

DETAINED

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of:

Case Number: 26-cv-2214-JO-DEB

KSENIIA RUMIANTSEVA

Petitioner

**MOTION TO ENFORCE
JUDGMENT**

V.

**CHRISTOPHER J. LAROSE,
WARDEN OF OTAY MESA
DETENTION CENTER**

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

Respondents

ZOHRABYAN
JAW, APC



INTRODUCTION

1. Petitioner Kseniia Rumiantseva (“Petitioner”) brings this Motion to Enforce Judgment pursuant to (28 U.S.C. § 1651), challenging her unreasonably prolonged and unconstitutional immigration detention under 8 U.S.C. § 1226(a).
2. Petitioner has been detained for approximately nineteen (19) months, including nearly ten (10) months following the filing of her appeal. Despite diligently pursuing all available relief, her continued detention has become unreasonably prolonged and constitutionally impermissible.
3. On April 27, 2026, this Court granted Petitioner’s Petition for Writ of Habeas Corpus in Case No. 26-cv-2214-JO-DEB and ordered Respondents to provide, by May 4, 2026, an individualized bond hearing before a neutral Immigration Judge. The Court expressly required that the Government bear the burden of proving, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk such that no amount of bond or alternative conditions of release would ensure her appearance. The Court further directed the Immigration Judge to consider Petitioner’s financial circumstances and alternatives to detention and prohibited denial of bond based on mandatory detention under 8 U.S.C. § 1225(b) or lack of jurisdiction under BIA precedent.
A true and correct copy of the Court’s Order is attached as Exhibit “A.”
4. On May 4, 2026, the Immigration Judge denied bond in a proceeding that did not comply with this Court’s April 27, 2026, Order and controlling Ninth Circuit precedent. In direct contravention of this Court’s directive that the Government bear the burden of proof by clear and convincing evidence, the Immigration Judge relied on conclusory and unsupported assertions of flight risk rather than specific, individualized evidence. The Immigration Judge disregarded substantial evidence of Petitioner’s strong community ties, including financial documentation, tax records, and letters of support from U.S. citizens, and failed



1 to hold the Government to its required burden of proof, instead effectively
2 shifting that burden to Petitioner. This failure constitutes noncompliance with
3 this Court's April 27, 2026, Order. **A true and correct copy of the Bond Order**
4 **is attached as Exhibit "B."**

- 5 5. Respondents' continued detention of Petitioner is therefore in direct violation
6 of this Court's April 27, 2026, Order. The Government has not met and cannot
7 meet its burden of establishing by clear and convincing evidence that Petitioner
8 poses either a danger to the community or a flight risk. See *Singh v. Holder*, 638
9 F.3d 1196, 1203 (9th Cir. 2011).
- 10 6. Petitioner timely appealed the bond denial on May 9, 2026; however,
11 administrative review does not cure the constitutional deficiencies in the bond
12 proceeding or Respondents' noncompliance with this Court's Order and serves
13 only to prolong Petitioner's unlawful detention. **A true and correct copy of the**
14 **Bond Appeal confirmation is attached as See Exhibit "C."**
- 15 7. During her prolonged confinement, Petitioner has suffered significant and
16 worsening deterioration of her physical and mental health, including epilepsy
17 and severe depression with suicidal ideation. Her continued detention has
18 caused and continues to cause irreparable harm.
- 19 8. The Constitution protects all persons within the United States from arbitrary
20 deprivation of liberty. Even in the immigration context, detention is subject to
21 constitutional limitations, and prolonged civil detention without adequate
22 procedural safeguards violates the Fifth Amendment. See *Zadvydas v. Davis*,
23 533 U.S. 678, 690, 695 (2001).
- 24 9. Absent intervention by this Court, Petitioner will remain detained without
25 meaningful review and in continued violation of this Court's prior Order. This
26 Court retains inherent authority to enforce its judgments and ensure compliance.
- 27 10. Accordingly, Petitioner respectfully requests that this Court enforce its April 27,
28 2026, Order and order her immediate release from ICE custody. In the



1 alternative, Petitioner requests that Respondents be ordered to provide a
2 constitutionally compliant bond hearing within seven (7) days, at which the
3 Government bears the burden of proof by clear and convincing evidence.
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5 **STATEMENT OF FACTS**
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7 11. Petitioner is a native and citizen of Russia who entered the United States at the
8 San Ysidro Port of Entry on September 22, 2024. She has remained
9 continuously detained since that date and has now been in immigration custody
10 for approximately nineteen (19) months.

11 12. Petitioner has been diagnosed with epilepsy and severe depressive disorder
12 with suicidal ideation and remains under medical treatment for both conditions.
13 During her merits hearing on June 18, 2025, Petitioner was administered
14 oxcarbazepine and sertraline, which significantly impaired her cognitive
15 functioning and rendered her unable to provide coherent and meaningful
16 testimony.

17 13. As a direct result of her medicated and impaired condition during the merits
18 hearing, Petitioner's asylum application was denied despite her diligent pursuit
19 of relief. Petitioner timely appealed the denial on July 3, 2025, and has
20 remained detained throughout the pendency of that appeal.

21 14. Petitioner has now been detained for nearly nineteen (19) months in total,
22 including nearly ten (10) months following the filing of her appeal, with no
23 meaningful progress toward final resolution of her case.

24 15. Respondents initiated removal proceedings against Petitioner in immigration
25 court, entitling her to due process protections guaranteed by the Constitution
26 and the Immigration and Nationality Act.
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1 16. Throughout the proceedings, Petitioner has diligently complied with all
2 requirements imposed by the immigration court. She has attended every
3 scheduled hearing and properly filed her application for asylum and related
4 relief.

5 17. Petitioner's continued detention has become arbitrary, excessive, and
6 unlawful. She therefore seeks an order from this Court directing her immediate
7 release from ICE custody.

8 18. On December 30, 2025, Petitioner filed a prior habeas petition in this Court,
9 Case No. 3:25-cv-03844-AGS-DEB, which was denied at that time.

10 19. Since that denial, circumstances have materially changed. Petitioner's
11 detention has continued to lengthen and has now become unreasonably
12 prolonged, raising serious constitutional concerns.

13 20. As of the filing of this Motion, Petitioner has been detained for approximately
14 nineteen (19) months with no foreseeable end to her confinement.

15 21. Petitioner subsequently filed a Petition for Writ of Habeas Corpus in this
16 Court, Case No. 26-cv-2214-JO-DEB.

17 22. On April 27, 2026, the Honorable Jinsook Ohta granted the Petition and
18 ordered Respondents to provide Petitioner with an individualized bond hearing
19 within seven (7) days. The Court expressly required that the Government bear
20 the burden of proving, by clear and convincing evidence, that Petitioner is
21 either a danger to the community or a flight risk. See *Singh v. Holder*, 638 F.3d
22 1196, 1203–05 (9th Cir. 2011). A true and correct copy of the Court's Order is
23 attached as Exhibit "A."
24

25 23. On May 4, 2026, the Immigration Judge denied bond. That decision failed to
26 comply with this Court's Order and controlling Ninth Circuit precedent. The
27 Immigration Judge relied on conclusory and unsupported assertions of flight
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1 risk while disregarding substantial evidence of Petitioner's strong community
2 ties, including financial records, tax documentation, and letters of support from
3 U.S. citizens.

4 24. The Immigration Judge further failed to meaningfully consider less restrictive
5 alternatives to detention or whether a reasonable bond amount could mitigate
6 any perceived flight risk, in direct violation of due process requirements. See
7 *Hernandez v. Sessions*, 872 F.3d 976, 991–92 (9th Cir. 2017). A true and
8 correct copy of the bond order is attached as Exhibit “B.”

9 25. Ninth Circuit law requires a threshold evidentiary showing before any burden
10 may shift to the respondent. See *Budiono v. Lynch*, 837 F.3d 1042 (9th Cir.
11 2016); *Kumar v. Holder*, 728 F.3d 993 (9th Cir. 2013); *Mata-Sanguinety v.*
12 *Garland* (9th Cir. 2023). No such showing was made here.

13 26. Petitioner timely appealed the Immigration Judge's bond denial to the Board
14 of Immigration Appeals. That appeal remains pending. A true and correct copy
15 of the confirmation of filing is attached as Exhibit “C.”

16 27. Petitioner has now been detained for approximately nineteen (19) months
17 without receiving a constitutionally adequate bond hearing. Although a hearing
18 was nominally provided, it failed to satisfy due process because the
19 Government was not held to its required burden of proof, the decision relied on
20 unsupported assertions, and the Immigration Judge failed to consider
21 alternatives to detention, Petitioner's ability to pay, or overwhelming evidence
22 of her community ties.

