

1 Bashir Ghazialam (CA Bar No. 212724)
2 LAW OFFICES OF BASHIR GHAZIALAM
3 P.O. Box 928167
4 San Diego, California 92192
5 Tel: (619) 795-3370
6 Fax: (866) 685-4543
7 bg@lobg.net

8 Attorney for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Jiaying XIE,

12 Petitioner,

13 v.

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;

17 Daniel A. BRIGHTMAN, Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigrations and
20 Customs Enforcement; U.S. Department
21 of Homeland Security;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security;

Pam BONDI, Attorney General of the
United States;

Respondents.

Case No.: '26CV1421 LL BLM

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

Agency Doc. No.:



1 Petitioner JIAXING XIE petitions this Court for a writ of habeas corpus under
2 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as
3 follows:

4 INTRODUCTION

5
6 1. Petitioner, JIAXING XIE ("Mr. Xie" or "Petitioner"), by and through his
7 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue
8 a Writ of Habeas Corpus ordering Mr. Xie's release from immigration detention by the
9 Department of Homeland Security, United States Immigration and Customs Enforcement
10 ("ICE"). Mr. Xie seeks immediate release from custody because Respondents have held
11 him since January 8, 2025—a prolonged period—even though he has hired counsel and
12 has acted diligently to have his asylum application heard by an immigration judge ("IJ"),
13 and his proceedings have been continued through no fault of his own. His continued
14 detention without a hearing as to flight risk and danger to the community violates the
15 U.S. Constitution and federal law.

16 CUSTODY

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

21 PARTIES

22 3. Mr. Xie is a 50-year-old citizen of China, born in Laibin, China. He is currently
23 detained at the Otay Mesa Detention Center in San Diego, California. Mr. Xie is seeking
24

1 asylum in the United States due to persecution on account of his religion and political
2 opinion.

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

6 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
7 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
8 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
9 Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a
10 custodian of Petitioner and is named in his official capacity.

11 6. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San
12 Diego, California and is named in his official capacity. ICE is the component of the DHS
13 that is responsible for detaining and removing noncitizens according to immigration law
14 and oversees custody determinations. In his official capacity, he is the legal custodian of
15 Petitioner.

16 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
17 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
18 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
19 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
20 Mr. Xie. Respondent Lyons has custodial authority over Mr. Xie, who names him in his
21 official capacity.
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1 8. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
2 responsibility for overseeing the operation of the immigration courts and the Board of
3 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
4 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
5 removal proceedings, including for custody redeterminations in bond hearings. She is
6 sued in her official capacity.

7
8 9. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official
9 capacity. DHS is the federal agency responsible for enforcing immigration laws and
10 granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem
11 has ultimate custodial authority over Mr. Xie, who names her in her official capacity.

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

19
20 **JURISDICTION AND VENUE**

21 11. This action arises under the United States Constitution and the Immigration and
22 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Xie's
23 detention under the INA and any inherent or plenary powers the government may claim
24 to continue holding him.

1 12. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
2 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
3 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
4 Jurisdiction is not limited by a petitioner’s nationality, immigration status, or any other
5 classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant
6 relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706
7 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001
8 (Declaratory Judgment Act), and 2241 (habeas corpus).

9
10 13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr.
11 Xie’s detention. Federal district courts possess broad authority to issue writs of habeas
12 corpus when a person is held “in custody in violation of the Constitution or laws or
13 treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to
14 immigration detention challenges that survived the REAL ID Act’s jurisdictional
15 restrictions. Because Mr. Xie seeks the traditional habeas remedy of release from
16 allegedly unlawful detention, his petition presents precisely the type of threshold legality-
17 of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S.
18 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020)
19 (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are
20 not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S.
21 678, 687 (2001). No court has ruled on the legality of Mr. Xie’s detention.

22
23 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
24 substantial part of the events or omissions giving rise to this claim have happened here,

1 Mr. Xie is detained here, and his custodian resides here. Venue is also proper under 28
2 U.S.C. § 2243 because Mr. Xie's immediate custodian resides in this District. See
3 *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

4 **FACTUAL BACKGROUND**

5 15. Mr. Xie is a 50-year-old citizen of China, born in Laibin, China. Mr. Xie is seeking
6 asylum in the United States due to persecution on account of his religion and political
7 opinion..

8 16. Mr. Xie arrived in the U.S. on January 8, 2025 and entered the U.S. by land at an
9 unknown location, without inspection and without valid entry documents or a visa. Upon
10 arrival, he walked up to border officials and informed them he had a fear to return to
11 China. He was ultimately transferred to the Otay Mesa Detention Center where he has
12 been detained ever since.

13 17. On February 20, 2025, an immigration judge reviewed Mr. Xie's negative credible
14 fear determination by an asylum officer, found him to be credible and made a positive
15 determination of credible fear of persecution in China.

16 18. At his first Master Calendar hearing on March 3, 2025, Mr. Xie appeared with
17 counsel and the IJ took pleadings. The IJ adjourned the proceedings to April 3, 2025 for
18 Mr. Xie to file his asylum application and personal statement, which Mr. Xie did prior to
19 date.

20 19. Mr. Xie's individual merits hearing was scheduled for August 1, 2025.
21 Proceedings were completed at that hearing and it was adjourned to November 10, 2025,
22 at which point, the IJ granted DHS's motion to pretermite, denied all forms of relief and
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24

1 ordered Mr. Xie removed to China. Mr. Xie reserved appeal and timely filed his appeal
2 on November 26, 2025. That appeal continues to be pending as of the date of filing of
3 this petition

4 20. Mr. Xie has not moved for a custody redetermination because the IJ's in this
5 jurisdiction have consistently ruled that they do not have jurisdiction to redetermine the
6 conditions of custody over individuals who have been apprehended at the border of the
7 United States and who have been processed under Section 235(b)(1) expedited removal
8 statute, and who have been placed in removal proceedings following a positive credible
9 fear determination by an asylum officer.
10

11 21. While in detention, due to his prolonged detention, Mr. Xie has developed serious
12 psychological symptoms, including anxiety, depression, paranoia, hopelessness and
13 emotional numbness, for which there is no adequate treatment in the detention facility.

14 22. Mr. Xie's continued detention without a tenable justification and without a
15 demonstration that removal is significantly likely in the reasonably foreseeable future
16 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
17 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

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

21 24. Mr. Xie's detention without a tenable justification violates his rights under the Due
22 Process Clause of the Fifth Amendment.
23

24 EXHAUSTION OF REMEDIES

1 25. Mr. Xie has exhausted all administrative remedies, and no further ones are
2 available. Furthermore, for habeas claims, exhaustion of administrative remedies is
3 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
4 prudential exhaustion requirement if “administrative remedies are inadequate or not
5 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
6 injury will result, or the administrative proceedings would be void.” *Id.* (quoting Laing v.
7 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).
8
9 Petitioner asserts that exhaustion should be waived because administrative remedies are
10 (1) futile and (2) his continued detention results in irreparable harm.

11 26. Exhausting administrative remedies here is futile because Respondents contend
12 Mr. Xie is subject to mandatory detention. As such, no request to release him from
13 custody would be considered by ICE and Mr. Xie’s repeated requests for parole release
14 have been denied. Moreover, immigration judges in this district claim to have no
15 jurisdiction to conduct a custody redetermination hearing as to individuals procedurally
16 situated like Mr. Xie. Indeed, in contravention to the INA and long-standing precedent
17 and practice, the Board of Immigration Appeals and Attorney General have deemed no
18 noncitizen eligible for bond before an immigration judge (with the exception of only
19 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
20 administrative remedies would be entirely futile.

21
22 27. Moreover, no statutory exhaustion requirements apply to Petitioner’s claim of
23 unlawful custody in violation of his due process rights, and there are no administrative
24 remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,

1 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because
2 the agency does not have jurisdiction to review” constitutional claims); In re Indefinite
3 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

4 28. More importantly, every day that Petitioner remains detained causes him harm
5 that cannot be repaired. His continued detention puts his physical and mental health at
6 greater risk, further warranting a finding of irreparable harm and the waiver of the
7 prudential exhaustion requirement. As explained above, Mr. Xie has developed serious
8 psychological symptoms, including anxiety, depression, paranoia, hopelessness and
9 emotional numbness, for which there is no adequate treatment in the detention facility..
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11 29. The Court must consider this in its irreparable harm analysis of the effects on
12 Petitioner as his detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
13 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to
14 suffer significant psychological effects from his detention, including anxiety caused by
15 the threats of other inmates and two suicide attempts,” in finding that petitioner would
16 suffer irreparable harm warranting waiver of exhaustion requirement).

17 **FIRST CAUSE OF ACTION**
18 **Fifth Amendment Due Process Violation**

19 30. Mr. Xie re-alleges and incorporates by reference, as if fully set forth herein, the
20 allegations in paragraphs 1-36 above.

21 31. The Supreme Court has long recognized that the Fifth and Fourteenth
22 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
23 removable aliens, must be afforded due process protection. See Yick Wo v. Hopkins, 118
24

1 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to
2 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
3 Amendment “are universal in their application, to all persons within the territorial
4 jurisdiction, without regard to any differences of race, of color, or of nationality” Id.
5 (emphasis added).

6 32. The Supreme Court has held that “even one whose presence in this country is
7 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
8 Process Clauses of the Fifth and Fourteenth Amendments]” Mathews v. Diaz, 426 U.S.
9 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) (“Whatever his status
10 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
11 term.”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“Persons within the
12 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
13 property without due process of law.”).

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

19 34. In Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District
20 granted habeas relief in a substantially similar case, applying a six-factor balancing test
21 first articulated in Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which
22 considers: (1) total length of detention to date; (2) likely duration of future detention; (3)
23 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
24

1 delays in the removal proceedings caused by the government; and (6) the likelihood that
2 the removal proceedings will result in a final order of removal. The court determined that
3 prolonged detention, when considered alongside other due process concerns, can rise to
4 the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at
5 773.

6 35. Applying the Banda six-factor framework here supports granting Mr. Xie's
7 petition.

8 36. The final factor—finality—strongly supports the grant of this habeas petition and
9 request for a bond hearing. Mr. Xie is statutorily eligible to apply for asylum, and until
10 that application is finally adjudicated, he cannot be removed from the United States, even
11 to a third country.

12 37. Any delays in this case are attributable to the government, and none are
13 attributable to Mr. Xie. Mr. Xie promptly applied for asylum at the border, he has timely
14 attended all of his interviews and court hearings and has worked diligently to prepare his
15 case with counsel. He has retained counsel at a very early stage of his case to represent
16 him.
17

18 38. Mr. Xie has now been detained by ICE for almost 14 months since his arrival in
19 the United States on January 8, 2025. His appeal before the BIA is still pending and it is
20 unknown when the BIA will complete its adjudication of the appeal, and in the event the
21 BIA affirms the IJ's decision, Mr. Xie will file a petition for review before the Ninth
22 Circuit Court of Appeals, which could take many more additional months if not years to
23 be completed. If the BIA reverses the IJ, then his case will be remanded back to a the IJ
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1 which will take several additional months if not over a year. This period is well beyond
2 the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701.
3 Courts consistently find detention beyond this threshold triggers due process scrutiny.
4 See Kydyrali, 499 F.Supp. 3d at 774–75.

5 39. Conditions of confinement also raise constitutional concerns as the medical
6 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
7 Xie’s health conditions.

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

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

13
14 **PRAYER FOR RELIEF**

15 Mr. Xie asks this Court to grant the following relief:

- 16
- 17 1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr.
18 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 alternatives
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1 to detention and Mr. Xie's ability to pay a bond are considered

2 4. Order Respondents to show cause why Mr. Xie is being subjected to
3 unlawful and unconstitutional detention; and
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5 5. Grant any other relief that may be fit and proper.

6 Dated: March 5, 2026

Respectfully submitted,

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8 By: /s/ Bashir Ghazialam
9 Bashir Ghazialam

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 and have reviewed his immigration file. Based on those discussions and review of his file, 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 March 5, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner