

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KOSTIANTYN KUZOVKOV
Petitioner

V.

PAMELA BONDI, in her capacity as Attorney General of the United States;
KRISTI NOEM, in her capacity as Secretary, U.S. Department of Homeland Security
TODD LYONS, Acting Director, United States Immigration and Customs Enforcement;
BRET BRADFORD, in his capacity as Field Office Director Houston Field Office U.S. Immigration and Customs Enforcement;
RAYMOND THOMPSON, in his capacity as Warden of the Joe Corley Processing Center ,
Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Kostiantyn Kuzovkov (hereinafter "Petitioner") has spent over one year in detention and has not been afforded post-custody reviews by U.S. Immigration and Customs Enforcement ("ICE") as set out in regulation. Shortly after arriving, an immigration officer denied Petitioner's claim that he had a credible fear of returning to Ukraine, and a final order was issued on July 26, 2024. He has remained in custody ever since without justification or end in sight.

2. Petitioner challenges his indefinite detention as a violation of the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and his rights under the Due Process Clause of the Fifth Amendments.
3. Petitioner respectfully requests this Court to grant him a writ of habeas corpus under 28 U.S.C. § 2241 and order Respondents to release him from custody under reasonable conditions of supervision.
4. Petitioner asks the Court to order Respondents to “show cause why the writ should not be granted,” within three days, as prescribed by statute. 28 U.S.C. §2243

CUSTODY

5. Petitioner is in the physical custody and under direct control of Respondents and their agents. He is detained at the Joe Corley Processing Center located in Conroe, Texas.

PARTIES

6. Petitioner is presently detained by Respondents and their agents at the Joe Corley Processing Center located at 500 Hilbig Road, Conroe, Texas 77301. He has been in ICE custody since on or about June 7, 2024. His removal order became administratively final on July 26, 2024.
7. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. She is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of Texas and is legally responsible for Petitioner's detention. As such, she is the legal custodian¹ of Petitioner.

¹ No binding Supreme Court or Fifth Circuit cases have adopted the immediate custodian rule in the removal context. *Rumsfeld v. Padilla*, 542 U.S. 426 at 435 n. 8 (2004) (expressly “left open the question whether the Attorney General is a proper respondent to a *habeas* petition filed by an [noncitizen] detained pending deportation”). The Petitioner is held at a private prison which contracts with the federal government to house immigration detainees at

8. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security ("DHS"). She is responsible for the administration of Immigration and Customs Enforcement ("ICE") and the implementation and enforcement of the Immigration and Nationality Act. 8 U.S.C. § 1103(a). She routinely transacts business in the Southern District of Texas and is legally responsible for Petitioner's detention. As such, she is a legal custodian² of Petitioner.
9. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. As director of ICE, the agency within DHS that detains and removes noncitizens, Respondent Lyons is a legal custodian³ of Petitioner.
10. Respondent Bret Bradford is named in his official capacity as the Field Office Director responsible for the Houston Field Office of ICE with administrative jurisdiction over Petitioner's case. He routinely transacts business within the boundaries of the judicial district of the Southern District of Texas. Pursuant to Respondent Bradford's orders, Petitioner remains detained. As such, he is a legal custodian⁴ of Petitioner.
11. Respondent Raymond Thompson is named in his official capacity as the Facility Administrator of the Joe Corley Processing Center where Petitioner is held. In this capacity, he is a legal custodian of Petitioner.

JURISDICTION

12. Petitioner is detained in the custody of Respondents at the Joe Corley Processing Center located at 500 Hilbig Road, Conroe, Texas 77301.

the direction of Respondent. Therefore, Respondent is a proper party because they oversee government agencies and/or offices under whose authority Petitioner is being detained.

² *ibid.*

³ *ibid.*

⁴ *ibid.*

13. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 2241 (power to grant habeas corpus) and 28 U.S.C. § 1331 (federal question jurisdiction); the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701.
14. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention under federal law. *See, e.g. Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (“We note at the outset that the primary habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases.”).

VENUE

15. Venue properly lies in the Southern District of Texas-Houston Division because Petitioner is physically present and in the custody of Respondents within the District. *See* 8 U.S.C. § 2241(a) (providing for habeas petitions “within [a court’s] respective jurisdiction”).

LEGAL FRAMEWORK

I. FINALITY OF EXPEDITED REMOVAL AND LIMITS ON MANDATORY DETENTION UNDER 8 U.S.C. 1225.

16. Under 8 U.S.C. § 1225(b)(1), certain arriving noncitizens or those apprehended near the border without valid documents may be placed in expedited removal proceedings. If an individual expresses a fear of return, they must be referred for a credible fear interview with an asylum officer under 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer determines that the noncitizen does not have a credible fear of persecution or torture, the individual is subject to removal under 8 U.S.C. § 1225(b)(1)(B)(iii)(I), unless they request review by an immigration judge. This right to review is explicitly provided in 8 U.S.C. § 1225(b)(1)(B)(iii)(III), and regulations require that the expedited removal order becomes

administratively final only after the immigration judge affirms the asylum officer's negative credible fear finding.

17. The Immigration and Nationality Act requires that noncitizens subject to expedited removal who express a fear of return be detained under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) during the pendency of their credible fear proceedings. This mandatory detention includes the period in which an asylum officer conducts a credible fear interview and, if applicable, while an immigration judge reviews a negative credible fear determination.
18. Once the expedited removal order is administratively final - i.e., after the immigration judge affirms the negative credible fear finding - the detention authority transitions from INA § 1225(b) (pre-final order) to INA § 1231(a) (post-final order). *See* 8 C.F.R. 235.3(b)(8) (stating that a noncitizen ordered removed under 8 C.F.R. 1225 shall be removed from the United States in accordance with 8 U.S.C. § 1231 and 8 C.F.R. § 241); *see also* 8 U.S.C. § 1231(a)(1)(B)(ii).

II. ONCE THE REMOVAL ORDER IS FINAL, DETENTION IS GOVERNED BY 8 U.S.C. § 1231.

Zadvydas and Its Progeny Prohibit Indefinite Detention Absent Justification

19. The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231, governs the detention of noncitizens "during" and "beyond" the "removal period." The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detained the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained beyond the removal period" if

they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

20. To avoid “indefinite detention” that would raise “serious constitutional concern,” the Supreme Court in *Zadvydas* construed 8 U.S.C. § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 689. In *Zadvydas*, the Supreme Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Id.* “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.
21. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen “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.” *Id.*
22. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the

community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

23. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.
24. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.
25. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005).

DHS Regulations Require Post-Order Custody Review

26. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a noncitizen's removal order becoming final, the local ICE field office with jurisdiction over the noncitizen's detention *must* conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), 8 C.F.R. § 241.4(c)(2), which must conduct a custody review before or at 180 days. 8 C.F.R. § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the noncitizen is likely to pose a danger to the community or a flight risk if released. 8 C.F.R. § 241.4(e). If the factors in 8 C.F.R. § 241.4 are met, ICE must release the noncitizen under conditions of supervision. 8 C.F.R. § 241.4(j)(2).
27. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7).
28. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See* 8 C.F.R. § 241.13(f). If

ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, 8 C.F.R. § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an immigration judge that the noncitizen is “specially dangerous.” 8 C.F.R. § 241.14(f).

STATEMENT OF FACTS

29. Petitioner is a forty-five (45) year old Ukrainian citizen born in the former Soviet Union. Facing the devastating impact on the ongoing war in Ukraine, Petitioner fled his home country in search of safety and stability. He made the difficult journey to the United States to seek refuge and protection.
30. On June 7, 2024, Petitioner entered the United States without inspection, turned himself into the U.S. immigration authorities, and expressed a fear of return to Ukraine. Petitioner was referred for a credible fear interview with an asylum officer, who determined that he did not establish a credible fear of persecution or torture.
31. Petitioner then exercised his right under the statute to have this determination reviewed by an immigration judge. On review, the immigration judge affirmed the asylum officer’s decision on July 24, 2024, rendering the expedited removal order administratively final under 8 U.S.C. § 1225(b)(1)(B)(iii)(III).
32. Petitioner has been held in immigration detention continuously since his apprehension in June 2024.
33. When apprehended, DHS took possession of Petitioner’s valid Ukrainian passport, which remains in their possession.

34. The United States government has suspended deportation flights to Ukraine due to the ongoing armed conflict, widespread infrastructure damage, and unstable conditions within the country. The Department of Homeland Security has formally recognized these conditions by designating Ukraine for Temporary Protected Status (TPS), which was extended through October 2026. Deportation to Ukraine is not currently feasible, as the war has disrupted international travel and raised serious humanitarian and logistical barriers to return. In practice, removals to Ukraine have ceased, and DHS has acknowledged that safe repatriation is not possible at this time.

35. Despite the finality of his removal order, ICE has not conducted any post-order custody reviews as required by 8 C.F.R. § 241.4. Furthermore, Petitioner has not been removed, nor has ICE taken any steps to execute the order.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act, 8 U.S.C. § 1231

36. Petitioner re-alleges and incorporates by reference the paragraphs above as if fully set forth herein.

37. Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since his removal order became administratively final. The 90-day removal period began for Petitioner on July 24, 2024. Therefore, the *Zadvydas* framework applies to Petitioner's detention, and he has been detained for more than six months since his removal order became final.

38. 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.

39. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future. If Respondents have "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019); *See also Gonzalez-Rondon v. Gillis*, No. 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (holding that petitioner met his initial burden where he was held in ICE custody for more than one year after the issuance of his removal order with no indication from the Venezuelan officials that travel documents would be issued).
40. Petitioner has been detained for more than six months since receiving a final removal order, and his removal to Ukraine is not reasonably foreseeable due to the ongoing armed conflict and widespread infrastructure damage.
41. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT TWO
Arbitrary and Capricious Agency Action
under the Administrative Procedure Act, 5 U.S.C. § 706(a)(A)

42. Petitioner re-alleges and incorporates by reference the paragraphs above as if fully set forth herein.
43. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi v. Shaughnessy*, 347

U.S. 260 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

44. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear, moreover, that [*Accardi*] claims may arise under the APA”), or as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.”) (internal quotations omitted). Prejudice is generally presumed when an agency violates its own policy. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (“We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien’s benefit and that the INS failed to adhere to them.”); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) (“The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.”). To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 (“[T]his Court is simply ordering that Defendants do what they already admit is required.”), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners’ custody under ICE’s

standards because “it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure”).

45. Courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
46. DHS has implemented regulations that require custody reviews at specified intervals to ensure continued detention remains justified. Specifically, 8 C.F.R. § 241.4(k)(1) mandates that DHS conduct a Post-Order Custody Review before the expiration of the 90-day removal period. DHS is also required to conduct additional custody reviews, including at or around the 180-day mark, to assess whether removal is reasonably foreseeable and whether continued detention is lawful and appropriate. 8 C.F.R. § 241.4(k)(2).
47. Petitioner has been detained almost one year following a final order of removal, yet DHS has failed to follow the mandatory review procedures set forth in 8 C.F.R. §§ 241.14 and 241.13.
48. ICE has deviated from its own policy in continuing to detain Petitioner without post-custody reviews, without providing justification for his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.
49. As a remedy, this Court should conduct its own review of Petitioner’s custody or, at least, order ICE to review Petitioner’s custody under the standard articulated in the regulations.

COUNT THREE
Violation of Due Process Clause of the
Fifth Amendment of the U.S. Constitution

50. Petitioner re-alleges and incorporates by reference the paragraphs above as if fully set forth herein.
51. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. “Freedom from

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”).

52. In the context of post-removal immigration proceedings, the government’s interest in detention is to ensure an individual’s presence at the time of removal. *Zadvydas*, 533 U.S. at 680. To the extent that an individual’s removal is unforeseeable, their detention becomes unconnected to the government’s interest, and thus, unlawful. *Id.*
53. Petitioner’s removal order became administratively final on July 26, 2024. Respondents have detained Petitioner for almost a year following the issuance of a final order of removal. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond six months is presumptively unreasonable where there is no significant likelihood of removal in the reasonably foreseeable future. Although DHS possesses Petitioner’s valid Ukrainian passport, it has failed to schedule Petitioner’s removal or provide a clear explanation for the continued delay. This indefinite and arbitrary detention violates Petitioner’s Fifth Amendment right to substantive due process.
54. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

55. Petitioner's prolonged civil detention, which has lasted beyond the end of the removal period, and which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner's detention violates Petitioner's rights to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court

- 1) Assume jurisdiction over this matter;
- 2) Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
- 3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- 4) Order Petitioner's immediate release;
- 5) Alternatively, review Petitioner's custody under the standard articulated in the regulations, or order ICE to review Petitioner's custody accordingly;
- 6) Grant such further relief as the Court deems just and proper.

Dated: July 14, 2025

Respectfully submitted,

By: /s/ Rebecca Chavez

Rebecca Chavez

GALVESTON-HOUSTON IMMIGRANT

REPRESENTATION PROJECT

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Attorney for Petitioner

Verification of Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I, Rebecca Chavez, and others working under my supervision have discussed with Petitioner the events described in the Petition. I hereby certify that the statements made in this attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Rebecca Chavez
Rebecca Chavez

Date: July 14, 2025