UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Zhaoxing Li, **A[redacted]** **Petitioner,** **v.** **Todd Blanche,** **Acting Attorney General** **of the United States of America,** **Markwayne Mullin,** **Secretary of the Department of** **Homeland Security, (DHS),** **David Venturella,** **Acting Director,** **United States Immigration and** **Customs Enforcement (ICE),** **Mary De Anda-Ybarra,** **Field Office Director,** **El Paso Field Office,** **U.S. Immigration and Customs** **Enforcement (ICE), and** **Warden of the** **ERO El Paso Camp East Montana,** **Respondents.**	**Civil Action No. 3:26-CV-2058** **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case seeks the immediate release of Petitioner, Mr. Zhaoxing Li, from unlawful immigration detention by the Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE"). ICE has detained Petitioner since July 7, 2026 at ERO El Paso Camp East Montana in Texas. He faces unlawful detention because DHS and the Executive Office

for Immigration Review ("EOIR") have concluded Petitioner is subject to mandatory detention, despite no change of circumstance since DHS's November 3, 2024 decision to release him from detention on his own recognizance. *See* Exh. A (Order of Release on Recognizance).

2. For nearly two years, Petitioner has lived in the United States in Maryland with his family and has no criminal history in the United States or anywhere in the world, to the best of undersigned counsel's knowledge.

3. On July 7, 2026, DHS rearrested Petitioner despite no change of circumstance justifying the revocation of his release on his own recognizance.

4. Petitioner's detention is unlawful for several reasons.

5. First, the Government has no legitimate interest in detaining Petitioner when he is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, his detention violates his substantive due process rights, requiring his immediate release.

6. Second, due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Petitioner. When the Government released Petitioner from its custody in 2024, it determined that he was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that determination has only strengthened. Petitioner's detention without any pre-deprivation process violates his procedural due process rights and this alone warrants his immediate release.

7. Third, the Government's position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is untenable because DHS's own paperwork confirms that

Petitioner's detention and release in 2024 occurred "[i]n accordance with" 8 U.S.C. § 1226(a). *See* Exh. A.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from detention. If the Court declines to order release or conduct its own hearing, it should order a bond hearing before an immigration judge with explicit procedural safeguards—such as ordering Respondents to carry the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk—and retain jurisdiction to review the determination to ensure compliance with due process. Finally, Petitioner asks this Court to order Respondents to return Petitioner's property to him upon release, including any government-issued property such as his identification.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ERO El Paso Camp East Montana in El Paso, TX.

10. This Court has 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).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and 28 U.S.C. § 1261, the All Writs Act.

VENUE

12. Venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner is currently detained. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). (finding proper venue lies in the judicial district in which Petitioner is currently detained).

13. 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 Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. Immigration &. Naturalization Svc.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner, Mr. Li, is alleged to be a citizen of the People's Republic of China who has been in immigration detention since July 7, 2026. After arresting Petitioner, ICE did not set bond, and Petitioner is unable to obtain review of his custody by an IJ.

17. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which EOIR—and the immigration court system it operates—is a component agency.

18. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and

Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent David Venturella is the Acting Director of ICE, the agency responsible for Petitioner's detention. Mr. Venturella has custodial authority over Petitioner and is sued in his official capacity.

20. Respondent Mary De Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division and is the federal official with supervisory authority over ERO El Paso Camp East Montana. Respondent Field Office Director is sued in her official capacity.

21. Respondent Warden is the warden of the ERO El Paso Camp East Montana and is the Petitioner's actual physical custodian. Respondent Warden is sued in their official capacity.

LEGAL FRAMEWORK

22. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* § 1226(c).

24. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

25. Last, the INA also provides for the detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

26. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

27. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention pursuant to § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

28. There is a growing circuit split on this issue, with the Fifth and Eighth Circuits upholding the Government's new interpretation of the detention authorities. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (finding that individuals who were not inspected or admitted are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *Herrera Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) (same). *But see Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026) (holding that individuals arrested within the United States are subject to discretionary detention under 8 U.S.C. § 1226(a)); *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026) (same); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Cirrus Rojas v. Olson*, No. 25-3127, 2026 WL 2198315 (7th Cir. July 30, 2026) (same); *Rodriguez Vazquez v. Bostock*, No. 25-6842, 2026 WL 2196424 (9th Cir. July 30, 2026) (same).

29. Petitioner concedes that pursuant to Fifth Circuit precedent, he is subject to mandatory detention under § 1225(b)(2). *Buenrostro-Mendez*, 166 F.4th at 498.

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[1] *Available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.*

30. Notwithstanding *Buenrostro-Mendez*, Petitioner's re-detention without a material change in circumstances violates his constitutional rights; the *Buenrostro-Mendez* decision does not preclude Petitioner's claims.

31. In *Buenrostro-Mendez*, the Fifth Circuit did not resolve—and expressly did not reach—the independent constitutional claim raised in this Petition. *See id.* In fact, *Buenrostro-Mendez* remanded the matter to the district court "for further proceedings consistent with [that] opinion." *Id.* As Judge Cardone recently stated: "Presumably, those further proceedings will entail consideration of Buenrostro-Mendez's due process claim, which the district court declined to reach in the first instance." *Monge Escoto v. Bondi*, No. EP-26-CV-283-KC, at *2 (W.D. Tex. Feb. 12, 2026). As such, "*Buenrostro-Mendez* has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of her constitutional right to procedural due process." *Marceau v. Noem*, No. 3:26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026).

32. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Petitioner maintains that his ongoing and potentially indefinite detention without an individualized custody determination violates his right to due process, as recognized post-*Buenrostro-Mendez* by judges within this Court. *See id*; *see also Rodriguez Flores v. Bondi*, No. EP-26-CV-00338-DB (Feb. 11, 2026).

33. Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community

from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

34. Given that habeas corpus "is, at its core, an equitable remedy," this Court has authority to order a remedy that fully addresses the statutory and constitutional violations in this case. *Schlup v. Delo*, 513 U.S. 298, 319 (1995); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

35. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas shall "dispose of the matter as law and justice require"); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner was previously released to the community and has been re-detained in violation of both the INA and due process, is release on recognizance without further conditions of release.

36. "In recent months, courts across the country have ordered the release of detainees in similar situations." *See, e.g., Moctezuma v. Henkey*, No. 1:25-cv-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing). (citing *Lepe v. Andrews*, 801 F.Supp.3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, 805 F.Supp.3d 482 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal.

July 4, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025); *Munoz Materano v. Arteta*, 804 F. Supp.3d 395 (S.D.N.Y. Sept. 12, 2025); *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025); *Gonzalez Centeno v. Lowe*, No. 3:25-CV-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026); *Feisal O. v. Noem*, No. 26-CV-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026); *Garcia Covarrubias v. Holston*, No. 2:25-CV-02445-RFB-DJA, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026); *Kenzhebaev v. Noem*, No. 1:25-CV-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025); *Kobilov v. O'Neill*, No. 26-CV-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026 (finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Orega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025); *Iza v. Arnott*, No. 6:25-CV-3392-MDH, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026).

37. Multiple courts have even ordered that the government must provide notice to immigrants of their intent to re-detain them *and* hold a pre-deprivation bond hearing before a neutral arbiter. *See Lepe*, 801 F.Supp.3d at 1119-20; *Pinchi*, 2025 WL 1853763, at *4; *Kenzhebaev*, 2025 WL 3737975 at *9.

38. Additionally, dozens of habeas courts have ruled that the government's use of the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2), violates due process and have had to order Respondents to allow a petitioner to post his bond. *See, e.g., M.P.L. v. Arteta*, No. 25-CV-5307 (VSB), 2025 WL 3288354, at *7, n.6 (S.D.N.Y. Nov. 25, 2025) (noting that in November 2025, "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process); *Guasco v. McShane*, No. 1:25-CV-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other

habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted).

39. In other cases, ICE has applied onerous electronic GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See Diahn v. Lowe*, No. 1:24-CV-1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026) (ordering ICE to remove ankle monitor it had unilaterally imposed after IJ granted bond without further conditions); *Orellana Juarez v. Moniz*, 788 F.Supp.3d 61, 69-70 (D. Mass. 2025) (same, finding this presented a "real constitutional risk" and defeated the purpose of neutral third-party review of custody); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187, 2025 WL 3089712, at *9 (E.D. Cal. Nov. 5, 2025) (same, in the context of a preliminary injunction); *N-N- v. McShane*, No. 25-CV-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025) (finding ICE's imposition of an ankle monitor, check-ins, and travel restrictions, which the IJ did not order in setting bond, violated due process and the *Acardi* doctrine).

40. Still other cases have left habeas courts unclear whether Respondents intend to comply with the court's orders to hold a bond hearing at all. *See, e.g., Gomez Rodriguez v. Noem*, No. 2:25-CV-01115-SPC-NPM, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025) (noting that "[i]n other cases before this Court, the respondents have claimed they cannot direct EOIR when to conduct a bond hearing," and ordering release if the government does not comply); *Vargas v. Bondi*, No. 25-CV-1023, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted*, No. 25-CV-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (recommending immediate release, in part because respondents argued that "if this Court ordered a hearing, it would require the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do").

41. Finally, if the record establishes "that the immigration judge to whom [Petitioner's] case is to be referred will fail to apply the correct legal standards for bond hearings under § 1226," the proper remedy is immediate release, not a bond hearing. *See Bautista Villanueva*, 2026 WL 100595, at *2 (quoting *M.K. v. Arteta*, No. 25-CV_9918 (LAK), 2025 WL 3720779, at *9 (S.D.N.Y. Dec. 23, 2025) ("Where respondents have offered no reason for why M.K.'s detention under Section 236 or any other statute would be lawful, the proper remedy is immediate release, not ordering a bond hearing.")).

FACTS

42. Petitioner, Mr. Li, came to the United States on November 1, 2024.

43. For nearly two years, Petitioner has made his home in the United States. Prior to his detention, Petitioner lived in Maryland with his father, mother and sister. His family relies on him for financial and emotional support and has been struggling while he has been detained.

44. Mr. Li filed for asylum and has an appeal pending with the Board of Immigration Appeals; he does not have a final order of removal.[2] *See* Exhs. B (BIA Filing Receipt), C (EOIR automated case information).

45. For nearly two years, Petitioner has lived at a fixed address, worked as a delivery driver, and had a stable, supportive community. He will return to live with his parents and sibling

[2] On June 24, 2026, an IJ denied Mr. Li's application for asylum and ordered him removed; however, this order is not final, because on July 8, 2026, Mr. Li appealed this decision to the BIA. The appeal remains pending and Mr. Li does not have a final removal order. An immigration order of removal becomes "administratively final" "upon the earlier of—(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the [noncitizen] is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B); *see also* 8 C.F.R. § 1241.1(a), (c) ("An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final . . . (a) Upon dismissal of an appeal by the Board of Immigration Appeals . . . (c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time."). When an order of removal becomes final, 8 U.S.C. § 1231(a)(3) then governs the noncitizen's detention; until and unless that happens, § 1226(a) continues to govern the noncitizen's detention.

upon release. Most importantly, Petitioner has complied with all requirements of his original release on recognizance.

46. Petitioner has no criminal convictions in the United States, to the best of undersigned counsel's knowledge.

47. Petitioner is accordingly neither a flight risk nor a danger to the community.

48. Despite these facts, Respondents re-arrested Petitioner on July 7, 2026 without affording Petitioner a pre-deprivation bond hearing or otherwise alleging a single change in circumstance justifying his re-detention.

49. Pursuant to ICE's current policies, Respondents now consider Petitioner to be subject to mandatory detention and have declined to release him from custody, despite previously processing his release under 8 U.S.C. § 1226(a).

50. Pursuant to *Buenrostro-Mendez*, an IJ and the BIA are unable to consider Petitioner's bond request and whether his re-detention is a violation of his right to due process.

51. As a result, Petitioner remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his community and unable to provide for his family.

52. Petitioner highlights that the immigration court system has seemingly been transformed into a body that is incapable of upholding Petitioner's statutory and constitutional rights.

53. A bond hearing by an IJ is not the most appropriate or efficient use of this Court's equitable authority or this Court's limited resources, as outlined herein. Recent actions by ICE attorneys and IJs during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for the court and the

parties, all while Petitioners' unlawful detention continues. *See* App'x (outlining a non-exhaustive list of sixty-seven cases nationwide in which federal courts intervened following a problematic bond hearing).

54. In the last year, ICE has frequently appealed the IJ's grant of bond to the BIA and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2). This stay, which keeps the petitioner detained despite an IJ bond grant, was rarely invoked in prior years but has now become common.

55. Additionally, as of September 26, 2025, the current administration terminated 128 IJs.[3] Former New York IJ David K.S. Kim explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."[4] The firings and pressure to deny cases have created a pervasive climate of fear designed to ensure compliance.[5] There is also a common theme involving the inevitable compromise of judicial independence when self-preservation requires favoring the government.[6]

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[3] Trump Administration Continues Firing Immigration Judges -- IFPTE responds, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp.

[4] Woo-Sun Lim, Former judge highlights legal failures in U.S. worker detentions, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

[5] Former IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they want." Marco Poggio, Judges See an Immigration Court Gutted from Inside, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside. Former Annandale IJ Anam Petit observed: "There's a climate of fear . . . Judges feel like, if they step a toe out of line right now . . . or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings." Eric Katz, 'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/. Former New York IJ Carmen Maria Rey Caldas similarly described judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership." Isabela Dias, "Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/.

[6] Former San Francisco IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired." Marco Poggio, Judges See an Immigration Court Gutted from Inside, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside. Former Boston IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice." *Id.*

56. To replace fired judges, the Department of Justice launched recruitment for what it explicitly marketed as "deportation judges." DHS—a party in immigration proceedings before EOIR—promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[7] The DOJ has authorized up to 600 military lawyers to serve as temporary IJ for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as a temporary IJ.[8] Corey Lewandowski, an adviser to the DHS Secretary, responded to the announcement by posting: "I see more deportations of illegal immigrants in the near future"[9]—an explicit acknowledgement of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS. In December, news outlets reported that a U.S. army lawyer who was detailed as an IJ was fired just one month into his new role, likely for granting more than half of the cases on which he ruled.[10] News outlets have reported that the IJs hired to fill the gaps from those fired in 2025 were explicitly trained to grant cases "only in rare circumstances," instead of being instructed in immigration law and encouraged to use their training and judicial discretion.[11]

57. These sentiments are echoed in the included affidavit from former IJ Lawrence O. Burman. *See* Exh. D (Affidavit of IJ Burman) ("Although immigration judges are expected to act as neutral adjudicators, I have noticed increasing concern among members of the bench about

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[7] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.
[8] Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025).
[9] Corey R. Lewandowski (@CLewandowski_), X (Sept. 2, 2025, 1:47 PM), https://x.com/clewandowski_/status/1962950546652070269.
[10] Associated Press, *US Army Lawyer Fired as Immigration Judge After Defying Trump Deportation Agenda*, The Guardian, (Dec. 19, 2025, 1:58 PM), https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation.
[11] Celine Castronuovo, *Trump Immigration Judges Pushed to Deny Asylum in Swift Training*, U.S. L. Wk. (Feb. 4, 2026, 9:45 AM), https://news.bloomberglaw.com/us-law-week/trump-immigration-judges-pushed-to-deny-asylum-in-swift-training.

institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure. I am concerned that the notable rise in bond denials and adverse case outcomes undermines due process and erodes confidence in the Immigration Court system.").

58. Considering the current climate within the immigration courts, no adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any IJ assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their livelihood.

CLAIMS FOR RELIEF

COUNT 1

Violation of the Fifth Amendment (Substantive Due Process)

59. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

60. The Due Process Clause prohibits the government from infringing upon certain "fundamental" liberty interests "unless the infringement is narrowly tailored to support a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Thus, the Fifth Amendment's guarantee "includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan v. Crawford*, 800 F. Supp. 3d 641, 658 (E.D. Va. 2025).

61. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

62. The only constitutional purposes for immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the

community." *Id.* (internal quotation marks and citation omitted). Detaining a noncitizen to effectuate any other goal is without statutory basis and thus unconstitutional. *Jackson v. Indiana*, 406 U.S. 715, 737 (1972).

63. Where the government has "asserted no individualized justification—let alone a special or compelling justification—to continue to deprive [noncitizens] of their physical liberty," the substantive due process rights of those noncitizens are violated. *Jacobo Ramirez v. Noem*, 817 F.Supp.3d 1037, 1056 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection, some previously released on recognizance, likely to prevail on substantive due process claim).

64. Petitioner's detention serves no lawful purpose because he is neither a danger nor a flight risk. Petitioner has lived in the United States for almost two years. He has complied with all the terms of his release on recognizance. He has a stable address, gainful employment, and the support of his immediate family and community. He has no criminal convictions. Thus, he is not a danger or a flight risk and there is no justification for his continued detention.

