 27.Respondent fundamentally misapprehends Petitioner’s due process claims.
24 Petitioner challenges his deprivation of liberty and prolonged detention, not the
25 adequacy of the procedures the immigration laws afford his “with respect to
26 admission. Petitioner solely challenging his ongoing detention, and he is not
27 bringing a constitutional claim with respect to the procedures governing his
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1 legal admission into the United States.

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

18
19 29. ICE has violated Petitioner's due process rights by denying an individualized
20 custody review to which he is entitled under ICE policy.

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

24 **GROUND TWO**

25 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**
26 **1231 (A)(6)**

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

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



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

4 33.Petitioner's continued detention has become unreasonable because his removal
5 is not reasonably foreseeable. Therefore, his ongoing confinement violates 8
6 U.S.C. § 1231(a)(6), and he must be released. Petitioner's Individual Hearing
7 is currently scheduled for April 30, 2026, before the Imperial Immigration
8 Court. Petitioner has now been detained for fifteen (15) months. Depending on
9 the outcome of his merits hearing, it may necessitate the need for appeal, which
10 will also unreasonably delay the process.

11 34.Petitioner is challenging his prolonged detention on constitutional grounds, not
12 statutory grounds. Notwithstanding the fact that he is being detained pursuant to
13 section 1225(b), Petitioner's detention is unequivocally subject to Constitutional
14 limits. The Supreme Court has not precluded noncitizens from bringing as-
15 applied constitutional challenges to their mandatory detention. Respondent
16 correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly
17 address constitutionality arguments." U.S. Response at 3. While in *Demore v.*
18 *Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
19 mandatory detention under § 1226(c), the Supreme Court has explicitly
20 recognized the availability of judicial review over as-applied challenges to
21 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
22 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
23 concurring). Courts in this district have accordingly found constitutional limits
24 to apply to immigration detention, irrespective of the underlying detention
25 authority. See, e.g., *Gebregziabher v. Marrero*, Case 3:26-cv-02004-JES-MSB;
26 *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *Tesfaye Alemu Gebregziabher*
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1 V. Sixto Marrero , Case 26-cv-2004-JES-MSB; Synthia Engonwei Munoh
 2 Warden, Otay Mesa Detention Center, Case 26-CV-1773 JLS (DDL); Fuad
 3 Abdulielil Ahmed V. Sixto Marrero Case 26-cv-01170-BAS-MMP; Maksim
 4 Lastin v. Warden, Imperial Regional Detention Facility 26-cv-974-RSH-DDL;
 5 Natalia Lastina V. Warden of Imperial Regional Detention Facility 3:26-cv-
 6 00975-TWR-VET; Karakhanyan v. Warden of Otay Mesa Detention Center-
 7 3:25-cv-03454-JO-MMP; Romik Parunakyan v. Warden of Otay Mesa
 8 Detention Center 25-cv-3739-LL-MSB; L.S. v. Warden of Otay Mesa Detention
 9 Center; M.F. v. Warden of Otay Mesa Detention Center 3:25-cv-3599-CAB-
 10 MSB; Miganush Ogandzhanyan V. Warden Of Otay Mesa Detention Center
 11 26cv0093 DMS MSB; Ter Ogannisian Geros v. Warden Of Otay Mesa
 12 Detention Center 26-CV-91 JLS (AHG); Emanuel Ter-Ogannisian v. Warden Of
 13 Otay Mesa Detention Center 26cv0124 DMS JLB; L.S. v. Warden of Otay Mesa
 14 Detention Center; Naira Kirakosyan v. Warden of Otay Mesa Detention Center
 15 26-cv-315-JO-DDL. (granting a writ of habeas corpus after Court
 16 determined that Petitioner’s detention without a bond hearing has become
 17 unreasonable and violates due process).

18 35. This Court should so hold as well.

19 36. Petitioner has now been detained for fifteen (15) months. This prolonged and
 20 indeterminate detention is arbitrary, excessive in duration, and unconstitutional.
 21

22 **GROUND THREE**
 23 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**
 24 **ADMINISTRATIVE PROCEDURE ACT**

25 **Petitioner’s ongoing and unreviewed detention violates his constitutional due**
 26 **process rights and cannot continue without a bond hearing**

27 37. The allegations in the above paragraphs are realleged and incorporated herein.
 28 Courts must "hold unlawful and set aside agency action" that is "arbitrary,

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1 capricious, an abuse of discretion, or otherwise not in accordance with law."
2 5 U.S.C. § 706(2)(A).

3 38. The Mathews test is the appropriate test for this Court to use to evaluate the
4 constitutionality of Petitioner's prolonged detention. *Mathews v. Eldridge*, 424
5 U.S. 319 (1976). The Mathews test is routinely applied by district courts across
6 the Ninth Circuit, including this Court, to determine whether due process
7 requires neutral review of a noncitizen's custody. *Rodriguez Diaz v. Garland*,
8 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a "flexible test"
9 broad enough to account for government interests when evaluating due process
10 claims in the immigration detention context); see, e.g., *Abduraimov*, 2025 WL
11 2912307 and *Maksim*, 2025 WL 2879328. Respondents offer "no valid
12 alternative to the Mathews framework nor [do they] demonstrate[e] that
13 Mathews is inapplicable here." *Jensen v. Garland*, No. 5:21-c-v- 01195-CAS
14 (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023).

15 39. The Mathews test for procedural due process claims balances: (1) the private
16 interest threatened by governmental action; (2) the risk of erroneous deprivation
17 of such interest and the value of additional or substitute safeguards; and (3) the
18 government interest. 424 U.S. at 335. Each Mathews factor weighs in
19 Petitioner's favor. Petitioner's detention of 15 months and counting without any
20 neutral review is a violation of his procedural due process rights and requires
21 this court to order a hearing before a neutral adjudicator to evaluate whether the
22 government can justify his ongoing detention.

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

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

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

18
19 43. Any internal review of Petitioner’s detention or request for discretionary parole
20 by DHS cannot satisfy the requirements for due process because DHS is the
21 very authority that is detaining him. Where a custody review is conducted by
22 the very same agency that is detaining the individual, that agency reviewing its
23 own actions cannot be held to a neutral standard. As such, Petitioner must be
24 afforded a hearing before a neutral arbiter in order for his ongoing, prolonged
25 detention to comply with due process.

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

12 45. Here, Petitioner’s Merits Hearing is set on April 30, 2026, before the Imperial
13 Immigration Court. Depending on the outcome of his merits hearing, it may
14 necessitate the need for appeal, which will also unreasonably delay the process.

15 46. Petitioner has been in detention **for 15 months**, and Petitioner’s removal is not
16 reasonably foreseeable, as it depends entirely on the outcome of his merits
17 hearing and any subsequent review that may follow. Accordingly, his continued
18 detention is arbitrary, prolonged, and constitutionally unreasonable.

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

23 48. Because “it is not clear when detention will end, the risk of erroneous
24 deprivation weights in favor of granting a bond hearing.” *A.E.*, 2025 WL
25 1424382, at *5; *Doe v. Andrews*, No. 1:25- CV-00506-SAB-HC, 2025 WL
26 2590392, *7 (E.D. Cal. Sept. 8, 2025) (noting that “[a]lthough future events are
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1 difficult to predict, the [c]ourt nevertheless finds that...possible remand to the
2 immigration court for further factfinding or possible judicial review by the
3 Ninth Circuit will be sufficiently lengthy such that [the delay] factor weighs in
4 favor of Petitioner”), report and recommendation adopted, No. 1:25-CV-00506-
5 KES-SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); Abduraimov,
6 2025 WL 2912307, *8 (“appeal to BIA and potential Ninth Circuit review ‘may
7 take up to two years or longer’ and ‘favors granting petitioner a bond hearing’)
8 (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)).
9 The risk of erroneous deprivation of Petitioner’s liberty interest and the
10 probably value of a bond hearing is exceptionally high. Therefore, the second
11 Mathews factor also weighs in favor of granting Petitioner a bond hearing.

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

6 50. In sum, there is no question that all three Mathews factors favor Petitioner.
7 Contrary to Respondent’s claim, Petitioner’s prolonged detention does not pass
8 constitutional muster and requires that this Court immediately order him a bond
9 hearing.

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

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

13 53. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
14 to detention and Petitioner’s financial circumstances in determining whether
15 further detention is warranted and the conditions of his release. See, e.g.,
16 Hernandez, 872 F.3d at 994 (“If the government is setting monetary bonds to
17 ensure appearance at future proceedings, there is no legitimate reason for it not
18 to consider the individual’s financial circumstances and alternative conditions
19 of release.”).

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

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24 **PRAYER FOR RELIEF**

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

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

- c) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- d) Issue a Writ of Habeas Corpus ordering Respondents to be released;
- e) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- f) Grant any further relief this Court deems just and proper

DATED: April 20, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner

