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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Xiaoyan YU,

12 Petitioner,

13 v.

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;
17 Patrick DIVVER, Field Office Director,
18 San Diego Office of Detention and
19 Removal, U.S. Immigrations and Customs
20 Enforcement; U.S. Department of
21 Homeland Security;
22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security;
Todd Blanche, Acting Attorney General
of the United States;

Respondents.

Case No.: '26CV2910 CAB GC

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Agency Doc. No.:



1 Petitioner XIAOYAN YU petitions this Court for a writ of habeas corpus under
2 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as
3 follows:

4 INTRODUCTION

5
6 1. Petitioner, XIAOYAN YU ("Mr. Yu" or "Petitioner"), a Chinese lawful permanent
7 resident, by and through his undersigned counsel, hereby petitions this Court under 28
8 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Yu's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Yu seeks immediate release from
11 custody because Respondents have held him since January 1, 2025—a prolonged
12 period—even though he has hired counsel and has acted diligently to have his relief
13 application heard by an immigration judge ("IJ"), and his proceedings have been
14 continued through no fault of his own. Alternatively, Mr. Yu seeks an order releasing him
15 from custody under minimum bond of \$1,500.00, or directing an immediate bond hearing
16 before a neutral decisionmaker where DHS bears the burden of justifying Mr. Yu's
17 continued detention by clear and convincing evidence and where alternatives to detention
18 and Mr. Yu's ability to pay a bond are considered

19
20 2. Order Respondents to show cause why Mr. Yu is being subjected to unlawful and
21 unconstitutional detention

22 3. His continued detention without a hearing as to flight risk and danger to the
23 community violates the U.S. Constitution and federal law.
24

CUSTODY

4. Mr. Yu is currently in Respondents' legal and physical custody. They are detaining him at the Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control.

PARTIES

5. Mr. Yu is a 38-year-old citizen of China, born in Fuqing City, China. Mr. He has been residing in the United States since November 16, 2017, and is presently a lawful permanent resident of the United States. He is currently detained at the Otay Mesa Detention Center in San Diego, California. Mr. Yu is seeking a waiver of removability under INA § 212(h). His wife and children, who are also lawful permanent residents of the United States. In addition, Mr. Yu developed extensive community ties in the United States.

6. Mr. Yu is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

7. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Divver, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

8. Respondent Patrick DIVVER is the Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is

1 responsible for detaining and removing noncitizens according to immigration law and
2 oversees custody determinations. In his official capacity, he is the legal custodian of
3 Petitioner.

4 9. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
5 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
6 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
7 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
8 Mr. Yu. Respondent Lyons has custodial authority over Mr. Yu, who names him in his
9 official capacity.
10

11 10. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
12 responsibility for overseeing the operation of the immigration courts and the Board of
13 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
14 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
15 removal proceedings, including for custody redeterminations in bond hearings. She is
16 sued in her official capacity.

17 11. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in his
18 official capacity. DHS is the federal agency responsible for enforcing immigration laws
19 and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent
20 Blanche has ultimate custodial authority over Mr. Yu, who names Mullin in his official
21 capacity.
22

23 12. Respondent Todd BLANCHE is the Acting Attorney General of the United States
24 and the most senior official in the U.S. Department of Justice (DOJ) and is named in his

1 official capacity. He is responsible for the Immigration and Nationality Act's
2 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
3 Executive Office for Immigration Review, the office that administers Mr. Yu's removal
4 proceedings and is responsible for adjudicating Mr. Yu's waiver application. Mr. Yu
5 names Blanche in his official capacity.

6 JURISDICTION AND VENUE

7
8 13. This action arises under the United States Constitution and the Immigration and
9 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Yu's
10 detention under the INA and any inherent or plenary powers the government may claim
11 to continue holding him.

12 14. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
13 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
14 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
15 Jurisdiction is not limited by a petitioner's nationality, immigration status, or any other
16 classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant
17 relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706
18 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001
19 (Declaratory Judgment Act), and 2241 (habeas corpus).

20
21 15. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr. Yu's
22 detention. Federal district courts possess broad authority to issue writs of habeas corpus
23 when a person is held “in custody in violation of the Constitution or laws or treaties of
24 the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration

1 detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because
2 Mr. Yu seeks the traditional habeas remedy of release from allegedly unlawful detention,
3 his petition presents precisely the type of threshold legality-of-detention question that §
4 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also*
5 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638
6 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction
7 under 8 U.S.C. § 1252. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court
8 has ruled on the legality of Mr. Yu's detention.
9

10 16. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
11 substantial part of the events or omissions giving rise to this claim have happened here,
12 Mr. Yu is detained here, and his custodian resides here. Venue is also proper under 28
13 U.S.C. § 2243 because Mr. Yu's immediate custodian resides in this District. See
14 *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

15 **FACTUAL BACKGROUND**

16 17. Mr. Yu is a 38-year-old citizen of China, born in Fuqing City, China. Mr. He has
17 been residing in the United States since November 16, 2017, and is presently a lawful
18 permanent resident of the United States. Mr. Yu is seeking a waiver of removability
19 under INA § 212(h). His wife and children, who are also lawful permanent residents of
20 the United States. In addition, Mr. Yu developed extensive community ties in the United
21 States.
22

23 18. Mr. Yu last departed his home country on or about November 16, 2017 and, on
24 May 15, 2018, he was granted asylum in the United States pursuant to INA § 208.

1 Subsequently, while already lawfully in the United States as an asylee, Respondent
2 adjusted status and became a lawful permanent resident (Green card holder) on
3 September 16, 2019.

4 19. Mr. Yu was detained by DHS on January 1, 2025, and on January 3, 2025, he was
5 placed into the instant proceedings and charged with removability under INA §
6 237(a)(2)(A)(iii) for having been convicted of an aggravated felony. The basis for the
7 charge of removability is Respondent's November 15, 2022 conviction for violating 18
8 U.S.C. § 1956(h), conspiracy to engage in money laundering. In proceedings, Respondent
9 has filed for, inter alia, re-adjustment of status through an approved I-130 filed by his
10 wife in conjunction with a waiver under INA § 212(h), as well as an application for
11 withholding of removal¹ as an alternative form of relief.
12

13 20. On January 3, 2025, the government issued Mr. Yu a Notice to Appear (NTA)
14 before an immigration judge (IJ) on January 13, 2025. When that NTA was filed on
15 January 3, 2025 with the immigration court, the Court rescheduled Mr. Yu's initial
16 appearance to January 14, 2025.

17 21. On January 10, 2025, Mr. Yu moved for a custody redetermination hearing for the
18 IJ. The IJ denied the motion based on the grounds that Mr. Yu is subject to mandatory
19 detention under INA § 236(c) (8 U.S.C. § 1226(c) due to his criminal conviction and that
20 the IJ lacks jurisdiction to redetermine his custody.
21
22
23

24 ¹ Petitioner is ineligible for asylum due to his conviction; however, he is eligible to re-adjust status to
lawful permanent resident in conjunction with an INA Section 212(h) waiver.

1 22. At his first Master Calendar hearing on December 14, 2025, Mr. Yu appeared
2 before the IJ with counsel and entered pleadings in his proceedings and requested relief
3 from removal. The IJ then adjourned the proceedings to February 19 for relief preparation
4 time.

5 23. At the February 19, 2025 master calendar hearing, Mr. Yu appeared with his new
6 counsel and the proceedings were then adjourned to March 27 to provide additional time
7 for Mr. Yu 's new counsel to confer with his prior counsel and to identify all the reliefs
8 Mr. Yu was eligible for and wished to apply for.

9 24. At the March 27, 2026 continued master calendar hearing, Mr. Yu's counsel
10 informed the IJ that Mr. Yu would be seeking the reliefs of re-adjustment of status based
11 on a prospective alien relative petition by his lawful permanent resident wife, along with
12 a § 212(h) waiver as Mr. Yu's primary form of relief and withholding of removal under
13 the Convention Against Torture (CAT) as his alternative form of relief (in the event the
14 primary form of relief was denied for any reason). The IJ adjourned the proceedings to
15 May 8, 2025 to provide time to prepare and file the relief applications.

16 25. On May 6, 2026, Petitioner filed his withholding of removal under the Convention
17 Against Torture (CAT) and supporting evidence. The matter was then adjourned to a
18 further master calendar hearing on June 10, 2026, to prepare and file the additional relief
19 application and additional evidence.
20

21 26. At the June 10, 2026, Petitioner's counsel informed the IJ that before Petitioner
22 could file his readjustment of status application with the immigration court, his wife
23 needs to file the Form I-130, alien relative petition with USCIS (as USCIS has exclusive
24

1 jurisdiction over immigrant petitions and immigration courts do not have jurisdiction to
2 adjudicate those petitions) and that Petitioner's wife was in the process of preparing and
3 filing that petition with USCIS. The matter was then adjourned to July 8, 2026.

4 27. At the July 8, 2026, Petitioner's counsel informed the IJ that the alien relative
5 petition by Petitioner's wife on behalf of Petitioner had been filed on July 4, 2026, and
6 requested that DHS counsel submit a request to USCIS to expedite the processing of the
7 Form I-130. DHS counsel represented to the IJ that he would check with his office to see
8 whether DHS counsel was able to submit such a request to USCIS and report back to the
9 IJ and that DHS had no objection to a further continuance for this purpose. The
10 proceedings were then adjourned to July 29, 2025.

12 28. At the July 29, 2025 continued master calendar hearing, DHS confirmed to the IJ
13 that a request for expedited processing of the Form I-130 had been submitted to USCIS
14 and that additional time was required. The proceedings were then continued to September
15 9, 2025.

16 29. At the September 9, 2025 continued master calendar hearing, Petitioner's counsel
17 informed the IJ that the Form I-130 had been approved and Petitioner was working to
18 prepare and file the readjustment and waiver applications with the court. The proceedings
19 were then adjourned to October 14, 2025. At that hearing, Petitioner confirmed that the
20 remaining applications had been filed and that Petitioner and counsel were working with
21 a doctor to arrange for Petitioner's medical examination at the detention facility. At the
22 same hearing, the IJ expressed some concerns regarding Petitioner's eligibility for these
23 applications and requested the parties to brief the issue and adjourned the proceedings
24

1 again to November 12, 2025 for that purpose as well as to complete the medical
2 examination.

3 30. On November 5, 2025, prior to the next scheduled master calendar hearing,
4 Petitioner was informed that the November 12, 2025 hearing had been vacated and that
5 the hearing had been reset to December 2, 2025 before a new IJ. Petitioner later learned
6 that his case was reassigned to a new IJ due to the abrupt firing of the existing IJ.

7 31. At the December 2, 2025 continued master calendar hearing, the new IJ presided
8 over the hearing, and a new DHS counsel appeared on behalf of the government. The IJ
9 made an inquiry to DHS counsel regarding the nature of Petitioner's entry to the United
10 States, who responded that they had not had time to review the file and requested
11 additional time to review the file. In addition, DHS counsel raised the one-year bar issue
12 as well as the aggravated felony bar. The new IJ adjourned the proceedings to another
13 master calendar hearing on January 13, 2026 and requested additional evidence regarding
14 the waiver application.
15

16 32. At the January 13, 2026 continued master calendar hearing, the newly assigned IJ
17 inquired about the government's position regarding Petitioner's eligibility for the §
18 212(h) waiver and government counsel conceded that Petitioner was eligible to apply for
19 the waiver. Petitioner's counsel confirmed that the application fees had been paid. The
20 matter was then scheduled for a final individual merits hearing on April 30, 2026.
21

22 33. At the April 30, 2026 scheduled individual calendar hearing, yet another new IJ
23 presided over the proceedings. Although this IJ is located in the Los Angeles Immigration
24 Court, the case had been assigned to them to preside over the proceeding remotely.

1 Although Petitioner's counsel advised the IJ that Petitioner was ready to proceed in
2 presenting his case, DHS attorney, who was also reassigned this case for the first time,
3 objected and claimed to the IJ that since Petitioner's petitioning spouse was merely a
4 lawful permanent resident and not a U.S. citizen yet, a visa number was not available yet
5 as the priority date for this category of beneficiaries in not yet current. On the other hand,
6 Petitioner's counsel advised the IJ that the priority date was current and the visa number
7 was available and cited the Department of State's current monthly visa bulletin. The IJ
8 inquired of DHS counsel as to what his source was for his claim. DHS counsel could not
9 cite to any source, except to state to the IJ that although he was new and had limited
10 knowledge of how things worked, but he assured the IJ that his superiors at the Office of
11 the Principal Legal Advisor, who had way more experience and knowledge than him had
12 assured him that the priority date was not in fact current and that no visa number was
13 available, and insisted that the IJ not proceed until a visa number could be available,
14 which according to him could be another 18 months. The IJ then ordered the parties to
15 brief the issue and adjourned the matter to May 21, 2026 for that purpose, before
16 proceeding.
17

18 34. Mr. Yu has not moved for any further custody redetermination because the IJ's in
19 this jurisdiction have consistently ruled that they do not have jurisdiction to redetermine
20 the conditions of custody over individuals subject to mandatory detention under INA §
21 236(c) (8 U.S.C. § 1226(c)).
22

23 35. Since being detained on January 1, 2025, Mr. Yu has been suffering from a slew of
24 medical conditions and ailments, including abdominal pain, chest pains, frequent

1 toothaches and colds, and possibly hemorrhoids (due to bleeding when going to the
2 bathroom). In addition, Petitioner has been suffering from anxiety, depression and sudden
3 mood swings, as well as lack of appetite and sleep. He has also been experiencing
4 extreme guilt as he is no longer able to work and provide for his family.

5 36. Mr. Yu's continued detention without a tenable justification and without a
6 demonstration that removal is significantly likely in the reasonably foreseeable future
7 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
8 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

9
10 37. The government has failed to effectuate Mr. Yu's removal within a reasonable
11 period of time or present any evidence that his removal is significantly likely to occur in
12 the reasonably foreseeable future.

13 38. Mr. Yu's detention without a tenable justification violates his rights under the Due
14 Process Clause of the Fifth Amendment.

15 EXHAUSTION OF REMEDIES

16 39. Mr. Yu has exhausted all administrative remedies, and no further ones are
17 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
18 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
19 prudential exhaustion requirement if "administrative remedies are inadequate or not
20 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
21 injury will result, or the administrative proceedings would be void." *Id.* (quoting Laing v.
22 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).
23
24

1 Petitioner asserts that exhaustion should be waived because administrative remedies are
2 (1) futile and (2) his continued detention results in irreparable harm.

3 40. Exhausting administrative remedies here is futile because Respondents contend
4 Mr. Yu is subject to mandatory detention. As such, no request to release him from
5 custody would be considered by ICE and Mr. Yu's repeated requests for parole or bond
6 release have been denied. Moreover, immigration judges in this district claim to have no
7 jurisdiction to conduct a custody redetermination hearing as to individuals procedurally
8 situated like Mr. Yu. Indeed, in contravention to the INA and long-standing precedent
9 and practice, the Board of Immigration Appeals and Attorney General have deemed no
10 noncitizen eligible for bond before an immigration judge (with the exception of only
11 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
12 administrative remedies would be entirely futile.

14 41. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
15 unlawful custody in violation of his due process rights, and there are no administrative
16 remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
17 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
18 the agency does not have jurisdiction to review" constitutional claims); In re Indefinite
19 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

21 42. More importantly, every day that Petitioner remains detained causes him harm
22 that cannot be repaired. His continued detention puts his physical and mental health at
23 greater risk, further warranting a finding of irreparable harm and the waiver of the
24 prudential exhaustion requirement. As explained above, since being detained on January

1 1, 2025, Mr. Yu has been suffering from a slew of medical conditions and ailments,
2 including abdominal pain, chest pains, frequent toothaches and colds, and possibly
3 hemorrhoids (due to bleeding when going to the bathroom). In addition, he has been
4 suffering from anxiety, depression and sudden mood swings, as well as lack of appetite
5 and sleep. He has also been experiencing extreme guilt as he is no longer able to work
6 and provide for his family.

7
8 43. There is no adequate, proper and available treatment in the detention facility to
9 address Mr. Yu's symptoms.

10 44. The Court must consider this in its irreparable harm analysis of the effects on
11 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
12 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to
13 suffer significant psychological effects from his detention, including anxiety caused by
14 the threats of other inmates and two suicide attempts," in finding that petitioner would
15 suffer irreparable harm warranting waiver of exhaustion requirement).

16 **FIRST CAUSE OF ACTION**
17 **Fifth Amendment Due Process Violation**

18 45. Mr. Yu re-alleges and incorporates by reference, as if fully set forth herein, the
19 allegations in paragraphs 1-44 above.

20 46. The Supreme Court has long recognized that the Fifth and Fourteenth
21 Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or
22 removable aliens, must be afforded due process protection. See Yick Wo v. Hopkins, 118
23 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to
24

1 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
2 Amendment “are universal in their application, to all persons within the territorial
3 jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.*
4 (emphasis added).

5 47. The Supreme Court has held that “even one whose presence in this country is
6 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
7 Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz.*, 426 U.S.
8 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status
9 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
10 term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the
11 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
12 property without due process of law.”).

14 48. As there is no final order of removal, and there doesn’t appear to be one in the
15 reasonably foreseeable future, Mr. Yu may not be removed from the United States. His
16 removal is not reasonably foreseeable, and his detention no longer serves any legitimate
17 purpose under the INA.

18 49. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District
19 granted habeas relief in a substantially similar case, applying a six-factor balancing test
20 first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which
21 considers: (1) total length of detention to date; (2) likely duration of future detention; (3)
22 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
23 delays in the removal proceedings caused by the government; and (6) the likelihood that
24

1 the removal proceedings will result in a final order of removal. The court determined that
2 prolonged detention, when considered alongside other due process concerns, can rise to
3 the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at
4 773.

5 50. Applying the Banda six-factor framework here supports granting Mr. Yu's
6 petition.

7 51. The final factor—finality—strongly supports the grant of this habeas petition and
8 request for release or a bond hearing. Mr. Yu is statutorily eligible to apply for, inter alia,
9 re-adjustment of status through an approved I-130 filed by his wife in conjunction with a
10 waiver under INA § 212(h), as well as an application for withholding of removal as an
11 alternative form of relief, and until those applications are finally adjudicated, he cannot
12 be removed from the United States. Thus, the only prospect for removal from the United
13 States would be a speculative, and not factually unsupported prospect of removal to a
14 third country.
15

16 52. Almost all delays in this case are attributable to the government. Mr. Yu promptly
17 applied for re-adjustment of status through an approved I-130 filed by his wife in
18 conjunction with a waiver under INA § 212(h), as well as an application for withholding
19 of removal as an alternative form of relief, he has timely attended all of his interviews
20 and court hearings and has timely complied with the IJ's filing deadlines.

21 53. Mr. Yu has now been detained by ICE for over sixteen months since his detention
22 on January 1, 2025. His continued individual hearing will not take place until May 21,
23 2026, and in the event he is granted readjustment of status or withholding of removal, the
24

1 government will likely appeal and if he is denied asylum and ordered removed by the IJ,
2 he will appeal before the BIA as a matter of his right, and the appeal of his case to the
3 BIA is estimated to take several months if not over a year. And in the event that the BIA
4 affirms the IJ, then Mr. Yu will petition for review with the Ninth Circuit Court of
5 Appeals and if the BIA reverses the IJ, then his case will be remanded back to a new IJ
6 which will take several additional months if not over a year. This period is well beyond
7 the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701.
8 Courts consistently find detention beyond this threshold triggers due process scrutiny.
9
10 See Kydyrali, 499 F.Supp. 3d at 774–75.

11 54. Conditions of confinement also raise constitutional concerns as the medical
12 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
13 Yu's health conditions.

14 55. Mr. Yu poses no risk of flight and no danger to the community. He has
15 responsibility handled the sole criminal charges against him, has accepted responsibility,
16 paid his penalties and completed his sentence, has demonstrated compliance with all prior
17 immigration requirements, and has family and community support in the United States.

18 56. Mr. Yu's continued detention without a tenable justification violates his Fifth
19 Amendment right to due process.
20

21 ///

22 ///

23 ///

24 ///

PRAYER FOR RELIEF

Mr. Yu asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Yu from custody immediately;
2. Declare the continued detention of Mr. Yu without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
3. Alternatively, order Mr. Yu's release from custody under minimum bond of \$1,500.00;
4. Alternatively, direct an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Mr. Yu's continued detention by clear and convincing evidence and where alternatives to detention and Mr. Yu's ability to pay a bond are considered
5. Order Respondents to show cause why Mr. Yu is being subjected to unlawful and unconstitutional detention; and
6. Grant any other relief that may be fit and proper.

Dated: May 8, 2026

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this May 8, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner