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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 RUI LUO,

12 Petitioner- Plaintiff,

13 vs.

14 CHRISTOPHER J. LAROSE, Senior
15 Warden, Otay Mesa Detention Center;
16 DANIEL A. BRIGHTMAN, Field Office
17 Director, San Diego Office of
18 Enforcement and Removal, U.S.
19 Immigration and Customs Enforcement;
20 TODD M. LYONS, Acting Director,
21 U.S. Immigration and Customs
22 Enforcement, U.S. Department of
23 Homeland Security; and KRISTIN
24 NOEM, Secretary, U.S. Department of
25 Homeland Security

26 Respondents-Defendants.

Case No.: '25CV3848 LL VET

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

27 PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW
28 CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 **INTRODUCTION**

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3 1. Petitioner, Rui Luo, (Petitioner or Ms. Luo), is a Chinese asylum
4 seeker and spouse of a U.S. citizen, who entered the U.S. on May 15, 2022, and
5 was apprehended by immigration agents. Though initially detained, immigration
6 agents released her on parole with reporting requirements on June 5, 2022. For
7 over three years, Ms. Luo complied with immigration-relation reporting
8 requirements, pursued affirmative asylum, and obtained work authorization
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10 Suddenly, without explanation or good cause, Respondents unlawfully re-detained
11 Ms. Luo on October 9, 2025, when she appeared as required by her parole at their
12 field office in San Diego, California. Petitioner’s re-detention after she had been
13 briefly detained and released on parole without any explanation or change in
14 circumstance violates the Due Process Clause of the Fifth Amendment.
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18 2. On October 28, 2025, Respondents filed a Notice to Appear placing
19 Ms. Luo in removal proceedings in San Diego, California. While in removal
20 proceedings, Petitioner has been subject to mandatory detention and has been
21 detained at the Otay Mesa Detention Facility in San Diego, California for over two
22 months without an opportunity to apply for bond in violation of the statutes and
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1 regulations. Since Petitioner is likely to face many additional months in detention
2 in Respondent's custody, and is at risk of being transferred out of the jurisdiction
3 of this Court, she seeks declaratory and injunctive relief requiring her immediate
4 release from the detention facility where she has been unlawfully held since
5 October 9, 2025, on the same terms and conditions as before, requiring a pre-
6 detention hearing prior to any future re-detention, and prohibiting her transfer
7 outside this Court's jurisdiction without the Court's permission.
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11 3. Accordingly, to vindicate Petitioner's statutory and constitutional
12 rights, the Court should grant the instant petition for a writ of habeas corpus.
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14 JURISDICTION

15 4. This action arises under the Constitution of the United States and the
16 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
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18 5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas
19 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the
20 United States Constitution (the Suspension Clause), and 28 U.S.C. § 1346 (U.S. as
21 defendant), and 28 U.S.C. § 1651 (All Writs Act).
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23 6. Federal district courts have jurisdiction to hear habeas claims brought
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1 by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*,
2 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration
3 detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-L-*
4 *H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025)
5 (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at
6 *7 (E.D. Cal. Aug. 21, 2025) (same).
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10 7. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
11 Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28
12 U.S.C. § 1651, and the Court's inherent equitable powers.
13

14 VENUE

15 8. Venue is proper because Petitioner is in Respondent's legal and
16 physical custody at Otay Mesa Detention Center in San Diego, California.
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18 9. Venue is also properly vested in this Court pursuant to 28 U.S.C.
19 § 1391(e) because part of the events or omissions giving rise to Petitioner's claims
20 occurred in this District, including her initial unlawful detention at ICE ERO in San
21 Diego, California and her current and ongoing detention under the legal and physical
22 custody of Respondent LaRose, warden of Otay Mesa Detention Center in San
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1 Diego, California. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443
2 (2004) (habeas petition must be addressed to the federal district court of
3 confinement); *Wairimu v. Dir., Dep't of Homeland Sec.*, No. 19-CV-174-BTM-
4 MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is
5 the preferable forum even if the Court otherwise has personal jurisdiction). For
6 these same reasons, venue should be found proper under Local Civil Rule HC.1.
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10 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

11 10. Under 28 USC § 2243, the Court must grant the petition for writ of
12 habeas corpus or issue an order to show cause (“OSC”) to the Respondents
13 “forthwith,” unless Petitioner is not entitled to relief. If an OSC is issued, the Court
14 must require Respondents to file a return “within three days unless for good cause
15 additional time, not exceeding twenty days, is allowed.” *Id.*
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17

18 11. Ms. Luo is “in custody” for the purpose of 28 U.S.C. section 2241
19 because she was arrested by Respondents remains in their legal and physical
20 custody at Otay Mesa Detention Center in San Diego, California. She is under
21 Respondents’ and their agents’ direct control.
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PARTIES

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3 12. Ms. Luo (Petitioner) is a 42 year old native and citizen of China,
4 whose first and only entry to the U.S. occurred on or about May 15, 2022.
5 Though initially released on June 5, 2022 via the DHS' parole authority, she has
6 been in DHS custody since October 9, 2025, when ICE ERO agents detained her
7 without notice or an opportunity to challenge her detention. She is currently
8 detained at the Otay Mesa Detention Facility in San Diego, California, a facility
9 under the direct control of the Respondents.
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12 13. Respondent, Christopher LaRose (LaRose) is the Senior Warden at
13 Otay Mesa Detention Center in San Diego, California, where Ms. Luo is detained.
14 LaRose is responsible for the day-to-day operations and confinement of
15 noncitizens detained at the facility. He acts at the directs of Respondents,
16 Brightman, Lyons, and Noem. LaRose is a custodian of Ms. Luo and is named in
17 his official capacity.
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21 14. Respondent, Daniel A. Brightman (Brightman) is the Field Office
22 Director of the ICE in San Diego, California. He acts at the direction of
23 Respondents, Lyons and Noem. ICE is responsible for local custody decisions
24

1 relating to noncitizens charged with being removable from the U.S., including the
2 arrest, detention, custody status, and removal of noncitizens. The San Diego Field
3 Office’s area of responsibility includes San Diego and Imperial Counties in
4 California. Respondent Brightman is a custodian of Ms. Luo and is named in his
5 official capacity.
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8 15. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and
9 he has authority over the actions of Respondents LaRose and Brightman. ICE is
10 responsible for local custody decisions relating to non-citizens charged with being
11 removable from the U.S., including the arrest, detention, custody status, and
12 removal of non-citizens. Respondent Lyons is a custodian of Ms. Luo and is
13 named in his official capacity.
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16 16. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
17 authority over the actions of all other DHS Respondents in this case, as well as all
18 operations and federal agencies of DHS, including ICE. In her capacity as
19 Secretary of DHS, Respondent Noem is charged with faithfully administering the
20 immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a).
21 Respondent Noem is a custodian of Ms. Luo and is named in her official capacity
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1 17. Respondent U.S. Immigration and Customs Enforcement (ICE) is
2 responsible for local custody decisions relating to noncitizens charged with being
3 removable from the U.S., including the arrest, detention, custody status, and removal
4 of noncitizens.
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6 18. Respondent Department of Homeland Security (DHS) is the federal
7 agency responsible for implementing and enforcing the INA, including the detention
8 of noncitizens. The agency has authority over the actions of ICE and all other DHS
9 Respondents.
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12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 19. Petitioner has no administrative remedies to exhaust.
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15 20. On October 28, 2025, Respondents served Petitioner with (1) a Form I-
16 862, Notice to Appear in Removal Proceedings under 8 U.S.C. § 1229, charging her
17 with removability under 8 U.S.C. § 1182(a)(6)(A)(i), entry without inspection; (2) a
18 Form I-831, Continuation Page for Form I-213, indicating DHS determined that she
19 would remain in custody during her removal proceedings; and (3) a Form I-286,
20 Notice of Custody Redetermination, indicating DHS intends to detain her under 8
21 C.F.R. § 236, pending a final administrative determination in her case. *See also* 8
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1 U.S.C. § 1226. DHS’s administrative decision is final.

2 21. Further, pursuit of administrative remedies before the Executive Office
3 for Immigration Review (EOIR) or the immigration court would be a futile gesture,
4 since the agency has already predetermined the issue before it. In two precedential
5 cases, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Hurtado*, 29 I&N
6 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that noncitizens
7 arrested and charged under 8 U.S.C. § 1182(a)(6)(A)(i) are not eligible for bond, as
8 they are applicants for admission and subject to mandatory detention without bond
9 under 8 U.S.C. § 1225(b)(2).¹

10 22. Since the DHS charged Ms. Luo with removability under 8 U.S.C. §
11 1182(a)(6)(A)(i), an immigration court will find her not eligible for bond and
12 subject her to mandatory detention.

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¹ See *Shen v. Larose*, No. 25cv3235-GPC (S.D. Cal. Dec. 11, 2025) (waiving exhaustion due to futility because of precedent in *Matter of Q. Li* and *Matter of Yajure-Hurtado*); *Beltran v. Noem*, No. 25cv2650-LL-DEB (S.D. Cal. Nov. 4, 2025) (exhaustion futile under *Matter of Yajure Hurtado*); *Singh v. Andrews*, No. 25-cv-00801-KES-SKO (E.D. Cal. July 11, 2025) (waiving exhaustion because it would be futile in light of *Matter of Q. Li*).

1 23. Due to the BIA’s precedential decisions, which are binding on
2 immigration judges, Ms. Luo is unable to seek any remedy before the immigration
3 court. *See* 8 C.F.R. §§ 1003.1(g)(1), (d)(i).²
4

5 **STATEMENT OF FACTS**

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7 24. Ms. Luo is a 42 year old native and citizen of China, who fled China
8 after facing persecution as a child and adult including being detained by the police
9 for practicing her religion. She is married to a U.S. citizen, and is eligible to seek
10 to adjust her status to lawful permanent residency in the U.S. status based on her
11 marriage.
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14 25. On or about May 15, 2022, Ms. Luo entered the U.S., and encountered
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18 ² Ms. Luo is also not a class member of *Maldonado Bautista v. Santacruz*, No.
19 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403 (C.D. Cal. Nov.
20 25, 2025), which includes “[a]ll noncitizens in the United States without lawful
21 status who (1) have entered or will enter the United States without inspection; (2)
22 *were not or will not be apprehended upon arrival*; and (3) are not or will not be
23 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time
24 the Department of Homeland Security makes an initial custody determination.”
(emphasis added). Ms. Luo entered without inspection but was apprehended after
entering, which disqualifies her from the bond eligible class.

1 immigration agents who detained her. Twenty-one (21) days later, on June 5,
2 2022, immigration agents determined she was not a flight risk or danger to the
3 community and released her from custody by granting her humanitarian parole
4 with reporting requirements under 8 U.S.C. § 1182(d)(5)(A).
5

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7 26. Following her release on parole, Ms. Luo relocated to Los Angeles
8 County, California, and regularly reported to U.S. Immigration and Customs
9 Enforcement's Office of Enforcement and Removal Office (ICE ERO), as
10 required by her parole requirements, first reporting in person once a month, then
11 every six months, and then annually.
12

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14 27. Ms. Luo was also briefly enrolled in ICE ERO's Alternatives to
15 Detention (ATD) program, a monitoring program administered by a private
16 company, which included temporarily reporting by a cell phone application. Due
17 to Ms. Luo's strict compliance with her reporting requirements, ICE ERO reduced
18 her parole reporting requirements by removing her from the ATD program and
19 requiring her to report to their office only once a year.
20
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22 28. In 2022, and in the next three years, five months, and thirteen days,
23 the Department of Homeland Security (DHS) never filed a Notice to Appear
24

1 (NTA) to commence removal proceedings against Ms. Luo with the immigration
2 court (EOIR).

3
4 29. To comply with the one-year asylum filing deadline after entry, Ms.
5 Luo affirmatively applied for asylum on December 5, 2022, with U.S. Citizenship
6 and Immigration Services (USCIS), with the assistance of an immigration
7 consultant due to her limited English proficiency. She attended a biometrics
8 appointment with USCIS on December 28, 2022, and later filed for and obtained
9 an employment authorization document on June 5, 2023, which she renewed.³
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12 30. Ms. Luo continued to report to ICE ERO in Los Angeles, California in
13 2023 and 2024.

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15 31. On or about October 6, 2025, she reported to ICE ERO in Los
16 Angeles, California to comply with her annual reporting requirement. The ICE
17 ERO agents in Los Angeles ordered her to report to the ICE ERO office in San
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22 ³ The immigration consultant who assisted Ms. Luo failed to include her
23 agency (alien) registration number also known as the “A” number in her initial
24 asylum application, which immigration agents issued to her at the border. Due to
25 this omission, USCIS issued her a second A number

1 Diego, California, since she had relocated to San Diego County, California.

2 32. On or about October 9, 2025, Ms. Luo reported to ICE ERO in San
3 Diego, California as required. On that day, ICE ERO agents re-detained Ms. Luo,
4 without explanation, notice, or an opportunity to challenge her re-detention. She
5 has been detained at the Otay Mesa Detention Facility since then.
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8 33. At the time of her re-detention, Ms. Luo had timely applied for
9 asylum, attended a biometrics appointment, requested and obtained work
10 authorization, complied with her parole reporting requirements and obeyed all
11 laws. She has no criminal history. She has lived in the U.S. for over three years,
12 and is married to a U.S. citizen. There are no changed circumstances since she
13 was apprehended and released warranting her re-detention
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16 34. On October 28, 2025, DHS commenced removal proceedings against
17 Ms. Luo in immigration court (EOIR) by filing an NTA and charging her with
18 removability under 8 U.S.C. 1182(a)(6)(A)(i), entry without inspection. The NTA
19 indicates she is an alien present in the United States who has not been admitted or
20 paroled, and does not allege that she is an arriving alien.
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23 35. The DHS also served her with a Form I-831, Continuation Page for
24

1 Form I-213, indicating that it determined she will remain in custody for her
2 removal proceedings.⁴ She was also served with a Form I-286, Notice of Custody
3 Redetermination, indicating DHS intends to detain her under 8 C.F.R. § 236,
4 pending a final administrative determination in her case. *See also* 8 U.S.C. § 1226.
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7 36. Ms. Luo will be seeking to adjust her status to lawful permanent
8 residency status based on her marriage to a U.S. citizen. She also remains eligible
9 to seek asylum before the immigration court.
10

11 LEGAL FRAMEWORK

12 37. As reported in the media, DHS has sought to increase detention and
13 deportation numbers to meet administration targets, resulting in a “shift in tactics”
14 that includes detaining noncitizens at immigration check-ins. This shift has
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19 ⁴ Ms. Luo was placed in proceedings pursuant to the Settlement Agreement in
20 *Cancino Castellar v. Mayorkas*, 3:17-cv-00491-BAS-AHG (S.D. Cal. 2021), a case
21 which challenged systemic delays in processing people arrested by immigration
22 agents in San Diego and Imperial Counties in California. The settlement requires
23 DHS to provide a first appearance to class members within 11 days of entering ICE
24 custody. Ms. Luo was provided an initial hearing on November 10, 2025. She was
25 never interviewed by an asylum officer, or required to demonstrate a credible fear
26 of persecution prior to the initiation of removal proceedings.

1 resulted in the re-detention of large numbers of noncitizens without notice or
2 explanation at immigration-related appointments.⁵ These re-detentions without
3 explanation or cause violate the Due Process Clause of the Fifth Amendment.
4

5 38. In this case, Respondents violated Petitioner's fifth amendment right
6 to due process, when they re-detained her on October 9, 2025 without any
7 explanation or change in circumstance. As determined by other U.S. district
8 courts, "even when ICE has the initial discretion to detain or release a noncitizen
9 pending removal proceedings, after that individual is released from custody [she]
10 has a protected liberty interest in remaining out of custody." *Shen v. Larose*, No.
11 25cv3235-GPC, 2025 U.S. Dist. LEXIS 256924 (S.D. Cal. Dec. 11, 2025) at *11
12 quoting *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025).⁶
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19 ⁵ See e.g. Marianne LeVine, Emmanuel Martinez, and Álvaro Valiño, "ICE
20 shift in tactics leads to soaring number of at-large arrests, data shows," *Washington*
21 *Post* (Dec. 28, 2025), available at
22 <https://www.washingtonpost.com/immigration/2025/12/28/ice-deportations-data-trump-arrests/>.

23 ⁶ See also *Doe v. Becerra*, 787 F. Supp. 3d 1083 (E.D. Cal. Mar. 3, 2025);
24 *Padilla v. United States Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172

1 39. As noted in other decisions, “[i]n fact, the government's initial release
2 of an individual from custody ‘creates an ‘implicit promise’ that the individual's
3 liberty will be revoked only if they fail to abide by the conditions of their
4 release.” *Shen v. Larose*, 2025 U.S. Dist. LEXIS 256924, at *11 (quoting
5 *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 U.S. Dist. LEXIS 163975, at*2
6 (N.D. Cal. Aug. 22, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.
7 Ct. 2593, 33 L. Ed. 2d 484 (1972)).

8 40. Thus, DHS may generally not re-arrest a previously released
9 noncitizen "absent a change in circumstances." *Salcedo Aceros v. Kaiser*, No. 25-
10 CV-06924-EMC, 2025 U.S. Dist. LEXIS 179594, *1 (N.D. Cal. Sept. 12, 2025)
11 (citing *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) and *Saravia*
12 *v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017)).

13 41. On June 5, 2022, DHS released Petitioner on parole, after determining
14 she was not a flight risk nor a danger to the community. After her release, she
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23 (W.D. Wash. 2023); *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228-JLT-SAB, 2025
24 U.S. Dist. LEXIS 200565, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025).

1 maintained a protected liberty interest in remaining out of custody. Respondents
2 violated her interest when they re-detained her without explanation or change in
3 circumstances, despite their own prior determination that Petitioner was not a
4 flight risk and posed no danger to the community.
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7 42. Due process called for procedural protections before depriving her of
8 her liberty interest. *See Zinermon v. Burch*, 494 U.S. 113, 127, (1990) (due
9 process “requires some kind of a hearing *before* the State deprives a person or
10 liberty or property.”) (emphasis in the original).
11

12 43. Here, Petitioner should have been provided hearing before she was
13 detained, since (1) Petitioner’s private interest in her continued liberty is
14 significant, (2) Respondents have and will continue to deprive her of that liberty
15 interest by subjecting her to mandatory detention without a pre-detention hearing,
16 and (3) the government cannot show any interest against providing such a hearing.
17
18 *See Shen v. Larose*, 2025 U.S. Dist. LEXIS 256924, at *12-16 (apply the factors
19 articulated in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976) to determine
20 what procedures are required by due process in cases like Petitioner’s).
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23 44. District courts have noted that "civil immigration detention must be
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1 'nonpunitive in purpose' and bear a 'reasonable relation' to the authorized statutory
2 purposes of preventing flight and danger to the community." *Shen v. Larose*,
3 2025 U.S. Dist. LEXIS 256924, at *13 (citing *G.S. v. Bostock*, No. 2:25-CV-
4 01255-JNW-TLF, 2025 U.S. Dist. LEXIS 214413, 2025 WL 3014274, at *8
5 (W.D. Wash. Oct. 8, 2025)). By releasing Ms. Luo on parole, "immigration
6 officers determined she was neither a flight risk nor a danger to the community."
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8
9 *Id.*

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11 45. There is no change in circumstance to justify Petitioner's re-detention.
12 After her release, Petitioner timely filed for affirmative asylum, attended a
13 biometrics appointment, applied for and obtained employment authorization,
14 applied to renew her employment authorization. She has no criminal history and
15 has complied with all conditions of her release. She has lived in the U.S. for over
16 three years, and is married to a U.S. citizen. She is eligible to seek permanent
17 residency status in the U.S. based on her marriage.
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21 46. Given the government's conduct, the substantial liberty interests held
22 by Petitioner, and the fact that the government cannot show that Petitioner
23 presents a risk or flight or danger to the community, a pre-deprivation bond
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1 hearing before a neutral decision-maker is warranted, where government has the
2 burden to provide justification for Petitioner's re-detention . *Shen v. Larose*, 2025
3 U.S. Dist. LEXIS 256924, at *15-16.
4

5 47. Additionally, Respondents continue to unlawfully detain Petitioner
6 without a bond hearing in violation of 8 U.S.C. 1226(a).
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8 48. During removal proceedings, there are two statutes governing civil
9 detention, namely (1) 8 U.S.C. § 1225(b), mandatory detention; and (2) 8 U.S.C. §
10 1226, discretionary detention, which provides for review of an initial custody
11 determination by DHS, though certain noncitizens who are inadmissible or
12 deportable for certain crimes may not be released. *See* 8 C.F.R. § 1236.1(d)(1).
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15 49. Here, Respondents continue to detain Petitioner under the mandatory
16 detention provision of 8 U.S.C. § 1225(b)(2), when she should instead be held
17 under the discretionary detention of 8 U.S.C. § 1226(a).
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19 50. In fact, on October 28, 2025, DHS served Ms. Luo with a Form I-286,
20 Notice of Custody Redetermination, indicating DHS intends to detain her under 8
21 U.S.C. § 1226 and 8 C.F.R. § 236, pending a final administrative determination in
22 her case. Since the record indicates DHS is detaining Petitioner under 8 U.S.C. §
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1 1226, the government cannot contend that she is subject to mandatory detention
2 under 8 U.S.C. § 1225(b)(2).
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4 51. However, in bond proceedings before the immigration court,
5 Respondents assert noncitizens like Petitioner are detained under 8 U.S.C. §
6 1225(b)(2). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).⁷ Essentially, the
7 government contends that all noncitizens present in the U.S. who have not been
8 admitted are considered "applicant[s] for admission" who are "seeking
9 admission," and are therefore subject to mandatory detention. 8 U.S.C. §
10 1225(b)(2)(A).
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14 52. As determined by other district courts, the plain language of 8 U.S.C.
15 § 1225(b)(2) does not support the government's position that it applies to all
16 noncitizens present in the U.S. who have not been admitted.
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21 ⁷ In *Matter of Q. Li*, 29 I&N Dec. 66, 67(BIA 2025) Respondent Li was
22 released on parole under 8 U.S.C. § 1182(d)(5)(A) shortly after entering the U.S.
23 She was later re-detained by DHS years a couple of years later. When Li, applied
24 for bond, the immigration court found she was subject to mandatory detention
25 under 8 U.S.C. § 1225(b)(2)(A).

1 process after she first entered the U.S. on May 15, 2022.⁸ She was apprehended,
2 detained, and expressed a fear of return to China due to persecution, but DHS
3 never referred her for a credible fear interview with an asylum officer. Instead,
4 DHS released her on parole for humanitarian reasons. More than three years after
5 she entered, on October 28, 2025, DHS placed her in removal proceedings under 8
6 U.S.C. § 1229. Since she was never subject to expedited removal, to the extent
7 that she is subject to detention, her detention must be governed by 8 U.S.C. §
8 1226(a).
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12 56. Further, Ms. Luo is not an “applicant for admission” within the
13 meaning of the plain text of the statute. After she entered and was apprehended
14 on May 15, 2022, the government chose to release her on parole but did not place
15 her in removal proceedings at that time, which is required under 8 U.S.C. §
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21 ⁸ In removal proceedings, DHS filed a Form I-213, Record of Inadmissible or
22 Deportable Alien, stating Ms. Luo was issued an expedited removal order, but the
23 NTA does not indicate that it was issued after an asylum officer found a credible
24 fear of persecution or torture, or that an expedited removal order under 8 U.S.C. §
25 1225(b)(1) was vacated.

1 1225(b)(2)(A). The government only placed her in removal proceedings after she
2 was re-detained on October 9, 2025.
3

4 57. Further, many district courts have found that the plain text of 8 U.S.C.
5 § 1225(b)(2) does not apply to any noncitizen present in the United States who has
6 not been admitted. *See Shen v. Larose*, 2025 U.S. Dist. LEXIS 256924, at *1
7 *citing Beltran v. Noem*, No.: 25cv2650-LL-DEB, 2025 U.S. Dist. LEXIS 217385,
8 2025 WL 3078837, at *5 (S.D. Cal. Nov. 4, 2025). An applicant for admission is
9 defined as "alien[s] present in the United States who ha[ve] not been admitted or
10 who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Under 8 U.S.C. §
11 1225(b)(2)(A), other applicants for admission who are "seeking admission" will
12 be mandatorily detained pending removal proceedings unless they are "clearly and
13 beyond a doubt entitled to be admitted. "Seeking admission" requires an
14 affirmative act such as entering the U.S., which the Petitioner was not seeking
15 admission when she was detained at an ICE field office. Thus, under the plain
16 language of the statute, she is not applicant for admission, and therefore, cannot be
17 subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
18
19
20
21
22

23 58. Respondents may also assert noncitizens like Petitioner are detained
24

1 under 8 U.S.C. § 1225(b)(1)(B)(ii). To be subject to the mandatory provision
2 cited under 8 U.S.C. § 1225(b)(1), noncitizens must be inadmissible under 8
3 U.S.C. § 1182(a)(6)(C) for misrepresentation when applying to be admitted or
4 U.S.C. § 1182(a)(7) for lacking valid entry documents. In addition to
5 inadmissibility, the noncitizen must be either “arriving in the U.S.” or “described
6 in clause (iii), referring to 8 U.S.C. § 1225(b)(1)(A)(iii), which refers to
7 noncitizens who have “designated by the Attorney General” and who are
8 described as
9
10
11

12 “an alien who has not been admitted or paroled into the United States, and
13 who has not affirmatively shown, to the satisfaction of an immigration
14 officer, that the alien has been physically present in the United States
15 continuously for the 2-year immediately prior to the date of the
16 determination of inadmissibility under this subparagraph.”

17 *See* 8 U.S.C. § 1225(b)(1)(A)(iii). Thus, under the language of the statute, to be
18 eligible for expedited removal, a noncitizen must either be a noncitizen “arriving in
19 the United States” or must both fall within the statutory criteria of 8 U.S.C. §
20 1225(b)(1)(A)(iii)(II) and be designated by the Attorney General (or her designee)
21 pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii)(I).
22

23 59. Petitioner is not subject to the mandatory detention provision under 8
24

1 U.S.C. § 1225(b)(1)(B)(ii) because at the time of her re-detention (1) she was not
2 a noncitizen “arriving in the United States,” since she was released on parole more
3 than three years previously; and (2) she was not statutorily eligible to be
4 designated for expedited removal, having been previously “admitted or paroled
5 into the United States.”
6
7

8 60. Further, as stated above, the government did not subject Ms. Luo to
9 the expedited removal process, as she was released on parole without being
10 referred for a credible fear interview.
11

12 61. In sum, since Petitioner is not subject to mandatory detention under 8
13 U.S.C. § 1225, and is detained under 8 U.S.C. § 1226(a), and her continued
14 detention without a bond hearing violates 8 U.S.C. § 1226.
15

16 **CLAIMS FOR RELIEF**
17

18 **COUNT ONE**

19 **Violation of the Fifth Amendment Right to Due Process**
20

21 62. The allegations in the above paragraphs are realleged and
22 incorporated herein.
23

24 63. Petitioner was released on parole after Respondents determined she
25

1 was not a flight risk or danger to the community. When she was released, she
2 maintained a protected liberty interest in remaining out of custody. Respondents
3 violated Petitioner’s liberty interest when they re-detained her without explanation
4 or change in circumstance. Due process under the constitution requires a hearing
5 before a liberty interest can be deprived in these circumstances. Thus, Petitioner
6 should have been afforded a pre-detention hearing by Respondents.
7

8
9 64. For these reasons, Petitioner’s re-detention violates the Due Process
10 Clause of the Fifth Amendment.
11

12 **COUNT TWO**

13
14 **Violation of the Administrative Procedure Act - 5 U.S.C. § 706(2)(A) Not in**
15 **Accordance with Law and in Excess of Statutory Authority, Unlawful**
16 **Detention**
17

18 65. The allegations in the above paragraphs are realleged and
19 incorporated herein.

20
21 66. Under the APA, a court shall “hold unlawful and set aside agency
22 action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise
23 not in accordance with law; (B) contrary to constitutional right, power, privilege,
24

1 or immunity...” 5 U.S.C. § 706(2)(A)-(B).

2
3 67. An action is an abuse of discretion if the agency “entirely failed to
4 consider an important aspect of the problem, offered an explanation for its decision
5 that runs counter to the evidence before the agency, or is so implausible that it
6 could not be ascribed to a difference in view or the product of agency expertise.”
7

8 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)
9 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
10 463 U.S. 29, 43 (1983)).
11

12 68. To survive an APA challenge, the agency must articulate “a
13 satisfactory explanation” for its action, “including a rational connection between the
14 facts found and the choice made.” *Dep’t of Com. v. New York*, 588 U.S. 752, 773
15 (2019) (citation omitted).
16
17

18 69. The INA provides that Respondents may, as they did in 2022 in
19 Petitioner’s case, release an individual from apprehension or custody based on an
20 individualized determination of their danger and flight risk. *See* 8 U.S.C. §
21 1226(a); *Zadvydas*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37
22 (BIA 2006). After such a release decision is made, a revocation of the custody
23
24

1 determination may be made only when warranted by an individual's specific facts
2 and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).
3

4 70. By re-detaining Ms. Luo without explanation or change in
5 circumstance, Respondents violated the INA, implementing regulations,
6 and the APA.
7

8 **COUNT THREE**

9 **Violation of 8 U.S.C. § 1226(a) and Implementing Regulations**

10
11 71. The allegations in the above paragraphs are realleged and
12 incorporated herein.
13

14 72. Respondent is detained under 8 U.S.C. § 1226(a), not mandatory
15 detention under 8 U.S.C. § 1225, which applies to noncitizens seeking admission
16 who are in expedited removal proceedings or in removal proceedings pending a
17 decision on their admissibility. As explained above, Petitioner was not seeking
18 admission to the U.S. at the time of her re-detention nor was she in expedited
19 removal proceedings.
20
21

22 73. Further, she was placed in removal proceedings under 8 U.S.C.
23 § 1229 and serve with a notice indicating the DHS was detaining her under 8
24

1 U.S.C. § 1226.

2 74. For these reasons, Petitioner's detention violates 8 U.S.C.
3
4 § 1226(a) and 8 C.F.R. § 1236.

5 **PRAYER FOR RELIEF**

6
7 Wherefore, Petitioner respectfully requests this Court to grant the following:

- 8 (1) Assume jurisdiction over this matter;
- 9
10 (2) Issue an Order to Show Cause ordering Respondents to show cause why this
11 Petition should not be granted within three days.
- 12 (3) Declare that Petitioner's detention Violates the Due Process Clause of the
13 Fifth Amendment,
- 14
15 (4) Issue a Writ of Habeas Corpus ordering Respondents to immediately release
16 her from detention under the same conditions as she was previously released
17 on parole.
- 18
19 (5) Issue an order prohibiting Respondents' from subjecting Petitioner to the
20 Alternatives to Detention Program or ATD including an ankle monitoring
21 device, watch monitoring device, telephonic/cellular monitoring device,
22 cellular phone application monitoring device, home visits, and any other
23
24

1 restriction imposed by ATD, or that requires monitoring by a private
2 company contracted by DHS.

3
4 (6) Issue an Order prohibiting Respondents from transferring Petitioner from
5 this district without the Court's approval.

6
7 (7) Issue an Order prohibiting Respondents from re-detaining or re-arresting
8 Petitioner absent constitutional protections, including notice of at least ten
9 days before a pre-deprivation hearing, at which the government will bear the
10 burden by clear and convincing evidence that Petitioner is likely to flee or
11 pose a danger to the community if she is not detained.

12
13 (8) Issue an Order requiring Respondents to provide a bond hearing before the
14 immigration court within ten days to meaningfully consider her eligibility
15 for release, if the Court does not order her immediate release as described
16 above in (4).

17
18 (9) Award Petitioner attorney's fees and costs under the Equal Access to Justice
19 Act, and on any other basis justified under law; and

20
21 (10) Grant any further relief this Court deems just and proper.
22
23

1 Respectfully submitted,

2
3
4 /s/ Nanya Y.M. Thompson
5 Nanya Thompson (CA SBN 249904)
6 nanya.esq@gmail.com

7 *Counsel for Petitioner*

8 Dated: December 30, 2025

9
10
11
12 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

13
14 I represent Petitioner, Rui Luo, and submit this verification on her behalf. I hereby
15 verify that the factual statements made in the foregoing Petition for Writ of Habeas
16 Corpus are true and correct to the best of my knowledge.

17
18 Dated: December 30, 2025

19 /s/ Nanya Y.M. Thompson
20 Nanya Thompson (CA SBN 249904)