

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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Yi XING,

Petitioner,

v.

Mary De Anda-Ybarra, in her official capacity as Director of U.S. Immigration and Customs Enforcement and Removal Operations, El Paso Field Office;
Kristi NOEM, in her official capacity as Secretary of Homeland Security; Pamela BONDI, in her official capacity as Attorney General of the United States; and Dora Castro, in her official capacity as Warden of the Otero County Processing Center

Case No.: 1:26-cv-00306

AMENDED VERIFIED EMERGENCY
PETITION

Respondents.

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**AMENDED VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
ON BEHALF OF PETITIONER PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Yi Xing ("Petitioner" or "Mr. Xing"), a citizen of the People's Republic of China with no criminal history and significant ties to the New York community, brings this Verified Emergency Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges his ongoing and arbitrary detention by U.S. Immigration and Customs Enforcement ("ICE") at the Otero County Processing Center in Chaparral, New Mexico. **Exhibit A.** *ICE Look-up Information.*

2. Mr. Xing has resided in the United States since March 2024, following his entry near Tecate, California. **Exhibit B.** *Notice to Appear.* For nearly two years, he has lived in Flushing, New York, where he is a devoted leader and interpreter for the Flushing 2nd Ward of the Church of Jesus Christ of Latter-day Saints. **Exhibit C.** *Supplemental Documents for Yi Xing's Individual Hearing.*

3. Despite his total compliance with all immigration requirements and the pending status of his meritorious asylum application, based on well-documented political and religious persecution in China, Mr. Xing was abruptly re-detained on November 19, 2025, during a routine ICE check-in.

4. The necessity of this emergency filing is underscored by the Immigration Court's recent and legally flawed denial of Petitioner's request for a custody redetermination on January 9, 2026 (**Exhibit D.** *Bond Request and Bond Decision*) and is further highlighted by Petitioner's upcoming Individual (Merits) Hearing, which is currently scheduled to take place on February 20, 2026, at 8:30 A.M. MT. **Exhibit E.** *Notice of Internet-Based Hearing.* On January 9, 2026, Immigration Judge Jacinto Palomino denied Mr. Xing's request for a change in custody status, explicitly citing *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The court concluded that it lacked jurisdiction

to grant bond because Petitioner, despite his nearly two-year residency in the United States, was reclassified as an "applicant for admission" subject to mandatory detention. **Exhibit D. Bond Request and Bond Decision.** However, this Court has definitively rejected the agency's position, stating that such an interpretation "collapses the statute's deliberate distinction between an 'applicant for admission' and an 'alien seeking admission'". As Chief Judge Kenneth J. Gonzales recently held in *Singh v. Noem*, No. 2:25-cv-01256, a noncitizen who has "effected an entry by living in the United States for several years" is "not seeking admission" and is therefore "entitled to a bond hearing under § 1226". Because the Board of Immigration Appeals' current policy has "rendered any attempt to seek relief directly from the agency futile," judicial intervention is mandated to prevent the "unlawful physical confinement" of an established community member. *Id.*

5. The Government's current "no-bond" policy, predicated on a strained reclassification of interior residents as "applicants for admission," is a radical departure from established law and a violation of the Fifth Amendment's guarantee against the deprivation of liberty without due process.

6. Because Mr. Xing is neither a flight risk nor a danger to the community, his continued detention is both unconstitutional and arbitrary.

7. Accordingly, Petitioner requests that this Court exercise its core habeas jurisdiction to restore his liberty, order his immediate release, or, in the alternative, compel Respondents to provide an individualized bond hearing before an Immigration Judge within seven days, as mandated by the precedent of this District.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq.

9. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. 12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained within the District of New Mexico and his immediate physical custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); see also *United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined.

12. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243


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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and

imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

15. Petitioner is “in custody” for the purpose of § 2241 because he is detained by Respondents at Otero County Processing Center, an immigration detention facility, in Chaparral, New Mexico. Petitioner is under the direct control of Respondents and their agents.

PARTIES

16. Petitioner Yi Xing (A# ) a native and citizen of the People's Republic of China, is lawfully present in the United States as an applicant for asylum, withholding of removal, and protection under the Convention Against Torture. He was detained by ICE at 26 Federal Plaza, New York, New York 10278. He is currently being held in the legal and physical custody of Respondent Dora Castro at the Otero County Processing Center in Chaparral, New Mexico.

