

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

XIAOLANG ZHANG,

Petitioner,

V.

PAMELA JO BONDI,
United States Attorney General;

KRISTI LYNN NOEM,
Secretary of Homeland Security; and,

**MARY DE ANDA-YBARRA,
El Paso Field Office Director for Detention
and Removal, U.S. Immigration and Customs
Enforcement and Director of El Paso Service
Processing Center;**

in their official capacities;

Respondents.

Civ. No. 3:26:00252

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Xiaolang Zhang (Petitioner or Mr. Zhang) files this petition seeking a writ of habeas corpus ordering his immediate release from detention or, in the alternative, requiring Respondents to afford him a bond hearing in which the Respondents bear the burden of proving by clear and convincing evidence that Petitioner is not a flight risk or a danger to the community. This Court has both the authority and the obligation to intervene where civil detention has crossed constitutional limits.

2. Respondents have detained Petitioner since September 18, 2024 for his removal proceedings which are still pending before the Executive Office for Immigration Review. Petitioner contends that the Board of Immigration Appeals (BIA) wrongly concluded that he is subject to mandatory detention because he stands convicted of an aggravated felony, as that term is defined in Immigration and Nationality Act (INA).

3. In the alternative, Petitioner contends that his prolonged detention is unreasonably long and unconstitutional. Petitioner further urges that if the Court orders a new bond hearing, such bond hearing complies with the Due Process Clause by imposing the burden of proof on Respondents to demonstrate by clear and convincing evidence that Petitioner is a flight risk or a danger.

4. Mr. Zhang is a native and citizen of China and a lawful permanent resident. On August 22, 2022, he pleaded guilty to violating 18 U.S.C. § 1832(a)(1), commonly referred to as theft of trade secrets, and on February 14, 2024, a federal district court sentenced Petitioner to 120 days in prison.

5. On September 18, 2024, Respondents Noem and De Anda-Ybarra took custody of Petitioner and initiated removal proceedings against him charging him as deportable as an aggravated felon based on his theft offense, 8 U.S.C. § 1227(a)(2)(A)(iii), and for having been convicted of a crime involving moral turpitude (CIMT) within 5 years after his admission, 8 U.S.C. § 1227(a)(2)(A)(i).

6. Petitioner has appeared with counsel at all of his hearings, is contesting his removability, and has applied for relief. His final (individual) hearing was continued four times and only today, January 30, 2026, the immigration judge made a final determination denying

Petitioner's application for relief. Petitioner intends to appeal and so he will remain subject to mandatory detention.

7. Early in his immigration proceedings, Petitioner requested a bond hearing and the immigration judge concluded that the court lacked jurisdiction under 8 U.S.C. § 1226(c) because of the aggravated felony charge. Petitioner appealed to the BIA and it affirmed the immigration judge's decision, agreeing that Petitioner's federal conviction is an aggravated felony.

8. As set forth herein, Mr. Zhang submits that he does not stand convicted of an aggravated felony. In the alternative, he argues that his prolonged detention pending a final decision in his removal proceedings is unreasonable and unjustified. Petitioner's continued detention is unlawful and unconstitutional because he maintains he is not a flight risk or danger to the community.

CUSTODY

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the El Paso Service Processing Center (EPSPC), an immigration detention facility, in El Paso, Texas. Respondent De Anda-Ybarra is the director of the EPSPC and therefore she is Petitioner's immediate custodian.

JURISDICTION AND VENUE

10. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

11. The proper venue for a habeas petition under § 2241 is the petitioner's district of confinement. Venue in this case lies in the Western District of Texas, El Paso Division, because Petitioner is detained in El Paso, Texas.

PARTIES

12. Mr. Xiaolang Zhang is a citizen and national of China and a lawful permanent resident of the United States. He is married to a U.S. citizen and is the father of two U.S. citizen children.

13. Respondent Pamela Bondi is the Attorney General of the United States. The Attorney General has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office of Immigration Review (EOIR) which houses the immigration court and the BIA. She is Mr. Zhang's legal custodian and is sued in her official capacity.

14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. Under the Homeland Security Act of 2002 (Pub. L. 107-296), the Department of Homeland Security assumed all of the functions of the former Immigration and Naturalization Service (INS). Section 441 of the Homeland Security Act created ICE and authorizes ICE to enforce the immigration laws. As a result, in her official capacity, Secretary Noem has responsibility for the administration of the immigration laws under 8 U.S.C. § 1103. She is empowered to initiate and conduct removal proceedings against Mr. Zhang and to detain him pending his removal proceedings. She is his legal custodian and is sued in her official capacity.

