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**UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF CALIFORNIA**

RICARDO CHUZON HERNA,	)	CASE NO. 1:25-at-1331
	)	
Petitioner	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS; DECLARATORY
vs.	)	JUDGMENT AND APA RELIEF
	)	
CHRISTOPHER CHESTNUT,	)	ALIEN NUMBER: 
Warden, California City	)	
Correctional Facility; SERGIO	)	
ALBARRAN, Field Office	)	
Director of Enforcement and	)	
Removal Operations, San	)	
Francisco Field Office; TODD M.	)	
LYONS, Acting Director of the	)	
United States Immigration and	)	
Customs Enforcement; KRISTI	)	
NOEM, Secretary of the United	)	
States Department of Homeland	)	
Security; PAMELA JO BONDI,	)	
United States Attorney General, <i>in</i>	)	
<i>their official capacities,</i>	)	
	)	
Respondents	)	

I. INTRODUCTION

1. Petitioner Ricardo Chuzon Herna (“Mr. Chuzon”) or (“Petitioner”) is in the physical custody of Respondents at the California City Correctional Facility. He hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on November 19, 2025, without first being provided a due process hearing to determine whether his incarceration is justified.

2. Petitioner Ricardo Chuzon Herna is in the physical custody of Respondents at the California City Correctional Facility in California City, California.

3. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community. DHS will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention, and that re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

4. He entered the United States on August 31, 2024 without inspection and was released by the Enforcement and Removal Operations (“ERO” or “ICE”) and placed in removal proceedings under 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I).

5. 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.

6. Petitioner’s detention on this basis violates the plain language of the Immigration and

1 Nationality Act. Section 1225(b)(2)(A) and does not apply to individuals like Petitioner who
2 previously entered and are now residing in the United States. Instead, such individuals are
3 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
4 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
5 having entered the United States without inspection.

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

8 8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension
9 Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. §
10 1331 because this action arises under federal law, including the Immigration and Nationality Act,
11 8 U.S.C. § 1101, et seq., Administrative Procedure Act, 5 U.S.C. §§ 702-706, 28 U.S.C. § 1361,
12 2201-02 (Declaratory Judgment).

13 II. JURISDICTION AND VENUE

14 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §
15 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
16 Suspension Clause).

17 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
18 Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651, and Fifth Amendment of
19 the United States Constitution.

20 11. Venue is proper in the District of Eastern California because Petitioner is currently
21 detained at the California City Correctional Facility in California City, California, under color of
22 the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28
23 U.S.C. §§ 1391, 2241.
24

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

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

3 **III. REQUIREMENTS OF 28 U.S.C. § 2243**

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

8 14. Habeas corpus is "perhaps the most important writ known to the constitutional law . .
9 . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or
10 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the
11 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
12 receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208
13 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

14 **IV. PARTIES**

15 16. Petitioner Ricardo Chuzon Herna was detained on November 19, 2025 and remains in
17 immigration custody at the California City Correctional Facility in California City, California.

18 19. Respondent Christopher Chestnut is employed as the California City Correctional
19 Facility in California City, California, where Petitioner is detained. He has immediate physical
20 custody of Petitioner. He is sued in his official capacity.

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

25 18. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs

1 Enforcement. He is named in his official capacity.

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

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

6 **V. LEGAL FRAMEWORK**

7 **Right to a Hearing Prior to Re-detention**

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

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

14 23. Civil immigration detention must be justified by a permissible purpose, and must
15 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
16 permissible regulatory goals are "ensuring the appearance of [noncitizens] at future immigration
17 proceedings" and "preventing danger to the community." *Id.*; *see also Matter of Patel*, 17 I&N
18 Dec. 597, 666 (BIA 1976) ("[A noncitizen] generally is not and should not be detained or
19 required to post bond except on a finding that he is a threat to the national security, or that he is a
20 poor bail risk.") (internal citations omitted).

21 24. ICE's power to arrest a noncitizen who is at liberty is also constrained by the
22 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the
23 government's discretion to incarcerate non-citizens is always constrained by the requirements of
24 due process"). "It is well established that the Fifth Amendment entitles [noncitizens] to due
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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.”).

25. 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

26. 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).

27. 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

1 friends and to form the other enduring attachments of normal life.” *Id.* at 482. “[T]he liberty of a
2 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
3 termination inflicts a grievous loss on the parolee and often others.” *Id.* Therefore, “[b]y
4 whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
5 Amendment.” *Id.*

6 28. This basic principle—that individuals have a liberty interest in their conditional
7 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
8 occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152. Petitioner was in fact released
9 from custody and placed in removal proceedings. *See also, Hurd v. District of Columbia*, 864
10 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
11 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
12 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
13 and *Morrissey*, 408 U.S. at 482).

14 29. Procedural due process constrains governmental decision that deprive individuals
15 of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment.
16 *See Matthews v. Eldridge*, 424 U.S. 319,332 (1976) *see also Perry v. Sindermann*, 408 U.S. 593,
17 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of
18 entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a
19 right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*,
20 408 U.S. 564, 569-70 (1972).

