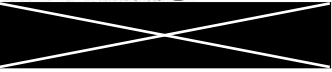


**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS**

Kun ZHAO

A 

Petitioner,

v.

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

Pamela BONDI, in her official capacity as
Attorney General of the United States;

Todd M. LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement

Brett A. BRADFORD, in his official
capacity as Director of ICE Houston Field
Office;

Martin L. Frink, in his official capacity as
Warden at Houston Contract Detention Facility

Respondents.

Docket No: 4:25-cv-3814

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Kun Zhao, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering Ms. Zhao's release from immigration detention of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"). Ms. Zhao seeks immediate release from custody because her continued detention without a hearing as to flight risk and danger to the community violates the U.S. Constitution and federal law.

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. *See Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

VENUE

3. Venue is proper in that Ms. Zhao is currently being detained at Houston Contract Detention Facility, located at 15850 Export Plaza Drive, Houston, TX 77032.

PARTIES

4. Petitioner, Kun ZHAO is a native and citizen of the People's Republic of China ("China"). She is currently detained by U.S. Immigration and Customs Enforcement (ICE) at the Houston Contract Detention Facility.
5. 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 her 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.
6. 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.
7. Respondent Todd M. LYONS is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). As the senior official executing the

duties of Director of ICE, he is responsible for the administration and enforcement of the immigration laws and is legally responsible for pursuing any effort to confine and remove Petitioner.

8. Respondent Brett A. BRADFORD is duly appointed and employed by the Department of U.S. Immigration and Customs Enforcement ("ICE") as the Director of the Houston 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.
9. Respondent Martin L. FRINK is the Warden at Houston Contract Detention Facility. Mr. Frink oversees various aspects of the facility's operations and the well-being of those detained.
10. Houston Contract Detention Facility is a detention center managed by CoreCivic and under contract with U.S. Immigration and Customs Enforcement. It is situated near the George Bush Intercontinental Airport in Houston, Texas.

BACKGROUND

11. On December 28, 2023, Ms. Zhao, her husband, Youpeng Hu, and their nine-year-old daughter, X[REDACTED]H[REDACTED] entered the United States without inspection at San Ysidro, CA. The family had traveled to the United

States with the intention of seeking asylum. They affirmatively approached U.S. immigration officials due to concerns for their daughter's health.

12. After flagging down U.S. immigration authorities at the San Diego border, the family was taken into custody for approximately five days before being released on their own recognizance. Neither Ms. Zhao, nor her husband, were give a credible fear interview or were questioned in any way regarding their fear of return to China.
13. Upon release, they were placed under an order of supervision requiring annual check-ins with Immigration and Customs Enforcement (“ICE”)(“conditional parole”).
14. On January 26, 2025, Notices to Appear (“NTA”) were docketed for all three family members, charging them as “alien[s] present in the United States who [have] not been admitted or paroled” and directing the family to appear at a Master Calendar Hearing on March 13, 2025. They were not charged as “arriving aliens.”
15. On February 5, 2025, Ms. Zhao briefly assisted at her uncle's spa in New Windsor, NY. The following day, February 6, 2025, she was arrested and was released the same day. She pled guilty to disorderly conduct.

16. At the Master Calendar Hearing on March 13, 2025, the Immigration Court set the family's Individual Hearing date for July 24, 2028 before Immigration Judge Tiesha Peal in New York City.
17. On May 28, 2025, in compliance with the order of supervision, Ms. Zhao and her husband reported to ICE at 26 Federal Plaza. Despite the absence of any disqualifying conviction, ICE placed Ms. Zhao in custody and transferred her to the Houston Contract Detention Facility in Houston, Texas.
18. Only Ms. Zhao was detained; she was removed to the Houston Contract Detention Facility where she remains in custody. She was not issued any document that terminated her "parole" status.
19. Ms. Zhao has now contracted COVID-19, and her family has serious concerns for her health.
20. On June 5, 2025, Mr. Hu filed an asylum application based on political persecution in China, listing Ms. Zhao and their daughter as derivatives under 8 C.F.R. § 208.21.
21. On June 11, 2025, Immigration Judge Andrew Caborn denied Ms. Zhao's request for a custody redetermination hearing, citing *Matter of Q. Li*, 29 I & N. Dec. 66, (BIA 2025). He ruled that "any noncitizen apprehended at or near the border, regardless of whether DHS places

them in expedited or full removal proceedings, must be detained under INA § 235(b), and is ineligible for bond under INA § 236(a).”

22. Two subsequent motions to reconsider by prior counsel were denied on June 16, 2025 and June 20, 2025.

23. Undersigned counsel filed a timely appeal to the Board of Immigration Appeals on July 7, 2025, where the matter remains pending.

24. Ms. Zhao has now been detained for almost three months without a constitutionally adequate bond hearing and without any showing that she poses a danger to the community or a flight risk.

25. Given her status as a derivative asylum status, consistent compliance with ICE supervision, the absence of any lawful basis for continued confinement, and now precarious health status, Ms. Zhao’s detention is unlawful under both constitutional and statutory frameworks.

LEGAL GROUNDS FOR RELIEF

A. STATUTORY ENTITLEMENT TO BOND HEARING

26. Reliance by the immigration judge on *Matter of Q.Li*, 29 I. & N. Dec.

66, (BIA 2025) to deny jurisdiction for bond is entirely misplaced. *Q.Li* purports to hold that Immigration and Nationality Act § 235(b) bars bond availability to anyone who “arrives in the United States...” *Matter of Q.Li*, *id.*, at 71, thus conflating section 235 cases for arriving aliens who are

put into expedited removal proceedings and others who are directly put into section 240 removal proceedings, since both classes of aliens “arrive” at the United States. This conflation of forms of proceedings is at odds with other BIA precedent decisions and decades of statutory and judicial treatment of two distinct classes of aliens who come to the United States.

27. Even a recent precedent BIA decision affirms Ms. Zhao’s eligibility for bond. In a post-*Q. Li* case, *Matter of Akhmedov*, 29 I. & N. Dec. 166, (BIA June 30, 2025), the court affirmed section 236(a) bond eligibility for a person who “entered the United States unlawfully in January 2022” *Matter of Akhmedov, id.* at 167.

28. *Q. Li* is also wholly inconsistent with precedent decision *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523 (BIA 2011), which holds: “[T]he DHS has discretion to put aliens in section 240 removal proceedings even though they may also be subject to expedited removal under section 235(b)(1)(A)(i) of the Act. Section 235(b)(2)(A) of the Act provides that in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.’ Thus, aliens

who are in the broad category of applicants for admission, which includes, inter alia, any alien present in the United States who has not been admitted, are entitled to section 240 removal proceedings. See section 235(a)(1) of the Act.” In this case, as here, the alien was put into 240 removal proceedings, not subject to expedited removal under section 235(b)(1)(A)(i).

29. *Q. Li* is similarly inconsistent with *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023), another precedent decision which echoes *E-R-M-* & *L-R-M-*.

30. The Board knows how to overrule precedents with which it disagrees. For example *Matter of M-S-*, 27 I. & N. Dec. 509, 509 (2019), held that arriving aliens are not entitled to bond hearings, and it expressly overruled a conflicting precedent, *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005).

31. *Matter of Q.Li*, 29 I. & N. Dec. 66, (BIA 2025) could have, but did not, overrule either *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747 (BIA 2023) or *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523 (BIA 2011), which remain binding precedent decisions.

32. “Yet section 235 (under which detention is mandatory) and section 236(a) (under which detention is permissive) can be reconciled only if

they apply to different classes of aliens. *See Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015) (concluding that “““permissive and mandatory [provisions] are in harmony, as they apply to different situations”).

33. There is no evidence that Ms. Zhao’s encounter with border officials constituted an “examination” under section 1225. Ms. Zhao’s “Release on Recognizance” is expressly premised on section 1226: “In accordance with section 236 of the Immigration and Nationality Act and the applicable provision of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance ...” Release on Recognizance is not a “humanitarian” or “public benefit” parole into the United States under section 1182(d)(5)(A). It is “conditional parole” from detention upon a charge of removability, under section 1226. “[R]elease on recognizance” as another name for “conditional parole” under § 1226(a),” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007).

34. A person “released on recognizance” is already inside of the United States, so the term “parole” makes no sense in her situation. *Ortega-Cervantes v. Gonzales*, 501 F.3d at 1115.

35. The noncitizen in *Matter of Q.Li*, in contrast, was paroled expressly under section 1182(d)(5)(A). *See also Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (“Release on such conditional parole under section 236(a)(2)(B) of the INA, 8 U.S.C. § 1226(a)(2)(B), is legally distinct from release on humanitarian parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A)). *Matter of Castillo-Padilla*, 25 I&N Dec. at 258-63.

36. Ms. Zhao was issued a Notice to Appear which does not charge her with being an “arriving alien,” but rather as “present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General” INA section 212(a)(6)(A)(i). Had she been charged as an arriving alien, then detention would of course be mandatory. “Yet section 235 (under which detention is mandatory) and section 236(a) (under which detention is permissive) can be reconciled only if they apply to different classes of aliens. *See Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015) (concluding that “““permissive and mandatory [provisions] are in harmony, as they apply to different situations”). *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (2019).

37. *Matter of Q. Li*, involved a noncitizen who remained in continuous DHS custody from the time of entry, with no intervening grant of parole or release into the community. By contrast, Ms. Zhao was affirmatively released, integrated into the community for more than a year, and allowed to advance her removal proceedings. Applying *Q. Li* here neglects both the continuous custody requirement and the legal significance of DHS's parole decision.

38. The *Q. Li* Board's selective reading of the statute – which ignores its “seeking admission” language – violates the rule against surplusage and negates the plain meaning of the text. “every clause and word of a statute” should have meaning. *Montclair v. Ramsdell*, 107 U.S. 147, 152, 2 S.Ct. 391, 27 L.Ed. 431. *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 143 S. Ct. 1720, 1723, 216 L. Ed. 2d 370 (2023).

39. By continuing to detain Ms. Zhao without bond under the guise of § 235(b), DHS is improperly circumventing the statutory framework and depriving her of a fundamental procedural safeguard. She was not apprehended “upon entry” in the same sense intended by § 235(b), nor was she continuously detained thereafter. Instead, DHS exercised

discretion to release her under supervision, a status incompatible with § 235(b) detention.

40. As such, her custody must be evaluated under INA § 236(a), entitling her to a bond hearing and to release absent proof that she is a danger to the community or a flight risk.

B. FIFTH AMENDMENT DUE PROCESS VIOLATION

41. The redetention of Ms. Zhao after having been paroled raises serious due process issues.

42. 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).

43. 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.").

44. Courts have repeatedly established that such parole and integration into the community places a noncitizen within the purview of § 236(a), which permits a bond hearing. In *Hernandez v. Decker*, 2020 WL 836673 (S.D.N.Y. Feb. 20, 2020), the court found that a noncitizen paroled into the U.S. after entry without inspection was entitled to a bond hearing under § 236(a). Similarly, in *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the Second Circuit rejected the government's attempt to treat a paroled individual as still subject to § 235(b), emphasizing that detention under § 236(a) must govern once DHS affirmatively exercises its parole authority.

45. Ms. Zhao was permitted to move with her family to New York, reside there for more than a year, while fully complying with ICE reporting

obligations. At no point was she issued any document terminating her parole.

46. “A petitioner who was ‘released on bond under government custody, ... retain[s] a weighty liberty interest under the Due Process Clause in avoiding reincarceration. Id. at 18 (citing *Young v. Harper*, 520 U.S. 143, 146–147 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–782; *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972)).) *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *3 (E.D. Cal. July 14, 2025). See also *Barbecho v. Decker*, No. 20-CV-2821 (AJN), 2020 WL 2317876, at *5 (S.D.N.Y. May 11, 2020)(must balance the equities and the public interest where redetention is concerned).

47. Due process requires that the government justify continued detention by demonstrating that Ms. Zhao poses either a danger to the community or a flight risk. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Here, ICE has failed to do either. Ms. Zhao has no prior criminal convictions, attended all required check-ins with ICE, and poses no danger to society.

48. The continued detention of Ms. Zhao without tenable justification is arbitrary and punitive in nature, in violation of her Fifth Amendment right to due process.

49. Ms. Zhao is a derivative applicant on her husband's pending asylum claim, which is based on political persecution in their home country of China. Political persecution constitutes one of the core protected grounds under the Immigration and Nationality Act ("INA") and the 1951 Refugee Convention. See 8 U.S.C. § 1158(b)(1)(A); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987).
50. Prolonged detention in a remote facility impairs her ability to participate meaningfully in the preparation of their asylum case, to consult with legal representatives in New York, and to gather critical evidence related to her claim. Detaining an individual with credible, ongoing asylum claim raises significant due process concerns and serves no legitimate governmental interest, particularly one where the individual has demonstrated compliance throughout all prior reporting obligations.
51. Moreover, Ms. Zhao's political asylum claim provides a compelling humanitarian justification for release. Detention under these circumstances runs contrary to U.S. obligations under the United Nations Convention Relating to the Status of Refugees, which prohibits the penalization of asylum seekers for unlawful entry or presence. See Article 31(1), 1951 Convention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- A. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately;
- B. Declare that the continued detention of Ms. Zhao without a tenable justification violates the Due Process Clause of the U.S. Constitution;
- C. Order Respondents to show cause why Ms. Zhao is being subjected to unlawful and unconstitutional detention;
- D. Grant any other relief that this Court may deem just and proper.

Dated: August 13, 2025

Respectfully submitted,

s/Brian Scott Green

Brian Scott Green

Colorado Bar ID # 56087

Law Office of Brian Green

9609 S University Boulevard,

#630084

Highlands Ranch, CO 80130

(443) 799-4225

briangreen@greenusimmigration.com

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

tedcoxecf@gmail.com

(212) 925-1208

cell: (347) 400-1212