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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ji Chu Chen,
Petitioner-Plaintiff,

v.

Luis Rosa Jr., Warden, Florence Correctional Center;

John Cantu, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations 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 his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd Blanche, in his Official Capacity, Attorney General of the United States;
Respondents-Defendants.

Case No.

A[redacted]

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

INTRODUCTION

1. Petitioner, Jichu Chen, a native and citizen of China, Agency number [redacted], by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing to detain him in an immigration detention pending resolution of his removal case without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. Petitioner seeks his immediate release from detention in Florence Correctional Center where ICE detained and continues to imprison him without a custody hearing to demonstrate that he is a flight risk or danger to the community, as required by the Due Process clause of the Fifth Amendment.

3. As background, Petitioner entered the U.S. seeking asylum in approximately 2009 and was granted asylum on February 15, 2011. The Petitioner became a Legal Permanent Resident. On July 20, 2022, the Petitioner was convicted of various state crimes. As a result, when he left attempted to re-enter the United States on September 5, 2025, he was placed into removal proceedings and detained. See Exh. A. Petitioner requested release from ICE through prior counsel on September 24, 2025. See Exh. B. He applied for asylum which is pending before the Ninth Circuit. See Exh. C.

CUSTODY

4. The Petitioner is currently in the custody of ICE at the Florence Correctional Center, in Florence, Arizona. The Petitioner is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

5. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

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

VENUE

9. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona. The Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE detained him and has held him without a custody redetermination hearing in violation of 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), and he is being detained in Florence, Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

11. No statutory exhaustion requirements apply to the Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (samc).

12. It would be futile for the Petitioner to request a bond hearing because he is designated as an arriving alien on his Notice to Appear. Therefore, the Petitioner is not eligible for bond and has exhausted all of his administrative remedies by making a request for discretionary release

with ICE on September 24, 2025. However, as of today's date they have not received a response.

PARTIES

13. The Petitioner was a Legal Permanent Resident. On July 20, 2022, the Petitioner was convicted of various state crimes. As a result, when he left attempted to re-enter the United States on September 5, 2025, he was placed into removal proceedings and detained. He is now pending an asylum application before the Ninth Circuit.

14. Luis Rosa Jr., Warden, Florence Correctional Center, which is operated by CoreCivic and contracted by DHS. As such, he is the immediate physical custodian of Petitioner and he is named in his official capacity.

15. Respondent John Cantu is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of the Petitioner.

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

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

18. Respondent Todd Blanche is the Attorney General of the United States and the most senior

official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

FACTUAL ALLEGATIONS

19. The Petitioner was a Legal Permanent Resident. On July 20, 2022, the Petitioner was convicted of various state crimes. As a result, when he left attempted to re-enter the United States on September 5, 2025, he was placed into removal proceedings and detained. He is now pending an asylum application before the Ninth Circuit.

20. The Petitioner requested discretionary release with ICE on September 24, 2025, but did not receive any response.

21. The Petitioner has been detained at the Florence Detention Center for 140 days – four months, two weeks, and four days, without a bond redetermination hearing. Each day that the Petitioner remains in custody his physical and mental health continues to decline causing irreparable injury to his person.

FIRST CLAIM FOR RELIEF

I. VIOLATION OF THE DUE PROCESS CLAUSE OF THE FITH AMENDMENT TO THE U.S. CONSTITUTION

22. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth and incorporated herein by reference.

23. The Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

24. Petitioner is in custody "under or by color of the authority of the United States" and in

custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. §2241. The Fifth Amendment's Due Process Clause provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." It specifically "entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). The Supreme Court held more than a century ago that civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228, 237-38, 16 S. Ct. 977, 41 L. Ed. 140 (1896).

25. Noncitizens subject to civil immigration detention "cannot be subjected to conditions that 'amount to punishment.'" See *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). At some point, civil detention can become punitive, resulting in a due process violation. *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021).

26. Noncitizens may be detained under mandatory detention provisions during a relatively brief period for processing and removal, courts have found that Congress did not intend, or have the power, to impose prolonged detention on a noncitizen simply because they may be deportable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)("We do have reason to believe, however, that Congress previously doubted the constitutionality of detention for more than six months").

A. The Petitioner's Liberty Interest Mandates His Immediate Release or in the Alternative a Custody Redetermination Hearing

27. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [the Petitioner] liberty interest against the [government's] interest in the efficient

administration of" its immigration laws in order to determine what process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

28. Releasing the Petitioner from custody or in the alternative, providing the Petitioner with a custody hearing, would decrease the risk of her being erroneously deprived of his liberty.

29. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

30. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether the Petitioner 's incarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Find Petitioner's detention by DHS violates the Due Process Clause of the Fifth Amendment;

(3) Issue a writ of habeas corpus and order the Petitioner's immediately release from detention subject to the same conditions he was previously released under;

(4) Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(5) Award attorney's fees, costs, and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2).; and

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

Dated: April 23, 2026,

RESPECTFULLY SUMBITED,

/s/ Bianca L. Torres
Bianca L. Torres
Attorney 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 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 this April 23, 2026, in Phoenix, AZ.

/s/ Bianca L. Torres
Bianca L. Torres
Attorney for Petitioner