

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DONG, Shi Huan
A 

Petitioner,

v.

Judith C. Almodovar
Acting Director of ICE
New York City 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**

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, DONG, Shi Huan, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering Mr. Dong's release from immigration detention of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"). Mr. Dong seeks immediate release from immigration detention due to his long presence in the United States after he was ordered removed, and living at a location known to 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. See *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

VENUE

3. Venue is proper in that Mr. Dong is currently being detained at an ICE office at 26 Federal Plaza, New York, New York.

PARTIES

4. Petitioner, DONG, Shi Huan, 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 Acting Director is duly appointed and employed by the Department of U.S. Immigration and Customs Enforcement ("ICE") as the Director of the New York City Field Office. He or she 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. Dong is a native and citizen of China. He was born  and is currently 39 years old.

9. Mr. Dong entered the United States in 2010. Subsequently he affirmatively filed an application for asylum. An immigration judge denied Mr. Dong's applications for relief and ordered him removed on December 13, 2011.

10. Mr. Dong filed a timely appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"). On May 22, 2014, the Board affirmed the IJ's decision.

11. Mr. Dong's U.S. citizen wife filed a petition for him, based on which he filed an application for lawful permanent residence status in 2023. The couple was scheduled for a USCIS interview January 28, 2025. Out of concern for potential detention, they did not attend the interview, and the application was denied as abandoned.

11. Mr. Dong was detained by ICE in September 14, 2025 near his home in Brooklyn and is now at 26 Federal Plaza, New York, NY on the 10th floor. He is still there in detention.

12. The New York Times recently reported about conditions at 26 Federal Plaza:

Two videos, which were recorded by a migrant who was held there last week and sneaked in his cellphone, show more than a dozen men sprawled on the floor atop thin thermal blankets or sitting on benches built into the room's white walls. In one video, the man, who recorded it near one of the room's two metal toilets, is heard saying in Spanish that the migrants were being held "like dogs in here."

ICE had traditionally used the cells, which don't have beds, to hold a small number of migrants for a few hours while they are processed and dispatched to detention centers outside the city. But the cells have become crowded since the agency scaled up arrests at its offices and in nearby immigration courthouses in May, forcing migrants to sleep on the floor or to sit upright, sometimes for several days.

<https://www.nytimes.com/2025/07/22/nyregion/video-immigration-holding-cells-overcrowded-unsanitary.html>

13. On September 15, 2025, counsel emailed The Office of Enforcement and Removal Operations (“ERO”)(ERO.INFO@ice.dhs.gov) inquiring into the status of Mr. Dong’s continued detention and asking when he would be released. No response was received.

14. There is no indication that removal is reasonably foreseeable.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. See *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Any requirement of administrative exhaustion is therefore purely discretionary.

16. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

17. Moreover, where the agency has predetermined a dispositive issue, no further action with the agency is necessary. See, e.g., *Monestime v. Reilly*, 704 F.

Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Garcia*, 615 F. Supp. 2d at 180 (same).

LEGAL GROUNDS FOR RELIEF

A. FIFTH AMENDMENT DUE PROCESS VIOLATION

18. 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).

19. 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.”).

20. The 90-day post final order removal period expired August 20, 2014, 8 U.S.C.A. § 1231 (West).

21. Mr. Dong's address and whereabouts were known to the DHS since that date.

22. There is at present no longer any statutory basis to detain him. *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).

24. Moreover, 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).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

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

Dated: May September 15, 2025

Respectfully submitted,

s/ Theodore N. Cox
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