23 28. During her prolonged detention, Petitioner has suffered significant
24 deterioration in both her physical and mental health. Her continued
25 confinement has caused and continues to cause serious and irreparable harm.
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1 29.Despite these extraordinary humanitarian and constitutional concerns,
2 Respondents continue to detain Petitioner without meaningful or lawful review
3 of whether her continued custody is justified.

4 30.Petitioner has fully exhausted available administrative remedies by timely
5 appealing the Immigration Judge's custody determination. Administrative
6 review cannot cure the ongoing constitutional violations resulting from her
7 prolonged detention, rendering habeas relief appropriate and necessary.

8 31.Petitioner respectfully requests that this Court order her immediate release
9 from ICE custody. In the alternative, she requests an order directing
10 Respondents to provide a constitutionally compliant bond hearing within seven
11 (7) days, at which the Government bears the burden of proof by clear and
12 convincing evidence.

13 32.Petitioner's continued detention is arbitrary, unlawful, and in direct violation
14 of due process. Immediate judicial intervention is required.

15 JURISDICTION

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

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

22 35. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
23 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-
24 Writs Act, 28 U.S.C. § 1651

25 36. Federal District courts have jurisdiction to hear habeas claims by non-citizens
26 challenging the lawfulness of their detention. Zadvydas, 533 U.S. at 687.
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1 37. Federal courts also have federal question jurisdiction, through the
2 Administrative Procedure Act ("APA"), to deem unlawful and to set aside
3 agency action that is arbitrary, capricious, an abuse of discretion or otherwise
4 inconsistent with law. 5 U.S.C. §706(2)(A). APA claims are cognizable on
5 habeas. 5 U.S.C. §703, which provides that judicial review of agency action
6 under the APA may be proceeded by any applicable form of legal action,
7 including but not limited to habeas corpus. The APA affords a right of review
8 to a person who is adversely affected or harmed by agency action.
9

10 VENUE

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

19 LEGAL FRAMEWORK

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

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



1 affected, it is incumbent upon agencies to follow their own procedures . . . even
2 where the internal procedures are possibly more rigorous than otherwise would
3 be required.").

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

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

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

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

13 **CLAIMS FOR RELIEF**

14 **GROUND ONE**

15 **VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS-** 16 **FAILURE TO PROVIDE CONSTITUTIONALLY ADEQUATE** 17 **PROCEDURAL SAFEGUARDS**

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

19 46.Due process requires that continued civil detention be justified through a fair
20 procedure.

21 47.At a constitutionally adequate bond hearing: the government must bear the
22 burden of proof; the burden must be clear and convincing evidence; the
23 adjudicator must consider alternatives to detention; the adjudicator must evaluate
24 ability to pay and conditions of release.

25 48.Petitioner has been denied such a hearing.

26 49.Despite substantial evidence demonstrating that she is not a flight risk or danger
27 and strong community ties Respondents continue to detain her without
28



1 meaningful review.

2 50. This lack of procedural safeguards renders her detention unconstitutional.

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

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

18 53. Petitioner challenges her deprivation of liberty and detention, not the adequacy
19 of the procedures the immigration laws afford her “with respect to admission.
20 Petitioner solely challenging her detention and revocation of parole, and she is
21 not bringing a constitutional claim with respect to the procedures governing her
22 legal admission into the United States.

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

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

26 56. Courts throughout this Circuit granted Motion to Enforce Judgment after
27 Petitioner was **unreasonably deemed a flight risk after a bond hearing**. *See*,
28



e.g., *Tiboko-Tfih v. Noem* (3:26-cv-01215).

GROUND TWO

Mandatory detention is subject to constitutional limits-Prolonged Detention

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

58.Petitioner's continued detention without a bond hearing violates the Fifth Amendment.

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

60.The risk of erroneous deprivation is exceptionally high because Petitioner has not received a constitutionally sufficient hearing before a neutral decisionmaker. No mechanism currently exists to test whether her continued detention is justified.

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

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

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

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

65.Furthermore, Petitioner is challenging her detention on constitutional grounds, not statutory grounds. Notwithstanding the fact that she is being detained

1 pursuant to section 1226(a), Petitioner's detention is unequivocally subject to
2 Constitutional limits. The Supreme Court has not precluded noncitizens from
3 bringing as-applied constitutional challenges to their mandatory detention.
4 Respondent correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not
5 explicitly address constitutionality arguments." U.S. Likewise, *While in Demore*
6 *v. Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
7 mandatory detention under § 1226(c), the Supreme Court has explicitly
8 recognized the availability of judicial review over as-applied challenges to
9 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
10 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
11 concurring).

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

15 67. Petitioner timely appealed the bond denial on May 9, 2026; however,
16 administrative review does not cure the constitutional deficiencies in the bond
17 proceeding or Respondents' noncompliance with this Court's Order and serves
18 only to prolong Petitioner's unlawful detention.

19 68. BIA's final decision may end up at least six months, which is **one year after**
20 **detention.**

21 69. Petitioner is challenging her prolonged detention on constitutional grounds, not
22 statutory grounds. Notwithstanding the fact that he is being detained pursuant to
23 section 1226(a), Petitioner's detention is unequivocally subject to Constitutional
24 limits. The Supreme Court has not precluded noncitizens from bringing as-
25 applied constitutional challenges to their mandatory detention. Respondent
26 correctly states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly
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1 address constitutionality arguments.” U.S. Response at 3. While in *Demore v.*
2 *Kim*, 538 U.S. 510 (2003) the Supreme Court rejected a facial challenge to
3 mandatory detention under § 1226(c), the Supreme Court has explicitly
4 recognized the availability of judicial review over as-applied challenges to
5 detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S.
6 392, 420 (2019); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J.,
7 concurring). Courts in this district have accordingly found constitutional limits
8 to apply to immigration detention, irrespective of the underlying detention
9 authority. See, e.g., *Gebregziabher v. Marrero*, Case 3:26-cv-02004-JES-MSB;
10 *Liu v. Larose*, Case 3:26-cv-01546-JO-MMP; *Synthia Engonwei Munoh*
11 *Warden, Otay Mesa Detention Center*, Case 26-CV-1773 JLS (DDL); *Fuad*
12 *Abdulielil Ahmed V. Sixto Marrero* Case 26-cv-01170-BAS-MMP; *Maksim*
13 *Lastin v. Warden, Imperial Regional Detention Facility* 26-cv-974-RSH-DDL;
14 *Natalia Lastina V. Warden of Imperial Regional Detention Facility* 3:26-cv-
15 00975-TWR-VET; *Karakhanyan v. Warden of Otay Mesa Detention Center*-
16 3:25-cv-03454-JO-MMP; *Romik Parunakyan v. Warden of Otay Mesa Detention*
17 *Center* 25-cv-3739-LL-MSB; *L.S. v. Warden of Otay Mesa Detention Center*;
18 *M.F. v. Warden of Otay Mesa Detention Center* 3:25-cv-3599-CAB-MSB;
19 *Miganush Ogandzhanyan V. Warden Of Otay Mesa Detention Center* 26cv0093
20 *DMS MSB*; *Ter Ogannisian Geros v. Warden Of Otay Mesa Detention Center*
21 *26-CV-91 JLS (AHG)*; *Emanuel Ter-Ogannisian v. Warden Of Otay Mesa*
22 *Detention Center* 26cv0124 DMS JLB; *L.S. v. Warden of Otay Mesa Detention*
23 *Center*; *Naira Kirakosyan v. Warden of Otay Mesa Detention Center* 26-cv-315-
24 *JO-DDL*. (granting a writ of habeas corpus after Court determined that
25 Petitioner’s detention without a bond hearing has become unreasonable and
26 violates due process).
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1 70. This Court should so hold as well.

2 71. Petitioner has now been detained for nineteen (19) months and with no indication
3 of when relief might be available. This prolonged and indeterminate detention is
4 arbitrary, excessive in duration, and unconstitutional.

5 **GROUND THREE**

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

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

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

14 73. The Mathews test is the appropriate test for this Court to use to evaluate the
15 constitutionality of Petitioner's prolonged detention. Mathews v. Eldridge, 424
16 U.S. 319 (1976). The Mathews test is routinely applied by district courts across
17 the Ninth Circuit, including this Court, to determine whether due process
18 requires neutral review of a noncitizen's custody. Rodriguez Diaz v. Garland,
19 53 F.4th 1189, 1206-07 (9th Cir. 2022) (noting that Mathews is a "flexible test"
20 broad enough to account for government interests when evaluating due process
21 claims in the immigration detention context); see, e.g., Abduraimov, 2025 WL
22 2912307 and Maksim, 2025 WL 2879328. Respondents offer "no valid
23 alternative to the Mathews framework nor [do they] demonstrate[e] that
24 Mathews is inapplicable here." Jensen v. Garland, No. 5:21-c-v- 01195-CAS
25 (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023).

26 74. The Mathews test for procedural due process claims balances: (1) the private
27 interest threatened by governmental action; (2) the risk of erroneous deprivation
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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
3 Petitioner's favor. Petitioner's detention of 19 months and counting without any
4 neutral review is a violation of her procedural due process rights and requires
5 this court to order a hearing before a neutral adjudicator to evaluate whether the
6 government can justify her ongoing detention.

7 75. Petitioner has a profound liberty interest. Petitioner has a weighty interest in her
8 own liberty, the core privacy interest at stake here. *Zadvydas*, 533 U.S. at 690
9 ("Freedom from imprisonment...lies at the heart of the liberty [the Due Process
10 Clause] protects."). Petitioner's 19 months of detention with a granted asylum"
11 limit of the brief detention contemplated in *Demore*, 538 U.S. at 530-31. See
12 also *Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) ("As detention
13 continues past a year, courts become extremely wary of permitting continued
14 custody absent a bond hearing.") (internal citation omitted).

15 76. The second prong of the Mathews test, the risk of erroneous deprivation of such
16 interest through the procedures used, and the probable value of additional
17 procedural safeguards, also weighs heavily in Petitioner's favor. 424 U.S. at 335.
18 "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing
19 before a neutral decisionmaker is substantial." *Diouf v. Napolitano* (*Diouf II*),
20 634 F.3d 1081, 1092 (9th Cir. 2011). When a petitioner "does not have a
21 statutory right to a bond hearing or the right to seek additional bond hearings. . .
22 the risk of erroneous deprivation as Petitioner's time in detention lengthens is
23 not insignificant," and the probable value of additional procedural safeguards is
24 exceedingly high. *Eliazar G.C.*, No. 1:24-CV-01032-EPG-HC, 2025 WL
25 711190, at *7 (E.D. Cal. Mar. 5, 2025); *Tonoyan v. Andrews*, 2025 WL 3013684
26 at *4 ("Given that Petitioner has been held without a bond hearing for almost a
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1 year, and it is not clear when detention will end, the risk of erroneous deprivation
2 weighs in favor of granting a bond hearing.”). In t case, Petitioner has been
3 deprived of her liberty in civil detention for 19 months. Because she is subject
4 to mandatory detention pursuant to section 1225(b), she does not have the
5 statutory right to request a bond hearing and therefore lacks access to an
6 appropriate procedural safeguard that would protect against the risk of erroneous
7 deprivation, absent intervention from this Court.

8 77. Here, a bond hearing before a neutral decisionmaker is the only appropriate
9 procedural safeguard to protect against the risk of erroneous deprivation because
10 it provides both the noncitizen and the government with an opportunity to
11 present witness testimony or evidence and be heard before a neutral body.
12 Anything less would not comport with due process. In particular, “the
13 discretionary parole system available to § 1225(b) detainees are not sufficient to
14 overcome the constitutional concerns raised by prolonged mandatory detention
15 because the parole process is purely discretionary, and its results are
16 unreviewable by IJs and “release decisions are based on humanitarian
17 considerations and the public interest.” *Abduraimov*, 2025 WL 2912307, at *6
18 (citing *Rodriguez v. Robbins (Rodriguez II)*, 715 F.3d 1127, 1144 (9th Cir. 2013)
19 (internal quotations omitted). The parole process “is not a constitutionally
20 adequate substitute for a bond hearing particularly since it does not test the
21 necessity of detention, does not afford the noncitizen an in-person adversarial
22 hearing before a neutral decisionmaker where he or she may present witness
23 testimony or evidence, does not require the ICE detention officer [to] make any
24 factual findings or provide their reasoning, and there is no apparent right to an
25 administrative appeal.” *Abduraimov*, 2025 WL 2912307, at *6 (citing *Padilla v.*
26 *U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023).
27
28



1 78. 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 her. 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
7 to comply with due process.

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

21
22 80. Petitioner has been in detention for **19 months**, and Petitioner's removal is not
23 reasonably foreseeable, as it depends entirely on the outcome of her merits
24 hearing and any subsequent review that may follow. Accordingly, her continued
25 detention is arbitrary, prolonged, and constitutionally unreasonable.

26 81. Due to prolonged detention, the Respondent has been experiencing both physical
27 and mental health issues. There is no indication as to how long the proceedings
28



1 will continue, and, depending on the outcome of a possible appeal, the Petitioner
2 may remain in custody for an extended period of time.

3 82. Because “it is not clear when detention will end, the risk of erroneous
4 deprivation weights in favor of granting a bond hearing.” A.E., 2025 WL
5 1424382, at *5; Doe v. Andrews, No. 1:25- CV-00506-SAB-HC, 2025 WL
6 2590392, *7 (E.D. Cal. Sept. 8, 2025) (noting that “[a]lthough future events are
7 difficult to predict, the [c]ourt nevertheless finds that...possible remand to the
8 immigration court for further factfinding or possible judicial review by the Ninth
9 Circuit will be sufficiently lengthy such that [the delay] factor weighs in favor
10 of Petitioner”), report and recommendation adopted, No. 1:25-CV-00506-KES-
11 SAB (HC), 2025 WL 2896218 (E.D. Cal. Oct. 11, 2025); Abduraimov, 2025
12 WL 2912307, *8 (“appeal to BIA and potential Ninth Circuit review ‘may take
13 up to two years or longer’ and ‘favors granting petitioner a bond hearing’”) (citing
14 Banda v. McAleenan, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019)). The risk
15 of erroneous deprivation of Petitioner’s liberty interest and the probably value
16 of a bond hearing is exceptionally high. Therefore, the second Mathews factor
17 also weighs in favor of granting Petitioner a bond hearing.

18
19 83. The third Mathews factor also supports Petitioner: the government interest is
20 weak here because the interest at stake “is the ability to detain Petitioner without
21 providing her a bond hearing, not whether the government may continue to
22 detain her” at all. Lopez-Reyes v. Bonnar, 362 F. Supp. 3d 762, 777 (N.D. Cal.
23 Jan. 29, 2019) (emphasis in original). As the government has conceded in similar
24 cases, the cost of providing such a bond hearing is minimal. Id.; Singh v. Barr,
25 Case No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at *12 (“The government
26 has not offered any indication that a second bond hearing would have outside
27 effects on its coffers.”); Marroquin Ambriz v. Barr, 420 F. Supp. 3d 953, 964
28



1 (N.D. Cal. 2019) (noting in the context of a §1226(a) detention, the parties did
2 not contest “that the cost of conducting a bond hearing, to determine whether the
3 continued detention of Petitioner is justified, is minimal”). Holding a hearing at
4 which Respondents must justify Petitioner’s continued detention thus actually
5 “promotes the Government’s interest—one we believe to be paramount—in
6 minimizing the enormous impact of incarceration in cases where it serves no
7 purpose.” See *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)
8 (emphasis added); *id.* at n.11; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir.
9 2021) (“[L]imiting the use of detention to only those noncitizens who are
10 dangerous or a flight risk may save the government, and therefore the public,
11 from expending substantial resources on needless detention.”).

12 84. In sum, there is no question that all three Mathews factors favor Petitioner.
13 Contrary to Respondent’s claim, Petitioner’s prolonged detention does not pass
14 constitutional muster and requires that this Court immediately order her a bond
15 hearing.
16

17 85. At a bond hearing, the government must bear the burden of justifying
18 Petitioner’s ongoing and prolonged detention. Where a custody hearing is
19 warranted as a procedural safeguard against unreasonably prolonged detention,
20 it is well established that the government bears the burden of justifying
21 continued confinement by clear and convincing evidence. *Singh v. Holder*, 638
22 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of
23 proof on the State in civil proceedings in which the individual interests at
24 stake...are both particularly important and more substantial than mere loss of
25 money.”). See e.g. *Lopez*, 631 F. Supp. 3d 870, n.3 (specifically noting that that
26 *Singh* provided guidance as to the procedural requirements for bond hearings
27 and that the government must prove by clear and convincing evidence that a
28

1 noncitizen is a flight risk. or danger to the community to justify denying bond)
2 (internal quotations omitted); Eliazar G.C., 2025 WL 711190, *10 (E.D. Cal.
3 Mar. 5, 2025) (stating that the Court will follow the “overwhelming majority of
4 courts” to hold that the government must justify continued mandatory detention
5 by clear and convincing evidence that the noncitizen is a flight risk or a danger
6 to the community); Maksim, 2025 WL 2879328, * 6 (same); Abduraimov, 2025
7 WL 2912307, *11 (same); Idiev, 2025 WL 3089349, *7 (same); Tonoyan, 2025
8 WL 3013684, *5 (same).

9 86.The Ninth Circuit in Singh stressed that “it is improper to ask the individual to
10 share equally with society the risk of error when the possible injury to the
11 individual—deprivation of liberty—is so significant[.]” See Singh, 638 F. 3d at
12 1205; Black, 103 F.4th at 157-58 (observing that where “an individual’s liberty
13 is at stake, the Supreme Court has consistently used [clear and convincing]
14 evidentiary standard for continued detention”) (internal citations omitted); id. at
15 159 (reiterating that the government bears the burden of meeting this standard
16 even where an individual is detained pursuant to mandatory detention). This
17 Court should, too, apply the heavy burden on the government to justify
18 Petitioner’s continued civil detention without a bond hearing.

19
20 87.Moreover, at the evidentiary hearing, the adjudicator must consider alternatives
21 to detention and Petitioner’s financial circumstances in determining whether
22 further detention is warranted and the conditions of her release. See, e.g.,
23 Hernandez, 872 F.3d at 994 (“If the government is setting monetary bonds to
24 ensure appearance at future proceedings, there is no legitimate reason for it not
25 to consider the individual’s financial circumstances and alternative conditions
26 of release.”).

27 88.Thus, due process and Ninth Circuit precedent require that the government bear
28

1 the burden of justifying Petitioner's ongoing and prolonged detention by clear
2 and convincing evidence.

3 89. Respondents' continued detention of Petitioner without individualized review is
4 arbitrary and violates due process.

5 90. Petitioner continues to suffer irreparable harm including deterioration of her
6 physical health, risk of cancer progression, and severe emotional harm to her
7 minor child. These harms cannot be remedied after the fact.

8 91. Petitioner is likely to succeed on the merits because prolonged detention without
9 a constitutionally adequate bond hearing violates clearly established due process
10 principles under Zadvydas and Singh.

11 92. Additionally, the prolonged and indeterminate nature of her detention now
12 approximately nineteen (19) months with no clear end renders it excessive and
13 unconstitutional.

14 GROUND FOUR

15 FAILURE TO COMPLY WITH FEDERAL COURT ORDER

16
17 93. The District Court explicitly required that the government bear the burden of
18 proving by clear and convincing evidence that Petitioner is a danger or flight
19 risk. The Immigration Judge failed to apply this standard, instead relying on
20 unsupported assertions. This constitutes noncompliance with this Court's order
21 and warrants enforcement.

22
23 94. The IJ committed clear legal and factual error in concluding that Respondent
24 poses a danger to the community and a flight risk. The Department of Homeland
25 Security ("DHS") failed to meet its burden of proving dangerousness or flight
26 risk by clear and convincing evidence, as required by the federal court's order
27 granting Respondent's Petition for Writ of Habeas Corpus.



1 95.The IJ further erred in finding Respondent poses a danger to the community or a
2 flight risk such that no condition of release could ensure her appearance. The
3 record lacks individualized evidence supporting such findings. Accordingly,
4 continued detention is legally unjustified.

5 96.Binding precedent requires a threshold showing before the burden shifts to the
6 respondent. See: *Budiono v. Lynch*, 837 F.3d 1042 (9th Cir. 2016); *Kumar v.*
7 *Holder*, 728 F.3d 993 (9th Cir. 2013); *Mata-Sanguinetty v. Garland* (9th Cir.
8 2023). No such showing was made here.

9 **PRAYER FOR RELIEF**

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

- 11 1. Enforce its April 27, 2026, Order.
12 2. Order Petitioner's immediate release from custody; or, in the
13 alternative,
14 3. Order a constitutionally compliant bond hearing within 7 days, at
15 which the government bears the burden of proof by clear and
16 convincing evidence;
17 4. Issue an Order to Show Cause;
18 5. Award attorney's fees and costs; and
19 6. Grant any further relief the Court deems just and proper.
20

21
22 DATED: May 1, 2026,

Respectfully submitted



25 Naira Zohrabyan
26 Attorney for Petitioner
27
28



CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this **MOTION TO ENFORCE JUDGMENT** using the CM/ECF system.

DATED: May 16, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner
Zohrabyan Law, APC

