

1 Naira Zohrabyan, Esq. [SBN 337925]
2 ZOHRABYAN LAW, APC
3 100 W. Broadway, Suite 540
4 Glendale, CA 91210
5 Tel: 818-270-5150
6 Fax: (747) 327-4059
7 Email: naira@zohrabyanlaw.com

DETAINED

8
9
10
11 Attorneys for Petitioner Omid Nazari

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

15 **In the matter of:**

16
17 **OMID NAZARI**

18 **Petitioner**

19
20 **v.**

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

24
25 **Respondents**
26
27
28

) **Case Number: 26-cv-02466-RSH-**
) **AHG**

) **A** 

) **MOTION TO ENFORCE**
) **JUDGMENT**

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



INTRODUCTION

1. Petitioner Omid Nazari Abdalla Bakr (“Petitioner”) seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging his prolonged and unconstitutional immigration detention under 8 U.S.C. § 1226(a).
2. Petitioner has been detained for approximately fifteen (15) months without a constitutionally adequate bond hearing. Although he was provided a hearing before an Immigration Judge, that proceeding failed to satisfy due process because the government was not required to meet the constitutionally mandated burden of proof, the decision relied on unsupported assertions, and the court failed to meaningfully consider alternatives to detention, Petitioner’s ability to pay, and overwhelming evidence of his community ties.
3. Petitioner’s continued detention is not only procedurally deficient, but also substantively unconstitutional. While in detention, petitioner was prescribed medication for anxiety and depression for approximately one year but discontinued it two months ago due to significant side effects, including excessive drowsiness. Since then, petitioner’s condition has worsened, and he has requested further medical evaluation. He suffers from severe and documented medical conditions, including heightened anxiety, likely exacerbated by his current environment in the detention center, memory and task completion issues, mixed anxiety depressive disorder, emotional numbness, physical deformity of left elbow area (fracture of head of left radius), reports of thought of suicide)—all of which have been inadequately treated in detention. During his detention, Petitioner has experienced rapid and dangerous physical deterioration, including significant decrease in mental health and lack of access to necessary specialist care.



- 1 4. Despite these extraordinary humanitarian factors, Respondents continue to
- 2 detain Petitioner without meaningful review of whether his continued custody
- 3 is justified. His prolonged detention, under these circumstances, violates the
- 4 Due Process Clause of the Fifth Amendment.
- 5 5. Petitioner has now fully exhausted available administrative remedies by timely
- 6 appealing the Immigration Judge's custody determination and denial of relief to
- 7 the Board of Immigration Appeals. Because administrative review cannot
- 8 remedy the ongoing constitutional violations caused by his prolonged detention,
- 9 habeas relief is appropriate and necessary.
- 10 6. Petitioner respectfully requests that this Court order his immediate release. In
- 11 the alternative, Petitioner requests that this Court order Respondents to provide
- 12 a constitutionally adequate bond hearing within seven (7) days, at which the
- 13 government bears the burden of proving by clear and convincing evidence that
- 14 continued detention is justified.
- 15

16 **STATEMENT OF FACTS**

- 17 7. Petitioner is a native and citizen of Iran who entered the United States at or near
- 18 San Ysidro, CA, on or about January 15, 2025, seeking asylum.
- 19 8. He has remained in immigration detention for approximately fifteen (15) months
- 20 to date.
- 21 9. Respondents commenced removal proceedings against him in immigration
- 22 court, entitling him to present his claim with the due process rights under 8
- 23 U.S.C. 1299a.
- 24 10. Since then, Petitioner has diligently attended every immigration court hearing.
- 25 He filed an asylum application.
- 26
- 27
- 28





