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

Zixing Yang,

Petitioner,

v.

Christopher LAROSE, the Warden of
the Otay Mesa Detention Center;

Gregory J. ARCHAMBEAULT, Field
Office Director, San Diego, Office of
Detention and Removal, U.S.

Immigration and Customs
Enforcement, U.S. Department of
Homeland Security;

Todd M. LYONS, Acting Director,
Immigration and Customs
Enforcement, U.S. Department of
Homeland Security;

Markwayne MULLIN, in the Official
Capacity, Secretary, U.S. Department
of Homeland Security; and

Todd BLANCHE, in the Official
Capacity, Attorney General of the
United States.

Respondents

NO. '26CV4296 BTM MSB

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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

**IMMEDIATE RELEASE
REQUESTED**

Asylum application pending
I-130 and I-485 pending

I. Introduction

1.
1. Petitioner Zixing Yang is a national of the People's Republic of China who came to the United States to seek asylum and who has done everything our laws ask of an asylum seeker. He entered lawfully on a B-1/B-2 visa on or about May 29, 2023. He filed an affirmative application for asylum on September 28, 2023, and that application remains pending. He was granted employment authorization, obtained a Social Security number, and has been working lawfully and living openly in the community for more than three years. On May 20, 2025, he married a United States citizen. On July 16, 2026, his wife filed an I-130 immigrant petition on his behalf and he concurrently filed an I-485 application to adjust status to lawful permanent residence; both remain pending. He has no criminal history of any kind.

2. On July 26, 2026, Petitioner was at work—delivering food as a rideshare and delivery driver—when ICE officers arrested him on the streets of San Diego. He was given no notice. He was given no hearing. No neutral decision-maker of any kind reviewed the decision to take away his liberty before it was taken. He has been confined at the Otay Mesa Detention Center ever since.

3. Petitioner was inspected and admitted at a port of entry on a valid visa, and he was arrested in the interior of the country while going about his work. He did not present himself for admission and has not departed the United States since his admission. He is therefore not an “arriving alien” or an applicant for admission under 8 U.S.C. § 1225. He is a lawfully admitted noncitizen, he is not subject to mandatory detention, and his detention is discretionary under 8 U.S.C. § 1226(a). A discretionary decision by the enforcing agency to seize a person who is living peaceably in the community—while both his asylum application and his adjustment-of-status application are pending—is precisely the kind of executive action the Due Process Clause was written to constrain.

4. “[A]bsent the necessity of quick action by the [Government] or the impracticality of providing any pre-deprivation process, a post-deprivation hearing would be constitutionally inadequate.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982) (citation and quotation marks omitted). Nothing about Mr. Yang’s arrest was quick, unexpected, or impracticable to plan around. He was a delivery driver who had lived openly for more than three years at an address the

1 Government holds in its own files across three separate pending applications; Respondents had
 2 every opportunity to give him notice and an opportunity to be heard before seizing him. They gave
 3 him neither.

4 5. Even if Respondents later provide a custody hearing, it will not cure the violation,
 5 and this Court should not order one. As district courts in this State have held on this precise question,
 6 “[a] post-detention bond hearing is insufficient to cure a violation of procedural due process arising
 7 from detention without a pre-deprivation hearing,” and “the appropriate remedy for the deprivation
 8 is release from custody.” *Mikayelyan v. Giles*, No. 5:26-cv-01035-SSS-DFM, Dkt. No. 19, at 3–4
 9 (C.D. Cal. May 20, 2026); *Zaitsev v. Warden, Adelanto*, 2026 WL 1047942, at 7 (C.D. Cal. Apr. 15,
 10 2026). *Indeed, on materially indistinguishable facts, a court in this Circuit very recently granted the*
 11 *writ and ordered release. See Dai v. Janecha*, No. 5:26-cv-03966-PD, Dkt. No. 10 (C.D. Cal. July 24,
 12 2026).

