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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT TACOMA**

9 **XIN SUN,**

10 **Petitioner,**

11 **v.**

12 **Camilla WAMSLEY, ICE Seattle Office Field)**
13 **Director, Markwayne MULLIN, Secretary of the)**
14 **U.S. Department of Homeland Security; Pam)**
15 **BONDI, Attorney General of the United States,)**
16 **Michael W. BANKS, Chief of US Border Patrol;)**
17 **Bruce SCOTT, Warden, Tacoma Northwest)**
18 **Detention Center; Todd LYONS, Acting Director)**
19 **of WA State Field Office, U.S. Immigration and)**
20 **Customs Enforcement in their official capacities,)**
21 **et. al.)**

22 **Respondents.**

Case No. 2:26-cv-1013

**PETITION FOR WRIT OF
HABEAS CORPUS**

23 **INTRODUCTION**

24 Comes now, Xin Sun, by and through undersigned counsel, Ji Min Kim, and respectfully
25 submits this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on his behalf,
and alleges as follows:

1. Petitioner is currently in the custody of the Department of Homeland Security (DHS)
and U.S. Immigration and Customs Enforcement (ICE) and is confined at the

1 Northwest Detention Center in Tacoma, Washington, located in 1623 E. J Street,
2 despite winning relief before the Immigration Judge.

3 2. Petitioner has been detained since he initially entered the United States in December
4 2024. The Immigration Judge ("IJ") found that he would likely be persecuted if
5 removed to his home country of China. **Exhibit 2. IJ Decision Granting Withholding
6 of Removal.**

7 3. Mr. Sun is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-
8 citizens with a final withholding of removal order by an IJ due to a substantial risk of
9 persecution or torture in their home country. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Sun's
10 removal order and accompanying grant of relief became final when ICE waived appeal
11 of the IJ's order. 8 C.F.R. § 1241.1.

12 4. Mr. Sun's ongoing detention violates INA § 236(c) which mandates the detention of
13 certain non-citizens due to specific criminal convictions. Mr. Sun has been detained
14 ever since his date of entry into the United States in December 2024. He does not have
15 a criminal record anywhere in the world; therefore, his detention is not warranted.

16 5. Mr. Sun's continued detention also violates 8 U.S.C. § 1231(a)(6), as interpreted by
17 the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal to
18 a third country is not reasonably foreseeable. He cannot be deported to his home
19 country of China because he was granted Withholding of Removal with respect to that
20 country. 8 C.F.R. § 1208.17. ICE's attempts to remove Mr. Sun to a random collection
21 of alternative countries—to which there is no policy or history of accepting non-citizen
22 deportees and to which there is no guarantee that he would not be repatriated back to
23 China – are speculative and futile. **Exhibit ##. Declaration of Deportation Officer
24 Jianrong Du.**

25 6. Mr. Sun's detention also violates the Due Process Clause of the Fifth Amendment of
the U.S. Constitution. "At its historical core, the writ of habeas corpus has served as a
mean of reviewing the legality of executive detention and it is in that context that its
protection has been strongest." *INS v. St Cyr*, 533 US 289, 301 (2001), superseded on
other grounds by statute as stated in *Patel vs. US Attorney Gen*, 971 F 3d 1258, 1270

1 (11th Cir 2020). The writ is meant to provide exactly the relief Petitioner seeks here:
2 to prevent the Respondents – a set of immigration agencies with vast resources,
3 including a punitive detention system and agents who arbitrarily detain anyone
4 (regardless of whether they have a legal visa) without even filing the charging
5 document with the immigration court – from prolonging Mr. Sun’s detention without
6 due process.

- 7 7. The Department of Homeland Security (“DHS” or “the Department”) has violated its
8 own agency regulations and internal policies in keeping Mr. Sun detained, as it has
9 failed to perform an individualized custody review; failed to identify or contact any
10 third countries to which Mr. Sun may be removed; and failed to provide Mr. Sun of
11 any meaningful notice and opportunity to express his fear of persecution or torture in
12 a third country.
- 13 8. Petitioner's detention has become prolonged and potentially indefinite, with no
14 reasonably foreseeable end. Absent timely judicial intervention, Petitioner faces
15 continued confinement without sufficient procedural safeguards to protect against
16 erroneous deprivation of liberty. Accordingly, this Court's exercise of habeas
17 jurisdiction is necessary to remedy an unlawful restraint on Petitioner's freedom.
- 18 9. Petitioner asserts that his ongoing detention violates due process and exceeds statutory
19 and constitutional limits on civil confinement. Absent an order from this Court,
20 Petitioner will remain subject to the indefinite and unconstitutional restraint of liberty.

21 JURISDICTION

- 22 1. Mr. Sun is currently detained under 8 U.S.C. § 1231(a) in Respondents’ custody at the
23 Northwest Detention Center. As such this case arises under the Constitution of the
24 United States; the Immigration and Nationality Act (“INA”) and its implementing
25 regulations; the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”),
Pub. L. No. 105-277, div. G, Title XXII, 2242(a), 112 Stat. 2681, 2681-822 (1998)

(codified as Note to 8 U.S.C. § 1231) and its implementing regulations; and 8 U.S.C. §§ 1101-1537.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 2241 (the general power to grant a writ of habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question jurisdiction); 5 U.S.C. §§ 702, 703, and 706 (the Administrative Procedure Act (“APA”)); 28 U.S.C. § 1651 (the All Writs Act); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).
3. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by non-citizens challenging the lawfulness or constitutionality of their civil immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292 – 296 (2018). Specifically, “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” *Zadvydas*, 533 U.S. at 688.

VENUE

1. Venue is proper under 28 U.S.C. § 2241(c)(3) because Petitioner is detained at the Northwest Detention Center in Tacoma, Washington, located in 1623 E. J Street, which is within the jurisdiction of this District.
2. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in the Western District of Washington. 28 U.S.C. § 1391(b)(2) and (e)(1).

REQUIREMENTS OF 28 U.S.C. § 2243

1. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to

1 relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require
2 respondents to file a return “within *three days* unless for good cause additional time,
3 not exceeding twenty days, is allowed.” *Id.* (emphasis added).

- 4 2. Courts have long recognized the significance of the habeas statute in protecting
5 individuals from unlawful detention. The Great Writ has been referred to as “perhaps
6 the most important writ known to the constitutional law of England, affording as it
7 does a *swift* and imperative remedy in all cases of illegal restraint or confinement.”
8 *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

9 **PARTIES**

- 10 1. Mr. Sun is a native and citizen of China, who was granted withholding of removal in
11 September 2025. Mr. Sun was first taken into ICE custody on December 22, 2024, and
12 has remained in ICE custody continuously since that date – over 12 months. He is
13 currently detained at the Northwest ICE Processing Center.
- 14 2. Respondent Camila Wamsley is the Director of the Seattle Field Office of ICE’s
15 Enforcement and Removal Operations division. As such, Ms. Wamsley is Petitioner’s
16 immediate custodian and is responsible for Petitioner’s detention and removal. She is
17 named in her official capacity.
- 18 3. Respondent Bruce Scott is employed by the private corporation, the GEO group, Inc.,
19 as Warden of the NWIPC, where Petitioner is detained. He has immediate physical
20 custody of Petitioner. He is sued in his official capacity.
- 21 4. Respondent Todd Lyons is the Acting Director of ICE. As such, Mr. Lyons is
22 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and
23 removal. He is named in his official capacity.
- 24 5. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
25 Security (DHS). DHS oversees ICE, which is responsible for administering and
enforcing the immigration laws. Secretary Mullin is the ultimate legal custodian of
Petitioner. He is sued in his official capacity.

- 1 6. Respondent Pamela Bondi is the Attorney General of the United States. She oversees
2 the Department of Justice, of which the Executive Office for Immigration Review and
3 the immigration court system operate as a component agency. She is sued in her
4 official capacity.

5 **STATEMENT OF FACTS**

- 6 1. Xin Sun was born on [REDACTED] in China. Neither he nor his parents are citizens of
7 any country besides China.
8 2. Mr. Sun fled China via Japan and Mexico and entered the United States on December
9 22, 2024, in Tecate, California. He has been in ICE custody ever since. He stayed at
10 various detention centers around the United States and was ultimately moved to the
11 Northwest ICE Processing Center in Tacoma, Washington in early 2025. **Exhibit 1.**
12 **Declaration of Xin Sun.**
13 3. Mr. Sun retained counsel from Kai Law Group in April 2025.
14 4. On September 25, 2025, an Immigration Judge granted Mr. Sun withholding of
15 removal, finding that he would more likely than not be persecuted by the Chinese
16 government if he was returned to China. **Exhibit 2. IJ Decision Granting**
17 **Withholding of Removal.**
18 5. The Department of Homeland Security (“DHS”) waived its right to appeal at Mr. Sun’s
19 individual hearing on September 25, 2025. Moreover, no Notice of Appeal was ever
20 filed and the IJ’s order became administratively final. **Exhibit 2. IJ Decision**
21 **Granting Withholding of Removal.**
22 6. Despite the IJ’s order of relief, Mr. Sun has continuously been held in ICE custody
23 since his hearing date in September 2025 – an additional six months. During that time,
24 Mr. Sun was contacted by one ICE officer around January 9, 2026, regarding his
25 potential removal to a third country. This officer told Mr. Sun that he would “be kept
in the detention center forever if he did not cooperate.” **Exhibit 3. Petitioner’s**
Traverse.

- 1 7. The ICE officer then provided Mr. Sun an application for a Chinese travel document
2 because his passport was confiscated when he entered the United States. *Id.* The ICE
3 officer also gave Mr. Sun a list entitled “Visa Free Chinese,” which contained a list of
4 country names and the number of days that a Chinese passport holder could
5 temporarily stay there. Mr. Sun would be unable to stay in any of these countries
6 permanently, nor is there any guarantee that Mr. Sun would not be sent back to China
7 – where he would be persecuted.
- 8 8. On January 20, 2026, Petitioner was given a document to sign by an ICE agent.
9 Because he could not read or understand the document, he refused to sign.
- 10 9. That same day, January 20, 2026, Petitioner, through undersigned counsel, filed a
11 petition for habeas corpus with the United States District Court in the Western District
12 of Washington (Tacoma). The Department filed its response on February 4, 2026, and
13 Petitioner filed his Traverse on February 9, 2026.
- 14 10. The Court denied Petitioner’s Habeas Petition on February 24, 2026. The Court
15 reasoned that (1) Petitioner’s argument under *Zadvydas* was premature given that he
16 had yet to be detained following the final order of removal for six months; (2)
17 Petitioner’s argument that ICE violated the Administrative Procedure Act and due
18 process failed to identify specific allegations and their corresponding claims or relief.
- 19 11. After the initial habeas petition was denied in February 2026, ICE again presented Mr.
20 Sun with a list of countries and informed him that he was required to select one by
21 March 26, 2026, or face up to ten (10) years of imprisonment. ICE further advised Mr.
22 Sun that the country of their choice would be Uganda. Mr. Sun does not speak the
23 language of Uganda, nor does he speak English, and he has no ties to that country.
24 This demand places Mr. Sun in an impossible position, effectively coercing him under
25 threat of severe criminal penalty especially knowing that he would not be able to
survive in that country.

LEGAL FRAMEWORK

I. APPREHENSION AND DETENTION OF ALIENS

1. Habeas corpus is the proper vehicle to challenge unlawful immigration detention. Under 28 U.S.C. § 2241, federal district courts have jurisdiction to review the legality of noncitizens' detention and to order release where custody violates the Constitution or the laws of the United States.
2. The Due Process Clause of the Fifth Amendment prohibits arbitrary civil detention and guarantees that no person may be deprived of liberty without adequate procedural safeguards. *Zadvydas*, 533 U.S. at 690. It applies to "all persons within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 679; *see also Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("It is well established that the Fifth Amendment entitles aliens to due process of law...").
3. Immigration detention is civil in nature and therefore must be reasonably related to legitimate governmental purposes such as ensuring appearance at proceedings or protecting the public. *Zadvydas*, 533 U.S. at 690-91; *see also Demore*, 538 U.S. at 515. Civil detention must likewise comply with applicable statutory provisions and agency regulations. *See Roca v. Scott*, 2026 WL 60412, *3+ (W.D. Wash. January 8, 2026) ("Where a procedure is set forth in an agency's regulations in order to protect a fundamental constitutional right such as due process, and the agency fails to follow that regulatory procedure, courts have found that this failure constitutes a due process violation.") Thus, detention becomes constitutionally unlawful when it is prolonged without individualized findings of flight risk or danger, or where no procedural mechanism exists to challenge custody.

II. STATUTORY WITHHOLDING OF REMOVAL AND RELIEF

1. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal

1 and relief under the Convention Against Torture. Non-citizens may be ineligible for
2 asylum for several reasons, including failure to apply within one year of entering the
3 United States. *See* 8 U.S.C. §1158(a)(2). There are fewer restrictions on eligibility for
4 withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for
CAT deferral of removal. 8 CFR § 1208.16.

5 2. When an Immigration Judge grants a non-citizen Withholding of Removal, the IJ
6 issues a removal order and simultaneously withholds that order with respect to the
7 country or countries for which the non-citizen demonstrated a sufficient risk of
8 persecution or torture. *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once
9 withholding is granted, either party has the right to appeal that decision to the BIA
10 within 30 days. 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party
appeals within the 30-day period, the withholding of removal and the accompanying
removal order become administratively final. *id.* § 1241.1.

11 3. When a non-citizen has a final withholding of removal grant, they cannot be removed
12 to the country for which they demonstrated a sufficient likelihood of persecution. 8
13 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). ICE is authorized to remove non-
14 citizens who were granted withholding of removal to a third country, so long as the
15 foreign government will accept them. 8 U.S.C. § 1231(b)(1) – (3); 8 U.S.C. §
16 1231(b)(2)(E)(vii). However, “the Attorney General may not remove an alien to a
17 country if the Attorney General decides that the alien’s life or freedom would be
18 threatened in that country because of the alien’s race, religion, nationality, membership
19 in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). And, non-
20 citizens “have the right to meaningful notice before removal to any third country” and
21 “the right to a meaningful opportunity raise a country-specific claim against removal
before removal to any third country.” *D.V.D. v. DHS*, Civil Action No. 25-10676-BEM
(D. Mass. February 25, 2026).

22 4. If ICE identifies an appropriate alternative country of removal, ICE must undergo
23 further proceedings in immigration court to effectuate removal to that country. *Jama*
24 *v. ICE*, 543 U.S. 335, 348 (2005); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24
25

1 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third country,
2 as DHS would first need to give petitioners notice and the opportunity to raise any
3 reasonable fear claims.”).

4 III. DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF
5 REMOVAL

6 A. Statutory Framework

- 7
- 8 1. ICE has authority to detain non-citizens like Mr. Sun with a final order of removal for
9 90 days after the removal order becomes final – a time frame known as “the removal
10 period.” 8 U.S.C. § 1231(a)(1)(A). When the 90-day period expires the non-citizen
11 may be released under supervision or the government may continue detention if the
12 non-citizen is determined to be a “risk to the community,” “unlikely to comply with
13 the order of removal,” or is found to be inadmissible or removable under specified
14 statutory categories. 8 U.S.C. § 1231(a)(6).
 - 15 2. To extend detention after the removal period, DHS must follow regulations outlining
16 post-custody review procedures intended to provide due process. 8 U.S.C. §
17 1231(a)(6); 8 C.F.R. §§ 241.4(c)(1), (h)(1), (j)(2), (k)(1)(i), (k)(2)(ii).
 - 18 3. The Supreme Court further held in *Zadvydas* that 8 U.S.C. § 1231(a)(6) contains an
19 implicit time limit, as it authorizes detention only for “a period reasonably necessary
20 to bring about the [non-citizen]’s removal from the United States. *Zadvydas*, 533 U.S.
21 at 689. Even where the government’s proposed goals for detention are ensuring the
22 appearance of a non-citizen to immigration proceedings and/or preventing danger to
23 the community, neither purpose justifies indefinite detention. *Id.* at 690. Thus, the
24 Supreme Court adopted a “presumptively reasonable period of detention of six months
25 when reviewing detention during the removal period.” *Zadvydas*, 533 U.S. at 701.
After six months, if there is no “good reason to believe that there is a significant
likelihood of removal in the reasonably foreseeable future, the Government must

1 respond with evidence sufficient to rebut that showing.” *Id.* And “once removal is no
2 longer reasonably foreseeable, continued detention is no longer authorized by statute.”
3 *Id.* at 699.

4 B. Regulations

- 5
- 6 1. DHS regulations provide that, before the end of the 90-day removal period, the local
7 ICE field office with jurisdiction over the non-citizen’s detention must conduct a
8 custody review to determine whether the non-citizen should remain detained. 8 C.F.R.
9 § 241.4(c)(1), (h)(1), (k)(1)(i).
 - 10 2. To avoid indefinite detention that would raise constitutional Due Process concerns, 8
11 C.F.R. § 241.4(i)(7) includes a supplemental review procedure that ICE must initiate.
12 Under this procedure, ICE evaluates the foreseeability of removal by analyzing factors
13 such as the history of ICE’s removal efforts to third countries. *Id.* § 241.13(f). If ICE
14 determines that removal is not reasonably foreseeable but nonetheless seeks to
15 continue detention based on “special circumstances,” it must justify the detention
16 based on narrow grounds such as national security or public health concerns, *id.* §
17 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that
18 the non-citizen is “specially dangerous.” *Id.* § 241.14(f).

17 C. ICE Policy

- 18
- 19 1. Consistent with the statutory and regulatory scheme, long-standing ICE policy favors
20 the prompt release of non-citizens who have been granted withholding of removal.
 - 21 2. The 2004 ICE Memorandum on Post-Relief Release (February 9, 2004) states that “it
22 is ICE policy to favor the release of [non-citizens] who have been granted protection
23 relief by an Immigration Judge, absent exceptional concerns such as national security
24 issues or danger to the community and absent any requirement under law to detain.”
25

- 1 3. In February 2021, Acting ICE Director, Tae Johnson, circulated a memorandum to all
2 ICE employees reminding them of the “longstanding policy” that “absent exceptional
3 circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT
4 protection by an immigration judge should be released. . .” Director Johnson clarified
5 that “in considering whether exceptional circumstances exist, prior convictions alone
6 do not necessarily indicate a public safety threat of danger to the community.”

7 **ARGUMENT**

8 I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION, HIS
9 REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT
10 SHOULD ORDER HIS IMMEDIATE RELEASE.

11 A. Mr. Sun is not subject to mandatory detention.

- 12
13 1. Mr. Sun is not and never has been subject to mandatory detention under INA § 236(c).
14 Mr. Sun has never committed a crime, either in the United States or anywhere else in
15 the world.¹ **Exhibit 1. Mr. Sun’s declaration.**

16 B. Mr. Sun’s removal is not significantly likely in the reasonably foreseeable future
17 under *Zadvydas*.

- 18
19 1. Mr. Sun’s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained
20 for more than 3 months since he received a final order of withholding of removal. The
21 90-day removal period began on September 25, 2025, when the government waived
22 appeal at the conclusion of his individual hearing and the removal order became
23 administratively final. 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c). That removal

24 ¹ Note that Mr. Sun’s declaration indicates he was detained by the Chinese police; however, he was neither
25 charged nor convicted of a crime, and his history of detention comprises the basis for his protection claim.

1 period ended on December 24, 2025. It has since been an additional 87 days that Mr.
2 Sun has been detained without diligent action taken by ICE to effectuate his removal.
3 The 180 day period of presumptive reasonable detention under *Zadvydas* will
4 concluded on March 24, 2026. After that date, the Department must sustain its burden
5 to show that Mr. Sun's removal is likely, such that his continued detention is
6 warranted, otherwise that detention is unconstitutional and not authorized by statute.
7 *Zadvydas*, 533 U.S. at 699.

- 8 2. DHS failed to adhere to its own regulations to conduct an individualized custody
9 determination within the 90-day removal period. 8 C.F.R. § 241.4(c)(1), (h)(1),
10 (k)(1)(i). It moreover failed to abide by its own supplemental procedures to justify Mr.
11 Sun's continued detention, as it contacted him one time – outside of the 90-day
12 removal period – to discuss removing Mr. Sun to a third country. The Department
13 initiated this conversation on January 9, 2026, initially threatening Mr. Sun that he
14 would be detained forever and giving him a list of countries that would allow Mr. Sun
15 to travel there for a temporary basis.
- 16 3. These actions betray DHS procedures and the INA's implementing regulations, given
17 that there was no assurance from any foreign country that it would receive Mr. Sun, or
18 that it would not repatriate him back to China.
- 19 4. The Department must similarly provide Mr. Sun with meaningful notice and
20 opportunity to express a fear of persecution or torture in any third country to which he
21 may be removed. *D.V.D.*, Civil Action No. 25-10676-BEM.
- 22 5. Petitioners like Mr. Sun who have been granted removal protection from their country
23 of citizenship are at high risk of indefinite detention. *See, e.g., Vargas v. Noem*, No.
24 25-3155-JWL, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025) (explaining that as
25 petitioner "may not be removed to his home country of Colombia, given the deferral
order still in effect; and thus, because he can only be removed to a third country that
agrees to accept him; his removal may be considered more difficult").

- 1 6. The Department has inappropriately blamed Mr. Sun for his continued detention,
2 alleging that he failed to select any countries to which he may be sent and as such was
3 uncooperative. However, this incorrectly places the burden for removal with Mr. Sun
4 when it is the Department that has the burden to identify a third country of removal,
5 notify Mr. Sun of that country, and provide him with the meaningful opportunity to
6 express a fear of persecution in that country. *D.V.D.*, Civil Action No. 25-10676-BEM.
- 7 7. Moreover, the Department has clearly taken no action to remove Mr. Sun, considering
8 its statements that Mr. Sun did not identify a country to which he may be removed
9 (because none of the proposed countries would allow him to stay permanently nor
10 provide him any protection from repatriation to China) and that it was “working to
11 obtain a TD for Petitioner to whichever country Petitioner may potentially be
12 removed.” **Exhibit ##. Respondent’s Response to Habeas Petition.** DHS is not
13 working on, nor has it taken any steps to obtain, a travel document to any country
14 given that no one specific country of removal has been identified. However, ICE
15 identified Uganda as a potential country of removal and informed Mr. Sun that he can
16 and will be deported there with or without his consent.
- 17 8. Respondent’s response to Petitioner’s Initial Habeas Petition is incredibly general, as
18 it lacks specific details or corroboration that the Department has made any inquiry into
19 obtaining Mr. Sun a travel document at all. DHS has had six months to effectuate Mr.
20 Sun’s removal and has failed to do so. Continued detention in this case is therefore
21 unconstitutional.

22 C. This Court should order Mr. Sun’s immediate release.

- 23 1. Because Mr. Sun’s removal is not reasonably foreseeable, *Zadvydas* requires that he
24 be immediately released. 533 U.S. at 700-01 (describing release as an appropriate
25 remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of
supervision”). To order his immediate release, this Court need only determine that Mr.
Sun’s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze

1 whether he poses a danger to the community or a flight risk. 533 U.S. at 699-700 (“[I]f
2 removal is not reasonably foreseeable, the court should hold continued detention
unreasonable and no longer authorized by statute.”).

- 3 2. *Zadvydas* explicitly held that flight risk is already baked into the reasonable
4 foreseeability analysis, *id.* at 690 (observing that the “justification . . . [of] preventing
5 flight . . . is weak or nonexistent where removal seems a remote possibility at best”),
6 and that dangerousness cannot unilaterally justify indefinite civil detention barring
7 “special circumstances,” which may include the non-citizen being a “suspected
8 terrorist” but do not include the non-citizen’s “removable status itself.” *Id.* at 691.
9 *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing
alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary
10 [civil detention].”).
- 11 3. With respect to Mr. Sun’s continued detention, ICE has not invoked the regulations
12 governing these “special circumstances” determinations. 8 C.F.R. § 241.14.
13 Additionally, this Court or ICE is free to impose conditions on release to mitigate any
14 potential concerns regarding flight risk or danger to community. *Zadvydas*, 533 U.S.
15 at 700 (“[T]he [noncitizen]’s release may and should be conditioned on any of the
various forms of supervised release that are appropriate in the circumstances.”).

16 II. ICE’S CONTINUED DETENTION OF MR. SUN VIOLATES THE APA AND 17 DUE PROCESS.

- 18 1. Agencies are bound to follow their own rules that affect the fundamental rights of
19 individuals, even self-imposed policies that limit otherwise discretionary decisions.
20 *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (setting aside an order of deportation
21 where the Board of Immigration Appeals failed to follow procedures governing
22 deportation proceedings). When agencies fail to adhere to their own policies as
23 required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and
24 contrary to law under the APA, *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C.
25

2018), or as a due process violation. Prejudice is generally presumed when an agency violates its own policy. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

2. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy. *Damus*, 313 F. Supp. 3d at 343 (“[T]his Court is simply ordering that Defendants do what they already admit is required.”). Or, a court may apply the policy itself and order relief consistent with the policy. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018).
3. ICE’s long-standing policy (“the Policy”) is to release non-citizens immediately following a grant of Withholding of Removal relief absent exceptional circumstances. (“Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released . . .”). The 2004 ICE Memorandum on Post-Relief Release (February 9, 2004).
4. To continue detention beyond the 90-day removal period, DHS regulations require ICE to conduct a post-order custody review (POCR) before 90 days or “as soon as possible thereafter.” 8 C.F.R. § 241.4(k)(1)(i)-(iv). DHS must then “notify the [non-citizen] in writing that he or she is to be released from custody or that he or she will be continued in detention pending removal or further review of his or her custody status.” § 241.4(k)(1)(i). “A decision to retain custody shall briefly set forth the reasons for the continued custody,” 8 C.F.R. § 241.4(d), and a copy of “any notice or decision that is being served on the alien” will also be sent to the attorney of record. 8 C.F.R. § 241.4(d)(3).
5. If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters, *id.* § 241.4(c)(2), which must then conduct a custody review before or at 180 days of post-removal order detention. *Id.* § 241.4(k)(2)(ii). As with the 90-day review, the ICE Headquarters is required to issue a “written recommendation [that] shall include a brief statement of the actors that the review panel deems material to its recommendations.” 8 C.F.R. § 241.4(i)(5).

- 1 6. There is no indication in Mr. Sun's case that ICE ever conducted a POOCR or referred
2 the matter to ICE Headquarters for a 180-day custody review. In failing to do so, DHS
3 failed to provide any rationale for Mr. Sun's continued detention and violated its own
4 policies.
- 5 7. If removal is not effectuated and a non-citizen is detained for longer than six months,
6 ICE must justify that continued detention by putting forth "special circumstances" –
7 such as national security or public health concerns. It may likewise argue that the non-
8 citizen is "specially dangerous" and as such should remain detained. 8 C.F.R. §
9 241.14(b)-(f). ICE has failed to put forth any of these justifications in Mr. Sun's case,
10 and thus has violated its own policies regarding Mr. Sun's continued detention.
- 11 8. Mr. Sun has been held in custody by ICE for almost six months since he was granted
12 Withholding of Removal by an Immigration Judge. ICE has taken no action to identify
13 a foreign country that may accept Mr. Sun, nor has it notified Mr. Sun of any potential
14 countries to which he may be sent. It is clear from its previous declaration that the
15 Department has taken no steps to effectuate Mr. Sun's removal contrary to its own
16 policy, and its continued failure to do so violates its own policies and the APA.
- 17 9. ICE violated its own long-standing policy regarding third country removal, thus
18 triggering an *Accardi* violation. ICE's departure from its own policy is arbitrary,
19 capricious, and contrary to law under the APA and violates Mr. Sun's due process
20 rights.

21 III. THIRD PARTY REMOVAL IS NO LONGER CONSTITUTIONAL

- 22 1. On February 25, 2026, a significant legal development occurred regarding so-called
23 "third-country removals." United States District Judge Brian E. Murphy of the District
24 of Massachusetts issued an 81-page decision holding that the government's practice
25 of deporting non-citizens to countries where they are not nationals, without adequate
notice or an opportunity to contest the removal, is unconstitutional. The ruling

1 invalidated a 2025 ICE policy that had expanded such removals and permitted
2 deportations with as little as six hours' notice. Exec. Order No. 14,159, 90 Fed. Reg.
3 8443 (Jan. 29, 2025).

4 The court found that this policy violated due process by providing no meaningful
5 opportunity for individuals to raise claims of potential persecution or torture in the
6 designated country of removal. The court further criticized the government's reliance
7 on unverified diplomatic assurances and noted that the policy improperly targeted
8 individuals who had already been granted protection from removal to their home
9 countries, only to be sent instead to unfamiliar third countries where they had no
10 ties. *See Doe v. Noem*, No. 25-cv-10495, slip op. at 1–2, 15–18 (D. Mass. Feb. 25,
11 2026)

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. §1231(a)(6)**

- 15 1. Petitioner realleges and incorporates by reference the paragraphs above.
- 16 2. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes
17 detention only for “a period reasonably necessary to bring about the alien’s removal
18 from the United States.” 533 U.S. at 689, 701.
- 19 3. Petitioner’s continued detention has become unreasonable because his removal is not
20 reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. §
21 1231(a)(6), and he must be immediately released.

22 **COUNT II**

23 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

1. Petitioner realleges and incorporates by reference the paragraphs above.
2. Courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
3. ICE has departed from its own policy in continuing to detain Petitioner after he was granted protective immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.
4. As a remedy, this Court should conduct its own review of Petitioner’s custody or, at least, order ICE to review Petitioner’s custody under the standard articulated in ICE policy.

COUNT III

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 236(c)

1. Petitioner realleges and incorporates by reference the paragraphs above.
2. Mr. Sun’s ongoing detention violates INA § 236(c) which mandates the detention of certain non-citizens due to specific criminal convictions. He does not have a criminal conviction history anywhere on the planet, yet he has been detained ever since 2024. His detention is not warranted.
3. As a remedy, this Court should conduct its own review of Petitioner’s custody or, at least, order ICE to review Petitioner’s custody under the standard articulated in ICE policy.

COUNT IV

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

1. Petitioner realleges and incorporates by reference the paragraphs above.

2. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.
3. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, § 236(c), 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
3. Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within 3 days;
4. Review Petitioner's custody under the standard articulated in ICE policy and issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any other further relief this Court deems just and proper.

Respectfully Submitted,



Ji Min Kim
Attorney at Law
Kai Law Group PS

**2502 Tacoma Ave S,
Ste 100 Tacoma, WA 98402**

Counsel for Petitioner

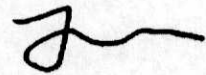
Dated: March 25, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 25, 2026

Respectfully Submitted,



Ji Min Kim

Attorney at Law

Kai Law Group PS