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

Instructions

1. **Who Should Use This Form.** You should use this form if
   - you are a federal prisoner and you wish to challenge the way your sentence is being carried out *(for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits)*;
   - you are in federal or state custody because of something other than a judgment of conviction *(for example, you are in pretrial detention or are awaiting extradition)*; or
   - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form.** You should not use this form if
   - you are challenging the validity of a federal judgment of conviction and sentence *(these challenges are generally raised in a motion under 28 U.S.C. § 2255)*;
   - you are challenging the validity of a state judgment of conviction and sentence *(these challenges are generally raised in a petition under 28 U.S.C. § 2254)*; or
   - you are challenging a final order of removal in an immigration case *(these challenges are generally raised in a petition for review directly with a United States Court of Appeals)*.

3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

5. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.

6. **Required Filing Fee.** You must include the $5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.

7. **Submitting Documents to the Court.** Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

8. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

UNITED STATES DISTRICT COURT

for the

Western District of Louisiana

JIAXIONG WU

Petitioner

v.

PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and
ELEAZAR GARCIA, Warden, Winn Correctional Center

Respondents

Case No. 25-1412
(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: JIAXIONG WU
   (b) Other names you have used:
2. Place of confinement:
   (a) Name of institution: Winn Correctional Center
   (b) Address: 560 GUM SPRING ROAD
   WINNFIELD, LA 71483
   (c) Your identification number: [redacted]
3. Are you currently being held on orders by:
   ☐ Federal authorities ☐ State authorities ☑ Other - explain:
   Mr. Wu is detained by U.S. Immigration and Customs Enforcement (ICE) since July 30, 2025, without due process protection.
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:
   (b) Docket number of criminal case:
   (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)*:

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: ICE New York Field Office, 26 Federal Plaza 9th Floor, Suite 9-110 New York, NY 10278

(b) Docket number, case number, or opinion number: [redacted]

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:

On July 16, 2025, a Form I-246 (Application for a Stay of Deportation or Removal) was duly filed to the ICE New York Field Office. However, on July 30, 2025, despite the counsel's objection, ICE verbally denied the I-246 and detained Pastor Wu following his voluntary appearance at the Office that day complying a prior directive.

(d) Date of the decision or action: 07/30/2025

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: Board of Immigration Appeals (BIA), and ICE New Orleans Field Office.

(2) Date of filing: July 28 (Motion to Reopen), July 31 (Emergency Motion to Stay Removal), 2025 for BIA filing; August 4 (I-246 to NO office), 2025 for ICE filing.

(3) Docket number, case number, or opinion number: All [redacted]

(4) Result: BIA: Both pending; ICE: Returned the I-246 without explanation on August 7, 2025.

(5) Date of result: Please refer to the column above.

(6) Issues raised:

BIA: On July 18, 2025, a formal Motion to Reopen was filed before the BIA based on new and material evidence of changed circumstances, [redacted]; the motion is docketed on July 28, 2025. Following the detention of him, on July 31, 2025, an Emergency Motion to Stay Removal was filed to the BIA. Both motions remain pending before BIA.

ICE: Following the July 30, 2025 verbal denial, on August 4, 2025, another Form I-246 was filed to ICE New Orleans Field Office, which was delivered on August 5. However, the application was then returned to Pastor Wu's counsel's office on August 7, 2025, without reason, explanation, or any remedies are available.

(b) If you answered "No," explain why you did not appeal:

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:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

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

The two motions are currently still pending before the BIA. For the I-246 application to ICE New Orleans Field Office, it was returned without reason on August 7, 2025. But on August 23, the office replied via email indicating the I-246 filed to them was added to Pastor. Wu's immigration.

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:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal: Please refer to the column above.

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:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(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:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

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

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ❒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 07/30/2025

(b) Date of the removal or reinstatement order: 07/03/2018

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

☑ Yes ❒ No

If "Yes," provide:

(1) Date of filing: 07/09/2018

(2) Case number: [redacted]

(3) Result: The appeal was dismissed.

(4) Date of result: 05/26/2020

(5) Issues raised:

1. Did the Immigration Judge err with regard to to issuing an adverse credibility finding with respect to the testimony given by the Appellant, Jiaxiong WU and his wife, Meiying Chen?

2. Did the Immigration Judge erroneously conclude that in weighing the totality of the evidence, the Appellants had not established that they suffered past persecution on account of a protected ground?

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

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

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:

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

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

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: ICE's Actions Violate the Fifth Amendment and Deny Petitioner Procedural Due Process.

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

On July 30, 2025, Pastor Wu appeared at the ICE's New York Field Office, accompanied by counsel, with a duly filed I-246 stay application. Despite ICE having previously acknowledged receipt of the filed I-246 stay application, ICE verbally denied the stay request without written decision, without prior notice, and without affording Petitioner any opportunity to respond or make argument.

After Petitioner's transfer to Winn Correctional Center, counsel filed another Form I-246 on August 4, 2025 to the ICE New Orleans Field Office. ICE returned it without explanation on August 7, 2025 –no indication if it was rejected, denied, or needed correction. Please refer to Memorandum of Law attached for complete facts and legal arguments.

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

☑ Yes ☐ No

GROUND TWO: Pending Motion to Reopen and Emergency Stay Motion Render Petitioner's Removal Period Not Begun, and INA § 1226 Governs His Detention, Not § 1231; Accordingly, a Bond Hearing Is Required.

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

Petitioner has filed a Motion to Reopen with the BIA on July 18, 2025, which was duly received on July 28, 2025, prior to his detention, and has requested an Emergency Motion to Stay Removal on July 31, 2025. Both motions remain pending. Furthermore, Petitioner is not a criminal noncitizen, but has never been afforded a hearing to contest his detention, not even given written notice explaining the denial of his I-246 stay applications.

Please refer to Memorandum of Law attached for complete facts and legal arguments.

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

☑ Yes ☐ No

GROUND THREE: Petitioner Diligently Pursued Relief but Has Been Denied a Fair Process.

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

Petitioner has diligently pursued every available avenue of relief, yet remains detained without fair process. He filed two Form I-246 applications for a stay of removal—on July 16, 2025, and August 4, 2025. The first was verbally denied at his July 30 ICE check-in without notice, written determination, or opportunity to respond; the second was returned with no explanation or indication of its status. He also filed an Emergency Motion to Stay Removal with the BIA on July 31, 2025, which remains pending. Despite these efforts, he has been afforded neither meaningful consideration nor the procedural safeguards guaranteed by the Constitution.

Please refer to Memorandum of Law attached for complete facts and legal arguments.

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

☑ Yes ☐ No

GROUND FOUR: Petitioner Has a Strong Asylum Claim, Minimal Flight Risk, No Disqualifying Criminal History, and Poses No Danger to the Community.

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

[redacted]

Please refer to Memorandum of Law attached for complete facts and legal arguments.

(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: N/A

Request for Relief

15. State exactly what you want the court to do:

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order his immediate release from ICE custody, or in the alternative, to provide at minimum a bond hearing.

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: 09.19.2025

Jia Xiong

Signature of Petitioner

/s/ Emily C. Trostle

Signature of Attorney or other authorized person, if any

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

JIAXIONG WU, **Petitioner,** **v.** **PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice;** **KRISTI NOEM, Secretary, U.S. Department of Homeland Security;** **TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and** **ELEAZAR GARCIA, Warden, Winn Correctional Center,** **Respondents**	**Case No. 25-1412** **September 19, 2025**

MEMORANDUM IN SUPPORT OF

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

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TABLE OF CONTENTS

TABLE OF AUHORITIES

Federal Cases

Supreme Court

Courts of Appeals

District Courts

Board of Immigration Appeals Decisions

Constitutional Provisions

Statutes

INTRODUCTION

Petitioner JIAXIONG WU ("Petitioner" or "Pastor Wu") respectfully seeks a writ of habeas corpus on the grounds of **due process violations** and the urgent necessity of **humanitarian protection**. Pastor Wu has served since April 12, 2023, as a full-time, ordained pastor at Fujianese Linking Church in Brooklyn, New York—a vibrant congregation of more than 1,600 members. He has been detained by U.S. Immigration and Customs Enforcement (ICE) since July 30, 2025.

On that date, Pastor Wu voluntarily appeared at the ICE New York Field Office pursuant to a prior directive, accompanied by counsel. Despite counsel's objection, ICE verbally denied his previously filed **Form I-246 (Application for a Stay of Deportation or Removal)** without written decision or opportunity to respond, and immediately detained him. (See **Exhibit 1** – Notice to Obligor to Deliver Alien; **Exhibit 2** – Form I-246 Cover Letter dated July 1, 2025; **Exhibit 3** – ICE Receipt dated July 16, 2025). The following day, on July 31, 2025, an **Emergency Motion to Stay Removal** was filed with the BIA and remains pending. (See **Exhibit 4** – Emergency Motion to Stay Removal Cover Letter).

Counsel subsequently submitted **another I-246** to the ICE New Orleans Field Office on August 4, 2025, after learning Pastor Wu had been transferred to Winn Correctional Center. (See **Exhibit 5** – Form I-246 Cover Letter dated August 4, 2025). That filing was **returned without explanation** on August 7, 2025, and ICE later confirmed only that a copy had been placed in his record. (See **Exhibit 6** – ICE Email dated August 23, 2025).

Meanwhile, on July 18, 2025—just prior his detention—Pastor Wu filed a **Motion to Reopen** with the BIA, docketed July 28, 2025. That motion, which **remains pending,** is based on materially changed circumstances, [redacted]

[redacted] (See **Exhibit 7** – EOIR Status Screenshot dated September 19, 2025; **Exhibit 8** – Motion to Reopen Cover Letter).

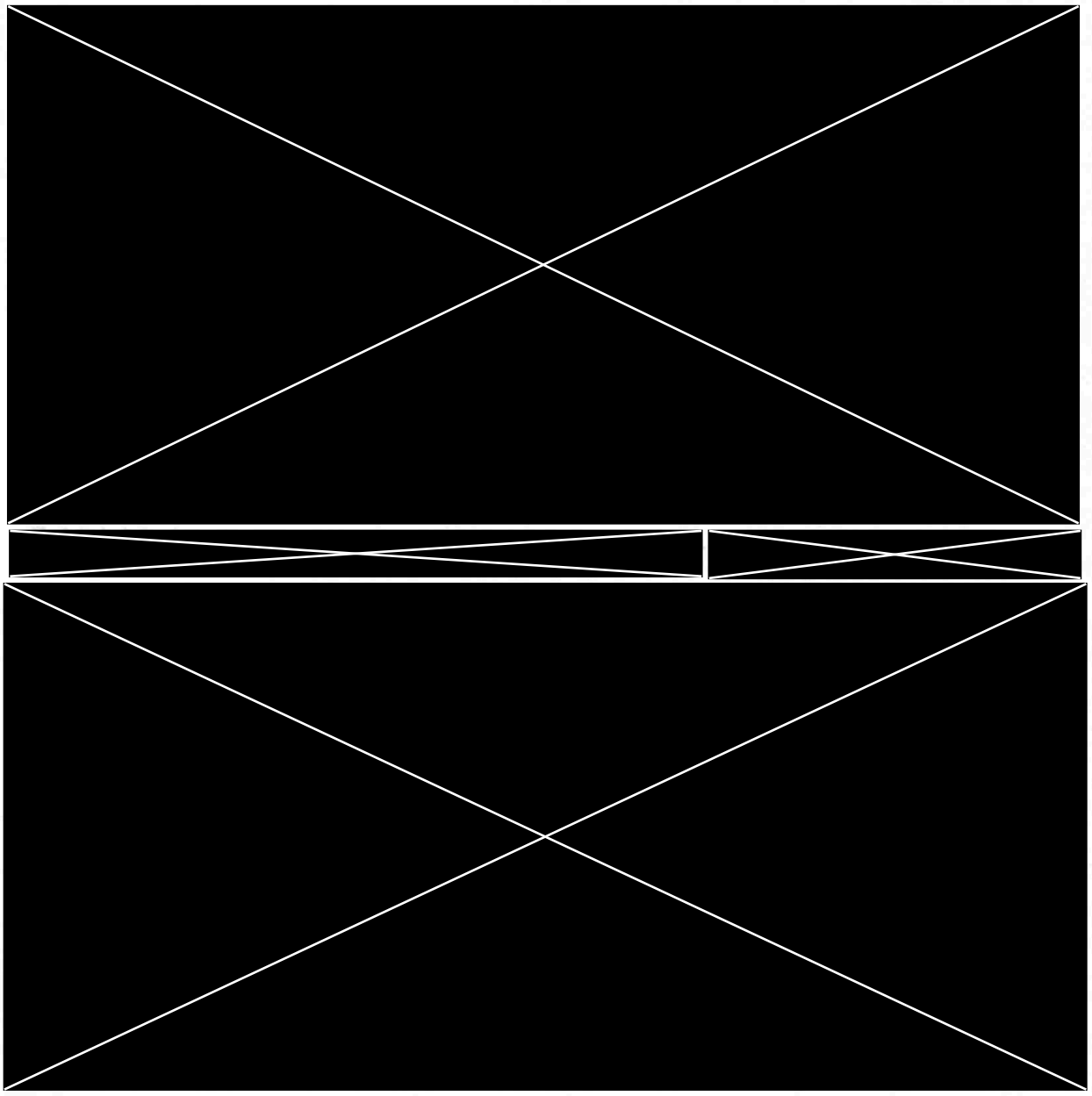
Pastor Wu's continued presence is of profound importance to his congregation of 1,600 members and to his wife. He poses no flight risk, no danger to the community, and has both a pending Motion to Reopen and an Emergency Motion to Stay Removal, which render his removal period not yet commenced. ICE violated due process by verbally denying his Form I-246 and detaining him without affording the basic protections of fair process.

