UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONG, SHI HUAN,

Petitioner,

v.

JUDITH C. ALMODOVAR, *et al.*,

Respondents.

Case No. 25 Civ. 7630 (JPC)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

JAY CLAYTON
United States Attorney
Southern District of New York
86 Chambers St., 3rd Floor
New York, New York 10007
Telephone: 212-637-2776
Facsimile: 212-637-2786
Attorney for Respondents

JACOB M. BERGMAN
Assistant United States Attorney
Of Counsel

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The government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus, ECF No. 1 ("Pet."), filed by petitioner Shi Huan Dong ("Petitioner") on September 15, 2025.

PRELIMINARY STATEMENT

Petitioner is a native and citizen of China who has been subject to a final removal order since May 2014 after undergoing full review by the judicial system. On September 14, 2025, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") so that ICE could execute his removal order.

Here, Petitioner essentially tries to challenge ICE's decision to detain him in order to execute his removal order. Petitioner asserts that he should be released from ICE's custody because his detention allegedly violates his due process rights under the Fifth Amendment. In support of his due process claim, Petitioner principally claims that (1) he cannot be removed or detained more than 90 days after his final order of removal and there is no statutory basis to detain him; and (2) his removal is not reasonably foreseeable. Petitioner is not entitled to the relief he seeks. As an initial matter, Petitioner's argument that 8 U.S.C. § 1231 bars his detention as a matter of law because the 90-day removal period provided under that statute has expired is simply wrong. Section 1231 authorizes his detention beyond the 90-day removal period on account of the fact that noncitizens, like Petitioner here, who are inadmissible under section 8 U.S.C. § 1182, "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6). As such, there plainly is a statutory basis to detain him. Second, Petitioner does not meet his threshold burden of demonstrating that his removal is not foreseeable, and even if he does, the government easily rebuts it here.

For these reasons, as detailed further below, this Court should deny the petition for writ of habeas corpus.

BACKGROUND

I. PROCEDURAL HISTORY

Petitioner is a noncitizen detained by ICE. On September 15, 2025, Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. ECF No. 1. Petitioner seeks, among other things, his immediate release from detention. *Id.*

II. FACTUAL BACKGROUND

Petitioner is a citizen of China who unlawfully entered the United States on or about May 3, 2010; he was not admitted or paroled by an immigration officer upon entry. Declaration of Hal S. Waters dated October 1, 2025 ("Waters Decl.") ¶ 3. On or about December 20, 2010, Petitioner filed an affirmative application for asylum ("Form I-589") with U.S. Citizenship & Immigration Services ("USCIS"). *Id.* On February 14, 2011, USCIS served Petitioner with a Notice to Appear ("NTA"), the document used to commence removal proceedings, charging him as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 4. On December 13, 2011, an Immigration Judge denied Petitioner's asylum application and ordered him removed to China. *Id.* ¶ 5. Petitioner timely filed a notice of appeal of that decision with the Board of Immigration Appeals ("BIA"). *Id.* On May 22, 2014, the BIA dismissed Petitioner's appeal, rendering his removal order final. *Id.* ¶ 6. Dong did not file a Petition for Review of the BIA's decision with the Second Circuit Court of Appeals. *Id.*

On or about September 8, 2023, Petitioner's wife, who is a citizen of the United States, filed a Petition for Alien Relative, Form I-130, and an Application to Register Permanent Residence or Adjust Status, Form I-485, with USCIS. *Id.* ¶ 8. The I-130 Petition was denied on January 28, 2025, and the I-485 Application was denied on August 15, 2025. *Id.*

On July 9, 2025, Petitioner was arrested by the New York City Police Department in Brooklyn, New York and charged with the misdemeanor offense of Criminal Possession of a Weapon in the Fourth Degree, in violation of New York Penal Law section 265.01, and a traffic infraction of Unsafe Turn or Failure to Give Appropriate Signal, in violation of New York Vehicle and Traffic Law section 1163(a). *Id.* ¶ 9. The charges remain pending. *Id.*

On September 14, 2025, Petitioner was arrested by ICE on a public sidewalk in Brooklyn, New York pursuant to a Warrant of Removal/Deportation, Form I-205, for purposes of executing his final removal order. *Id.* ¶ 10. He was taken into custody and transported to 26 Federal Plaza, New York, New York for processing and to await transfer to a facility with available bedspace, pending removal. *Id.* Prior to this, Petitioner had never been in Department of Homeland Security ("DHS") custody. *Id.* ¶ 11.

On September 15, 2025, Petitioner was transferred to Delaney Hall Detention Facility in Newark, New Jersey to await transfer to a facility with bedspace. *Id.* ¶ 12. On September 18, 2025, Petitioner was transferred to Alexandria Staging Facility in Alexandria, Louisiana to await transfer to a facility with bedspace. *Id.* ¶ 13. Finally, on September 22, 2025, Petitioner was transferred to Folkston D. Ray ICE Processing Center in Folkston, Georgia after bedspace was secured. *Id.* ¶ 14. Petitioner remains at the Folkston D. Ray ICE Processing Center as of the date of this filing. *Id.*

DHS database checks reveal that Petitioner was issued a Chinese passport that is valid through March 21, 2029. *Id.* ¶ 15. On September 30, 2025, Petitioner informed ICE's Atlanta Field Office's Enforcement and Removal Operations ("ERO – ATL") that while he has lost his passport, he will cooperate with ICE to obtain a travel document. *Id.* ¶ 16. Thereafter, ERO – ATL gathered the information needed to submit a complete travel document request packet for Petitioner to ICE's headquarters in Washington, D.C. for submission to the Embassy of the People's Republic of

China in Washington, D.C. *Id.* ¶ 17. And, ERO – ATL expects to submit this request to ICE headquarters today, October 1, 2025. *Id.* ¶ 18. Since January 2025, China has accepted its citizens who were removed from the United States and will issue travel documents to its nationals who are in the United States. *Id.* ¶ 20. ICE is unaware of any impediments to effectuating Dong's removal to China once it obtains a travel document, *Id.* ¶ 21, and once travel documents are received, Dong will be booked on the next airline flight to China to effectuate his removal from the United States, *Id.* ¶ 19.

III. DETENTION AUTHORITY

Pursuant to 8 U.S.C. § 1231(a), ICE has the authority to detain an alien subject to a final removal order. *See Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("8 U.S.C. § 1231, governs the detention of aliens subject to final orders of removal."); *accord Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"). An order of removal is considered final upon the earlier of "(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B). *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (citing § 1101(a)(47)(B) to conclude that "[a]n order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA."). An alien may request judicial review of a final removal order by filing a petition for review in the court of appeals that has jurisdiction. *See* 8 U.S.C. § 1252(a)(5), (b)(9).

Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal after a removal order becomes final, and during which the

government "shall" detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). When the government is unable to secure removal within the removal period, while detention is no longer mandatory, the government "may" continue to detain four categories of aliens: (1) "inadmissible" aliens, (2) aliens who are "removable" for national-security or foreign-policy reasons or for violating entry conditions, status requirements or certain criminal laws, (3) aliens who pose a "risk to the community," and (4) aliens who are "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). Aliens who fall outside those categories (or who fall within them but are not detained) are subject to supervision upon release. 8 U.S.C. § 1231(a)(3) & (6).

The Supreme Court addressed ICE's authority to detain aliens after their removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. 533 U.S. at 699-700. The Supreme Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. However, the Court did not require the government to release every alien whose detention exceeds six months. Rather, the Court held:

> After this 6-month period, 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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.*

Id. (emphasis added).[1] Thus, the Supreme Court placed the initial burden on the alien. *Id.* If the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *Id.* Following *Zadvydas*, the government promulgated regulations requiring ICE to conduct custody reviews for aliens whose post-removal-order detention has exceeded six months. *See* 8 C.F.R. §§ 241.4, 241.13.

Pursuant to the relevant regulations, ICE "shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2). The regulation permits ICE to exercise its discretion to revoke release when, in the opinion of the revoking official: ". . . (iii) [i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) . . . any other circumstance[] indicates that release would no longer be appropriate." *Id.* The regulation does not require advance notice prior to revoking an alien's release pursuant to section 241.4(*l*)(2).[2]

ICE utilizes different review procedures in instances where an alien subject to a final removal order has "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future," 8 C.F.R. § 241.13(a). In those circumstances, ICE may choose to release an alien subject to

[1] In *Zadvydas*, the concern of "indefinite detention" arose where the petitioners could not be removed from the United States because their home countries would not accept their repatriation, yet the government continued to detain them. *See Zadvydas*, 533 U.S. at 684–86. But "indefinite" does not merely mean of uncertain duration; the concerns animating *Zadvydas* pertained to aliens in a "removable-but-unremovable limbo," where an alien's confinement is "not limited, but potentially permanent." *Jama v. ICE*, 543 U.S. 335, 347 (2005).

[2] In contrast, an alien whose release is revoked due to violations of the terms of the conditions of release under section 241.4(*l*)(1) must be notified at the time of revocation of the reasons for revocation, and must be afforded an initial interview "promptly after his or her return to Service custody" to respond to the reasons stated in the notification. 8 C.F.R. § 241.4(*l*)(1).

"appropriate conditions." 8 C.F.R. § 241.13(g)(1). ICE "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). ICE also has "discretion" to "grant a stay of removal or deportation for such time and under such conditions as [it] may deem appropriate." 8 C.F.R. § 241.6(a).

IV. ARGUMENT

The Court should deny the petition for writ of habeas corpus because Petitioner's detention for the purpose of executing a valid, final, 2014 removal order, complies with all applicable statutes and regulations. Petitioner alleges that his detention violates his Fifth Amendment due process protections because: more than 90 days have elapsed since his final order of removal; his deportation is not reasonably foreseeable; there is no statutory basis to detain him; and DHS has known of Petitioner's address since 2014. These arguments are entirely without merit because the statutory scheme authorizes Petitioner's detention pending his removal, his removal is reasonably foreseeable, and whether or not DHS has known of Petitioner's address is entirely irrelevant.

A. Petitioner's Detention Does Not Violate 8 U.S.C. § 1231

Petitioner argues that his detention violates 8 U.S.C. § 1231 as a matter of law because the 90-day removal period provided under that statute has expired and, more broadly, that there is no statutory basis to detain him. *See* Pet. ¶¶ 20, 22. However, this is simply incorrect, and Petitioner's present detention is permissible under 8 U.S.C. § 1231; accordingly, his due process claim must fail.

As set forth above, 8 U.S.C. § 1231(a) governs the detention of aliens subject to final removal orders such as Petitioner. Contrary to Petitioner's argument, nothing in the statute

prevents Petitioner's detention; there is no absolute immunity from detention after the 90-day removal period. While § 1231(a)(2) provides for a 90-day period of mandatory detention during the removal period,[3] § 1231(a)(6) authorizes detention beyond the removal period. Although Petitioner argues that "there is at present no longer any statutory basis to detain him," he is incorrect; Petitioner is an alien ordered removed under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, and therefore falls within the category of aliens that may be detained even after the removal period expires. *See* 8 U.S.C. § 1231(a)(6); *see also* Waters Decl. ¶ 4.

Moreover, Section 1231(a)(6) does not expressly specify how long detention may continue after the removal period expires. As noted above, in *Zadvydas*, the Supreme Court interpreted the statute to include an "implicit limitation": detention beyond the removal period may last only for "a period reasonably necessary to bring about" removal. *Zadvydas*, 533 U.S. at 689. The Supreme Court identified six months of detention as presumptively reasonable. *Id.* Thereafter, if an alien "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must rebut the showing or release the alien on an order of supervision. *Id.* at 701.

