Connie Chan
Connie Chan & Associates, P.C.
405 Sansome Street, 2nd Floor
San Francisco, CA 94111
Tel: 415-956-4809
Fax: 415-956-3759
Email: cc@connieychan.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KAIFENG WANG, Petitioner vs. Todd LYONS, Acting Director, Immigration and Customs Enforcement; Sergio ALBARRAN, Field Office Director of Enforcement and Removal Operations, San Francisco Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Christoper CHESTNUT, Warden, California City Correctional Facility; Minga WOFFORD, Facility Administrator of Mesa Verde ICE Processing Center; Tonya ANDREWS, Facility Administrator of the Golden State Annex Detention Facility; and Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents	CASE NO. PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ALIEN NUMBER [redacted]

I. INTRODUCTION

1. Kaifeng Wang ("Petitioner" or "Mr. Wang"), by and through counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from re-detaining her without first providing him a due process hearing where the government bears the burden to demonstrate to a neural adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. Petitioner is a native and citizen of China who entered the United States on November 7, 2024 without inspection. On December 18, 2024, ICE granted him interim parole for a period of one year. On January 21, 2025, ICE issued Petitioner a notice notifying him to report to 630 Sansome Street, San Francisco, CA 94111 for a check-in to re-issue a new interim parole.

3. Numerous credible reports demonstrate that, across the country, including in San Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other check-ins with ICE and then arrested by ICE.

4. On information and belief, many of those individuals who appeared as instructed at ICE check-ins in San Francisco and other Bay Area cities were incarcerated or re-incarcerated by ICE. [1]

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[1] "73-year-old Bay Area woman is detained by ICE after more than a decade of check-ins," NBC News (Sept. 17, 2025), https://www.nbcnews.com/news/us-news/california-grandmother-detained-ice-check-ins-immigration-rcna231685; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision; McKinnon de Kuyper, Mahmoud Khalil's Lawyers Release Video of His Arrest, N.Y. Times (Mar. 15, 2025), available at https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, Trump is seeking to deport another academic who is legally in the country, lawsuit says, Politico (Mar. 19, 2025), available at https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

5. In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[2]

6. In light of credible reports of ICE re-incarcerating individuals at their ISAP check-ins, it is highly likely Mr. Wang will be arrested and incarcerated at this appointment, despite the fact that Mr. Wang is neither a flight risk nor a danger to the community. If he is arrested, he faces the very real possibility of being transferred outside of Northern California with little or no notice.

7. Respondents cannot re-arrest Petitioner without affording him due process rights under the Fifth Amendment to the U.S. Constitution. Respondents also cannot re-arrest Petitioner without abiding by the Administrative Procedure Act, which obligates administrative agencies to follow their own rules, procedures, and instructions.

8. On September 5, 2025, the Board of Immigration Appeals ("BIA or Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

9. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) and 1225(b)(1) and does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional

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[2] *See, e.g.*, McKinnon de Kuyper, Mahmoud Khalil's Lawyers Release Video of His Arrest, N.Y. Times (Mar. 15, 2025), available at https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025).

parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

10. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., Administrative Procedure Act, 5 U.S.C. §§ 702-706, 28 U.S.C. § 1361, 2201-02 (Declaratory Judgment).

II. JURISDICTION AND VENUE

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 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, and Fifth Amendment of the United States Constitution.

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity, a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California, Mr. Wang is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California, and there is no real property involved in this action.

15. Venue is further proper because a substantial part of the events or omissions giving

rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

III. REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

IV. PARTIES

18. Petitioner Kaifeng Wang is a native and citizen of China who resides in Dublin, California.

19. Respondent Sergio Albarran is the Director of the San Francisco Field Office of ICE's Enforcement and Removal Operations division. As such, Sergio Albarran is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement. He is named in his official capacity.

21. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's ultimate legal custodian. She is sued in her official capacity.

22. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the Department of Justice. She is one of Petitioner's legal custodians.

23. Respondent Tonya Andrews is the facility administrator at the Golden State Annex Detention Facility in McFarland, California. If Petitioner is arrested and detained there, she will have immediate physical custody of Petitioner. She sued in her official capacity.

24. Respondent Christopher Chestnut is the warden of the California City Correctional Facility in California City, California. If Petitioner is arrested and detained there, he will have immediate physical custody of Petitioner. He is sued in his official capacity.

25. Respondent Minga Wofford is the Facility Administrator of Mesa Verde ICE Processing Center. If Petitioner is arrested and detained there, she will have immediate physical custody of Petitioner. She is sued in her official capacity.

V. LEGAL FRAMEWORK

Right to a Hearing Prior to Re-detention

26. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing such that detention would now be warranted.

27. The Due Process Clause of the Fifth Amendment makes it unlawful for Respondents to detain Petitioner without first providing a hearing before a neutral decision maker to determine whether detention is justified by a risk of flight or danger to the community

28. Civil immigration detention must be justified by a permissible purpose, and must be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two permissible regulatory goals are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*; *see also Matter of Patel*, 17 I&N

Dec. 597, 666 (BIA 1976) ("[A noncitizen] generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.") (internal citations omitted).

29. ICE's power to arrest a noncitizen who is at liberty is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.").

30. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

Petitioner's Protected Liberty Interest in His Conditional Release

31. Petitioner's liberty from immigration custody and his weighty interest in

avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment…lies at the heart of the liberty" that the Due Process Clause protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

32. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. "[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* Therefore, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Id.*

33. Here, Petitioner was paroled into the country under 8 U.S.C. § 1182(d)(5)(A) for one year. Because Petitioner was paroled into the United States, he has a protectable liberty interest under *Mathews v. Eldridge*, 424 U.S. 319,332 (1976). *Aviles-Mena v. Kaiser*, 2025 WL 2578215 (September 5, 2025).

34. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152. Petitioner was in fact released from custody and placed in removal proceedings. *See also, Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due

process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

35. Procedural due process constrains governmental decision that deprive individuals of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319,332 (1976) *see also Perry v. Sindermann*, 408 U.S. 593, 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

36. Civil detention with no foreseeable end infringes upon a protected liberty interest and thus violates his Constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct.2491,2493. 150 L. Ed. 2d 653 (2001) ("Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute.").

37. In fact, an individual maintains a protected liberty interest in his freedom even where he obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to

society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

38. Here, Petitioner's release is in relevant ways similar to the liberty interest in parole protected in *Morrissey*. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

39. Petitioner's one year at liberty provides him a "a liberty interest that entitles him to constitutional due process before he is incarcerated." *Hurd*, 864 F.3d at 683; *see also Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring program had liberty interest protected by the Due Process Clause because the program "allowed the appellees to live with their loved ones, form relationships with neighbors, lay down roots in their community, and reside in a dwelling of their own choosing (albeit subject to certain limitations) rather than in a cell designated by the government."); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen made a substantial showing that he had liberty interest requiring pre-deprivation hearing before re-arrest, even after original bond order was reversed on appeal); *Duong*, 2025 U.S. Dist. LEXIS 185024, at *13-14 (noncitizen released on *Zepeda-Rivas* bail order had strong liberty interest even after expiration of settlement agreement); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist. LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025) (same).

Petitioner's Strong Interest in His Liberty Required a Hearing Before He Was Incarcerated By ICE

40. If a petitioner identifies a protected liberty interest, the Court must then determine

what process is due. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). To determine the process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at 1055.

41. Under the *Mathews* test, the Court balances three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

42. Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). *Zinermon*, 494 U.S. at 128.

43. Here, the *Mathews* factors all favor Petitioner and establish that the government was required to provide Petitioner notice and a hearing prior to any incarceration.

44. First, Petitioner's private interest in his liberty is substantial. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause."). The Supreme Court has recognized that individuals released from serving a criminal sentence have a "valuable" liberty interest—even if

that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 ("[G]iven the civil context" of immigration detention, a noncitizen's interest in release on bond is "arguably greater than the interest of parolees in *Morrissey*."). Here, Petitioner's interest is even more pronounced than the average noncitizen given that he has been living in the United States ever since he was initially released from ICE custody.

45. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally detain Petitioner without a hearing before a neutral adjudicator that would determine whether detention serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690. These developments show that detention is likely not warranted.

46. DHS's choice to detain Petitioner without a hearing has deprived him of his liberty and separated him from his family and community without any opportunity for Petitioner to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at [her] scheduled check-in without notice or hearing, and where compliance with release terms is in dispute, and ordering immediate release and enjoining Respondents from re-detention without a pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show by clear and convincing evidence that petitioner is a flight risk or danger to the community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025) (same).

47. By contrast, the value of a deprivation hearing before a neutral decision-maker is

high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to determine whether Petitioner actually currently poses a flight risk or danger such that detention is justified. *See, e.g, Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 ("At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness."). Requiring such a hearing be held before Petitioner is detained serves to protect his liberty interest, facilitate his right to counsel and to gather evidence, and ensure that ICE's decision to incarcerate Petitioner's release does not evade review. *See Zinermon*, 494 U.S. at 127; Hurd, 864 F.3d at 683.

48. Third, the government's interest in detaining Petitioner without a hearing is low. The government cannot plausibly assert it has any basis for detaining Petitioner now, when he has lived in the community without incident for more than a year. In any event, providing Petitioner with a hearing before this Court (or another neutral decisionmaker) to determine whether there is evidence that Petitioner currently poses any risk of flight or danger to the community imposes a de minimis, if any, burden on the government. Such a hearing is far less costly and burdensome for the government than keeping Petitioner detained at what the Ninth Circuit described as a "staggering" cost to the public of $158 each day per detainee in 2017, "amounting to a total daily

cost of $6.5 million" (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at 996.

49. Because the government failed to give Petitioner the notice and hearing he was due under the *Mathews* factors prior to re-detaining him, the Court should order him released until the government provides him with a constitutionally-compliant hearing.

50. At a pre-deprivation hearing, due process requires that the government justify re-detention of Petitioner by clear and convincing evidence that he poses a flight risk or danger. *See Singh*, 638 F.3d at 1204 ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (internal quotation marks omitted); *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the "consensus view" among District Courts concluding that, "where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned to custody, ordering that the government bear the burden at the hearing by clear and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

Detention Bears No Reasonable Relationship to any Legitimate Purpose As Petitioner's Removal is not Reasonably Foreseeable

51. Here, Petitioner also timely filed his I-589 asylum application within one year of entering the United States. If he is arrested at his ICE check-in, he would be without the opportunity to fully exercise his due process rights.

52. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes-to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at

690-691 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*, No.15-CIV-261, 2015 WL 1176706 at*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for detention is required to be particularly strong once detention is presumptively unconstitutional.

53. The detention of Petitioner would be arbitrary on its face. ICE must determine whether he was a danger to the community or whether he was a flight risk. Without any explanation or new basis why he is subject to detention, his foreseeable detention is arbitrary and violates due process.

Petitioner's Re-detention is Governed by 8 U.S.C. § 1226(a)

54. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

55. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

56. Revocation and return to custody are authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

57. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

58. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),

while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

59. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b). This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

60. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

61. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

62. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

63. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that

rejected well-established understanding of the statutory framework and reversed decades of practice.

64. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). *See* Ex. 1. The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

65. On September 5, 2025, the Board adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

66. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

67. Even before ICE or the Board introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

68. Subsequently, court after court has adopted the same reading of the INA's detention

authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL

2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

69. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

70. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

71. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

72. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

73. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. §1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the

Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Respondents Improperly Dismissed Petitioner's Asylum Application

74. Despite having a properly completed asylum application pending before USCIS, on June 6, 2025, DHS issued a letter to Petitioner titled Notice of Dismissal of Form I-589 ("Dismissal Notice"), stating that Petitioner's asylum application could not be processed because DHS records "indicate[d]" that Petitioner had been "apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal." The Dismissal Notice further stated that the asylum office "cannot process" Petitioner's asylum application, that his application was "dismissed," and that "all processing" of his application was "terminated." The Dismissal Notice states if Petitioner wishes to have his "claim of fear considered," he must request a credible fear interview. The Dismissal Notice contains no information regarding an appeal process.

75. Credible fear interviews are intended to screen those in expedited removal proceedings to determine if they can proceed to present their asylum claim before either USCIS or the Executive Office of Immigration Review ("EOIR"). An asylum officer does not have the authority to grant asylum at a credible fear interview. The Dismissal Notice removes Petitioner from the procedurally protected affirmative asylum system and sends him backwards into a less protected preliminary credible fear interview, a process intended only for those in expedited removal proceedings.

76. Petitioner has never received a completed Notice and Order of Expedited Removal.

VI. FACTS

77. Petitioner has resided in the United States since November 7, 2024.

78. Petitioner's next check-in with ICE is on December 18, 2025.

79. Petitioner is a native and citizen of China who entered the United States on November 7, 2024 without inspection. On December 18, 2024, ICE granted him interim parole for a period of one year. On January 21, 2025, ICE issued Petitioner a notice notifying him to report to 630 Sansome Street, San Francisco, CA 94111 for a check-in to re-issue a new interim parole.

80. Petitioner filed an application for asylum with USCIS, and was issued Form I-589 receipt on March 5, 2025.

81. Petitioner fears returning to China because he has suffered past persecution [redacted] because they arrested, beat, and tortured him.

82. On June 6, 2025, USCIS issued Petitioner a Notice of Dismissal of Form I-589, the application used to apply for asylum, stating that the asylum office will issue an appointment notice for credible fear. Petitioner was paroled into the United States. Petitioner has continuously been in the United States since he was paroled. Therefore, Petitioner is not authorized to be in expedited removal.

83. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

VII. CLAIMS FOR RELIEF

COUNT I

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process

84. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

85. The Due Process Clause of the Fifth Amendment forbids the government from

depriving any "person" of liberty "without due process of law." Fifth Amendment of the U.S. Constitution.

86. Petitioner has a vested liberty interest in his release from immigration custody. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator. *See Morrissey*, 408 U.S. at 487-488.

87. Respondents' wrongful dismissal of Petitioner's affirmative asylum application and subsequent referral to the expedited removal process deprives Petitioner of due process by placing him in limbo without any process at all.

COUNT II
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution
Substantive Due Process

88. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

89. The government may not deprive a person of life, liberty, or property without due process of law. Fifth Amendment of the U.S. Constitution. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Id.*

90. Petitioner has a fundamental interest in liberty and being free from official restraint. Civil detention that is unrelated to a valid regulatory purpose or excessive in relation to that purpose is punitive, in violation of substantive due process. *See Jones*, 393 F.3d at 934.

91. The government's arrest of Petitioner is untethered from any valid basis for civil immigration detention, is excessive in relation to any risk that does exist, and is therefore punitive in violation of substantive due process. Petitioner's continued detention is unlawful and violates due process.

92. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

93. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

94. Respondents' wrongful dismissal of Petitioner's affirmative asylum application and subsequent referral to the expedited removal process deprives Petitioner of due process by placing him in limbo without any process at all.

COUNT III

Arbitrary and Capricious Agency Action (APA, 5 U.S.C. § 706)

95. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

96. Respondents DHS and ICE acted arbitrarily, capriciously, and contrary to law when they detained Petitioner and failed to consider the totality of his immigration history, his pending asylum application.

97. By detaining Petitioner, without to considering the totality of his immigration history, his pending asylum application, Respondents acted in a manner that was arbitrary, capricious, and an abuse of discretion, in violation of 5 U.S.C. § 706(2)(A).

98. Respondents' conduct further violates administrative due process and the Fifth Amendment, as they failed to provide Petitioner with notice, a meaningful opportunity to respond, or any fair consideration of his pending application.

99. The government's inconsistent and self-contradictory treatment, without

considering Petitioner's immigration history constitutes a fundamental violation of due process and administrative fairness that warrants judicial correction under the APA and the Constitution.

100. Respondents failed to comply with their obligations under the APA when they dismissed Petitioner's asylum application. The Dismissal Notice stated that Petitioner had been "apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal." But Petitioner has not received a complete Notice and Order of Expedited Removal. In fact, Petitioner is not eligible to be in expedited removal because he was paroled into the United States, so application of that process to him is unlawful. 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

101. Second, USCIS's divestment of their own jurisdiction to adjudicate Petitioner's application contravenes the law. Once he was physically present in the United States, and he timely submitted his application for affirmative asylum which USCIS accepted and deemed complete, USCIS was required to adjudicate his application, and Petitioner is entitled to an asylum interview with a USCIS officer. 8 C.F.R. § 208.9.

102. By dismissing Petitioner's application, Respondents acted contrary to the requirements of the APA, statutory law, and government regulations, rendering the dismissals arbitrary, capricious, and unlawful under the APA.

103. As a result, Respondents have caused and will continue to cause Petitioner to suffer irreparable injury by depriving him of his statutory rights to have his affirmative asylum application adjudicated.

104. Petitioner is entitled to injunctive relief to avoid any further injury.

COUNT IV
Violation of the INA

105. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

106. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

107. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the Court to:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside of the District of Northern California and the United States while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Enjoin ICE from re-arresting Petitioner unless and until a hearing can be held before a neutral adjudicator to determine whether his re-detention

would be lawful and whether the government has shown that she is a danger or a flight risk by clear and convincing evidence;

e. Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

f. Direct Respondents to adjudicate Petitioner's affirmative asylum application before USCIS;

g. Issue a Writ of Habeas Corpus requiring that Respondents are enjoined from imposing additional conditions of release that were not imposed since his release from ICE custody in 2024;

h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

i. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: December 17, 2025

By: /s/ Connie Chan
Connie Chan
Attorney for Petitioner

PROOF OF SERVICE

I, the undersigned, declare that my office is in San Francisco, California. I am over the age of eighteen (18) years and not a party to the action within. My business address is 405 Sansome Street, 2nd Floor, San Francisco, CA 94111. On December 17, 2025, I served the following documents: **PETITION FOR WRIT OF HABEALS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** by placing a true and correct copy in a sealed envelope, each addressed as follows:

Christopher Chestnut
California City Detention Facility
22844 Virginia Boulevard
California City, CA 93505

Minga Wofford
Mesa Verde ICE Processing Facility
425 Golden State Ave
Bakersfield, CA 93301

Tonya Andrews
Golden State Annex Detention Facility
611 Frontage Rd.
McFarland, CA 93250

Sergio Albarran
San Francisco Field Office
U.S. Immigration and Customs Enforcement
630 Sansome Street
Rm 590
San Francisco, CA 94111

Todd M. Lyons
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Kristi Noem
U.S. Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

Pamela Jo Bondi
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Civil Process Clerk
United States Attorney's Office for the
Northern District of California
450 Golden Gate Avenue
P.O. Box 36055
San Francisco, CA 94102

By mail. I am readily familiar with the business for collection and processing of correspondence for mailing in the United States Postal Service and that this document, with postage fully prepaid, will be deposited with the United States Postal Service this date in the ordinary course of business.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on December 17, 2025, at San Francisco, California.

/s/ Connie Chan
Connie Chan