FILED
MAY 29 2026
CLERK. U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

Southern District of California

DONGXIN LUO

Petitioner

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Respondent
(name of warden or authorized person having custody of petitioner)

Case No. '26CV3329 DMS AHG
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Dongxin Luo
   (b) Other names you have used: N/A
2. Place of confinement:
   (a) Name of institution: Otay Mesa Detention Center
   (b) Address: 7488 Calzada De La Fuente
   San Diego, CA 92154-2717
   (c) Your identification number: [redacted]
3. Are you currently being held on orders by:
   ☑ Federal authorities ☐ State authorities ☐ Other - explain:
   ICE DETENTION
4. Are you currently:
   ☐ A pretrial detainee (waiting for trial on criminal charges)
   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you: N/A
   (b) Docket number of criminal case: N/A
   (c) Date of sentencing:
   ☑ Being held on an immigration charge
   ☐ Other *(explain)*:

Decision or Action You Are Challenging

5. What are you challenging in this petition:
   ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention
☑ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other *(explain)*: N/A

6. Provide more information about the decision or action you are challenging:
(a) Name and location of the agency or court: Otay Mesa Detention Center
(b) Docket number, case number, or opinion number: None
(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:
Held in ICE detention for 11 months since 5/18/2025
U.S. IMMIGRATION AND CUSTOMS ENFROCEMENT REFUSAL TO RELEASE ME FROM IMMIGRATION DETENTION
(d) Date of the decision or action: 05/18/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**
Did you appeal the decision, file a grievance, or seek an administrative remedy?
☐ Yes ☑ No
(a) If "Yes," provide:
(1) Name of the authority, agency, or court: N/A
(2) Date of filing:
(3) Docket number, case number, or opinion number: N/A
(4) Result: N/A
(5) Date of result:
(6) Issues raised: N/A
(b) If you answered "No," explain why you did not appeal: N/A

8. **Second appeal**
After the first appeal, did you file a second appeal to a higher authority, agency, or court?
☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: N/A

(2) Date of filing:

(3) Docket number, case number, or opinion number: N/A

(4) Result: N/A

(5) Date of result:

(6) Issues raised: N/A

(b) If you answered "No," explain why you did not file a second appeal: N/A

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: N/A

(2) Date of filing:

(3) Docket number, case number, or opinion number: N/A

(4) Result: N/A

(5) Date of result:

(6) Issues raised: N/A

(b) If you answered "No," explain why you did not file a third appeal: N/A

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: N/A

(3) Date of filing:

(4) Result: N/A

(5) Date of result:

(6) Issues raised: N/A

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: N/A

(3) Date of filing:

(4) Result: N/A

(5) Date of result:

(6) Issues raised: N/A

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: N/A

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 05/18/2025

(b) Date of the removal or reinstatement order: 08/01/2025

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Date of filing:

(2) Case number: N/A

(3) Result: N/A

(4) Date of result:

(5) Issues raised: N/A

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court: N/A

(2) Date of filing:

(3) Case number: N/A

(4) Result: N/A

(5) Date of result:

(6) Issues raised: N/A

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☑ No

If "Yes," provide:

(a) Kind of petition, motion, or application: N/A

(b) Name of the authority, agency, or court: N/A

(c) Date of filing:

(d) Docket number, case number, or opinion number: N/A

(e) Result: N/A

(f) Date of result:

(g) Issues raised: N/A

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: I contest my incarceration in immigration detention because I was detained by the Department of Homeland Security Immigration and Customs Enforcement since 5/18/2025. Violation of 8 U.S.C. §1231(a)(6)

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

I have been detained by ICE beyond the removal period authorized by statute. ICE is not likely to remove me in the near future. See attached memorandum with additional specific facts. Question (b) below is not applicable.

(b) Did you present Ground One in all appeals that were available to you?

☑ Yes ☐ No

GROUND TWO: Violation of the due process clause of the Fifth Amendment to the U.S. Constitution.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

ICE is depriving me of my right to liberty. I have been detained by ICE for a prolonged period. See attached memorandum with additional specific facts. Question (b) below is not applicable.

(b) Did you present Ground Two in all appeals that were available to you?

☑ Yes ☐ No

GROUND THREE: I have been denied the right to a speedy trial. By the time my asylum master hearing takes place in 5/28/2026 I will have been incarcerated for 12 months.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

My aslum master hearing has been delayed. Question (b) below is not applicable.

(b) Did you present Ground Three in all appeals that were available to you?

☑ Yes ☐ No

GROUND FOUR: I have an application i589 to request for asylum submitted to the immigration court and I will not be a flight risk and will comply with all the U.S. laws and I will appear at all immigration court hearings and ICE check-ins.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

I have a sponsor who will ensure that I will not be a flight risk, attend all court hearings and ICE check-ins.

(b) Did you present Ground Four in all appeals that were available to you?

☑ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: This is not applicable to this matter.

Request for Relief

15. State exactly what you want the court to do: I request the court to grant my immediate release so I can be allowed to pursue my asylum claim outside of detention and so I can apply for a work permit to earn a living to support my family while the asylum process is being adjudicated.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 05/29/2026

[redacted]

Signature of Petitioner

Signature of Attorney or other authorized person, if any

DONGXIN LUO [redacted]
7488 Calzada de la Fuente
San Diego, CA 92154-2717
(619) 671-8700

Detained

Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DONGXIN LUO

Petitioner,

vs.

Markwayne MULLIN, Secretary, Department of Homeland Security; Todd BLANCHE, Acting Attorney General; Patrick DIVVER, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, David VENTURELLA, Acting Director of ICE Enforcement and Removal Operations (ERO); Gregory J. ARCHAMBEAULT, ICE Field Office Director; and Christopher J. LAROSE, Otay Mesa Senior Warden

Respondents.

Case No.: **'26CV3329 DMS AHG**

AMENDED PETITION FOR WRIT OF HABEAS CORPUS
AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

DONGXIN LUO A221350941
7488 Calzada de la Fuente
San Diego, CA 92154-2717
(619) 671-8700

Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DONGXIN LUO Petitioner, vs. Markwayne MULLIN, Secretary, Department of Homeland Security; Todd BLANCHE, Acting Attorney General; Patrick DIVVER, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, David VENTURELLA, Acting Director of ICE Enforcement and Removal Operations (ERO); Gregory J. ARCHAMBEAULT, ICE Field Office Director; and Christopher J. LAROSE, Otay Mesa Senior Warden Respondents.	Case No.: '26CV3329 DMS AHG PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ORAL ARGUMENT NOT REQUESTED

INTRODUCTION

1. As the Petitioner, I am DONGXIN LUO ("I" or "Petitioner"), a 45-year-old native and citizen of the People's Republic of China, who is currently unlawfully incarcerated in immigration custody by Respondents at the Otay Mesa Detention Center in San Diego, California. I fled severe, state-sponsored religious persecution in China to seek asylum in the United States under the Refugee Act of 1980.

2. I entered the United States at or near the San Ysidro Port of Entry near San Diego, California, on May 1, 2024, for the express purpose of seeking asylum. I was immediately apprehended by U.S. Customs and Border Protection (CBP) authorities. Upon demonstrating a clear, well-founded, and credible fear of persecution or torture before a federal asylum officer, my case was transferred to full removal proceedings before the Immigration Court pursuant to Section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a.
3. Despite having established a credible fear of severe physical torture and religious persecution, and despite posing absolutely no flight risk or danger to the community, I have been subjected to continuous, unyielding physical incarceration by Immigration and Customs Enforcement (ICE) for more than one full year—specifically, from May 18, 2025, through the present date of May 26, 2026. This ongoing, uninterrupted detention now spans one year and eight days (368 days), far exceeding the well-established six-month constitutional benchmark governing civil immigration detention.
4. Throughout this entire period of prolonged confinement, I have been entirely denied an individualized custody or bond redetermination hearing before an Immigration Judge or any neutral arbiter. When I sought a bond redetermination, the Executive Office for Immigration Review (EOIR) denied my request on absolute jurisdictional grounds, holding that under INA § 235(b)(1)(B)(ii) and the Board of Immigration Appeals' restrictive precedent in Matter of M-S-, 27 I&N Dec. 509 (BIA 2019), the Executive branch maintains that immigration courts lack any legal jurisdiction to review or authorize the release of noncitizens transferred from expedited removal to full removal proceedings, forcing continuous detention until the absolute conclusion of all administrative and judicial review.

5. This categorical, unreviewable, and indefinitely prolonged detention violates the fundamental guarantees of the United States Constitution and federal statutory law. Specifically, Respondents' actions violate my procedural and substantive due process rights under the Fifth Amendment, as well as the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq., because my confinement has become punitive, arbitrary, capricious, and entirely disconnected from any legitimate administrative purpose.
6. On information and belief, I am being detained pursuant to a sweeping, centralized executive enforcement policy—including the "Protecting the American People Against Invasion" Executive Order effective January 21, 2025—which enforces mandatory, blanket incarceration and extra-territorial transfers of asylum seekers as a punitive deterrent, completely overriding the localized, case-by-case discretion mandated by federal regulations.
7. Because further administrative appeals are entirely futile under binding agency precedent, I seek immediate intervention from this Court via the Great Writ of Habeas Corpus to vindicate my constitutional rights. I request an order directing my immediate release from physical confinement under reasonable conditions of supervision or, in the alternative, an order mandating that Respondents provide me with a constitutionally sufficient individualized bond hearing before this Court or a neutral arbiter within seven (7) days, where the government must bear the burden of proving by clear and convincing evidence that my continued detention is justified by flight risk or dangerousness.

JURISDICTION

8. This Court possesses subject-matter jurisdiction over this Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241 (statutory habeas corpus jurisdiction); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1651 (the All Writs Act); Article III of the United States Constitution; and Article I, Section 9, Clause 2 of the Constitution (the Suspension Clause).

9. This Court is fully empowered to review challenges to the lawfulness of executive immigration detention and to grant remedial relief, including immediate release or the ordering of a constitutionally compliant bond hearing. See Zadvydas v. Davis, 533 U.S. 678, 687 (2001) (holding that 28 U.S.C. § 2241 provides an explicit and independent statutory vehicle for noncitizens to challenge the lawfulness of their physical immigration confinement); Demore v. Kim, 538 U.S. 510, 517 (2003); INS v. St. Cyr, 533 U.S. 289, 301 (2001).

10. The jurisdictional stripping provisions of the INA, including 8 U.S.C. § 1252(a)(2)(B)(ii) (bars to judicial review of discretionary decisions) and 8 U.S.C. § 1252(g) (bars to judicial review of executive decisions to commence or execute removal orders), do not apply to and do not preclude this action. I do not seek review of any discretionary agency determination, nor do I challenge the executive's authority to initiate or adjudicate my underlying removal proceedings. Rather, I directly challenge the independent, non-discretionary, and ongoing statutory and constitutional legality of my prolonged physical imprisonment under federal law. See Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 482 (1999); Ibarra-Perez v. U.S., 154 F.4th 989 (9th Cir. 2025); Constantinovici v. Bondi, No. 25-cv-2405, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025);

Chub v. Larose, No. 25-cv-3513, 2025 WL 3654008 (S.D. Cal. Dec. 17, 2025); Gao v. Larose, No. 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27, 2025).

11. To the extent that any administrative remedies exist, exhaustion is purely prudential rather than jurisdictional in constitutional habeas corpus actions. Exhaustion is waived here because any further administrative appeal to the Board of Immigration Appeals (BIA) would be demonstrably futile, as the BIA has firmly established in Matter of M-S-, 27 I&N Dec. 509 (BIA 2019) that immigration courts possess no legal jurisdiction to grant bond hearings to individuals in my specific procedural posture. See Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017); Laing v. Ashcroft, 370 F.3d 994, 1000-01 (9th Cir. 2004).

VENUE

12. Venue is properly situated in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241(a).
13. I am currently physically incarcerated and restrained of my liberty at the Otay Mesa Detention Center in San Diego, California, which is located entirely within the territorial boundaries and judicial jurisdiction of the Southern District of California.
14. Furthermore, as the immediate physical custodian, Respondent Christopher J. LaRose (Warden of the Otay Mesa Detention Center), and localized managing officials, Respondent Gregory J. Archambault (ICE Field Office Director), reside and perform their official duties within this judicial district, and a substantial part of the operational actions, omissions, and policies giving rise to the claims asserted herein have occurred and continue to occur within this district. See Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973).

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

15. The statutory framework of 28 U.S.C. § 2241(c)(3) provides that a Writ of Habeas Corpus may extend to any prisoner who demonstrates that he is "in custody in violation of the Constitution or laws or treaties of the United States." I am undeniably "in custody" for purposes of the statute, as I am subjected to total physical confinement, involuntary restraint, and isolation within a secure, high-security civil immigration facility managed under color of federal authority. See Jones v. Cunningham, 371 U.S. 236, 243 (1963).

16. Pursuant to 28 U.S.C. § 2243, a federal court protecting constitutional liberty must act with extreme expedition. The statute mandates that the court before whom the petition is filed "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant is not entitled thereto." The statute further dictates that a hearing on the return of the writ must be granted within a highly constrained timeframe, reflecting the traditional and essential function of the Great Writ as a swift, imperative, and non-negotiable remedy against unlawful executive confinement. See Fay v. Noia, 372 U.S. 391, 400 (1963); Yong v. INS, 208 F.3d 1116, 1120 (9th Cir. 2000).

17. Federal jurisprudence demands that immigration habeas corpus petitions be afforded special, preferential, and accelerated consideration to guarantee that structural administrative or bureaucratic delays do not continuously erode an individual's fundamental constitutional rights. Civil detention must remain strictly non-punitive, narrowly tailored, and tightly bound by judicial oversight. Where the executive branch deprives a person of physical liberty for a prolonged period without basic procedural

safeguards, federal courts have a clear and binding statutory obligation under § 2243 to review the merits of that confinement immediately and to order appropriate relief.

PARTIES

18. I, DONGXIN LUO (Alien Registration Number: [redacted], am a 45-year-old native and citizen of China who is currently physically incarcerated in civil immigration custody by Respondents at the Otay Mesa Detention Center in San Diego, California.

19. Respondent, Markwayne MULLIN, is the Secretary of the United States Department of Homeland Security (DHS) and is sued herein in his official capacity. In his capacity as Secretary, Respondent Mullin is the chief enforcement officer responsible for the administration, implementation, and execution of all federal immigration and nationality laws under 8 U.S.C. § 1103(a). He maintains ultimate operational and policy control over U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), and is a legal custodian of I.

20. Respondent, Todd BLANCHE, is the Acting Attorney General of the United States and is sued herein in his official capacity. As the head of the United States Department of Justice (DOJ), Respondent Blanche is the chief law enforcement officer of the federal government, possesses final authority over the interpretation and application of immigration laws, and directly oversees the Executive Office for Immigration Review (EOIR) and the nationwide network of immigration courts and the Board of Immigration Appeals.

21. Respondent, PATRICK DIVVER, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is an agency component within the U.S. Department of Justice. EOIR is directly responsible for the administrative adjudication of removal and custody proceedings

conducted by its constituent sub-components, including the Otay Mesa Immigration Court and the Board of Immigration Appeals.

22. Respondent, David VENTURELLA, is the Executive Associate Director of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) and is sued herein in his official capacity. In this capacity, Respondent Venturella is directly responsible for the localized and national execution, supervision, management, and operational policy of all civil immigration detention facilities, operations, and programs within the United States.

23. Respondent, Gregory J. ARCHAMBEAULT, is the ICE Field Office Director for the San Diego Field Office and is sued herein in his official capacity. Respondent Archambault is the specific, localized director responsible for administering and executing ICE detention policies, operations, and custody determinations within the San Diego region, and maintains direct administrative authority over the detention of individuals at the Otay Mesa Detention Center.

24. Respondent Christopher J. LAROSE is the Senior Warden of the Otay Mesa Detention Center and is sued herein in his official capacity. Respondent LaRose operates as the immediate, physical jailer and custodian directly responsible for the day-to-day confinement, secure locking, and physical restraint of I at the facility.

LEGAL FRAMEWORK

25. The Due Process Clause of the Fifth Amendment mandates that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. Freedom from physical imprisonment and arbitrary executive restraint sits at the absolute

core of the liberty protected by the Constitution. This fundamental right applies unconditionally to all persons within the territorial jurisdiction of the United States, including all noncitizens, regardless of their nationality, legal status, or the manner in which they crossed the border. See Reno v. Flores, 507 U.S. 292, 306 (1993); Zadvydas v. Davis, 533 U.S. 678, 693 (2001); Mathews v. Diaz, 426 U.S. 67, 77 (1976); Wong Wing v. United States, 163 U.S. 228, 238 (1896).

26. Civil immigration detention is a severe deprivation of physical liberty. Because it is strictly civil and regulatory, it must never be utilized as a tool for punishment or deterrence. The Supreme Court has repeatedly held that civil detention violates the Constitution unless it is narrowly tailored, non-punitive, and strictly justified by a legitimate, individualized government purpose. See Zadvydas, 533 U.S. at 690; Addington v. Texas, 441 U.S. 418, 425 (1979); Foucha v. Louisiana, 504 U.S. 71, 80 (1992); Matter of Guerra, 24 I&N Dec. 37 (BIA 2006). The only legally recognized justifications for civil immigration detention are to prevent an unmitigated flight risk or to protect the community from a clearly established, direct danger to persons or property.

27. Under the statutory structure enacted via the Refugee Act of 1980, Congress established a comprehensive national commitment and an explicit statutory right for any individual physically present in or arriving at the United States to apply for asylum and safe haven from foreign persecution. 8 U.S.C. § 1158(a)(1); see INS v. Cardoza-Fonseca, 480 U.S. 421, 424 (1987); Duran v. INS, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985). Noncitizens placed in full removal proceedings under 8 U.S.C. § 1229a generally have their custody governed by 8 U.S.C. § 1226(a), which demands a case-by-case review and explicitly permits release on bond or recognizance where flight risk or danger are absent. Any subsequent revocation of release under 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9) is

highly constrained and must rest upon individualized changes in circumstances, requiring a rational connection between the specific facts found and the choice made. See National Association of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 658 (2007); Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Auto Insurance Co., 463 U.S. 29, 43 (1983).

28. When statutory civil immigration detention becomes unreasonably prolonged, procedural due process dictates that the noncitizen be granted a robust, individualized custody hearing. The landmark federal jurisprudence of the Ninth Circuit establishes that when civil detention crosses into an unconstitutional, prolonged duration, the burden of proof must shift entirely to the government to justify continued incarceration by clear and convincing evidence. See Martinez v. Clark, 124 F.4th 775, 786 (9th Cir. 2024); Singh v. Holder, 638 F.3d 1196, 1200 (9th Cir. 2011); Diouf v. Napolitano (Diouf II), 634 F.3d 1081, 1086 (9th Cir. 2011).

29. To determine whether a specific period of civil confinement has crossed the constitutional threshold into an unconstitutional, prolonged duration, federal courts apply a circumstance-specific, multi-factor balancing analysis. See Chavez-Alvarez v. Warden, York County Prison, 783 F.3d 468 (3d Cir. 2015); Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019). In the Banda case, the court articulated six factors that determine how long is someone's detention is too long. The six factors are: (1) the total length of confinement to date; (2) the likely duration of future detention; (3) the specific conditions, restrictions, and carceral nature of the confinement facility; (4) delay in proceedings is a result of bad faith or dilatory tactics caused by the detainee; (5) delay in proceedings is a result of bad faith or dilatory tactics caused by the government; (6) the likelihood that the underlying administrative proceedings will result in a final, legally executable order of removal.

30. Of these factors, the total length of detention to date is considered the most important. Id. To date, the I have been in detention for twelve months. The Ninth Circuit in Diouf v. Napolitano 634 F. 3d 1081 (9th Circuit 2011) held that when detention crosses the six months threshold, and release or removal is not imminent, the private interests at stake are profound. I have been detained for more than twelve months, My detention has surpassed these thresholds.

31. District Courts have found that detention for periods between 7 and 13 months are unreasonable. See Abdul Kadir v. Larose, No. 25-cv-1-45, 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025) (13 months); Sadeqi v. Larose, 25-cv-2587, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025) (11 months); Gao v. Larose, 25-cv-2084, 2025 WL 2770633 (S.D. Cal. Sept. 27, 2025) (10months); Amado v. US. Dept. of Justice, 25-cv-2687, 2025 3079052 (S.D. Cal. Nov. 4, 2025) (13 months); Masood v. Barr, No. 19-CV-07623-JD, 2020 WL95633, at *3 (N.D. Cal. Jan. 8, 2020) (nearly nine months); Cabral v. Decker,331 F. Supp. 3d 255,261 (S.D.N.Y. 2018) (over seven months); Wallace v. Green, 16-CV-5324, 2016 WL 11979045 (D. N.J. Oct. 24, 2016) (seven months).

32. The second factor requires consideration of the "anticipated duration of all removal proceedings - including administrative and judicial appeals." Banda, at 1119 (quoting Jamal A., 358 F. Supp. 3d at 859). In addition to the twelve months that I have already been incarcerated, my future detention will last for many more months. Belqasim v. Bostock, No. 2:25-cv-01282, 2025 WL3466971 (W.D. Wash. Oct. 28, 2025) ("many more months and potentially years in detention" likely during pendency of removal proceedings). It is not clear when my individual merits hearing will be heard. Furthermore, if my asylum claim is denied, I will expect to file an appeal to the Board of Immigration Appeals, which may continue his cases for six to twelve additional months,

depending on the backlog of appeals, thus ensuring that my future detention will last many more months. Belqasim v. Bostock, No. 2:25-cv-01282, 2025 WL3466971 (W.D. Wash. Oct. 28, 2025) ("many more months and potentially yearsin detention" likely during pendency of removal proceedings). It is not clear when the Board of Immigration Appeals will act in his case. Furthermore, my case might be appealed to the Ninth Circuit, either by me or Respondents.

33. The third Banda factor also weighs in my favor as "[t]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing." In this case, my detention is "indistinguishable from penal confinement," just as it was in Kydyrali. As recently recognized by this Court in AbdulKadir v. Larose, immigration detainees like myself detained at OMDC are "locked up behind razor wire and concrete walls in a secured facility," forced to wear "a color-coded prisoner jump suit," forbidden from accessing the internet, guarded at all times by "armed guards authorized to inflict punishment for violations of rules, and have restricted access to outdoor space and visitation.

34. The fourth and fifth factors concern delays in the removal proceedings caused by me, the Petitioner, or the government. As neither party has caused significant delays, these factors are neutral.

35. The final Banda factor concerns the likelihood that the removal proceedings will result in a final order of removal and requires that the Court consider "whether the noncitizen has asserted any defenses to removal." Banda, at 1120." [W]here a noncitizen has asserted a good faith challenge to removal, 'the categorical nature of the detention will become increasingly unreasonable.'" Id.citing Sajous v. Decker, No. 18-CV-2447, 2018 WL 2357266, at* 11 (S.D.N.Y.May 23, 2018).

36. In the current case, I am a survivor of religious persecution, where I was interrogated, beaten and detained [redacted] Religious persecution is a basis for asylum under the Immigration and Nationality Act. See Guo v. Sessions, 897 F.3d 1208, 1215-17 (9th Cir. 2018). Because my claim has merit, my appeal is in good faith. Moreover, my detention is prolonged and unreasonable.

37. Crucially, where a noncitizen asserts a good-faith, legally meritorious defense or active claim for asylum, categorical detention becomes increasingly unreasonable and unconstitutional, as the individual cannot be penalized for exercising their lawful rights to seek relief. See Sajous v. Decker, No. 18-CV-2447, 2018 WL 2357266, at *1 (S.D.N.Y. May 23, 2018); Aleman Fernandez v. Chavez, No. 24-cv-01235, 2024 WL 1198543 (N.D. Cal. 2024). Civil noncitizens retain a highly protected, fundamental liberty interest in release that operates with greater force than that of convicted criminals, parolees, or probationers. See United States v. Knights, 534 U.S. 112 (2001); Jennings v. Rodriguez, 583 U.S. 281 (2018); Rodriguez v. Marin, 909 F.3d 252 (9th Cir. 2018).

38. Despite these clear constitutional limits, the BIA's decision in Matter of M-S-, 27 I&N Dec. 509 (BIA 2019) artificially strips immigration courts of jurisdiction to conduct bond hearings for asylum seekers originally processed under expedited removal, creating a structural framework of categorical, unreviewable executive imprisonment. This absolute deprivation of a neutral arbiter violates both the statutory design of the INA and the constitutional mandate of the Fifth Amendment.

FACTUAL BACKGROUND

39. I, Dongxin Luo, am a 45-year-old male native and citizen of the People's Republic of China, born [redacted] in Huarong County, Hunan Province. I have been happily married to my wife, Tian Shen, for seventeen years, and we have a sixteen-year-old son, Ziyan Luo. For over sixteen years, I worked diligently as a professional chef at the Fuyao Men Seafood Restaurant in Shenzhen City, China, establishing a stable, peaceful life with no criminal history or arrests.

40. On November 8, 2024, my mother completely lost her sight overnight. Due to her advanced age, medical professionals explicitly advised that she could not safely undergo corrective surgery. I immediately resigned from his long-term culinary position in Shenzhen and returned to rural hometown in Huarong County to act as her primary, full-time caregiver to fulfill my duty as her son.

41. On December 1, 2024, a close personal friend, Fang Cao, introduced me to Christianity and invited me to attend a private Christian home gathering. Fang Cao shared the gospel of Jesus Christ, including specific biblical accounts of Jesus performing miracles and restoring sight to the blind. Intensely moved by these teachings due to my mother's tragic affliction, I eagerly embraced the Christian faith, converted, and began actively participating in private, unapproved Christian house church services.

42. On December 15, 2024, Chinese public security and police forces executed a violent raid on the private house church gathering that I was attending. The police interrupted the worship, handcuffed all attendees, and transported them to the local police station. I was placed in a small interrogation room, where I was subjected to severe physical torture. Officers handcuffed one of his hands to a high metal bar on the wall and interrogated him

extensively, demanding the names and locations of the house church leaders and other congregants. The police formally accused me of participating in a banned "cult organization" in direct violation of laws established by the Chinese Communist Party.

43. When I refused to betray his fellow Christians, officers punched me repeatedly in the face and nose until I bled profusely. They then utilized police batons to beat my head, back, arms, and legs. Instinctively, I raised my left arm to shield my face and skull from the baton strikes. This defensive action resulted in severe, permanent structural trauma to my left wrist. Following the beating, I was thrown into solitary confinement cell measuring one meter by one meter cell for ten days. I was restricted to two meager meals a day consisting of a single bun and sticky rice, and was forced to beg for hours just to receive two cups of water daily.

44. Upon my conditional release on December 25, 2024, I sought emergency hospital treatment, which confirmed extensive soft tissue damage, permanent mobility loss in my left wrist, and chronic neurological numbness to the left side of my body. Because of this permanent injury, I can never return to my lifelong profession as a chef. Chinese police mandated regular check-ins, and when I missed a scheduled appearance on January 22, 2025, security forces raided my home and interrogated my wife regarding my whereabouts.

45. Fearing for my life and freedom, I fled China on January 19, 2025, traversing Egypt (where I was confined for 70 days awaiting a visa), Spain, Nicaragua, Honduras, Guatemala, and Mexico. During my arduous transit through Tapachula, Mexico, I was hospitalized for 36 days due to a severe respiratory illness brought on by exposure.

46. I arrived at the San Ysidro Port of Entry near San Diego, California, on May 18, 2025, concealed within the rear cargo area of a vehicle, fleeing imminent danger. I was immediately apprehended by U.S. Customs and Border Protection (CBP) authorities, as

documented in the Department of Homeland Security Record of Deportable/Inadmissible Alien (Form I-213). DHS initially processed my for expedited removal under Section 212(a)(7)(A)(i)(I) of the INA. I expressed a profound fear of return and successfully established a credible fear of persecution or torture before an asylum officer. Consequently, DHS issued a Notice to Appear, transferring me into full removal proceedings under INA § 240.

47. Ever since my initial apprehension on May 18, 2025, I have been continuously incarcerated by ICE at the Otay Mesa Detention Center. As of today, May 27, 2026, I have been detained in civil confinement for exactly one year and nine days (over 12 months). This duration vastly exceeds the standard 6-month threshold for prolonged detention under federal habeas corpus standards.

48. Seeking release from this prolonged confinement, I requested a bond redetermination hearing before the Immigration Court. However, the Otay Mesa Immigration Judge explicitly denied the request on jurisdictional grounds, ruling that under INA § 235(b)(1)(B)(ii) and Matter of M-S-, a noncitizen transferred from expedited removal to full removal proceedings remains categorically ineligible for bond, stripping the court of jurisdiction to review custody. Any appeal to the BIA is legally futile due to entrenched administrative precedent.

49. I have no criminal history whatsoever; I have a valid asylum claim pursued in complete good faith, and I pose zero flight risk or danger to any community. On information and belief, Respondents are detaining me pursuant to sweeping executive branch enforcement mandates—including the "Protecting the American People Against Invasion" Executive Order, which took effect on January 21, 2025. This policy enforces a rigid, categorical framework of mass detention, intentionally deploying prolonged incarceration and extra-

territorial transfer as punitive measures to deter asylum seekers from exercising their explicit statutory rights under the Refugee Act of 1980.

CLAIMS FOR RELIEF
COUNT ONE

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)

43. I restate and reallege each and every paragraph set forth above as if fully incorporated herein.

44. Under the Administrative Procedure Act (APA), reviewing courts must hold unlawful and set aside any agency actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). An agency action constitutes a clear abuse of discretion if it entirely fails to consider an important aspect of the problem, offers an explanation for its decision that runs counter to the evidence before the agency, or operates as a sweeping, non-discretionary, and categorical policy that completely bypasses the individualized, case-by-case evaluation demanded by federal statutes and regulations. See National Association of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 658 (2007); Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mutual Auto Insurance Co., 463 U.S. 29, 43 (1983).

45. Pursuant to 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9), any executive decision by DHS or ICE to enforce, continue, or maintain the physical custody and confinement of an individual in removal proceedings must be rooted in an individualized assessment of specific facts, operational necessity, and the personal characteristics of the detainee. These provisions mandate the active, localized exercise of agency discretion rather than the

mechanical application of centralized, macro-level enforcement directives. To survive review, the agency must articulate a satisfactory explanation for its action, establishing a rational connection between the specific facts found regarding the individual noncitizen and the choice made to deprive that person of physical liberty.

46. Respondents have entirely failed to exercise the localized, individualized discretion mandated by 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9). Instead, Respondents have subjected me to an unyielding, rigid, and categorical policy of mass detention directed by centralized executive branch mandates, including the "Protecting the American People Against Invasion" Executive Order. By treating my incarceration as absolute, permanent, and entirely non-reviewable, and by completely ignoring my unblemished criminal record, stable community ties, and highly documented, meritorious asylum application, Respondents have abused their discretion and acted in excess of their statutory authority. My ongoing detention by Respondents is arbitrary, capricious, an abuse of administrative discretion, and not in accordance with law.

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)

47. I restate and reallege each and every paragraph set forth above as if fully incorporated herein.

48. PATRICK DIVVER The APA commands that federal courts set aside agency actions that are taken "without observance of procedure required by law" or are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A) &

(C). The statutory design of the Immigration and Nationality Act, as amended by the Refugee Act of 1980, restricts civil immigration detention to a strictly regulatory, non-punitive mechanism designed solely to ensure appearance at hearings and to safeguard the public. 8 U.S.C. § 1226(a). It does not authorize the executive branch to institute a system of indefinite, prolonged categorical imprisonment without judicial or administrative review for individuals who have cleared a credible fear screening and are pursuing asylum in full Section 240 removal proceedings.

49. Under well-settled federal statutory construction, where any civil immigration detention statute is invoked to deprive an individual of physical liberty for an extended duration, it must be read as containing an implicit temporal limitation. When civil incarceration becomes prolonged, exceeding a presumptive benchmark of six months, the statutory authority under 8 U.S.C. § 1226 or § 1225 ceases to permit unreviewable detention. At that juncture, the law mandates a robust, adversarial custody hearing where the government must bear the affirmative burden of proof to justify continued confinement by clear and convincing evidence. See Martinez v. Clark, 124 F.4th 775, 786 (9th Cir. 2024); Singh v. Holder, 638 F.3d 1196, 1200 (9th Cir. 2011).

50. Respondents are currently detaining me in a manner that directly violates these statutory boundaries and exceeds their explicit authority under the INA. By interpreting and applying the detention statutes as a mechanism for categorical, unreviewable physical confinement lasting more than twelve months, and by deploying the Board of Immigration Appeals' restrictive ruling in Matter of M-S- to entirely strip the immigration courts of jurisdiction to conduct a basic bond redetermination, Respondents have transformed civil regulatory detention into an unconstitutional, punitive, and unauthorized system of indefinite executive imprisonment. Because Respondents lack any statutory or regulatory

authority to hold a nonviolent, traumatized asylum seeker for over a year without an adversarial hearing before a neutral arbiter, my ongoing physical incarceration is not in accordance with law, stands in excess of their statutory authority, and must be set aside under 5 U.S.C. § 706(2).

APPROPRIATE REMEDY

51. The Ninth Circuit dictates that where detention has become prolonged, a bond hearing is required at which the burden of proof is on the government to justify detention by clear and convincing evidence. Martinez v. Clark, 124 F.4th775, 786 (9th Cir. 2024) [noting that due process requires "the government to prove dangerousness or risk of flight by clear and convincing evidence" at a bond hearing for noncitizens subject to prolonged detention (citing Singh v. Holder, 638 F.3d 1196, 1200, 1205 (9th Cir. 2011))].
52. At no point have Respondents asserted that I pose any national security, danger to community, or flight risk concerns.
53. Although a bond hearing before a neutral arbiter is the usual remedy for prolonged detention, I am rightly concerned that I will not receive an impartial hearing before the immigration court. Immigration judges are at-will employees that fall within the ambit of the Department of Justice, rather than the judiciary branch. Since President Trump took office, 1 in 7 immigration judges have been fired, often due to politically motivated reasons, such as grant rates. (See Exhibit A). The mass terminations serve as a warning to the remaining judges and further erode their neutrality and independence.
54. To waylay any concerns of this Court, I am providing detailed sponsor documents submitted by my sponsor, a naturalized U.S. citizen with deep roots in the Rancho Santa

Fe, CA community who agrees to ensure this court that I will comply with all laws of the United States, not be a flight risk nor be a danger to the community.

PRAYER FOR RELIEF

WHEREFORE, I respectfully request that this Court grant the following relief:

(1) Assume subject-matter jurisdiction over this action between the Respondents and I;

(2) Declare my ongoing civil detention for over twelve months by Respondents without an individualized determination of flight risk or dangerousness is arbitrary, capricious, an abuse of discretion, and a direct violation of the Administrative Procedure Act and the Immigration and Nationality Act;

(3) Declare that my prolonged detention without an individualized bond hearing before a neutral arbiter violates the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to immediately release me from physical custody under the direct order of the U.S. District Court, Southern District of California, under reasonable, non-carceral conditions of supervision;

(5) Consider the submitted sponsor documents for determining my immediate release by order of this Court in lieu of ordering a bond hearing at the immigration court where there is significant prevalence of bias in negatively assessing and determining a detainee's flight risk and level of danger to the community to justify a high percentage of denials for release on bond in direct conflict with the U.S. District Court, Southern District of California's decision in granting Writ of Habeas Corpus. (See Exhibit A, page 7 Immigration Bonds 2nd Trump Administration Report by Joseph Gunther and Brandon Marrow)

(6) Issue an Order strictly prohibiting Respondents from transferring me out of the physical jurisdiction of the San Diego ICE Field Office without prior, explicit authorization from this Court during the pendency of these habeas corpus proceedings;

(7) Appoint Federal Defenders of San Diego to represent me, on a Pro Bono basis, due to my inability to pay for private representation. (See Exhibit B- CJA23)

(8) Award reasonable costs and statutory fees to me, to the extent permitted under federal law;

(9) Grant such further, alternative, or additional relief as this Court deems just, proper, and necessary to protect and vindicate my fundamental constitutional liberties.

Dated: May 27, 2026

Respectfully Submitted,



Dongxin Luo,

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