

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JINLONG PIAO,

Petitioner,

v.

TODD M. LYONS, *et al.*,

Respondents.

Case No. 1:25-cv-1725 (AJT/WEF)

**FEDERAL RESPONDENTS' OPPOSITION TO THE PETITION FOR
A WRIT OF HABEAS CORPUS**

INTRODUCTION

Although Petitioner Jinlong Piao purports to challenge his immigration detention, he does so under the wrong standard. While Petitioner asserts that whether he is properly detained requires an assessment of whether he is detained under 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(a), the fact is that he is not detained under either of these statutes. Rather, Petitioner, who is subject to a final order of removal, is detained pursuant to 8 U.S.C. § 1231. For that reason, Petitioner's detention must be assessed pursuant to the well-established standards set forth by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas*, the Supreme Court addressed the potential constitutional issue inherent in the detention of certain aliens subject to final removal orders under the Immigration and Nationality Act ("INA"). To avoid any putative constitutional issue, the Court interpreted the applicable detention statute, 8 U.S.C. § 1231(a)(6), to presumptively authorize detention for a period of six months, only *after which* is an alien able to seek release by showing that removal is not reasonably foreseeable; if the alien makes that showing, the burden shifts to the government to justify continuing detention.

The Petition should be denied. Although Petitioner has been detained for six and a half months, he has not met his burden to demonstrate that his removal is not "foreseeable." In fact, the application for Petitioner's travel documents to China was approved earlier this month. Once they are issued, Petitioner will be able to board a readily available commercial flight to return to China. Further, additional due process is not warranted because, as the Fourth Circuit has held, "the *Zadvydas* standard is due process[.]" *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024). And Petitioner fails to demonstrate any exceptional circumstances to warrant departure from the *Zadvydas* standard.

Therefore, Federal Respondents respectfully request that this Court decline to issue a Writ of Habeas Corpus and deny the Petition.

BACKGROUND

A. Detention Under 8 U.S.C. § 1231

In general, when an alien is ordered removed, the INA provides the United States with ninety (90) days to execute the removal. 8 U.S.C. § 1231(a)(1)(A). This “removal period” begins to run on the latest of three dates:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B). During the removal period, the Attorney General is required to detain certain criminal aliens. *See id.* § 1231(a)(2)(A). Moreover, the detention of certain aliens, including inadmissible aliens like Petitioner, may be continued beyond the initial ninety (90) days, or the alien may be released. *Id.* § 1231(a)(6); 8 C.F.R. §§ 241.4(a), (d)(1). After ninety days have lapsed, ICE, in its discretion, may release an alien if he shows, to the satisfaction of ICE, that he “will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal[.]” 8 C.F.R. § 241.4(d)(1).

An alien’s custody determination is made by either an ICE field office director, *see id.* § 241.4(h), or the Executive Associate Commissioner of ICE, *see id.* § 241.4(h). *See also id.* § 241.4(h)(5) (delegation authority of directors). If an ICE field office director is conducting the custody determination, he must “provide written notice to the [alien] approximately 30 days in advance of the pending records review so that the alien may submit information in writing in support of his or her release.” *Id.* § 241.4(h)(2). The “custody review will consist of a review of the alien’s records and any written information submitted in English to the district director by or on behalf of the alien.” *Id.* § 241.4(h)(1). The director “*may*[.] in his or her discretion[.] schedule a personal or telephonic interview

with the alien as part of this custody determination.” *Id.* Once the director makes his decision, he must notify the alien of such decision. *Id.* § 241.4(h)(4).

If an alien is released, he is subject to supervision by the Secretary of Homeland Security. *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5 (conditions of release). An alien’s supervised release may be revoked in three instances: (1) if the alien violates the conditions of his release, (2) if the Executive Associate Commissioner of ICE determines, in its discretion, to revoke an alien’s release, or (3) if an ICE director, in his discretion, finds revocation is in the public interest to enforce a removal order or if he deems release would no longer be warranted. 8 C.F.R. §§ 241.4(l)(1), (2). If an alien is subject to either of ICE’s discretionary revocation decisions, ICE will review an alien’s record and schedule an interview, “which will ordinarily be expected to occur within approximately three months after release is revoked.” *Id.* § 241.4(l)(3). “That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” *Id.*

B. Petitioner’s Relevant Immigration History

Petitioner is a forty-three-year-old native and citizen of China. Declaration of James Mullan, Federal Respondents’ Exhibit (“FREX”) 1 ¶ 5. Petitioner first entered the United States as a nonimmigrant student with an F-1 visa on August 26, 2007. *Id.* ¶ 6. He remained in the United States after the expiration of that student visa on May 29, 2008. *Id.* On or about June 6, 2008, Petitioner filed an application for asylum, which was referred for removal proceedings. *Id.* ¶ 7. Those proceedings were terminated on July 25, 2008. *Id.* ¶ 8.

Petitioner sought asylum a second time on September 23, 2013. *Id.* ¶ 9. Petitioner was again referred to removal proceedings and a notice to appear was issued on November 25, 2013. *Id.* ¶ 10. Petitioner conceded he was removable pursuant to 8 U.S.C. § 1227(a)(1)(B), and the charge was sustained. *Id.* ¶ 11. On April 14, 2017, an Immigration Judge ordered Petitioner removed from the

United States. *Id.* ¶ 12. Petitioner appealed that decision, but his appeal was unsuccessful. *Id.* ¶¶ 13-14.

On September 28, 2020, a Form I-130 Petition for Alien Relative was filed on Petitioner's behalf. *Id.* ¶ 15. The petition was approved on October 22, 2021, however, Petitioner is not eligible for adjustment of status because he is subject to a final order of removal. *Id.* Petitioner sought to reopen his immigration proceedings with the Board of Immigration Appeals in 2022 and with the immigration court in 2025, but both motions were unsuccessful. *Id.* ¶¶ 16-17. Petitioner sought DHS's position on another motion to reopen in May 2025, but DHS has not joined any motion, and DHS is not aware of any motion to reopen that is currently pending. *Id.* ¶ 18.

On March 26, 2025, Petitioner was taken into ICE custody and transferred to the Caroline Detention Facility in Bowling Green, Virginia. *Id.* ¶ 19. His detention is pursuant to 8 U.S.C. § 1231 because he is subject to a final order of removal. *Id.* ¶ 20. Petitioner submitted a completed identify certification form on April 29, 2025. *Id.* ¶ 21. On May 3, 2025, ICE submitted a formal request for travel documents to China. *Id.* ¶ 22. That request was approved by China on October 1, 2025. *Id.* ¶ 25. ICE is now waiting on the issuance of the travel document. *Id.* Once the document is received, Petitioner can take a readily available commercial flight to China from Washington-Dulles International Airport. *Id.* ¶ 26.

Over the course of Petitioner's detention, ICE twice reviewed Petitioner's detention and recommended continued detention. *Id.* ¶¶ 23, 24.

C. Procedural History

On October 9, 2025, Petitioner filed for a Writ of Habeas Corpus. *See* Doc. No. 1. Petitioner brings four claims in his Petition: (1) his detention—which he asserts is pursuant to 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(a) violates Immigration and Naturalization Act (Count I); (2) his detention violates

the Due Process Clause (Count II). *See* Dkt. No. 1. On October 10, 2025, this Court issued an Order to Show Cause requiring Respondents to file a Response to the Petition. *See* Dkt. No. 2.

ARGUMENT

I. Petitioner's Detention Satisfies the *Zadvydas* Standard (Count I)

The *Zadvydas* court held that detention of six months after a final order of removal is presumptively reasonable. After six months, however, it is *not* the case that “every alien must automatically be placed on supervised release.” *Menghua Wan v. Crawford*, 2014 WL 970180, at *3 (E.D. Va. Mar. 12, 2014). Rather, confinement may continue unless the alien can meet a two-prong standard: “[t]he alien must show (i) that he is being held beyond the presumptively reasonable six-month period, and (ii) that there is no significant likelihood of removal in the foreseeable future.” *Id.* “If the alien makes these prima facie showings, the burden shifts to the government to provide evidence in rebuttal.” *Id.* (citing *Zadvydas*, 533 U.S. at 701).

Although Petitioner has been detained for a few weeks beyond six months, he has failed to show that there is no significant likelihood of removal in the foreseeable future; indeed, he does not make this argument at all in his petition. *See, e.g.*, Petition (Dkt. No. 1) ¶ 59 (describing *Zadvydas* standard but not arguing that Petitioner is unlikely to be removed). And the facts of Petitioner's case show that removal is significantly likely. Indeed, China approved ICE's request for a formal travel document for Petitioner on October 1, 2025. Exhibit 1 ¶¶ 22, 25. ICE is waiting on the issuance of this document and then will be able to book Petitioner on a readily available commercial flight to China. *Id.* ¶ 26.

Under *Zadvydas*, the initial burden is squarely on Petitioner to show that removal is not significantly likely in the foreseeable future. *See Ming Hui Lu v. Lynch*, 2016 WL 375053, at *6 (E.D. Va. Jan. 29, 2016) (citing *Zadvydas*, 533 U.S. at 701) *see also, e.g., Andrade*, 459 F.3d at 543 (holding that detention of more than three years under § 1231 was constitutionally sound under *Zadvydas*); *Abiodun*

v. Mukasey, 264 F. App'x 726, 729 (10th Cir. 2008) (upholding continued detention of an alien under *Zadvydas* awaiting removal for three years); *Doucoure v. Chertoff*, 2007 WL 1726567, at *4 (D.N.J. June 13, 2007) (“While Petitioner has remained in detention for almost three years, th[at] fact alone does not qualify Petitioner for release from custody.”); *Naranjo v. Spivey*, 2018 WL 504404, at *3 (M.D. Ga. Jan. 22, 2018) (report and recommending finding that three year detention was permissible under *Zadvydas* as removal was reasonably foreseeable). Nothing in the Petition suggests that Petitioner’s removal is not foreseeable; rather, the facts of Petitioner’s case indicate only that Petitioner will be removed once the travel document, which has already been approved, is issued. *See Mattete v. Loiselle*, 2007 WL 3223304, at *4 (E.D. Va. Oct. 26, 2007) (“Even though a nation has not granted travel documents to a petitioner, or has refused to grant travel documents, [that] does not prove that a petitioner has no reasonable likelihood of being removed.”). Indeed, so long as “[p]rogress, however slow, is being made” towards an alien’s removal, his continued detention is in accord with due process under *Zadvydas*. *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001).

In sum, Petitioner has failed to meet his initial burden to set forth *any* evidence to demonstrate that “there is no significant likelihood of removal in the reasonably foreseeable future.” Even if he did and the burden thereby “shifts to the government to provide evidence in rebuttal,” *see Menghua Wan*, 2014 WL 970180, at *3, the government has adduced more than enough evidence to show that it has taken “active steps to secure removal [of Petitioner] at some point in the future,” *see id.* at *4. *See Exhibit 1 ¶¶ 22, 25-26.*

Thus, even if Petitioner has made a *prima facie* showing that his removal is unlikely (which he has not), the Government has rebutted that showing.¹ Accordingly, Petitioner's habeas action cannot proceed on the grounds alleged.

II. Petitioner's Detention Comports with the Fifth Amendment's Due Process Clause (Count II)

A. The *Zadvydas* standard is due process.

Petitioner faces a fundamental flaw in his request for the Court to order that he be given more process than what he has received in this case: The Supreme Court has already decided what constitutional due process is required under these circumstances to avoid violating the rights of a alien in his position. "*Zadvydas* largely, if not entirely, forecloses due process challenges to § 1231 detention apart from the framework it established." *Castaneda*, 95 F.4th at 706. Thus, the Fourth Circuit recently held "the *Zadvydas* standard *is* due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation." *Id.* (emphasis in the original).

In *Zadvydas*, the Supreme Court determined what "limits" the "Constitution's demands" imposed on "post-removal-period detention" pursuant to § 1231. 533 U.S. at 689. After determining that the Constitution "does not permit indefinite detention," the Court held that a habeas court "should hold continued detention unreasonable" only "if removal is not reasonably foreseeable." *Id.* at 689, 699. But the Supreme Court did not stop there—it went on to detail the process by which that

¹ Another judge within this district has observed that situations in which removal was not "reasonably foreseeable" include those where

no country would accept the detainee, the country of origin *refused* to issue proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time.

Menghua Wan, 2014 WL 970180, at *4 (emphasis added). As in *Menghua Wan* where the alien's habeas petition was dismissed, the circumstances here are also in no way analogous to these examples.

determination would be made. After the end of the presumptively reasonable six-month detention period, an alien must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If that showing is made, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* This process was sufficient, the Court reasoned, to avoid the “serious constitutional concerns” that “indefinite detention” would raise. *Id.* at 682.

The upshot of this decision is straightforward. “[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a),” and it “offered [courts] a standard through which to judge indefinite-detention cases—the *Zadvydas* standard.” *Martinez*, 968 F.3d at 566; see *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* “articulates the outer bounds of the Government’s ability to detain aliens . . . without jeopardizing their due process rights”).

The Court should certainly decline Petitioner’s assertion that he is entitled to a bond hearing here. When, as here, the Supreme Court has spoken on the issue at hand, “[t]his Court is bound like all lower courts to apply [that] precedent.” *United States v. Williams*, 2010 WL 3909480, at *4 (E.D. Va. Sept. 23, 2010); see *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (“It is beyond our power to disregard a Supreme Court decision . . .”). There is accordingly no warrant for the Court to hold that due process demands more than what the Supreme Court already held it requires in this circumstance. See *Wang*, 320 F.3d at 146 (rejecting claim for bond hearing because “pursuant to *Zadvydas*, an alien’s due process rights are not jeopardized by his continued detention as long as his removal remains reasonably foreseeable.”). Petitioner has received all the process to which he is entitled.

B. Even if this Court were to find that Petitioner warrants additional process, the Mathews factors weigh in favor of continued detention (Counts II and IV).

Even if *Zadvydas* did not squarely govern Petitioner’s claim, as it does, he would not be entitled to the bond hearing that he seeks. The analytical framework established in *Mathews v. Eldridge* generally

controls the analysis of claims seeking additional procedural protections under the Constitution, though the doctrine has already been applied in this context (*i.e.*, an alien subject to an order of removal) when the Supreme Court examined the constitutionality of these detention statutes. *See Demore*, 538 U.S. at 527-28; *Zadvydas*, 533 U.S. at 699; *Miranda v. Garland*, 34 F.4th 338, 358-59 (4th Cir. 2022) (adopting *Mathews*). Under *Mathews*, a court must consider three factors in assessing whether a given procedural framework affords due process: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. 424 U.S. 319, 335 (1976). Any analysis of these factors in the immigration context must “weigh heavily” the fact that “control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the immediate release Petitioner requests.

1. With respect to the first factor—the private interest at stake—it is true as a general matter that freedom from physical restraint “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. At the same time, as “an illegal alien present within the country,” Petitioner may claim only a “limited liberty interest.” *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible alien pending removal did not violate due process); *see Demore v. Kim*, 538 U.S. 510, 522 (2003) (explaining that aliens’ “liberty rights . . . are subject to limitations and conditions not applicable to citizens” (quoting *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting))).

The Supreme Court has emphasized that “detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process.” *Demore*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court

has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). And Courts have upheld as constitutional periods of mandatory detention much longer than Petitioner’s. *See, e.g., Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (an alien’s three-plus-year detention was constitutional).

2. Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all aliens detained pursuant to § 1231, including those in withholding-only proceedings. There is no basis in law for imposing yet more procedures that neither Congress nor the relevant agencies have adopted.

As a threshold matter, § 1231(a)(6) provides that DHS “may” detain an alien beyond the 90-day removal period—in other words, the decision is discretionary. And federal regulations set forth a framework for the exercise of that discretion. *See* 8 C.F.R. § 241.4. Under that framework, ICE may release the alien if he demonstrates to the satisfaction of the responsible official that he will not pose a danger to the community or a significant flight risk pending his removal from the United States. *Id.* § 241.4(d)(1). The relevant DHS field office conducts an initial review at the outset of detention, and a *separate* review panel at ICE headquarters periodically conducts further reviews. *Id.* § 241.4(i)(3), (k)(1)-(2). During those reviews, officials must decide whether to release or detain the alien by considering “[f]avorable factors” (such as “close relatives residing here lawfully”) and unfavorable factors (such as the likelihood that “the alien is a significant flight risk” or that he would “[e]ngage in future criminal activity”). *Id.* § 241.4(f)(5), (7), (8)(iii). And the alien may submit information that he believes provides a basis for release; may be assisted by an attorney or other representative; and may, if appropriate, seek a government-provided translator. *Id.* § 241.4(h)(2).

Federal regulations also set out a separate set of “special review procedures” derived from *Zadvydas*. 8 C.F.R. § 241.13(a). Under those procedures, an eligible alien “may submit a written request for release,” together with “whatever documentation” he wishes “in support of the assertion that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* § 241.13(d)(1). Adjudicators at ICE headquarters must then review the alien’s case, allow the alien to respond to the government’s evidence, allow the alien to submit additional relevant evidence, allow the alien to be represented by an attorney, and, ultimately, “issue a written decision based on the administrative record.” *Id.* § 241.13(g); *see id.* § 241.13(d)-(e). The regulations expressly provide that those special review procedures supplement rather than supplant the discretionary framework discussed in the preceding paragraph. *Id.* § 241.13(b). And, of course, the alien may ultimately seek Article III judicial review through habeas. The Supreme Court concluded in *Zadvydas* that the process established in that case overcomes any constitutional concerns the applicable procedures might raise. *See* 533 U.S. at 692, 699-701; *see also Wang*, 320 F.3d at 146 (rejecting claim for bond hearing to justify continuing detention).

3. Regarding the third *Mathews* factor, the government’s interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government “need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication” when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

In determining what process is due in immigration proceedings, “it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). “[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Mathews*,

426 U.S. at 81 n.17 (quoting *Harisiades v. Shaugnessy*, 342 U.S. 580, 588-89 (1952)). “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest.” *Miranda*, 34 F.4th at 364. It is thus clear that, in the removal process, “the government interest includes detention.” *Id.* And the Supreme Court has stated removal proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character.” *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Further, “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); see *Landon*, 459 U.S. at 34 (“The government’s interest in efficient administration of the immigration laws . . . is weighty.”). Detention following entry of a final removal order remedies this risk by “increasing the chance that, if ordered removed, the alien[] will be successfully removed.” *Demore*, 538 U.S. at 528.

Therefore, all three *Mathews* factors favor the Government, and this Court should accordingly dismiss the Petition.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully ask this Court to deny the Petition for a Writ of Habeas Corpus.

Dated: October 20, 2025

Respectfully submitted,

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