15. Respondent Mary De Anda-Ybarra is the Director for the El Paso Field Office of the ICE Enforcement & Removal Operations (ERO). In this capacity, she is responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings in El Paso County, Texas. Respondent De Anda-Ybarra is also the director of the EPSPC, where Petitioner is detained. Respondent De Anda-Ybarra is therefore

Petitioner's immediate custodian and is authorized to release him. She is sued in her official capacity.

FACTS AND PROCEDURAL HISTORY

16. Mr. Zhang is a citizen and national of China.

17. He studied computer science in China and then moved to Canada and obtained his master's in applied science in November 2011.

18. In October 2011, Petitioner came to the United States on an H-1B visa.

19. In December 2015, Petitioner began working for Apple, Inc.

20. On October 23, 2017, Petitioner adjusted his status to that of a lawful permanent resident. Exh. A (Copy of LPR Card).

21. On or about April 28, 2018, Petitioner informed his supervisors at Apple that he was resigning.

22. On or about April 30, 2018, before his effective date of separation, Petitioner went to his office and removed some personal items as well as items belonging to Apple. At the same time, Petitioner downloaded confidential information belonging to Apple.

23. During his second exit interview, Petitioner disclosed the materials he downloaded.

24. Apple began an investigation that resulted in federal charges that Petitioner had taken confidential proprietary information belonging to Apple without the company's consent.

25. On August 22, 2022, Petitioner pleaded guilty to violating 18 U.S.C. § 1832(a)(1), commonly referred to as theft of trade secrets, and on February 14, 2024, U.S. District Judge Edward J. Davila sentenced Petitioner to 120 days in prison. Exh. B (Amended Judgment).

26. Petitioner surrendered himself to the Bureau of Prisons in California to begin serving his sentence.

27. Petitioner was then transferred to Texas to serve his sentence.

28. On September 18, 2024, Respondents Noem and De Anda-Ybarra took custody of Petitioner and initiated removal proceedings. Exh. C (Notice to Appear dated September 18, 2024).

29. Respondents charged Petitioner as deportable as an aggravated felon based on his theft offense, 8 U.S.C. § 1227(a)(2)(A)(iii), as an aggravated felony defined in § 1101(a)(43)(M)(i), and for having been convicted of a crime involving moral turpitude (CIMT) within 5 years after his admission, 8 U.S.C. § 1227(a)(2)(A)(i). *Id.* Section 1101(a)(43)(M)(i) defines an aggravated felony as offense that “involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.”

30. The September 2024 Notice to Appear improperly charged Petitioner as an arriving alien. Respondents Noem and De Anda-Ybarra then filed amended deportation charges on October 30, 2024. Exh. D (Form I-261 dated October 30, 2024).

31. That would not be the last time Respondents amended Petitioner’s deportation charges. Respondents filed amended charges on February 25, 2025 and then again on July 3, 2025, less than 2 weeks before Petitioner’s final immigration hearing. Exhs. E and F.

32. On July 3, 2025, in lieu of the previous deportation charges, Respondents charged Petitioner as deportable under 8 U.S.C. § 1227(a)(4)(A)(i) for engaging in any activity that violates any law relating to espionage. Exh. F.

33. At his final hearing on July 16, 2025, Petitioner objected to the late-filed charge and denied the allegation. The immigration judge did not make a finding of removability but proceeded to start taking testimony from Petitioner in support of his application to re-adjust status to permanent residence and for a waiver.

34. The presentation of evidence was not concluded on July 16, 2025 and so the final hearing case was continued until August 27, 2025.

35. Before the next hearing, Respondents again revised the deportation charges on July 24, 2025. Exh. G. Petitioner responded to the charges by filing written pleadings.

36. Because Petitioner's counsel was unavailable on August 27, 2025, he requested a short continuance, and the immigration court continued final hearing to September 11, 2025.

37. Petitioner's counsel traveled to El Paso on September 10, 2025 to conclude Petitioner's case. But the immigration court cancelled the hearing shortly before the hearing was due to start.

38. Petitioner's case was then scheduled for September 22, 2025. Although Petitioner had previously testified and was cross examined by the ICE attorney, the immigration judge allowed the ICE attorney to once again cross-examine Petitioner even though he did not testify on re-direct.

39. On October 23, 2025, Respondents Noem and De Anda-Ybarra once again filed amended deportation charges. Exh. H. The court took more testimony and then heard argument from counsel for both parties. The immigration court then scheduled Petitioner's final hearing for December 11, 2025.

40. Before the December 11, 2025 hearing, Petitioner filed his response to the revised deportation charges and a brief concerning his eligibility for relief.

41. At the December 11, 2025, the immigration court heard argument from counsel and requested written final closing arguments from the parties.

42. The parties appeared on January 30, 2026. On that day, the immigration judge found Petitioner deportable under for having been convicted of a crime involving moral turpitude

(CIMT) within 5 years after his admission, 8 U.S.C. § 1227(a)(2)(A)(i) and also under 8 U.S.C. § 1227(a)(4)(A)(i) for engaging in any activity that violates any law relating to espionage.

43. The immigration judge also denied Petitioner's application for adjustment of status and a waiver because Petitioner is inadmissible under 8 U.S.C. § 1182(a)(3)(A)(i). Petitioner intends to appeal to the BIA.

44. Early in his removal proceedings, Petitioner requested to be released on bond and the immigration judge denied bond on November 20, 2024 concluding that Petitioner was subject to mandatory detention under § 1226(c) because of the aggravated felony.

45. Petitioner appealed the bond decision to the BIA. Respondents Noem and De Anda-Ybarra requested that the bond case be remanded to the immigration court and the BIA granted the request.

46. On remand, the immigration judge again denied bond concluding again that Petitioner's conviction is an aggravated felony that subjects him to mandatory detention.

47. Petitioner appealed to the BIA and on July 30, 2025, the BIA affirmed the immigration judge's bond decision and dismissed the appeal. Exh. I (BIA Bond Decision).

48. Removal proceedings continue and to date have not been concluded.

49. Petitioner remains detained more than sixteen (16) months after his removal proceedings were initiated.

50. Petitioner has not delayed or prolonged his proceedings by engaging in dilatory tactics. Through his attorney, he has requested one continuance and has filed 4 motions requesting that his hearing be set on an earlier date. Petitioner's counsel filed a second request for continuance and then withdrew it.

51. Petitioner maintains that he is not deportable because he remains eligible for relief from removal.

52. Mr. Zhang has no other remedy at law but to seek habeas relief from this Court.

53. No Article III court has addressed the merits of Petitioner's claims for release.

GROUND FOR RELIEF

FIRST GROUND FOR RELIEF: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND REGULATIONS

54. The foregoing allegations are repeated and re-alleged as though fully set forth herein.

55. Petitioner has now been detained for over sixteen months, and his removal proceedings are still not concluded.

56. The BIA wrongly concluded that Petitioner's conviction for violation 18 U.S.C. § 1832(a)(1) by carrying away confidential information without authorization is an aggravated felony because it involves fraud or deceit where the victim lost more than \$10,000, 8 U.S.C. § 1101(a)(43)(M)(i).

57. To determine whether a criminal conviction is an aggravated felony, the Fifth Circuit requires application of the categorical approach. *Orellana v. Garland*, 117 F.4th 679, 686 (5th Cir.) (citing *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013)). Under this approach, the court looks not to the specific details of the noncitizen's conviction, but to the statute under which the noncitizen was convicted. *See Moncrieffe v. Holder*, 569 U.S. at 190. If the definition of the statute of conviction matches the generic federal definition of an aggravated felony offense, then it is said to be a categorical match for the offense listed in the INA. *Gonzales v. Dumas-Alvarez*, 549 U.S. 183, 186 (2007) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). A court

must “presume[] that the conviction ‘rested upon [nothing] more than the least of th[e] acts criminalized, and then determine[s] whether those acts are encompassed by the generic federal offense.” *Moncrieffe v. Holder*, 569 U.S. at 190-91 (citing *Johnson v. United States*, 539 U.S. 133, 137 (2010)); *Rad v. AG United States*, 983 F.3d 651, (3d Cir. 2020) (concluding that the least culpable acts in 18 U.S.C. §§ 1037(a)(3) and (4) entailed deceit within the meaning of INA § 101(a)(43)(M)(i)).

58. If the statute of conviction is broader than the aggravated felony definition and “punishes some conduct that would satisfy the elements of a [generic aggravated felony offense] and some conduct that would not,” a court can employ the modified categorical approach to determine whether the underlying statute is divisible and describes multiple offenses. *Pereida v. Wilkinson*, 141 S.Ct. 754, 762-63 (2021).

59. Whether a statute is divisible depends on whether alternatively listed items in the statute are “elements” or “means.” See *Descamps v. United States*, 570 U.S. 254, 260-61 (2013). The Supreme Court distinguishes the two terms by defining “elements” as “the ‘constituent parts’ of a crime’s legal definition – the things that the ‘prosecution must prove to sustain a conviction’” – and “means” as the “various factual ways of committing some component [or element] of the offense” that need not be proved to the jury or admitted by the defendant. See *Mathis v. United States*, 136 S.Ct. 2243, 2248-49 (2016). If the items are means, rather than elements, the modified categorical approach cannot be used, and a court must apply the categorical approach to the indivisible statute and determine whether the statute categorically matches the removal ground. See *id.* at 2253-54.¹

¹ The realistic probability test plays no role when the statute of conviction is a federal law. In *Taylor v. United States*, 596 U.S. 845 (2022), the Court explained that the realistic probability test is necessary when a federal court is “mak[ing] a judgment about the meaning of a state statute.” *Id.* at 858-59.

