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6 **Xiao Wu**

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9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Xiao Wu,

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12 Petitioner,

13 v.

14 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
15 Diego Field Office, Immigration and Customs
Enforcement; et al.

16 Respondents.
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Case No. 3:26-cv-03836-AGS-DEB

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

Petitioner Xiao Wu, through counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241 and alleges:

I. INTRODUCTION

1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because Petitioner is in federal immigration custody and is being detained in violation of the Constitution and laws of the United States.
2. Respondents' continued detention of Petitioner without a prompt and individualized custody determination violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.
3. Petitioner requests (a) expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. § 2243; (b) an order requiring a prompt individualized custody hearing (or other prompt individualized custody determination) with appropriate procedural safeguards; (c) release unless Respondents carry the applicable burden to justify continued detention; and (d) any further relief the Court deems just and proper.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is "in custody" under color of federal authority within this judicial district and alleges that such custody violates the Constitution and laws of the United States.
5. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
6. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.

7. Venue is proper in this District because Petitioner is detained within the South District of California.

III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

8. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show Cause “forthwith” unless it appears from the petition that Petitioner is not entitled to relief.

9. Habeas corpus is a fundamental mechanism for testing the legality of executive detention and provides a swift and imperative remedy for unlawful restraint of liberty.

IV. PARTIES

10. Petitioner Xiao Wu is detained by the Department of Homeland Security (“DHS”), through Immigration and Customs Enforcement (“ICE”), at OMDL.

11. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

12. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

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

V. FACTUAL BACKGROUND

14. Petitioner is a native and citizen of China.

15. On or about June 12, 2019, Petitioner entered the United States with his wife and son near Tecate, California. Approximately three hours after entering, Petitioner was apprehended by United States Border Patrol.

16. Petitioner was detained for approximately three days. Following his release, Petitioner and his family were transferred to a shelter in downtown San Diego, where they remained for approximately three months.

17. After leaving the shelter, Petitioner and his family were placed in a church in downtown San Diego, where they lived for approximately six months. They later rented a home in San Diego and lived there for less than two years before moving to Escondido, California, where they have continued to reside.

18. Following their release from immigration custody, Petitioner and his family complied with DHS and ICE reporting requirements. They initially reported once a week. Because they consistently complied, their reporting schedule was reduced to once a month.

19. Petitioner and his family continued reporting for approximately one year. ICE then removed Petitioner's GPS monitoring device and informed the family that they were no longer required to report.

20. Approximately one year after entering the United States, Petitioner received an Employment Authorization Document. While authorized to work, Petitioner was employed as a cook.

1 21. On or about February 15, 2024, Petitioner and his family submitted their application for
2 asylum.

3 22. On the evening of May 31, 2026, Petitioner was driving for Lyft when he mistakenly
4 entered Camp Pendleton through an incorrect entrance. At that time, his employment
5 authorization was no longer current.

6 23. Military personnel stopped Petitioner, requested his identification documents, and
7 questioned him for approximately 40 minutes. During the questioning, they asked
8 Petitioner about his immigration status.

9 24. Petitioner was then transferred to DHS and ICE custody. Despite his history of
10 complying with every prior reporting requirement, Petitioner has remained detained since
11 May 31, 2026.
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13 VI. LEGAL FRAMEWORK

14 25. Immigration detention is civil and nonpunitive in nature and may be imposed only to
15 serve legitimate regulatory purposes, such as ensuring appearance at removal proceedings
16 or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v.*
17 *Flores*, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these
18 purposes, or that lacks adequate procedural safeguards, violates due process.

19 26. Noncitizens in removal proceedings are entitled to the protections of the Due Process
20 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
21 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
22 the factual and legal basis for continued civil confinement before a neutral
23 decisionmaker.
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1 27. Where detention authority is exercised under 8 U.S.C. § 1226(a), custody determinations
2 must be individualized and must meaningfully assess whether continued detention is
3 necessary to address flight risk or danger to the community. The statute expressly
4 authorizes release on bond or conditional parole, and implementing regulations provide
5 for custody redetermination before an Immigration Judge. 8 U.S.C. § 1226(a); 8 C.F.R.
6 §§ 1236.1(d), 1003.19.

7 28. Even where DHS invokes authority to revoke a prior release under 8 U.S.C. § 1226(b),
8 such revocation must be based on individualized facts and exercised only by officials
9 authorized by regulation. 8 C.F.R. § 1236.1(c)(9). A categorical or automatic re-
10 detention, or a revocation undertaken without a reasoned, individualized assessment,
11 exceeds statutory and regulatory limits and is inconsistent with due process.

12 **VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)**

13 **Ground One: Violation of the Administrative Procedure Act (APA) Abuse of** 14 **Discretion Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)**

15 29. Petitioner incorporates by reference all preceding paragraphs.

16 30. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,
17 including custody maintained in violation of the Constitution or laws of the United States.
18 Petitioner also seeks relief under the Administrative Procedure Act, 5 U.S.C. § 701 et
19 seq. to the extent Respondents' custody decision constitutes reviewable agency action
20 and no other adequate remedy provides complete relief.

21 31. Under the APA, a reviewing court must "hold unlawful and set aside agency action"
22 found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
23 with law." 5 U.S.C. § 706(2)(A).
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1 32. Agency action is arbitrary and capricious where the agency fails to consider an important
2 aspect of the problem, offers an explanation that runs counter to the evidence, or reaches
3 a decision that is implausible in light of the record. *Motor Vehicle Mfrs. Ass'n of U.S.,*
4 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Nat'l Ass'n of Home Builders*
5 *v. Defs. of Wildlife*, 551 U.S. 644 (2007).

6 33. To satisfy APA review, the agency must provide a reasoned explanation reflecting a
7 rational connection between facts found and choices made. *Dep't of Com. v. New York*,
8 139 S. Ct. 2551 (2019).

9 34. Petitioner was previously released from immigration custody and later re-detained. On
10 information and belief, Respondents re-detained Petitioner and/or revoked Petitioner's
11 prior release determination without a reasoned, individualized assessment of Petitioner's
12 current circumstances, and without providing a meaningful custody determination
13 adequate to test whether confinement remains necessary.

14 35. On information and belief, Respondents' re-detention and continued detention operate in
15 practice as a categorical denial of individualized custody review (including by treating
16 parole as the only release mechanism, refusing neutral custody redetermination, or
17 otherwise maintaining detention without an individualized custody analysis), rather than
18 a reasoned exercise of discretion on Petitioner's facts.

19 36. If Respondents contend Petitioner's prior release was revoked pursuant to 8 U.S.C. §
20 1226(b), then the revocation had to be the product of an individualized exercise of
21 discretion within the limits set by statute and the implementing regulation, including the
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1 requirement that revocation authority be exercised only by the official(s) authorized
2 under 8 C.F.R. § 1236.1(c)(9).

3 37. By re-detaining Petitioner and maintaining custody without a reasoned, individualized
4 revocation decision and without procedures adequate to test the necessity of confinement
5 as applied, Respondents acted arbitrarily and capriciously and abused discretion in
6 violation of 5 U.S.C. § 706(2)(A).

7 38. Petitioner is entitled to habeas and APA relief setting aside the unlawful revocation/re-
8 detention decision as applied and ordering a prompt, individualized custody
9 determination by a neutral decisionmaker
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11 **Ground Two: Violation of the Administrative Procedure Act (APA) Not in**
12 **Accordance with Law / In Excess of Statutory Authority / Without Observance of**
13 **Procedure Required by Law Violation of 8 U.S.C. § 1226(b) and 8 C.F.R. §**
14 **1236.1(c)(9).**

15 39. Petitioner realleges and incorporates all preceding paragraphs.

16 40. The APA requires a court to set aside agency action that is “not in accordance with law,”
17 “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of
18 procedure required by law.” 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), 5 U.S.C. §
19 706(2)(D).

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21 41. To the extent Respondents purported to revoke a prior release determination under 8
22 U.S.C. § 1226(b), that revocation had to be (a) made on an individualized basis and (b)
23 made by the official(s) authorized to exercise revocation authority under 8 C.F.R. §
24 1236.1(c)(9).

1 42. On information and belief, Petitioner's custody posture has been determined, directed, or
2 maintained through a categorical practice, blanket rule, or non-authorized decisionmaker
3 rather than an individualized revocation decision by an authorized official consistent with
4 8 C.F.R. § 1236.1(c)(9).

5 43. As a result, Respondents' re-detention and continued detention are not in accordance with
6 law, are in excess of statutory authority, and/or were taken without observance of
7 required procedure, in violation of 5 U.S.C. § 706(2)(A), 5 U.S.C. § 706(2)(C), and 5
8 U.S.C. § 706(2)(D).

9 44. Petitioner is entitled to habeas and APA relief ordering Respondents to cure these legal
10 defects and provide a prompt, individualized custody determination consistent with
11 governing law
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13 **Ground Three: Violation of the Fifth Amendment Procedural Due Process (As-**
14 **Applied Challenge to Continued Civil Detention Without a Constitutionally**
15 **Adequate Custody Determination).**

16 45. Petitioner realleges and incorporates all preceding paragraphs.

17 46. The Due Process Clause prohibits the federal government from depriving any person of
18 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.
19 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993).
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21 47. The Supreme Court has held that the INA cannot be rewritten by statutory interpretation
22 to impose an automatic schedule of bond hearings; however, as-applied constitutional
23 challenges to immigration detention remain cognizable on the merits. *Jennings v.*
24 *Rodriguez*, 583 U.S. 131 (2018).

1 48. Petitioner is detained and has not received a prompt, individualized custody hearing
2 before a neutral adjudicator at which release on bond or conditions may be meaningfully
3 considered.

4 49. Because immigration detention is civil and nonpunitive, due process requires procedures
5 adequate to ensure detention remains justified as applied. At minimum, due process
6 requires a meaningful opportunity to contest the factual and legal basis for continued
7 confinement and to obtain an individualized determination whether continued detention
8 remains justified. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

9 50. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing framework, (a)
10 Petitioner's private liberty interest is substantial, (b) the risk of erroneous deprivation is
11 high absent an individualized, neutral custody determination, and (c) the Government's
12 interests can be served through less restrictive alternatives and conditions of release
13 where appropriate.

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15 51. Continued detention without a prompt, individualized, constitutionally adequate custody
16 determination violates the Due Process Clause as applied and warrants habeas relief
17 under 28 U.S.C. § 2241.

18 **VIII. REQUEST FOR RELIEF**

19 52. Petitioner respectfully requests that the Court:

- 20 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
21 respond forthwith;
22 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;
23 C. Order Petitioner released;
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1 D. In the alternative, Order Respondents to provide a prompt, individualized custody
2 determination before a neutral adjudicator that meaningfully considers whether continued
3 detention is justified and, if not, what conditions of release would reasonably address
4 flight risk or danger;

5 E. Award Petitioner attorneys' fees and costs to the extent permitted by law, including
6 under 28 U.S.C. § 2412; and

7 F. Grant such other and further relief as the Court deems just and proper.
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10 DATED this July 24, 2026.

11 /s/ Jose Torres
12 Jose Torres
13 *Counsel for Petitioner*
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