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DETAINED

Attorneys for Petitioner Yuqin Ding

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

15 In the matter of:

16 YUQIN DING

19 v.

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

) Case Number: '26CV3218 JAO MSB



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

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

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



STATEMENT OF FACTS

1. Petitioner Yuqin Ding (“Petitioner”) seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging her prolonged and unconstitutional immigration detention under 8 U.S.C. § 1226(a).
2. Petitioner has been detained for almost eight (8) months without a constitutionally adequate bond hearing. Although she was provided a hearing before an Immigration Judge, that proceeding failed to satisfy due process because the government was not required to meet the constitutionally mandated burden of proof, the decision relied on unsupported assertions, and the court failed to meaningfully consider alternatives to detention, Petitioner’s ability to pay, and overwhelming evidence of her community ties.
3. Petitioner is a 51-year-old woman, a native and citizen of China. She entered the United States on or about May 23, 2023, with inspection under a tourist visa.
4. On November 14, 2023, Petitioner timely filed Form I-589, Application for Asylum and for Withholding of Removal, with the USCIS.
5. As a result, Petitioner has remained in a period 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.”**
6. Petitioner has no criminal history. She possesses a valid Social Security number and has been authorized to work in the United States.
7. On September 19, 2025, Petitioner and her husband YOU CHEN were driving near the US-Mexico border in the vicinity of San Diego, California. Due to a routing error on their GPS guidance system, the couple was briefly routed



1 through Mexico, though were not aware that they had left the United States or
2 that they had entered Mexico.

3 8. Federal officials subsequently arrested Petitioner and her husband, alleging they
4 had illegally crossed the border and had thus abandoned their asylum claim,
5 allegedly rendering them indefinitely detainable under contemporaneous BIA
6 guidance.

7 9. Since then, Petitioner has been continuously detained by ICE for almost eight
8 (8) months.

9 10. Petitioner is currently detained at the Otay Mesa Detention Center, CA. She has
10 not been given an opportunity to be heard.

11 11. On January 20, 2026, an Immigration Judge ("IJ") denied Petitioner's asylum,
12 withholding of removal, and relief under the Convention Against Torture.
13 Petitioner timely appealed that decision on February 9, 2026. As a result,
14 Petitioner's removal proceedings remain pending to this day.

15 12. Yuqin Ding is not an applicant for admission to the United States, Yuqin Ding
16 has lived in the United States for over two years. Before her wrongful detention,
17 she lived with her husband in Fresno, California. Yuqin Ding has been in
18 Immigration Court proceedings since arriving to the United States.

19 13. Petitioner has not missed any court hearings or ICE appointments. Yuqin Ding
20 has no criminal history anywhere in the world.

21 14. During her prolonged detention, Petitioner has suffered significant physical and
22 mental health deterioration. Her continued confinement has caused and
23 continues 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. § 1226(a). 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 her
3 when she filed her application.

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

13 18. Petitioner seeks declaratory and injunctive relief to compel her immediate
14 release from the immigration jail where she has been held by DHS since being
15 unlawfully detained on September 19, 2025, without first being provided a due
16 process hearing to determine whether her incarceration is justified.

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

24 20. Absent review in this Court, no other neutral adjudicator will examine
25 Petitioner's rights: Respondents will continue-unchecked-to detain her
26 unlawfully under 8 U.S.C. § 1226(a) without due process.

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

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



1 22. Petitioner experienced severe distress and shock throughout her unlawful
2 detention. She is a working member of the community, supports her family and
3 has a pending immigration case. She has been in full compliance with
4 immigration requirements and is not a danger to the community nor a flight risk.
5 23. Petitioner has been detained for almost eight (8) months. She has a pending
6 appeal with the BIA and more likely it will take months until the BIA's decision.
7 24. Respondents continue to detain Petitioner without providing a meaningful
8 opportunity for a constitutionally adequate bond hearing.
9 25. Respondents continue to detain Petitioner without meaningful review of
10 whether her continued custody is justified. Her prolonged detention, under these
11 circumstances, violates the Due Process Clause of the Fifth Amendment.
12 26. Petitioner respectfully requests that this Court order her immediate release. In
13 the alternative, Petitioner requests that this Court order Respondents to provide
14 a constitutionally adequate bond hearing within seven (7) days, at which the
15 government bears the burden of proving by clear and convincing evidence that
16 continued detention is justified.
17 27. Petitioner filed another petition under case 26-cv-01533-CAB-MMP.
18 28. Circumstances have changed as the detention has become unreasonably
19 prolonged.
20
21

