

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Kaw Bleh HTOO,

Petitioner,

v.

Pamela BONDI, U.S. Attorney General;

Kristi NOEM, Secretary, Department of
Homeland Security;

Todd LYONS, Acting Director,
Immigration and Customs Enforcement;

Joel L BROTT, Sheriff, Sherburne
County Jail,

Respondents.

Civil Action No: 25-cv-

**PETITION FOR WRIT OF HABEAS
CORPUS**

**8 U.S.C. § 1231
28 U.S.C. § 2241**

I. INTRODUCTION

1. Respondents are unlawfully detaining Petitioner, Kaw Bleh HTOO (“Mr. Htoo”) under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.

Respondents are currently unlawfully and unreasonably subjecting Mr. Htoo to prolonged and indefinite post-order detention, with no likelihood of removal in the reasonably foreseeable future. Mr. Htoo was ordered removed on May 3, 2024, and his removal order became administratively final on June 2, 2024.

2. On April 24, 2025, Mr. Htoo was taken into custody by Immigration and Customs Enforcement. Respondents have detained Mr. Htoo for 211 days under § 1231, in excess of the statutory removal period and the presumptively reasonable period

under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

3. On June 26, 2023, the Department of Homeland Security commenced removal proceedings against Ms. Htoo by filing a Notice to Appear. Ms. Htoo applied for asylum, withholding of removal, and protection under the Convention Against Torture. Ms. Htoo's applications for asylum and withholding of removal were denied, but his application for deferral of removal under the Convention Against Torture was granted on May 3, 2024. His removal order became administratively final on June 2, 2024, when the period to submit an appeal expired.
4. On April 24, 2025, Mr. Htoo's was released from prison and taken into custody by Immigration and Customs Enforcement. He has been detained by Respondents for a total of 211 days with no end in sight.
5. The Supreme Court has held that it is presumptively reasonable for the government to detain a noncitizen with a final order of removal for six months or less. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "After this 6-month period, 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." *Id.* "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–

700.

6. Here, the removal period began on April 24, 2025, the date the Ms. Htoo was taken into custody by Immigration and Customs Enforcement. Mr. Htoo's detention during this removal period exceeds 180 days. Currently, there is no substantial likelihood of removal in the reasonably foreseeable future because ICE has been unable to execute Mr. Htoo's removal order over the last 180 days.
7. To remedy this unlawful detention, Mr. Htoo seeks relief in the form of immediate release from detention on reasonable conditions determined by ICE pursuant to 8 C.F.R. § 241.5.
8. Mr. Htoo also requests that this Court order Respondents to produce a copy of any valid travel document they possess for him, and evidence demonstrating the likelihood of an upcoming flight outside of the United States, should it exist.

II. JURISDICTION AND VENUE

9. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). Because Mr. Htoo seeks to challenge his custody as a violation of the Constitution, laws, or treaties of the United States, jurisdiction is proper in this court. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary

federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases.”); *Moallin v. Cangemi*, 427 F.Supp.2d 908, 920–21 (D. Minn. 2006).

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Mr. Htoo is detained within this District. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because some of the Respondents are headquartered within this District.

III. PARTIES

11. Petitioner Kaw Bleh Htoo is a native and citizen of Burma (Myanmar). Mr. Htoo was denied asylum and withholding of removal by the Immigration Court on May 3, 2024, but his application for deferral under the Convention Against Torture was granted. Ms. Htoo’s order of removal became final on June 2, 2024, when the appeal window closed. On April 24, 2025, Ms. Htoo was taken into custody by Immigration and Customs Enforcement. He has been held in continued post-order detention since April 24, 2025. He is currently detained at the Sherburne County Jail in Elk River, Minnesota.
12. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals and the immigration judges as a subunit—the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration laws, including detention statutes, along with Respondent Noem. Attorney General

Bondi is a legal custodian of Mr. Htoo. Attorney General Bondi's official address is 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

13. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Mr. Htoo's detention and removal, and as such is a legal custodian of Mr. Htoo. Secretary Noem's official address is 245 Murray Lane SW, Washington, D.C. 20528.
14. Respondent Todd Lyons is being sued in his official capacity as the Director of Immigration and Customs Enforcement, a sub-unit of the Department of Homeland Security. In that capacity, Director Lyons has supervisory capacity over ICE personnel in Minnesota, and he is the head of the agency that retains legal custody of Mr. Htoo. Acting Director Lyons's official address is 500 12th Street SW, Washington, D.C. 20536.
15. Respondent Joel L Brott is being sued in his official capacity as the Sheriff of Sherburne County, Minnesota. In that capacity, Sheriff Brott is responsible for the Sherburne County Jail—a detention facility under contract with ICE and the physical location where Mr. Htoo is currently in custody. The address for Sherburne County Jail is 13880 Business Center Drive NW, Elk River, MN 55330.

IV. EXHAUSTION

16. Mr. Htoo has exhausted his administrative remedies as required by law. Judicial action is his only remedy. Mr. Htoo is being detained despite his removal being significantly unlikely in the foreseeable future.
17. No statutory exhaustion requirement applies to Mr. Htoo's claim of unlawful detention.
18. The immigration court does not have jurisdiction to order Mr. Htoo's release.
19. No administrative remedies currently exist under the law to challenge indefinite post-order detention where there is no reasonable likelihood that removal will occur in the foreseeable future.

V. FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

20. Petitioner, Kaw Bleh Htoo, is a 26-year-old native and citizen of Burma. *See* Ex. A (NTA) at 1.
21. Mr. Htoo was admitted to the United States on August 29, 2011 as a refugee. Ex. A (NTA) at 1.
22. On March 5, 2015, Mr. Htoo's status was adjusted to that of a lawful permanent resident under INA Section 209(a), with a retroactive date to August 29, 2011. Ex. A (NTA) at 1.
23. On October 3, 2022, Mr. Htoo was convicted in the Ramsey County District Court in St. Paul, Minnesota for the offense of assault in the second degree in violation of Minnesota Statute Section 609.222, subdivision 2 and two counts of attempted

robbery in the first degree in violation of Minnesota Statute Section 609.245, subdivision 1, and . Ex. A (NTA) at 1, 4.

24. On May 19, 2021, Mr. Htoo was convicted in the Dakota County District Court in Hastings, Minnesota of attempted theft in violation of Minnesota Statute Section 609.52, subdivision 2(a)(1). Ex. A (NTA) at 4.
25. On June 29, 2022, Mr. Htoo was convicted in the Anoka County District Court in Anoka, Minnesota for the offense of fleeing a police officer in a motor vehicle in violation of Minnesota Statute Section 609.487, subdivision 3. Ex. A (NTA) at 1.
26. On January 26, 2023, the Department of Homeland Security initiated removal proceedings against Ms. Htoo by filing a Notice to Appear (NTA). Ex. A (NTA).
27. The Immigration Judge (“IJ”) sustained the three charges of removability lodged against Mr. Htoo. Ex. A (NTA) at 3. At the time of his removal proceedings, Mr. Htoo was incarcerated at a Minnesota Correctional Facility.
28. Mr. Htoo filed applications for asylum, withholding of removal, and protection under Article III of the Convention Against Torture.
29. On May 3, 2024, the Immigration Judge denied Ms. Htoo’s application for asylum and withholding of removal, but granted his application for deferral of removal under the Convention Against Torture. Ex. B (IJ Decision).
30. The Department of Homeland Security did not file a notice of appeal before the expiration of the appeal deadline. As a result, his removal order became administratively final on June 2, 2024. *See* Ex. B (IJ Decision).

31. On April 24, 2025, Mr. Htoo completed his prison sentence and was released from State custody. Upon release, he was detained by Immigration and Customs Enforcement.
32. On July 20, 2025, ICE held a 90-day custody review. ICE decided to continue Mr. Htoo's detention at that time on the basis that he had been convicted of an aggravated felony and because ICE is pursuing his removal to a third country. Ex. C (ICE Decision to Continue Detention).
33. On November 3, 2025, ICE held an 180-day custody review. ICE decided to continue Mr. Htoo's detention at that time on the basis that he had been convicted of an aggravated felony and because ICE is pursuing his removal to a third country. Ex. C (ICE Decision to Continue Detention). Ex D (ICE Decision to Continue Detention).
34. Mr. Htoo has been detained by Respondents for 11 days since he was taken into custody on April 24, 2025. Respondents have, to date, been unable to execute Mr. Htoo's removal or obtain a travel document and do not appear to have definite plans to do so in the near future.
35. Mr. Htoo has complied with all requests by Respondents and has fully cooperated with Respondents' efforts to remove him.
36. Mr. Htoo has not been given any specific information about a travel document or a flight plan for his removal.
37. As of the date of this filing, Mr. Htoo has spent 211 days in ICE custody.
38. Mr. Htoo has exhausted his administrative remedies. No other court of competent

jurisdiction has the authority to order the release of Mr. Htoo.

VI. LEGAL FRAMEWORK

A. STATUTORY & REGULATORY FRAMEWORK

39. Under 8 U.S.C. § 1231, noncitizens with a final order of removal shall be removed from the United States within a period of 90 days. 8 U.S.C. § 1231(a)(1)(A).

40. The beginning of the 90-day removal period is determined by the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. at § 1231(a)(1)(B).

41. During the removal period, the noncitizen may be detained, and may not be released under any circumstances if found inadmissible or deportable on criminal or national security grounds. § 1231(a)(2).

42. If the noncitizen is not removed during the 90-day period, he or she "shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien":

- (A) to appear before an immigration officer periodically for identification;
- (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

§ 1231(a)(3).

43. The removal period may be extended beyond 90 days and the noncitizen may remain detained if the noncitizen frustrates his or her removal. § 1231(a)(1)(C).
44. Alternatively, the noncitizen may be detained beyond the 90 days if he or she is inadmissible under § 1182 or removable under various sections of § 1227, or determined to be a risk to the community or unlikely to comply with the order of removal. § 1231(a)(6); 8 C.F.R. § 241.4(a).

B. PROLONGED DETENTION

45. The Due Process Clause of the Fifth Amendment requires that “[n]o person shall . . . be deprived of liberty . . . without due process of law.” “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). In the context of immigration detention, at a minimum, detention must “bear[] a reasonable relation to the purpose for which the individual [was] committed.” *Id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). If “detention’s goal is no longer practically attainable,” detention becomes unreasonable and therefore violates the Fifth Amendment right to due process. *Id.*
46. The Fifth Amendment Due Process Clause also requires that Respondents follow procedures that are adequate to establish that detention is both statutorily and constitutionally valid. *See Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (“due process places a heightened burden of proof on the State in civil proceedings in

which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”).

47. Under the canon of constitutional avoidance, no immigration detention statute should be construed in a way that would violate the Constitution where it is “fairly possible” to avoid doing so. *Zadvydas*, 533 U.S. at 689.
48. In *Zadvydas*, the Supreme Court held that, while the statute provides for a removal period of 90 days, post-order detention up to 180 days was presumptively reasonable. *Id.* at 701. After six months, the burden is on the government to rebut a showing by the noncitizen “that there is no significant likelihood of his removal in the reasonably foreseeable future.” *Id.* “[W]hat constitutes the ‘reasonably foreseeable future’ shrinks as the total period of postremoval confinement grows.” *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 915 (D. Minn. 2006).

VII. CAUSES OF ACTION

COUNT ONE: VIOLATION OF 8 U.S.C. § 1231 – PROLONGED DETENTION

49. Petitioner re-alleges and incorporates by reference the paragraphs above.
50. Mr. Htoo’s detention has exceeded and will continue to exceed the six-month presumptive threshold under *Zadvydas*, as he has now been detained for 244 days under § 1231.
51. Respondent’s do not possess a valid travel document for Mr. Htoo and there is no substantial likelihood of removal in the reasonably foreseeable future.
52. Therefore, 8 U.S.C. § 1231 does not authorize detention of Mr. Htoo as removal is no longer likely to occur in the reasonably foreseeable future.

**COUNT TWO: VIOLATION OF FIFTH AMENDMENT
SUBSTANTIVE DUE PROCESS**

53. Petitioner re-alleges and incorporates by reference the paragraphs above.
54. The Fifth Amendment Due Process Clause protects against arbitrary and indefinite detention by the executive branch. *Zadvydas*, 533 U.S. at 699.
55. Due process requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals. *See Zadvydas*, 533 U.S. at 690-91. As removal is not reasonably foreseeable for Mr. Htoo and Respondents can only offer a vague plan for removal, his detention is arbitrary and unreasonable, and therefore in violation of the Fifth Amendment's guarantee of Due Process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter;
2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
3. Pursuant to 28 U.S.C. § 2243 issue an order directing the Respondents to show cause within 3 days why the writ of habeas corpus should not be granted;
4. Order Respondents to produce to the Court and Petitioner any valid travel document for Petitioner in their possession;
5. Order Respondents to produce to the Court and Petitioner evidence demonstrating their ability to execute a removal flight outside of the United States in the near

future;

6. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody on an Order of Supervision with any conditions deemed necessary pursuant to 8 C.F.R. § 241.5; and
7. Grant any and all further relief this Court deems just and proper.

Dated: November 21, 2025

Respectfully submitted,

s/ Maria Miller

Maria Miller (MN #396748)

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