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9 UNITED STATES DISTRICT COURT FOR  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 KAIFENG WANG,

13 Petitioner

14 vs.

15 Todd LYONS, Acting Director,  
16 Immigration and Customs  
17 Enforcement; Sergio  
18 ALBARRAN, Field Office  
19 Director of Enforcement and  
20 Removal Operations, San  
21 Francisco Field Office,  
22 Immigration and Customs  
23 Enforcement; Kristi NOEM,  
24 Secretary, U.S. Department of  
25 Homeland Security; U.S.  
DEPARTMENT OF  
HOMELAND SECURITY;  
Christopher 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:



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**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 neutral 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. On December 18, 2025, ICE detained Petitioner at a routine ICE check-in to renew his interim parole.

3. 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.

4. 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.

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

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

6 6. 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 7. 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 8. 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 9. 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 10. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the  
21 Respondents are employees or officers of the United States, acting in their official capacity, a  
22 substantial part of the events or omissions giving rise to the claim occurred in the Northern  
23 District of California, Mr. Wang is under the jurisdiction of the San Francisco ICE Field Office,  
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25

1 which is in the jurisdiction of the Northern District of California, and there is no real property  
2 involved in this action.

3 11. Venue is further proper because a substantial part of the events or omissions giving  
4 rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's  
5 custody. 28 U.S.C. § 1391(e).

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

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

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

17 **IV. PARTIES**

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

20 15. Respondent Sergio Albarran is the Director of the San Francisco Field Office of  
21 ICE's Enforcement and Removal Operations division. As such, Sergio Albarran is Petitioner's  
22 immediate custodian and is responsible for Petitioner's detention and removal. He is named in  
23 his official capacity.  
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1 16. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs  
2 Enforcement. He is named in his official capacity.

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

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

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

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

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

16  
17 **V. LEGAL FRAMEWORK**

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

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

22 23. The Due Process Clause of the Fifth Amendment makes it unlawful for  
23 Respondents to detain Petitioner without first providing a hearing before a neutral decision  
24 maker to determine whether detention is justified by a risk of flight or danger to the community  
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24. Civil immigration detention must be justified by a permissible purpose, and must

1 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two  
2 permissible regulatory goals are “ensuring the appearance of [noncitizens] at future immigration  
3 proceedings” and “preventing danger to the community.” *Id.*; *see also Matter of Patel*, 17 I&N  
4 Dec. 597, 666 (BIA 1976) (“[A noncitizen] generally is not and should not be detained or  
5 required to post bond except on a finding that he is a threat to the national security, or that he is a  
6 poor bail risk.”) (internal citations omitted).

7  
8 25. ICE’s power to arrest a noncitizen who is at liberty is also constrained by the  
9 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the  
10 government’s discretion to incarcerate non-citizens is always constrained by the requirements of  
11 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due  
12 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting  
13 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government  
14 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the  
15 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718  
16 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against  
17 unlawful or arbitrary personal restraint or detention.”).

18  
19 26. Federal district courts in California have repeatedly recognized that the demands  
20 of due process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole  
21 both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-  
22 detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v.*  
23 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020  
24 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,  
25 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021).

1 **Petitioner’s Protected Liberty Interest in His Conditional Release**

2 27. Petitioner’s liberty from immigration custody and his weighty interest in  
3 avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690  
4 (“Freedom from imprisonment...lies at the heart of the liberty” that the Due Process Clause  
5 protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a  
6 protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47  
7 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

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

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

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

5 31. Procedural due process constrains governmental decision that deprive individuals  
6 of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment.  
7 *See Mathews v. Eldridge*, 424 U.S. 319,332 (1976) *see also Perry v. Sindermann*, 408 U.S. 593,  
8 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of  
9 entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a  
10 right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*,  
11 408 U.S. 564, 569-70 (1972).

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

22 33. In fact, an individual maintains a protected liberty interest in his freedom even  
23 where he obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-*  
24 *Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that  
25 due process considerations support the notion that an inmate released on parole by mistake,

1 because he was serving a sentence that did not carry a possibility of parole, could not be re-  
2 incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to  
3 society, so it “would be inconsistent with fundamental principles of liberty and justice” to return  
4 him to prison) (internal quotation marks and citation omitted).

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

10 35. Petitioner’s one year at liberty provides him a “a liberty interest that entitles him to  
11 constitutional due process before he is incarcerated.” *Hurd*, 864 F.3d at 683; *see also Gonzalez-*  
12 *Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring program had  
13 liberty interest protected by the Due Process Clause because the program “allowed the appellees  
14 to live with their loved ones, form relationships with neighbors, lay down roots in their  
15 community, and reside in a dwelling of their own choosing (albeit subject to certain limitations)  
16 rather than in a cell designated by the government.”); *see also Jorge M.F.*, 534 F. Supp. 3d at  
17 1054 (holding that released noncitizen made a substantial showing that he had liberty interest  
18 requiring pre-deprivation hearing before re-arrest, even after original bond order was reversed on  
19 appeal); *Duong*, 2025 U.S. Dist. LEXIS 185024, at \*13-14 (noncitizen released on *Zepeda-Rivas*  
20 bail order had strong liberty interest even after expiration of settlement agreement); *Carballo v.*  
21 *Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist. LEXIS 158839, at \*4 (E.D. Cal.,  
22 Aug. 15, 2025) (same).

1 **Petitioner’s Strong Interest in His Liberty Required a Hearing Before He Was**  
2 **Incarcerated By ICE**

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

11 37. Under the *Mathews* test, the Court balances three factors: “first, the private interest  
12 that will be affected by the official action; second, the risk of an erroneous deprivation of such  
13 interest through the procedures used, and the probative value, if any, of additional or substitute  
14 procedural safeguards; and finally the government’s interest, including the function involved and  
15 the fiscal and administrative burdens that the additional or substitute procedural requirements  
16 would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335  
17 (1976)).

18 38. Importantly, the Supreme Court “usually has held that the Constitution requires some  
19 kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*,  
20 494 U.S. 113, 127 (1990) (emphasis in original). *Zinerman*, 494 U.S. at 128.

21 39. Here, the *Mathews* factors all favor Petitioner and establish that the government was  
22 required to provide Petitioner notice and a hearing prior to any incarceration.  
23

24 40. First, Petitioner’s private interest in his liberty is substantial. *See Foucha v.*  
25

1 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core  
2 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that  
3 individuals released from serving a criminal sentence have a “valuable” liberty interest—even if  
4 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the  
5 interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g.*,  
6 *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration detention, a  
7 noncitizen’s interest in release on bond is “arguably greater than the interest of parolees in  
8 *Morrissey*.”). Here, Petitioner’s interest is even more pronounced than the average noncitizen  
9 given that he has been living in the United States ever since he was initially released from ICE  
10 custody.  
11

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

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

1 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23,  
2 2025) (same).

3 43. By contrast, the value of a deprivation hearing before a neutral decision-maker is  
4 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,  
5 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*  
6 *Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous  
7 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather  
8 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,  
9 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than  
10 ICE’s unilateral decision to produce accurate determinations regarding factual disputes, and to  
11 determine whether Petitioner actually currently poses a flight risk or danger such that detention is  
12 justified. *See, e.g., Doe*, 2025 U.S. Dist. LEXIS 37929, at \*15 (“At a hearing, a neutral  
13 decisionmaker can consider all of the facts and evidence before him to determine whether  
14 Petitioner in fact presents a risk of flight or dangerousness.”). Requiring such a hearing be held  
15 before Petitioner is detained serves to protect his liberty interest, facilitate his right to counsel  
16 and to gather evidence, and ensure that ICE’s decision to incarcerate Petitioner’s release does not  
17 evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

18  
19 44. Third, the government’s interest in detaining Petitioner without a hearing is low. The  
20 government cannot plausibly assert it has any basis for detaining Petitioner now, when he has  
21 lived in the community without incident for more than a year. In any event, providing Petitioner  
22 with a hearing before this Court (or another neutral decisionmaker) to determine whether there is  
23 evidence that Petitioner currently poses any risk of flight or danger to the community imposes a  
24 de minimis, if any, burden on the government. Such a hearing is far less costly and burdensome  
25

1 for the government than keeping Petitioner detained at what the Ninth Circuit described as a  
2 “staggering” cost to the public of \$158 each day per detainee in 2017, “amounting to a total daily  
3 cost of \$6.5 million” (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at  
4 996.

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

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

19  
20  
21 **Detention Bears No Reasonable Relationship to any Legitimate Purpose As Petitioner’s  
Removal is not Reasonably Foreseeable**

22 47. Here, Petitioner also timely filed his I-589 asylum application within one year of  
23 entering the United States. Petitioner was arrested at the ICE check-iun without the opportunity  
24 to fully exercise his due process rights.