22 JURISDICTION

23
24 29. 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 30. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
27 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
28 United States Constitution (Suspension Clause).

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



1 31. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
2 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and
3 the All-Writs Act, 28 U.S.C. § 1651

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

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

17 VENUE

18 34. Venue is proper in this district and division pursuant to 28 U.S.C. §
19 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is
20 detained within this district in the Otay Mesa Detention Center.
21 Furthermore, a substantial part of the events or omissions giving rise to this
22 action occurred and continue to occur at ICE's Washington Field Office in
23 Chantilly, Virginia, within this division. No real property is involved in this
24 action. 28 U.S.C. §1391(e).
25
26
27
28



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

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

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

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

PARTIES

38. Petitioner is a native and citizen of China who has been in immigration detention since September 19, 2025. Petitioner entered the United States on or about May 23, 2023, with inspection under a tourist visa. Petitioner has resided in the United States since 2023.

39. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, CA.



1 40. Respondents seek to keep Petitioner detained without providing a
2 meaningful opportunity to seek a bond hearing, in violation of due-process
3 requirements. See 8 U.S.C. § 1226(a).

4 41. Respondents cannot evade constitutional requirements. The U.S.
5 Constitution guarantees Petitioner the same due-process protections
6 available to her at the time she filed her application for relief, including
7 freedom from arbitrary and indefinite detention.
8

9 LEGAL FRAMEWORK

10 42. Freedom from physical detention lies at the core of the liberty protected by
11 the Due Process Clause. Noncitizens within the United States are entitled to
12 due process protections, including the right to challenge the legality of their
13 detention.
14

15 43. Even where detention is authorized by statute, it remains subject to
16 constitutional limitations. Prolonged detention without adequate procedural
17 safeguards violates due process.

18 44. The constitutionality of Petitioner's detention is governed by the balancing
19 test set forth in *Mathews v. Eldridge*, which considers: The private liberty
20 interest at stake; the risk of erroneous deprivation; and the government's
21 interest. All three factors weigh strongly in favor of requiring a bond hearing
22 in this case.
23

24 CLAIMS FOR RELIEF

25 GROUND ONE

26 **VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE 27 PROCESS- FAILURE TO PROVIDE CONSTITUTIONALLY 28 ADEQUATE PROCEDURAL SAFEGUARDS**



- 1 45.The allegations in the above paragraphs are realleged and incorporated
2 herein.
- 3 46.Due process requires that continued civil detention be justified through a fair
4 procedure.
- 5 47.At a constitutionally adequate bond hearing: the government must bear the
6 burden of proof; the burden must be clear and convincing evidence; the
7 adjudicator must consider alternatives to detention; the adjudicator must evaluate
8 ability to pay and conditions of release.
- 9 48.Petitioner has been denied such a hearing.
- 10 49.Despite substantial evidence demonstrating that she is not a flight risk or danger,
11 and has strong community ties. Respondents continue to detain her without
12 meaningful review.
- 13 50.This lack of procedural safeguards renders her detention unconstitutional.
- 14 51.Likewise, Petitioner has due process rights to challenge their detention.
15 Zadvydas v. Davis, 533 U.S. 678, 693, 695 (2001) (while noncitizens outside
16 the United States’ “geographic borders” lack constitutional protections, all
17 “persons” within them are protected by the Due Process Clause, regardless of
18 immigration status); Rodriguez Diaz v. Garland, 53 F.4th 1189, 1205-06 (9th
19 Cir. 2022) (though constitutional rights of citizens and noncitizens “are not
20 coextensive,” noncitizens are entitled to due process, including to challenge
21 detention pending proceedings).
- 22 52.As the Ninth Circuit held, the Due Process Clause applies to noncitizens
23 regardless of whether they are “seeking admission” or are “admitted” under
24 immigration law. Wong v. United States, 373 F.3d 952, 973 (9th Cir. 2004),
25 abrogated on other grounds by Wilkie v. Robbins, 551 U.S. 537 (2007); see also
26 Padilla v. U.S. Immigr. & Customs Enft, 704 F. Supp. 3d 1163, 1171 (W.D.
27
28

