

Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GUO XIN ZHENG,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT FIELD
OFFICE DIRECTOR, *et al.*,

Respondents.

Case No. 2:25-cv-02483-TLF

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
March 11, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Guo Xin Zheng, a native and citizen of the People’s Republic of China, subject to an order of removal under Section 241 of the Immigration and Naturalization Act (“INA”). *See* 8 U.S.C. § 1231. Petitioner seeks habeas relief from his continued post-order detention at the Northwest ICE Processing Center (“NWIPC”) pending execution of a final order of removal. Dkt. 17 (“Am. Pet.”). But Congress has authorized post-order detention to effectuate removal, and the Supreme Court has held that such detention is lawful so long as removal remains reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

FEDERAL RESPONDENTS’ RETURN MEMORANDUM
[Case No. 2:25-cv-02483-TLF] - 1

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1 Petitioner cannot carry his burden under 28 U.S.C. § 2241(c)(3). He is subject to a valid,
2 administratively final order of removal, and his detention is authorized by 8 U.S.C. § 1231(a)(6).
3 Nor is his detention “indefinite.” His detention falls within the “presumptively reasonable” six-
4 month detention period announced by the Supreme Court in *Zadvydas*. 533 U.S. at 700-01.
5 Petitioner’s remaining claims rest on speculation about possible future third-country removal or
6 hypothetical re-detention. Such contingent injuries do not establish a present violation of law or
7 satisfy Article III. Because Petitioner’s detention is within the presumptively reasonable period
8 and he has met his burden to rebut the presumption, his custody is lawful, and the Petition should
9 be denied.

10 II. LEGAL STANDARD

11 “Writs of habeas corpus may be granted by . . . the district courts . . . within their respective
12 jurisdictions.” 28 U.S.C. § 2241(a). A habeas petitioner must prove by the preponderance of the
13 evidence that he is “in custody in violation of the Constitution or laws or treaties of the United
14 States.” *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004); 28 U.S.C. § 2241(c).

15 III. FACTUAL AND PROCEDURAL BACKGROUND

16 A. Detention Authorities and Removal Procedures

17 The INA contains a complex scheme of authorities governing the detention and release of
18 aliens during and following their removal proceedings. These periods are generally referred to
19 as “pre-order” (meaning before the entry of a final order of removal) and, relevant here, “post-
20 order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226
21 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention). Once a final
22 order of removal has been entered, an alien enters what Congress has called the “removal period.”
23 8 U.S.C. § 1231(a)(1). During this period of 90 days, Congress has directed that the Secretary of
24

1 Homeland Security “shall remove the alien from the United States.” *Id.* ICE¹ is charged with
2 attempting to effectuate removal of an alien from the United States. 8 U.S.C. § 1231(a)(1). To
3 ensure an alien’s presence for removal and to protect the community from dangerous aliens while
4 removal is being achieved, Congress mandates detention during the removal period. 8 U.S.C.
5 § 1231(a)(2).

6 Section 1231(a)(6) authorizes the Department of Homeland Security (“DHS”) to continue
7 detention of aliens after the expiration of the removal period. Unlike Section 1231(a)(2),
8 Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the
9 length of detention under that provision:

10 An alien ordered removed who is inadmissible under section 1182, removable
11 under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been
12 determined by the [the Secretary of Homeland Security] to be a risk to the
13 community or unlikely to comply with the order of removal, *may* be detained
14 *beyond the removal period* and, if released, shall be subject to the terms of
15 supervision in paragraph (3).

16 8 U.S.C. § 1231(a)(6) (emphasis added).

17 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
18 Supreme Court has held that an alien may be detained only “for a period reasonably necessary to
19 bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. The
20 Supreme Court has further identified six months as a presumptively reasonable time to bring
21 about an alien’s removal. *Id.*, at 701.

22 If an alien cannot be removed to the country designated in his removal order because the
23 country refuses to accept the alien, the alien has been granted relief from removal to that country,
24 the country refuses to recognize the alien as its citizen, or another reason, Congress has directed

¹ Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 ICE to pursue removal to alternate countries. *See* 8 U.S.C. §§ 1231(b)(2)(D), (E); 1231(b)(3); 8
2 C.F.R. §§ 241.13(a), 241.15.

3 In this case, on September 15, 2025, an immigration judge denied Petitioner's application
4 for relief, ordered Petitioner removed to the People's Republic of China, and granted Petitioner's
5 application for withholding of removal. Lambert Decl., Ex. H, Decision. The 30-day appeal
6 period for this order lapsed on October 15, 2025, and Petitioner's removal order became
7 administratively final as of that date. 8 C.F.R. § 1003.38(b); 8 CFR § 1241.1(c). Withholding of
8 removal is mandatory, but "only restrict[s] *where* the Government may remove a noncitizen to,
9 not *whether* the noncitizen is subject to removal." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025
10 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the IJ grants such protection,
11 the removal order remains valid and enforceable, albeit not to the identified country or countries
12 of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*,
13 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

14 **B. Petitioner Guo Xin Zheng**

15 Petitioner is a native and citizen of the People's Republic of China who entered the United
16 States without inspection on February 16, 2023, and was taken into immigration custody. Rosa
17 Decl., ¶ 4; Lambert Decl., Ex. A, Form I-213; Ex. B, Warrant for Arrest. On March 17, 2023,
18 Petitioner was served with a Notice to Appear, charging his as removable under 8 U.S.C.
19 § 1182(a)(6)(A)(i). Rosa Decl., ¶ 5; Lambert Decl., Ex. E, Notice to Appear. Shortly thereafter,
20 Petitioner was released from immigration custody pursuant to an Order of Release on
21 Recognizance ("OREC"). Rosa Decl., ¶ 6; Lambert Decl., Ex. C, OREC; Ex. D, Notice of
22 Custody Determination. Petitioner's release on an OREC was conditioned on several factors,
23 including that he does not commit any crimes. Lambert Decl., Ex. C, OREC.

1 Petitioner filed an asylum application with the Immigration Court on June 29, 2023. Rosa
2 Decl., ¶ 7.

3 While released from custody, Petitioner was arrested for and convicted of several criminal
4 offenses in violation of his OREC. Rosa Decl., ¶¶ 8-9. On November 18, 2023, Petitioner was
5 arrested and charged with misdemeanor larceny; this charge remains pending. Rosa Decl., ¶ 8.
6 Then, on December 3, 2024, Petitioner pleaded guilty to conspiracy to commit theft and was
7 sentenced to a maximum term of 12 months; Petitioner received credit for 255 days served. Rosa
8 Decl., ¶ 9.

9 On December 4, 2024, ICE arrested Petitioner and took him into custody. Rosa Decl.,
10 ¶ 10; Lambert Decl., Ex. F, Form I-213; Ex. G, Warrant for Arrest. On May 30, 2025, Petitioner
11 was transferred to the Northwest ICE Processing Center in Tacoma, Washington. Rosa Decl.,
12 ¶ 13.

13 On September 15, 2025, an immigration judge denied Petitioner's application for relief,
14 ordered Petitioner removed to the People's Republic of China, and granted Petitioner's
15 application for withholding of removal. Lambert Decl., Ex. H, Order of the Immigration Judge;
16 Rosa Decl., ¶ 14. Petitioner did not appeal, and the order of removal became administratively
17 final on October 15, 2025. *Id.* At this time the detention authority shifted to mandatory detention
18 pursuant to 8 U.S.C. § 1231(a)(2).

19 On October 21, 2025, a Deportation Officer ("DO") interviewed Petitioner and verbally
20 informed him that DHS intended to seek his removal to a third country. Rosa Decl., ¶ 15. The
21 DO presented Petitioner with a list of visa-free countries Petitioner could go to if he had a valid
22 Chinese passport and was willing to buy a ticket. *Id.* Then again, on November 4, 2025, another
23 DO provided Petitioner with a list of visa-free countries for China passport holders and informed
24

1 him that he could purchase tickets to those countries. Rosa Decl., ¶ 16. Petitioner stated to the
2 DO that he would like to consider going to a third country. *Id.*

3 Petitioner's 90-day removal period expired on January 13, 2025. 8 U.S.C. § 1231(a)(2).
4 On January 14, 2026, ICE determined that Petitioner would remain in custody pursuant to 8
5 U.S.C. § 1231(a)(6). Rosa Decl., ¶ 18. The *Zadvydas* "presumptively reasonable" six-month
6 period does not expire until April 15, 2026.

7 IV. ARGUMENT

8 A. Petitioner is lawfully detained pending his removal.

9 Petitioner fails to demonstrate that he is "in custody in violation of the Constitution or
10 laws or treaties of the United States" as required to succeed in a habeas. 28 U.S.C. § 2241.
11 Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. In
12 *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention
13 pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-
14 removal detention "to a period reasonably necessary to bring about that alien's removal from the
15 United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does
16 not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable,
17 continued detention is no longer authorized by statute." *Id.*, at 699.

18 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
19 burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*
20 (stating that "for detention to remain reasonable, as the period of post-removal confinement
21 grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").
22 However, the Supreme Court determined that it is "presumptively reasonable" for the
23 Government to detain a noncitizen for six months following entry of a final removal order, while
24 it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court

1 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
2 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
3 “does not mean that every [noncitizen] not removed must be released after six months. To the
4 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
5 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

6 Petitioner’s six-month “presumptively reasonable period of detention” runs from October
7 15, 2025 (the date the removal order became final) through April 15, 2026. Petitioner has not yet
8 been detained for six months after his administrative removal order became final. He also has
9 not met his burden to show that there is a “good reason to believe that there is no significant
10 likelihood of removal in the reasonably foreseeable future” before the burden shifts back to the
11 government to rebut that showing.” *Zadvydas*, 533 U.S. at 701. While he was granted
12 withholding of removal for China, he is subject to a final order of removal and can be removed—
13 pursuant to receiving proper notice of removal to a third country and the opportunity to express
14 fear of removal. At this stage, the burden remains on Petitioner to present good reason to believe
15 that there is no significant likelihood of removal in the reasonably foreseeable future, and he has
16 not done so. *Zadvydas*, 533 U.S. at 701.

17 **B. Petitioner’s claim of fear of removal to a third country is already addressed under**
18 **existing DHS policy.**

19 Petitioner asks this Court to enjoin his removal to a third country without notice and
20 meaningful opportunity to respond in reopened removal proceedings. *Pet.*, at 38-39. Here,
21 Petitioner identifies no country, no policy, and no factual circumstance demonstrating that third-
22 country removal would operate as punishment rather than lawful execution of a removal order.
23 Petitioner’s claim further fails because it seeks prospective injunctive relief for procedures that
24 DHS already provides as a matter of policy.

1 The relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—
 2 are already DHS policy. See U.S. Department of Homeland Security, “Guidance Regarding
 3 Third Country Removals,” Kristi Noem, March 30, 2025,
 4 available at [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf)
 5 [282404.43.1_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf) (last visited Mar. 6, 2026); U.S. Immigration and Customs Enforcement,
 6 “Third Country Removals Following the Supreme Court’s Order in *Department of Homeland*
 7 *Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025, available
 8 at [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.1](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf)
 9 [90.1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf) (last visited Mar. 6, 2026).²

10 If ICE were to seek Petitioner’s removal to a third country, ICE would provide him with
 11 notice of its intent to remove him and notice as to which country if DHS had not received
 12 diplomatic assurances from the country of removal that aliens removed from the United States
 13 will not be persecuted or tortured. This notice would allow Petitioner to claim fear of removal to
 14 that country. If Petitioner were to claim a fear of removal to that third country as well, ICE would
 15 refer him to USCIS, and USCIS would schedule Petitioner for an interview to determine whether
 16 it is more likely than not that he will be persecuted or tortured in that third country. If USCIS
 17 determined that Petitioner had a reasonable fear, DHS would seek to reopen or institute removal
 18 proceedings. In the alternative, Petitioner could seek to reopen his own removal proceedings.

19 //

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22 _____
 23 ² On February 25, 2026, the district court presiding over the class action suit challenging DHS’s third country removal
 24 policy issued an order granting in part the Government’s motion to dismiss, as well as Plaintiffs’ motion for summary
 judgment. See *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass.
 Feb. 25, 2026). The district court stayed the judgment until March 12, 2026, to allow the Government to seek a stay
 in the U.S. Court of Appeals for the First Circuit.

1 **C. Petitioner’s punitive banishment argument is speculative and does not demonstrate**
2 **that DHS’s third country removal policy is unconstitutional**

3 Petitioner’s “punitive third country banishment” argument fails because it lacks any
4 factual basis demonstrating that the third-country removal policy is unconstitutional either on its
5 face or as applied to the facts here. Pet., Ground Four, at 32-41.

6 First, Petitioner cannot meet the heavy burden required for a facial challenge. A facial
7 challenge demands a showing that a law “is invalid in toto—and therefore incapable of any valid
8 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
9 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
10 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
11 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
12 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner’s broad assertions that the
13 program imposes punishment on its subjects are precisely the type of speculative allegations that
14 these cases reject.

15 Second, Petitioner pleads no facts supporting an as-applied claim. Petitioner does not
16 allege that ICE has provided him notice of removal for any third country removal and he does not
17 assert that he has completed any paperwork for removal to any country. *See generally*, Dkt. 17.
18 Further, he does not allege which third country he fears removal to, what harm he personally
19 faces, or any circumstances that would make removal punitive in his case. A claim resting on
20 speculative and unsupported injury does not satisfy Article III’s case-or-controversy requirement.
21 *Lewis v. Cont’l Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*,
22 Petitioner provides no evidence that his speculative removal to a third country would result in
23 imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at *4 (E.D.
24 Cal. Sept. 18, 2025); *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash.

1 Aug. 21, 2025). Without factual allegations establishing a realistic danger of punitive treatment,
2 Petitioner's theory remains purely conjectural and nonjusticiable. Thus, Petitioner's claims in
3 Ground Four for relief should be denied.

4 **D. Petitioner's Reliance on Speculative Future Re-Detention Does Not Provide a Basis**
5 **for Habeas Relief**

6 Petitioner asks this Court to treat a possible future re-detention as a present ground for
7 habeas relief. *See* Pet., at 36-38. However, Petitioner has not been released, nor has any release
8 been revoked. His request therefore rests entirely on a hypothetical future event.

9 Petitioner fails to allege that re-detention is likely to occur without proper notice and an
10 opportunity to be heard. Even if he did, such an assertion would be speculative at best. Moreover,
11 because he is subject to a removal order, if he were released and then re-detained, his re-detention
12 would be for the purposes of removal and the standards of re-detention suggested by Petitioner,
13 danger to the community and flight risk, would not be applicable. *See* 8 C.F.R. §§ 241.13(i),
14 241.4(l).

15 Accordingly, this Court should deny Petitioner's request for permanent injunctive relief.
16 *Torres v. Hermosillo*, No. 2:25-cv-02687-LK, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20,
17 2026).

18 **E. Even if the Court grants the habeas petition, it should deny Petitioner's remaining**
19 **requests for relief**

20 Subsections (d) -(i) in Petitioner's Prayer for Relief exceed the narrow scope of habeas
21 review under 28 U.S.C. § 2241, the Court's subject matter jurisdiction, and conflict with the
22 detention and removal scheme set forth in 8 U.S.C. § 1225(b).

23 **First**, Petitioner's request for a hearing with the burden on the government by clear and
24 convincing evidence is contrary to law. *See* Pet., Prayer for Relief, subsection (d), at 42. The

1 Supreme Court has rejected reading such requirements into immigration detention statutes. *See*
2 *Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018); *see also, Johnson v. Arteaga-Martinez*, 596
3 U.S. 149, 157-58 (2022). No Supreme Court decision requires the Government to justify
4 immigration detention by clear and convincing evidence in this context. Furthermore, this
5 standard is not applicable to OSUP revocations. *See* 8 C.F.R. §§ 241.13(i), 241.4(l).

6 Thus, even if this Court should order Petitioner's release, this Court should not grant his
7 request to grant their request for "a hearing before a neutral decisionmaker at which the
8 government bears the burden of establishing flight risk or danger to the community by clear and
9 convincing evidence." Pet., Prayer for Relief ¶ (d) (emphasis added).

10 **Second**, Petitioner asks this Court to enjoin ICE from re-detaining him without first
11 obtaining a travel document; providing a travel document to him and his counsel; offering
12 Petitioner the opportunity to leave on his own; and only if Petitioner does not leave, ICE may re-
13 detain Petitioner only if a flight has been scheduled. Pet., Prayer for Relief, subsection (e), at 42.
14 This request does not comport with *Zadvydas* and is not required by any statute or regulation.
15 Because Petitioner is subject to an order of removal, ICE's legal authority to detain him is clear.
16 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 683. While it may be necessary under certain
17 circumstances to release a detainee on supervision to avoid having the detainee's detention
18 become "indefinite," no statutory or regulatory authority cited by Petitioner requires ICE to have
19 a travel document in-hand before detaining or re-detaining an individual who is subject to a
20 removal order. Indeed, in the twenty-five years since *Zadvydas*, no Supreme Court decision has
21 required the conditions on re-detention Petitioner seeks here. Petitioner provides no authority for
22 the novel and extensive injunctive relief he seeks.

23 **Third**, Petitioner asks this Court to enjoin his removal to a third country without notice, a
24 meaningful opportunity to respond, and due process in reopened removal proceedings. Pet.,

1 Prayer for Relief, subsection (f), at 42. For the reasons stated above, Petitioner's request is
2 already protected under existing DHS policy and Petitioner's request is speculative without any
3 substantiated claim that he has been denied this process. *See supra* § IV.B. Further, this Court
4 cannot lawfully enjoin the execution of Petitioner's removal. To do so would directly violate the
5 jurisdiction-stripping provision at 8 U.S.C. § 1252(g). Accordingly, this request for injunctive
6 relief should be denied.

7 **Fourth**, Petitioner requests that this court enjoin Respondents from removing Petitioner
8 to any third country where he is likely to face imprisonment or other punishment upon arrival.
9 Pet., Prayer for Relief, subsection (g), at 42. First, the government cannot remove a person to a
10 country where they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
11 ("FARRA"), Public Law 105-277, div. G, sec. 2242, 112 Stat. 2681, 2631-822 (8 U.S.C. § 1231
12 note); 28 C.F.R. §§ 200.1, 208.16-208.18, 1208.16-1208.18. Second, to the extent Petitioner
13 seeks an injunction prohibiting any third country removal, this request is plainly controverted by
14 Supreme Court precedent. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) ("If an alien
15 is granted withholding-only relief, DHS may not remove the alien to the country designated in
16 the removal order unless the order of withholding is terminated. But because withholding of
17 removal is a form of country specific relief, nothing prevents DHS from removing the alien to a
18 third country other than the country to which removal has been withheld or deferred.") (citation
19 modified). Since no third country has been identified, Petitioner's request is speculative and not
20 ripe for review for the reasons stated above. Thus, this request for relief should be denied.

21 Accordingly, even if this Court were to grant habeas relief, the Court should deny the
22 additional relief requested in Petitioner's Prayer for Relief subsections (d)-(g).

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24 //

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition. Even if this Court were to grant habeas relief, the Court should deny the additional relief requested in Petitioner's Prayer for Relief subsections (d)-(g).

DATED this 6th day of March, 2026.

Respectfully submitted,

s/ Michelle R. Lambert

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I certify that this memorandum contains 3,592 words, in compliance with the Local Civil Rules.