

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Wen Qing LU,

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;

Randall Henderson, in his official capacity as
Warden of South Texas Detention Facility.

Respondents.

Agency Case No.:

A 

Docket No: 5:25-cv-1865

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

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

WITH DEMAND FOR RETURN WITHIN THREE DAYS

PURSUANT TO 28 U.S.C. § 2243

PRELIMINARY STATEMENT

1. Petitioner Wen Qing LU, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his

continued detention by U.S. Immigration and Customs Enforcement ("ICE") as violative of the Fifth Amendment Due Process Clause as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner demands that Respondents show cause why the writ should not be granted and that this writ be made returnable within three days, as authorized by 28 U.S.C. § 2243.

2. Mr. Lu is a 51-year-old man who has been detained by ICE since June 6, 2025. His detention now exceeds six months, exceeding the six-month period that the Supreme Court in *Zadvydas* identified as presumptively reasonable for post-removal-order detention. Yet ICE itself previously determined that Mr. Lu cannot be removed. In May 2018, after approximately six months of detention, ICE concluded that China refused to accept Mr. Lu for deportation and released him on an Order of Supervision.

3. For nearly seven years following his release, Mr. Lu fully complied with every supervision requirement. He never missed an ICE appointment. He reported to ICE on time every year. He lived with his current wife and son and run a Chinese restaurant, working hard to support his family. He posed no danger to anyone.

4. On June 6, 2025, Mr. Lu went to work at the restaurant as usual. When he was close to the restaurant, he was detained by ICE. During ICE detention, on August 21, 2025, ICE required Mr. Lu to complete an application for travel documents. On December 11, 2025, ICE orally informed Mr. Lu that it had resubmitted the travel document application. However, ICE has never produced any travel documents. ICE has also not identified any new circumstances that would make removal feasible when it was previously not.

5. Mr. Lu's continued detention serves no legitimate purpose. The sole justification for civil immigration detention is to effectuate removal. *Zadvydas*, 533 U.S. at 690. Where removal is not significantly likely in the reasonably foreseeable future, detention becomes constitutionally impermissible. ICE's own prior determination that China refuses to accept Mr. Lu demonstrates that removal was not practicable in May 2018, and nothing in the

record suggests that circumstances have changed. Under *Zadvydas*, Mr. Lu is entitled to release.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant writs of habeas corpus to persons held "in custody in violation of the Constitution or laws or treaties of the United States." The Supreme Court confirmed in *Zadvydas* that federal courts have habeas jurisdiction to review the lawfulness of continued detention following a final order of removal. *Id.* at 687-88.

7. Venue is proper in this district because Petitioner is currently detained at South Texas Detention Facility located at 566 Veterans Drive, Pearsall, TX 78061, which is within the Western District of Texas. The immediate custodian of Petitioner is Warden Randall Henderson of the South Texas Detention Facility.

8. The jurisdiction-stripping provisions of the Immigration and Nationality Act do not apply to this petition. Petitioner does not challenge the validity of his 1994 removal order. He challenges the constitutionality of his continued detention when removal cannot be effectuated. The Supreme Court in *Zadvydas* specifically held that such challenges are cognizable under 28 U.S.C. § 2241. 533 U.S. at 687-88.

PARTIES

9. Petitioner Wen Qing LU is a native and citizen of China. He was born in [REDACTED] and is currently 51 years old. His Alien Registration Number is A# [REDACTED]. [REDACTED] He has been detained since June 6, 2025, and is currently held at South Texas Detention Facility located at 566 Veterans Drive, Pearsall, TX 78061.

10. Respondent Randall Henderson is the Warden of South Texas Detention Facility, where Petitioner is currently detained. Randall Henderson is responsible for Petitioner's immediate physical custody and is sued in his official capacity.

11. Respondent Pamela Bondi is the Attorney General of the United States. She is named in her official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security, the agency responsible for the detention and removal of aliens from the United States. She is named in her official capacity.


13. Respondent Marcos Charles is the Acting Executive Associate Director of Enforcement and Removal Operations within ICE. ERO is responsible for immigration detention and removal operations. He is named in his official capacity.

14. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency directly responsible for Petitioner's detention. He is named in his official capacity.

STATEMENT OF FACTS

*(ALL FACTUAL STATEMENTS ARE MADE
UPON INFORMATION AND BELIEF)*

A. Petitioner's Personal Background

15. Petitioner Wen Qing LU was born in  in Fuzhou, China. He is 51 years old and married. Mr. Lu came to the United States in 1990 and has resided in this country for nearly thirty-five years. He has a U.S.-born minor son with his ex-wife, and his current wife is a United States citizen. Both have lawful status in the United States and reside together. Mr. Lu has worked in the restaurant since 2007. In 2017, he and his wife operated their own Chinese restaurant. Prior to his detention, Mr. Lu was continuously employed at the restaurant, supporting his family and raising his minor son. Throughout his employment, Mr. Lu has consistently reported his income and paid taxes.

B. Criminal History and Sentence

16. In late 1994 and 1995, when Mr. Lu was around 20 years old, he was sentenced to 5 to 15 years and 10 to 30 years imprisonment for attempted extortion and kidnapping. Mr. Lu demonstrated perfect compliance in prison, became a cooperative

witness, and served 10 years in federal prison before being released after completing his sentence. In April 2018, Mr. Lu was detained due to a conflict with his wife. His ex-wife withdrew the case, and he was not convicted, but Mr. Lu was still detained by ICE for six months before being released. His criminal conduct occurred more than 30 years ago. Since his release from federal prison, Mr. Lu has not been involved in any criminal misconduct.

C. The 1991 Removal Order

17. On December 11, 1991, an Immigration Judge ordered Mr. Lu removed from the United States. The removal order became administratively final on that date.

D. Initial Post-Order Detention and ICE's Determination That China Refused Acceptance

18. The incident involving Mr. Lu and his ex-wife was referred to U.S. Immigration and Customs Enforcement (ICE), and he was detained pending removal proceedings. After approximately six months in post-order detention, ICE determined that it could not effectuate Mr. Lu's removal because China refused to accept him for deportation.

E. Release on Order of Supervision

19. ICE's 2018 release of Mr. Lu was consistent with the requirements of *Zadvydas v. Davis*, 533 U.S. 678 (2001), which holds that post-removal-order detention is permissible only for a period reasonably necessary to effectuate removal and that, once removal is not significantly likely in the reasonably foreseeable future, continued detention is no longer authorized.

F. Seven Years of Full Compliance with Supervision

20. For approximately seven years following his release, from May 2018 to December 2024, Mr. Lu fully complied with all supervision requirements. He never missed an interview appointment with the San Antonio ICE office. He reported yearly with his local probation officer without any failures to report. He resided peacefully in the community and posed no danger.

21. Mr. Lu's perfect seven-year compliance record demonstrates that he poses no flight risk and no danger to the community. He has strong family ties to the United States, including his U.S. citizen wife and underage son.

G. Re-Detention Without Explanation

22. On June 6, 2025, Mr. Lu went to work at his restaurant as usual. While on his way to work, he was detained by ICE. ICE provided no explanation and offered no evidence to justify their right to deport him.

23. The Immigration and Customs Enforcement (ICE) requested Mr. Lu to fill out a travel document application form, which Mr. Lu completed on August 21, 2025. On December 11, 2025, ICE verbally informed Mr. Lu that the form had been resubmitted, but ICE did not provide any statement indicating that the situation had changed, nor did they explain whether China would now accept Mr. Lu's repatriation. ICE also did not provide any written statement explaining the reason for Mr. Lu's re-detention.

24. After his re-detention, Mr. Lu he was held in the same place as before, the South Texas Detention Facility, located at 566 Veterans Drive, Pearsall, TX 78061.

H. Mr. Lu's 90-day and 180-day Custody Reviews

25. Since Mr. Lu's re-detention on June 6, 2025, he immediately requested an interview with ICE and stated that he would fully cooperate. ICE did not provide any explanation for his arrest and conducted only one custody review. After the expiration of the removal period on August 21, 2025, ICE merely asked Mr. Lu to complete a form requesting personal information and did not conduct a formal custody or detention review. Mr. Lu completed the form to the best of his knowledge. On December 11, 2025, ICE informed Mr. Lu that his travel document request had been resubmitted. To date, Mr. Lu has received no results or decisions from any subsequent custody review and remains in detention.

LEGAL STANDARDS

26. The Fifth Amendment provides that no "person" shall be "deprived of ... liberty ... without due process of law." U.S. Const. amend. V. This protection extends to all persons within United States territory, including aliens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

27. In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not authorize indefinite detention of aliens following final orders of removal. The Court construed the statute to contain an implicit "reasonable time" limitation, holding that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

28. The Court explained that "[f]reedom 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." *Id.* at 690. The only permissible justification for civil immigration detention is to effectuate removal. Where removal is not significantly likely in the reasonably foreseeable future, detention serves no legitimate purpose and violates due process.

29. The Court established six months as the "presumptively reasonable period of detention." *Id.* at 701. After this period, if 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.*

CLAIMS FOR RELIEF

COUNT ONE: DETENTION EXCEEDS PRESUMPTIVELY REASONABLE PERIOD

30. Under *Zadvydas*, the Supreme Court recognized six months as the "presumptively reasonable period of detention" for post-removal-order custody. 533 U.S. at 701. After this period, the burden shifts to the government to demonstrate a significant likelihood of removal in the reasonably foreseeable future.

31. Mr. Lu was re-detained on June 6, 2025. As of the filing of this petition, he has been detained for more than six months. This period has exceeded the presumed reasonable six-month period. The six-month period expired around December 6, 2025.

32. Under *Zadvydas*, Mr. Lu is entitled to have his habeas petition considered on the merits and to release if the government cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future.

COUNT TWO: NO SIGNIFICANT LIKELIHOOD OF REMOVAL

33. Mr. Lu has demonstrated good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future. In May 2018, after approximately six months of detention, ICE concluded that Mr. Lu's removal could not be effectuated because China refused to accept him for deportation. ICE Field Office Director approved his release.

34. Since Mr. Lu's re-detention on June 6, 2025, there is no evidence in the record that China has changed its position. ICE has not produced any communication from China indicating willingness to accept Mr. Lu. ICE has not issued any travel documents.

35. The government cannot meet its burden to rebut Mr. Lu's showing by pointing to ongoing "efforts" that have proven unsuccessful for years. Multiple courts in 2025 have recognized that similar circumstances demonstrate the absence of a significant likelihood of removal.

COUNT THREE: RE-DETENTION WITHOUT CHANGED CIRCUMSTANCES VIOLATES DUE PROCESS

36. The regulations implementing *Zadvydas* provide that revocation of supervised release is appropriate only where "changed circumstances" have led to a determination "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

37. The government had seven years during Mr. Lu's supervised release to obtain travel documents from China if China's position had changed. The government's failure to secure removal during this period demonstrates that removal remains not significantly likely. Re-detention without any evidence that circumstances have changed is arbitrary and violates due process.

**COUNT FOUR: APA VIOLATION BY ICE IN FAILING TO
ADHERE TO ITS OWN REGULATIONS**

38. The regulations at 8 C.F.R. § 241.4 establish mandatory procedures for continued detention of aliens beyond the removal period. When release is revoked, 8 C.F.R. § 241.4(l)(1) requires that "the alien will be notified of the reasons for revocation of his or her release" and "afforded an initial informal interview promptly after his or her return to Service custody."

39. Section 241.4(l)(3) further provides that "the normal review process will commence with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked."

40. ICE has violated each of these requirements. ICE failed to provide Mr. Lu with adequate notice of the revocation of his prior release decision. ICE also failed to conduct or schedule the required informal custody review interview in June 2025, and instead merely provided Mr. Lu with a basic personal information form in August 2025. Furthermore, Mr. Lu never received any written decision explaining or justifying his continued detention. When Mr. Lu inquired about his detention status on December 11, 2025, detention facility officials informed him only that ICE had resubmitted an application for travel documents, even though no valid or issued travel documents existed at that time.

41. Under the *Accardi* doctrine, federal agencies are bound to follow their own regulations, and failure to do so renders associated agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When regulations are promulgated to

protect fundamental constitutional rights, violations warrant relief without a separate showing of prejudice. *Leslie v. Attorney General of United States*, 611 F.3d 171, 178-79 (3d Cir. 2010).

42. Multiple courts in 2025 have held that ICE's failure to follow § 241.4 revocation procedures constitutes a due process violation warranting habeas relief. *See Zongbo Zhu v. Genalo*, No. 1:25-CV-06523, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025).

**COUNT FIVE: PETITIONER IS NOT CAND CANNOT
CONSTITUTIONALLY BE SUBJECTED TO MANDATORY
DETENTION**

43. DHS has asserted that Mr. Lu is subject to mandatory detention based on his prior removal order and conviction for extortion and kidnapping. This argument fails as a matter of law.

44. The mandatory detention provisions of 8 U.S.C. § 1231(a)(2) apply only "during the removal period." Mr. Lu's 90-day removal period expired in 1992. Post-removal-period detention is governed by § 1231(a)(6), which is subject to the constitutional limits established in *Zadvydas*. The Supreme Court specifically addressed the mandatory detention argument and held that the statute "does not permit indefinite detention." 533 U.S. at 689.

45. The petitioners in *Zadvydas* had serious criminal records, yet the Court held they were entitled to release when removal was not significantly likely. 533 U.S. at 684-86, 701. Criminal history alone cannot justify indefinite civil detention. Moreover, Mr. Lu has already served his full 10-year criminal sentence. His criminal conduct occurred more than 30 years ago. He demonstrated perfect compliance with supervision for seven years.

**COUNT SIX: MR. LU'S LONG RECORD OF SUPERVISED
RELEASE COMPLIANCE DEMONSTRATES RELEASE IS
APPROPRIATE**

46. Mr. Lu's perfect seven-year record of compliance with supervision requirements demonstrates that release under supervision is sufficient to serve any legitimate

government interest. From May 2018 to December 2024, Mr. Lu fully complied with all supervision requirements. He never missed an interview appointment with ICE. He reported every year to his probation officer without fail.

47. Mr. Lu has substantial ties to the United States that eliminate any flight risk concern. His U.S. citizen wife and underage son are all in the United States.

48. Mr. Lu is not a danger to the community. He is now 51 years old. Since his release from federal prison, he has not been involved in any criminal misconduct. As *Zadvydas* emphasized, post-removal-period detention is civil, not criminal, and its purpose is to facilitate removal, not to punish. 533 U.S. at 690-91. Where removal is not significantly likely and the alien poses no flight risk or danger, continued detention serves no legitimate purpose.

DEMAND FOR RETURN WITHIN THREE DAYS

49. Petitioner demands that, pursuant to 28 U.S.C. § 2243, the writ be made returnable within three days unless the Court, for good cause shown, extends the time for such return. Section 2243 provides: "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed."

50. Expedited consideration is warranted in this case for the following reasons: (a) Mr. Lu has been detained for over six months, exceeding the presumptively reasonable six-month period; (b) he is 51 years old; (c) his family are in the U.S. with legal status; (d) ICE itself previously determined that removal is not practicable and released Mr. Lu, yet has now re-detained him without any showing of changed circumstances; and (e) ICE has conducted

no 90-day custody reviews and has not responded to Mr. Lu's requests for a case review or update.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Wen Qing LU respectfully requests that this Court:

- A. Issue an Order directing Respondents to show cause why a writ of habeas corpus should not be granted, returnable within three days pursuant to 28 U.S.C. § 2243;
- B. Declare that his continued detention violates the Fifth Amendment Due Process Clause as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001);
- C. Declare that ICE violated 8 C.F.R. § 241.4(l) by failing to provide him with notification of reasons for revocation, an informal interview, and required custody reviews;
- D. Order Respondents to release him immediately under appropriate conditions of supervision;
- E. In the alternative, order Respondents to provide him with a hearing before a neutral decisionmaker at which the government must demonstrate a significant likelihood of removal in the reasonably foreseeable future;
- F. Order Respondents to demonstrate, within fourteen days, what specific steps they have taken since May 2018 to obtain travel documents from China and what evidence they have that China has changed its position regarding accepting him;
- G. Award him his reasonable costs and attorneys' fees; and
- H. Grant him such other and further relief as the Court deems just and proper.

December 23, 2025

Respectfully submitted,

/s/Brian Scott Green

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VERIFICATION

I, Theodore N. Cox, counsel for Petitioner 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: December 23, 2025

Respectfully submitted,

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