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6 **UNITED STATES DISTRICT COURT**  
7 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
8 **SEATTLE, WASHINGTON**

9 **Pui Sun HO**  
10 *Petitioner,*

11 **v.**

12 **Kristi NOEM**, *in her official capacity as*  
Secretary of the Department of Homeland Security,

13 **Pamela BONDI**, *in her official capacity as*  
Attorney General of the United States,

14 **Todd LYONS**, *in his official capacity as*  
15 Acting Director and Senior Official Performing the  
16 Duties of the Director of U.S. Immigration and  
Customs Enforcement,

17 **Cammilla WAMSLEY**, *in her official capacity as*  
18 Field Office Director of Enforcement and Removal  
Operations, Seattle Field Office, U.S. Immigration and  
19 Customs Enforcement (ICE),

20 **Bruce SCOTT**, *in its official capacity as*  
Warden of the Northwest ICE Processing Center,

21 *Respondents.*  
22  
23

**Case No.**

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

**Agency File No.:** 

## INTRODUCTION

1. This case challenges the government’s arbitrary re-detention of a lawful permanent resident who has lived under lawful supervision for nearly three years without incident. Petitioner Pui Sun Ho is not challenging his removal order, nor asking this Court to review any decision within the exclusive jurisdiction of the court of appeals. He challenges only his present confinement—an act of executive overreach that deprived him of liberty without notice, hearing, or lawful basis. The Constitution, the habeas statute, and binding precedent prohibit the government from stripping liberty first and justifying it later. The Due Process Clause demands a pre-deprivation hearing before a neutral adjudicator when the government seeks to revoke conditional liberty. No such hearing occurred here.

2. Petitioner’s renewed confinement bears no lawful justification. He was released under a formal Order of Recognizance, complied with every condition of supervision, appeared at all hearings, and remained available to DHS. Then, without warning or stated reason, ICE officers seized him outside his home, revoked his release, and confined him in a for-profit detention center. The agency acted unilaterally—without notice, without a hearing, and without judicial oversight. Such detention is unconstitutional, unlawful, and irreparable absent immediate habeas relief.

3. The question before this Court is narrow: whether the government may re-detain a lawful permanent resident, previously released under lawful supervision, without first affording the basic procedural safeguards guaranteed by the Fifth Amendment. The Constitution and the habeas statute answer no. The government’s conduct violates the most elemental liberty interest recognized in our legal tradition—the right to be free from arbitrary physical restraint.

## JURISDICTION

4. Petitioner is in the physical custody of Respondents. Petitioner is detained at the NWIPC in Tacoma, Washington.

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). *See INS v. St. Cyr*, 533 U.S. 289 (2001).

7. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

8. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction. Specifically, § 1252(a)(5) and (b)(9) do not apply here. Petitioner does not seek “judicial review of an order of removal entered or issued.” 8 U.S.C. § 1252(a)(5). Similarly, § 1252(b)(9) “consolidates” a “noncitizen’s various challenges arising from the removal proceeding” into “a petition for review [before] the courts of appeals.” *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting *INS v. St. Cyr*, 533 U.S. 289, 313 n. 37 (2001)). However, again, Petitioner challenges only Respondents’ actions to re-detain him prior to providing a legally valid justification or an opportunity to respond before a neutral adjudicator. Such an action cannot be challenged via a petition for review.

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court’s inherent equitable powers.

**VENUE**

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Petitioner is currently in custody.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

**REQUIREMENTS OF 28 U.S.C. 2243**

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added) (citation omitted). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination”).

**PARTIES**

14. Petitioner **PUI SUN HO** is a 47-year-old lawful permanent resident who was placed in removal proceedings in November 2022. On November 5, 2025, ICE arrested and detained Petitioner at the for-profit detention facility in Tacoma, Washington, operated by the GEO Group, Inc. Immigration and Customs Enforcement continue to detain Petitioner without a hearing or an opportunity to contest his detention before a neutral arbiter.

15. Respondent **KRISTI NOEM** is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”). In this capacity, she is responsible for the implementation and enforcement of the INA, overseeing ICE’s day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Lyons, Guadian, and Baltazar. which are responsible for Petitioner’s detention. Secretary Noem has ultimate custodial authority over Petitioner Mr. Kumar and is sued in her official capacity.

