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

SONG LIN, a.k.a. LIN SONG, an individual;

Petitioner,

v.

CHRISTOPHER LAROSE, Warden of Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director of San Diego ICE Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; TODD BLANCHE, Acting Attorney General of the United States; MARKWAYNE MULLIN, Secretary of Homeland Security, in their official capacities,

Respondents.

Case No. '26CV4548 LEK JAC

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner Song Lin, also known as Lin Song ("Mr. Lin" or "Petitioner") (A-Number [redacted], by and through the undersigned counsel, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and respectfully alleges as follows:

## INTRODUCTION

1. Petitioner is a native and citizen of the People's Republic of China, who is currently detained at the Otay Mesa Detention Center, San Diego, California. Petitioner, by and through his undersigned counsel, hereby files this petition for writ of habeas corpus seeking his immediate

release from immigration detention. Petitioner has been continuously held by the U.S. Department of Homeland Security ("DHS") since January 28, 2026.

2. Petitioner's prolonged mandatory detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020). Here, Petitioner has been detained for an extended period without any opportunity to challenge his detention before a neutral decisionmaker, in violation of his rights to due process.

## CUSTODY

3. Petitioner is currently detained at the Otay Mesa Detention Center, San Diego, California. He is in the Respondents' physical custody and under Respondents' and their agents' direct control.

## JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. §2241, Article I, Section 9, Clause 2 of the United States Constitution, and 28 U.S.C. §1331, as Petitioner is presently in custody under the color of the authority of the United States, and such custody violates the Constitution, law, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241.

5. The venue lies in the Southern District of California, the judicial district in which Petitioner is currently detained. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

## REQUIREMENTS OF 28 U.S.C. § 2243

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

## THE PARTIES

7. Petitioner is a citizen of China who entered the United States on or about January

28, 2026, and has since been detained by Respondents.

8. Respondent CHRISTOPHER LAROSE is sued in his official capacity as the Warden of the Otay Mesa Detention Center. He has immediate physical custody of Petitioner under the facility's contract with ICE to detain noncitizens. Respondent LAROSE is a legal custodian of Petitioner.

9. Respondent PATRICK DIVVER is sued in his official capacity as Field Office Director of San Diego ICE Field Office. Respondent DIVVER is a legal custodian of Petitioner and has the authority to release him.

10. Respondent DAVID VENTURELLA is sued in his official capacity as Acting Director of ICE. In this capacity, Respondent VENTURELLA directs and oversees ICE's Enforcement and Removal Operations, the component agency responsible for Petitioner's detention. Respondent VENTURELLA is a legal custodian of Petitioner and has the authority to release him.

11. Respondent MARKWAYNE MULLIN is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent MULLIN is responsible for the implementation and enforcement of the INA and oversees ICE, the component agency responsible for Petitioner's detention. Respondent MULLIN is a legal custodian of Petitioner.

12. Respondent TODD BLANCHE is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent BLANCHE is a legal custodian of Petitioner.

## STATEMENT OF FACTS

13. Petitioner entered the United States on or about January 28, 2026, and was apprehended by immigration authorities.

14. Following Petitioner's entry, DHS placed Mr. Lin in expedited removal proceedings.

15. On February 5, 2026, an asylum officer conducted a credible fear interview and

determined that Petitioner had established a credible fear of persecution in China. The asylum officer found Petitioner credible, determined that his fear of persecution is on account of religion, and determined that Petitioner is not subject to any bar to asylum or withholding of removal.

16. On February 7, 2026, DHS issued Petitioner a Notice to Appear ("NTA"), charging him with removability under Immigration and Nationality Act §§ 212(a)(7)(A)(i)(I) and 212(a)(6)(C)(i), thereby placing Petitioner from expedited removal proceedings to full removal proceedings before an Immigration Judge ("IJ").

17. Petitioner subsequently filed an application for asylum, which remains pending before the immigration Court.

18. Petitioner has no criminal history.

19. When Petitioner was taken into custody, ICE took Petitioner's personal belongings, including his cell phone and currency. Those belongings have not been returned.

20. To date, Petitioner has been detained for more than six months without being provided an individualized bond hearing.

## LEGAL FRAMEWORK

21. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). Section 2241 of Title 28 confers the federal courts with the power to issue writs of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. This includes challenges by non-citizens in immigration related matters. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also A.A.R.P. v. Trump*, 605 U.S. 91, 145 (2025).

22. Indefinite prolonged detention of an alien raises due process concerns. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem.")

23. Numerous district courts, including this Court, have recognized that "prolonged mandatory detention...without a bond hearing will – at some point – violate the right to due process." *Mingzhi Gao v. Larose,* 805 F. Supp. 3d 1106 (S.D. Cal. 2025*)* (citing *Abdul-Samed v. Warden of*

*Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343 (E.D. Cal. July 25, 2025)); *see also Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he Court joins the majority of courts across the country in concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.").

24. To determine whether a petitioner's detention has been unreasonably prolonged, courts apply the *Banda v. McAleenan*'s six-factor analysis as a framework, which weights: (1) the total length of detention to date; (2) the likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Banda v. McAleenan* 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019).

25. If a bond hearing is provided, the government must bear the burden to establish "by clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released." *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090 (S.D. Cal. 2025); *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343 (E.D. Cal. July 25, 2025).

## CAUSE OF ACTION

## COUNT ONE

## (Violation of the Fifth Amendment Due Process Clause)

26. Petitioner repeats and incorporates by reference the allegations set forth above.

27. The *Banda v. McAleenan*'s six factors demonstrate that Petitioner's prolonged detention for over six months without a bond hearing has become unreasonable and violates due process. *Id.*

28. First, the total length of detention weighs in favor of Petitioner. To date, Petitioner has been in detention for more than six months. The Supreme Court has indicated six months is a presumptively reasonable length of detention for civil immigration cases. *Zadvydas*, 533 U.S. at 701. Courts applying the *Banda* factors have likewise found that detention approaching or exceeding six months weighs in favor of requiring an individualized bond hearing. *See Odimara v.*

*Bostock*, No. 2:24-CV-572-JHC-GJL, 2024 U.S. Dist. LEXIS 149107, 2024 WL 3862256 (W.D. Wash. July 12, 2024) (finding length of detention "slightly in favor of granting a bond hearing" where petitioner had been detained "approximately six months"); *Nche v. Divver*, No. 26-cv-2449-JES-DDL, 2026 U.S. Dist. LEXIS 96746 (S.D. Cal. May 1, 2026) (same); *Islamov v. Doe*, No. 26-cv-01528-JES-VET, 2026 U.S. Dist. LEXIS 95720 (S.D. Cal. Apr. 30, 2026) (finding "that the first *Banda* factor weighs slightly in favor of granting a bond hearing" where petitioner has been detained four months); *see also Ricardo v. ICE Field Office Dir.*, No. 2:26-CV-01195-SAB, 2026 U.S. Dist. LEXIS 95692 (W.D. Wash. Apr. 30, 2026) (finding that the first *Banda* factor weighed in favor of the petitioner, who had been detained for approximately five and a half months, where "there [was] no evidence that Petitioner [was] likely to be released in the reasonably foreseeable future.")

29. The second factor also strongly supports the grant of this habeas petition. Petitioner's detention is likely to continue for many additional months, if not years, pending the completion of removal proceedings, including an individual hearing and any subsequent appeal to the Board of Immigration Appeals ("BIA"). Given that either party may seek appellate review depending on the outcome of the merits hearing, continued detention is virtually certain. *See Guatam v. Corr. Corp. of Am.*, No. 3:25-cv-3600-JES-DEB, 2026 WL 25846 (S.D. Cal. Jan. 5, 2026) ("[A] removal order may not become final until after the appeals Petitioner could file, to both the Board of Immigration Appeals and Ninth Circuit...These appeals can take a long time."); *see also Banda v. McAleenan*, 385 F. Supp. 3d at 1119 (finding an appeal to the BIA and subsequent judicial review "may take up to two years or longer").

30. For the third factor, courts have recognized that the conditions at the Otay Mesa Detention Center are "indistinguishable from penal confinement." *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020); *Amado v. United States DOJ*, No. 25-cv-2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025).

31. The fourth and fifth factors concern delays in the removal proceedings caused by Petitioner or the government. All delays in this case are attributable to the government, and none whatsoever are attributable to Petitioner. Petitioner has not been dilatory in pursuing his claims. To

the contrary, he promptly applied for asylum and has diligently complied with all procedural requirements and has timely appeared at and participated in all proceedings as scheduled by the government.

32. In considering the sixth factor, "likelihood that the removal proceedings will result in a final order of removal," courts consider "whether the noncitizen has asserted any defenses to removal," *Banda v. McAleenan*, 385 F. Supp. 3d at 1120 (citations omitted). Here, Petitioner has asserted substantial defenses to removal. He faces persecution in China due to his religion. An immigration officer has determined that Petitioner has established a credible fear of persecution. Petitioner will now have the opportunity to present evidence supporting his asylum claims. Although it remains unclear how an IJ will eventually rule, Petitioner has presented defenses that reduce the likelihood of a final removal order. Accordingly, the sixth factor favors Petitioner.

33. Therefore, the six factors weigh in favor of Petitioner. Petitioner's detention has become unreasonably prolonged, and Respondents' continued detention of Petitioner without a bond hearing violates the Due Process Clause.

## PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue the writ of habeas corpus and order Respondents to show cause within three days why the requested relief should not be granted;
3. Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;
4. Declare that Respondents' prolonged detention of Petitioner violates the Due Process Clause of the Fifth Amendment;
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
6. In the alternative, only if the Court concludes that Petitioner is not legally entitled to immediate release under the present circumstances based on a specific legal authority, order Respondents to provide Petitioner with a bond hearing before an Immigration

Judge, at which the government bears the burden of establishing by clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released;

7. Order Respondents to return all of Petitioner's personal belongings;
8. Enjoin Petitioner's removal from the United States pending a final decision on this habeas action;
9. Enjoin Petitioner's removal from the United States without meaningful notice and opportunity to fully present a fear-based claim;
10. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act and any other applicable authority;
11. Grant further relief as the Court finds just and proper.

Dated: August 7, 2026

Juris Path Law Firm, PC

*/s/Yunchao Song*
Yunchao Song, Esq.
Attorneys for Petitioner Song Lin