65. Petitioner's prior release on recognizance required a finding that he was not a flight risk or a danger at the time. *See* 8 C.F.R. § 1236.1(c)(8); *see also* Exh. A. Therefore, re-detention is only consistent with substantive due process if there is a change in circumstances leading the government to believe that the noncitizen now presents a danger, presents a flight risk, or is likely to be removed in the reasonably foreseeable future. Since being released, Petitioner has not been re-arrested, charged, or convicted of any offense; missed any immigration appointments; or otherwise failed to comply with release conditions. There is no material change in circumstances warranting re-detention. On the contrary, Petitioner has strengthened his community ties and established a pattern of continued compliance with all requirements the Government has issued.

Therefore, just as there was no lawful reason to hold Petitioner in detention at the time that he was released, there is no lawful reason to hold Petitioner in detention now.

66. Because the government is not detaining Petitioner to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

COUNT 2

Violation of the Fifth Amendment (Procedural Due Process)

67. In this petition, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). This liberty interest applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

68. Courts use the three-factor *Mathews v. Eldrige* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

69. The first *Mathews* factor weighs heavily in Petitioner's favor. Petitioner has a strong liberty interest in being free from confinement.

70. The second *Mathews* factor also weighs in Petitioner's favor. The risk of erroneous deprivation of liberty is extremely high, given the lack of a bond hearing before a neutral arbiter

and the fact that Petitioner is subject to indefinite, unreviewable detention. Petitioner was previously released from detention after being found that he is neither a danger nor a flight risk, and his re-detention—without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond—make the risk of erroneous deprivation of liberty not just high, but certain. His detention is the direct result of insufficient safeguards and lack of procedure. Under these circumstances, the risk of erroneous deprivation of his liberty is high and the second *Mathews* factor weighs heavily in Petitioner's favor.

71. The third factor favors Petitioner as well. Petitioner's erroneous detention imposes high fiscal and administrative burdens on Respondents. Releasing Petitioner and requiring the government to provide a pre-deprivation hearing before re-detaining him would save government resources and effort wasted on erroneous detention. Unlawful detention and violating noncitizens' constitutional rights are contrary to the public interest.

72. Given the significant liberty interest at stake, the high risk of erroneous deprivation, and the minimal burden to the government of additional procedural safeguards, the government's detention of Petitioner violates his right to procedural due process.

PRAYER FOR RELIEF

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy."). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) ("[The habeas statute] does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with

respect to the relief that may be granted[.]"). Here, because ordering a 1226(a) bond hearing before EOIR—an adjudicatory body that is no longer unbiased—would not properly redress the statutory and constitutional violations present in this matter.

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

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

d. Declare that Petitioner's detention is unlawful;

e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner under the same conditions outlined in his initial Order of Release on Recognizance;

f. In the alternative, Petitioner requests a custody hearing before this Court. The habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance.[12]

g. At a minimum, the Court should order that Petitioner be provided a 1226(a) bond hearing, *but with additional safeguards*. Specifically, the Court should order:

[12] *See e.g. L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), rep. and rec not reached, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

a. A bond hearing where the government shall bear the burden of establishing by clear and convincing evidence that (1) changed circumstances exist since the Government's 2024 decision to release Petitioner on his own recognizance; and (2) Petitioner poses a danger or flight risk; this protection is necessary to "[reflect] the concern that '[b]ecause the alien's potential loss of liberty is so severe . . . he should not have to share the risk of error equally.'" *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025).[13]

b. Provide that the habeas court shall retain jurisdiction to review the IJ bond decision to ensure compliance with the court's order and due process.

c. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) because its application violates the procedural due process rights of noncitizens granted bond. *See Gutierrez v. Thompson*, No. 4:25-cv-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025); *see also Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025).

h. Order Respondents to return all of Petitioner's property to him upon release, including any government-issued identification cards;

i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

[13] The *Lopez Arevelo* Court also noted that "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk; *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted))

Dated: August 5, 2026

/s/ Rebecca Swaintek-Green
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VERIFICATION

I represent Petitioner, Zhaoxing Li, and submit this verification on his behalf. I hereby verify that the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 5, 2026

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