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

YUYING LIN

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL
DETENTION FACILITY; et al.,
MARKWAYNE MULLIN,
SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY,

Respondents.

Case No.: '26CV3173 JLS MMP

**PETITION FOR WRIT OF HABEAS
CORPUS TO RELEASE INS
DETAINEE UNDER 28 USC § 2241**

IN CUSTODY

COMES NOW THE PETITIONER, YUYING LIN, by and through her
counsel, Michael L. Tusken, moves for immediate release from Immigration Custom
Enforcement (ICE) custody. Petitioner presently is being detained at:

Imperial Regional Adult Detention Facility

1572 Gateway Road

Calexico, CA 92231

Petitioner's Administrative Information is:

YUYING LIN

Country of Birth: China, Peoples Republic of

A-Number: 

-1-

HABEAS PETITION YUYING LIN

1 **I. STATEMENT OF FACTS**

2 Petitioner is a 41-year-old national of the People's Republic of China
3 ("China"). She came to the border of the United States in 2023, was taken into
4 custody for one day, and released on conditional parole without a bond. She fled her
5 native country of China where she was persecuted and from where she fears future
6 persecution. Respondent has filed an I-589 application for asylum and was issued
7 work authorization from USCIS. Respondent was not taken into custody until last
8 week by ICE when it instituted a sweep of a farm area in Indio. ICE had no
9 administrative warrant for her arrest, did not know of her presence until her
10 apprehension, and had no probable cause to apprehend her, except for the fact that she
11 was outside a farm area on a public street and appeared ethnically Asian. She fully
12 cooperated with ICE and presented her USCIS-issued work authorization and told the
13 ICE officer she was already in proceedings and had a conditional parole.
14 Notwithstanding this, ICE summarily took Petitioner into custody without first
15 holding a hearing or even an interview to justify its position that Petitioner should be
16 re-arrested after already having been released on conditional parole, and giving her an
17 opportunity to respond. She lives with distant family in Los Angeles County when
18 not employed in Riverside County. At the time of her arrest by ICE, she already had
19 appeared several times at the Office of the Immigration Judge and is scheduled for an
20 individual hearing regarding her asylum application.

21 **II. LEGAL STANDARD**

22 A district court may grant a writ of habeas corpus when a petitioner "is in
23 custody in violation of the Constitution or laws or treaties of the United States." 28
24 U.S.C. § 2241(c); *Magana-Pizano v. I.N.S.*, 200 F.3d 603, 609 (9th Cir. 1999); 28
25 U.S.C. § 2241 expressly permits the federal courts to grant writs of habeas corpus to
26 aliens when those aliens are 'in custody in violation of the Constitution or laws or
27 treaties of the United States.'"). In federal habeas proceedings, the petitioner bears the
28 burden of proving his case by a preponderance of evidence. *Lambert v. Blodgett*, 393

1 F.3d 943, 970 n.16 (9th Cir. 2004); *Bellew v. Gunn*, 532 F.2d 1288, 1290 (9th Cir.
2 1976) (citations omitted).

3 **III. LAW AND ARGUMENT**

4 **A. DETENTION STATUTE**

5 Petitioner avers that her re-detention without notice and a hearing violates the
6 Fifth Amendment's Due Process Clause, and that she is wrongfully detained under 8
7 U.S.C. §1225(b)(2). Petitioner previously was released from immigration custody on
8 conditional parole issued under 8 U.S.C. §1226(a). The government contends that
9 Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2). Prior
10 decisions by Courts in this district have recognized that the position of the government
11 does not conform to the law. Petitioner avers that she is wrongfully detained under 8
12 U.S.C. §1225(b)(2).

13 As a noncitizen who, at the time of her detention, had been present in the
14 United States for more than two and a half years having previously been released on a
15 conditional parole, Petitioner avers that she is not subject to 8 U.S.C. §1225(b)(2), *see*
16 8 U.S.C. §1225(b) (1) which provides that noncitizens present in the United States
17 without admission who are physically present in the United States continuously for at
18 least two years prior to their apprehension are not subject to mandatory detention. By
19 contrast, 8 U.S.C §1225(b)(2) applies to noncitizens arriving at the border or who very
20 recently entered the United States. The Supreme Court has observed that the
21 government may "detain certain aliens seeking admission into the country under
22 §§1225(b)(1) and (b)(2)," while §1226(a) allows the government to "detain certain
23 aliens **already in the county** pending the outcome of removal proceedings." *Jennings*
24 *v. Rodriguez*, 583 U.S. 281, 289 (2018). Petitioner avers that she is therefore NOT
25 SUBJECT to mandatory detention under 8 U.S.C. §1225(b)(2) as the government has
26 asserted in her bond hearing before the immigration judge, because she has been in the
27 country more than 2 years. Furthermore, as detailed, *infra*, Petitioner is entitled to
28 remain on her conditional parole and free from being again detained after having

1 already been released. As such, the government is detaining Petitioner in violation of
2 the Constitution or laws or treaties of the United States.

3 B. DUE PROCESS CLAUSE

4 The Fifth Amendment guarantees that no person shall be “deprived of life,
5 liberty, or property, without due process of law.” U.S. Const. amend. V. “It is well
6 established that the Fifth Amendment entitles aliens to due process of law in
7 deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Reno v.*
8 *Flores*, 507 U.S. 292, 306 (1993)). “An elementary and fundamental requirement of
9 due process in any proceeding which is to be accorded finality is notice reasonably
10 calculated, under all the circumstances, to apprise interested parties of the pendency of
11 the action and afford them an opportunity to present their objections.” *Mullane v.*
12 *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (citations omitted).

13 The Due Process Clause generally “requires some kind of a hearing before the
14 State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
15 (1990). “The fundamental requirement of due process is the opportunity to be heard at
16 a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319,
17 333 (1976) (internal quotation marks and citation omitted). Petitioner avers that
18 having been previously released on conditional parole (in 2023 when coming to the
19 border), she has a protected liberty interest in remaining free from detention. “Even
20 individuals who face significant constraints on their liberty or over whose liberty the
21 government wields significant discretion, retain a protected interest in their liberty.”
22 *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (citations omitted).

23 Although the initial decision to detain or release an individual may be within
24 the government’s discretion, “the government’s decision to release an individual from
25 custody creates ‘an implicit promise,’ upon which that individual may rely, that their
26 liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions [of
27 release].’” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)) (alterations in
28 original). Petitioner avers that she has a protected liberty interest, and that the Due

1 Process Clause mandates following procedural protections before she can be deprived
2 of that interest. *See Mathews*, 424 U.S. at 334–35.

3 To determine which procedures are constitutionally sufficient to satisfy the Due
4 Process Clause, the following factors must be considered: (1) “the private interest that
5 will be affected by the official action”; (2) “the risk of an erroneous deprivation of
6 such interest through the procedures used, and the probable value, if any, of additional
7 or substitute procedural safeguards”; and (3) “the [g]overnment’s interest, including
8 the function involved and the fiscal and administrative burdens that the additional or
9 substitute procedural requirement would entail.” *Id.* at 335.

10 Petitioner avers that all three factors are in Petitioner’s favor and demonstrate
11 that the government’s revocation of Petitioner’s conditional parole without
12 notification, reasoning, or an opportunity to be heard denied her the due process rights
13 to which she is entitled. Petitioner avers that she has a significant liberty interest in
14 remaining out of custody pursuant to her conditional parole. *See Pinchi*, 792 F. Supp.
15 3d 1025, *supra*, at 1032 (“Thus, even when ICE has the initial discretion to detain or
16 release a noncitizen pending removal proceedings, after that individual is released
17 from custody, she has a protected liberty interest in remaining out of custody.”
18 (citations omitted)). Freedom from detention is a fundamental part of due process
19 protection. *See Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“[F]reedom
20 from imprisonment is at the ‘core of the liberty protected by the Due Process
21 Clause.’” (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))). Furthermore, the
22 risk of an erroneous deprivation of such interest is high as Petitioner’s release was
23 revoked without providing her with a reason for revocation or giving her an
24 opportunity to be heard.

25 It is important to note that the initial determination was that the Petitioner
26 should be released on conditional parole because she posed no danger to the
27 community and was not a flight risk. Petitioner avers that there is no evidence that
28 these findings have changed. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176

(N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Factually, there is nothing to suggest that Petitioner has failed to abide by the conditions of her release or that circumstances have changed. "Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." *Saravia*, 280 F. Supp. 3d 1168, *supra*, at 1176. "Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk" *Id.*

The risk of erroneous deprivation of Petitioner's liberty is high because neither the government nor Petitioner has had an opportunity to determine whether there is any valid basis for her detention. *Pinchi*, 792 F. Supp. 3d 2025, *supra*, at 1035 (citation omitted). Clearly, the probable value of additional procedural safeguards, such as notice and a pre-re-arrest hearing, is high. Finally, the government's interest in detaining Petitioner without notice, a reason for doing so, and a hearing is low. *See Id.* at 1036 ("[T]he government has articulated no legitimate interest that would support arresting [petitioner] without a pre-detention hearing."); *Alvarenga Matute v. Wofford*, 807 F. Supp. 3d 1120, 1130 (E.D. Cal. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest [petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). There is also no indication that providing a pre-re-arrest hearing would be fiscally or administratively burdensome on the government. *See Pinchi*, at 1036 ("In immigration court, custody hearings are routine and impose a minimal cost." (quoting *Singh v. Andrews*, 803 F. Supp.3d 1035, 1048 (E.D. Cal. 2025))).¹

¹ On March 31, 2026, the United States District Court for the District of Massachusetts issued its decision in *Doe v. U.S. Department of Homeland Security*,

Petitioner respectfully posits that the government's detaining her by revoking her release without notice or a hearing prior to re-arrest is in violation of the Due Process Clause, and her detention is unlawful. *See Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025) (finding the petitioner's parole was revoked without notice and a hearing and without a showing of a change of circumstances, thus violating her due process rights and rendering her detention unlawful). Petitioner strongly suggests to this Honorable Court that the appropriate remedy is Petitioner's immediate release subject only to the conditions of her preexisting conditional parole. *See Noori v. LaRose*, 807 F. Supp. 3d 1146, 1156 (S.D. Cal. 2025) (finding DHS violated the petitioner's due process rights by revoking his parole without notice or a hearing and ordering his immediate release); *Ortega*, 415 F. Supp. 3d 963, *supra* at 970 (ordering immediate release after the petitioner was detained while out on bond without notice or pre-deprivation hearing).

1. Respondent Is Not a Danger.

The Respondent is not a danger to the community. She has no arrests (excluding the ICE apprehension), nor any convictions, is gainfully employed and is not a danger to the community.

2. Respondent Is Not a Flight Risk.

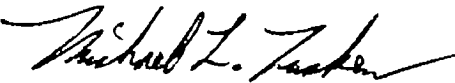
25-cv-12245-ADB held that the Department of Homeland Security (DHS)'s April 2025 mass termination of humanitarian parole for certain noncitizens who had been paroled at ports of entry following their CBP One appointments is illegal. 1:25-cv-12245, (D. Mass.). The court certified a class consisting of individuals who: (1) scheduled appointments for entry into the United States using CBP One; (2) were paroled into the United States between May 16, 2023, and Jan. 19, 2025; (3) had their parole terminated, without any further explanation; and (4) remain in the United States.

1 Respondent has established herself in the community and is gainfully
2 employed. She has a bona fide and approvable application for asylum based on her
3 subjective and objective fears of persecution from a country well-known to this
4 government as a serial oppressor. She previously was released from ICE custody
5 without a bond and ALWAYS appeared for her hearings with the IJ.

6 Based upon the foregoing, it is respectfully requested that the Court enter an order
7 releasing Plaintiff from custody.

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9 Dated: May 21, 2026

Respectfully Submitted,

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12 MICHAEL TUSKEN
13 Attorney for Petitioner
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