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6
7 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

8
9 HE, Dakun

Petitioner,

Case No. '26CV0680 DMS VET

10
11 v.

**PETITION FOR WRIT OF
HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

12 FIELD OFFICE DIRECTOR, Enforcement and
Removal Operations, San Diego Field Office,
13 Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
14 Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
15 U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; ACTING
16 WARDEN, IMPERIAL REGIONAL
DETENTION FACILITY,

17 *Respondents.*

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1 INTRODUCTION

2 1. Petitioner HE, Dakun(“ Petitioner”) is in the physical custody of Respondents at
3 the Imperial Regional Detention Facility. He now faces unlawful detention because the
4 Department of Homeland Security (DHS) and the Executive Office of Immigration Review
5 (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, *inter alia*, having entered the United States without
7 inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner’s removal proceeding, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 inspection—to be an “*applicant for admission*” under 8 U.S.C. § 1225(b)(2)(A) and therefore
13 subject to mandatory detention.

14 4. Petitioner sought a bond redetermination hearing before an immigration judge (IJ)
15 on two occasions, however, the IJ denied bond in decisions issued in June 2025 and January
16 2026, respectively. The IJ based this decision on the same legal analysis that the IJ has no
17 jurisdiction based on Matter of M-S- and Matter of Jurtado.

18 5. Moreover, the DHS policy states it was issued “*in coordination with the*
19 *Department of Justice (DOJ).*” The IJ concluded that, notwithstanding the fact that Petitioner
20 entered the United States on or about June 03, 2019, without inspection and has since been
21 paroled into the United States after posting a \$30,000 bond and lived in the United States for
22 nearly six years, during which time he raised a family, committed no crimes of any kind and was
23 gainfully employed.

1 **VENUE**

2 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
3 500 (1973), venue lies in the United States District Court for the Southern District of California,
4 the judicial district in which Petitioner currently is detained.

5 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
6 Respondents are employees, officers, and agencies of the United States, and because a
7 substantial part of the events or omissions giving rise to the claims occurred in California.

8 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

13 16. Habeas corpus is “perhaps the most important writ known to the constitutional
14 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
15 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
16 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
17 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
18 F.3d 1116, 1120 (9th Cir. 200

19 **PARTIES**

20 17. Petitioner HE, Dakun is a citizen of China who has been in immigration detention
21 since May 30, 2025. After arresting Petitioner at 15138 Valley Blvd, City of Industry, CA 91746,
22 ICE did not set bond, and Petitioner requested a review of his custody by an IJ. On June 24,
23 2025, Petitioner was denied bond by an IJ at the Imperial Immigration Court based upon, the
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1 reason was that the Immigration Judge lacked jurisdiction. On January 12, 2026, Petitioner was
2 denied bond by an IJ again at the Imperial Immigration Court, the reason this time was “*the*
3 *Respondent is not a member of the Bond Eligible Class.*”¹ Petitioner has resided in the United
4 States since June, 2019.

5 18. Respondent Field Office Director oversees the San Diego Field Office of ICE’s
6 Enforcement and Removal Operations division. As such, the Field Office Director is Petitioner’s
7 immediate custodian and is responsible for Petitioner’s detention and removal.

8 19. Respondent Kristi Noem is the Secretary of the Department of Homeland
9 Security. She is responsible for the implementation and enforcement of the Immigration and
10 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
11 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

12 20. Respondent Department of Homeland Security (DHS) is the federal agency
13 responsible for implementing and enforcing the INA, including the detention and removal of
14 noncitizens.

15 21. Respondent Pamela Bondi is the Attorney General of the United States. She is
16 responsible for the Department of Justice, of which the Executive Office for Immigration Review
17 and the immigration court system it operates is a component agency. She is sued in her official
18 capacity.

19 22. Respondent Executive Office for Immigration Review (EOIR) is the federal
20 agency responsible for implementing and enforcing the INA in removal proceedings, including
21 for custody redeterminations in bond hearings.

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¹ Court was referencing the US District Court decision issued by Federal Judge Sunshine in *Maldonado Baptista v. Santacruz, et al*, (CCD,2025)

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

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

13 32. 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 33. The new policy, entitled “*Interim Guidance Regarding Detention Authority for*
17 *Applicants for Admission*,”² claims that all persons who entered the United States without
18 inspection shall now be deemed “*applicants for admission*” under 8 U.S.C. § 1225, and therefore
19 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies
20 regardless of when a person is apprehended, and adversely impacts those, like Petitioner, who
21 have resided in the United States for months, years, and even decades.

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24 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

1 34. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals
2 (BIA), EOIR adopts this same position.³ *Matter of Jurtado*. That decision holds that all
3 noncitizens who entered the United States without admission or parole are considered applicants
4 for admission and are ineligible for immigration judge bond hearings.

5 35. ICE and EOIR have adopted this position even though federal courts have
6 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration
7 court stopped providing bond hearings for persons who entered the United States without
8 inspection and who have since resided here, the U.S. District Court in the Western District of
9 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §
10 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
11 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,
12 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass.
13 July 7, 2025) (granting habeas petition based on same conclusion).

14 36. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court
15 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),
16 applies to people like Petitioner.

17 37. Section 1226(a) applies by default to all persons "*pending a decision on whether*
18 *the [noncitizen] is to be removed from the United States.*" These removal hearings are held under
19 § 1229a, to "*decid[e] the inadmissibility or deportability of a[] [noncitizen].*"

20 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
21 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
22 (E)'s reference to such people makes clear that, by default, such people are afforded a bond
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24 ³ Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
2 creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions,
3 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove*
4 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

8 40. 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.

11 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
12 applies “*at the Nation’s borders and ports of entry, where the Government must determine*
13 *whether a[] [noncitizen] seeking to enter the country is admissible.*” *Jennings v. Rodriguez*, 583
14 U.S. 281, 287 (2018).

15 41. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
16 people like Petitioner, who have already entered and were residing in the United States at the
17 time they were apprehended.

18 **FACTS**

19 42. Petitioner has resided in the United States since July 03, 2019, and has lived in
20 [REDACTED] Rosemead, CA, 91770, for over 3 years, and lives in [REDACTED] Chino,
21 CA 91710, for over 3 years
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1 43. On May 31, 2025, Petitioner was arrested during an ICE raid at 15138 Valley
2 Blvd, City of Industry, CA 91746. Petitioner is now detained at the IMPERIAL REGIONAL
3 DETENTION FACILITY.

4 44. DHS placed Petitioner in removal proceedings before the Imperial Immigration
5 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being
6 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States
7 without inspection.

8 45. Petitioner has significant ties to the community in the United States. His parents are
9 all permanent residents, and his sister is a citizen of the United States. He is an individual who has
10 lived in the U.S. for over 6 years, integrated into the community, established residence, was
11 gainfully employed, and surrounded by his immediate relatives who are either U.S. citizens or
12 lawful permanent residents of the US, and was later taken into ICE custody. Petitioner is neither a
13 flight risk nor a danger to the community. At the time of his initial entry, the Respondent passed a
14 credible fear interview and was granted parole into the United. Thereafter, in accordance with ICE
15 requirements, the Respondent was fitted with an ankle monitor and has strictly complied with all
16 GPS monitoring and reporting requirements and was released from custody.

17 46. Following Petitioner's arrest and initial transfer to Imperial Regional Detention
18 Facility on June 2025, ICE issued a custody determination to continue Petitioner's detention
19 without an opportunity to post bond or be released on other conditions.

20 47. Petitioner subsequently requested a bond redetermination hearing before an IJ
21 twice.

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1 48. On June 24, 2025, an Imperial Immigration Court IJ issued a decision that the court
2 lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant
3 for admission under § 1225(b)(2)(A).

4 49. On January 12, 2026, an Imperial Immigration Court IJ issued the other decision
5 that the Respondent is not a member of the Bond Eligible Class under *Maldonado Bautista v.*
6 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, ECF No. 82 at *2, 14-15 (C.D. Cal. Nov. 25, 2025)

7 50. As a result, Petitioner remains in detention. Without relief from this court, he
8 faces the prospect of months or even years in immigration custody, separated from his family
9 and community.

10 51. Any appeal to the BIA is futile. DHS’s new policy was issued “*in coordination*
11 *with DOJ*,” which oversees the immigration courts. Further, as noted, the most recent BIA
12 decision on this issue held that persons like Petitioner are subject to mandatory detention as
13 applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the
14 Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner
15 are applicants for admission and subject to detention under § 1225(b)(2)(A). *See Mot. to*
16 *Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025),
17 Dkt. 49 at 27–31.

18 **CLAIMS FOR RELIEF**

19 **COUNT I**

20 **Violation of the INA**

21 52. Petitioner incorporates by reference the allegations of fact set forth in the
22 preceding paragraphs.
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1 53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
2 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
3 relevant here, it does not apply to those who previously entered the country and have been
4 residing in the United States prior to being apprehended and placed in removal proceedings by
5 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
6 § 1225(b)(1), § 1226(c), or § 1231.

7 54. There is a recent series of decision in a Fedral Court Central District Calif (Judge
8 Sunshine) in *Maldonado Baptista v Santacruz, et al* [decided after Jurtado] in Dec2025/ Jan
9 2026 finding that Respondents that were released and living in the US and now subject to interior
10 arrests are not deemed arriving and are entitled to Bond Hearing.

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

13 **COUNT II**

14 **Violation of Due Process**

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

17 57. The government may not deprive a person of life, liberty, or property without due
18 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government
19 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
20 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
21 (2001).

22 58. Petitioner has a fundamental interest in liberty and being free from official
23 restraint.

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

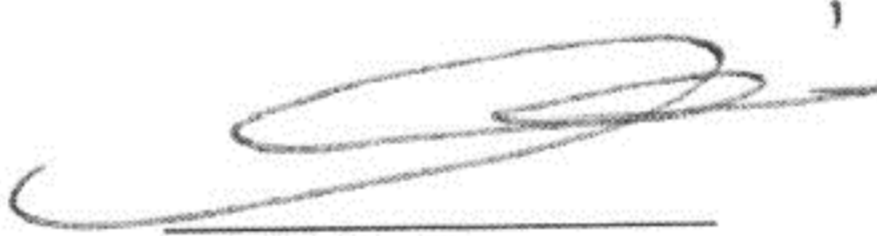
3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 5 a. Assume jurisdiction over this matter;
- 6 b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or
7 provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14
8 days;
- 9 c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
10 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
11 law; and
- 12 d. Grant any other and further relief that this Court deems just and proper.

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14 Respectfully submitted

15 DATED: February 03, 2026.

16 

17 Susan Qin Esq.
18 Law Office of Susan Qin, PC
19 *Attorney for Petitioner*

1 VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF

2 PURSUANT TO 28 U.S.C. § 2242

3 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's
4 attorney. I have discussed with the Petitioner the events described in this Petition. Based on those
5 discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas
6 Corpus are true and correct to the best of my knowledge.

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8 Date: February 03, 2026



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Susan Qin