


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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| Zi Yang |) | |
| |) | |
| Petitioner-Plaintiff, |) | Case No. 0:26cv60553 |
| |) | |
| v. |) | PETITION FOR WRIT OF |
| |) | HABEAS CORPUS PURSUANT |
| |) | TO 28 U.S.C. §2241; AND |
| |) | COMPLAINT FOR |
| U.S. DEPARTMENT OF HOMELAND |) | DECLARATORY AND |
| SECURITY; KRISTI NOEM , Secretary of the |) | INJUNCTIVE RELIEF |
| U.S. Department of Homeland Security, in her |) | |
| official capacity; Joseph Edlow, acting Director of |) | |
| U.S. Immigration and Customs Enforcement in his |) | |
| official capacity; John E. Cantú, Field Office |) | |
| Director of USCIS and DAVID H. HARDIN, |) | |
| Warden, Broward Transitional Center in his |) | |
| official capacity. |) | |
| |) | |
| Respondents-Defendants. |) | |

INTRODUCTION

1. Zi Yang () is a 25-year-old asylum seeker from China who has been unlawfully detained by U.S. Immigration and Customs Enforcement (“ICE”) despite having no criminal history and deep ties in the United States. After entering without inspection in February 2023 and applying for asylum, Mr. Yang was released on March 1, 2023 under a Form I-220A Order of Release on Recognizance pursuant to INA § 236(a). The Department of Homeland Security (“DHS”) exercised this release authority only upon determining that Mr. Yang was neither a danger to the community nor a flight risk. Mr. Yang fully complied with all conditions of his release for over two years, building a record of stability, employment, and community ties in New York. Without warning or cause, ICE abruptly re-detained Mr. Yang in late 2025, despite no new adverse facts or violations on his part. ICE provided no notice or opportunity for Mr. Yang to contest this sudden re-detention, which constitutes an arbitrary about-face from DHS’s prior determination that he could remain at liberty under supervision.

2. On January 21, 2026, an Immigration Judge (“IJ”) in the Krome Immigration Court conducted a custody redetermination proceeding but concluded that the court “lacks jurisdiction to set a bond” for Mr. Yang “based on [his] manner of entry.” The IJ’s written order cited the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which classifies noncitizens who entered without inspection as “applicants for admission” detained under INA § 1225(b) – a provision that does not permit bond hearings by an IJ. The IJ acknowledged ongoing litigation (*Maldonado Bautista v. Santacruz*) challenging this no-bond policy, but noted that *Maldonado Bautista* resulted in a declaratory judgment rather than a nationwide injunction, and thus *Yajure Hurtado* remains binding on immigration courts absent further action. Accordingly, the IJ denied Mr. Yang’s request for a change in custody status for lack of jurisdiction. The IJ made *no individualized findings* that Mr. Yang is dangerous or a flight risk – indeed, no bond hearing on the merits was ever held. Mr. Yang has now been returned to civil detention indefinitely, with no administrative avenue for release or bond consideration. This scenario leaves habeas corpus under 28 U.S.C. § 2241 as Mr. Yang’s sole avenue to challenge the legality of his ongoing detention.

3. Mr. Yang’s continued detention is unlawful and violates the Constitution for multiple reasons. First, DHS’s own actions demonstrate that Mr. Yang’s detention is unnecessary. DHS exercised its discretion to release Mr. Yang in 2023 after determining he was not a danger or flight risk, and for over two years he proved that trust was warranted by obeying all conditions and appearing at all required check-ins. There are no changed circumstances or new evidence to suggest that Mr. Yang has become a flight risk or danger now – in fact, “[n]o new adverse facts justify a different assessment.” Re-detaining him under these conditions is arbitrary and capricious, lacking any legitimate governmental justification. Second, the manner of Mr. Yang’s re-detention flagrantly violated his right to due process. ICE seized Mr. Yang back into custody without prior notice or any opportunity for him to be heard. He was not afforded a prompt post-arrest hearing before a neutral decision-maker to determine if his renewed detention was warranted – indeed, the immigration judge refused to consider release at all, citing lack of jurisdiction. This executive “veto” of Mr. Yang’s liberty, undertaken unilaterally and without process, offends the Fifth Amendment’s most basic guarantees. Third, the prolonged, indefinite nature of Mr. Yang’s detention – with removal proceedings and related litigation likely to stretch on for many months or years – triggers fundamental due process concerns recognized by the

Supreme Court in *Jennings v. Rodriguez* and *Zadvydas v. Davis*. In *Jennings*, the Court held that the immigration statutes permit prolonged detention *without* automatic bond hearings as a matter of textual interpretation, but it emphatically remanded the case for the lower courts to decide whether the Constitution tolerates such prolonged detention. The Court noted that reading the statutes to allow indefinite civil detention raises “*serious constitutional concerns*” that must be addressed under the Due Process Clause. And in *Zadvydas*, the Supreme Court construed INA § 1231(a)(6) to contain an implicit temporal limitation because indefinite detention of a noncitizen “*would raise a serious constitutional problem*” in light of Fifth Amendment due process requirements. The Court in *Zadvydas* affirmed that all persons in the United States – including those with unresolved immigration status – are protected by the Due Process Clause, which forbids arbitrary, purposeless imprisonment. Freedom from bodily restraint lies at the core of the liberty interest that due process protects, and any deprivation of that liberty must be narrowly tailored to serve a compelling governmental interest.

4. Mr. Yang’s case exemplifies the very due process violations identified in *Jennings* and *Zadvydas*. He has now been detained for several weeks with no hearing whatsoever to assess whether his confinement is justified, and he faces potentially many more months in custody as his asylum case and related class-action litigation unfold. Yet the government has articulated no new rationale for his re-detention, nor could it – by its own prior assessment, Mr. Yang poses no danger or flight risk. Detaining him under these circumstances is not “rational and non-arbitrary” as due process requires; it is punishment in all but name. The discretion that Congress gave DHS to arrest and detain noncitizens (and to revoke prior release) is not “*unlimited*” and cannot be exercised in a manner that violates constitutional due process. See *Zadvydas*, 533 U.S. at 698 (even where Congress grants immigration detention authority, that authority remains subject to important constitutional limitations). By abruptly re-detaining Mr. Yang in the absence of any individualized finding of necessity, and by refusing to provide any forum for him to contest his custody, Respondents have overstepped those constitutional limitations. As one federal court observed in ordering the release of a similarly situated asylum seeker, ICE’s attempt to unilaterally keep noncitizens detained without bond or judicial review – especially after an IJ or DHS previously found them eligible for release – “violated [the noncitizen’s] constitutional due process rights” and “*rejected [the] sweeping new interpretation of who is eligible for bond*” as contrary to law. Numerous courts around the country – including at least one U.S. Court of

Appeals – have now firmly rejected the government’s position that immigrants like Mr. Yang can be denied any bond consideration at all. For example, the U.S. Court of Appeals for the Seventh Circuit recently held that the government’s argument for treating every noncitizen who entered without inspection as subject to mandatory detention under § 1225(b) (and thus ineligible for bond) was unlikely to succeed on the merits. In that case, *Castañon-Nava v. DHS*, the Seventh Circuit found the government’s no-bond position so dubious that it upheld a preliminary injunction requiring a bond hearing, concluding that INA § 1225(b)(2) does not automatically apply to every noncitizen present in the U.S. without admission. Likewise, in a certified class action covering similarly situated detainees, a federal court declared that class members like Mr. Yang “are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2),” and it held that the agency’s “practice of denying bond [on that ground] violates the [INA].” Despite these clear judicial rulings, the agency continues to adhere to the *Yajure Hurtado* no-bond policy, forcing individuals like Mr. Yang to turn to the federal courts for relief. Indeed, the Executive Office for Immigration Review has instructed its immigration judges to follow *Matter of Yajure Hurtado* as binding precedent, which is why the IJ in Mr. Yang’s case refused to grant bond. The result is that only this Court can now review the legality of Mr. Yang’s detention and provide an effective remedy. Congress has long recognized habeas corpus as the proper vehicle for detainees to challenge unlawful executive detention, see 28 U.S.C. § 2241, and that is precisely the relief Mr. Yang seeks. Given that the immigration courts have disclaimed jurisdiction to grant him a custody hearing, Mr. Yang’s petition for a writ of habeas corpus is not only ripe – it is his last resort to safeguard his fundamental right to freedom from imprisonment without due process of law.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