1 11. Individual hearings have been reset multiple times. Petitioner started his merits
2 hearing on October 24, 2025, which lasted about 3-4 hours and direct
3 examination was concluded. 1st individual hearing: previously set October 24,
4 2025, was reset to December 9, 2025; 2nd individual hearing: previously set
5 December 9, 2025, was reset to January 15, 2026; 3rd individual hearing:
6 previously set January 15, 2026, was reset to January 29, 2026; 4th individual
7 hearing: previously set January 29, 2026, was reset to February 10, 2026; 5th
8 individual hearing: previously set February 10, 2026, was reset to February 24,
9 2026, 6th individual hearing: previously set February 24, 2026, was reset to
10 March 24, 2026, 7th individual hearing: previously set March 24, 2026 was reset
11 to April 7, 2026. 8th individual hearing: previously set on April 30, 2026, was
12 reset to May 21, 2026. All of these hearings lasted about 1.5 hours, except the
13 first one which lasted about 3-4 hours. Because the time was limited, the
14 hearings were not completed and were continued to later dates. All these times
15 individual hearings were continued and delayed at no fault on the part of
16 Petitioner, who has been detained since January 15, 2025.

17
18 12. Petitioner's upcoming Individual hearing is set on May 21, 2026, at 1:00 PM.

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

20 14. On May 1, 2026, United States District Judge Honorable Robert S. Huie granted
21 Petitioner's Petition and directed Respondents to conduct a bond hearing within
22 7 days **"in which the government bears the burden of establishing by clear
23 and convincing evidence that Petitioner is a danger to the community or a
24 flight risk if released."** A true and correct copy of the Order granting Habeas
25 Corpus and Notice of Electronic Filing are attached as an **Exhibit "A."**

26 15. On May 1, 2026, Immigration Judge Jeffrey V. Munoz unreasonably denied
27 Petitioner's bond as flight risk. The Immigration Judge denied release based on
28

1 the government's unsupported assertion that Petitioner posed a danger to
2 community. A true and correct copy of the Order denying custody
3 redetermination is attached as an **Exhibit "B."**

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

9 17.From January 7, 2009, to October 10, 2010, Respondent served approximately
10 one year and nine months in the Islamic Revolutionary Guard Corps ("IRGC")
11 pursuant to mandatory military conscription requirements under Iranian law.
12 Respondent's service was involuntary, and failure to comply would have resulted
13 in criminal penalties, loss of civil rights, and restrictions on freedom of
14 movement. Respondent's actions during conscription were compelled by law,
15 and there is no evidence whatsoever that he affirmatively, knowingly, or
16 purposefully engaged in any prohibited conduct, including the provision of
17 material support to terrorism within the meaning of INA § 212(a)(3)(B), 8 U.S.C.
18 § 1182(a)(3)(B).
19

20 18.At the time of Respondent's military service, the IRGC was not designated as a
21 Foreign Terrorist Organization ("FTO") under INA § 219, 8 U.S.C. § 1189. The
22 United States Department of State did not designate the IRGC until 2019, nearly
23 a decade after Respondent completed his mandatory service.

24 19.Respondent did not know, nor did he have reason to know, that the IRGC was
25 later designated as a terrorist organization, and he was never made aware of any
26 alleged terrorist activities during his compulsory service. Respondent did not
27 receive terrorist or paramilitary training beyond routine state-mandated military
28



1 instruction, nor did he knowingly receive any training intended to support
2 terrorism.

3 20. The IJ erred in finding that DHS met its burden to establish, by clear and
4 convincing evidence, that Respondent's asylum claim is barred by terrorist
5 activities. The IJ further erred in finding Respondent poses a danger to the
6 community or a flight risk such that no condition of release could ensure his
7 appearance. The record lacks individualized evidence supporting such findings.
8 Accordingly, continued detention is legally unjustified.

9 21. The IJ erred in concluding that DHS satisfied its initial burden to present specific
10 and individualized evidence that Respondent knowingly provided material
11 support to a terrorist organization.

12 22. Binding precedent requires a threshold showing before the burden shifts to the
13 respondent. See: *Budiono v. Lynch*, 837 F.3d 1042 (9th Cir. 2016); *Kumar v.*
14 *Holder*, 728 F.3d 993 (9th Cir. 2013); *Mata-Sanguinety v. Garland* (9th Cir.
15 2023). No such showing was made here.

16 23. The IJ erred in concluding that compulsory service constitutes material support.
17 Respondent's service in the IRGC from 2009 to 2010 was mandatory under
18 Iranian law; completed nearly a decade before the IRGC's 2019 FTO
19 designation and limited to routine military training. There is no evidence that
20 Respondent acted voluntarily, provided assistance to terrorist activity, and
21 possessed knowledge of any alleged terrorist conduct. Mere compulsory service
22 is insufficient to establish material support.

23 24. The IJ erred in concluding that knowledge requirement was met. Under INA §
24 212(a)(3)(B), an individual must know or reasonably should know that their
25 conduct supports a terrorist organization. The BIA requires proof of such
26 knowledge: *Matter of S-K-*, 23 I&N Dec. 936. Here, DHS presented no evidence
27
28

1 that Respondent had knowledge of the IRGC's alleged terrorist character and/or
2 any terrorist-related activities.

3 25.The IJ incorrectly applied the "military training" provision. Respondent only
4 received only standard conscript training. Did not receive specialized or terrorist
5 training and completed service before FTO designation. Thus, the statutory bar
6 does not apply

7 26.The IJ erred in concluding that mere association is sufficient. The Ninth Circuit
8 requires personal, knowing involvement, not passive association. See: *Miranda*
9 *Alvarado v. Gonzales*, 449 F.3d 915; *Kalubi v. Ashcroft*, 364 F.3d 1134.
10 Membership alone—even in an organization that later engages in wrongdoing—
11 is not sufficient.

12 27.Petitioner timely appealed the IJ decision denying bond, which is still pending
13 receipt from the Board of Immigration Appeals. A true and correct copy of email
14 confirming receipt of filing bond is attached hereto as an **Exhibit "C."**

15 28.Petitioner has been detained for approximately fifteen (15) months without a
16 constitutionally adequate bond hearing. Although he was provided a hearing
17 before an Immigration Judge, that proceeding failed to satisfy due process
18 because the government was not required to meet the constitutionally mandated
19 burden of proof, the decision relied on unsupported assertions, and the court
20 failed to meaningfully consider alternatives to detention, Petitioner's ability to
21 pay, and overwhelming evidence of his community ties.

22 29.During his prolonged detention, Petitioner has suffered significant physical and
23 mental health deterioration. His continued confinement has caused and
24 continues to cause serious harm.

25 30.Petitioner's continued detention is not only procedurally deficient, but also
26 substantively unconstitutional. He suffers from severe and documented medical
27
28

1 conditions, including [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED], all of
5 which have been inadequately treated in detention. During his detention,
6 Petitioner has experienced rapid and dangerous physical deterioration, including
7 significant weight loss and lack of access to necessary specialist care.

8 31.Despite these extraordinary humanitarian factors, Respondents continue to
9 detain Petitioner without meaningful review of whether his continued custody is
10 justified. His prolonged detention, under these circumstances, violates the Due
11 Process Clause of the Fifth Amendment.

12 32.Petitioner has now fully exhausted available administrative remedies by timely
13 appealing the Immigration Judge's custody determination and denial of relief to
14 the Board of Immigration Appeals. Because administrative review cannot
15 remedy the ongoing constitutional violations caused by his prolonged detention,
16 habeas relief is appropriate and necessary.

17 33.Petitioner respectfully requests that this Court order his immediate release. In
18 the alternative, Petitioner requests that this Court order Respondents to provide
19 a constitutionally adequate bond hearing within seven (7) days, at which the
20 government bears the burden of proving by clear and convincing evidence that
21 continued detention is justified.

22 34.Following his military service, petitioner developed a neurological condition
23 affecting the right side of his body, causing intermittent numbness and
24 weakness. Despite multiple medical evaluations, including MRI and brain
25 imaging, no definitive diagnosis has been established. Physicians have indicated
26 that the condition may be psychosomatic and is exacerbated by stress and
27
28

1 anxiety. He has previously informed to the immigration judge of this condition.
2 While in detention, petitioner was prescribed medication for anxiety and
3 depression for approximately one year but discontinued it two months ago due
4 to significant side effects, including excessive drowsiness. Since then,
5 petitioner's condition has worsened, and he has requested further medical
6 evaluation. He suffers from severe and documented medical conditions,
7 including heightened anxiety, likely exacerbated by his current environment in
8 the detention center, memory and task completion issues, mixed anxiety
9 depressive disorder, emotional numbness, physical deformity of left elbow area
10 (fracture of head of left radius), reports of thought of suicide), all of which have
11 been inadequately treated in detention. True and correct copies of Petitioner's
12 medical records are attached herein as an **Exhibit "E."**

13
14 35. Petitioner's continued detention is arbitrary and unlawful, and he requests that
15 this Court order his immediate release from ICE custody.

16 **JURISDICTION**

17
18 36. This action arises under the Constitution of the United States and the
19 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

20 37. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
21 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
22 United States Constitution (Suspension Clause).

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

26 39. Federal District courts have jurisdiction to hear habeas claims by non-citizens
27 challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687.
28



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

10 VENUE

11
12 41. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3)
13 and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this
14 district at Imperial Regional Detention Facility. Furthermore, a substantial part
15 of the events or omissions giving rise to this action occurred and continue to
16 occur at ICE's Washington Field Office in Chantilly, Virginia, within this
17 division. No real property is involved in this action. 28 U.S.C. §1391(e).
18

19 LEGAL FRAMEWORK

20 42. Freedom from physical detention lies at the core of the liberty protected by the
21 Due Process Clause. Noncitizens within the United States are entitled to due
22 process protections, including the right to challenge the legality of their
23 detention.
24

25 43. Even where detention is authorized by statute, it remains subject to
26 constitutional limitations. Prolonged detention without adequate procedural
27 safeguards violates due process.
28



1 44. The constitutionality of Petitioner's detention is governed by the balancing test
2 set forth in *Mathews v. Eldridge*, which considers: The private liberty interest
3 at stake; the risk of erroneous deprivation; and the government's interest. All
4 three factors weigh strongly in favor of requiring a bond hearing in this case.

5
6 **CLAIMS FOR RELIEF**

7 **GROUND ONE**

8 **VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS-**
9 **FAILURE TO PROVIDE CONSTITUTIONALLY ADEQUATE**
10 **PROCEDURAL SAFEGUARDS**

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

12 46. Due process requires that continued civil detention be justified through a fair
13 procedure.

14 47. At a constitutionally adequate bond hearing: the government must bear the
15 burden of proof; the burden must be clear and convincing evidence; the
16 adjudicator must consider alternatives to detention; the adjudicator must evaluate
17 ability to pay and conditions of release.

18 48. Petitioner has been denied such a hearing.

19 49. Despite substantial evidence demonstrating that he is not a flight risk or danger
20 and strong community ties Respondents continue to detain him without
21 meaningful review.

22 50. This lack of procedural safeguards renders his detention unconstitutional.

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



1 coextensive,” noncitizens are entitled to due process, including to challenge
2 detention pending proceedings).

3 52.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 53. Petitioner challenges his deprivation of liberty and detention, not the adequacy
11 of the procedures the immigration laws afford his “with respect to admission.
12 Petitioner solely challenging his detention and revocation of parole, and he is
13 not bringing a constitutional claim with respect to the procedures governing his
14 legal admission into the United States.

15 54.To the extent Respondent takes the extraordinary position that Petitioner has no
16 due process rights at all, that is unsupported by law and would have gruesome
17 practical consequences: “If excludable [noncitizens] were not protected by even
18 the substantive component of constitutional due process, ... we do not see why
19 the United States government could not torture or summarily execute them. ...
20 [W]e conclude that government treatment of excludable [noncitizens] must
21 implicate the Due Process Clause of the Fifth Amendment.”. *Rosales-Garcia v.*
22 *Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*,
23 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) (“[T]he principle that
24 unadmitted [noncitizens] have no constitutionally protected rights defies
25 rationality. Under this view, the Attorney General, for example, could invoke
26 legitimate immigration goals to justify a decision to stop feeding all detained
27
28

1 [noncitizens] Surely, we would not condone mass starvation.”). Thus, there
2 is no question that Petitioner has the right to challenge the constitutionality of
3 his prolonged detention under the Due Process Clause of the Fifth Amendment
4 of the Constitution.

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

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

20 GROUND TWO

21 **Mandatory detention is subject to constitutional limits-Prolonged** 22 **Detention**

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

24 58. Petitioner’s continued detention without a bond hearing violates the Fifth
25 Amendment.

26 59. Petitioner has a fundamental liberty interest in freedom from physical restraint.
27 That interest is substantial and ongoing.
28





1 60. The risk of erroneous deprivation is exceptionally high because Petitioner has
2 not received a constitutionally sufficient hearing before a neutral
3 decisionmaker. No mechanism currently exists to test whether his continued
4 detention is justified.

5 61. The government's interest in avoiding such a hearing is minimal. Providing a
6 bond hearing imposes little administrative burden while ensuring
7 constitutionally required protections.

8 62. Under the Due Process Clause, prolonged detention, especially approaching or
9 exceeding several months, requires an individualized determination of
10 necessity.

11 63. "Freedom from imprisonment-from government custody, detention, or other
12 forms of physical restraint-lies at the heart of liberty [Due Process Clause]
13 protects." *Zadvydas*, 533 U.S. at 690.

14 64. Petitioner has an interest in remaining with his community, working and
15 continuing the process of seeking cancellation of removal and I-130 petition
16 adjudication. See *Morrissey*, 408 U.S. 471 at 482 ("Subject to the conditions of
17 his parole, he can be gainfully employed and is free to be with family and friends
18 and to form the other enduring attachment of normal life.")

19 65. The risk of an erroneous deprivation of such interest is high as ICE has violated
20 Petitioner's due process rights by revoking Petitioner's parole, without providing
21 him a reason for revocation. Since DHS's initial determination that Petitioner
22 should be released because he posed no danger to the community and was not at
23 flight risk, there is no evidence that these findings have changed. See *Saravia v.*
24 *Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017).

25 66. Government's interest in detaining Petitioner without notice, reasoning, and a
26 hearing is "low." See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
27
28

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

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

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

17 69. Furthermore, Petitioner is challenging his detention on constitutional grounds,
18 not statutory grounds. Notwithstanding the fact that he is being detained pursuant
19 to section 1226(a), Petitioner’s detention is unequivocally subject to
20 Constitutional limits. The Supreme Court has not precluded noncitizens from
21 bringing as-applied constitutional challenges to their mandatory detention.
22 Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not
23 explicitly address constitutionality arguments.” U.S. Likewise, *While in Demore*
24 *v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
25 mandatory detention under § 1226(c), the Supreme Court has explicitly
26 recognized the availability of judicial review over as-applied challenges to
27
28



1 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
2 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
3 concurring).

4 70. Furthermore, Petitioner's continued detention has become unreasonable because
5 his removal is not reasonably foreseeable. Therefore, his ongoing confinement
6 violates 8 U.S.C. § 1231(a)(6), and he must be released.

7 71. On April 20, 2026, the IJ denied Petitioner's Application for Cancellation of
8 Removal and on April 28, 2026, Petitioner timely appealed to the BIA.

9 72. BIA's final decision may end up at least six months, which is **one year after**
10 **detention**.

11 73. 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 1226(a), 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., *Gebregizabher v. Marrero*, Case 3:26-cv-02004-JES-MSB;
26 *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *Synthia Engonwei Munoh*
27
28



1 Warden, Otay Mesa Detention Center, Case 26-CV-1773 JLS (DDL); Fuad
2 Abdulielil Ahmed V. Sixto Marrero Case 26-cv-01170-BAS-MMP; Maksim
3 Lastin v. Warden, Imperial Regional Detention Facility 26-cv-974-RSH-DDL;
4 Natalia Lastina V. Warden of Imperial Regional Detention Facility 3:26-cv-
5 00975-TWR-VET; Karakhanyan v. Warden of Otay Mesa Detention Center-
6 3:25-cv-03454-JO-MMP; Romik Parunakyan v. Warden of Otay Mesa Detention
7 Center 25-cv-3739-LL-MSB; L.S. v. Warden of Otay Mesa Detention Center;
8 M.F. v. Warden of Otay Mesa Detention Center 3:25-cv-3599-CAB-MSB;
9 Miganush Ogandzhanyan V. Warden Of Otay Mesa Detention Center 26cv0093
10 DMS MSB; Ter Ogannisian Geros v. Warden Of Otay Mesa Detention Center
11 26-CV-91 JLS (AHG); Emanuel Ter-Ogannisian v. Warden Of Otay Mesa
12 Detention Center 26cv0124 DMS JLB; L.S. v. Warden of Otay Mesa Detention
13 Center; Naira Kirakosyan v. Warden of Otay Mesa Detention Center 26-cv-315-
14 JO-DDL. (granting a writ of habeas corpus after Court determined that
15 Petitioner's detention without a bond hearing has become unreasonable and
16 violates due process).

17
18 74. This Court should so hold as well.

19 75. Petitioner has now been detained for fifteen (15) months and with no indication
20 of when relief might be available. This prolonged and indeterminate detention is
21 arbitrary, excessive in duration, and unconstitutional.

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 an adequate bond hearing**

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

28 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).

77. 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).

78. 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 15 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.

79. 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 with a granted asylum"

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 detention
3 continues past a year, courts become extremely wary of permitting continued
4 custody absent a bond hearing.”) (internal citation omitted).

5 80. 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 335.
8 “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing
9 before a neutral decisionmaker is substantial.” *Diouf v. Napolitano* (*Diouf II*),
10 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner “does not have a
11 statutory right to a bond hearing or the right to seek additional bond hearings. . .
12 the risk of erroneous deprivation as Petitioner’s time in detention lengthens is
13 not insignificant,” and the probable value of additional procedural safeguards is
14 exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL
15 711190, at *7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684
16 at *4 (“Given that Petitioner has been held without a bond hearing for almost a
17 year, and it is not clear when detention will end, the risk of erroneous deprivation
18 weighs in favor of granting a bond hearing.”). In this case, Petitioner has been
19 deprived of his liberty in civil detention for 15 months. Because he is subject to
20 mandatory detention pursuant to section 1225(b), he does not have the statutory
21 right to request a bond hearing and therefore lacks access to an appropriate
22 procedural safeguard that would protect against the risk of erroneous
23 deprivation, absent intervention from this Court.
24

25 81. Here, a bond hearing before a neutral decisionmaker is the only appropriate
26 procedural safeguard to protect against the risk of erroneous deprivation because
27 it provides both the noncitizen and the government with an opportunity to
28



1 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 to
4 overcome the constitutional concerns raised by prolonged mandatory detention
5 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. 2013)
9 (internal quotations omitted). The parole process “is not a constitutionally
10 adequate substitute for a bond hearing particularly since it does not test the
11 necessity of detention, does not afford the noncitizen an in-person adversarial
12 hearing before a neutral decisionmaker where he or she may present witness
13 testimony or evidence, does not require the ICE detention officer [to] make any
14 factual findings or provide their reasoning, and there is no apparent right to an
15 administrative appeal.” *Abduraimov*, 2025 WL 2912307, at *6 (citing *Padilla v.*
16 *U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023).

17
18 82. Any internal review of Petitioner’s detention or request for discretionary parole
19 by DHS cannot satisfy the requirements for due process because DHS is the very
20 authority that is detaining him. Where a custody review is conducted by the very
21 same agency that is detaining the individual, that agency reviewing its own
22 actions cannot be held to a neutral standard. As such, Petitioner must be afforded
23 a hearing before a neutral arbiter in order for his ongoing, prolonged detention
24 to comply with due process.

25 83. Contrary to Respondent’s assertions, Petitioner faces prolonged detention for an
26 indefinite period of time pending the final adjudication of his asylum claim. This
27 Court has recognized that “it is difficult to ascertain an endpoint to removal
28

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

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

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

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

22 87. Because “it is not clear when detention will end, the risk of erroneous
23 deprivation weighs in favor of granting a bond hearing.” *A.E.*, 2025 WL
24 1424382, at *5; *Doe v. Andrews*, No. 1:25- CV-00506-SAB-HC, 2025 WL
25 2590392, *7 (E.D. Cal. Sept. 8, 2025) (noting that “[a]lthough future events are
26 difficult to predict, the [c]ourt nevertheless finds that...possible remand to the
27
28

1 immigration court for further factfinding or possible judicial review by the Ninth
2 Circuit will be sufficiently lengthy such that [the delay] factor weighs in favor
3 of Petitioner”), report and recommendation adopted, No. 1:25-CV-00506-KES-
4 SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); Abduraimov, 2025
5 WL 2912307, *8 (“appeal to BIA and potential Ninth Circuit review ‘may take
6 up to two years or longer’ and ‘favors granting petitioner a bond hearing’) (citing
7 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The risk
8 of erroneous deprivation of Petitioner’s liberty interest and the probably value
9 of a bond hearing is exceptionally high. Therefore, the second Mathews factor
10 also weighs in favor of granting Petitioner a bond hearing.

11 88. The third Mathews factor also supports Petitioner: the government interest is
12 weak here because the interest at stake “is the ability to detain Petitioner without
13 providing him a bond hearing, not whether the government may continue to
14 detain him” at all. *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal.
15 Jan. 29, 2019) (emphasis in original). As the government has conceded in similar
16 cases, the cost of providing such a bond hearing is minimal. *Id.*; *Singh v. Barr*,
17 Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (“The government
18 has not offered any indication that a second bond hearing would have outside
19 effects on its coffers.”); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964
20 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did
21 not contest “that the cost of conducting a bond hearing, to determine whether the
22 continued detention of Petitioner is justified, is minimal”). Holding a hearing at
23 which Respondents must justify Petitioner’s continued detention thus actually
24 “promotes the Government’s interest—one we believe to be paramount—in
25 minimizing the enormous impact of incarceration in cases where it serves no
26 purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)
27
28

(emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (“[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.”).

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

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



1 WL 3013684, *5 (same).

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

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

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

23 94.Respondents’ continued detention of Petitioner without individualized review is
24 arbitrary and violates due process.

25 95.Petitioner continues to suffer irreparable harm including deterioration of his
26 physical health, risk of cancer progression, and severe emotional harm to his
27 minor child. These harms cannot be remedied after the fact.
28



1 96. Petitioner is likely to succeed on the merits because prolonged detention without
2 a constitutionally adequate bond hearing violates clearly established due process
3 principles under Zadvydas and Singh.

4 97. Additionally, the prolonged and indeterminate nature of his detention now
5 approximately fifteen (15) months with no clear end renders it excessive and
6 unconstitutional.

7 **GROUND FOUR**

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

9
10 98. The District Court explicitly required that the government bear the burden of
11 proving by clear and convincing evidence that Petitioner is a danger or flight
12 risk. The Immigration Judge failed to apply this standard, instead relying on
13 unsupported assertions. This constitutes noncompliance with this Court's order
14 and warrants enforcement.

15 99. The IJ committed clear legal and factual error in concluding that Respondent
16 poses a danger to the community and a flight risk. The Department of Homeland
17 Security ("DHS") failed to meet its burden of proving dangerousness or flight
18 risk by clear and convincing evidence, as required by the federal court's order
19 granting Respondent's Petition for Writ of Habeas Corpus.

20
21 100. From January 7, 2009, to October 10, 2010, Respondent served approximately
22 one year and nine months in the Islamic Revolutionary Guard Corps ("IRGC")
23 pursuant to mandatory military conscription requirements under Iranian law.
24 Respondent's service was involuntary, and failure to comply would have
25 resulted in criminal penalties, loss of civil rights, and restrictions on freedom of
26 movement. Respondent's actions during conscription were compelled by law,
27 and there is no evidence whatsoever that he affirmatively, knowingly, or
28 purposefully engaged in any prohibited conduct, including the provision of



1 material support to terrorism within the meaning of INA § 212(a)(3)(B), 8
2 U.S.C. § 1182(a)(3)(B).

3 101. At the time of Respondent's military service, the IRGC was not designated as a
4 Foreign Terrorist Organization ("FTO") under INA § 219, 8 U.S.C. § 1189. The
5 United States Department of State did not designate the IRGC until 2019, nearly
6 a decade after Respondent completed his mandatory service.

7 102. Respondent did not know, nor did he have reason to know, that the IRGC was
8 later designated as a terrorist organization, and he was never made aware of any
9 alleged terrorist activities during his compulsory service. Respondent did not
10 receive terrorist or paramilitary training beyond routine state-mandated military
11 instruction, nor did he knowingly receive any training intended to support
12 terrorism.

13 103. The IJ erred in finding that DHS met its burden to establish, by clear and
14 convincing evidence, that Respondent's asylum claim is barred by terrorist
15 activities. The IJ further erred in finding Respondent poses a danger to the
16 community or a flight risk such that no condition of release could ensure his
17 appearance. The record lacks individualized evidence supporting such findings.
18 Accordingly, continued detention is legally unjustified.

19 104. The IJ erred in concluding that DHS satisfied its initial burden to present specific
20 and individualized evidence that Respondent knowingly provided material
21 support to a terrorist organization.

22 105. Binding precedent requires a threshold showing before the burden shifts to the
23 respondent. See: *Budiono v. Lynch*, 837 F.3d 1042 (9th Cir. 2016); *Kumar v.*
24 *Holder*, 728 F.3d 993 (9th Cir. 2013); *Mata-Sanguinetty v. Garland* (9th Cir.
25 2023). No such showing was made here.
26
27
28



1 106. The IJ erred in concluding that compulsory service constitutes material support.
2 Respondent's service in the IRGC from 2009 to 2010 was mandatory under
3 Iranian law; completed nearly a decade before the IRGC's 2019 FTO
4 designation and limited to routine military training. There is no evidence that
5 Respondent acted voluntarily, provided assistance to terrorist activity, and
6 possessed knowledge of any alleged terrorist conduct. Mere compulsory service
7 is insufficient to establish material support.

8 107. The IJ erred in concluding that knowledge requirement was met. Under INA §
9 212(a)(3)(B), an individual must know or reasonably should know that their
10 conduct supports a terrorist organization. The BIA requires proof of such
11 knowledge: *Matter of S-K-*, 23 I&N Dec. 936. Here, DHS presented no evidence
12 that Respondent had knowledge of the IRGC's alleged terrorist character and/or
13 any terrorist-related activities.

14 108. The IJ incorrectly applied the "military training" provision. Respondent only
15 received only standard conscript training. Did not receive specialized or terrorist
16 training and completed service before FTO designation. Thus, the statutory bar
17 does not apply

18 109. The IJ erred in concluding that mere association is sufficient. The Ninth Circuit
19 requires personal, knowing involvement, not passive association. See: *Miranda*
20 *Alvarado v. Gonzales*, 449 F.3d 915; *Kalubi v. Ashcroft*, 364 F.3d 1134.
21 Membership alone—even in an organization that later engages in wrongdoing—
22 is not sufficient.
23

24 **PRAYER FOR RELIEF**

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

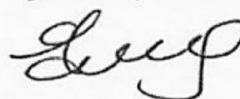
- 26 1. Enforce its May 1, 2026, Order.
27
28



2. Order Petitioner's immediate release from custody; or, in the alternative,
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.

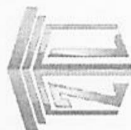
DATED: May 11, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner

ZOHRABYAN
-LAW, A.P.C.-

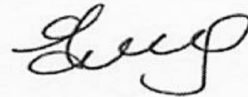


CERTIFICATE OF SERVICE

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

DATED: May 11, 2026

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner
Zohrabyan Law, APC

