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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Huu Quyen Pham.

Petitioner,

v.

Donald J. Trump, *in his official capacity as President of the United States*. **Luis Rosa, Jr.,** *in his official capacity as Director of the Florence Correctional Center*; **Christopher McGregor**, *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Phoenix Field Office*; **Markwayne Mullin,** *in his official capacity as Secretary of Homeland Security*; and **Todd Blanche**, *in his official capacity as Acting Attorney General of the United States*.

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No.

INTRODUCTION

1. Petitioner Huu Quyen Pham ("Mr. Pham" or "Petitioner") brings this petition for a writ of habeas corpus because he is being unlawfully detained by Respondents as a result of the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review's ("EOIR") erroneous conclusion that he is subject to mandatory detention without the possibility of release on bond.

2. Mr. Pham was released from DHS custody, pursuant to section 236 of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1226), on an Order of Release on

Recognizance ("ROR") on January 2, 2024. *See* Ex. 1, Order of Release of Recognizance. Nearly three years later, on October 14, 2025, Immigration and Customs Enforcement ("ICE") apprehended and re-detained Mr. Pham, without explanation, during a routine check-in. *See* Ex. 2 at 4, I-213 (noting only that Mr. Pham "is in removal proceedings with a hearing scheduled for 12/3/2025" and that he was "subject to be rearrested"). Mr. Pham was eventually transferred to the Florence Correctional Center ("Florence") in Florence, AZ, where he is currently being held.

3. On March 10, 2026, Mr. Pham was ordered removed by an immigration judge ("IJ"). Immigration Counsel for Mr. Pham then timely filed an appeal before the Board of Immigration Appeals ("BIA") on April 2, 2026. That appeal remains pending and no scheduling order has been set. Mr. Pham is accordingly not subject to a final order of removal.

4. During his release, Mr. Pham had complied with all legal requirements, including attending all scheduled ICE check-ins and avoiding criminal activity. His re-detention served no purpose other than to fill ICE's arbitrary arrest quotas. Despite its own regulations' requirements, ICE has not provided Mr. Pham with written reasons for revoking his conditional release or an informal interview for him to challenge the revocation and his re-detention. ICE's failure to comply with its own regulations for revocation of release violates the Administrative Procedure Act ("APA") and due process, pursuant to *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Independent of such violations, Mr. Pham's re-detention without notice and an opportunity to be heard violates his Fifth Amendment due process rights. For these procedural violations, Mr. Pham requests that he be released and placed back on the terms of supervision with which he was consistently complying. *See Colman-Randas v. Cantu*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344, at *2 (D. Ariz. Mar. 5, 2026) (finding petitioner was entitled to a hearing before she was re-detained after release on an order of recognizance, ordering immediate release); *Singh v.*

Party, No. CV-25-483-PHX-JCH (CDB), 2026 WL 809849, at *4 (D. Ariz. Mar. 24, 2026) (same, finding that "immediate release, rather than requiring another bond hearing, is the appropriate remedy").

5. Accordingly, Mr. Pham seeks a writ of habeas corpus requiring that he be immediately released from custody, with all of his personal property.

JURISDICTION & VENUE

6. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

9. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Arizona, the judicial district in which Petitioner is currently detained.

10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

11. Venue is proper within the Phoenix Division because Respondent Christopher McGregor has a principal place of business in Phoenix, Arizona.

12. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

PARTIES

13. Petitioner Huu Quyen Pham is a native and citizen of Vietnam who has been in ICE custody since October 2025. He is currently detained at Florence.

14. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of Homeland Security.

15. Respondent Luis Rosa, Jr. is the Director of the Florence Correctional Center, a private jail that contracts with ICE to detain noncitizens. Mr. Rosa is responsible for overseeing the administration and management of Florence. Though Mr. Rosa does not have the legal authority to release Mr. Pham, without ICE's permission, he is the immediate custodian of Petitioner. He is sued in his official capacity.

16. Respondent Christopher McGregor is the Acting Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Phoenix Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Arizona, including Florence, and has the authority to make custody determinations regarding individuals detained there. Mr. McGregor is a legal custodian of Petitioner. He is sued in his official capacity.

17. Respondent Markwayne Mullin is the Secretary of Homeland Security. He supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the

detention and removal of noncitizens throughout the United States. Secretary Mullin is the ultimate legal custodian of Petitioner. He is sued in his official capacity.

18. Respondent Todd Blanche is the Acting Attorney General of the United States. As the Attorney General, he oversees EOIR, including all IJs and the Board of Immigration Appeals ("BIA"), and has authority over immigration detention. He is sued in his official capacity.

STATEMENT OF FACTS

19. Mr. Pham was born in Vietnam, though has lived in the U.S. since December, 2023. That year, Mr. Pham entered the U.S. without inspection, crossing the border in Tecate, California, before being detained by U.S. immigration authorities, pursuant to 8 U.S.C. § 1226.

20. Respondents issued Mr. Pham a Notice to Appear ("NTA") on January 2, 2024. Ex. 3, Notice to Appear. The NTA specifies that Mr. Pham is "an alien present in the United States who has not been admitted or paroled" and notes that he "entered the United States at or near Tecate, CA, on or about December 31, 2023." *Id.* It also charges him as removable under 8 U.S.C. § 1182(a)(6)(A)(i) (being present in the U.S. without admission/parole or arrival outside of a time and place designated by the Attorney General). *Id.*

21. On that same day, DHS issued Mr. Pham an Order of Release on Recognizance, subjecting him to various conditions of release. Ex. 1. Mr. Pham faithfully complied with all conditions of release, including attending all check-ins and avoiding criminal activity. He obtained employment authorization documents ("EAD"), and was gainfully employed and paying taxes.

22. Mr. Pham was re-detained by ICE during a routine check-in on October 14, 2025. *See* Ex. 2 at 4. Neither notice nor rationale was provided to Mr. Pham as to the reasons for revocation of his release. The Government's own I-213 provides only that "[Mr. Pham] is in

removal proceedings with a hearing scheduled for 12/3/2025 in NYC EOIR. Per Non-Detained AFOD – subject to be rearrested." *Id.*

23. Mr. Pham has remained detained at Florence without the opportunity for individualized review of his detention since then. He and his family have suffered during the more than six (6) months that he has been detained, as a result of the emotional and financial toll of his detention, with no clear end in sight.

LEGAL FRAMEWORK

24. ICE may revoke the release of certain noncitizens ordered ROR. First, a noncitizen's release can be revoked if they violate the conditions of release. 8 C.F.R. § 241.4(l)(1). Alternatively, the Executive Associate Commissioner (or a District Director) can revoke release on conditions and re-detain a non-citizen when (1) the purposes of release have been served, (2) the noncitizen violated any condition of release, (3) "it is appropriate to enforce a removal order or to commence removal proceedings," or (4) "release would no longer be appropriate" due to the noncitizen's conduct. 8 C.F.R. § 241.4(l)(2).

25. In either case, the noncitizen is entitled to receive notice of the reasons for revocation and a "prompt" informal interview to respond to the reasons for revocation. If the noncitizen demonstrates that they did not violate the conditions of release, they can be released following the interview. 8 C.F.R. § 241.4(l)(3).

26. However, any individual whose release has been revoked is entitled to the regular custody review procedures in 8 C.F.R. § 241.4, "which will ordinarily be expected to occur within approximately three months after release is revoked." 8 C.F.R. § 241.4(l)(3). "That custody review will include a final evaluation of any contested facts relevant to the revocation and a

determination whether the facts as determined warrant revocation and further denial of release." *Id.*

27. Under the system that Congress created, two statutes govern the detention of noncitizens without a final order of removal—namely § 1225 and 1226. The former, commonly referred to as "expedited removal proceedings," provides for mandatory detention of noncitizens apprehended at the border, while the latter provides a framework for discretionary release and for mandatory detention upon conviction of certain exclusionary crimes. These authorities have existed largely in the same form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") nearly 30 years ago.

28. 8 U.S.C. § 1226(a) (INA § 236(a)) sets forth the "default rule" for "[noncitizens] already present in the United States" by "permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). It states that "on a warrant issued by the Attorney General, a[] [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States" 8 U.S.C. § 1226(a). Noncitizens arrested upon a warrant and in ongoing removal proceedings are eligible to seek release on bond before an IJ. *Id.* § 1226(a)(2).

29. A separate provision, 8 U.S.C. § 1225(b) (INA § 235(b)) governs the detention of noncitizens who seek admission to the United States at the border at § 1225(b)(1) and § 1225(b)(2). Section 1225(b)(1) applies to noncitizens in "expedited removal" proceedings, while § 1225(b)(2) explains that, notwithstanding several limited statutory exceptions, "in the case of a[] [noncitizen] who is an applicant for admission, if the examining immigration officer determines that a[] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a [removal] proceeding under section 1229a of this title." 8

U.S.C. § 1225(b)(2). "In other words, noncitizens subject to [Section] 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. . . . in contrast to the default detention regime under § 1226(a), which allows for discretionary release and review of detention through a bond hearing." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025). Consequently, IJs do not have jurisdiction to grant bond for such "applicant[s] for admission," though DHS retains the discretion to release such noncitizens on a specific type of parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

30. Summing up the relationship between these two statutory provisions, "Section 1225 'authorizes the Government to detain certain [noncitizens] seeking admission into the country,' whereas [S]ection 1226 'authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *5 (E.D. Cal. Oct. 27, 2025) (citing *Jennings*, 583 U.S. at 289) (emphasis in original). Reflecting that understanding, "[f]or decades, whenever [ICE] detained a noncitizen within the interior part of the United States who did not have a pending order of removal, [it] detained them under [8 U.S.C. § 1226]." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025) (cleaned up). Consequently, "[u]ntil mid-2025, DHS applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation," providing them with the opportunity to seek bond before an IJ. *Aguirre Villa, v. Normand*, No. 5:25-CV-89, 2025 WL 3095969, at *5 (S.D. Ga. Nov. 4, 2025) (internal quotation marks omitted).

31. Additionally, current binding "[f]ederal regulations provide that [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at

306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Those regulations—which the Department of Justice promulgated in 1997, and which remain in effect—explicitly state that "[noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination," and that "inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving noncitizens do not." Inspection and Expedited Removal of [Noncitizens]; Detention and Removal of [Noncitizens]; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

32. On July 8, 2025, DHS radically upended this longstanding interpretation and practice when it issued a notice to all ICE employees that "DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities." *See* AILA Doc. No. 25071607, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission at 1, American Immigration Lawyers Association (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. In the memo, DHS announced that it considered "applicants for admission" to now encompass any noncitizen "present in the United States who has not been admitted or who arrives in the United States," in conjunction with its novel stance "that [Section 1225] of the Immigration and Nationality Act (INA), rather than [Section 1226], is the applicable immigration detention authority for all applicants for admission." *Id.* As a result, DHS concluded that these noncitizens "are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.*

33. On September 5, 2025, the government further doubled down on this position when the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In that decision, the BIA concluded that the "plain text" of the INA mandates that noncitizens who are "present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220. The BIA conceded that even though "section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a subset of the category of [noncitizens] that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)"—effectively rendering Section 1225(b)(2) superfluous and redundant under this novel interpretation—this concern is irrelevant because "redundancies are common in statutory drafting." *Id.* at 222.

34. The BIA's decision in *Matter of Yajure Hurtado*, which IJs across the nation believe they are required to follow as binding precedent, effectively mandates that noncitizens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer," even if they "[r]emain[] in the United States for a lengthy period of time following entry without inspection." *Id.* at 228. Consequently, IJs "have no authority to redetermine the custody conditions of a[] [noncitizen] who crossed the border unlawfully without inspection." *Id.* "This sweeping new policy subjects millions of undocumented residents to prolonged detention without the opportunity for release on bond, in contravention of decades of agency practice and robust due process protections hitherto afforded to such residents to enable them to challenge the government's basis for detaining them." *Rodriguez Cabrera, v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *3 (D. Nev. Nov. 3, 2025).

35. Courts in this district have repeatedly rejected Respondents' novel and unlawful interpretation of the law and ordered immediate release or bond hearings as a remedy. *See, e.g.*, *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (Lanza, J.); *Silva v. Figueroa*, No. CV-25-4015-PHX-JJT (MTM), 2025 WL 4076899 (D. Ariz. Nov. 18, 2025) (Tuchi, J.); *Millan-Osuna v. Cantu*, No. CV-25-4019-PHX-MTL (JFM), 2025 WL 3294945 (D. Ariz. Nov. 26, 2025) (Liburdi, J.); *Sanabria v. Rosa*, No. CV-25-4439-PHX--JJT (ASB), 2025 WL 3561632 (D. Ariz. Dec. 11, 2025) (Tuchi, J.); *Sanchez-Sanchez v. Luis Rosa*, 2:25-cv-4586-SHD--DMF, ECF No. 7 (D. Ariz. Dec. 19, 2025) (Desai, J.); *Diaz Cruz v. Noem*, No. CV-26-324-PHX-KML (CDB), 2026 WL 237770 (D. Ariz. Jan. 29, 2026) (Lanham, J.); *Paladino Jarquin v. Trump*, No. 2:26-cv-186-RM--MTM, ECF No. 8 (D. Ariz. Feb. 2, 2026) (Márquez, J.); *Tamarit-Ferrer v. Rivas*, No. CV-25-4886-PHX-DWL (MTM), 2026 WL 295687 (D. Ariz. Feb. 4, 2026) (Lanza, J.); *Colman-Randas v. Cantu*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344 (D. Ariz. Mar. 5, 2026) (Liburdi, J.); *Avakian v. Cantu*, No. CV-26-104-PHX-SHD, 2026 WL 746351 (D. Ariz. Mar. 17, 2026) (Desai, J.); *Singh v. Party*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849 (D. Ariz. Mar. 24, 2026) (Hinderaker, J.). Multiple jurists in this district ruled that these noncitizens were in fact detained under § 1226(a) and should be released immediately.

36. This Court has joined the vast majority of courts "around the country [that] have rejected [the government's] new interpretation of the INA." *See, e.g.*, *Lopez Benitez v. Francis*, 795 F.Supp.3d 475 (S.D.N.Y. Aug. 13, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Aguirre Villa*, 2025 WL 3091833;

Menjivar Sanchez v. Wofford, No. 1:25-CV-01187-SKO (HC), 2025 WL 3089712 (E.D. Cal. Nov. 5, 2025); *Salgado Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589 (W.D. Mich. Nov. 4, 2025); *Hernandez Alonso v. Tindall*, No. 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Godinez-Lopez v. Ladwig*, No. 2:25-CV-02962-SHL-ATC, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025), *Singh v. Bondi*, No. 1:25-CV-02101-SEB-TAB, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Aguilar Guerra v. Joyce*, 2:25-CV-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-CV-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014274 (W.D. Wash. Oct. 8, 2025), report and recommendation adopted sub nom. *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014035 (W.D. Wash. Oct. 28, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Kostak v. Trump*, No. 3:25-CV-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,

2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Trejo-Bautista v. President of the United States*, No. 1:26-cv-20376-KMW, ECF No. 13 at *8 n.3 (S.D. Fla. Mar. 4, 2026) ("The Court has ceased attempting to catalog every district court decision addressing this issue but is aware of approximately 3,500 decisions nationwide reaching the same conclusion.").

37. This Court has agreed with the growing number of courts across the Ninth Circuit who have held that a noncitizen, once released from immigration detention on an order of recognizance, is entitled to a pre-deprivation hearing before any rearrest or re-detention as a matter of due process. *Colman-Randas*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344, at *1; *Singh*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849, at *3; *Telenchana v. Hermosillo*, 2:26-cv-363-GJL, 2026 WL 696806, at *9 (W.D. Wash. Mar. 12, 2026) (concluding that re-detention of petitioners who had been released on their own recognizance violated due process under the *Mathews* framework because petitioners had "established liberty interests."); *J.C.E.P. v. Minga Wofford*, No. 1:25-CV-1559-EFB (HC), 2025 WL 3268273, at *6 (E.D. Cal. Nov. 24, 2025) (collecting cases); *Ramirez Clavijo v. Kaiser*, 25-CV-6248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025) ("Petitioner thus has shown a likelihood of success on the merits of her claim that she is entitled to a pre-deprivation hearing before a neutral decisionmaker prior to any re-arrest or detention under the Due Process Clause."); *Singh v. Andrews*, 1:25-CV-801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) ("On balance, the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained.").

