

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Ke Dian WANG

Petitioners,

v.

LaDeon FRANCIS, Field Office Director of
Enforcement and Removal Operations, New
York Field Office, Immigration and Customs
Enforcement; Todd LYONS, Acting Director,
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW.

Respondents.

Case No. 1:25-cv-9830

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Ke Dian Wang is a 60-year-old man from China who, as of the filing of this petition, are in the physical custody of the Respondents at 26 Federal Plaza in New York, New York.

2. Upon information and belief, Petitioner entered the United States in 1989. He fought a removal case and received a final order of removal October 28, 2002, when his appeal to the Board of Immigration Appeals was dismissed. Upon reason and belief, Petitioner was unable to be deported to China and was instead put on an Order of Supervision (“OSUP”) which required periodic check-ins with Immigration and Customs Enforcement (“ICE”).

3. Mr. Wang has been complying and checking in with ICE since he was put on OSUP in or about 2002.

4. On November 24, 2025, Mr. Wang attended one of his OSUP check-ins at 26 Federal Plaza. He was detained at that check-in. Since his last check-in, no circumstances have changed.

5. As Respondents have violated the Petitioner’s constitutional due process rights, Petitioner seeks a writ of habeas corpus requiring that he is released immediately.

JURISDICTION

6. Petitioner is in the physical custody of Respondents. Upon information and belief, Petitioner is detained at 26 Federal Plaza in New York, New York.

7. This action arises under the Constitution of the United States.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of New York, the judicial district in which Petitioner currently is detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner Ke Dian Wang is a citizen of China who has been in immigration detention since November 24, 2025.

15. Respondent LaDeon Francis is the Director of the New York Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Francis is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, New York, New York 10278.

16. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of Immigration and Customs Enforcement. As the Acting Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and routinely transacts business in this District. He supervises Respondent LaDeon Francis. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

LEGAL FRAMEWORK

Detention Authority

20. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

22. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

23. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

24. This case concerns the detention provisions at §§ 1231(a)–(b). An individual with a final order of removal may be subject to required or discretionary detention under 8 U.S.C. § 1231(a). If released, he is subject to the terms of supervision under 8 U.S.C. § 1231(a)(3).

25. 8 C.F.R. § 241.4(1) sets forth the procedures ICE must follow to revoke an Order of Supervision and return a non-citizen to custody. Section 241.4(1)(1) provides that an individual “who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody.” The noncitizen must be “notified of the reasons for revocation of his [] release” and “afforded an initial informal interview promptly after his [] return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.*

26. The Executive Associate Commissioner has independent discretionary authority “to revoke release and return to Service custody an alien previously approved for release under the procedures in this Section.” 8 C.F.R. § 241.4(1)(2). While a district director may also revoke release of an alien when, “in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner,” to exercise its discretion, the revoking official must find that “(i) the purposes of release have been served; (ii) the alien [has] violate[d] any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” *Id.*

Civil Immigration Detention

27. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadydas*, 533 U.S. 690; *Demore*, 538 U.S. 528.

28. To comport with due process, civil detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to

prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

29. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 LX 119339, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

30. Despite these baseline requirements, Respondents now regularly re-detain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (ordering the immediate release of a petitioner redetained by ICE because she "poses a risk of flight or a danger to the community" and her sudden redetention violated her right to due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering the release of petitioner redetained after an immigration

court hearing and concluding “Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.”).

Post-Order Detention Authority

31. Individuals with a final order of removal may be subject to detention pursuant to 8 U.S.C. § 1231(a). If released, they are subject to the terms of supervision in accordance with 8 U.S.C. § 1231(a)(3). If the person indicates a fear of return during reinstatement proceedings, DHS must refer him or her to an asylum officer for a reasonable fear interview. 8 C.F.R. §§ 208.31, 241.8(e).

32. Individuals released pursuant to an order of supervision may be returned to custody if the conditions of release are violated. 8 C.F.R. § 241.4(l)(1). Upon revocation, however, “the alien will be notified of the reasons for revocation of his or her release or parole” and “afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* In addition, the regulation provides that release may be revoked in the discretion of designated officials only where one of the enumerated grounds is present, including that (i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) enforcement of a removal order or initiation of removal proceedings is appropriate; or (iv) the conduct of the alien, or other circumstances, indicate that release is no longer appropriate. *Id.* § 241.4(l)(2).

