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DETAINED

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11 Attorneys for Petitioner **Salim Shoikov Muborakshoevich**

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

14 **In the matter of:**

Case Number: '26CV2811 TWR DEB

15
16 **SALIM SHOIKOV**

A-Number

17 **MUBORAKSHOEVICH**

18 **v.**

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

19 **SIXTO MARRERO, WARDEN OF**
20 **IMPERIAL REGIONAL ADULT**
21 **DETENTION FACILITY**

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

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



STATEMENT OF FACTS

1. Petitioner Salim Shoikov Muborakshoevich is a citizen of Tajikistan. He entered the United States on or about September 16, 2022, then he was processed. On or about September 18, 2022, Petitioner was released from custody on parole. *See attached Exhibit "A"* -Petitioner's Parole document.
2. Petitioner fled the Tajikistan to escape persecution by the Tajik government authorities on account of his political opinion. As a result of this persecution, Petitioner submitted his Application for Asylum (Form I-589).
3. Petitioner further supplemented his case and submitted all the required documents.
4. Petitioner has three and half (3.5) years of residence in the United States.
5. On or about February 4, 2024, Petitioner appeared for his biometrics appointment, during which he provided fingerprints and other required biometric information in support of his I-589 application for asylum and for withholding of removal. *See attached Exhibit "B"* -Notice of Biometrics Appointment.
6. Petitioner is employed as a truck driver.
7. On or about December 12, 2025, he was arrested by U.S. Immigration and Customs Enforcement (ICE).
8. Respondent has revoked Petitioner's parole without proper notice.
9. Petitioner is currently detained at the Imperial Regional Detention Facility. He has not been given an opportunity to be heard.
10. Petitioner has no criminal history. He possesses a valid Social Security number, has been authorized to work in the United States, and has consistently filed and paid federal income taxes, demonstrating compliance with U.S. law and a strong record of responsibility.



- 1 11. Petitioner has appeared for all scheduled hearings and biometric appointments
2 and has demonstrated his intention to comply with all court orders and conditions
3 of release.
- 4 12. On March 31, 2026, Immigration Judge honorable Ortiz, Ferdinand granted
5 Petitioner's application for asylum and withholding of removal. *See*
6 *attached Exhibit "C"* -The Judge's decision to grant Asylum.
- 7 13. On April 22, 2026, the U.S. Department of Homeland Security (DHS) filed an
8 appeal against the Immigration Judge's decision. Case is pending. *See*
9 *attached Exhibit "D"* -Filing receipt for appeal or motion.
- 10 14. Petitioner has remained in immigration detention almost five (5) months to date.
- 11 15. During this detention, Petitioner has suffered significant physical and mental
12 health deterioration. His continued confinement has caused and continues to
13 cause serious harm.
- 14 16. Respondents now seek to keep Petitioner detained without a meaningful
15 opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225. Respondents do so
16 based not on Petitioner's personal circumstances or individualized facts.
- 17 17. But Respondents cannot evade due process requirements so easily. The U.S.
18 Constitution requires the Respondents provide at least the rights available to his
19 when he filed his application.
- 20 18. The Constitution protects Petitioner, and every other person present in this
21 country-from arbitrary deprivations of his liberty and guarantees his due process
22 of law. The government's power over immigration is broad, but as the Supreme
23 Court has declared, it "is subject to important constitutional limitations"
24 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint
25 always been at the core of the liberty protected by the Due Process Clause from
26 arbitrary governmental action" *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
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1 19. Petitioner seeks declaratory and injunctive relief to compel his immediate release
2 from the immigration jail where he has been held by DHS since being unlawfully
3 detained on December 12, 2025, without first being provided a due process
4 hearing to determine whether his incarceration is justified.

5 20. Petitioner experienced severe distress and shock throughout his unlawful
6 detention. He is a working member of the community, supports his family, pays
7 taxes, and has a pending immigration case. He has been in full compliance with
8 immigration requirements and is not a danger to the community nor a flight risk.

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

15 22. The risk of an erroneous deprivation of such interest is high as Petitioner's parole
16 was terminated without providing a reason for termination or giving an
17 opportunity to be heard. Since DHS's initial determination that Petitioner be
18 paroled because he posed no danger to the community and was not a flight risk,
19 there is no evidence that this have been changed.

