**UNITED STATES DISTRICT COURT**
**DISTRICT OF ARIZONA**

GUO LIAN LUO [redacted]

Petitioner,

-against-

John CANTÚ, Field Office Director, Phoenix Field Office, Enforcement and Removal Operations, Pamela Jo BONDI, Attorney General of the United States; Todd M. LYONS, Senior Official Performing the Duties of Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, Department of Homeland Security; WARDEN, in his or her official capacity, Eloy Detention Center.

Respondents.

**Civil Action No.:**

**PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 *ET SEQ.* AND FOR ORDER TO SHOW CAUSE WITHIN THREE DAYS PURSUANT 28 U.S.C. § 2243**

Petitioner/Plaintiff Guo Lian Luo [redacted], by and through counsel, hereby respectfully shows:

1. Petitioner hereby petitions this Court under 28 U.S. C.§ 2241, et seq., to issue a Writ of Habeas Corpus ordering Petitioner's release from the

custody of the Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), for statutory and constitutional violations. In the alternative, Petitioner requests that the Court order Respondents to show cause, within three days, why the relief requested in this petition should not be granted, pursuant to 8 U.S.C. § 2243.

**GROUNDS FOR ORDER TO SHOW CAUSE WITH A RETURN DATE OF THREE DAYS**

2. Petitioner requests that this Court order Respondents to immediately show cause why the relief requested in this petition should not be granted. According to 28 U.S.C. § 2243:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

28 U.S.C. § 2243; *see Boumediene v. Bush*, 128 S. Ct. 2229, 2247 (2008) (the "Clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account"); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)

## JURISDICTION

3. Jurisdiction is proper in this Court under 28 U.S.C. § 2241 (habeas corpus); 28 USC § 1331 (federal question jurisdiction); the Administrative Procedure Act, 5 USC § 701 *et seq.*; Fed. R. Civ. P. 81 *et seq.*, declaratory judgment and mandamus, brought pursuant to 28 USC § 2201, 28 USC § 1361, Article I, Section 9, Clause 2 of the U.S. Constitution, and the common law.. *See* 28 U.S.C. §§ 2241(a), (c)(3); *Singh v. Holder*, 638 F. 3d 1196, 1202 (9th Cir. 2011) ("[e]ven post-[REAL ID Act], aliens may continue to bring collateral legal challenges to the Attorney General's detention authority ... through a petition for habeas corpus") (citing *Casas-Castrillon v. Department of Homeland Security (Casas)*, 535 F.3d 942,946 (9th Cir. 2008)); *Nadarajah v. Gonzales,* 443 F.3d 1069, 1075 (9th Cir. 2006) (holding that "the jurisdiction-stripping provision [of the REAL ID Act] does not apply to federal habeas corpus petitions that do not involve final orders of removal"); *see also, Fay v. Noia*, 372 U.S. 391, 430-31 (1963) (the habeas writ "lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 213 (1953) (an alien "may by habeas corpus test the validity of his exclusion"); *Foucha v. Louisiana,* 504 U. S. 71, 80 (1992)

("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"); *see also Parham v. J.* R., 442 U. S. 584, 600 (1979) (noting the "substantial liberty interest in not being confined unnecessarily").

**VENUE**

4. Venue is proper in this court, which exercises jurisdiction in petitions for habeas corpus filed by persons residing in the District of Arizona. Petitioner is incarcerated at the Eloy Detention Center, 1705 East Hanna Road, Eloy, AZ 85131, which is within this district. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

**PARTIES**

5. Petitioner/Plaintiff Guo Lian LUO ("Plaintiff" or "LUO") is a native and citizen of The People's Republic of China and asylee in the United States who is currently in the custody of DHS-ICE at incarcerated at the Eloy Detention Center, in Eloy, Arizona.

6. Respondent John CANTÚ is the Field Office Director, Phoenix Field Office, Enforcement and Removal Operations, and is the official charged with the oversight and direction of the agents of ICE in the State of Arizona. He is the acting field officer for the Eloy Detention Center, in Eloy, Arizona.

7. Respondent Pamela Jo BONDI, is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States.

8. Respondent Todd M. LYONS, is the Senior Official Performing the Duties of Director, Immigration and Customs Enforcement, an agency organized and existing under the laws of the United States of America with the responsibility for detaining and executing orders of removal, deportation, and exclusion of aliens.

9. Respondent Kristi NOEM is the duly appointed, qualified, confirmed and Secretary of the Department of Homeland Security, and as such, has the responsibility for the administration and enforcement of all the functions, powers, and duties of ICE, including maintaining and enforcing Plaintiff's custody.

10. Respondent WARDEN, Eloy Detention Center, located in Eloy, Arizona, is charged with the oversight and treatment of prisoners within the facility.

## FACTUAL BACKGROUND

11. LUO is a native and citizen of The People's Republic of China ("China") born on [redacted]. He last entered the United States without

inspection at the U.S. – Mexico border on or about August 25, 2017. He was apprehended by DHS after his entry and detained in the custody of ICE.

12. While still detained in ICE custody, LUO was given a credible fear interview in or around September 2017, where an asylum office found that he established a credible fear of persecution in China based on past persecution and a fear of future persecution on religious grounds. He was thereafter placed into removal proceedings through the issuance of a Notice to Appear ("NTA") and released on $20,000 bond. LUO relocated to the New York area after his release on bond, where he has been residing since.

13. LUO filed a timely I-589 Application for Asylum and Withholding of Removal, which included a request for protection under Article III of the United Nations Convention Against Torture ("CAT") based on past persecution suffered in China for the unauthorized practice of religion, in particular for participating in an illegal "family church." His application was also based on a fear of future persecution on religious grounds.

14. LUO has been active in the Christian church since his relocation to the New York area in late 2017 after his release on bond. On March 5, 2018, he was baptized at the New Life Alliance Chinese Church in Brooklyn, New York, where he has been a member for about seven years before he started

attending Sunday Worshiping Service at Grace Faith Church in Chinatown, NYC.

15. LUO married his U.S citizen wife, Yan mei CAI ("Ms. Cai"), on November 29, 2024 in the state of Washington. He has two minor step-children from the marriage, both of whom live in Seattle, Washington. An I-130 Petition for Alien Relative filed on LUO's behalf by his U.S. citizen spouse is currently pending with United States Citizenship and Immigration Services ("USCIS") family petition on Mr. Luo's behalf.

16. LUO has diligently attended all immigration hearings in the New York Immigration Court since his release on bond in 2017. His individual merits hearing was last scheduled for July 24, 2025, in the New York immigration court when he was arrested and placed into ICE custody on July 9, 2025.

17. LUO was visiting his two minor step-children in Seattle, Washington in July 2025 and he was inadvertently arrested on July 9, 2025 by the Drug Enforcement Agency ("DEA") when he was helping a friend in fixing an air conditioning unit in Seattle, Washington. The DEA had an active marijuana warrant against the location of LUO's friend, and he was swept up in the arrest. According to the DEA, LUO was simply in the "wrong place at the

wrong time," and he was told directly by DEA agents that he "was not their target" of the July 9, 2025 arrest warrant and subsequent raid on the location. No criminal charges were filed against LUO as a result of the DEA arrest or for any other related reason. Indeed, LUO has no criminal record in the United States.

18. After LUO was taken into custody by the DEA, he was detained by ICE despite that no criminal charges were filed and he had a pending immigration court hearing in the New York Immigration Court. The hearing was rescheduled for November 26, 2025. LUO was detained at the Eloy Detention Center in Eloy, Arizona at the time, where he currently remains detained in ICE custody.

19. On November 26, 2025, the Visiting Immigration Judge in Tacoma Immigration Court conducted the merits hearing via video conference and LUO testified in support of his applications for asylum and related relief on "WebEx," the immigration court online hearing system.

20. After a full and fair hearing on the merits of his past and future persecution claims, LUO was granted asylum by the immigration judge in an oral decision issued in the Eloy Immigration Court. The IJ issued a written summary of the order indicating that LUO was found removable under

212(a)(7)(i) of the Immigration and Nationality Act but "granted" asylum relief. No country of removal was listed.

21. The Department of Homeland Security reserved appeal of the decision of the Immigration Judge granted LUO asylum, which is due at the Board of Immigration Appeals ("BIA") within 30 days, or by December 26, 2025. Upon information and belief, no appeal has yet been filed. LUO remains detained at the Eloy Detention Center in Eloy, Arizona.

