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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 LEQING TANG,
10
11 Plaintiff,

12 vs.

13 CHRISTOPHER LAROSE, warden of
14 Otay Mesa Detention Center
15 PATRICK DIVVER, San Diego Field
16 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 MARKWAYNE MULLIN, Secretary of
23 the Department of Homeland Security
24 ("DHS");
25 ACTING Attorney General of the United
26 States,
27 U.S. DEPARTMENT OF HOMELAND
28 SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV2472 RSH MSB

Agency Number: 

PETITION FOR WRIT OF HABEAS
CORPUS

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INTRODUCTION

1. Leqing TANG is a refugee from China. He grew up in China where he was forced to live under communist rule. The government forced his wife to have an abortion because of their family planning rules. They refused to pay Mr. Tang his subsidy during Covid lockdown and when he complained, he was arrested and beaten for opposing the government. To avoid further persecution, he made his way to the United States. He entered the United States and requested asylum.

2. He entered the United States on November 2, 2023. He was vetted by the Respondents. They determined he was not a flight risk or a danger to the community and they granted him conditional parole and release on his own recognizance.

3. Mr. Tang began his life in the United States after he was released. He found a place to live and integrated himself into the local community. In the 3 years he has lived here he has established himself financially as well. He has filed his I-589 application for Asylum.

4. On June 18, 2025, Mr. Tang was working as a migrant farm worker in the greater Los Angeles area. He was working on a farm near Interstate 10 when ICE officials arrived. They lined everyone up, put them all in handcuffs, along with Mr. Tang, and took them to a processing center in Los Angeles.

1 5. Mr. Tang's English is very limited. He did not understand what was
2 happening to him. He was simply told he was under arrest and must be detained.
3 He was told that there was no final decision yet on his case and he must wait in
4 detention for a decision. He was not told what law he had violated. He was not
5 advised of his Miranda rights. With no cause and no explanation and no warrant he
6 was put in the ICE vehicle and eventually transferred to the Otay Mesa facility.
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9 6. One of the benefits that petitioner enjoyed with conditional parole
10 has been his ability to work and to more actively participate in his asylum
11 application process. Suddenly, with no notice, no neutral determination that there
12 has been a change in circumstances, Respondents seek to revoke Mr. Tang liberty
13 and force him to remain in custody for the duration of his application process.
14 Respondents do so based not on Mr. Tang' personal circumstances but because of
15 Respondents' interpretation of President Trump's whim and categorical
16 determination that, the Fifth Amendment notwithstanding, noncitizens are not
17 entitled to due process.
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1 7. But Respondents cannot evade the law so easily. The U.S.
2 Constitution requires the Respondents provide at least the rights available to him
3 when he was granted parole and when he filed his application for asylum¹.
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5 8. Accordingly, to vindicate Petitioner's rights, this Court should grant
6 the instant petition for a writ of habeas corpus. Mr. Tang asks this Court to find
7 that Respondents' attempt to detain him are arbitrary and capricious and in
8 violation of the law, and to immediately issue an order preventing his transfer out
9 of this district.
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12 JURISDICTION

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14 9. This action arises under the Constitution of the United States and
15 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
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17 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
18 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
19 United States Constitution (Suspension Clause).
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21 11. This Court may grant relief under the habeas corpus statutes, 28
22 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
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26 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
27 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
28 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 3 million trials.").

1 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
2 U.S.C. § 1252(e)(2).
3

4 **VENUE**

5 12. Venue is proper because Petitioner is in Respondents' custody in
6 San Diego, California. Venue is further proper because a substantial part of the
7 events or omissions giving rise to Petitioner's claims occurred in this District,
8 where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
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11 13. For these same reasons, divisional venue is proper under Local
12 Rule HC.1
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14 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

15 14. The Court must grant the petition for writ of habeas corpus or
16 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
17 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
18 must require Respondents to file a return "within three days unless for good cause
19 additional time, not exceeding twenty days, is allowed." *Id.*
20
21

22 15. Courts have long recognized the significance of the habeas statute
23 in protecting individuals from unlawful detention. The Great Writ has been
24 referred to as "perhaps the most important writ known to the constitutional law of
25 England, affording as it does a swift and imperative remedy in all cases of illegal
26 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).
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1 16. Petitioner is “in custody” for the purpose of § 2241 because he is
2 arrested and detained by Respondents.
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4 **PARTIES**

5 17. Leqing Tang (“Petitioner”) is a 47-year-old citizen of China born
6  He is currently a resident of San Diego, California, and is present
7 within the state of California as of the time of the filing of this petition.
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9 18. Respondent Christopher LaRose is the Warden of the Otay Mesa
10 Detention Center and is a legal custodian of Petitioner.
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12 19. Respondent Patrick Divver is the Field Office Director for the San
13 Diego Field Office, Immigration and Customs Enforcement and Removal
14 Operations (“ICE”). The San Diego Field Office is responsible for local custody
15 decisions relating to non-citizens charged with being removable from the United
16 States, including the arrest, detention, and custody status of non- citizens. The San
17 Diego Field Office’s area of responsibility includes San Diego, California and the
18 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
19 Petitioner.
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23 20. Respondent Todd Lyons is the acting director of U.S. Immigration
24 and Customs Enforcement, and he has authority over the actions of respondent
25 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
26 Petitioner.
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1 the United States. The purpose of the Refugee Act is to enforce the “historic policy
2 of the United States to respond to the urgent needs of persons subject to
3 persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
4 212, 94 Stat. 102 (1980).

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7 27. The INA gives the Attorney General or the Secretary of Homeland
8 Security discretion to grant asylum to noncitizens who satisfy the definition of
9 “refugee.” Under that definition, individuals generally are eligible for asylum if
10 they have experienced past persecution or have a well-founded fear of future
11 persecution on account of race, religion, nationality, membership in a particular
12 social group, or political opinion and if they are unable or unwilling to return to
13 and avail themselves of the protection of their homeland because of that
14 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

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18 28. Noncitizens seeking asylum are guaranteed Due Process under the
19 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
20 (1993).

21
22 29. Noncitizens who are applicants for asylum are entitled to a full
23 hearing in immigration court before they can be removed from the United States. 8
24 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
25 appellate review before the Board of Immigration Appeals of removal orders
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1 entered against them and judicial review in federal court upon a petition for
2 review. 8 U.S.C. § 1252(a) *et seq.*
3


4 30. Immigration detention is a form of civil confinement that
5 “constitutes a significant deprivation of liberty that requires due process
6 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
7

8 31. Immigration detention should not be used as a punishment and
9 should only be used when, under an individualized determination, a noncitizen is a
10 flight risk because they are unlikely to appear for immigration court or a danger to
11 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
12

13 32. When a noncitizen arrives in the United States, the Attorney
14 General or his designees also have the authority to either detain, release on bond or
15 release on parole the noncitizen. INA § 212(d)(5)(A).
16

17 33. Parole must be terminated upon written notice after an
18 individualized determination that the purposes no longer apply. 8 C.F.R. §
19 212.5(e)(2)(i).
20
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22 **FACTUAL BACKGROUND**

23 34. Petitioner is a citizen of China. He was born  in China.
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25 35. Petitioner was repeatedly persecuted in China. He became afraid
26 for his life and believed he could no longer remain in China.
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1 36. On November 2, 2023, Petitioner was granted conditional parole
2 into the United States to seek asylum. This release was based on the individualized
3 facts in his case determined during his border interview, under 8 U.S.C. §
4 1182(d)(5).
5

6 37. He was also issued an NTA and placed in 240 removal
7 proceedings.
8

9 38. He has attended all scheduled hearings in connection with his
10 removal proceedings.
11

12 39. On information and belief, Petitioner continues to meet all the
13 requirements of his parole.
14

15 40. Petitioner applied for asylum.

16 41. On information and belief, Respondents issued work authorization
17 to Petitioner pursuant to 8 C.F.R. § 274a.12(c)(08).
18

19 42. On June 18, 2025, Mr. Tang was working as a migrant farm
20 worker in the greater Los Angeles area. He was working on a farm near Interstate
21 10 when ICE officials arrived. They lined everyone up, put them all in handcuffs,
22 along with Mr. Tang, and took them to a processing center in Los Angeles.
23

24 43. Mr. Tang's English is very limited. He did not understand what
25 was happening to him. He was simply told he was under arrest and must be
26 detained. He was told that there was no final decision yet on his case and he must
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1 wait in detention for a decision. He was not told what law he had violated. He was
2 not advised of his Miranda rights. With no cause and no explanation and no
3 warrant he was put in the ICE vehicle and eventually transferred to the Otay Mesa
4 facility.
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7 44. Mr. Tang was never presented with a warrant for his arrest. The
8 ICE agents did not provide him any process. The ICE agents did not offer him any
9 opportunity to be heard prior to arresting and detaining him.
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11 45. On January 20, 2025, President Donald Trump issued several
12 executive actions relating to immigration, including “Protecting the American
13 People Against Invasion,” an executive order (EO) setting out a series of interior
14 immigration enforcement actions. The Trump administration, through this and
15 other actions, has outlined sweeping, executive branch-led changes to immigration
16 enforcement policy, establishing a formal framework for mass deportation. The
17 “Protecting the American People Against Invasion” EO instructs the DHS
18 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
19 prioritize civil immigration enforcement procedures including through the use of
20 mass detention.
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25 46. On information and belief, Respondents are detaining Petitioner
26 regardless of the individual facts and circumstances of his case.
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1 47. On information and belief, Respondents are using the immigration
2 detention system as a means to punish individuals for asserting rights under the
3 Refugee Act.
4