17. Respondent MARY DE ANDA-YBARRA is the Field Office Director for the Enforcement and Removal Operations ("ERO") El Paso Field Office of U.S. Immigration and Customs Enforcement ("ICE"). As Field Office Director, she oversees ICE’s enforcement and removal operations in West Texas and New Mexico, including the Otero County Processing Center. She is a legal custodian of Petitioner and is sued in her official capacity.

18. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security ("DHS"). In this capacity, she oversees ICE and is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). Secretary Noem is the ultimate legal custodian of Petitioner and is sued in her official capacity.

19. Respondent PAMELA BONDI is the Attorney General of the United States. As Attorney General, she oversees the Executive Office for Immigration Review ("EOIR"), including the immigration court system and the Board of Immigration Appeals ("BIA"). She is

legally responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and is a legal custodian of Petitioner. She is sued in her official capacity.

20. Respondent DORA CASTRO is the Warden of the Otero County Processing Center. In this capacity, she is the immediate custodian of Petitioner and is responsible for his day-to-day incarceration. She is sued in her official capacity.

LEGAL FRAMEWORK

I. Statutory Authority for Habeas Corpus Review

21. Under 28 U.S.C. § 2241, federal district courts have the authority to grant a writ of habeas corpus to any person held "in custody in violation of the Constitution or laws or treaties of the United States". This review is the proper vehicle for noncitizens to challenge the lawfulness of their physical confinement by immigration authorities. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

II. The Two Distinct Detention Regimes Under the INA

22. The Immigration and Nationality Act ("INA") establishes two primary detention frameworks for noncitizens in removal proceedings: 1) Mandatory Detention under 8 U.S.C. § 1225(b)(2)(A): This provision applies to "applicants for admission" who are "seeking admission". Detention under this section is mandatory and does not afford the noncitizen a bond hearing. *See Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-01031-KG-JFR, 2025 WL 3187432, at *1 (D.N.M. Nov. 14, 2025). 2. Discretionary Detention under 8 U.S.C. § 1226(a): This provision applies to noncitizens "already in the country" who are pending a removal decision. Under this regime, noncitizens are entitled to individualized bond hearings at the outset of their detention to determine if they pose a danger or flight risk. *See Salazar v. Dedos*, No. 1:25-cv-00982-MLG-LF, 2025 WL 2676729, at *3 (D.N.M. Oct. 2, 2025).

III. The "Effected Entry" Standard in the District of New Mexico

23. This Court has repeatedly held that the mandatory detention mandate of § 1225(b)(2)(A) is narrow and applies only to those currently "taking active steps... to seek lawful entry". Noncitizens who have already "effected an entry" by living in the interior of the United States for an extended period are not "seeking admission" within the meaning of the statute. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Consequently, for individuals like Petitioner who have resided in the community for years, detention is governed by § 1226(a). This Court joins the "overwhelming majority" of district courts nationwide in rejecting the Government's attempt to reclassify established interior residents as border-style "applicants for admission" subject to bond-less detention. *See Singh v. Noem*, No. 2:25-cv-01256-KG-JFR, Doc. 9 at 3 (D.N.M. Jan. 30, 2026).

IV. The Burden of Proof in Bond Hearings

24. While a noncitizen typically bears the burden in a standard § 1226(a) hearing, this Court has ruled that where a Petitioner has been subject to unlawful mandatory detention, the burden shifts. In such cases, the Government must prove, by clear and convincing evidence, that the Petitioner is a flight risk or a danger to the community to justify continued custody. A noncitizen's "strong private interest in being free from civil detention" outweighs the Government's "comparatively minimal burden to justify custody". *See Pu Sacvin*, 2025 WL 3187432, at *3.

STATEMENT OF FACTS

25. Petitioner Yi Xing arrived in the United States near Tecate, California, on or about March 17, 2024. Upon arrival, he was processed by the Department of Homeland Security

("DHS") and subsequently released into the interior of the United States on his own recognizance.

26. For nearly two years, Mr. Xing has lived openly and lawfully in Flushing, New York, establishing deep ties to the community. He is a well-known member of his neighborhood and has resided at his current address without ever attempting to evade immigration authorities.

27. On May 17, 2024, Mr. Xing filed a meritorious Form I-589, Application for Asylum and for Withholding of Removal, detailing his well-founded fear of persecution in China due to his religious beliefs and anti-CCP activism.

28. Throughout his time in the United States, Mr. Xing has remained in total compliance with all DHS requirements, including attending every scheduled check-in with ICE Enforcement and Removal Operations ("ERO") in New York City.

