UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Xianwu Lin,
Petitioner,

v.

Pamela Bondi et al,
Respondents.

No: 25-CV-8568-KMK

PETITIONER'S RESPONSE TO THE OPPOSITION OF RESPONDENTS

INTRODUCTION

Petitioner respectfully submits this reply to Respondents' opposition. Even accepting that ICE has now obtained a travel document, the Government has not met its burden under *Zadvydas v. Davis*, 533 U.S. 678 (2001), to show that Petitioner's continued post-order detention is constitutionally permissible. The record instead demonstrates (1) a risk of indefinite detention driven by the Government's own delay and mishandling; (2) independent due process violations in the manner and length of detention that are not cured by a late-breaking travel document; and (3) detention that has drifted away from any lawful immigration purpose into punishment and administrative convenience.

Respondents' opposition confirms that Petitioner's detention has crossed the line that *Zadvydas v. Davis*, 533 U.S. 678 (2001), drew between permissible post-removal-order detention and unlawful, effectively indefinite confinement. Petitioner has now been held in ICE custody well beyond the six-month presumptively reasonable period, without any concrete, individualized showing that his removal to China is "significantly likely … in the reasonably foreseeable

future." *Id.* at 701. The government's belated production of a three-month "Permit for Entry," after an earlier Chinese travel document expired unused due to ICE's own inaction, does not transform this prolonged detention into a constitutionally sound one.

Nor can Respondents salvage this detention by invoking generalized "danger to the community" based on decades-old convictions that were fully punished in criminal court and that did not prevent DHS from releasing Mr. Lin on an Order of Supervision for nearly two years. As *Zadvydas* makes clear, § 1231(a)(6) cannot be read to authorize open-ended preventive detention of removable noncitizens based solely on past criminality. 533 U.S. at 690–92. See also *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005) (same statute must be read consistently and cannot support indefinite detention).

Under the statutory framework and the governing precedents, Petitioner has met his burden under *Zadvydas*, and Respondents have not carried theirs. The writ should issue.

ARGUMENT

POINT ONE: A TRAVEL DOCUMENT DOES NOT AUTOMATICALLY MAKE REMOVAL "REASONABLY FORESEEABLE" UNDER ZADVYDAS

In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only "for a period reasonably necessary to bring about that alien's removal," and that once detention passes six months, the Government may continue to detain "only until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 689, 701. The Court emphasized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" the Due Process Clause protects.

Under *Zadvydas*, a travel document does not end the inquiry. The question is whether actual removal is significantly likely in the reasonably foreseeable future, in light of real-world obstacles and the Government's own conduct. *See Clark v. Martinez*, 543 U.S. 371, 384–85 (2005) (construing § 1231(a)(6) uniformly and applying the same "reasonably foreseeable" limit to all noncitizens detained under that provision).

Courts applying *Zadvydas* have rejected the idea that a foreign government's general willingness to issue travel documents or a bare assertion that documents exist is enough. In *Rajigah v. Conway*, 268 F. Supp. 2d 159 (E.D.N.Y. 2003), the court explained that the fact that Guyana "regularly issues travel documents" and "Gyuana actually issued a travel document to petitioner" could not by itself establish that the petitioner's removal would take place in the near future. The court looked instead to the actual prospects for removal, not abstract assurances. *Id.*

Similarly, the Supreme Court in *Jama v. ICE*, 543 U.S. 335 (2005), described the very concern animating *Zadvydas* as detention in a "removable-but-unremovable limbo," where removal is legally authorized but practically blocked. Here, the Government's own timeline shows that ICE requested a travel document in 2022 and 2023 but heard nothing for well over a year. (Dkt. #26 at 3). Then ICE claims a document was approved in June 2025 but somehow never reached the field office and expired before any removal occurred. (Dkt. # 26 at 4). ICE only to obtain a new document in November

2025, after Petitioner had already endured more than eight months of renewed detention. (Dkt. #26 at 5).

Those facts do not show a "routine" repatriation process; they show bureaucratic delay, miscommunication, and an inability to convert paper approvals into actual transportation. *Zadvydas* requires the Government to show that there is "no significant likelihood" that removal will fail in the reasonably foreseeable future, not merely that it now possesses a document that *might* be used before it expires. 533 U.S. at 701.

The Second Circuit's decision in *Wang v. Ashcroft*, 320 F.3d 130 (2d Cir. 2003), underscores this point. There, the court upheld detention where the Government had already scheduled a flight to China for a specific date, and the only obstacle was the petitioner's own request for a judicial stay. 320 F.3d at 146–47. In other words, *removal was concretely imminent*. This case is the opposite: ICE's narrative is one of lost or expired documents, multi-month gaps, and no firm removal date, even as detention stretches beyond the *Zadvydas* six-month presumption.

Nor does *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), help the Government. *Arteaga-Martinez* held only that § 1231(a)(6) does not itself mandate bond hearings after six months; it expressly left open as-applied constitutional challenges under *Zadvydas*. The Government still must satisfy Zadvydas's "reasonably foreseeable" standard as a matter of due process. A travel document acquired after way more than six months of detention, following ICE's own mishandling of prior approvals, does not automatically satisfy that constitutional requirement.

On this record, at minimum, Petitioner has carried his initial *Zadvydas* burden by showing of prolonged post-order detention, a history of delayed and expired travel documentation, and the Government's inability for over a year to turn "approval" into actual repatriation. The Government's response that ICE now has new documents and intend to remove Mr. Lin "as soon as practicable" is precisely the kind of conclusory assurance that *Zadvydas* and *Rajigah* reject as insufficient. (Dkt. # 27 at 6).

POINT TWO: EVEN IF REMOVAL WERE REASONABLY FORESEEABLE TODAY, THE LENGTH AND MANNER OF DETENTION HAVE INDEPENDENTLY VIOLATED DUE PROCESS

Even if removal were reasonably foreseeable, that does not retroactively cure months of unconstitutional detention or extinguish Petitioner's ongoing due process claims.

A. Prolonged Civil Detention Requires Robust Procedural Protections

The Second Circuit has repeatedly held, in closely analogous immigration contexts, that prolonged civil detention without a meaningful opportunity to contest the necessity of confinement violates the Due Process Clause. In *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the court granted habeas relief to a noncitizen detained for roughly fifteen months without the Government ever having to justify his incarceration, holding that due process required a bond hearing at which the Government bears the burden of proving danger or flight risk by clear and convincing evidence.

In *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), the Second Circuit extended this reasoning to mandatory detention under § 1226(c), holding that "a noncitizen's constitutional right to due

process precludes their unreasonably prolonged detention under § 1226(c) without a bond hearing," and that, once detention becomes unreasonably prolonged, due process requires an individualized custody hearing using the *Mathews v. Eldridge* balancing framework and placing the burden on the Government, with consideration of ability to pay and alternatives to detention. 424 U.S. 319 (1976).

Although *Velasco Lopez* and *Black* arose under § 1226 rather than § 1231, they rest on core due-process principles that apply equally here: prolonged civil detention is constitutionally suspect unless and until the Government actually proves that continued incarceration is necessary to serve a legitimate purpose such as preventing flight or danger to the community. The Supreme Court's cases make the same point in broader terms: "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); see *Zadvydas*, 533 U.S. at 690 (civil immigration detention must be "reasonably related" to permissible regulatory goals).

Here, Petitioner has been detained for almost ten months without any judicial custody determination and, based on the

Government's own declaration, has received only an internal ICE panel review that simply re-labeled him a "danger" based on decades-old convictions—precisely the kind of perfunctory, non-adversarial review that courts have deemed inadequate. See *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 754–55 (M.D. Pa. 2004) (holding that "*Zadvydas* does not save the Government from the requirement of providing a meaningful hearing" and that the "price for securing a stay of removal is not continued incarceration").

The Government points to its paper review and the belated travel document as if they were substitutes for a constitutionally adequate hearing. They are not. Under *Velasco Lopez* and *Black*, once detention becomes unreasonably prolonged, due process demands that *an impartial adjudicator*, not the detaining agency itself, decide whether continued incarceration is necessary, with the Government bearing the burden of proof. ICE's internal custody review, conducted by the same agency that has every institutional incentive to keep Petitioner detained while it tries to fix its own earlier errors, does not satisfy that constitutional standard.

The government's detention of Mr. Lin violates the statutory mandate for supervision following the removal period. § 1231(a)(3) provides that aliens not removed within the removal period "shall" be subject to supervision, not detention.

B. Conditions and Punitive Effect Matter in the Due-Process Analysis

The Government also ignores that due process protects not only against whether a person is detained, but also how. In *Bell v. Wolfish*, 441 U.S. 520 (1979), the Supreme Court held that civil detainees may not be subjected to conditions that amount to punishment, and that restrictions "not reasonably related to a legitimate governmental objective" are unconstitutional. The Second Circuit has applied this framework to civil immigration detainees as well. See, e.g., *Charles v. Orange County*, 925 F.3d 73, 81–84 (2d Cir. 2019) (recognizing robust due-process protections for detainees' conditions of confinement and medical care).

After years of lawful community supervision and without a meaningful hearing, detaining Petitioner for months in a county jail under criminal-like conditions while ICE repeatedly mismanages its

own removal logistics, bears the hallmarks of punishment and administrative convenience, not of a tailored civil measure reasonably related to effectuating removal. See *Basank v. Decker*, 449 F. Supp. 3d 205, 213–14 (S.D.N.Y. 2020) (recognizing that immigration detainees are civil detainees entitled to protection from punitive conditions). Under Bell, such detention cannot be justified by vague references to "danger" untethered to any contemporaneous factual showing or consideration of less restrictive alternatives.

POINT THREE: THE GOVERNMENT'S OWN CONDUCT SHOWS DETENTION IS BEING USED FOR AN UNLAWFUL, PRETEXTUAL PURPOSE

Zadvydas recognizes that post-order detention may be justified only so long as it serves valid immigration purposes—"ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." 533 U.S. at 690. When detention no longer advances those purposes, or becomes "indefinite and potentially permanent," it violates due process. Id. at 690–91.

The government lacks statutory authority to detain Mr. Lin. The Immigration and Nationality Act creates a precise detention framework with mandatory temporal limits. Under § 1231(a)(1)(B)(i),

the 90-day period began on October 31, 2022, and it ended on January 29, 2023. The government's mandatory detention power under § 1231(a)(2) expired that day. There is no dispute that ICE did not remove Petitioners during that window. Section 1231(a)(1)(A) provides that the Attorney General "shall remove the alien from the United States within a period of 90 days." The word "shall" is mandatory, not discretionary.

Section 1231(a)(6) creates a narrow exception permitting detention beyond the removal period, but only when specific conditions are met. The statute allows continued detention only for aliens who are "inadmissible under section 1182," "removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4)," or who have been "determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal."

Here, the Government's narrative shows that for a substantial period ICE allowed Mr. Lin to live in the community on an order of supervision. Then ICE re-detained him on the representation that removal was "imminent" based on a travel document that it ultimately did not possess or could not locate. Further, ICE permitted that the

travel document to expire without arranging travel. Only after almost a year of renewed incarceration and the filing of this habeas petition ICE obtained a new document.

This suggests a detention policy driven not by an urgent, concrete removal plan, but by institutional delay and a desire to keep Petitioner locked up while ICE attempts to repair its own administrative failures. *Zadvydas* forbids detention whose effect is to punish or warehouse noncitizens in "removable-but-unremovable" limbo. *Jama v. ICE*, 543 U.S. 335 (2005).

Moreover, to the extent the Government relies on Petitioner's decades-old criminal convictions to justify continued confinement, Second Circuit precedent makes clear that the Constitution does not permit open-ended civil incarceration simply because a person once committed a serious crime. In *Velasco Lopez* and *Black*, the court required the Government to prove, with current evidence, that continued detention is necessary to prevent flight or danger, not merely to point to past convictions. ICE has never been required to make such a showing here in any adversarial forum.

POINT FOUR: THE GOVENMENT'S COMPLETE FAILURE TO FOLLOW MANDATORY REGULATORY PROCEDURES INDEPENDENTLY REQUIRES RELIEF

Even if the government had statutory authority to detain Mr. Lin, which it does not, it failed to follow mandatory regulatory procedures for detention. Federal regulations require specific procedures before detaining someone with an expired removal period. Under 8 C.F.R. § 241.13(i), before revoking release, the agency must determine there is a significant likelihood of removal in the reasonably foreseeable future, the alien must be notified of the reasons for revocation of release, and DHS must conduct an informal interview promptly to afford the alien an opportunity to respond.

The government followed none of these requirements. Mr. Lin received no notice before his arrest on February 24, 2025. He was given no explanation for why his years of successful supervision was being revoked. He received no opportunity to contest the detention through an informal interview or any other process. The declaration of ICE officer doesn't even claim that an interpreter was used in their "informal" opportunity to contest detention.

Governments are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The *Accardi* doctrine establishes that an agency's failure to follow its own regulations violates due process. Numerous courts have recently held that such violations justify habeas relief. See *Zongbo Zhu v. Genalo*, No. 1:25-CV-06523, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025).

Similarly, 8 C.F.R. § 241.4 establishes mandatory procedures for post-order custody reviews. These regulations require consideration of specific factors including criminal history, compliance with supervision, community ties, and likelihood of removal. Here, the government provides no evidence that any proper custody review occurred before Mr. Lin's arrest. Officer Dawson declaration uses conditional language suggesting procedures were not followed, stating the non-citizen "would have" remained in custody if proper procedures had been followed.

CONCLUSION

This Court should order Mr. Lin's immediate release on an order of supervision with appropriate conditions. Every additional day of detention compounds the constitutional and statutory violations.

For all the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondent to immediately release Mr. Lin under appropriate and reasonable conditions of supervision, keeping in mind that he has provided his address and lived openly for decades.
2. In the alternative, order an immediate bond hearing at which the Government bears the burden of proving by clear and convincing evidence that no conditions of release could reasonably ensure Mr. Lin's appearance and community safety.
3. Award attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, given the Government's positions were not substantially justified.
4. Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 9, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(b) and Rule II.B of Judge Karas's Individual Rules of Practice, the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules and Judge Karas's Individual Rules. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 2,674 words in this reply memorandum.

Dated: New York, New York
December 9, 2025

Respectfully submitted,

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