13 6. Mr. Yang does not ask this Court to order a bond hearing. He asks this Court to issue
 14 the writ and order his immediate release on reasonable conditions of supervision, and to bar
 15 Respondents from re-detaining him absent notice and a constitutionally adequate pre-deprivation
 16 hearing before a neutral adjudicator.

17 II. Jurisdiction

18 7. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus);
 19 U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause); 28 U.S.C. § 1331 (federal question); 28 U.S.C.
 20 § 1651 (the All Writs Act); and 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act). Petitioner is “in
 21 custody under or by color of the authority of the United States” and “in custody in violation of the
 22 Constitution or laws ... of the United States.” 28 U.S.C. § 2241(c)(1), (c)(3).

23 8. Federal courts retain jurisdiction under § 2241 to review the constitutionality of
 24 immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510,
 25 516–17 (2003); *INS v. St. Cyr*, 533 U.S. 289, 305 (2001). This Petition challenges only the
 26 lawfulness of Petitioner’s custody. It does not challenge a final order of removal—none exists—and
 27 the jurisdiction-channeling provisions of 8 U.S.C. § 1252 therefore do not bar this action. See
 28 *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018).

9. The Court is directed to grant the writ or issue an order to show cause “forthwith,” 28 U.S.C. § 2243, and to give habeas petitions “special, preferential consideration to ensure expeditious hearing and determination.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000). “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

III. Venue

10. Venue is proper in this district. A habeas petition challenging present physical confinement must be filed in the district of confinement and name the petitioner's immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 442–47 (2004). Petitioner is detained at the Otay Mesa Detention Center in San Diego County, which lies within the Southern District of California. 28 U.S.C. §§ 84(d), 2241(a).

IV. Parties

11. Petitioner Zixing Yang is a native and citizen of the People's Republic of China. He is detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154, under A# [REDACTED]

12. Respondent Christopher LaRose [confirm] is the Warden of the Otay Mesa Detention Center and is Petitioner's immediate custodian, with day-to-day control over the facility where he is confined. *Padilla*, 542 U.S. at 435.

13. Respondent Gregory J. Archambeault [confirm] is the Field Office Director of the ICE San Diego Field Office, Enforcement and Removal Operations, and is the ICE official with authority over Petitioner's detention and custody determinations. He is sued in his official capacity.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity.

15. Respondent Markwayne Mullin is the Secretary of Homeland Security and is sued in his official capacity. DHS encompasses ICE and is charged with administering and enforcing the immigration laws. See 8 U.S.C. § 1103(a).

V. Exhaustion of Administrative Remedies

18. Those conditions are met. The constitutional injury Petitioner alleges—deprivation of liberty without pre-deprivation process—is one the immigration courts have no jurisdiction to adjudicate and no power to remedy. An Immigration Judge cannot undo a completed constitutional violation or order release as a remedy for the denial of pre-deprivation process; the only relief the agency can offer is a custody redetermination—that is, more of the after-the-fact process that the case law holds insufficient to cure the injury. See *Zaitsev*, 2026 WL 1047942, at 7; *Zepeda Perez v. Santacruz*, 2026 WL 980492, at 5 (C.D. Cal. Apr. 9, 2026). Requiring exhaustion would also be futile and would compound the irreparable harm of each additional day of unlawful custody.

A. Lawful Entry, Pending Asylum Application, and Lawful Employment.

1 22. Consistent with his pending application, USCIS granted Petitioner employment
2 authorization, and he obtained a Social Security number. He has since lived openly at a known
3 address, worked lawfully as a rideshare and delivery driver, established community ties, and
4 maintained a spotless record with no criminal history whatsoever.

5 23. Petitioner has been awaiting adjudication of his asylum application. He intended, and
6 remains prepared, to appear whenever an interview or hearing is scheduled and to continue
7 prosecuting his asylum claim.

8 **B. Marriage to a United States Citizen and Pending Application to Adjust Status.**

9 24. On May 20, 2025, Petitioner married a United States citizen. Their marriage is bona
10 fide, and they have lived together as husband and wife since.

