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DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHAO YE,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden of the Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security,

Respondents-Defendants.

Case No.: '26CV3735 CAB AHG

A#: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner CHAO YE ("Mr. Ye") petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

1. Petitioner is a citizen and national of China. He is detained at Otay Mesa Detention Center in San Diego, California.

2. Petitioner entered the United States on or about December 2, 2024, was placed in immigration custody, and has remained detained at Otay Mesa Detention Center in San Diego, California.

3. Petitioner sought asylum, withholding of removal, and protection under the Convention Against Torture. He filed Form I-589 and later amended it, including amendments submitted on June 25, 2025 and October 22, 2025. On March 19, 2026, the Immigration Judge ordered Petitioner removed to China after denying all relief. Petitioner timely appealed to the Board of Immigration Appeals, and that appeal remains pending.

4. Respondents commenced removal proceedings against him in immigration court under 8 U.S.C. § 1229a, entitling him to present his claims with the due process rights available in section 240 proceedings.

5. In immigration court, noncitizens have the right to pursue claims for relief from removal, including asylum, withholding of removal, and protection under the Convention Against Torture, be represented by counsel, gather and present evidence,

and pursue appeals. 8 U.S.C. § 1229a. Those safeguards are particularly important here because Mr. Ye's case turns on political-opinion persecution, translation issues, corroborating phone evidence, and an active BIA appeal.

6. Respondents now seek to keep Mr. Ye detained without a meaningful opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225(b). Respondents do so categorically, without adequate consideration of his pending appeal, the length of detention, his stated willingness to comply with conditions, the evidence he has sought to present, and individualized risk.

7. But Respondents cannot evade due process requirements so easily. The U.S. Constitution requires the Respondents provide at least the rights available to him when he filed his application.

8. The Constitution protects Mr. Ye—and every other person present in this country—from arbitrary deprivations of his liberty and guarantees him due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

9. Mr. Ye seeks declaratory and injunctive relief to compel his immediate release from immigration detention, where he has been held by DHS since approximately

December 2024, without first being provided a due process hearing to determine whether his prolonged detention is justified.

10. Absent review in this Court, no other neutral adjudicator will examine Mr. Ye's plight: Respondents will continue—unchecked—to detain him under the civil immigration detention authority they invoke, including 8 U.S.C. § 1225(b), without a timely, meaningful hearing to determine whether his prolonged detention remains justified. Mr. Ye appeared before the Otay Mesa Immigration Court within Otay Mesa Detention Center in San Diego, California, and his case is now pending before the Board of Immigration Appeals.

11. For the reasons outlined below, Mr. Ye's prolonged detention and inability to obtain a meaningful custody hearing violate his statutory and constitutional rights, including Due Process protections under the U.S. Constitution. Mr. Ye respectfully requests that this Court grant the instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to prevent such harms from recurring. Mr. Ye also asks this Court to find that Respondents' prolonged detention and threatened transfer are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district. Mr. Ye asks this Court, through his first, second, and third causes of action, to find that his prolonged detention is unlawful in accordance with the Administrative Procedure Act and in violation of his Fifth Amendment rights.

12. Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release Petitioner from his prolonged detention, or, at minimum, to require a prompt constitutionally adequate custody hearing.

13. For these reasons, this Court should order Mr. Ye's immediate release or in the alternative require Respondents to justify his continued detention through a prompt individualized custody redetermination hearing.

14. Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release due to prolonged detention and due process concerns within 14 days unless Respondents schedule a hearing before an IJ where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the IJ shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

JURISDICTION

15. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq.

16. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United

States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act). Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Akhtar v. LaRose*, No. 3:26-cv-00982-RBM-MMP, Doc. 9 (S.D. Cal. Apr. 2, 2026) (granting § 2241 petition and requiring an individualized bond hearing for an Otay Mesa detainee); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

17. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

18. Venue is proper because Petitioner is in Respondents' legal and physical custody at Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' legal and physical custody, including his current and ongoing detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must

be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the Court otherwise has personal jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

20. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful and prolonged 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).

21. Mr. Ye is "in custody" for the purpose of 28 U.S.C. section 2241 because Respondents have detained him and he remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control.

PARTIES

22. Mr. Ye ("Petitioner") is a 39-year-old citizen and national of China. He entered the United States on or about December 2, 2024, after fleeing China through Japan and Mexico. He was not admitted or paroled after inspection and was placed in full removal proceedings after a credible-fear process. This habeas petition challenges prolonged civil detention during those proceedings.

23. Mr. Ye sought asylum, withholding of removal, and protection under the Convention Against Torture based on his fear of returning to China because of his actual and imputed political opinion, criticism of the Chinese Communist Party, support for Ukraine, and status as a person monitored by Chinese authorities.

24. Petitioner's claim arises from events in China, where he owned a business, recorded and posted evidence of misconduct involving local authorities, expressed views critical of the Chinese government, and later faced detention, torture, and monitoring by the Chinese government and police. He fled China in 2024 and sought protection in the United States.

25. Petitioner's administrative appeal remains pending before the Board of Immigration Appeals. He has stated that he will appear for every hearing and comply fully with any release conditions imposed by the Court or the agency.

26. Since December 2024, Mr. Ye has remained in Respondents' custody.

27. Mr. Ye is currently residing in Respondents' custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

28. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. Ye is detained. Mr. LaRose is responsible for the day-to-day operations and confinement of non-citizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Mullin. Mr. LaRose is a custodian of Mr. Ye and is named in his official capacity.

29. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent Divver is a custodian of Mr. Ye and is named in his official capacity.

30. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr. Ye and is named in his official capacity.

31. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is charged with faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Ye and is named in his official capacity.

32. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens.

33. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

34. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin (collectively, "Respondents") all in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

36. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432–33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

37. The Refugee Act established the right to apply for asylum in the United States and defined the standards for granting asylum. It is codified in various sections of the INA.

38. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinions and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

39. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

40. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

41. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

42. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

43. DHS placed Mr. Ye in removal proceedings under INA § 240, 8 U.S.C. § 1229a, after a credible-fear process. Respondents appear to rely on mandatory civil immigration detention under 8 U.S.C. § 1225(b), or another asserted custody authority, to keep him detained while his administrative appeal proceeds. Thus, the relevant custody question is whether Respondents may continue to detain him for a prolonged period without the meaningful procedural safeguards required by due process.

44. The Supreme Court has recognized that immigration detention is constitutionally limited because freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Prolonged detention without a meaningful opportunity to contest custody implicates that liberty interest.

45. Courts in this District have held that when mandatory detention under 8 U.S.C. § 1225(b) becomes unreasonably prolonged, due process requires an individualized bond hearing. *See Akhtar v. LaRose*, No. 3:26-cv-00982-RBM-MMP, Doc. 9 (S.D. Cal. Apr. 2, 2026); *Xie v. LaRose*, Case No. 3:26-cv-01116-RBM-MMP, 2026 WL 836351, at *2–3 (S.D. Cal. Mar. 26, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772–73 (S.D. Cal. 2020). Accordingly, when detention becomes prolonged, due process requires a meaningful opportunity to be heard, an individualized assessment of flight risk and danger, and consideration of less restrictive alternatives.

46. Here, Mr. Ye has been detained since December 2024. Respondents have not provided a constitutionally adequate hearing at which the government bears the burden of proving that continued detention is necessary, even after consideration of alternatives to detention and conditions of release.

47. Mr. Ye's immigration case also involves claims for withholding of removal and protection under the Convention Against Torture. Those claims require the

opportunity to consult with counsel, gather evidence, present testimony and supporting documentation, and pursue administrative review.

48. Detention has materially impaired Mr. Ye's ability to participate in those proceedings. The Court should therefore evaluate his custody under the statutes and constitutional principles governing prolonged detention in removal proceedings.

49. A continued custody decision must be supported by a reasoned explanation and substantial evidence. Respondents must consider Mr. Ye's current circumstances, including the length of detention, the pending BIA appeal, the translation and evidentiary issues raised in his immigration case, his stated willingness to comply with conditions, and the lack of any individualized finding that he currently presents a flight risk or danger.

50. The government's interest in enforcing the immigration laws does not permit indefinite or unduly prolonged detention without adequate process. Nor may Respondents rely solely on categorical detention authority to avoid a meaningful custody redetermination once detention has become prolonged.

