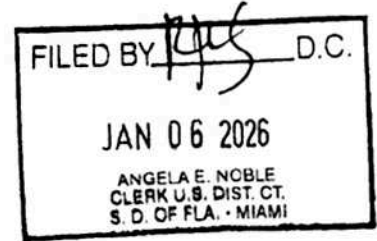


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTHERN FLORIDA
MIAMI FLORIDA



BAISHENG, AN
A [REDACTED]
Petitioner- Plaintiff

Index No.

Vs.

PAM BONDI, Attorney General of the
United States Department of Justice

GARRET RIPA, the District Director

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner-plaintiff Baisheng An (Petitioner) hereby petitions this Court for a writ of habeas corpus and seeks declaratory and injunctive relief to review the lawfulness of his detention by the United States Bureau of Immigration and Customs Enforcement (BICE) for nearly 6 months.

Petitioner alleges as follows:

JURISDICTION

1. This action arises under the United States Constitution, the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 et seq. (the INA), and the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* (the APA).
2. Jurisdiction exists in this Court pursuant to 28 U.S.C. 2241 *et seq.*, 28 U.S.C. 1331, the APA, the Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*, and the All Writs Act, 28 U.S.C. 1361. This Court has jurisdiction to review Petitioners unlawful detention claims. *See Ngo v. INS*, 192 F.3d 390, 393 (3d Cir. 1999).

VENUE

3. Venue is proper in this district because Petitioner is currently incarcerated in the Miami FDC, Miami Florida, within the District of Southern Florida. *See* 28 U.S.C. 1391(e)(2).

PARTIES

4. Petitioner is a citizen and native of the Peoples Republic of China.
5. Respondent-defendant Pam Bondi is the duly appointed, qualified and confirmed Attorney General of the United States Department of Justice, and, as such, is the official charged with responsibility for the administration of all the functions, powers and duties of BICE, including carrying out or staying any order of exclusion, deportation or removal.
6. Respondent-defendant Garret Ripa is sued in his official capacity as the District Director, Miami, Florida, United States Bureau of Immigration and Customs Enforcement. As such, he is the United States Attorney General's designate, charged with the duty of administration and enforcement of all the functions, powers and duties of BICE. He has responsibilities for detainees confined in the Federal Detention Center.

FACTS

7. Petitioner is a 64 year old man born in China in 1961.
8. Petitioner was detained by ICE since March 9 2025 has not been to court
9. Petitioner has no criminal records. He has been detained for over 6 months without a court, he is entitled to immediate release from detention.
10. He is not a flight risk nor poses threat to the community.

CONSTITUTIONAL FRAMEWORK

11. All persons, including aliens, residing in the United States are protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Due Process Clause of the Fifth Amendment provides that [n]o person shall be deprived of life, liberty, or property, 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 Clause protects. *Zadvydas*, 533 U.S. at 690. This protection extends also to an alien subject to a final order of removal. *Id.* at 693-94. Detention by BICE puts at risk an individual's protected liberty interest. *Id.* at 680, 690.

SUBSTANTIVE DUE PROCESS

12. The substantive due process requirement of the Fifth Amendment prohibits the government from subjecting persons to preventative detention for a potentially indefinite period. *See United States v. Salerno*, 481 U.S. 739, 746 (1987). Furthermore, civil detention must be narrowly drawn to serve a legitimate and compelling governmental interest, such as ensuring that detainees if released will not present a danger to the community or abscond from future immigration proceedings. *See Zadvydas*, 533 U.S. at 690-91; *Salerno*, 481 U.S. at 747.

13. In civil cases involving potentially indefinite detention, the goal of preventing danger to the community, without more, is insufficient to justify continued detention; rather, the dangerousness rationale must also be accompanied by some other special circumstance, such as mental illness, that helps to create the danger. *Zadvydas*, 533 U.S. at 691. Thus, an alien's mere status as removable, which bears no relationship to his dangerousness, is not a sufficient basis to justify indefinite detention. *Id.* at 691-92. Similarly, where

removal is, at most, a remote possibility, prevention of flight is a weak or non-existent justification for continued detention. *Id.*

STATUTORY AND REGULATORY FRAMEWORK

14. The Attorney General is authorized to detain aliens who are subject to final orders of removal for the purpose of effectuating their removal from the United States. *See* 8 U.S.C. 1231(a). Generally, aliens shall be removed within 90 days of the latest of: (1) the date the removal order becomes administratively final; (2) the date that BICE is able to execute the removal order after completion of judicial review; or (3) the date the alien is released from criminal incarceration. *See* 8 U.S.C. 1231(a)(1).
15. In response to the Supreme Court's decision in *Zadvydas*, the INS issued the Interim Regulations regarding continued detention of aliens subject to final orders of removal. *See* 66 Fed. Reg. 56967 (Nov. 14, 2001). The Interim Regulations now govern BICEs determination whether there is a significant likelihood that an alien will be removed from the United States in the reasonably foreseeable future, and whether there are special circumstances justifying the continued detention of certain aliens. *Id.* at 56967.
16. Under the Interim Regulations, an alien for whom the 90-day period has expired without removal from the United States may submit to the HQPDU a written request for release asserting grounds for the belief that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future to the country to which the alien was ordered removed and there is no third country willing to accept the alien. 8 C.F.R. 241.13(d)(1). The HQPDU must acknowledge the request within ten days of receipt with a letter explaining procedures that will be used to evaluate the request. 8 C.F.R. 241.13(e)(1). The HQPDU must consider all the facts of the case including, *inter alia*, the

history of the alien's efforts to comply with the removal order, the history of BICEs efforts to remove aliens to the country in question, and the reasonably foreseeable results of BICEs ongoing efforts, 8 C.F.R. 241.13(f), and provide a written decision. 8 C.F.R. 241.13(g). If the HQPDU determines that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future, and no special circumstances justify continued detention, BICE shall promptly make arrangements for release of the alien subject to appropriate conditions. 8 C.F.R. 241.13(g)(l). Special circumstances justifying continued detention are: (1) if the alien has a highly contagious disease that is a threat to public safety; (2) if his release would have serious adverse foreign policy consequences; (3) if there are security or terrorism concerns; and (4) if release would pose a special danger to the public. 8 C.F.R. 241.14(b)(d), (f).

COUNT ONE

(Detention in Violation of INA and the Interim Regulations)

17. Petitioner repeats and re-alleges the allegations contained in paragraphs 1 through 16 above as though set forth fully herein.
18. Section 241 of the INA does not authorize BICE to detain indefinitely an alien subject to a final order of removal. The alien must be released if there is no reasonable likelihood of removal in the reasonably foreseeable future. Zadvydas, 533 U.S. at 699-700. BICE may not detain the alien beyond a reasonable period of time, which the Supreme Court has determined to be, presumptively, six months. Id. at 701. BICE has detained Petitioner for almost seven months.
19. No special circumstances exist to justify Petitioners continued detention:

- A. Petitioner is not an alien with a highly contagious disease posing a danger to the public. 8 C.F.R. 241.14(b).
- B. Petitioners release would not cause serious adverse foreign policy consequences. 8 C.F.R. 241. 14(c)(1). While relations between China and the United States are marked by some tension and disagreement, the countries do have many close ties, *see* <http://www.state.gov/r/pa/ei/bgn/18902.htm>. There is no indication that Petitioners release would have any foreign policy consequences, let alone serious adverse consequences.
- C. Petitioner was not and is not now detained on account of security or terrorism concerns. 8 C.F.R. 241.14(d)(1).
- D. Petitioner has not committed a crime of violence as defined in 18 U.S.C. 16 as would classify him as specially dangerous under the Interim Regulations, 8 C.F.R. 241.14(f)(i), and his release therefore would not pose a special danger to the public. 8 C.F.R. 241.14(f).
20. Because there is no significant likelihood of his removal in the reasonably foreseeable future, and because none of the special circumstances exist here to justify Petitioners continued detention, Petitioner must be released. *See Zhou*, at 9-10.

COUNT TWO

(Substantive Due Process Violation)

21. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 through 19 as though set forth fully herein.
22. As a person in the United States, Petitioner is protected by the Due Process Clause of the Fifth Amendment. BICE has detained Petitioner for almost seven months without any

court. Petitioner has not been determined to pose a danger to the community nor a risk for flight, and no special circumstances exist to justify his continued detention. As Petitioner is not dangerous, not a flight risk, and cannot be removed, his indefinite detention is not justified and violates substantive due process. *See Zadvydas, 533 U.S. at 690-91*

COUNT THREE

(Procedural Due Process Violation)

23. Petitioner repeats and re-alleges the allegations set forth in paragraphs 1 through 22 above as though fully set forth herein.
24. Petitioner has a fundamental interest in freedom from deprivation of his liberty without first being afforded procedural due process protections. Petitioner's continued indefinite detention without a hearing before an impartial adjudicator infringes upon his right to procedural due process in violation of the Fifth Amendment. *See Plyler, 457 U.S. at 210.*
25. A custody hearing before an immigration judge would significantly reduce the risk of an erroneous deprivation of Petitioner's liberty and would pose minimal fiscal or administrative burden on the government. *See Cruz-Taveras, 1996 U.S. Dist. LEXIS 11516, at *19-20*

26. **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays this Honorable Court to grant the following relief:

1. Issue an Order:
 - A. Declaring that Petitioner's continued detention is not authorized by the INA and/or violates the Fifth Amendment;
 - B. Granting this Petition for a Writ of Habeas Corpus and releasing Petitioner under an order of supervision;



- C. Declaring that Petitioners continued indefinite detention without a hearing before an impartial adjudicator infringes upon his right to procedural due process in violation of the Fifth Amendment; and
- D. Enjoining Respondents-defendants to conduct an immediate hearing before an Immigration Judge.

2. Grant any other and further relief this Court may deem appropriate

Respectfully submitted,

I affirm, under penalty of perjury, that the foregoing is true and correct

Dated 12/15/2025

BAISHENG AN
BAISHENG, AN
A 
Reg: 
P.O Box 019120
Miami FL 33101