

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

JUN HONG GONG,

Petitioner,

v.

KRISTI NOEM, Secretary
Department of Homeland Security;
PETER R. FLORES, Acting
Commissioner for U.S. Customs
and Border Protection; PAM
BONDI, Attorney General,

Respondents

)
)
) Civil No.: '25CV0348 RBM MMP
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) **WRIT FOR PETITION OF**
) **HABEAS CORPUS; EX PARTE**
) **APPLICATION FOR**
) **TEMPORARY RESTRAINING**
) **ORDER; AND COMPLAINT**
) **FOR DECLARATORY AND**
) **INJUNCTIVE RELIEF UNDER**
) **THE ADMINISTRATIVE**
) **PROCEDURES ACT AND FOR**
) **VIOLATIONS UNDER THE U.S.**
) **CONSTITUTION**
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COMES NOW the Petitioner, Jun Hong Gong, by and through undersigned
counsel and for her causes of action against Respondents, alleges and states the
following:

1 **I. INTRODUCTION**

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3 1. Respondents are currently unlawfully detaining the Petitioner in
4 violation of the Constitution of the United States. Petitioner is a lawful
5 permanent resident of the United States and was also granted asylee status
6 and withholding of removal by an immigration judge on December 5, 2024.
7 No appeal was filed, and the decision became a final administrative decision
8 as a result. Following return from an emergency trip abroad to China to see
9 her dying father who passed away, Respondent Customs and Border
10 Protection at the San Ysidro port of entry unlawfully refused her admission
11 into the United States as a LPR and detained the Petitioner in violation of the
12 law. Respondents informed Petitioner that she is being removed from the
13 United States and returned to China for a 5-year period. Respondents
14 transferred Petitioner to Respondent ICE's custody where she remains at
15 present.

16 2. Petitioner requires this Court's immediate intervention not only to
17 safeguard her basic Due Process right to freedom from arbitrary detention
18 but also to ensure she is not forcibly removed from the United States as a
19 lawful permanent resident, or forced to voluntarily relinquish said lawful
20 permanent residence, and that the alleged expedited removal order be held
21 unconstitutional as a result. This action arises under the Administrative
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1 Procedures Act (“APA”) 5 U.S.C. §701 *et seq.* challenging the refusal of her
2 admission and under the U.S. Constitution for violations of her Due Process
3 rights as a lawful permanent resident to live permanently in the United
4 States, work in the United States and be protected by all laws of the United
5 States and the State of California for which she resides.
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8 **II. JURISDICTION**

9 3. This Court has jurisdiction pursuant to the provisions of §2241, Art.
10 I §9, cl. 2 of the United States Constitution, and 28 U.S.C. §1331, (federal
11 question jurisdiction) as a civil action arising Immigration and Nationality
12 Act (INA) codified at 8 U.S.C. § 1101 *et seq.*; 5 U.S.C. § 701 *et seq.*
13 (Administrative Procedure Act or APA) as an action challenging agency
14 action as arbitrary capricious or otherwise against the law. The Court may
15 grant relief under the habeas corpus statutes, 28 U.S.C. §2241 *et seq.*, the
16 Declaratory Judgement Act, 28 U.S.C. §2201 *et seq.*, and the All Writs Act,
17 28 U.S.C. §1651.
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21 **III. EXHAUSTION OF REMEDIES**

22 4. Petitioner has no administrative remedies available to address the
23 Defendants’ violations in this case.
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1 **IV. VENUE**

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3 5. Venue is proper in this Court pursuant to 28 U.S.C. Section
4 1391(e)(3), as amended, because Petitioner is detained at the Otay Mesa
5 facility located within this district, and no real property is involved in this
6 action.
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8 **V. PETITIONER**

9 6. Petitioner Jun Hong Gong is a native and citizen of China and a
10 lawful permanent resident (LPR) of the United States.
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12 **VI. RESPONDENTS**

13 2. Respondent Kristi Noem is the United States Secretary of the
14 Department of Homeland Security (DHS). In her capacity as Secretary, Ms.
15 Noem is charged with the administration and enforcement of the INA and has
16 oversight of all federal immigration agencies including the Customs and Border
17 Protection (CBP), Immigration and Customs Enforcement (ICE), and USCIS.
18
19 Ms. Noem is sued in her official capacity.
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21 3. Respondent Peter R. Flores is the Acting Commissioner for U.S.
22 CBP. In his capacity as Acting Commissioner, Mr. Flores has oversight over his
23 agency, CBP, and is responsible for the actions and decisions of any individual
24 CBP officer. He is sued in his official capacity.
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27 4. Respondent Pam Bondi is the United States Attorney General. In
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1 her capacity as U.S. Attorney General, Ms. Bondi is responsible for the
2 administration and enforcement of the immigration laws of the United States. She
3 additionally heads the Department of Justice which performs certain background
4 and security checks in connection with applications for benefits under the INA.
5 Ms. Bondi is sued in his official capacity.
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8 **VII. FACTUAL ALLEGATIONS**

9 5. Jun Hong Gong is a native and citizen of China. She first entered
10 the United States on July 3, 2012, as a H-1B nonimmigrant.
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12 6. On August 23, 2013, Ms. Gong filed an I-589 Application for
13 asylum. She was assigned alien registration number  Her
14 application was referred to the immigration court. On December 16, 2017, she
15 was charged with removal as a visa overstay under INA Section 237(a)(1)(B).
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17 7. During removal proceedings, Ms. Gong filed for relief from removal
18 including Form EOIR-42B, Application for Cancellation of Removal and
19 Adjustment of Status for Certain Nonpermanent Residents on April 8, 2019.
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21 8. Ms. Gong testified in support of her applications and on December
22 5, 2024, her application for cancellation of removal under INA Section
23 240A(b)(1) was granted by the Immigration Judge effectively according to her
24 lawful permanent residence. Additionally, the Immigration Judge granted her
25 asylum under INA Section 208 and in the alternative, withholding of removal
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1 under INA Section 241(b)(3). No appeal was filed by DHS. *See* Exhibit A,
2 Immigration Judge's Decision.
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4 9. After approval on or after January 18, 2025, Ms. Gong made an
5 emergency trip to China to see her father. Her father passed on January 20,
6 2025. Ms. Gong attempted to return to the United States on February 15, 2025,
7 unfortunately she was robbed of two backpacks immediately before she arrived
8 and had a police report at the San Ysidro border and presented herself as a
9 lawful permanent resident.
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12 10. Respondent CBP held Ms. Gong in secondary and CBP alleged they
13 could not verify her residency, that she was being removed from the United
14 States for a period of 5-years, and that she was returning to China and being
15 transferred to ICE custody.
16

17 11. On February 17, 2025, Ms. Gong was transferred to ICE custody
18 where she remains at present. As of this same date the EOIR publicly accessible
19 website shows Ms. Gong was accorded relief on December 5, 2024, but this
20 was apparently inaccessible or not attempted by CBP. *See* Exhibit B.
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23 **VIII. CLAIMS FOR RELIEF**

24 **Count One – VIOLATION OF THE DUE PROCESS CLAUSE OF THE**
25 **FIFTH AMENDMENT TO THE U.S. CONSTITUTION DUE TO**
26 **UNLAWFUL DETENTION**
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1 12. Petitioner re-alleges and incorporates by reference paragraphs 1
2 through 11 above.

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4 13. The Due Process Clause of the Fifth Amendment forbids the
5 government from depriving any “person” of liberty “without due process of
6 law.” U.S. Const. amend. V. All people within the territorial bounds of the
7 United States enjoy due process rights, regardless of citizenship. *See e.g.*
8 *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“[T]here are literally millions of [non-
9 citizens] within the jurisdiction of the United States...[and] the Fifth
10 Amendment...protects every one of these persons.”) (internal quotation marks
11 omitted); *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886). These protections
12 apply equally to non-citizens facing deportation proceedings. *Demore v Kim*,
13 538 U.S. 510, 523 (2003); *see also Zadvydas*, 533 U.S. at 72 (“[B]oth removable
14 and inadmissible [non-citizens] are entitled to be free from detention that is
15 arbitrary and capricious.”) (Kennedy, J., dissenting). “Freedom from
16 imprisonment-from government custody, detention or other forms of physical
17 restraint- lies at the heart of the liberty” that the Due Process clause protects.
18 *Zadvydas*, 533 U.S. at 690. Due process thus requires “adequate procedural
19 protections” to ensure that the government’s asserts justification for
20 incarceration “outweighs the individual’s constitutionally protected interest in
21 avoiding physical restraint.” *Id.* at 690. Individuals with prior removal orders are
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1 entitled to procedural safeguards against prolonged detention. *See Padilla-*
2 *Ramirez v Bible*, 882 F.3d 826, 830 (9th Cir. 2017) (*citing Diouf v Napolitano*,
3 634 F.3d 1081, 1084 (9th Cir. 2011)).
4

5 14. Petitioner is detained with Respondents unlawfully. Petitioner has no
6 prior removal orders, nor a single criminal arrest or conviction. The Petitioner
7 was accorded lawful permanent residence, yet she remains in Respondents'
8 custody. Petitioner cannot be subject to expedited removal because she can
9 verify her lawful permanent residence, and such status has not been terminated.
10 She has further been unlawfully threatened or informed that she is ordered
11 removed for 5 years stripping her of her lawful permanent residence. At
12 minimum, the Respondents by law, would be required to process her for new
13 removal proceedings where an immigration judge would review her custody and
14 alleged inadmissibility or removability.
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18 **Count Two – DENIAL OF HER LAWFUL PERMANENT RESIDENCE**
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20 **STATUS AND APPLICATION FOR ADMISSION VIOLATES THE**
21 **ADMINISTRATIVE PROCEDURES ACT**
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23 15. Petitioner re-alleges and incorporates by reference paragraphs 1
24 through 11 above.

25 16. Under the Administrative Procedures Act, "the final agency action
26 for which there is no other adequate remedy in court [is] subject to judicial
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1 review.” 5 U.S.C. §704. The reviewing court “shall... hold unlawful and set aside
2 agency action, findings, and conclusions found to be (A) arbitrary, capricious, an
3 abuse of discretion, or otherwise not in accordance with law,” or “unsupported by
4 substantial evidence.” 5 U.S.C. §706(2)(A), (E). A court reviewing agency action
5 “must assess...whether the decision was based on a conclusion of relevant factors
6 and whether there has been a clear error of judgement; it must “examine the
7 reasons for agency decisions- or, as the case may be, the absence of such
8 reasons.” *Encino Motorcars LLC v Navarro*, 136 S. Ct. 2117, 2125 (2016)
9 (quoting *Motor Vehicles Mfrs. Assn of U.S. State Farm Mut. Auto Ins. Co*, 426
10 U.S. 29 43 (1983)); *Judulang v Holder*, 565 U.S., 42, 53 (2011)(quotations
11 omitted).

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16 17. By denying the Petitioner’s application for admission as a LPR,
17 detaining her, and ordering her removal for a 5-year period, the Respondents are
18 in violation of the APA. The Respondents’ egregious actions are arbitrary and
19 capricious, and not in accordance with law. The Respondents allege they cannot
20 verify the Immigration Judge’s December 5, 2024 decision, even though a copy
21 of the Decision was proffered to Respondents and a simple public EOIR case
22 search reflects the same. Further, Respondents are permitted by law to admit an
23 LPR even without proper documentation through a discretionary waiver of
24 documentary requirements in accordance with section 211(b) of the Act and §
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1 211.1(b)(3).

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3 **Count Three – THE EXPEDITED REMOVAL ORDER VIOLATES THE**
4 **U.S. CONSTITUTION AND APA**

5 18. Petitioner re-alleges and incorporates by reference paragraphs 1
6 through 11 above.

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8 19. Expedited removal is a process by which immigration officers can
9 summarily remove certain noncitizens without a hearing. Created in 1996 as part
10 of the Illegal Immigration Reform and Immigrant Responsibility Act, expedited
11 removal applies to noncitizens who arrive at a port of entry if they do not have
12 entry documents or if they have tried to enter through fraud or misrepresentation.
13 Individuals placed through expedited removal generally have no right to
14 challenge their deportation in federal court, due to jurisdiction-stripping
15 provision. **However, there is an exception for challenging an expedited**
16 **removal order if an individual is a lawful permanent resident, or someone**
17 **already determined to be a refugee or granted asylum, who has been**
18 **wrongfully subject to expedited removal. In 2020, the Supreme Court upheld this**
19 **law, finding that it did not violate the right to habeas corpus. *Dep't of Homeland***
20 ***Sec. v. Thuraissigiam*, 140 S.Ct. 1959 (2020).**

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25 20. In the Petitioner's case she can challenge the expedited removal
26 because she is a lawful permanent resident and she is also an asylee. 8 C.F.R.

1 Section 235.3 specifically provides that verified lawful permanent residents or
2 asylees shall not order the alien removed pursuant to section 235(b)(1) of the Act.
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4 The Petitioner provided the immigration judge's decision and her Alien number
5 and passport which could be verified by any member of the public.
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7 Therefore, ordering the Petitioner removed under section 235(b)(1) was
8 unconstitutional and as a result also unlawful under the APA.

9 **Count Four- REQUEST FOR TEMPORARY RESTRAINING ORDER**

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11 21. Petitioner re-alleges and incorporates by reference paragraphs 1
12 through 11 above.

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14 22. A temporary restraining order should be issued if, immediate and
15 irreparable injury, loss or irreversible damage will result" to the applicant if the
16 order does not issue. Fed. R. Civ. P. 65(b). The standard for issuing a temporary
17 restraining order is the same as the standard for issuing a preliminary injunction.
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19 *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th
20 Cir. 2001). To obtain a preliminary injunction, Petitioner must demonstrate that
21 (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable
22 harm in the absence of preliminary relief, (3) the balance of equities tips in her
23 favor, and (4) an injunction is in the public interest. *Stormans, Inc. v. Selecky*,
24 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council,*
25 *Inc.*, 555 U.S. 7, 22 (2008)). "A preliminary injunction is appropriate when a
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1 plaintiff demonstrates . . . that serious questions going to the merits were raised
2 and the balance of hardships tips sharply in the plaintiff's favor.” *Alliance for*
3 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (*quoting Lands*
4 *Council v. McNair*, 537 F.3d 981, 97 (9th Cir. 2008) (*en banc*)).

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7 23. As set forth above, Respondents’ ongoing detention of the Petitioner
8 violates the Due Process Clause. She has proof of her lawful permanent
9 residency, therefore she is likely to success on the merits. She will suffer
10 irreparable harm because she was informed she ordered removed from the United
11 States for 5-years and being deported to China. The balance of equities is in her
12 favor considering she has been a long-time resident of the United States and is a
13 single parent to a minor US citizen child and a Registered Nurse employed at a
14 hospital where she cares for Americans. Further, a temporary restraining order is
15 in the public interest, permitting the Petitioner to continue her lawful permanent
16 residency or have her case properly reviewed by an immigration judge and not
17 arbitrarily remove a permanent resident without due process, weighs in her favor.
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21 **Count Five- EQUAL ACCESS TO JUSTICE ACT**

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23 24. Petitioner re-alleges and incorporates by reference paragraphs 1
24 through 11 above.

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26 25. If she prevails, Petitioner will seek attorney’s fees and costs under
27 the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28

1 U.S.C. § 2412.

2 **IX. CONCLUSION**

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4 **WHEREFORE**, Petitioner requests the Court to grant the following relief:

5 (1) Accept and maintain continuing jurisdiction of this action.

6 (2) Grant a temporary restraining forbidding Respondents from removing the
7 Petitioner from the United States.

8 (3) Order Respondents detention as unconstitutional and order Petitioner's release
9 from custody.

10 (4) Order the expedited removal order as unconstitutional and in violation of the
11 APA.

12 (5) Award Petitioner the costs of this action, including fair and reasonable attorney's
13 fees as provided in the Equal Access to Justice Act.

14 (6) Provide such relief as the Court may deem proper and appropriate.

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16 Respectfully submitted this 17th day of February 2025.

17
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