11 25. On July 16, 2026—ten days before his arrest—Petitioner’s U.S.-citizen spouse filed a
12 Form I-130, Petition for Alien Relative, on his behalf, and Petitioner concurrently filed a Form I-485,
13 Application to Register Permanent Residence or Adjust Status. Both applications remain pending
14 before USCIS.

15 26. Because Petitioner was inspected and admitted, he is prima facie eligible to adjust
16 status to lawful permanent residence as the immediate relative of a United States citizen. See 8
17 U.S.C. § 1255(a). He therefore has two independent, pending paths to lawful status, each of which
18 gives him every incentive to appear. Those same filings make him among the least likely of all
19 noncitizens to abscond: his address, employment, biometrics, and family relationships are all
20 documented in the Government’s own files.

21 **C. Petitioner’s Arrest While Working—Without Any Notice or Hearing.**

22 27. On July 26, 2026, Petitioner was working as a rideshare and delivery driver,
23 delivering food to a customer in San Diego, California, when ICE officers stopped and arrested him.
24

25 28. Petitioner was arrested without a judicial warrant, without any prior notice, and
26 without a hearing. No judge, no magistrate, and no Immigration Judge—no neutral decision-maker
27 of any kind—reviewed the decision to deprive him of his liberty before it was taken.

28 29. Petitioner was arrested in the interior of the United States, on a city street, in the
ordinary course of his work. He did not present himself at any border or port of entry seeking

1 admission, and he has not departed the United States since his lawful admission in 2023. He is not
 2 an “arriving alien” or applicant for admission subject to 8 U.S.C. § 1225, and he is not subject to
 3 mandatory detention. His detention is discretionary under 8 U.S.C. § 1226(a).

4 30. Petitioner was transported and delivered to the Otay Mesa Detention Center, where
 5 he has remained in continuous custody. He has no criminal history and had never before been
 6 detained. His confinement has separated him from his U.S.-citizen wife and has taken a serious toll
 7 on him.

8 31. There was no emergency, no exigency, and no risk of flight that pre-deprivation
 9 notice would have created and that the Government could not have managed. Petitioner had applied
 10 for asylum, obtained work authorization, married a United States citizen, applied to adjust status,
 11 and lived openly in the community for more than three years. Providing notice and a hearing before
 12 any arrest was entirely practicable. Respondents simply did not do it.

13 VII. Legal Argument

14 A. Petitioner Holds a Protected Liberty Interest, and Due Process Required Notice and a 15 Hearing Before Respondents Seized Him.

16 32. “Freedom from imprisonment—from government custody, detention, or other forms
 17 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
 18 *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). That protection runs to
 19 “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful,
 20 unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; accord *Mathews v. Diaz*, 426 U.S.
 21 67, 77 (1976); *Demore*, 538 U.S. at 523.

22 33. The Government’s discretion to detain noncitizens “is always constrained by the
 23 requirements of due process.” *Hernandez*, 872 F.3d at 981. Because Petitioner is a § 1226(a)
 24 detainee and not subject to mandatory detention, no statute compelled his seizure. Respondents’
 25 decision to take him into custody was a pure exercise of executive discretion over a person living at
 26 liberty in the community—and is therefore subject to the full requirements of the Due Process
 27 Clause, including its requirement of pre-deprivation process.

28 34. A noncitizen living at liberty in the United States has a due-process interest in “an
 opportunity or a hearing before [he] is deprived of any significant protected interest.” *R.A.N.O. v.*