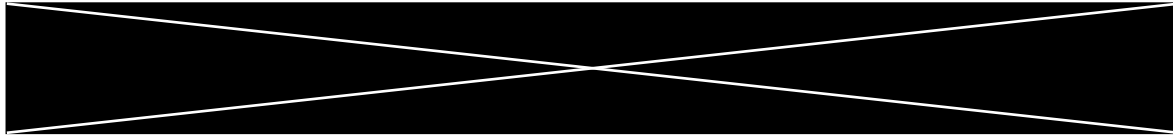
29. On November 19, 2025, during a routine, scheduled check-in in Manhattan, Petitioner was unexpectedly taken into custody by ICE officers.

30. Following his arrest, Petitioner was transferred halfway across the country to the Otero County Processing Center in New Mexico, effectively severing his immediate access to his New York-based legal counsel and community support network.

31. Mr. Xing has no criminal record in the United States or his native China. His behavior during his two-year residency has been exemplary.

32. Petitioner is a prominent and active member of the Flushing 2nd Ward of the Church of Jesus Christ of Latter-day Saints. He serves the congregation as a Mandarin interpreter and is a regular participant in church services and humanitarian activities.

33. His commitment to his legal case is evidenced by his proactive participation in



34. Given his deep religious community ties, his lack of criminal history, and his diligent pursuit of asylum, there is no evidence to suggest that Mr. Xing poses a flight risk or a danger to any person or property.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act (8 U.S.C. §§ 1225(b) and 1226(a))

35. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

36. Respondents have detained Petitioner under 8 U.S.C. § 1225(b), asserting that he is an "arriving alien" subject to mandatory detention without bond.

37. Under the plain language of the INA, the mandatory detention provision of § 1225(b)(2)(A) applies only to noncitizens "seeking admission" who have not yet "effected an entry" into the United States.

38. Because Petitioner has lived openly in the interior of the United States for nearly two years, he has effected an entry and is no longer "seeking admission" within the meaning of the statute.

39. Accordingly, Petitioner's detention is instead governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and authorizes release on bond or conditional parole.

40. By detaining Petitioner under the incorrect statutory authority and denying him a bond hearing, Respondents have acted in violation of the INA.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause (Procedural Due Process)

41. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

42. The Fifth Amendment's Due Process Clause prohibits the government from depriving any person of their liberty without due process of law.

43. Freedom from imprisonment lies at the heart of the liberty that the Due Process Clause protects.

44. In this District, due process requires that a noncitizen who has established deep roots in the community be afforded an individualized bond hearing to determine if their detention is reasonably necessary to ensure their appearance or the safety of the community.

45. By re-detaining Petitioner at a routine check-in without any change in circumstances or individualized finding of risk, and by holding him without a bond hearing, Respondents have violated Petitioner's procedural due process rights.

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause (Unlawful Burden of Proof)

46. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

47. Due process requires that when the government seeks to deprive an individual of their liberty through civil detention, the government must bear the burden of justifying that detention.

48. Under the prevailing law of this District, Respondents must justify Petitioner's continued detention by clear and convincing evidence that he is a flight risk or a danger to the community.

49. Respondents have failed to meet this burden and have instead subjected Petitioner to categorical, bond-less detention, thereby violating the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- 1) Grant the Writ of Habeas Corpus and assume jurisdiction over this matter;
- 2) Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and that his detention under 8 U.S.C. § 1225(b) is unlawful and in violation of the Fifth Amendment's Due Process Clause;
- 3) Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days of this Court's order;
- 4) Order that at said bond hearing, the Government shall bear the burden of proof to justify Petitioner's continued detention by clear and convincing evidence that he is either a flight risk or a danger to the community;
- 5) Order Petitioner's immediate release from custody if the Government fails to provide the required bond hearing within the specified seven-day timeframe;
- 6) Direct Respondents to file a status report with this Court within ten (10) days certifying whether a bond hearing was held and the outcome of said hearing;
- 7) Enjoin Respondents from transferring Petitioner out of the District of New Mexico or from removing him from the United States while this Petition is pending;
- 8) Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, and any other applicable law; and
- 9) Grant such other and further relief as this Court deems just and proper.

Date: February 6, 2026

Respectfully Submitted,

VIP LAW GROUP, PC

By: /s/ Guofeng Li

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

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

/s/ Guofeng Li
Guofeng Li

Date: February 6, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2026, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Guofeng Li
Guofeng Li

Date: February 6, 2026