1 Wash. 2023). The Due Process Clause allows Petitioner to challenge her
2 detention.

3 53. Petitioner challenges her deprivation of liberty and detention, not the adequacy
4 of the procedures the immigration laws afford her “with respect to admission.
5 Petitioner solely challenging her detention, and she is not bringing a
6 constitutional claim with respect to the procedures governing her legal
7 admission into the United States.

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

25
26 55. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
27 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025
28 WL 2084921, at *4 (“[Petitioner’s] release from ICE custody after her initial



1 apprehension reflected a determination by the government that she was neither
2 a flight risk or a danger to the community, and [Petitioner] has a strong interest
3 in remaining at liberty unless she no longer meets those criteria.”); Noori, 2025
4 WL 2800149, at *10 (“Petitioner is not an “arriving” noncitizen but one that has
5 [been] present in our country over a year. This substantial amount of time
6 indicates she is afforded the Fifth Amendment’s guaranteed due process before
7 removal.”); Matute v. Wofford, No. 25-cv-1206-KES-SKO (HC), 2025 WL
8 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty
9 interest in her release).

10
11 56. Courts throughout this Circuit granted Motion to Enforce Judgment after
12 Petitioner **was unreasonably deemed a flight risk after a bond hearing**. See,
13 e.g., Tiboko-Tfiuh v. Noem (3:26-cv-01215).

14 57. Likewise, this lack of procedural safeguards for failure to provide adequate bond
15 hearing renders her detention unconstitutional.

16 58. As a remedy, this Court should conduct its own review of Petitioner's custody
17 or, at least, order ICE to review Petitioner's custody under the standard
18 articulated in ICE policy.

19 **GROUND TWO**

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

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

23 60. Petitioner’s continued detention without a bond hearing violates the Fifth
24 Amendment.

25 61. Petitioner has a fundamental liberty interest in freedom from physical restraint.
26 That interest is substantial and ongoing.

27 62. The risk of erroneous deprivation is exceptionally high because Petitioner has
28 not received a constitutionally sufficient hearing before a neutral

1 decisionmaker. No mechanism currently exists to test whether her continued
2 detention is justified.

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

6 64. Under the Due Process Clause, prolonged detention, especially approaching or
7 exceeding several months, requires an individualized determination of
8 necessity.

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

12 66. Petitioner has an interest in remaining with her community, working and
13 continuing the process of seeking cancellation of removal proceedings. See
14 *Morrissey*, 408 U.S. 471 at 482 ("Subject to the conditions of her parole, she can
15 be gainfully employed and is free to be with family and friends and to form the
16 other enduring attachment of normal life.")

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

23 68. Government's interest in detaining Petitioner without notice, reasoning, and a
24 hearing is "low." See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
25 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
26 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the
27
28



1 power to take steps toward doing so; but its interest in doing so without a hearing
2 is low.”). Respondents fail to point to any burdens on the government if it were
3 to have provided proper notice, reasoning, and a pre-deprivation hearing.

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

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

16 71. Furthermore, Petitioner is challenging her detention on constitutional grounds,
17 not statutory grounds. Notwithstanding the fact that she is being detained
18 pursuant to section 1226(a), Petitioner’s detention is unequivocally subject to
19 Constitutional limits. The Supreme Court has not precluded noncitizens from
20 bringing as-applied constitutional challenges to their mandatory detention.
21 Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not
22 explicitly address constitutionality arguments.” U.S. Likewise, *While in Demore*
23 *v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
24 mandatory detention under § 1226(c), the Supreme Court has explicitly
25 recognized the availability of judicial review over as-applied challenges to
26 detention, including mandatory detention. *See, e.g., Nielsen v. Preap*, 586 U.S.
27 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
28

1 concurring).

