

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

Xianwu Lin,  
,

*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

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

*Respondents.*

**Docket No:**

**PETITION FOR  
WRIT OF HABEAS  
CORPUS AND  
ORDER TO SHOW  
CAUSE WITHIN  
THREE DAYS**

1. Petitioner Xianwu Lin (“Mr. Lin” or “Petitioner”), hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Lin’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. Lin’s removal order became administratively final on October 31, 2022—over two years ago. The 90-day “removal period” mandated by 8 U.S.C. § 1231(a)(1) expired on January 29, 2023. The six-month presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), expired on April 30, 2023—also over two years ago.

3. Despite these clear temporal limitations, ICE arrested and detained Mr. Lin on February 24, 2025, claiming authority that expired two years 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. Lin is currently being detained at Orange County Correctional Facility, located at 110 Wells Farm Road, Goshen, NY 10924.

### **PARTIES**

6. Petitioner, Xianwu Lin 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. Respondent, Lawrence CATLETTI, in his official capacity as Colonel of the Corrections Division at the Orange County Correctional Facility. He is responsible for the maintaining and enforcement of the detention of aliens including Petitioner.

### **BACKGROUND**

12. Mr. Lin is a 49-year-old native and citizen of the People's Republic of China currently detained by ICE at Orange County Correctional Facility, 110 Wells Farm Road, Goshen, NY 10924.

13. Mr. Lin entered the United States without inspection in or about June 1993.

14. Mr. Lin was arrested on March 1, 2002 and charged with robbery and was charged both by New York State and federal authorities.

15. On July 9, 2003, in Queens County Supreme Court, Mr. Lin was convicted of Burglary in the First Degree and sentenced to a 5-year term of imprisonment.

16. He was also convicted in federal court later in 2003 and was sentenced to 25 years imprisonment, to run concurrently with the State sentence.

17. On October 7, 2022, Mr. Lin was transferred to ICE custody. That day, ERO Atlanta served Mr. Lin with a Form I-862, Notice to Appear.

18. Mr. Lin did not apply for relief from removal, and on October 31, 2022, an immigration judge ordered him removed to China. Mr. Lin did not appeal; the order became administratively final that day.

19. The statutory removal period ran through January 29, 2023. On January 23, 2023, ICE released Mr. Lin to an Order of Supervision in New York.

20. Mr. Lin complied with all reporting requirements. ICE officers conducted multiple residence visits during supervision. ICE authorized him for employment (2023–present); he worked as a ticket checker for a New York bus company and paid taxes on all income.

21. On February 24, 2025, Mr. Lin appeared for a routine OSUP check-in and was taken into ICE custody. ICE issued a Notice of Revocation of Release stating

that “a travel document has been procured to effect your removal” and that removal was “imminent.”

22. Removal has not occurred.

23. On September 5, 2025, ICE served a Notice to Continue Detention, now asserting that Mr. Lin “would pose a threat to the community and pose a risk of flight.”

24. As of October 10, 2025, Mr. Lin has been detained for approximately 8 months since his February 24, 2025 arrest.

25. Mr. Lin petitions for a writ of habeas corpus under 28 U.S.C. § 2241, seeking immediate release under appropriate conditions of supervision, because he has been detained beyond six months and his removal is not reasonably foreseeable.

### **LEGAL ARGUMENT**

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

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

27. 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.

28. Here, Mr. Lin has been detained for almost 8 months since February 24, 2025—well beyond the six-month *Zadvydas* threshold. He has thus triggered the *Zadvydas* presumption and shifted the burden to ICE to show that his removal is significantly likely in the reasonably foreseeable future. 533 U.S. at 701.

29. 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.

30. 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) In February 2025 ICE asserted a travel document had been “procured” and that removal was “imminent,” yet no removal occurred in the

ensuing more than seven months. The Government's own timeline undermines any claim of foreseeability.

- b) Since the removal order became administratively final, two 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.
- c) 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. Lin.
- d) Upon information and belief, ICE has not obtained and cannot obtain travel documents from China for Mr. Lin's removal.

31. 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.

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

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

33. 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. Lin's Poses No Flight Risk**

34. The government cannot credibly claim Mr. Lin poses a flight risk when he has:

- Resided continuously in the United States for over 32 years;
- With his three LRP brother in the United States;
- Maintained continuous employment and paid taxes;
- Never attempted to evade immigration authorities;

35. 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. Lin Poses No Danger to the Community**

36. The Government cannot invoke public-safety in the abstract to evade *Zadvydas*. If DHS seeks to rely on dangerousness, it must follow applicable special-circumstances procedures with evidence and individualized findings;

otherwise, supervision conditions adequately mitigate concerns and are expressly contemplated by §1231(a)(3).

### **C. Removal Is Not Reasonably Foreseeable**

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

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

39. The government's detention of Mr. Lin 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.

### **IRREPARABLE HARM AND NEED FOR EMERGENCY RELIEF**

40. Every day of unlawful detention constitutes irreparable injury to Mr. Lin 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").

41. The harm is particularly acute given Mr. Lin age (47 years old), his role as a brother to three LPR brothers, and the psychological trauma of indefinite detention after building a life in America for over decades.

42. Mr. Lin faces additional irreparable harm through the separation from his three LPR brothers; deterioration of his physical and mental health in detention; and the loss of his home and stability built over decades.

43. The balance of hardships overwhelmingly favors Mr. Lin, 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.

44. 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. Lin from custody;

B. Declare that Mr. Lin'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. Lin 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. Lin 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:

Respectfully submitted,

/s/ Theodore N. Cox

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### VERIFICATION

I, Theodore N. Cox, counsel for Petitioner Xianwu Lin, 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:

Respectfully submitted,

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