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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HUANG MINGXING,
Petitioner,

VS.

JEREMY CASEY, Warden of the Imperial Regional Detention Facility, in his official capacity;
FIELD OFFICE DIRECTOR, San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, in his or her official capacity;
DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity;
MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, in his official capacity;
TODD BLANCHE, Acting Attorney General of the United States, in his official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS");
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ("ICE");
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ("EOIR"),

Case No.: '26CV4575 RSH JAC

PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241) AND COMPLAINT FOR INJUNCTIVE/DECLARATORY RELIEF

Assigned to:
Dept:

Respondents.

Petitioner Huang Mingxing ("Petitioner"), by and through counsel, alleges:

I. INTRODUCTION

1. This petition challenges Petitioner's ongoing unlawful detention by Respondents. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner brings this action for habeas, injunctive, and declaratory relief ordering Respondents to release him.

2. In the interim, Petitioner seeks an order from the Court that he be released, and not be removed from this judicial district or removed from the United States, pending disposition of his petition for writ of habeas corpus.

3. Petitioner is currently detained at the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, CA 92231, the ICE detention facility serving the El Centro, California area.

II. REQUIREMENTS OF 28 U.S.C. § 2243

4. A court entertaining an application for a writ of habeas corpus "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243 (emphasis added). Petitioner is entitled to relief for the reasons set forth below, and respectfully requests that the Court issue an order to show cause forthwith.

5. Petitioner separately applies, by ex parte application filed concurrently herewith, for a temporary restraining order and an order to show cause re preliminary injunction under Federal Rule of Civil Procedure 65. The briefing and hearing schedule Petitioner requests, and the grounds for expedition, are set forth in that application. See *Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000) ("The statute itself directs courts to give petitions for habeas corpus special, preferential

consideration to insure expeditious hearing and determination.") (quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954)).

III. JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody in violation of the Constitution and laws of the United States.

7. No order of removal—final or otherwise—has been entered against Petitioner. His removal proceedings remain pending before the Imperial Immigration Court, where his next Master Calendar hearing is set for August 20, 2026. Petitioner therefore does not seek review of any removal order, of Respondents' decision to seek his removal, or of the process for determining his removability. He challenges only the lawfulness of his present physical custody—a claim independent of and collateral to his removal proceedings, and squarely within the traditional office of the writ. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

8. This Court has recently and repeatedly so held. In *Faizi v. Larose*, No. 25-cv-02974-JO-MSB, 2026 WL 1112035, at *2–*3 (S.D. Cal. Apr. 24, 2026), the Court rejected the Government's reliance on 8 U.S.C. §§ 1252(b)(9) and (g) as bars to a detained noncitizen's due process challenge, holding that "[c]hallenges to the legality of a noncitizen's detention during the pendency of removal proceedings" are "independent of or collateral to the removal process" and that a contrary reading "would render claims of prolonged detention effectively unreviewable." Accord *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1108–09 (S.D. Cal. 2025); *Vasquez Garcia v. Noem*, 803 F. Supp. 3d 1064, 1072–74 (S.D. Cal. 2025) (granting temporary restraining order and rejecting both bars in a habeas action brought by noncitizens charged under INA § 212(a)(6)(A)(i) and detained at the Imperial

Regional Detention Facility), *voluntarily dismissed without prejudice* (S.D. Cal. Sept. 29, 2025); see *Jennings*, 583 U.S. at 293–95 (plurality opinion).

9. The Supreme Court has resolved the point directly. In *Nielsen v. Preap*, 586 U.S. 392, 402 (2019), the Court held that § 1252(b)(9) did not bar jurisdiction over a challenge to the denial of bond hearings, because the detainees were "not asking for review of an order of removal," were "not challenging the decision to detain them in the first place or to seek removal," and were "not even challenging any part of the process by which their removability will be determined." The same is true of Petitioner. The Ninth Circuit is in accord: § 1252(b)(9) "has built-in limits," and "claims challenging the legality of detention ... are independent of the removal process." *Gonzalez v. U.S. Immigration & Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020).

10. Section 1252(g) is narrower still. It reaches "only ... three discrete actions"—the decision or action to commence proceedings, adjudicate cases, or execute removal orders—and does not "sweep in any claim that can technically be said to arise from" them. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999); *Jennings*, 583 U.S. at 294. Petitioner challenges none of the three: no proceedings are being commenced against him anew, he does not ask this Court to adjudicate his removability, and there is no removal order to execute. He objects instead to the lack of process afforded him before Respondents revoked his release—a challenge to Respondents' legal authority to act as they did, not to any exercise of prosecutorial discretion. *Ibarra-Perez v. United States*, 154 F.4th 989, 996–99 (9th Cir. 2025) (§ 1252(g) does not bar claims premised on a lack of legal authority, or due process claims collaterally challenging an agency's practices), *reh'g en banc denied*, 2026 U.S. App. LEXIS 18572 (9th Cir. June 25, 2026); *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc); *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998). Ambiguity is resolved in favor of preserving review. *Ramirez v. Noem*, 815 F. Supp. 3d 1162 (S.D. Cal.

2025); see also *E.C. v. Noem*, No. 2:25-cv-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025), *habeas petition dismissed without prejudice*, 2025 U.S. Dist. LEXIS 212350 (D. Nev. Oct. 24, 2025).

11. Section 1252(f)(1) is likewise inapposite. Petitioner seeks individualized habeas and injunctive relief as to his own custody, not classwide injunctive relief restraining the operation of the statute.

12. Nor does 8 U.S.C. § 1226(e) bar review. That provision insulates the Attorney General's discretionary judgments from review; it does not bar constitutional challenges to the lawfulness of detention. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018). The Ninth Circuit has recently reaffirmed the point: § 1226(e) "restricts jurisdiction only with respect to the executive's exercise of discretion," and that discretionary judgment "does not include constitutional claims or questions of law." *Martinez v. Clark*, 124 F.4th 775, 781–82 (9th Cir. 2024) (quoting *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011)). Petitioner does not ask this Court to reweigh a discretionary custody judgment. He asks it to hold that revoking an existing release without notice, stated reasons, or any opportunity to be heard violates the Due Process Clause.

13. This Court also has jurisdiction under 28 U.S.C. § 1331 over Petitioner's constitutional claims for declaratory and injunctive relief.

14. Venue is proper in this District because Petitioner is detained at the Imperial Regional Detention Facility in Imperial County, California, which is within the Southern District of California, and his immediate custodian is located in this District.

IV. PARTIES

15. Petitioner Huang Mingxing is a citizen and national of the People's Republic of China. He is currently detained at the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, California 92231.

16. Respondent Jeremy Casey is the Warden of the Imperial Regional Detention Facility and is sued in his official capacity. He is Petitioner's immediate custodian and has day-to-day custody over Petitioner at the facility.

17. Respondent Field Office Director, San Diego Field Office, Enforcement and Removal Operations ("ERO"), U.S. Immigration and Customs Enforcement ("ICE"), is sued in his or her official capacity. The San Diego Field Office is identified by ICE as the responsible Field Office for the Imperial Regional Detention Facility. In that official capacity, this Respondent is responsible for ICE detention operations and related custody decisions—including detention, transfer, and removal actions—affecting noncitizens held at the facility.

18. Respondent David J. Venturella is the Acting Director of ICE and is sued in his official capacity. As Acting Director, he heads the agency responsible for the detention, transfer, and removal of noncitizens, including Petitioner.

19. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS") and is sued in his official capacity. DHS is charged with the administration and enforcement of immigration laws, and DHS oversees ICE, which is responsible for Petitioner's detention.

20. Respondent Todd Blanche is the Acting Attorney General of the United States and is sued in his official capacity as head of the Department of Justice. The Attorney General oversees the Executive Office for Immigration Review ("EOIR") and the immigration court system.

21. Respondent DHS is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act ("INA"), including detention and removal functions carried out through component agencies.

22. Respondent ICE is the DHS component agency responsible for the detention, transfer, and removal of noncitizens.

23. Respondent EOIR is the federal agency responsible for administering immigration court proceedings, including custody redeterminations in bond proceedings.

V. FACTUAL ALLEGATIONS

24. Petitioner Huang Mingxing (A# [redacted]) is currently detained by Respondents at the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, CA 92231.

25. Petitioner entered the United States on April 5, 2024, at or near Otay Mesa, California, and was apprehended by U.S. Border Patrol at approximately 10:35 a.m. that day. DHS processing records reflect no criminal history. That same day, DHS (1) personally served Petitioner with a Notice to Appear (Form I-862), placing him in removal proceedings under INA § 240, 8 U.S.C. § 1229a, and charging him solely under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) (presence without admission or parole), and (2) released Petitioner from custody on his own recognizance pursuant to a Form I-220A, Order of Release on Recognizance, which states on its face that it was issued "in accordance with section 236 of the Immigration and Nationality Act"—that is, 8 U.S.C. § 1226. The NTA and I-220A are attached as Exhibit 4.

26. **Petitioner is not an "arriving alien."** The Notice to Appear served on Petitioner on April 5, 2024 charges him solely under INA § 212(a)(6)(A)(i)—the ground applicable to a noncitizen "present in the United States without being admitted or paroled"—and DHS designated Petitioner on that form as an alien present in the United States who has not been admitted or paroled, rather than as an arriving alien. (Ex. 4.) DHS did not place Petitioner in expedited removal proceedings; it placed him in ordinary removal proceedings under INA § 240 and released him the same day under INA § 236. Respondents' own charging document thus forecloses any contention that Petitioner is an arriving alien whose detention is governed by 8 U.S.C. § 1225(b). See *Faizi v. Larose*, No. 25-cv-02974-JO-MSB, 2026 WL 1112035, at *4 & n.1 (S.D. Cal. Apr. 24, 2026) (rejecting the Government's "arriving alien" characterization where its own Notice to Appear checked only the

box for a noncitizen "present in the United States who has not been admitted or paroled").

27. **DHS elected § 236 at the border.** Petitioner was apprehended by U.S. Border Patrol at or near Otay Mesa at approximately 10:35 a.m. on the day he entered. DHS therefore had Petitioner in its physical custody, at the border, on the day of entry—the moment at which every mechanism of 8 U.S.C. § 1225 was most readily available to it. DHS used none of them. Instead, on that same day, DHS made four separate determinations, each recorded in writing: (1) it declined to place Petitioner in expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and instead issued a Notice to Appear; (2) on that Notice to Appear it charged Petitioner under 8 U.S.C. § 1182(a)(6)(A)(i) and designated him as a noncitizen present in the United States who has not been admitted or paroled, rather than as an arriving alien; (3) it commenced ordinary removal proceedings under INA § 240, 8 U.S.C. § 1229a; and (4) it released Petitioner on a Form I-220A stating on its face that it issued "in accordance with section 236 of the Immigration and Nationality Act." (Ex. 4.)

28. Those determinations were not made in ignorance of the facts on which Respondents now rely. DHS knew the date, the place, and the manner of Petitioner's entry, because its own officers effected the apprehension and recorded those facts on the charging document itself. Whatever the reach of 8 U.S.C. § 1225(b)(2)(A) may be in other cases, DHS answered that question as to this Petitioner on the day it apprehended him, in writing, and answered it under INA § 236. Respondents' contemporaneous election is irreconcilable with any present contention that Petitioner was, and has at all times remained, subject to mandatory detention with no possibility of release.

29. No order of removal has ever been entered against Petitioner. His removal proceedings under INA § 240 remain pending before the Imperial Immigration Court, and his next Master Calendar hearing is scheduled for August 20, 2026.

Petitioner has appeared at every hearing in those proceedings and has never been ordered removed, in absentia or otherwise.

30. **Continuous residence at the same address.** Upon release, Petitioner took up residence at [redacted], where he lived with his adult son, Huang Zhangqiang. That is the same address recorded on the Notice to Appear served on April 5, 2024, and it has remained Petitioner's sole and continuous residence at all times since. Petitioner has never changed his place of residence, and he complied with all conditions of his release and all instructions given to him by DHS. Petitioner's removal proceedings were subsequently venued at the Imperial Immigration Court.

31. **Pending Asylum Application.** On or about April 18, 2024, Petitioner executed a Form I-589, Application for Asylum and for Withholding of Removal, seeking asylum, withholding of removal, and protection under the Convention Against Torture. His application is based on [redacted] Petitioner's I-589 remains pending in his removal proceedings before the Imperial Immigration Court, 2409 La Brucherie Road, Imperial, California 92251 (EOIR docket date April 10, 2024). His next Master Calendar hearing is scheduled for August 20, 2026, at 8:30 a.m. (internet-based) before Immigration Judge Stuart J. Zander. No appeal has been received in the case; it remains pending.

32. Prior to August 2, 2026, Petitioner had no criminal history in the United States or anywhere else.

33. **The August 2, 2026 Traffic Stop.** At approximately 10:00 a.m. on August 2, 2026, as Petitioner was exiting a warehouse driveway, an ambulance was responding to a call, and Petitioner failed to yield to it in time. A police vehicle

thereafter followed Petitioner with its emergency lights activated. Petitioner did not immediately notice the police vehicle behind him and therefore did not stop at once. After approximately one to two miles, when the police vehicle sounded its siren, Petitioner realized the officers were directing him to stop, and he slowly and safely pulled over to the side of the road and stopped. At no time did Petitioner attempt to flee, accelerate, or drive evasively.

34. Petitioner was arrested at approximately 10:06 a.m. and booked by the Imperial County Sheriff's Office at approximately 11:33 a.m. on suspicion of a single misdemeanor violation of California Vehicle Code § 2800.1 (Booking No. 26-002756; Agency Case No. 26-10929). Bail was set at $5,000. That same afternoon, at approximately 3:25 p.m., the full $5,000 bail was posted in cash on Petitioner's behalf (Imperial County Sheriff-Coroner Official Receipt No. C11842), and Petitioner was released from state custody with a court date of September 2, 2026, at 8:30 a.m. in the El Centro criminal court. The charge remains pending and unadjudicated; Petitioner has not been convicted of any offense, is presumed innocent, and intends to appear and contest the charge. The facts described above—Petitioner's failure to immediately notice the patrol vehicle, followed by his prompt and safe stop once the siren sounded—are inconsistent with the willful intent to evade that Vehicle Code § 2800.1 requires.

35. **Clerical error in the booking records.** The Imperial County Sheriff's Office Booking Summary Sheet (Exhibit 5) lists an address for Petitioner of [redacted] That entry is a clerical error by the booking officer. Petitioner has never resided in Arizona and has never resided at any address in Chino or Chino Valley. As alleged above, Petitioner's sole and continuous residence since April 5, 2024 has been [redacted]—the address DHS itself recorded on the Notice to Appear. The similar address appearing on the Sheriff-Coroner's bail receipt (Exhibit 5) is the address of the person who posted bail on Petitioner's behalf, not of Petitioner, as

the face of the receipt reflects. Petitioner has at no time changed his place of residence, with or without permission, and any suggestion to the contrary based on the booking paperwork would be factually mistaken.

36. **The August 2, 2026 Re-Arrest, Without Notice or Hearing.** On August 2, 2026, immediately upon stepping out of the police station after posting bail, Petitioner was arrested by ICE officers. ICE did not inform Petitioner at the time of arrest, or at any time thereafter, of the factual or legal basis for the revocation of his release and his re-detention. No written notice of the reasons for revocation of his release was provided. No hearing or opportunity to contest the re-detention has been afforded.

37. As of the filing of this Petition, ICE has not provided Petitioner with any notice, hearing, or opportunity to contest his re-detention. Petitioner remains detained at the Imperial Regional Detention Facility.

38. Petitioner has no criminal convictions whatsoever. The sole event preceding his re-detention was a routine traffic incident, charged as a single unadjudicated misdemeanor, for which the full $5,000 bail was posted and he was released the very same day. Petitioner's asylum application remains pending, he maintained a stable residence with his son, and he complied with the conditions of his release for more than two years.

COUNT ONE

Violation of the Fifth Amendment — Procedural Due Process

39. Petitioner repeats, re-alleges, and incorporates by reference all preceding paragraphs as though fully set forth herein.

40. The Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); see *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Clause generally "requires some kind of a hearing

before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

41. Respondents have deprived Petitioner of his liberty without the procedural protections required by the Due Process Clause of the Fifth Amendment by arresting and detaining him without providing any reason for the arrest, without providing any documentation, and without providing meaningful notice and an opportunity to be heard.

42. ICE provided no stated basis for Petitioner's re-detention. The arrest occurred immediately after the full $5,000 bail set for a single misdemeanor traffic charge was posted and Petitioner was lawfully released from state custody. A pending, unadjudicated charge—as to which Petitioner is presumed innocent—is not a judicial determination that Petitioner violated any law, and it therefore cannot establish noncompliance with the I-220A condition that he "not violate any local, State, or Federal laws or ordinances." Nor has Petitioner failed to comply with any other condition of his release: he has continuously resided at the same Rowland Heights address recorded on his Notice to Appear, has reported as directed, and has appeared at every stage of his removal proceedings. The state court's own decision to release Petitioner on bail the same day reflects that court's judgment that the pending charge did not warrant his detention.

43. That 8 U.S.C. § 1226(b) permits the Attorney General to revoke a bond or parole and rearrest a noncitizen "at any time" does not alter the analysis. Section 1226(b) confers authority to revoke; it prescribes no procedure for doing so and does not purport to displace the Fifth Amendment. Statutory power to terminate a conditional liberty interest has never been understood to dispense with notice and an opportunity to be heard. *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972). Courts in this Circuit have accordingly held that ICE's exercise of revocation authority without notice or a hearing violates due process notwithstanding the agency's statutory discretion. See *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025,

1032 (N.D. Cal. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

44. To the extent Respondents contend that Petitioner's detention and supervision are governed by 8 U.S.C. § 1231 and implementing supervision/revocation regulations, those regulations require notice of the reasons for revocation and an opportunity to respond, including an initial informal interview upon detention. Here, Respondents failed to provide any notice of the factual basis for Petitioner's re-detention and failed to afford him any opportunity to contest his arrest. To the extent Petitioner's detention is governed by 8 U.S.C. § 1226(a), due process likewise requires notice and an individualized custody determination before a neutral decisionmaker.

45. This Court has granted habeas relief on materially identical facts—to a noncitizen detained at the very same facility, against the very same Warden. In *Singh Singh v. Warden of Imperial Regional Detention Facility*, No. 26-CV-948 JLS (VET), ECF No. 9 (S.D. Cal. Mar. 10, 2026) (attached as Exhibit 1), the Court held that the summary revocation of a compliant noncitizen's release—without notification, reasoning, or an opportunity to be heard—violated the Due Process Clause under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), ordered the petitioner's immediate release on his preexisting conditions, and ordered that any re-detention be preceded by notice and a hearing before a neutral decisionmaker at which the Government bears the burden of proof by clear and convincing evidence.

46. Other judges of this District are in accord. See *Noori v. LaRose*, 807 F. Supp. 3d 1146, 1164 (S.D. Cal. 2025); *Navarro Sanchez v. LaRose*, 2025 WL 2770629, at *5 (S.D. Cal. Sept. 26, 2025) (granting habeas and releasing petitioner to the conditions of her preexisting parole on due process grounds). District courts throughout this Circuit have likewise held that ICE's failure to provide notice and an opportunity to be heard in connection with revocation of release renders re-detention unlawful and supports habeas relief. See, e.g., *Alvarenga Matute v.*

Wofford, 807 F. Supp. 3d 1120, 1128–30 (E.D. Cal. 2025); *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025) (where "the petitioner has not received any bond or custody hearing," "the risk of an erroneous deprivation of liberty is high"); *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032–36 (N.D. Cal. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk), aff'd, 905 F.3d 1137 (9th Cir. 2018).

47. Each *Mathews* factor favors Petitioner. The private interest is his "fundamental interest in freedom from physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). The risk of erroneous deprivation is at its maximum, because Respondents afforded no process at all: "where the government has provided no process to determine whether continued detention is justified, the risk of erroneously depriving an individual's constitutionally protected interest in avoiding physical restraint is obvious." *Faizi*, 2026 WL 1112035, at *5 (quoting *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025)). And the Government's countervailing interest is minimal: its regulatory interests in civil detention are limited to securing appearance and protecting the public, *Zadvydas*, 533 U.S. at 690, it has identified no individualized basis for either concern here, and "the cost and burden of providing a bond hearing is minimal," *Faizi*, 2026 WL 1112035, at *6 n.2. Detention that serves no regulatory purpose does not "bear some reasonable relation" to the purposes of civil confinement. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

48. Petitioner's claim does not depend on the duration of his confinement. The constitutional defect is not that Petitioner has been held too long, but that Respondents revoked a release they had themselves granted—and on which Petitioner relied for nearly twenty-eight months of documented compliance—without notice, stated reasons, or any opportunity to be heard before any

decisionmaker. That defect was complete on the day of his re-detention and is not cured by the passage of time, nor would it have been avoided had Respondents acted more quickly. Petitioner accordingly does not ask this Court to fix any temporal threshold; he asks it to hold that the process that was due before revocation was not provided.

49. The government's decision to release an individual from custody "creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[] to live up to the . . . conditions [of release].'" *Garro Pinchi*, 792 F. Supp. 3d at 1032 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Here, Respondents have identified no materially changed circumstance: Petitioner's only new circumstance was an unadjudicated traffic charge on which the state court itself released him on bail.

50. Accordingly, Respondents' actions violate Petitioner's right to procedural due process under the Fifth Amendment, and Petitioner is entitled to habeas relief.

COUNT TWO

Violation of the Fifth Amendment — Substantive Due Process

51. Petitioner repeats, re-alleges, and incorporates by reference all preceding paragraphs as though fully set forth herein.

52. Immigration detention is civil in nature and violates substantive due process when it is not reasonably related to a legitimate governmental purpose, such as preventing flight or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Petitioner presents neither a flight risk nor a danger to the community. He maintained a stable residence with his adult son for more than two years, complied with the conditions of his release, has a pending asylum application that gives him every incentive to appear at his hearings—his next Master Calendar hearing is set for August 20, 2026—and has no criminal convictions. The sole triggering event

for his re-detention was a single unadjudicated misdemeanor traffic charge for which the state itself released him on bail the same day.

54. No individualized determination of flight risk or danger to the community was made prior to or at the time of Petitioner's arrest. ICE provided no reason whatsoever for the re-detention. Detaining a compliant asylum seeker because of a pending, unadjudicated misdemeanor charge—immediately after the state released him on bail—is not reasonably related to any legitimate governmental purpose.

55. Under these circumstances, re-arresting and detaining Petitioner on August 2, 2026 without any stated justification—rather than any individualized showing of flight risk or danger—constitutes arbitrary civil detention not reasonably related to any legitimate governmental purpose, in violation of the Fifth Amendment.

COUNT THREE (PROTECTIVE / FALLBACK)

Improper Invocation of 8 U.S.C. § 1225(b)(2) Mandatory Detention and/or Improper Limitation of 8 U.S.C. § 1226(a) (If Asserted) — Due Process

56. Petitioner repeats and incorporates all prior allegations.

57. **A. Binding Ninth Circuit Authority Forecloses Any § 1225(b)(2) Mandatory-Detention Theory.**

58. To the extent Respondents contend that Petitioner is subject to "mandatory detention" under 8 U.S.C. § 1225(b)(2) as an "applicant for admission," the Ninth Circuit has now squarely rejected that theory in a published, precedential decision. *Rodriguez Vazquez v. Bostock*, No. 25-6842, 2026 U.S. App. LEXIS 22798, 2026 WL 2196424 (9th Cir. July 30, 2026), aff'g 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (affirming summary judgment for a certified class of detainees). That decision rejected the position—announced in ICE guidance and adopted by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—that noncitizens who entered without inspection are categorically subject to mandatory detention under § 1225(b)(2)(A) rather than eligible for a custody determination under § 1226(a). The Court of Appeals held, based on the

statutory text, context, and longstanding practice, that § 1225(b)(2)(A) applies only to noncitizens seeking entry at the border, and that detention of noncitizens who—like Petitioner—are present in the interior and in § 240 removal proceedings, 8 U.S.C. § 1229a, is governed by § 1226(a), which permits release on bond. That published decision is binding on this Court and is dispositive of any mandatory-detention argument Respondents might advance. District courts confronting the same ICE policy have reached the same conclusion on materially identical facts. See *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (noncitizen who entered without inspection in 2024 and had resided in the United States for over a year was not an "applicant for admission" under § 1225(b)(2) and was entitled to bond consideration under § 1226(a); ICE detained him immediately upon his release from criminal custody); *Doe v. Moniz*, 800 F. Supp. 3d 203, 210–12 (D. Mass. 2025) (detention of a noncitizen already residing in the United States is governed by § 1226, not § 1225), *appeal dismissed*, 2025 U.S. App. LEXIS 35248 (1st Cir. Nov. 25, 2025).

59. The Court of Appeals grounded that holding in the statutory text. The phrase "seeking admission" in § 1225(b)(2)(A) is undefined and therefore retains its ordinary meaning, which requires an affirmative act of seeking entry—something a noncitizen does at the border or at a port of entry. The phrase "applicant for admission" in § 1225(a)(1), by contrast, is a statutory term of art that assigns a legal status, for purposes of removal proceedings, to certain noncitizens who are physically present without having been lawfully admitted. A noncitizen who bears that status is not thereby placed in a perpetual state of "seeking admission," and reading the two phrases as coextensive would render "seeking admission" superfluous. *Rodriguez Vazquez*, 2026 U.S. App. LEXIS 22798.

60. The Laken Riley Act confirms the point by negative implication. Section 1226(c)(1)(E) mandates the detention of noncitizens who are inadmissible under § 1182(a)(6)(A)—that is, present without admission or parole—*and* who have been

charged with, arrested for, convicted of, or have admitted the elements of an enumerated offense. That such persons are subject to mandatory detention under § 1226(c)(1)(E) implies that persons present without admission who have *not* committed such an offense remain subject to § 1226(a). Petitioner is in the latter category: he is charged under § 1182(a)(6)(A)(i), and he has been charged with no enumerated offense.

61. Thirty years of Executive practice points the same way, and Respondents' own agency has said so. In adopting the contrary rule, the Board acknowledged that "for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection," and that in the 1997 interim rule implementing IIRIRA the agency took the position that, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled … will be eligible for bond and bond redetermination." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025) (quoting Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). That no administration for three decades found a duty to detain such persons mandatorily is strong evidence that no such duty exists.

62. *Matter of Yajure Hurtado* is in any event distinguishable. The respondent there entered without inspection, later obtained temporary protected status, and was apprehended after that status expired; DHS had never released him. *Id.* at 216–17. Here, DHS released Petitioner on the day of his apprehension on a Form I-220A that states on its face that it issued "in accordance with section 236 of the Immigration and Nationality Act." (Ex. 4.) The Board has never addressed—and the decision does not purport to resolve—whether the agency may disavow its own § 236 custody determination two years after making it.

63. This Court has already so held, on the same question, and granted the writ. In *Ramirez v. Noem*, 815 F. Supp. 3d 1162 (S.D. Cal. 2025), Chief Judge Bashant rejected the Board's contrary ruling in *Matter of Yajure Hurtado*, held that a

noncitizen arrested in the interior "is not seeking admission to the United States" within the meaning of § 1225(b)(2)(A) and is instead "subject to Section 1226(a)," and granted habeas relief. *Id.* at 1167–69. The Court reasoned that reading § 1225 to reach every noncitizen present without admission would disregard the plain meaning of "seeking admission," ignore the division of labor between § 1225 (those seeking admission) and § 1226 (those already in the country), render the Laken Riley Act's amendment to § 1226(c) superfluous, and depart from decades of contrary agency practice. *Id.* at 1167–69.

64. The remedy ordered in *Ramirez* is the remedy Petitioner seeks here. The Court did not remand for a new custody hearing; it ordered the petitioner released "on the same ... bond and conditions of release as ordered by the Immigration Judge" months earlier. *Id.* at 1169. And the Court rejected the Government's contention that 8 U.S.C. § 1226(e) confined it to ordering a fresh hearing, explaining that it was "not setting aside the discretionary decision to grant or revoke bond" but was instead "leaving in place" the custody determination that had already been made. *Id.* at 1169 n.1. Petitioner's position is stronger still: the custody determination he asks this Court to leave in place is one that Respondents themselves made when they released him on the Form I-220A on April 5, 2024.

65. Independently of that binding authority, Respondents' own charging document forecloses the premise of any § 1225(b) theory. As alleged above, the Notice to Appear DHS served on Petitioner on April 5, 2024 designates him as an alien present in the United States who has not been admitted or paroled—not as an arriving alien—and charges him solely under INA § 212(a)(6)(A)(i). (Ex. 4.) Respondents may not now litigate against the classification their own form records. See *Faizi v. Larose*, No. 25-cv-02974-JO-MSB, 2026 WL 1112035, at *4 & n.1 (S.D. Cal. Apr. 24, 2026). Any § 1225(b)(2) mandatory-detention theory therefore fails twice over: as a matter of law under *Rodriguez Vazquez*, and as a matter of fact under Respondents' own Notice to Appear.

66. The Ninth Circuit's holding likewise accords with DHS's own conduct here. DHS placed Petitioner in full removal proceedings under INA § 240, 8 U.S.C. § 1229a, and released him from custody on a Form I-220A that states on its face that it was issued "in accordance with section 236 of the Immigration and Nationality Act"—that is, 8 U.S.C. § 1226. DHS thus invoked § 1226 as the authority for Petitioner's custody determination at the outset, and ICE's prior decision to release Petitioner is wholly inconsistent with any contention that Petitioner was subject to mandatory detention with no possibility of release.

67. Nor does the absence of an administrative arrest warrant on August 2, 2026 remove Petitioner from § 1226. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." INA § 236(a), 8 U.S.C. § 1226(a). That clause confers authority; it does not condition the statute's coverage. The Court of Appeals read it precisely that way, describing § 1226(a) as a provision that "permits (but does not require) the government upon a warrant to arrest and detain" a noncitizen. *Rodriguez Vazquez*, 2026 U.S. App. LEXIS 22798. And the line the Court of Appeals drew was not between noncitizens arrested with and without a warrant; it was between those "seeking admission" at the border and those "apprehended in the interior of the United States." *Id.* Petitioner falls on the interior side of that line.

68. Reading the warrant clause as a precondition would also invert the statute. Issuing the warrant is Respondents' task, not Petitioner's. On Respondents' reading, an arrest made without the document § 1226(a) contemplates would not render the arrest defective but would instead enlarge Respondents' own authority—transforming a noncitizen who was eligible for release on bond into one subject to mandatory detention with no possibility of release at all. A statute is not to be construed so that an agency improves its position by omitting the step the statute describes.

69. Congress in fact addressed re-arrest expressly, and did so within § 1226. Subsection (b), titled "Revocation of bond or parole," provides that the Attorney General "at any time may revoke a bond or parole authorized under subsection (a), *rearrest the alien under the original warrant*, and detain the alien." INA § 236(b), 8 U.S.C. § 1226(b). Two consequences follow. First, Congress contemplated that a re-arrest following revocation would proceed under the warrant already in the file rather than a newly issued one; the absence of a fresh warrant on August 2, 2026 is therefore not the anomaly Respondents would need it to be. Second, and more fundamentally, § 1226(b)'s revocation power operates only upon "a bond or parole authorized under subsection (a)"—that is, upon a release granted under § 1226(a). Petitioner's April 5, 2024 release was granted under § 236 on the face of Respondents' own form. (Ex. 4.) Respondents cannot invoke the authority § 1226(b) gives them to undo a § 1226(a) release while simultaneously maintaining that Petitioner was never within § 1226 at all.

70. **B. Section 1226(a) Is Not Limited to Previously Admitted Aliens.**

71. To the extent Respondents further contend that 8 U.S.C. § 1226(a) applies only to aliens who were previously "admitted," *Rodriguez Vazquez* forecloses that position as well. The text of § 1226(a) authorizes arrest and detention of "an alien pending a decision on whether the alien is to be removed from the United States" and contains no limitation to previously admitted aliens. The only categorical exclusions from § 1226(a) bond are set forth in § 1226(c), and none applies to Petitioner.

72. Petitioner has no criminal convictions of any kind and therefore falls outside 8 U.S.C. § 1226(c)(1)(A)–(D). Nor does he fall within § 1226(c)(1)(E), added by the Laken Riley Act, Pub. L. No. 119-1 (Jan. 29, 2025). That subparagraph imposes two requirements: under § 1226(c)(1)(E)(i) the noncitizen must be inadmissible under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7); *and* under § 1226(c)(1)(E)(ii) the noncitizen must be charged with, arrested for, convicted of, or admit having

committed acts constituting the essential elements of burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury. Petitioner satisfies clause (i); he does not satisfy clause (ii).

73. Petitioner was arrested on a single misdemeanor count under California Vehicle Code § 2800.1, booked as "Fleeing Peace Officer Prohibited." (Ex. 5.) Section 2800.1 punishes a driver who, with intent to evade, willfully flees or attempts to elude a pursuing peace officer's vehicle displaying a red lamp and sounding a siren. Its elements are flight and intent to evade. It is not burglary, theft, larceny, or shoplifting; no death or serious bodily injury resulted; and **it contains no assault element whatsoever.** Under California law—which supplies the meaning of these terms under the Laken Riley Act—assault upon a peace officer requires an unlawful attempt, coupled with a present ability, to commit a violent injury upon the officer. Cal. Penal Code §§ 240, 241(c), 245(c). Petitioner was neither charged with nor arrested for any such offense: the booking record reflects one count under § 2800.1 and nothing more. (Ex. 5.) Petitioner did not touch, threaten, or use force against any officer; he pulled over and stopped as soon as he realized the officers were directing him to do so.

74. In the alternative, even if § 1226(c)(1)(E)(ii) were construed to reach Petitioner's arrest, mandatory detention on that basis would violate due process. Applying *Mathews*, courts have held that detaining a noncitizen without any bond hearing, based solely on an arrest that has not resulted in a conviction, cannot be squared with the Fifth Amendment. *Doe v. Moniz*, 800 F. Supp. 3d 203, 216–17 (D. Mass. 2025) (granting habeas and ordering a bond hearing where the petitioner was arrested but never charged), *appeal dismissed*, 2025 U.S. App. LEXIS 35248 (1st Cir. Nov. 25, 2025); see also *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (construing § 1226(c)(1)(E)(ii) narrowly as a matter of constitutional avoidance where the petitioner had been acquitted). Petitioner stands in the same position in the respect that matters: he has been convicted of nothing. The charge

against him is unadjudicated, he is presumed innocent, and the state court released him on bail the same day.

75. **C. The Supreme Court's Detention Decisions Are Not to the Contrary.**

76. Nothing in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *Nielsen v. Preap*, 586 U.S. 392 (2019), or *Demore v. Kim*, 538 U.S. 510 (2003), supports Respondents' position. *Jennings* construed the detention statutes not to require periodic bond hearings but expressly declined to resolve any constitutional question; it did not address the revocation, without notice or hearing, of a release the government had already granted. *Preap* concerned the timing requirements of § 1226(c) mandatory detention for noncitizens with qualifying criminal convictions—Petitioner has none. (As set forth above, Petitioner separately relies on *Preap*'s holding that a challenge to the denial of a bond hearing falls outside § 1252(b)(9). 586 U.S. at 402. That holding and the § 1226(c) holding are independent of one another.) *Demore* upheld brief mandatory detention of a noncitizen who had *conceded* deportability and had been convicted of an aggravated felony following the full procedural protections of a criminal trial. Petitioner has conceded nothing and has been convicted of nothing; he contests removability through a pending asylum application. See *Doe v. Moniz*, 800 F. Supp. 3d at 216 (distinguishing *Demore* on precisely this ground).

77. Accordingly, any attempt by Respondents to invoke § 1225(b)(2) mandatory detention and/or to deny Petitioner access to § 1226(a) bond proceedings would be unlawful, arbitrary, and contrary to binding Ninth Circuit precedent, the INA's text, implementing regulations, longstanding agency practice, and the Due Process Clause of the Fifth Amendment.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this action;

B. Issue an Order to Show Cause "forthwith" under 28 U.S.C. § 2243;

C. Order Respondents to immediately release Petitioner from detention;

D. Pending final adjudication, and in order to preserve this Court's jurisdiction and its ability to grant effective relief, order that Petitioner not be transferred out of this judicial district and not be removed from the United States;

E. Alternatively, order an expedited custody redetermination and/or bond hearing within a date certain before a neutral decisionmaker, at which Respondents should bear the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, as this Court ordered in *Singh Singh*, and order release pending that proceeding;

F. Declare that Respondents' detention violates the Fifth Amendment;

G. Declare that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) or § 1226(c) and is entitled to a custody redetermination hearing under 8 U.S.C. § 1226(a) or, alternatively, under the Due Process Clause;

H. Award Petitioner his costs and reasonable attorney's fees in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

I. Grant such other and further relief as the Court deems just and proper.

Dated: August 10, 2026

Respectfully submitted,

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