

THE HONORABLE THERESA L. FRICKE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GUO XIN ZHENG,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-2483-TLF

**MR. ZHENG'S REPLY TO
RESPONDENTS' RETURN
MEMORANDUM TO HIS
AMENDED PETITION**

Mr. Zheng respectfully asks this Court to grant his petition for a writ of habeas corpus and order his immediate release. Respondents have demonstrated no progress nor efforts toward *lawful* third-country removal and their ongoing detention of Mr. Zheng is not justified by any likelihood of such removal in the reasonably foreseeable future. Instead of pursuing the avenues for lawful third-country removal required by statute, Respondents have simply tried to get Mr. Zheng to depart the United States on his own—something he demonstrated is not possible. Detention thus serves only as coercive pressure on Mr. Zheng, rather than serving any legitimate role in effectuating lawful third-country removal. This Court should find that Mr. Zheng has overcome the presumption that detention for purposes of removal is reasonable up to six months following a final removal order because he has demonstrated that lawful removal is neither likely nor even in the works. Respondents have not rebutted this evidence.

Additionally, Respondents' arguments opposing Mr. Zheng's requests for prospective relief are unavailing. Mr. Zheng pled and provided sufficient evidence that

1 Respondents have a practice and policy of effectuating third-country removals that both
 2 violate due process and amount to unconstitutional punitive banishment. As a person
 3 granted withholding of removal to his country of citizenship, Mr. Zheng is at particular
 4 risk of being subjected to such unconstitutional removal. He asks this Court to grant his
 5 requested injunctive relief and to protect him against the irreparable harm that would
 6 befall him under Respondents' unconstitutional policies and practices.

7 Mr. Zheng's request for injunctive relief against unconstitutional re-detention is
 8 also proper. This request is necessary to effectuate his primary request for relief—
 9 release from unconstitutional detention. Respondents' prior detention of Mr. Zheng
 10 without following proper procedures for revocation of a *pre*-removal order term of
 11 supervision demonstrates the risk of unconstitutional re-detention in the future. And
 12 application of fundamental due process law supports Mr. Zheng's request for
 13 prospective relief that requires Respondents to bear the burden to justify any re-
 14 detention.

15 Mr. Zheng respectfully asks this Court to grant his petition for a writ of habeas
 16 corpus and his requests for prospective relief.

17 Argument

18 **I. Mr. Zheng has rebutted the presumption that his detention is reasonable five** 19 **months after his removal order became administratively final based on the** 20 **undisputed evidence that Respondents have made no efforts to lawfully remove** 21 **him.**

21 As Respondents agree, “once removal is no longer reasonably foreseeable,
 22 continued detention is no longer authorized by statute.” Dkt. 21 (Respondents' return
 23 memorandum) at 6 (quoting *Zadvydas*, 533 U.S. at 699). Respondents incorrectly argue
 24 that “the Supreme Court implicitly recognized that six months is the *earliest* point at
 25 which a noncitizen's detention could raise constitutional issues” by setting up a shifting
 26 presumption rule in *Zadvydas*. *Id.* at 6–7. Nowhere in *Zadvydas* does the Court state

1 that detention is always lawful up to six months. Rather, the Court created a rule that
 2 detention was presumptively reasonable to effectuate removal up to six months, and
 3 presumptively unreasonable after six months. *See Zadvydas*, 533 U.S. at 701. During
 4 either period, a party may rebut the presumption with compelling evidence. *See id.*; Dkt.
 5 17 (Amended Habeas Petition) at 13–14 (citing cases holding that presumption of
 6 reasonableness during first six months of detention may be rebutted). Indeed,
 7 Honorable District Judge Jamal N. Whitehead of this District recently rejected
 8 Respondents’ argument that six months of detention is the *earliest* point at which a
 9 person may challenge their detention, explaining: “The six-month period creates a
 10 presumption of reasonableness, not automatic immunity from review. Indeed, the
 11 *Zadvydas* framework requires courts to assess not only how long the petitioner has been
 12 detained, but whether removal is ‘reasonably foreseeable.’” *Uprety v. Bondi*, No. 2:25-
 13 CV-02443-JNW-MLP, 2026 WL 194227, at *3 (W.D. Wash. Jan. 26, 2026) (quoting
 14 *Zadvydas*, 533 U.S. at 701).

15 Here, Mr. Zheng has overcome the presumption of reasonableness by
 16 demonstrating that Respondents have made no efforts to lawfully remove him to a third
 17 country and, unsurprisingly, that there is no likelihood of that removal in the reasonably
 18 foreseeable future. As detailed in Mr. Zheng’s amended petition, the only actions that
 19 Respondents have taken with respect to removal are to have immigration officers
 20 encourage Mr. Zheng to depart on his own to a subset of countries that allow Chinese
 21 citizens to visit with only their passports.¹ *See* Dkt. 17 (Amended Habeas Petition) at 8–
 22 11. These conversations were conducted without a qualified interpreter, despite

23 ¹ As discussed in Mr. Zheng’s petition, self-departing in this fashion would not be safe
 24 or reliable—the “visa-free” countries Respondents encouraged Mr. Zheng to buy his
 25 own ticket to are those that only allow Chinese passport holders to visit for short times
 26 without a pre-approved visa. *See* Dkt. 17 at 10–11. These are not places where Mr.
 Zheng could reside safely or permanently, or necessarily be assured he would not be
 sent back to China.

1 Respondents being on notice from Mr. Zheng's removal proceedings that he needed a
2 Mandarin interpreter. *See* Dkt. 13 (Declaration of Mr. Zheng) at 1–2. And Respondents
3 have not located or confirmed the status of Mr. Zheng's Chinese passport that would be
4 necessary for him to even depart to travel to one of these countries. *See* Dkt. 17 at 10–
5 11.

6 Furthermore, Mr. Zheng made clear in his amended petition and accompanying
7 declaration that Respondents' efforts to encourage him to depart on his own will not
8 succeed. As Mr. Zheng explained, he did not understand from the October and
9 November conversations—conducted without an interpreter—that immigration officers
10 wanted him to pay for his own ticket to another country. Dkt. 13 at 2. He only learned
11 this was their desire after undersigned counsel reviewed Respondents' filings with him
12 with the assistance of a qualified interpreter. *Id.* Upon learning this, Mr. Zheng affirmed
13 that he cannot afford to buy an international plane ticket. *Id.* And (as discussed above),
14 the location and status of Mr. Zheng's Chinese passport remains unknown in any event.
15 *See* Dkt. 17 at 10–11. As such, Mr. Zheng demonstrated in his amended habeas petition
16 and accompanying exhibits that his departure on his own from the United States is not
17 possible. Respondents have disputed none of these facts. *See* Dkt. 21; Dkt. 22
18 (Declaration of Anthony Rosa); Dkt. 23 (Declaration of Michelle Lambert).

19 Respondents have also taken no actions since Mr. Zheng filed his amended
20 petition and accompanying documents to try to lawfully remove him to a third country.
21 *See id.* (describing no actions related to removal taken since November 2025).
22 Respondents have never taken any action to effect his lawful removal to a third country
23 as dictated by statute, which would begin by asking Mr. Zheng to designate any country
24 of his choice for removal and seeking his removal to that country. *See* Dkt. 17 at 10–11,
25 20–21. Indeed, Respondents have never asked Mr. Zheng to designate a country of his
26 choice for removal, have never sought his acceptance by such a country, and have never

1 had Mr. Zheng complete an application for travel documents to any country. *See* Dkt.
2 13 at 3. As such, Respondents have made zero efforts toward lawful third-country
3 removal. And Mr. Zheng has demonstrated that departing on his own (as opposed to
4 being removed) is not possible. Respondents have disputed none of these facts and have
5 provided no evidence to the contrary. *See generally* Dkt. 21; Dkt. 22; Dkt. 23.