5 48. On information and belief, Petitioner has no criminal history.
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7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**

9 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**
10

11 **Not in Accordance with Law and in Excess of Statutory Authority**

12 **Unlawful Detention**

13 49. Petitioner restates and realleges all paragraphs as if fully set forth
14 here.
15

16 50. Under the APA, a court shall “hold unlawful and set aside agency
17 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
18

19 51. An action is an abuse of discretion if the agency “entirely failed to
20 consider an important aspect of the problem, offered an explanation for its decision
21 that runs counter to the evidence before the agency, or is so implausible that it
22 could not be ascribed to a difference in view or the product of agency expertise.”
23

24 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)

25 (*quoting Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
26 463 U.S. 29, 43 (1983)).
27
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1 52. To survive an APA challenge, the agency must articulate “a
2 satisfactory explanation” for its action, “including a rational connection between
3 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
4 2569 (2019) (citation omitted).
5

6
7 53. By categorically revoking Petitioner’s liberty and transferring him
8 to Otay Mesa Detention Center without consideration of his individualized facts
9 and circumstances, Respondents have violated the APA.
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11 54. Respondents have made no finding that Petitioner is a danger to
12 the community.
13

14 55. Respondents have made no finding that Petitioner is a flight risk.
15

16 56. By detaining the Petitioner categorically, Respondents have
17 further abused their discretion because there have been no changes to his facts or
18 circumstances since the agency made its initial determination to parole him into the
19 United States that support detention.
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21 57. Respondents have already considered Petitioner’s facts and
22 circumstances and determined that he was not a flight risk or danger to the
23 community when they granted him parole. There have been no changes to the facts
24 that justify this revocation of his parole.
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26 **COUNT TWO**

27 **Violation of Fifth Amendment Right to Due Process**

Procedural Due Process

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3 58. Petitioner restates and realleges all paragraphs as if fully set forth
4 here.

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6 59. The Due Process Clause of the Fifth Amendment to the U.S.
7 Constitution prohibits the federal government from depriving any person of “life,
8 liberty, or property, without due process of law.” U.S. Const. Amend. V. Due
9 process protects “all ‘persons’ within the United States, including [non-citizens],
10 whether their presence here is lawful, unlawful, temporary, or permanent.”
11 *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

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14 60. Due process requires that government action be rational and non-
15 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

16
17 61. While the government has discretion to detain individuals under 8
18 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
19 discretion is not “unlimited” and must comport with constitutional due process. *See*
20 *Zadvydas*, 533 U.S. at 698.

21
22 62. Here, Respondents have chosen to revoke Petitioner’s liberty in an
23 arbitrary manner and not based on a rational and individualized determination of
24 whether he is a safety or flight risk, in violation of due process. Because no
25 individualized custody determination was made prior to his detention and no
26 circumstances have changed to make Petitioner a flight risk or a danger to the
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1 community, Respondents' revocation of Petitioner's release violates his right to
2 procedural due process.
3

4 **Bond is not the appropriate remedy**

5 63. Many courts recently have been ordering a bond hearing as an
6 alternative avenue for relief. If Mr. Tang's detention was unlawful, *ab initio*, he
7 should not be required to post a bond and, in effect, pay a ransom to be released
8 from this illegal detention. Nothing indicates that Mr. Tang has somehow become
9 a flight risk or a danger to the community. He was not detained at the farm
10 because he was suddenly a flight risk or a danger to the community. When ICE put
11 him in handcuffs, they did not assert that they had suddenly determined he was a
12 flight risk or a danger to the community. He was simply swept up in this
13 administrations scheme to lock up all immigrants without green cards.
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18 64. Ordering a bond hearing because he is no longer deemed subject to
19 mandatory detention rewards the government's unlawful behavior. First, it
20 legitimizes his detention. Second, it allows the government to detain without a
21 prior determination of a change in individual circumstances regarding flight risk
22 and danger. Third, it requires the petitioner to prove that he is not a flight risk or a
23 danger to the community, something the government already determined when
24 they released him. Fourth, it requires the petitioner to pay a fee to the parties that
25 unlawfully detained him in order to be released from his unlawful detention.
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1 (5) Issue an Order prohibiting the Respondents from transferring
2 Petitioner from the district without the court's approval;
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4 (6) Issue an Order that, upon his release, Respondents are prohibited
5 from enrolling the Petitioner in any Alternative to Detention program, specifically
6 barring them from requiring an ankle monitor;
7

8 (7) Issue an Order required Respondents to return to Mr. Tang any
9 and all documents that were with him upon his detention;
10

11 (8) Grant any further relief this Court deems just and proper.

12 Dated: April 20, 2026

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