2. This Court has habeas jurisdiction under 8 U.S.C. § 1252(e)(2) (habeas corpus proceedings), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2)(B), this Court has jurisdiction to determine whether, in fact, the removal order against Mr. Yang was lawful such that she was “ordered removed under [8 U.S.C. § 1225(b)(1)].”

VENUE

3. Venue is proper in the Southern District of Florida because Petitioner is detained at the Broward Transitional Center in this District. In habeas cases, the district of confinement is the typical venue for challenging present physical custody. Additionally, pursuant to 28 U.S.C. § 1391(e), this is an action against officers of the United States in their official capacities, and a substantial part of the events giving rise to the claim; namely Petitioner's re-detention and ongoing custody is occurring in this District. Venue is therefore proper in this Court.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

4. With respect to Mr. Yang's habeas claim, the Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless Mr. Yang is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

5. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The urgency of these proceedings reflects the central role of habeas corpus as a safeguard against unlawful detention and the historic importance of a swift remedy.

6. Mr. Yang is "in custody" for the purpose of 28 U.S.C. § 2241 because he is arrested and detained by Respondents.

PARTIES

7. Petitioner Zi Yang is a 25-year-old native of China who is in Respondents' custody. He was apprehended in February 2023 near Brownsville, Texas after entering the United States without inspection. Petitioner expressed a fear of persecution and was placed in removal proceedings under INA § 240 (No. XXXXXXXXXX), rather than expedited removal. He filed a defensive asylum application in 2023, which remains pending adjudication. From March 1, 2023 until late October 2025, Petitioner lived in Flushing, New York, under an order of release on recognizance, without incident. ICE re-detained him on October 23, 2025 and transferred him to BTC in Florida, where he has now been detained for 3 months. Petitioner is in the custody of

Respondents and under their direct control at BTC.

8. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, she is responsible for the implementation and enforcement of the Immigration and Nationality Act. Ms. Noem is responsible for oversight of ICE, and ICE is a legal custodian of Mr. Yang.

9. Respondent Joseph Edlow is the Acting Director of ICE. He is responsible for the policies and practices of ICE nationwide and is a legal custodian of Mr. Yang. He is sued in his official capacity.

10. Respondent Warden of Broward Transitional Center, (currently David H. Hardin) is sued in his/her official capacity. The Warden (or Officer in Charge) of BTC is the local custodian responsible for the day-to-day confinement of Petitioner at the facility. Some courts view the warden of the detention facility as the proper respondent in a habeas petition challenging present physical confinement. Petitioner names the Warden out of an abundance of caution to ensure that the Court has jurisdiction over at least one proper custodian.

LEGAL FRAMEWORK

Expedited Removal

11. The expedited removal statute provides that the process begins—and often effectively concludes—with an inspection by an immigration officer. The officer must, first, determine if the individual is a noncitizen who is inadmissible because they have engaged in certain kinds of fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or lacks valid entry documents, 8 U.S.C. § 1182(a)(7). *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). No other person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3). Among that set, only two categories of noncitizens are eligible for expedited removal: (1) noncitizens “arriving in the United States,” and (2) noncitizens who “ha[ve] not been admitted or paroled into the United States” and cannot affirmatively show that they have been “physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)–(iii).

12. In the case of noncitizens who have not been admitted or paroled into the United States, if the officer concludes that the individual is inadmissible under an applicable ground and

has been continuously present in the United States for less than two years, the officer “shall,” with the concurrence of a supervisor, 8 C.F.R. § 1235.3(b)(7), order the individual removed “without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).

13. At any time during the expedited removal process, the officer may permit the individual to withdraw his application for admission and allow the person to depart the country without issuing an expedited removal order. 8 U.S.C. § 1225(a)(4). For those who express a fear of return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening does not remotely approach the type of process that asylum seekers receive in regular immigration proceedings before an immigration judge under 8 U.S.C. § 1229a.

14. During the inspection process, if an individual indicates an intention to apply for asylum or expresses fear of return to his or her country of origin, the immigration officer must refer the individual for a rudimentary screening interview with an asylum officer, referred to as a “credible fear” interview, to determine whether the individual should be able to apply for asylum and related humanitarian relief. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. §§ 235.3(b)(4), 208.30(d)-(e).

15. To prevail at the credible fear interview, the applicant must show “a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen’s] claim and such other facts as are known to the officer, that the [noncitizen] could establish eligibility for asylum.” 8 U.S.C. § 1225(b)(1)(B)(v).

16. Applicants who satisfy the credible fear standard have their expedited removal orders cancelled by operation of law and are placed into regular removal proceedings under 8 U.S.C. § 1229a, where they have the opportunity to apply for asylum and other relief from removal, present and cross-examine evidence before an immigration judge (IJ), preserve objections, and appeal any adverse decision to the Board of Immigration Appeals and court of appeals. 8 C.F.R. § 208.30(f); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii). Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

17. Applicants who do not pass the credible fear interview may request review of the decision by an IJ, but do not receive a full hearing or any subsequent administrative appellate review. 8 U.S.C. § 1225(b)(1)(B)(iii)(II)-(III); *see also* 8 C.F.R. § 208.30(g)(1).

18. During the inspection and credible fear stages of expedited removal, DHS detains the noncitizen. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii). In *Jennings v. Rodriguez*, the Supreme Court held that individuals in expedited removal who demonstrate a credible fear are not statutorily eligible for bond hearings. 583 U.S. 281, 297-303 (2018).

19. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens with expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2.

20. Congress provided limited habeas review in individual cases. Relevant here, a federal district court may review whether the individual “was ordered removed under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(e)(2)(B). Although the statute provides that such review must be limited to “whether such an order in fact was issued and whether it relates to the petitioner” and may not include review of whether a noncitizen “is actually inadmissible or entitled to any relief from removal,” *see* 8 U.S.C. § 1252(e)(5), if the Court finds in the petitioner’s favor, the court can order placement in removal proceedings under 8 U.S.C. § 1229a, *see* U.S.C. § 1252(e)(4)(B).


21. In *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), the Supreme Court upheld a lack of habeas jurisdiction where the noncitizen petitioner entered the United States without inspection and then challenged flaws in the credible fear proceeding and sought a “new opportunity to apply for asylum” and “the opportunity to remain lawfully in the United States.” 591 U.S. at 115, 119. Concurring in the judgment, Justice Breyer expressed concern about future readings of the decision to foreclose *all* habeas claims, including a claim of “natural-born U.S. citizen[ship],” “a claim that rogue immigration officials forged the record of a credible-fear interview that . . . never happened,” or a claim that an asylum officer made a “dead-wrong legal interpretation.” *Id.* at 151 (Breyer, J., concurring in the judgment).

22. On information and belief, on or about May 20, 2025, DHS issued guidance regarding, among other things, the dismissal of full removal proceedings under 8 U.S.C. § 1229a.

On information and belief, the DHS Dismissal Guidance “instruct[ed]” DHS attorneys to move to dismiss full removal proceedings in order to “help deportation officers . . . arrest people who” DHS believes are “‘amenable’ to . . . expedited removal.” Hamed Aleaziz, et al., *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025).¹ Under the DHS Dismissal Guidance, agency attorneys are “encourage[ed] . . . to look for cases that could be dismissed, which could accelerate deportations of more people.” *Id.* The DHS policy of dismissing removal proceedings under 8 U.S.C. § 1229a is being challenged as unlawful in *Immigrant Advocates Response Collaborative v. United States Department of Justice*, No. 25-cv-02279 (D.D.C. filed July 16, 2025).

23. The Supreme Court in *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021) held that individuals in withholding-only proceedings following reinstated removal orders (a category that includes Mr. Yang) are detained under § 1231, not under the pre-removal detention statute § 1226, and therefore have no statutory right to a bond hearing during their pursuit of withholding. However, the absence of a statutory bond hearing mechanism does not mean ICE can detain such individuals indefinitely. Section 1231 must still be administered in compliance with the Constitution and the limitations recognized by *Zadvydas* and its progeny. As detailed below, Respondents’ continued detention of Mr. Yang well past the six-month presumptive limit, and with no prospect of removal, exceeds their lawful authority under the INA and violates Mr. Yang’s constitutional rights.


STATEMENT OF FACTS

24. Petitioner Zi Yang was born in China on . Fleeing persecution, he entered the United States without inspection on or about February 26, 2023 near a port of entry in Brownsville, Texas. Rather than subjecting him to expedited removal under 8 U.S.C. § 1225(b)(1), DHS placed Petitioner in full removal proceedings pursuant to INA § 240 by issuing a Notice to Appear (charging him as an arriving alien present without admission). Petitioner expressed his intention to seek asylum. He filed a defensive Form I-589 application for asylum and withholding of removal with the Immigration Court, which was received and

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pending as of August 23, 2023. Petitioner's removal case remains ongoing in the Immigration Court. Petitioner has never failed to attend a court hearing or immigration appointment; his diligence in pursuing asylum evidences his intent to see his case through lawfully.

25. After Petitioner was initially detained for a short period in DHS custody, ICE conducted a custody determination pursuant to INA § 236(a). On March 1, 2023, ICE issued Petitioner a Form I-220A, Order of Release on Recognizance, thereby releasing him from detention under specified conditions. This decision meant that ICE had assessed Petitioner's situation and concluded he could be trusted to remain at liberty while his case was pending. Indeed, ICE uses release on recognizance only when it determines an individual is neither a danger to the community nor a flight risk. Petitioner was not required to post a bond; instead, he was released on his own recognizance with instructions to check in periodically and obey all laws and directives.

26. Petitioner immediately moved to New York City to join his community there. From early 2023 until late 2025, he resided continuously in Queens, New York at a stable address (most recently,  Flushing, NY 11355). He obtained a valid Employment Authorization Document and secured steady employment as an Uber driver, becoming self-sufficient and paying taxes. Petitioner established meaningful community ties in New York, including involvement in a local church and friendships with U.S. citizens and residents. He also had the support of a committed sponsor in the community who was willing to provide housing and ensure Petitioner's compliance with immigration requirements. Throughout this period, Petitioner scrupulously complied with all conditions of his release. He attended every required ICE check-in and notified ICE of his address. He did not incur any arrests or criminal charges (in fact, Petitioner has no criminal history whatsoever in the U.S.). By every measure,

Petitioner's conduct during over two years of freedom proved that DHS's trust in him was well placed.

27. On October 23, 2025, while Petitioner was traveling by car from New York to Chicago, he was stopped for a routine traffic-related matter by local law enforcement in Indiana. During the stop, officers discovered Petitioner's immigration status and the fact that he had an outstanding removal case. Petitioner was not charged with any crime; nevertheless, the officers contacted ICE. ICE officers (believing Petitioner had no legal immigration status at that moment) took Petitioner into custody. He was subsequently transferred to ICE detention – first briefly held at a local facility in the Midwest [if applicable], and then transported to Broward Transitional Center in Florida, arriving in late 2025. ICE did not inform Petitioner of any reason why it was revoking his prior release. There was no allegation that Petitioner had violated the terms of his release or committed any offense. In fact, ICE's paperwork indicates the re-arrest was triggered solely by Petitioner's encounter with law enforcement (i.e., his immigration status), not because of any new adverse conduct on his part.

28. Since October 2025, Petitioner has been detained at BTC in Pompano Beach, Florida, under ICE's authority. He has now been in ICE custody for approximately 3 months this time (in addition to the time he was originally detained in 2023). Petitioner's immigration case is still ongoing, and he continues to pursue asylum and other relief from removal. Despite his exemplary record on release, ICE has not provided any new custody hearing or individualized determination to justify why it must jail Petitioner again. Petitioner, through counsel, requested a custody redetermination (bond hearing) in Immigration Court, given that he is held under § 236(a). That bond hearing took place on January 21, 2026 before an Immigration Judge (IJ) at the BTC immigration court; the IJ concluded he lacked jurisdiction. Petitioner has exhausted any

available remedies by seeking bond relief in the immigration court; the only avenue remaining is this habeas petition, as further administrative appeals would be ineffective or futile in addressing the core legality of his detention.

29. It bears emphasis that nothing has transpired to warrant treating Petitioner differently now than in 2023. He remains eligible for release under the same statute. He has shown greater ties and continuing compliance over two years. He has never been arrested for, nor convicted of, any crime. He poses no danger to the community – indeed, he has been a contributing member of his community. He does not pose a flight risk – to the contrary, Petitioner has every incentive to appear for his immigration hearings to obtain asylum and has demonstrated his commitment to doing so. The Government has presented no evidence of changed circumstances (such as criminal activity, violations, or even a deterioration in compliance) that would justify a harsher custody decision. In short, no new adverse facts support Petitioner’s re-detention. The decision to incarcerate him now, after a long period of successful release, appears arbitrary and capricious.

30. For over two years, Petitioner enjoyed his liberty under supervision and proved that the goals of immigration detention (ensuring attendance at hearings and protecting the public) can be met in his case by less restrictive means. Yet ICE chose to jail him again without affording him any process to contest that decision. Petitioner now turns to this Court for relief because his continued detention under these circumstances violates the law and his constitutional rights.

CLAIMS FOR RELIEF

COUNT I

Violation of 8 U.S.C. § 1225(b), and implementing regulations, and the Administrative Procedure Act

31. The allegations in the above paragraphs are realleged and incorporated herein.

32. Pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii)(II), DHS cannot apply the expedited removal statute to a noncitizen who “has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph [i. e. under 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)].” *See also* 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025).

33. Mr. Yang has been continually physically present in the United States since March 1, 2023. Thus, ICE had no authority to issue an expedited removal order after making an inadmissibility determination under 8 U.S.C. §§ 1182(a)(7) on May 27, 2025, i. e. after more than two years of his continuous physical presence in the United States.

34. Accordingly, the Court should find that no expedited removal order exists and, alternatively, ICE had no authority to issue the order to Mr. Yang and should order Respondents “to require that [he] be provided a hearing in accordance with section 1229a of [8 U.S.C.]” 8 U.S.C. § 1252(e)(4).

COUNT II

Violation of INA § 236(a) and the Administrative Procedure Act (APA) (Lack of Statutory Authority and Arbitrary Decision-Making)

35. The allegations in the above paragraphs are realleged and incorporated herein.

36. Respondents’ detention of Petitioner is not in accordance with law and exceeds their statutory authority under the Immigration and Nationality Act. INA § 236(a) authorizes detention only as a matter of discretion and only upon an individualized determination that detention is warranted by concerns such as flight risk or danger. By previously releasing Petitioner on recognizance, DHS necessarily determined under § 236(a) that he did not require detention. No provision of the INA allows DHS to simply ignore that prior determination and re-detain an individual without any new evidence or reason. To do so is arbitrary, capricious, and an abuse of discretion, and thus violates the APA, 5 U.S.C. § 706(2)(A) (which applies because Petitioner challenges a final agency action – his redetention – that is not committed to

unreviewable discretion). Respondents' redetention decision, taken after Petitioner complied for years, flouts the purpose of § 236(a) and the regulatory requirement that custody decisions be based on individualized factors like risk and danger.

37. In effect, Respondents have retroactively altered Petitioner's custody status without cause, treating him as if he were an initial detainee who had never been found suitable for release. This is not what the law permits. If anything, DHS's own prior exercise of discretion created a reasonable expectation (and a reliance interest on Petitioner's part) that he would remain free absent misbehavior or new circumstances. While DHS can revoke release in some cases, basic principles of administrative law and due process dictate that such a revocation must be justified – for example, by a violation of release conditions or emergent risk concerns. Here, Petitioner committed no violation, and Respondents have articulated no legitimate basis under the statute for detention. Their action in October 2025 was ultra vires to the extent it was divorced from the considerations § 236(a) requires.

38. Because Respondents' actions conflict with INA § 236(a) and are arbitrary and capricious in violation of the APA, Petitioner's detention is unlawful and this Court should grant relief. The Court should hold unlawful and set aside Respondents' redetention of Petitioner and order his release, as the APA authorizes (5 U.S.C. § 706(2)). In the alternative, the Court should construe § 236(a) in a manner that requires a contemporaneous individualized finding to justify Petitioner's continued detention and order Respondents to provide Petitioner with a bond hearing consistent with that standard. Either way, Petitioner is entitled to immediate release under the correct application of the statute.

COUNT III

Violation of the Fifth Amendment Due Process Clause (Arbitrary Detention and Denial of Procedural Protections)

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. Respondents' actions violate Petitioner's rights under the Fifth Amendment's Due Process Clause. The Due Process Clause forbids the Government from depriving individuals of liberty in an arbitrary manner or without robust procedural safeguards. Civil immigration detention is constitutionally permissible only if it is reasonably related to the Government's purposes (preventing flight and danger) and accompanied by adequate procedures to ensure that detention remains justified. In Petitioner's case, both the substantive and procedural components of due process have been violated.

41. Petitioner's re-detention in 2025 was arbitrary in the constitutional sense. He was deprived of his liberty despite having *done everything right* for over two years. There is no rational basis to suddenly treat Petitioner as a flight risk or danger when DHS's own prior assessment – and his subsequent compliance – prove the opposite. The Supreme Court in *Demore v. Kim* upheld a narrow regime of mandatory detention for certain criminal noncitizens during the “brief period” of their removal proceedings, but emphasized that such detention is constitutionally permissible only because it is of short, finite duration and serves compelling regulatory goals. Petitioner's detention, by contrast, is indefinite and purposeless: it has already lasted many months with no end in sight, even though he *could* be continuing his life in the community and appearing for hearings as needed. Unlike the detainee in *Demore*, Petitioner has no criminal record and is detained under a discretionary statute, not a mandate. Prolonging his incarceration under these circumstances is unreasonable and excessive in relation to the Government's objectives, especially given the availability of less restrictive means (as proven by his successful release on recognizance).

42. Indeed, as time passes, the constitutional concerns grow. The Supreme Court's decision in *Jennings v. Rodriguez* made clear that the immigration statutes (e.g. § 1226(a), (c), § 1225(b)) do authorize detention beyond six months, rejecting a statutory time limit, but the Court pointedly did *not* decide whether such prolonged detention might violate due process. *Jennings* thus preserves detainees' ability to bring as-applied constitutional challenges to unreasonable detention. Petitioner's case presents exactly such a challenge: detention that was initially discretionary has become prolonged and punitive without fresh justification. Two-and-a-half years after filing his asylum case, he is jailed despite no finding by any neutral

decision-maker that he poses a danger or flight risk at this time. The balance of Petitioner's liberty interest against the Government's interest has tipped heavily in Petitioner's favor, yet Respondents continue to detain him reflexively. This constitutes a deprivation of liberty without due process of law.

43. Procedurally, Respondents have failed to provide the safeguards that due process requires for a § 236(a) detainee in Petitioner's posture. At minimum, due process entitles a civil detainee to an individualized hearing before a neutral adjudicator to determine if detention is necessary. Petitioner, however, was re-detained without any hearing at all. He was not given advance notice or an opportunity to contest ICE's decision to revoke his release. Even after re-detention, ICE did not promptly provide a bond hearing; Petitioner had to affirmatively request one. When a bond hearing did occur (if it did), the process was constitutionally inadequate. On information and belief, the Immigration Judge applied the ordinary bond standard that placed the burden on Petitioner to prove he merited release – a standard that might pass muster early in a case, but not after months or years of incarceration. At that stage, due process requires the Government to bear the burden to prove that continued detention is justified by clear and convincing evidence of flight risk or danger. Numerous courts have held that for prolonged detainees under § 1226(a), the Fifth Amendment demands such burden-shifting and consideration of alternatives to detention. If the Immigration Judge did not apply those heightened protections, Petitioner was denied the process he was due.

44. Moreover, due process calls for a contemporaneous finding that *current* conditions warrant detention. ICE made no such finding in Petitioner's case in 2025. Simply having an old warrant or an outstanding removal case is not enough – due process requires an evaluation of present risk factors. Petitioner's re-detention appears to have been on "auto-pilot," triggered by an encounter with law enforcement rather than any deliberative assessment. This mechanical detention violates Petitioner's procedural rights. Even DHS's own guidance (such as the now-rescinded 2021 enforcement priorities memo) recognized that mitigating factors – like length of time in the U.S., humanitarian factors, etc. – should be considered before taking someone into custody. Here, Respondents ignored all mitigating and factual factors in Petitioner's favor.

45. In sum, Respondents have deprived Petitioner of liberty in a manner that “shocks the conscience” (given his model behavior and the lack of rationale) and have failed to provide even the most basic procedural safeguard (a fair hearing) to justify that deprivation. This violates the Fifth Amendment. Petitioner’s detention is unconstitutional, and he is entitled to habeas relief. The Court should declare that Petitioner’s continued detention without an individualized determination violates due process and order Respondents to release Petitioner immediately unless a constitutionally adequate hearing is provided forthwith.

COUNT IV

Violation of the Fifth Amendment (Substantive Due Process – Right to Bodily Liberty; Eighth Amendment)

46. For the foregoing reasons, Petitioner’s prolonged detention also infringes his substantive due process right to be free from unjustified bodily restraint. Freedom from physical detention lies at the heart of the liberty the Fifth Amendment protects. Civil detention is permissible only in certain narrow circumstances and must be carefully limited. As detailed above, Petitioner’s detention has become unreasonable and excessive, especially given DHS’s prior determination that he can safely be at liberty. There is no sufficiently compelling governmental interest served by keeping Petitioner locked up at this stage. Therefore, his detention violates substantive due process independently of any procedural flaws. The Court should find that Respondents’ actions “lack a reasonable relationship to any legitimate governmental purpose” and thus amount to punishment, which is forbidden in civil detention.

PRAYER FOR RELIEF

Wherefore, Mr. Zi Yang respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter.
2. Issue an Order to Show Cause directing Respondents to file a return and to show cause, within a short period
3. Declare that Respondents’ actions in detaining Mr. Yang are unlawful and violates Mr. Yang’s rights under the Fifth Amendment’s Due Process Clause.
4. Declare that Respondents’ actions in detaining Mr. Yang are unlawful and violate Mr. Yang’s rights under the Eighth Amendment’s Right to Bodily Liberty.

5. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Yang from immigration custody.
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act or any other applicable authority, if he prevails in this action.
7. Grant any further relief that this Court deems just and proper, including such orders as may be necessary to effectuate the Court's judgments.

Respectfully submitted on this 21st day of January, 2026,

/s/ Magdalena Cuprys

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was filed and served on all counsel of record via the Court's CM/ECF system on this 25th day of February, 2026.

By: /s/Magdalena Cuprys, Esq.
MAGDALENA CUPRYS
Florida Bar No.: 22460