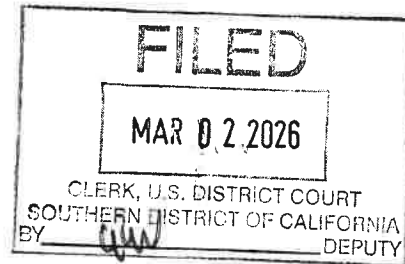


Benxing Yue



Pro Se

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BENXING YUE,

Petitioner,

vs.

Case No.: **'26CV1328 JES SBC**

Kristi NOEM, Secretary, Department of
Homeland Security; Pam BONDI, Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Todd LYONS,
Executive Associate Director of ICE
Enforcement and Removal Operations (ERO);
Gregory J. ARCHAMBEAULT, ICE Field
Office Director; and Christopher J. LAROSE,
Otay Mesa Senior Warden

Agency No.

PETITION FOR WRIT OF HABEAS
CORPUS

ORAL ARGUMENT NOT REQUESTED

Respondents.

INTRODUCTION

1. Petitioner Benxing YUE entered the United States at Otay Mesa, California, on October 23, 2024, for the purpose of seeking asylum from China.
2. Petitioner was apprehended by immigration authorities on October 23, 2024 in California.
3. Petitioner is charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), § 1182(a)(7)(A)(i).

1 4. Petitioner is currently detained at the Otay Mesa detention center by immigration
2 authorities and is the subject of a pending removal hearing.

3 5. Petitioner was denied release by the Department of Homeland Security (DHS).
4 Due to the Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025), Petitioner
5 could not request for a bond redetermination hearing because the immigration court was
6 instructed by the Board of Immigration Appeals that it lacked jurisdiction over the bond
7 hearing for immigrants who, like the Petitioner, entered the U.S. without inspection.
8 Because Section 235(b)(1)(B)(ii) of the Immigration and Nationality Act “requires
9 detention until the conclusion of removal proceedings.”
10

11
12 6. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant
13 petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents’
14 attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of
15 the law, and to immediately issue an order to release Petitioner from detention.
16

17 JURISDICTION

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

20 8. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
21 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
22 (Suspension Clause).
23

24 9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the
25 Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651,
26 and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
27
28

VENUE

10. Venue is proper because Petitioner is in Respondents' custody in Otay Mesa, California.

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 Respondent's custody. 28 U.S.C. § 1391(e).

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

11. 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.

12. 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).

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

PARTIES

14. Petitioner is currently detained at the Otay Mesa immigration detention center.

1 15. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security
2 ("DHS"), and is sued in her official capacity. The Secretary of Homeland Security is
3 charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

4
5 16. Respondent Pam BONDI is the Attorney General of the United States and is sued in her
6 official capacity as the head of the Department of Justice. The Attorney General is
7 responsible for the fair administration of the laws of the United States.

8 17. Respondent Executive Office for Immigration Review is a component agency of the
9 Department of Justice responsible for conducting removal and bond hearings of
10 noncitizens. EOIR is comprised of a lower adjudicatory body administered by immigration
11 judges and an appellate body known as the Board of Immigration Appeal (BIA).
12 Immigration judges issue bond redetermination hearing decisions, which are then subject
13 to appeal to the BIA.
14

15 18. Respondent Todd LYONS is the Acting Director of U.S. Immigration and Customs
16 Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention
17 of Petitioner.
18

19 19. Respondent GREGORY J. ARCHAMBEAULT is the Immigration and Customs
20 Enforcement Field Office Director at the ICE Otay Mesa immigration detention facility
21 and is sued in his official capacity. Respondent GREGORY J. ARCHAMBEAULT is
22 responsible for the detention of Petitioner.
23

24 20. Respondent CHRISTOPHER J. LAROSE, is the OTAY MESA SENIOR WARDEN and
25 is sued in his official capacity as he is responsible for the detention of Petitioner.
26
27
28

LEGAL FRAMEWORK

21. 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).

22. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

23. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).

24. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.

25. 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).

26. 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

1 human rights and humanitarian concerns.” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th
2 Cir. 1985).

3
4 27. The Refugee Act established the right to apply for asylum in the United States and defines
5 the standards for granting asylum. It is codified in various sections of the INA.

6 28. The INA gives the Attorney General or the Secretary of Homeland Security discretion to
7 grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition,
8 individuals generally are eligible for asylum if they have experienced past persecution or
9 have a well-founded fear of future persecution on account of race, religion, nationality,
10 membership in a particular social group, or political opinion and if they are unable or
11 unwilling to return to and avail themselves of the protection of their homeland because of
12 that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

13
14 29. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The
15 Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is
16 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. §
17 1158(a)(1).

18
19 30. Immigration detention is a form of civil confinement that “constitutes a significant
20 deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S.
21 418, 4253 (1979).

22
23 31. Custody determinations for individuals in 1229a removal proceedings are governed by 8
24 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a
25 danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678,
26 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

1 32. Custody determinations under § 1226(a) are individualized and based on the facts
2 presented in those cases. Unlike § 1226(c), which can provide for categorical
3 determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a
4 case-by-case review of the facts and circumstances.
5

6 33. Once a determination to release an individual from custody is made, the release order may
7 be revisited when the facts or circumstances warrant revocation or reconsideration. 8
8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may
9 take that individual back into custody by revoking the individual's release when the facts
10 and circumstances warrant it. Revocation and return to custody is authorized only based on
11 the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation,
12 revocation decisions are limited in nature and may only be made by certain authorized
13 officials. 8 C.F.R. § 1236.1(c)(9).
14
15

16 **FACTUAL BACKGROUND**

17
18 34. Petitioner fled China, where he was persecuted by the Chinese government, and entered
19 the United States on October 23, 2024. In China, he was arrested, interrogated, detained
20 and beaten for being a practicing Christian.

21 35. Petitioner suffered severe back pain resulting from the severe beatings he received while
22 detained in China and he lost 2 of his front teeth. Upon his arrival in the U.S. applied for
23 asylum and he submitted an i589 while in Otay Mesa Detention Center.
24

25 36. He was placed in removal proceedings to appear before an IJ, and was charged with
26 having entered the United States without inspection and being present without valid
27
28

1 immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), § 1182(a)(7)(A)(i). ICE denied
2 Petitioner's request for release.

3
4 37. Petitioner could not qualify for a custody redetermination hearing due to the Board of
5 Immigration Appeal's Matter of Yajure Hurtado, which severely limited the immigration
6 courts' jurisdiction in setting bonds for those who entered the U.S. without inspection.
7 Any appeal to the Board of Immigration Appeals is futile.

8
9 38. On January 20, 2025, President Donald Trump issued several executive actions relating to
10 immigration, including "Protecting the American People Against Invasion," an executive
11 order (EO) setting out a series of interior immigration enforcement actions. The Trump
12 administration, through this and other actions, has outlined sweeping, executive branch led
13 changes to immigration enforcement policy, establishing a formal framework for mass
14 deportation. The "Protecting the American People Against Invasion" EO instructs the
15 DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to
16 prioritize civil immigration enforcement procedures including through the use of mass
17 detention.
18

19 39. On information and belief, Respondents are detaining and seeking to transfer Petitioner
20 regardless of the individual facts and circumstances of his case.

21
22 40. On information and belief, Respondents are using the immigration detention system,
23 including extra-territorial transfer and detention, as a means to punish individuals for
24 asserting rights under the Refugee Act.

25 41. On information and belief, Petitioner has no criminal history.

26 **CLAIMS FOR RELIEF**

27 **COUNT ONE**

28 **Violation of the Administrative Procedure Act - 5 U.S.C. § 706(2)(A)**

Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

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

43. 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)).

44. 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).

45. By categorically revoking Petitioner’s release and seeking to transfer him away from the district without consideration of his individualized facts and circumstances, Respondents have violated the APA.

46. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support the revocation of his release from custody.

47. Respondents have already considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his release on his own recognizance.

COUNT TWO

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

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

49. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

50. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a bond or parole authorized under [8 U.S.C. § 1226(a)] and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”

51. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

52. On information and belief, Respondents have revoked or are revoking Petitioner’s prior custody determination as a result of a categorical policy prepared by and implemented by

1 unidentified government officials in Washington, not through the individual exercise of
2 discretion required by law or by the individuals enumerated by regulation to do so.

3 53. Because Petitioner's revocation of release from custody has been made or will be
4 categorically directed by government officials not authorized by law to make this
5 determination, Respondents' detention of Petitioner is not in accordance with law and in
6 excess of statutory authority.
7

8 **COUNT THREE**

9 **Violation of Fifth Amendment Right to Due Process** 10 **Procedural Due Process**

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

12 55. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
13 federal government from depriving any person of "life, liberty, or property, without due
14 process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the
15 United States, including [non-citizens], whether their presence here is lawful, unlawful,
16 temporary, or permanent." *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.
17

18 56. Due process requires that government action be rational and non-arbitrary. See *U.S. v.*
19 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
20

21 57. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to
22 revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and
23 must comport with constitutional due process. See *Zadvydas*, 533 U.S. at 698.

24 58. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and
25 not based on a rational and individualized determination of whether he is a safety or flight
26 risk, in violation of due process. Because no individualized custody revocation has been
27 made and no circumstances have changed to make Petitioner a flight risk or a danger to the
28

community, Respondents' revocation of Petitioner's release violates his right to procedural due process.

59. To secure his release, Petitioner has a sponsor, who is a fellow Christian and a U.S. citizen, who will make sure that he will not be a flight risk nor a danger to the community and will follow all the laws of the United States in addition to complying with all the requirements of the courts and with the Department of Homeland Security.

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 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) Order the Petitioner be immediately released forthwith under the jurisdiction of this COURT and not require the Petitioner to be sent to the Immigration Court for a custody redetermination hearing and to set bond because the Immigration Court still is required to follow the BIA's directive that it has no jurisdiction in holding custody redetermination hearings for immigrants like the Petitioner, who are detained for over one year while awaiting his asylum case to be heard, in clear violation of his Fifth Amendment rights of due process.

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

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

Dated February 27, 2026

Respectfully Submitted,

YUE BEN XING

Benxing Yue

A large black rectangular redaction box covering the signature area, with a white 'X' drawn across it from corner to corner.

Pro Se