

JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq*.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq*. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the habeas corpus petition or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id*.

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner FONG TA LIN (“Petitioner”) is a 26-year-old citizen of the Republic of China. He is detained by the Respondents at the Otay Mesa Detention Center.

1 10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior
2 Warden of the (Otay Mesa Detention Center). Defendant LaRose has custody of petitioner.

3 11. Respondent TODD BLANCHE is being sued in his official capacity as the Acting
4 Attorney General of the United States. He is the official generally charged with supervisory
5 authority over all operations of the Department of Justice. In this capacity, he is responsible for the
6 administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive
7 Office for Immigration Review (“EOIR”), a component of the DOJ, which includes the immigration
8 courts and the Board of Immigration Appeals (“BIA” or “Board”). He is empowered to oversee the
9 adjudication of removal and bond hearings and by regulation has delegated that power to the
10 nation’s Immigration Judges and the BIA.

11 12. Respondent MARKWAYNE MULLIN is being sued in his official capacity as the
12 Secretary of the United States Department of Homeland Security. He is the executive officer who
13 has been given authority to manage and control U.S. Immigration and Customs Enforcement
14 (“ICE”). As such, he is the ultimate legal custodian of petitioner.

15 13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field
16 Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a
17 component of DHS with responsibility over persons in immigration custody at the Otay Mesa
18 Detention Center. Director DIVVER has custody of petitioner.

19 **LEGAL FRAMEWORK**

20 14. This petition presents the question of whether the Constitution allows the indefinite
21 prolonged detention of a noncitizen not subject to a final order of removal.

22 15. Section 235(b)(1) of the Immigration and Nationality Act (“INA”) contemplates that
23 aliens arriving in the United States will be screened for eligibility for expedited removal. See 8
24 U.S.C. § 1225(b)(1). However, if an alien “indicates either an intention to apply for asylum” or “a
25 fear of persecution” during initial screening, then “the officer shall refer the alien for an interview
26 by an asylum officer. See 8 U.S.C. § 1225(b)(1)(A)(ii). If an immigration officer determines after
27 that interview that the alien has a credible fear of persecution, “the alien shall be detained for further
28 consideration of the application for asylum.” §1225(b)(1)(B)(ii).

1 16. “Neither the Ninth Circuit nor the Supreme Court have provided guidance regarding
2 the point at which an immigration detainee’s prolonged mandatory detention becomes
3 unconstitutional.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL
4 3079052, at *5 (S.D. Cal. Nov. 4, 2025). However, “[n]early all district courts that have considered
5 [the constitutionality of prolonged mandatory detention] agree that prolonged mandatory detention
6 pending removal proceedings, without a bond hearing, will—at some point—violate the right to due
7 process.” *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019) (internal quotation marks and
8 citations omitted) (cleaned up) (collecting cases).

9 17. Many district courts addressing habeas petitions asserting claims based upon
10 mandatory detention have determined that prolonged detention without a bond hearing violates due
11 process rights. *See Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110 (S.D. Cal. 2025) (listing cases). In
12 this regard, judges in the Southern District of California have rejected Respondents’ due process
13 arguments and “join[ed] the majority of courts across the country in concluding that an
14 unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing
15 violates due process.” *Khadka v. Otay Mesa Det. Ctr.*, No. 3:26-CV-00475-RBM-MMP, 2026 WL
16 800177, at *3 (S.D. Cal. Mar. 23, 2026); *Malysenko v. Warden Otay Mesa Det. Ctr.*, Case No.: 3:26-
17 cv-00069-RBM-SBC, 2026 WL 252367, at *4 (S.D. Cal. Jan. 30, 2026) (quoting *Kydyrali v. Wolf*,
18 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)); *see Xie v. LaRose*, Case No.: 3:26-cv-00529-
19 RBMDDL, 2026 WL 549909, at *2 (S.D. Cal. Feb. 27, 2026) (quoting the same); *see Zhakuov v.*
20 *Noem*, Case No. 3:26-cv-00288-RBM-DDL, 2026 WL 517981, at *2 (S.D. Cal. Feb. 25, 2026)
21 (same); *Hussain v. LaRose*, Case No.: 3:26-cv-00194-RBM-MSB, 2026 WL 206715, at *2 (S.D.
22 Cal. Jan. 27, 2026) (same). “This Court likewise agree[d] with those district courts that interpret
23 *Thuraissigiam* as circumscribing an arriving noncitizen’s due process rights to admission, rather
24 than limiting that person’s ability to challenge detention.” *Malysenko*, 2026 WL 252367, at *4
25 (quoting *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110 (S.D. Cal. 2025)). *Asayehegn v. LaRose*, Case
26 No.: 26-cv-00663-RBM-BJW, 2026 WL 937126 at *2 (S.D. Cal. April 27, 2026).

27 18. To determine whether § 1225(b) detention has become unreasonable, the Court
28 considers: (1) total length of detention to date; (2) likely duration of future detention; (3) conditions

1 of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the
2 removal proceedings caused by the government; and (6) the likelihood that the removal proceedings
3 will result in a final order of removal. *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020)
4 (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019).

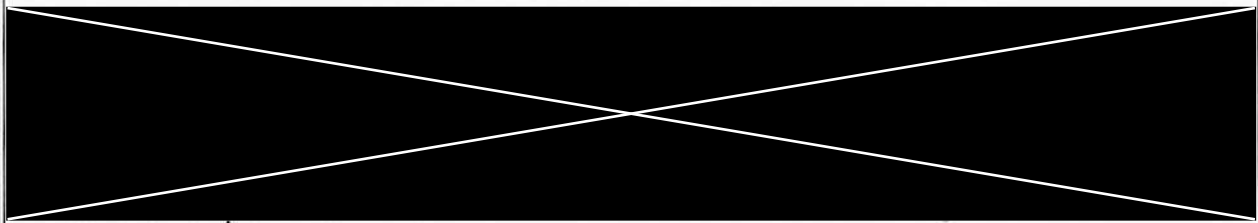
5 19. Petitioner is detained at the Otay Mesa Detention Center, which several courts have
6 found is “indistinguishable from penal confinement.” *Kydyrali*, 499 F. Supp. 3d at 773 (citation
7 omitted); *Abdul Kadir v. Larose*, Case No. 25-cv-1045-LL-MMP, 2025 WL 2932654 at *5 (S.D.
8 Cal. Oct. 15, 2025).

9 **FACTUAL ALLEGATIONS**

10 20. Petitioner FONG TA LIN is a 26-year-old citizen of the Republic of China (Taiwan).
11 He is not married and has no children. He has been regularly employed. Petitioner has no criminal
12 record. Petitioner’s parents divorced when he was five years old. Petitioner went to live with his
13 paternal father in Taiwan, who used to physically beat him.

14 21. Petitioner was brought to the United States as a 16-year-old child by his mother on
15 December 23, 2015 through the Visa Waiver Program (VWP). The VWP allows citizens from
16 designated countries (including Taiwan) to travel to the United States for tourism or business for up
17 to 90 days without obtaining a visa. Petitioner overstayed his VWP entry.

18 22. Petitioner moved to Houston, Texas with his mother. In January 2016, the mother
19 married a United States citizen, petitioner’s step-father. 

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24 23. Petitioner’s mother legalized her immigration status to a lawful permanent resident
25 though her United States citizen husband. Over the years, petitioner’s relatives have also tried to
26 legalize his immigration status. In 2017, his step-father filed a Form I-130 and an adjustment of
27 status application, which were denied. In 2019, petitioner’s mother filed a Form I-130 and an
28 adjustment of status application, which were also denied.

24. In February 2023, petitioner filed a Form I-360 VAWA self-petition concurrent with Form I-485 application for adjustment of status. The USCIS issued petitioner a Prima Facie Determination on his VAWA Form I-360 self-petition. A VAWA prima facie determination is an initial USCIS finding that a VAWA self-petitioner has submitted sufficient preliminary evidence to meet basic eligibility requirements. In December 2025, the USCIS granted an extension of petitioner's Prima Facie Determination, which is now set to expire on June 13, 2026. Petitioner's Form I-360 VAWA self-petition and his Form I-485 adjustment of status application are still pending with the USCIS. Petitioner does not appear to be subject to any disqualifying grounds of inadmissibility. So, he has a straightforward adjustment of status application that should be approved. There is somewhat of a glitch in petitioner's case in that the UCSIS has jurisdiction to adjudicate the Form I-360 VAWA self-petition and adjustment of status applications, petitioner's primary form of relief from removal. Petitioner does not know when the USCIS will adjudicate his petition and application.

25. Around October 10, 2025, petitioner was surprised when government agents entered his apartment in Houston, Texas and detained him, saying that he was an illegal alien. For some reason, the government agents transported petitioner 1,500 miles away from his home and sent him to the Otay Mesa Detention Facility, where he remains today.

26. Almost five months later, on March 2, 2026, the DHS filed a Notice of Referral to Immigration Judge to start an asylum only proceeding at the Otay Mesa Immigration Court. Petitioner had his initial master calendar hearing on March 10, 2026. The court continued the case to another master calendar hearing on April 16, 2026 for the filing of the asylum application. Petitioner has filed an asylum application. He fears harm or mistreatment in Taiwan because he did not return there from the USA to complete his compulsory military service. He also fears his father and paternal grandfather because of their domestic violence. The immigration court will schedule an individual calendar trial on the asylum application.

27. If for some reason the court denies petitioner's asylum application at his eventual individual calendar hearing, he is entitled to appellate review of this decision. He can first appeal to the Board of Immigration Appeals ("BIA"). If the BIA denies the appeal, He can file a petition for

1 review with the Ninth Circuit Court of Appeals. The DHS has the same appellate rights. The
2 appellate review process will take months and possibly years.

3 28. Respondents have detained petitioner since October 10, 2025—a total of 185 days so
4 far. Spending so many months in the immigration jail has been devastating to petitioner's physical
5 and emotional health. Petitioner expected to legalize his immigration status through his pending
6 VAWA petition and was flummoxed when he was instead sent away from his Houston, Texas home
7 to the immigration jail at Otay Mesa, California. His prolonged detention has rendered petitioner
8 isolated, afraid, anxious, desperate, and depressed. He also fears for the well-being of his mother,
9 who is in delicate health and depends upon petitioner for support.

10 **CAUSES OF ACTION**

11 (Violation of the Due Process Clause)

12 29. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 28.

13 30. On October 10, 2025, DHS agents detained petitioner and sent him to the Otay Mesa
14 Detention Center for an asylum only proceeding.

15 31. On March 2, 2026, the DHS started an asylum only proceeding against petitioner at
16 the Otay Mesa Immigration Court. He has applied for asylum. The asylum only case is pending.

17 32. Petitioner has been detained for 185 days. His prolonged detention has caused him
18 physical and emotional distress..

19 33. The prolonged detention of petitioner without an individualized bond hearing in the
20 reasonably foreseeable future violates the Due Process Clause of the United States Constitution.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

23 (1) Assume jurisdiction over this matter;

24 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
25 should not be granted within three days;

26 (3) Declare that Petitioner's prolonged detention violates the Due Process Clause of the
27 Fifth Amendment;

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1 (4) Issue a Writ of Habeas Corpus ordering Respondents to provide petitioner a prompt
2 and individualized bond hearing, where Respondents must justify Petitioner's continued detention
3 by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to
4 the community if released;

5 (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28
6 U.S.C. § 2412), and any other applicable statute or regulation; and

7 (6) Grant any further relief this Court deems just and proper.

8 DATED: 13 April 2026

9 Respectfully submitted,

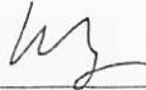
10 */s/ William Baker*

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12 _____
13 William Baker (157 906)
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16 Chula Vista, California 91913
17 Telephone: (619) 422-4885
18 william.baker@morenoandassociates
19 Attorney for petitioner
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1 VERIFICATION

2 DECLARATION UNDER PENALTY OF PERJURY

3 I declare under penalty of perjury under the laws of the United States that I am the petitioner; I
4 have read the petition or had it read to me in a language I understand, and the information in the
5 petition is true and correct. I understand that a false statement of a material fact may serve as the
6 basis for prosecution for perjury.

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9 FONG TA LIN
10 Petitioner/Peticionario
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7 **核實**

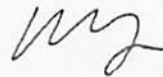
8 **作偽證處罰聲明**

9 本人謹根據美國法律作偽證處罰聲明：本人即為申請人；本人已閱讀申請書或已由他人以
10 本人能夠理解的語言宣讀申請書內容；申請書中所載資料真實無誤。本人知悉，對重要事實
11 作出虛假陳述可能構成偽證罪，並因此受到起訴。

12
13 **Héshí**

14 **zuò wèizhèng chūfá shēngmíng**

15 běnrén jīn gēnjù měiguó fǎlǜ zuò wèizhèng chūfá shēngmíng: Běnrén jí wèi shēnqǐng rén; běnrén
16 yǐ yuèdú shēnqǐng shū huò yǐ yóu tā rén yǐ běnrén nénggòu lǐjiě de yǔyán xuāndú shēnqǐng shū
17 nèiróng; shēnqǐng shū zhōng suǒ zài zīliào zhēnshí wúwù. Běnrén zhīxī, duì zhòngyào shìshí
18 zuòchū xūjiǎ chénshù kěnéng gòuchéng wèizhèng zuì, bìng yīncǐ shòudào qǐsù.

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22 **FONG TA LIN**
23 **Petitioner**