

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

Chunbiao Xu,
A 

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

Eric ROKOSKY, in his official capacity as
Warden of Elizabeth Contract Detention
Facility;

Respondents.

Docket No:

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

1. Petitioner Chunbiao Xu (“Mr. Xu” or “Petitioner”), hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Xu’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. Xu's removal order became administratively final on March 22, 2011—over fourteen years ago. The 90-day “removal period” mandated by 8 U.S.C. § 1231(a)(1) expired on June 20, 2011. The six-month presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), expired on September 22, 2011— also over fourteen years ago.

3. Despite these clear temporal limitations, ICE arrested and detained Mr. Xu on March 18, 2025, claiming authority that expired two decades ago. 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 that Mr. Xu is currently being detained at Elizabeth Contract Detention Facility, located at 625 Evans Street, Elizabeth, NJ 07201.

PARTIES

6. Petitioner, Chun Biao Xu is a native and citizen of the People's Republic of China ("China"). He is currently under the ICE custody.

7. 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.

8. Marcos CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations. Is responsible for the enforcement and removal of aliens including petitioner.

9. Todd M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement ("ICE"). He is responsible for the administration of ICE

functions relating to detention and removal of aliens including maintain and enforcing petitioner's condition of supervision.

10. 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 her 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.

11. Eric ROKOSKY, in his official capacity as Warden of Elizabeth Contract Detention Facility. He is responsible for the maintaining and enforcement of the detention of aliens including Petitioner.

BACKGROUND

12. Mr. Xu is a 48-year-old native and citizen of the People's Republic of China currently in ICE custody at Elizabeth Contract Detention Facility.

13. Mr. Xu entered the United States in or about January 2002.

14. In or about June 2010, Mr. Xu was arrested and charged with conspiracy to commit alien smuggling, transporting, or harboring.

15. He was sentenced to nine months in prison.

16. Mr. Xu was then placed in removal proceedings. On March 22, 2011, an immigration judge issued a removal order against him. He did not appeal this decision, and his removal order was administratively final on that date.

17. Mr. Xu's removal period extended to June 20, 2011.

18. Three months later, June 20, 2011, at the end of the removal period, Mr. Xu was released and placed under an order of supervision, with an ankle monitor fitted "pursuant to Post Order Custody Review under 8 CFR 241.4."

19. He complied with all ICE reporting requirements. During this period, ICE officers also conducted multiple visits to his residence to supervise and record his registration.

20. In March 2016, Mr. Xu moved to New York, where he continued to comply with all ICE reporting requirements.

21. Based on the order of supervision, Mr. Xu was eligible to apply for and receive authorization to work from 2011 to the present. Mr. Xu duly paid taxes for all income earned during this period.

22. On March 28, 2025, when he appeared for his routine order of supervision check-in, he was detained by ICE.

23. Mr. Xu was given a “Notice of Revocation of Release” which stated that “a travel document has been procured to affect [sic] your removal from the United States. Your removal is now imminent ..”

24. It was not imminent and he was not removed.

25. On June 19, 2025, Mr. Xu was given a “Notice to Continue Detention” now inconsistently claiming that he “would pose a threat to the community ... and pose a risk of flight...”

26. Today, September 30, 2025, Mr. Xu is still detained by ICE detention facility at 625 Evans Street, Elizabeth, NJ 07201.

27. Mr. Xu now files a petition for a writ of habeas corpus, requesting release on the grounds that he has been detained for more than six months and his removal is not reasonably foreseeable.

LEGAL ARGUMENT

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

28. Petitioner realleges and incorporates paragraphs 1-27 as if fully set forth herein.

29. The Immigration and Nationality Act creates a carefully structured detention scheme with mandatory temporal boundaries that ICE has flagrantly violated in detaining Mr. Xu.

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

30. 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.

31. 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.

32. 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

33. Mr. Xu's 90-day removal period expired on June 20, 2011. For the past fourteen 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

34. 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.

35. 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.

36. Accepting the government's implied position—that it can detain Mr. Xu fourteen years after his final removal order—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 regardless of whether removal is actually possible.

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

37. Petitioner realleges and incorporates paragraphs 1-36 as if fully set forth herein.

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

39. In *Zadvydas*, the Court interpreted § 1231(a)(6) to authorize detention only for a period reasonably necessary to secure removal, and no longer. The Court held that detention beyond six months after the removal period expires is presumptively unreasonable unless the government can establish that removal is significantly likely to occur in the reasonably foreseeable future. This rule was adopted to avoid the grave constitutional concerns raised by indefinite civil detention, which offends both substantive due process and the longstanding principle that immigration detention must bear a reasonable relation to its purpose of effectuating removal.

40. Here, Mr. Xu has already been detained for more than six months since March 28, 2025. The government has not shown—and cannot show—that his removal is reasonably foreseeable. Absent such a showing, continued detention

violates both the statutory framework as construed in *Zadvydas* and the constitutional protections against indefinite civil confinement.

41. 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:

- a) Fourteen 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 within the fourteen years since the order became final.
- b) 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. Xu.
- c) Upon information and belief, ICE has not obtained and cannot obtain travel documents from China for Mr. Xu's removal.

42. 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.

43. Accordingly, Mr. Xu's continued detention is unlawful, and this Court should grant habeas relief under 28 U.S.C. § 2241.

C. The Government's Position Would Eviscerate Constitutional Protections

44. 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.

45. 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**

46. Petitioner realleges and incorporates paragraphs 1-45 as if fully set forth herein.

47. 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.

D. Mr. Xu's Poses No Flight Risk

48. The government cannot credibly claim Mr. Xu poses a flight risk when he has:

- Resided continuously in the United States for over 23 years;
- With his U.S. citizen wife (by a traditional marriage), raises three children, ages 22, 21 and 18 who depend on him;
- Maintained continuous employment and paid taxes;
- Never attempted to evade immigration authorities;

49. 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.

E. Mr. Xu Poses No Danger to the Community

50. The government cannot manufacture a public safety justification - *ex post facto* -- where none exists. Mr. Xu has been a productive, member of society for over two decades.

F. Removal Is Not Reasonably Foreseeable

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

52. The claim in the Notice of Revocation of Supervision that ICE had already obtained a travel document is demonstrably false.

53. The government's detention of Mr. Xu 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 twenty-one years, removal is not merely remote—it is impossible.

COUNT IV: ARBITRARY AND CAPRICIOUS ACTION UNDER THE APA

54. Petitioner realleges and incorporates paragraphs 1-53 as if fully set forth herein.

55. ICE's detention of Mr. Xu 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 15 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

56. Every day of unlawful detention constitutes irreparable injury to Mr. Xu 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").

57. The harm is particularly acute given Mr. Xu age (48 years old), his role as father to a U.S citizen minor child, his status as primary breadwinner for his family, and the psychological trauma of indefinite detention after building a life in America for over decades.

58. Mr. Xu faces additional irreparable harm through the loss of employment that supports his family; the separation from his minor U.S. citizen children during critical developmental years; the inability to support his U.S. citizen spouse; deterioration of his physical and mental health in detention; and the loss of his home and stability built over decades.

59. The balance of hardships overwhelmingly favors Mr. Xu, as Respondents suffer no cognizable harm from complying with federal law and releasing someone who poses no flight risk or danger and cannot be removed.

60. 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. Xu from custody;

B. Declare that Mr. Xu'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*;
- The Administrative Procedure Act;

C. Enter a permanent injunction prohibiting Respondents from re-detaining Mr.

Xu 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. Xu poses a flight risk or danger 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: October 6, 2025

Respectfully submitted,

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VERIFICATION

I, Theodore N. Cox, counsel for Petitioner Chunbiao Xu, 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: October 6, 2025

Respectfully submitted,

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