UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Maoqin Li, *Petitioner,* *v.* *Pamela Bondi et al,* *Respondents.*	No: 25-17139

PETITIONER'S REPLY TO THE RESPONSE 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. and relies instead on speculative assertions of imminent removal that are unsupported by record evidence.

Respondents' response 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. A temporary travel document, without a removal date or confirmed logistics, does not establish foreseeable removal.

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.*

Nothing in the record establishes a "routine" or reliably functioning repatriation process. The Government has not demonstrated its ability to translate a paper authorization into actual removal logistics. *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 possesses a travel document that may or may not be executed before it expires. 533 U.S. at 701.

A travel document acquired after way more than six months of detention does not automatically satisfy that constitutional

requirement. Notably, Respondents request 30 additional days to report whether removal occurs, which is an admission that removal is not imminent. If removal were truly foreseeable in the near term, ICE would not need an open-ended extension to attempt execution.

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. Li "as soon as practicable" is precisely the kind of conclusory assurance that *Zadvydas* and *Rajigah* reject as insufficient. (Dkt. # 27 at 6).

The speculative nature of Respondents' request underscores Petitioner's point: detention is continuing based on hope, not evidence.

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 eight months without any judicial custody determination. ICE justified Petitioner's

April 2025 arrest and revocation of release on the assertion that removal was "imminent." Yet Petitioner remains detained eight months later. Courts have repeatedly rejected continued detention where the Government relies on repeated assurances of imminence that fail to materialize. The pattern here mirrors precisely the indefinite detention *Zadvydas* forbids.

Respondents suggest that Petitioner's lack of opposition to vacating the transfer restriction somehow weakens his habeas claim. It does not. Petitioner's habeas challenge concerns the legality of continued detention, not the geographic location of confinement. Silence on a collateral transfer issue cannot be construed as consent to indefinite detention or as evidence that removal is foreseeable.

The government's detention of Mr. Li 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.

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. Li. 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. Li 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 did not possess or could not locate at the time. Only after almost a year of renewed incarceration and the filing of this habeas petition ICE obtained a new document. Further, the travel document would eventually expire without arranging travel.

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).

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. Li, 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. Li received no notice before his arrest on April 21, 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.

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. Li'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. Li'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. Li 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. Li'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 18, 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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