25 48. To comport with due process, detention must bear a reasonable relationship to its two

1 regulatory purposes-to ensure the appearance of noncitizens at future hearings and to prevent  
2 danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at  
3 690-691 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*,  
4 No.15-CIV-261, 2015 WL 1176706 at\*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for  
5 detention is required to be particularly strong once detention is presumptively unconstitutional.

6  
7 49. The detention of Petitioner is arbitrary on its face. ICE must determine  
8 whether he was a danger to the community or whether he was a flight risk. Without any  
9 explanation or new basis why he is subject to detention, his detention is arbitrary and violates  
10 due process.

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

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

15 51. Once a determination to release an individual from custody is made, the release order  
16 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C.  
17 § 1226(b). For an individual who was once in custody, the Attorney General may take that  
18 individual back into custody by revoking the individual's release when the facts and  
19 circumstances warrant it.

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

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

25 54. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal

1 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
2 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
3 while noncitizens who have been arrested, charged with, or convicted of certain crimes are  
4 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

9 56. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
10 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
11 104--208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section  
12 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,  
13 139 Stat. 3 (2025).

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

19 58. Thus, in the decades that followed, most people who entered without inspection and  
20 were placed in standard removal proceedings received bond hearings, unless their criminal  
21 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
22 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
23 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)  
24  
25

1 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
2 “restates” the detention authority previously found at § 1252(a)).

3 59. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
4 rejected well-established understanding of the statutory framework and reversed decades of  
5 practice.

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

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

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

18 63. Even before ICE or the Board introduced these nationwide policies, IJs in the  
19 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
20 entered the United States without inspection and who have since resided here. There, the U.S.  
21 District Court in the Western District of Washington found that such a reading of the INA is  
22 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not  
23  
24  
25

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
2 1239 (W.D. Wash. 2025).

3 64. Subsequently, court after court has adopted the same reading of the INA's detention  
4 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-  
5 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-  
6 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*  
7 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),  
8 report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133  
9 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL  
10 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025  
11 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW  
12 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,  
13 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025  
14 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,  
15 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-  
16 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-  
17 KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051  
18 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v.*  
19 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);  
20 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
21 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.  
22 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.  
23 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.

1 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2  
2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §  
3 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL  
4 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
5 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

6 65. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it  
7 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
8 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.  
9

10 66. Section 1226(a) applies by default to all persons “pending a decision on whether the  
11 [noncitizen] is to be removed from the United States.” These removal hearings are held under §  
12 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

21 68. Section 1226 therefore leaves no doubt that it applies to people who face charges of  
22 being inadmissible to the United States, including those who are present without admission or  
23 parole.  
24

25 69. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who

1 recently entered the United States. The statute’s entire framework is premised on inspections at  
2 the border of people who are “seeking admission” to the United States. 8 U.S.C. §1225(b)(2)(A).  
3 Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the  
4 Nation’s borders and ports of entry, where the Government must determine whether a[]  
5 [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,  
6 287 (2018).

7  
8 **Respondents Improperly Dismissed Petitioner’s Asylum Application**

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

19 71. Credible fear interviews are intended to screen those in expedited removal  
20 proceedings to determine if they can proceed to present their asylum claim before either USCIS  
21 or the Executive Office of Immigration Review (“EOIR”). An asylum officer does not have the  
22 authority to grant asylum at a credible fear interview. The Dismissal Notice removes Petitioner  
23 from the procedurally protected affirmative asylum system and sends him backwards into a less  
24  
25

1 protected preliminary credible fear interview, a process intended only for those in expedited  
2 removal proceedings.

3 72. Petitioner has never received a completed Notice and Order of Expedited Removal.  
4

5 **VI. FACTS**

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

7 74. ICE arrested Petitioner at a routine check-in on December 18, 2025.

8 75. Petitioner is a native and citizen of China who entered the United States on November  
9 7, 2024 without inspection. On December 18, 2024, ICE granted him interim parole for a period  
10 of one year. On January 21, 2025, ICE issued Petitioner a notice notifying him to report to 630  
11 Sansome Street, San Francisco, CA 94111 for a check-in to re-issue a new interim parole.

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

14 77. Petitioner fears returning to China because he has suffered past persecution 

15  because they arrested, beat, and tortured him.

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

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

23 **VII. CLAIMS FOR RELIEF**

24 **COUNT I**

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

1  
2  
3  
80. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

4  
5  
6  
81. 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.

7  
8  
9  
82. 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.

10  
11  
12  
13  
83. 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.

14  
15  
**COUNT II**  
**Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**  
**Substantive Due Process**

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17  
84. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

18  
19  
20  
21  
85. 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.*

22  
23  
24  
25  
86. 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.

87. The government’s arrest of Petitioner is untethered from any valid basis for civil

1 immigration detention, is excessive in relation to any risk that does exist, and is therefore  
2 punitive in violation of substantive due process. Petitioner's continued detention is unlawful and  
3 violates due process.

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

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

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

12  
13 **COUNT III**

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

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

17 92. 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 93. 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 94. 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 95. The government's inconsistent and self-contradictory treatment, without  
4 considering Petitioner's immigration history constitutes a fundamental violation of due process  
5 and administrative fairness that warrants judicial correction under the APA and the Constitution.

6 96. Respondents failed to comply with their obligations under the APA when they  
7 dismissed Petitioner's asylum application. The Dismissal Notice stated that Petitioner had been  
8 "apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice  
9 and Order of Expedited Removal." But Petitioner has not received a complete Notice and Order  
10 of Expedited Removal. In fact, Petitioner is not eligible to be in expedited removal because he  
11 was paroled into the United States, so application of that process to him is unlawful. 8 U.S.C. §  
12 1225(b)(1)(A)(iii)(II).  
13

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

19 98. By dismissing Petitioner's application, Respondents acted contrary to the  
20 requirements of the APA, statutory law, and government regulations, rendering the dismissals  
21 arbitrary, capricious, and unlawful under the APA.  
22

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

1 100. Petitioner is entitled to injunctive relief to avoid any further injury.

2 **COUNT IV**  
3 **Violation of the INA**

4 101. Petitioner incorporates by reference the allegations of fact set forth in the  
5 preceding paragraphs.

6 102. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
7 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
8 relevant here, it does not apply to those who previously entered the country and have been  
9 residing in the United States prior to being apprehended and placed in removal proceedings by  
10 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §  
11 1225(b)(1), § 1226(c), or § 1231.  
12

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

15 **VIII. PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests the Court to:

- 17 a. Assume jurisdiction over this matter;
- 18 b. Order that Petitioner shall not be transferred outside of the District of  
19 Northern California and the United States while this habeas petition is  
20 pending;
- 21 c. Issue an Order to Show Cause ordering Respondents to show cause why  
22 this Petition should not be granted within three days;
- 23 d. Enjoin ICE from re-arresting Petitioner unless and until a hearing can be  
24 held before a neutral adjudicator to determine whether his re-detention  
25

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

- 3 e. Declare that Petitioner cannot be re-arrested unless and until he is  
4 afforded a hearing on the question of whether his re-incarceration would  
5 be lawful—i.e., whether the government has demonstrated to a neutral  
6 adjudicator that he is a danger or a flight risk by clear and convincing  
7 evidence;
- 8 f. Direct Respondents to adjudicate Petitioner’s affirmative asylum  
9 application before USCIS;
- 10 g. Issue a Writ of Habeas Corpus requiring that Respondents are enjoined  
11 from imposing additional conditions of release that were not imposed  
12 since his release from ICE custody in 2024;
- 13 h. Award Petitioner attorney’s fees and costs under the Equal Access to  
14 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other  
15 basis justified under law; and
- 16 i. Grant any other and further relief that this Court deems just and proper.  
17  
18

19 Respectfully submitted,

20 Date: December 18, 2025

21 By: /s/ Connie Chan  
22 Connie Chan  
23 Attorney for Petitioner  
24  
25

**PROOF OF SERVICE**

1  
2 I, the undersigned, declare that my office is in San Francisco, California. I am over the  
3 age of eighteen (18) years and not a party to the action within. My business address is 405  
4 Sansome Street, 2nd Floor, San Francisco, CA 94111. On December 18, 2025, I served the  
5 following documents: **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C.**  
6 **§ 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** by  
7 placing a true and correct copy in a sealed envelope, each addressed as follows:  
8

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

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

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

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

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

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

1 Pamela Jo Bondi  
2 950 Pennsylvania Avenue NW  
3 Washington, DC 20530-0001

4 Civil Process Clerk  
5 United States Attorney's Office for the  
6 Northern District of California  
7 450 Golden Gate Avenue  
8 P.O. Box 36055  
9 San Francisco, CA 94102

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

14 I declare under the penalty of perjury that the foregoing is true and correct. Executed on  
15 December 18, 2025, at San Francisco, California.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
/s/ Connie Chan  
Connie Chan