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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 YUNDONG XIE,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, warden of
14 Otay Mesa Detention Center
15 DANIEL A. BRIGHTMAN, San Diego
16 Field Office Director, Immigration and
17 Customs Enforcement and Removal
18 Operations ("ICE/ERO");
19 TODD LYONS, Acting Director of
20 Immigration Customs Enforcement
21 ("ICE");
22 KRISTI NOEM, Secretary of the
23 Department of Homeland Security
24 ("DHS");
PAMELA BONDI, Attorney General of
the United States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV0529 CAB DDL

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

Agency Doc. No. 

Petitioner n petitions this Court for a writ of habeas corpus under 28 U.S.C. §

2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1
2 1. Petitioner, Yundong XIE (“Mr. XIE” or “Petitioner”), by and through his
3 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to
4 issue a Writ of Habeas Corpus ordering Mr. Xie’s release from immigration
5 detention by the Department of Homeland Security, United States Immigration and
6 Customs Enforcement (“ICE”). Mr. Xie seeks immediate release from custody
7 because Respondents have held him since January 5, 2025—a prolonged period.
8 Mr. Xie was given a credible fear interview, which he passed and he was placed into
9 removal proceedings on February 3, 2025. His first individual hearing was
10 scheduled for September 26, 2025. Unfortunately, his attorney became ill and could
11 not attend. The individual was reset for Jan 2, 2026. In December, 2025, this
12 hearing was cancelled, and a master calendar hearing was set for Jan 6, 2026. At
13 that hearing a new individual hearing was set for May, 20, 2026, 16 months after he
14 was initially detained. Individual hearings are only scheduled for 2 hours at a time
15 in detention. Mr. Xie’s case will not be concluded on May 20, 2026 and will require
16 at least one continuation which will be set at least another 4 months later. Once the
17 application is adjudicated, one of the two parties will appeal which could add
18 another six to 12 months of detention awaiting resolution. There is no possibility of
19 his removal in the foreseeable future. His continued detention without a hearing as
20 to flight risk and danger to the community violates the U.S. Constitution and federal
21 law.
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1 **CUSTODY**

2 2. Mr. Xie is currently in Respondents' legal and physical custody. They are
3 detaining him at the Otay Mesa Detention Center in San Diego, California. He is
4 under Respondents' and their agents' direct control.
5

6 **PARTIES**

7 3. Mr. Xie is a 51-year-old citizen of China. He is currently detained at the Otay
8 Mesa Detention Center in San Diego, California.

9 4. Mr. Xie is currently in Respondents' legal and physical custody at the Otay
10 Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
11 corporation, operates that facility.

12 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
13 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
14 day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of
15 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a
16 custodian of Petitioner and is named in his official capacity.
17

18 6. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in
19 San Diego, California and is named in his official capacity. ICE is the component of
20 the DHS that is responsible for detaining and removing noncitizens according to
21 immigration law and oversees custody determinations. In his official capacity, he is
22 the legal custodian of Petitioner.
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1 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
2 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
3 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
4 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
5 detaining Mr. Xie. Respondent Lyons has custodial authority over Mr. Xie, who
6 names him in his official capacity.
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8 8. Respondent Kristi NOEM is the Secretary of the DHS and is named in her
9 official capacity. DHS is the federal agency responsible for enforcing immigration
10 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.
11 Respondent Noem has ultimate custodial authority over Mr. Xie, who names her in
12 her official capacity.

13 9. Respondent Pam BONDI is the Attorney General of the United States and the
14 most senior official in the U.S. Department of Justice (DOJ) and is named in her
15 official capacity. She is responsible for the Immigration and Nationality Act’s
16 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
17 Executive Office for Immigration Review, the office that administers Mr. Xie’s
18 removal proceedings and is responsible for adjudicating Mr. Xie’s asylum
19 application. Mr. Xie names her in her official capacity.
20

21 10. Respondent U.S. Immigration Customs Enforcement is the federal agency
22 responsible for custody decisions relating to non-citizens charged with being removable
23 from the United States, including the arrest, detention, and custody status of non-citizens.
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1 jurisdictional restrictions. Because Mr. Xie seeks the traditional habeas remedy of
2 release from allegedly unlawful detention, his petition presents precisely the type of
3 threshold legality-of-detention question that § 2241 was designed to address. *See*
4 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d
5 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.
6 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See*,
7 e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the legality of
8 Mr. Xie's detention.
9

10 15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)
11 because a substantial part of the events or omissions giving rise to this claim have
12 happened here, Mr. Xie is detained here, and his custodian resides here. Venue is
13 also proper under 28 U.S.C. § 2243 because Mr. Xie's immediate custodian resides in
14 this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J.,
15 concurring).
16

17 **FACTUAL BACKGROUND**

18 16. Mr. Xie is a citizen of China. This is a communist regime and does not
19 tolerate dissent.

20 17. Mr. Xie is a supporter of democracy and the right to self-determination.
21 He had made some posts about China's treatment of Hong Kong. He was lured into a
22 police station under false pretenses. Once inside he was imprisoned and tortured.
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1 After finally being released he was under constant surveillance and threat. As a
2 result, he fled China and came to the United States to seek asylum.

3 18. Mr. Xie entered the United States pursuant to a CBP One appointment
4 on January 5, 2025. He was processed at the border and then taken to Otay Mesa
5 Detention Center on January 6, 2025. He has been in detention since January 6,
6 2025.

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8 19. Upon arrival at Otay Mesa, Mr. Xie was given a credible fear interview
9 which he passed. His Notice to Appear, which commenced his 240 removal
10 proceedings, was entered on February 3, 2025.

11 20. Initially Mr. Xie's hearings went forward as normal. At one point his
12 judge was changed and a new master was set before Judge Robinson. His asylum
13 application was filed on June 25, 2025. His first individual hearing was set for
14 September 26, 2025. However, his lawyer became ill and could not attend. His
15 individual was reset for January 2, 2026. In December, this was cancelled and a new
16 master calendar was set for January 6, 2026. At this hearing a new individual
17 hearing was set for May 20, 2026. That hearing will be 16 months after Mr. Xie's
18 detention began.

19 21. Hearing Dates:

- 20
21 a. February 13, 2025- first master calendar hearing
22 b. March 16, 2025 - master held
23 c. April 7, 2025 - master held
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- 1 d. June 11, 2025 – judge changed to IJ Robinson. New master set to review
2 docket by the court.
- 3 e. July 16, 2025 – IJ Robinson sets Individual hearing for Sept 26
- 4 f. September 26, 2026 – Individual continued – attorney out sick. New
5 individual set for January 1, 2026
- 6 g. December 9, 2026 – individual taken off calendar and master reset
- 7 h. January 21, 2026 – master calendar held, individual hearing set for May,
8 20, 2026.
- 9 i. May 20, 2026 – individual hearing.

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11 22. Mr. Xie timely filed his asylum application on June 25, 2025.

12 23. Mr. Xie's first individual hearing is now set for May 20, 2026. Individual
13 hearings are only allotted 2 hours at the detention court in Otay Mesa. Mr. Xie will
14 not be able to present his case in chief in only 2 hours. This will require another
15 continuance to complete his testimony and cross examination. Currently individual
16 hearings are being set from four to six months out due to the heavy caseloads at the
17 detention center. As a result, the court's ruling on his asylum application is at least
18 eight months in the future if not longer. Once the court either grants or denies the
19 asylum application, one of the two parties will reserve appeal which will add at least
20 another six months to the process. Without an opportunity for a bond hearing,
21 Petitioner will be spending at least another year in detention.

22
23 24. Mr. Xie's continued detention without a tenable justification and
24 without a demonstration that removal is significantly likely in the reasonably

1 foreseeable future violates constitutional due process. *Zadvydas v. Davis*, 533 U.S.
2 678 (2001); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

3 25. The government has failed to effectuate Mr. Xie's removal within a
4 reasonable period of time or present any evidence that his removal is significantly
5 likely to occur in the reasonably foreseeable future.

6 26. Mr. Xie's detention without a tenable justification violates his rights
7 under the Due Process Clause of the Fifth Amendment.
8

9 **EXHAUSTION OF REMEDIES**

10 27. Exhausting administrative remedies here is futile because Respondents
11 contend Mr. Xie is subject to mandatory detention. As such, no request to release
12 him from custody would be considered by ICE. Moreover, immigration judges in this
13 district claim to have no jurisdiction to conduct a custody redetermination hearing
14 as to individuals procedurally situated like Mr. Xie. Indeed, in contravention to the
15 INA and long-standing precedent and practice, the Board of Immigration Appeals
16 and Attorney General have deemed no noncitizen eligible for bond before an
17 immigration judge (with the exception of only noncitizens who entered the U.S. on a
18 visa). As such, any attempts to exhaust administrative remedies would be entirely
19 futile.
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21 28. Recently, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-
22 SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA
23 has asserted that bond hearings are now available. However, after the final decision
24

1 in *Maldonado* was entered, DHS sent out a directive to Immigration Judges to ignore
2 this case and continue to deny jurisdiction. IJ Begovich has already denied several
3 bond requests claiming, once again, lack of jurisdiction.

4 29. Moreover, no statutory exhaustion requirements apply to Petitioner's
5 claim of unlawful custody in violation of his due process rights, and there are no
6 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*
7 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile
8 exercise because the agency does not have jurisdiction to review" constitutional
9 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)
10 (same).

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12 30. More importantly, every day that Petitioner remains detained causes
13 him harm that cannot be repaired. His continued detention puts his mental health at
14 greater risk, further warranting a finding of irreparable harm and the waiver of the
15 prudential exhaustion requirement.

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17 31. The Court must consider this in its irreparable harm analysis of the
18 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
19 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
20 petitioner "continues to suffer significant psychological effects from his detention,
21 including anxiety caused by the threats of other inmates and two suicide attempts,"
22 in finding that petitioner would suffer irreparable harm warranting waiver of
23 exhaustion requirement).

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FIRST CAUSE OF ACTION

Fifth Amendment Due Process Violation

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2 32. Mr. Xie re-alleges and incorporates by reference, as if fully set forth
3 herein, the allegations in the previous paragraphs.

4 33. The Supreme Court has long recognized that the Fifth and Fourteenth
5 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
6 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
7 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
8 confined to the protection of citizens.”). As stated by the Court, the provisions of the
9 Fourteenth Amendment “are universal in their application, to all persons within the
10 territorial jurisdiction, without regard to any differences of race, of color, or of
11 nationality” *Id.* (emphasis added).

12 34. The Supreme Court has held that “even one whose presence in this
13 country is unlawful, involuntary, or transitory is entitled to that constitutional
14 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
15 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
16 (1982) (“Whatever his status under the immigration laws, an alien is surely a
17 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
18 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
19 [may not]... be deprived of life, liberty or property without due process of law.”).

20 35. As there is no final order of removal, and there doesn’t appear to be
21 one in the reasonably foreseeable future, Mr. Xie may not be removed from the
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1 United States. His removal is not reasonably foreseeable, and his detention no
2 longer serves any legitimate purpose under the INA.

3 36. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
4 District granted habeas relief in a substantially similar case, applying a six-factor
5 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
6 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
7 duration of future detention; (3) conditions of detention; (4) delays in the removal
8 proceedings caused by the detainee; (5) delays in the removal proceedings caused
9 by the government; and (6) the likelihood that the removal proceedings will result
10 in a final order of removal. The court determined that prolonged detention, when
11 considered alongside other due process concerns, can rise to the level of a
12 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

14 37. Applying the *Banda* six-factor framework here supports granting Mr.
15 Xie's petition.

16 38. The final factor—finality—strongly supports the grant of this habeas
17 petition. Mr. Xie has been waiting over a year just to have this asylum application
18 adjudicated. The May 20, 2026 date will be 16 months after his detention began. His
19 asylum application will not be conclusively decided at that hearing. That will be
20 many months in the future.

22 39. Nearly all delays in this case are attributable to the government. The
23 delay due to illness was not caused by Mr. Xie. He promptly applied for asylum after
24 his credible fear interview; he has timely attended all of his interviews and court

1 hearings. His individual hearing is initially scheduled for May 20, 2026 and it will be
2 reset again for another date even further in the future.

3 40. Mr. Xie has now been detained by ICE for over twelve months since his
4 arrival in the United States on January 5, 2025. This period is well beyond the
5 presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701.
6 Courts consistently find detention beyond this threshold triggers due process
7 scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

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9 41. Mr. Xie poses no risk of flight and no danger to the community. He has
10 no criminal history, has demonstrated compliance with all prior immigration
11 requirements, and has community support in the United States.

12 42. Mr. Xie’s continued detention without a tenable justification violates his Fifth
13 Amendment right to due process.

14 **PRAYER FOR RELIEF**

15 Mr. Xie asks this Court to grant the following relief:
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- 17 1. Issue a Writ of Habeas Corpus ordering Respondents to release
18 Mr. Xie from custody immediately;
- 19 2. Declare the continued detention of Mr. Xie without a tenable
20 justification a violation of the Due Process Clause of the U.S. Constitution;
- 21 3. Alternatively, order an immediate bond hearing before a neutral
22 decisionmaker where DHS bears the burden of justifying Mr. Xie’s
23 continued detention by clear and convincing evidence and where
24 alternatives to detention and Mr. Xie’s ability to pay a bond are

1 considered;

2 4. Order Respondents to show cause why Mr. Xie is being subjected
3 to unlawful and unconstitutional detention; and

4 5. Grant any other relief that may be fit and proper.

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6 Dated: January 27, 2026

Respectfully submitted,

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8 By: /s/ Brian J. McGoldrick
9 Brian J. McGoldrick, Esq.
10 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 27th day of January, 2026, in San Diego, California.

/s/ Brian J. McGoldrick
Brian J. McGoldrick, Esq.
Attorney for Petitioner