16. Respondent **BRUCE SCOTT** is named in his official capacity as the warden of the Northwest ICE Proceeding Center (NWIPC). Bruce Scott is employed by the private corporation The GEO Group, Inc., as Warden of the NWIPC, where Petitioner is detained.

17. Respondent **CAMMILLA WAMSLEY** is named in her official capacity as the Field Office Director for the Seattle Field Office of ICE’s Enforcement and Removal Operations (ERO) division. As Field Office Director, Respondent Wamsley is Mr. Kumar’s immediate custodian and is responsible for Mr. Kumar’s detention and removal.

18. Respondent **TODD LYONS** is named in his official capacity as Acting Director U.S. Immigration and Customs Enforcement and as such is the legal custodian of Petitioner.

19. Respondent **PAMELA BONDI** is named in her official capacity as the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration

1 court system, including the immigration judges who conduct bond hearings as her designees, and  
2 is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is  
3 legally responsible for administering Petitioner's removal and bond proceedings, and as such, she  
4 is Petitioner's legal custodian.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 20. There is no statutory requirement of administrative exhaustion before immigration  
7 detention may be challenged in federal court by a writ of habeas corpus. See 8 U.S.C. § 1252(d)(1).

8 21. The Supreme Court has recognized that exhaustion is not required where a plaintiff  
9 "may suffer irreparable harm if unable to secure immediate judicial consideration of her claim."  
10 *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Petitioner raises  
11 constitutional claims that the agency cannot redress, and where each day that passes is one in which  
12 she is being unconstitutionally deprived of her liberty. Petitioner does not challenge the merits of  
13 his removal proceedings or the outcome of any immigration-court decision; he challenges only the  
14 legality of his re-arrest and current re-detention.

15 22. Even if the Court were to consider requiring exhaustion as a prudential matter,  
16 further action with the agency is unnecessary when pursuing administrative remedies would be  
17 futile or the agency has predetermined a dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144,  
18 147-48 (1992) (holding that an administrative remedy is inadequate when it "lacks institutional  
19 competence to resolve the particular type of issue presented, such as the constitutionality of a  
20 statute" or where the "challenge is to the adequacy of the agency procedure itself"). There is no  
21 agency mechanism through which a detained individual may contest ICE's unilateral revocation  
22 of release or demand a pre-deprivation hearing. *See Hernandez v. Sessions*, 872 F.3d 976, 987 (9th  
23 Cir. 2017) (holding that habeas jurisdiction exists where the petitioner challenges the

1 constitutionality of detention itself, not its discretionary aspects). Because the constitutional injury  
2 arises from the re-detention and deprivation of liberty without process, only a federal court can  
3 remedy it.

4 23. Moreover, Exhaustion is also excused where the pursuit of administrative relief  
5 would be futile or inadequate. *See* *Gibson v. Berryhill*, 411 U.S. 575, 564 n. 14 (1973); *McCarthy*  
6 *v. Madigan*, 503 U.S. 140, 147–48 (1992). ICE’s internal review of its own decision to re-detain  
7 the Petitioner would provide no meaningful review, as the same agency that executed the unlawful  
8 arrest would adjudicate its legality. Moreover, habeas corpus exists precisely to remedy ongoing  
9 unlawful detention when other remedies are unavailable or ineffective. *See INS v. St. Cyr*, 533  
10 U.S. 289, 301 (2001) (“At its historical core, the writ of habeas corpus has served as a means of  
11 reviewing the legality of Executive detention, and it is in that context that its protections have been  
12 strongest.”).

13 24. Nor would later administrative or judicial review cure the present constitutional  
14 harm. The deprivation occurred at the moment of arrest—when liberty was extinguished without  
15 notice or hearing. A subsequent bond hearing, if one were ever granted, would come only after the  
16 damage has been done and cannot retroactively supply due process. *See Mathews v. Eldridge*, 424  
17 U.S. 319, 333 (1976) (due process requires hearing “at a meaningful time and in a meaningful  
18 manner.”). The harm is immediate, structural, and continuing.

19 25. Accordingly, this Court properly exercises jurisdiction under 28 U.S.C. § 2241 and  
20 may grant habeas relief without requiring exhaustion. Administrative processes cannot restore  
21 liberty wrongfully taken; only this Court can.