51. Mr. Ye does not ask this Court to decide the merits of his removal case. Rather, he seeks habeas and equitable relief requiring Respondents to justify his continued civil detention through constitutionally adequate procedures.

52. Thus, consistent with long-standing habeas principles, this Court should require Respondents to provide a prompt, meaningful bond or custody redetermination hearing, or release Mr. Ye under appropriate conditions of supervision.

53. Immigration detention should not be used as punishment and should only continue, after prolonged confinement, when an individualized determination shows that a noncitizen is a flight risk because he is unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In *Zadvydas*, the Supreme Court rejected the argument that immigration detainees possess no liberty interest in freedom from civil detention merely because they lack a legal right to live at large in the United States. *Id.* This liberty interest applies not only to indefinite detention, but also to prolonged detention.

54. On information and belief, Mr. Ye alleges that Respondents continue to detain him categorically under the civil immigration detention authority they invoke, without adequate consideration of his current risk, pending appeal, evidence, language barriers, or alternatives to detention. Since December 2024, Mr. Ye has been subject to prolonged detention without adequate relief or a meaningful opportunity to present why he should be able to pursue immigration relief outside detention.

55. On information and belief, Respondents are using prolonged detention and potential extra-territorial transfer as a means to pressure or punish individuals such as Mr. Ye for asserting rights under the INA and the Refugee Act. Mr. Ye is in section 240 removal proceedings, has requested asylum, withholding of removal, and

protection under the Convention Against Torture, and is pursuing a pending BIA appeal after his claim was denied by the Immigration Judge. Without a meaningful custody hearing and explanation of the basis for continued detention, Respondents unlawfully continue to detain him for a prolonged period in their custody.

FACTUAL BACKGROUND

56. Mr. Ye ("Petitioner") is a 39-year-old citizen of China.

57. Mr. Ye sought asylum, withholding of removal, and protection under the Convention Against Torture based on fear of returning to China on account of persecution and torture he suffered due to his actual and imputed political opinion, criticism of the Chinese Communist Party, support for Ukraine, and subsequent status as a person monitored by Chinese authorities.

58. Petitioner entered the United States on or about December 2, 2024, after traveling through Japan and Mexico. He was placed in immigration custody and has remained detained at Otay Mesa Detention Center in San Diego, California.

59. Petitioner filed Form I-589 seeking asylum, withholding of removal, and CAT protection and later amended that application, including amendments on June 25, 2025, and October 22, 2025.

60. On March 19, 2026, Petitioner was ordered removed to China after the Immigration Judge denied Petitioner's request for relief. Petitioner timely appealed to the Board of Immigration Appeals, where his case remains pending.

61. DHS commenced removal proceedings against Petitioner after his credible-fear process. Petitioner does not ask this Court to adjudicate the merits of his removal case; he asks this Court to remedy unlawful prolonged detention.

62. Petitioner's immigration proceedings have involved substantial translation and evidentiary issues, including concerns that translation failures distorted his testimony and that detention impaired his access to corroborating evidence stored on his phones and social media accounts.

63. Mr. Ye remains in Respondents' legal and physical custody at Otay Mesa Detention Center, in San Diego, California.

CAUSES OF ACTION

COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Prolonged Detention

64. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

65. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

66. Once a removal proceeding has been initiated under INA § 240, Respondents must ground any detention decision in the detention authority that actually applies to Petitioner. Here, Respondents seemingly rely on mandatory civil immigration detention under 8 U.S.C. § 1225(b), or another asserted civil custody authority. Any continued custody decision must comply with the INA, implementing regulations, the APA, and the Constitution.

67. Even if Respondents assert mandatory detention authority under 8 U.S.C. § 1225(b), that asserted authority does not eliminate the requirement that prolonged detention be justified by a lawful and reasoned custody determination consistent with due process.

68. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), (*citing SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015)); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

69. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief, Respondents have maintained Mr. Ye's prolonged detention categorically, without a reasoned explanation addressing the length of his

detention, his pending BIA appeal, the conditions at Otay Mesa Detention Center, translation and evidentiary issues, less restrictive alternatives, and the lack of a current individualized finding that he is a flight risk or danger. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.").

70. In deciding to detain and continue detaining Mr. Ye, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights and liberty interests implicated by prolonged civil immigration detention. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24–33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

71. The arbitrary and capricious prolonged detention of Mr. Ye has not been supported by a reasoned, individualized custody determination and causes Mr. Ye irreparable harm.

72. DHS's theory, as reflected in his proceedings, is that Mr. Ye is an applicant for protection from China who is detained during removal proceedings and a pending BIA appeal. Mr. Ye's habeas claim focuses on unlawful prolonged detention and the

denial of a meaningful custody hearing. Without a formal and meaningful custody hearing, Respondents continue to detain Petitioner in violation of the APA.

73. Additionally, the continued prolonged detention is contrary to the powers permitted to Respondents under the APA. Petitioner has been detained for more than sixteen months without due process and without credit to his particular facts or circumstances, which is an abuse of discretion and power under the APA.

74. Petitioner has demonstrated that he remains interested in seeking immigration relief in the United States by filing his I-589 application, amending that application, presenting evidence, and pursuing a BIA appeal after the Immigration Judge's decision denied him relief. For these reasons, the Court should find that the decision to detain Mr. Ye for over sixteen months is arbitrary, capricious, and unsupported by substantial evidence as Respondents fail to consider his continuous pursuit of lawful relief and compliance with court-mandated proceedings. *See* 5 U.S.C. § 706(2)(A), (E).

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

75. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

76. Under the APA, a court shall "hold unlawful and set aside agency action…" that is "…(A) arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with law; (B) contrary to constitutional right, power, privilege, or immunity…" 5 U.S.C. § 706(2)(A)-(B).

77. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

78. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019).

79. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion.

80. By detaining Mr. Ye without adequate notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA. Mr. Ye is a detained asylum seeker from China with a pending BIA appeal. Respondents have failed to conduct a meaningful individualized assessment of his current circumstances and alternatives to detention. For these reasons, continued detention without a meaningful custody hearing is arbitrary, capricious, and an abuse of discretion.

81. Respondents have not made an individualized, current finding that no condition of release could mitigate any risk. Petitioner is entitled to exhaust his remedies by bringing this habeas petition and seeking immediate release or release on appropriate conditions after a meaningful custody redetermination where the government bears the burden of showing he is both a danger to the community and a flight risk.

82. Respondents have made no finding that Petitioner is a flight risk, nor a danger to the community.

83. On information and belief, by detaining Mr. Ye categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Mr. Ye's specific facts or circumstances that support his detention for more than sixteen months.

84. Respondents have failed to demonstrate he poses a danger to the community or that he is a flight risk. Therefore, continued detention without a meaningful hearing that complies with due process is unlawful.

85. Petitioner asks this Court to find the conditions of his detention to be contrary to the APA and requests his release from Respondents' custody.

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COUNT THREE

Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V.

86. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

87. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "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 v. Davis*, 533 U.S. 678, 690 (2001).

88. Mr. Ye has a fundamental interest in liberty and being free from official restraint.

89. The government's detention of Petitioner without notice or an opportunity to be heard before detention violates his right to due process.

90. The government's prolonged detention of Petitioner without a meaningful bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

91. Since December 2024, Petitioner has remained in immigration custody at Otay Mesa Detention Center. Petitioner has not been provided a meaningful and constitutionally adequate opportunity to address why his prolonged detention is unjustified.

92. Respondents allege that Petitioner is subject to civil immigration detention while his removal proceedings and BIA appeal remain pending. However, Petitioner remains entitled to constitutionally adequate process before continued prolonged detention. Respondents failed to provide a meaningful opportunity to address his current risk profile and alternatives to detention.

93. For these reasons, the Court should find that the decision to continue detaining Mr. Ye without a meaningful bond or custody redetermination hearing violates his Fifth Amendment due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that refusal to allow Petitioner a meaningful bond hearing violates the INA, APA, and Due Process;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

(7) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody.

(8) Award Petitioner's counsel reasonable attorney's fees and costs under Equal Access to Justice Act, and on any other basis justified under law;

(9) Grant such further relief as the Court deems just, equitable, and appropriate; and

(10) Grant any and all other further relief this Court deems just or proper.

Respectfully submitted,

Dated: June 25, 2026

//s// John Wells

John Wells, SBN 358423

Attorney for Petitioner Chao Ye