VLAD KUZMIN
vlad@kuzminlaw.com
225 Broadway, Suite 2108
New York, NY 10007
Telephone: 212-608-1800

Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Y- C-, an adult,

Petitioner,

v.

KENNETH GENALO, New York Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS")

Case No.

Agency No. AXXX-XXX-335

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Y- C- is a national of China who seeks protection in the United States after being persecuted by the Chinese authorities for practicing Christianity.

2. Petitioner was released into the United States on or about February 17, 2024, by Respondents. Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. § 1229a. Yet, without any apparent reason, Respondents detained Petitioner on October 7, 2025,

while he was dutifully reporting to ICE. Respondents now seek to detain Petitioner indefinitely and to transfer Petitioner away from the District of New York so that they can rapidly deport Petitioner under an entirely separate and inapposite law. Respondents do so based not on Petitioner's personal circumstances or individualized facts but because of Respondents' interpretation of President Trump's whim and categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process.[1]

3. Respondents actions are not authorized and the U.S. Constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner in Petitioner's § 1229a proceedings.

4. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain, transfer, and deport Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order releasing Petitioner and/or preventing Petitioner's transfer out of this district.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

[1] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

6. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

8. Venue is proper because Petitioner is in Respondents' custody at Metropolitan Detention Center in Brooklyn, NY. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

11. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

12. Petitioner is a 43-year-old citizen of China. Petitioner is present within the state of New York as of the time of the filing of this petition.[2]

13. Respondent Kenneth Genalo is the Field Office Director for the New York Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The New York Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent Genalo is a legal custodian of Petitioner.

14. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Kenneth Genalo and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

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[2] Petitioner seeks leave to proceed anonymously because public identification creates a risk of retaliatory physical harm risk due to Petitioner's status as an asylum seeker in the United States, and the nature of Petitioner's claim is sensitive and highly personal. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The Ninth Circuit has identified several different situations in which parties have been permitted to proceed under a fictitious name, including "(1) when identification creates a risk of retaliatory physical or mental harm, . . . ; (2) when anonymity is necessary 'to preserve privacy in a matter of sensitive and highly personal nature,' . . . ; and (3) when the anonymous party is 'compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.'" *Id.* (collecting cases; internal citations omitted). The Petitioner would provide Petitioner's identity to the Respondents and the Court under seal.

16. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

17. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

18. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

19. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

20. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

21. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

22. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable

or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

23. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

24. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

25. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

26. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

27. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

FACTUAL BACKGROUND

28. Petitioner is a citizen of China.

29. Petitioner seeks protection in the United States after persecution by the Chinese authorities for his religious belief.

30. On or about February 17, 2024, Petitioner came to or near the port of entry of Otay Mesa, California. Respondents arrested and detained Petitioner. On or about the same day, based on the individualized facts of Petitioner's case, Respondent DHS released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. 1226(a). On or about February 18, 2024, Respondents initiated removal proceedings against Petitioner in New York by filing a Notice to Appear.

31. Respondents alleged that Petitioner is subject to removal from the United States under 8 U.S.C. § 1182(a)(6)(A)(i) and commanded that Petitioner appear for a hearing in the immigration court in New York, NY on March 5, 2025.

32. Petitioner submitted his asylum application with the Immigration Court but his hearing was later cancelled by the Immigration Court. Instead of allowing Petitioner to proceed with his asylum case in immigration court, Respondents, without any stated reason, detained Petitioner on October 7, 2025, while he was dutifully reporting to ICE.

33. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

34. On information and belief, Petitioner avers that Respondents' act with purpose to divest Petitioner of Petitioner's due process rights in Petitioner's ongoing § 1229a asylum proceedings.

35. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.

36. On information and belief, Petitioner has no criminal history.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process - Procedural Due Process

37. Petitioner restates and realleges all paragraphs as if fully set forth here.

38. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

39. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

40. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." *Id.*

41. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, see id.

42. Here, on information and belief, Petitioner was detained by Respondents while he was working with his counsel to prepare his asylum case and supporting evidence. This detention and potential transfer of Petitioner to another district effectively inhibits the counsel's assistance and violates Petitioner's due process rights while costing the US taxpayers a lot of money and serving no legitimate government's purpose.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention

43. Petitioner restates and realleges all paragraphs as if fully set forth here.

44. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

45. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

46. The INA provides that Respondents may, as they did months ago in Petitioner's case, release an individual from custody based on an individualized determination of their

danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

47. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

48. By categorically revoking Petitioner's release, inhibiting contact with his attorney, and potentially transferring Petitioner away from the district without consideration of Petitioner's individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

49. On information and belief, Respondents have made no finding that Petitioner is a danger to the community.

50. On information and belief, Respondents have made no finding that Petitioner is a flight risk because, in fact, Petitioner's was arrested while dutifully appearing to ICE on Petitioner's reporting day.

51. On information and belief, by detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Petitioner's facts or circumstances that support the revocation of Petitioner's release from custody.

52. Respondents have already considered Petitioner's facts and circumstances and determined that Petitioner was not a flight risk or danger to the community. On information and belief, there have been no changes to the facts that justify this revocation of Petitioner's release

on recognizance. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider Petitioner, on an individualized basis, to be a danger to the community or a flight risk. Moreover, Petitioner submitted his asylum application and was waiting for his next immigration court hearing as required which cannot be a basis to find that Petitioner is a flight risk.

COUNT THREE

Violation of Fifth Amendment Right to Due Process - Procedural Due Process

53. Petitioner restates and realleges all paragraphs as if fully set forth here.

54. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

55. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

56. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698; *Hernandez*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that due process applies to revocation of parole).

57. Here, after initially releasing Petitioner, Respondents have chosen to re-detain Petitioner in an arbitrary manner and not based on a rational and individualized determination of

whether she is a safety or flight risk, in violation of due process. Had Respondents conducted such an assessment, they would have concluded that no facts or circumstances had changed to justify a revocation of Petitioner's release on recognizance. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (noting that DHS has incorporated *Matter of Sugay* "into its practice, requiring a showing of changed circumstances where the previous release decision was made by a DHS officer").

58. On information and belief, because no individualized custody revocation or redetention decision has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents have violated Petitioner's right to procedural due process.

59. On information and belief, Respondents did not provide Petitioner access to a doctor when he was sick with flu-like symptoms and requested to see a doctor soon after his detention. At that time, many inmates in the facility had flu. Petitioner had to resort to take fever medications left behind by an inmate who was transferred elsewhere.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Dated: November 23, 2025.

/s/ Vlad Kuzmin

VLAD KUZMIN
vlad@kuzminlaw.com
225 Broadway, Suite 2108
New York, NY 10007
Telephone: 212-608-1800

Attorneys for Petitioner