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

6 31. In fact, an individual maintains a protected liberty interest in his freedom even
7 where he obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-*
8 *Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that
9 due process considerations support the notion that an inmate released on parole by mistake,
10 because he was serving a sentence that did not carry a possibility of parole, could not be re-
11 incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to
12 society, so it “would be inconsistent with fundamental principles of liberty and justice” to return
13 him to prison) (internal quotation marks and citation omitted).

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

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

9
10 **Petitioner’s Strong Interest in His Liberty Required a Hearing Before He Was**
11 **Incarcerated By ICE**

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

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

3 36. Importantly, the Supreme Court “usually has held that the Constitution requires some
4 kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*,
5 494 U.S. 113, 127 (1990) (emphasis in original). *Zinerman*, 494 U.S. at 128.

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

8 38. First, Petitioner’s private interest in his liberty is substantial. *See Foucha v.*
9 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core
10 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that
11 individuals released from serving a criminal sentence have a “valuable” liberty interest—even if
12 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the
13 interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g.,*
14 *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration detention, a
15 noncitizen’s interest in release on bond is “arguably greater than the interest of parolees in
16 *Morrissey*.”). Here, Petitioner’s interest is even more pronounced than the average noncitizen
17 given that he has been living in the United States ever since he was initially released from ICE
18 custody.
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20 39. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally
21 detain Petitioner without a hearing before a neutral adjudicator that would determine whether
22 detention serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533
23 U.S. at 690. These developments show that detention is likely not warranted.

24 40. DHS’s choice to detain Petitioner without a hearing has deprived him of his
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1 liberty and separated him from his family and community without any opportunity for Petitioner
2 to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-
3 SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at [her]
4 scheduled check-in without notice or hearing, and where compliance with release terms is in
5 dispute, and ordering immediate release and enjoining Respondents from re-detention without a
6 pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show
7 by clear and convincing evidence that petitioner is a flight risk or danger to the community);
8 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23,
9 2025) (same).

10
11 41. By contrast, the value of a deprivation hearing before a neutral decision-maker is
12 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,
13 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*
14 *Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous
15 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
16 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,
17 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than
18 ICE’s unilateral decision to produce accurate determinations regarding factual disputes, and to
19 determine whether Petitioner actually currently poses a flight risk or danger such that detention is
20 justified. *See, e.g., Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 (“At a hearing, a neutral
21 decisionmaker can consider all of the facts and evidence before him to determine whether
22 Petitioner in fact presents a risk of flight or dangerousness.”). Requiring such a hearing be held
23 before Petitioner is detained serves to protect his liberty interest, facilitate his right to counsel
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1 and to gather evidence, and ensure that ICE’s decision to incarcerate Petitioner’s release does not
2 evade review. *See Zinerman*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

3 42. Third, the government’s interest in detaining Petitioner without a hearing is low. The
4 government cannot plausibly assert it has any basis for detaining Petitioner now, when he has
5 lived in the community without incident for more than a year. In any event, providing Petitioner
6 with a hearing before this Court (or another neutral decisionmaker) to determine whether there is
7 evidence that Petitioner currently poses any risk of flight or danger to the community imposes a
8 de minimis, if any, burden on the government. Such a hearing is far less costly and burdensome
9 for the government than keeping Petitioner detained at what the Ninth Circuit described as a
10 “staggering” cost to the public of \$158 each day per detainee in 2017, “amounting to a total daily
11 cost of \$6.5 million” (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at
12 996.

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

17 44. At a pre-deprivation hearing, due process requires that the government justify re-
18 detention of Petitioner by clear and convincing evidence that he poses a flight risk or danger. *See*
19 *Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State in civil
20 proceedings in which the individual interests at stake . . . are both particularly important and
21 more substantial than mere loss of money.”) (internal quotation marks omitted); *Ixchop Perez v.*
22 *McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among
23 District Courts concluding that, “where . . . the government seeks to detain [a noncitizen]
24 pending removal proceedings, it bears the burden of proving that such detention is justified);
25

1 *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before
2 being returned to custody, ordering that the government bear the burden at the hearing by clear
3 and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

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

6 45. Here, Petitioner also timely filed his I-589 asylum application within one year of
7 entering the United States. At his routine ICE check-in, he was arrested without the opportunity
8 to fully exercise his due process rights.

9 46. To comport with due process, detention must bear a reasonable relationship to its two
10 regulatory purposes-to ensure the appearance of noncitizens at future hearings and to prevent
11 danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at
12 690-691 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*,
13 No.15-CIV-261, 2015 WL 1176706 at*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for
14 detention is required to be particularly strong once detention is presumptively unconstitutional.
15

16 47. The detention of Petitioner is arbitrary on its face. As ICE did not produce an arrest
17 warrant and arrested and jailed Petitioner despite not exercising a calculation about whether he
18 was a danger to the community or whether he was a flight risk. Without any explanation or new
19 basis why he is subject to detention-especially in light of the fact that he has a pending asylum
20 application, his continued detention is arbitrary and violates due process.

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

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

25 49. Once a determination to release an individual from custody is made, the release order

1 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C.
2 § 1226(b). For an individual who was once in custody, the Attorney General may take that
3 individual back into custody by revoking the individual's release when the facts and
4 circumstances warrant it.