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

5 73. On January 20, 2026, an Immigration Judge ("IJ") denied Petitioner's asylum,
6 withholding of removal, and relief under the Convention Against Torture.
7 Petitioner timely appealed that decision on February 9, 2026. As a result,
8 Petitioner's removal proceedings remain pending to this day.

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

11 75. Petitioner is challenging her prolonged detention on constitutional grounds, not
12 statutory grounds. Notwithstanding the fact that she is being detained pursuant to
13 section 1226(a), Petitioner's detention is unequivocally subject to Constitutional
14 limits. The Supreme Court has not precluded noncitizens from bringing as-
15 applied constitutional challenges to their mandatory detention. Respondent
16 correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly
17 address constitutionality arguments." U.S. Response at 3. While in *Demore v.*
18 *Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
19 mandatory detention under § 1226(c), the Supreme Court has explicitly
20 recognized the availability of judicial review over as-applied challenges to
21 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
22 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
23 concurring). Courts in this district have accordingly found constitutional limits
24 to apply to immigration detention, irrespective of the underlying detention
25 authority. See, e.g., *Gebregziabher v. Marrero*, Case 3:26-cv-02004-JES-MSB;
26 *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *Synthia Engonwei Munoh*
27
28



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

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

19 77. Petitioner has now been detained for almost eight (8) months and with no
20 indication of when relief might be available. This prolonged and indeterminate
21 detention is arbitrary, excessive in duration, and unconstitutional.

22 GROUND THREE

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

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

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

Courts must "hold unlawful and set aside agency action" that is "arbitrary,

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

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

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

81. The Mathews test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation

1 of such interest and the value of additional or substitute safeguards; and (3) the
2 government interest. 424 U.S. at 335. Each Mathews factor weighs in Petitioner's
3 favor. Petitioner's detention of 8 months and counting without any neutral review
4 is a violation of her procedural due process rights and requires this court to order
5 a hearing before a neutral adjudicator to evaluate whether the government can
6 justify her ongoing detention.

7
8 82. Petitioner has a profound liberty interest. Petitioner has a weighty interest in her
9 own liberty, the core privacy interest at stake here. *Zadvydas*, 533 U.S. at 690
10 ("Freedom from imprisonment...lies at the heart of the liberty [the Due Process
11 Clause] protects."). Petitioner's 8 months of detention limit of the brief detention
12 contemplated in *Demore*, 538 U.S. at 530-31. See also *Lopez v. Garland*, 631 F.
13 Supp. 3d 870, 880 (E.D. Cal. 2022) ("As detention continues past a year, courts
14 become extremely wary of permitting continued custody absent a bond hearing.")
15 (internal citation omitted).

16 83. The second prong of the Mathews test, the risk of erroneous deprivation of such
17 interest through the procedures used, and the probable value of additional
18 procedural safeguards, also weighs heavily in Petitioner's favor. 424 U.S. at 335.
19 "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing
20 before a neutral decisionmaker is substantial." *Diouf v. Napolitano* (*Diouf II*),
21 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner "does not have a statutory
22 right to a bond hearing or the right to seek additional bond hearings. . . the risk
23 of erroneous deprivation as Petitioner's time in detention lengthens is not
24 insignificant," and the probable value of additional procedural safeguards is
25 exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190,
26 at *7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684 at *4
27 ("Given that Petitioner has been held without a bond hearing for almost a year,
28

1 and it is not clear when detention will end, the risk of erroneous deprivation
2 weighs in favor of granting a bond hearing.”). In this case, Petitioner has been
3 deprived of her liberty in civil detention for 8 months. Because she is subject to
4 mandatory detention pursuant to section 1226(a)), she does not have the statutory
5 right to request a bond hearing and therefore lacks access to an appropriate
6 procedural safeguard that would protect against the risk of erroneous deprivation,
7 absent intervention from this Court.

8
9 84. Here, a bond hearing before a neutral decisionmaker is the only appropriate
10 procedural safeguard to protect against the risk of erroneous deprivation because
11 it provides both the noncitizen and the government with an opportunity to present
12 witness testimony or evidence and be heard before a neutral body. Anything less
13 would not comport with due process. In particular, “the discretionary parole
14 system available to § 1226(a) detainees are not sufficient to overcome the
15 constitutional concerns raised by prolonged mandatory detention because the
16 parole process is purely discretionary, and its results are unreviewable by IJs and
17 “release decisions are based on humanitarian considerations and the public
18 interest.” *Abduraimov*, 2025 WL 2912307, at *6 (citing *Rodriguez v. Robbins*
19 (*Rodriguez II*), 715 F.3d 1127, 1144 (9th Cir. 2013) (internal quotations omitted).
20 The parole process “is not a constitutionally adequate substitute for a bond
21 hearing particularly since it does not test the necessity of detention, does not
22 afford the noncitizen an in-person adversarial hearing before a neutral
23 decisionmaker where he or she may present witness testimony or evidence, does
24 not require the ICE detention officer [to] make any factual findings or provide
25 their reasoning, and there is no apparent right to an administrative appeal.”
26 *Abduraimov*, 2025 WL 2912307, at *6 (citing *Padilla v. U.S. Immigr. & Customs*
27 *Enft*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023)).
28



1 85. Any internal review of Petitioner's detention or request for discretionary parole
2 by DHS cannot satisfy the requirements for due process because DHS is the very
3 authority that is detaining him. Where a custody review is conducted by the very
4 same agency that is detaining the individual, that agency reviewing its own
5 actions cannot be held to a neutral standard. As such, Petitioner must be afforded
6 a hearing before a neutral arbiter in order for her ongoing, prolonged detention to
7 comply with due process.

8
9 86. Contrary to Respondent's assertions, Petitioner faces prolonged detention for an
10 indefinite period of time pending the final adjudication of her cancellation of
11 removal. This Court has recognized that "it is difficult to ascertain an endpoint to
12 removal proceedings, but it is clear proceedings could take a substantial amount
13 of time," and "[i]t is unknown when the IJ will decide the application for relief."
14 *Idiev v. Warden, et al.*, No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349, at
15 *5 (E.D. Cal. Nov. 5, 2025). Even after the IJ issues a decision, each party "has
16 other avenues available for relief including an appeal to the BIA and a petition
17 for review to the Ninth Circuit Court of Appeals." *Id.* See, e.g., *Abduraimov*,
18 2025 WL 2912307 (where the government appealed the IJ's grant of asylum and
19 the BIA remanded back to the IJ); *A.E.*, 2025 WL 1424382 (where the
20 government appealed the IJ's grant of asylum, the IJ denied all relief on remand,
21 and the noncitizen appealed to the BIA).

22
23 87. Here, on January 20, 2026, an Immigration Judge ("IJ") denied Petitioner's
24 asylum, withholding of removal, and relief under the Convention Against
25 Torture. On February 9, 2026, Petitioner timely appealed to the BIA.

26 88. BIA's final decision may end up at least six months, which is **one year after**
27 **detention.**

28 89. Petitioner has been in detention **for almost 8 months**, and Petitioner's removal



1 is not reasonably foreseeable, as it depends entirely on the outcome of her
2 Application for Cancellation of Removal appeal and any subsequent review that
3 may follow. Accordingly, her continued detention is arbitrary, prolonged, and
4 constitutionally unreasonable.

5 90. Due to prolonged detention, Respondent has been experiencing physical and
6 mental issues. There is no indication as to how long the appeal will take, and/or
7 depending on outcome of the appeal, Petitioner might stay in custody longer.

