UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CHONG DA WU,

Petitioner,

v.

WARDEN, Florida Baker Corrections institute; **Garrett J. Ripa,** Miami Field Office Director U.S. Immigration and Customs Enforcement; of Homeland Security; and **PAMELA J. BONDI,** Attorney General of the United States, in their official capacities,

Respondents.

Case No. 25-CV-1254-MMH-MCR

PETITIONER'S REPLY TO THE RESPONDENT'S
RESPONSE TO PETITION FOR WRI OF HABEAS CORPUS (DE# 13)

TO THE HONORABLE COURT:

COMES NOW, the Petitioner, Chongda Wu, by and through undersigned counsel and hereby submits this Reply to the Respondent's Response to Mr. Wu's Petition for Writ of Habeas Corpus. The Petitioner will try to reply to every issue and argument made by the Petitioner. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus. Mr. Wu Will reply the respondent's arguments in the same order as presented to the Court.

FACTS

On November 15, 2007, Petitioner was arrested, processed for, and placed in expedited removal, and on October 10, 2008, ordered removed. *From November 15, 2007, to May 7, 2009,*

(6 months) Mr. Wu was detained by ICE and at no fault of his own, the respondents were unable to secure his travel documents to removed him to the People Republic of China.

After Mr. Wu filed a Habeas Corpus on April 23, 2009, and ERO continue to secure a travel document for Mr. Wu, (Respondent's Exhibit A, at ¶¶9-14) and since they could not secure a travel document, and the Habeas Corpus was pending, ERO decided to release.

The respondent alleges that " Throughout the course of the next several months, the ERO made efforts to expedite the pending travel document requests, conducted a post-order custody review ("POCR"), and issued a decision to serve a Form I-229(a) and Instruction Sheet to Petitioner about Petitioner's obligations to cooperate with immigration authorities. *Id.* at ¶¶ 18-25." No document or Form I-229(a) was provided with the response to support the allegation. But Assuming it is correct, Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on March 20, 2012, (Respondent's Exhibit A, ¶29) ; Again Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on November 9, 2017 (Respondent's Exhibit A, ¶31); Again Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on July 24, 2019. (Respondent's Exhibit A, ¶33); Again, Petitioner followed ERO requirements and his efforts to secure travel documents and provide evidence of his efforts on April 7, 2025. (Respondent's Exhibit A, ¶35).

Therefore, there is no doubt that the petitioner has been actively engaged in his efforts to provide his travel documents to the respondents. Even after his detention for the second time, the government has been unable to secure Petitioner's travel documents at no fault of the Petitioner.

Even as of today, the Respondents have been unable to secure a travel documents, despite the fact that petitioner has now been more than one year detained, if we add the time he first was

detained from November 15, 2007, to May 7, 2009 (6 moths) and now, from July 9, 2025 to present December 22, 2025 (5 months and 14 days), no travel documents has been secured.

The respondent states "Upon information and belief" Petitioner was nominated for a charter flight on December 15, 2025; not withstanding on the same date, Respondents were required to submit additional supporting documentation to the National Immigrant Administration ("NIA") to continue verification efforts for Petitioner's travel documents. (Respondent's Exhibit A, ¶48). As of today, there is no information regarding the issuance date of the travel documents, and this delay is not attributable to the respondent.

RESPONSE

A. Mr. Wu has not failed to cooperate in removal efforts and therefore at the time of filing the habeas, petitioner's post-removal order detention had already exceeded six- months. Petitioner contends that his current detention far "exceeds the reasonably necessary period" to accomplish his removal and should be subject to supervision.

LEGAL STANDARDS

Petitioner respecfully states that he is being detained under 8 U.S.C. § 1231, and his detention is unlawful because his 90-day removal period expired November 15, 2007, to May 7, 2009 (6 moths) and now, from July 9, 2025 to present December 22, 2025 (5 months and 14 days), and more so, after his removal order became final.