6 Mr. Zheng has thus met his burden to demonstrate that there is “no significant
7 likelihood of removal in the reasonably foreseeable future” and has thus overcome the
8 presumption that detention is reasonable for the first six months after a removal order is
9 final. *Zadvydas*, 533 U.S. at 701. It is undisputed that “once removal is no longer
10 reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at
11 69; *see also* Dkt. 21 at 6 (quoting same). Such is the case here. There is no evidence
12 that Mr. Zheng will be removed in the next month or so before April 15, 2026 (which
13 marks six months from the date his removal order became administratively final). There
14 is no evidence that he will likely be lawfully removed in the next six months. Nor is
15 there evidence that he will likely be lawfully removed any time in 2026. Respondents
16 have taken no steps toward effecting his lawful third-country removal. And Mr. Zheng
17 has demonstrated that Respondents’ efforts to pressure him into departing on his own
18 cannot succeed. As a result, Mr. Zheng asks this Court to grant his petition and order
19 his immediate release because Respondents are detaining him even though there is “no
20 significant likelihood of removal in the reasonably foreseeable future[.]” *Zadvydas*, 533
21 U.S. at 701; *see also Rea-Hernandez v. Bondi*, No. 2:25-CV-02609-TL, 2026 WL
22 322874, at *5 (W.D. Wash. Feb. 6, 2026) (in cases where a person is granted
23 withholding of removal and has no significant ties to another country, courts have
24 routinely found good reason to believe there is no significant likelihood of removal in
25 the reasonably foreseeable future) (citing cases).

1 In the event the Court finds the shifting presumptions in *Zadvydas* dispositive,
 2 the Court could simply withhold ruling until April 15, 2026, at which point the
 3 presumption indisputably shifts. *See* Dkt. 21 at 6 (acknowledging the “presumptively
 4 reasonable” six-month period under *Zadvydas* ends on April 15, 2026).

5 **II. Mr. Zheng sufficiently demonstrated that Respondents’ third-country removal**
 6 **policies and practices both violate due process and include punitive banishment,**
 7 **and that he is at risk of suffering harm under these policies and practices.**

8 Respondents seek to defeat Mr. Zheng’s requests for injunctive relief to protect
 9 himself against unlawful third-country removal in violation of due process or that
 10 amounts to punitive banishment by ignoring substantial portions of Mr. Zheng’s
 11 amended petition. Without citation to the record, Respondents claim: “Petitioner
 12 identifies no country, no policy, and no factual circumstance demonstrating that third-
 13 country removal would operate as punishment rather than lawful execution of a
 14 removal order. Petitioner’s claim further fails because it seeks prospective injunctive
 15 relief for procedures that DHS already provides as a matter of policy.” Dkt. 21 at 7. But
 16 in fact, Mr. Zheng briefed each of these issues at length, including providing substantial
 17 evidence both of Respondents’ punitive banishment policy and their practice of
 18 violating due process in third-country removals. *See* Dkt. 17 at 11, 23–32. Furthermore,
 19 while Mr. Zheng agrees that the law *should* afford him an avenue to claim fear and be
 20 protected against removal to a third country where he faces persecution or torture, he
 21 disagrees that Respondents’ present practices and internal policies comply with these
 22 laws.

23 First, Respondents claim that Mr. Zheng’s argument that their third-country
 24 removal policy and practices are unconstitutional as punitive banishment “lacks any
 25 factual basis” demonstrating facial or as-applied constitutional violations. Dkt. 21 at 9.
 26 As an initial matter, Mr. Zheng nowhere explicitly made a facial challenge to
 Respondents’ third-country removal policy. *See generally* Dkt. 17. Mr. Zheng did brief

1 and provide substantial evidence of Respondents' policy and practice of removing non-
 2 U.S. citizens to third countries for a punitive purpose.

3 These included statements evidencing a punitive purpose made by Respondents
 4 and their administration, Respondents' selection of countries notorious for human rights
 5 abuses and instability for third-country removal, and the actual incarceration,
 6 maltreatment, and abuse of deportees upon arrival in those countries. *Id.* at 23–30 (and
 7 exhibits and sources cited therein). In his petition, Mr. Zheng alleged, among other
 8 facts, that “Panama² and Costa Rica³ took in hundreds of deportees . . . and imprisoned
 9 them in hotels, a jungle camp and a detention center.” Dkt. 17 at 26–27. Additionally,
 10 “the U.S. paid El Salvador \$5 million to indefinitely imprison over 200 deported
 11 Venezuelans in a maximum-security prison notorious for gross human rights abuses,
 12 known as CECOT.” *Id.* at 27–28. Similarly, Respondents' administration deported eight
 13 people to South Sudan, where they were imprisoned and held incommunicado. *Id.* at
 14 28–29. And the administration deported people from multiple countries to Eswatini,
 15 where the Eswatini government has stated they are imprisoning the deportees for an
 16 estimated 12 months, with the U.S. paying for the costs of imprisonment. *Id.* at 29.

18 ² In Panama, immigrants are forced to choose between repatriation to their country of
 19 origin or detention under conditions that have “sparked backlash from human rights
 20 organizations.” Castano, Danielle, *The U.S.'s Illegal Migrant Deportations to Panama*,
 Human Rights Research Center (June 5, 2025),
 21 [https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-](https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama)
[panama](https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama) [<https://perma.cc/7JPL-3YXS>].

22 ³ According to multiple human rights organizations, migrants expelled to Costa Rica
 23 face conditions that constitute human rights violations. *Costa Rica: New report exposes*
 24 *human rights violations against migrants expelled from the U.S. and warns: “This*
 25 *cannot happen again.”*, Centro Por La Justicia y El Derecho International (May 22,
 2025), [https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/)
 26 [violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/)
[again/](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/) [<https://perma.cc/E8C7-72G2>].

1 These facts, which Respondents do not dispute, sufficiently establish the punitive nature
2 of Respondents' third-country removal policy and practice.

3 Courts in this district have held that Respondents' practice of third-country
4 removal is punitive as a matter of policy and thus violates due process under *Wong*
5 *Wing v. United States*, 163 U.S. 228, 236–38 (1986), and *Zadvydas*, 533 U.S. at 693–
6 94. *See Abubaka v. Bondi, et. al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *7–8
7 (W.D. Wash. Nov. 17, 2025); *Nguyen v. Scott*, No. CV25-1398-TMC, 796 F. Supp. 3d
8 703, 732–35 (W.D. Wash. Aug. 21, 2025) (relying on similar evidence and including
9 detailed reasoning supporting finding); *Hambarsonpour v. Bondi*, No. CV25-1802-
10 RSM, 2025 WL 3251155, at *1, *4–5 (W.D. Wash. Nov. 21, 2025); *Baltodano v.*
11 *Bondi, et. al.*, No. CV25-1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4,
12 2025). In each of these cases, the district court ordered the Respondents not to remove
13 the petitioner to any third country where the petitioner is likely to face imprisonment
14 upon arrival. *Id.* Mr. Zheng only requests the same protections—the assurance that he
15 will not be swooped up and sent to any country that will accept him without first having
16 an opportunity to argue against such action.

17 Furthermore, the risk of punitive banishment to a third country is not
18 speculative, given Respondents' inability to remove Mr. Zheng to China and indications
19 they want to remove him to a Third Country. *See, e.g.*, Dkt. 22 at 4 (declaring vaguely
20 that “DHS continues to pursue Petitioner’s removal from the United States to a third
21 country, a country other than China.”). As discussed above, Respondents have taken no
22 steps toward lawfully removing Mr. Zheng to a third country in compliance with the
23 controlling statute. Under similar circumstances, where a petitioner had been granted
24 deferral of removal to his country of citizenship, Honorable District Judge Robert S.
25 Lasnik held the petitioner had established a reasonable fear of removal to a third
26

1 country where he would be met with imprisonment for an unconstitutional punitive
2 purpose, and granted injunctive relief. *See Baltodano*, 2025 WL 3484769, at *10.

3 Second, Respondents claim that their policies already require notice and a
4 meaningful opportunity to be heard regarding fear of removal to a third country. *Id.*
5 at 8. Notably, Respondents concede that ICE would provide such notice only “if DHS
6 had not received diplomatic assurances from the country of removal that [non-U.S.
7 citizens] removed from the United States will not be persecuted or tortured.” *Id.*
8 Respondents thus ask the Court not only to decline an injunction preventing punitive
9 banishment, but also to decline injunctive relief that would ensure the essentials of due
10 process so an immigration judge could intervene to stop such unlawful removal.

