

UNITED STATES DISTRICT COURT
FOR MINNESOTA

Xue Lor,

Petitioner-Plaintiff,

v.

Pam Bondi, et al.,

Respondents-Defendants.

Civil Case No. 0:25-cv-04774 (PAM/LIB)

**PETITIONER'S REPLY IN SUPPORT
OF WRIT OF HABEAS CORPUS**

INTRODUCTION

Respondents Pamela Bondi, Kristi Noem, Michael Bottjen, and the U.S. Department of Homeland Security (collectively, "Respondents") contend that Petitioner Xue Lor's ("Petitioner") removal to Laos is now likely in the reasonably foreseeable future and that ICE lawfully revoked Petitioner's release from supervision. However, Respondents' opposition rests on speculation, generalized country conditions, and post hoc procedures that fall short of constitutional and regulatory requirements.

Petitioner's detention arises under 8 U.S.C. § 1231(a)(6), a statute that is expressly constrained by the Due Process Clause as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Zadvydas* does not merely limit the duration of detention; it imposes substantive and procedural due-process requirements that prohibit renewed detention absent concrete, individualized evidence that removal is now significantly likely in the reasonably foreseeable future. Respondents have not met that burden here.

BACKGROUND

Petitioner filed this Complaint and Petition for a Writ of Habeas Corpus seeking release from detention by U.S. Immigration and Customs Enforcement (“ICE”). Respondents filed a Response to the Petition for Writ of Habeas Corpus (“Response”), requesting that the Court deny the petition in its entirety.

Accordingly, the following background is drawn from Respondents’ Response and the Declaration of Christopher A. Campbell (“Campbell Decl.”), along with its accompanying exhibits.

JURISDICTION AND SCOPE OF REVIEW

Habeas jurisdiction pursuant to 28 U.S.C. § 2241 encompasses challenges to unlawful detention and to agency action that directly result in unconstitutional custody. Respondents correctly note that Petitioner bears the burden of establishing that he is in custody in violation of the Constitution or laws of the United States, and that judicial review in immigration matters is limited. But Respondents overstate those limitations.

Contrary to Respondents’ assertion, claims grounded in the Administrative Procedure Act (“APA”) and the *Accardi* doctrine are not categorically barred in habeas. Where agency noncompliance with binding regulations and arbitrary decision-making result in unlawful detention, habeas review lies at the core of the Court’s authority under 28 U.S.C. § 2241. Respondents may not avoid judicial review by invoking broad detention authority or narrowing habeas jurisdiction.

ARGUMENT

Respondents concede that Petitioner was released for nearly a decade because the Government could not effectuate removal to Laos. That prior release necessarily reflects a

determination that there was no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*. The law does not permit the Government to restart the *Zadvydas* analysis through serial release and re-detention. Once the Government has failed to effectuate removal and has released a noncitizen based on that failure, the burden rests squarely on Respondents to demonstrate materially changed circumstances establishing a significant likelihood of removal in the reasonably foreseeable future. Respondents have not met that burden here.

I. Respondents' General Statutory Authority Does Not Justify Continued Detention Here

Respondents' Response recites the historical and statutory authority of the federal government to detain noncitizens pending removal. Yet, the question before this Court is not whether ICE possesses *some* authority to detain noncitizens subject to a final order of removal, but whether continued detention of this Petitioner, under these circumstances, comports with the Constitution, governing statutes, and binding regulations.

Zadvydas makes clear that § 1231(a)(6) does not authorize detention “in perpetuity” simply because a final removal order exists. 533 U.S. at 689. On the contrary, the Supreme Court imposed an implicit constitutional limitation: post-order detention is permissible only for so long as it is reasonably necessary to effectuate removal. *Id.* at 699–701. Thus, while Respondents correctly cite § 1231 as the source of detention authority, Respondents' reliance on general detention authority ignores this controlling limitation.

II. The *Zadvydas* Clock Does Not Restart Upon Re-Detention

Courts repeatedly hold that the *Zadvydas* clock does not reset simply because ICE releases and later re-detains a noncitizen under the same final order of removal.¹ Allowing the Government

¹ See, e.g., *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005) (emphasizing that the constitutional limitation turns on the practical likelihood of removal, not procedural posture); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635 (“Surely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, as was done in this case, while technically not in violation

to restart the six-month period through re-detention would nullify *Zadvydas* entirely and permit indefinite detention through administrative sleight of hand.

