

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Sen Mao LIN, Sen Miao Lin

A 

Petitioner,

v.

John Tsoukaris, in his official capacity as
Director of ICE Newark Field Office;

Kristi Noem, in her official capacity as
Secretary of the
U.S. Department of Homeland Security;

Pamela Bondi, in her official capacity as
U.S. Attorney General;

Respondents.

Docket No:

**PETITION FOR WRIT
OF HABEAS CORPUS
AND IMMEDIATE
RELEASE DUE TO
SEVERE MEDICAL
NEGLECT IN
DETENTION**

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Sen Mao Lin, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering Mr. Lin's release from immigration detention of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"). Mr. Lin seeks immediate release from immigration detention due to the government's failure to provide adequate medical care in violation of the Fifth Amendment's Due Process Clause.

JURISDICTION

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act (5 U.S.C. § 706), and Article I, Section 9, Clause 2 of the U.S. Constitution. The requirement that an alien released from ICE detention is non-discretionary. *Alvarez v. Holder*, 454 Fed. App'x 769, 772-74 (11th Cir. Dec. 14, 2011) (finding that because release from detention was required by statute and case law, wearing an ankle bracket and reporting for the ISAP program as a condition of release was a non-discretionary decision). Accordingly, this Court has jurisdiction to review constitutional challenges to conditions of an alien's order of supervision. *Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 528-30 (SDNY 2009) ("finding that the Court has jurisdiction to review constitutional challenges to post-removal period detention and supervision pursuant to 28 U.S.C. § 2241(c)(3). See *Zadvydas v. Davis*, 533 U.S. 678, 687-88, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Kalombo*, 2009 WL 1788589, at *3-4").

VENUE

3. Venue is proper in that Mr. Lin is currently being detained at Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105.

PARTIES

4. Petitioner, Sen Mao Lin is a native and citizen of the People's Republic of China ("China"). He is currently under the ICE custody.

5. Respondent Pamela Bondi is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States.

6. Respondent John Tsoukaris is duly appointed and employed by the Department of U.S. Immigration and Customs Enforcement ("ICE") as the Director of the Newark Field Office. He is responsible for the administration and enforcement of ICE functions relating to detention and removal of aliens, including maintaining and enforcing Petitioner's conditions of supervision.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Secretary Noem's responsibilities are set forth in 8 U.S.C. §§1103(a)(1)-(3), among which are: to administer and enforce the Immigration Act and all other laws relating to the immigration and naturalization of aliens; to control, direct and supervise all employees; to establish such regulations, issue such instructions, and perform such other acts deemed necessary for carrying out his authority; and to require any employee of the Service of the Department of Justice to perform or exercise any other the powers, privileges, or

duties conferred or imposed by this Act or regulations issued there under upon any other employee of the Service.

BACKGROUND

8. Mr. Lin is a native and citizen of China. He was born on 

 1958 and is currently sixty-seven (67) years old.

9. Mr. Lin entered the United States on December 4, 1993.

Subsequently, DHS placed Mr. Lin in exclusion proceedings and he filed an application for asylum on December 14, 1993. Mr. Lin failed to appear at his merits hearing on his asylum application and, therefore, was ordered excluded from the United States. Mr. Lin moved to reopen his exclusion proceedings, which were successfully reopened by an immigration judge ("IJ") by decision, dated October 27, 2003. The IJ subsequently denied Mr. Lin's applications for relief.

10. Mr. Lin filed a timely appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"). On January 25, 2005, the Board affirmed the IJ's decision without opinion. Mr. Lin filed a timely petition for review to the United States Court of Appeals for the Second Circuit, *Lin v. Holder*, No. 12-3426. On August 30, 2006, the Court denied Mr. Lin's petition for review.

11. On May 14, 2012, Mr. Lin filed a motion to reopen his proceedings to the BIA. On August 7, 2012, the BIA denied Mr. Lin's motion to reopen. Mr. Lin timely petitioned the U.S. Court of Appeals for the Second Circuit for review of

the BIA's decision. On January 23, 2013, the Second Circuit remanded Mr. Lin's case to the BIA pursuant to *United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994). *United States v. Jacobson* set forth a procedure for alien subject to a final removal order whereby a pending petition for review is remanded to the Board of Immigration Appeal and the alien may not be removed until and unless the petition for review is reinstated. Therefore, pursuant to this decision, Mr. Lin may not be removed from the United States unless and until the petition for review before the Second Circuit is reinstated and denied.

12. Since 2012, Mr. Lin was placed under an order of supervision by the agency. The agency required Mr. Lin to report in-person. Mr. Lin was arrested and taken into custody when he reported to the agency on May 6, 2025.

13. Mr. Lin has long suffered from type II diabetes and hypertension. He also has been diagnosed with gastro-esophageal reflux disease and BPH, which, if not properly managed, significantly increases the risk of prostate cancer.

14. Before his detention, Mr. Lin was prescribed and regularly took medications to manage these conditions under the supervision of a licensed physician.

15. Since entering ICE custody, Mr. Lin has repeatedly requested his medications and medical evaluations. His requests have been ignored or delayed, resulting in a total lack of access to his essential medications.

16. On May 19, 2025, Mr. Lin collapsed and lost consciousness while in detention. He was taken to an outside hospital, where he received emergency treatment.

17. Mr. Lin remains at serious risk of further medical crises if returned to ICE custody without immediate and comprehensive medical care. ICE's failure to provide medical treatment violates his constitutional rights.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. See *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Any requirement of administrative exhaustion is therefore purely discretionary.

19. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

20. Moreover, where the agency has predetermined a dispositive issue, no further action with the agency is necessary. See, e.g., *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a

noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Garcia*, 615 F. Supp. 2d at 180 (same).

21. The BIA interprets § 1225(b) as mandating detention of arriving aliens pending removal proceedings. See *Matter of X-K-*, 23 I. & N. Dec. 731, 732 (BIA 2005) ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . ."). Exhaustion before the BIA would therefore be futile.

22. Further, "the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues" (quotations and citation omitted). *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Because petitioner raises a constitutional due process claim in his habeas petition, exhaustion of his due process claims would be futile.

21. A request for release on humanitarian parole under 8 U.S.C. 1182(d)(5)(A) would also be futile. Parole review is conducted informally by DHS officers—the jailing authority—by checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. See *Arias v. Aviles*, 2016 WL 3906738 (S.D.N.Y. July 14, 2016); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (finding that DHS abused its authority by denying parole). In the absence of

administratively enforceable standards, grants of parole have decreased sharply in recent years. *See* Human Rights First, *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers* 13 (2016) (relying on government data to document a one-third decrease in parole grants between 2012 and 2015).

22. Nonetheless, Mr. Lin, through counsel, submitted an online parole request seeking release from respondents based on intent to self-deport and his medical issues on May 15, 2025, and another email to the Newark ERO local office on May 20, 2025. No response was received.

LEGAL GROUNDS FOR RELIEF

A. FIFTH AMENDMENT DUE PROCESS VIOLATION

23. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are universal in their application, *to all persons* within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality....” *Id.* (emphasis added).

24. The Supreme Court has held that “even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional

protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); *see also Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

25. The Fifth Amendment guarantees that civil immigration detainees may not be subjected to punitive conditions of confinement and must be provided with adequate medical care. Unlike criminal detainees, civil immigration detainees are held solely to ensure their appearance at proceedings and removal and may not be punished.

26. Civil detainees have at least the same constitutional protections regarding medical care as pretrial detainees, who are protected under the Fifth and Fourteenth Amendments. In the Third Circuit, deliberate indifference to serious medical needs is established when (1) a detainee has a serious medical need, and (2) the officials knew of the need and disregarded it. *See Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987) (deliberate indifference is shown when officials "deny reasonable requests for medical

treatment ... and such denial exposes the inmate to undue suffering or the threat of tangible residual injury").

27. The government's deliberate indifference to a civil detainee's serious medical needs violates the Due Process Clause of the Fifth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (recognizing that conditions of confinement for civil detainees must not amount to punishment); *Jones v. Blanas*, 393 F.3d 918, 931–32 (9th Cir. 2004); *Agyeman v. INS*, 296 F.3d 871 (9th Cir. 2002) (the Ninth Circuit held that a noncitizen in immigration detention could seek habeas relief under 28 U.S.C. § 2241 where his medical conditions were not properly addressed.)

28. Courts have repeatedly recognized the availability of habeas corpus relief in cases where detainees are suffering from medical neglect. *See Basank v. Decker*, 449 F. Supp. 3d 205, 213 (S.D.N.Y. 2020) (granting habeas to ICE detainees with underlying medical conditions because detention during COVID-19 placed them at "imminent risk to their health"); *see also Dawson v. Asher*, No. 20-cv-409, 2020 WL 1304557, at *1 (W.D. Wash. Mar. 19, 2020) (granting temporary release where the detainee's health was at serious risk due to detention conditions).

29. Mr. Lin's multiple diagnosed chronic medical conditions, including diabetes, hypertension, GERD, and prostatic hyperplasia—combined with the fact that he has not received any of his prescribed medications in ICE custody and

collapsed on May 19, 2025, constitute a case of deliberate indifference under clearly established constitutional law.

30. Given the serious risk of irreversible harm or death from continued neglect of Mr. Lin's medical needs, and ICE's demonstrated inability to meet its constitutional obligations, Mr. Lin is entitled to habeas relief and immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- A. Declare Mr. Lin's continued detention unlawful;
- B. Declare the continued detention of Mr. Lin without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
- C. Order Respondents to immediately release Mr. Lin;
- D. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, ordering Respondents to immediately release Mr. Lin from immigration detention on the grounds that his continued detention violates the Fifth Amendment due to the denial of necessary medical care;
- E. Order Respondents to show cause why Mr. Lin is being subjected to unlawfully and unconstitutional detention ; and
- F. Grant any other relief that may be fit and proper.

Dated: May 22, 2025

Respectfully submitted,

Alan J. Pollack, Esq.
Frank & Pollack LLC
76 Ferry Street
Newark, NJ 07105
973-297-1919

s/ Theodore N. Cox
Theodore N. Cox, Esq.
pro hac vice counsel
motion to be filed
Law Office of Theodore N. Cox
325 Broadway, Suite 201
New York, New York 10007
(212) 925-1208