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DETAINED

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11 Attorneys for Petitioner **Rustam Khusikhanov**

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



14
15 **In the matter of:**

) **Case Number: '26CV3062 LL SBC**

16
17 **RUSTAM KHUSIKHANOV**

) **A-Number** 

18
19 **v.**

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

20
21 **CHRISTOPHER J. LAROSE,**
22 **WARDEN OF OTAY MESA**
23 **DETENTION CENTER**

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

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

STATEMENT OF FACTS

- 1
- 2
- 3 1. Petitioner is a citizen of Russia. He entered the United States on or about January
- 4 5, 2023, then he was processed. On or about February 12, 2023, Petitioner was
- 5 released from custody on parole.
- 6 2. Subsequently, the Petitioner submitted his Application for Asylum (Form I-589).
- 7 3. Petitioner has more than three (3) years of residence in the United States.
- 8 4. On or about April 20, 2026, Petitioner was detained by U.S. Immigration and
- 9 Customs Enforcement (ICE) at or near the San Clemente San Diego military base.
- 10 5. Respondent has revoked Petitioner’s parole without proper notice.
- 11 6. Petitioner is currently detained at the Otay Mesa Detention Center, CA. He has
- 12 not been given an opportunity to be heard.
- 13 7. Petitioner has no criminal history. He possesses a valid Social Security number
- 14 and has been authorized to work in the United States.
- 15 8. Petitioner has appeared for all scheduled hearings and biometric appointments and
- 16 has demonstrated his intention to comply with all court orders and conditions of
- 17 release.
- 18 9. Petitioner’s upcoming master hearing is set on May 27, 2026, See Exhibit “A”
- 19 **Screenshot EOIR page.**
- 20 10. Petitioner has remained in immigration detention since April 20, 2026, to date.
- 21 11. During this detention, Petitioner has suffered significant physical and mental
- 22 health deterioration. His continued confinement has caused and continues to cause
- 23 serious harm.
- 24 12. 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 based
- 26 not on Petitioner’s personal circumstances or individualized facts.
- 27
- 28



1 13. 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 14. 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" *Zadvydas*
8 *v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint always been
9 at the core of the liberty protected by the Due Process Clause from arbitrary
10 governmental action" *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

11 15. 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 April 20, 2026, without first being provided a due process hearing to
14 determine whether his incarceration is justified.

15 16. Petitioner experienced severe distress and shock throughout his unlawful
16 detention. He is a working member of the community, supports his family and has
17 a pending immigration case. He has been in full compliance with immigration
18 requirements and is not a danger to the community nor a flight risk.

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

25 18. The risk of an erroneous deprivation of such interest is high as Petitioner's parole
26 was terminated without providing a reason for termination or giving an
27
28



1 opportunity to be heard. Since DHS's initial determination that Petitioner be
2 paroled because he posed no danger to the community and was not a flight risk,
3 there is no evidence that this have been changed.

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

7 20. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus
8 to release Petitioner from detention within 10 days unless Respondents schedule
9 a hearing before an IJ where: (1) to continue detention, the government must
10 establish by clear and convincing evidence that Petitioner presents a risk of flight
11 or danger, even after consideration of alternatives to detention that could mitigate
12 any risk that Petitioner's release would present; and (2) if the government cannot
13 meet its burden, the IJ shall order Petitioner's release on appropriate conditions of
14 supervision, taking into account Petitioner's ability to pay a bond.

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

17 JURISDICTION

18 22. 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 23. 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 24. 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
27
28

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



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

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

11
12 **VENUE**

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

20
21 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

22
23 28. The Court must grant the petition for writ of habeas corpus or issue an order to
24 show cause (OSC) to the Respondents "forthwith" unless Petitioner is not entitled
25 to relief. 28 U.S.C. 2243. If an OSC is issued, the Court must require Respondents
26 to file return "within three days unless good cause additional time, not exceeding
27 twenty days, is allowed." *Id.*



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

6 30. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because he
7 was arrested by Respondents and remains in their legal and physical custody at
8 Otay Mesa Detention Center, in California. He is under Respondent’s and their
9 agents’ direct control.

10 **PARTIES**

11
12 31. Petitioner is a citizen of Russia. He entered the United States on or about January
13 5, 2023, then he was processed. On or about February 12, 2023, Petitioner was
14 released from custody on parole.

15 32. Subsequently, the Petitioner submitted his Application for Asylum (Form I-589).

16 33. Petitioner has more than three (3) years of residence in the United States.

17 34. On or about April 20, 2026, Petitioner was detained by U.S. Immigration and
18 Customs Enforcement (ICE) at or near the San Clemente San Diego military base.

19 35. Respondent has revoked Petitioner’s parole without proper notice.

20 36. Petitioner is currently detained at the Otay Mesa Detention Center, CA. He has
21 not been given an opportunity to be heard.

22 37. Petitioner has no criminal history. He possesses a valid Social Security number
23 and has been authorized to work in the United States.

24 38. Petitioner has appeared for all scheduled hearings and biometric appointments and
25 has demonstrated his intention to comply with all court orders and conditions of
26 release.

27 39. Petitioner’s upcoming master hearing is set on May 27, 2026.
28



1 40. Petitioner has remained in immigration detention for since April 30, 2026 to date.

2 41. During this detention, Petitioner has suffered significant physical and mental
3 health deterioration. His continued confinement has caused and continues to cause
4 serious harm.

5 42. Respondents seek to keep Petitioner detained without providing a meaningful
6 opportunity to seek a bond hearing, in violation of due-process requirements. See
7 8 U.S.C. § 1225.

8 43. Respondents cannot evade constitutional requirements. The U.S. Constitution
9 guarantees Petitioner the same due-process protections available to his at the time
10 he filed his application for relief, including freedom from arbitrary and indefinite
11 detention.

12
13 **LEGAL FRAMEWORK**

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

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

19 45. Under the Accardi doctrine, which originated in the context of an immigration
20 case and has been developed through subsequent immigration caselaw, agencies
21 are bound to follow their own rules that affect the fundamental rights of
22 individuals, even self-imposed policies and processes that limit otherwise
23 discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. at 226 (holding
24 that BIA must follow its own regulations in its exercise of discretion); *Morton*
25 *v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected,
26 it is incumbent upon agencies to follow their own procedures . . . even where the
27 internal procedures are possibly more rigorous than otherwise would be
28



1 required.").

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

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

21
22 48. Prejudice is generally presumed when an agency violates its own policy. See
23 *Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to
24 adhere to its own regulations . . . is not required to make a showing of prejudice
25 before he is entitled to relief. All that need be shown is that the subject
26 regulations were for the alien's benefit and that the INS failed to adhere to
27 them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires
28



1 reversal irrespective of whether a new trial will produce the same verdict.").

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

10 50. Here, Petitioner falls into this category where ICE has failed to act as required
11 by their procedures and require intervention.

12 **CLAIMS FOR RELIEF**

13 **GROUND ONE**

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

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

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

17 52. Petitioner has due process rights to challenge their detention. *Zadvydas v. Davis*,
18 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States'
19 "geographic borders" lack constitutional protections, all "persons" within them
20 are protected by the Due Process Clause, regardless of immigration status);
21 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though
22 constitutional rights of citizens and noncitizens "are not coextensive," noncitizens
23 are entitled to due process, including to challenge detention pending proceedings).

24 53. As the Ninth Circuit held, the Due Process Clause applies to noncitizens
25 regardless of whether they are "seeking admission" or are "admitted" under
26 immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004),
27 abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also
28



1 Padilla v. U.S. Immigr. & Customs Enft, 704 F. Supp. 3d 1163, 1171 (W.D.
2 Wash. 2023). The Due Process Clause allows Petitioner to challenge his detention.
3 54. Petitioner challenges his deprivation of liberty and detention, not the adequacy of
4 the procedures the immigration laws afford his “with respect to admission.
5 Petitioner solely challenging his detention and revocation of parole without proper
6 notice, and he is not bringing a constitutional claim with respect to the procedures
7 governing his legal admission into the United States.

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

23
24 56. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has a
25 protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL
26 2084921, at *4 (“[Petitioner’s] release from ICE custody after his initial
27 apprehension reflected a determination by the government that he was neither a
28



1 flight risk or a danger to the community, and [Petitioner] has a strong interest in
2 remaining at liberty unless he no longer meets those criteria.”); Noori, 2025 WL
3 2800149, at *10 (“Petitioner is not an “arriving” noncitizen but one that has [been]
4 present in our country over a year. This substantial amount of time indicates he is
5 afforded the Fifth Amendment’s guaranteed due process before removal.”);
6 Matute v. Wofford, No. 25-cv-1206-KES-SKO (HC), 2025 WL 2817795, at *5
7 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty interest in his
8 release).

9 57. This Court accordingly found constitutional limits to apply to immigration
10 detention, irrespective of the underlying detention authority. See, e.g., Vikas
11 Kumar v. Christopher Larose, Warden, Otay Mesa Detention Center et al., 25-
12 CV-3796 JLS (DDL); Aigul Kazybayeva v. Warden, Otay Mesa Detention Center
13 3:26-cv-00421-GPC-MMP; Dariya Karmamoldoyeva v. Warden, Otay Mesa
14 Detention Center 3:26-cv-00423-GPC-MSB; Dugar Dambaev v. Warden,
15 Imperial Detention Center 26-cv-1182-JO-SBC; Roman T. v. Warden, Golden
16 State Annex Detention Facility 1:26-cv-02385-TLN-JDP. (**granting a writ of**
17 **habeas corpus releasing petitioner from custody to the conditions of his**
18 **preexisting parole on due process grounds**)

19
20 58. Likewise, in Liping Zhao V. Christopher J. Larose 26-cv-1285-JES-DDL-
21 (**granting a writ of habeas corpus releasing petitioner from custody to the**
22 **conditions of his preexisting release on recognizance on due process grounds**).

23 59. Furthermore, relief was granted in similar matter. See *Doe v. Becerra*, 787 F.
24 Supp. 3d 1083, 1089 (E.D. Cal. 2025); *Duong v. Kaiser*, --- F. Supp. 3d ---, 2025
25 WL 2689266, at *7–10 (N.D. Cal. 2025); *Pinchi*, 2025 WL 2084921, at *5;
26 *Gonzalez Salazar*, 2025 WL 3063629, at *6; *Abdul Kadir v. Larose*, Case No.:
27 25cv1045-LL-MMP, 2025 WL 2932654, at *6 (S.D. Cal. Oct. 15, 2025); *Matute*
28



1 v. *Wofford*, No. 1:25-cv-01206-KES-SKO (HC), 2025 WL 2495767, at *8 (E.D.
2 Cal. Oct. 3, 2025).

3 60. ICE has violated Petitioner's due process rights by revoking Petitioner's parole,
4 without providing a reason for revocation or giving an opportunity being heard.

5 61. As a remedy, this Court should conduct its own review of Petitioner's custody
6 or, at least, order ICE to review Petitioner's custody under the standard
7 articulated in ICE policy.

8 **GROUND TWO**

9 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**
10 **1231 (A)(6)**

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

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

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

16 64. Petitioner has an interest in remaining with his community, working and
17 continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 482
18 ("Subject to the conditions of his release on recognizance, he can be gainfully
19 employed and is free to be with family and friends and to form the other enduring
20 attachment of normal life.")

21 65. The risk of an erroneous deprivation of such interest is high as Petitioner's parole
22 was revoked without providing a reason for revocation or giving an opportunity
23 being heard. Since DHS's initial determination that Petitioner should be released
24 because he posed no danger to the community and was not at flight risk, there is
25 no evidence that these findings have changes. See *Saravia v. Sessions*, 280 F.
26 Supp. 3d 1168, 1760 (N.D. Cal2017).

27 66. Petitioner has no criminal record, has not been arrested or otherwise in criminal
28



1 trouble, had work authorization. “Once a noncitizen has been released, the law
2 prohibits federal agents from rearresting his merely because he is subject to
3 removal proceedings.” Saravia, 280 F. Supp. 2d at 1760. “Rather, the federal
4 agents must be able to present evidence of materially changed circumstances—
5 namely, evidence that the noncitizen is in fact dangerous or has become a flight
6 risk.” *Id.*

7 67. Government’s interest in detaining Petitioner without notice, reasoning, and a
8 hearing is “low.” *See Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
9 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
10 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has the
11 power to take steps toward doing so; but its interest in doing so without a hearing
12 is low.”). Respondents fail to point to any burdens on the government if it were to
13 have provided proper notice, reasoning, and a pre-deprivation hearing.

14 68. Therefore, because Respondents detained Petitioner by revoking his parole in
15 violation of the Due Process Clause, his detention is unlawful. *See, e.g., Alegria*
16 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug.
17 11, 2025) (granting a TRO based on a procedural due process challenge to a
18 revocation of release on recognizance without a pre-deprivation hearing); *Navarro*
19 *Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing
20 petitioner from custody to the conditions of his preexisting order of release on
21 recognizance on due process grounds).
22

23 69. Petitioner’s parole revocation without notification, reasoning, or an opportunity
24 to be heard, denied Petitioner of his due process rights. Therefore, his continued
25 detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

26 70. Furthermore, Petitioner is challenging his detention on constitutional grounds, not
27 statutory grounds. Notwithstanding the fact that he is being detained pursuant to
28



1 section 1225(b), Petitioner’s detention is unequivocally subject to Constitutional
2 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
3 constitutional challenges to their mandatory detention. Respondent correctly
4 states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not explicitly address
5 constitutionality arguments.” U.S. Likewise, While in *Demore v. Kim*, 538 U.S.
6 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention
7 under § 1226(c), the Supreme Court has explicitly recognized the availability of
8 judicial review over as-applied challenges to detention, including mandatory
9 detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*,
10 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly
11 found constitutional limits to apply to immigration detention, irrespective of the
12 underlying detention authority. See, e.g., *Vikas Kumar v. Christopher Larose,*
13 *Warden, Otay Mesa Detention Center et al.*, 25-CV-3796 JLS (DDL); *Aigul*
14 *Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP;
15 *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-
16 00423-GPC-MSB. (granting a writ of habeas corpus releasing petitioner from
17 custody to the conditions of his preexisting parole on due process grounds).

18
19 71. This Court should so hold as well.

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

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

25
26 72. The allegations in the above paragraphs are realleged and incorporated herein.
27 Courts must "hold unlawful and set aside agency action" that is "arbitrary,
28 capricious, an abuse of discretion, or otherwise not in accordance with law." 5

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



1 U.S.C. § 706(2)(A).

2 73. 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 is
6 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 Court
10 should, too, apply the heavy burden on the government to justify Petitioner’s
11 continued civil detention without a bond hearing.

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

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

22 **PRAYER FOR RELIEF**

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

- 24 a) Assume jurisdiction over this matter;
- 25 b) Issue an Order to Show Cause ordering Respondents to show
26 cause why this Petition should not be granted within three
27 days.
28



- c) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- d) Issue a Writ of Habeas Corpus ordering Respondents to be released.
- e) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- f) Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for her 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: May 15, 2026

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner



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