

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS**

TSEWANG D.

Petitioner,

v.

JOHN DOE, et al,

Respondents.

Case No. 1:25-cv-00275

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO
PETITION AND MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

This is Petitioner's Reply to Respondents' combined Response to Petitioner's Petition for Habeas Corpus and Motion for Summary Judgement (ECF 9).

The essence of this case is whether there is a reasonable likelihood that Petitioner can be removed to China in the reasonably foreseeable future. If there is not, then the revocation of his release on supervision was unlawful under 8 C.F.R. § 241.13(i), and his continued detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001)

Respondents' response and motion fail to address this key issue in a substantive way. Instead, they focus on irrelevant issues such as whether the underlying order for his removal to China is lawful (a claim that Petitioner does not raise and which this Court does not have jurisdiction to consider) and that Petitioner is required to exhaust clearly futile remedies, such as seeking release on a bond from an Immigration Judge, even though Immigration Judges have no statutory authority to grant bond to a person with a final order of removal. With regard to the likelihood of removal to China in the reasonably foreseeable future, Respondents merely state that it is likely because they requested travel documents from China in November 2025 (five months after Petitioner was detained). This shows conclusively that Petitioner's removal to China was not reasonably foreseeable at the time they revoked his supervision, and thus the revocation was unlawful. Further, Petitioner has consistently requested travel documents from China since at least 2012, when he was first released on supervision, and China has consistently refused to issue them. Respondents offer nothing in the way of a response from the Chinese consulate to show that travel document will actually be issued, and in the absence of such a showing, Petitioner's removal to China is not likely in the reasonably foreseeable future as a

matter of law. To the extent that there is any factual dispute about this issue, it dooms Respondents' motion for summary judgment.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner is a native of Tibet and citizen of China, who has been living in the US for over twenty-eight years (Petition for a Writ of Habeas Corpus, ECF 2, ¶ 27). Petitioner entered the US in June 1998 using a Nepali passport with someone else's B-2 tourist visa. He overstayed that visa and subsequently filed for asylum from China based on his Tibetan heritage on March 13, 2000. The application was referred to Immigration Court where it was denied by an Immigration Judge (IJ) in 2001, and the Board of Immigration Appeals (BIA) upheld the denial in 2002, making the removal order administratively final (*id.*, ¶¶ 7-8).

In 2011, after a motion to reopen the removal order was denied, ICE placed Petitioner an order of supervision, which required that he check in with them on a regular basis, keep them informed of his address, and cooperate in requesting travel documents from the Chinese consulate. (*id.*, ¶¶ 28-29) Implicit in the issuance of the order of supervision was a finding by ICE that "he was neither a flight risk nor danger to the community and that his removal from the US in the reasonably foreseeable future was unlikely." (*id.*, ¶ 30). The Chinese government has never issued travel documents to Petitioner, because he does not have the required identity documents, as he was born in a rural area of Tibet born where no birth certificates were issued or recorded (*id.*, ¶ 30). Petitioner has no criminal history, and no immigration history other than as outlined above (ECF 2, ¶ 41 and ECF 9-2, at 2).

During his time in the US, Petitioner has gotten married to a US citizen, and together they have two U.S. citizen children. His wife filed an I-130, Petition for Alien Relative for him. If

this petition were approved, Petitioner would be eligible for an adjustment of status to permanent resident, and so Petitioner filed a corresponding Form I-485, Application for Adjustment of Status, along with that I-130 petition. (ECF 9-2, at 2) An interview for these applications was scheduled, for July 2025, but at an ICE check-in a few weeks earlier, on June 8, 2025, at the New York City ICE Field Office Petitioner was detained by (ECF 2, ¶ 34). This detention occurred despite Petitioner having fully complied with the terms of his order of supervision, by continuing to request travel documents from China, keeping ICE informed as to his address, and appearing for all of his scheduled check-ins (*id.*, ¶ 30). At his detention, he was told that ICE were in the process of obtaining travel documents from China (*id.*, ¶ 34). This was not true, and no request was made until November 18, 2025 (ECF 9-1, ¶ 14).

While in detention, through his immigration attorney, Petitioner requested a bond hearing from an IJ, which was denied in October 2025 for lack of jurisdiction as he was subject to a final order of removal (ECF 9-4, at 1). This decision was correct: immigration judges only have authority to grant bond hearings to certain categories of non-citizens detained pending removal proceedings, see 8 U.S.C. § 1226(a)(2). Petitioner's removal proceedings concluded in 2001, with his final order of removal, and his detention is now governed by 8 U.S.C. § 1231(a)(2), which does not authorize bond hearings. See *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022). Petitioner was asked to sign papers while in custody, presumably the Warning for Failure to Depart" referenced by Officer Campa (ECF 9-1, ¶ 12), but refused to sign until his immigration attorney was able to review the document (ECF 1, ¶ 38). Said document has yet to be provided to Petitioner's immigration attorney (*id.*).

He then filed this Petition for a Writ of Habeas Corpus, asserting six causes of action.

Count One asserts that Petitioner's detention violated his rights under the Fourth and Fifth amendment, as Respondents were only authorized to detain him during the 90 day after his removal order became administratively final in 2002. Count Two asserts that revocation of his order of supervision without any prior notice or any violation of its terms violated his rights to procedural due process. Count Three asserts that Respondents violated his due process by failing to hold an initial interview to respond to the reasons for his revocation of release as required by 8 C.F.R. § 241.4(l)(1) or a ninety day post order-custody review as required by 8 C.F.R. § 241.4(l)(3). Count Four asserts that as Petitioner had not been given advance notice or an opportunity to respond, removing him to a third country would violate his due process rights. Count Five asserts that detaining Petitioner twenty-three years after his removal order became final, knowing that his removal to China was not imminent, was arbitrary and capricious in violation of the Administrative Procedures Act (APA). Count Six asserts that detaining Petitioner without permitting him to remotely attend his interview with his wife, which would allow him to adjust status if successful, was also arbitrary and capricious in violation of the APA.

As relief, the Petition seeks, *inter alia*, a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, to provide him written notice of any third country to which they intend to deport him along with an adequate opportunity seek relief from such removal, and to reschedule an interview on his I-130 petition and allow him to attend remotely if necessary.

The Court then issued an Order to Show Cause directing Respondents to respond to the Petition twenty days after service (ECF 6).

On December 23, 2025, Respondents filed a combined motion for Summary Judgement and response to Petition for Writ of Habeas Corpus ("Resp. Memo", ECF 9), in which they argue that the Petition should be dismissed for failure to exhaust administrative remedies, citing 8 CFR

§ 241.13 (ECF 9, pp. 5 – 7). Respondents then argue that any claim they intended to deport Petitioner to a third country is “baseless”, and then states the Petition should be dismissed because he did not argue that his removal to China is unlawful. Finally, Respondents allege that Petitioner is lawfully detained under 8 U.S.C. § 1231, and that his detention has not violated any of the limits on detention set by *Zadvydas v. Davis*, *supra*, 533 U.S. 682 (*id*, pp. 9 – 12). Finally, they argue that in the event of a bond hearing, the burden should remain on Petitioner to prove that he is not a flight risk or danger to the community (*id*, pp. 27 – 28), and that the Court should not enjoin his transfer outside of this District (*id*, pp. 28 – 29).¹ Respondents do not even acknowledge, much less respond to, Petitioner’s claims that the revocation of his release on an order of supervision violated his rights to due process and the APA

In support of their Response, Respondents submitted a declaration from a Supervisory Detention and Deportation Officer Juan Campa (“the Campa declaration”, ECF 9-1). This declaration confirms that Petitioner’s removal order became administratively final on December 27, 2002, and that Petitioner was placed on an order of supervision in November 2011 “because at the time there was no significant likelihood of removal and there was a delay in obtaining a travel document.” (*id*, ¶ 11) The declaration further states that on June 8, 2025, Respondents served Petitioner with two documents: a Notice of Revocation of Release, stating that he can be removed from the US pursuant to the removal order, as well as a Form I-229, Warning for Failure to Depart, which he (Petitioner) refused to sign. The I-229 form is just that: a notice or warning to the non-citizen of the consequences of failing to depart, or cooperate with departure. It is not a finding that the non-citizen has failed to cooperate, and the signature is merely an acknowledgment of acceptance. See Exhibit A. A separate document, called a Notice of Failure

¹ Petitioner has sought neither a bond hearing nor an injunction against his transfer out of the district.

to Comply, is served on a non-citizen who has failed to comply with removal such as by not completing required documentation for issuance of a travel document. See Exhibit B. There is no claim that such a notice was served on Petitioner, nor could there be: Petitioner has never failed to comply with any of the steps required for issuance of a travel document. Finally, the Campa declaration states that Respondents submitted a request for a travel document for removal to China on November 18, which is still pending (ECF 9-1, ¶ 14). Officer Campa offers no explanation for why the request was not made until over five months after Petitioner had been detained, or what response, if any, the Chinese government has provided.

Respondents' Response is also supported by a Form I-213, Record of Deportable/Inadmissible Alien (ECF 9-2), which contains Petitioner's immigration history, notes that there is no criminal history, and confirms that he has a pending I-485, application to adjust status, and I-130, petition for alien relative. Again, there is no claim in this I-213 that Petitioner ever violated the terms of his order of supervision, or that he failed to comply with any requests for a travel document. There is also no indication in this form that travel documents were imminent at the time of Petitioner's detention in June 2025, or that his removal was otherwise imminent or reasonably foreseeable at the time of his detention.

For the following reasons, the Court should deny Respondents' motion and grant the Petition.

LEGAL STANDARDS FOR FED. R. CIV. P. RULE 56 MOTION FOR SUMMARY JUDGEMENT

“Under Rule 56, the moving party is entitled to summary judgment if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The

moving party bears the initial burden of providing the Court with a legal basis for its motion, and it must identify those portions of the record that it contends demonstrate the absence of a genuine issue of material fact.” *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *4 (S.D. Tex. Sept. 26, 2025) (internal citations omitted), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). “If the moving party fails to meet this initial burden, the motion must be denied, regardless of the nonmovant’s response.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994).

Here, there is a genuine dispute of a very basic material fact: is Petitioner’s removal to China imminent, or even likely in the reasonably foreseeable future? Petitioner says it isn’t, and Respondent says it is (although there is no evidence to support their claim). In cases where there has been a persistent failure of the removal country to issue travel documents (for whatever reason), a mere statement by ICE that it has requested travel documents has been found insufficient to show a likelihood of removal in the reasonably foreseeable future. For this and other reasons, Respondents’ Motion for summary Judgment should be denied.

ARGUMENT

Point 1. Exhaustion of Remedies.

Respondents argue that Petitioner has failed to exhaust his administrative remedies. First, they state that “Petitioner did not allege or show there has been any administrative determination by DHS’s Headquarters Post-order Detention Unit (HQPDU) determining whether there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future to establish exhaustion of administrative remedies”, citing 8 C.F.R. § 241.13(d)-(g). (ECF 9, at 6).

8 C.F.R. § 241.13(d) provides that a detained non-citizen with a final order of removal, can submit a request to the HQPDU “asserting the basis for the alien's belief that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future.” However, this section applies to the continuation in detention of non-citizens after expiration of the removal period, see § 241.13(a): “This section establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period”. § 214.4, in turn, authorizes the “Continued detention of inadmissible, criminal, and other aliens beyond the removal period.”. Petitioner is not subject to continued detention, he is subject to detention after revocation of an order of supervision. A post-revocation review is prescribed by 8 C.F.R § 214.4(l) and is scheduled by the HQPDU Director, not the detainee. § 214.4(l)(3).

Respondents also argue that Plaintiff failed to exhaust potential remedies by not appealing the October 2025 IJ order, stating that the Immigration Court had no jurisdiction to hold a bond hearing because Petitioner had a final order of removal, citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). Respondents’ reliance on *Fuller* is misplaced. That case found administrative remedies were not exhausted where the administrative appeal could be successful if the appellate court exercised discretion and allowed the appeal to be filed outside of the requisite time period. Petitioner’s case is plainly different as there is no possibility of discretion. Petitioner is detained under 8 U.S.C. § 1231, and Immigration Judges only have authority to hold bond hearings for non-citizens pending removal proceedings, see 8 U.S.C. § 1226(a). Even Respondents acknowledge later in their Motion that Petitioner “remains in custody without a bond pending his removal to China” (ECF 9, at 8). Thus, the IJ lacks jurisdiction to hold a bond hearing, and so it would thus be plainly futile to appeal the IJ’s order denying a bond hearing for

lack of jurisdiction to the BIA. Accordingly, Petitioner has no administrative remedies to exhaust.

Point 2. Respondents' arguments regarding whether Petitioner's removal to China is unlawful are irrelevant.

Respondents contend that "because the Petitioner has failed to demonstrate that his removal to China is unlawful, the Petition should be denied." (*id.*) This section of Respondent's argument is not responsive to any of the claims raised in the Petition, and is irrelevant. Petitioner was ordered removed to China by an Immigration Judge in 2001, which was upheld by the Board of Immigration Appeals in 2002. Judicial review of such an order lies with the Court of Appeals via petition for review filed within thirty days of the final order, 8 U.S.C. § 1252(b)(2). This Petition neither seeks judicial review of that order, nor argues that the removal order was incorrect. The only relief sought in this Petition is release from custody on the basis that revocation of his release on supervision was unlawful, and his removal to China is unlikely in the reasonably foreseeable future.

Point 3. Petitioner is not subject to the 90-day post-order detention, because he was placed on post-order supervision in 2011, fourteen years ago. continued detention violates the INA, its implementing regulations, and the Supreme Court's ruling in *Zadvydas*.

Respondents argue that Petitioner's detention is lawful under 8 U.S.C. § 1231, specifically citing to 8 U.S.C. § 1231(a)(1)(A) as permitting detention for a ninety-day period following entry of a final order of removal, and that "there is a "special statute [that] authorizes further detention if the government fails to remove the alien" during the removal period." (ECF 9, at 9, citing *Zadvydas v. Davis*, *supra*, 533 U.S. 682).

Respondents seem to state that this 90-day post-order detention period began on June 8, 2025, the date of Petitioner's detention ("the relevant time period in which Petitioner has been

continually detained by ICE started on June 8, 2025, when Petitioner was arrested and taken into ICE custody—not December 2002 when the removal order became administratively final as the Petition suggests.”, Resp. Memo at 10), but that is incorrect. It would be counterintuitive to allow for the 90-day post-order mandatory detention period to commence twenty-five years after the removal order became administratively final, and thirteen years after Petitioner was placed on an order of supervision, which is only authorized by statute *after* the initial 90 day period, 8 U.S.C. § 1231(a)(3) (“If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision...”)

Regardless of whether or not it is counter-intuitive, the INA is clear and explicit about the timing of post-order detention. The removal period begins on one of three discrete dates, in this case on “The date the order of removal becomes administratively final.”, 8 U.S.C. § 1231(a)(1)(B)(i), and “shall be extended” if the non-citizen fails to cooperate in their removal, 8 U.S.C. § 1231(a)(1)(C). The INA mandates detention during that removal period, 8 U.S.C. § 1231(a)(2), and authorizes release on supervision after expiration of the 90-day removal period, or any subsequent extension, 8 U.S.C. § 1231(a)(3) (“If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General.”). Those regulations are at 8 C.F.R. § 241.4, and § 214.4(l) governs revocation of release on supervision.

That begins and ends debate on the issue. When Respondents detained Petitioner in June 2015, it was not and could not have been pursuant to the statutory authority at 8 U.S.C § 1231(a), because that only governs detention during the removal period. It is unnecessary to resolve here whether or not the 90-day detention period must commence immediately upon the removal order

becoming final², because regardless of when it commences, it cannot commence after the person has been released on an order of supervision, which Petitioner was, in 2011. Accordingly, Respondents' argument, that Petitioner is still subject to the 90-day removal period detention, must be rejected.

However, even if Petitioner had been detained in June 2025 for the 90-day post-order detention period, which he was not, he would still have to have been released after 90 days. An extension is only authorized "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.", 8 U.S.C. § 1231(a)(1)(C), and there is no allegation or claim that Petitioner has done so in this case. On the contrary, the undisputed evidence is that Petitioner was released on supervision in 2011, on condition that he would make attempts to obtain travel documents from the Chinese government, that he made such attempts, and they were either denied or not responded to (Petition, ECF 2, ¶¶ 28, 30). Even the Campa declaration acknowledges that travel documents to China could not be obtained, (ECF 9.1, ¶ 11), makes no allegation that Petitioner tried to prevent or obstruct his removal to China, and states that Petitioner's release on supervision was revoked in order to effect his removal to China, and not because he was subject to the mandatory 90-day post-order detention. Thus, even if Petitioner were detained under 8 U.S.C. § 1231(a)(1) in June 2025, he would have had to have been released on supervision after 90 days.

² Some cases have found that commencement of the removal period can be tolled if the person has tried to frustrate their removal, *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501–02 (S.D.N.Y. 2009), (requiring a bad faith failure to cooperate, such as providing the INS with false or inconsistent information regarding identity or country of origin, or refusing to complete travel arrangements or name a country for deportation, before the non-citizen can be found to have frustrated their removal). Here, Petitioner did not act to toll the removal period; on the contrary, he remained living at the address of record, and was well-known in his community, and actually presented himself to ICE in order to be placed on supervision.

And it is now January 14, 2026, 220 days since Petitioner's June 8, 2025 detention, which is presumptively unreasonable under *Zadvydas v. Davis, supra*, 533 U.S. 689 (holding that after six-month's post-final order detention, "once an 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.") Here, Petitioner has done just that, and the government has not rebutted it. The Petition alleges that Petitioner has made consistent attempts to obtain travel documents from China but that they have not issued, because he is from a remote/rural area in Tibet in which there is no formal records of births (Petition, ECF 2, ¶ 30). Extrinsic evidence corroborates this³, as does the BIA 2010 decision denying Petitioner's motion to reopen (ECF 9-3, p. 2) Respondents admit that in 2011, "there was no significant likelihood of removal and there was a delay in obtaining a travel document for Petitioner." (ECF 9, at 3). Therefore, Petitioner clearly demonstrated "that 'the circumstances of his status,' or the existence of 'particular individual barriers to his repatriation' to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future." *Tawfik v Garland*, 2024 WL 4534747, *3 (SD Tex 2024), quoting *Idowu v Ridge*, 2003 WL 21805198, *4 (ND Tex 2023).

Respondents do not dispute this, and indeed the Campo declaration corroborates that travel documents were unobtainable in 2011, and that Petitioner's supervision was revoked in 2025, fourteen years later, not because he didn't cooperate in getting travel documents during that time period, but instead because he "can be removed to China pursuant to his administratively final order of removal" (ECF 9-1, ¶ 13). If Petitioner had not been making

³ There are reports spanning the last twelve years that even for Tibetans with the proper identity documents China refused to issue passports due to political motivations in suppressing and controlling the Tibetan people. <https://www.rfa.org/english/news/tibet/passports-01202013213254.html?utm; https://tibet.net/akin-to-a-caged-bird-how-china-restricts-tibetans-freedom-of-movement/> (last visited on January 13, 2026)

consistent efforts to obtain travel documents from China during the period of his supervision, it would have been revoked for that reason. Thus, it is clear that Petitioner has been making consistent efforts to obtain travel documents from China, and that they have not been provided. Respondents also cannot be permitted to argue that one is reasonably likely to be produced given that they waited nearly five months to request a document from China in November after detaining Respondent in June (ECF 9-1, ¶ 14) and have not stated what response, if any, has been provided by the Chinese government to their request for a travel document for Petitioner.

Two final point warrant mention. Respondents assert that “Petitioner has previously refused to help with efforts and denied ICE’s Warning for Failure to Depart. See Gov’t Ex. 1, ¶ 12. By failing to cooperate with ICE in obtaining his travel document for his removal to China and prolonging his removal by appealing a removal order beyond the statutory deadline to do so (Gov’t Ex. 3 at 2-3), the Court should deny Petitioner’s constitutional and statutory claims challenging the lawfulness of his detention.” (Resp. Memo at 11). There is simply no merit to these claims.

First, the assertion that Petitioner has refused to help with efforts to obtain travel documents to China finds no support in the record whatsoever (it is not noted in the I-213 or the Camp declaration), and his refusal to sign the Warning for Failure to Depart means nothing more than that he refused to sign a notice reminding him of the penalties for not requesting a travel document (see Exhibit A). As previously explained, the Warning for Failure to Depart is not a request for a travel document, nor does it have any relationship to whether or not he requested a travel document. The Petition repeatedly asserts that Petitioner consistently cooperated in trying to obtain travel documents to China. If that was not true, then it was then incumbent on

Respondents to provide some specific evidence or instance in which he had refused to do so, and the unsupported statements of counsel that he had not done so are not evidence.

Second, Respondents assertion that Petitioner prolonged his removal by “appealing his removal order beyond the statutory deadline to do so” is simply incorrect, which a rudimentary reading of the cited-to document (ECF 9- 3) would have revealed. That document is a denial by the Board of Immigration Appeals (BIA) in 2010 of an untimely motion to reopen. It is not an appeal, and it did not delay or prolong Petitioner’s removal, because it did not stay the underlying removal order. As the Campa declaration correctly states, the BIA denied Petitioner’s appeal in December 2002, at which time his removal order became administratively final. The motion to reopen did not affect that.

Point 4. Respondents have not responded to Petitioner’s claims that the revocation of his release on supervision violated his due process rights as well as the Administrative Procedures Act.

Petitioner claimed in Counts Two and Three of his petition that revocation of his order of supervision in the manner complained of, and without holding an initial post-revocation interview or a ninety day post order-custody review violated his due process rights. He claimed in Count Five that it was arbitrary and capricious in violation of the Administrative Procedures Act (APA), and in Count Six that detaining him without affording an opportunity to remotely attend the previously-schedule I-130 interview with his wife, which would allow him to adjust status if successful, was also arbitrary and capricious in violation of the APA.

Respondents have not responded to any of these claims, which make up the bulk of the petition, and so summary judgment must be denied as to them. *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025) (“The government does not address Villanueva's claim that it violated his due process rights by failing to comply with its own

regulations, much less point to evidence to show that genuine issues of fact exist material to his claim. The government's motion for summary judgment on these claims is denied.”, *id.*, * 7)

Respondents' actions plainly violated Petitioner's rights as complained of in the Petition.

Regulations authorize revocation of an order of supervision under two conditions: if the non-citizen violates a condition of release (8 C.F.R. § 241.13(i)(1)) or if there is “a significant likelihood that the alien may be removed in the reasonably foreseeable future.” (§ 241.13(i)(2)).

Petitioner is not alleged to have violated any of the conditions of his release. Therefore, the revocation of release could have only occurred if removal was likely in the “reasonably foreseeable future” (8 C.F.R. § 241.13(i)(1), (2)). And it was not: the Chinese consulate had refused to issue a travel document for Petitioner at the time he was placed on supervision in 2011, they didn't issue one during the intervening fourteen years, despite Petitioner's requests that they do so, and now it is January 2026, and they still have not issued one.

It was Respondents' burden, when revoking Petitioner's release, to show a significant likelihood that he could be removed. *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025) (“[U]pon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed;”, *id.*, * 3), *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (“[T]he regulations ... place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future.”); *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO (HC), 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025) (“[W]hen ICE revokes the [OSUP] of a noncitizen who has been ordered removed to effectuate that noncitizen's removal, it is [ICE's] burden to show a significant likelihood that the alien may be removed.”)

A mere generalized statement that ICE have been making efforts to get a travel document, or that they hope one will be issued soon, have always been found insufficient to discharge that burden, *Tadros v. Noem*, Case No. 25-cv-4108 (EP), 2025 WL 1678501, at *3 (D.N.J. June 13, 2025). This mirrors the Supreme Court's caution in *Zadvydas v. Davis*, *supra*, 533 U.S. at 702, against "requir[ing] an alien seeking release to show the absence of any prospect of removal". Thus, there was no likelihood of removal in the reasonably foreseeable future at the time Petitioner's release on supervision was revoked, and there is no likelihood of it now, and so Petitioner's removal to China is not likely to occur in the reasonably foreseeable future.

This revocation of supervision violated the INA's implementing regulations at 8 C.F.R. § 241.13(g) and (h) (authorizing re-detention when there is no likelihood of removal in the reasonably foreseeable future), as well as the Administrative Procedures Act at 5 U.S.C. § 706 (requiring agency action to be in accordance with law, § 702.2(A), and in observance of procedure required by law, § 702.2(D)). Because these violations of the proscribed procedures violated Petitioner's fundamental constitutional right (to be free from unlawful government detention), they violated his right to procedural due process.

In determining claims of procedural due process violations, courts apply the three-prong test established by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976): "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Arias Gudino v Lowe*, 785 F.Supp.3d 27, 44 (M.D. Pa. 2025).

Regarding the Mathews v. Eldridge test, “[t]he failure of an agency to follow its own regulations is not, however, a per se denial of due process unless the regulation is required by the constitution or a statute.” in which case a showing of a procedural due process violation requires the claimant to show “substantial prejudice” arising from the violation. *Gomez-Simeon v. Bondi*, No. SA-25-CV-01460-JKP, 2025 WL 3470872, at *5 (W.D. Tex. Nov. 24, 2025), citing *Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989) and *Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024).

Here, Petitioner satisfies either requirement. The regulations at 8 C.F.R. §§ 241.4 (governing “Continued detention of inadmissible, criminal, and other aliens beyond the removal period.”) and 241.13 (“Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future”) were promulgated and enacted to provide necessary procedural safeguards to ensure the detention beyond the removal period comports with due process requirements. See, *Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *7 (S.D. Tex. Aug. 21, 2008), superseded, No. CV B-08-037, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008), report and recommendation adopted, No. CV B-08-037, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008). Thus, a violation of these regulations is necessarily a violation of both the constitution and the statute.

Analyzing each Mathews prong in turn, because Petitioner is detained, his “private interest in personal liberty [is] of the highest interest one can have, weighing the first prong clearly in [his] favor.” *Gomez-Simeon v. Bondi*, *supra*, 2025 WL 3470872, at *5 (W.D. Tex. Nov. 24, 2025) citing *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 364 (S.D.N.Y. 2019) (finding that an immigrant detained by ICE had “the highest [private] interest one can have”) and *Hamdi v.*

Rumsfeld, 542 U.S. 507, 529 (2004). Deprivation of personal liberty is certainly “substantial prejudice” applied to this context.

The second prong addresses the risk of an erroneous deprivation of Petitioner’s liberty through the procedures used. Here, Respondents abruptly detained Petitioner without the advance notice they were required to provide such notice by the regulations. (ECF 1, ¶ 31). His removal was not likely in the reasonably foreseeable future, because obviously Respondents didn’t have a travel document from China or he would have been removed by now. This generalized hope that a travel document will be issued soon is insufficient to show removal in the reasonably foreseeable future, *Tadros v. Noem, supra*, 2025 WL 1678501, at *3. Petitioner is entitled to advance notice of any third country to which Respondents might try remove him to, as well as an opportunity to challenge such removal, *Villanueva v. Tate, supra*, 2025 WL 2774610, at *8, so removal to a third country is also not reasonably foreseeable. Thus this procedure – detaining Petitioner without any likelihood of her removal in the foreseeable future –erroneously deprived Petitioner of his liberty.

The third factor, “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail” *Mathews, supra*, 424 U.S. at 335, does not weigh strongly in favor of Respondents. The regulations do not authorize revocation of release on supervision unless removal is reasonably foreseeable, 8 C.F.R. § 241.13(i)(2), and the law could not be clearer that a generalized expectation that a travel document will be issued at some point in the future does not make removal reasonably foreseeable. In *Zadvydas, supra*, 533 U.S. at 702, the Supreme Court explicitly rejected the Fifth Circuit’s holding that good-faith efforts by the Government to remove the alien satisfied the removal statute and attendant regulations “until there is a more

definitive showing that deportation is impossible, not merely problematical, difficult, and distant.”, *Zadvydas v. Underdown*, 185 F.3d 279, 294 (5th Cir. 1999). The Supreme Court held that the Fifth Circuit’s holding, that continued detention was lawful as long as there are “good faith efforts to effectuate ... deportation”, demanded a reading of the statute further than the Court could bear. *Zadvydas*, 533 U.S. at 702.

The regulations were promulgated and enacted precisely to address the concerns of the Supreme Court in *Zadvydas*, *id*, and provide necessary procedural safeguards to ensure the detention beyond the removal period comports with due process requirements, *Kane v. Mukasey*, *supra*, 2008 WL 11393137, at *7. A violation of these regulations is therefore necessarily a violation of both procedural due process as well as of the INA and the Administrative Procedures Act (APA) at 5 U.S.C. § 706(2)(a), (c), (d). Government interests are not harmed by requiring it to follow its own regulations, see *Kane v. Mukasey*, *id*, 2008 WL 11393137, at *5 citing *Marshall v. Lansing*, 839 F.2d 933, 943 (3d Cir. 1988). Accordingly, the government interest factor in the Mathews test does not weigh in favor of Respondents.

Petitioner therefore shows that revocation of his release on supervision violated the INA and its implementing regulations, the Administrative Procedures Act, and Petitioner’s substantive and procedural due process rights. And because Respondents have not responded to this part of the Petition, the Court should enter judgment in Petitioner’s favor on these counts, and order his immediate release.

Point 4. Respondent’s I-130 and I-485 applications are still pending and cannot be adjudicated without an interview.

Respondent was detained in June 2025, weeks before his I-130 interview was scheduled to be held. Count 6 of the Petition requested that this Court order Respondents to facilitate an

interview where he could attend the I-130 interview remotely with USCIS and his US citizen spouse. His application is supported with ample evidence and approval of the I-130 would make him eligible for adjustment of status. Respondents have not responded to this part of the Petition, and so the Court should grant it as unopposed. Petitioner once again asks this Court to enter such an order.

Point 5. Petitioner's request for an order enjoining his removal to a third country without advance notice and procedural protections.

The Petition asked the Court for an Order directing Respondents to provide him with written notice of any third country to which they intend to deport him, and to provide him with an adequate opportunity to seek protection against removal to such country prior to any attempted removal (Prayer for Relief, ¶ 4). Respondents have not responded at all to that request, much less oppose it. Accordingly, Petitioner requests that the Court grant that relief as unopposed.

CONCLUSION

Respondent's Motion for Summary Judgement should be denied. The Court should grant Petitioner's Petition, and order him released immediately. The Court should also order Respondents to facilitate an I-130 interview for Petitioner if his release is not immediately ordered.

Dated: New York NY
January 14, 2026

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