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DETAINED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In the Matter of:

YE, Chao

Petitioner,

v.

WARDEN OF THE CALIFORNIA CITY DETENTION FACILITY; CURRENT OR ACTING FIELD OFFICE DIRECTOR, SAN FRANCISCO FIELD OFFICE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; CURRENT OR ACTING DIRECTOR, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; CURRENT OR ACTING SECRETARY, UNITED STATES DEPARTMENT OF HOMELAND SECURITY; AND CURRENT OR ACTING UNITED STATES ATTORNEY GENERAL,

Respondents.

Case No.: 1:26-cv-05291-DJC-SCR

A#: [redacted]

PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S TRAVERSE TO RESPONDENTS' OPPOSITION

Petitioner Chao Ye, through undersigned counsel, respectfully submits this Traverse in reply to Respondents' Opposition to the Petition for Writ of Habeas Corpus. The Opposition concedes the facts that matter most: Mr. Ye has been continuously confined in civil immigration custody since December 2, 2024; his detention has lasted approximately nineteen months; he has never received a hearing at which a neutral decisionmaker determined whether present confinement is necessary to address danger or flight risk; and his timely administrative appeal remains pending. The Government answers those facts with a categorical proposition that the word "shall" in 8 U.S.C. § 1225(b)(1) ends the constitutional inquiry. It does not. The statutory text identifies the Government's detention authority, but the Fifth Amendment determines whether that authority may be applied for an unreasonably prolonged period without any individualized custody process.

I. INTRODUCTION

This case presents a direct and traditional habeas question: whether the Government may continue to imprison a person for nineteen months in a civil case, with additional confinement of uncertain duration ahead, without ever proving to a neutral adjudicator that incarceration is necessary. Mr. Ye does not ask this Court to review the merits of his asylum, withholding, or Convention Against Torture claims. He does not ask the Court to rewrite § 1225(b) as a matter of statutory interpretation. He asks for the remedy of habeas corpus - release from unlawful physical restraint, or

at minimum a prompt hearing capable of producing release.

The Opposition relies principally on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), and *Demore v. Kim*, 538 U.S. 510 (2003). None controls this case. *Thuraissigiam* addressed a request for additional review of an expedited-removal credible-fear determination and emphasized that the petitioner did not seek simple release. Mr. Ye seeks precisely that traditional habeas relief. *Banyee* is an out-of-circuit decision whose categorical rule has not been adopted by the Ninth Circuit and conflicts with the approach repeatedly applied by courts in this Circuit. *Demore* upheld detention under a different statute based on detention described as brief - roughly a month and a half in most cases and about five months when an administrative appeal was taken. Nineteen months without any custody hearing is not the brief detention considered there.

The Supreme Court has already separated the statutory and constitutional questions. *Jennings v. Rodriguez* held that § 1225(b) itself does not contain an implied six-month bond-hearing rule, but it expressly declined to decide the constitutional challenge and remanded for consideration of that question. *Jennings v. Rodriguez*, 583 U.S. 281, 297-312 (2018). The Opposition improperly converts *Jennings*' refusal to rewrite the statute into a merits ruling on the constitutional claim the Court reserved. That is the central error in Respondents' position.

The result urged by Respondents would mean that the Government may avoid

all custody review merely by labeling confinement mandatory and keeping removal proceedings administratively pending. Under that theory, nineteen months, three years, or ten years would be constitutionally indistinguishable so long as a case had some theoretical endpoint. The Due Process Clause does not permit physical liberty to depend on such a fiction. As the Ninth Circuit explained after *Jennings*, it had "grave doubts" that any statute permitting arbitrary prolonged detention without process could be constitutional. *Rodriguez v. Marin*, 909 F.3d 252, 256-57 (9th Cir. 2018). Those doubts are decisive here because Mr. Ye has had no custody hearing at all.

The Court should grant the writ and order Mr. Ye released under reasonable conditions. Alternatively, the Court should order an individualized hearing within seven days at which the Government must prove by clear and convincing evidence that continued detention is necessary because Mr. Ye presently poses a danger or flight risk that cannot be adequately addressed through less restrictive conditions.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Ye Passed Credible-Fear Screening and Was Placed in Full Removal Proceedings.

Mr. Ye is a citizen and national of China. He was encountered near the southern border on December 2, 2024, expressed fear of return, and was placed in immigration custody. An asylum officer determined that he demonstrated a credible fear of persecution or torture. DHS thereafter placed him in regular removal proceedings under

8 U.S.C. § 1229a, where he pursued asylum, withholding of removal, and protection under the Convention Against Torture.

His protection claims are based on asserted persecution and torture arising from actual and imputed political opinion, criticism of the Chinese Communist Party, support for Ukraine, and continuing monitoring by Chinese authorities. Those merits are before the immigration system, not this Court. They matter here only because they establish that Mr. Ye is using the review procedures Congress provided to seek protection from return to a country where he claims a substantial risk of persecution and torture.

B. Mr. Ye Has Been Confined for Approximately Nineteen Months Without Any Custody Hearing.

Mr. Ye has remained continuously detained since December 2, 2024. Respondents themselves calculate approximately nineteen months of custody as of their July 16, 2026 filing. Throughout that period, no immigration judge or other neutral decisionmaker has conducted a hearing to determine whether he is presently dangerous, whether he is likely to abscond, or whether conditions of release could reasonably address any identified concern.

The absence of process is complete, not technical. No adjudicator has required the Government to identify the current regulatory need for detention. No adjudicator has tested the reliability of any asserted custody rationale. No adjudicator has

considered supervision, reporting, electronic monitoring, geographic restrictions, an approved residence, or other alternatives. The Government's position is that none of those questions may ever be asked while § 1225(b) applies, regardless of the length of confinement.

C. The Immigration Judge Denied Relief, but Mr. Ye Timely Appealed and the BIA Appeal Remains Pending.

On March 19, 2026, the Immigration Judge denied Mr. Ye's applications and ordered removal. Mr. Ye timely appealed. The appeal has been briefed and remains pending before the Board of Immigration Appeals. The Immigration Judge's order therefore is not administratively final, and removal is neither executable nor imminent.

The pending appeal also means that the duration of future detention is uncertain. The BIA may affirm, reverse, or remand. A final BIA decision may be followed by judicial review where authorized. A statutory endpoint exists in the abstract, but there is no concrete date by which Mr. Ye's confinement will end. Due process evaluates the real duration and foreseeable continuation of physical custody, not merely the existence of a final procedural step somewhere in the future.

D. Mr. Ye Has Not Engaged in Dilatory Conduct and Is Prepared to Comply with Strict Release Conditions.

Respondents suggest in a footnote that amendments to Mr. Ye's protection application likely prolonged proceedings. That speculation is not evidence of

obstruction or bad faith. The amendments clarified a high-stakes protection claim, were submitted while the case was being adjudicated, and did not prevent the Immigration Judge from completing the merits hearing and issuing a decision. Mr. Ye then filed a timely appeal. Nothing in the Opposition identifies a missed hearing, a frivolous continuance request, a refusal to proceed, or any tactic designed merely to extend custody.

Mr. Ye is prepared to comply with reasonable conditions that directly address appearance and public safety. Those conditions may include residence at an approved address with a sponsor, regular ICE check-ins, immediate notice of address changes, telephonic or electronic reporting, GPS monitoring if the Court deems it necessary, restrictions on travel, and appearance at every immigration and federal-court proceeding. The Government has never established that such measures would be inadequate because it has never been required to address them at a custody hearing.

III. GOVERNING LEGAL PRINCIPLES

A person held "in custody in violation of the Constitution or laws or treaties of the United States" may seek habeas relief under 28 U.S.C. § 2241(c)(3). The traditional function of the writ is to test the legality of executive detention and secure release from unlawful restraint. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *INS v. St. Cyr*, 533 U.S. 289, 301, 305 (2001). Mr. Ye is in physical custody and asks for release or a hearing that can result in release. His claim therefore lies at the core of habeas relief.

The Fifth Amendment protects every "person" from deprivation of liberty without due process of law. Freedom from imprisonment and other physical restraint lies at the heart of that liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The Due Process Clause applies to noncitizens physically present in the United States whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693; *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903).

Civil detention must remain nonpunitive and reasonably related to a legitimate regulatory purpose. *United States v. Salerno*, 481 U.S. 739, 747, 755 (1987). Immigration custody may serve the legitimate purposes of assuring appearance and protecting the community, but due process requires a reliable procedure when prolonged confinement continues without any individualized determination that those purposes require incarceration.

Procedural due process is evaluated under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), by considering the private interest affected, the risk of erroneous deprivation and value of additional safeguards, and the Government's interest and administrative burden. The Ninth Circuit applies that framework to immigration custody procedures. *Hernandez v. Sessions*, 872 F.3d 976, 990-93 (9th Cir. 2017); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-10 (9th Cir. 2022) (assuming *Mathews* applies and evaluating the procedures actually provided).

IV. ARGUMENT

A. Section 1225(b) Establishes Statutory Detention Authority, but It Does Not Resolve the As-Applied Constitutional Challenge.

Respondents begin and largely end with the phrase "shall be detained" in § 1225(b)(1)(B)(ii). The statutory premise is incomplete. Mr. Ye does not contend that the word "shall" can be interpreted as "may" or that the Court may insert a six-month limitation into the statute. *Jennings v. Rodriguez* forecloses that statutory construction. *Jennings v. Rodriguez*, 583 U.S. at 297-312. But *Jennings* also expressly declined to decide whether applying the statute to prolonged detention without a bond hearing violates due process. *Id.* at 312. It remanded so the constitutional arguments could be decided on their merits.

That distinction is dispositive. A statute may authorize detention as a general matter and still be unconstitutional as applied after custody becomes unreasonably prolonged without adequate procedure. *Nielsen v. Preap* likewise made clear that a statutory holding does not foreclose as-applied constitutional challenges to the statute as construed. *Nielsen v. Preap*, 586 U.S. 392, 420 (2019). The Court therefore need not alter § 1225(b)'s text. It may enforce the Constitution by requiring process before the Government continues applying that text to keep Mr. Ye imprisoned.

Respondents' contrary theory would collapse constitutional review into statutory interpretation: whenever Congress uses mandatory language, no court could ask

whether the resulting deprivation has become arbitrary. That is not the law. Statutory authority is a necessary condition of lawful detention, not a sufficient answer to every constitutional objection concerning duration and procedure.

The relief requested also respects the statutory scheme. A custody hearing does not grant admission, decide removability, or terminate the BIA appeal. It determines only whether incarceration remains necessary while those proceedings continue. If the Government proves present danger or flight risk under constitutionally adequate procedures, detention may continue. If it cannot, supervised release preserves the removal process without unnecessary imprisonment.

B. Thuraissigiam Does Not Foreclose a Traditional Habeas Challenge to Prolonged Physical Detention.

The Opposition quotes *Department of Homeland Security v. Thuraissigiam* for the proposition that an applicant for admission has only the rights regarding admission that Congress supplied. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. at 138-40. The omitted limiting phrase - "regarding admission" - is critical. *Thuraissigiam* challenged the procedures used to deny a credible-fear claim and requested another opportunity to obtain asylum. He did not seek simple release and did not dispute the lawfulness of confinement during the expedited-review period. *Id.* at 117, 138-40. The Supreme Court therefore held that his requested relief did not resemble the traditional writ.

Mr. Ye's petition is the opposite. He does not ask this Court to reopen credible-fear screening, review the Immigration Judge's merits decision, grant asylum, or admit him to the United States. He asks to be released from physical custody because nineteen months of civil incarceration without a custody hearing has become unconstitutional. *Thuraissigiam* itself recognized that habeas traditionally protects the right to seek release from unlawful detention. *Id.* at 117. That recognition supports jurisdiction and relief here.

The Opposition also relies on the entry fiction reflected in *Shaughnessy v. United States ex rel. Mezei* and describes Mr. Ye as having "never entered" the United States. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). That fiction may govern admission status, but it does not erase physical presence or the Constitution's protection against arbitrary bodily restraint. *Zadvydas* explained that due process applies to all persons within the United States and treated *Mezei* as a narrow exclusion case involving national-security concerns, not a general rule authorizing limitless civil imprisonment. *Zadvydas*, 533 U.S. at 693-94. Mr. Ye is physically confined in California, and the Fifth Amendment applies to that confinement.

C. Nineteen Months Without Any Individualized Custody Hearing Violates Procedural Due Process.

1. Mr. Ye's Private Liberty Interest is Exceptionally Relevant.

The private interest is freedom from physical incarceration. It is difficult to

identify a more fundamental interest. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80. Each additional day of detention restricts movement, work, family and community relationships, confidential consultation with counsel, and the practical ability to assist in a pending appeal. Unlike a monetary or administrative deprivation, lost liberty cannot be restored after the case ends.

Duration magnifies that interest. Mr. Ye has been confined for approximately nineteen months - far beyond the brief detention described in *Demore* and well beyond the six-month point the Ninth Circuit has repeatedly treated as constitutionally significant in prolonged-detention cases. The BIA appeal has no fixed decision date, and further review or remand could extend custody. The private interest therefore is not merely theoretical; it is immediate, severe, and increasing.

2. The Risk of Erroneous Deprivation is Intolerably High Because There Has Been No Custody Process at All.

The second *Mathews* factor strongly favors relief. The statutory classification asks whether Mr. Ye is an applicant for admission whose protection proceedings remain pending. It does not determine whether he will appear if released, whether he threatens anyone, or whether supervision can mitigate any risk. Those are different factual questions, and no one has decided them.

Respondents' position guarantees error because it makes individualized facts legally irrelevant. A person who poses no danger and would appear for every

proceeding receives the same confinement as a person shown by reliable evidence to present a serious risk. The absence of a hearing means there is no notice of a custody rationale, no opportunity to contest it, no consideration of alternatives, and no reasoned decision. Almost any neutral custody procedure would materially reduce that risk.

The Opposition argues under *Connecticut Department of Public Safety v. Doe* that due process does not require a hearing on facts made irrelevant by statute. *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 7-8 (2003). That analogy fails because Mr. Ye does not seek to alter the factual predicate Congress chose for initial detention. He challenges the independent constitutional legality of continued physical confinement after nineteen months. A legislature cannot make a constitutional limitation disappear by declaring the facts relevant to that limitation immaterial. The question whether incarceration remains necessary is relevant because the Constitution, not § 1225(b)'s initial classification, makes it relevant.

Additional safeguards have obvious value. A neutral adjudicator can assess current danger and flight risk, evaluate reliability, consider proposed conditions, and require a reasoned explanation. Immigration judges already conduct such hearings in other detention contexts. The value is greatest here because no initial bond or custody redetermination has ever occurred.

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3. A Prompt Hearing Imposes Minimal Burden and Advances, Rather Than Undermines, the Government's Interests.

The Government has legitimate interests in ensuring appearance and protecting the community. An individualized hearing serves those interests. If Mr. Ye poses a provable danger or flight risk that conditions cannot mitigate, the Government may establish that fact and continue detention. If he does not, confinement serves no regulatory purpose and supervised release preserves the Government's ability to complete proceedings at far lower human and fiscal cost.

The administrative burden is minimal. Immigration courts routinely evaluate danger, flight risk, bond, ability to pay, and alternatives to detention. *Hernandez v. Sessions*, 872 F.3d at 990-93. Respondents offer no reason why one prompt hearing after nineteen months would impair enforcement. Their argument is not that a hearing is difficult; it is that the Constitution permits the Government never to hold one. The *Mathews* balance rejects that categorical position.

D. The Case-Specific Reasonableness Factors Independently Confirm That Detention Has Become Unconstitutionally Prolonged.

Courts evaluating prolonged § 1225(b) detention commonly consider: (1) total length of detention; (2) likely future duration; (3) conditions of confinement; (4) delay attributable to the detainee; (5) delay attributable to the Government; and (6) the likelihood that proceedings will culminate in a final removal order. *Kydyrali v. Wolf*,

499 F. Supp. 3d 768, 772-73 (S.D. Cal. 2020). These factors are not a mechanical test; they organize the constitutional inquiry into whether confinement remains reasonably related to its civil purpose.

First, nineteen months weighs overwhelmingly for Mr. Ye. Courts have found materially shorter periods under § 1225(b) sufficiently prolonged to require a hearing. *See Malyshko v. Warden, Otay Mesa Detention Center*, No. 3:26-cv-00069-RBM-SBC, 2026 WL 252367, at *4-5 (S.D. Cal. Jan. 30, 2026); *Xie v. LaRose*, No. 3:26-cv-00529-RBM-DDL, 2026 WL 549909, at *2-4 (S.D. Cal. Feb. 27, 2026); *Khadka v. Otay Mesa Detention Center*, No. 3:26-cv-00475-RBM-MMP, 2026 WL 800177, at *3-5 (S.D. Cal. Mar. 23, 2026).

Second, future duration is uncertain. The BIA has not ruled. A remand would return the case to immigration court; an affirmance may be followed by judicial review. The Government cannot identify a near-term release or removal date. A theoretical endpoint does not make ongoing detention temporally definite in the constitutional sense.

Third, Mr. Ye is confined in a secure civil detention facility and cannot live or work in the community while litigating his appeal. The fact that detention is labeled civil does not reduce the physical restraint; it increases the need to ensure the confinement remains regulatory rather than punitive.

Fourth, there is no showing of bad-faith delay by Mr. Ye. Clarifying an asylum

and torture application and filing a timely BIA appeal are lawful steps Congress expressly permits. Good-faith use of those protections cannot be converted into a forfeiture of liberty. Fifth, even assuming no improper Government delay, lack of bad faith does not cure the absence of process. Due process limits the deprivation itself, not only intentional misconduct.

Sixth, the ultimate immigration outcome is unresolved. An asylum officer found credible fear, and the BIA is considering claims involving persecution and torture. This Court need not predict the merits. The relevant point is that a final executable order does not presently exist and removal is not imminent. On balance, every material consideration either favors Mr. Ye or is neutral; none justifies continued no-hearing detention.

E. Recent Decisions in This District and the Southern District Reject Respondents' Categorical Position.

Respondents acknowledge that courts in this District have distinguished *Thuraissigiam* as addressing admission rather than detention, but ask this Court to reject that distinction. The weight of recent authority points the other way. In *Oli v. Chestnut*, No. 1:26-cv-01437-JLT-SAB, the court granted habeas relief to a person who entered without inspection, had never been released, and was detained under § 1225(b) without a bond hearing. Findings and Recommendations at 7-14 (E.D. Cal. Apr. 3, 2026), adopted, Order (E.D. Cal. Apr. 24, 2026). The court ordered a prompt bond

hearing rather than treating mandatory statutory authority as the end of due process analysis.

Those decisions do not invent a statutory bond right. They enforce the Fifth Amendment after statutory detention becomes unreasonably prolonged. Their reasoning answers the Opposition point by point: *Jennings* left the constitutional question open; *Thuraissigiam* concerned admission procedures and nontraditional relief; the entry fiction does not eliminate all liberty interests; and a case-specific due process inquiry is required when detention extends far beyond the brief period historically associated with removal proceedings.

F. Demore Does Not Authorize Nineteen Months of No-Hearing Detention.

Respondents rely on *Demore v. Kim* to argue that detention during removal proceedings is categorically constitutional. *Demore* rejected a facial challenge to detention of specified criminal noncitizens under § 1226(c). Its reasoning repeatedly described that detention as brief and limited: approximately 47 days in most cases and about four to five months when the noncitizen appealed. *Demore v. Kim*, 538 U.S. at 513, 529-30 & n.12. Mr. Ye's nineteen-month detention is multiple times longer, arises under a different statutory provision, and lacks the criminal predicate central to Congress's judgment in § 1226(c).

Justice Kennedy, whose vote was necessary to the majority, separately explained that due process could require an individualized determination of flight risk and

dangerousness if continued detention became unreasonable or unjustified. *Id.* at 532 (Kennedy, J., concurring). The Supreme Court later confirmed that statutory decisions concerning mandatory detention do not foreclose as-applied constitutional challenges. *Nielsen v. Preap*, 586 U.S. at 420.

The Opposition's reliance on *Demore*'s phrase "limited period necessary" therefore supports Mr. Ye. A period becomes constitutionally suspect when it is no longer limited in the practical sense and when the Government has never shown detention is necessary in the individual case. Nineteen months with no release date and no custody hearing lies far outside *Demore*'s premise.

G. Rodriguez Diaz Is Inapposite Because Mr. Ye Has Never Received the Initial Process That Case Found Constitutionally Significant.

The Opposition cites *Rodriguez Diaz v. Garland*, but primarily quotes Judge Bumatay's separate concurrence rather than the majority holding. The concurrence is not controlling. The majority assumed the *Mathews* framework applied and upheld the procedures in that case because the petitioner was detained under § 1226(a), received an individualized bond hearing soon after detention, could seek redetermination based on changed circumstances, and requested a second Government-burden hearing. *Rodriguez Diaz v. Garland*, 53 F.4th at 1194, 1206-10.

Mr. Ye has received none of those protections. Section 1225(b) provides no initial bond hearing and no mechanism for custody redetermination based on changed

circumstances. He is not asking for a second hearing or for periodic re-hearings after an adequate initial decision. He asks for the first neutral determination of whether his nineteen-month incarceration is necessary. The procedural difference makes *Rodriguez Diaz* support, rather than defeat, his claim: procedures that may suffice after an actual bond hearing cannot justify having no hearing at all.

H. Banyee Is Nonbinding, Unpersuasive, and Contrary to the Approach Applied in This Circuit.

Banyee v. Garland is an Eighth Circuit decision and does not bind this Court. The Ninth Circuit has not adopted its bright-line rule that detention is permissible for as long as proceedings remain pending. Instead, the Ninth Circuit has expressed grave constitutional concern about arbitrary prolonged detention without process, *Rodriguez v. Marin*, 909 F.3d at 256-57, and district courts throughout this Circuit apply case-specific due process analysis.

The premise that a formal endpoint always makes detention constitutional is also unsound. A proceeding may be finite in theory yet unreasonably prolonged in fact. Pretrial criminal detention has an endpoint, civil commitment proceedings have endpoints, and administrative adjudications have endpoints; none permits the Government to disregard due process until the last procedural step occurs. The question is whether the duration and absence of safeguards have made the current deprivation arbitrary.

Nor can *Banyee*'s "keys in his pocket" metaphor resolve this case. Mr. Ye cannot lawfully be required to choose between bodily liberty and statutory protection from persecution or torture. Withholding of removal and Convention Against Torture protection implement nonrefoulement obligations and may bar return even when asylum is denied. A person does not cause unconstitutional detention merely by pursuing a bona fide appeal Congress authorized. *See Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (distinguishing good-faith exercise of legal rights from dilatory conduct); *German Santos v. Warden, Pike County Correctional Facility*, 965 F.3d 203, 211-13 (3d Cir. 2020) (same).

The Opposition's formulation is particularly troubling because it treats surrender to feared persecution or torture as the price of due process. The Constitution does not permit the Government to prolong confinement without a hearing and then blame the detainee for refusing to abandon the very claims that prevent removal.

I. Respondents' Attempt to Attribute Delay to Mr. Ye Does Not Defeat Relief.

Respondents state that amendments to Mr. Ye's application "likely" prolonged the case. The assertion is both speculative and legally insufficient. A due process court examines the nature and purpose of delay, not simply whether the detainee filed something. Clarifying facts, correcting translation or drafting issues, presenting corroboration, and pursuing a timely appeal are ordinary components of a protection case. They are not equivalent to repeated meritless continuances or obstruction.

The chronology disproves any suggestion of indefinite stalling. Mr. Ye entered custody in December 2024, litigated his claims to an Immigration Judge, received a decision in March 2026, and timely appealed. During the pendency of his case, Mr. Ye attempted to secure access to evidence on his two cell phones being held at the Otay Mesa Detention Center by submitting requests for his attorney to access the phones and the evidence they contained. For months, these requests went unheeded, and upon learning of Mr. Ye's numerous attempts to gain access to evidence on his cell phones, the Immigration Judge issued a subpoena on January 30, 2026. This by itself shows Mr. Ye did not stall in his proceedings before the Immigration Court and demonstrates the fallacy of the Government's argument. The Government identifies no sanctionable conduct and no finding that any filing was frivolous. Even if some delays were attributable to necessary preparation of his claims, that would be only one factor and could not erase nineteen months of total confinement or the complete absence of custody process.

Due process also does not require proof of Government bad faith. A neutral adjudicatory timeline may still produce an unconstitutional deprivation when detention grows prolonged and no hearing tests necessity. The Government's diligence in processing the merits is relevant but not dispositive; liberty cannot remain unreviewed merely because the merits docket is moving.

J. The Opposition Mischaracterizes the Claim as Substantive Due Process and Invokes Inapposite Cases.

Mr. Ye's principal claim is procedural. He accepts for purposes of this case that Congress may authorize initial detention of applicants for admission. He challenges the adequacy of the procedure for continuing that detention after it becomes prolonged. The requested hearing does not declare detention impermissible "no matter what process is provided." It asks what process is due before the Government may continue depriving him of physical liberty.

Connecticut Department of Public Safety v. Doe involved a registry triggered solely by an undisputed conviction; current dangerousness had no role in the legislative classification. *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 7-8. Here, current danger and flight risk are the regulatory reasons that can justify civil immigration incarceration. The Constitution independently requires a reasonable relationship between detention and those purposes. A hearing on necessity therefore is not a "bootless exercise"; it is the only mechanism for determining whether confinement remains civil and nonpunitive.

Department of State v. Muñoz, 602 U.S. 899 (2024), and *Washington v. Glucksberg*, 521 U.S. 702 (1997), concern the methodology for identifying unenumerated substantive rights. Mr. Ye does not assert a newly invented fundamental right to a particular immigration benefit. He invokes the ancient and settled liberty

interest in freedom from imprisonment and seeks procedures to protect it. The *Glucksberg* historical test does not displace ordinary procedural due process analysis.

Reno v. Flores, 507 U.S. 292 (1993), likewise did not approve nineteen months of adult civil detention without any custody hearing. It considered a facial challenge to a regulation governing the release of detained juveniles to approved custodians and emphasized the procedures available within that scheme. The existence of a generally valid detention system does not answer whether its application to Mr. Ye has become unreasonably prolonged.

Michael H. v. Gerald D., 491 U.S. 110 (1989), addressed a state-law parentage presumption and has no meaningful bearing on the procedure required before prolonged federal incarceration. These cases cannot transform a straightforward procedural claim into a substantive claim merely because § 1225(b) does not itself list danger and flight risk as statutory elements.

K. Due Process Requires the Government to Bear the Burden by Clear and Convincing Evidence and Requires Consideration of Less Restrictive Alternatives.

Once detention has become prolonged, the Government should bear the burden of justifying continued incarceration. Requiring Mr. Ye to prove a negative - that he is not dangerous and will not flee - would compound the risk created by nineteen months without process. The Government controls the detention decision, has access to

immigration and law-enforcement information, and seeks to continue the most severe form of civil restraint. It therefore must justify that restraint.

Clear and convincing evidence is the appropriate standard. Civil confinement implicates an interest of exceptional weight, and the Supreme Court requires heightened proof where error may result in unnecessary loss of liberty. *Addington v. Texas*, 441 U.S. 418, 425-33 (1979). The Ninth Circuit has applied a clear-and-convincing standard in prolonged immigration detention proceedings. *Singh v. Holder*, 638 F.3d 1196, 1203-08 (9th Cir. 2011), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

The hearing must also address alternatives. Detention is not necessary if residence requirements, reporting, GPS or other monitoring, travel restrictions, sponsor supervision, or a bond calibrated to ability to pay can reasonably mitigate risk. *Hernandez*, 872 F.3d at 990-93. A constitutionally adequate decision should explain why proposed alternatives are insufficient rather than treating detention as the automatic default.

At minimum, the hearing should include: notice of the custody basis; access to the information on which the Government relies, subject to lawful protections; a competent Mandarin interpreter; representation by counsel; the Government's clear-and-convincing burden; express consideration of nonmonetary alternatives and ability to pay; and a written or recorded decision sufficient for meaningful review.

L. Respondents' One-Sentence APA Argument Does Not Defeat the Constitutional Habeas Claim.

The Opposition asserts that the APA claims fail because § 1225(b) mandates detention. That argument repeats the statutory point and does not answer constitutional legality. Agency action is not "in accordance with law" when its application violates the Constitution, and 5 U.S.C. § 706(2)(B) expressly recognizes review of agency action contrary to constitutional right.

The Court need not resolve any independent APA issue to grant relief. Section 2241 supplies a direct vehicle for the custody claim, and the Fifth Amendment supplies the governing rule. But the existence of statutory detention authority cannot convert unconstitutional application of that authority into lawful agency action. At most, *Jennings* defeats a claim that the APA or INA themselves create an implied periodic bond hearing; it does not defeat Mr. Ye's as-applied due process claim.

V. THE APPROPRIATE REMEDY IS RELEASE OR, AT MINIMUM, A PROMPT CONSTITUTIONALLY ADEQUATE CUSTODY REDETERMINATION HEARING

Habeas corpus authorizes release from unlawful executive detention. After approximately nineteen months without any individualized custody process, immediate release under reasonable supervision is an appropriate remedy. Respondents have had ample time to identify any individualized reason why Mr. Ye cannot safely pursue his

appeal outside a detention facility, yet their Opposition relies exclusively on categorical statutory status.

Reasonable conditions can preserve every legitimate governmental interest. Mr. Ye can reside at an approved address, report as directed, maintain updated contact information, appear at all proceedings, comply with geographic or travel restrictions, and submit to electronic or telephonic monitoring if ordered. The Court may retain jurisdiction to ensure compliance and may prohibit transfer outside the District before Respondents comply with the writ.

Alternatively, the Court should order a hearing within seven days. The Immigration Judge should be required to release Mr. Ye unless the Government proves by clear and convincing evidence that he currently poses a danger or flight risk and that no less restrictive condition or combination of conditions can reasonably mitigate that risk. Any monetary bond must account for ability to pay. The decision should be written or recorded and should specifically address proposed alternatives.

This alternative remedy is measured and familiar. It does not decide admission, asylum, withholding, CAT protection, or removal. It simply requires the Executive to justify continued physical custody after a period far exceeding the detention considered brief in controlling precedent.

VI. CONCLUSION

Respondents' Opposition should be rejected. Section 1225(b)'s mandatory language answers a statutory question that Mr. Ye does not ask this Court to revisit. It does not answer whether nineteen months of civil incarceration without any neutral custody hearing is consistent with the Fifth Amendment. *Jennings* reserved that constitutional question; *Thuraissigiam* addressed admission procedures and nontraditional relief; *Demore* concerned brief detention under a different statute; *Rodriguez Diaz* involved an actual initial bond hearing; and *Banyee* is nonbinding and inconsistent with the case-specific approach applied in this Circuit.

Mr. Ye has a pending, fully briefed BIA appeal; no executable final order; no individualized finding of danger or flight risk; and no custody hearing after approximately nineteen months. Due process requires more than categorical detention by statutory label.

For these reasons, Petitioner respectfully requests that the Court grant the Petition and order his immediate release under reasonable conditions. In the alternative, Petitioner requests an individualized custody hearing within seven days at which the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary, the adjudicator expressly considers less restrictive alternatives and ability to pay, and Mr. Ye is released if the Government does not carry its burden.

Respectfully submitted,

Dated: July 20, 2026

//s// Mario Portugal
Mario Portugal
Attorney for Petitioner Chao YE