38. Indeed, the Supreme Court itself has found that "[a] protected liberty interest may arise from a conditional release from physical restraint" and that such an "interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Young v. Harper*, 520 U.S. 143, 147-49 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same for parole). Where a noncitizen is released on their own recognizance from civil immigration detention, they retain a protected liberty interest in their release and are accordingly entitled to the procedural protection of a pre-deprivation hearing prior to being re-detained. The Government's failure to provide such a hearing violates due process and can only be remedied through a return to the same custody, under the same conditions, that existed prior to re-detention.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA and the APA

39. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are present without having been admitted or paroled. By its very terms, it applies only to those noncitizens who are apprehended while they are applying for admission near the border or at a port of entry. For those like Mr. Pham, detention must be pursuant to § 1226(a), unless they are subject to § 1226(b)(1), § 1226(c), or § 1231.

41. Mr. Pham cannot be subject to mandatory detention under § 1225(b)(1), including because he does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025). Indeed, the government has expressly backed away from their attempt to put Mr. Pham into Expedited Removal, by moving to remand his proceedings back to the IJ.

42. Mr. Pham cannot be subject to mandatory detention under § 1225(b)(2), including because, as a person already present in the United States, he is not currently "seeking admission" to the United States. *See, e.g., Echevarria*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282.

43. Mr. Pham is not lawfully subject to mandatory detention under § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability").

44. Since Mr. Pham is not "seeking admission," nor is he an "arriving alien[s]" subject to § 1225(b), and nor does he have disqualifying criminal arrests or convictions subjecting him to § 1226(c), he cannot be subject to mandatory detention. Furthermore, the Government's prior application of 8 U.S.C. § 1226 to Mr. Pham on January 2, 2024, dispositively renders that statute as governing. Accordingly, the application of § 1225(b)(2) to Mr. Pham unlawfully mandates his continued detention and violates the INA by depriving him of his rights under § 1226(a).

45. To the extent that Respondents assert that *Matter of Yajure Hurtado* nevertheless requires Mr. Pham's mandatory detention, the BIA's interpretation in that case is ultra vires and in conflict with the careful balance of factors clearly established in the INA with regard to bond eligibility and is not subject to deference by this Court. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Moreover, the policy and legal theory behind *Matter of Yajure Hurtado* have now been vacated with the BIA's decision itself also being vacated as contrary to law, notwithstanding the temporary stay thereof recently issued by the Ninth Circuit. *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *7 (C.D. Cal. Feb. 18, 2026).

46. Respondents have violated their own binding regulations at 8 C.F.R. § 241.4(d), (h), (k), and (l) regarding the procedures for revocation of release and post-order custody reviews. This is arbitrary, capricious, and contrary to law in violation of the APA.

COUNT II
Violation of Substantive Due Process

47. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

48. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

49. The Government's interest in detaining a noncitizen during removal proceedings is limited to ensuring appearance and protecting the community. *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Indefinite detention without an individualized determination is punitive and arbitrary, violating substantive due process. *Zadvydas*, 533 U.S. at 690. Here, Mr. Pham's detention is not based on any individualized finding of flight risk or dangerousness. It is based solely on an erroneous legal classification (as an "applicant for admission"). This blanket detention is not "narrowly tailored to support a compelling government interest," *Flores*, 507 U.S. at 302, and is therefore substantively unreasonable and unconstitutional.

50. To that end, immediate release, with all personal property, would be an appropriate remedy for Respondents' constitutional violations in this case, including the lack of pre-deprivation notice or individualized review prior to Mr. Pham's arrest—which occurred during a routine ICE check-in—in a manner that cannot be remedied by a post-deprivation hearing. *See Colman-Randas*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344, at *1 (ordering

immediate release after re-detaining petitioner, who had been previously released on recognizance, without provision of a pre-deprivation hearing); *Sing*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849, at *3 (same); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1036 (N.D. Cal. July 24, 2025) (ordering immediate release after courthouse arrest and granting preliminary injunction against re-detention, finding "re-detention without a pre-detention hearing before a neutral decisionmaker is likely unconstitutional" (internal quotations omitted)); *Muev v. O'Neill*, No. 2:25-cv-07172-JMG, at 1 n.1 (E.D. Pa. Jan. 13, 2026) (granting immediate release after finding mandatory detention without the opportunity for a bail hearing unlawful); *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Roshniashvili v. Allen*, No. 2:26-CV-93, 2026 WL 446657, at *8 (S.D.W. Va. Feb. 17, 2026) (finding the proper remedy for unlawful detention to be immediate release, noting that "there is little chance the Government would actually hold a bond hearing, and there is no chance any hearing that occurred would comport with due process.") (citing *Briceno Solano v. Mason*, No. 2:26-CV-45, 2026 WL 311624, at *20 (S.D.W. Va. Feb. 4, 2026)); *Qasemi v. Francis*, No. 1:25-CV-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 1:25-CV-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that Government's repeated use of unlawful detention policies across

the country caused petitioners to "sit in jail waiting for a judicial decision," ordering immediate release instead of causing additional delay with a bond hearing). The Government's failure to provide Mr. Pham with either notice or a pre-detention hearing cannot now be adequately remedied through provision of a post-detention hearing. This fact renders immediate release the only means by which the deprivation of due process suffered by Mr. Pham might now be remedied.

51. The Government violated Mr. Pham's right to substantive due process by continuing his prolonged detention without any individualized review thereof. His rights continue to be violated every day that he remains detained in this manner.

COUNT III
Violation of Procedural Due Process

52. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

53. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

54. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[] any person … of liberty … without due process of law. U.S. Const. Amend. V.

55. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693;

56. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. The Supreme Court has "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases);

see also Salerno, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

57. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. Here, independent of their failure to follow the relevant regulations for revoking Petitioner's ROR, Respondents have violated his due process rights by failing to conduct an individualized determination of flight risk or danger prior to his re-detention.

58. Respondents' policy, as implemented through *Matter of Yajure Hurtado* and the January 13, 2026, EOIR guidance, and in defiance of the *Maldonado Bautista* judgment prior to its temporary stay, categorically denies Mr. Pham a bond hearing, as required by law. Respondents' outright refusal to provide any process whatsoever to determine the necessity of Mr. Pham's detention is a per se violation of procedural due process. *See, e.g., Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011) ("At its core, procedural due process guarantees an opportunity to be heard at a meaningful time and in a meaningful manner."); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("the Constitution requires some kind of a hearing before the State deprives a person of liberty of property"). By instructing IJs that they lack jurisdiction to consider bond for individuals like Mr. Pham, Respondents have deprived him of the most basic procedural safeguard—a hearing. This is the antithesis of due process.

59. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), categorically denying Mr. Pham an individualized review of his custody based on the *Matter of Yajure Hurtado* decision violates procedural due process for several reasons, including but not limited to:

i. Mr. Pham's private interest in freedom from imprisonment weighs heavily. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("the most significant liberty interest there is-the interest in being free from imprisonment); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause"); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."). Every additional day of detention inflicts significant and irreparable harm on his health, well-being, and ability to assist in his own defense. His ongoing removal proceedings before the Board of Immigration Appeals proceed on an expedited basis while he is detained, makes the deprivation of liberty and the obstruction of his legal preparation especially acute and unjustifiable. Mr. Pham was detained without any pre-detention determination as to whether he posed a flight risk or any risk of dangerousness, and sans any material change in circumstances triggering his sudden arrest and detention; rather, "it appears [Mr. Pham] was detained simply because" he was readily identified by Respondents as a noncitizen in the process of petitioning for asylum as a legal means to remain in the United States. *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at *34-35 (E.D.N.Y. Oct. 6, 2025).

ii. The risk of erroneous deprivation of liberty is extremely high, as Respondents' new interpretation of immigration detention provisions categorically deprives individuals such as Mr. Pham of the opportunity to seek individualized review of their custody, as required by the INA. Mr. Pham is precisely the type of

individual for whom discretionary release under § 1226(a) was designed: non-dangerous individuals who are not flight risks because of their community ties. "[T]he government cannot switch tracks and subject Petitioner[] to mandatory detention under section 1225(b)(2) when the government has instead placed Petitioner[] in removal proceedings under section 1229a and release [him] on [his] own recognizance under section 1226(a)." *Colman-Randas*, No. CV-25-03594-PHX-MTL (ASB), 2026 WL 617344, at *2 (citing *Valencia Zapata v. Kaiser*, 801 F.Supp.3d 919, 936 (N.D. Cal. 2025), *appeal filed*, No. 25-7472 (9th Cir. Nov. 26, 2025)).

iii. The Government's interest in re-detaining Mr. Pham without a hearing is low. *See Id.* (citing *Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019). Detention hearings in immigration court are commonplace and impose only a "minimal cost." *Doe v. Becerra*, 787 F.Supp.3d 1083, 1094 (E.D. Cal. Mar. 3, 2025). The Government's interest is further reduced on account of their own determination on January 2, 2024, that Mr. Pham warranted release on his own recognizance after immigration officials necessarily determined he was neither a danger to the community nor flight risk. Sans any change in material circumstances that would otherwise warrant revocation of his conditions of release, Mr. Pham's re-detention bears no rational relation to any legitimate governmental interests. Notably, the Government's interest is that of the people's, and the people have an interest in not erroneously wasting their tax dollars on continued detention without individualized review thereof. Furthermore, while the Government has an interest in the efficient

> administration of immigration laws, nothing prevents them from so administering the law whilst simultaneously affording individuals, like Mr. Pham, with their core due process right of notice and an opportunity to be heard relative prior to revocation of their core liberty interest. *Id.*

60. Mr. Pham's sudden and inexplicable arrest and re-detention, sans notice or opportunity for individualized review, is unlawful and violative of his constitutionally protected rights. The Government previously determined that 8 U.S.C. § 1226 governed Mr. Pham's arrest and detention in 2024. He was released pursuant to that statute on an order of release on recognizance. Respondents cannot cherry-pick detention statutes to suit their current litigation posture.

61. The Government violated Mr. Pham's right to procedural due process by denying him notice or opportunity to be heard prior to revoking his conditional order of release on his own recognizance. His rights continue to be violated every day that he remains detained in this manner.

COUNT IV
Access to Records

62. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

63. Mr. Pham also requests that the Court order Respondents to produce all records relating to decisions on his arrest and detention held by Respondents, including, but not limited to, DHS Form I-286, Notice of Custody Determination, and all other records bearing upon the "true cause of the [petitioner's] detention," 28 U.S.C. § 2243, as part of their response to the petition. *See* 28 U.S.C. § 2247 ("On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment . . . shall be admissible in evidence."); *Harris v. Nelson*, 394 U.S. 286, 292 (1969) ("[T]he power of inquiry on federal habeas is plenary.") (punctuation and citation omitted).

64. Review of these records would be directly relevant and probative to the Court's inquiry into Mr. Pham's statutory and constitutional claims, and production of these records would be a minimal burden on Respondents. At a minimum, Respondents are far better positioned to provide this evidence. *See Harris*, 394 U.S. at 291 ("[T]his Court has emphasized, taking into account the office of the writ and the fact that the petitioner, being in custody, is usually handicapped in developing the evidence needed to support in necessary detail the facts alleged in his petition . . .").

65. The existence (or nonexistence) of records regarding Respondents' custody determination, legal justifications, and factual basis for Mr. Pham's arrest and detention are all directly relevant to their claims in this petition for habeas corpus. *See Harris*, 394 U.S. at 300 ("[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.").

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order, under the All Writs Act, 28 U.S.C. § 1651, that Petitioner shall not be transferred outside of this jurisdiction while this habeas petition is pending;

c. Issue an Order requiring Respondents to show cause within three days why this Petition should not be granted;

d. Declare that Petitioner's detention is unlawful, that he is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);

e. Declare that Respondents' actions, as set forth herein, violate the INA, APA, and Petitioner's substantive and procedural due process rights;

f. Declare that Respondents' failure to follow the binding revocation and custody review provisions at 8 C.F.R. § 241.4 violates the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment;

g. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner, with all personal property, subject to any appropriate conditions;

h. Order Respondents to produce all records relating to decisions on Petitioner's arrest and detention held by Respondents, including but not limited to DHS Form I-286, Notice of Custody Determination, and all other records bearing upon the "true cause of Petitioner's detention";

i. Prohibit Respondents from revoking Petitioner's Release on Recognizance or re-detaining him in the future without complying with 8 C.F.R. § 241.4;

j. Issue appropriate injunctive relief; and

k. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 23rd day of April, 2026.

/s/ Andrew Pelcher
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