60. To determine whether Mr. Zhang's conviction involves fraud or deceit, the categorical approach is applied. *Kawashima v. Holder*, 565 U.S. 478, 483 (2012). The fact that the criminal statute does not have fraud or deceit as an element does not remove the conviction from the scope of INA § 101(a)(43)(M)(i). Rather, "clause (i) refers more broadly to offenses that 'involve' fraud or deceit – meaning offenses with elements that *necessarily entail* fraudulent or deceitful conduct." *Id.* at 484 (emphasis added). The Supreme Court in *Kawashima* held that submitting a tax return in violation of 26 U.S.C. § 7206 categorically involved fraud or deceit because all the elements of the offense necessarily involved deceitful conduct: a falsity, that was material, and knowingly and willfully made. *Id.* at 483-84.

61. A crime that comes within § 101(a)(43)(M)(i) need not have fraud or deceit as an element, but fraud or deceit must be necessary components of the crime. *Kawashima v. Holder*, 565 U.S. at 484. The commonly accepted legal meaning of fraud is a "false representation[] of a material fact made with knowledge of [its] falsity and with intent to deceive the other party. The representation must be believed and acted upon by the party deceived to his disadvantage." *Valansi v. Ashcroft*, 278 F.3d 203, 209 (3d Cir. 2002) (quoting *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956)); *see also Soliman v. Gonzales*, 419 F.3d 276, 282 (4th Cir. 2005) (explaining that the crime of fraud is the "intentional perversion of truth for the purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his injury.").

Application of the realistic probability test in this context is proper and necessary to accord respect to the state courts' role as "the final arbiters of state law in our federal system." *Id.*

62. The Fifth Circuit instructs that for purposes of § 101(a)(43)(M)(i), “[f]raud’ and ‘deceit’ retain their common law meanings.” *James v. Gonzales*, 464 F.3d 505, 508 (5th Cir. 2006). Relying upon Black’s Law Dictionary, the Court defines “‘fraud’ as ‘a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment,’ and ‘deceit’ as ‘the act of intentionally giving a false impression.’” *James v. Gonzales*, 464 F.3d at 508 n.14 (quoting Black’s Law Dictionary 413, 670 (7th ed. 1999)).

63. Section 1832 of Title 18 of the United States Code contains 5 subsections, (a)(1) – (5). At issue here is § 1832(a)(1) which provides:

Whoever, with intent to convert a trade secret, that is related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information.

18 U.S.C. § 1832(a)(1).

64. Congress broadly drafted the statute to deter any intent to convert proprietary information, regardless of whether the information is in fact a trade secret, parts or all of the information is already publicly known, and whether the conduct in fact causes any harm. The text of the statute confirms that § 1832(a)(1) can be violated in 8 distinct ways: by (1) stealing, (2) without authorization appropriates, (3) without authorization takes, (4) without authorization carries away, (5) without authorization conceals, (6) fraud, (7) artifice, or (8) deception.

65. The language of the statute overall, the disjunctive language of subsection (a)(1), and the jury instructions show that to obtain a conviction under subsection (a)(1), the government can do so by proving any of the eight different ways the statute can be violated. *See* Comments, Manual of Model Criminal Jury Instructions (2010), 8.141B Theft of Trade Secrets, available at

<http://www.ce9.uscourts.gov/jury-instructions/node/726/>; *United States v. Butler*, 949 F.3d 230, 234 (5th Cir. 2020) (“Comparing the statute’s use of ‘or’ between the two paragraphs to its use of the same word within each paragraph demonstrates that the paragraphs are meant to be different offenses with their own elements. *The paragraphs use ‘or’ internally to set out alternative means.*”) (emphasis added). Therefore, the specific acts are means, not elements of the offense, making § 1832(a)(1) indivisible and requiring the court *to focus on the least culpable act*. *Moncrieffe v. Holder*, 569 U.S. at 190-91 (“Because we examine what the [criminal offense] necessarily involved, not the facts underlying the case, we must presume that the conviction ‘rested upon nothing more than the least of the acts’ criminalized...”).

66. Without a doubt, *stealing* trade secrets concerns fraudulent or deceptive conduct. And obviously, converting trade secrets through fraud, artifice or deception satisfies “fraud or deceit” under § 101(a)(43)(M)(i). But fraudulent and deceitful conduct are not the only means by which § 1832(a)(1) is violated. In keeping with the broad purposes of the statute and to afford the greatest protection to trade secrets, Congress also criminalized the conversion of trade secrets when the same are appropriated, taken, carried away, or concealed *without authorization* and where no deceit or fraud is involved.

67. “Without authorization” is not defined by the federal statute, but in the context of the Computer Fraud and Abuse Act (“CAFAA”), 18 U.S.C. § 1030(a)(5)(A), courts have interpreted the term to mean “without permission.” *United States v. Thomas*, 877 F.3d 591, 595 (5th Cir. 2017); *United States v. Nosal*, 844 F.3d 1024, 1035 (9th Cir. 2016) (for purposes of CAFAA, “without authorization” means without permission). One district court has interpreted “without authorization” in § 1832(a)(3) to mean “without ‘permission or power granted by an

authority.” *United States v. Olgado*, 2022 U.S. Dist. LEXIS 116233 at *21 (N.D. Cal. June 30, 2022) (quoting *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1132 (9th Cir. 2009)).

68. Even accepting that § 1832(a)(1) requires intent to convert and knowledge of injury, such intent does not require deception directed at the owner. One may openly remove proprietary information without authorization—without false representations, concealment, or inducement of reliance. Knowledge of injury is not equivalent to fraud or deceit as those terms are defined under Fifth Circuit precedent.

69. Petitioner submits that carrying away (or taking) trade secrets without authorization does not necessarily involve fraud or deceit and therefore, a conviction for violating § 1832(a)(1) is not an aggravated felony as defined in § 101(a)(43)(M)(i).

70. The minimum conduct to obtain a conviction for violating § 1832(a)(1) is carrying away confidential information without authorization. No deceit or fraud is involved. Importantly, the act of carrying away is not conditioned on being unlawful or done maliciously. No false representation or dishonest conduct inheres in carrying away confidential information. The BIA erred in its analysis that all forms of violating § 1832(a)(1) necessarily involve fraud or deceit.

71. Since the statute is indivisible, there is no need to resort to the modified categorical approach and determine whether Petitioner’s conviction concerns the least culpable acts.² But regardless, there is no question that Respondent was convicted of carrying away trade secrets without authorization. His plea agreement makes plain that he pleaded guilty to “knowingly and without authorization carry[ing] away” confidential information. Exh. J (Order Unsealing Plea Agreement and Plea Agreement).

² The court also does not apply the realistic probability test for the reasons stated in footnote 1. And even if the court applied the test, Respondent satisfies the test based on his prosecution and conviction as demonstrated by the plea agreement and the transcript of his re-arraignment.

72. At Petitioner's re-arraignment, where he pleaded guilty in open court, both defense counsel and the Assistant United States Attorney representing the United States, informed the federal court that Mr. Zhang was pleading guilty to carrying away without authorization, Exh. K (Plea Hearing Transcript).

73. The BIA erred in its analysis that all forms of violating § 1832(a)(1) necessarily involve fraud or deceit.

74. Because Mr. Zhang does not stand convicted of an aggravated felony, he is not subject to mandatory detention and remains eligible for bond.

**SECOND GROUND FOR RELIEF:
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

75. The foregoing allegations are repeated and re-alleged as though fully set forth herein.

76. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property without due process of law."

77. As a noncitizen physically present in the United States, Mr. Zhang is entitled to Due Process Clause protections against deprivations of liberty.

78. Freedom from detention "lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil detention is permitted only under narrow circumstances in which there is legitimate governmental interest at stake. *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *Kambo v. Poppell*, 2007 WL 3051601, *10 (W.D. Tex. Oct. 18, 2007) at *18 (there must be a sufficiently compelling government interest ... that outweighs the individual's constitutionally protected interest in avoiding physical restraint."). Moreover, detention must be imposed by

constitutionally adequate procedural safeguards. *Demore v. Kim*, 538 U.S. 510, 523-24 (2003) (Kennedy, J., concurring).

79. In *Zadvydas v. Davis*, the Supreme Court held that § 1231(a)(6) limits the Government's authority to detain a noncitizen to a period reasonably necessary to bring about the noncitizen's removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court noted that the statute does not permit indefinite detention; the "reasonably necessary" detention period should be limited to six months after the removal order becomes final. *Id.* at 697-702. Under *Zadvydas*, it is presumptively unreasonable, and thus unconstitutional, for the DHS to detain a noncitizen for more than six months after a final order of removal.

80. In *Demore v. Kim*, the Supreme Court considered a constitutional challenge to the mandatory detention provision in § 1226(c). *Demore v. Kim*, 538 U.S. 510 (2003). That provision requires the mandatory detention of certain noncitizens convicted of crimes and who are in removal proceedings. The Supreme Court upheld § 1226(c)'s mandatory detention provision but did so with the express understanding that the statute authorized mandatory detention only for the "limited period of [the alien's] removal proceedings," which the Court estimated "lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal" his removal order to the BIA. *Id.* at 530.

81. At this stage, if detained under § 1226(c), Petitioner's detention has become unreasonable and unlawful, and he is constitutionally entitled to be released immediately.

82. Two circuit courts have held that noncitizens subject to § 1226(c) may bring constitutional challenges to their prolonged detention. *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 143 (2d Cir. 2024); *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020). District courts reviewing similar constitutional challenges have reached the same

decision. *See, e.g., De Oliveira Viegas v. Green*, 370 F. Supp. 3d 443 (D.N.J. 2019) (requiring a bond hearing when civil detention lasted fifteen months); *Smith v. Barr*, 444 F. Supp. 3d 1289 (N.D. Okla. 2020) (requiring a bond hearing when civil detention lasted over thirty months) *Santos v. Clesceri*, No. 3:20-cv-50349, (N.D. Ill. Feb. 19, 2021) (requiring bond hearing where noncitizen had been detained over 18 months); *Mohamed v. Sec’y, Dep’t of Homeland Security*, 376 F. Supp.3d 950 (D. Minn. 2018) (15 month detention under § 1226(c) held to be unreasonable and unlawful and recommending that a bond hearing be given to the petitioner).

83. District courts in the Fifth Circuit have concluded that noncitizens may also challenge their prolonged detention under § 1226(c) as violative of their due process rights. *See, e.g., M.D.F. v. Johnson*, No. 3:20-CV-0829-GBK, 2020 U.S. Dist. LEXIS 227595, 2020 WL 7090125 (N.D. Tex. Dec. 3, 2020) (concluding that generally detention for more than 20 months is constitutionally suspect, and in the petitioner’s case, his detention under § 1226(c) for over 22 months was unreasonable and thus ordering the Government to “schedule a bond hearing before an Immigration Judge at which the government must show ‘by clear and convincing evidence’ that the petitioner poses either a flight risk or a danger to the community); *Diallo v. Pitts*, Civil Action No. 1:19-cv-216, 2020 U.S. Dist. LEXIS 25508, 2020 WL 714274 (S.D. Tex. Jan. 15, 2020) (concluding that federal court has jurisdiction to consider challenge to prolonged detention); *Norales-Lopez v. Gomez*, No. SA-14-CA-149, 2014 U.S. Dist. LEXIS 125830 (W.D. Tex. Jun. 26, 2014) (concluding that detention of noncitizen under § 1226(c) for over 500 days was unreasonable, but the petition was moot).

84. To determine whether a noncitizen’s detention under § 1226(c) has become unreasonably or unjustifiably prolonged, courts apply two approaches. The Second Circuit instructs lower courts to apply the *Mathews v. Eldridge*, 424 U.S. 319 (1976) framework. *See Black*

v. Dir. Thomas Decker, 103 F.4th at 147-48. That approach requires courts to weigh (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements may entail.” *Id.* at 335.

85. The Third Circuit’s approach expressly rejects “the presumption of reasonableness or unreasonableness of any duration.” *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d at 211. Instead, the court advocates for a “highly fact-specific inquiry” that takes into account the following factors: the length of detention, whether the detention is likely to continue, the reasons for the delay, and “whether the alien’s conditions of confinement are meaningfully different from criminal punishment.” *Id.* at 210-11.

86. Regardless of the approach, Petitioner satisfies both tests. As it concerns the *Mathews* test, the private interest at stake is of the highest order: “the interest in being free from imprisonment.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The Supreme Court has stressed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

87. Petitioner remains detained for civil, not criminal purposes. He has been detained for over 16 months, far longer than the 4-month prison sentence he served for his federal criminal conviction and almost 3 times longer than the 5 months the Government represented in *Demore*. *Demore v. Kim* that removal proceedings last, 538 U.S. at 529. As a result of his detention, Petitioner has lost his job and remains separated from his U.S. citizen wife and children. Thus, this first factor weighs heavily in Petitioner’s favor.

88. The second *Mathews* factor also weighs in favor of Petitioner. This factor concerns “the risk of an erroneous deprivation of [the private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *Mathews*, 424 U.S. at 335. Only the Petitioner’s interest is considered in this analysis. *Hamdi*, 542 U.S. at 530.

89. Detention under § 1226(c) contains no procedural safeguards. Noncitizens subject to mandatory detention are not eligible for a bond hearing or review of their detention status at any time. Of course, the noncitizen can challenge whether they should be subject to mandatory detention under § 1226(c). But once that determination is made against the noncitizen, neither the immigration court nor the government review *the reasonableness of the duration* regardless of the criminal grounds for the noncitizen’s detention, whether s/he is a danger to the public, the noncitizen’s community ties, or the merits of the noncitizen’s defense to removal.

90. Petitioner still holds lawful permanent resident. He has deep ties to the United States. He has a U.S. citizen wife and 2 U.S. citizen children. He stands convicted of felony theft. But his conviction did not involve drugs, guns or violence. “[T]he almot nonexistent procedural protections in place for section 1226(c) detainees markedly increases[s] the risk of an erroneous deprivation of [a noncitizen’s] private liberty interests.” *Black v. Dir. Thomas Decker*, 103 F.4th at 152.

91. The last factor concerns the Government’s interest that takes into account the function involved and the fiscal and the attendant fiscal and administrative burdens due to additional or substitute procedural requirements. To be sure, Respondents have an interest in ensuring Petitioner’s presence at future hearings and safeguarding the community from someone with a criminal history. But immigration judges routinely consider these interests in bond hearings, so affording Petitioner a bond hearing does not eliminate the Government’s interests. “And while

the government's legitimate interests justify a relatively short-term deprivation of liberty, the balance of interests shifts as the noncitizen's detention is prolonged without any particularized assessment of need." *Black v. Dir. Thomas Decker*, 103 F.4th at 155. No new procedure needs to be designed or established since immigration judges are already holding bond hearings. On the other hand, Petitioner's continued detention is costing the government. This third factor therefore favors the Petitioner.

92. As it concerns the Third Circuit approach, Petitioner also comes out ahead of Respondents. The duration of his detention is already more than 16 months, far longer than his criminal sentence and 3 times longer than the 5 months the Government said in *Demore* that removal proceedings last.

93. The DHS initiated removal proceedings in September 2024. Since then, the immigration court has held more than half dozen hearings. Respondents Noem and De Anda-Ybarra continue to add, revise, and withdraw removal charges. After four separately scheduled hearings, the immigration judge has not ruled on Petitioner's application for adjustment of status and waiver. And if denied relief, Petitioner intends to appeal that determination. Thus, his detention is likely to continue for several months or years.

94. Petitioner has not been at fault for the delay. He has requested two short continuances and one was withdrawn. All the delay is attributable to the immigration court or the Department of Homeland Security. The latter continues to withdraw, revise and add removal charges, even after the immigration court began to take testimony.

95. Respondents have detained Mr. Zhang for over sixteen (16) months, well beyond the reasonably necessary period established in *Zadvydas* and *Kim*. Petitioner has attended every

hearing and has complied with every deadline imposed by the Immigration Court and the BIA. He timely filed his applications for relief from removal and has testified at his hearings.

96. Petitioner has done nothing to prolong his detention. Where civil detention has become unreasonably prolonged and no longer bears a reasonable relation to its regulatory purpose, release—not merely a bond hearing—is the appropriate constitutional remedy. See *Zadvydas v. Davis*, 533 U.S. at 690.

**THIRD GROUND FOR RELIEF:
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

97. The foregoing allegations are repeated and re-alleged as though fully set forth herein.

98. If not released immediately and instead he is granted a bond hearing before the immigration judge, Petitioner submits that the Due Process Clause requires that the Court impose on Respondents Noem and De Anda-Ybarra the burden to demonstrate by clear and convincing evidence that Petitioner is a flight risk or a danger.

99. Without any support from the Immigration and Nationality Act or its implementing regulations, immigration courts impose the burden of proof on noncitizens to demonstrate the absence of flight risk or danger as a condition to being granted bond.

100. The Due Process Clause requires a constitutionally adequate bond hearing for the government to continue to detain a person. “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 v. Davis*, 533 U.S. 678, 690 (2001). Detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

101. At a minimum, due process requires “adequate procedural protections” to ensure that the Government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotation marks omitted).

102. In civil detention cases, the Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). In particular, civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government’s justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750–51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

103. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings in which *the Federal Government* bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See, e.g., Singh*, 638 F.3d at 1204–05; *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); *Alvarez Figueroa v. McDonald*, Civil Action No. 18-10097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15–16 (D. Mass. May 14, 2018) (“The *Zadvydas* Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement

of the burden of proof on the government.”) (Saris, C.J.); *Doe v. Tompkins*, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb. 12, 2019) (holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3–4 (D. Mass. Jan. 29, 2019) (same) (Saris, C.J.); *Martinez v. Decker*, No. 18- CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17, 2018) (concluded that “due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a).”); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) (same; further, “the Court concludes that the government must bear the burden by clear and convincing evidence.”); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713–17 (E.D. Va. 2016) (“the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future proceedings.”); *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming *Haughton* as “good authority”).

104. Courts have reached similar conclusions for noncitizens, like Petitioner, who are detained under § 1226(c). See e.g., *Black v. Dir. Thomas Decker*, 103 F.4th at 155-58; *Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-14 (3d Cir. 2020); *Arido-Sorro v. Garland*, No. CV-23-00842-PHX-JAT (ESW), 2024 U.S. Dist. LEXIS 181882 at *12-16 (D. Ariz. Sep. 5, 2024) (collecting cases). To reach that conclusion, these courts have applied the *Mathews v. Eldridge* test.

105. The *Mathews v. Eldridge* test requires this Court to consider (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. at 333.

106. The private interest involved here is of the highest order. “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 v. Davis*, 533 U.S. 678, 695 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). “[L]iberty is the norm” in our society “and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has counseled courts to be “careful not to minimize the importance and fundamental nature” of a person’s liberty rights. *Foucha v. Louisiana*, 504 U.S. at 80.

107. A noncitizen’s detention pending their removal proceedings is indistinguishable from criminal incarceration, whether pretrial or after adjudication of guilt. They are behind bars and not free to leave the facility. Their meals and sleeping times are fixed. They can only spend a few hours per day outside in the sun. Their ability to see their family is strictly limited. They are guarded by officers authorized to employ any amount of physical force necessary for the occasion. These are Petitioner’s conditions of confinement and thus, there can be no doubt that he is significantly deprived of his liberty.

108. The second *Mathews* factor, that is the risk of an erroneous deprivation of a person’s liberty interest under the present procedures and the probable value of additional or

substitute procedures, weighs in favor of Petitioner. It bears repeating that removal proceedings are civil, not criminal. More than money is at stake in an immigration bond hearing; a person's freedom hangs in the balance. And yet, noncitizens in removal proceedings must represent themselves if unable to afford an attorney. 8 U.S.C. § 1229a(b)(4)(A) ("the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing....").

109. Because they are detained, noncitizens in removal proceedings are unable able to gather evidence in support of their request for bond. In fact, many noncitizens in removal proceedings in Texas were not living in this state prior to their detention and so their out-of-state attorneys and family are not able to assist, and the noncitizen's personal records are not within their reach.

110. Unrepresented noncitizens are also at a disadvantage because they may not be fully proficient in English and are untrained in immigration law and procedures. The Department of Homeland Security (DHS), in turn, is represented by lawyers and these lawyers are known to the immigration judges. Cf. *Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (noting heightened risk of error in parental rights termination proceedings exists in part because "[t]he State's attorney usually will be an expert on the issues contested and the procedures employed at the factfinding hearing").

111. Lastly, noncitizens, whether represented or unrepresented, often face the daunting task of proving a negative. Take Petitioner's case for example. He stands convicted of a single offense that did not involve drugs, guns or violence. He was known to the DHS because he is lawful permanent resident. He has a fixed address, was employed, and was paying taxes. How else is Petitioner to prove that he is not a flight risk or danger?

112. The last factor is the Government's interest. Petitioner does not dispute that Respondents have legitimate interests in ensuring that the immigration laws are enforced, that

noncitizens appear for their removal proceedings, and in the execution of removal orders. But these interests do not support placing the burden on noncitizens. If that is the case, then the DHS never has to make any showing that a noncitizen is a flight risk or a danger. Further, the DHS's interest in securing the appearance of noncitizens at removal hearings is weak where the noncitizen is not a flight risk or a danger. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021).

113. Detention incidental to removal must “bear[] [a] reasonable relation to [its] purpose.” *Zadvydas*, 533 U.S. at 690. As the First Circuit noted, unnecessary detention imposes significant societal costs. *Id.* at 25. Noncitizens are separated from their families and they lose their jobs. Their families, most whom are U.S. citizens or permanent residents, are deprived of financial support and care. “The needless detention of those individuals thus ‘separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees.’ Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Id.* at 33 (internal citation omitted).

114. Therefore, the balance of the *Mathews* factors weighs in favor imposing the burden of proof on the DHS to demonstrate that noncitizens in removal proceedings are a flight risk or danger. Failing to do so violates Respondents’ due process rights.

PRAYER FOR RELIEF

WHEREFORE, Mr. Zhang respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order directing Respondents to show cause why the writ should not be granted;
- c. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Zhang immediately because he is not an aggravated felony subject to mandatory detention or order a bond an individualized bond hearing for Petitioner where the Respondents bear the burden of demonstrating by clear and convincing evidence that Petitioner is not a flight risk or a danger to the community.
- d. Grant reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- e. Grant such further relief as the Court deems just and proper.

Dated: January 27, 2026

Respectfully Submitted,

By: /s/ Javier N. Maldonado

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ATTORNEYS FOR XIAOLANG ZHANG

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of Xiaolang Zhang and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado