



### **JURISDICTION**

4. This is an action arising under the Constitution of the United States, as well as the INA, 8 U.S.C. § 1101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. 1331 (federal question), and U.S. CONST., Art. I, § 9, Cl. 2 (suspension clause).

6. This Court may order relief under the habeas statute, 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

7. Venue is proper because—on information and belief—Petitioner is detained in New York County, New York, which is within the territorial jurisdiction of this Court.

### **PARTIES**

8. Petitioner is a Chinese national who has applied for asylum in the United States. His case remains pending before the Executive Office for Immigration Review (“EOIR”). On information and belief, as of October 8, 2025, he is being held in ICE custody at 26 Federal Plaza, New York, NY 10278.

9. Judith Almodovar is the Acting Director of ICE’s New York Field Office. In her official capacity, she is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout the City of New York, including Queens County. She therefore has custody over Petitioner, in that she can order his release from ICE custody.

10. Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”), which is ICE’s parent agency. In her official capacity, she oversees and directs the activities of

ICE, including its detention operations in New York and elsewhere. She therefore has custody over Petitioner, in that she can direct ICE to release him from custody.

11. Pamela Bondi is the Attorney General. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS. She therefore has constructive custody of Petitioner, in that she has the capacity to order DHS to release Petitioner.

### STATEMENT OF FACTS

12. Fleeing religious persecution in China, Mr. Chen arrived in the United States on December 13, 2023, and promptly turned himself in to agents of Customs and Border Protection (“CBP”), an arm of DHS. *See* Exh. A (notice to appear). He was released shortly thereafter, pursuant—on information and belief—to an order of release on recognizance under section 236 of the INA, 8 U.S.C. § 1226.<sup>1</sup>

13. On October 8, 2025, when Mr. Chen went to the ICE New York Field Office for his scheduled check-in, he was taken into custody without explanation, notwithstanding the fact that he has abided by all the conditions of his supervised release.

14. It is unclear where ICE is currently holding Mr. Chen. When undersigned counsel attempted to ascertain Mr. Chen’s whereabouts from ICE’s “detainee locator,” it returned in place of any “Current Detention Facility” a cryptic instruction to “Call ICE For Details.” *See* Exh. D. This is consistent with prior observations by this Court regarding individuals detained at 26 Federal Plaza. *Cf., e.g., Mercado v. Noem*, No. 25-cv-6568 (LAK), 2025 WL 2658779 at \*3 (S.D.N.Y. Sep.

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<sup>1</sup> Undersigned counsel is not in possession of the release order. However, such an order is the only conceivable mechanism by which ICE could have released Mr. Chen if indeed he “has not been admitted or paroled.” Exh. A.

17, 2025) (“[T]he ICE Online Detainee Locator, which attorneys rely on to locate their clients, did not indicate reliably whether an individual was detained at 26 Fed.”).

15. It is likely that ICE intends to transfer Mr. Chen to a remote detention facility, far from his community and chosen counsel. *Cf., e.g., Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (attempted transfer to ICE detention center in Louisiana); *Mahdawi v. Trump*, 136 F.4th 443 (2d Cir. 2025) (same).

16. It is also likely that ICE intends to tell whatever immigration court ends up hearing the case that Mr. Chen is subject to mandatory detention under its new detention policy, which was originally implemented via secret agency memorandum, *see* Exh. E,<sup>2</sup> but has since been adopted by the Board of Immigration Appeals (“BIA”) in a published decision, *see Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

#### LEGAL FRAMEWORK

17. “[T]he Fifth Amendment entitles noncitizens to due process of law . . . whether their presence here is lawful, unlawful, temporary, or permanent.’ ‘Noncitizens are also entitled to challenge through habeas corpus the legality of their ongoing detention,’ including ‘the lawfulness of detention when it is first imposed.’ ‘The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review.’” *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528 (AT), 2025 WL 1927931, at \*2 (S.D.N.Y. July 13, 2025) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020)) (citations omitted, alterations in *Chipantiza-Sisalema*).

18. “The Second Circuit has held that the *Mathews v. Eldridge* balancing test applies when determining the adequacy of process in the context of civil immigration confinement. The

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<sup>2</sup> This leaked copy of the memorandum was obtained here: <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.” *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at \*3 (S.D.N.Y. June 18, 2025) (citing *Velasco Lopez*, 978 F.3d at 851; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (citations omitted).

19. “Historically, ‘common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed upon the circumstances.’ The ‘equitable and flexible nature of habeas relief’ continues in our system today. Where appropriate, courts must use their authority to consider not only the present circumstances of confinement, but the actions that led to it. ‘The intended duration of the detention and the reasons for it bear upon the precise scope of the inquiry. . . . The habeas court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain.’ As the *Velasco Lopez* court stated, ‘[t]he purpose of habeas corpus is to impose limitations on the Government's ability to do these things.’” *Ozturk v. Trump*, No. 25-cv-374, 2025 WL 1145250, at \*15 (D. Vt. Apr. 18, 2025) (quoting *Boumediene v. Bush*, 553 U.S. 723, 779, 783 (2008); *Velasco Lopez*, 978 F.3d at 855) (alterations in *Ozturk*).

20. As a prudential matter, “[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention.” *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018). “Nonetheless, in this Circuit, a district court may in its discretion excuse exhaustion when (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be

futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Castillo Lachapel v. Joyce*, No. 25-cv-4693 (JHR), 2025 WL 1685576, at \*2–3 (S.D.N.Y. June 16, 2025) (quoting *Michalski*, *supra*).

21. While the government today takes the position that individuals present in the United States without admission or parole are subject to mandatory detention under 8 U.S.C. § 1225, there doesn’t exist “a single Article III court that has adopted its expansive construction” of that section. *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765 at \*7 (E.D.N.Y. Sep. 29, 2025); *see also Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434 at \*7 (“Under *Loper*, the Court is not required to defer to the BIA’s recent interpretation, particularly when that view has not ‘remained consistent over time.’” (quoting *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385–86 (2024))); *Hyppolite v. Noem*, No. 25-cv-4304 (NRM), 2025 WL 2829511 at \*11 (E.D.N.Y. Oct. 6, 2025) (“For all the reasons outline *supra*, the Court respectfully but wholly disagrees with the reasoning of the BIA.” (citing *Barrera v. Tindall*, No. 25-cv-541 (RGJ), 2025 WL 2690565 at \*5 (W.D. Ky. Sep. 19, 2025) (“[B]ecause it is the responsibility of the court to decide whether the law means what the agency says[,] the Court disagrees with the holding of *Matter of Yajure [Hurtado]* and declines to follow it.” (quotation marks omitted))).

22. And irrespective of the specific detention authority at issue, district courts have not hesitated to order immediate release where ICE re-detains aliens without any semblance of due process. *See, e.g., Kelly v. Almodovar*, No. 25-cv-6448 (AT), 2025 WL 2381591 at \*4 (S.D.N.Y. Aug. 15, 2025) (“Respondents emphasize that ICE has the statutory, discretionary authority to detain noncitizens like Kelly under 8 U.S.C. § 1226(a). But the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is. Nor is there any dispute that it failed to do so here. . . . Respondents are ORDERED to

immediately release Kelly from custody.” (citations omitted)); *Savane v. Francis*, No. 25-cv-6666 (GHW), 2025 WL 2774452 at \*1, 10 (S.D.N.Y. Sep. 28, 2025) (“The Court need not resolve the threshold statutory interpretation question in this case. Assuming that Petitioner is properly subject to mandatory detention under § 1225 as Respondents contend, Respondents did not afford Mr. Savane any process before his re-detention—including the baseline procedural safeguards required by § 1225’s implementing regulations themselves. . . . Respondents are directed to immediately release Petitioner from custody within one business day of this order.”).

**FIRST CLAIM FOR RELIEF**  
**Violation of 8 U.S.C. § 1226**

23. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

24. Where an alien has been released from custody pursuant to 8 U.S.C. § 1226(a), the statute goes on to provide that the Government “at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien *under the original warrant*, and detain the alien,” *id.* § 1226(b) (emphasis added).

25. Inasmuch as the Government now claims that Mr. Chen is subject to (mandatory) detention under section 1225, *see* Exh. E, such retroactive classification violates section 1226(b), which provides that any re-detention must occur pursuant to “the original warrant.”

**SECOND CLAIM FOR RELIEF**  
**Violation of Fifth Amendment Right to Due Process**

26. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

27. As in other recent cases, the Government’s “ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity

to respond, violates his due process rights.” *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at \*4 (S.D.N.Y. June 18, 2025).

28. “In light of the deprivation of [Mr. Chen’s] liberty, formerly granted and approved by Respondents, the absence of any deliberative process prior to, or contemporaneous with, the deprivation, and the statutory and the constitutional rights implicated, a writ of habeas corpus is the only vehicle for relief. It is, in essence, the most appropriate remedy.” *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at \*15 (S.D.N.Y. June 12, 2018).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that the Court:

- (1) Assume jurisdiction over his petition;
- (2) Enjoin Respondents from transferring Petitioner outside of this judicial district;
- (3) Direct Respondents to show cause within three days (or in no event more than twenty days) why the Petition should not be granted;
- (4) Order Petitioner’s immediate release during the pendency of these proceedings;
- (5) Declare that Petitioner’s detention is necessarily pursuant to 8 U.S.C. § 1226, and not pursuant to 8 U.S.C. § 1225;
- (6) Declare Petitioner’s unexplained arrest and ongoing detention to be violative of the Due Process Clause of the Fifth Amendment;
- (7) Issue a writ of habeas corpus directing Respondents to release Petitioner;
- (8) Award reasonable attorney’s fees and costs to Petitioner; and
- (9) Provide such other relief as the Court deems just and proper.

Dated: October 8, 2025  
New York, New York

/s/ Yevgeny Samokhleb  
*Counsel for Petitioner*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Xiaoquan Chen, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 8<sup>th</sup> day of October, 2025.

/s/ Yevgeny Samokhle