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

23 24. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus
24 to release Petitioner from detention within 10 days unless Respondents schedule
25 a hearing before an IJ where: (1) to continue detention, the government must
26 establish by clear and convincing evidence that Petitioner presents a risk of flight
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**PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR DECLARATORY RELIEF**



1 or danger, even after consideration of alternatives to detention that could mitigate
2 any risk that Petitioner's release would present; and (2) if the government cannot
3 meet its burden, the IJ shall order Petitioner's release on appropriate conditions
4 of supervision, taking into account Petitioner's ability to pay a bond.

5 25. Petitioner's continued detention is arbitrary and unlawful, and he requests that
6 this Court order his immediate release from ICE custody.

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8 **JURISDICTION**

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

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

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

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

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

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

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

32. 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.*

33. 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).

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



PARTIES

35. Petitioner Salim Shoikov Muborakshoevich is a citizen of Tajikistan. He entered the United States on or about September 16, 2022, then he was processed. On or about September 18, 2022, Petitioner was released from custody on parole.

36. Petitioner fled the Tajikistan to escape persecution by the Tajik government authorities on account of his political opinion. As a result of this persecution, Petitioner submitted his Application for Asylum (Form I-589).

37. Petitioner has three and half (3.5) years of residence in the United States.

38. On or about February 4, 2024, Petitioner appeared for his biometrics appointment, during which he provided fingerprints and other required biometric information in support of his I-589 application for asylum and for withholding of removal.

39. Petitioner is employed as a truck driver.

40. On or about December 12, 2025, he was arrested by U.S. Immigration and Customs Enforcement (ICE).

41. Respondent has revoked Petitioner's parole without proper notice.

42. Petitioner is currently detained at the Imperial Regional Detention Facility. He has not been given an opportunity to be heard.

43. Petitioner has no criminal history. He possesses a valid Social Security number, has been authorized to work in the United States, and has consistently filed and paid federal income taxes, demonstrating compliance with U.S. law and a strong record of responsibility.

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



1 45. On March 31, 2026, Immigration Judge honorable Ortiz, Ferdinand granted
2 Petitioner's application for asylum and withholding of removal.

3 46. On April 22, 2026, the U.S. Department of Homeland Security (DHS) filed an
4 appeal against the Immigration Judge's decision. Case is pending.

5 47. Petitioner has remained in immigration detention almost five (5) months to date.

6 48. During this detention, Petitioner has suffered significant physical and mental
7 health deterioration. His continued confinement has caused and continues to
8 cause serious harm.

9 49. Respondents seek to keep Petitioner detained without providing a meaningful
10 opportunity to seek a bond hearing, in violation of due-process requirements. See
11 8 U.S.C. § 1225.

12 50. Respondents cannot evade constitutional requirements. The U.S. Constitution
13 guarantees Petitioner the same due-process protections available to his at the
14 time he filed his application for relief, including freedom from arbitrary and
15 indefinite detention.

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17 **LEGAL FRAMEWORK**

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

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

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

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

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

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

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

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

16
17 **CLAIMS FOR RELIEF**

18 **GROUND ONE**

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

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

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

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



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

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

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

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

5 63. The relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has
6 a protected liberty interest in remaining out of custody *See, e.g., Pinchi*, 2025 WL
7 2084921, at *4 (“[Petitioner’s] release from ICE custody after his initial
8 apprehension reflected a determination by the government that he was neither a
9 flight risk or a danger to the community, and [Petitioner] has a strong interest in
10 remaining at liberty unless he no longer meets those criteria.”); *Noori*, 2025 WL
11 2800149, at *10 (“Petitioner is not an “arriving” noncitizen but one that has
12 [been] present in our country over a year. This substantial amount of time
13 indicates he is afforded the Fifth Amendment’s guaranteed due process before
14 removal.”); *Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL
15 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty
16 interest in his release).

17 64. This Court accordingly found constitutional limits to apply to immigration
18 detention, irrespective of the underlying detention authority. *See, Vikas Kumar*
19 *v. Christopher Larose*, Warden, Otay Mesa Detention Center et al., 25-CV-3796
20 JLS (DDL); *Aigul Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-
21 00421-GPC-MMP; *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention*
22 *Center* 3:26-cv-00423-GPC-MSB; *Dugar Dambaev v. Warden, Imperial*
23 *Detonation Center* 26-cv-1182-JO-SBC; *Roman T. v. Warden, Golden State*
24 *Annex Detention Facility* 1:26-cv-02385-TLN-JDP; *Liping Zhao V. Christopher*
25 *J. Larose* 26-cv-1285-JES-DDL (**granting a writ of habeas corpus releasing**
26 **petitioner from custody to the conditions of his preexisting release on**
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recognizance on due process grounds).

