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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KE ZHONG CHEN, *Petitioner*, v. PAUL ARTETA, Warden of the Orange County Correctional Facility; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States. *Respondents.*	Docket No. 1:25-cv-09089-JGK **VERIFIED PETITION FOR HABEAS CORPUS**

INTRODUCTION

1. Petitioner is a native of China and arrived in the United States in 1993. In 1997, an Immigration Judge ("IJ") ordered him removed from the United States. However, the Immigration and Naturalization Service ("INS") and its successor, the Department of Homeland Security ("DHS"), have been unable to remove Petitioner, despite his complete compliance with all removal efforts. Upon information and belief, Petitioner was detained at least once by DHS in an effort to effectuate his removal. In 2015, Petitioner was detained for approximately seven months and subsequently released on supervision because DHS could not remove him.

2. On May 13, 2025, DHS again detained Petitioner, despite no progress having been made in the efforts to remove him from the United States.

3. Petitioner's re-detention and continued detention violate the Immigration and Nationality Act ("INA") and his Fifth Amendment rights. Unless this Court grants habeas relief, Petitioner faces potentially indefinite detention.

JURISDICTION

4. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq*.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained at the Orange County Correctional Facility, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

8. Respondent Paul Arteta is sued in his official capacity as Warden of the Orange County Correctional Facility. Respondent Arteta is the physical custodian of Petitioner.

9. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

12. Petitioner entered the United States on or about October 8, 1993 without inspection along the Canadian border. *See* Ex. A, Order to Show Cause.

13. On December 9, 1994, Petitioner filed a Form I-589, Application for Asylum with U.S. Citizenship and Immigration Services ("USCIS").

14. On June 1, 1995, Petitioner was apparently found ineligible for asylum by USCIS and was referred to an Immigration Judge ("IJ"). On June 14, 1995, he was issued an Order to Show Cause and Notice of Hearing. *See id.*

15. On April 10, 1997, an IJ ordered Petitioner removed from the United States and denied all applications for relief. *See* Ex. B, Order of Removal. Petitioner did not file an appeal of the decision with the Board of Immigration Appeals ("BIA"). As a result, Petitioner's order of removal became final at the conclusion of the 30-day appeal period.

16. Upon information and belief, Petitioner was detained by DHS in 2014.[1] DHS released Petitioner after seven months of detention because it was unable to remove Petitioner. Petitioner was released and placed under supervision.

17. Petitioner has continuously resided in New York. He is the father to one U.S. citizen child. In 2017, after being separated for more than 20 years, Petitioner's parents also immigrated to the United States. They are now legal permanent residents.

18. On June 19, 2017, Petitioner's U.S. citizen son filed a Form I-130, Petition for Alien Relative ("I-130") on behalf of Petitioner. On November 2, 2017, the I-130 was approved. *See* Ex. D, I-130 Approval Notice.

[1] This occurred following an arrest on June 8, 2014. All charges stemming from that arrest were dismissed on March 11, 2015. *See* Ex. C, Certificate of Disposition.

19. On August 15, 2018, Petitioner filed a Form I-212, Application to Reapply for Admission After Deportation or Removal ("I-212) with USCIS. On October 16, 2020, the I-212 was approved. *See* Ex. E, I-212 Approval Notice.

20. On May 13, 2025, Petitioner was detained again by DHS. *See* Ex. F, Detention Paperwork.

21. On June 24, 2025, DHS conducted a custody review and determined it would continue to detain Petitioner. *See* Ex. G, June 24, 2025 Detention Review Record.

22. On August 19, 2025, DHS again conducted a custody review and again determined that it would continue to detain Petitioner. *See* Ex. H, September 12, 2025 Detention Review Record.

23. On October 15, 2025, DHS served Petitioner with a Decision to Continue Detention stating that ICE reviewed his custody status and determined that he will not be released. The decision states that "ICE is currently working to secure a travel document for your removal from the United States. ICE has reason to believe there is significant likelihood that your removal will occur in the near future." The decision does not provide any details about what ICE is doing to secure a travel document or why it believes that there is a significant likelihood of removal. To date, ICE does not appear to have made any progress towards removing Petitioner as nothing has been presented to Petitioner to suggest otherwise. Moreover, China has not re-issued Petitioner a passport or travel document. *See* Ex. I, Decision to Continue Detention.

LEGAL FRAMEWORK

Detention Authority

24. When an individual is ordered removed, 8 U.S.C. § 1231 permits the government to detain the individual during the "removal period." The removal period is defined as the 90-day

period during which "the Attorney General shall remove the alien from the United States. 8 U.S.C. §1231(a)(1)(A).

25. The removal period begins on the latest of three dates: (l) "[t]he date the order of removal becomes administratively final;" (2) if the removal order is judicially reviewed and the court orders a stay of removal, the date of the court's final order; and (3) "if the alien is detained or confined (except under an immigration context) the date the alien is released from detention or confinement." 8 U.S.C. § 1231(a)(1)(B)(i-iii).

26. The 90-day removal period shall be extended, and the alien remain under detention only "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

27. Section 1231(a) requires that noncitizens who do not leave the United States or are not removed within the removal period, "pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

28. Certain noncitizens, however, including those who are removable based on certain criminal convictions, may be detained beyond the removal period. *See* 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period . . . .").

29. If released, a noncitizen belonging to a category described in 8 U.S.C. § 1231(a)(6) also "shall be subject to the terms of supervision" in [8 U.S.C. § 1231(a)(3)]." 8 U.S.C. § 1231(a)(6).

30. In *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), the Supreme Court, "interpreting the statute to avoid a serious constitutional threat . . . conclude[d] that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."

31. *Zadvydas* instructed courts how to analyze post-final order habeas claims. *Id.* First, "the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* Reasonableness depends primarily on the statute's basic purpose of "assuring the alien's presence at the moment of removal." *Id.* Accordingly, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700.

32. The *Zadvydas* Court found it "necessary to recognize some presumptively reasonable period of detention" and decided upon six months. *Id.* at 701. The Court provided that:

> [a]fter this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.
>
> *Id.*

33. The question of whether the six-month period applies only to time periods in which a noncitizen is actually in immigration detention is "not clearly answered by *Zadvydas*." *Zavvar v. Scott*, Civil Action No. 25-2104-TDC, 2025 LX 377714, at *13 (D. Md. Sep. 8, 2025). However, many courts have found that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period.

See Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009); *Tadros v. Noem*, No. 25-4108-EP, 2025 U.S. Dist. LEXIS 113198, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that the removal period began upon the affirmance of the removal order even though the petitioner was immediately released, rather than when he was detained 16 years later, and rejecting the argument that the petitioner could not obtain habeas relief because he had not yet been in detention for six months); *Zavvar,* 2025 LX 377714, at *13; *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr'g Tr. at 33-34 (D. Md. June 23, 2025) (Dkt. No. 21) (finding that the six-month period was not tolled upon release from detention).

Re-Detention Regulations

34. "After *Zadvydas*, the immigration regulations were revised to implement administrative review procedures for those aliens detained beyond the removal period, including those who are redetained upon revocation of their supervised release." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 LX 363146, at *7-8 (E.D. Tex. Aug. 2, 2025); *see also* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56977 (Nov. 14, 2001) (codified at 8 C.F.R. § 241.13).

35. *Zadvydas* "provided no instruction for what process is necessary to protect non-citizens' liberty interest when the government seeks to return them to custody." *Guillermo M. R. v. Kaiser*, No. 25-05436-RFL, 2025 U.S. Dist. LEXIS 175897, 2025 WL 1983677, at *5 (N.D. Cal. July 17, 2025); *see also Nguyen v. Hyde*, No. 25-11470-MJJ, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (concluding that the six-month presumptively reasonable period was not applicable in a case "about ICE's authority to re-detain [a noncitizen] after he was issued a final order of removal, detained, and subsequently released on an OSUP"

rather than "ICE's authority to detain in the first place upon an issuance of a final order of removal as in *Zadvydas*"). In these circumstances, DHS is bound by the governing regulations.

36. Section 241.13(i)(2) entitled "Revocation for removal" provides that "the Service may revoke an alien's [supervised] release under this section and return the alien to custody if, on account of changed circumstances, *the Service* determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added).

37. Section 241.4(b)(4) entitled "Service determination under 8 C.F.R. 241.13" states that, after supervised release under section 241.13, "*if the Service subsequently determines*, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to . . . a third county, the alien shall again be subject to the custody review procedures under this section." 8 C.F.R. § 241.4(b)(4) (emphasis added).

38. "These regulations clearly indicate, upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed." *Escalante*, 2025 LX 363146, at *8; *see also Nguyen v. Hyde*, No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros*, 2025 WL 1678501 (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. Respondents have violated Petitioner's due process rights under the Fifth Amendment by re-detaining him with no significant likelihood of removal in the reasonably foreseeable future, and in violation of the governing regulations concerning re-detention.

41. Petitioner's prolonged detention further violates his substantive due process rights.

42. As a remedy, the Court should order Petitioner released from detention.

COUNT TWO

Violation of Petitioner's Procedural Due Process Rights

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976). The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

45. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private

interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

46. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. DHS has not provided any reason to believe that circumstances have changed and that there is a significant likelihood of removal in the reasonably foreseeable future.

47. As to the third factor, there is no significant governmental interest in detaining Petitioner, particularly because has complied with all efforts to remove him.

COUNT THREE

Violation of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(6)

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

50. Petitioner's re-detention violates the Supreme Court's decision in *Zadvydas*, the INA, and the regulations concerning re-detention of noncitizens with final orders of removal.

51. Petitioner has been detained at least twice in connection with efforts to remove him. First, upon information and belief, in 2014 for approximately seven months. Second, on May 19, 2025 when Petitioner was taken into custody at the Orange County Correctional Facility, where he remains detained today. Petitioner's unduly prolonged detention violates the INA.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Enjoin transferring of Petitioner out of the district during the pendency of the instant action;

(3) Declare that DHS' actions violate the Immigration and Nationality Act, 8 U.S.C. § 1231; and/or the Fifth Amendment to the U.S. Constitution;

(4) Order Petitioner released from detention;

(5) Order that Respondents shall not re-detain Petitioner without prior-authorization from this Court;

(6) Grant Equal Access to Justice Act ("EAJA") fees and costs; and

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

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Dated: November 6, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Ling Li, Esq., submit this verification that verifies this petition pursuant to 28 U.S.C. § 2242, on behalf of Petitioner who remains detained. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 6th day of November, 2025.

By: */s/ Ling Li*
Ling Li, Esq.