Petitioner was released in February 2006 and remained at liberty under an Order of Supervision for nearly a decade precisely because removal to Laos was not practicable. Campbell Decl. ¶ 10. That prolonged release is evidence that there was no significant likelihood of removal in the reasonably foreseeable future, and continual detention is unwarranted. *See Ali v. Cangemi*, 419 F.3d 722, 730–31 (8th Cir. 2005) (government's previous failure to remove a non-citizen significantly impacted the assessment of whether their removal was likely in the reasonably foreseeable future under *Zadvydas*). Critically, Petitioner's release demonstrates that continued detention under § 1231(a)(6) was previously unlawful and reasonably unforeseeable. Respondents cannot erase that constitutional history by simply taking Petitioner back into custody.

a. The Six-Month Presumption Does Not Shift the Burden Back to Petitioner

Respondents correctly state that six months of detention is presumptively constitutional—but fundamentally misapply that principle. The six-month presumption applies only before a noncitizen has demonstrated that removal is not reasonably foreseeable. Once that showing has been made, the burden shifts to the Government and does not oscillate back and forth at the Government's convenience. *Zadvydas*, 533 U.S. at 701.

Petitioner already made that showing years ago, and Respondents agreed by releasing him from their custody. Respondents conceded that removal was not reasonably foreseeable and now bear the burden of producing evidence of materially changed circumstances for their re-detention of Petitioner. Respondents cannot now demand that Petitioner re-prove what the Government itself previously conceded.

of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals.”)

b. Respondents Fail to Show a Significant Likelihood of Removal

Zadvydas requires an individualized, fact-specific inquiry. Generalized assertions that Laos has accepted other individuals for repatriation do not establish that Petitioner himself is likely to be removed in the reasonably foreseeable future. *Id.*

Respondents' evidence consists primarily of the assertion that ICE "anticipates" issuance of travel documents and that removals to Laos have occurred in other cases. Campbell Decl. ¶ 14. That is insufficient. After decades of unsuccessful removal efforts and in the absence of a travel document today, Petitioner's continued detention is no longer reasonably related to removal. It amounts instead to impermissible preventive confinement. *Id.* at 690.

III. Respondents' Own *Zadvydas* Framework Confirms That Continued Detention Is Unlawful and Warrants Habeas Relief

Respondents identify five circumstances in which courts have found no significant likelihood of removal under *Zadvydas*. Response at 12. Properly applied, those very factors confirm that Petitioner's continued detention violates due process and supports habeas relief.

a. Statelessness

Petitioner entered the United States as a refugee and is effectively stateless. Statelessness weighs heavily against foreseeability because removal depends entirely on the discretionary acceptance of a foreign sovereign. Respondents' attempt to dismiss statelessness ignores that Petitioner lacks a country with a legal obligation to receive him.

b. Country of Origin's Refusal to Issue Travel Documents

Respondents' decade-long inability to obtain travel documents for Petitioner from Laos is undisputed. Petitioner was released precisely because such documents could not be secured and his removal could not be effectuated. The continued absence of travel documents, coupled with

the lack of any concrete evidence to the contrary, supports a finding that removal is not significantly likely in the reasonably foreseeable future.

c. U.S. Repatriation Agreement and History of Native Country

Respondents rely on recent removals of other individuals to Laos, but *Zadvydas* requires an individualized inquiry. Historical reality matters. For decades, Laos did not reliably accept removals, including Petitioner's. Temporary or limited repatriation activity does not erase that history, nor does it establish that Petitioner himself will be accepted.

d. Political or Diplomatic Conditions Affecting Removal

Current political and diplomatic conditions further undermine respondents' foreseeability claim. On December 16, 2025, the President issued a Proclamation imposing a full suspension and travel ban, effective January 1, 2026.² Executive recognition of national, diplomatic, or security concerns directly undercuts ICE's speculative assertions about imminent removal. Where executive action itself constrains international movement, detention premised on near-term removal cannot be constitutionally sustained.

e. Extraordinarily Long Delays Supporting an Inference of Non-Removal

This case involves not months, but decades of unsuccessful removal efforts. Absent concrete, individualized evidence of a changed reality for Petitioner himself, continued detention rests solely on speculation.

IV. Due Process, the APA, and the Accardi Doctrine Independently Confirm the Unlawfulness of Detention

² "According to the Overstay Report, Laos had a B-1/B-2 visa overstay rate of 28.34 percent and an F, M, and J visa overstay rate of 11.41 percent. According to the Fiscal Year 2023, Department of Homeland Security (DHS) Entry/Exit Overstay Report ("2023 Overstay Report"), Laos had a B-1/B-2 visa overstay rate of 34.77 percent and an F, M, and J visa overstay rate of 6.49 percent. Additionally, Laos has historically failed to accept back its removable nationals. (<https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-further-restricts-and-limits-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/>)

The issue is not whether Respondents *can* detain under § 1231(a)(6) in the abstract, but whether it *may* continue to detain Petitioner, after years of acknowledged non-removability, without individualized evidence of foreseeable removal and without compliance with mandatory regulatory procedures. Respondents' reliance on broad detention authority ignores a fundamental principle of administrative law: when an agency acts, it must act lawfully.

The *Accardi* doctrine requires agencies to follow their own regulations, particularly where those regulations protect individual liberty. Mandatory regulatory safeguards govern ICE's revocation of supervision; failure to comply with those safeguards renders the resulting detention unlawful and ultra vires. Similarly, arbitrary and capricious agency action that directly produces unlawful detention may be challenged through habeas notwithstanding the APA's usual remedial framework. Habeas must provide a meaningful opportunity to challenge executive detention that violates the Constitution or laws of the United States.

a. Revocation Authority Exists Only If Regulatory Preconditions Are Met

Respondents correctly note that ICE may revoke an Order of Supervision under 8 C.F.R. § 241.13(i)(2); however, this authority can only be exercised "on account of changed circumstances" when the agency determines that removal is significantly likely in the reasonably foreseeable future. Respondents' regulation imposes mandatory procedural safeguards, including notice, an opportunity to respond, and a meaningful evaluation of contested facts. That regulatory language is mandatory, not discretionary.

Here, Respondents provided notice of revocation and an opportunity to respond *after* Petitioner's arrest and detention. The informal interview conducted after Petitioner's arrest did not provide a real opportunity to be heard; it merely created the appearance of process. Once detained, Petitioner faced an inherent imbalance of power and lacked freedom to gather evidence or consult

meaningfully with counsel. Under these circumstances, any purported opportunity to respond was illusory.

Due process requires meaningful notice and a genuine opportunity to be heard before a liberty interest is deprived, not after the fact. Respondents' expectation that Petitioner could meaningfully or fairly respond to the revocation of his release while he was already in their custody is fundamentally unreasonable and constitutionally deficient. Furthermore, a post-detention interview cannot cure the absence of a pre-deprivation process, nor can it satisfy due process where the government has already restrained liberty and predetermined the outcome.

b. Signature by an Acting Official Does Not Cure the Absence of Required Findings or Lawful Exercise of Authority

As a result, Respondents' post-hoc procedures fail to satisfy the minimum requirements of procedural due process, which demand timely notice and a meaningful opportunity to contest the grounds for revocation prior to detention. The Notice of Revocation contains no articulated findings demonstrating changed circumstances as to Petitioner himself. Moreover, Respondents have shown that the signatory personally made the individualized determinations required by the regulation. An agency cannot satisfy *Accardi* or due process merely by affixing a supervisory signature to a notice that lacks the findings the regulation mandates.

Respondents' failure to adhere to their own regulatory requirements governing revocation of supervision is compelling evidence that Petitioner's re-detention is unconstitutional. Thus, the Court may—and should—consider these violations in determining whether Petitioner's custody is lawful.

CONCLUSION

Respondents ask this Court to sanction indefinite detention through re-detention, speculation, and procedural shortcuts. The Constitution forbids that result. As Respondents have

failed to demonstrate an individual significant likelihood of removal in the reasonably foreseeable future, because ICE violated its own revocation regulations, and because detention is no longer reasonably related to any legitimate removal purpose, the Court should grant the petition and order Petitioner's immediate release under appropriate conditions.

Dated: 1/8/2026

Minneapolis, Minnesota

Respectfully submitted by,

s/ Mai Neng Moua

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