

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED  
OCT 29 2025  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

Liao Kun  
Petitioner,

v.

Angel Garite  
ASSISTANT FIELD OFFICE DIRECTOR  
EL PASO SERVICE PROCESSING CENTER

Mary De Anda Ybarra  
ICE FIELD OFFICE DIRECTOR

Kristi Noem  
SECRETARY OF THE DEPARTMENT  
OF HOMELAND SECURITY

Pamela Bondi  
ATTORNEY GENERAL

Respondents.

Civil Action No. : 3:25-cv-00418-LS

Agency No. 240 514 352

LIAO KUN'S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
FOLLOWING HIS HABEAS CORPUS PETITION

I. BACKGROUND

Petitioner Kun Liao, is a native and citizen of the People's Republic of China. Petitioner entered the United States on May 7, 2023. He got detained since that date. He submitted his identity and passport along with other papers at the same date. He was last taken into ICE custody on May 30, 2023, and has remained in ICE custody continuously since that date. Thus Petitioner has been detained for 29 months, he filed a Writ of Habeas Corpus petition to this court on September 21, 2025 by first class mail.

## II. LEGAL STANDARD

### A. JURISDICTION

#### Conditions of Confinement

“The Supreme Court has left the door open a crack for prisoners to use habeas corpus to challenge a condition of confinement.” *Robinson v. Sherrod*, 631 F.3d 839, 841 (7<sup>th</sup> Cir. 2011) *Id.* at 840.

A detainee may, and should, assert "fact or duration" claims under § 2241. See *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017). Generally, habeas petitions seek release from custody, while civil rights actions are the proper vehicle to attack unconstitutional conditions of confinement. However, the line between claims concerning "conditions of confinement" ("conditions claims") and claims concerning "fact or duration of confinement" ("fact claims") is "a blurry one." *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 U.S. Dist. LEXIS 67640, 2020 WL 1904497, at \*10 (S.D. Tex. Apr. 17, 2020) (quoting *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017)). Where an individual is "challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release," the proper remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). The Fifth Circuit has granted habeas relief in the past where the petitioner was seeking immediate release from prison, even where the dissent objected that the case involved conditions of confinement. *Coleman v. Dretke*, 409 F.3d 665, 669-70 (5th Cir. 2005).

As Petitioner is a civil detainee, his conditions of confinement claims are, like pretrial detainees, governed by the Due Process Clause. See *Hare v. City of Corinth*, 74 F.3d 633, 638-639 (5th Cir. 1996) (en banc). Due process under the Fifth Amendment "requires that a pretrial detainee not be punished." *Bell v. Wolfish*, 441 U.S. 520, 535 n.16, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979).

### B. PETITIONER'S REMOVAL PROCEEDING

#### 1. Arriving alien

Under 8 C.F.R. § 1001.1(q), an arriving alien is an applicant for admission attempting to come into the United States at a port-entry whether or not to a designated port-of-entry, and regardless of the means of transport. *Rodriguez Del Rio v. Price*, 2020 U.S. Dist. LEXIS 242809.

#### 2. Credible Fear Interview

If an immigration officer determines that an alien (other than an alien described in subparagraph (F) who is arriving in the United States or is described in clause(iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) [8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7)] and the alien indicates either an intention to apply for asylum under section 208 [8 U.S.C. § 1758] or a fear of persecution, the officer **shall** refer the alien for an interview by an asylum officer under subparagraph(B), 8 U.S.C.S. § 1225(b)(1)(A)(ii).

An asylum officer **shall** conduct interviews of aliens referred under subparagraph(A)(ii), either at a part of entry or at such other place designated by the Attorney General. § 1225(b)(1)(B)(i).

“The officer **shall** prepare a written record of a determination ... A copy of the officer's interview notes shall be attached to the written summary.” § 1225(b)(1)(B)(iii)(II)

“The Attorney General **shall** provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible.” § 1225(b)(1)(B)(iv)

### **3. Inadmissible aliens' right**

Although inadmissible aliens are not entitled to the full protection of the Constitution, the Supreme Court has also made clear that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quotation marks omitted). In *Zadvydas*, the Court found that indefinite post-removal-period detention was unconstitutional for "aliens who were admitted to the United States but subsequently ordered removed." 533 U.S. at 682. In *Clark*, the Supreme Court extended the application of *Zadvydas* to inadmissible aliens but did not address the constitutional issue, instead deciding the case based on statutory interpretation. *Clark*, 543 U.S. at 378 (holding that the statute applies to both inadmissible and removable aliens and cannot be interpreted to apply to differently to these different categories of aliens.)

### **4. Notice To Appear (NTA)**

1) In removal proceedings under section 240[8 U.S.C. § 1229a], written notice (in this section referred to as a "Notice To Appear") **shall** be given in person to the alien.  
**8 U.S.C. § 1229(a)**

2) The alien may be represented by counsel and the alien **will be** provided (i) a period of time to secure counsel under subsection (b)(i) and (ii) a current list of counsel prepared under subsection (b)(2). **§ 1229(a)(E)**

3) In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240[8 U.S.C. § 1229a], the hearing date **shall** not be scheduled earlier than 10 days after the service of the notice to appear, **§ 1229(b)(1)**

4) The Attorney General **shall** provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240[8 U.S.C. § 1229a]. Such lists **shall** be provided under subsection (a) (1)(E) and otherwise made generally available. **§ 1229(b)(2)**

5) Charging document means the written instrument which initiates a proceeding before an Immigration Judge. **8 C.F.R. § 1003.13**

6) (a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to § 1003.32 which indicates the Immigration Court in which the charging document is filed. **8 C.F.R. § 1003.14**

The fundamental requirement of due procee is that Petitioner be given notice and opportunity to be heard. The absence of the NTA rendered the Immigration court had no jurisdiction on Petitioner's removal proceeding, which caused fundamental due process violation.

#### **5. Parole under 8 C.F.R. § 212.5(b) and Directive 11001.1**

Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). ICE Directive 11002.1.

#### **6. Post-Removal Detention Under § 1231**

Petitioner is detained pursuant to § 1231. Under § 1231, "when a [noncitizen] is ordered removed, the Attorney General **shall** remove the [noncitizen] from the United States within a period of 90 days." § 1231(a)(1). The nocitizen must be detained during this initial 90-day time-frame, See § 1231(a)(2), which is "referred to as the 'removal period', " § 1231(a)(1)(A). if the nocitizen "does not leave or is not removal within the removal period," then he or she is normally subject to supervised release. § 1231(a)(3).

#### **7. Legal Explanation about the Words "May" and "Shall"**

“unlike the word ‘**may**’, which implies discretion, the word ‘**shall**’ usually connotes a requirement.” *Kingdomware Technologies, Inc v. United States*, 579 U.S. 162, 171, 136 S. Ct. 1969, 1977, 195 L. Ed. 2D 334, 344 (2016).

### **C. CLASS MEMBER PURSUANT A NATION WIDE INJUNCTION**

#### **1. Petitioner Is A Class Member Pursuant A Nationwide Injunction requiring "timely bond hearings that comport with due process."**

In *Padilla*, the district court for the western District of Washington, held that 8 U.S.C.S. § 1225(b)(1)(B)(ii) is facially unconstitutional as applied to any arriving noncitizen who passed a credible fear interview. The Court reasoned this was so because the statute did not afford detained noncitizens a bond hearing before an immigration judge. The court issued a nationwide injunction to this effect, ordering that any noncitizen in expedited removal proceedings who passed a credible fear interview be released into the United States unless the government provided the alien with a bond hearing within seven days of request for a hearing. *Padilla v. Immigration & Customs Enf't*, 953 F.3d 1134.

#### **2. Petitioner Is A Class Member Pursuant A Nationwide Injunction requiring parole to any provisional class members absent an individualized determination, through the parole process, that if such provisional class member presents a flight risk or a danger to the community.**

Plaintiffs have been denied parole in violation of the ICE Directive, and that the Government has thereby violated the Administrative Procedure Act, the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment.

Class Member: all arriving asylum-seekers who "are found to have a credible fear of persecution or torture" and "who are or will be detained by ICE . . . after having been denied parole under the authority of the [five] ICE Field Offices at the Detroit, El Paso, Los Angeles, Newark, and Philadelphia.

### **D. TEMPORARY RESTRAINING ORDER**

A TRO preserves the status quo and prevents irreparable harm until a hearing can be held on an application for preliminary injunction. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974). The moving party bears the burden of demonstrating that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. Alternatively, if the moving party can demonstrate the requisite likelihood of irreparable harm, and show that an injunction is in the public

interest, a preliminary injunction may issue so long as there are serious questions going to the merits and the balance of hardships tips sharply in the moving party's favor. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

### **III. ARGUMENTS**

#### **A. DUE PROCESS VIOLATIONS**

##### **1. Procedural due process violations**

1) ICE in violating my constitutional rights by not following its internal policy, U.S. Immigration and Customs Enforcement, ICE 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (2009). Since Petitioner is not a flight risk or danger to the community, he should not have had the parole denied or revoked.

2) The absence of Mr. Liao's NTA, the information and notice about his Credible Fear Interview, 90-day review, etc. *Trump v. J.G.G.*, 604 U.S. 145 S. Ct. 1003, 1006, 221 L. Ed. 2D 529 (2025).

Due Process requires that an alien be given notice of the charges against him, a full hearing, and a fair opportunity to be heard. *Hermosillo v. Garland*, 2022 U.S. App. LEXIS 1042 (Fifth Cir. 2022)

Petitioner's removal proceeding was fundamentally unfair due to procedural errors and prejudice resulting from the fundamental procedural error. Fails to meet the requirements for an NTA under the Statute. *Campos-Chaves v. Garland*, 602 U.S. 447.

3) Petitioner has been detained more than 29 months, but he haven't had an individualized bond hearing before a neutral decision-maker.

4) Procedural defects in Petitioner's bond determinations before the IJ deprived him of due process. Petitioner had a bond hearing on January 24, 2025 and October 1, 2025. In these two bond hearings, Petitioner had no chance to orally testify. Besides, in Petitioner's first bond hearing, the IJ's memorandum included a reason "flight risk" for denying Petitioner's bond which had not mentioned in the hearing or its written decision. It's inaccurate reflection of the reasons for the IJ's oral decision. The memorandum was procedurally flawed based on a degree of dissonance with the IJ's oral decision. Thus:

i. The IJ violated his due process by not allowing Petitioner to orally testify at his hearing.

ii. The IJ's bond memorandum violated due process by including reasons not set forth in the IJ's oral decision.

5) The IJ refused to accept my evidence on my cellphone, as pro se I had no right to access the evidence saved in my cellphone. Besides, the evidence in my cellphone had been changed by someone I don't know.

6) 2000 Bond amount set by the immigration Judge violates his Fifth Amendment right to procedural due process because he cannot afford the bond and he is being held solely based on his indigence, because the monetary bond amount was set without consideration of his financial circumstances and he is unable to post the bond. *Hernandez v. Kolitwenzew*, 2020 U.S. Dist. LEXIS 97874 (7<sup>th</sup> Cir).

The immigration Judge Michael Pleters tried to grant Petitioner a bond around 1500 dollars verbally in Petitioner's hearing in 2023, but Petitioner unable to pay the bond. He've been detained for 29 months just because of his indigence.

## **2. Substantive due process violations**

1) The Petitioners (and the class they represent) were already within the territorial borders of the U.S. when they were detained, they are not considered on a similar footing to "excludable" aliens. (See Dkt. No. 91, order on Motion to to Dismiss at 8-10.) "Once an individual has entered the Country, he is entitled to the protection of the Due Process Clause." *United States v. Raya-Vaca*, 771 F.3d 1195, 1202 (9th Cir. 2014) (emphasis in original); See also *Zadvydas*, 533 U.S. at 693. The Court finds that this class of plaintiffs has a considerable private interest at stake: A constitutional right to press their due process claims, including their right to be free from indeterminate civil detention, and their right to have the bond hearings conducted in conformity with due process.

2) Mr. Liao is in custody pursuant to INA § 241(a)(6), 8 U.S.C. § 1231(a)(6). Under INA § 241(a)(1), 8 U.S.C. § 1231(a)(1), ICE shall remove aliens within 90 days of receiving an administrative final order of removal. Further, for aliens with a final order of removal who have entered the United States, INA § 241 has been interpreted by the Supreme Court in *Zadvydas* to only authorize continued detention for a period reasonably necessary to secure the alien's removal. See *Zadvydas*, 533 U.S. at 699-700. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens. The Supreme Court found in *Zadvydas* that six months is the presumptively reasonable period for removal in most cases. See *id.* at 701. Sine Mr. Liao's order of removal became final on April 10, 2025, his 90-day statutory removal period ended on July 9, 2025, and his six-month presumptive removal period

under *Zadvydas* ended on October 10, 2025. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government's burden to establish that an alien petitioner will be deported in the reasonably foreseeable future. *See Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002) (government failed to show that alien's deportation to China was reasonably foreseeable. Rather for the government to meet its burden of showing that an alien's repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner's case. Mr. Liao's deportation order cannot be effectuated by ICE. Mr. Liao's continued detention by Respondents violates INA § 241(a)(6), as interpreted in *Zadvydas*. "The private interest at issue here is 'fundamental': freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" *Hernandez v. Sessions*, 872 F.3d 976 993 (9th Cir. 2017) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118L Ed. 2d 437 (1992)). The ninth Circuit described the fundamental nature of that interest as "beyond dispute." *Id.*

3) Petitioner's confinement was punitive because the conditions of his federal civil confinement are worse than the conditions of the state criminal confinement. These conditions violate his constitutional rights.

4) provides support for the proposition that he is being held pursuant to a different purpose. The average period of extended detention necessitated by an appeal to the BIA was 5 months. *see Demore*, 538 U.S. at 530. Mr. Liao's appeal to the BIA was 14 months. His detention without a hearing before a neutral decision-maker violates his constitutional right to due process.

5) Section 1231 governs the detention and release of noncitizens who have been ordered removed. During the "removal period", which typically lasts 90 days, detention is mandatory. If ICE is unable to remove Petitioner during the 90-day, Petitioner is entitled to release because his continued detention violates 8 U.S.C. § 1231(a)(3), his due process rights under the Fifth Amendment, his right against unreasonable seizure under the Fourth, his right against cruel and unusual punishment under the Eighth Amendment, and the Suspension Clause.

6) Petitioner was eligible for the discretionary relief sought due to the positive result of his Credible Fear Interview. He posed a liberty or property interest in the first instance. The denial of discretionary relief cannot violate a substantive due process interest, because discretionary relief is a privilege created by Congress. Thus DHS violated Petitioner's right to due process, he suffered prejudice where he was eligible for the relief sought due to the positive result of his Credible Fear Interview and the support that the shelter organization Casa Marianella provided.

7) The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.

While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest – to effect the alien's removal. *See Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.")

Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint. *See e.g., Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

8) Right to courts. An inmate's constitutional right of access to the courts includes access to "adequate law libraries or adequate assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2D 72 (1977). When alleging that meaningful access to the courts has been denied, an inmate must allege that prison officials caused an "actual injury", namely, that a "non-frivolous and arguably meritorious underlying legal claim." was frustrated or impeded. *White v. Kautzky*, 494 F.3d 677, 680(8<sup>th</sup> Cir. 2007). Rather, an inmate must show a causal connection between a library inadequacy and an actual injury. *See Entzi v. Redman*, 485 F.3d 998, 1005 (8<sup>th</sup> Cir. 2007).

Petitioner had appeal with the BIA between February, 2023 to July, 2025; he had a Petition for Review with the Fifth Circuit Court between April, 2025 to August, 2025, case No. 25-60256; he have a Petition for Review with the Fifth Circuit Court between August, 2025 to present time, case No. 25-60427. The cage officers in the dorm sometimes would stop him from going to law library, sometimes, library officers would not call him until very late time. Photocopying services in law library hadn't been available for two months due to the alleged reasons, like the photo copier machine broken, out of ink, out of papers.

Then he got assaulted in unit 6, but he was transferred from blue low unit to mid high unit, he lost his privilege to be spending the whole day in law library. Petitioner didn't speak English before he came to the United States. He represent himself as pro se. The due process rights entitle him to have adequate law library time. "adequate", it means good enough, sufficient to satisfy the requirements, although it's not limitless in the light of the law, but the El Paso SPC facility has the capability and condition to fulfill Petitioner's this requirement, it's applicable with just little efforts that allow Petitioner to be in law library with the detainees from other mid high unit, since he had been living in

those units and he also had been allowed to be in law library for the whole day before, that means there's no obstacle to fulfill this requirement, not at all.

Due to the reasons above, Petitioner's motion to reconsider the dismissed of Petitioner's appeal from the removal order with the BIA was denied on untimely filing; Petitioner's petition for review, case No. 25-60427 was dismissed on "failed to timely file the Petitioner's brief".

The documents for the appeals with the courts were also filed in a rush for every time. Because Petitioner needed to finish it before the deadline but he hadn't had adequate law library time to prepare his appeals. Petitioner had to omit some of his points or arguments and shorten his study on laws and cases.

9) Right to counsel. The absence of NTA and information about Petitioner's Credible Fear Interview led the deprivation of Petitioner's opportunity to counsel.

### **3. Substantial Prejudice**

To establish substantial prejudice, the Petitioner must show that the alleged deprivation of due process affected the outcome of the proceeding. *Petlechkov v. United States AG*, 2024 U.S. App. LEXIS 8086.

- 1) The deprivation of Petitioner's right to courts led his motion to reconsider his dismissed appeal with BIA was denied for untimely filing and his petition for review case No. 25-60256 dismissed for failed to timely file a brief. And the refusal of the assistance of the translation of Petitioner's Declaration delayed Petitioner's removal proceeding for many months.
- 2) The deprivation of Petitioner's due process right to notice and opportunity to be heard. The absence of the notices related to Petitioner's NTA, credible fear interview information, Parole determination, 90-day review, etc.
- 3) The forensic evaluation report was incorrect, its opposite conclusions seriously misled the outcome of Petitioner's removal proceeding. And it also substantially delayed Petitioner's removal proceeding for 8 months.
- 4) No minimal procedural protection available due to institution bias, including individualized bond hearing and parole, it leads Petitioner more than 29 months indefinite detention.

5) Due to institution bias and indifference, Petitioner's sensitive information leaking and spreading among detainees even officials lead to Petitioner's mental torture, his safety is in question.

Those violations substantially affected the outcome of Petitioner's removal proceeding, thus the substantial prejudice established.

## **B. PETITIONER'S DETENTION**

**Detention under § 1225(b)(1)(B)(ii), also § 1225(b)(2)(A): indefinite detention without an individualized bond hearing before a neutral immigration judge is unreasonable which is in violation of Due process**

Petitioner's prolonged detention violates due process. It is "well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993)). Indeed, this protection applies to "all 'persons' within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty" that the Due Process Clause protects. Under these due process principles, civil immigration detention is constitutional only in "certain special and narrow nonpunitive circumstances," and it must "bear a reasonable relation to the purpose" for which the noncitizen was detained. (citations, brackets, and quotation marks omitted). The Supreme Court has identified those purposes as mitigating the risk of danger to the community and preventing flight; accord *Demore*, 538 U.S. at 527-28.

The Court should apply the six-factor test adopted in *Singh v. CChoate*. No. 19-cv-00909-KLM, 2019 U.S. Dist. LEXIS 141979, 2019 WL 3943960, at \*5 (D. Colo. Aug. 21, 2019). Under *Singh*, Petitioner's prolonged detention without an individualized bond hearing violates the Fifth Amendment's due process guarantees.

The Court must construe the Application and other papers filed by Petitioner liberally because he is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 92S. Ct. 594, 30L. Ed. 2d 652 (1972). (per curiam); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a pro se litigant. See *Hall*, 935 F.2d at 1110.

The lack of an adequate process for reviewing decisions to detain aliens has also been central to other courts' decisions to grant habeas relief to aliens pending the determination of their removal proceedings. See, e.g., *Diop*, 656 F.3d at 235 ("We do not

believe that Congress intended to authorize prolonged, unreasonable, detention without a bond hearing.")

In Maldonado, the 5th District Court has determined that § 1225(b)(2)(A) detention is subject to a reasonable time limitation. Sitting in immigration detention for more than two years, having committed no crime in his attempt to seek asylum in this country, and without any opportunity for an individualized review of his detention by a neutral immigration judge, the Court finds Petitioner's detention to be prolonged. See *Chen v. Aitken*, 917 F. Supp. 2d 1013, 1018 (N.D. Cal. 2013) (granting habeas relief upon finding that "petitioner Chen's detention has lasted well beyond the typical period described in *Demore*, and has become 'prolonged' because neither release nor removal are imminent"); see also *Bautista*, 862 F. Supp. 2d at 381-82 (stating that "[d]ue process has been long overdue to *Bautista*" when *Bautista* was detained, pursuant to § 1225(b)(2)(A), for twenty-six months). Under these circumstances-even without a bright-line rule regarding a reasonable length of mandatory detention-it is clear that Petitioner's twenty-six month mandatory detention is unreasonable. *Maldonado v. Macias*, 2015 U.S. Dist. LEXIS 167361 (5th Cir.)

Whether Petitioner's removal is significantly likely in the reasonably foreseeable future, If not, then the Constitution does require his immediate release.

### **C. CONDITIONS OF CONFINEMENT**

The condition of Petitioner's detention constitutes punishment which is based on twelve factors:

- 1) The abuse and discrimination relates the social environment conditions during his detention and the continuance of his detention, which increases his risk of permanent mental illness;
- 2) the long term of the lack of inadequate brand new underwear, socks, T-shirt, which increase his risk of health;
- 3) abuse from the officials;
- 4) the very low temperature of the air conditioner in the law library and the dorm combine with the cold shower water sometimes very hot and the refusal of the request for sweater, extra blanket, he would be shaking when he is in law library and he would be covering a blanket for the whole time when he was in the dorm, periodic vendor machine noise and sometimes extremely loud noise made by the detainees in the dorm, along with abuse, which lead to his long term mental and physical torture;

5) the extremely loud noises in the dorm combines with the officials indifference about it, which increase his risk of permanent reduction of his ear-hearing;

6) his arbitrary disciplinary, and arbitrary transferring between the dorms.

7) No locker. I had requested for many times, no response. A lot of the copies of my Grievance Forms lost. I'm not sure if there are any other of my documents had lost, because I have too many documents. It's positive that my sensitive information has been leaked.

8) Request the copy of my requests and complains from the Tablet for many times, no answer.

9) There are a lot of arguments for my cases that I need to search and check from the law library. But the law library App from the Tablet was suddenly not available without any notice or explanation. It's been almost a month. I'm very worry about my situation since I didn't speak English before I came to the United States, also I appear as pro se, I've been detained for more than 29 months, and I have too many paperwork need to do.

10) No further information relates to my detention and removal proceeding were provided. I've been in the dark for more than 29 months. The whole thing is totally unfair to me.

11) Practice of housing detainees with convicted inmates. I don't have criminal history, I was a violence victim, but I'm detained with convicted inmates.

#### **D. ADMINISTRATIVE PROCEDURES ACT (APA)**

The Legal Orientation Program and OIDO Case Manager Interview Program had been closed without notice. The last notice was on February 3, 2025, it said: we were informed by DOJ EOIR that the pause to LOP operations/services has been rescinded. The LOP request form has been enabled.

The law library App from Tablet also is out of service without notice and explanation.

The reply: LOP has been dismantled, closing form. Request ID #581320071 on Jul. 14, 2025.

The reply: OIDO no longer has a Case Manager. Request ID #558250261 on May 13, 2025.

Petitioner had requested many times relief from his Deportation Officer J. Hernandez in

2023, which were all denied. The IJ refused to grant Petitioner bond with an invalid reason, which was " Denied, because the respondent has a removal order on appeal to the Board". Petitioner appealed the IJ's bond decision to the BIA on January 24, 2025, the appeal dismissed as moot on June 3, 2025 because Petitioner received the final decision on his removal proceeding from the BIA on April 10, 2025. He also requested supervision release upon his 90-day review, but the agency has yet to make a determination or they revoked Petitioner's supervision release without a pre-deprivation hearing. His detention is indefinite, even though he has no chance to know his situation. Petitioner had been brought to the airports without notices, which were in Los Angeles on August 19, 2025 and in El Paso on September 9, 2025. Petitioner was denied another bond in his bond hearing with another invalid reason on October 1, 2025, which was "because you came to the United States without a visa".

The final agency actions that are arbitrary and capricious, contrary to the APA and his substantive and procedural due process rights.

#### **E. EQUAL PROTECTION**

During the detention, back in 2023, I was called "chi-na" by an officer named Peregrino because I'm a Chinese, I'm not sure if its a discrimination, after that I asked officer Delgado about it, he told me they could not call me that, then I realized it's a discrimination but I was not for so sure. Since then, there were many detainees even officers started calling me "chi-na", it lasted for many months. I was suffering but I didn't know what to do, also I was so confused. I was called "ma cc", "qing shampoo" and "ma li gong" by detainees for more than a year because they knew I had been staying at home separating from the real world for 8 years due to the persecution I had.

I had a conflict with two detainees in unit 2 on around June 24, 2025 who kept calling me "qing shampoo" which means "washing head without shampoo: no hair: Chinese living in qing period, someone told me it means coward". I reported to officer Lopez, he reported to the Captain. Then Capain Flores, Captain Quezada and a lady official came and asked me to go to processing alone. The detainees immediately encouraged and gained in numbers from two to three people, they kept calling me "qing shampoo". The Captains stopped me in the gate, Captain Guezada blamed me as a trouble maker, he said I had been making another trouble in unit 3 a couple months ago, but it was actually happened in unit 4 on May 2, 2025 and I was assaulted by three detainees and humiliated by the whole dorm. After I went back to unit 2, the people who called me "qing shampoo" from three people to four people. Then I did hunger strike to protest it but then I got disciplined for 8 hours, I was very cold but got denied blanket. I had been suffering from those discrimination for a very long time.

There were also two incidents had happened in 7A on September 24 and October 22.

These two events are discrimination against Petitioner on the basis of his national origin in violation of the Equal Protection Clause under the Fifth and Fourteenth Amendments to the United States Constitution.

## **F. TEMPORARY RESTRAINING ORDER**

### **1. Likelihood of Success on the Merits**

The right to be free of incarceration is at the heart of the Due Process Clause. There are serious questions, at the very least, as to whether ICE may unilaterally deprive Petitioner of his liberty without timely review from a neutral decision-maker. Petitioner has shown that the balance of hardship tips sharply in his favor, and thus that issuance of a preliminary injunction is appropriate.

Petitioner's indefinite detention violates his substantive due process rights because his civil confinement has "become excessively prolonged, and therefore punitive." (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4, 107 S. Ct. 2095, 95 . Ed. 2d 697 (1987)). "The length of his confinement, its in-relatedness to the Immigration and Nationality Act's statutory purpose, and the negative impact imprisonment has on his health, constitute an objectively unreasonable harm that rises to the level of punishment. He is therefore entitled to immediate release.

The government's objectives in detaining Mr. Liao are not reasonable because they could be equally met by less punitive alternatives and are not connected to a constitutionally permitted purpose: to avoid flight or dangerousness. There are also too many evidence indicates that Mr. Liao is not a flight risk or danger to the community. He received supporting documents from a shelter organization Casa Marianella in 2023 and 2025, they were willing to provide Mr. Liao daily needs including housing, foods, clothes, medical and immigration case support, to make sure Mr. Liao attend the hearing and comply with the requirements of his release. Besides, there's a likelihood that Mr. Liao will win his asylum due to the past persecution he had and there are so many evidence show that he had been singled out for persecution thus has a well-founded fear of future persecution. Also Mr. Liao has been always comply with the law and rules before or after he crossed the border, also including his 29 months detention period. He has never had intention to violate the rules or the law. He has never indicated a flight risk.

Petitioner is being deprived of his statutory and constitutional rights, and continued detention constitute irreparable injury. The two times of the denial of his bond hearings, which prolonged his detention in violation of federal laws, is attributable to the new DHS policy. Granting the Temporary Restraining Order is necessary to prevent continued detention without due process.

It's been more than 29 months since Petitioner has been detained on May 7, 2023. His indefinite detention without an individualized bond hearing violated (1) Petitioner's right to substantive due process under the Due Process Clause of the Fifth Amendment, because it is wholly excessive to any legitimate purpose; (2) his right to procedural due process; and (3) the Immigration and Nationality Act and its implementing regulations. However, the alien's 29 months mandatory detention under the combination of his detention is unreasonable and violated his rights to substantive due process. Further, as to procedural due process, the government had not provided the alien all the process that he was due; without notice; the void of NTA and his forensic evaluation report. Those meaningfully delayed his removal proceeding.

Petitioner's indefinite detention violates the substantive element of the Fifth Amendment's Due Process Clause, which "prohibits prolonged pre-removal detention of an immigrant unless it is based on a sufficiently legitimate government interest." ICE has no legitimate reason to keep Petitioner in custody, not because it has any concerns about Petitioner's identity, risk of flight, or threat to the community. ICE has stipulated to his identity, passport, that a sponsor in Austin has agreed to support him if he is paroled, and that he has no criminal history. It's also a violation of his procedural due process rights that the Fifth Amendment entitles civil detainees "to an evidentiary review hearing, with procedural protections, in front of a neutral decision-maker, to ensure that a detention decision comports with the strict constitutional standards limiting deprivations of liberty in the absence of a criminal conviction."

From all above, there are so many constitutional violations during Petitioner's removal proceeding and his detention, Petitioner is likely success on the Merits.

## **2. Likely to suffer irreparable harm in the absence of preliminary relief**

Petitioner faces potentially serious irreparable harm if he is remaining detained, in the form of severe mental illness, long-term health effects and possibly death due to the daily abuse that the daily mental harm he receives.

It is well established that the deprivation of constitutional rights unquestionably constitute irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2021) (quoting *Elrod v. Burns*, 427 U.S. 247, 272(1976). Moreover, "The Ninth circuit has recognized 'irreparable harms imposed on anyone subject to immigration detention' including 'the economic burdens imposed on detainees and their families as a result of detention.'" *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Leivn-Perez v. Holder*, 640 F.3d 912, 969-970 (9th Cir. 2011)(the inability to pursue a petition for review may constitute irreparable harm). The evidence here demonstrates that Mr. Liao's indefinite detention, abuse during the detention, the denied of his right to access the court, the denied his motion to reconsider on the removal order on untimely filing and

the dismissed his first petition for review on untimely filing indicates that the irreparable injury has occurred.

Most courts consider the infringement of a constitutional right enough and require no farther showing of irreparable injury. When an alleged constitutional right is involved, most courts hold that not further showing of irreparable injury is necessary.

### **3. Balance of the Harms and Government/Public Interest**

Because the interest of the government is the interest of the public, the final two factors merge when the government is the opposing party.

"The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." [Jorge M.F. v. Wilkinson, No. 21-cv-01434, 2021 WL 783561, at \*3 (N.D. Cal. Mar. 1, 2021)](cleaned up)(quoting Ortiz Vargas, 2020 WL 5074312, at \*4 and then quoting Hernandez, 872 F.3d at 996); see also Preminger v. Principi, 422 F.3d 815, 826(9th Cir. 2005)("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Without the requested injunctive relief, Petitioner-Plaintiff faces the danger of significant health consequences and deprivation of his liberty. Yet the comparative harm potentially imposed on Respondent-Defendant is minimal - a mere short delay in detaining Petitioner-Plaintiff, should the government ultimately show that detention is intended and warranted. Moreover, a party "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." Zepeda v. U.S. Immigr. & Nat. Serv., 753 F.2d 719, 727 (9th Cir. 1983).

The Government does not enjoy an unfettered right to detain noncitizens in contravention with their Fifth Amendment rights. It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings where a constitutional right hangs in the balance, that right usually trumps any harm to the defendant.

In addition, there appears to be no dispute that there is no evidence that Mr. Liao poses a risk of flight or a danger to the community, neither before or after he crossed the border, nor during his detention.

However, detention is not necessary to further Defendant's interest in preventing Petitioner from absconding. Rather, ICE has a number of alternative tools available to it to ensure enforcement, which it is free to use with Petitioner if he is released from detention. For example, ICE's conditional supervision program uses a combination of

electronic ankle monitors, bio-metric voice recognition software, unannounced home visits, employer verification, and in-person reporting requirements to supervise individuals released from detention. An initial study of ICE's alternatives to detention reported a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings among supervised individuals. U.S. Gov't Accountability Office, GAO-15-26, *Alternative to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 30 (2014). Thus, because Defendants' interest can be served through means other than detention, and Petitioner's interest are irreparably harmed by staying in detention, the balance of the equities favor Petitioner.

The public also has an interest in maintaining public safety. It is undisputed that Petitioner Mr. Liao does not have a history of violence, although Mr. Liao had been arrested for recklessly attacking a woman with one punch 18 years ago in China, he received only 5 days in detention with no charge. However, he committed a reckless crime, according to 18 U.S.C.S § 16(a) compels conclusion that "use of force" in 18 U.S.C.S § 16(a) requires specific intent to use force. *Tran v. Gonzales*, 414 F.3d 464, 2005. Reckless crimes are not crime of violence under 18 U.S.C.S § 16(a). *Jimenez-Gonzalez v. Mukasey*, 548 F.3d 557 (7<sup>th</sup> Cir. 2008). Petitioner has never been charged that it indicates that he has no criminal history. He has been always complying the law before or after he crossed the border. He went to the port of entry three times and the Consulate of the United States two times for seeking asylum in New Laredo, Mexico. He registered CBP One, tried his best to make appointment, but the system had been always crashed. During his trip from Colombia to Panama in a small boat in the late night in a sea, he hadn't a life-jacket, but he kept encouraging people how to be safe. He accompanied a couple for a while for their safety who were carrying a 2 years old baby when they were crossing the Panama jungle, despite his own difficulties that he was carrying a near 15kg backpack. He also helped this couple's 8 years old boy to climb a dangerous hill during the trip. Petitioner had never had an intention to cross the border in the wildness, he turned in himself immediately to a border patrol officer after he saw the officer was far away from him, which means he had no intention to escape from inspection. There were compelling reason that Petitioner had to cross the border illegally, which was that he felt his life was in danger, also it's the only way left for him to seek asylum in the United States.

During Petitioner's detention in El Paso SPC, there were heavy "boom" sounds happened in a big oven in the kitchen, it was an emergency situation, but Petitioner stayed behind and kept the door opening to make sure every one came out of the kitchen safely and smoothly.

Back in the time when Mr. Liao was in China, for many years, he had tried his best to speak out for people in the public. From above all, it indicates that Mr. Liao poses no

danger to the public but it actually indicates that his release will benefit the public. His release from detention is in the public's interest.

**WHEREFORE**, Petitioner prays that this Court grant Petitioner the following relief:

- 1) Assume jurisdiction over these matters;
- 2) Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution; that Petitioner Mr. Liao's continued detention lacks a reasonable relationship to any legitimate government purpose and is excessive and punitive in nature;
- 3) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody, under reasonable conditions of supervision;
- 4) Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the ICE [Field Office in El Paso] during the pendency of these proceedings and while the Petitioner remains in Respondent's custody; and
- 5) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- 6) In alternative, order that Mr. Liao be provided a bond hearing before a neutral adjudicator within seven days, at which hearing Respondents bear the burden of establishing that continued detention is warranted by clear and convincing evidence;
- 7) Granted further relief as this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted this on

10.26.2025.

Liao Kun

Liao Kun, Pro se

El Paso Service Processing Center  
8915 Montana AVE.  
El Paso, TX, 79925

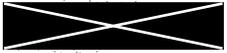
## CERTIFICATE OF SERVICE

I Liao Kun, hereby certify that I sent the foregoing along with any attached with the United States District Court the Clerk of the Court for the Western District Of Texas El Paso Division by first class mail on 10.26, 2025. I further certify that Petitioner will serve a copy of the foregoing and any attached pages to DHS/ICE Office of Chief Counsel - EPD by the El Paso SPC's internal mailing system to the address 11541 Montana Avenue, Suite O, EL PASO, TX 79936, on 10.26, 2025.

Liao Kun  
Liao Kun, Pro se

10.26.2025  
Date

Liao Kun

A   
El Paso SPC  
8915 Montana Ave.  
El Paso, TX 79925



**FILED**  
OCT 29 2025  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

United States District  
Western District Court of  
EL PASO DIVISION, office of t  
525 Magoffin Ave. Room  
EL PASO, TX 799