**FACTS**

**A. 2013 Removal Proceedings, 2018 Removal from the United States, and Motion to Reopen**

26. Petitioner is a 47-year-old lawful permanent resident, born in Hong Kong.<sup>1</sup> He originally entered the United States as a child at the age of 15, as a conditional resident, obtaining lawful permanent resident status in 1995.

27. In 2008, Petitioner was driving with his friend in his friend's care, when they were pulled over by the police in Oregon for not stopping the total requisite time at a red light before making a right turn. Petitioner consented for the police officers to search the vehicle, and the police found a small amount of white powder, which the police officers alleged was cocaine. On or about January 7, 2009, Petitioner plead guilty in the Circuit Court of the State of Oregon for the County of Washington for Unlawful Delivery of a Controlled Substance under ORS 475.880 (Case Number C082779CR).<sup>2</sup>

28. On May 16, 2013, Petitioner was detained at the Northwest ICE Proceeding Center, and placed in removal proceedings based on Petitioner's ORS 475.880 under. The Department of

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<sup>1</sup> Mr. Ho was born in Hong Kong and therefore a citizen of Hong Kong. However, Mr. Ho was born in Hong Kong when it was a territory of the United Kingdom. As such, the United Kingdom considers him a "British National (Overseas)" (or "BN(O)") a type of nationality particularly made for individuals born in Hong Kong before July 1, 1997. *See* Hong Kong Act of 1985 (2)(2)(2)(1)(b). British National (Overseas) "don't have the automatic right to live or work in the UK" and "aren't considered a UK national by the European Union (EU)." *See* TYPES OF BRITISH NATIONALITY, Government of the United Kingdom found at <https://www.gov.uk/types-of-british-nationality/british-national-overseas>.

<sup>2</sup> Notably, Petitioner discovered on or about October of 2024 that Oregon State Crime Lab Results found that *none* of the substances found during Petitioner's arrest tested positive for any type of controlled substances. It was further discovered that this report was submitted to the state police department and state prosecutors' office prior to Petitioner being sentenced for this state offence. The state prosecutor did not bring this exculpatory evidence to the attention to Petitioner's criminal defense counsel, nor the state court, at any point, let alone before his criminal proceedings were over. An Oregon state court recently vacated his conviction. On or about May 22, 2025, Oregon Circuit Court Judge Erik Bucher vacated Petitioner's 2009 conviction based on the motion by the State of Oregon. *Pui Sun Ho v. State of Oregon*, No. 25CV24377 (Or. Cir. Ct. Apr. 21, 2025)).

Homeland Security (“DHS”) alleged that Petitioner’s conviction constituted an “Aggravated Felony” under 8 U.S.C. § 1227(a)(2)(A)(iii). On October 1, 2013, Petitioner appeared before an immigration judge without counsel, and the Immigration Judge erroneously concluded that Petitioner’s conviction was an “aggravated felony,” terminated his status as a lawful permanent resident, and ordered him removed to Hong Kong.

**B. Petitioner’s 2014 Release from Detention, 2018 Deportation, 2019 Return to the U.S.**

29. DHS was unable to obtain travel documents from Hong Kong remove Petitioner, so on or about April 28, 2014, Petitioner was released from detention, and required to report with Immigration and Customs Enforcement (“ICE”) approximately every six months.

30. In mid-2018, DHS was able to obtain travel documents from the United Kingdom based on Petitioner’s BN(O) status. Based on this BN(O) travel document, DHS detained Petitioner at the Northwest ICE Processing Center in Tacoma, WA, to prepare for his removal to Hong Kong.<sup>3</sup>

31. It was at this time that Petitioner obtained counsel who discovered that Petitioner’s 2013 removal order was issued in error because Petitioner’s 2009 conviction did not constitute an “aggravated felony” as defined by 8 U.S.C. § 1227(a)(2)(A)(iii). Petitioner filed a motion to reopen his removal proceedings, terminate his administrative proceedings and reinstate his status as a lawful permanent resident. The Immigration Judge denied the motion to reopen, and Petitioner

