IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Wei Zhang, Petitioner v. Pamela Bondi, Attorney General; et al., Respondents.	Case No.: 25-CV-1301-PRW **PETITIONER'S RESPONSE TO RESPONDENTS' OBJECTIONS TO REPORT & RECOMMENDATION** **EXPEDITED HANDLING REQUESTED**

INTRODUCTION

Petitioner, Wei Zhang, filed a petition for a writ of habeas corpus on November 3, 2025 alleging that he is being detained in violation of law. ECF No. 1. On December 3, 2025, Magistrate Shon T. Erwin issued a Report and Recommendation ("R&R") that recommends granting the habeas petition and ordering Petitioner's immediate release. ECF No. 16. On December 10, 2025, Respondents filed an objection to the R&R. ECF No. 17.

Respondents first claim that Petitioner's *Zadvydas* claim was premature at the time it was filed. *Id.* at 1-10. Respondents next submit that *Zadvydas* does not compel Petitioner's release at this time. *Id.* at 10-12.

For the reasons that follow, Respondents' objections should be disregarded, and the Court should affirm the R&R, ordering Petitioner's immediate release.

PROCEDURAL & FACTUAL HISTORY

Petitioner incorporates by reference the facts alleged in his verified habeas corpus

petition, and as found in the R&R. *See* ECF No. 1; ECF No. 16 at 1-5, 7-12.

ARGUMENT

I. Petitioner reasserts all prior arguments.

Petitioner incorporates by reference and reasserts his prior arguments in his petition and reply. *See* ECF Nos. 1, 13. Magistrate Erwin properly determined that Petitioner has met his burden for habeas relief and immediate release.

II. Dismissal without prejudice is not warranted.

Respondents suggest that Petitioner's habeas corpus petition was premature at the time it was filed because it was filed before Petitioner had been detained in post-final-order custody for less than six months. *See* ECF No. 17 at 3. This argument presumes that six months of post-final-order custody is *always* reasonable. However, as the Southern District of Texas has previously acknowledged, *Zadvydas*'s "**six-month presumption is not a bright line, however, and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits.**" *Ali v. Dept. of Homeland Security*, 451 F. Supp. 3d 703, 707 (S.D. Tex. Apr. 2, 2020) (emphasis added; citation omitted). Because the six-month rule only renders up to six months of detention "presumptively" constitutional, the presumption can be rebutted. Because the presumption is capable of being rebutted, it is legal error to hold that a *Zadvydas*-based petition is unripe simply because it is filed before six months of custody has elapsed. *See Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (W.D. Wisc. 2008) ("Nothing about this scheme supports the conclusion drawn by many courts that the presumptive legality of detention within the first six months is irrebuttable. The *Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing

inherent in the operation of the presumption itself that requires it to be irrebuttable."); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Moreover, Petitioner has factually rebutted the claim of reasonableness, even before reaching six months of administratively-final post-order detention, by demonstrating: (1) institutional barriers to his repatriation due to his grant of deferral of removal preventing Petitioner's removal to China; (2) that Respondents did not comply with the post-90-day custody review procedures mandated by regulation that invoke review under 8 C.F.R. § 241.13 for examination of whether there exists no significant likelihood of removal in the reasonably foreseeable future; (3) demonstrating Respondents did not give Petitioner the necessary 180-day custody review; (4) that Respondents' determination that Petitioner presents a flight risk and may violate conditions of release was unreasonable because Petitioner was not provided with his due process right to an interpreter when Respondents collected information from Petitioner bearing that determination; and (5) by September 15, 2025, Petitioner's file contained the following evidence of no significant likelihood of removal in the reasonably foreseeable future: (5.A) the July 1, 2025 denial of a Mexican travel document; (5.B) the July 1, 2025 denial of a Mongolian travel document; (5.C) Zhang's CAT order preventing removal to China; (5.D) a lack of responses to Zhang's requests for travel documents from Britain, Korea, Japan, and Canada despite months elapsing since those requests were made; (5.E) Zhang lacks any citizenship or ties to any country other than China or the United States; and (5.F) Zhang's criminal history, which

makes him undesirable to third countries that Zhang lacks any material or personal nexus with. *See* ECF Nos. 1, 13.

Respondents' suggestion that the Court lacks subject-matter jurisdiction over an unripe *Zadvydas* petition is premised on a misunderstanding of prudential ripeness and constitutional ripeness.

All that is necessary to establish constitutional ripeness under Article III is demonstrating that Petitioner: (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendants, and (3) that is likely to be redressed by a favorable judicial decision. *North Mill Street, LLC v. City of Aspen*, 6 F.4th 1216, 1229 (10th Cir. 2021). "To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual and imminent, not conjectural or hypothetical." *Id.* (citations and internal quotations omitted).

Conversely, prudential ripeness, or lack thereof, does not bear on the Court's subject-matter jurisdiction. *See Wyoming v. Zinke*, 871 F.3d 1133, 1141 (10th Cir. 2017) ("We ask, then, whether these appeals fall within our obligation to 'hear and decide,' or whether we should abstain from the exercise of our jurisdiction because these appeals are prudentially unripe?") (citation omitted).

The Tenth Circuit analyzes "prudential ripeness by evaluating 'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Id.* (quoting *Abbott Labs v. Gardner*, 387 U.S. 136, 149 (1967)). "With respect to this question, we consider a number of factors, such as whether the issue is a purely legal one, whether the agency decision in dispute was final, and whether 'further

factual development would significantly advance our ability to deal with the legal issues presented.'" *Id.* (citations and internal quotations omitted). The Tenth Circuit has "also considered 'whether judicial intervention would inappropriately interfere with further administrative action' and 'whether the courts would benefit from further factual development of the issues presented.'" *Id.* at 1141-42 (citations and internal quotations omitted).

Here, Petitioner has sufficiently alleged facts that give the court Article III ripeness. *See, e.g.*, *Rivera v. Holder*, 307 F.R.D. 539, 552 (W.D. Wash. Apr. 13, 2015). Petitioner has alleged injury in fact in the form of unconstitutional prolonged civil detention occurring in violation of due process. The detention is ongoing, meaning that it is concrete, particularized, and actual and imminent. Petitioner has demonstrated that the injury in fact is fairly traceable to Respondents conduct, and that it is likely to be redressed by a favorable judicial decision granting the petition and ordering immediate release. *See* R&R. The only remaining question then relates to prudential ripeness.

The issues are not purely legal, but the issues that must be decided relate to the application of legal doctrine to uncontested facts. This is made plain by Respondents' decision not to object to any findings of fact made by the R&R. *See* ECF No. 17. Thus, the present case essentially presents a purely legal issue in the context of the Court's review of the magistrate's R&R. Additionally, the issues are very well fit for judicial decision, especially in light of the fact that at the time the R&R issued, Petitioner had experienced more than six months of post-final-order detention. Moreover, further factual development would not significantly advance the Court's ability to deal with the legal issues presented.

Similarly, judicial intervention would not inappropriately interfere with further administrative action, as Respondents always have the ability to revoke Petitioner's release on the forthcoming Order of Supervision ("OOS") if they comply with the requirements of 8 C.F.R. § 241.13(g), (i). Lastly, dismissing the petition without prejudice just to force Petitioner to refile the same petition would impose plain and undue hardship on Petitioner by materially extending the length of his unlawful and prolonged civil detention. Under these circumstances, it would be an abuse of discretion for the Court to vacate the R&R and deny the habeas petition on grounds of concerns relating to prudential ripeness.

Other courts have exercised jurisdiction over *Zadvydas*-based habeas petitions that were filed prior to reaching 6 months of post-final-order custody after the habeas applicant reaches 6 months of post-final-order custody. *See Olajide v. B.I.C.E.*, 402 F. Supp. 2d 688, 691-92 (W.D. Va. Nov. 30, 2005) ("Respondents argue that because Olajide had not been in BICE custody for more than six months at the time he filed his petition, his claim is not ripe for review. This argument mistakenly focuses on the date the petition was filed rather than the time the petition is adjudicated. … As of now, Olajide has been in custody for just over six months, more than the six-month presumptively reasonable period for post-removal order detention. Accordingly, his petition is now ripe for judicial review."); *see also Blanchette v. Connecticut General Ins. Corps.*, 419 U.S. 102, 139-40 (1974) (stating that "a change in circumstances altered the posture of the case" where issues were not ripe at the time they were in district court but were ripe before the Supreme Court, and holding, "**since ripeness is peculiarly a question of timing, it is the situation now rather than the situation at the time of the District Court's decision that must govern.**") (emphasis

added); *Momennia v. Bondi*, 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 3006045 (W.D. Okla. Oct. 27, 2025); *Kamara v. Kavanaugh*, 2013 WL 4541535, at *2 (D. Md. Aug. 26, 2013) (declining to dismiss a *Zadvydas* petition filed 11 days before the 6-month mark); *see also Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

There is no reason to dismiss the petition instead of affirming the R&R.

III. *Zadvydas* compels Petitioner's release.

Respondents' arguments on this issue have already been adequately addressed in Petitioner's reply. *See* ECF No. 13 at 10-14. The undersigned copies and pastes the most relevant portion of the reply below:

> In addition to there being no evidence of a regulatorily compliant 180-day interview under § 241.4(i), there is also no evidence that Respondents have engaged in the necessary review of whether there is a significant likelihood of Zhang's removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.4(i)(7). Federal regulation provides:
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> > During the custody review process as provided in this paragraph (i), or at the conclusion of that review, if the alien submits, **or the record contains, information providing a substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future, the HQPDU shall treat that as a request for review and initiate the review procedures under § 241.13.**
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> *Id.* (emphasis added).
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> In Zhang's case, by September 15, 2025, the record contained information providing a substantial reason to believe that removal of Zhang

was not significantly likely to occur in the reasonably foreseeable future. That evidence consisted of: (1) the July 1, 2025 denial of a Mexican travel document; (2) the July 1, 2025 denial of a Mongolian travel document; (3) Zhang's CAT order preventing removal to China; (4) a lack of responses to Zhang's requests for travel documents from Britain, Korea, Japan, and Canada despite months elapsing since those requests were made; (5) Zhang lacks any citizenship or ties to any country other than China or the United States; and (6) Zhang's criminal history, which makes him undesirable to third countries that Zhang lacks any material or personal nexus with.

...

Respondents claim that Zhang admitted to being a flight risk in his questionnaire completed in anticipation of an eventual § 241.4(i) custody review. *See* ECF No. 12 at 15-16. However, it is unclear who filled out the form, especially considering everything is written in English, no interpreter was present, and the record demonstrates that Zhang understands "MANDARIN." *See* ECF No. 12-5 at 2 (showing Mandarin is the language he understands); ECF No. 12-7 at 1-3 (showing the interview questionnaire was completed in English, with no interpreter information provided). Considering the obvious scrivener's error on the following page (ECF No. 12-7 at 4), it is difficult to trust the scrivener abilities of the deportation officers that filled out the questionnaire on Zhang's behalf without an interpreter. Moreover, because no interpreter was used, it is hard to trust that Zhang understood the question he was being asked or the appropriate answer considering all of the legal jargon in Question 16 (as compared to the other questions that use relatively basic words addressing more accessible concepts). Noticeably absent from the questionnaire is any sort of follow-up or additional information about when Zhang failed to appear or escaped. *See* ECF No. 12-7 at 3. Considering the record includes no evidence of any failures to appear or escapes, and considering Zhang received an order of removal on the merits rather than an *in absentia* order of removal after failing to appear, and considering the criminal documents do not show a failure to appear, there is substantial reason to doubt the accuracy of the "Yes" answer to question 16.

More fundamentally, the fact that Respondents conducted an interview of Zhang in English without an interpreter is concerning in and of itself considering the documents Respondents submitted to the Court plainly demonstrate that Zhang "is unable to understand the English language" according to Zhang's criminal defense counsel. *See* ECF No. 12-3 at 16. Respondents' failure to provide Zhang with an interpreter during his 180-day interview is a regulatory and due process violation. *See* 8 C.F.R. §

> 241.13(e)(5) ("The HQPDU **will** provide an interpreter upon its determination that such assistance is appropriate") (emphasis added); 8 C.F.R. § 241.4(i)(3)(i) ("The HQPDU Director **will** provide a translator if he or she determines that such assistance is appropriate.") (emphasis added); *B.C. v. U.S. Atty. Gen.*, 12 F.4th 306, 313-19 (3d Cir. 2021) (finding due process violation in immigration proceedings when immigration judge failed to conduct an adequate threshold inquiry into whether an interpreter was needed, and by failing to realize an interpreter was needed as the hearing continued); *Nazarova v. I.N.S.*, 171 F.3d 478, 484 (7th Cir. 1999) ("A non-English-speaking alien has a due process right to an interpreter at her deportation hearing because, absent an interpreter, a non-English speaker's ability to participate in the hearing and her due process right to a meaningful opportunity to be heard are essentially meaningless.") (citation omitted).
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> Considering the foregoing answer is the only proof Respondents rely upon for claiming Zhang is a flight risk and likely to violate the conditions of release, the irregularities in how the interview was conducted and how the answers were recorded are material. The singular one-word answer to question 16 does not constitute a sufficient basis for continuing to detain Zhang under § 241.4. Moreover, even if the government properly determined Zhang is a flight risk under § 241.4, it nonetheless erred by failing to conduct the review required by 8 C.F.R. § 241.4(i)(7) and 8 C.F.R. § 241.13 relating to the likelihood of removal in the reasonably foreseeable future.

ECF No. 13 at 8, 10-12.

Respondents have provided no evidence indicating the slightest likelihood, much less a significant likelihood, that Respondents will *ever* be able to deport Petitioner to any country, much less in the reasonably foreseeable future. Respondents have not even bothered to state what *might* change if they are permitted more time before being forced to release Petitioner. On this record, Petitioner has clearly met his burden, and Respondents have not met their rebuttal burden.

CONCLUSION

The Court must affirm the R&R. Alternatively, the Court must order Petitioner's immediate release in accordance with all prior arguments.

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Respectfully submitted,

RATKOWSKI LAW PLLC

/s/ Nico Ratkowski

Nico Ratkowski (Atty. No.: 0400413)
332 Minnesota Street, Suite W1610
Saint Paul, MN 55101
P: (651) 755-5150
E: nico@ratkowskilaw.com

Attorney for Petitioner