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

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

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

GROUND TWO

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

Mandatory detention is subject to constitutional limits

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

69. "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.

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

71. The risk of an erroneous deprivation of such interest is high as Petitioner's parole

1 was revoked without providing a reason for revocation or giving an opportunity
2 being heard. Since DHS's initial determination that Petitioner should be released
3 because he posed no danger to the community and was not at flight risk, there is
4 no evidence that these findings have changes. See *Saravia v. Sessions*, 280 F.
5 Supp. 3d 1168, 1760 (N.D. Cal2017).

6 72. Petitioner has no criminal record, has not been arrested or otherwise in criminal
7 trouble, had work authorization. "Once a noncitizen has been released, the law
8 prohibits federal agents from rearresting his merely because he is subject to
9 removal proceedings." *Saravia*, 280 F. Supp. 2d at 1760. "Rather, the federal
10 agents must be able to present evidence of materially changed circumstances-
11 namely, evidence that the noncitizen is in fact dangerous or has become a flight
12 risk." *Id.*

13 73. Government's interest in detaining Petitioner without notice, reasoning, and a
14 hearing is "low." See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL
15 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
16 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the
17 power to take steps toward doing so; but its interest in doing so without a hearing
18 is low."). Respondents fail to point to any burdens on the government if it were to
19 have provided proper notice, reasoning, and a pre-deprivation hearing.

20 74. Therefore, because Respondents detained Petitioner by revoking his parole in
21 violation of the Due Process Clause, his detention is unlawful. See, e.g., *Alegria*
22 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug.
23 11, 2025) (granting a TRO based on a procedural due process challenge to a
24 revocation of release on recognizance without a pre-deprivation hearing); *Navarro*
25 *Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing
26 petitioner from custody to the conditions of his preexisting order of release on
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1 recognizance on due process grounds).

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

5 76. Furthermore, Petitioner is challenging his detention on constitutional grounds, not
6 statutory grounds. Notwithstanding the fact that he is being detained pursuant to
7 section 1225(b), Petitioner's detention is unequivocally subject to Constitutional
8 limits. The Supreme Court has not precluded noncitizens from bringing as-applied
9 constitutional challenges to their mandatory detention. Respondent correctly
10 states: *Jennings v. Rodriguez*, 583 U.S. 281 (2018) "did not explicitly address
11 constitutionality arguments." U.S. Likewise, While in *Demore v. Kim*, 538 U.S.
12 510 (2003) the Supreme Court rejected a facial challenge to mandatory detention
13 under § 1226(c), the Supreme Court has explicitly recognized the availability of
14 judicial review over as-applied challenges to detention, including mandatory
15 detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Demore v. Kim*,
16 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). This Court accordingly
17 found constitutional limits to apply to immigration detention, irrespective of the
18 underlying detention authority. See, e.g., *Vikas Kumar v. Christopher Larose*,
19 Warden, Otay Mesa Detention Center et al., 25-CV-3796 JLS (DDL); *Aigul*
20 *Kazybayeva v. Warden, Otay Mesa Detention Center* 3:26-cv-00421-GPC-MMP;
21 *Dariya Karmamoldoyeva v. Warden, Otay Mesa Detention Center* 3:26-cv-
22 00423-GPC-MSB. (**granting a writ of habeas corpus releasing petitioner from**
23 **custody to the conditions of his preexisting parole on due process grounds**).

24
25 77. This Court should so hold as well.

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

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

78. The allegations in the above paragraphs are realleged and incorporated herein. Courts must "hold unlawful and set aside agency action" that is "arbitrary, 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. Moreover, at the evidentiary hearing, the adjudicator must consider alternatives to detention and Petitioner's financial circumstances in determining whether further detention is warranted and the conditions of his release. See, e.g., *Hernandez*, 872 F.3d at 994 ("If the government is setting monetary bonds to ensure appearance at future proceedings, there is no legitimate reason for it not to consider the individual's financial circumstances and alternative conditions of release.").

81. Thus, due process and Ninth Circuit precedent require that the government bear the burden of justifying Petitioner's ongoing and prolonged detention by clear and



convincing evidence.

PRAYER FOR RELIEF

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

- a) Assume jurisdiction over this matter;
- b) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- c) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a)(6);
- d) Issue a Writ of Habeas Corpus ordering Respondents to be released.
- e) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- f) Enjoin Respondents from re-detaining Petitioner under set forth applicable statutory and regulatory procedures.
- g) Grant any further relief this Court deems just and proper.

DATED: May 4, 2026

Respectfully submitted

ZOHRABYAN
-LAW, APC-

