

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Dengcheng CHEN,

,

Petitioner,

v.

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

Marcos CHARLES, in his official capacity as Acting
Executive Associate Director, Enforcement and
Removal Operations;

Todd M. LYONS, in his official capacity as Acting
Director, Immigration and Customs Enforcement;

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

Judith C. ALMODOVAR, in her official capacity as
Acting Director of ICE New York City Field Office

Paul ARTETA, in his official capacity as Sheriff of
the Orange County Sheriff's Office;

Lawrence CATLETTI, in his official capacity as
Colonel of the Corrections Division at the Orange
County Correctional Facility;

Respondents.

Docket No:

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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

2. This case presents an egregious violation of statutory and constitutional limits on immigration detention that threatens the liberty of all individuals subject to immigration enforcement. Mr. Chen's removal order became final on May 27, 2022—more than three years ago. The 90-day “removal period” mandated by 8 U.S.C. § 1231(a)(1) expired on August 25, 2022. The six-month presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), expired on November 27, 2022—nearly three years ago.
3. Despite these clear temporal limitations, ICE arrested and detained Mr. Chen on June 3, 2025, claiming authority that expired nearly three years after his removal order and long after both the statutory and constitutional detention periods had expired. The government's position—that it can warehouse detention authority indefinitely and deploy it at will decades later—would eviscerate the statutory scheme Congress created and render meaningless the Supreme Court's constitutional safeguards against indefinite detention.

JURISDICTION

4. 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. § 701 et seq., and Article I, Section 9, Clause 2 of the U.S. Constitution. See *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

VENUE

5. Venue is proper in this Court as Mr. Chen is currently detained at Orange County Correctional Facility, located at 110 Wells Farm Road Goshen, NY 10924, which is within this judicial district.

PARTIES

6. Petitioner Deng Cheng Chen is a 35-year-old native and citizen of the People's Republic of China currently in ICE custody at the Orange County Correctional Facility.
7. Respondent Pamela Bondi is the Attorney General of the United States, charged with enforcement of the laws of the United States. She is sued in her official capacity only.
8. Respondent Marcos Charles is the Acting Executive Associate Director of Enforcement and Removal Operations, responsible for overseeing ICE's detention and removal operations nationwide. He is sued in his official capacity only.
9. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement, charged with the overall administration and operation of ICE, including oversight of enforcement and removal operations, detention policies, and implementation of immigration enforcement priorities nationwide. He is sued in his official capacity only.
10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security, whose responsibilities include administering and enforcing immigration laws pursuant to 8 U.S.C. §§ 1103(a)(1)-(3). She is sued in her official capacity only.
11. Respondent Judith Almodovar is the Acting Director of ICE New York City Field Office, responsible for the administration and enforcement of ICE functions relating to detention and removal of aliens in New York, including determinations on whether and where Petitioner is to be detained. She is sued in her official capacity only.

12. Paul Arteta is the Sheriff of the Orange County Sheriff's Office, whose responsibilities including administering and enforcing laws of the Orange County, NY. He is sued in his official capacity only.
13. Respondent Lawrence Catletti is the Colonel of the Corrections Division at the Orange County Correctional Facility, which operates under the Orange County Sheriff's Office, and has immediate custody of Petitioner. He is sued in his official capacity only.

FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Chen's Immigration History

14. Mr. Chen entered the United States on July 14, 2017, fleeing political persecution in China where he was invited to a church gathering. Within months of his arrival, he filed an application for political asylum, seeking protection under United States law.
15. On May 14, 2021, Mr. Chen pled guilty to two counts of Assault-4th Degree.
16. On July 19, 2021, an Immigration Judge in Kansas City, MO denied his applications for relief and ordered him removed to China.
17. On May 27, 2022, the Board of Immigration Appeals ("BIA") dismissed his appeal, rendering his removal order administratively final on that date. This date— May 27, 2022—triggers all statutory time limits governing Mr. Chen's detention authority.

B. The Statutory Removal Period Expired Over Twenty Years Ago

18. Under 8 U.S.C. § 1231(a)(1)(B)(i), the government's 90-day removal period began on May 27, 2022, when Mr. Chen's removal order became final. This period expired on November 27, 2022—nearly three years ago.
19. During the 90-day removal period, the statute mandates that "the Attorney General *shall* initially detain the alien." 8 U.S.C. § 1231(a)(2). However, once this period expires without successful removal, the statute's command is equally clear: "the alien, pending

removal, *shall* be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added).

20. The word "shall" creates a mandatory obligation, not a discretionary choice. Once the removal period expired without Mr. Chen's removal to China, ICE lost its general detention authority, and Mr. Chen was entitled to supervised release as a matter of law.

C. China's Historical Refusal to Accept Deportees

21. China has maintained a documented policy of refusing to issue travel documents for its nationals subject to removal from the United States, particularly those who sought political asylum. This refusal has persisted for decades and shows no signs of change.
22. Upon information and belief, there are upwards of 40,000 Chinese nationals in the United States with removal orders, with some estimates reaching 100,000. Despite these numbers, successful removals to China remain extremely rare, particularly for those who arrived before certain cutoff dates or sought political asylum.
23. Recent reports from February 2025 indicate that some Chinese nationals have been sent to third countries rather than China, demonstrating the continued impossibility of direct removal. One Chinese national, Zheng Lijuan, was among 299 migrants flown to Panama rather than their countries of origin, highlighting the extreme measures taken when countries refuse repatriation.

D. Mr. Chen's Deep Ties to the United States

24. During the three years since his removal order became final, Mr. Chen has built a life, family, and community in the United States that demonstrates he is not a flight risk.
25. Mr. Chen has been a devout member of the Evangelical Church Mission and Seminary International in Chinatown (ECMSI in Chinatown), located at 248 Grand Street, New York, NY 10002. He was baptized in December 2024. He not only attends Sunday

services regularly, he also serves faithfully at the church. He assists with the church's audio and video equipment and is always willing to help during holidays and special events. He also helps with cleaning and comes to church during the week to practice piano. He interacts well with other members of the congregation and has made many positive contributions to the community.

26. Mr. Chen has an Aunt, Huaxie Xue, and a Cousin,  here in the U.S. who is both U.S. Citizens.
27. Mr. Chen has maintained continuous, lawful employment throughout his time in the United States. He has worked as a cook at various restaurants, providing food services to his community.
28. Mr. Chen has dutifully filed taxes, contributing to the United States economy and demonstrating his integration into American society.

E. ICE's Arbitrary Detention Three Years After the Removal Period

29. On June 3, 2025, three years after his removal order became final and the statutory removal period expired, ICE arrested Mr. Chen without warning when he went to the reporting to ICE at New York, NY.
30. Upon information and belief, ICE has provided no evidence that:
- China has agreed to accept Mr. Chen's return;
 - Travel documents have been obtained or are forthcoming;
 - Any circumstances have changed making removal reasonably foreseeable;
 - Mr. Chen poses any flight risk.

31. Instead, ICE appears to be engaging in arbitrary enforcement, detaining individuals with decades-old removal orders without any reasonable expectation of effectuating removal, likely for statistical or political purposes rather than any legitimate government interest.

LEGAL ARGUMENT

COUNT I: VIOLATION OF 8 U.S.C. § 1231 - DETENTION BEYOND STATUTORY AUTHORITY

32. Petitioner realleges and incorporates paragraphs 1-30 as if fully set forth herein.
33. The Immigration and Nationality Act creates a carefully structured detention scheme with mandatory temporal boundaries that ICE has flagrantly violated in detaining Mr. Chen.

A. The Plain Language of Section 1231 Prohibits Mr. Chen's Current Detention

34. Under 8 U.S.C. § 1231(a)(1)(B)(i), when a removal order becomes administratively final, a 90-day "removal period" begins. The statute's command during this period is unequivocal: "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2) (emphasis added). The word "during" temporally limits mandatory detention to this specific 90-day window.
35. When the removal period expires without successful removal, the statute dictates a mandatory result: "[I]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added). Congress chose the mandatory "shall" rather than the permissive "may," leaving no discretion for continued detention absent specific statutory authorization.
36. The Supreme Court has consistently recognized that "shall" creates mandatory obligations. In *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018), the Court emphasized that "the word 'shall' usually connotes a requirement" as opposed to discretion. This

mandatory language forecloses any attempt by ICE to create detention authority where none exists.

37. Mr. Chen's 90-day removal period expired on November 27, 2022. For the past three years, he has been entitled to supervision, not detention, as a matter of statutory law.

B. ICE Cannot Manipulate Statutory Time Limits Through Strategic Delay

38. The government cannot circumvent these temporal limitations by waiting decades to arrest someone whose removal period has long expired. Federal courts have rejected such manipulation. As the Southern District of New York held in *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009), when addressing ICE's attempt to "arbitrarily trigger the removal period" by delaying arrest: ICE cannot manipulate statutory timelines to manufacture detention authority that has expired.
39. Similarly, in *Ulysse v. Department of Homeland Security*, 291 F. Supp. 2d 1318, 1325 (M.D. Fla. 2003), the court rejected ICE's argument that the removal period begins upon arrest rather than when the order becomes final, finding "no indication in the statute or regulations" supporting this position and recognizing that accepting it would grant the agency unlimited discretion to extend detention indefinitely through strategic delays.
40. Accepting the government's implied position—that it can detain Mr. Chen three years after the removal period expired—would create a regime of shadow detention authority. ICE could maintain lists of individuals with decades-old removal orders and strategically detain them whenever politically expedient or when seeking to bolster removal statistics, regardless of whether removal is actually possible.

**COUNT II: VIOLATION OF DUE PROCESS UNDER THE
FIFTH AMENDMENT AND *ZADVYDAS v. DAVIS***

41. Petitioner realleges and incorporates paragraphs 1-41 as if fully set forth herein.

42. Even if this Court were to find some residual detention authority under Section 1231(a)(6)—which Petitioner disputes—Mr. Chen's detention violates the constitutional limits established by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

A. The Six-Month Presumptively Reasonable Period Expired Three Years Ago

43. In *Zadvydas*, the Supreme Court held that detention beyond six months after the removal period expires is presumptively unreasonable unless the government demonstrates removal is reasonably foreseeable. The Court established this bright-line rule to avoid the serious constitutional problems raised by indefinite civil detention.
44. Critically, this six-month period begins when the 90-day removal period expires, not when ICE chooses to effectuate physical detention. The statutory framework and constitutional analysis are tied to fixed temporal markers, not the government's discretionary enforcement decisions.
45. As the *Farez-Espinoza* court explicitly held: "the six-month period of detention authorized by statute and reviewed by *Zadvydas* commences on the date the order of removal becomes final, not the date of detention." 600 F. Supp. 2d at 500. This interpretation prevents ICE from circumventing constitutional protections through strategic delays.
46. Mr. Chen's six-month presumptively reasonable period began on May 27, 2022 (when the 90-day removal period expired) and ended on November 27, 2022—nearly three years ago. Every day of Mr. Chen's current detention violates the constitutional framework established by *Zadvydas*.

B. The Government Cannot Meet Its Burden of Demonstrating Reasonable Foreseeability

47. After the six-month period expires, the government bears the burden of demonstrating by clear and convincing evidence that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. The government cannot possibly meet this burden when:

1. Three years have passed without removal. The sheer passage of time creates an overwhelming presumption that removal is not reasonably foreseeable. If removal were possible, it would have occurred during the two decades since the order became final.
2. China has consistently refused to accept its nationals subject to removal from the United States, particularly those who sought political asylum. There is no evidence this policy has changed regarding Mr. Chen.
3. Upon information and belief, ICE has not obtained and cannot obtain travel documents from China for Mr. Chen's removal.

48. The government cannot rely on speculation or hope that someday, somehow, China might change its position. *Zadvydas* requires concrete evidence that removal is reasonably foreseeable in the immediate future, not theoretical possibility at some indefinite point.

C. The Government's Position Would Eviscerate Constitutional Protections

49. If the government can restart the six-month clock whenever it chooses to detain someone, then *Zadvydas*'s protections become meaningless. Under this theory, ICE could release someone for decades, then re-detain them and claim a fresh six-month period of presumptively reasonable detention. This would mean someone whose removal order became final in 1970 could be detained today with the same constitutional justification as someone whose order became final yesterday.

50. Such an interpretation defies both logic and law. The Supreme Court's concern in *Zadvydas* was preventing indefinite civil detention, which it characterized as raising

serious constitutional problems. The Court emphasized that detention becomes increasingly difficult to justify as time passes without removal. If ICE could reset the constitutional clock at will by strategically delaying detention, it would create precisely the indefinite detention problem *Zadvydas* sought to prevent.

**COUNT III: ABSENCE OF ANY LEGITIMATE
GOVERNMENT INTEREST IN DETENTION**

51. Petitioner realleges and incorporates paragraphs 1-51 as if fully set forth herein.
52. The Fifth Amendment prohibits deprivation of liberty without due process of law. This protection extends to all persons within United States territory, including aliens subject to removal orders. *Zadvydas*, 533 U.S. at 693. In the civil detention context, the government must demonstrate a special justification that outweighs the individual's fundamental liberty interest.

A. Mr. Chen Poses No Flight Risk

53. The government cannot credibly claim Mr. Chen poses a flight risk when he has:
1. Resided continuously in the United States for over 8 years;
 2. Maintained continuous employment and paid taxes;
 3. Never attempted to evade immigration authorities; A person with such deep roots in the community, facing no reasonable prospect of removal, has every incentive to remain and pursue available legal remedies rather than flee.

B. Mr. Chen Poses Danger to the Community

54. Although Mr. Chen is a law-abiding individual, his record shows he pled guilty to two counts of Assault - 4th Degree at the Boone County, 13th Judicial Circuit of Missouri. The stabbing occurred at the House of Chow restaurant in Columbia on the night of Saturday, September 28, 2019. Chen allegedly stabbed a co-worker and also injured his

Boss who tried to intervene. Both victims were hospitalized with stab wounds. According to court documents, Chen and his co-worker had been arguing for some time, with the co-worker repeatedly calling him an "animal". Mr. Chen pleaded guilty to this misdemeanor because he had stabbed individuals during the incident. Mr. Chen is also aware that his former employer obtained a full order of protection against him.

55. Mr. Chen has never been convicted of any other crime and has no other history of arrest other than when he was detained by Chinese police for attending church gathering.

C. Removal Is Not Reasonably Foreseeable

56. As detailed above, removal to China is not reasonably foreseeable after three years of demonstrated impossibility. Detention cannot be justified to facilitate a removal that will never occur.

57. The government's detention of Mr. Chen serves no legitimate purpose and violates both procedural and substantive due process. As the Supreme Court recognized in *Zadvydas*, detention's justification is "weak or nonexistent where removal seems a remote possibility at best." 533 U.S. at 690. After three years, removal is not merely remote—it is impossible.

**COUNT IV: VIOLATION OF PROCEDURAL DUE
PROCESS AND REGULATORY REQUIREMENTS**

58. Petitioner realleges and incorporates paragraphs 1-56 as if fully set forth herein.

59. Even if detention authority existed—which it does not—ICE failed to follow required procedures under its own regulations, violating Mr. Chen's procedural due process rights.

60. The regulations at 8 C.F.R. § 241.4 establish specific procedures for post-order custody reviews and detention decisions. Upon information and belief, ICE failed to conduct proper custody reviews considering Mr. Chen's history; Assess whether changes in

circumstances over three years affected detention authority; Consider mandatory factors including family ties, employment history, and community connections; or evaluate less restrictive alternatives to detention.

61. The wholesale abandonment of regulatory procedures, combined with the arbitrary nature of detention two decades after the removal period, shocks the conscience and violates fundamental fairness.

**COUNT V: ARBITRARY AND CAPRICIOUS ACTION
UNDER THE APA**

62. Petitioner realleges and incorporates paragraphs 1-60 as if fully set forth herein.
63. ICE's detention of Mr. Chen constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). The decision to detain someone after three years, without evidence of changed circumstances, without following required procedures, and without any legitimate purpose, represents the paradigm of arbitrary government action.

**IRREPARABLE HARM AND NEED FOR EMERGENCY
RELIEF**

64. Every day of unlawful detention constitutes irreparable injury to Mr. Chen's fundamental liberty interests that cannot be adequately compensated through monetary damages. *Zadvydas*, 533 U.S. at 690 ("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").
65. The harm is particularly acute given Mr. Chen's age (35 years old), and the psychological trauma of indefinite detention after building a life in America for over eight years.

66. Mr. Chen faces further irreparable harm, including the loss of employment; deterioration of his physical and mental health while in detention; and the loss of his home and the stability he has cultivated over the years.

67. Mr. Chen was previously released by ICE due to serious health concerns, including frequent urination, frequent bowel movements, mental health issues, and diabetes. His current detention has retraumatized him, and he feels as though he is being tortured once again.

68. The balance of hardships overwhelming favors Mr. Chen, as Respondents suffer no cognizable harm from complying with federal law and releasing someone who poses no flight risk and cannot be removed.

69. The public interest strongly favors enforcing statutory limits and constitutional protections. Permitting ICE to circumvent temporal limitations and detain people decades after removal periods expire undermines the rule of law and threatens the liberty of countless individuals with old removal orders.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Chen from custody;
- B. Declare that Mr. Chen's detention violates:
 - 8 U.S.C. § 1231's temporal limitations;
 - The Due Process Clause of the Fifth Amendment;
 - The Supreme Court's holding in *Zadvydas v. Davis*;

- ICE's own regulations at 8 C.F.R. § 241.4;
 - The Administrative Procedure Act;
- C. Enter a permanent injunction prohibiting Respondents from re-detaining Mr. Chen absent clear and convincing evidence that removal to China has become imminently feasible;
- D. In the alternative, order an immediate bond hearing at which the government bears the burden of proving by clear and convincing evidence that Mr. Chen poses a flight risk that cannot be mitigated by conditions of release;
- E. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;
- F. Retain jurisdiction to ensure compliance with this Court's orders;
- G. Grant such other and further relief as this Court deems just and proper.

Dated: September 30, 2025

Respectfully submitted,

s/ Theodore N. Cox

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VERIFICATION

I, Theodore N. Cox, counsel for Petitioner Deng Cheng Chen, hereby verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Dated: September 30, 2025

Respectfully submitted,

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