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<sup>3</sup> As of January 31, 2021, due to a diplomatic conflict between China/Hong Kong and the United Kingdom, Hong Kong no longer recognizes the BN(O) travel documents as a valid to travel to Hong Kong. *See* Press Release, The Government of the Hong Kong Special Administrative Region (HKSAR), HKSAR Government follows up on China’s countermeasures against British Government’s handling of issues related to British National (Overseas) passport (January 29), <https://www.info.gov.hk/gia/general/202101/29/P2021012900763.htm> (announcing the “the non-recognition of the British National (Overseas) (BN(O)) passport as a valid travel document and proof of identity. With effect from January 31, BN(O) passports cannot be used for immigration clearance and will not be recognised [*sic*] as any form of proof of identity in Hong Kong.”).

1 appealed to the Board of Immigration Appeals. During the pendency of his appeal to the Board of  
2 Immigration Appeals, DHS removed to Petitioner to Hong Kong using the BN(O) travel document.

3 32. On or about April 9, 2019, the Board of Immigration Appeals reversed the  
4 Immigration Court's decision and agreed that Petitioner's 2009 conviction did not constitute an  
5 aggravated felony as defined by 8 U.S.C. § 1227(a)(2)(A)(iii) reopened and terminated his  
6 administrative proceedings, and restored Petitioner's lawful permanent resident status. Petitioner  
7 was then able to board a plane, and return to the United States as a lawful permanent resident.

8 **C. 2022 Removal Proceedings and Release on Recognizance**

9 33. In 2022, ICE sent Petitioner a letter requesting that he report to the Portland Field  
10 Office in Portland, Oregon. On November 17, 2022, Petitioner reported to the ICE Portland Field  
11 Office, as required, and was taken into custody. The government issued Petitioner a Notice to  
12 Appear, re-initiating removal proceedings against him based on the 2009 conviction that was the  
13 basis of his original removal proceedings.

14 34. ICE officers reviewed Petitioner's case and released him from custody under an  
15 Order of Release on Recognizance (ROR). This release required regular reporting during the  
16 pendency of his removal proceedings. He complied fully, attended all hearings and check-ins,  
17 worked lawfully, lived with his family, and structured his life in reliance on the government's  
18 supervision framework.

19 **D. November 5, 2025, Unilateral Re-Detention**

20 35. On November 5, 2025, months before his next scheduled ICE check-in and his  
21 removal proceedings are still administratively pending, ICE officers waited outside Petitioner's  
22 home, surrounded his vehicle, pulled him out of the car to arrest him, and revoked his ROR without  
23 notice, stated grounds, or an opportunity to respond. He was taken into custody in Portland, Oregon

1 and later transferred to the for-profit detention facility, Northwest ICE Processing Center in  
2 Tacoma, Washington.

3 36. Despite that Petitioner has followed all of his conditions of release, and that his  
4 removal proceedings are still administratively pending, ICE continues to detain Petitioner.

### 5 **LEGAL FRAMEWORK**

#### 6 **A. Procedural Due Process: Petitioner's Re-Detention Was Unconstitutional and Unlawful**

7 37. Due process requires that if DHS seeks to re-arrest a person like Petitioner—who  
8 has lived in the United States without incident after DHS first released him, and has submitted an  
9 application for protection from removal and otherwise complied with the terms of his release—the  
10 government must afford a hearing before a neutral decisionmaker to determine whether any re-  
11 detention is justified, and whether the person is a flight risk or danger to the community.

12 38. “Freedom from imprisonment—from government custody, detention, or other  
13 forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.”  
14 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is the “the  
15 most elemental of liberty interests.” *E.A. T.-B.*, 2025 WL 2402130, at \*3 (citation modified); *see*  
16 *also Ramirez Tesara*, 2025 WL 2637663, at \*3 (stating that the petitioner had “an exceptionally  
17 strong interest in freedom from physical confinement”).

18 39. Consistent with this principle, individuals released on parole or other forms of  
19 conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408  
20 U.S. 471, 482 (1972).

21 40. Such liberty is protected by the Fifth Amendment because, “although  
22 indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to  
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1 be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the  
2 [released individual] and often on others.” *Id.*

3 41. To protect against arbitrary re-detention and to ensure the right to liberty, due  
4 process requires “adequate procedural protections” that test whether the government’s asserted  
5 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally  
6 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

7 42. Due process thus guarantees notice and an individualized hearing before a neutral  
8 decisionmaker to assess danger or flight risk before the revocation of an individual’s release.  
9 *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is  
10 the opportunity to be heard . . . at a meaningful time in a meaningful manner.” (citation  
11 modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine  
12 whether there is probable cause or reasonable ground to believe that the arrested parolee has  
13 committed . . . a violation of parole conditions” and that such determination be made “by someone  
14 not directly involved in the case” (citation modified)).

15 43. Several courts, including this one, have recognized that these principles apply with  
16 respect to the re-detention of the many noncitizens that DHS has arbitrarily begun taking back into  
17 custody, often after such persons have been released for months and years.

18 44. For example, in *E.A. T.-B.*, this Court applied the *Mathews v. Eldridge*, 424 U.S.  
19 319 (1976), framework to hold that even in a case where the government asserted that mandatory  
20 detention initially applied, a person’s re-detention could not occur absent a hearing. The Court did  
21 the same in, *Ramirez Tesara*, *Kumar*, *Ledesma Gonzalez*, and *Ramos Nevarez*. *See Ramirez*  
22 *Tesara*, 2025 WL 2637663, at \*2–3; *Kumar*, 2025 WL 2677089, at \*2–3; *Ledesma Gonzalez*, 2025  
23 *WL 2841574*, at \*7–8; *Ramos Nevarez*, 2025 WL 3062680, at \*3.

1           45. In applying the three *Mathews* factors, the *E.A. T.-B.* court held that the petitioner  
2 had “undoubtedly [been] deprive[d] . . . of an established interest in his liberty,” 2025 WL  
3 2402130, at \*3, which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified).  
4 The Court further explained that even if detention was mandatory, the risk of erroneous deprivation  
5 of liberty without a hearing was high because a hearing serves to ensure that the purposes of  
6 detention—the prevention of danger and flight risk—are properly served. *Id.* at \*4–5. Finally, the  
7 Court explained that “the Government’s interest in re-detaining non-citizens previously released  
8 without a hearing is low: although it would have required the expenditure of finite resources  
9 (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting  
10 and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the  
11 liberty interest at issue.” *Id.* at \*5. As a result, this Court ordered the petitioner’s immediate release.  
12 *Id.* at \*6.

13           46. This Court applied a similar analysis in *Ramirez Tesara*. There, the Court reasoned  
14 that the petitioner had a “weighty” interest in his liberty and was entitled to the “full protections  
15 of the due process clause.” 2025 WL 2637663, at \*3. When examining the value of additional  
16 safeguards, the Court also noted that despite the government’s allegations of violations of the  
17 condition of release, “the fact ‘that the Government may believe it has a valid reason to detain  
18 Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports  
19 with due process.’” *Id.* at \*4 (quoting *E.A. T.-B.*, 2025 WL 2402130, at \*4). Finally, the Court  
20 reasoned that any government interest in re-detention without a hearing was “minimal.” *Id.*  
21 Accordingly, there too, the Court ordered the petitioner’s immediate release. *Id.* at \*5.

22           47. The *Kumar*, *Ledesma Gonzalez*, and *Ramos Nevarez* courts reached the same  
23 decision, again holding that all three factors weighed in favor of affording the petitioner a bond

1 hearing. 2025 WL 2677089, at \*3–4; 2025 WL 2841574, at \*7–9; 2025 WL 3062680, at \*3; *see*  
2 *also Report & Recommendation, Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct.  
3 15, 2025), Dkt. 13 (same).

4 48. This Court’s decisions in *E.A. T.-B., Ramirez Tesara, Kumar, Ledesma Gonzalez*  
5 and *Ramos Nevarez* are consistent with many other district court decisions addressing similar  
6 situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June  
7 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v.*  
8 *Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025)  
9 (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug.  
10 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D.  
11 Cal. Aug. 21, 2025) (similar); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692 (S.D.  
12 Tex. Oct. 16, 2025) (granting a preliminary injunction for immediate release due to lack of pre-  
13 deprivation hearing).

14 49. The same framework and principles apply here and compel immediate release.  
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**A. Substantive Due Process: The Government Cannot Prove That Petitioner's Removable is Foreseeable**

50. To comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

51. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for a legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91.

52. Here, Petitioner’s detention is not reasonably related to its purpose. First, there is no reason to believe that Ms. Santiago would not attend any immigration proceedings. He is a married and longtime resident of Oregon and has made his life there. More importantly, he has reliably complied with any and all government requirements related to his removal proceedings not only since being placed in removal proceedings in 2022, but since he was first placed in removal proceedings in 2013. More importantly, there has been no material change regarding public safety since Petitioner’s removal proceeding started in 2022. And, finally, the government has not demonstrated that they have the proper travel documents to deport Petitioner if he ultimately does not prevail in his ongoing removal proceedings since Hong Kong no longer recognizes BN(O) travel documents as valid for immigration screening purposes.

53. Second, when the government is unable to effectuate removal of a noncitizen, insofar as not being able to obtain a travel document to be removed, the Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is

1 provided, unless the infringement is narrowly tailored to serve a compelling state interest”);  
2 Demore, 538 U.S. at 528 (applying a less rigorous standard for “deportable [noncitizens]”).

3 54. Here, Petitioner has significant ties to the United States, and he has abided by all of  
4 the government’s requirements since his re-initiation of his removal proceedings in 2022.  
5 Accordingly, he is neither a flight risk nor a threat to public safety, so the high standard applicable  
6 to his case cannot be met.

7 55. Petitioner’s continued detention is unrelated to the purposes justifying it as a  
8 constitutional matter and therefore contravenes the fundamental Due Process protections in the  
9 Fifth Amendment of the Constitution and is causing Petitioner’s substantial and irreparable harm.

10 **IRREPARABLE INJURY**

11 56. Petitioner’s deportation presents an unusual situation. Although Petitioner was born  
12 in Hong Kong, and despite never being in the United Kingdom, Petitioner nonetheless faces  
13 deportation to a country he has literally never been to before. This peculiarity presents a unique  
14 harm that is not ordinary in most type of deportations.

15 57. Petitioner faces irreparable injury in his ongoing unlawful re-arrest and re-  
16 detention. Petitioner is separated from his extensive family in the U.S., including his U.S. citizen  
17 wife, his U.S. citizen stepdaughter, his U.S. citizen mother, his U.S. citizen stepfather, and all of  
18 his friends and community. *See e.g., Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en  
19 banc).

20 58. Moreover, Petitioner is at risk of losing his current employment. Petitioner’s  
21 employer only authorizes leave from employment for medical reasons. Petitioner’s unlawful re-  
22 arrest, re-detention, and deprivation of liberty without a pre-deprivation hearing significantly  
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1 jeopardizes his ability to continue have stable and ongoing employment. Without his income, his  
2 family will suffer severe economic hardship.

3 **CLAIMS FOR RELIEF**

4 **COUNT I:**

5 **Violation of Fifth Amendment Procedural Due Process Protections**

6 59. Petitioner repeats and incorporates by reference each allegation contained in the  
7 preceding paragraphs as if fully set forth herein.

8 60. Supreme Court has long recognized that noncitizens physically present in the  
9 United States are entitled to due process protections, regardless of their immigration status.  
10 *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical  
11 restraint “lies at the heart of the liberty that the Due Process Clause protects.” *Zadvydas*, 533 U.S.  
12 at 690.

13 61. One of the first inquiries in any case of violation of procedural due process is  
14 whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of  
15 that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972). Reliance on  
16 government policies and assurances may give rise to protected expectations under the Due Process  
17 Clause. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

18 62. Due process requires notice and a meaningful opportunity to be heard *before* the  
19 Government may deprive an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 332–33  
20 (1976).

21 63. Due process does not permit the government to re-detain Petitioner and strip him  
22 of his liberty without written notice and a pre-deprivation hearing before a neutral decisionmaker  
23

1 to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408  
2 U.S. at 487–88. Such written notice and a hearing must occur prior to any re-detention.

3 64. Respondents revoked Petitioner’s release and deprived him of liberty without  
4 providing him written notice and a meaningful opportunity to be heard by a neutral decisionmaker  
5 prior to his re-detention. The deprivation of liberty was therefore procedurally unlawful from the  
6 moment of revocation of liberty, arrest, and detention. The risk of erroneously depriving Petitioner  
7 of that interest is severe, as he is separated from his family, community, and work indefinitely, and  
8 has been thrown into sudden instability. He has been afforded absolutely no process, let alone  
9 constitutionally sufficient process. By failing to provide Petitioner with notice, an opportunity to  
10 be heard, and meaningful review, Respondents violated the Fifth Amendment. A bond proceeding  
11 after Respondents unlawfully detained petitioner is not an adequate substitute. It only occurs after  
12 liberty has already been taken.

13 65. Accordingly, Petitioner’s re-detention violates the Due Process Clause of the Fifth  
14 Amendment.

## 15 **COUNT II**

### 16 **Violation of Fifth Amendment Substantive Due Process Protections**

17 66. Petitioner repeats and incorporates by reference each allegation contained in the  
18 preceding paragraphs as if fully set forth herein.

19 67. The Constitution forbids the Government from detaining a person where detention  
20 no longer serves a legitimate, nonpunitive purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690–92  
21 (2001). Immigration detention is permissible only to prevent danger to the community or ensure  
22 appearance for removal.  
23

1        68. Petitioner has appealed the denial of his applications for relief, and that process is  
2 still in its early stages. His removal order is therefore not final, and he cannot lawfully be removed  
3 from the United States. Detention therefore serves neither recognized purpose.

4        69. Furthermore, even if Petitioner's removal proceedings were administratively  
5 final—which they are not—Respondents have not provided any evidence that it has secured the  
6 required travel documents to remove Petitioner to Hong Kong.

7        70. From 2013 to 2018, Respondents' were unable to secure travel documents from  
8 Hong Kong to remove Petitioner. In 2018, Respondents were able to secure a travel document  
9 from the United Kingdom, because of Respondent's "British National (Overseas)" ("BN(O)")  
10 status. It was this BN(O) passport that Respondents used when Petitioner was erroneously removed  
11 in 2018. However, as of January 31, 2021, due to a diplomatic conflict between China/Hong Kong  
12 and the United Kingdom, Hong Kong no longer recognizes the BN(O) passport as a valid travel  
13 document to travel to Hong Kong. *See* Press Release, The Government of the Hong Kong Special  
14 Administrative Region (HKSAR), HKSAR Government follows up on China's countermeasures  
15 against British Government's handling of issues related to British National (Overseas) passport  
16 (January 29), <https://www.info.gov.hk/gia/general/202101/29/P2021012900763.htm> (announcing  
17 the "the non-recognition of the British National (Overseas) (BN(O)) passport as a valid travel  
18 document and proof of identity. With effect from January 31, BN(O) passports cannot be used for  
19 immigration clearance and will not be recognised as any form of proof of identity in Hong Kong.").

20        71. In these circumstances, continued confinement is unreasonable, and contrary to the  
21 substantive protections of the Due Process Clause. The Fifth Amendment does not permit the  
22 Government to imprison Petitioner indefinitely when removal is not reasonably foreseeable, and  
23 no legitimate governmental interest is advanced.

**PRAYER FOR RELIEF**

Petitioner respectfully requests that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension, and set the matter for prompt hearing;
- C. Prohibit Petitioner's removal from the United States and transfer outside the District of Colorado during the pendency of this action;
- D. Declare that Petitioner's arrest and continued detention are unlawful;
- E. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;
- F. Prohibit Petitioner's re-detention by Respondents unless Petitioner is provided a pre-detention hearing before an immigration judge, where the government bears the burden to justify material changed conditions require Petitioner's detention, and the Court considers less restrictive alternatives to detention;
- G. In the alternative, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention;
- H. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- I. Grant any other and further relief that this Court deems just and appropriate.

1  
2 Dated: November 7, 2025

3 s/Hannah Hamley

4 Hannah Hamley

5 **Emery | Reddy, PLLC**

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Respectfully submitted,

9 s/ Luis Cortes Romero

10 Luis Cortes Romero\*

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23 **\*Motion for *pro hac vice* admission forthcoming**

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I represent Petitioner, Pui Sun Ho, and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: November 7, 2025

s/Hannah Hamley

Hannah Hamley

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