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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 Yang SONG,

12 Petitioner-Plaintiff,

13 v.

14 Christopher J. LAROSE, Senior Warden,  
15 Otay Mesa Detention Center, San Diego,  
16 California;

17 Daniel A. BRIGHTMAN, Acting Field  
18 Office Director, San Diego Office of  
19 Detention and Removal, U.S.

20 Immigrations and Customs Enforcement;  
21 Todd M. LYONS, Acting Director,  
22 Immigration and Customs Enforcement,  
23 U.S. Department of Homeland Security;

24 Sirce OWEN, Acting Director for  
Executive Office for Immigration Review;  
Kristi NOEM, Secretary, U.S. Department  
of Homeland Security;

Pam BONDI, Attorney General of the  
United States;

Respondents-Defendants.

Case No.: '26CV0771 TWR MSB

**PETITION FOR WRIT OF HABEAS  
CORPUS AND ORDER TO SHOW  
CAUSE WITHIN THREE DAYS;  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

Agency File No.: 

1 Petitioner YANG SONG petitions this Court for a writ of habeas corpus under  
2 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4  
5 1. Petitioner, YANG SONG (“Mr. Song” or “Petitioner”), is a Chinese asylum seeker  
6 detained at the Otay Mesa Detention Center in San Diego, California. Petitioner, by and  
7 through his undersigned counsel, hereby files this petition for writ of habeas corpus and  
8 complaint for declaratory and injunctive relief to compel his immediate release from  
9 immigration detention where he has been held by the U.S. Department of Homeland  
10 Security (DHS) since being unlawfully re-detained on September 28, 2025, without first  
11 being provided a due process hearing to determine whether his incarceration is justified.  
12 Petitioner was previously released on July 2, 2023, by DHS on conditional parole  
13 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a  
14 flight risk nor a danger to the community.

15  
16 2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial  
17 check on Respondents’ administrative decisions to detain him under 8 U.S.C.  
18 § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioner is not an  
19 applicant for admission nor is he seeking admission. And because the government  
20 purports to hold him under § 1225(b)(2), it has not provided him with an individualized  
21 bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a),  
22 contravening his rights under the Immigration and Nationality Act and the Fifth  
23 Amendment’s Due Process Clause.

1 3. Petitioner seeks declaratory and injunctive relief to compel his immediate release  
2 from the immigration jail where he has been held by the U.S. Department of Homeland  
3 Security (DHS) since being unlawfully re-detained on September 28, 2025, without first  
4 being provided a due process hearing to determine whether his incarceration is justified.

5 4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's  
6 plight: Respondents will continue to detain him in violation of the law essentially  
7 indefinitely. He thus urges this Court to review the lawfulness of his detention; declare  
8 that his detention under 8 U.S.C. § 1225(b)(2) is unlawful; order either his immediate  
9 release or that, at a minimum, Respondents provide him a bond hearing complying with  
10 the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

11 5. Petitioner must be released from custody unless and until DHS proves to a neutral  
12 adjudicator, by clear and convincing evidence, material changed circumstances  
13 (including that he is a flight risk and/or a danger to the community) that would justify  
14 cancelling Petitioner's release from ICE custody on July 2, 2023 on conditional parole  
15 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a  
16 flight risk nor a danger to the community.

17 6. The Due Process clause of the Fifth Amendment, as well as statutory and  
18 regulatory authorities, require the government to provide noncitizens with notice and a  
19 hearing prior to re-detention. Here, Petitioner's rights were violated and continue to be  
20 each day he is detained.

21 ///

22 ///

1 **STATEMENT OF FACTS**

2 7. Mr. Song is a Chinese man who fled China due to being persecuted and tortured on  
3 account of his religion.

4 8. Mr. Song arrived in the United States on or about June 30, 2023, and entered the at  
5 unknown location in California, without inspection and without valid entry documents or  
6 a visa. Upon arrival, he walked up to border officials and informed them he had a fear to  
7 return to China.

8 9. Mr. Song was detained for three days by border patrol officials and he was then  
9 released on about July 2, 2023 on conditional parole pursuant to INA section 236  
10 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to  
11 the community that he could not be released on his own recognizance. On the same date,  
12 Mr. Song was issued a Notice to Appear (NTA) ordering him to appear before the Board  
13 of Immigration Appeals Court.  
14

15 10. The Form I-286, Notice of Custody Determination states in pertinent part as  
16 follows: “Pursuant to the authority contained in section 236 of the Immigration and  
17 Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined  
18 that, pending a final administrative determination in your case, you will be: ...  
19 Released ... on your own recognizance.” (conditional parole pursuant to INA section 236  
20 (8 U.S.C. § 1226)).  
21

22 11. The NTA issued to Mr. Song stated that he is an “alien present in the United States  
23 who has not been admitted or paroled” under Section 212(a)(6)(A)(i). After his release,  
24

1 Mr. Song' removal proceedings were assigned to the Board of Immigration Appeals  
2 Court.

3 12.Mr. Song not only complied with all conditions of his release on conditional  
4 parole, but he also attended all his court hearings, timely filed his application for asylum,  
5 attended his biometrics appointment, and otherwise obeyed all laws of the United States.  
6 He was issued a work permit as well as a U.S. Social Security Card and a California  
7 driver's license. Mr. Song is presently a partner and the chief chef at a Chinese restaurant.

8 13.Before his reincarceration on September 28, 2025, Mr. Song's immigration  
9 proceeding was pending before the Board of Immigration Appeals where it continues to  
10 be pending.

11 14.On September 28, 2025, Mr. Song was attending an airshow at the Marine Corps  
12 Air Station (MCAS) when the officers inquired about his immigration status, and when  
13 Mr. Song informed them that he was an asylum applicant and showed them his  
14 employment authorization card and driver's license, the officers contacted ICE and  
15 ordered him to wait. Upon arrival, ICE officers arrested Mr. Song. Mr. Song was arrested  
16 despite following all traffic and other laws and despite having a valid work permit and  
17 driver's license.

18 15.Mr. Song was re-detained by ICE officers without any notice or opportunity to be  
19 heard, or any showing of any changed circumstances. He was then transferred to the Otay  
20 Mesa Detention Center where he has been held ever since.  
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1 16. At the time he was re-detained, Mr. Song’ immigration court proceedings were  
2 pending before the Board of Immigration Appeals and he has timely filed his appeals  
3 brief, and the appeal remains pending.

4 17. Since his release on July 2, 2023 from ICE custody on conditional pursuant to INA  
5 section 236 (8 U.S.C. § 1226), Mr. Song has no criminal record and there have been no  
6 other changed circumstances from the time that he was initially apprehended and released  
7 justifying his apprehension. As stated above, Mr. Song attended all his ICE check-ins and  
8 court hearings.

9 18. Mr. Song has lived in the United States for over two years, during which he not  
10 only timely filed his asylum application and obtained his work permit, but he has also  
11 been working to support himself and his family. He has also developed community ties  
12 here in the United States, has obeyed all laws of the United States and has no criminal  
13 record.

14 19. In short, nothing has changed – let alone materially changed – since he was  
15 released on his own recognizance over two years ago on July 2, 2023 such that his  
16 current detention is justified.

17  
18  
19 **CUSTODY**

20 20. Petitioner is currently in Respondents’ legal and physical custody. They are  
21 detaining him at the at the Otay Mesa Detention Center in San Diego, California.  
22 CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents’  
23  
24

1 and their agents' direct control. Prior to his arrest and re-detention Petitioner was not  
2 provided with a constitutionally and statutorily compliant bond hearing.

### 3 JURISDICTION

4  
5 21. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United  
6 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'  
7 custody under the United States' color of authority, and such custody violates the United  
8 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's  
9 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,  
10 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;  
11 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),  
12 2241 (habeas corpus).

13  
14 22. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review  
15 Petitioner's re-detention without being provided an individualized bail hearing prior to  
16 his re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner's  
17 challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal  
18 district courts possess broad authority to issue writs of habeas corpus when a person is  
19 held "in custody in violation of the Constitution or laws or treaties of the United States"  
20 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges  
21 that survived the REAL ID Act's jurisdictional restrictions.

22  
23 23. Because Petitioner seeks the traditional habeas remedy of release from allegedly  
24 unlawful detention rather than additional administrative review of his underlying claims,

1 his petition presents precisely the type of threshold legality-of-detention question that §  
2 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also*  
3 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at  
4 1211-12)). And no court has ruled on the legality of Petitioner’s detention.

5  
6 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

12 25. Courts have long recognized the significance of the habeas statute in protecting  
13 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the  
14 most important writ known to the constitutional law of England, affording as it does a  
15 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,  
16 372 U.S. 391, 400 (1963) (emphasis added).

17 26. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs  
18 courts to give petitions for habeas corpus ‘special, preferential consideration to insure  
19 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.  
20 2000) (internal citations omitted). The Ninth Circuit warned against any action creating  
21 the perception “that courts are more concerned with efficient trial management than with  
22 the vindication of constitutional rights.” *Id.*

1 VENUE

2 27. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the  
3 Respondents are employees or officers of the United States, acting in their official  
4 capacity; because a substantial part of the events or omissions giving rise to the claim  
5 occur in San Diego County in the Southern District of California where Petitioner is  
6 currently detained, and because there is no real property involved in this action.  
7

8 INTRADISTRICT ASSIGNMENT

9 28. The decision to re-arrest and re-detain Petitioner was made by the San Diego field  
10 office of ICE, and until he was unlawfully re-detained by ICE, his case was pending  
11 before the Board of Immigration Appeals Court. He was then transferred to Otay Mesa  
12 Detention Center in San Diego, California.  
13

14 EXHAUSTION OF ADMINISTRATIVE REMEDIES

15 29. Petitioner requested a bond hearing before the Immigration Judge and on January  
16 28, 2026, the Immigration Judge denied bond based on lack of jurisdiction.

17 30. Furthermore, in habeas claims, exhaustion of administrative remedies is prudential,  
18 not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may  
19 waive the prudential exhaustion requirement if “administrative remedies are inadequate  
20 or not efficacious, pursuit of administrative remedies would be a futile gesture,  
21 irreparable injury will result, or the administrative proceedings would be void.” *Id.*  
22 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation  
23  
24

1 marks omitted)). Exhaustion should be waived because administrative remedies are (1)  
2 futile and (2) his continued detention results in irreparable harm.

3 31. Pursuant to the Board's recent precedential decisions in *Matter of Q. Li*, 29 I&N  
4 Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an  
5 immigration judge would not take jurisdiction over any custody redetermination hearing.  
6 Per those decisions, contravening decades of law and practice by Respondents, Petitioner  
7 is erroneously deemed an applicant for admission ineligible for a bond hearing before an  
8 immigration judge (IJ).  
9

10 32. No statutory exhaustion requirements apply to Petitioner's claim of unlawful  
11 custody in violation of his due process rights, and there are no administrative remedies  
12 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d  
13 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency  
14 does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*,  
15 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).  
16

17 33. Exhausting administrative remedies here is futile because Respondents contend  
18 Petitioner is subject to mandatory detention. As such, no parole request to release  
19 Petitioner from custody would be considered by ICE. Moreover, in contravention to the  
20 INA and long-standing precedent and practice, the Board of Immigration Appeals and  
21 Attorney General have deemed no noncitizen eligible for bond before an immigration  
22 judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any  
23 attempts to exhaust administrative remedies would be entirely futile.  
24

1 34. More importantly, every day that Petitioner remains detained causes him harm that  
2 cannot be repaired. His continued detention puts his physical and mental health at greater  
3 risk, further warranting a finding of irreparable harm and the waiver of the prudential  
4 exhaustion requirement. The Court must consider this in its irreparable harm analysis of  
5 the effects on him as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-  
6 07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that petitioner  
7 “continues to suffer significant psychological effects from his detention, including  
8 anxiety caused by the threats of other inmates and two suicide attempts,” in finding that  
9 petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).  
10

11 35. Health concerns are one factor the Court should consider in its irreparable harm  
12 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,  
13 No. 19-CV-07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that  
14 petitioner “continues to suffer significant psychological effects from his detention,  
15 including anxiety caused by the threats of other inmates and two suicide attempts,” in  
16 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion  
17 requirement).  
18

19 **PARTIES**

20 36. Petitioner Yang SONG is a Chinese asylum seeker. He fled China due to being  
21 persecuted and tortured on account of his religion. He is presently seeking asylum in the  
22 United States before the Executive Office for Immigration Review.  
23  
24

1 37. Petitioner is currently in Respondents' legal and physical custody at the Otay Mesa  
2 Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation,  
3 operates that facility.

4 38. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San  
5 Diego, California and is named in his official capacity. ICE is the component of DHS that  
6 is responsible for detaining and removing noncitizens according to immigration law and  
7 oversees custody determinations. In his official capacity, he is the legal custodian of  
8 Petitioner.

9 39. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his  
10 official capacity. Among other things, ICE is responsible for the administration and  
11 enforcement of the immigration laws, including the removal of noncitizens. In his official  
12 capacity as head of ICE, he is the legal custodian of Petitioner.

13 40. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official  
14 capacity. DHS is the federal agency encompassing ICE, which is responsible for the  
15 administration and enforcement of the INA and all other laws relating to the immigration  
16 of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the  
17 administration and enforcement of the immigration and naturalization laws pursuant to  
18 section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135  
19 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal  
20 custodian of Petitioner.  
21

22 41. Respondent Pam BONDI is the Attorney General of the United States and the most  
23 senior official in the U.S. Department of Justice (DOJ) and is named in her official  
24

1 capacity. She has the authority to interpret the immigration laws and adjudicate removal  
2 cases. The Attorney General delegates this responsibility to the Executive Office for  
3 Immigration Review (EOIR), which administers the immigration courts and the BIA.

4 42. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention  
5 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-  
6 to-day operations of the Otay Mesa Detention Center and acts at the Direction of  
7 Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a  
8 custodian of Petitioner and is named in their official capacity.  
9

## 10 LEGAL FRAMEWORK AND ANALYSIS

### 11 **Statutory Framework Regarding Re-Detention**

12 43. The Due Process clause of the Constitution, Congress's statutes and implementing  
13 regulations as well as precedential decisions narrow DHS's authority to unilaterally  
14 revoke any noncitizen's immigration bond or conditional parole and re-arrest the  
15 noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).  
16

17 44. ICE can release a noncitizen from custody after the noncitizen "demonstrate[s] to  
18 the satisfaction of the officer that such release would not pose a danger to property or  
19 persons" and that the noncitizen is "likely to appear for any future proceeding." §  
20 1236.1(c)(8).3 "Release [therefore] reflects a determination by the government that the  
21 noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F.  
22 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905  
23 F.3d 1137 (9th Cir. 2018).  
24

1 45. Petitioner was released from ICE custody on July 2, 2023, on conditional parole  
2 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a  
3 flight risk nor a danger to the community.

4 46. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since  
5 September 28, 2025, despite lacking authority to hold him under § 1225(b)(2), and  
6 without giving him an individualized bail hearing before a neutral adjudicator under §  
7 1226(a). That violates Petitioner's rights under the INA, the APA and the Fifth  
8 Amendment's Due Process Clause.  
9

10 47. Petitioner was arrested and is detained despite the fact that Respondents failed to  
11 provide him notice and a pre-deprivation hearing before a neutral arbiter demonstrating  
12 materially changed circumstances justifying his re-detention, and despite the fact that he  
13 is not an applicant for admission seeking admission to the United States as required by  
14 Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for over two years  
15 and as such is subject to Section 1226(a).  
16

17 **Materially Changed Circumstances – Right to a Hearing Prior to Re-**  
18 **incarceration.**

19 48. The Board of Immigration Appeals has clearly identified limits to DHS's authority  
20 to re-detain noncitizens: "where a previous bond determination has been made by an  
21 immigration judge, no change should be made by [the DHS] absent a change of  
22 circumstance," a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.  
23  
24

1 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir.  
2 2021)(“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

3 49.The government has further clarified in litigation that the showing of changed  
4 circumstances applies “both where the prior bond determination was made by an  
5 immigration judge *and* where the previous release decision was made by a DHS officer.”  
6 *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).  
7

8 50.Further, DHS has in practice limited its authority and “generally only re-arrests  
9 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances,” not just  
10 any changed circumstances. *Id.* (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90)  
11 (emphasis added).  
12

13 51.Guidance from *Matter of Sugay* and DHS practice alone —that ICE should not re-  
14 arrest a noncitizen absent changed circumstances— are insufficient to protect Petitioner’s  
15 weighty interest in his freedom from detention. Federal district courts in California have  
16 repeatedly recognized that the demands of due process and the limitations on DHS’s  
17 authority to revoke a noncitizen’s bond or parole require a pre-deprivation hearing for a  
18 noncitizen on bond, like Petitioner, before ICE re-detains him, to comport with the Due  
19 Process clause of the Constitution. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.  
20 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*  
21 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020);  
22 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2 (N.D. Cal.  
23 Mar. 1, 2021)  
24

1 52. Just in the last few months, several federal courts in California have agreed that  
2 immigration re-detention after being released in the community warrants a pre-  
3 deprivation hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.  
4 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.  
5 Cal. July 11, 2025); *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-  
6 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F.*  
7 *Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

9 53. It follows that prior to re-detaining Petitioner who had previously been released  
10 pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-detention  
11 hearing and notice of such hearing at which DHS had the burden of proving that  
12 Petitioner’s conditional parole should be canceled.

13  
14 54. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without  
15 having an immigration judge or a neutral adjudicator assess whether circumstances have  
16 materially changed since his release on July 2, 2023, on conditional parole pursuant to  
17 INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk  
18 nor a danger to the community..

19 **Petitioner’s due process rights**

20  
21 55. The government cannot deprive any person of “life, liberty, or property, without  
22 due process of law[.]” U.S. Const. Amend. V. Due process extends to “all ‘persons’  
23 within the United States, including [non-citizens], whether their presence here is lawful,  
24 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

1       **A. Petitioner’s Liberty Interest is protected**

2       56. “Freedom from imprisonment—from government custody, detention, or other  
3 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
4 protects.” *Zadvydas*, 533 U.S. at 690.

5       57. A continued liberty interest also exists where an individual was detained and is  
6 subsequently released, even if conditionally released and even when an initial decision to  
7 detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-  
8 82 (1972). “[S]ubject to the conditions of his parole, [a parolee] can be gainfully  
9 employed and is free to be with family and friends and to form the other enduring  
10 attachments of normal life.” *Id.* at 482. The parolee relies “on at least an implicit promise  
11 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The  
12 Court explained that “the liberty of a parolee, although indeterminate, includes many of  
13 the core values of unqualified liberty and its termination inflicts a grievous loss on the  
14 parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and  
15 must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at  
16 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed  
17 in a pre-parole program created to reduce prison overcrowding have a protected liberty  
18 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82  
19 (1973) (holding that individuals released on felony probation have a protected liberty  
20 interest requiring pre-deprivation process).  
21  
22  
23  
24

1 58. As the First Circuit has explained, when analyzing the issue of whether a specific  
2 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved  
3 the issue by comparing the specific conditional release in the case before them with the  
4 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,  
5 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*  
6 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person  
7 who is in fact free of physical confinement—even if that freedom is lawfully revocable—  
8 has a liberty interest that entitles him to constitutional due process before he is re-  
9 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,  
10 408 U.S. at 482).

11  
12 59. The protectable liberty interest created by conditional parole also applies to  
13 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is  
14 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d  
15 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a  
16 liberty interest, so too does [a noncitizen released from immigration detention] have a  
17 liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp.  
18 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves  
19 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at  
20 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at \*2  
21 (N.D. Cal. May 6, 2022).  
22  
23  
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1 60. The protected liberty interest is even more substantial when balancing the  
2 nonpunitive purpose of immigration detention against the “irreparable harms imposed on  
3 anyone subject to immigration detention,” including “subpar medical and psychiatric care  
4 in ICE detention facilities, the economic burdens imposed on detainees and their families  
5 as a result of detention, and the collateral harms to children of detainees whose parents  
6 are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

8 61. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the  
9 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the conditions  
10 of her release.’ The regulatory framework makes clear that those conditions [a]re that [the  
11 noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*,  
12 — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at \*8 (N.D.  
13 Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

15 62. A noncitizen released from custody pending removal proceedings therefore has a  
16 protected liberty interest in remaining out of custody. See *Diaz v. Kaiser*, No. 3:25-CV-  
17 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-  
18 02508, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022); see also *Ramirez Clavijo v.*  
19 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

21 63. Petitioner has a substantial liberty interest in not being detained. He has been living  
22 in the United States for over two years, has been working and supporting himself and has  
23 developed extensive community ties.

1 **B. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Arrest and**  
2 **Revocation of Parole**

3 64. “Adequate, or due, process depends upon the nature of the interest affected. The  
4 more important the interest and the greater the effect of its impairment, the greater the  
5 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*  
6 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at  
7 481-82). This Court must “balance [Petitioner’s] liberty interest against the  
8 [government’s] interest in the efficient administration of” its immigration laws in order to  
9 determine what process he is owed to ensure that ICE does not unconstitutionally deprive  
10 him of his liberty. *Id.* at 1357.

12 65. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth  
13 Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps  
14 the Court assess adequate safeguards: “[F]irst, the private interest that will be affected by  
15 the official action; second, the risk of an erroneous deprivation of such interest through  
16 the procedures used, and the probative value, if any, of additional or substitute procedural  
17 safeguards; and finally the government’s interest, including the function involved and the  
18 fiscal and administrative burdens that the additional or substitute procedural requirements  
19 would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

21 66. The Due Process Clause typically requires a hearing of some sort before the  
22 government may deprive a person of liberty. *Zinerman v. Burch*, 494 U.S. 113, 127  
23 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due  
24

1 process always requires, at a minimum, notice and an opportunity to respond.”). Post-  
2 deprivation remedies may satisfy the requirements of due process only in a “special case”  
3 where they are “the only remedies the State could be expected to provide” and where  
4 “one of the variables in the *Mathews* equation—the value of post deprivation  
5 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the  
6 State cannot be required constitutionally to do the impossible by providing post  
7 deprivation process.” *Zinermon*, 494 U.S. at 985.

9 **1. Petitioner has a substantial liberty interest in staying out of detention**

10 67. An individual's interest in not being detained is “the most elemental of liberty  
11 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578  
12 (2004). “Freedom from bodily restraint has always been at the core of the liberty  
13 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This  
14 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole  
15 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest  
16 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)  
17 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in  
18 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-  
19 06900, at \*5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025  
20 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the  
21 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).  
22  
23  
24

1       **2. There is a risk of erroneous deprivation that the additional procedural**  
2       **safeguard of a pre-detention hearing would help protect against.**

3       68. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it  
4       “does not eliminate its obligation to effectuate the detention in a manner that comports  
5       with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-  
6       05436-RFL, 2025 WL 1983677, at \*7 (N.D. Cal. July 17, 2025) (finding “undeniably  
7       stark” risk of erroneous deprivation where the Government contends that  
8       “notwithstanding a neutral arbiter’s determination that Petitioner should be released, ICE  
9       is entitled to unilaterally terminate the IJ’s order by re-detaining Petitioner without a  
10       hearing for at least six months, based on ICE’s own determination in its sole discretion  
11       that additional conditions of release unilaterally set by ICE had been violated”); *see also*  
12       *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

13       69. Where the petitioner “has not received any bond or custody ... hearing, the risk of  
14       an erroneous deprivation [of liberty] is high because neither the government nor  
15       [Petitioner] has had an opportunity to determine whether there is any valid basis for her  
16       detention.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025  
17       WL 2084921, at \*8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing  
18       significantly decreases that risk because the government has to prove to a neutral  
19       adjudicator by clear and convincing evidence that circumstances have materially changed  
20       to justify re-detention, and a hearing is likelier to produce accurate determinations  
21       regarding factual disputes, such as whether a certain occurrence constitutes a “changed  
22       regarding factual disputes, such as whether a certain occurrence constitutes a “changed  
23       regarding factual disputes, such as whether a certain occurrence constitutes a “changed  
24

1 circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989)  
2 (when “delicate judgments depending on credibility of witnesses and assessment of  
3 conditions not subject to measurement” are at issue, the “risk of error is considerable  
4 when just determinations are made after hearing only one side”).

5  
6 70. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be  
7 decreased where a neutral decisionmaker, rather than ICE alone, makes custody  
8 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.  
9 2011); see also *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*  
10 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge  
11 is one of the most basic due process protections.”)

12  
13 71. Any argument that noncitizens can request a custody determination hearing once  
14 re-detained goes against the due process safeguards envisioned in the Constitution,  
15 because such hearing happens after the fact and cannot prevent an erroneous deprivation  
16 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at \*3 (N.D.  
17 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond  
18 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already  
19 suffered the harm that is the subject of his motion: that is, his potentially erroneous  
20 detention.”). Further, custody determination hearings are routinely conducted in  
21 immigration court and this is not a “special case” that warrants post-deprivation remedies  
22 because other remedies are impractical the way it was in *Zinerman*.  
23  
24

1 72. Consequently ICE was required to provide Petitioner with notice and a hearing  
2 prior to any re-incarceration and revocation of his conditional parole. *See Morrissey*, 408  
3 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494  
4 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,  
5 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil  
6 commitment proceedings may not constitutionally be held in jail pending the  
7 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the  
8 balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation  
9 hearing before a neutral adjudicator, which ICE failed to provide.  
10

11 73. Further, immigration detention is civil (as opposed to criminal), and its primary  
12 purpose is to ensure a noncitizen’s appearance during removal proceedings and protect  
13 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,  
14 690, 697 (2001). Due process thus also requires consideration of alternatives to detention  
15 at any custody redetermination hearing that may occur, and where alternatives to  
16 detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v.*  
17 *Wolfish*, 441 U.S. 520, 538 (1979).  
18

19 **3. The government’s interest in detaining Petitioner is minimal, and in fact the**  
20 **procedural requirements of a hearing would promote judicial and**  
21 **administrative efficiency given the government’s limited resources**

22 74. The efficient allocation of the government’s limited fiscal resources further  
23 supports holding a hearing prior to re-detaining noncitizens. The “fiscal and  
24 administrative burdens” as a result of the due process safeguard are nonexistent. *See*

1 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long  
2 recognized that “[t]he costs to the public of immigration detention are ‘staggering,’”  
3 *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz*, 2025 WL 1676854, at  
4 \*3. In 2017 – with inflation numbers are likely higher today– immigration detention cost  
5 “\$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*,  
6 872 F.3d at 996. On the other hand, “[i]n immigration court, custody hearings are routine  
7 and impose a minimal cost.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-  
8 05632-PCP, 2025 WL 2084921, at \*10 (N.D. Cal. July 24, 2025) (citing *Singh v.*  
9 *Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at \*8 (E.D. Cal. July 11, 2025)). The  
10 cost of re-detaining an immigrant who was previously released “pending any bond  
11 hearing would significantly exceed the cost of providing [the immigrant] with a pre-  
12 detention hearing.” *Pinchi*, 2025 WL 2084921, at \*10.

13  
14  
15 75. ICE’s new policy to make a minimum number of arrests each day under the new  
16 administration<sup>1</sup> does not constitute a material change in circumstances and cannot stand  
17 to replace regulations enacted by Congress that allow the release of noncitizens in the  
18 first place. It is “arbitrary, capricious [and] an abuse of discretion” “in excess of statutory  
19 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-  
20 (C). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear  
21 and convincing evidence that her detention is necessary to prevent danger to the  
22

23  
24 <sup>1</sup> See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (September 28, 2025),  
available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 community or flight,” then the only potential injury the government faces is a short delay  
2 in detaining” Petitioner. *Pinchi*, 2025 WL 2084921, at \*12. “Faced with ... a conflict  
3 between minimally costly procedures and preventable human suffering, [the Court has]  
4 little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]  
5 favor.” (internal citations omitted). *Id.*

6  
7 76. Consequently the government’s interest in keeping Petitioner in detention without  
8 a due process hearing is outweighed by Petitioner’s significant private interest in his  
9 liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and  
10 until the government demonstrates by clear and convincing evidence that he is a flight  
11 risk or danger to the community. It becomes abundantly clear that the *Mathews* test  
12 favors Petitioner when the Court considers that the process Petitioner seeks—release  
13 from custody pending notice and a hearing regarding whether his conditional parole  
14 should be revoked and, if so, whether a new bond amount should be set—is a standard  
15 course of action for the government. In the alternative, providing Petitioner with a  
16 hearing before this Court (or a neutral decisionmaker) to determine whether there is clear  
17 and convincing evidence that Petitioner is a flight risk or danger to the community would  
18 impose only a *de minimis* burden on the government, because the government routinely  
19 provides this sort of hearing to detained individuals like Petitioner.  
20  
21

### 22 **Statutory Framework Regarding Detention – Section 1225 and Section 1226**

23 77. The Immigration and Nationality Act (INA) prescribes three basic forms of  
24 detention for noncitizens in removal proceedings.

1 78.First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-  
2 expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a.  
3 Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their  
4 detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been  
5 arrested, charged with, or convicted of certain crimes are subject to mandatory detention,  
6 see 8 U.S.C. § 1226(c).  
7

8 79.Second, the INA provides for mandatory detention of noncitizens subject to  
9 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking  
10 admission referred to under § 1225(b)(2).  
11

12 80.Last, the Act also provides for detention of noncitizens who have been previously  
13 ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C.  
14 § 1231(a)–(b).  
15

16 81.This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).  
17

18 82.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.  
20 No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–  
21 585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,  
22 Pub. L. No.119-1, 139 Stat. 3 (2025).  
23

24 83.Following enactment of the IIRIRA, EOIR drafted new regulations explaining that,  
in general, people who entered the country without inspection were not considered  
detained under § 1225 and that they were instead detained under § 1226(a). See

1 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct  
2 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 84. Thus, in the decades that followed, most people who entered without inspection—  
4 unless they were subject to some other detention authority—received bond hearings. That  
5 practice was consistent with many more decades of prior practice, in which noncitizens  
6 who were not deemed “arriving” were entitled to a custody hearing before an IJ or other  
7 hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at  
8 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously  
9 found at § 1252(a)).  
10

11 85. On May 15, 2025, the Board issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025)  
12 stating that an applicant for admission who is arrested and detained without a warrant  
13 while arriving in the United States, whether or not at a port of entry, and subsequently  
14 placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for  
15 any subsequent release on bond under 8 U.S.C. § 1226(a).  
16

17 86. On September 5, 2025, the Board of Immigration Appeals issued a precedent  
18 decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that  
19 noncitizens who entered the United States without inspection were ineligible for bond  
20 redetermination hearings because they were seeking admission, and fell within 8 U.S.C. §  
21 1225(b)(2)(A).  
22

23 87. This legal theory espoused by the BIA’s decisions in *Matter of Q Li* and *Matter of*  
24 *Yajure Hurtado* that noncitizens who entered the United States without admission or

1 parole are ineligible for bond hearings has been universally rejected by the district courts.  
2 *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at \*9 (W.D. Wash.  
3 Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL  
4 2591530, at \*3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-  
5 SKO (HC), 2025 WL 2617256, at \*9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*,  
6 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-  
7 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-  
8 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-  
9 01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No.  
10 4:25CV3172, 2025 WL 2531521, at \*2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No.  
11 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v.*  
12 *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*8 (E.D. Mich. Aug. 29, 2025);  
13 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at \*6 (D. Minn.  
14 Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at \*3 (W.D.  
15 La. Aug. 27, 2025) *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

18 88. The Board’s interpretation defies the INA. The plain text of the statutory  
19 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

20 89. Section 1226(a) applies by default to all persons “pending a decision on whether  
21 the [noncitizen] is to be removed from the United States.” These removal hearings are  
22 held under § 1229a, which “decid[e] the inadmissibility or deportability of a[ ]  
23 [noncitizen].”  
24

1 90. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
2 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).  
3 Subparagraph (E)’s reference to such people makes clear that, by default, such people are  
4 afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that  
5 it applies to people who face charges of being inadmissible to the United States,  
6 including those who are present without admission or parole.  
7

8 91. 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  
10 inspections at the border of people who are “seeking admission” to the United States. 8  
11 U.S.C. § 1225(b)(2)(A).

12 92. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that  
13 “the phrase ‘at the time of application for admission’...refers to the particular point in  
14 time when a noncitizen submits an application to physically enter into the United States.”  
15 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be measured at the  
16 point in time that an immigrant actually submits an application for entry into the United  
17 States.” *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only  
18 makes an application for admission when they seek permission to physically enter the  
19 United States. *Id.* at 924.  
20

21 93. In short, *Torres* clarified there is a temporal limitation to a classification of  
22 applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir.  
23  
24

1 2024) (stating that “Torres merely rejected the view that an alien remains in a perpetual  
2 state of applying for admission”).

3 94. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
4 people like Petitioner who are alleged to have entered the United States without  
5 admission or parole.

7 **FIRST CLAIM FOR RELIEF**  
8 **Due Process**  
9 **U.S. Const. amend. V**

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

12 96. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments  
13 refer to all “persons,” not just “citizens.” Aliens, even inadmissible or removable aliens,  
14 must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369  
15 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection  
16 of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are  
17 universal in their application, to all persons within the territorial jurisdiction, without  
18 regard to any differences of race, of color, or of nationality” *Id.* (emphasis added).

19 97. The Supreme Court has held that “even one whose presence in this country is  
20 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due  
21 Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz.*, 426 U.S.  
22 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status  
23 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that  
24

1 term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the  
2 territory of the United States... even aliens... [may not]... be deprived of life, liberty or  
3 property without due process of law.”).

4 98. Petitioner’s continued detention without any bond hearing violates his right to due  
5 process under the Fifth Amendment.

6 99. The Government may not deprive a person of life, liberty, or property without due  
7 process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government  
8 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that  
9 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

10 100. Petitioner has a vested liberty interest in his conditional release. Due Process  
11 does not permit the government to strip him of that liberty without a hearing before this  
12 Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

13 101. Petitioner’s re-arrest without a hearing violated the Constitution both  
14 substantively, because Respondents have no valid interest in detaining him since  
15 circumstances have not changed, and procedurally, because he was not provided with a  
16 pre-detention hearing.

17 102. Mr. Song poses no risk of flight and no danger to the community. He has no  
18 criminal history, has demonstrated compliance with all prior immigration requirements,  
19 and has community ties and support in the United States.

20 ///

21 ///

**SECOND CLAIM FOR RELIEF**

**Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2) Unlawful Denial of Bond**

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

104. Under the Administrative Procedures Act (“APA”), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a “satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made”).

105. A court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

106. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

1 107. The application of § 1225(b)(2) to bar Petitioner from receiving a bond  
2 redetermination hearing before an immigration judge is arbitrary, capricious, and not in  
3 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

4 **THIRD CLAIM FOR RELIEF**

5 **Statutory Violation – Petitioner’s Detention is in Violation of 8 U.S.C. § 1226(a)-(b)**

6 108. Petitioner re-alleges and incorporates by reference, as if fully set forth  
7 herein, the allegations in the paragraphs above.

8 109. Respondents lack statutory authority to detain Petitioner under 8 U.S.C.  
9 § 1225(b)(2), because that statute requires that the individual be an applicant for  
10 admission and seeking admission to the U.S.

11 110. As Petitioner does not meet these criteria, his detention must be governed by  
12 8 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to  
13 make an individualized custody determination.

14 111. Under § 1226(a), individuals may be detained as a matter of discretion,  
15 released on their own recognizance, or released on bond of at least \$1,500.

16 112. Respondents’ failure to apply the correct statutory framework violates the  
17 INA and exceeds the government’s detention authority.

18 113. Thus, Petitioner respectfully requests that this Court order his release from  
19 detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal  
20 proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court  
21 conduct an immediate bond hearing where DHS bears the burden of justifying  
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1 Petitioner’s continued detention by clear and convincing evidence and the Court takes  
2 into consideration alternatives to detention and Petitioner’s ability to pay a bond.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Mr. Song prays that this Court grant the following relief:

- 5 (1) Assume jurisdiction over this matter;
- 6 (2) Issue the writ of habeas corpus and order Respondents to show cause,  
7 within three days of Petitioner’s filing this petition, why the relief he  
8 seeks should not be granted; and set a hearing on this matter within five  
9 days of Respondents’ return on the order to show cause (*see* 28 U.S.C.  
10 § 2243);
- 11 (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction  
12 of the Southern District of California pending the resolution of this case;
- 13 (4) Issue a Writ of Habeas Corpus requiring Respondents to release  
14 Petitioner on the conditions of his prior conditional parole and to return  
15 Petitioner’s personal documents and possessions upon his release;
- 16 (5) Alternatively conduct an immediate bond hearing before this Court  
17 where DHS bears the burden of justifying Petitioner’s continued  
18 detention by clear and convincing evidence and the Court takes into  
19 consideration alternatives to detention and Petitioner’s ability to pay a  
20 bond;  
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(6) Award reasonable costs and attorney fees under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

(7) Grant such further relief as the Court deems just and proper.

Dated: February 6, 2026,

Respectfully submitted,

By: /s/ Bashir Ghazialam  
Bashir Ghazialam  
Attorneys for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner’s attorneys. I hereby verify under penalty of perjury pursuant to 28 U.S.C. § 2242 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Executed on this February 6, 2026, in San Diego, California.

/s/ Bashir Ghazialam  
Bashir Ghazialam  
Attorney for Petitioner

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