TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264
TINA SNELLINGS
Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
Tina.Snellings@usdoj.gov
Attorneys for the Federal Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Yiming Luo,

Petitioner,

v.

John Mattos, NSDC Warden; Michael Bernacke, Field Director, West Valley City Office of ICE ERO; Todd Lyons, ICE Acting Director; Kristi Noem DHS Secretary; Pam Bondi, U.S. Attorney General,

Respondents.

Case No. 2:25-cv-02460-CDS-EJY

Respondent's Omnibus Response to Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 12) and Motion for Preliminary Injunction (ECF No. 14).

I. INTRODUCTION

Federal Respondents, John Mattos, Michael Bernacke, Todd Lyons, Kristi Noem, and Pam Bondi, through undersigned counsel, hereby file their omnibus response to Petitioner Yiming Luo's Amended Petition for Writ of Habeas Corpus (ECF No. 12) and Motion for Preliminary Injunction (ECF No. 14). As explained herein, Petitioner's continued detention is lawful under statutory authority and Supreme Court precedent, which allow for such detention after a final order of removal.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of China.[1] On June 12, 2025, Petitioner was taken

[1] First Amended § 2241 Petition, ECF No. 12 at 3.

into Immigration and Customs Enforcement (ICE) custody.[2] On July 2, 2025, an Immigration Judge (IJ) ordered that Petitioner was inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA).[3] The IJ denied Petitioner's application for voluntary departure under INA § 240B(a).[4] The IJ ordered that Petitioner be removed from the United States to China.[5] The IJ did not order any alternative countries for removal.[6] Both the Department of Homeland Security (DHS) and Petitioner waived appeal of the order making it a final order.[7] After the removal order, Petitioner continued his detention in ICE custody. During his detention, ICE has sought to obtain travel documents to effectuate Petitioner's removal to China.

Petitioner filed his Petition for Writ of Habeas Corpus on December 11, 2025.[8] On December 30, 2025, Petitioner filed a First Amended Petition and a Motion for Preliminary Injunction.[9] The Court ordered Federal Respondents to respond to the Petition by January 13, 2026.[10] This omnibus response follows.

III. ARGUMENT

A. Petitioner's Request for Injunctive Relief Fails Because He Cannot Establish a Likelihood of Success on the Merits

In his Motion, Petitioner seeks an order granting Petitioner's request for a preliminary injunction and ordering Federal Respondents to release Petitioner.[11] To prevail on a motion for a preliminary injunction, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of

---

[2] *Id.* at 2
[3] Order of Immigration Judge, attached hereto as Exhibit 1 at ¶ I.
[4] *Id.* at ¶ III.
[5] *Id.* at IV.
[6] *Id.*
[7] *Id.* at V.
[8] ECF No. 1-1.
[9] ECF Nos. 12, 14.
[10] ECF No. 16.
[11] ECF No. 14 at 2.

preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."[12] Plaintiffs must demonstrate a "substantial case for relief on the merits."[13] When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [Winter factors]."[14]

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party.[15] The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security."[16]

1. Petitioner Cannot Establish a Likelihood of Success on the Merits that His Detention Violates His Due Process

i. ICE is Authorized to Detain and Deport Petitioner

ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6). Following Supreme Court precedent, Petitioner has not established the requisite "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future, as required under *Zadvydas* to shift the burden to the government.

ii. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231(a).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the

---

[12] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).
[13] *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
[14] *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).
[15] *See Nken*, 556 U.S. at 435.
[16] *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the [moving party's] favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien.[17] If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to section 212 of INA (8 U.S.C. § 1182)[18]; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal."[19]

Petitioner is outside the initial 90-day mandatory removal period which commenced following his order of removal on July 2, 2025. However, he is still eligible for ICE detention beyond the initial 90 days as he is subject to removal under section 212 of the INA. Specifically, the IJ's removal order found that Petitioner was inadmissible under section 212(a)(6)(A)(i) of the INA (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General).[20] This order is now final.

Because Petitioner has been ordered removed pursuant to section 212(a)(6)(A)(i) of the INA, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States and he is not entitled to a bond hearing or release as § 1231(a)(6)

---

[17] 8 U.S.C. § 1231(a)(2) ("shall detain").
[18] Section 212 of the INA has been moved to 8 U.S.C. § 1182, however other code sections and immigration documents still refer to it as section 212 of the INA.
[19] 8 U.S.C. § 1231(a)(6)(A).
[20] Exhibit 1 at I; section 212 of the INA (8 U.S.C. § 1182(a)(6)(A)(i)).

does not require such process.[21] Petitioner's detention is therefore lawful under § 1231(a)(6) and this Court should dismiss his Petition.

iii. Petitioner's Detention Does Not Run afoul of *Zadvydas*.

Under *Zadvydas v. Davis*, the Supreme Court established that detention for up to six months after a final order of removal is "presumptively reasonable."[22] As the Court explained in *Zadvydas*, detention beyond the 90-day removal period is justified when it is "reasonably necessary" to effectuate removal.[23] After six months, the burden shifts to the petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden reverts to the government to rebut that showing.[24] The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process."[25] When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal."[26] To set forth a Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test.[27]

Here, Petitioner's final Order of Removal was entered on July 2, 2025. As a result, Petitioner's current period of post-removal-order detention has just begun to exceed the six-month timeframe that *Zadvydas* identifies as *presumptively reasonable*. Petitioner's post-removal-order detention hit the 6-month mark on January 2, 2026, which was after he filed

---

[21] *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof").
[22] *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)
[23] *Id.*
[24] *Id.* at 701.
[25] *Demore v. Kim*, 538 U.S. 510, 523 (2003).
[26] *Zadvydas*, 533 U.S. at 699.
[27] *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

both his original and first amended petition. Crossing that temporal threshold does not in itself entitle Petitioner to relief. Once the six-month mark passes, the burden shifts to the Petitioner to provide evidence giving rise to a "reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner has not met that burden.

The petition contains no factual allegations demonstrating that removal is not reasonably foreseeable. Petitioner merely states "no specific plans have been made to deport Luo, and no third country designation has been made."[28] This assertion lacks the specificity necessary to satisfy *Zadvydas*. It does not identify when any requests for travel documents or plans were made or if any requests are pending, or whether ICE is continuing to pursue removal efforts. Nor does it show that China has affirmatively refused to accept Petitioner or that negotiations would be futile. Absent evidence that ICE has reached a dead end—or that diplomatic channels have been exhausted—Petitioner has not established the "good reason to believe" necessary to trigger further analysis under *Zadvydas*.

2. Petitioner Is Unlikely to Succeed on his Third Country Due Process Violation Claim Because it Rests on a Non-Existent Third-Country Removal Order.

Petitioner cannot establish a likelihood of success on his due process claim because no third-country removal has been identified, designated, or initiated. The Ninth Circuit has made clear that, in the context of third-country removals, due process protections—including notice and an opportunity to reopen to pursue withholding or a convention

[28] ECT No. 14 at 13:6-7.

against torture claim—are triggered when the agency identifies a third country of removal.[29] Here, none of the predicates for those protections are present.

At present, DHS has not designated a third country for Petitioner's removal, and DHS has not issued a Notice of Removal identifying any third country. Additionally, Petitioner has not provided any evidence that China has refused to accept him. Absent agency action, Petitioner's due process claim rests entirely on speculation. The procedural protections discussed in *Sadychov* have not yet been triggered. Until DHS identifies a third country of removal and provides formal notice, there is no cognizable deprivation of liberty or statutory right, and therefore no ripe due process claim for the Court to adjudicate.

Because Petitioner has not shown that a third-country removal is occurring—or even imminent—he cannot demonstrate that DHS has failed to provide constitutionally required process. His claim thus fails at the threshold and cannot support the extraordinary relief of a preliminary injunction.

B. Petitioner Has Failed to Show an Irreparable Harm.

To prevail on their request for injunctive relief, Petitioners must demonstrate "immediate threatened injury."[30] Merely showing a "possibility" of irreparable harm is insufficient.[31] "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."[32] Here, because Petitioner's alleged harm "is essentially inherent in

---

[29] *See Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) ("[A]n applicant is not entitled to have the agency adjudicate claims of relief that relate 'to a country that nobody is trying to send them to.'").
[30] *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (*citing Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)).
[31] *See Winter*, 555 U.S. at 22.
[32] *Id.*

detention, the Court cannot weigh this strongly in favor of" Petitioner.[33] Nor should the court weigh Petitioner's alleged harm resulting from being deported to a third country in Petitioner's favor when that risk of such third country deportation is not imminent.

C. Factors Three and Four, Balancing of the Harm to the Opposing Party and the Public Interest also Weigh against Petitioner.

When "the government is a party, [courts] consider the balance of the equities and the public interest together."[34] And "[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction."[35] Here, an adverse decision would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws" by requiring "the Court to severely restrict the discretion of the Attorney General."[36] The public has an interest in the government's enforcement of its laws.[37] As with the irreparable harm analysis, the "determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits of the [constitutional] challenge."[38] While it is "always in the public interest to protect constitutional rights,"[39] when, as here, Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates.[40]

---

[33] *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).
[34] *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018).
[35] *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).
[36] *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined.").
[37] *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal.").
[38] *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 685, 690 (8th Cir. 2012).
[39] *Id.*
[40] *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

Accordingly, Petitioner has not established that he merits an injunction, and the Court should deny this request.

D. For similar reasons, Petitioner's Amended Petition for Habeas Corpus Should be Denied.

For the same reasons that Petitioner cannot establish a likelihood of success on the merits sufficient to warrant injunctive relief, his Amended Petition for Writ of Habeas Corpus likewise fails and should be denied.

As set forth above, Petitioner is subject to a final order of removal and is lawfully detained pursuant to 8 U.S.C. § 1231(a)(6). His detention falls squarely within the statutory framework governing post-removal-order custody, and Supreme Court precedent forecloses his claim to release or a bond hearing under that provision.[41] Petitioner has not satisfied the burden required under *Zadvydas*, to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future, nor has he alleged facts showing that DHS's ongoing efforts to effectuate removal have reached an impasse.

Petitioner's third country due process claims fare no better. As discussed above, his challenge to a purported third-country removal rests on speculation and the absence of any operative agency action. Because DHS has not designated a third country of removal or issued a notice identifying such a country, Petitioner has not suffered any deprivation of process cognizable under the Due Process Clause.[42]

Finally, habeas relief is not warranted where, as here, the challenged detention is authorized by statute and consistent with constitutional limitations as articulated by the Supreme Court.[43] Petitioner therefore has not demonstrated that his custody violates the

---

[41] *See Johnson*, 596 U.S. at 581.
[42] *See Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014).
[43] *See Demore*, 538 U.S. at 523.

Constitution, laws, or treaties of the United States, and his Amended Petition must be denied.

IV. CONCLUSION

For the reasons set forth above, Petitioner has not demonstrated that his continued detention is unlawful or that he is entitled to the extraordinary relief he seeks. Accordingly, Federal Respondents respectfully request that the Court deny the Amended Petition for Writ of Habeas Corpus and the Motion for Preliminary Injunction.

Respectfully submitted this 13th day of January 2026.

TODD BLANCHE
Deputy Attorney General of the United States

/s/ Tina Snellings
TINA SNELLINGS
Assistant United States Attorney

ELECTRONIC CERTIFICATE OF SERVICE

I, undersigned, hereby certify that I am an employee of the United States Attorney's Office, District of Nevada, and that on this day an electronic copy of the foregoing **Respondent's Omnibus Response to Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 12) and Motion for Preliminary Injunction (ECF No. 14).** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED THIS: Tuesday, January 13, 2026.

/s/ Tina Snellings
TINA SNELLINGS
Assistant United States Attorney