But the six-month period contemplated by *Zadvydas* begins when the alien is *detained*, and it does not automatically start at the conclusion of the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1). *See Callender v Shanahan*, 281 F. Supp 3d 428, 435 (S.D.N.Y. 2017) ("the six-month 'presumptively reasonable period of detention' under Zadvydas … could not have begun until [Petitioner] was detained by ICE."). When, as here, a petitioner brings a claim when he has

[3] The government does not dispute that the statutory 90-day removal period expired in 2014 ninety days after Petitioner's removal order became final. *See* 8 U.S.C. § 1231(a)(1)(B)(i).

not yet been detained for six months, courts routinely dismiss such claims as "premature." *See, e.g.*, *De Oliveira Jimenez v. Searls*, No. 22 Civ. 960 (JLS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (collecting cases); *accord Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011) ("challenge to [alien's] continued post removal order detention is premature" because he "has not been in post-removal-order detention longer than the presumptively reasonable six-month period set forth in *Zadvydas*"); *Rodney v. Mukasey*, 340 F. App'x 761, 764-65 (3d Cir. 2009) (challenge to post-removal-order detention within the six-month presumptively reasonable period under *Zadvydas* premature); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (*per curiam*) ("[The] six-month period thus must have expired at the time [the petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."). Here, Petitioner has been detained since September 14, 2025—approximately two and a half weeks. Waters Decl. ¶ 10. Petitioner's challenge therefore should be rejected as premature. And "[b]ecause [Petitioner's] petition is premature, the Court need not determine the likelihood of his removal in the reasonably foreseeable future." *See De Oliveira Jimenez*, 2023 WL 11134381, at *5 n.4.

Petitioner also argues, without elaboration, that "Mr. Dong's address and whereabouts were known to DHS since [August 20, 2014]. [And] There is at present no longer any statutory basis to detain him. *Farez-Espinoza* v. *Chertoff,* 600 F. Supp. 2d 488, 499, 500 (S.D.N.Y. 2009), *see Ulysse* v. *Dep't of Homeland Sec.,* 291 F. Supp.2d 1318, 1324 (M.D.Fla.2003)." Pet. ¶¶ 21-22. Such arguments lack merit. First, *Ulysee*, is of little use. There, the district court found no statutory authority for INS to detain the petitioner after the 90-day removal period expired, but it failed to consider § 1231(a)(6) or otherwise address *Zadvydas*. Second, *Farez-Espinoza* is also unhelpful for Petitioner, not least of which because that case it was wrongly decided. Like the district court in *Ulysee*, the decision in *Farez-Espinoza* fails to address § 1231(a)(6). It also

erroneously viewed *Zadvydas*' presumptively reasonable six-month period of detention to run from the date of the removal order, regardless of whether the alien was detained at the time. That view is contrary to both common sense and the law. The decision in *Callender* is instructive. There, the district court correctly held that the six-month "presumptively reasonable period of detention" under *Zadvydas*, begins when a person is detained, not when their order of removal becomes final. *See Callender*, 281 F. Supp 3d at 435. The court's reasoning in *Callendar* makes perfect sense since the Supreme Court in *Zadvydas* was concerned with the potential for indefinite *detention* under Section § 1231(a)(6). *Zadvydas*, 533 U.S. at 690; *see also Rodriguez–Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense.") (internal quotation marks and citation omitted); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) (noting that "detention is the core issue in *Zadvydas*" and holding that "the time between Petitioner's removal order becoming final and his detention does not impact the due process analysis established by *Zadvydas*"); *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) ("Because *Zadvydas* clearly involved *detention* of a petitioner during the presumptively reasonable period, it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody."). Accordingly, Petitioner's arguments are without merit.

Lastly, Petitioner does not explain why any purported knowledge by DHS of Petitioner's address renders his detention invalid. As described above, there is plainly a statutory basis for his detention and any knowledge of Petitioner's whereabouts does not alter that.

B. Petitioner's Removal is Reasonably Foreseeable

Petitioner states that detention is not supported where removal is not reasonably foreseeable. Pet. ¶ 24. Beyond stating this general proposition, Petitioner does not make any

showing of why his removal is not reasonably foreseeable. In light of this, his due process claim must fail.

It is indisputable that the immigration laws clearly authorize ICE to detain aliens subject to final orders of removal. As explained above, the Supreme Court held that aliens subject to final removal orders may be detained for as long as is "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court concluded that six months was a presumptively reasonable period of time for detention in order to execute a removal order. *Id.* at 701. While it found that this six-month period was presumptively reasonable, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* An alien challenging their post-removal-order detention bears the initial burden of "providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," after which "the Government must respond with evidence sufficient to rebut that showing." *Id.*

Petitioner has not met his threshold burden of showing that there is good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. He offers nothing more than a conclusory statement that his removal is not reasonably foreseeable. However, "mere assertions that removal is unforeseeable do not satisfy this burden." *Juma v. Mukasey*, No. 09 Civ. 3122 (PAC) (AJP), 2009 WL 2191247, at *3 (S.D.N.Y. July 23, 2009) (quoting *Zadvydas*, 533 U.S. at 701); *see Callender*, 281 F. Supp. 3d at 434–35 (stating that allegations that an embassy "will not issue a travel document in the foreseeable future" or that "government has been unable to obtain a travel document to date" do no satisfy petitioner's burden.). Moreover, Petitioner cannot meet his burden by merely relying on the length of his detention—which, to date, is roughly two and half weeks—because the passage

of time without issuance of a travel document, by itself, does not show that there is no significant likelihood of removal within the reasonably foreseeable future. *See, e.g.*, *Beckford v. Lynch*, No. 15-cv-1020 (JTC), 2016 WL 827389, at *6 (W.D.N.Y. Mar. 3, 2016) (collecting cases); *Newell v. Holder*, 983 F. Supp. 2d 241, 248 (W.D.N.Y. 2013) ("[T]he mere passage of time [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal."). In light of the short period of Petitioner's detention, it is difficult to see how Petitioner could meet his burden at this time—especially given that there is no impediment to Petitioner's removal. *Cf. Montestime v. Reilly*, 704 F. Supp. 2d 453, 458-59 (S.D.N.Y. 2010) (due process violation arising from the United States' then-existing moratorium on deportations to Haiti); *Ly v. Hansen*, 351 F.3d 263, 266 n.1, 271-73 (6th Cir. 2003) (detention unconstitutional where petitioner's actual removal was never a possibility due to the lack of a repatriation agreement between the United States and Vietnam).

But even if Petitioner could make some showing to meet his initial burden—which he cannot—the government easily rebuts it here by showing that his removal is in fact reasonably foreseeable. In order to repatriate Petitioner to China, because Petitioner states that he has lost his passport, ICE must submit an application to obtain travel documents to the Chinese Embassy in Washington, D.C. Waters Decl. ¶ 17. Since detaining Petitioner on September 14, 2025, ICE has already obtained the documents needed to complete the application. *Id.* ¶¶ 17, 18. And, ERO – ATL expects to submit a travel document application to ICE headquarters by the close of business today, October 1, 2025. *Id.* ¶ 18. ICE headquarters, in turn, will in turn coordinate with the Chinese embassy in Washington, D.C. *Id.* ¶ 17.

This is not a case where the detention is "indefinite and potentially permanent," *Demore v. Kim*, 538 U.S. 510, 528 (2003), nor is Petitioner in "removable-but-unremovable limbo," *Jama*,

543 U.S. at 347. Rather, as mentioned above, ICE expects to submit by the close of business today, October 1, 2025, the travel documentation application to headquarters for Petitioner. Waters Decl. ¶ 18. Based on recent experience, ICE anticipates that, unlike in the past, China will issue a travel documents for Petitioner. *Id.* ¶ 20. Once ICE obtains a travel document for Petitioner, it can, and fully intends to, execute Petitioner's final removal order. *Id.* ¶ 19. Petitioner's "due process rights are not jeopardized by his continued detention as long as his removal remains reasonably foreseeable." *Portillo v. Decker*, No. 21 Civ. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022).

In light of the fact that ICE is actively pursuing Petitioner's removal and expects to receive a travel document to effectuate his removal to China, due process does not require that he be released while ICE completes the removal process.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's petition for writ of habeas corpus.

Dated: New York, New York
October 1, 2025

Respectfully submitted,

JAY CLAYTON
United States Attorney
Southern District of New York
Attorney for Respondents

By: *s/ Jacob M. Bergman*
JACOB M. BERGMAN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: 212-637-2776
jacob.bergman@usdoj.gov