

1 Eric Mark  
2 Law Office of Eric M. Mark  
3 96 Summer Ave  
4 Newark, NJ 07104  
5 Tel: (973) 306-4246  
6 Email: EricM@ericmarklaw.com

7 Attorney for Petitioner

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEW JERSEY**

10 **AIPING LIU,**

11 Petitioner

12 vs.

13 **TODD LYONS**, Acting Director,  
14 Immigration and Customs  
15 Enforcement, **KRISTI NOEM**,  
16 Secretary of United States  
17 Department of Homeland Security,  
18 **RUBEN PEREZ**, Immigration and  
19 Customs Enforcement, Acting  
20 Newark Field Office Director,  
21 **ANGELA KLAPAKIS**, Field  
22 Office Director of the Philadelphia  
23 USCIS office, **LUIS SOTO**,  
24 Director, Delaney Hall Detention  
25 Facility, **PAMELA BONDI**, United  
States Attorney General,

Respondents

) **CASE NO. 25-cv-16289**

) **PETITION FOR WRIT OF HABEAS**  
) **CORPUS UNDER 28 U.S.C. § 2241 AND**  
) **COMPLAINT FOR INJUNCTIVE**  
) **AND DECLARATORY RELIEF**

I. INTRODUCTION

1. Petitioner Aiping Liu (“Ms. Liu”) is in immigration detention and faces the prospect of removal because she was seized by Immigration and Customs Enforcement (“ICE”) while attending her adjustment of status interview at the USCIS Field Office in Philadelphia, PA. Without this Court’s intervention, the government will continue to detain Ms. Liu and remove her in violation of federal law, federal regulations, and due process.
2. Ms. Liu, a 49-year-old woman, is a native and citizen of China. She entered the United States with a fraudulent Japanese passport on April 4, 1994 at Miami, Florida.
3. She has been subject to a final order of exclusion since her application for asylum was denied by the Immigration Judge (“IJ”). Exhibit A: Order of Exclusion. On July 25, 1994, Ms. Liu filed an I-589 Application for Asylum and Withholding of Removal. On May 31, 1995, her asylum application was denied, and she was ordered excluded from the United States.
4. On July 1, 1999, Ms. Liu filed a motion to reopen based on claims under the Convention Against Torture (“CAT”), [REDACTED]
5. On November 15, 2000, the Immigration Judge denied the motion to reopen. Ms. Liu appealed that decision to the Board of Immigration Appeals (“BIA” or “Board”). On March 11, 2002, the BIA dismissed the appeal, holding that the birth of her two United States citizen children (the second was born during the litigation) did not create an exception to the applicable filing deadline. Exhibit B: BIA decision March 11, 2002.

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6. On February 22, 2008, she filed a second motion to reopen with the Board, alleging changed country conditions in China and asserting that she would be subject to persecution and torture based on the birth of her two U.S. citizen sons, H [REDACTED] and Y [REDACTED]. Exhibit C: BIA decision dated April 22, 2008.
7. On April 22, 2008, the Board denied the motion to reopen, finding that it was time- and number-barred.
8. Ms. Liu’s United States citizen son, Harry Yang, filed an I-130 immigrant petition for her which was approved by the United States Citizenship and Immigration Services (“USCIS”) on June 28, 2019. Exhibit D: I-130 Approval.
9. On October 2, 2025, Ms. Liu appeared for her adjustment of status interview pursuant to that application. At the conclusion of the interview, she was detained by ICE. Exhibit E: Affidavit of Marco Pignone, III, Esq.
10. Ms. Liu detention and intended removal violate and would violate the Immigration and Nationality Act and its regulations and the U.S. Constitution’s due process guarantee. Unless habeas relief is granted, she faces removal to a country that she left decades ago, and continued detention away from her U.S. citizen children, lawful permanent resident mother, and family and denial of adjustment of status to which she is lawfully entitled.

## II. JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and Article I, Section 9, Clause 2, of the United States Constitution (Suspension Clause).

1 12. Venue is proper in the District of New Jersey because Petitioner is currently detained  
2 at the Delaney Hall Detention Center in Newark, New Jersey under color of the  
3 authority of the United States, in violation of the Constitution, laws or treaties thereof.  
4 28 U.S.C. §§ 1391, 2241.  
5

6 **III. PARTIES**

7 13. Petitioner Aiping Liu was detained by ICE on October 2, 2025. She remains in  
8 immigration custody at the Delaney Hall Detention Center in Newark, New Jersey.

9 14. Respondent Todd Lyons is the Acting Director of Immigration and Customs  
10 Enforcement. He is named in his official capacity.

11 15. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's  
12 ultimate legal custodian. She is sued in her official capacity.

13 16. Respondent Ruben Perez is the Acting Field Office Director for ICE Enforcement and  
14 Removal Operations in the Newark Field Office. He is one of Petitioner's legal  
15 custodians, and is sued in his official capacity.

16 17. Respondent Luis Soto is employed as the Director of the Delaney Hall Detention  
17 Center, where Petitioner is detained. He has immediate physical custody of Petitioner.  
18 He is sued in his official capacity.

19 18. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of  
20 the Department of Justice. She is one of Petitioner's legal custodians.

21 19. Angela Klapakis is the Field Office Director of the Philadelphia USCIS office. She is  
22 being sued in her official capacity.  
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**IV. FACTS**

**A. Petitioner's Immigration History**

20. Petitioner Aiping Liu is a native and citizen of the People's Republic of China. In 1994, Ms. Liu departed China and traveled to the Bahamas. While in the Bahamas, an individual offered her a fraudulent Japanese passport under the name "Rumiko Shoji" to facilitate her entry into the United States. She paid \$300 for the passport.

21. On April 4, 1994, Ms. Liu entered the United States at Miami International Airport using the fraudulent passport. On July 25, 1994, she filed an I-589 Application for Asylum and Withholding of Removal. On May 31, 1995, her asylum application was denied, and she was ordered excluded from the United States.

22. On July 1, 1999, Ms. Liu filed a motion to reopen based on claims under the

Convention Against Torture ("CAT"), asserting a fear of [REDACTED]

[REDACTED] On November 15, 2000, the Immigration Judge denied the motion to reopen. Ms. Liu appealed that decision to the Board. On March 11, 2002, the Board dismissed the appeal, holding that the birth of her two United States citizen children did not create an exception to the applicable filing deadline.

23. On February 22, 2008, Ms. Liu filed a second motion to reopen with the BIA, alleging changed country conditions in China and asserting that she would be subject to persecution and torture based on [REDACTED]

[REDACTED] On April 22, 2008, the BIA denied the motion, finding it time- and number-barred.

**B. Petitioner's effort to become a lawful permanent resident.**

- 1 24. On September 15, 2018, Ms. Liu filed a Form I-485, Application to Register  
2 Permanent Residence or Adjust Status. On June 27, 2019, she appeared for her I-485  
3 interview before U.S. Citizenship and Immigration Services (“USCIS”). During that  
4 interview, Ms. Liu admitted that she had also made misrepresentations on her prior I-  
5 589 asylum application.
- 6 25. On June 28, 2019, USCIS approved the Form I-130, Petition for Alien Relative, filed  
7 by Ms. Liu’s U.S. citizen son, Harry Yang. However, USCIS determined that Ms.  
8 Liu was inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and  
9 Nationality Act (“INA”) for willfully misrepresenting material facts to procure  
10 admission to the United States and in connection with her asylum application. She  
11 was provided an opportunity to file Form I-601, Application for Waiver of Grounds  
12 of Inadmissibility.
- 13 26. On September 5, 2018, Ms. Liu filed an I-601 waiver application, designating her  
14 mother as the qualifying relative. On July 8, 2019, USCIS denied the I-601 waiver,  
15 finding that she failed to demonstrate the requisite level of extreme hardship to her  
16 qualifying relative. As a result, USCIS also denied her I-485 application for  
17 adjustment of status.
- 18 27. On September 26, 2024, Ms. Liu submitted a second I-485 application for adjustment  
19 of status and I-601 application for waiver of inadmissibility based on her mother’s  
20 new diagnoses for neurocognitive disorder (probable Alzheimer’s, DSM-5 799.59  
21 (R.190) and intellectual disability (DSM-5, 319 (F-70)). Exhibit F: 2024 USCIS  
22 submission.  
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1 28. Under pre-IIRIRA law, Immigration Judges generally did not have jurisdiction to  
2 adjudicate applications for adjustment of status in exclusion proceedings. A limited  
3 exception existed for individuals who had initially been inspected and admitted into  
4 the United States, subsequently filed an application for adjustment, and then departed  
5 the country under a grant of advance parole pursuant to 8 U.S.C. § 1182(d)(5) (1994).  
6 *See In re Castro–Padron*, 21 I. & N. Dec. 379, 380 (BIA 1996); *Succar v. Ashcroft*,  
7 394 F.3d 8, 17 & n.12 (1st Cir. 2005); *see also* 8 C.F.R. §§ 245.2(a), 236.4 (1995).  
8 Following the enactment of IIRIRA, the governing principles remained essentially  
9 unchanged. *See Zheng v. Gonzales*, 422 F.3d 98, 119 & n.16 (3d Cir. 2005)  
10 (recognizing the continued applicability of the narrow exception identified in *In re*  
11 *Castro–Padron*).  
12

13 29. In this case, Ms. Liu was placed in exclusion proceedings prior to IIRIRA, and  
14 her exclusion order subsequently became final. She does not fall within the  
15 narrow *Castro–Padron* exception, as she did not depart under a grant of  
16 advance parole after applying for adjustment. Therefore, under the governing  
17 pre-IIRIRA regulatory scheme, the Immigration Judge lacks jurisdiction to  
18 adjudicate her application for adjustment of status.  
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20 30. Because Ms. Liu’s case arises from exclusion proceedings and does not  
21 involve a situation in which the Immigration Judge has jurisdiction under the  
22 limited statutory and regulatory exceptions, jurisdiction over her Form I-485  
23 properly lies with USCIS. The applicable regulations vest USCIS (formerly  
24 INS) with jurisdiction to adjudicate adjustment applications filed by  
25

1 individuals in exclusion proceedings, unless the narrow exception applies. *See*  
2 8 C.F.R. § 245.2(a) (1995).

3 31. Accordingly, despite the existence of a final exclusion order, Ms. Liu remains  
4 within the exclusion framework, and jurisdiction to adjudicate her adjustment  
5 of status application rests with USCIS, not the Immigration Court.

6 **C. Petitioner’s detention during the adjustment of status process.**

7 32. On August 18, 2025, she appeared for her interview based on those  
8 applications. At the conclusion of the interview, she was detained by ICE.

9 33. Petitioner poses no danger or flight risk.

10 34. Upon information and belief, her detention and intended removal is founded  
11 on nothing other than her May 31, 1995 final exclusion order—which she  
12 was attempting to address through the adjustment of status process.

13 35. Petitioner’s abrupt detention has already caused significant harm to her  
14 family.

15 36. Upon information and belief, there is a strong likelihood that ICE will remove  
16 Petitioner from the United States.

17 37. Without intervention of this Court, Petitioner may be removed from  
18 the United States without the opportunity to be granted adjustment of status  
19 before USCIS despite having completed and satisfied all requirements and  
20 being lawfully entitled to such status. Alternatively, Petitioner will continue  
21 to be detained indefinitely while awaiting USCIS action. Both outcomes  
22 would be unlawful.  
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V. CLAIMS FOR RELIEF

COUNT ONE

**Immigration and Nationality Act and Applicable Regulations  
(as applied to Petitioner’s detention)**

38. The foregoing allegations are realleged and incorporated herein.

39. Interpreted in light of the Constitution, the Immigration and Nationality Act (“INA”) and its applicable regulations did not permit Petitioner’s abrupt detention after she completed the final step to regularize her immigration status and without any determination that she poses a danger to the community or flight risk. The INA makes detention mandatory only during the “removal period”—a 90-day period that began when Petitioner’s order of exclusion became final, and has long since expired. 8 U.S.C. § 1231(a)(1). After the 90-day period, detention is permissible only in certain circumstances, upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

40. In this case, the administrative order became final on May 31, 1995, when the Immigration Judge denied Ms. Liu’s asylum application and ordered her excluded. Her subsequent detention occurred approximately thirty-one (31) years after the entry of that exclusion order, and more than a year after she initiated the process of adjusting status to become a lawful permanent resident. This detention, effectuated without prior notice, without providing her any meaningful opportunity to present evidence or argument, and without an individualized determination of danger or flight risk, rests solely on the existence of the decades-old exclusion order that she had

1 effectively resolved. Such action violates the Immigration and Nationality Act (INA)  
2 and its implementing regulations.

3 **COUNT TWO**  
4 **Due Process under the U.S. Constitution**  
5 **(as applied to Petitioner’s detention)**

6 41. The foregoing allegations are realleged and incorporated herein.

7 42. Other than as punishment for a crime, due process permits the government to take  
8 away liberty only “in certain special and narrow nonpunitive circumstances . . . where  
9 a special justification . . . outweighs the individual’s constitutionally protected interest  
10 in avoiding physical restraint.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)  
11 (quotations omitted). Such special justification exists only where a restraint on liberty  
12 bears a “reasonable relation” to permissible purposes. *Jackson v. Indiana*, 406 U.S.  
13 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*,  
14 533 U.S. at 690. In the immigration context, those purposes are “ensuring the  
15 appearance of aliens at future immigration proceedings and preventing danger to the  
16 community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

17 43. Those substantive limitations on detention are closely intertwined with procedural  
18 due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to  
19 adequate procedures to determine whether their detention in fact serves the purposes  
20 of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533  
21 U.S. 692; *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir.  
22 2008). Where laws and regulations fail to provide such procedures, the habeas court  
23 must assess whether the noncitizen’s immigration detention is reasonably related to  
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1 the purposes of ensuring his appearance or protecting the community. *Zadvydas*, 533  
2 U.S. at 699.

3 44. Because Petitioner was detained without any determination that she poses a danger or  
4 flight risk, and because she in fact poses no danger or flight risk, her detention  
5 violates due process.

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7 **COUNT THREE**  
8 **Immigration and Nationality Act and Applicable Regulations**  
9 **(as applied to Petitioner's removal)**

10 45. The foregoing allegations are realleged and incorporated herein.

11 46. The Immigration and Nationality Act and its implementing regulations do not  
12 prohibit noncitizens who are present in the United States, including those who are  
13 subject to final exclusion or removal orders, from pursuing adjustment of status if  
14 they are otherwise eligible. The statutory and regulatory framework provides that  
15 certain individuals with final orders may seek relief through the appropriate  
16 adjustment procedures, including the filing of an application with USCIS. This  
17 reflects Congress's intent to allow eligible individuals to regularize their status  
18 notwithstanding the existence of a prior order, provided that they comply with the  
19 applicable adjustment process.

20 47. In this case, Ms. Liu was taken into custody without prior notice by ICE. The  
21 agency's attempt to remove Petitioner without affording her the opportunity to pursue  
22 the adjustment of status procedures that are available under the Immigration and  
23 Nationality Act and the relevant regulations, and which she had already initiated,  
24 violates the statutory scheme.

1 48. By seeking to remove her solely on the basis of a decades-old exclusion order,  
2 without consideration of her pending adjustment application or the regulatory  
3 procedures that apply to individuals in exclusion proceedings, the agency acted in  
4 violation of the Immigration and Nationality Act, the governing regulations, and  
5 fundamental due process principles.

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7 **COUNT FOUR**  
8 **Due Process under the U.S. Constitution**  
9 **(as applied to Petitioner’s removal)**

10 49. Petitioner incorporates by reference the allegations set forth in each of the preceding  
11 paragraphs of this petition.

12 50. Under the Fifth Amendment to the United States Constitution, those threatened with  
13 the loss of liberty or property due to actions by the federal government are entitled to  
14 due process of law.

15 51. Due process protects a noncitizen’s liberty interest in the adjudication of applications  
16 for relief and benefits made available under the immigration laws. *See Arevalo v.*  
17 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the “right  
18 to seek relief” even when there is no “right to the relief itself”). Petitioner has a  
19 protected due process interest in her ability to apply for legal permanent resident  
20 status.

21 52. Any efforts by ERO to remove Petitioner, without allowing her to avail herself of the  
22 procedures created by the INA and its regulations, violate and would violate due  
23 process.

24 **COUNT FIVE**  
25 **Administrative Procedures Act**  
**(as applied to Petitioner’s detention and removal)**

1 53. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein  
2 and incorporates them by reference.

3 54. The Administrative Procedures Act (APA) forbids agency action that is “arbitrary,  
4 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.  
5 § 706(2)(A). A court reviewing agency action “must assess . . . whether the decision  
6 was based on a consideration of the relevant factors and whether there has been a  
7 clear error of judgment”; it must “examin[e] the reasons for agency decisions—or, as  
8 the case may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53  
9 (2011) (quotations omitted).

10 55. Petitioner’s detention and any efforts to remove Petitioner under the facts alleged  
11 here, including facts showing that she was seized while availing herself of the  
12 adjustment of status process for individuals placed in exclusion proceedings created  
13 under the INA and regulations, are and would be arbitrary and capricious under the  
14 APA.

15 56. The APA also sets forth rule-making procedures that agencies must follow before  
16 adopting substantive rules. *See* 5 U.S.C. § 553. The Department of Homeland  
17 Security followed these rulemaking procedures to establish the adjustment of status  
18 process for arriving aliens.

19 57. The ERO’s sudden decision to prohibit Ms. Liu from pursuing the process created by  
20 these regulations, a prohibition accomplished in this case by detaining and attempting  
21 to remove Ms. Liu in the midst of her efforts to legalize her status, improperly alters  
22 these substantive rules without notice-and-comment rulemaking, in violation of the  
23 APA.  
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1 **VI. REQUEST FOR ORAL ARGUMENT**

2 58. Petitioner does not request oral argument on this Petition unless deemed necessary by  
3 the Court.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests the Court to:

- 6 a. Assume jurisdiction over this matter;
- 7 b. Enjoin Respondents from removing Petitioner from the United States  
8 until the USCIS make a decision on her I-601 and I-485 applications.;
- 9 c. Order ICE to release Ms. Liu from custody pending adjudication of the  
10 applications by USCIS or alternatively to enjoin Respondents from  
11 transferring the Petitioner outside the jurisdiction of the District of New  
12 Jersey pending the resolution of this case;
- 13 d. Direct United States Citizenship and Immigration Services to adjudicate  
14 Petitioner's pending applications for waiver of inadmissibility and for  
15 adjustment of status within seven (7) days of the Court's order;
- 16 e. Prohibit the Department of Homeland Security and its components,  
17 including ICE, from re-detaining Petitioner absent a new and independent  
18 violation of law;
- 19 f. Declare that the process applied to Petitioner by Respondents violates the  
20 Due Process Clause of the Fifth Amendment, the INA, the APA, and  
21 federal regulations;
- 22 g. Issue a writ of habeas corpus directing Respondents to pursue a  
23 constitutionally adequate process to justify adverse immigration actions  
24 against Petitioner;  
25

- 1 h. Grant attorneys' fees and costs of this action under the Equal Access to  
2 Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and  
3 i. Grant such other relief as the Court deems necessary and proper.  
4

5  
6 Dated: Oct. 6, 2025

Respectfully submitted,

/s/ Eric M. Mark

Eric M. Mark, Esq.

Attorney for Petitioner

**PROOF OF SERVICE**

I, the undersigned, declare that my office is in Newark, New Jersey. I am over the age of eighteen (18) years and not a party to the action within. My business address is 96 Summer Ave Newark, NJ 07104. On October 6, 2025, I caused to be served the following documents:

**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, MEMORANDUM OF LAW, AND APPENDIX** by placing a true and correct copy in a sealed envelope, each addressed as follows:

Kristi Noem  
U.S. Department of Homeland Security  
2801 Nebraska Avenue NW  
Washington, D.C. 20528

Todd Lyons  
U.S. Immigration and Customs Enforcement is:  
500 12th Street SW  
Washington, DC 20536

Ruben Perez  
Enforcement and Removal Operations  
Newark Field Office  
970 Broad St. 11th Floor  
Newark, NJ 07102

Luis Soto  
Delaney Hall Detention Facility  
451 Doremus Avenue  
Newark, New Jersey 07105

Pamela Bondi  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Civil Process Clerk  
U.S. Attorney's Office  
970 Broad Street, 7th Floor  
Newark, NJ 07102

Angela Klapakis  
Philadelphia USCIS office  
30 N. 41<sup>st</sup>  
Philadelphia, PA 19104

**By mail.**

I declare under the penalty of perjury that the foregoing is true and correct. Executed on  
October 6, 2025, at Newark, New Jersey.

/s/ Eric M. Mark

Eric M. Mark, Esq.