11 In fact, multiple courts have found that Respondents’ cited internal policies—
12 namely the most recent July 9, 2025, internal policy memorandum (relied upon by
13 Respondents at Dkt. 21 at 8)—violate due process and do not follow the law. Rather
14 than demonstrating compliance with due process and the law, as Respondents argue,
15 *see* Dkt. 21 at 8–9, these policies create an “imminent threat” that Respondents will
16 violate Mr. Zheng’s due process rights to effectuate a punitive third-country removal.
17 *Nguyen*, 796 F. Supp. 3d at 736; *see also Wana v. Bondi*, No. 2:25-CV-02321-RSL,
18 2025 WL 3628634, at *5 (W.D. Wash. Dec. 15, 2025) (same); *Nguyen v. Bondi*, No.
19 2:25-CV-02723-RAJ, 2026 WL 183819, at *6 (W.D. Wash. Jan. 23, 2026) (The “July
20 9, 2025 internal ICE memorandum confirms its willingness to remove noncitizens to
21 third countries swiftly and with little notice” and in violation of due process). In any
22 event, Respondents’ “reliance on agency procedures is insufficient. Due process
23 requires advance notice of the proposed country of removal and a meaningful
24 opportunity to challenge that decision in a full adversarial hearing before an
25 I[m]migration J[udge].” *Daneshfar v. Facility Adm’r*, No. C25-1708-DGE-MLP, 2025
26 WL 4037745, at *3 (W.D. Wash. Dec. 16, 2025), *report and recommendation adopted*,

No. 2:25-CV-01708-DGE-MLP, 2026 WL 71405 (W.D. Wash. Jan. 9, 2026).

Injunctive relief is necessary to protect Mr. Zheng's rights here.

III. Injunctive relief prohibiting re-detention in violation of due process is proper to effectuate the Court's grant of Mr. Zheng's primary request for relief, to protect Mr. Zheng against a real risk of unlawful re-detention, and to ensure the basic tenets of due process are respected.

Respondents ask this Court to deny Mr. Zheng's request for prospective relief preventing his unlawful re-detention because, they argue, his claim is "speculative" as they have not released or re-detained him since the entry of his removal order. Dkt. 21 at 10. This argument ignores that Respondents *did* re-detain Mr. Zheng *before* entry of the removal order without following the correct procedures for re-detention. Indeed, Respondents simply "took [Mr. Zheng] into DHS custody" in reliance on an administrative warrant on December 4, 2024. Dkt. 22 at 4. Respondents used this procedure even though they had previously released Mr. Zheng on an order of supervision *prior* to removal proceedings. *Id.* Yet Respondents concede there is no evidence they followed the procedure for revocation of such an order of supervision. *Id.*

This is sufficient to warrant a prospective order requiring notice and an opportunity to be heard consistent with due process prior to any re-detention. As Honorable Judge Whitehead noted in a recent ruling, "[w]ithout any re-detention standard, the Government could theoretically re-detain [the petitioner] after release, which would render the Court's order meaningless." *Uprety*, WL 194227, at *4. Given that courts have "broad discretion" in granting habeas relief "as law and justice require" they should fashion orders that ensure their orders cannot be thwarted as soon as they are carried out. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

Honorable District Judge Richard A. Jones agreed, finding that "imposing conditions on any future re-detention of [the Petitioner] is necessary to fully effectuate the intent of this order." *Acosta-Ginori v. Bondi*, No. CV25-02649-RAJ, 2026 WL

1 221509, at *6 (W.D. Wash. Jan. 28, 2026). There, Judge Jones found persuasive that
2 Respondents had re-detained the Petitioner once without due process. Furthermore,
3 Judge Jones explained that prospective relief was the only way to give effect to the
4 Petitioner's due process rights in this regard: Petitioner "'seeks a pre-deprivation
5 hearing; he can enforce that right only by bringing a challenge now, prior to being re-
6 arrested.'" *Id.* (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019))
7 (also citing multiple cases where courts enjoined future re-detention without safeguards
8 consistent with due process). Mr. Zheng is asking for a prohibition on the direct
9 violation of the order he hopes this Court will issue releasing him, absent some
10 intervening change in circumstances and justification for detention. That is entirely
11 reasonable and appropriate.

12 Respondents further oppose Mr. Zheng's request that such prospective relief
13 include a requirement that Respondents justify any re-detention by clear and convincing
14 evidence. Dkt. 21 at 10–11. Respondents cite to *Jennings v. Rodriguez*, 583 U.S. 281,
15 303–04 (2018), for the proposition that "[t]he Supreme Court has rejected reading such
16 requirements into immigration detention statutes." Dkt. 21 at 11. But this is not what
17 *Jennings* actually held.

18 *Jennings* overruled Ninth Circuit's (and other Circuits') statutory interpretation
19 of an immigration detention statute (specifically 8 U.S.C. § 1226) to contain an implicit
20 statutory requirement that ICE provide detained people with bond hearings every six
21 months, and requirements for such hearings. In this Circuit, *Jennings* reversed this
22 particular reading of the statute in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). But
23 the Supreme Court left undisturbed the prospect of explicit constitutional challenges to
24 the statute or requirements for immigration detention decisions. *Jennings*, 583 U.S. at
25 312. Because "*Singh*'s holding regarding the burden of proof was based on
26 constitutional due process principles, rather than any interpretation of the statute"

(which was what *Jennings* involved), its holding respecting the burden of proof at a constitutionally mandated bond hearing remains intact post *Jennings*. *Odimara v. Bostock*, CV24-01412-MJP-TLF, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and recommendation adopted*, No. CV24-1412-MJP, 2025 WL 1489705 (W.D. Wash. May 23, 2025) (quoting *Jimenez v. Current or Acting Field Off. Dir., San Francisco Field Off., United States Immigr. & Customs Enf't*, No. 23-CV-03566, 2024 WL 714659, at *9 (N.D. Cal. Feb. 21, 2024), *appeal docketed sub nom. Martinez Jimenez v. United States Immigration and Customs Enforcement, et al.*, No. 24-2491 (9th Cir. Apr. 19, 2024)).

The Ninth Circuit, too, has continued to apply the *Singh* standard in cases related to prolonged detention. *See Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024) (finding the BIA applied the correct legal standard in requiring the government to prove by clear and convincing evidence that a noncitizen detained under § 1226(c) was a danger to the community). *See also Anyanwu v. United States Immigr. & Customs Enf't Field Off. Dir.*, CV24 -00964-LK-GJL, 2024 WL 4627343, at *8 (W.D. Wash. Sept. 17, 2024), *report and recommendation adopted sub nom. Anyanwu v. ICE Field Off. Dir.*, CV24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024) (“the [Ninth] Circuit Court [of Appeals] has signaled that the clear and convincing evidence standard remains good law for immigration detainees subject to prolonged detention.”)

In *Johnson v. Arteaga-Martinez*, also relied upon by Respondents at Dkt. 21 at 11, the Supreme Court applied essentially the same reasoning as *Jennings* had applied to § 1226 (a pre-removal order immigration detention statute) to 8 U.S.C. § 1231 (the post-removal order detention statute, applicable here). As in *Jennings*, the Court in *Arteaga-Martinez* rejected an interpretation of the *statute* to require periodic bond hearings with a burden on the government to justify ongoing detention. *See* 596 U.S. 573, 581 (2022). But, just as in *Jennings*, the Court in *Arteaga-Martinez* explicitly

1 declined to reach the constitutional question of whether due process required either
2 periodic hearings or a particular burden of proof, because these questions were not
3 actually decided by the lower court. *Id.* at 583.