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

23 92. The third Mathews factor also supports Petitioner: the government interest is
24 weak here because the interest at stake “is the ability to detain Petitioner without
25 providing her a bond hearing, not whether the government may continue to detain
26 him” at all. Lopez-Reyes v. Bonnar, 362 F. Supp. 3d 762, 777 (N.D. Cal. Jan. 29,
27
28



2019) (emphasis in original). As the government has conceded in similar cases, the cost of providing such a bond hearing is minimal. *Id.*; *Singh v. Barr*, Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (“The government has not offered any indication that a second bond hearing would have outside effects on its coffers.”); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did not contest “that the cost of conducting a bond hearing, to determine whether the continued detention of Petitioner is justified, is minimal”). Holding a hearing at which Respondents must justify Petitioner’s continued detention thus actually “promotes the Government’s interest one we believe to be paramount in minimizing the enormous impact of incarceration in cases where it serves no purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (“[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.”).

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

94. At a bond hearing, the government must bear the burden of justifying Petitioner’s ongoing and prolonged detention. Where a custody hearing is warranted as a procedural safeguard against unreasonably prolonged detention, it is well established that the government bears the burden of justifying continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of proof on the

1 State in civil proceedings in which the individual interests at stake...are both
2 particularly important and more substantial than mere loss of money.”). See e.g.
3 Lopez, 631 F. Supp. 3d 870, n.3 (specifically noting that Singh provided guidance
4 as to the procedural requirements for bond hearings and that the government must
5 prove by clear and convincing evidence that a noncitizen is a flight risk. or danger
6 to the community to justify denying bond) (internal quotations omitted); Eliazar
7 G.C., 2025 WL 711190, *10 (E.D. Cal. Mar. 5, 2025) (stating that the Court will
8 follow the “overwhelming majority of courts” to hold that the government must
9 justify continued mandatory detention by clear and convincing evidence that the
10 noncitizen is a flight risk or a danger to the community); Maksim, 2025 WL
11 2879328, * 6 (same); Abduraimov, 2025 WL 2912307, *11 (same); Idiev, 2025
12 WL 3089349, *7 (same); Tonoyan, 2025 WL 3013684, *5 (same).

13
14 95.The Ninth Circuit in Singh stressed that “it is improper to ask the individual to
15 share equally with society the risk of error when the possible injury to the
16 individual—deprivation of liberty— is so significant[.]” See Singh, 638 F. 3d at
17 1205; Black, 103 F.4th at 157-58 (observing that where “an individual’s liberty
18 is at stake, the Supreme Court has consistently used [clear and convincing]
19 evidentiary standard for continued detention”) (internal citations omitted); id. at
20 159 (reiterating that the government bears the burden of meeting this standard
21 even where an individual is detained pursuant to mandatory detention). This
22 Court should, too, apply the heavy burden on the government to justify
23 Petitioner’s continued civil detention without a bond hearing.

24
25 96.Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
26 to detention and Petitioner’s financial circumstances in determining whether
27 further detention is warranted and the conditions of her release. See, e.g.,
28 Hernandez, 872 F.3d at 994 (“If the government is setting monetary bonds to

1 ensure appearance at future proceedings, there is no legitimate reason for it not
2 to consider the individual's financial circumstances and alternative conditions of
3 release."").

4 97. 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
6 and convincing evidence.

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

14 99. Thus, due process and Ninth Circuit precedent require that the government bear
15 the burden of justifying Petitioner's ongoing and prolonged detention by clear
16 and convincing evidence.

17 100. Respondents' continued detention of Petitioner without individualized review is
18 arbitrary and violates due process.

19 101. Petitioner is likely to succeed on the merits because prolonged detention without
20 a constitutionally adequate bond hearing violates clearly established due process
21 principles under Zadvydas and Singh.

22 102. Additionally, the prolonged and indeterminate nature of her detention now
23 approximately eight months with no clear end renders it excessive and
24 unconstitutional.



PRAYER FOR RELIEF

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

1. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release; OR
2. In the alternative, order Respondents to provide a bond hearing within 7 days;
3. Require the Government to bear the burden of proof by clear and convincing evidence;
4. Declare Petitioner's detention unconstitutional;
5. Award attorneys' fees and costs;
6. Grant any further relief deemed just and proper.

DATED: May 26, 2026

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner

