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DETAINED

Attorneys for Petitioner **Dzansir Gokoev**

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

16 **In the matter of:**

) **Case Number: '26CV3375 JLS MSB**

18 **DZANSIR GOKOEV**

) **A-Number** 

20 **v.**

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

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



STATEMENT OF FACTS

1. Petitioner is a citizen of Russia. He entered the United States on or about October 3, 2022, through Miami, Florida, pursuant to parole authorization valid until October 22, 2023. A true and correct copy of the I-94 is attached herein as an **Exhibit "A."**
2. On or about December 16, 2023, Petitioner timely filed the I-589 Application for Asylum and Withholding of Removal. A true and correct copy of the Receipt of I-589 is attached herein as an **Exhibit "B."**
3. Petitioner appeared before the Immigration Court for a Master Calendar Hearing in April 2024.
4. During the hearing, the Immigration Judge informed Petitioner that the Individual Hearing would likely be scheduled approximately one and a half years later.
5. On or about January 26, 2025, Petitioner filed change of address A-11 form with the USCIS. Respondent's previous address was [REDACTED] and the new address was [REDACTED]
6. After the Master Calendar Hearing, Petitioner never received any subsequent Notice of Hearing from the Immigration Court regarding the date and time of the Individual Hearing.
7. On or about April 29, 2025, as a result of Petitioner's failure to appear at a hearing for which he never received notice, the Court entered an in-absentia removal order. A true and correct copy of the removal order is attached herein as an **Exhibit "C."**
8. The Petitioner remained unaware of this decision until January 2026.



1 9. On January 17, 2026, the Petitioner was detained by Immigration and Customs
2 Enforcement near Exit 68 on Interstate 77 in Virginia. It was at that time that
3 Petitioner first became aware that a Hearing had been scheduled and that an
4 in-absentia removal order had been entered against him.

5 10. Petitioner filed a Petition for Writ of Habeas Corpus pro per with the Southern
6 District of California under the case number 3:26-cv-02127, which was denied
7 on June 1, 2026.

8 11. Petitioner has more than three and a half (3.5) years of residence in the United
9 States.

10 12. Petitioner has exercised due diligence to avoid any omissions and to properly
11 manage his immigration case. He has consistently appeared for all ICE check-
12 ins and maintained valid employment authorization.

13 13. On or about May 26, 2026, Petitioner filed a motion to reopen with the
14 Immigration Court. **See Exhibit "D", Screenshot of the EOIR case status page.**

15 14. Respondent has revoked Petitioner's parole without proper notice.

16 15. The Immigration Judge issued an in-absentia removal order because the
17 Petitioner was unaware of the hearing, as he did not receive any notice of the
18 hearing, through no fault of his own.

19 16. Petitioner is currently detained at the Imperial Regional Detention Facility, CA.
20 He has not been given an opportunity to be heard.

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

23 18. Petitioner has consistently appeared for all scheduled ICE check-ins and
24 biometric appointments, thereby demonstrating his intent to comply with all
25 court orders and the conditions of his release, with the exception of the above-
26 referenced incident, which resulted from his lack of notice.
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1 19. Petitioner has remained in immigration detention for approximately four and a
2 half (4.5) months as of the date of this filing.

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

6 21. Respondents now seek to keep Petitioner detained without a meaningful
7 opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225. Respondents do so
8 based not on Petitioner's personal circumstances or individualized facts.

9 22. But Respondents cannot evade due process requirements so easily. The U.S.
10 Constitution requires the Respondents provide at least the rights available to his
11 when he filed his application.

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

19 24. Petitioner seeks declaratory and injunctive relief to secure his immediate release
20 from immigration detention, where he has been held by the Department of
21 Homeland Security (DHS) since January 2026. His continued detention is
22 unlawful, as it was imposed without first affording him a due process hearing to
23 determine whether such detention is justified.

24 25. Petitioner experienced severe distress and shock throughout his unlawful
25 detention. He is a working member of the community and has a pending
26 immigration case. He is not a danger to the community nor a flight risk.
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1 26. Petitioner is entitled to a bond hearing; Petitioner has a protected liberty interest
2 in remaining out of custody. As Petitioner has a protected liberty interest, the
3 Due Process Clause requires procedural protections before he can be deprived of
4 that interest. Government's revocation of the Petitioner's parole, together with
5 the Immigration Judge's issuance of an in-absentia removal order without proper
6 notice, explanation, or an opportunity to be heard, deprived the Petitioner of his
7 due process rights.

8 27. The risk of an erroneous deprivation of such liberty interest is substantial, as the
9 Petitioner's parole was terminated without any stated reason and without
10 affording him an opportunity to be heard, and the Immigration Judge
11 subsequently ordered his removal in absentia. Moreover, although DHS initially
12 determined that the Petitioner warranted parole because he posed neither a danger
13 to the community nor a flight risk, there is no evidence that these circumstances
14 have changed.

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

18 29. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus
19 to release Petitioner from detention within 10 days unless Respondents schedule
20 a hearing before an IJ where: (1) to continue detention, the government must
21 establish by clear and convincing evidence that Petitioner presents a risk of flight
22 or danger, even after consideration of alternatives to detention that could mitigate
23 any risk that Petitioner's release would present; and (2) if the government cannot
24 meet its burden, the IJ shall order Petitioner's release on appropriate conditions
25 of supervision, taking into account Petitioner's ability to pay a bond.
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27
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1 30. Petitioner's continued detention is arbitrary and unlawful, and he requests that
2 this Court order his immediate release from ICE custody.

3 **JURISDICTION**

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

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

9 33. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
10 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-
11 Writs Act, 28 U.S.C. § 1651

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

14 35. Federal courts also have federal question jurisdiction, through the
15 Administrative Procedure Act ("APA"), to deem unlawful and to set aside
16 agency action that is arbitrary, capricious, an abuse of discretion or otherwise
17 inconsistent with law. 5 U.S.C. § 706(2)(A). APA claims are cognizable on
18 habeas. 5 U.S.C. § 703, which provides that judicial review of agency action
19 under the APA may be proceeded by any applicable form of legal action,
20 including but not limited to habeas corpus. The APA affords a right of review
21 to a person who is adversely affected or harmed by agency action.
22

23 **VENUE**

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

5 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**
6

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

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

18 39. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because he
19 was arrested by Respondents and remains in their legal and physical custody at
20 Imperial Regional Detention Facility, in California. He is under Respondent’s
21 and their agents’ direct control.

22 **PARTIES**

23 40. Petitioner is a citizen of Russia. He entered the United States on or about October
24 3, 2022, through Miami, Florida, pursuant to parole authorization valid until
25 October 22, 2023.

26 41. On or about December 16, 2023, Petitioner timely filed the I-589 Application for
27 Asylum and Withholding of Removal.
28

1 42. Petitioner appeared before the Immigration Court for a Master Calendar
2 Hearing in April 2024.

3 43. During the hearing, the Immigration Judge informed Petitioner that the
4 Individual Hearing would likely be scheduled approximately one and a half years
5 later.

6 44. On or about January 26, 2025, Petitioner filed change of address A-11 form
7 with the USCIS. Respondent's previous address was [REDACTED]
8 [REDACTED] and the new address was [REDACTED]

9 45. After the Master Calendar Hearing, Petitioner never received any subsequent
10 Notice of Hearing from the Immigration Court regarding the date and time of
11 the Individual Hearing.

12 46. On or about April 29, 2025, as a result of Petitioner's failure to appear at a
13 hearing for which he never received notice, the Court entered an in-absentia
14 removal order.

15 47. The Petitioner remained unaware of this decision until January 2026.

16 48. On January 17, 2026, the Petitioner was detained by Immigration and Customs
17 Enforcement near Exit 68 on Interstate 77 in Virginia. It was at that time that
18 Petitioner first became aware that a Hearing had been scheduled and that an
19 in-absentia removal order had been entered against him.

20 49. Petitioner has more than three and a half (3.5) years of residence in the United
21 States.

22 50. On or about May 26, 2026, Petitioner filed a motion to reopen with the
23 Immigration Court.

24 51. Respondent has revoked Petitioner's parole without proper notice.
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1 52.The Immigration Judge issued an in-absentia removal order because the
2 Petitioner was unaware of the hearing, as he did not receive any notice of the
3 hearing, through no fault of his own.

4 53.Petitioner is currently detained at the Imperial Regional Detention Facility, CA.
5 He has not been given an opportunity to be heard.

6 54.Petitioner has no criminal history. He possesses a valid Social Security number
7 and has been authorized to work in the United States.

8 55.Petitioner has consistently appeared for all scheduled ICE check-ins and
9 biometric appointments, thereby demonstrating his intent to comply with all
10 court orders and the conditions of his release, with the exception of the above-
11 referenced incident, which resulted from his lack of notice.

12 56.Petitioner has remained in immigration detention for approximately four and a
13 half (4.5) months as of the date of this filing.

14 57.During this detention, Petitioner has suffered significant physical and mental
15 health deterioration. His continued confinement has caused and continues to
16 cause serious harm.

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

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

25
26 **LEGAL FRAMEWORK**

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

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



1
2 60.ICE's long-standing policy is to release non-citizens immediately following a
3 grant of asylum, relief absent exceptional circumstances.

4 61.Under the Accardi doctrine, which originated in the context of an immigration
5 case and has been developed through subsequent immigration caselaw, agencies
6 are bound to follow their own rules that affect the fundamental rights of
7 individuals, even self-imposed policies and processes that limit otherwise
8 discretionary decisions. See *Accardi v. Shaughnessy*, 347 U.S. at 226 (holding
9 that BIA must follow its own regulations in its exercise of discretion); *Morton*
10 *v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected,
11 it is incumbent upon agencies to follow their own procedures . . . even where
12 the internal procedures are possibly more rigorous than otherwise would be
13 required.").

14 62.The requirement that an agency follow its own policies is not "limited to rules
15 attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167
16 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination
17 of the provision's language, its context, and any available extrinsic evidence"
18 supports the conclusion that it is "mandatory rather than merely precatory." *Doe*
19 *v. Hampton*, 566 2d 265, 281 (D.C. Cir. 1977); see also *Morton*, 415 U.S. at
20 235-36 (applying *Accardi* to violation of internal agency manual); *U.S. v.*
21 *Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS
22 instructions to Special Agents were not promulgated in something formally
23 labeled a 'Regulation' . . .").

24
25 63.When agencies fail to adhere to their own policies as required by *Accardi*, courts
26 typically frame the violation as arbitrary, capricious, and contrary to law under
27 the APA, see *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It
28

1 is clear, moreover, that [Accardi] claims may arise under the APA"), or as a
2 due process violation, see *Sameena, Inc. v. United States Air Force*, 147 F.3d
3 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations
4 tends to cause unjust discrimination and deny adequate notice and consequently
5 may result in a violation of an individual's constitutional right to due process.")
6 (internal quotations omitted).

7 64. Prejudice is generally presumed when an agency violates its own policy. See
8 *Montilla*, 926 F.2d at 167 ("We hold that an alien claiming the INS has failed
9 to adhere to its own regulations . . . is not required to make a showing of
10 prejudice before he is entitled to relief. All that need be shown is that the subject
11 regulations were for the alien's benefit and that the INS failed to adhere to
12 them."); *Heffner*, 420 F.2d at 813 ("The Accardi doctrine furthermore requires
13 reversal irrespective of whether a new trial will produce the same verdict.").

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

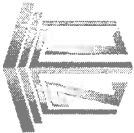
23 66. Here, Petitioner falls into this category where ICE has failed to act as required
24 by their procedures and require intervention.

25 **CLAIMS FOR RELIEF**

26 **GROUND ONE**

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

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



Petitioner has the right to challenge the legality of his detention

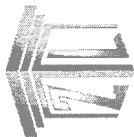
67. The allegations in the above paragraphs are realleged and incorporated herein.

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

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

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

71. To the extent Respondent takes the extraordinary position that Petitioner has no due process rights at all, that is unsupported by law and would have gruesome practical consequences: “If excludable [noncitizens] were not protected by even the substantive component of constitutional due process, ... we do not see why the United States government could not torture or summarily execute them. ...



1 [W]e conclude that government treatment of excludable [noncitizens] must
2 implicate the Due Process Clause of the Fifth Amendment.”. *Rosales-Garcia v.*
3 *Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*,
4 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) (“[T]he principle that
5 unadmitted [noncitizens] has no constitutionally protected rights defies
6 rationality. Under this view, the Attorney General, for example, could invoke
7 legitimate immigration goals to justify a decision to stop feeding all detained
8 [noncitizens] Surely, we would not condone mass starvation.”). Thus, there
9 is no question that Petitioner has the right to challenge the constitutionality of his
10 prolonged detention under the Due Process Clause of the Fifth Amendment of
11 the Constitution.

12 72. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
13 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL
14 2084921, at *4 (“[Petitioner’s] release from ICE custody after his initial
15 apprehension reflected a determination by the government that he was neither a
16 flight risk or a danger to the community, and [Petitioner] has a strong interest in
17 remaining at liberty unless he no longer meets those criteria.”); *Noori*, 2025 WL
18 2800149, at *10 (“Petitioner is not an “arriving” noncitizen but one that has
19 [been] present in our country over a year. This substantial amount of time
20 indicates he is afforded the Fifth Amendment’s guaranteed due process before
21 removal.”); *Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL
22 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty
23 interest in his release).

24 73. This Court accordingly found constitutional limits to apply to immigration
25 detention, irrespective of the underlying detention authority. *See, e.g.,*
26 *Karakhanyan v. Warden of Otay Mesa Detention Center*-3:25-cv-03454-JO-
27
28

1 MMP; Romik Parunakyan v. Warden of Otay Mesa Detention Center 25-cv-
2 3739-LL-MSB; L.S. v. Warden of Otay Mesa Detention Center; M.F. v. Warden
3 of Otay Mesa Detention Center 3:25-cv-3599-CAB-MSB, Vikas Kumar v.
4 Christopher Larose, Warden, Otay Mesa Detention Center et al., 25-CV-3796
5 JLS (DDL); Aigul Kazybayeva v. Warden, Otay Mesa Detention Center 3:26-cv-
6 00421-GPC-MMP; Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention
7 Center 3:26-cv-00423-GPC-MSB; Dugar Dambaev v. Warden, Imperial
8 Detonation Center 26-cv-1182-JO-SBC; Roman T. v. Warden, Golden State
9 Annex Detention Facility 1:26-cv-02385-TLN-JDP

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

14 75. Furthermore, relief was granted in similar matter. *See Doe v. Becerra*, 787 F.
15 Supp. 3d 1083, 1089 (E.D. Cal. 2025); *Duong v. Kaiser*, --- F. Supp. 3d ---, 2025
16 WL 2689266, at *7–10 (N.D. Cal. 2025); *Pinchi*, 2025 WL 2084921, at *5;
17 *Gonzalez Salazar*, 2025 WL 3063629, at *6; *Abdul Kadir v. Larose*, Case No.:
18 25cv1045-LL-MMP, 2025 WL 2932654, at *6 (S.D. Cal. Oct. 15, 2025); *Matute*
19 *v. Wofford*, No. 1:25-cv-01206-KES-SKO (HC), 2025 WL 2495767, at *8 (E.D.
20 Cal. Oct. 3, 2025).

21 76. ICE has violated Petitioner's due process rights by revoking Petitioner's parole,
22 without providing a reason for revocation or giving an opportunity being heard.
23

24 77. Immigration Judge issued an in-absentia removal order because the Petitioner
25 was unaware of the hearing, as he did not receive any notice of the hearing,
26 through no fault of his own.

27 78. As a remedy, this Court should conduct its own review of Petitioner's custody
28

1 or, at least, order ICE to review Petitioner's custody under the standard
2 articulated in ICE policy.

3 **GROUND TWO**

4 **VIOLATION OF IMMIGRATION AND NATIONALITY 8 U.S.C. §**
5 **1231 (A)(6)**

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

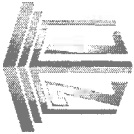
7 79.The allegations in the above paragraphs are realleged and incorporated herein.

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

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

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

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



1 risk.” *Id.*

2 84. Government’s interest in detaining Petitioner without notice, reasoning, and a
3 hearing is “low.” *See Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
4 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
5 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has the
6 power to take steps toward doing so; but its interest in doing so without a hearing
7 is low.”). Respondents fail to point to any burdens on the government if it were to
8 have provided proper notice, reasoning, and a pre-deprivation hearing.

9 85. Therefore, because Respondents detained Petitioner by revoking his parole in
10 violation of the Due Process Clause, his detention is unlawful. *See, e.g., Alegria*
11 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug.
12 11, 2025) (granting a TRO based on a procedural due process challenge to a
13 revocation of release on recognizance without a pre-deprivation hearing); *Navarro*
14 *Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing
15 petitioner from custody to the conditions of his preexisting order of release on
16 recognizance on due process grounds).¹

17 86. Petitioner’s parole revocation and removal order without notification, reasoning,
18 or an opportunity to be heard, denied Petitioner of his due process rights.
19 Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must
20 be immediately released.
21

22 87. Furthermore, Petitioner is challenging his detention on constitutional grounds, not
23 statutory grounds. Notwithstanding the fact that he is being detained pursuant to
24 section 1225(b), Petitioner’s detention is unequivocally subject to Constitutional
25 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
26 constitutional challenges to their mandatory detention. Respondent correctly
27 states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) “did not explicitly address
28



1 constitutional arguments.” U.S. Likewise, While in *Demore v. Kim*, 538 U.S.
2 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention
3 under § 1226(c), the Supreme Court has explicitly recognized the availability of
4 judicial review over as-applied challenges to detention, including mandatory
5 detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*,
6 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly
7 found constitutional limits to apply to immigration detention, irrespective of the
8 underlying detention authority. See, e.g., *Vikas Kumar v. Christopher Larose*,
9 Warden, Otay Mesa Detention Center et al., 25-CV-3796 JLS (DDL); *Aigul*
10 *Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP;
11 *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-
12 00423-GPC-MSB. (granting a writ of habeas corpus releasing petitioner from
13 custody to the conditions of his preexisting parole on due process grounds).

14 88. This Court should so hold as well.

15 GROUND THREE

16 **ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE** 17 **ADMINISTRATIVE PROCEDURE ACT**

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

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

24 90. The Ninth Circuit in *Singh* stressed that “it is improper to ask the individual to
25 share equally with society the risk of error when the possible injury to the
26 individual—deprivation of liberty— is so significant[.]” See *Singh*, 638 F. 3d at
27 1205; *Black*, 103 F.4th at 157-58 (observing that where “an individual’s liberty is
28



1 at stake, the Supreme Court has consistently used [clear and convincing]
2 evidentiary standard for continued detention”) (internal citations omitted); *id.* at
3 159 (reiterating that the government bears the burden of meeting this standard
4 even where an individual is detained pursuant to mandatory detention). This Court
5 should, too, apply the heavy burden on the government to justify Petitioner’s
6 continued civil detention without a bond hearing.

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

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

17 PRAYER FOR RELIEF

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

- 19 a) Assume jurisdiction over this matter;
- 20 b) Issue an Order to Show Cause ordering Respondents to show
21 cause why this Petition should not be granted within three
22 days.
- 23 c) Declare that Petitioner’s detention violates the Due Process
24 Clause of the Fifth Amendment, 8 U.S.C. §1231(a)(6);
- 25 d) Issue a Writ of Habeas Corpus ordering Respondents to be
26 released.
- 27 e) Award Petitioner attorney’s fees and costs under the Equal
28



1 Access to Justice Act, and on any other basis justified under
2 law; and

- 3 f) Enjoin Respondents from re-detaining Petitioner under 8
4 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
5 travel document for his removal.
6 g) Enjoin Respondents from re-detaining Petitioner without first
7 following all procedures set forth in 8 C.F.R. §§ 241.4(l),
8 241.13(i), and any other applicable statutory and regulatory
9 procedures.
10 h) Enjoin Respondents from removing Petitioner unless they provide
11 the following process:
12 a. written notice to both Petitioner and Petitioner's counsel in a
13 language Petitioner can understand.
14 i) Grant any further relief this Court deems just and proper.
15

16
17 DATED: June 1, 2026

Respectfully submitted



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20 Naira Zohrabyan
21 Attorney for Petitioner
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