

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Sen Mao LIN, Sen Miao Lin
A 070-850-144

Petitioner,

v.

John Tsoukaris, in his official capacity as

Director of ICE Newark Field Office;

Kristi Noem, in her official capacity as
Secretary of the
U.S. Department of Homeland Security;

Pamela Bondi, in her official capacity as
U.S. Attorney General;

Respondents.

Docket No:

**PETITION FOR WRIT
OF HABEAS CORPUS
AND IMMEDIATE
RELEASE**

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Sen Mao Lin, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering Mr. Lin's release from immigration detention of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE").

JURISDICTION

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act (5 U.S.C. § 706), and Article I, Section 9, Clause 2 of the U.S. Constitution. The requirement that an alien released from ICE detention is non-discretionary. *Alvarez v. Holder*, 454 Fed. App'x 769, 772-74 (11th Cir. Dec. 14, 2011) (finding that because release from detention was required by statute and case law, wearing an ankle bracket and reporting for the ISAP program as a condition of release was a non-discretionary decision). Accordingly, this Court has jurisdiction to review constitutional challenges to conditions of an alien's order of supervision. *Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 528-30 (SDNY 2009) ("finding that the Court has jurisdiction to review constitutional challenges to post-removal period detention and supervision pursuant to 28 U.S.C. § 2241(c)(3). See *Zadvydas v. Davis*, 533 U.S. 678, 687-88, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Kalombo*, 2009 WL 1788589, at *3-4").

VENUE

3. Venue is proper in that Mr. Lin is currently being detained at Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105.

PARTIES

4. Petitioner, Sen Mao Lin is a native and citizen of the People's Republic of China ("China"). He is currently under the ICE custody.

5. Respondent Pamela Bondi is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States.

6. Respondent John Tsoukaris is duly appointed and employed by the Department of U.S. Immigration and Customs Enforcement ("ICE") as the Director of the Newark Field Office. He is responsible for the administration and enforcement of ICE functions relating to detention and removal of aliens, including maintaining and enforcing Petitioner's conditions of supervision.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Secretary Noem's responsibilities are set forth in 8 U.S.C. §§1103(a)(1)-(3), among which are: to administer and enforce the Immigration Act and all other laws relating to the immigration and naturalization of aliens; to control, direct and supervise all employees; to establish such regulations, issue such instructions, and perform such other acts deemed necessary for carrying out his authority; and to require any employee of the Service of the Department of Justice to perform or exercise any other the powers, privileges, or

duties conferred or imposed by this Act or regulations issued there under upon any other employee of the Service.

BACKGROUND

8. Mr. Lin is a native and citizen of China. He was born on November 16, 1958 and is currently sixty-four (64) years old.

9. Mr. Lin entered the United States on December 4, 1993. Subsequently, DHS placed Mr. Lin in exclusion proceedings and he filed an application for asylum on December 14, 1993. Mr. Lin failed to appear at his merits hearing on his asylum application and, therefore, was ordered excluded from the United States. Mr. Lin moved to reopen his exclusion proceedings, which were successfully reopened by an immigration judge ("IJ") by decision, dated October 27, 2003. The IJ subsequently denied Mr. Lin's applications for relief.

10. Mr. Lin filed a timely appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"). On January 25, 2005, the Board affirmed the IJ's decision without opinion. Mr. Lin filed a timely petition for review to the United States Court of Appeals for the Second Circuit, *Lin v. Holder*, No. 12-3426. On August 30, 2006, the Court denied Mr. Lin's petition for review.

11. On May 14, 2012, Mr. Lin filed a motion to reopen his proceedings to the BIA.

12. On August 7, 2012, the BIA denied Mr. Lin's motion to reopen.

13. Mr. Lin has been regularly reporting to ICE on an order of supervision since 2012.

14. Mr. Lin timely petitioned the U.S. Court of Appeals for the Second Circuit for review of the BIA's decision. On January 23, 2013, the Second Circuit remanded Mr. Lin's case to the BIA pursuant to *United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994). *United States v. Jacobson* set forth a procedure for alien subject to a final removal order whereby a pending petition for review is remanded to the Board of Immigration Appeal and the alien may not be removed until and unless the petition for review is reinstated. Therefore, pursuant to this decision, Mr. Lin may not be removed from the United States unless and until the petition for review before the Second Circuit is reinstated and denied.

15. Mr. Lin's second circuit petition has been reinstated at the request of the U.S. Attorney for the Southern District of New York, and it is currently pending.

16. Mr. Lin was detained, and released on an order of supervision on December 28, 2011.

17. Based on the order of supervision, Mr. Lin was eligible to apply for and receive authorization to work from 2012 to the present.

18. Mr. Lin duly paid taxes for all income earned during this period.

19. Mr. Lin was detained when he reported to ICE at 26 Federal Plaza, New York, New York on May 6, 2025.

20. At the request of ICE, Mr. Lin provided ICE at 26 Federal Plaza with his valid passport on June 25, 2025.

21. Mr. Lin previously filed a petition for a writ of habeas corpus, requesting release solely because of untreated medical conditions, *LIN v. Tsoukaris et al.*, 2:25-cv-05652 (DNJ). As a result of this filing, Mr. Lin was able to receive somewhat better medical care, and this action was voluntarily withdrawn.

22. Mr. Lin's household registry in China has been cancelled and his former house there has been torn down.

21. Mr. Lin has no immediate family members in China.

22. On August 5, 2025, Ruben Perez, Acting Field Office Director gave Mr. Lin a "Decision to Continue Detention" based on a "significant threat to public safety" and "flight risk;" "ICE is in receipt or expects to receive the necessary travel documents to effectuate your removal ..." According to this "Decision" Mr. Lin has a conviction of "counterfeiting trademark."

FIFTH AMENDMENT DUE PROCESS VIOLATION

23. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court,

the provisions of the Fourteenth Amendment "are universal in their application, to *all persons* within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality...." *Id.* (emphasis added).

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

25. "An alien ordered removed ... may be detained "beyond the removal period or only for a period reasonably necessary to secure the alien's removal." INA § 241(a)(6), *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 2495, 150 L. Ed. 2d 653 (2001).

26. "[W]here petitioner's 'address and whereabouts' were on file with DHS during the entire ... period [after the final order but before petitioner was detained], the six-months "presumptively reasonable" detention ends six months after the 90-day removal period ends, *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 499,

500 (S.D.N.Y. 2009), *see Ulysse v. Dep't of Homeland Sec.*, 291 F.Supp.2d 1318, 1324 (M.D.Fla.2003).

27. The 90 day removal period expired on March 26, 2005 and the six month presumptively reasonable period for potential detention expired on September 26, 2005. Mr. Lin's address and whereabouts were known to the DHS during this time, and thus there is at present no statutory basis to detain him. *Farez-Espinoza v. Chertoff*.

Revocation of order of supervision

28. The Second Circuit has long “viewed the revocation of supervised release as a sanction” for the failure to “abide by the imposed conditions in order to be granted release instead of remaining incarcerated.” *Id.* at 833-34 (citing *United States v. Edwards*, 834 F.3d 180, 183 (2d Cir. 2016) *United States v. Aspinall*, 389 F.3d 332, 350 (2d Cir. 2004)). Yet there is nothing to suggest that Mr. Lin “engaged in conduct prohibited (or failed to perform acts required) by the release condition” that has allowed him to remain freely in the United States.

29. As the Supreme Court explained, “[t]he choice...is not between imprisonment and the alien ‘living at large.’ It is between imprisonment and supervision under release conditions that may not be violated.” *Zadvydas*, 533 US at 695-96 (citing 8 U. S. C. §§ 1231(a)(3), 1253 (1994 ed., Supp. V)); 8 CFR § 241.5 (2001) (establishing conditions of release after removal period)).

30. Absent some kind of violation of his supervised release, none of which has been alleged, the purposes of immigration detention, as explained by the *Zadvydas* Court – protecting the community and ensuring appearing at future immigration proceedings, are not served by Mr. Lin’s detention. *Zadvydas id.* at 690. “A petitioner who was ‘released on bond under government custody, ... retain[s] a weighty liberty interest under the Due Process Clause in avoiding reincarceration.’” *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR 2025 WL 1927596, at *3 (E.D. Cal. July 14, 2025) (citing *Young v. Harper*, 520 U.S. 143, 146–147 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–782; *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972)); see also *Barbecho v. Decker*, No. 20-CV-2821 (AJN), 2020 WL 2317876, at *5 (S.D.N.Y. May 11, 2020) (must balance the equities and the public interest where redetention is concerned).

31. While the “Supreme Court has held ‘that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings,’” *Lora*, 804 F. 3d at 606 (quoting *Demore v. Kim*, 538 U.S. 510, 526 (2003)), “it has made clear that the indefinite detention of a non-citizen ‘raise[s] serious constitutional concerns’ in that ‘[f]reedom 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.’” *Id.* (quoting *Zadvydas*, 533 U.S. at 682); see *Zadvydas*, 533 U.S. at 696 (“we

believe that an alien's liberty interest is, at the least, strong enough to raise a serious question as to whether, irrespective of the procedures used, the Constitution permits detention that is indefinite and potentially permanent”).

32. Given the 20 years since the removal period and six month presumptively reasonable detention period ended, this redetention not only violates due process, it serves no purpose whatsoever, effectively submitting Mr. Lin, an elderly non-citizen, to potentially indefinite detention without any justifiable, individualized reason for doing so despite that he has diligently appeared before ICE for years and is a danger to no one. See *Lora*, 804 F. 3d at 614 (noting “the disastrous impact” of “detention on the lives of immigrants who are neither a flight risk nor dangerous”). The Court cannot let stand a redetention of such an individual that bears no relation to the goals of Congress or the due process limitations considered by the Supreme Court, as well as this and “every other circuit.” *Id* (citing cases).

REMOVAL IS NOT REASONABLY FORESEEABLE

33. Detention is not justified where removal is not reasonably foreseeable, removal is not reasonably likely in the foreseeable future, *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 706 (S.D. Tex. 2020); see *Lora*, 804 F. 3d at 615 (“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”) *Zadvydas*, 533 U.S. at 700-01).

34. There are upwards of 40,000 Chinese now in the United States with removal orders (one estimate states the number to be 100,000), and relatively few have actually been removed.

35. Some Chinese have been removed to third countries, indicating extreme difficulty in obtaining travel documents. In February 2025, a Chinese national, Zheng, Lijuan, was one of “299 migrants – from China, Afghanistan, Iran and other countries with which the US lacks extradition agreements” who were flown in shackles to Panama. She escaped the hotel in Panama City where they were held, avoiding being sent to a “concentration camp” like facility near the Darien gap.

36. Because there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” absent even the bare allegation that Mr. Lin violated the terms of his supervised release or otherwise presents a flight risk or danger to the community, much less some modicum of proof that detention is justified on one of these grounds, he should be released immediately. *Lora*, 804 F. 3d at 615.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- A. Declare Mr. Lin's continued detention unlawful;
- B. Declare the continued detention of Mr. Lin without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
- C. Order Respondents to immediately release Mr. Lin;
- D. Order Respondents to show cause why Mr. Lin is being subjected to unlawfully and unconstitutional detention ; and
- E. Grant any other relief that may be fit and proper.

Dated: August 19, 2025

Respectfully submitted,

s/Alan Pollack

Alan J. Pollack, Esq.
Frank & Pollack LLC
76 Ferry Street
Newark, NJ 07105
973-297-1919

s/ Theodore N. Cox

Theodore N. Cox, Esq.
pro hac vice counsel
motion to be filed
Law Office of Theodore N. Cox
325 Broadway, Suite 201
New York, New York 10007
(212) 925-1208