

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KWAN HO WU,

Petitioner,

v.

BRET BRADFORD, *et al.*,

Respondents.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 4:25-CV-05906

THE FEDERAL RESPONDENTS' RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR SUMMARY JUDGMENT

Respondents Bret Bradford, Kristi Noem, and Pam Bondi (hereinafter the “Federal Respondents”)¹ hereby request that the Court deny Petitioner’s habeas petition and request for emergency temporary injunctive relief, and grant summary judgment in the Government’s favor, in accordance with Federal Rule of Civil Procedure 56.

The Court should reject Petitioner’s habeas petition because his purported grounds for relief are legally unavailing. Specifically, he alleges that his detention is unlawful because there has been no finding that he is a danger or a flight risk. However, the relevant inquiry is whether there is a significant likelihood of removal in the reasonably foreseeable future. Petitioner bears the burden in this inquiry, and here he does not even attempt to meet it, nor

¹ The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also id.* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, while the named warden is the proper party in form, the Federal Respondents respond herein as the real party in interest.

could he. Thus, the Court should deny the petition, including the request for emergency temporary relief, and enter judgment in favor of the Government.

I. BACKGROUND AND PROCEDURAL HISTORY

As Petitioner Kwan Ho Wu does not dispute, he is a citizen and native of China. Dkt. No. 1 ¶ 11. Petitioner initially entered the United States in 1992, when he was charged as excludable and placed in removal proceedings. *See* Exhibit 1 ¶ 8 (Sworn Declaration of Deportation Officer Sheffield). He was ordered removed in 1994. *Id.* ¶ 10. He has since made numerous attempts to set aside this removal order, including with the BIA and the federal appellate court via a petition for review, but every court has rejected every attempt. *Id.* ¶¶ 10–17. As of this moment, and as Petitioner does not dispute, he is subject to a valid, enforceable order of removal.

Petitioner alleges that he was detained by ICE on June 24, 2025. Dkt. No. 1 ¶ 15. Since his arrest, ICE has initiated the travel document process for purposes of effectuating Petitioner's removal. Exh. 1 ¶ 25. The agency recently conferred with Petitioner regarding his travel documents necessary for his removal, and on December 30, 2025, a new travel document application was approved and served on Petitioner. *Id.* ¶¶ 26–27. This travel document application will be sent to the Chinese consulate for approval as soon as possible. *Id.* ¶ 27.

On December 9, 2025, Petitioner filed a Writ of Habeas Corpus (Dkt. No. 1), challenging his detention as unlawful. He purports to assert two claims, but upon inspection, both claims appear to be the same, alleging a violation of constitutional due process based on *Zadvydas* considering he is not a threat to the community nor a flight risk. *See* Dkt. No. 1. The

Federal Respondents accordingly respond to the habeas petition and motion for emergency temporary relief with this response and motion for summary judgment.²

II. LEGAL STANDARD ON SUMMARY JUDGMENT

Generally, summary judgment is proper when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party meets its burden of demonstrating the absence of a genuine factual dispute, the non-movant must then come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The non-movant must “go beyond the pleadings and by [the nonmovant's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015). The non-movant's burden “will not be satisfied by ‘some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.’” *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam)).

III. APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the

² Where this filing addresses the legal merits of this case in the context of granting summary judgment and/or denying the habeas petition, such argument is of course also directed in opposition to any request for interim emergency relief, for which Petitioner accordingly cannot satisfy his burden of demonstrating a substantial likelihood of success on the merits.

confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941). As set forth in the INA, an alien must be held in custody after entry of a final removal order and during the 90-day removal period. 8 U.S.C. § 1231(a)(2). After this period, the INA nevertheless contemplates—and permits—continued detention past this period. *Id.* § 1231(a)(6). However, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court addressed “whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States.” *Id.* at 695. It held that post-removal detention is presumptively lawful up to six months, after which the detention may still be reasonable and lawful until and unless “the alien provides good reason” to “determine that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

With this backdrop in mind, the Federal Respondents proceed to the legality of Petitioner’s post-removal detention in this case.

IV. ARGUMENT

Petitioner asserts two causes of action, both for having “unlawfully detained [him] in violation of constitutional due process.” Dkt. No. 1 ¶¶ 25–40. Upon closer inspection, the two counts do not appear materially different, as Count One—the shorter one—can be subsumed into Count Two. *Compare id.* ¶ 26 (Count One) (“Petitioner has demonstrated no conduct indicating that he is a threat to the United States or otherwise considered to be a flight risk”) (Count One) *with id.* ¶ 34 (Count Two) (“Petitioner poses no flight risk or danger to the community or any other conduct that could pose a danger to the United States.”). Overall, his argument appears to be that because he is neither dangerous nor a flight risk, his detention

violates his due process rights. This argument, however, is based on a misreading of *Zadvydas* which holds that *indefinite* detention past six months is presumptively unlawful (this “presumption,” when triggered, is where factors like danger to the community and flight risk come into consideration). But such detention must be indefinite, which this detention is not, considering the wheels are in motion on his removal and the Government has had many successful recent repatriations of Chinese nationals to China.

A. RELEVANT INQUIRY IN POST-REMOVAL-ORDER DETENTION CHALLENGES

Petitioner’s focus on whether he is a danger or a flight risk puts the cart before the horse; while those are factors which might make an indefinite detention unlawful, his detention must be considered indefinite in the first place.

As stated earlier, *supra* Part III, the INA permits continued detention after the initial 90-day removal period. 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court addressed the issue of “whether aliens *that the Government finds itself unable to remove* are to be condemned to an *indefinite* term of imprisonment within the United States.” *Id.* at 695 (emphasis added). The Supreme Court rejected this notion of indefinite post-removal detention and held that while the INA permits post-removal detention, such detention contains an implicit six-month presumption under which the detention is presumptively lawful up to six months, and after which “an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

As Petitioner himself puts it, *Zadvydas* “prohibits the indefinite detention of noncitizens who (i) cannot be repatriated in the reasonably foreseeable future, and (ii) pose no threat to

the community.” Dkt. No. 1 ¶ 30 (citing *Zadvydas*, 533 U.S. at 689). Petitioner is correct, and implicit in his accurate characterization of the law is his understanding that only if the first criteria is met, i.e., that his detention is indefinite, would his dangerousness and flight risk be factors which might make his detention unlawful.

B. SUBSTANTIAL LIKELIHOOD OF REMOVAL

Under *Zadvydas*, the main anathema to be avoided is not detention of aliens who are not flight risks nor a danger to their community. Rather, it is indefinite detention, which is presumptively unconstitutional (barring factors like dangerousness and flight risk). That, then, is the central inquiry here.

Again, the Supreme Court has made clear that “an alien may be held in confinement [after the post-removal-order period] until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. As courts have recognized, this issue as to the likelihood of removal is a fact-intensive inquiry. *See, e.g., Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2451030 (S.D. Tex. Aug. 25, 2025) (explaining that likelihood of removal is a fact-intensive inquiry); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-00564, 2018 WL 3097029 (W.D. Tex. June 22, 2018) (same). And as *Zadvydas* made clear, the burden in this inquiry belongs to the alien to show no significant likelihood of removal—not the other way around. *See* 533 U.S. at 701 (putting the burden on “the alien” to “provide[] good reason” sufficient to show that there is “no significant likelihood of removal in the reasonably foreseeable future.”). Here, Petitioner references this likelihood-of-removal inquiry, *see* Dkt. No. 1 ¶ 30, yet declines to even *attempt* to meet his burden as he offers

nothing, by way of even argument let alone evidence, to demonstrate that removal is implausible—i.e., that his detention is indefinite.

In *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006), the Fifth Circuit dismissed a *Zadvydas* challenge as “meritless” where the alien “offered nothing beyond his conclusory statements suggesting” that he could not be removed. *Id.* at 543–44. Here, Petitioner does not even offer conclusory statements that the Government cannot effectuate his removal. Nor could he; as provided in Officer Sheffield’s sworn declaration, the wheels are in motion for his removal as ICE has approved a completed travel document application and anticipates formally submitting the request to China soon. Exh. 1 ¶ 27. And there is no reason to think there is no substantial likelihood of China approving the removal. Also attached is a declaration from a very similar *Zadvydas* challenge before Judge Eskridge, also involving a Chinese national. *See Zhu v. Bondi*, 4:25-CV-04840 (S.D. Tex. 2025). In *Zhu*, Thurman Karan, the Acting Unit Chief for the Asia division of ICE Headquarters, Enforcement and Removal Operations, attested that “China is accepting the returns of their citizens,” and that as of the date of his declaration (October 30, 2025), there had already “been 2,138 removals to China in Fiscal Year 2025.” Exh. 2 ¶¶ 6–7. Indeed, in *Zhu*, the detainee staunchly argued—even in the face of the declaration—that the Government was not going to be able to remove her to China. Her argument was mostly based on outdated reports of geopolitical tension between the United States and China. *See Zhu*, 4:25-CV-04840, Dkt. No. 11. And as the Government remarked in *Zhu*, “for every article that Petitioner has identified, the Federal Respondents can identify, from a basic Google search, just as many articles, if not more, from 2024–25 reflecting that China has changed its stance and is currently accepting repatriations.” *Id.* at Dkt. No. 14

at 2–3. Judge Eskridge heard argument on the likelihood-of-removal inquiry and deferred ruling, and a few weeks later the Government successfully executed the alien’s removal to China, mooted out the case. *Id.* at Dkt. Nos. 26, 27. In *Zhu*, the petitioner’s confident urging that efforts to remove her would be unsuccessful turned out to be flatly wrong. Indeed, by way of another example, on December 17, 2025, there was another *Zadvydas* challenge filed in the Southern District of Texas, Houston Division, by another Chinese national who similarly argued it was “clear” that “Respondents cannot remove him.” *Zhou v. Bradford*, 4:25-CV-06090, Dkt. No. 1 ¶ 16 (S.D. Tex. 2025). That case was also dismissed, shortly after filing, as it turned out that the alien had been successfully removed to China two days before his attorney filed the habeas petition. *Id.* at Dkt. Nos. 5, 6.

In light of the foregoing, Petitioner cannot meet his burden of showing that there is no substantial likelihood to China in the reasonably foreseeable future. The evidence shows that such removals are occurring, including in multiple recent cases from the Houston Division of the Southern District of Texas where the petitioners insisted, incorrectly, that such efforts would be unsuccessful. Until or unless Petitioner can show otherwise, his habeas must fail. *See, e.g., Tanfik v. Garland*, 2024 WL 4534747, at *3 (S.D. Tex. 2024) (denying a petition that argued a “lack of visible progress” toward removal); *Apau v. Ashcroft*, No. 3:02-CV-02652, 2003 WL 21801154, *3 (N.D. Tex. June 17, 2003) (the “bare fact” that Ghana had not yet issued travel documents was not sufficient to carry the petitioner’s burden under *Zadvydas*).

V. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court grant their motion and deny Petitioner's petition for a writ of habeas corpus as he has not shown that his detention is unlawful.

Dated: January 2, 2026

Respectfully submitted,

NICHOLAS J. GANJEI
UNITED STATES ATTORNEY

By: /s/ Shawn D. Ren
Shawn D. Ren, Attorney-in-Charge
Assistant United States Attorney
Southern District No. 3892202
Texas Bar No. 24132873
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9569
Fax: (713) 718-3300
E-mail: shawn.ren@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on January 2, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

/s/ Shawn D. Ren
Shawn D. Ren
Assistant United States Attorney