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DETAINED

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11 Attorneys for Petitioner Boyu Wang

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

14 In the matter of:

) Case Number: '26CV2648 RSH MSB

15  
16 BOYU WANG



17 v.  
18 CHRISTOPHER J. LAROSE,  
19 WARDEN OF OTAY MESA  
20 DETENTION CENTER

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

21  
22 )  
23 ) Challenge to Unlawful Incarceration;  
24 ) Request for Declaratory and  
25 ) Injunctive Relief  
26 )  
27 )  
28 )

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



**STATEMENT OF FACTS**

1. Petitioner is a native and citizen of the People's Republic of China who entered the United States at or near Los Angeles, California, on or about November 4, 2010, pursuant to an F-1 nonimmigrant student visa. See Exhibit "A," Passport's visa's page and Form I-94.
2. Petitioner fled the People's Republic of China is afraid of returning to his country for fear of being persecuted for practicing and expressing his religious beliefs in Christianity. As a result of this persecution, on or about September 22, 2011, Petitioner submitted his Application for Asylum (Form I-589).
3. As such, Petitioner is still in the status of authorized stay. Petitioner did not accumulate unlawful presence since he timely filed Form I-589, Application for Asylum and for Withholding of Removal, with the USCIS. Per the USCIS Policy, "Asylees and asylum applicants: Generally, time while a bona fide asylum application is pending is not counted as unlawful presence."
4. On or about September 22, 2011, Petitioner's Asylum interview was completed, and Application of Asylum was referred to Immigration Court for removal proceedings.
5. On or about April 18, 2015, petitioner was served with a Notice to Appear at the Immigration Court at Dallas, Texas.
6. On or about February 21, 2020, an Immigration Judge ordered Petitioner removed. Petitioner timely appealed that decision, and the appeal was received on March 17, 2020. Petitioner's opening brief was submitted on March 7, 2022, and the Department of Homeland Security filed its opposition brief on March 21, 2022. The appeal remains pending, and no decision has been issued to date.





1 7. Since March 23, 2008, Petitioner has been a practicing Christianity. He began  
2 practicing Christianity while attending an underground church in China, where  
3 he was baptized. Petitioner continues to practice Christianity in the United States  
4 and regularly attends First Baptist Church, located on Clairemont Mesa  
5 Boulevard in San Diego, California.

6 8. Petitioner has been residing in the United States since November 4, 2010.

7 9. 8. On or about March 31, 2026, Petitioner was arrested by U.S. Immigration and  
8 Customs Enforcement (ICE) after he and his wife accidentally entered the  
9 Oceanside Military Base while conducting a delivery job.

10 10. Petitioner is currently detained at the Otay Mesa Detention Center in Otay Mesa,  
11 CA.

12 11. Petitioner has no criminal history. He possesses a valid Social Security number,  
13 has been authorized to work in the United States, and has consistently filed and  
14 paid federal income taxes, demonstrating compliance with U.S. law and a strong  
15 record of responsibility.

16 12. Petitioner is married to Ling Zhou. They reside at [REDACTED]  
17 [REDACTED] and Petitioner will continue to reside at this  
18 address upon release, Petitioner attended all required immigration appointments  
19 and consistently complied with every requirement imposed by ICE.

20 13. During his detention, petitioner has been repeatedly bullied by other detainees.

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

24 15. Respondents now seek to keep Petitioner detained without a meaningful  
25 opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225. Respondents do so  
26 based not on Petitioner's personal circumstances or individualized facts.  
27  
28



1 16. But Respondents cannot evade due process requirements so easily. The U.S.  
2 Constitution requires the Respondents provide at least the rights available to his  
3 when he filed his application.

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

11 18. Petitioner seeks declaratory and injunctive relief to compel his immediate release  
12 from the immigration jail where he has been held by DHS since being unlawfully  
13 detained on March 31, 2026, without first being provided a due process hearing  
14 to determine whether his incarceration is justified.

15 19. Petitioner is entitled to a bond hearing; Petitioner has a protected liberty interest  
16 in remaining out of custody. As Petitioner has a protected liberty interest, the  
17 Due Process Clause requires procedural protections before he can be deprived of  
18 that interest. Government's revocation of Petitioner's authorized stay without  
19 notification, reasoning, or an opportunity to heard, denied Petitioner of his due  
20 process rights.

21 20. Absent review in this Court, no other neutral adjudicator will examine  
22 Petitioner's rights: Respondents will continue-unchecked-to detain his  
23 unlawfully under 8 U.S.C. § 1225 (b)(1), INA § 235 (b)(1), without due process.

24 21. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus  
25 to release Petitioner from detention within 10 days unless Respondents schedule  
26 a hearing before an IJ where: (1) to continue detention, the government must  
27  
28

1 establish by clear and convincing evidence that Petitioner presents a risk of flight  
2 or danger, even after consideration of alternatives to detention that could mitigate  
3 any risk that Petitioner's release would present; and (2) if the government cannot  
4 meet its burden, the IJ shall order Petitioner's release on appropriate conditions  
5 of supervision, taking into account Petitioner's ability to pay a bond.

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

8 **JURISDICTION**  
9

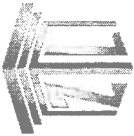
10 23. This action arises under the Constitution of the United States and the  
11 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

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

15 25. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241  
16 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-  
17 Writs Act, 28 U.S.C. § 1651  
18

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

21 27. Federal courts also have federal question jurisdiction, through the  
22 Administrative Procedure Act ("APA"), to deem unlawful and to set aside  
23 agency action that is arbitrary, capricious, an abuse of discretion or otherwise  
24 inconsistent with law. 5 U.S.C. § 706(2)(A). APA claims are cognizable on  
25 habeas. 5 U.S.C. § 703, which provides that judicial review of agency action  
26 under the APA may be proceeded by any applicable form of legal action,  
27  
28



1 including but not limited to habeas corpus. The APA affords a right of review  
 2 to a person who is adversely affected or harmed by agency action.

### 3 4 VENUE

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

### 11 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

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

23 31. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because he  
 24 was arrested by Respondents and remains in their legal and physical custody at  
 25 Otay Mesa Detention Center, in California. He is under Respondent’s and their  
 26 agents’ direct control.  
 27  
 28



**PARTIES**

32. Petitioner is a native and citizen of the People's Republic of China who entered the United States at or near Los Angeles, California, on or about November 4, 2010, pursuant to an F-1 nonimmigrant student visa.

33. Petitioner fled the People's Republic of China and fears returning due to past persecution and a well-founded fear of future persecution on account of his religious beliefs and practice of Christianity. As a result, on or about September 22, 2011, Petitioner submitted an Application for Asylum (Form I-589).

34. On or about September 22, 2011, Petitioner appeared for his asylum interview, after which his asylum application was referred to the Immigration Court for removal proceedings.

35. On or about April 18, 2015, Petitioner was served with a Notice to Appear.

36. On or about February 21, 2020, an Immigration Judge ordered Petitioner removed. Petitioner timely appealed that decision; the appeal was received on March 17, 2020. Petitioner filed his opening brief on March 7, 2022, and the Department of Homeland Security filed its opposition brief on March 21, 2022. The appeal remains pending, and no decision has been issued to date.

37. Petitioner has been a practicing Christian since March 23, 2008. He began practicing Christianity while attending an underground church in China, where he was baptized. Petitioner continues to practice Christianity in the United States and regularly attends First Baptist Church on Clairemont Mesa Boulevard in San Diego, California.

38. Petitioner has continuously resided in the United States since November 4, 2010.



1 39. On or about March 31, 2026, Petitioner was arrested by U.S. Immigration and  
2 Customs Enforcement ("ICE") after he and his wife inadvertently entered the  
3 Oceanside Military Base while conducting a delivery job.

4 40. Petitioner is currently detained at the Otay Mesa Detention Center in Otay Mesa,  
5 California

6 41. Petitioner has no criminal history. He possesses a valid Social Security number,  
7 has been authorized to work in the United States, and has consistently filed and  
8 paid federal income taxes, demonstrating compliance with U.S. law and a strong  
9 record of responsibility.

10 42. Petitioner is married to Ling Zhou. They reside at [REDACTED]  
11 [REDACTED] Upon release, Petitioner will continue to  
12 reside at this address. Prior to his detention, Petitioner attended all required  
13 immigration appointments and consistently complied with all ICE requirements.

14 43. As a result of his prolonged detention, Petitioner has experienced significant  
15 physical and mental health deterioration. His continued confinement has caused  
16 and continues to cause serious harm.

17 44. Respondents seek to keep Petitioner detained without providing a meaningful  
18 opportunity to seek a bond hearing, in violation of due-process requirements. *See*  
19 *8 U.S.C. § 1225.*  
20

21 45. Respondents cannot evade constitutional requirements. The U.S. Constitution  
22 guarantees Petitioner the same due-process protections available to his at the  
23 time he filed his application for relief, including freedom from arbitrary and  
24 indefinite detention.

25  
26 ///

27 ///





**LEGAL FRAMEWORK**

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

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

47. 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.").

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

10 50. 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 subject  
14 regulations were for the alien's benefit and that the INS failed to adhere to  
15 them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires  
16 reversal irrespective of whether a new trial will produce the same verdict.").

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

26 52. Here, Petitioner falls into this category where ICE has failed to act as required  
27 by their procedures and require intervention.  
28

**CLAIMS FOR RELIEF**

**GROUND ONE**

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

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

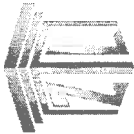
53. The allegations in the above paragraphs are realleged and incorporated herein.

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

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

56. Petitioner challenges his deprivation of liberty and detention, not the adequacy of the procedures the immigration laws afford his “with respect to admission. Petitioner solely challenging his detention and revocation of authorized stay without proper notice, and he is not bringing a constitutional claim with respect to the procedures governing his legal admission into the United States.

57. To the extent Respondent takes the extraordinary position that Petitioner has no



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

17 58. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has  
18 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL  
19 2084921, at \*4 (“[Petitioner’s] release from ICE custody after his initial  
20 apprehension reflected a determination by the government that he was neither a  
21 flight risk or a danger to the community, and [Petitioner] has a strong interest in  
22 remaining at liberty unless he no longer meets those criteria.”); *Noori*, 2025 WL  
23 2800149, at \*10 (“Petitioner is not an “arriving” noncitizen but one that has  
24 [been] present in our country over a year. This substantial amount of time  
25 indicates he is afforded the Fifth Amendment’s guaranteed due process before  
26 removal.”); *Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL  
27 2817795, at \*5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty  
28



interest in his release).

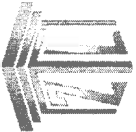
59. This Court accordingly found constitutional limits to apply to immigration detention, irrespective of the underlying detention authority. See, e.g., *Karakhanyan v. Warden of Otay Mesa Detention Center*-3:25-cv-03454-JO-MMP; *Romik Parunakyan v. Warden of Otay Mesa Detention Center* 25-cv-3739-LL-MSB; *L.S. v. Warden of Otay Mesa Detention Center*; *M.F. v. Warden of Otay Mesa Detention Center* 3:25-cv-3599-CAB-MSB, *Vikas Kumar v. Christopher Larose, Warden, Otay Mesa Detention Center et al.*, 25-CV-3796 JLS (DDL); *Aigul Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP; *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00423-GPC-MSB.

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

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

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

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



1 articulated in ICE policy.

2 **GROUND TWO**  
3 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**  
4 **1231 (A)(6)**

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

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

7 65. “Freedom from imprisonment-from government custody, detention, or other forms  
8 of physical restraint-lies at the heart of liberty [Due Process Clause] protects.”  
9 Zadvydas, 533 U.S. at 690.

10 66. Petitioner has an interest in remaining with his community, working and  
11 continuing the process of seeking asylum. See Morrissey, 408 U.S. 471 at 482  
12 (“Subject to the conditions of his release on recognizance, he can be gainfully  
13 employed and is free to be with family and friends and to form the other enduring  
14 attachment of normal life.”)

15 67. The risk of an erroneous deprivation of such interest is high as Petitioner’s  
16 autotomized stay without providing him a reason for revocation or giving an  
17 opportunity being heard. Since DHS’s initial determination that Petitioner should  
18 be admitted as an F1 student because he posed no danger to the community and  
19 was not at flight risk, there is no evidence that these findings have changes. See  
20 Saravia v. Sessions, 280 F. Supp. 3d 1168, 1760 (N.D. Cal2017).

21 68. Petitioner has no criminal record, has not been arrested or otherwise in criminal  
22 trouble, had work authorization. “Once a noncitizen has been released, the law  
23 prohibits federal agents from rearresting his merely because he is subject to  
24 removal proceedings.” Saravia, 280 F. Supp. 2d at 1760. “Rather, the federal  
25 agents must be able to present evidence of materially changed circumstances-  
26 namely, evidence that the noncitizen is in fact dangerous or has become a flight  
27 risk..” *Id.*  
28

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

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

71. Petitioner's revocation of authorized stay without notification, reasoning, or an opportunity to be heard, denied Petitioner of his due process rights. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

72. Furthermore, Petitioner is challenging his detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that he is being detained pursuant to section 1225(b), 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. Likewise, *While in Demore v. Kim*, 538 U.S.



1 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention  
2 under § 1226(c), the Supreme Court has explicitly recognized the availability of  
3 judicial review over as-applied challenges to detention, including mandatory  
4 detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*,  
5 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly  
6 found constitutional limits to apply to immigration detention, irrespective of the  
7 underlying detention authority. See, e.g., *Vikas Kumar v. Christopher Larose*,  
8 *Warden, Otay Mesa Detention Center et al.*, 25-CV-3796 JLS (DDL); *Aigul*  
9 *Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP;  
10 *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00423-  
11 GPC-MSB; *Liu v. Larose v. Warden, Otay Mesa Detention Center* Case 3:26-cv-  
12 01546-JO-MMP; *Dugar Dambaev v. Warden, Imperial Detonation Center* 26-cv-  
13 1182-JO-SBC; *Roman T. v. Warden, Golden State Annex Detention Facility* 1:26-  
14 cv-02385-TLN-JDP

15  
16 73. (granting a writ of habeas corpus releasing petitioner from custody to the  
17 conditions of his preexisting parole on due process grounds).

18 74. This Court should so hold as well.

19 **GROUND THREE**

20 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE**  
21 **ADMINISTRATIVE PROCEDURE ACT**

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

24  
25 75. The allegations in the above paragraphs are realleged and incorporated herein.  
26 Courts must "hold unlawful and set aside agency action" that is "arbitrary,  
27 capricious, an abuse of discretion, or otherwise not in accordance with law." 5  
28 U.S.C. § 706(2)(A).

76. The Ninth Circuit in *Singh* stressed that "it is improper to ask the individual to





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

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

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

### 21 PRAYER FOR RELIEF

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

- 23 a) Assume jurisdiction over this matter;  
24 b) Issue an Order to Show Cause ordering Respondents to show  
25 cause why this Petition should not be granted within three  
26 days.  
27 c) Declare that Petitioner’s detention violates the Due Process  
28

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



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) Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal.
- g) Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures.
- h) Enjoin Respondents from removing Petitioner unless they provide the following process:
  - a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand.
- i) Grant any further relief this Court deems just and proper.

DATED: April 26, 2026,

Respectfully submitted



Naira Zohrabyan  
Attorney for Petitioner