1 *Wofford*, 2026 WL 40507, at 7 (*E.D. Cal. Jan. 6, 2026*) (*emphasis in original*); *see also* *E-M v.*
 2 *Hermosillo*, 2026 WL 883776, at 6 (D. Or. Mar. 31, 2026); *Singh v. Noem*, 2026 WL 766228, at 9
 3 (*D.N.M. Mar. 18, 2026*). *That Petitioner was never detained before—the Government simply chose*
 4 *not to detain him while his asylum application was pending—does not diminish his liberty interest.*
 5 *“Although the government did not detain and then release her, it made a decision not to detain her*
 6 *in the first place; Petitioner thus has the same liberty interest in her continued freedom as an*
 7 *individual initially detained.”* *Kharitonova v. Albarran*, 2026 WL 531441, at 2 (N.D. Cal. Feb. 25,
 8 2026); accord *Dai v. Janecha*, No. 5:26-cv-03966-PD, Dkt. No. 10, at 3–4 (C.D. Cal. July 24, 2026).
 9 The rule that process must precede deprivation is the constitutional default. *Logan*, 455 U.S. at 436.
 10 Post-deprivation process suffices only in “extraordinary situations where some valid governmental
 11 interest is at stake that justifies postponing the hearing until after the event.” *United States v. James*
Daniel Good Real Prop., 510 U.S. 43, 53 (1993) (citation omitted). This is not such a case.

12 35. Nor did any ICE administrative warrant supply the missing process. “A neutral judge
 13 is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th
 14 Cir. 2001). A warrant the enforcing agency writes for itself is the opposite of neutral review. *See*
 15 *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (risk of erroneous deprivation is
 16 reduced where a neutral decision-maker, rather than ICE alone, makes custody determinations).

17 **B. Every Mathews Factor Confirms That Pre-Deprivation Process Was Required.**

18 36. What process is due is determined by *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976):
 19 the private interest affected; the risk of erroneous deprivation and the value of additional safeguards;
 20 and the Government’s interest. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Each
 21 factor favors Petitioner.

22 37. First, the private interest is at its maximum. Petitioner’s interest in freedom from
 23 physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507,
 24 529 (2004). Liberty permits him to live with his U.S.-citizen wife, support his household, prosecute
 25 his asylum and adjustment applications, appear at his interviews, and “form the other enduring
 26 attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

27 38. Second, the risk of erroneous deprivation from a unilateral ICE arrest reviewed by no
 28 one is high, and pre-deprivation safeguards “would greatly reduce the risk” of an erroneous
 deprivation of liberty. *Singh v. Noem*, 2026 WL 766228, at 9. *Had Petitioner been heard before his*

1 seizure, he could have presented his lawful admission, work authorization, marriage to a United
 2 States citizen, pending I-130 and I-485, community ties, and pending asylum claim—demonstrating
 3 that he is neither a danger nor a flight risk.

4 39. Third, the Government’s interest in seizing Petitioner without any prior process is
 5 low. Civil immigration detention is not punitive; the only legitimate interests are preventing danger
 6 and securing appearance. *Zadydas*, 533 U.S. at 690. Petitioner presents neither concern—he has no
 7 criminal history and every incentive to appear. “[A]lthough the government has a strong interest in
 8 enforcing the immigration laws, the government’s interest in detaining petitioner without a hearing
 9 is ‘low.’” *R.A.N.O.*, 2026 WL 40507, at 7 (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D.
 10 Cal. 2019)). *The burden of providing notice and a hearing is minimal—the Government runs*
 11 *custody hearings every day—while “[t]he costs to the public of immigration detention are*
 12 *‘staggering.’” Hernandez*, 872 F.3d at 996. *This is not the “special instance ... where post-*
 13 *deprivation process is all that is due.” Zinerman v. Burch*, 494 U.S. 113, 139 (1990).

14 **C. A Post-Deprivation Bond Hearing Cannot Cure the Violation, and the Court Should**
 15 **Not Order One.**

16 40. Respondents may argue that Petitioner can seek a bond hearing before an
 17 Immigration Judge. That is no answer. “[A] post-detention bond hearing is insufficient to cure a
 18 violation of procedural due process arising from detention without a pre-deprivation hearing.”
 19 *Zaitsev*, 2026 WL 1047942, at 7; accord *Zepeda Perez*, 2026 WL 980492, at 5; *E.G.M. v. Scott*,
 20 2026 WL 914803, at 6 (*W.D. Wash. Apr. 3, 2026*) (“any post-deprivation remedies ... do not cure
 21 the constitutional violation”). Most recently, in *Dai v. Janecha*, a court in this Circuit granted the
 22 writ and ordered the release of a Chinese asylum-seeker who had lived at liberty in the community
 23 while her asylum application was pending and who was detained by ICE without notice or a pre-
 24 deprivation hearing. No. 5:26-cv-03966-PD, Dkt. No. 10, at 7–8 (C.D. Cal. July 24, 2026). The
 25 court rejected the Government’s offer of a bond hearing, observing that the petitioner “does not ask
 26 this Court to order a bond hearing,” and ordered release on her prior conditions within 24 hours.
 27 *Id.* at 6, 8. In *Mikayelyan v. Giles*, the court likewise confronted this argument directly and, even
 28 though the petitioner had already received a bond hearing at which the Immigration Judge denied
 bond, granted the writ and ordered release, holding “the appropriate remedy for the deprivation is
 release from custody.” No. 5:26-cv-01035-SSS-DFM, Dkt. No. 19, at 4 (C.D. Cal. May 20, 2026);
 accord *Singh*, 2026 WL 766228, at 10.

D. The Only Adequate Remedy Is Immediate Release.

VIII. Claims for Relief

Violation of Procedural Due Process — Detention Without Pre-Deprivation Notice and Hearing
(U.S. Const. amend. V)

44. Petitioner held a constitutionally protected liberty interest in remaining free from physical confinement. Respondents deprived him of that interest on July 26, 2026 without notice, without a hearing, and without review by any neutral decision-maker.

10

COUNT TWO

***Violation of Substantive Due Process — Detention Untethered to Any Permissible Purpose
(U.S. Const. amend. V)***

46. Petitioner re-alleges and incorporates by reference each preceding paragraph.

47. Civil immigration detention may serve only two permissible purposes: preventing danger to the community and securing the noncitizen's appearance at removal proceedings. *Zadvydas*, 533 U.S. at 690. It may not be punitive.

48. Petitioner has no criminal history and has been found by no adjudicator to be dangerous. He entered lawfully, works lawfully, has a pending asylum application, is married to a United States citizen, and had filed his I-130 and I-485 applications ten days before his arrest—giving him the strongest possible incentive to appear. His detention is therefore not reasonably related to any legitimate purpose and violates substantive due process. The Court should grant the writ, order his immediate release, and enjoin Respondents from re-detaining him absent constitutionally adequate pre-deprivation process.

IX. Prayer for Relief

WHEREFORE, Petitioner Zixing Yang respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioner's detention—effected on July 26, 2026 without notice and without a hearing before a neutral adjudicator prior to the deprivation of his liberty—is unlawful and violates the Due Process Clause of the Fifth Amendment;
- (3) Declare that any post-deprivation bond hearing did not and cannot cure that violation;
- (4) Issue a Writ of Habeas Corpus and ORDER Respondents to release Petitioner from custody IMMEDIATELY, on reasonable conditions of supervision, restoring the conditions of liberty that existed before his arrest and without imposing any new restraint—including electronic monitoring—absent a subsequent, constitutionally adequate pre-deprivation determination that such a restraint is necessary;
- (5) Order Respondents to file a status report certifying compliance with the order of release within three (3) days of its entry;

- (6) Enjoin Respondents from re-detaining Petitioner absent notice and a constitutionally adequate hearing before a neutral adjudicator held prior to any such re-detention;
- (7) Enjoin Respondents from transferring Petitioner outside the Southern District of California pending resolution of this Petition;
- (8) Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- (9) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, on July 27, 2026.

By counsel,

/s/ Hovhannes Bayburtski

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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 have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on July 27, 2026, in Studio City, CA.

/s/ Hovhannes Bayburtski
Hovhannes Bayburtski, Esq.
Attorney for Petitioner