

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DENGCHENG CHEN,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 25 Civ. 8098 (JGLC)

**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: 212-637-2652
Attorney for Respondents

MARY ELLEN BRENNAN
Assistant United States Attorney
Of Counsel

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 2

 I. PROCEDURAL HISTORY..... 2

 II. FACTUAL BACKGROUND..... 2

 III. DETENTION AUTHORITY..... 4

 IV. ARGUMENT..... 7

 A. **Petitioner’s** Detention Does Not Violate 8 U.S.C. § 1231 7

 B. Petitioner’s Removal Is Reasonably Foreseeable 10

 C. Petitioner’s Detention Serves Valid Immigration Purposes and Does Not
 Violate His Due Process Rights..... 14

 D. ICE Complied With Regulations in Detaining Petitioner..... 15

 E. Petitioner’s Administrative Procedure Act Challenge Fails 16

CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases	Page:
<i>Abimbola v. Ridge</i> , 181 F. App'x 97 (2d Cir. 2006).....	13
<i>Achouatte v. Holder</i> , 2012 WL 2357711 (N.D. Ala. May 14, 2012).....	16
<i>Beckford v. Lynch</i> , 2016 WL 827389 (W.D.N.Y. Mar. 3, 2016).....	12
<i>Bonitto v. B.I.C.E.</i> , 547 F. Supp. 2d 747 (S.D. Tex. Apr. 17, 2008).....	16
<i>Callender v Shanahan</i> , 281 F. Supp 3d 428 (S.D.N.Y. 2017).....	9, 10, 11
<i>Chupina v. Holder</i> , 570 F.3d 99 (2d Cir. 2009).....	4
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	14
<i>Farez-Espinoza v. Chertoff</i> , 600 F. Supp. 2d 488 (S.D.N.Y. 2009).....	8, 9
<i>Guangzu Zheng v. Decker</i> , 618 F. App'x 26 (2d Cir. 2015).....	12, 13
<i>Hassoun v. Sessions</i> , 2019 WL 78984 (W.D.N.Y. Jan. 2, 2019).....	12
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017)	14
<i>Jama v. ICE</i> , 543 U.S. 335 (2005).....	6, 14
<i>Johnson v. Arteaga-Martinez</i> , 596 U.S. 573 (2022).....	4
<i>Juma v. Mukasey</i> , 2009 WL 2191247 (S.D.N.Y. July 23, 2009)	11

<i>Mohammad v. Lynch</i> , 2016 WL 8674354 (W.D. Tex. May 24, 2016)	16
<i>Montestime v. Reilly</i> , 704 F. Supp. 2d 453 (S.D.N.Y. 2010).....	12
<i>Newell v. Holder</i> , 983 F. Supp. 2d 241 (W.D.N.Y. 2013)	12, 13
<i>Portillo v. Decker</i> , 2022 WL 826941 (S.D.N.Y. Mar. 18, 2022)	14
<i>Rasul v. Barr</i> , 445 F. Supp. 3d 38 (W.D.N.Y. 2020).....	16
<i>Trump v. J.G.G.</i> , 143 S. Ct. 1003 (2025).....	16
<i>Ulysse v. Dep't of Homeland Sec.</i> , 291 F. Supp.2d 1318 (M.D.Fla.2003).....	9
<i>Velasco Lopez v. Decker</i> , 978 F.3d 842 (2d Cir. 2020).....	14
<i>Wang v. Ashcroft</i> , 320 F.3d 130 (2d Cir. 2003).....	4
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	passim

Statutes

8 U.S.C. § 1101	4, 5
8 U.S.C. § 1182.....	1, 2, 3, 8
8 U.S.C. § 1231	passim
8 U.S.C. § 1252.....	5
28 U.S.C. § 2241	2

Regulations

8 C.F.R. § 241.13	6, 7
8 C.F.R. § 241.4.....	6, 7, 15, 16
8 C.F.R. § 241.6	7

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 Dengcheng Chen (“Petitioner”) on September 30, 2025.

PRELIMINARY STATEMENT

Petitioner is a native and citizen of China who has been subject to a final removal order since May 2022 after undergoing full removal proceedings. On June 3, 2025, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement (“ICE”) so that ICE could execute his removal order.

Petitioner challenges ICE’s actions to detain him to execute his removal order on several grounds, each of which fails. 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, 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.

Moreover, Petitioner’s detention comports with due process. Petitioner does not meet his threshold burden of demonstrating that his removal is not reasonably foreseeable; and even if he were to do so, the government easily rebuts any such showing here. The government has procured a travel document to permit Petitioner’s removal and is prepared to book him on the earliest practicable commercial flight to China, once this Court lifts the stay it imposed restraining the government from removing him. Due process does not prohibit Petitioner from being detained while the Government arranges for his departure.

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 30, 2025, Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. ECF No. 1 (“Pet.”). Petitioner seeks, among other things, his immediate release from detention and an injunction prohibiting the government from re-detaining him “absent clear and convincing evidence that removal to China has become imminently foreseeable.” *Id.* at Prayer for Relief. On October 8, 2025, this Court issued an order enjoining ICE from transferring Petitioner out of the Southern District of New York and the United States unless and until the Court orders otherwise, effectively staying Petitioner’s removal. ECF No. 24.

II. FACTUAL BACKGROUND

Petitioner is a citizen of China who unlawfully entered the United States in July 2017. Declaration of Mincheol So, dated December 8, 2025, ECF No. 26 (“So Decl.”) ¶ 3-4. At that time, Petitioner was encountered and arrested by United States Border Patrol. Border Patrol issued Petitioner an expedited removal order, and after Petitioner claimed a fear of return to China, he was put through the credible fear screening process and determined to have a positive credible fear. *Id.* ¶ 4.

On July 24, 2017, Petitioner was served with a Notice to Appear (“NTA”), the document used to commence removal proceedings, charging him as inadmissible pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, at the time of application for admission, is not in possession of a valid unexpired immigration visa, reentry permit, border crossing identification card, or other valid entry document. *Id.* ¶ 5; *see* Return to Habeas Petition, ECF No. 27 (“Return”) Ex. A. Shortly thereafter,

after Petitioner's attorney moved for a bond hearing, an Immigration Judge held a bond hearing on August 22, 2017, and set bond at \$20,000. So Decl. ¶ 7-8. Petitioner posted bond and was released from ICE custody on August 25, 2017. *Id.* ¶ 9. On April 18, 2018, Petitioner filed an I-589 Application for Asylum and for Withholding of Removal. *Id.* ¶ 11.

On September 28, 2019, Petitioner was arrested by the Columbia Police Department in Missouri on charges of assault in the first degree, armed criminal action, and assault in the second degree. *Id.* ¶ 12. On May 14, 2021, Petitioner was convicted in Missouri of two counts of assault in the fourth degree and sentenced to 365 days incarceration. *Id.* ¶ 14. At the conclusion of his sentence, he was released into DHS custody. *Id.* ¶ 15.

On June 14, 2021, DHS filed Additional Charges of Inadmissibility/Deportability (Form I-261), charging Petitioner as inadmissible to the United States under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 18; *see* Return Ex. B. On June 15, 2021, Petitioner appeared before the Immigration Court and moved for a bond hearing. A bond hearing was held, and the Immigration Judge denied bond, finding that Petitioner failed to establish that he is not a danger to the community. So Decl. ¶ 19. Petitioner appealed the bond decision to the Board of Immigration Appeals ("BIA"), and the BIA affirmed the Immigration Judge's decision. *Id.* ¶ 20.

On July 13, 2021, Petitioner appeared for a hearing on the merits of his application for relief. *Id.* ¶ 21. On July 19, 2021, the Immigration Judge sustained both charges of removability, denied Petitioner's applications for relief, and ordered him removed to China. *Id.* ¶ 22. On May 27, 2022, the BIA dismissed Petitioner's appeal, rendering his removal order final. *Id.* ¶ 24.

In or around July 2022, ICE initiated the process of seeking travel documents to effectuate Petitioner's removal to China. *Id.* ¶ 25. ICE was unable to obtain travel documents at that time,

and, consequently, Petitioner was released from ICE custody and placed on Order of Supervision (“OSUP”) on December 15, 2022. *Id.* ¶ 26; *see* Return Exs. C, D.

On April 14, 2025, and again on June 19, 2025, ICE sent requests for travel documents to the Chinese embassy in Washington, D.C. So Decl. ¶ 32. On June 3, 2025, Petitioner was taken into custody by ICE for the purpose of executing his final removal order. *Id.* ¶ 30. On June 6, 2025, he was transported to Orange County Jail in Goshen, New York, for detention pending removal. *Id.* Petitioner remains in detention at Orange County Jail. *Id.* ¶ 34.

On September 3, 2025, following a 90-day post-order custody review, ICE issued a Decision to Continue Detention, notifying Petitioner that ICE had reviewed his file and determined that he would remain detained pending his removal. Return Ex. E.

On October 20, 2025, ICE received a travel document from China for Petitioner, which will expire on January 10, 2026. So Decl. ¶ 33; *see* Return Ex. F. ICE is prepared to book Petitioner on the earliest practicable commercial flight to China to effectuate his removal from the United States once this Court’s stay of removal is lifted. So Decl. ¶ 35.

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)(6) 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

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).

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 "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

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. *See* Pet. ¶¶ 32-37. However, this is simply incorrect, and Petitioner's present detention is permissible under 8 U.S.C. § 1231.

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 while ICE seeks to execute his removal order; there is no absolute

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).

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. Petitioner’s assertion that ICE now lacks any statutory authority to detain him for removal is incorrect; Petitioner is an alien ordered removed under 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), 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* So Decl. ¶¶ 5, 18.

Section 1231(a)(6) does not expressly specify how long detention may continue after the removal period expires. But the Supreme Court has resolved this question. 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.

Petitioner points to the years that have elapsed between the expiration of the 90-day removal period and the present, suggesting that ICE has attempted “to ‘arbitrarily trigger the removal period’ by delaying arrest” to “manufacture detention authority that has expired.” *See* Pet. ¶¶ 38-40 (quoting *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009)).

³ The government does not dispute that the statutory 90-day removal period expired in 2022, ninety days after Petitioner’s removal order became final. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Petitioner was detained during the removal period in 2022, but he was released on an order of supervision after ICE was unable to obtain travel documents for Petitioner’s removal to China at that time. *See* So Decl. ¶ 26.

That assertion is false, and also legally incorrect. The government concedes that the 90-day removal period in this case began and ended in 2022 and does not rely on any “arbitrar[y] trigger[ing]” of that period for its current detention authority. As discussed, § 1231(a)(6) provides the legal authority for Petitioner’s detention beyond that 90-day removal period.

Moreover, the amount of time that elapsed while Petitioner was released on an Order of Supervision is irrelevant to the analysis of the reasonableness of Petitioner’s current detention under *Zadvydas*. While ICE, in its discretion, permitted Petitioner to remain at liberty from December 2022, after ICE was unable to obtain a travel document at that time, that administrative grace did not confer protection from future detention to effectuate removal, such that it precluded ICE from arresting and detaining him at a later date once it was prepared to remove him.⁴ By the terms of his release in December 2022, Petitioner was required to report “for deportation or removal” from the United States and to assist ICE “in obtaining any necessary travel documents.” Return Ex. D.

⁴ The two district court cases Petitioner cites, *Farez-Espinoza*, 600 F. Supp. 2d at 499, 500 and *Ulysse v. Dep’t of Homeland Sec.*, 291 F. Supp.2d 1318, 1324 (M.D.Fla.2003), do not assist him. Each decision hinged on whether the 90-day removal period started to run at the time the petitioner’s removal order became administratively final, notwithstanding the fact that the petitioner in each case was not detained during the 90 days immediately following the date on which the removal order became final. Here, by contrast, the government does not dispute that the 90-day removal period has expired, nor that Petitioner was detained during those 90 days. Instead, the government has argued that § 1231(a)(6) provides statutory authority for his detention beyond that 90-day period—a legal reality that the courts either overlooked or failed to address in *Farez-Espinoza* and *Ulysse*. The court in *Farez-Espinoza* 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, but that view is contrary to both common sense and the law. In *Callender v. Shanahan*, the district court correctly held that the six-month “presumptively reasonable period of detention” under *Zadvydas*, runs when a person is detained, not when their order of removal becomes final. 281 F. Supp 3d 428, 435 (S.D.N.Y. 2017). 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.

Petitioner is also incorrect that the presumptively reasonable six-month period of detention described by the Supreme Court in *Zadvydas* “begins when the 90-day removal period expires, not when ICE chooses to effectuate physical detention.” Pet. ¶ 44. The six-month period contemplated by *Zadvydas* runs while the alien is *detained*, and it does not automatically run continuously from the conclusion of the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1). Otherwise, under Petitioner’s reading, a presumptively reasonable period *of detention* runs even when a person is not detained. That makes no sense. *See Callender*, 281 F. Supp 3d at 435.

In any event, there is no dispute that the presumptively reasonable six-month period of detention has already elapsed here, so it is irrelevant when that period began. Nonetheless, Petitioner’s detention pending removal remains statutorily authorized and does not violate due process. As discussed below, Petitioner has not met his threshold burden under *Zadvydas* of showing that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and even if he did, the government rebuts it here, as ICE is prepared to remove him once the Court lifts the stay of removal. *Zadvydas*, 533 U.S. at 701.

B. Petitioner’s Removal Is Reasonably Foreseeable

Petitioner states that his continued detention violates due process because his removal is not reasonably foreseeable. *See* Petition ¶¶ 41-50. Beyond the length of time that has passed since his removal order became final, speculative statements about China’s willingness to accept its nationals from the United States, and ICE’s ability to obtain travel documents, however, Petitioner does not make any showing that his removal is not reasonably foreseeable. In light of this, his due process claim fails.

The immigration laws authorize ICE to detain aliens subject to final orders of removal. 8 U.S.C. § 1231(a)(2), (a)(6). 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 does not attempt to meet 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. As an initial matter, he incorrectly suggests that it is the government that bears the initial burden of showing that removal is reasonably foreseeable. Pet. ¶ 47. He then offers only conclusory and speculative allegations about the amount of time that has passed since his removal order became final in 2022, China’s willingness to accept nationals ordered removed from the United States, and ICE’s supposed inability to “obtain travel documents from China.” *Id.* But “mere assertions that removal is unforeseeable do not satisfy [the petitioner’s] burden [under *Zadvydas*].” See *Juma v. Mukasey*, No. 09 Civ. 3122 (PAC)(AJP), 2009 WL 2191247, at *3 (S.D.N.Y. July 23, 2009) (vague, conclusory, and general claims that removal is not foreseeable, and that Embassy will not issue travel document in foreseeable future, fails to meet initial burden); *id.* at *3 n.4 (collecting cases); see also, e.g., *Callender*, 281 F. Supp. 3d 428, 434–35 (S.D.N.Y. 2017) (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 not satisfy petitioner’s burden); *Newell v. Holder*, 983 F. Supp. 2d 241, 248 (W.D.N.Y. 2013); *Beckford v. Lynch*, No. 15-cv-1020 (JTC), 2016 WL 827389, at *6 (W.D.N.Y. Mar. 3, 2016). And as noted below, here, the record is to the contrary. In October 2025, Petitioner was issued a travel document permitting his removal. So Decl. ¶ 33; Return Ex. F. While Petitioner alleges that “China has consistently refused to accept its nationals subject to removal from the United States, particularly those who sought political asylum,” Pet. ¶ 47, this assertion is undermined by the fact that China has actually issued a travel document permitting Petitioner’s removal to China, *see* So Decl. ¶ 33; Return Ex. F.

Moreover, Petitioner cannot meet his burden by merely relying on the length of his current detention—which, to date, is more than six months—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*, 168 F. Supp. 3d at 539-40 (collecting cases); *Newell*, 983 F. Supp. 2d at 248 (“[T]he mere passage of time [is] insufficient to meet the petitioner’s burden to demonstrate no significant likelihood of removal.”). This is not a case where a petitioner has identified a specific impediment to his removal. *Cf. Montestime v. Reilly*, 704 F. Supp. 2d 453, 456, 458 (S.D.N.Y. 2010) (finding a “likelihood of indefinite detention” due to the United States’ then-existing moratorium on deportations to Haiti following 2010 earthquake); *Hassoun v. Sessions*, No. 18 Civ. 586, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (finding that petitioner had met his burden where he “has shown that the countries with which he has any affiliation,” including Lebanon, Sweden, and the United Arab Emirates, “will not accept him”). Nor can this Court’s stay of removal create a legal impediment rendering removal unforeseeable under *Zadvydas*. *See, e.g., Guangzu Zheng v. Decker*, 618 F. App’x 26, 28 (2d Cir. 2015) (“[T]he Government has been prevented from removing Zheng by the BIA’s

stay of removal (sought by Zheng) and by its own forbearance policy (also resulting from Zheng’s pursuit of an additional stay). If this Court denies Zheng’s petition for review and pending stay motion, the Government can seek another travel document. Given this record, Zheng has not provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” (internal quotation marks omitted)); *Abimbola v. Ridge*, 181 F. App’x 97, 99 (2d Cir. 2006) (alien’s filing of numerous petitions is a “self-inflicted wound” that does not entitle him to relief under *Zadvydas*).

Even if Petitioner could meet his initial burden—which he cannot—the government has rebutted any showing here by demonstrating that his removal is in fact reasonably foreseeable. In order to repatriate Petitioner to China, ICE was required to submit an application to obtain travel documents to the Chinese Embassy in Washington, D.C. ICE obtained the documents needed to complete the application, and submitted its most recent request for travel documents to the Chinese Embassy in Washington, D.C. in June 2025. So Decl. ¶ 32. China has issued ICE a travel document for Petitioner’s removal, and so ICE is ready to effectuate Petitioner’s removal and is prepared to do so promptly once the Court lifts the stay of removal. *Id.* ¶35. Accordingly, the government has shown that Petitioner’s removal is significantly likely to occur in the reasonably foreseeable future. *Cf. Newell*, 983 F. Supp. 2d at 248 (denying habeas petition where a foreign consulate previously “issued a travel document for petitioner, and travel arrangements for his removal were made by DHS but were cancelled” after petitioner filed a petition for review and requested a stay of removal); *accord Guangzu Zheng*, 618 F. App’x at 28.

ICE avers that it is unaware of any impediments to effectuating Petitioner’s removal to China now that it has obtained travel documents, and intends to effectuate Petitioner’s removal as soon as practicable. So Decl. ¶ 35. Accordingly, 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 a “removable-but-unremovable limbo,” *Jama*, 543 U.S. at 347. Rather, the only current impediment to removal is the stay this Court issued when this habeas action was filed. *Id.* ¶ 33, 35. 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).

Because ICE is actively pursuing Petitioner’s removal and has received a travel document to effectuate his removal to China, his detention pending removal does not violate due process.

C. Petitioner’s Detention Serves Valid Immigration Purposes and Does Not Violate His Due Process Rights

Petitioner argues that his detention violates due process because it does not serve a lawful immigration purpose. Petition ¶¶ 51-57. This claim is without merit.

Petitioner’s detention pending his removal from the United States, following the issuance of a final order of removal, is statutorily authorized by 8 U.S.C. § 1231. The statute’s “basic purpose” is “effectuating an alien’s removal.” *Zadvydas*, 533 U.S. at 697. Moreover, in detaining noncitizens under § 1231 pending removal, the government also seeks to effectuate additional “regulatory goals” for detention, which include “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (brackets and quotation marks omitted). The government’s interests in “(1) ensuring that noncitizen[s] do not abscond and (2) ensuring they do not commit crimes” are “well-established.” *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (citing *Zadvydas*, 533 U.S. at 690; *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017)).

Petitioner makes a conclusory claim that he poses no flight risk or danger, Petition ¶¶ 53-55, but Petitioner has a significant criminal history, and, notably, was convicted of assault in the

fourth degree. *See* So Decl. ¶ 14. His conviction of this offense is a sufficient basis to demonstrate potential danger to the community, which separately justifies his continued detention pending removal to China.

Therefore, because Petitioner's detention serves the valid immigration purposes of ensuring that ICE can effectuate his final order of removal, and preventing danger to the public pending his removal, his due process claim fails. *See Zadvydas*, 533 U.S. at 690-91; *Velasco Lopez*, 978 F.3d at 854

D. ICE Complied With Regulations in Detaining Petitioner

Contrary to Petitioner's contentions, Pet. ¶¶ 58-61, ICE adhered to its regulations in revoking Petitioner's release under conditions of supervision. The relevant regulations provide that 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(*I*)(2). The regulation does not provide any requirement of advance notice before an alien's release is revoked pursuant to section 241.4(*I*)(2). Rather, notice of the reasons for the revocation must be provided only for aliens who violated a condition of release, and only "upon revocation." *Id.* § 241.4(*I*)(1).

Aside from conclusory statements, Petitioner has not pointed to any specific regulatory provision that he claims ICE has violated. He vaguely alleges that "ICE failed to conduct proper custody reviews" concerning Petitioner. But he fails to state a claim. Following the Supreme Court's decision in *Zadvydas*, ICE enacted regulations to meet the criteria the Court established to prevent indefinite detention. *See* 8 C.F.R. § 241.4. Under those regulations, a detained alien is entitled to a review of his custody status before his removal period expires, at 180 days, and at annual intervals thereafter, with the right to request interim reviews from headquarters not more

than once every three months. *See* 8 C.F.R. §§ 241.4(k)(1), (k)(2). ICE conducted a 90-day custody review, reviewing Petitioner’s case and determining that he would remain detained pending removal; notice of the determination from that review is contained in ICE’s notice dated September 3, 2025. Return Ex. E. ICE intends to conduct a 180-day custody review this week.

This claim should therefore be denied.⁵

E. Petitioner’s Administrative Procedure Act Challenge Fails

Petitioner seeks to repackage his claims under the APA as an additional claim for relief, but he cannot sustain a claim under the APA because the APA is not the proper vehicle to challenge the validity of one’s detention. The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee’s confinement, regardless of whether a detainee formally requests release from confinement, such “claims fall within the ‘core’ of the writ of habeas corpus and thus *must be brought in habeas*.” *Trump v. J.G.G.*, 143 S. Ct. 1003, 1005 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—

⁵ While Petitioner has received a 90-day custody review and will be receiving a 180-day custody review this week, any claim of procedural error or tardiness would not warrant release; instead, it would warrant only that the process (i.e., the post-order custody reviews) be provided. *See, e.g., Rasul v. Barr*, 445 F. Supp. 3d 38, 52 (W.D.N.Y. 2020) (where custody review had procedural errors, order that custody review under 8 C.F.R. § 241.4s be provided within 90 days); *Mohammad v. Lynch*, No. 16-cv-28 (PRM), 2016 WL 8674354, at *6 n.6 (W.D. Tex. May, 24, 2016) (“The Court notes that both Petitioner’s ninety-day and 180-day custody reviews were tardy. While this likely constitutes a procedural due process violation . . . the appropriate remedy . . . is to order the Government to conduct the required detention review.”); *Achouatte v. Holder*, No. 4:11-cv-03977 (VEH) (JEO), 2012 WL 2357711 (N.D. Ala. May 14, 2012), *R&R adopted* 2012 WL 2358185 (N.D. Ala. June 14, 2012) (same); *Bonitto v. B.I.C.E.*, 547 F. Supp. 2d 747, 758 (S.D. Tex. Apr. 17, 2008) (R&R adopted by separate order) (concluding that ICE failed to comply with its post-order custody regulations, violating the petitioner’s procedural due process rights, but directing ICE to conduct a “meaningful post-removal custody review” within 60 days or otherwise release the petitioner).

and it is simply not cognizable under the APA. Petitioner's challenge to detention premised on the APA, then, must fail.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 (“[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review”); *see also J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring) (“[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ . . . habeas corpus, not the APA, is the proper vehicle here.”). Here, Petitioner has identified alternative avenues for remedy via a habeas petition. Accordingly, Petitioner's APA claim should be denied.

CONCLUSION

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

Dated: New York, New York
December 8, 2025

Respectfully submitted,

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

By: s/ Mary Ellen Brennan
MARY ELLEN BRENNAN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: 212-637-2652
Maryellen.brennan@usdoj.gov