Accordingly, Immigration and Nationality Act (INA) § 1226, rather than § 1231, governs the present matter, and Pastor Wu is entitled to immediate release or, at minimum, a bond hearing. Petitioner respectfully requests that this Court grant this **Petition for Writ of Habeas Corpus**, thereby securing his release so that he may continue to practice his faith, shepherd his community, and support his family. This emergency petition merits immediate judicial intervention to uphold the principles of due process, religious liberty, and humanitarian justice.

FACTS AND PROCEEDINGS

Pastor Wu was born on [redacted] in Lianjiang County, Fujian Province, China. (See **Exhibit 9** – Notarial Birth Certificate). He married Ms. Meiying Chen on October 13, 2003. (See **Exhibit 10** – Notarial Marriage Certificate). In May 2016, they fled China and entered the United States on or about **May 7, 2016**, compelled by [redacted]

[redacted] On April 5, 2016, police raided one such gathering,



In December 2023, Pastor Wu entered New Jersey's **Pretrial Intervention (PTI)** program after being incidentally implicated in a criminal matter. Importantly, this resolution does not constitute a conviction under New Jersey state law nor under INA § 101(a)(48)(A). No custodial sentence was imposed; no formal judgment of guilt was entered, and all charges will be dismissed and rendered eligible for expungement upon completion. The incident was isolated, non-violent,

and involves no element of moral turpitude. (See **Exhibit 20** – PTI Plea Form and Order of Postponement).

Upon arrival in the United States, Pastor Wu was initially detained upon entry in 2016, found to **have a credible fear of persecution**, and later released. (See **Exhibit 21** – Credible Fear Interview Report; **Exhibit 22** – Custody Release Order; **Exhibit 23** – Notice to Appear). In October and December 2016, Pastor Wu filed **Form I-589** application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT), which were denied by the Immigration Judge in 2018 and by the BIA in 2020. (See **Exhibit 24** – Form I-589 Application; **Exhibit 25** – IJ's Oral Decision dated July 3, 2018; **Exhibit 26** – Removal Order dated July 3 ,2018; **Exhibit 27** – BIA Decision dated May 26, 2020).

On July 30, 2025, at approximately 7:00 A.M., Pastor Wu voluntarily appeared at the ICE New York Field Office pursuant to a prior directive (See **Exhibit 1**). He was accompanied by his counsel in New York, Yuan Jiang, Esq. Despite counsel's objection, ICE verbally denied Pastor Wu's previously filed **Form I-246 (Stay of Removal)**, which ICE had acknowledged as received on July 16, 2025 (See **Exhibit 2** and **3**). **ICE issued this denial without advance notice, written determination, or an opportunity for Pastor Wu to respond, and immediately placed him in detention**. The following day, on July 31, 2025, an **Emergency Motion to Stay Removal** was filed with the Board of Immigration Appeals (BIA), where it remains pending. (See **Exhibit 4**).

On August 4, 2025, after learning that Pastor Wu had been transferred to Winn Correctional Center in Louisiana, counsel filed another **Form I-246** to the ICE New Orleans Field Office. (See **Exhibit 5**). That application was returned on August 7, 2025, **without any cover letter or explanation indicating whether it had been rejected, denied, or if further action was required**. On August 23, 2025, the ICE New Orleans Outreach Team responded to counsel's case status

inquiry by email, stating: *"Your email was forwarded to the Deportation Officer managing Mr. Wu's case for their awareness. A copy of the I-246 was added to Mr. Wu's immigration enforcement record for reference."* (See **Exhibit 6**).

Meanwhile, just days before his detention, on July 18, 2025, Pastor Wu had filed a **Motion to Reopen** with the BIA, which was formally received and docketed on July 28, 2025 (See **Exhibit 7**). That motion remains pending and merits full and fair adjudication. It is predicated on materially **changed circumstances**, including Pastor Wu's ordination and ongoing service as a **Christian pastor**, as well as **China's escalated persecution of Christian leaders** post COVID-19 pandemic (See **Exhibit 8**).

Pastor Wu is now a full-time ordained pastor of a thriving congregation of over 1,600 members in Brooklyn. He poses no flight risk or danger to the community. His continued detention, while his Motion to Reopen remains pending and amid ICE's arbitrary handling of his I-246 applications, underscores the urgent necessity of this Court's intervention.

ARGUMENT

I. This Court Has Jurisdiction to Issue a Writ of Habeas Corpus

A. Federal Law (28 U.S.C. § 2241(c)(3)) and Common Law Authorize Federal Courts to Issue Writs of Habeas Corpus

Under 28 U.S.C. § 2241(c)(3), federal district courts have power to issue writs of habeas corpus for persons who are "in custody in violation of the Constitution or laws or treaties of the United States." This provision is among the primary statutory bases for habeas relief. The U.S. Constitution also protects the writ under the Suspension Clause (Article I, § 9, cl. 2), which ensures that habeas cannot be suspended except in cases of rebellion or invasion when public safety may

require. These twin sources confirm that judicial review of detention is a fundamental safeguard in our legal structure.

Courts have consistently held that statutory limitations on habeas must be narrowly construed. Thus, in the absence of explicit statutory bars, § 2241 remains an avenue for challenging detention or removal when constitutional rights are at stake.

The common law heritage of habeas corpus further reinforces this jurisdiction. Historically, habeas has been the mechanism by which individuals imprisoned without due process could seek relief in courts. When executive or administrative authorities hold persons without adequate procedural protections, habeas remains available as the overriding check—even if other administrative remedies nominally exist. This principle is deeply embedded in American jurisprudence and supports jurisdiction here, where Petitioner alleges significant procedural violations by ICE. See *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025) ; *Zadvydas v. Davis*, 533 U.S. 678, at 687, 121 S. Ct. 2491, at 2497 (2001).

B. This Court Has Jurisdiction Because Respondents Exercise "Custody" Over Petitioner and Are Located Within This Court's Jurisdiction

Physical detention unquestionably constitutes "custody" under § 2241. Courts have repeatedly held that being held in an ICE facility, jail, or other detention center triggers the custody requirement. *Rumsfeld v. Padilla* confirmed that for "core habeas petitions," jurisdiction lies in "the district of confinement." 542 U.S. 426, at 443, 124 S. Ct. 2711, at 2722 (2004) ; see also *J.G.G.*, 145 S. Ct. at 1005. The petitioner in *Padilla* was held in a military brig in South Carolina, and the Court emphasized that habeas must be filed in the district where the petitioner is physically detained. *Id.* at 443.

In this case, Petitioner Pastor Wu is detained at Winn Correctional Center in Louisiana. That facility is under the control of ICE and its officers, who are under Respondents' authority. Thus, at the time of this filing, Respondents exercise custody over Petitioner and are legally and practically able to effectuate any order of release. Their control over the detention facility and direct supervision of Petitioner satisfy the custody requirement.

Moreover, *Padilla* also clarifies the district-of-confinement rule: for § 2241 habeas petitions challenging current physical confinement, the proper court is the one where the detention occurs. *Id.* at 443. Because Pastor Wu is in custody in Winn Correctional Center, this Court has territorial jurisdiction over both the custodian and the place of confinement.

Thus, jurisdiction is appropriate: Petitioner is in custody; the Respondents are subject to the Court's jurisdiction; and the petition is filed in the district where confinement occurs.

C. Petitioner Has Exhausted All Available Administrative Remedies (or They Are Futile)

Petitioner has pursued every administrative avenue reasonably available to him. On July 16, 2025, prior to his detention, the ICE New York Field Office acknowledged receipt of his **Form I-246**; and on August 4, 2025, following his transfer, another **I-246** application was submitted to the ICE New Orleans Field Office. On July 31, 2025, an **Emergency Motion to Stay Removal** was filed with the BIA. Yet despite these diligent efforts, ICE verbally denied the first I-246 without written explanation, the second was returned without justification, and no adjudication has been forthcoming on the stay motion.

Under precedents, exhaustion of administrative remedies can be excused in certain circumstances: where administrative remedies are **unavailable, ineffective**, or **futile**. *Beharry v. Ashcroft* holds that exhaustion is not required when available remedies provide no opportunity for

adequate relief or constitutional claims are involved that cannot be addressed by the administrative tribunal. 329 F.3d 51, at 62 (2d Cir. 2003); see also *Ashley v. Ridge*, 288 F. Supp. 2d 662, at 667 (D.N.J. 2003) . Courts in this circuit and other various circuits have similarly recognized that when the agency lacks authority to grant the relief sought, or when the process is delayed to such an extent that it becomes meaningless, exhaustion may be excused. See *Villafranca v. Kerry*, Civil Action No. 1:16-cv-155, 2017 U.S. Dist. LEXIS 99414, at 9 (S.D. Tex. Jan. 9, 2017); *Williams v. Paramo*, 775 F.3d 1182, at 1191 (9th Cir. 2014).

Here, both I-246 Stay Applications were improperly denied or returned, and the Emergency Stay Motion will only be adjudicated when ICE sets a removal date. Such a framework renders the remedy too slow and effectively unavailable to prevent the ongoing constitutional injury, namely, detention without due process. As of this petition date, Petitioner has not been afforded any meaningful opportunity to be heard or provided any written decision—despite timely filings. Under the standard for futility, this lack of response—coupled with the administrative agency's design of acting only upon the setting of a removal date—makes exhaustion futile.

Therefore, for all these reasons—statutory authority under 28 U.S.C. § 2241, Petitioner's physical custody and the presence of his custodian within this Court's jurisdiction, and exhaustion or futility of available administrative avenues—this Court possesses full jurisdiction to review Petitioner's claims through a writ of habeas corpus.

II. The Writ Should Be Granted

A. ICE's Actions Violate the Fifth Amendment and Deny Petitioner Procedural Due Process

"It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." *J.G.G.*, 145 S. Ct. at 1006 (citing *Reno v. Flores*, 507 U.S. 292,

at 306, 113 S. Ct. 1439, at 1449 (1993)). "In a procedural due process claim, it is not the deprivation of liberty that is unconstitutional; it is the deprivation of liberty without adequate procedural safeguards." *M P v. Joyce*, 2023 U.S. Dist. LEXIS 151823, at 9 (W.D. La. Aug. 9, 2023) (quoting *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 U.S. Dist. LEXIS 49448, at 8 (W.D. Tex. Mar. 23, 2020); see also *A.R.L. v. Garland*, No. 6:23-CV-00852 SEC P, 2023 U.S. Dist. LEXIS 233416, at 13 (W.D. La. Dec. 20, 2023).

The Due Process Clause of the Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. In the context of immigration detention and removal proceedings, this includes a requirement that any deprivation of physical liberty must be accompanied by fundamental procedural protections: adequate notice, a written decision, an opportunity to respond, and meaningful hearing. *M P*, 2023 U.S. Dist. at 9; *Mathews v. Eldridge*, 424 U.S. 319, at 333, 96 S. Ct. 893, at 902 (1976).

Procedural due process is especially important when, as here, detention follows immediately on the heels of a stay application that had been duly filed and acknowledged, yet treated as though it did not exist. ICE's actions deprived Pastor Wu of notice and of any meaningful opportunity to respond before his liberty was taken. Such conduct is not merely unfair—it is, under established precedents, a violation of constitutional rights.

1. ICE's verbal denial of Petitioner's Form I-246 without advance notice, written decision, or opportunity to respond

On July 30, 2025, Pastor Wu appeared at the ICE's New York Field Office, accompanied by counsel, with a duly filed I-246 stay application. Despite ICE having previously acknowledged receipt of the filed I-246 stay application, ICE verbally denied the stay request without written decision, without prior notice, and without affording Petitioner any opportunity to respond or make

argument. Immediately following that verbal denial, ICE placed him into detention. This sequence contravenes procedural due process as established by Supreme Court under *Mathews* and other authorities requiring a fair opportunity to be heard before deprivation of liberty.

As recognized in *Virani*, "not every instance of regulatory non-compliance gives rise to a procedural due process violation and a valid claim for habeas relief…But a federal agency's failure to follow its own procedural regulations can constitute a denial of due process where there is no evidence that the minimal constitutional requirements as to due process have otherwise been satisfied." *Id.* at 27.

Here, ICE's own Form I-246 prescribes that a written decision is expected. The form includes an "Action Block – For ICE Use Only" with checkboxes for "Granted," "Denied," or "Rejected," and a space indicating whether a denial letter will accompany the decision. That structure signals ICE's internal procedural expectation that denials, or decisions, be documented in writing and that the applicant be so notified. The absence of any written decision in Petitioner's case demonstrates that there is no base for judicial review, no way for Petitioner to correct misunderstandings, supply missing information, or meaningfully appeal the decision.

Legal authority also supports the proposition that verbal or summary adverse determinations are constitutionally insufficient when dealing with liberty interests. Courts in *Grigoryan v. Barr* and *Gutierrez v. Holder* require that persons in removal proceedings not only be represented and heard but also be given notice of what is being alleged, and the chance to contest it. 959 F.3d 1233, at 1240 (9th Cir. 2020); 662 F.3d 1083, at 1091 (9th Cir. 2011).

2. ICE's return of the subsequent I-246 filing without explanation

After Petitioner's transfer to Winn Correctional Center, counsel filed another Form I-246 on August 4, 2025 to the ICE New Orleans Field Office. ICE returned it without explanation on August 7, 2025—no indication if it was rejected, denied, or needed correction. Such unexplained returns deny Petitioner any chance to understand or challenge ICE's decision.

Procedurally, this compounds the first deprivation. Even if the first verbal denial were ambiguous, the unexplained return of the second application confirmed that ICE was disregarding normal process: Petitioner was given no notice of deficiencies, no chance to respond, and no transparency.

Courts have held that returning or dismissing applications without explanation can violate due process when no meaningful opportunity to respond or cross-examine exists. As recently held by Supreme Court in *J.G.G.*, "the detainees are entitled to notice and opportunity to be heard 'appropriate to the nature of the case.'" *Id.* at 1006 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, at 313, 70 S. Ct. 652, at 657 (1950)). ICE's actions fell far short of that constitutional guarantee.

B. Pending Motion to Reopen and Emergency Stay Motion Render Petitioner's Removal Period Not Begun, and INA § 1226 Governs His Detention, Not § 1231; Accordingly, a Bond Hearing Is Required

1. Petitioner's removal period has not begun, and INA § 1226 applies

Under INA § 1231(a)(1)(A) and (a)(2)(A), a noncitizen subject to a order of removal may be detained and removed by the Attorney General only *after* the "removal period" commences. The removal period generally begins when an "order of removal becomes administratively final,"

namely, when "the BIA has reviewed the order (or the time for seeking the BIA's review has expired)." *Johnson v. Guzman Chavez*, 594 U.S. 523, at 534, 141 S. Ct. 2271, at 2285 (2021).

However, under INA § 1231(a)(1)(B)(ii), if the removal order is "judicially reviewed and if a court orders a stay of the removal of the alien," the removal period is not yet started until "the date of the court's final order." Thus, where removal is stayed, detention under § 1231 is not authorized; instead, INA § 1226 governs.

Courts under multiple circuits have also held that "[s]ection 1231 does not govern the detention of immigrants whose removal has been stayed pending judicial review." *Hechavarria v. Sessions*, 891 F.3d 49, at 56 (2d Cir. 2018); see also *Jonalson v. Moniz*, Civil Action No. 22-10083-NMG, 2022 U.S. Dist. LEXIS 225677, at 7 n.3 (D. Mass. Aug. 2, 2022); *Loachamin v. Kurzdorfer*, No. 25-CV-6124-MAV, 2025 U.S. Dist. LEXIS 145753, at 6 (W.D.N.Y. July 23, 2025); *Carlos Enrique U. R. v. Sec'y of Homeland Sec.*, No. 19-1063 (MJD/BRT), 2019 U.S. Dist. LEXIS 148457, at 6 (D. Minn. June 17, 2019); *Smith v. Barr*, 444 F. Supp. 3d 1289, at 1299 (N.D. Okla. 2020); *Thompson v. Horton*, No. 4:19-cv-00120-AKK-HNJ, 2019 U.S. Dist. LEXIS 168352, at 3 n.1 (N.D. Ala. Sep. 30, 2019).

As the Ninth Circuit explained, "[t]he more sensible reading of the statute [§ 1231] is that if an alien files a timely petition for review and requests a stay, the removal period does not begin until the court of appeals (1) denies the motion for a stay *or* (2) grants the motion *and* finally denies the petition for review." *Prieto-Romero v. Clark*, 534 F.3d 1053, at 1056 (9th Cir. 2008). Other circuits agree. See *Alexander v. AG*, 495 F. App'x 274, at 276 n.1 (3d Cir. 2012); *D'Ambrosio v. McDonald*, Civil Action No. 25-10782-FDS, 2025 U.S. Dist. LEXIS 150216, at 12 n.6 (D. Mass. Aug. 4, 2025); *Downer v. Searls*, No. 20-CV-6326-FPG, 2020 U.S. Dist. LEXIS 272954, at 10

(W.D.N.Y. Aug. 18, 2020); *Quito v. Horton*, No. 4:19-cv-00739-ACA-HNJ, 2020 U.S. Dist. LEXIS 10420, at 2 n.2 (N.D. Ala. Jan. 22, 2020).

Similarly, *Reid v. Donelan* explains that "if a motion to stay is **pending**, the reviewing court's decision will obviously occur **later** than the administrative decision that precipitated the motion for stay. Until the reviewing court issues its final order, the individual subject to the order is **not** within any 'removal period' and is simply **not being held under § 1231**." 64 F. Supp. 3d 271, at 276-77 (D. Mass. 2014) (emphasis added).

Moreover, DHS has adopted a longstanding forbearance agreement with the Second Circuit, under which DHS will not remove any noncitizen who has requested a stay of removal with a petition for review unless the stay motion is denied. *Sarr v. Garland*, 50 F.4th 326, at 335 (2d Cir. 2022) ("the government's forbearance policy…mean that the government will not remove [the petitioner] pending the resolution of his petition to a merits panel or prior to notifying this Court of its intention to remove [the petitioner] imminently."); *In re Immigration Petitions*, 702 F.3d 160, at 162 (2d Cir. 2012) ("While a petition is pending in this Court, the government's forbearance policy has assured that removal will not occur.").

Courts therefore treat this as the functional equivalent of a judicial stay: "the overwhelming majority of courts in this Circuit have found that the forbearance agreement amounts to a court ordered stay of . . . removal." *Agard v. Searls*, No. 23-CV-91-LJV, 2023 U.S. Dist. LEXIS 187353, at 7-8 (W.D.N.Y. Oct. 18, 2023) (quoting *Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, at 796 (W.D.N.Y. 2019)); see also *Sanchez v. Decker*, 431 F. Supp. 3d 310, at 315 (S.D.N.Y. 2019); *Falodun v. Session*, No. 6:18-cv-06133-MAT, 2019 U.S. Dist. LEXIS 209157, at 14 (W.D.N.Y. Dec. 4, 2019). "In such cases, because there has been the equivalent of a stay but no 'final order,'

as required by INA § 1231(a)(1)(B)(ii), courts in this Circuit generally treat **noncitizens with pending petitions for review as detained under section 1226.**" *Id.* (emphasis added).

Although Petitioner is not currently detained within the Second Circuit, it is where he was first detained, where he first sought relief, and where he has resided for years. Here, while Petitioner has not filed a petition for review in a court of appeals, he has filed a Motion to Reopen with the BIA on July 18, 2025, which was duly received on July 28, 2025, prior to his detention, and has requested an Emergency Motion to Stay Removal on July 31, 2025. Both motions remain pending. Until the BIA rules on those motions, the removal period has not begun, and detention under § 1231 is unauthorized. Accordingly, § 1226 governs, and Petitioner is entitled to a bond hearing.

2. A bond hearing is required under § 1226

INA § 1226(a)(2)(A) authorizes the Attorney General to release a noncitizen on bond or conditional parole pending completion of proceedings. The statute's plain language contemplates individualized determinations, not mandatory detention without process, except in the limited circumstances described in § 1226(c) (certain criminal aliens).

Courts across the country have emphasized that due process requires at least a bond hearing under § 1226 when detention becomes prolonged or **occurs without meaningful review**. Absent "some sort of hearing when initially detained at which [the detainee] may challenge the basis of his detention," detention without a bond hearing is impermissible. *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, at 223 (3d Cir. 2011); see also *Reid v. Donelan*, 819 F.3d 486, at 494 (1st Cir. 2016).

By contrast, in *Demore v. Hyung Joon Kim*, the Supreme Court upheld mandatory detention without bond only in the narrow context of § 1226(c), which applies to certain criminal

aliens with serious offenses. Such detention is constitutional even though there had been no determination that the alien posed either a danger to society or a flight risk. See 538 U.S. 510, at 513, 123 S. Ct. 1708, at 1712 (2003).

Here, Petitioner is not a criminal noncitizen, and § 1226(c) is inapplicable. His sole criminal matter was resolved through New Jersey's Pretrial Intervention (PTI) program, a diversionary program that neither constitutes a conviction under New Jersey law nor a conviction for immigration purposes.

Moreover, Petitioner has never been afforded a hearing to contest his detention, not even given written notice explaining the denial of his I-246 stay applications. His confinement therefore lacks both statutory foundation and constitutional safeguards.

Because § 1226 governs and Petitioner has not been afforded a bond hearing guaranteed by due process, his continued detention is unlawful. This Court should therefore order his release or, at minimum, direct that he receive a prompt bond hearing before an immigration judge.

C. Petitioner Diligently Pursued Relief but Has Been Denied a Fair Process

Petitioner has consistently and diligently pursued all available avenues of relief, yet has been denied fair process while remaining detained. As mentioned above, he has filed two Form I-246 applications for a stay of removal, on July 16, 2025, and again on August 4, 2025. The first was verbally denied at his July 30, 2025 ICE check-in, without any advance notice, written determination, or opportunity to respond. The second was returned without explanation, cover letter, or indication of whether it had been rejected, denied, or required further action.

In addition, on July 31, 2025, Petitioner filed an Emergency Motion to Stay Removal with the BIA, which to this day remains pending. Yet despite these diligent efforts, he has been afforded

neither meaningful consideration nor access to the established procedural safeguards that the Constitution requires.

Here, Petitioner diligently sought relief—from seeking asylum, to filing motions to reopen, to submitting stay applications—yet has been denied a fair hearing or result. Procedural due process is violated when denial of process effectively forecloses meaningful access to relief.

D. Petitioner Has a Strong Asylum Claim, Minimal Flight Risk, No Disqualifying Criminal History, and Poses No Danger to the Community

1. Petitioner has established *prima facie* eligibility for asylum, withholding of removal, and CAT protection

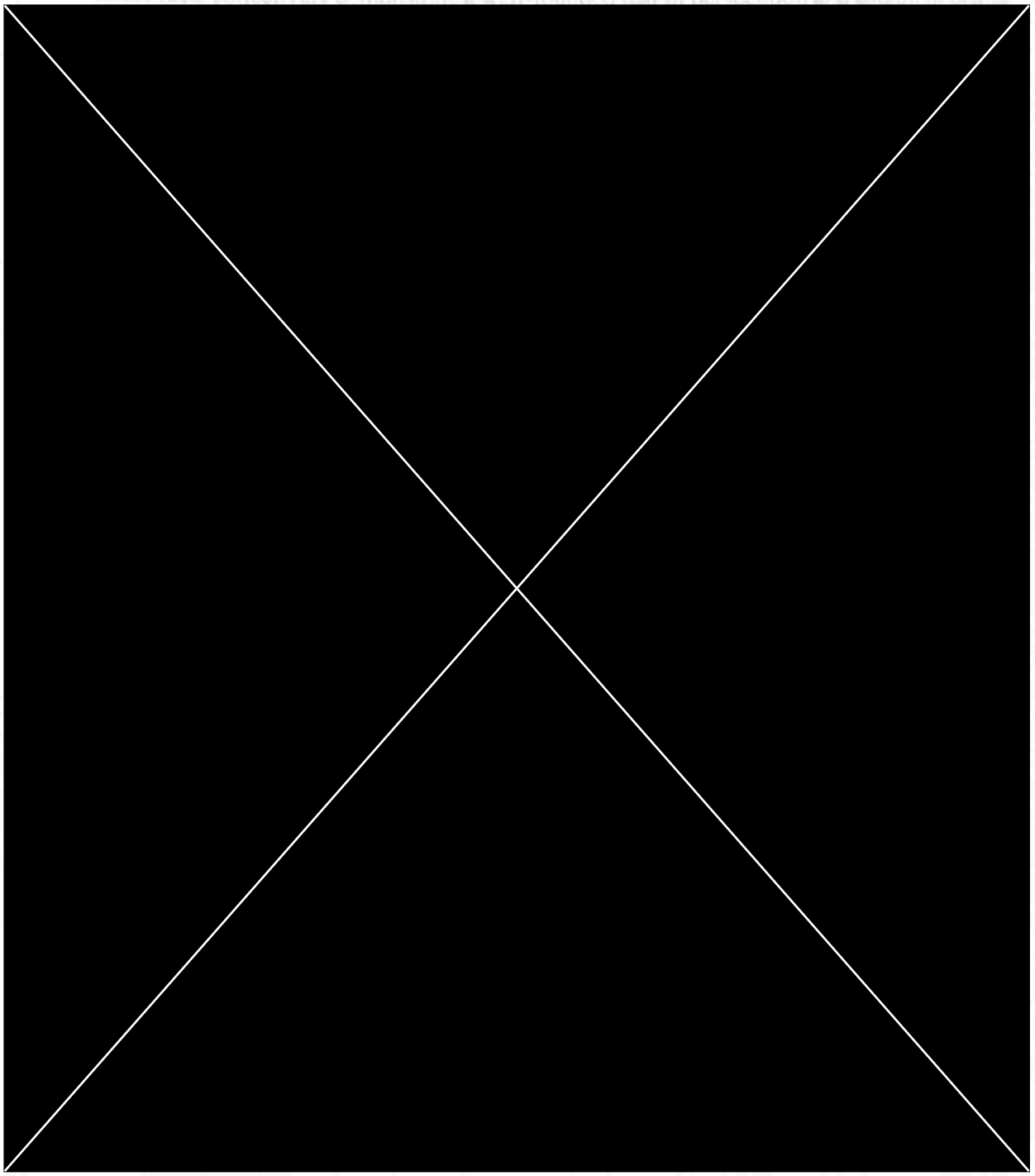
Petitioner's account of forced religious persecution in China, coupled with his subsequent pastoral leadership and deep-rooted community ties in the United States, demonstrates a compelling claim for asylum and related humanitarian relief.

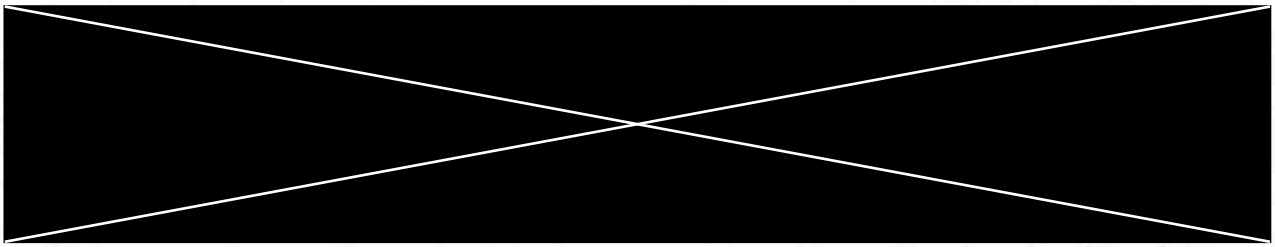
Where a respondent has made a prima facie showing, reopening must be granted unless the motion is denied for discretionary reasons pursuant to *Immigration & Naturalization Serv. v. Abudu*, 485 U.S. 94, at 97, 108 S. Ct. 904, at 908 (1988).

To establish prima facie eligibility, the BIA must determine whether "there is a reasonable likelihood that the statutory requirements for the relief sought have been satisfied, and that there is a reasonable likelihood that relief will be granted in the exercise of discretion." *Id.* at 418–19. The Board should not engage in credibility determinations when ruling on motions to reopen. See *Ghadessi v. Immigration & Naturalization Serv.*, 797 F.2d 804, at 810 (9th Cir. 1986) .

Here, Petitioner satisfies the standards articulated in *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996) and *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Under *Mogharrabi*, an

applicant demonstrates a well-founded fear of persecution where: (1) the applicant possesses a protected characteristic; (2) the persecutor is aware, or could become aware, of that characteristic; (3) the persecutor has the ability to punish the applicant; and (4) the persecutor has the inclination to punish. *Id.* at 446. Petitioner satisfies all four elements.





These facts collectively demonstrate a well-founded fear of persecution and establish prima facie eligibility for asylum, withholding, and CAT protection.

2. Petitioner has no disqualifying criminal history

In 2023, Petitioner was briefly implicated in a New Jersey criminal matter after offering a ride to an individual later identified as the sole perpetrator of a crime. Although Petitioner was charged as a co-defendant, the case was admitted into New Jersey's **Pretrial Intervention (PTI)** program, a rehabilitative diversion track for first-time offenders. PTI requires no admission of guilt, and upon completion, all charges are dismissed with prejudice and expungement becomes available. (See **Exhibit 20**).

Petitioner's acceptance into PTI does not constitute a "conviction" under New Jersey law nor INA § 101(a)(48)(A). The BIA has long held that diversionary programs without an adjudication of guilt do not amount to convictions. *Matter of Grullon*, 20 I&N Dec. 12 (BIA 1989). Likewise, in *Matter of Mohamed*, 27 I&N Dec. 92 (BIA 2017), the BIA clarified that a plea form alone is insufficient to trigger § 101(a)(48)(A) unless coupled with judicial acceptance and imposition of a penalty. Here, no plea of guilty, nolo contendere, or factual admission was entered, and prosecution was formally deferred.

Accordingly, Petitioner remains without any statutory conviction and is not barred from asylum, withholding, or CAT relief.

3. Petitioner poses no danger to the community or risk of flight

Apart from this single, isolated, and non-conviction matter, Petitioner has maintained an unblemished record. He continues to serve faithfully as an ordained pastor, delivering sermons, offering pastoral counseling, and guiding his congregation with steadfast devotion. His ministry and sustained record of service reflect not only his good moral character but also his role as a source of stability and support within his community.

Petitioner also presents no flight risk. He has lived openly in the United States for nearly a decade, is deeply rooted in his faith community, and has every incentive to pursue his asylum case lawfully. He has consistently complied with immigration reporting requirements and has no motive to abscond.

In sum, Petitioner has demonstrated prima facie eligibility for asylum, withholding of removal, and CAT relief; he has no disqualifying criminal record; and he poses neither a danger to the public nor a flight risk. Under these circumstances, his continued detention is neither reasonable nor just.

E. Granting the Writ Imposes Virtually No Burden on the Government

Granting habeas relief and releasing Petitioner would impose minimal, if any, burden on the government. On the contrary, release would reduce detention costs while allowing Petitioner to continue contributing to his community as a spiritual leader. Pastor Wu requires no specialized supervision, is not a flight risk, and poses no danger to the community.

The government therefore bears virtually no additional cost if the requested writ is granted. Immediate release would simultaneously preserve constitutional protections and conserve valuable government resources.

F. Even if Supervised Release Were Required, Alternatives to Detention (ATD) Are More Cost-Effective and Far Less Restrictive

Should the Court determine that some form of supervision is warranted, Petitioner is fully willing to participate in ICE's **Alternatives to Detention (ATD)** program under the Intensive Supervision Appearance Program (ISAP). This program is widely recognized as a cost-effective, reliable alternative that ensures compliance without resorting to prolonged physical detention.

As a respected and devoted pastor with deep community ties, Petitioner has every incentive to comply with all reporting obligations. Prolonged detention has already inflicted significant harm: his congregation has suffered profound spiritual and emotional distress from the sudden loss of their pastor (see **Exhibit 19**), and his wife, Ms. Chen, has been left devastated by the absence of her husband's daily companionship and support. Releasing Petitioner under ATD would mitigate these ongoing harms while fully addressing any governmental supervision concerns.

G. Ordering Release, or at Minimum a Bond Hearing, Vindicates Constitutional Rights While Protecting the Government's Interests

Ordering Petitioner's immediate release—or, at a minimum, a bond hearing—strikes the proper balance between safeguarding constitutional rights and protecting governmental interests. A bond hearing would provide Petitioner with a meaningful opportunity to demonstrate his eligibility for release and rebut any government claims of flight risk or danger.

Such a safeguard is not only constitutionally necessary but also consistent with the government's legitimate interest in orderly supervision of removal proceedings. In this case, release or bond hearing is the only remedy that vindicates Petitioner's constitutional rights and prevents further unlawful detention.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order his immediate release from ICE custody, or in the alternative, to provide at minimum a bond hearing.

Respectfully submitted,

Date: New Orleans, Louisiana
September 19, 2025

/s/ **Emily C. Trostle**

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Counsel for Petitioner
**Pro Hac Vice Application forthcoming*

TABLE OF EXHIBITS

Number	Exhibit	Pages
1	Notice to Obligor to Deliver Alien	1
2	Form I-246 Cover Letter dated July 1, 2025	2 – 7
3	ICE Receipt dated July 16, 2025	8 – 10
4	Emergency Motion to Stay Removal Cover Letter	11 – 23
5	Form I-246 Cover Letter dated August 4, 2025	24 – 26
6	ICE Email dated August 23, 2025	27 – 29
7	EOIR Status Screenshot dated September 19, 2025	30 – 32
8	Motion to Reopen Cover Letter	33 – 60
9	Notarial Birth Certificate	61 – 64
10	Notarial Marriage Certificate	65 – 68
11	Affidavit of Pastor Wu	69 – 72
12	The Lianjiang County Public Security Bureau Summonses	73 – 76
13	Certificate of Baptism	77
14	Letter from Rev. Dr. Zhaodeng Peng	78
15	Community Activity Photos at Tian Fu United Methodist Church	79 – 81
16	Certificate of Ordination	82
17	Community Activity Photos at Fujianese Linking Church	83 – 91
18	Letter from Rev. Dr. Meng Loeng Yip	92 – 93
19	Affidavits of Fellow Deacons – Guoxiang Lin, Hui Rong Lin, Qing Lin, Xue Ying Tang, and Mei Ying Zheng	94 – 103
20	PTI Plea Form and Order of Postponement	104 – 112
21	Credible Fear Interview Report	113 – 126
22	Custody Release Order	127
23	Notice to Appear	128 – 129
24	Form I-589 Application	130 – 139
25	IJ's Oral Decision dated July 3, 2018	140 – 149
26	Removal Order dated July 3 ,2018	150 – 151
27	BIA Decision dated May 26, 2020	152 – 157