33. As other courts, including some in this district have found, ICE violates the Due Process Clause when it revokes a noncitizen’s order of supervision without the requisite notice, hearing, and findings, and thereafter re-detains the noncitizen. *See Funes Gamez v. Francis*, 25

CIV. 7429 (PAE), 2025 WL 3263896, at *13-*24 (S.D.N.Y. Nov. 24, 2025); *Zhu v. Genalo*, 25 CIV.06523 (JLR), 2025 WL 24523252, at *4 (S.D.N.Y. Aug. 26, 2025); *Ceesay v Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025); *Torres-Jurado v. Biden*, 19 CIV. 3593 (AT), 2023 WL 7130898, at *5 (S.D.N.Y. Oct. 29, 2023); *see also You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018) (“Even assuming *arguendo* that Respondents had the authority to revoke Petitioner’s release under 241.4 in May 2018, they could not detain him without providing him with notice and an informal interview. Nor could they detain Petitioner without finding that he was ‘a risk to the community or unlikely to comply with the order of removal.’” (citing 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4(l)).

FACTS

34. Petitioner has resided in the United States since on or about May 1989. Mr. Wang lives with his family in Queens, New York.

35. On November 24, 2025, Petitioner was arrested during a routine OSUP check-in with Immigration and Customs Enforcement. Upon information and belief, Petitioner is now detained at 26 Federal Plaza.

36. Petitioner has long been on OSUP and has complied with all check in and other requirements for over a decade. Upon information and belief, there have been no changes in Petitioner’s circumstances in between his last check in and the November 24, 2025 check-in where he was detained. Petitioner is neither a flight risk nor a danger to his community.

37. On information and belief, following Petitioner’s arrest, ICE issued a custody determination to continue Petitioner’s detention without being notified of the reasons for revocation of OSUP nor afforded an opportunity to respond to reasons for revocation.

38. As a result, Petitioner remains in detention. Without relief from this court, they face the prospect of months, or even years, in immigration custody, separated from their family and community.

39. On August 23, 2025, USCIS approved an I-130 Petition with Mr. Wang as beneficiary as the Parent of a U.S. Citizen.

CLAIMS FOR RELIEF

COUNT ONE VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION SUBSTANTIVE DUE PROCESS

40. The allegations in the above paragraphs are re-alleged and incorporated herein.

41. Petitioner is being detained without cause and in violation of his Constitutional right to Due Process under the Fifth Amendment.

42. The government's ongoing detention of Petitioner is unjustified and unlawful.

43. The goals of immigration detention are to "ensur[e] [his] appearance ... at future immigration proceedings," and to "[p]revent[] danger to the community." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Neither goal is served by Petitioner's detention.

44. Petitioner was detained by ICE at a scheduled check in pursuant to his Order of Supervision, demonstrating that there was no need for detention to ensure his presence at those check ins.

45. In addition, upon information and belief, Petitioner has no criminal history and presents no danger to the community.

46. The Due Process Clause guarantees detained immigrants the right to be detained in a safe situation, free from punitive conditions of confinement. *See* U.S. Const. amend. V.

47. Respondents' failure to adequately protect Petitioner from these punitive conditions, or release him from detention altogether, violates his due process rights.

48. Petitioner has no adequate remedy at law.

49. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION
PROCEDURAL DUE PROCESS

50. The allegations in the above paragraphs are realleged and incorporated herein.

51. Petitioner is being detained without cause and in violation of his Constitutional right to Due Process under the Fifth Amendment.

52. The Procedural Due Process Clause of the Fifth Amendment prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

53. Petitioner has a liberty interest in not being detained.

54. As Petitioner was released on an order of supervision pursuant to § 1231(a)(3), ICE was required to adhere to its own regulations before it could revoke Petitioner's freedom and take him back into custody.

55. The government's re-detention of Petitioner providing him with notice and an informal interview deprives him of due process.

56. Petitioner has no adequate remedy at law.

57. Petitioner's detention thereby deprives him of his rights to Due Process under the Fifth Amendment of the United States Constitution.

COUNT THREE
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND THE
ADMINISTRATIVE PROCEDURES ACT

58. The allegations in the above paragraphs are realleged and incorporated herein.

59. The APA requires courts to “hold unlawful and set aside agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).s

60. When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *Accardi*, 347 U.S. at 266, 268. The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Morton*, 415 U.S. at 235 (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

61. Before deciding to revoke someone’s OSUP, Respondents’ regulations require meaningful notice and a chance to respond. 8 C.F.R. § 1182(e). Such notice was not afforded to Petitioner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Southern District of New York while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner;
- e. Declare that Petitioner's detention is unlawful;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 25th of November, 2025.

/S/Lauren Nicole Kostas
Lauren Nicole Kostas
Pro Bono Counsel for the Petitioner