THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

WEI ZHANG,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1301-PRW**
	)	
PAMELA BONDI et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner Wei Zhang seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF No. 1). United States District Judge Patrick R. Wyrick has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Respondents filed a Response and Petitioner replied. (ECF Nos. 12 & 13).[1] For the reasons set forth below, the undersigned recommends that the Court **GRANT** habeas relief to Petitioner and release him from custody immediately.

I. BACKGROUND

Mr. Zhang is a citizen of China who began residing in the United States in approximately 2005. (ECF No. 1:1, 13). On August 5, 2010, an Immigration Judge granted Mr. Zhang asylum and on July 12, 2016, he obtained the status of "Lawful Permanent Resident." (ECF Nos. 12:6; 12-4; 12-5). On January 26, 2024, Petitioner pled guilty to a drug trafficking offense and was sentenced to a 10-year sentence, all of which was

[1] Respondents' Motion to Strike Petitioner's Reply (ECF No. 14) is **DENIED**. Petitioner's counsel is reminded again, as he was previously, *see* ECF No. 18:2, n.2, *Jin v. Bondi*, Case No. 25-132 (W.D. Okla. Nov. 24, 2025), of his obligation to comply with LCvR7.1 regarding length of briefs and requests for leave to file oversized briefs. Mr. Ratkowski will not be warned again.

suspended upon Mr. Zhang's successful completion of a drug program. (ECF No. 12-3). Petitioner was released from the Department of Corrections' custody and into DHS custody on October 31, 2024. (ECF No. 12:8).[2] Indeed, on that date, Petitioner was issued a Notice to Appear, charging him with removability under § 237(a)(2)(B)(i) of the Immigration and Nationality Act (INA) as an alien who, at any time after admission, has committed a violation of any law or regulation relating to a controlled substance other than a single offense involving possession of marijuana for personal use in an amount of 30 grams or less. *See* ECF No. 12-4. For unknown reasons, these proceedings were terminated without prejudice on November 22, 2204. (ECF No. 12-1:2). On November 25, 2024, an identical Notice to Appear was issued to Petitioner, again charging him with removability. *See* ECF No. 12-5.

On April 9, 2025, an Immigration Judge ordered Mr. Zhang removed to China, terminated his lawful permanent residency, and ordered his removal deferred under the Convention Against Torture (CAT). *See* ECF No. 12-6. Petitioner attests that since being detained in 2024, he has not been asked to apply for travel documents to any country, and no government agent has expressed to him that a third-country removal is being attempted, much less expected to be successful. (ECF No. 1:2). Mr. Zhang is currently detained in the Cimmaron Correctional Facility in Cushing, Oklahoma.[3] Petitioner contends that his detention is "designed to send a message to other individuals with final orders of

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[2] Mr. Zhang attests that he was picked up and detained by ICE on June 9, 2024 and has remained in their custody ever since. (ECF No. 1:12). But Respondents submit evidence in the form of an affidavit from Deportation Officer Erick Klein stating that Petitioner was released from the Bill Johnson Correctional Center into ERO custody on October 31, 2024. (ECF No. 12-1:2).

[3] *See* https://locator.ice.gov/odls/#/results (last visited Dec. 2, 2025).

removal that they need to leave the United States or they will be jailed indefinitely and without any process." (ECF No. 1:2-3).

Respondents submit evidence in the form of an affidavit from Deportation Officer Erich Klein stating that on May 8, 2025, DHS sent a Request for Acceptance of Alien to the British Consulate General, the Consulate of the Republic of Korea, and the Embassy of Japan, presumably in an attempt to remove Mr. Zhang to those countries. (ECF No. 12-1:3). On July 1, 2025, Mr. Klein states that the Department sent a Request for Acceptance of Alien to the Consulate General of Canada, the Consulate General of Mongolia, and the Consulate General of Mexico, again presumably in an attempt to remove Petitioner to one of these countries. (ECF No. 12-1:3). On July 1, 2025, the Embassy of Mongolia denied Petitioner entry and the Consulate of Mexico stated that it did not have authority to grant or deny Petitioner entry into Mexico. (ECF No. 12-1:3). As of November 18, 2025, no other responses have been received from any of the other countries. Deportation Officer Micheal Thompson also states: "The State Department is also working with ERO on Z[h]ang's third country removal. ERO has been successful in removing aliens to third countries with the State Department's assistance. Z[h]ang is also a priority for removal due to his criminal history, and I believe Z[h]ang will be removed to a third country." (ECF No. 12-2:2).

On September 15, 2025, Mr. Zhang was afforded a personal 90-day post order custody review where he was interviewed and a determination was made that the criteria for continued detention had been met under 8 C.F.R. § 241.4(e) and he would continue

to be detained.[4] Petitioner contends that removal is unlikely to occur any time in the reasonably foreseeable future. (ECF No. 1:2-3, 12-13).