Section 1231 provides for a 90-day removal period calculated from the time the removal order becomes final, 8 U.S.C. § 1231(a)(1), during which time detention of the removable alien is mandatory. 8 U.S.C. § 1231(a)(2). Section 1231 also provides that a removable alien who is not removed during the 90-day removal period may be granted supervised release. **8 U.S.C. § 1231(a)(3)**. Also, a removable alien may be detained beyond the 90-day removal period if the alien

is found to be a risk to the community or is unlikely to comply with the order of removal. See 8 U.S.C. § 1231(a)(6). Mr. Wu has not been determined to be flight risk or danger to the community. Indeed, in Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), the United States Supreme Court held that § 241(a) of the INA authorizes detention, after entry of an administrative final order of deportation or removal, for a period "reasonably necessary" to accomplish the alien's removal from the United States. Zadvydas, 533 U.S. at 699-700. The Court recognized six months as a reasonable extended period of detention to allow the government to accomplish an alien's removal after the removal period has commenced. Id. at 701.

Here, Petitioner argues that because his removal order became final since 2009 and he has not filed any immigration remedy, such as a stay of removal, or any other relief, and it has taken the Respondent 14 years to get an identity travel document, the Petitioner has demonstrated that he has a post removal order detention for a period exceeding six months; and (2) that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, since the government has taken more than 14 years to get a travel document at NO FAULT of the Petitioner.

PETITIONER HAS NOT FAILED TO COOPERATE IN HIS REMOVAL EFFORTS

Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on March 20, 2012, (Respondent's Exhibit A, ¶29) ; Again Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on November 9, 2017 (Respondent's Exhibit A, ¶31); Again Petitioner followed ERO requirements and his efforts to secure travel documents, and provide evidence of his efforts on July 24, 2019. (Respondent's Exhibit A, ¶33); Again, Petitioner followed ERO

requirements and his efforts to secure travel documents and provide evidence of his efforts on April 7, 2025. (Respondent's Exhibit A, ¶35).

The government faults Mr. Wu because because it remained unclear, particularly in 2020, whether Petitioner had actually received a response from the Chinese Consulate or presented any evidence to the ERO, that he received a response. (Respondent Exhibit A, ¶36-37) Such assertion belies the intelligence of the ERO officers, that from 2009 to 2025 supervised the Petitioner and in ***direct contact with the Chinese consulate***, following up on the identity and travel documents. of the Petitioner. (See Exhibit A, ¶¶ 8, 9.10,11,13, 15,18,24,25) Furthermore, as up today, Respondent has received an actual response from the Chinese Consulate, that they need more information from ERO to identify the Petitioner. **(Respondent's Exhibit A, ¶¶ 40-48)** Therefore, Petitioner has fully cooperated with his removal efforts.

The Respondents alleged that the Petitioner Has Failed to Establish Good Reason to Believe That There Is No Significant Likelihood of Removal In the Reasonably Foreseeable Future. (DE# 13 at p. 14)

The petitioner has shown that the respondent's, at no fault of the Petitioner, have not been able to secure a travel document to China. Moreover. ERO multiple contact with the consulate and not be able to send the Petitioner back to China as recent as *December 15, 2025* **(See Respondent's Exhibit F, p. 3, ¶10)** , shows that there is no significant likelihood of removal in the reasonably foreseeable future, and a incredible speculation regarding a possible date for removal. The court should note that there is no date for removal.

The respondent states that Petitioner Does Not Have Standing to Bring His Administrative Procedures Act Claim.

Respondent claims that Mr. Wu's APA claim is independently barred by the limitation in 5 U.S.C. § 704. (By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." (DE# 13, p. 15)

Petitioner respecfully states that careful consideration should be given to the cited case, as the Supreme court also indicated in J.G.G., that:" Although the APA allows courts to review only agency action "for which there is no other adequate remedy in a court," 5 U. S. C. §704, ***this Court has long read that limitation narrowly***, emphasizing that it "should not be construed to defeat the central purpose of providing a broad spectrum of judicial review of agency action." Bowen v. Massachusetts, 487 U. S. 879, 903, 108 S. Ct. 2722, 101 L. Ed. 2d 749 (1988); see also Darby v. Cisneros, 509 U. S. 137, 146, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993) ("Congress intended by that provision simply to avoid duplicating previously established special statutory procedures for review of agency actions"). Indeed, in the mid-20th century, this Court repeatedly said that habeas and APA actions were both available to noncitizens challenging their deportation orders. See Brownell v. Tom We Shung, 352 U. S. 180, 181, 77 S. Ct. 252, 1 L. Ed. 2d 225 (1956) ("[E]ither remedy is available in seeking review of [deportation] orders"); see also Shaughnessy v. Pedreiro, 349 U. S. 48, 50-51, 75 S. Ct. 591, 99 L. Ed. 868 (1955) (allowing for judicial review of a deportation order under the APA)." J.G.G., 604 U.S. at 671.

This Court may grant relief under the Administrative Procedure Act as it has not been foreclosed by the Supreme Court of the United States in Habeas Procedures.

The Respondent States that this court lack Subject matter jurisdiction, because the Petitioner is being detained pending the commencement of expedited removal proceedings. (DE# 13 p. 18) Therefore under 8 USC ¶ 1252(g) this court has no jurisdiction. (Id)

Petitioner respectfully states that he is not being held "pending the Commencement of expedited removal." Mr Wu is NOT challenging ERO detainers, notice to appear, detention order, of any removal order. Mr. Wunever questioned his removal order, by filing any appeal to the Board of Immigration Review or a Petition for Review in the Court of Appeals. As a matter of fact his removal order is final.

Contrary to the Government's allegation of lack of Subject matter Jurisdiction, the Supreme Court has indicted that District courts **have** the authority to grant writs of habeas corpus. Habeas corpus is fundamentally "a remedy for unlawful executive detention." Munaf v. Geren, 553 U.S. 674, 693, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) (citation omitted). A writ may be issued to a petitioner who demonstrates that he is being held in custody in violation of the Constitution or federal law. See 28 U.S.C. § 2241(c)(3). The Court's jurisdiction extends to challenges involving immigration-related detention. See Zadvydas v. Davis, 533 U.S. 678, 687, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

THE ZIPPER CLAUSE

Again, the respondent misstates or mischaracterize Mr. Wu allegations. Mr. Wu is not challenging his order of removal. As stated earlier, that order is final, and not reviewable. Therefore, Mr. Wu states that the zipper clause is inapplicable and judicial review by this Court is completely proper and not contrary to the INA. 8 U.S.C. § 1252(b)(9).

Failure to Exhaust

The Government's states that Petitioner has yet to exhaust his administrative remedies because he has not requested a bond there is no evidence that Petitioner or his attorney has filed a motion for bond. (DE# 13, p. 22)

Mr. Wu respecfully states that this argument grossly misinterprets the law. Mr. Wu is unable to request a bond, since the Board of Immigration review has foreclosed has forclosed any request for bond for aliens that arrived to the United States Ilelgaly, as the Petitioner did in the case of Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025). (Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.) (Id)

The Respondent indicates that on the MERITS the Petitioner's detention is lawful. (DE# 13, p. 23)

Mr. Wu respectfully states that part iii, Merits of the Response, is convoluted and extremely difficult to address coherently. He is contesting his prolonged detention, as permitted by previously discussed Supreme Court case law. At most, he should be allowed to wait under electronic monitoring while the Respondents arrange his removal from the United States. Mr. Wu was previously released and under supervision for 14 years. During this period, the government was unable to secure his travel documents, through no fault of its own.

While on supervision, Mr. Wu abide by all conditions of his release, he has a USC child and is only asking for a immediate removal, or if the respondent cannot remove him, that he be placed in a Supervision for which he was 14 years, until the government can remove him.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter and to declare that the Respondents' challenged actions violate the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1225(b), and 8 C.F.R. § 1003.42(e), Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

Respectfully submitted,

PALOMARES-STARBUCK & ASSOCIATES
66 W. Flagler Street, 6th floor
Miami, Florida 33130
Telephone: (305) 537-9373
E-Service E-mail: palolaw2@gmail.com
Secondary E-mail: palolaw@gmail.com

By: */s/ Lorenzo J. Palomares*
Lorenzo J. Palomares, Esq.
Florida Bar No. 100785
Counsel for Petitioner