


FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
LUMPKIN, GEORGIA
JAN 29 2026

**LAW BRIEF IN SUPPORT OF PETITION OF WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241**

Name : YiHui Xu

Alien Registration No.: 

Pro Se Petitioner-Detained

Case: 4:25-CV-00530-CDL-CHW

Detention Center: Stewart Detention Center

Address: 146 CCA Road

Lumpkin, GA 31815

INTRODUCTION

1. Petitioner, YiHui Xu, petitions this Court for a writ of habeas corpus to remedy Petitioner's indefinite detention by Respondents. Petitioner submit this Memorandum of Law in Support of the Petition for a Writ of Habeas Corpus.
2. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), noncitizens cannot be detained indefinitely if the government is unable to carry out their removal. Instead, detention after a final order of removal is authorized only when removal is reasonably foreseeable. As a guide to courts, the Court in *Zadvydas* established a presumption that detention after a final order of removal was permissible for six months. Detention after a final order maybe unlawful even when six months have not passed, particularly if it is clear that the United States will not be able to effect a noncitizen's removal. But after that six-month period, once a noncitizen 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." And the longer a noncitizen has been detained, the stronger the government's showing must be.
3. In *Clark v. Martinez*, 543 U.S. 371 (2005) the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens. Department of Homeland Security administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).
4. Petitioner is entitled to release under the framework of *Zadvydas* and *Martinez* unless the government promptly demonstrates that there is a significant likelihood of removal in the reasonably foreseeable future.
5. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (stating that an order to show good cause why a petition for a writ of habeas corpus should be denied is returnable "within three days unless for good cause additional time, not exceeding twenty days, is allowed").

6. Until now, Petitioner has not received Respondent's Motion to Dismiss. In order to achieve fairness and justice, Petitioner respectfully requests that the Court order Respondents to send Motion to Dismiss to Petitioner.

STATEMENT OF FACTS

7. Petitioner was born in China.
8. Petitioner entered the United States on or about: December 26, 2024.
9. An Immigration Judge ordered Petitioner removed from the United States on or about March 28th, 2025.
10. Regarding Appeals: Petitioner did not file an appeal with the Board of Immigration Appeals("BIA").
11. Petitioner has cooperated fully with all of ICE's efforts to remove Petitioner. Petitioner has cooperated with ICE in following ways: Petitioner has cooperated with ICE by signing a travel document application. On Nov 7 2025, Petitioner's current ICE officer Atkinson delivered the travel document application forms for Chinese Consulate to Petitioner in the first visit. Petitioner completed and signed the travel document application forms and then returned the forms to the ICE officer Atkinson on Nov 12 2025. Petitioner has sent out numerous electronic messages to ICE through the Stewart Detention Center's tablets in the detailed description of Petitioner's efforts in contact with Chinese Embassy or Consulate regarding travel documents on April 26 2025 at 11:09, April 29 2025 at 11:53 and May 2 2025 at 10:45. *See ICE Messages.*
12. Nonetheless, ICE has been unable to remove Petitioner from the United States. ICE is unlikely to remove Petitioner in the reasonably foreseeable future because: Petitioner's embassy or consulate has not issued Petitioner travel documents. Petitioner has stayed in detention for over nine months since Petitioner was served a final order for removal by an Immigration Judge on March 28 2025. Petitioner has stayed in detention for over one year since Petitioner was ordered removed from the United States on Dec 27th, 2024. Petitioner's

first ICE officer Graumenz has never visited Petitioner to effectuate removal. Petitioner has never been served any documents by ICE regarding Petitioner's custody status. Instead Petitioner was refused to give a review by ICE on June 1st, 2025. *See ICE Messages.*

13. Regarding Petitioner Detention: Petitioner has been detained by ICE until now. Petitioner's movement was severely restricted within the Stewart Detention Center. Petitioner has been traumatized by the physical violence at the Stewart Detention Center. In fact, ICE has never paid any attention to Petitioner's well-being while Petitioner was in detention. On Nov 24 2025, Petitioner was deliberately poisoned by a Jamaica detainee who had long term mental issues and came to tamper Petitioner's drinks with unknown stuff from toilet. At that time, several witnesses came forward to corroborate this incident. Petitioner immediately followed the procedure to report this incident to the case manager, manager and other relevant people at the unit. However, so far Petitioner has not been informed of the result from any investigation on this matter and not seen any action being taken for this incident. On Dec 3 2025, the same detainee poured down iced water on Petitioner's face while Petitioner was in sleep.
14. If released, Petitioner will be supported by charities in the United States. In particular: Petitioner has reached an agreement with Casa Marianella, a nonprofit organization that provides resources for displaced immigrants. CASA MARIANELLA is located at 821 Gunter Street Austin, Texas 78702. Casa Marianella can be contacted by phone at (512) 385-5571. Casa Marianella has been reliably providing sponsorship to asylum seekers like Petitioner since 1986, and will support Petitioner's well-being with case management, access to legal and medical resources if released.

See Casa Marianella Letter of Support.

ARGUMENT

15. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA") §§ 101-507, 8 U.S.C. § 1101-1537, amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-1570.
16. This Court has jurisdiction under 28 U.S.C. § 2241, the Suspension Clause, U.S. Const. art. I § 9, cl. 2, and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and Petitioner's custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas*, 566 U.S. 678. This Court may grant relief under 28 U.S.C. § 2241 (habeas corpus), 5 U.S.C. § 702 (establishing the right of review for a person suffering a legal wrong due to agency action), and 28 U.S.C. § 1651 (All Writs Act).
17. The Due Process clause applies to all persons in the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the Supreme Court emphasized, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical lies at the heart of the liberty that [the Due Process] Clause protects." 533 U.S. at 690 (*citing Foucha v. Louisiana*, 504 U.S. 71, 80(1992)). The Court noted, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.*; *see also Plyer v. Doe*, 457 U.S. 202, 210(1982)("Alien, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").
18. Under 8 U.S.C. § 1231(a)(2), noncitizens subject to final orders of removal "shall" be detained during the first 90 days—the "removal period"—and they "shall" be removed during that period under § 1231(a)(1). Under 8 U.S.C. § 1231(a)(6), the government "may" continue detention beyond the 90-day removal period if a noncitizen falls within certain broad categories of removability or is determined "to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).
19. In *Zadvydas*, the Supreme Court construed 8 U.S.C. § 1231(a)(6) to authorize detention only where it is significantly likely that removal will occur in the reasonably foreseeable

future, in order to avoid the serious due process concerns that would be presented by permitting detention for an indefinite period of time. *Zadvydas*, 533 U.S. at CITE. After a noncitizen meets his or her initial burden to show that no such likelihood of removal exists, the burden shifts to the Government to "respond with evidence sufficient to rebut [the alien's] showing." *Id.* at 701.

20. Courts have rejected conclusory claims by ICE agents which claim, without submitting concrete factual information about scheduled flights or repatriation agreements, that removal is imminent. "[A] theoretical possibility of eventually being removed does not satisfy the government's burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future." *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept 17, 2020)(internal quotation marks and citation omitted). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to repatriated, [a] Court certainly cannot conclude that [a] removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Id.* at *5 (internal quotation marks and citation omitted). *See also*, *Gomez Barco v. Witte*, No. 6:20-CV-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not been able to secure necessary travel documents, noting that the ICE officer "clearly has no factual basis for his 'belief that there is no foreseeable impediment to Petitioner's removal or that her removal is imminent,'" and that there was no foundation for the "expectation" that the COVID-19 related travel restrictions in place would soon be lifted); *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14 2020). Other district courts in the Fifth Circuit and elsewhere have similarly granted habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. *See, e.g., Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting habeas relief to petitioner detained for approximately sixteen months due to a lack of diplomatic relations with Venezuela); *Ali v. Dep't of Homeland*

Sec., 451 F. Supp. 3d 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); *Sharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond to a travel document request for more than seven months). In granting Ms. Balza's release, the court considered and rejected a conclusory declaration by a local ICE Assistant Field Officer that removal was imminent. *Id.* at *5. In *Alexis v. Smith*, the petitioner, Mr. Alexis, had been in detention for almost a year and subject to a removal order for over a year. An ICE official testified to an informal agreement that permitted removals but acknowledged that there were far fewer removals to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with identity documents and it was unknown when that would be resolved. The magistrate did not credit ICE's vague statements that it was "endeavoring to rectify the issue" and concluded there was no end in sight for detention, and recommended release. The District Court Judge agreed and ordered release. ICE then released Mr. Alexis on an Order of Supervised release and moved to get the judgment vacated on mootness, which it was. However, this does not invalidate the reasoning and conclusions of the Magistrate Judge and District Court Judge on this subject, and this case is still informative and persuasive to the body of law on this subject. *Alexis v. Smith*, No. CIV. A. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011), report and recommendation adopted, No. CIV. A. 11-0309, 2011 WL 3954945 (W.D. La. Sep. 6, 2011), vacated, No. CV 11-0309, 2011 WL 13386020 (W.D. La. Sep. 15, 2011).

21. Courts in other District have—pursuant to *Zadydas*—released individuals who have been detained for over six months. *See, e.g., Gomez Barco*, 2020 WL 7393786 (ordering release of an immigrant detainee who was a native and citizen of Venezuela who was detained longer than six months because ICE had not been able to secure necessary travel documents); *Balza*, 2020 WL 6143643, at *5 (ordering release of petitioner and noting that

“[a]fter more than a year of detention, Petitioner's removal need not necessarily be imminent, but it cannot be speculative”) (internal quotation marks omitted).

22. Under *Zadvydas*, courts have found that there is no significant likelihood of removal and grant relief where:

- The petitioner's country of origin refuses to issue a travel document. *See, e.g., Alexis v. Smith*, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) (granting habeas relief to petitioner detained for approximately one year due to the Haitian government rejecting the quality of identity documents provided); *Fermine v. Dir. of Immigr. & Customs Enf't*, No. 2:06-cv-1578, 2007 WL 2284606 (W.D. La. May 23, 2007) (granting habeas relief to petitioner detained for fifteen months due to Trinidad's refusal to issue travel documents); *Lijadu v. Gonzales*, No. 06-1208, 2006 WL 3933850 (W.D. La. Dec. 18, 2006) (granting habeas relief to petitioner detained nineteen months because Nigeria refused to issue travel documents due to petitioner's HIV status. *See also Ka v. Bureau of Immigr. & Customs Enf't*, No. B-07-197, 2008 WL 11462867, at *8 (S.D. Tex. June 24, 2008)(ordering release of petitioner detained twelve months after Senegal “refuse to issue Ka a travel document because he d[id] not have proper identity documentation”); *Moreira v. Gonzales*, No. CIVA CV05-588 A, 2006 WL 3861972 (W.D. La. Nov. 2, 2006)(granting habeas relief to petitioner detained for three years because Cape Verde advised that it would not accept the petitioner for repatriation); *Khan v. Gonzales*, 481 F. Supp. 2d 638 (W.D. Tex. 2006).

- There is either no response from a country designated for removal or a significant delay in receiving a response. *See, e.g., Gonzalez-Rondon v. Gillis*, 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen months where there was no response from Venezuelan officials). *See also Sharifi*, 2020 WL 7379211; *Aung v. Barr*, No. 20-CV-681-LJV, 2020 WL 4581465 (W.D.N.Y. Aug. 10, 2020); *Edwards v. Barr*, No. 4:20cv350-WS-MAF, 2020 WL 6747737 (N.D. Fla. Oct. 14, 2020); *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319 (W.D.N.Y. July 14, 2020); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL 7680560 (W.D. Tex. Nov. 3, 2020); *Singh v. Whitaker*, 362 F. Supp. 3d 93 (W.D.N.Y. 2019); *Butt v. Holder*, No. CA 08-0672-CG-C, 2009 WL 1035354 (S.D. Ala. Mar. 19, 2009) (holding that petitioner met his initial burden where he was held in ICE custody for more than ten months after the issuance of his removal order with no indication from the Pakistani Embassy that travel documents would be issued); *Lawrikow v. Kollus*, No. CV-08-1403-PHX-GMS (LOA), 2009 WL 2905549 (D. Ariz. July 27, 2009); *Reid v. Crawford*, No. 06-02436 PHX JWS (MEA), 2007 WL 1063413 (D. Ariz. Jan. 31, 2007); *Gui v. Ridge*, No. 3CV031965, 2004 WL 1920719 (M.D. Pa. Aug. 13, 2004); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290 (N.D. Ill. Apr. 28, 2003).
- ICE fails to take action to secure travel documents for a prolonged period. *See, e.g., Senor*, 401 F. Supp. 3d at 430-31 (granting habeas relief after ICE initially requested travel documents but where "there [wa]s no indication from the record that anyone ha[d] taken any further action in the eight months since that time ... to facilitate Senor's receipt of the necessary travel documents"). *See also Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012) (ordering petitioner's release where the government failed "to provide any documentation of efforts ... to effectuate removal ... [for] nearly six months").

23. As the length of detention grows, the period of time that would be considered the "reasonably foreseeable future" shrinks. *See, e.g., Zadvydas*, 533 U.S. at 701 (stating that as the length of time in detention grows "what count as the 'reasonably foreseeable future' conversely would have to shrink"); *Senor*, 401 F. Supp. 3d at 430 ("[T]he passage of time combined with the 'government [being] no closer to ... repatriating [a detainee] than they were once they first took him into custody' [is] sufficient to meet that 'initial burden.'"); *Lawrikow*, 2009 WL 2905549, at *12.
24. Petitioner's continued detention is unlawful, and Petitioner is unlikely to be removed in the reasonably foreseeable future. Therefore, Petitioner's detention violates the statute and s/he is entitled to immediate release.
25. Petitioner's detention also violates the Due Process Clause. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. "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. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Id.* Petitioner's prolonged civil detention, which has lasted well beyond the end of the removal period, and which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner's detention violates Petitioner's right to due process.

CONCLUSION


26. In conclusion, Petitioner's indefinite detention violates the detention statute and is unconstitutional. Petitioner respectfully requests that this Court grant the Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from their custody.

Respectfully submitted,

Signature: _____

Yihui Xu

Name: YiHui Xu

A-Number: 

Case: 4:25-CV-00530-CDL-CHW

Detention Center: Stewart Detention Center

Address: 146 CCA Road

Lumpkin, GA 31815