## LEGAL GROUNDS FOR RELIEF

### COUNT

### I.

### DETENTION UNAUTHORIZED BY STATUTE AND REGULATION

22. The allegations set forth in paragraphs 1 through 21 above are repeated and re-alleged as though fully set forth herein.

23. LUO is being detained in direct violation of the statute and regulation. His continued detention is no longer authorized by any statutory provision of the INA.

24. Detention in this instance was initially governed by INA § 236(a), 8 U.S.C. § 1226(a), which provides that "an alien may be arrested and detained *pending a decision* on whether the alien is to be removed from the United

States." *Id* (emphasis added). 8 U.S.C. § 1226(a) thus "authorizes the federal government to detain aliens pending the completion of their removal proceedings." *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1193 (9th Cir. 2022); *see Hernandez v. Sessions,* 872 F. 3d 976, 982 (9th Cir. 2017) ("[u]nder § 1226(a), the Attorney General has 'general, discretionary' authority to detain a non-citizen 'pending a decision on whether the alien is to be removed from the United States'") (quoting *Casas-Castrillon v. Dep't of Homeland Sec.,* 535 F.3d 942, 948 (9th Cir. 2008) (quoting 8 U.S.C. § 1226(a)); *see Padilla-Ramirez v. Bible*, 882 F. 3d 826, 831 (9th Cir. 2017) (Section 1226(a) ("applies *only* while 'a decision on whether the alien is to be removed from the United States' is pending'") (emphasis added) (quoting 8 U.S.C. § 1226(a)).

25. In the case at bar, removal proceedings were completed by the Immigration Judge on November 26, 2025 when LUO was granted asylum in an oral decision issued by the immigration judge. A written order confirming that decision was also issued. A decision on whether to remove LUO is no longer "pending" – because an immigration judge has now issued a decision on whether he is to be removed and decided to accord him the status of an asylee, there is no longer authorization to detain LUO under 8 U.S.C. § 1226(a).[1]

1 Even if proceedings had not concluded with the decision to grant LUO asylum, his recent

26. Notably, although DHS reserved appeal of the IJ's grant of asylum in this case, upon information and belief, no appeal to the BIA has yet been filed. Nevertheless, even if an appeal is filed, it does not confer authority to detain under 8 U.S.C. § 1226(a)(1) in these circumstances because there is no removal order under review. Indeed, the decision that would be "pending" on appeal at the BIA would not pertain to whether LUO "is to be removed from the United States" but only regarding whether, pursuant to the applicable standards of review, the grant of asylum was correct. *Id*; *see Noriega-Lopez v. Ashcroft*, 335 F. 3d 874, 882-83 (9th Cir. 2003).

27. Indeed, while the Board has jurisdiction to affirm *an IJ's* order of removal on appeal, the INA "specifies in no uncertain terms that it is IJs who

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re-detention was nevertheless unauthorized under 8 U.S.C. § 1226(a) because he had already been granted release from custody on bond when initially detained by ICE in August 2017 after entering without inspection. It was already determined that LUO was not a flight risk nor a danger to the community in September 2017 after posting a $20,000 bond: the "Government's plenary power to enforce immigration laws is an insufficient basis to justify Plaintiff['s] rearrest[]..." *Saravia for AH v. Sessions*, 905 F. 3d 1137, 1142 n.8 (9th Cir. 2018). Rather, because as "the BIA recognized... 'where a previous bond determination has been made by an immigration judge, no change should be made ... absent a change of circumstance,'" *Id.* at 1145 n.10 (quoting *Matter of Sugay,* 17 I. & N. Dec. 637, 640 (BIA 1981), LUO was at minimum "entitled to a hearing to contest the finding ... that led to [his] rearrest." *Id.* at 1142 n.8. Despite that there appears to be no meaningful change to the initial determination that bond was warranted given LUO has appeared for every immigration hearing scheduled by the court, has no criminal convictions, and indeed no criminal charges resulted from his recent inadvertent arrest by the DEA while visiting a friend in Seattle, upon information and belief, no hearing to determine if he rearrest was warranted was ever conducted.

are to issue administrative orders of removal in the first instance. There is no indication in the statute that the BIA may do so." *Id* ("only an IJ…may issue orders of deportation," the "BIA … is restricted to affirming such orders, not issuing them in the first instance"); *see Nakka v. US Citizenship & Immigration Services*, 111 F. 4th 995, 1008 n. 13 (9th Cir. 2024) (noting the "IJ may order removal") (citing 8 C.F.R. § 1240.12(c) (the "order of the immigration judge shall direct the respondent's removal from the United States…")); *Hadera v. Gonzales*, 494 F.3d 1154, 1158 (9th Cir. 2007) ("[a]fter determining that a noncitizen is removable, an IJ must assign a country of removal") (citing 8 C.F.R. § 1240.12(d) ("When a respondent is ordered removed from the United States, the immigration judge shall identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made…")). As the "decision identified in section 1226(a)" cannot be made in the first instance by the BIA "such a decision is not pending" on appeal even if one is ultimately filed. *Padilla-Ramirez*, 882 F. 3d at 831.

28. Thus, because 8 U.S.C. § 1226(a)) "applies *only* while 'a decision on whether the alien is to be removed from the United States' is 'pending'" and such as decision "has already been made" in this case, that "decision therefore is not pending, meaning that section 1226(a) cannot apply" if the IJ's grant is

appealed. *Id* at 830-31, 835-36 (finding 8 U.S.C. § 1226(a) does not apply "there can be no removal order, final or otherwise, until the alien's claim for relief is resolved... the agency's decision that he 'is to be removed from the United States,' is final for detention purposes even though it lacks finality for purposes of judicial review ...."); *see Noriega-Lopez*, 335 F. 3d at 884-85 (reversing habeas denial because "the BIA's lack of authority to enter Noriega-Lopez's removal order renders that component of his proceedings 'in essence, a legal nullity'...the BIA acted beyond its authority in deciding *sua sponte* to enter a removal order...") (quoting *Reynaga v. Cammisa*, 971 F.2d 414, 417 (9th Cir.1992)); *see also, e.g., Rodriguez v. Robbins*, 715 F. 3d 1127,1135 (9th Cir. 2013) (only if "the BIA affirms a removal order" does the "government's authority to detain the alien [under] § 1226(a)...remain[] until 'we have rejected his final petition for review or his time to seek such review expires'") (quoting *Casas-Castrillon,* 535 F.3d at 948-49); *Prieto-Romero,* 534 F.3d at 1065 (same).

29. Even to the extent LUO is detained as an "applicant for admission" under 8 U.S.C. §1225(b)(2)(A) pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), there is no longer statutory authority to keep him in custody. That subsection states that "in the case of an alien who is

an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. §1225(b)(2)(A). In turn, 8 U.S.C. § 1229a refers to proceedings conducted by "[a]n immigration judge … for deciding the inadmissibility or deportability of an alien." *Id.* at § 1229a(a)(1).

30. Since those proceedings have occurred and conclude, there is no authority to continue LUO's re-detention under 8 U.S.C. §1225(b)(2)(A) even if initially authorized under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).[2] *Id* (holding that applicants who entered the United States without inspection are "applicants for admission" subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A)); *see Noriega-Lopez*, 335 F. 3d at 884 ("[t]he current

[2] Indeed, if proceedings before the IJ were not yet concluded, LUO would still be entitled to release. On November 20, 2025, the district court in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) effectively overturned *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) by holding that the government's policy affirmed by that decision is inconsistent with the plain language of the INA and that petitioners are properly subject to § 1226(a). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no bond policy—the Bond Eligible Class—and *expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added). The district court thus certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista,* 2025 WL 3288403, at *9. Because LUO clearly fits class membership, his detention would nevertheless continued to be governed by § 1226(a), entitling him to release for the reasons provided in paragraphs 24-28.

INA... spells out the manner in which the Attorney General is to exercise his authority to order aliens removed, namely, through proceedings instigated by the INS before immigration judges, resulting in removal orders issued, after a full hearing, by one of those judges").

31. Finally, there is clearly no authority to detain LUO under the post-removal provision of the INA, which governs the detention, release, and removal of aliens ordered removed. 8 U.S.C. § 1231(a). That provision states that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days," generally beginning on the "date the order of removal becomes administratively final." 8 U.S.C. §§ 1231(a)(1)(A)-(B). Because LUO was not "ordered removed" there is no "order of removal" which authorizes his detention for a "removal period" under 8 U.S.C. § 1231(a). *Singh v. Holder*, 638 F. 3d 1196, 1205 (9th Cir. 2011) ("a § 1231(a)(6) detainee is subject to a final order of removal...") (citing *Diouf v. Napolitano,* 634 F.3d 1081, 1087 (9th Cir.2011)).

32. Accordingly, there is no statutory authorization to continue holding LUO in civil immigration custody under any provision of the INA given he was granted asylum and has permission to lawfully remain in the United States. *See Hernandez*, 872 F. 3d at 983 (finding "an alien's continued

detention was not authorized by statute" during the appeals process initiated by the agency after BIA granted "asylum...as well as protection under the Convention Against Torture") (quoting *Nadarajah,* 443 F.3d at 1081); *see also, Guevara v. Holder*, 649 F. 3d 1086, 1092 (9th Cir. 2011) (aliens "'granted' status... includes aliens who have been granted asylum"); *Tchoukhrova v. Gonzales*, 430 F. 3d 1222, 1225 (9th Cir. 2005) (an applicant "granted asylum...can legally stay in this country").

33. Absent the statutory authority to detain him, LUO must therefore be immediately released from custody.

## II.

## DETENTION UNAUTHORIZED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION

34. The allegations set forth in paragraphs 1 through 33 above are repeated and re-alleged as though fully set forth herein.

35. Even if still permitted by statute despite the grant of asylum by the IJ (although it is not), LUO's detention is no longer statutorily authorized under his particular circumstances, and in violation of the due process clause of the constitution. LUO can longer be removed to any country and there is nothing to suggest he is a danger to the community. As removable is no longer reasonably

foreseeable, or even possible at the present time, and LUO has no criminal record or other reason to believe he is now a danger to the community after having been found to be no danger when bond was initially granted by the agency, the purpose of the statute is no longer served by his continued detention.

36. The "civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable... aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Demore v. Kim,* 538 U.S. 510, 528 (2003)). Even where "continued detention is permitted by statute, however, due process requires 'adequate procedural protections' to ensure that the government's asserted justification for physical confinement 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Id* ("[t]here is an important difference between whether detention is statutorily authorized and whether it has been adequately determined to be necessary as to any particular person") (quoting *Zadvydas,* 533 U.S. at 690-91 (internal quotation marks omitted); *see Padilla v. Immigration and Customs Enforcement*, 953 F. 3d 1134, 1143 (9th Cir. 2020)

("Although '[t]he government has legitimate interests in protecting the public and in ensuring that non-citizens in removal proceedings appear for hearings, any detention incidental to removal must bear[ ] [a] reasonable relation to [its] purpose'") (quoting *Hernandez,* 872 F.3d at 990 (quoting *Zadvydas,* 533 U.S. at 690) (internal quotation marks omitted).

37. Here, LUO's detention under any provision of the INA serves no legitimate government purpose. Since LUO was granted asylum by the immigration judge after establishing a well-founded fear of persecution in China, "he may not be deported to that country or to any other." *Andriasian v. INS*, 180 F. 3d 1033, 1042 n.14, 1045 (9th Cir. 1999) (finding an alien entitled to asylum cannot be removed to the country of persecution or to a third country unless he "received an offer of resettlement") (citing 8 C.F.R. § 208.13(d)); *see Hernandez,* 872 F. 3d at 983 (finding "no significant likelihood of his removal in the reasonably foreseeable future, because as a result of the asylum and CAT findings, 'the government is not entitled to remove Nadarajah to Sri Lanka, and no other country has been identified to which Nadarajah might be removed...") (quoting *Nadarajah,* 443 F.3d at 1081-82); *see Robleto-Pastora v. Holder*, 567 F. 3d 437, 445 (9th Cir. 2009) (the "INA provides that, '[i]n the case of an alien granted asylum under'... 'the Attorney General — (A) shall not remove or

return the alien to the alien's country of nationality'") (quoting 8 U.S.C. § 1158(c)(1)(A) (emphasis added); *see also,* 8 C.F.R. § 1208.22 ("[a]n alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 1208.24").

38. Since "removal is its ultimate goal," the purpose of the detention statute – if any did indeed apply here – would be entirely unserved by LUO's continued detention: as an asylee, he simply cannot be removed in the foreseeable future. *Singh,* 638 F. 3d at 1204-05 (noting an "important interest is at stake — freedom from prolonged detention" for "someone subject to only an initial finding of removal") (quoting *Diouf,* 634 F.3d at 1087); *see Hernandez,* 872 F. 3d at 983 (noting where "the government is not entitled to remove Nadarajah to Sri Lanka, and no other country has been identified to which Nadarajah might be removed" is a "powerful indication of the improbability of his foreseeable removal") (quoting Nadarajah, 443 F.3d at 1082-83) (internal quotation marks omitted)); *Prieto-Romero,* 534 F.3d at 1065 (noting "if it has not yet finally been determined that he should be removed .... [h]is continued detention... remains authorized by § 1226(a) because it is consistent with ... a legitimate government purpose, which is 'preventing deportable... aliens from fleeing prior to or during their removal proceedings'") (quoting *Zadvydas,* 533

U.S. at 699).

39. In this case, because of the IJ's "finding that he merits mandatory relief from removal, that would prevent [his] removal to [China]" there is nothing to indicate LUO "foreseeably remains capable of being removed" let alone that "it has not yet finally been determined that he should be removed." *Id.* Clearly, since the government no longer "retains an interest in 'assuring [his] presence at removal," LUO's "continued detention" no longer "remains authorized by § 1226(a)" even if the statute did still apply as an appeal to the BIA was pending. *Id* (citing *Zadvydas*, 533 U.S. at 699); *see Hernandez*, 872 F. 3d at 983 (finding "an alien's continued detention was not authorized by statute" with respect to "the detention of an alien whom the government could not lawfully remove") (quoting *Nadarajah*, 443 F.3d at 1082-83).

40. It follows that even if detention under the INA was permitted for an alien in his circumstances, absent any legitimate government interest in removing him, LUO's new asylee status warrants immediate release under the due process clause. Generally, such "non-punitive detention violates the Constitution unless it is strictly limited, which typically means that the detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's

legitimate goals." *Padilla,* 953 F. 3d at 1142-43 (citing *United States v. Salerno*, 481 U.S. 739, 750-51 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 360, 364 (1997)). Consequently, "[i]mmigration detention, like all non-punitive detention, violates the Due Process Clause unless 'a special justification... outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 1143 (quoting *Zadvydas,* 533 U.S. at 690 (quoting *Hendricks*, 521 U.S. at 356)).

41. No such "special justification" is present here: LUO cannot be removed and has no criminal record or history of violence and was already found not to be a flight risk or danger to the community when first granted bond – circumstances which did not change simply because he was mistakenly arrested by the DEA. *Id.*

42. Even if the government has "legitimate interests in protecting the public and in ensuring that non-citizens in removal proceedings appear for hearings," because "any detention incidental to removal must `bear[ ] [a] reasonable relation to [that] purpose,'" no hearing before independent decisionmaker is even necessary for this Court to conclude that LUO's continued detention, potentially for a prolonged period of administrative appeal, is justified on any legitimate grounds, *Id* (quoting *Hernandez,* 872 F.3d

at 990) (quoting *Zadvydas*, 533 U.S. at 690), especially "[g]iven the substantial liberty interests at stake." *Id* (finding prolonged detention unlawful for aliens who do not "present a particular risk of flight or danger" but "who expect to be detained for anywhere from six months to over-a-year while their applications for asylum or protection are fully adjudicated") (quoting *Singh*, 638 F.3d at 1200)); *see Prieto-Romero*, 534 F. 3d at 1064 n.9 (noting where alien granted asylum entitled to release where "there was no 'established timeline' for decision" on appeal" where "review process can take years, even" if grant of relief is "allowed to stand") (citing *Nadarajah*, 443 F.3d at 1075); *Casas-Castrillon*, 535 F.3d at 950 (holding individuals subjected to prolonged detention pending judicial review of their removal orders are entitled to an "individualized determination as to the necessity of [their] detention").

43. In sum, the "'narrow' detention policy 'during the limited period' necessary to arrange for removal" that would be "reasonably related to the government's purpose of effectuating removal and protecting public safety for reasons" does "not apply here." *Padilla,* 953 F. 3d at 1143 (quoting Demore, 538 U.S. at 526-28). Because his "detention does not "bear[ ] [a] reasonable relation," to the government's "legitimate interests," LUO's statutory detention is no longer authorized: he "should not be required to endure further delays"

while contesting a detention that is clearly no longer statutorily permissible. *Id.* at 1143, 1146 (finding the need for "mechanisms for ensuring that a noncitizen will be released from detention if his or her detention does not 'bear[ ] [a] reasonable relation,' to the government's 'legitimate interests in protecting the public [or] in ensuring that non-citizens in removal proceedings appear for hearings'") (quotations omitted).

44. Accordingly, this Court should order that LUO be immediately released from ICE custody.

## IRREPARABLE HARM

45. LUO is currently detained in violation of the statutory laws passed by Congress and Constitution of the United States. His continued detention despite having been granted asylee status after he was "already found to have legitimate circumstances of victimization" in China is not only a violation of law and due process but an egregious deprivation of his liberty and right to freedom from physical restraint which represents irreparable harm ranging "from physical, emotional, and psychological damages to unnecessarily prolonged family separation." *Padilla*, 953 F. 3d at 1147 (finding for aliens with a lesser interest, pending decision on removability, that "in the absence of

preliminary relief, plaintiffs would suffer irreparable harm in the form of "substandard physical conditions, low standards of medical care, lack of access to attorneys and evidence as Plaintiffs prepare their cases, separation from their families, and re-traumatization of a population already found to have legitimate circumstances of victimization") (quotation omitted).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

46. LUO already posted a $20,000 bond in September 2017 after he was found not be a flight risk or danger to the community. Since he was re-detained on July 9, 2025, he has made repeated requests for release with ICE, all of which have been denied.

47. There is no other venue in which to challenge LUO's detention.

**RIGHT TO ATTORNEY'S FEES IN THIS ACTION**

48. LUO is entitled to costs and attorney's fees associated with this action. Congress has authorized fee recovery by prevailing parties in the Equal Access to Justice Act ("EAJA"). Under EAJA, the prevailing litigant is entitled to attorney's fees and costs if the government fails to show that its position was substantially justified or that special circumstances make an award unjust and (3) the requested fees and costs are reasonable. *Perez-Arellano v. Smith,* 279 F.3d 791, 793 (9th Cir. 2002) (citing 28 U.S.C. §2412 d)(1)(A)).

49. As there is no lawful or constitutional basis for detention, and Respondents actions in this matter in re-detaining LUO and continuing that detention after he was granted lawful status, are unwarranted, egregious, inhumane and in direct violation of the law and Constitution, the government's position is not substantially justified, and thus, attorney's fees are appropriate.

***WHEREFORE, YOUR PETITIONER PRAYS THIS HONORABLE COURT:***

I. That this Court declare the continued detention of LUO unlawful as not authorized by 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b) or 8 U.S.C. § 1231;

II. That this Court declare the continued detention of LUO without a tenable justification a violation of the Due Process Clause of the Constitution.

III. That this Court order Respondents to immediately release LUO pursuant to the declarations above;

IV. That the Court grant interim release pending a final decision, and any appeal of such decision, on this writ;

V. That this Court award LUO costs and attorney's fees; and

VI. That the Court grant any other and further relief may be fit and proper.

Dated: New York, New York
December 15, 2025

Respectfully submitted,

s/ Aileen Shao, Esq.
Aileen Shao, Esq.
Counsel for Petitioner/Plaintiff

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## ATTORNEY VERIFICATION

I, Aileen Shao, Esq., authorized representative of Petitioner/Plaintiff, affirm under penalty of perjury that:

The statement of facts contained in this Petition are true to my knowledge, except as to those matters that are stated in it on our information and belief, and as to those matters, we believe them to be true.

Dated: New York, New York
December 15, 2025

Respectfully submitted,

s/ Aileen Shao, Esq.
Aileen Shao, Esq.
Counsel for Petitioner/Plaintiff

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**AFFIRMATION OF SERVICE**

I, Aileen Shao, Esq., an attorney duly admitted in the bar of the State of New York, affirm under penalty of perjury that on December 15, 2025 I served a true and correct .PDF version of this Petition for Writ of Habeas Corpus on opposing counsel by this Court's ECF system

Dated: New York, New York
December 15, 2025

Respectfully submitted,

s/ Aileen Shao, Esq.
Aileen Shao, Esq.
Counsel for Petitioner/Plaintiff

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