

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

Attorneys for Petitioner **Thi Thuy Vinh Nguyen**

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **In the matter of:**

Case Number: '26CV2749 BAS VET

13 **THI THUY VINH NGUYEN**

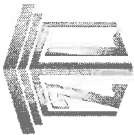
14 A 

15 **v.**
16 **CHRISTOPHER LAROSE,**
17 **WARDEN OF OTAY MESA**
18 **DETENTION CENTER**

19 **PETITION FOR WRIT OF**
20 **HABEAS CORPUS AND ORDER**
21 **TO SHOW CAUSE WITHIN**
22 **THREE DAYS; COMPLAINT**
23 **FOR DECLARATORY RELIEF**

24 **Challenge to Unlawful Incarceration;**
25 **Request for Declaratory and**
26 **Injunctive Relief**

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



STATEMENT OF FACTS

1. Petitioner is a native and citizen of Vietnam who entered the United States on December 1, 2024. Since that date, Petitioner has remained in continuous immigration custody, and as of today, has been detained for approximately sixteen (16) months without release. **See Exhibit “A” (Notice to Appear).**
2. On November 6, 2025, the San Diego Immigration Court granted Petitioner Withholding of Removal pursuant to INA § 241(b)(3). The Department of Homeland Security (DHS) did not appeal this decision, and Petitioner's order of removal therefore became final on that same date. **See Exhibit “B” (Order of the Immigration Judge)**
3. Despite the grant of Withholding of Removal and the absence of any appeal by DHS, Petitioner has remained in ICE custody continuously from December 1, 2024, to the present.
4. At no point has DHS alleged let alone established that Petitioner presents a flight risk or a danger to the community, and there is no factual or legal basis justifying continued detention.
5. Following the final order of removal on November 6, 2025, Petitioner entered post-order detention governed by 8 U.S.C. § 1231(a). The six-month presumptively reasonable period of detention recognized by *Zadvydas v. Davis* expired on May 6, 2026.

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



1 6. As a result, Petitioner has been detained for approximately 515 days in total,
2 including nearly six (6) months of detention after the grant of Withholding of
3 Removal well beyond any period that can be presumed reasonable under
4 constitutional or statutory standards.
5

6 7. Respondents have failed to rebut Petitioner's showing that there is no significant
7 likelihood of removal in the reasonably foreseeable future. Specifically,
8 Respondents have provided no declaration from a deportation officer, no
9 evidence of a valid travel document, and no evidence of any concrete steps
10 toward removal, whether to Vietnam or to a third country.
11

12 8. Likewise, Respondents did not obtain a valid travel document, provide the travel
13 document to Petitioner and Petitioner's counsel, and/or offer Petitioner the
14 opportunity to travel to a third country in eight months after granting of
15 withholding.
16

17 9. As such, due to prolonged detention, Petitioner has been experiencing physical
18 and mental issues.
19

20 10. This decision reinforces that the Due Process Clause requires a meaningful
21 opportunity to contest detention when custody becomes prolonged, and that
22 courts may order bond hearings as a remedy in § 2241 actions where ICE has
23 failed to conduct adequate custody review.
24
25
26
27
28

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



1 11. Petitioner's ongoing, unreviewed detention is arbitrary, unlawful, and
2 unconstitutional. The Government has not provided any custody review, despite
3 ICE policy requiring release following a grant of protection relief.
4

5 12. Petitioner therefore seeks immediate release or, at minimum, a constitutionally
6 adequate custody hearing before a neutral adjudicator.
7

8 13. The Constitution protects Petitioner and every other person present in this
9 country- from arbitrary deprivations of her liberty and guarantees her due
10 process of law. The government's power over immigration is broad, but as the
11 Supreme Court has declared, it "is subject to important constitutional
12 limitations" *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from
13 bodily restraint always been at the core of the liberty protected by the Due
14 Process Clause from arbitrary governmental action" *Foucha v. Louisiana*, 504
15 U.S. 71, 80 (1992).
16
17
18

19 14. Petitioner's continued detention is arbitrary and unlawful, and she requests
20 that this Court order her immediate release from ICE custody.
21

22 JURISDICTION

23

24 15. This action arises under the Constitution of the United States and the
25 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
26
27
28

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



1 16.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 17.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 18.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 19.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 LEGAL FRAMEWORK

18 ICE'S CONTINUED DETENTION OF PETITIONER, WITHOUT 19 REVIEWING HER CUSTODY UNDER ICE POLICY VIOLATES THE 20 ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.

21 20.ICE's long-standing policy is to release non-citizens immediately following a
22 grant of withholding or CAT relief absent exceptional circumstances.

23 21.Under the *Accardi* doctrine, which originated in the context of an immigration
24 case and has been developed through subsequent immigration caselaw,
25 agencies are bound to follow their own rules that affect the fundamental rights
26 of individuals, even self-imposed policies and processes that limit otherwise
27 discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. at 226 (holding
28

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



1 that BIA must follow its own regulations in its exercise of discretion); *Morton*
2 *v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are
3 affected, it is incumbent upon agencies to follow their own procedures . . . even
4 where the internal procedures are possibly more rigorous than otherwise would
5 be required.").

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

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

25 24. Prejudice is generally presumed when an agency violates its own policy. See
26 *Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed
27
28

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

1 to adhere to its own regulations . . . is not required to make a showing of
 2 prejudice before he is entitled to relief. All that need be shown is that the subject
 3 regulations were for the alien's benefit and that the INS failed to adhere to
 4 them."); Heffner, 420 F.2d at 813 ("The Accardi doctrine furthermore requires
 5 reversal irrespective of whether a new trial will produce the same verdict.").

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

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

16 CLAIMS FOR RELIEF

17 GROUND ONE

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

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

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

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

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

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

3 29.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 her
9 detention.

10 30.Section 1252(g) provides that “no court shall have jurisdiction to hear any cause
11 or claim by or on behalf of any alien arising from the decision or action by the
12 Attorney General to commence proceedings, adjudicate cases, or execute
13 removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g).
14 Section 1252(g) should be read “narrowly” as to apply “only to three discrete
15 actions that the Attorney General may take: her decision or action to ‘*commence*
16 proceedings, *adjudicate* cases, or *execute* removal orders.” *Ibarra-Perez v.*
17 *United States*, No. 24-631, 2025 WL 2461663 (9th Cir. Aug. 27, 2025) (quoting
18 *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482,
19 487 (1999)). Section 1252(g) “does not prohibit challenges to unlawful
20 practices merely because they are in some fashion connected to removal orders”
21 *Id.* At *7. Section 1252(g) does not bar due process claims. *Walters v. Reno*,
22 145 F.3d 1032, 1052- 53 (9th Cir. 1998) ((finding that the petitioner’s objective
23 was not to review the merits of their proceeding, but rather “to enforce their
24 constitutional rights to due process in the context of those proceedings”).
25

26 31.Here, Petitioner challenges her deprivation of liberty and prolonged detention,
27 not the adequacy of the procedures the immigration laws afford her “with
28

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



1 respect to admission. Petitioner solely challenging her detention and revocation
2 of parole without proper notice, and she is not bringing a constitutional claim
3 with respect to the procedures governing her legal admission into the United
4 States.

5 32. Likewise, Respondents argue that under the Supreme Court decision in
6 Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020),
7 Petitioner has no due process rights beyond those that Congress has provided,
8 and that her due process claim therefore fails. In Thuraissigiam, the Supreme
9 Court rejected a habeas petitioner's argument that the due process clause
10 conferred rights to challenge his expedited removal beyond those established
11 by Congress, stating that "an alien at the threshold of initial entry cannot claim
12 any greater rights under the Due Process Clause." 591 U.S. at 107. The
13 petitioner in that case had "attempted to enter the country illegally and was
14 apprehended just 25 yards from the border." Id. The Supreme Court determined
15 that the "political department of the government" had plenary authority to admit
16 or exclude aliens seeking initial entry, and thus "an alien in respondent's
17 position has only those rights regarding admission that Congress has provided
18 by statute." Id. at 139–40.

19 33. Following the Supreme Court's decision in Thuraissigiam, some district courts
20 have adopted Respondents' reasoning to dismiss or deny habeas petitions in the
21 context of arriving aliens subject to mandatory detention under Section 1225(b).
22 See Petgrave v. Aleman, 529 F. Supp. 3d 665, 679 (S.D. Tex. 2021) ("As far
23 as Petitioner is concerned, whatever procedure Congress has authorized is
24 sufficient due process."); Gonzales Garcia v. Rosen, 513 F. Supp. 3d 329, 536
25 (W.D.N.Y. 2021) ("Petitioner is on the threshold of initial entry into the United
26 States and . . . she accordingly is not entitled to procedural protections beyond
27
28



those provided by statute”).

34. Respondents also argue that a much older case, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), establishes that arriving aliens subject to a mandatory detention scheme, regardless of the length of their detention, never become entitled by the due process clause to a bond hearing. Petitioner disagrees since *Mezei* involved a noncitizen who had been “permanently excluded from the United States on security grounds but [who was] stranded in his temporary haven on Ellis Island because other countries [would] not take him back” 345 U.S. at 207. In 1950, the Attorney General determined, pursuant to emergency regulations that based on certain confidential information, the noncitizen should be excluded from the United States “for security reasons.” *Id.* at 208–10, 214–15. The Supreme Court rejected the noncitizen’s constitutional challenge, citing “considerations” of “danger to the national security.”

35. There are cases that distinguish the constitutional holding in *Mezei* as addressing the national security considerations presented in that case. See *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003) (*Mezei* Court explicitly grounded its decision in the special circumstances of a national emergency and the determination by the Attorney General that *Mezei* presented a threat to national security). Furthermore, *Lett v. Decker*, 346 F. Supp. 3d 379, 386 (S.D.N.Y. 2018) (*Mezei* may compel the conclusion that arriving aliens already excluded on national security grounds are not entitled to a bond hearing prior to their arranged deportation. However, *Mezei* does not compel the categorical conclusion that all arriving aliens may be subject to prolonged confinement without a bond hearing.)

36. 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
14 her detention under the Due Process Clause of the Fifth Amendment of the
15 Constitution.

16
17 37.ICE has violated Petitioner's due process rights by denying her an
18 individualized custody review to which she is entitled under ICE policy.

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

22 **GROUND TWO**

23 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §** 24 **1231 (A)(6)**

25 **Post-Removal Order Detention is Constitutionally Suspect and not** 26 **Authorized by Statute where Removal is not Reasonably Foreseeable**

27 39.The INA provides that after a removal order becomes final, the government
28 “shall remove the alien from the United States within a period of 90 days.” 8
U.S.C. § 1231(a)(1)(A). During this 90-day initial removal period, the

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



1 government “shall” detain the noncitizen. *Id.* § 1231(a)(2)(A). 8 U.S.C. §
2 1231(a)(6) allows the government to detain certain enumerated classes of
3 immigrants—including those ordered removed due to criminal convictions—
4 beyond the initial 90-day removal period.

5 40. In *Zadvydas v. Davis*, the Court addressed the question of how long DHS can
6 detain a noncitizen pursuant to § 1231(a)(6). 533 U.S. 678, 682 (2001). The
7 Court first highlighted that “[f]reedom from . . . government custody . . . lies at
8 the heart of the liberty that [the Due Process] Clause protects” and that civil
9 detention violates the Due Process Clause outside of “certain special and
10 ‘narrow’ nonpunitive ‘circumstances’ . . . where a special justification . . .
11 outweighs the ‘individual’s constitutionally protected interest in avoiding
12 physical restraint.’” *Id.* at 690 (internal citations omitted). Under the principle
13 of constitutional avoidance, the *Zadvydas* Court then rejected the government’s
14 position that § 1231(a)(6) permits indefinite civil detention and determined that
15 § 1231(a)(6) no longer authorizes detention when “removal is not reasonably
16 foreseeable.” *Id.* at 699; *see also id.* at 690 (a “statute permitting indefinite
17 detention of [a noncitizen] would raise a serious constitutional problem”).

18
19 41. Here, Respondents have provided no evidence and/or a declaration from a
20 deportation officer to rebut this showing that they are in the process of removing
21 Petitioner in their Response. ECF Docket No. 3.

22 42. Likewise, Respondents did not obtain a valid travel document, provide the travel
23 document to Petitioner and Petitioner’s counsel, and/or offer Petitioner the
24 opportunity to travel to a third country in eight months after granting of
25 withholding.

26 43. The Court went on to establish a framework for future challenges to § 1231(a)(6)
27 detention. “[F]or the sake of uniform administration in the federal courts” and
28

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



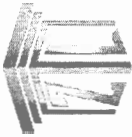
1 because “Congress previously doubted the constitutionality of detention for
2 more than six months,” the Court found that detention was “presumptively
3 reasonable” for the first six months of post-removal order detention. *Id.* at 700-
4 01. When the “presumptively reasonable” six-month period ends, noncitizens
5 seeking release from custody bear the initial burden of providing “good reason
6 to believe that there is no significant likelihood of removal in the reasonably
7 foreseeable future.” *Id.* at 701. Once that initial showing is made, the burden
8 shifts to DHS to respond with sufficient rebuttal evidence. *See id.* The Court
9 further held that “for detention to remain reasonable, as the period of [post-order]
10 confinement grows, what counts as the ‘reasonably foreseeable future’
11 conversely would have to shrink.” *Id.*

12 44. Courts consider the cumulative length of post-order detention when determining
13 if post-order detention exceeds the six-month “presumptively reasonable”
14 period. *See, e.g., Nguyen v. Scott*, 796 F. Supp. 703, 721-22 (W.D. Wash. 2025);
15 *S.F. v. Bostock*, No. 3:25-cv-01084-MTK, 2025 WL 2841022, at *4 (D. Or. Oct.
16 7, 2025) (the government “concede[s] that Petitioner’s detention should be
17 measured cumulatively”); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635,
18 at *2 (W.D. La. Nov. 20, 2015) (“Surely, under the reasoning of *Zadvydas*, a
19 series of releases and re-detentions by the government . . . in essence results in
20 an indefinite period of detention”).

21
22 45. Respondents have provided no evidence and/or a declaration from a deportation
23 officer to rebut this showing that they are in the process of removing Petitioner
24 in their Response. ECF Docket No. 3.

25 46. Likewise, Respondents did not obtain a valid travel document, provide the travel
26 document to Petitioner and Petitioner’s counsel, and/or offer Petitioner the
27 opportunity to travel to a third country in eight months after granting of
28

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



withholding

47. Here, “[p]etitioner’s current detention is no longer presumptively reasonable because he has been detained for more than six months following his final removal order.” *Abdirahman v. Noem*, No. 3:26-cv-00177-RBM-AHG, 2026 WL 311509, at *2 (S.D. Cal. Feb. 5, 2026). Further, because the petitioner was granted withholding of removal, third country removal is exceedingly rare, and for the past 8 months, ICE has not been able to remove her to a third country, Petitioner has met her initial burden under *Zadvydas* to show good reason to believe that there is no significant likelihood of her removal. (“Petitioner has also met his initial burden under *Zadvydas* to show good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future; he was granted withholding of removal to Somalia, established that ‘third country removal is exceedingly rare, and [noted that] ICE has not been able to remove [him] to a third country for over 8 months.’”).

48. See also *Azzo v. Noem*, 2025 WL 3535208, at *3 (S.D. Cal. Dec. 10, 2025) (“Petitioner must offer more than ‘conclusory statements suggesting that he will not’ be removed”) (quoting *Andrade v. Gonzalez*, 459 F.3d 538, 543 (5th Cir. 2006)); cf. *Abdirahman v. Noem*, Case No.: 3:26-cv-00177-RBM-AHG, 2026 WL 311509, at *2 (S.D. Cal. Feb. 5, 2026) (holding petitioner satisfied his burden under *Zadvydas* because he was granted withholding of removal to his country of origin and established that “third country removal is exceedingly rare, and ICE has not been able to remove [him] to a third country for over 7 months.”) (internal citation omitted).

49. Furthermore, Petitioner is challenging her detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that she is being detained pursuant to section 1225(b), Petitioner’s detention is unequivocally subject to

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



1 Constitutional limits. The Supreme Court has not precluded noncitizens from
2 bringing as-applied constitutional challenges to their mandatory detention.
3 Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did
4 not explicitly address constitutionality arguments.” U.S. Likewise, While in
5 *Demore v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial
6 challenge to mandatory detention under § 1226(c), the Supreme Court has
7 explicitly recognized the availability of judicial review over as-applied
8 challenges to detention, including mandatory detention. See, e.g., *Nielsen v.*
9 *Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003)
10 (Kennedy, J., concurring). This Court accordingly found constitutional limits to
11 apply to immigration detention, irrespective of the underlying detention
12 authority. See, e.g., *Gebregizabher v. Marrero*, Case 3:26-cv-02004-JES-MSB;
13 *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *Tesfaye Alemu Gebregizabher*
14 *V. Sixto Marrero* , Case 26-cv-2004-JES-MSB; *Synthia Engonwei Munoh*
15 *Warden, Otay Mesa Detention Center*, Case 26-CV-1773 JLS (DDL); *Fuad*
16 *Abdulielil Ahmed V. Sixto Marrero* Case 26-cv-01170-BAS-MMP; *Maksim*
17 *Lastin v. Warden, Imperial Regional Detention Facility* 26-cv-974-RSH-DDL;
18 *Natalia Lastina V. Warden of Imperial Regional Detention Facility* 3:26-cv-
19 00975-TWR-VET; *Karakhanyan v. Warden of Otay Mesa Detention Center-*
20 *3:25-cv-03454-JO-MMP*; *Romik Parunakyan v. Warden of Otay Mesa*
21 *Detention Center* 25-cv-3739-LL-MSB; *L.S. v. Warden of Otay Mesa Detention*
22 *Center*; *M.F. v. Warden of Otay Mesa Detention Center* 3:25-cv-3599-CAB-
23 *MSB*; *Miganush Ogandzhanyan V. Warden Of Otay Mesa Detention Center*
24 *26cv0093 DMS MSB*; *Ter Ogannisian Geros v. Warden Of Otay Mesa*
25 *Detention Center* 26-CV-91 JLS (AHG); *Emanuel Ter-Ogannisian v. Warden Of*
26 *Otay Mesa Detention Center* 26cv0124 DMS JLB; *L.S. v. Warden of Otay Mesa*
27
28

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



1 Detention Center; Naira Kirakosyan v. Warden of Otay Mesa Detention Center
2 26-cv-315-JO-DDL. (granting a writ of habeas corpus after Court
3 determined that Petitioner's detention without a bond hearing has become
4 unreasonable and violates due process).

5 50. This Court should so hold as well.

6 **GROUND THREE**

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

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

11
12 51. The allegations in the above paragraphs are realleged and incorporated herein.
13 Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious,
14 an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §
15 706(2)(A).

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

25 53. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
26 to detention and Petitioner's financial circumstances in determining whether further
27 detention is warranted and the conditions of his release. See, e.g., Hernandez, 872 F.3d
28

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



1 at 994 (“If the government is setting monetary bonds to ensure appearance at future
2 proceedings, there is no legitimate reason for it not to consider the individual’s
3 financial circumstances and alternative conditions of release.”).

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

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioner requests that the Court:

- 10 1) Assume jurisdiction over this matter;
11 2) Order Respondents to immediately release Petitioner from custody under the
12 conditions of Petitioner’s prior supervised release;
13 3) Order that Respondents may not re-detain Petitioner unless they:
14 a. First establish, at a hearing before a neutral adjudicator, that Petitioner
15 is a flight risk or a danger to the community such that re-detention is
16 warranted, or
17 b. (1) Obtain a valid travel document, (2) provide the travel document to
18 Petitioner and Petitioner’s counsel, (3) offer Petitioner the opportunity
19 to leave the country on their own within two months, and (4) Petitioner
20 fails to leave the country.
21 4) Order that Respondents may not remove Petitioner to a third country without
22 notice and meaningful opportunity to respond in compliance with the INA and
23 due process, which should minimally include written notice to both Petitioner
24 and Petitioner’s counsel in a language Petitioner can understand and a
25 meaningful opportunity to be heard in reopened removal proceedings with a
26 hearing before an immigration judge;

27
28 **PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR DECLARATORY RELIEF**



- 1 5) Award reasonable costs and attorney's fees under the Equal Access to Justice
2 Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis
3 justified under law; and
4 6) Grant such relief as the Court deems just and proper.
5

6 DATED: April 30, 2026

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner

