

1 KEKER & VAN NEST LLP
JON B. STREETER- #101970
2 jstreeter@kvn.com
STACY CHEN - #261822
3 schen@kvn.com
BETNY TOWNSEND - #284497
4 btownsend@kvn.com
REESE NGUYEN - #284581
5 rnguyen@kvn.com
633 Battery Street
6 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
7 Facsimile: (415) 397-7188

8 ASIAN AMERICANS ADVANCING JUSTICE –
ASIAN LAW CAUCUS
9 ALISON PENNINGTON - #231861
alisonp@advancingjustice-alc.org
10 ANOOP PRASAD - #250681
aprasad@advancingjustice-alc.org
11 55 Columbus Avenue
San Francisco, CA 94111
12 Telephone: (415) 848-7722
Facsimile: (415) 896-1702
13

14 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
JULIA HARUMI MASS - #189649
15 jmass@aclunc.org
JINGNI (JENNY) ZHAO - #284684
16 jzhao@aclunc.org
39 Drumm Street
17 San Francisco, CA 94111
Telephone: (415) 621-2493
18 Facsimile: (415) 255-8437

19 Attorneys for Plaintiff-Petitioners
20 MONY PREAP, EDUARDO VEGA PADILLA,
and JUAN LOZANO MAGDALENO

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 MONY PREAP, EDUARDO VEGA
PADILLA, and JUAN LOZANO
24 MAGDALENO,

25 Plaintiff-Petitioners,

26 v.

27 RAND BEERS, Secretary, United States
Department of Homeland Security; ERIC H.
HOLDER, JR., United States Attorney
28 General; TIMOTHY S. AITKEN, Field
Office Director, San Francisco Field Office,

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF; INDIVIDUAL
PETITIONS FOR WRIT OF HABEAS
CORPUS**

CLASS ACTION

1 United States Bureau of Immigration and
2 Customs Enforcement; GREGORY J.
3 ARCHAMBEAULT, Field Office Director,
4 San Diego Field Office, United States
5 Bureau of Immigration and Customs
6 Enforcement; DAVID MARIN, Field Office
7 Director, Los Angeles Field Office, United
8 States Bureau of Immigration and Customs
9 Enforcement,

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Defendant-Respondents.

1 **I. INTRODUCTION**

2 1. The United States Bureau of Immigration and Customs Enforcement (“ICE”) has
3 detained each Plaintiff in this case, Mony Preap, Eduardo Padilla, and Juan Magdaleno
4 (collectively, the “Named Plaintiffs”), without affording them the most basic of procedural
5 protections—a bond hearing at which they may offer proof that they pose no flight risk or danger
6 to the public and that they are entitled to be released while deportation proceedings are pending
7 against them.

8 2. Each of the Named Plaintiffs has a past criminal conviction that, potentially, could
9 result in his deportation. Each was released following that conviction; each has lived in freedom
10 since his release, some for periods of many years; each has ties to family and community; and
11 each has an individualized case to make that his criminal record should not result in his
12 unconditional detention or ultimate deportation. But under a broad—and incorrect—
13 interpretation of federal law adopted by the defendants-respondents (collectively, the
14 “Government”), each of the Named Plaintiffs has been denied the opportunity to challenge his
15 detention while his deportation proceedings are pending.

16 3. The Named Plaintiffs seek (i) an order of declaratory relief properly construing 8
17 U.S.C. § 1226(c) (“Section 1226(c)”), the statute relied upon by the Government to justify their
18 mandatory detention; (ii) injunctive relief prohibiting the Government from detaining them during
19 their deportation proceedings without affording an opportunity for a hearing at which an
20 Immigration Judge may ascertain whether their release on bond would create a risk of flight or a
21 danger to the community; and (iii) writs of habeas corpus ordering the Government to provide
22 immediate individualized bond hearings on the same question.

23 4. The Named Plaintiffs are not alone in their plight. On any given day, more than
24 3,500 individuals are detained at immigration detention facilities throughout the State of
25 California. A significant number of these individuals are being held without an opportunity to
26 challenge their detention due to the Government’s misapplication of Section 1226(c).
27 Accordingly, the Named Plaintiffs seek relief not only for themselves, but on a class-wide basis
28

1 for all similarly situated individuals who are or will be subject to unlawful mandatory detention
2 under Section 1226(c) in the State of California.

3 **II. JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
5 question); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 1651; 28 U.S.C. §§ 2201-02 (declaratory
6 relief); and 28 U.S.C. § 2241 (habeas corpus).

7 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
8 § 1391(b) because a substantial part of the events giving rise to these claims occurred in this
9 District.

10 **III. INTRADISTRICT ASSIGNMENT**

11 7. Pursuant to Civil Local Rule 3-2(c), this action may be assigned on a district-wide
12 basis.

13 **IV. PARTIES**

14 **A. Plaintiffs-Petitioners**

15 8. Plaintiff-Petitioner Mony Preap is 32 years old. He came to the United States in
16 1981, when he was an infant, and has been a lawful permanent resident of the United States since
17 then. He is detained in West County Detention Facility in Richmond, California.

18 9. Plaintiff-Petitioner Eduardo Vega Padilla is 48 years old. He was born in Mexico
19 and came to the United States in 1966, when he was 16 months old. He became a lawful
20 permanent resident in the same year. He is currently held in immigration custody at the Rio
21 Cosumnes Correctional Center in Elk Grove, California.

22 10. Plaintiff-Petitioner Juan Lozano Magdaleno is 57 years old. He was born in
23 Mexico and came to the United States in 1974, when he was a teenager. He has been a lawful
24 permanent resident of the United States since he was admitted. He is detained at the West County
25 Detention Facility in Richmond, California.

1 **B. Defendants-Respondents**

2 11. Defendant-Respondent Rand Beers is the Acting Secretary of Homeland Security
3 and head of the Department of Homeland Security—the arm of the federal government
4 responsible for enforcement of immigration laws. He is sued in his official capacity.

5 12. Defendant-Respondent Eric Holder is the Attorney General of the United States
6 and the head of the Department of Justice, which includes within its purview the Board of
7 Immigration Appeals and the immigration courts as a sub-unit known as the Executive Office of
8 Immigration Review. He is sued in his official capacity.

9 13. Defendant-Respondent Timothy S. Aitken is the Field Office Director for U.S.
10 Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations in ICE’s
11 San Francisco Field Office, and is the immediate custodian of the Named Plaintiffs and other
12 members of the proposed class held in the Northern and Eastern Districts of California. He is
13 sued in his official capacity.

14 14. Defendant-Respondent Gregory J. Archambeault is the Field Office Director for
15 ICE Enforcement and Removal Operations in ICE’s San Diego Field Office, and is the immediate
16 custodian of the members of the proposed class held in the Southern District of California. He is
17 sued in his official capacity.

18 15. Defendant-Respondent David Marin is the Field Office Director for ICE
19 Enforcement and Removal Operations in ICE’s Los Angeles Field Office, and is the immediate
20 custodian of the members of the proposed class held in the Central District of California. He is
21 sued in his official capacity.

22 **V. FACTUAL ALLEGATIONS REGARDING NAMED PLAINTIFFS-PETITIONERS**

23 **A. Mony Preap**

24 16. Plaintiff-Petitioner Mony Preap is 32 years old. His family is from Cambodia, but
25 they fled Cambodia after his mother was arrested and tortured by the Khmer Rouge. Mr. Preap
26 was born in a refugee camp that he believes was located in Malaysia. However, he has been
27 informed by defendants that he was actually born in Indonesia. Mr. Preap has no memory of his
28

1 life before he arrived in the United States in 1981 as an infant. He has been a lawful permanent
2 resident of the United States since his entry.

3 17. Prior to being taken into detention, Mr. Preap lived with and was the primary
4 caregiver for his 11-year-old son and his mother. Mr. Preap has had sole custody of his son since
5 his son's mother abandoned them when his son was three months old. His son is a United States
6 citizen. Mr. Preap's mother is in remission for breast cancer and also suffers from seizures.
7 Because of her fragile health, she requires extensive care. Prior to his detention, Mr. Preap spent
8 his day caring for her and their home, running errands for his mother who cannot drive and
9 attending to his son.

10 18. In 2004, Mr. Preap was arrested for possession of a small amount of marijuana in
11 two separate incidents. His court proceedings for those incidents did not take place until June
12 2006. The first incident resulted in a misdemeanor conviction, for which he was given credit for
13 the few weeks of time that he served. The second incident also resulted in a misdemeanor
14 conviction. Mr. Preap was released from state custody for those incidents on June 29, 2006. In
15 2013, Mr. Preap was convicted of simple battery following an argument between him and his ex-
16 girlfriend. After she punched him, cutting his lip, she then bit his arm, leaving a large gash. He
17 pushed her off; she did not sustain any injuries. She did, however, call the police. He awaited
18 their arrival, at which time he was arrested.

19 19. Mr. Preap was serving his 72-day sentence in the Sonoma County Detention
20 Facility for his simple battery offense—a conviction that does not subject him to removal—when
21 he was transferred to immigration detention on September 11, 2013. Since that day, he has been
22 held at the West County Detention Facility in Richmond, California.

23 20. Mr. Preap is allegedly held subject to mandatory detention based on his two
24 convictions for simple possession of marijuana from 2004.

25 21. If afforded a bond hearing, Mr. Preap would present strong arguments for his
26 entitlement to release. And if granted release on a bond, he would be able to pay it.

27
28

1 **B. Eduardo Vega Padilla**

2 22. Plaintiff-Petitioner Eduardo Vega Padilla is 48 years old. He was born in Mexico
3 and came to the United States in 1966, when he was 16 months old. He became a lawful
4 permanent resident in the same year.

5 23. Prior to being taken into detention, he lived with his elderly mother, his daughter,
6 and his grandson. They are all U.S. citizens. He has five children who are United States citizens.
7 Four of his children are now adults. He also has six grandchildren, one of whom was born while
8 he was in detention. His three siblings are all United States citizens and live in the Sacramento
9 area.

10 24. During a rough period in his life when his marriage had fallen apart, his
11 grandmother had fallen ill and his father had died suddenly, Mr. Padilla was convicted of
12 possession of a controlled substance in 1997 and in 1999. While he was on probation for the
13 second conviction, officers searched his home and found an unloaded pistol in a shed behind his
14 house. He was then convicted of possessing a firearm while having a prior felony conviction. He
15 was sentenced to six months in jail and was released in 2002.

16 25. On August 15, 2013, immigration officers came to his home, knocked on his door,
17 and asked him to accompany them to the immigration office. He voluntarily complied, and was
18 then taken into custody, where he has remained until this day. He is currently being detained at
19 the Rio Cosumnes Correctional Center in Sacramento County.

20 26. Mr. Padilla is being held in mandatory detention under Section 1226(c) based on
21 two possession-of-a-controlled-substance convictions from 1997 and 1999, and his firearm-
22 possession conviction from 2002.

23 27. If afforded a bond hearing, Mr. Padilla would present strong arguments for his
24 entitlement to release. And if granted release on a bond, Mr. Padilla would be able to pay it with
25 help from his family.

26
27
28

1 **C. Juan Lozano Magdaleno**

2 28. Plaintiff-Petitioner Juan Lozano Magdaleno is 57 years old. He was born in
3 Mexico and came to the United States as a teenager in 1974. He has been a lawful permanent
4 resident of the United States since his entry.

5 29. Prior to being taken into immigration detention, Mr. Magdaleno lived with his
6 wife, two of his four children, his son-in-law, and his grandchild, all of whom are United States
7 Citizens. All of his four children are United States citizens. They, along with his ten United
8 States citizen grandchildren, live close to Mr. Magdaleno's home.

9 30. Mr. Magdaleno is very close to his family. Last month, one of his daughters got
10 married. Although he was unable to attend because he was in immigration detention, his family
11 arranged to have him call and make a speech at the reception over the speaker system. Prior to
12 being detained, Mr. Magdaleno took care of four of his grandchildren every day, taking them to
13 school, picking them up and watching them after school until their parents returned from work.
14 Because of his detention, one of his daughters has had to close her nail salon early each day to
15 watch her children.

16 31. Mr. Magdaleno has made a living selling antiques at antique stores and flea
17 markets since the late 1980s. Throughout his career, he has owned an antique refinishing store,
18 an antique store and a thrift store. In 2000, Mr. Magdaleno was convicted of possession of a
19 firearm while having a prior felony conviction, a DUI conviction from the 1980s that is not a
20 removable offense. Prior to his firearm conviction, Mr. Magdaleno had been working in his thrift
21 store. As part of his business, he purchased storage units at auction and resold the contents.
22 Bidders on the storage units at the auction have no knowledge of the contents of the units. One of
23 the storage units Mr. Magdaleno purchased contained an old rifle, which he kept unloaded. When
24 police officers came to his store for an unrelated matter, they arrested him for possession of the
25 gun.

26 32. In October 2007, Mr. Magdaleno was convicted of simple possession of a
27 controlled substance. He was sentenced to six months in jail and released in January 2008.

28

1 33. Mr. Magdaleno has been in immigration custody since June 17, 2013, when ICE
2 agents came to his home and took him into custody based on the 2007 controlled-substance
3 conviction and the 2000 firearm-possession conviction. He is currently being detained at the
4 West County Detention Facility in Richmond, California.

5 34. If afforded a bond hearing, Mr. Magdaleno would present strong arguments for his
6 entitlement to release. He would be able to pay bond with the help of his family.

7 **VI. LEGAL FRAMEWORK**

8 35. Title 8 of the United States Code, Section 1226 controls the Government's
9 authority to detain noncitizens during their removal proceedings.

10 36. Section 1226(a) gives the Government the discretion to release an individual on
11 his own recognizance or on a bond while his removal case is pending if it determines that release
12 would not create a risk or flight or a danger to the community. If the Government decides not to
13 release an individual or conditions release upon a bond amount the individual is unwilling or
14 unable to pay, the individual is entitled to have the Government's decision reviewed by an
15 Immigration Judge at a bond redetermination hearing. At that hearing, the individual has the
16 opportunity to demonstrate that he should be released.

17 37. Section 1226(c) is an exception to system created by Section 1226(a). It defines a
18 category of individuals to whom the individualized determinations of Section 1226(a) do not
19 apply. Under Section 1226(c), an individual apprehended by immigration authorities "**when [he]**
20 **is released**" from criminal custody for an offense enumerated in Section 1226(c)(1) (a "Section
21 1226(c)(1) offense") is categorically ineligible for release or a bond redetermination hearing
22 while his removal case is pending (emphasis added). Individuals that the Government deems to
23 be subject to mandatory detention under Section 1226(c) are routinely detained for months
24 without any custody review by a neutral arbiter.

25 38. In *Matter of Rojas*, 23 I. & N. Dec. 117 (BIA 2001), the Board of Immigration
26 Appeals (the "BIA") held that the "when...released" language in Section 1226(c) is merely
27 instructive and does not limit the class of people subject to mandatory detention, despite the plain
28 language of the statute. The district courts in the Ninth Circuit have consistently rejected the

1 BIA’s interpretation of Section 1226(c). *See, e.g., Espinoza v. Aitken*, No. 5:13-CV-00512 EJD,
2 2013 WL 1087492 (N.D. Cal. 2013); *Dighero-Castaneda v. Napolitano*, 2:12-CV-2367 DAD,
3 2013 WL 1091230, at *6 (E.D. Cal. 2013); *Zabadi v. Chertoff*, No. 05-0335, 2005 WL 315377, at
4 *5 (N.D. Cal. Nov. 22, 2005). Nonetheless, the Government continues to subject individuals
5 throughout the State of California to mandatory detention under Section 1226(c) regardless of
6 how long ago the individual finished serving his sentence for a Section 1226(c)(1) offense.

7 **VII. CLASS ACTION ALLEGATIONS**

8 39. Mr. Preap, Mr. Padilla, and Mr. Magdaleno bring this action on behalf of
9 themselves and all other similarly-situated individuals in California pursuant to Federal Rules of
10 Civil Procedure 23(a) and 23(b)(2) or, in the alternative, as a class action habeas petition.

11 40. Mr. Preap, Mr. Padilla, and Mr. Magdaleno propose to represent a class of all
12 individuals in the state of California who are or will be subject to mandatory detention under 8
13 U.S.C. § 1226(c) and who were not or will not have been taken into custody by the Government
14 immediately upon their release from criminal custody for a Section 1226(c)(1) offense. These
15 individuals are now or have been detained in facilities throughout California, including Adelanto
16 Detention Facility, West County Detention Facility, El Centro Service Processing Center, Otay
17 Detention Facility, Rio Cosumnes Correctional Center, Santa Ana City Jail, and Yuba County
18 Jail.

19 41. The proposed class meets the requirements of Federal Rules of Civil Procedure
20 23(a)(1). On any given day, over 3,500 individuals are detained throughout the State of
21 California. A significant number of these individuals, like Named Plaintiffs, are subject to
22 mandatory detention due to the government’s misapplication of Section 1226(c). In addition,
23 other individuals will be subject to the government’s mandatory detention policy in the future.
24 Joinder of all members of this class is therefore impracticable.

25 42. The proposed class also meets the commonality requirement of Federal Rule of
26 Civil Procedure 23(a)(2). The central question for each proposed class member is whether
27 Section 1226(c) allows the Government to detain individuals without a bond hearing regardless of
28

1 when they were previously released from criminal custody for a Section 1226(c)(1) offense,
2 which is a pure question of law.

3 43. The proposed class additionally meets the typicality requirement of Federal Rule
4 of Civil Procedure Rule 23(a)(3). The claims of the Named Plaintiffs are typical of the claims of
5 the proposed class because like the proposed class members, the Named Plaintiffs are individuals
6 who have been subject to mandatory detention due to the government’s misapplication of
7 Section 1226(c). The Named Plaintiffs, like the proposed class members, were not taken into
8 immigration custody immediately upon their release from custody for a Section 1226(c)(1)
9 offense.

10 44. Next, the proposed class meets the requirements of Federal Rule of Civil
11 Procedure 23(a)(4), because the Named Plaintiffs will fairly and adequately represent the interests
12 of all members of the proposed class. The Named Plaintiffs seek relief that is identical to the
13 relief sought by all class members, and they have no interests that are adverse to other class
14 members. The Named Plaintiffs are represented by *pro bono* counsel from Kecker & Van Nest
15 LLP, Asian Americans Advancing Justice – Asian Law Caucus, and the American Civil Liberties
16 Union Foundation of Northern California. Counsel has extensive experience litigating class
17 actions, as well as matters on behalf of detainees, including immigration detainees.

18 45. Finally, the proposed class satisfies the requirements of Rule 23(b)(2) because the
19 Government has and continues to act on grounds that are generally applicable to the proposed
20 class by detaining individuals under Section 1226(c) regardless of when they were released from
21 criminal custody for an offense enumerated in Section 1226(c)(1). Class-wide injunctive and
22 declaratory relief is appropriate in this litigation.

23 **VIII. CLAIMS OF NAMED PLAINTIFFS AND PROPOSED CLASS MEMBERS**

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

26 46. The foregoing allegations are realleged and incorporated herein.

27 47. Section 1226(a) authorizes the Government to release individuals who are placed
28 into removal proceedings, including the Named Plaintiffs and proposed class members, on their

1 own recognizance or on a bond, “[e]xcept as provided in subsection (c).” Section 1226(c) only
2 authorizes the mandatory detention of individuals who are arrested by the Government “when
3 [they are] released” from criminal custody for a Section 1226(c)(1) offense. Section 1226(c) does
4 not affect individuals who—like the Named Plaintiffs and all other proposed class members—
5 were not detained immediately upon their release from custody for a Section 1226(c)(1) offense.

6 48. The Government has misapplied Section 1226(c) to the Named Plaintiffs and the
7 proposed class members. Their continued detention without the opportunity for a bond hearing
8 violates Title 8 U.S.C. § 1226 and is thus unlawful.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

11 49. The foregoing allegations are realleged and incorporated herein.

12 50. The Due Process Clause of the Fifth Amendment forbids the government from
13 depriving an individual of life, liberty, or property without due process of law. The
14 Government’s detention of the Named Plaintiffs and the proposed class members is an unjustified
15 deprivation of liberty, and thus violates the Due Process Clause of the Fifth Amendment.

16 **IX. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs-Petitioners pray that this Court grant the following relief:

- 18 1. Certify this matter as a Class Action, appoint the Named Plaintiffs as Class
19 Representatives, and appoint the Named Plaintiffs’ Counsel as Class Counsel;
- 20 2. Declare that the Government’s policy of subjecting the Named Plaintiffs and
21 proposed class members to detention under Section 1226(c) regardless of when they were
22 released from custody for a Section 1226(c)(1) offense violates the Immigration and Nationality
23 Act or, in the alternative, the Due Process Clause of the Fifth Amendment, and that the
24 Government must provide immediate bond hearings to all individuals currently being unlawfully
25 held based on Section 1226(c);
- 26 3. Grant a writ of habeas corpus to Mony Preap that orders the Government to release
27 him on bond or recognizance or to provide him with an immediate individualized bond hearing
28 under Section 1226(a);

1 4. Grant a writ of habeas corpus to Eduardo Vega Padilla that orders the Government
2 to release him on bond or recognizance or to provide him with an immediate individualized bond
3 hearing under Section 1226(a);

4 5. Grant a writ of habeas corpus to Juan Lozano Magdaleno that orders the
5 Government to release him on bond or recognizance or to provide him with an immediate
6 individualized bond hearing under Section 1226(a);

7 6. Order the Government to release on bond or recognizance, or to provide
8 immediate individualized bond hearings under Section 1226(a) to the Named Plaintiffs and
9 proposed class members; or, in the alternative, grant to the proposed class members writs of
10 habeas corpus that require the Government to release them on bond or recognizance or provide
11 them with immediate individualized bond hearings under Section 1226(a);

12 7. Grant Plaintiffs reasonable attorneys' fees, costs, and other disbursements pursuant
13 to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

15 Respectfully submitted this 12th day of December, 2013.

16 Dated: December 12, 2013

KEKER & VAN NEST LLP

17 By: /s/ Jon Streeter

18 JON STREETER
19 STACY CHEN
20 BETNY TOWNSEND
21 REESE NGUYEN

22 Dated: December 12, 2013

ASIAN AMERICANS ADVANCING JUSTICE
– ASIAN LAW CAUCUS

23 By: /s/ Alison Pennington

24 ALISON PENNINGTON
25 ANOOP PRASAD

26 Dated: December 12, 2013

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

27 By: /s/ Julia Harumi Mass

28 JULIA HARUMI MASS
JINGNI (JENNY) ZHAO

Attorneys for Plaintiff-Petitioners
Mony Preap, Eduardo Vega Padilla, and Juan
Lozano Magdaleno