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

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

10 52. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
11 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
12 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
13 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
14 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

18 54. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
19 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
20 104—208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
21 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
22 139 Stat. 3 (2025).

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

5 56. Thus, in the decades that followed, most people who entered without inspection and
6 were placed in standard removal proceedings received bond hearings, unless their criminal
7 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
8 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
9 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
10 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
11 “restates” the detention authority previously found at § 1252(a)).
12

13 57. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
14 rejected well-established understanding of the statutory framework and reversed decades of
15 practice.
16

17 58. The new policy, entitled “Interim Guidance Regarding Detention Authority for
18 Applicants for Admission,” claims that all persons who entered the United States without
19 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). *See*
20 Ex. 3. The policy applies regardless of when a person is apprehended, and affects those who
21 have resided in the United States for months, years, and even decades.

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

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

4 61. Even before ICE or the Board introduced these nationwide policies, IJs in the
5 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
6 entered the United States without inspection and who have since resided here. There, the U.S.
7 District Court in the Western District of Washington found that such a reading of the INA is
8 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
9 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
10 1239 (W.D. Wash. 2025).

11 62. Subsequently, court after court has adopted the same reading of the INA's detention
12 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-
13 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
14 11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
15 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
16 report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
17 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
18 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025
19 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
20 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
21 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025
22 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
23 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).

63. 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.

64. 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].”

65. 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

1 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
2 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
3 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
4 WL 1869299, at *7.

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

8 67. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
9 recently entered the United States. The statute’s entire framework is premised on inspections at
10 the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).
11 Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the
12 Nation’s borders and ports of entry, where the Government must determine whether a[]
13 [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
14 287 (2018).
15

16 VI. FACTS

17 68. Petitioner has resided in the United States since August 31, 2024.

18 69. DHS placed Petitioner in removal proceedings before the Immigration Court pursuant
19 to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8
20 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection and 8
21 U.S.C. § 1182(a)(7)(A)(i)(1).
22

23 70. Petitioner’s next Immigration Court master hearing is scheduled for January 12,
24 2026 at 1:00 PM.

25 71. Petitioner fears returning to Peru because he has suffered past persecution on account of his sexual orientation as a homosexual.

1 72. On November 19, 2025, Petitioner was arrested by ICE ERO officers during a
2 routine appointment that he had consistently attended.

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

5 **VII. CLAIMS FOR RELIEF**

6 **COUNT I**

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

9 74. Petitioner incorporates by reference the allegations of fact set forth in the preceding
10 paragraphs.

11 75. The Due Process Clause of the Fifth Amendment forbids the government from
12 depriving any “person” of liberty “without due process of law.” Fifth Amendment of the U.S.
13 Constitution.

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

17 **COUNT II**

18 **Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**
19 **Substantive Due Process**

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

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

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

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

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

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

13 COUNT III

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

15 83. Petitioner incorporates by reference the allegations of fact set forth in the
16 preceding paragraphs.

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

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

23 86. Respondents' conduct further violates administrative due process and the Fifth
24
25

1 Amendment, as they failed to provide Petitioner with notice, a meaningful opportunity to
2 respond, or any fair consideration of his pending application.

3 87. The government's inconsistent and self-contradictory treatment, without
4 considering is immigration history and pending applications constitutes a fundamental violation
5 of due process and administrative fairness that warrants judicial correction under the APA and
6 the Constitution.

7
8 **COUNT IV**
9 **Violation of the INA**

10 88. Petitioner incorporates by reference the allegations of fact set forth in the preceding
11 paragraphs.

12 89. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
13 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
14 relevant here, it does not apply to those who previously entered the country and have been
15 residing in the United States prior to being apprehended and placed in removal proceedings by
16 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §
17 1225(b)(1), § 1226(c), or § 1231.

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

20
21 **VIII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff respectfully requests the Court to:

- 23 a. Assume jurisdiction over this matter;
- 24 b. Order that Petitioner shall not be transferred outside of the District of
- 25 Eastern California 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. Declare Respondents' actions in re-detaining Petitioner on November 19, 2025 and continuing to detain him contrary to law;
- e. Issue a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from their custody;
- f. Order Respondents to provide Petitioner with a hearing before a neutral decisionmaker;
- g. Enjoin Respondents from causing Petitioner any additional harm during the pendency of this litigation, such as by transferring him farther away from his legal Counsel or placing him into solitary confinement;
- h. Declare that Petitioner's detention without an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;
- i. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner with no additional conditions of release that were not imposed prior to him detention in 2025;
- j. 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
- k. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: December 18, 2025

By: /s/ Arash Yasrebi
Arash Yasrebi
Attorney for Petitioner

PROOF OF SERVICE

I, the undersigned, declare that my office is in Oakland, California. I am over the age of eighteen (18) years and not a party to the action within. My business address is 1999 Harrison St 18th floor, Oakland, CA 94612. On December 18, 2025, I served the following documents:

PETITION FOR WRIT OF HABEAS 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

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
U.S. Attorney's Office
501 I Street, Suite 10-100
Sacramento, CA 95814

