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7 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

8 KEVIN ALEXANDER PORTILLO
9 LUNA,

10 Petitioner,

11 v.

12 CHRISTOPHER J. LAROSE, et al.,

13 Respondents.
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Case No.: 26-CV-1645 TWR (AHG)

**PETITIONER'S TRAVERSE
IN SUPPORT OF HIS PETITION FOR
WRIT OF HABEAS CORPUS**

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1 **I. INTRODUCTION**

2 Respondents designated Petitioner as “an alien present in the United States who has not been
3 admitted or paroled.” Clearly showing that he is not an arriving alien and thus not subject to 8
4 U.S.C. §1225(b). When considering the statutory definitions of the INA and the plain text of 8
5 U.S.C. § 1225, it is unambiguous that “applicants for admission” do not include noncitizens already
6 in the United States like Petitioner.

7 To vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of
8 habeas corpus and order his immediate release from custody. Petitioner asks this Court to find that
9 his current detention is arbitrary and capricious and in violation of the law.

10 District courts within the Ninth Circuit have adopted the majority view that 8 U.S.C. § 1226,
11 and not 8 U.S.C. § 1225, applies to people similarly situated to Petitioner; and therefore, he is
12 entitled to the statutorily permitted process, including a bond hearing, at minimum.

13 Petitioner is requesting this Court to order his immediate release because this Court has the
14 authority to order such release; the vindication of his rights under a habeas corpus ordering a bond
15 hearing is unlikely due to DHS’ frivolous appeals or the immigration judges not acting as neutral
16 adjudicators; and his detention is in violation of his constitutional rights.

17 **II. ARGUMENT**

18 **A. THE APPLICABLE DETENTION STATUTE IS 8 U.S.C. §1226(A)**

19 On their Return, Respondents do not dispute that Petitioner was designated as “an alien
20 present in the United States who has not been admitted or paroled.” This designation was made by
21 the Respondents.

22 The statutory and regulatory framework governing immigration detention is complex.
23 “Where a [noncitizen] falls within this statutory scheme can affect whether his detention is
24

1 mandatory or discretionary, as well as the kind of review process available to him if he wishes to
2 contest the necessity of his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 9th Cir. 2008.

3 In cases involving “aliens” present in the United States, the majority view is that section
4 1226 rather than section 1225 of the 8 U.S.C. is the appropriate section to apply and have rejected
5 respondents’ argument that petitioner is an “applicant for admission” subject to mandatory
6 detention under 8 U.S.C. § 1225(b)(2).

7 In their Return, Respondents cite *Jennings* to justify Petitioner detention under 8 U.S.C. §
8 1225(b). But *Jennings* considered § 1226 as existing in harmony with § 1225(b)(2), where § 1226(a)
9 “authorizes the Government to detain certain [noncitizens] already in the country pending the
10 outcome of removal proceedings.” *Jennings* 583 U.S. at 289. The Ninth Circuit previously
11 concluded “permissive and mandatory descriptions are in harmony, as they apply to different
12 situations.” *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015).
13 Thus, Respondents’ expansive interpretation of “applicants for admission” would effectively
14 nullify a portion of the INA. Absent Congressional action that repeals and revises § 1226(a), the
15 directive that the Attorney General may release the noncitizen on bond or parole persists.
16 Accordingly, Respondents are violating the INA, as codified at 8 U.S.C. § 1226(a), by detaining
17 petitioner without a bond hearing. As the regulations provide, if a noncitizen wishes to contest the
18 initial custody determination—i.e., the denial or amount of bond—the noncitizen has a right to do
19 so before an immigration judge. 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Based on this clear violation
20 to the regulations, Petitioner asks this Court to find that his current detention is arbitrary and
21 capricious and in violation of the law, and therefore, this court should order his immediate release.

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23 /

1 **B. THE LACK OF A NEUTRAL ADJUDICATOR WILL RESULT IN THE**
2 **CONTINUING VIOLATION OF PETITIONER'S RIGHTS**

3 The Due Process Clause requires "the guarantee of an impartial and disinterested tribunal."
4 *Marshall v. Jerrica, Inc.*, 446 U.S. 238,242 (1980). Immigration judges, like other judicial officers,
5 have a "responsibility to function as neutral and impartial arbiters" and "must assiduously refrain
6 from becoming advocates for either party." *Aguilar-Solis v. I.N.S.*, 168 F.3d 565, 569 (1st Cir.
7 1999); *Elias v. Gonzales*, 490 F.3d 444,451 (6th Cir. 2007) ("An immigration judge has a
8 responsibility to function as a neutral, impartial arbiter and must refrain from taking on the role of
9 advocate for either party."); *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006) (noting the IJ's job
10 is to be neutral and not be an advocate for either party).

11 However, Respondents cannot guarantee an impartial tribunal at this time due to "the Trump
12 administration [push] to reshape America's immigration courts."¹ See Exhibit K. "Former
13 [immigration] judges call this a shrinkage of America's immigration courts that sends a clear
14 message from the Trump administration,"² as one former immigration judge commented "You are
15 telling every other [immigration] judge that is left that they better not be following the law or their
16 conscience; that they need to apply the law as you are interpreting it."³ "Ana Partida, a judge who
17 retired from the Otay Mesa court in San Diego in October [said] "I no longer felt that I had judicial
18 independence to conduct my courtroom and to make decisions under the law as I interpreted it.""⁴

19 We are seeing this disregard for the law from immigration judges even after a direct order
20 from a district court, as a local immigration attorney comments "[habeas] order was clear that 1.

21
22 ¹ Also available at: <https://www.npr.org/2026/02/23/g-s1-110911/trump-immigration-judges-dismissals-numbers> (last
23 visited on March 27, 2026).

24 ² *Id.*

³ *Id.*

⁴ *Id.*

1 DHS had the burden to prove; 2. by CLEAR and CONVINCING evidence. DHS offered no
2 evidence. Only offered argument as to flight risk, but NO EVIDENCE... Judge [] started asking
3 questions about length of detention and when the next hearing was ... I pointed out the district court
4 had already considered this and found that his detention was prolonged and that she was relitigating
5 that issue... Regardless, IJ found that client is a flight risk if he doesn't want to stay in jail for
6 another 6 weeks." See Exhibit L.

7 Additionally, DHS is reserving meritless appeals in all bonds granted, resulting in the
8 continued unlawful detention and violation of constitutional rights of people similarly situated to
9 Petitioner (i.e. "I just got done with a post habeas bond hearing where IJ [] granted my client a
10 \$1,500 bond... OPLA attorney [] said he would reserve appeal... [because] they received a directive
11 to appeal all decisions granting bond based on danger and flight risk... So DHS is now resorting to
12 filing frivolous appeals as a stall tactic." See Exhibit M.) Therefore, we request Petitioner's
13 immediate release.

14 Because Respondents cannot guarantee an impartial tribunal at this time, this Court should
15 order Petitioner's immediate release. Moreover, "Federal courts have a fair amount of flexibility"
16 in constructing a remedy. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). Furthermore, it is
17 well known that habeas corpus is "perhaps the most important writ known to the constitutional law
18 . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or
19 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). Therefore, this court should
20 order Petitioner's immediate release to avoid any further illegal confinement.

21 **C. PETITIONER'S DETENTION IS IN VIOLATION OF DUE PROCESS AND THIS**
22 **COURT SHOULD ORDER IMMEDIATE RELEASE IN HIS CASE**

23 The Due Process Clause applies to "all 'persons' within the United States, including
24 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*,

1 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary
2 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of
3 power without any reasonable justification in the service of a legitimate government objective,”
4 *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Immigration detention, which is “civil,
5 not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1)
6 dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690. The only legitimate interests that civil
7 immigration detention serves are mitigating the risk of flight and preventing danger to the
8 community. When these rationales are absent, immigration detention serves no legitimate
9 government purpose and becomes impermissibly punitive, violating a person’s substantive due
10 process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable
11 relation” to the government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*,
12 No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody
13 after finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates either that
14 the government acted with a punitive purpose or that it lacks any legitimate reason to detain him”).

15 Moreover, due process requires that government action be rational and non-arbitrary. *See*
16 *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain
17 individuals under 8 U.S.C. § 1226(a) this discretion is not “unlimited” and must comport with
18 constitutional due process. *See Zadvydas*, 533 U.S. at 698. Here, Respondents have chosen to ignore
19 Petitioner’s right to a bond hearing in an arbitrary manner and not based on a rational and
20 individualized determination of whether he is a safety or flight risk, in violation of due process.
21 Furthermore, Respondents have even taken away Petitioner’s right to present evidence in support
22 of his bond request, showing that in this present case, the government actions are not rational, and
23 the government has acted arbitrarily. Therefore, it is clear that Respondents’ detention of Petitioner
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1 violates his constitutional right to due process and this court should order his immediate release to
2 vindicate Petitioner's rights.

3 **D. THIS COURT SHOULD FIND THAT PETITIONER'S CURRENT DETENTION IS**
4 **AN ABUSE OF DISCRETION**

5 Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of
6 discretion. 5 U.S.C. § 706(2)(A). To survive an APA challenge, the agency must articulate "a
7 satisfactory explanation" for its action, "including a rational connection between the facts found
8 and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
9 In their Return, Respondents do not articulate a reason for denying Petitioner's bond hearing
10 without consideration of his individualized facts and circumstances, or for rejecting Petitioner's
11 evidence in support of his bond hearing and stating as rejection reasons ("1. No Pending Case. 2.
12 Rejection Reason Not Found (Other)") when, clearly, there was a case pending before the
13 immigration court. Respondents entirely failed to consider Petitioner's evidence in support of his
14 bond request clearly showing that Respondent's abused their discretion. More importantly, there is
15 no rational connection between the facts of the case, i.e. Petitioner being an alien present in the
16 United States without being admitted or paroled, and the choice made by the immigration judge of
17 denying bond because Petitioner is detained under 8 USC 1225(b) as an applicant for admission.

18 Because Respondents actions are an abuse of discretion, this Court should set aside their
19 actions and order Petitioner's immediate release.

20 **E. THIS COURT SHOULD FIND THAT PETITIONER'S CURRENT DETENTION IS**
21 **IN EXCESS OF STATUTORY AUTHORITY AND ORDER HIS IMMEDIATE**
22 **RELEASE**

23 Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance
24 with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or
limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

1 By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to
2 mandatory detention under § 1225(b)(2), Respondents violated Petitioner's statutory rights under
3 the INA. Therefore, the immigration judge's order is not in accordance with the law.

4 Respondents' detention of Petitioner under § 1225(b) is not in accordance with the law, is
5 contrary to Petitioner's due process right, and it is in excess of the authority provided to
6 Respondents by the INA, therefore, this court shall hold unlawful Respondents current detention of
7 the Petitioner and order his immediate release.

8 **III. CONCLUSION**

9 For all the above reasons, we respectfully request this Court to find that because Respondents
10 abused their discretion, acted in excess of their statutory authority, are violating Petitioner's
11 constitutionally protected due process, and cannot ensure Petitioner's case will be heard by a neutral
12 adjudicator, this Court should order Petitioner's immediate release and enjoin Respondents from re-
13 detaining Petitioner without a pre-deprivation hearing before a neutral adjudicator.

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15 Dated: March 30, 2026

16 Respectfully Submitted,

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