4 The Ninth Circuit reached the due process issue as applied to a person in certain
5 pre-removal order detention under § 1226(a) (pertaining to initial detention prior to any
6 removal order) in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). There, the
7 Ninth Circuit applied the familiar *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing
8 test and held that Mr. Rodriguez Diaz specifically received sufficient procedural
9 safeguards to justify his ongoing detention. But the Ninth Circuit indicated that a
10 hearing where the government bears the burden by clear and convincing evidence to
11 justify detention may be required by due process in other cases: “Whatever the merit of
12 these arguments in other cases—and without deciding whether they could ever create
13 procedural error of constitutional magnitude—they bear no relation to the facts of this
14 case.” *Rodriguez Diaz*, 53 F.4th at 1211–12. In *Rodriguez Diaz*, the Ninth Circuit relied
15 heavily on the many “existing agency procedures” that provided Mr. Rodriguez Diaz
16 sufficient protection with regard to his detention under § 1226(a). *Odimara*, 2025 WL
17 1490395, at *10 (quoting *Rodriguez Diaz*, 53 F.4th 1189). As *Odimara* explained,
18 “under § 1226(a) and its implementing regulations, petitioner received an
19 individualized bond hearing shortly after the start of his detention and had a continuing
20 right to request release on the basis of changed circumstances.” *Id.* (cleaned up). “[I]t
21 was only in the context of these procedural protections already afforded to the
22 noncitizens detained under Section 1226(a) that *Rodriguez Diaz* concluded noncitizen
23 detainees had no constitutional right to additional bond hearings based solely on the
24 passage of time.” *Id.* (cleaned up).

25 But since *Rodriguez Diaz*, courts have held that due process *does* require a
26 hearing where the government bears the burden to justify ongoing immigration

1 detention by clear and convincing evidence on facts that differ from those in *Rodriguez*
 2 *Diaz*. See *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL
 3 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (citing cases requiring such due process for
 4 people detained under § 1226(c), which involves different existing safeguards than §
 5 1226(a), which was analyzed in *Rodriguez Diaz*). As there is no controlling decision for
 6 Mr. Zheng’s particular situation—including his present detention under § 1231, his lack
 7 of meaningful opportunity to challenge this detention under § 1231, and the limited
 8 regulatory protections against unlawful redetention—the Court should apply the
 9 *Matthews v. Eldridge* test.

10 Applying this test, multiple courts in this district have held that due process
 11 requires notice and an opportunity to be heard *prior to* re-detention in similar situations,
 12 and have granted prospective relief. See e.g., *Tessema v. Bondi*, No. C25-2330-JNW-
 13 MLP, 2025 WL 4033288, at *1 (W.D. Wash. Dec. 11, 2025), *report and*
 14 *recommendation adopted*, No. C25-2330-JNW-MLP, 2026 WL 84922 (W.D. Wash.
 15 Jan. 12, 2026) (“prohibiting Respondents from redetaining [petitioner] without adequate
 16 notice of the reasons for redetention and a meaningful opportunity to respond to those
 17 reasons”); *Yukse v. Bondi*, No. 2:25-cv-02555-DGE-GJL, 2026 WL 60364, at *5
 18 (W.D. Wash. Jan. 8, 2026) (ordering that petitioner “shall not be re-detained without
 19 notice and an opportunity to be heard unless Respondents have evidence detention is
 20 authorized under 8 C.F.R. § 241.13(i)(1)”); *Jimenez v. Bondi*, No. C25-2167-RSM,
 21 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025) (finding that petitioner with final
 22 order of removal “has a protected liberty interest in his continuing release from custody,
 23 and that due process requires that Petitioner receive proper notice and an opportunity to
 24 respond before he can be redetained”; barring re-detention “without providing adequate
 25 notice of the reasons for his re-detention and a meaningful opportunity to respond.” *Id.*
 26 at *3). Mr. Zheng asks this Court to reach the same conclusion and to order that

1 Respondents may not re-detain him without advance notice and an opportunity to be
2 heard. He also asks the Court to require Respondents to justify re-detention by clear and
3 convincing evidence of an adequate justification.

4 **Conclusion**

5 For the reasons discussed above, Mr. Zheng respectfully asks this Court to grant
6 his petition for a writ of habeas corpus and to order his immediate release as well as the
7 prospective relief requested to protect his constitutional rights.

8 DATED this 11th day of March, 2026.

9 Respectfully submitted,

10 s/ *Rebecca C. Fish*
11 Assistant Federal Public Defender
12 Attorney for Guo Xin Zheng
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