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6 **UNITED STATES DISTRICT COURT FOR THE**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 FEIXUE WU, an individual;

9 Petitioner,


10 v.

11 CHRISTOPHER LAROSE, Warden of Otay
12 Mesa Detention Center; PATRICK DIVVER,
Field Office Director of San Diego ICE Field
13 Office, U.S. Immigration and Customs
Enforcement, Enforcement and Removal
14 Operations; TODD LYONS, Acting Director,
U.S. Immigration and Customs Enforcement;
15 TODD BLANCHE, Acting Attorney General of
the United States; MARKWAYNE MULLIN,
16 Secretary of Homeland Security, in their official
capacities,

17 Respondents.
18
19

Case No. '26 CV2696 AGS BJW

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

20
21 Petitioner Feixue Wu ("Mr. Wu" or "Petitioner") (A-Number: ) petitions this
22 Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents detaining him
23 unlawfully, and states as follows:

24 **INTRODUCTION**

25 1. Petitioner is a citizen of the People's Republic of China detained at the Otay Mesa
26 Detention Center, San Diego, California. Petitioner, by and through his undersigned counsel,
27 hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive
28

1 relief to compel his immediate release from immigration detention where he has been held by the
2 U.S. Department of Homeland Security (“DHS”) since April 11, 2026, without being afforded a
3 bond hearing. Petitioner’s mandatory detention violates his right to due process.

4 2. Petitioner’s unlawful detention arises from the DHS’s new interpretation of the
5 Immigration and Nationality Act (“INA”), which was formalized by the Board of Immigration
6 Appeals (“BIA”) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this
7 interpretation, individuals who entered without inspection are categorically treated as “applicants
8 for admission” and subject to mandatory detention under INA §235(b)(2)(A).

9 3. Numerous district courts across the country rejected this interpretation and held that
10 the detention based on it is unlawful. *See e.g., Crispin M.C. v. Noem*, No. 1:25-cv-01487-KES-
11 HBK (HC), 2026 U.S. Dist. LEXIS 3729 (E.D. Cal. Jan. 8, 2026); *R.P.V. v. Wofford*, No. 1:26-cv-
12 01010 JLT EPG (HC), 2026 U.S. Dist. LEXIS 36618 (E.D. Cal. Feb. 20, 2026); *Velazquez-Beltran*
13 *v. Noem*, No. 3:26-cv-959-JES-MSB, 2026 U.S. Dist. LEXIS 39070 (S.D. Cal. Feb. 25, 2026);
14 *Simon v. Larose*, No. 3: 25-cv-3587-JES-VET, 2026 U.S. Dist. LEXIS 2712 (S.D. Cal. Jan. 7,
15 2026); *Lopez v. Larose*, No. 25-cv-2717-JES-AHG, 2025 U.S. Dist. LEXIS 214488 (S.D. Cal. Oct.
16 30, 2025); *Unavailable v. Noem*, No. 1:26-cv-0058 DAD AC, 2026 U.S. Dist. LEXIS 88414 (E.D.
17 Cal. Apr. 21, 2026).

18 4. The newly adopted interpretation bars noncitizens like Petitioner from seeking
19 release on bond under INA § 236 (8 U.S.C. § 1226).

20 5. Petitioner’s continued detention on this basis violates the plain text of the INA and
21 the constitutional guarantees of Due Process.

22 **CUSTODY**

23 6. Petitioner is currently in Respondents’ physical custody. Petitioner is detained at the
24 Otay Mesa Detention Center, San Diego, California. He is under Respondents’ and their agents’
25 direct control.

26 **JURISDICTION AND VENUE**

27 7. This Court has subject matter jurisdiction under 28 U.S.C. §2241, Article I, Section
28 9, Clause 2 of the United States Constitution (the “Suspension Clause”); and 28 U.S.C. §1331, as

1 Petitioner is presently in custody under the color of the authority of the United States, and such
2 custody violates the Constitution, law, or treaties of the United States. This Court may grant relief
3 pursuant to 28 U.S.C. § 2241.

4 8. The venue lies in the Southern District of California, the judicial district in which
5 Petitioner is currently detained. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
6 because Respondents are employees, officers, and agencies of the United States, and because a
7 substantial part of the events or omissions giving rise to the claims occurred in this District.

8 **THE PARTIES**

9 9. Petitioner is a Chinese citizen who entered the United States on or about August 5,
10 2023, without inspection.

11 10. Respondent CHRISTOPHER LAROSE is sued in his official capacity as Warden
12 of the Otay Mesa Detention Center. Respondent LAROSE is a legal custodian of Petitioner and has
13 the authority to release him.

14 11. Respondent PATRICK DIVVER is sued in his official capacity as Field Office
15 Director of San Diego ICE Field Office. Respondent DIVVER is a legal custodian of Petitioner and
16 has the authority to release him.

17 12. Respondent TODD LYONS is sued in his official capacity as Acting Director of
18 ICE. In this capacity, Respondent LYONS directs and oversees ICE's Enforcement and Removal
19 Operations, the component agency responsible for Petitioner's detention. Respondent LYONS is a
20 legal custodian of Petitioner and has the authority to release him.

21 13. Respondent MARKWAYNE MULLIN is sued in his official capacity as the
22 Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent
23 MULLIN is responsible for the implementation and enforcement of the INA and oversees ICE, the
24 component agency responsible for Petitioner's detention. Respondent MULLIN is a legal custodian
25 of Petitioner.

26 14. Respondent TODD BLANCHE sued in his official capacity as the Acting Attorney
27 General of the United States and the head of the U.S. Department of Justice ("DOJ"). In that
28 capacity, he oversees the Executive Office for Immigration Review ("EOIR"), which administers

1 the immigration courts and the Board of Immigration Appeals. Respondent BLANCHE is a legal
2 custodian of Petitioner.

3 **STATEMENT OF FACTS**

4 15. Mr. Wu entered the United States on or about August 5, 2023, without inspection.
5 He was not apprehended by immigration authorities at the time of entry and has continuously
6 resided in the United States since that time.

7 16. On or about December 6, 2023, Mr. Wu affirmatively filed an application for asylum
8 (Form I-589) with U.S. Citizenship and Immigration Services ("USCIS"). USCIS accepted the
9 application and issued a receipt notice. Mr. Wu was subsequently granted an Employment
10 Authorization Document and a Social Security card, authorizing him to work lawfully in the United
11 States.

12 17. Since that time, Mr. Wu has diligently and consistently worked to support himself,
13 paid taxes, studied English at Mt. San Antonio College, and lived openly and peacefully as a
14 contributing member of his community.

15 18. On or about April 11, 2026, while working as a food delivery driver, Mr. Wu
16 inadvertently entered a military base in Oceanside, California. He was detained by officers at the
17 base and subsequently transferred to ICE custody, where he has remained detained ever since.

18 19. On or about April 12, 2026, Mr. Wu was issued a Notice to Appear, alleging that he
19 is a noncitizen present in the United States who has not been admitted or paroled, and charging him
20 as removable under INA § 212(a)(6)(A)(i). He was then placed into removal proceedings under 8
21 U.S.C § 1229(a).

22 20. When Mr. Wu was taken into custody, ICE took his personal belongings, including
23 his Employment Authorization Document, Social Security card, and driver's license.

24 21. At no time prior to his detention was Mr. Wu provided with a bond hearing or any
25 opportunity to contest his detention beforehand. Nor was he presented with a warrant authorizing
26 his arrest at the time he was taken into custody.

27 22. To date, Petitioner has not been afforded a bond hearing.

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LEGAL FRAMEWORK

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2 23. The Constitution guarantees that the writ of habeas corpus is “available to every
3 individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing
4 U.S. Const., Art I, § 9, cl. 2). Section 2241 of Title 28 confers the federal courts with the power to
5 issue writs of habeas corpus to persons “in custody in violation of the Constitution or laws or treaties
6 of the United States.” 28 U.S.C. § 2241. This includes challenges by noncitizens in immigration
7 related matters. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); see also *A. A. R. P. v. Trump*,
8 145 S. Ct. 1364, 1367 (2025).

9 24. The INA, codified at 8 U.S.C. § 1101 et seq., establishes multiple statutory bases
10 for immigration detention. For decades, courts, Congress, and agencies have consistently
11 distinguished between two principal detention frameworks: 8 U.S.C §1225, which governs
12 applicants for admission encountered at or near the border, and 8 U.S.C §1226, which governs the
13 arrest and detention of individuals already present in the United States.

14 25. 8 U.S.C. § 1226(a) applies to noncitizens, like Petitioner, who entered the United
15 States years ago and were later apprehended in the interior, “pending a decision on whether the
16 [noncitizen] is to be removed from the United States.” Under § 1226(a), detention is
17 discretionary, and individuals may be released on bond or conditional parole as approved by the
18 Attorney General.

19 26. By contrast, § 1225(b) applies to individuals arriving in the United States and
20 seeking admission. It authorizes mandatory detention of “an alien who is an applicant for
21 admission” where the examining immigration officer determines that the individual is not “clearly
22 and beyond a doubt entitled to be admitted.” As the Supreme Court has explained, § 1225(b)
23 typically applies “at the Nation’s borders and ports of entry,” whereas § 1226 “authorizes the
24 Government to detain certain aliens already in the country pending the outcome of removal
25 proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018).

26 27. Consistent with this framework, for decades, individuals who entered without
27 inspection but resided in the United States and were later arrested in the interior were consistently
28 treated as subject to §1226(a)’s discretionary detention framework.

1 in the United States since 2023, and was present in the interior when he was apprehended in April,
2 2026. Petitioner's detention, accordingly, is governed by § 1226(a) rather than § 1225(b)(2). *See*
3 *Unavailable v. Noem*, No. 1:26-cv-0058 DAD AC, 2026 U.S. Dist. LEXIS 88414, at *6 (E.D. Cal.
4 Apr. 21, 2026) (found that “§ 1226(a) rather than § 1225(b)(2) applies to noncitizens living in the
5 United States who, prior to their current detention, had not been detained by immigration authorities
6 and are not subject to mandatory detention under § 1226(c) or post-removal order detention under
7 § 1231”).

8 33. Under § 1226(a), a noncitizen may be arrested on a warrant and would be entitled
9 to a bond hearing before an immigration judge and must be released if the noncitizen “does not
10 present a danger to persons or property, is not a threat to national security, and does not pose a
11 risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017).

12 34. When the ICE agents detained Petitioner, he was not presented with any warrant
13 authorizing the detention as required under § 1226(a). In addition, to date, Petitioner has not been
14 provided a bond hearing before an immigration judge.

15 35. By applying the incorrect statutory framework and refusing to provide Petitioner
16 with a bond hearing under § 1226(a), Respondents have violated the INA and exceeded their
17 lawful detention authority.

18 36. Accordingly, Petitioner respectfully requests that this Court order his release from
19 detention under 8 U.S.C. § 1226(a).

20 **COUNT TWO**

21 **(Violation of the Due Process Clause of the Fifth Amendment)**

22 37. Petitioner repeats and incorporates by reference the allegations set forth above.

23 38. “[O]nce an alien enters the country, the legal circumstance changes, for the Due
24 Process Clause applies to all ‘persons’ within the United States, including aliens, whether their
25 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693
26 (2001); *see also Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (“[I]t is well-established
27 that the Due Process Clause stands as a significant constraint on the manner in which the political
28 branches may exercise their plenary authority.”).

1 order Respondents to provide Petitioner with a bond hearing before an Immigration
2 Judge pursuant to 8 U.S.C. § 1226(a) within 7 days, with the Court specifying that, at
3 such hearing, the government bears the burden of establishing by clear and convincing
4 evidence that continued detention is justified;

- 5 7. Order Respondents to return all of Petitioner's personal belongings, including his
6 Employment Authorization Document and other identity documents;
- 7 8. Upon release, prohibit Respondents from imposing conditions of supervision more
8 restrictive than those previously in place, including the imposition of electronic
9 monitoring, absent a hearing consistent with due process;
- 10 9. Enjoin Respondents from transferring, re-arresting, or detaining Petitioner absent
11 lawful process, including a pre-deprivation hearing before a neutral decisionmaker at
12 which the government bears the burden of proof;
- 13 10. Require Respondents, should they choose to conduct such a hearing, to provide
14 Petitioner with reasonable advance notice of the time and place of the hearing;
- 15 11. Enjoin Petitioner's removal from the United States pending a final decision on this
16 habeas action;
- 17 12. Enjoin Petitioner's removal from the United States without meaningful notice and
18 opportunity to fully present a fear-based claim;
- 19 13. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and
20 on any other basis allowed by law;
- 21 14. Grant further relief as the Court finds just and proper.

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23 Dated: April 28, 2026

Juris Path Law Firm, PC

24
25 /s/Yunchao Song
26 Yunchao Song, Esq.
27 Attorney for Petitioner FeiXue Wu
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