II. PETITIONER'S CLAIMS

Mr. Zhang asserts four counts in the Petition. In Count One, Petitioner requests "declaratory judgment pursuant to 28 U.S.C. § 2201 that [he] is detained pursuant to 8 U.S.C. § 1231(a)(1)," "that [he] has sufficiently demonstrated that there is no significant likelihood of his removal in the reasonably foreseeable future ("NSLRRFF") so as to shift the burden to Respondents" "that ICE did not rebut [his] NSLRRFF showing and must therefore release him on an Order of Supervision in accordance with 8 C.F.R. § 241.5," and "that until ICE rebuts [his] NSLRRFF showing, [he] may not be redetained." (ECF No. 1:19-20).

In Count Two, Petitioner contends that his detention by Respondents violates the Immigration and Nationality Act and applicable ICE regulations. (ECF No. 1:20).

In Count Three, Petitioner raises two due process claims. He states that his continued detention in excess of six months violates his "Fifth Amendment guarantee of due process" established in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) as Respondents have not rebutted his prior showing of no substantial likelihood of removal in the foreseeable future. (ECF No. 1:21). And he states a separate due process claim based on his allegations that he has been detained "to punish him and to otherwise send a message

[4] As noted by Petitioner in his Reply, the interview-related documents submitted by Respondents are internally inconsistent. For example, the panel of deportation officers conducting the 180-day review found: (1) "the criteria for... continued detention as set forth by 8 C.F.R. § 241.4(e) has been met"; and (2) "[t]he panel recommends that Zhang... should not remain in ICE custody." ECF No. 12-7:4 (emphasis added). However, the "Decision to Continue Detention" states that ICE has determined to keep Petitioner in custody. *See* ECF No. 12-7:5.

to similarly situated individuals that they must leave the United States to avoid a similar fate." (ECF No. 1:21-22).

In Count Four, Petitioner alleges that Respondents have violated the Administrative Procedures Act [APA] as "[their] decisions, which represent changes in the agencies' policies and positions, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the case, and have offered explanations for their decisions that run counter to the evidence before the agencies." (ECF No. 1:22). Respondents are sued in their official capacities. (ECF No. 1:8-9).

III. STANDARD OF REVIEW

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear ... challenges to the lawfulness of immigration-related detention." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas."); *Head v. Keisler*, No. 07-CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) (determining that "[t]his Court has subject matter jurisdiction over" unconstitutional detention in an immigration-related § 2241 habeas petition).

Petitioner asserts that his continued detention violates 8 U.S.C. § 1231(a). (ECF No. 1). Under this statute, "when an alien is ordered removed, the Attorney General shall

remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The 90-day period is known as the "removal period." *Id.* After the removal period, ICE has discretion to detain inadmissible or criminal aliens. *Id.* § 1231(a)(6). However, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *See Zadvydas*, 533 U.S. at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) (reiterating that "the reasonable period of post-removal detention is presumptively six months"). After that, a detainee may bring a habeas action to challenge his detention. *Zadvydas*, 533 U.S. at 688. "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.* at 701.

Therefore, to obtain habeas relief, a petitioner has the initial burden to show the post-removal-order detention has surpassed six months and to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see also Soberanes*, 388 F.3d at 1311 ("If removal is not reasonably foreseeable, the court should hold continued detention unreasonable." (citation modified)). "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." *Zadvydas*, 533 U.S. at 701. Further, "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." *Id.*

IV. PETITIONER'S CONTINUED DETENTION VIOLATES HIS FIFTH AMENDMENT DUE PROCESS RIGHTS

Mr. Zhang is entitled to immediate release based on a violation of his Due Process rights as discussed below.

A. Mr. Zhang has met his Initial Burden

Petitioner has met his initial burden under *Zadvydas* to: (1) establish his post-removal-order detention has surpassed six months and (2) show "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Notably, Petitioner is not required under *Zadvydas* to "show the absence of any prospect of removal—no matter how unlikely or unforeseeable," *id.* at 702, only that that he has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

As to his current detention, Petitioner argues that he "has remained in ICE detention in excess of six months from around June 2024 to present." (ECF No. 1:1). However, as discussed, the reasonable period of post-removal detention is presumptively six months *beyond the removal period. See supra.* The removal period begins on the latest of three dates: (1) the date the order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement. 8 U.S.C. § 1231(a)(1)(B). Here, Mr. Zhang was ordered removed on April 9, 2025. (ECF Nos. 1:1; 12-6). But because Petitioner filed an appeal, the order of removal was not

administratively final until the appeal was dismissed on May 27, 2025. *See* ECF No. 1:1 ("An appeal was filed and dismissed on May 27, 2025"); 8 C.F.R. § 1241.31 (noting that an order of deportation "become[s] final upon dismissal of an appeal by the Board of Immigration appeals."). Thus, the six-month presumptively reasonable period of post-removal detention under *Zadvydas* expired November 27, 2025.[5]

Further, Petitioner has "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. "To meet the burden of establishing this, Petitioner must demonstrate the existence of either institutional barriers to repatriation or obstacles particular to his removal." *Dusabe v. Jones*, No. 24-464-SLP, 2024 WL 5465749, at *3 (W.D. Okla. Aug. 27, 2024), *adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025). Here, Petitioner has identified several barriers and obstacles.

First, Respondent submitted evidence which shows that although Petitioner was ordered removed on April 9, 2025, the Immigration Judge deferred removal under the

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[5] The Court notes that Petitioner filed his habeas petition before the expiration of the presumptively reasonable six-month period. *See* ECF No. 1. While Petitioner's *Zadvydas* claim was not ripe when filed, it is now ripe. The alternative would be to dismiss the Petition, only for Mr. Zhang to re-file and pay another court-filing fee. While pleading claims for relief prematurely is disfavored, the Court will not force Petitioner to re-file at this juncture. *See Momennia v. Bondi, et al.*, No. CIV-25-1067, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (recommending granting habeas relief, in part, based on the petitioner's *Zadvydas* claim, which ripened during the pendency of the case), *adopted*, 2025 WL 3011896, at *1 (stating: "It is undisputed that Petitioner has been detained over six months."); *Smith v. Barr*, 444 F.Supp.3d 1289, 1298 (N.D. Okla. Mar. 16, 2020) (denying motion to dismiss habeas petition which had argued that the petitioner's *Zadvydas* claim was filed before the expiration of the presumptively reasonable 6-month post-removal-period, stating "On these facts, petitioner arguably had a ripe constitutional claim under Zadvydas *after* he filed the instant petition[.]") (emphasis added); *Quang Minh Lien v. Sessions*, No. 18-cv-2146-WJM-SKC, 2018 WL 4853339, at *4 (D. Colo. Oct. 5, 2018) (allowing a *Zadvydas* claim that was premature at the time of filing the habeas petition but became ripe during the pendency of the case).

Convention Against Torture (CAT). (ECF No. 12-6).[6] This deferment is evidence of "a clear institutional barrier to [Petitioner's] repatriation." *See* ECF No. 20:10, *Sukhyani v. Bondi et al.*, Case No. CIV-25-1243 (W.D. Okla. Nov. 18, 2025), adopted, 2025 WL 3283274 (W.D. Okla. Nov. 25, 2025); *Trejo v. Warden of ERO El Paso East Mont.*, No. EP-25 CV-401, --- F. Supp. 3d. ---, 2025 WL 2992187, at *5 (W.D. Tex. Oct. 24, 2025) (finding that petitioner "identified a particular individual barrier to his repatriation to his country of origin—his grant of DCAT, which prevents his removal to El Salvador" (citation modified)); *Misirbekov v. Venegas*, No. 25-cv-00168, 2025 WL 2450991, *1 (S.D. Tex. Aug. 15, 2025) (finding that petitioner is likely to succeed in his habeas petition because he "provided good reason to believe that there is no significant likelihood of removal in the foreseeable future," as he could not be removed to his country of birth and "does not have citizenship nor any ties to any other country"); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (recognizing that a grant of withholding of removal under the Convention Against Torture to a noncitizen "is a powerful indication of the improbability of his foreseeable removal, by any objective measure").

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[6] CAT was implemented by the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, Div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (Oct. 21, 1998) (codified as Note to 8 U.S.C. § 1231, United States Policy with Respect to the Involuntary Return of Persons in Danger of Subjection to Torture). *See generally Nasrallah*, 140 S. Ct. at 1690 (discussing FARRA and CAT). CAT "prohibits removal to a country where an alien would probably face torture." *Ismaiel v. Mukasey*, 516 F.3d 1198, 1204 (10th Cir. 2008). "Relief under the CAT is mandatory if the convention's criteria are satisfied." *Id.*; *see also* 8 C.F.R. § 1208.16(c)(4) (providing that an alien meeting CAT's criteria "shall be granted," at a minimum, deferral of removal). "A claim under CAT differs from a claim for asylum or withholding of removal under the INA [Immigration and Nationality Act] because there is no requirement that the petitioner[ ] show that torture will occur on account of a statutorily protected ground." *Igiebor v. Barr*, 981 F.3d 1123, 1127–28 (10th Cir. 2020) (citation omitted).

Second, Petitioner has demonstrated obstacles to his removal to a third country. Petitioner alleges, and Respondents do not dispute, that ICE has not secured travel documents for Petitioner. (ECF No. 1:2). Respondents submit a declaration from ICE Deportation Officer Erich Klein, who stated:

- Between May and July 2025, DHS sent a "Request for Acceptance of Alien," presumably on behalf of Mr. Zhang, to the British Consulate General, the Consulate of the Republic of Korea, the Embassy of Japan, the Consulate General of Canada, the Consulate General of Mongolia, and the Consulate General of Mexico;
- On July 1, 2025, the Embassy of Mongolia denied Petitioner entry and the Consulate of Mexico stated that it did not have authority to grant or deny Petitioner entry into Mexico;
- As of November 18, 2025, no other responses have been received from the remaining countries; and
- ERO's Headquarters Office is "currently working on removing Zhang to a third country."

(ECF No. 12-1). Respondents submit an additional declaration from ICE Deportation Officer Micheal Thompson, who additionally stated: "The State Department is also working with ERO on Z[h]ang's third country removal. ERO has been successful in removing aliens to third countries with the State Department's assistance. Z[h]ang is also a priority for removal due to his criminal history, and I believe Z[h]ang will be removed to a third country." (ECF No. 12-2). But beyond these assertions, Respondents have presented no *evidence* that any of the aforementioned countries, or any other third country would be actually willing to take *Mr. Zhang*, and the mere possibility of repatriation to third countries, without concrete progress, is insufficient to justify continued detention. *See Momennia v. Bondi*, 2025 WL 3011896, at *10 (W.D. Okla. Oct.

15, 2025) ("[M]ere intent to find a third country," absent "specific communications between the United States and an identified country" is "too speculative to permit indefinite detention"), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025); *Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding insufficient the government's assertion that ICE "requested third country removal assistance from [Enforcement and Removal Operations] HQ"); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future.").

Based on the foregoing, the Court should find that Petitioner has met his initial burden to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future.

B. Respondents Have Not Met Their Burden

Once Petitioner has established six months of post-removal-order detention and "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." *Zadvydas*, 533 U.S. at 701. The Court should find that Respondents have not met their burden in this regard.

As stated, Respondents submit declarations from Deportation Officers Klein and Thompson regarding attempts to locate a country actually willing to accept Mr. Zhang. *See supra*. But to date, the evidence shows:

- Petitioner is prohibited from being removed to China based on his deferral of removal there under the CAT;

- six attempts to deport Mr. Zhang to a third country have not been successful;
- no other attempts to reach out to third countries who may be willing to accept Mr. Zhang have been attempted; and
- no travel documents have been secured for Mr. Zhang.

See supra. But, as stated, "mere intent to find a third country is too speculative to permit indefinite detention or to overcome [Petitioner's] showing." *Momennia v. Bondi*, No. CIV25-1067-J, 2025 WL 3011896, at *10 (W.D. Okla. Oct. 15, 2025), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025). And although Mr. Thompson states a belief that ERO has been successful in removing aliens to third countries with the State Department's assistance and his belief that Petitioner will be removed to a third country, "Respondents have not established [*the petitioner's*] removal to a third country is significantly likely in the reasonably foreseeable future." *See* ECF No. 20:15, *Sukhyani v. Bondi*, et al., Case No. CIV-25-1243 (W.D. Okla. Nov. 18, 2025), adopted, 2025 WL 3283274 (W.D. Okla. Nov. 25, 2025). Based on the foregoing, the Court should conclude that Respondents have failed to rebut Petitioner's showing that there is no significant likelihood of his removal in the reasonably foreseeable future and that he is being detained indefinitely in violation of the Fifth Amendment. Accordingly, the undersigned concludes that under *Zadvydas*, Petitioner is entitled to habeas relief and immediate release from custody. *See* 28 U.S.C. § 2241(c)(3).

V. PETITIONER'S REMAINING CLAIMS

As stated, Petitioner also alleges that his re-detention was in violation of ICE's own regulations and the APA. *See supra*. But because the undersigned recommends that the

Court grant the Petition after finding Petitioner's indefinite detention violates his Fifth Amendment Due Process rights, the Court should decline to address Petitioner's other claims. *See Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3006045, at *1 n.1 (W.D. Okla. Oct. 27, 2025) (declining to decide whether ICE violated its own regulations by continuing to detain the petitioner because the Court adopted the conclusion that his indefinite detention violates his Fifth Amendment Due Process rights). Further, considering the recommended relief, the undersigned declines to address Petitioner's other requests for injunctive and/or declaratory relief.

VI. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

For the reasons set forth above, the undersigned recommends the Court grant Petitioner's request for habeas relief and order his immediate release from custody. The undersigned further recommends that the Court order Respondents to submit a declaration pursuant to 28 U.S.C. § 1746 affirming that Petitioner has been released from custody.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by **December 10, 2025**, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[7] The parties are further advised

[7] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation to seven days. *See* Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker*, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) (noting that "[t]he Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process").

that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

VII. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on December 3, 2025.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE