

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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Yi XING,

Petitioner,

v.

Mary De Anda-Ybarra, in her official capacity as Director of U.S. Immigration and Customs Enforcement and Removal Operations, El Paso Field Office;
Kristi NOEM, in her official capacity as Secretary of Homeland Security; Pamela BONDI, in her official capacity as Attorney General of the United States; and Dora Castro, in her official capacity as Warden of the Otero County Processing Center

Respondents.

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Case No.: 1:26-cv-00306

**MEMORANDUM OF LAW IN
SUPPORT OF PETITIONER'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

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FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

Petitioner Yi Xing ("Petitioner") seeks an emergency Temporary Restraining Order and Preliminary Injunction to stay his individual (merits) hearing, currently scheduled for February 19, 2026, before the Otero Immigration Court. Petitioner is currently challenging his unlawful "bond-less" mandatory detention in this Court via an Amended Verified Emergency Petition for Writ of Habeas Corpus.

On February 11, 2026, this Court issued an Order for Respondents to Show Cause, explicitly finding that "it appears from the face of the petition that Petitioner may be entitled to relief." Despite this preliminary finding, the Government continues to hold Petitioner in mandatory detention and intends to force him to proceed to a final merits trial while he is unlawfully confined. A stay is necessary to prevent irreparable harm to Petitioner's due process rights and to preserve this Court's jurisdiction over the fundamental legality of his custody.

II. STATEMENT OF FACTS

Petitioner has resided in the United States since March 17, 2024, having established deep community and religious ties in New York. Despite full compliance with all ICE requirements, he was re-detained during a routine check-in on November 19, 2025, and transferred to the Otero County Processing Center in New Mexico.

The Immigration Court denied Petitioner's request for a bond hearing on January 9, 2026, citing the Board of Immigration Appeals' ("BIA") restrictive ruling in *Matter of Hurtado*. This Court has already ordered Respondents to show cause why Petitioner should not be granted relief, with the Government's response not due until February 26, 2026, seven days after the scheduled merits hearing.

III. ARGUMENT

A party seeking a TRO or preliminary injunction must establish: (1) a substantial likelihood of success on the merits; (2) irreparable harm; (3) that the balance of equities tips in their favor; and (4) that the injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

A. Substantial Likelihood of Success on the Merits

This Court has already determined that Petitioner "may be entitled to relief". Under the prevailing law of this District, individuals like Petitioner who have "effected an entry" and lived in the interior for years are governed by the discretionary detention provisions of 8 U.S.C. § 1226(a), not the mandatory detention of § 1225(b). See *Singh v. Noem*, No. 2:25-cv-01256 (D.N.M. Jan. 30, 2026). Petitioner's nearly two-year residency in New York falls squarely within the "effected entry" standard adopted by this Court.

B. Irreparable Harm

Forcing Petitioner to proceed to a final asylum hearing while unlawfully detained constitutes irreparable harm. Physical confinement "lies at the heart of the liberty that the Due Process Clause protects." Furthermore, Petitioner's ability to assist in his own defense, specifically in finalizing witness preparations with church leaders from New York, is severely hampered by his continued detention in New Mexico. Proceeding on February 19 would render his habeas petition effectively moot regarding his right to prepare for his merits hearing while at liberty.

C. Balance of Equities and Public Interest

The balance of equities tips sharply in Petitioner's favor. The Government suffers no harm from a brief delay to allow this Court to determine the legality of Petitioner's detention. Conversely, the public has a strong interest in ensuring that the Department of Justice and DHS comply with

the Constitution and the INA. Judicial economy is best served by staying the administrative trial until the fundamental question of the Court's authority over the Petitioner is resolved.

IV. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court GRANT his Motion for a Temporary Restraining Order and Preliminary Injunction and ENJOIN Respondents from proceeding with the individual hearing in the Otero Immigration Court until this Court has reached a final disposition on the merits of his Habeas Petition.

Date: February 17, 2026

Respectfully Submitted,

VIP LAW GROUP, PC

By: /s/ Guofeng Li

Guofeng Li, Esq.

855 Conklin Street. Suite S

Farmingdale, NY 11735

Tel: (516) 808-6266

Email: lawyerly.chris@gmail.com

Counsel for Petitioner

Federal Bar ID: 26-112

CERTIFICATION OF COMPLIANCE WITH D.N.M.LR-CIV. 65.1

Pursuant to Local Rule 65.1, I, Guofeng Li, counsel for Petitioner, hereby certify that on February 17, 2026, I provided notice of this emergency filing to the U.S. Attorney's Office for the District of New Mexico.

1. **Method of Notice:** I sent a copy of the Notice of Motion, Memorandum of Law, and the Supporting Affidavit to Assistant U.S. Attorney Allison Shokes (the designated duty attorney) via electronic mail at allison.shokes@usdoj.gov.
2. **Additional Efforts:** I further attempted to contact the Civil Division of the U.S. Attorney's Office via telephone at (505) 346-7274 to advise them of the immediate nature of this request.
3. **Necessity of Ex Parte Relief:** Due to the imminent nature of the February 19 merits hearing, which is less than 48 hours away, Petitioner respectfully requests that this Court consider this motion immediately to prevent irreparable injury before the Respondents can formally respond.

Date: February 17, 2026

Respectfully Submitted,

VIP LAW GROUP, PC
By: /s/ Guofeng Li
Guofeng Li, Esq.
855 Conklin Street. Suite S
Farmingdale, NY 11735
Tel: (516) 808-6266
Email: lawyerly.chris@gmail.com
Counsel for Petitioner
Federal Bar ID: 26-112