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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

2:26-cv-00265-CDS-BNW

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

Xi Hong

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; MICHAEL BERNACKE, Field
Director, West Valley City Office; TODD
LYONS, Acting Director; JOHN MATTOS,
Nevada Southern Detention Center,

Respondents.

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1 Personal Information

2 1. (a) Xi Hong

3 (b) Other names used:

4 2. Place of confinement:

5 (a) Nevada Southern Detention Center

6 (b) 2190 E Mesquite Avenue, Pahrump, NV 89048

7 (c) Case number or numbers: My A# is



8 3. I am currently being held on orders by federal authorities: United
9 States Immigration and Customs Enforcement.

10 4. I am currently being held pursuant to a final removal order.

11 Decision or Action You Are Challenging

12 5. What are you challenging in this petition: immigration detention.

13 6. Provide more information about the decision or action you are
14 challenging:

15 (a) Name and location of the agency or court: United States
16 Immigration and Customs Enforcement

17 (b) Docket number, case number, or opinion number: My A# is



18
19 (c) Decision or action you are challenging: I was originally ordered
20 removed on DATE.

21 I was taken into custody by ICE on DATE I have been detained in ICE
22 custody for X months following my final deportation order.

23 Your Earlier Challenges of the Decision or Action

24 7-9. First, second, and third appeals: None

25 10. Motion under 28 U.S.C. § 2255: N/A

26 11. Appeals of immigration proceedings:

27 Does this case concern immigration proceedings? Yes

- 1 (a) Date you were taken into immigration custody: July 29, 2025
- 2 (b) Date of the removal or reinstatement order: 1998
- 3 (c) Did you file an appeal with the Board of Immigration Appeals? NO

4 If "Yes," provide answers.

- 5 (1) Date of filing:
- 6 (2) Case number:
- 7 (3) Result:
- 8 (4) Date of result:
- 9 (5) Issues raised:

- 10 (d) Did you appeal the decision to the United States Court of Appeals? NO

11 Appeals? If "Yes," provide answers.

- 12 (1) Name of court:
- 13 (2) Date of filing
- 14 (3) Case number:
- 15 (4) Result:
- 16 (5) Date of result:
- 17 (6) Issues raised:

18 12. Other appeals:

19 Other than the appeals listed above, have you filed any other petition,
20 application, or motion about the issues raised in this petition? Yes No

22 **JURISDICTION AND VENUE**

23 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general
24 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
25 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.
26 § 2201, 2202 (Declaratory Judgment Act).

27

1 Federal district courts have jurisdiction to hear habeas claims by non-citizens
2 challenging the lawfulness of their detention. See e.g. *Zadvydas v. Davis*, 533 U.S.
3 678 (2001). Federal courts also have federal question jurisdiction, through the
4 Administrative Procedures Act (APA) to “hold unlawful and set aside agency action”
5 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
6 with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. 5 U.S.C. §
7 703. The APA affords a right of review to a person who is “adversely affected or
8 aggrieved by agency action.” 5 U.S.C. § 702. Petitioner’s continued detention
9 violates his constitutional due process rights, and constitutes arbitrary and
10 capricious agency action, and is an abuse of discretion.

11 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28
12 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at
13 Choose a detention center

14 Accordingly, Petitioner’s habeas petition is properly before this court.

15 PARTIES

16 Xi Hong is a citizen of Country. He is detained in the control and custody of
17 Respondents in Nevada.

18 Wardens Name is the warden of Nevada Southern Detention Center
19 Wardens Last Name, in his official capacity, is the immediate custodian of
20 Petitioner.

21 Michael Bernacke is the Field Director of the West Valley City Office of ICE
22 Enforcement and Removal Operations, which has jurisdiction of enforcement and
23 removal operations over detention facilities in Nevada, including Nevada Southern
24 Detention Center where Petitioner is detained. Bernacke, in his official capacity, is
25 a legal custodian of Petitioner.

26 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,
27 which is responsible for administering and enforcing immigration laws, including

1 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
2 custodian of Petitioner.

3 Kristi Noem is the Secretary of the Department of Homeland Security, which
4 oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
5 Petitioner.

6 Pam Bondi is the Attorney General of the United States. She oversees the
7 immigration court system, which is housed within the Executive Office for
8 Immigration Review (EOIR) and includes all immigration courts and the Board of
9 Immigration Appeals (BIA). She is named in her official capacity.

10
11 **STATEMENT OF FACTS**

12 Brief statement regarding immigration history and detention:

13 I have been Unlawfully Detained in Custody
14 AT N.S.D.C. since July of 2025 without
15 DUE Process. I Am in a wheel chair
16 and Have CHF illness and while
17 detained I have experienced AN Enlarged
18 heart due to Negligent MEDICAL
19 attention. I suffer in custody due
20 To my mobility Impaired an Required
21 A.D.A. amendmeties. its Difflcult
22 to make Phone calls, Use Restroom.
23 and mobilized in the Unit. I have
24 A Family that Depends on ME for
25 Support.

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GROUNDS FOR RELIEF

Ground One: Petitioner's continued detention violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.

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. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Petitioner's removal is not reasonably foreseeable.

The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6) (emphasis added). However, in *Zadvydas*, supra, the Supreme Court concluded that due process imposes an "implicit limitation" upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689. Specifically, the Court held that 8 U.S.C. §1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States" and that six months of detention after the removal order is final is "presumptively reasonable." *Id.* at 701. The Court further determined that "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he was ordered removed. Therefore, the *Zadvydas* framework applies.

1 Petitioner's continued detention is unreasonable and his removal is not
2 reasonably foreseeable. As of the filing date of this Amended Petition, X months
3 have passed since the immigration judge issued an order of removal in immigration
4 proceedings. Despite his lengthy detention, Respondents have not been able to
5 effectuate his removal either to his country of origin, or to a third country. His
6 removal is no longer reasonably foreseeable, so the Constitution and the holding of
7 *Zadvydas* compel his immediate release. See 533 U.S. at 700-01 (describing release
8 as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . .
9 terms of supervision").

10
11 **Ground Two: Petitioner's continued detention violates the Immigration
12 and Nationality Act, 8 U.S.C. § 1231(a)(6).**

13 As provided in Ground One, above, Petitioner's detention is governed by 8
14 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*.
15 Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6) because it is both
16 unreasonable and because removal is not reasonably foreseeable. As further
17 discussed in Ground Three, incorporated herein by reference, Petitioner poses
18 neither a risk of flight nor a danger to the community. Rather, his continued
19 detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS
20 policies. Moreover, and as discussed in Ground One, Petitioner's removal is not
21 reasonably foreseeable. This Court should order that Petitioner be released.

22
23 **Ground Three: ICE's continued detention of Petitioner, without providing
24 an individualized custody assessment pursuant to ICE policy, violates the
25 Administrative Procedures Act, 5 U.S.C. §706(2)(A).**

26 Under the Administrative Procedures Act (APA), a court must hold unlawful
27 and set aside agency action found to be "arbitrary, capricious, an abuse of
discretion, or otherwise not in accordance with law" or "without observance of

1 procedure required by law.” 5 U.S.C. §706(2). An agency action is “arbitrary and
2 capricious if the agency has relied on factors which Congress has not intended it to
3 consider, entirely failed to consider an important aspect of the problem, offered an
4 explanation for its decision that runs counter to the evidence before the agency, or is
5 so implausible that it could not be ascribed to a difference in view or the product of
6 agency expertise.” *Motor Vehicles Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*
7 *Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “defer to an agency’s determinations so long
8 as the agency ‘gives adequate reasons for its decisions, in the form of a satisfactory
9 explanation for its action including a rational connection between the facts found
10 and the choice made.” *Nat. Res. Def. Council, Inc. v. United States Env’t Prot.*
11 *Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned up).

12 As noted in 8 C.F.R. §241.4, before the end of the 90-day removal period, the
13 local ICE field office with jurisdiction over a noncitizen’s detention must conduct a
14 custody review to determine whether the noncitizen should remain detained. *See* 8
15 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). A copy of any decision to release or continue to
16 detain a noncitizen “shall be provided to the detained [noncitizen].” 8 C.F.R.
17 §241.4(d). Where ICE decides that a noncitizen will stay detained, the decision
18 provided to the noncitizen “shall briefly set forth the reasons for the continued
19 detention.” *Id.* The criteria for determining if continued detention is warranted
20 mainly concerns whether the noncitizen presents a risk of flight or danger to the
21 community. 8 C.F.R. §241.4(e). The review panel members must also determine that
22 travel documents are not available or that “immediate removal, while proper, is
23 otherwise not practicable or not in the public interest.” *Id.*

24 Petitioner’s continued detention without an individualized assessment is
25 arbitrary and capricious. Because there is no evidence that Respondents found
26 Petitioner to be a danger or a flight risk, or that he had travel documents, the
27 decision to continue detaining him violates DHS’s own regulations. “It is a familiar

1 rule of administrative law that an agency must abide by its own regulations.” *Fort*
2 *Stewart Schs. v. Fed. Lab. Rels. Auth.*, 495 U.S. 641, 654 (1990); *see also United*
3 *States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that government
4 agencies are required to follow their own regulations). In addition, continuing to
5 detain Petitioner is contrary to ICE’s longstanding policy of releasing individuals
6 granted withholding of removal absent an exceptional reason not to do so. Even the
7 new directives regarding removal to third countries, which on their face are
8 unconstitutional and in violation of the INA because they fail to provide the
9 requisite due process and comply with the regulations, do not provide any reason
10 that a noncitizen in Petitioner’s position should not be released. Accordingly,
11 Petitioner’s continued detention violates the APA because it is arbitrary and
12 capricious and not in accordance with law.

13 This Court should order that Petitioner be released because Respondents
14 have not demonstrated that he was afforded proper procedures related to his
15 continued detention, or that he warrants continued detention under the regulations.
16 Accordingly, his continued detention is unlawful.

17 **Ground Four: ICE’s policy to remove noncitizens to a third country with**
18 **no notice or opportunity to seek fear-based protection constitutes**
19 **arbitrary and capricious agency action in violation of the Administrative**
20 **Procedure Act, 5 U.S.C. § 706.**

21 The APA entitles “a person suffering legal wrong because of agency action, or
22 adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. §
23 702. Further, the APA compels a reviewing court to “hold unlawful and set aside
24 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
25 otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,”
26 *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set
27 aside agency action, findings, and conclusions found to be . . . without observance of
procedure required by law.” 5 U.S.C. § 706(2)(D).

1 Petitioner has a due process right to meaningful notice and opportunity to
2 present a fear-based claim to an immigration judge before DHS deports him to a
3 third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Aden v.*
4 *Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Petitioner also has a due
5 process right to implementation of a process or procedure to afford these
6 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).
7 Respondents, however, have adopted a policy—set forth in their March 30, 2025
8 memo and July 9, 2025, directive—that is arbitrary and capricious and deprives
9 Petitioner of meaningful notice and an opportunity to present a fear-based claim to
10 an immigration judge prior to his deportation to a third country. Moreover,
11 Respondents' policy also violates the INA and implementing regulations which
12 mandate that Respondents refrain from removing Petitioner, and similarly situated
13 individuals, to a third country where they will likely be persecuted or tortured, thus
14 requiring Respondents to provide meaningful notice of deportation to a third
15 country and the opportunity to present a fear-based claim to an immigration judge
16 before deporting an individual to a third country. In this case, the March 30 memo
17 and July 9 directive and Respondents recent actions in this case and others,
18 demonstrate Respondents do not intend to observe those protections.¹

19 The APA empowers federal courts to “compel agency action unlawfully
20 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that
21 Respondents' actions and policy are unlawful and compel that—before any attempt
22 is made to deport him to a third country—Petitioner be provided with meaningful
23 notice and opportunity to present a fear-based claim to an immigration judge.
24

25
26 ¹ *See also* Lunga Masuku, Eswatini government faces court challenge for
27 accepting US deportees, THE GUARDIAN (Aug. 22, 2025),
<https://www.reuters.com/world/africa/eswatini-government-faces-court-challenge-accepting-us-deportees-2025-08-22/>.

1
2 **Ground Five: Petitioner’s detention in immigration custody pending**
3 **removal to any third country pursuant to recent ICE policy violates the**
4 **Due Process Clause of the Fifth Amendment.**

5 “It is well established that the Fifth Amendment entitles aliens to due
6 process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct.
7 1003, 1006 (2025)(per curiam(quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
8 Petitioner is thus entitled to “notice and an opportunity to be heard appropriate to
9 the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*,
10 339 U.S. 306, 313 (1950)). As relevant here, this means that Petitioner is entitled to
11 notice that he is to be removed to a third country “within a reasonable time and in
12 such a manner as will allow [him] to actually seek habeas relief in the proper venue
13 before such removal occurs.” *Id.*

14 Petitioner has not had an opportunity to contest removal to any third country
15 on the ground that he may face persecution or torture if he is removed to that
16 country. To the extent that Petitioner’s continued detention is meant to facilitate
17 his removal to a third country, his detention is unlawful because, as argued in
18 Ground Four, ICE’s procedure for third country removal is arbitrary and capricious,
19 and does not comply with due process. Any such future removal would be
20 accomplished in violation of his due process rights, rendering his detention on that
21 basis unlawful. This due process claim “necessarily impl[ies] the invalidity of [his]
22 confinement and removal” to a third country not yet named in any removal order.
23 *J.G.G.*, 145 S. Ct. at 1005. Thus, his due process claim is properly brought in these
24 habeas proceedings, and ordering his release from detention is a proper remedy for
25 such a violation.
26
27

PRAYER FOR RELIEF

Accordingly Xi Hong respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Xi Hong brought before the Court so that he may be discharged from his unconstitutional confinement;
2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this amended petition and any defenses that may be raised by respondents; and
3. Grant such other and further relief as, in the interests of justice, may be appropriate.

DATED this 31 day of Jan., 2026


Xi Hong