IN THE UNITED STATES DISTRICT COURT
FOR THE SOUNTHERN DISTRICT OF MISSISSIPPI

YUK CHUN KWONG,

Petitioner,

-against-

RAFAEL VERGARA,

Respondent.

Case No.: 5:25-cv-152

REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

ARGUMENT: THE GOVERNMENT FAILS TO SHOW REMOVAL IS REASONABLY FORESEEABLE

Respondent's opposition rests on a single unsupported premise: that the mere submission of a travel-document request to Hong Kong in May 2025 makes Mr. Kwong's removal "reasonably foreseeable." That premise is legally and factually incorrect.

The Supreme Court established the fundamental principle governing immigration detention: Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The Court defined "reasonably foreseeable" to mean significantly likely in the reasonably foreseeable future, not merely theoretically possible. *Id.* at 701. This standard requires concrete evidence of progress toward removal, not abstract hope that removal might eventually occur.

Zadvydas incorporates a critical temporal principle. The Court explained that "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* What might constitute reasonable foreseeability on day one of detention becomes unreasonable as weeks turn to months without progress.

Where the government unnecessarily delays in seeking travel documents, that delay undermines any claim that removal is reasonably foreseeable.

Unexplained delay reveals the government's own assessment that removal is not urgent or imminent. The government cannot manufacture detention authority through its own inaction.

Here, the practical reality is fatal to the government's position. Mr. Kwong has been subject to a final order of removal since 2010. For more than fifteen years, the Hong Kong government has refused to issue travel documents permitting his return. When Mr. Kwong was previously detained following his release from federal prison in 2021, Hong Kong declined to accept him and ICE was compelled to release him under an order of supervision. That history is not disputed. See Pet. ¶¶ 21–22. Nothing has changed since then. The same government that previously refused to accept Mr. Kwong is now being asked again, through the same process that has already failed.

A. The Government's Seventy-five-Day Delay Destroys Any Claim of Imminence

The single most damaging fact in this case requires no legal analysis to understand. The government arrested Mr. Kwong on March 12, 2025, and then did nothing for seventy-five days. Only on May 26, 2025, did ICE finally submitted a travel-document packet to Hong Kong. *See* Declaration of Charles Ward ("Ward Decl."), para 7. More than two hundred and twenty-eight days have now passed without any response.

If ICE genuinely believed removal was imminent on March 12, the travel

document request would have been submitted immediately. Instead, ICE waited longer than many complete removal proceedings to take from start to finish before taking the first step toward obtaining the documentation necessary for removal.

When removal is truly imminent, the government compiles the travel document request before arrest or within days. The government acts immediately and submits the request to the receiving country before arrest or within days; follow up promptly; and diplomatic channels are actively engaged. None of this happened here.

Mr. Kwong was not a fugitive apprehended after years in hiding. He was reporting to ICE as required under his Order of Supervision when arrested. The government knew exactly where he was. ICE had his complete file. His identity, nationality, address, and removal status had been established for twenty-three years. There was nothing to investigate, nothing to determine, nothing that could possibly justify a seventy-five-day delay before requesting a travel document.

The government's silence about this delay speaks volumes. Officer Ward's declaration states only that "[o]n May 26, 2025, ERO submitted a travel document packet to Hong Kong requesting a passport or other suitable travel document for Petitioner" Ward Decl., para. 7. The declaration provides no explanation for the delay. It offers no justification for the inaction and does not even acknowledge that a delay occurred.

Government delay undermines the government's own assessment of urgency. When the government treats removal as something to address eventually rather than

immediately, the government cannot simultaneously assert that removal is imminent.

The government cannot attribute delay of that foreign bureaucracy when the government itself squandered seventy-five days before initialing this process. Nor can it fault Hong Kong for delays the government itself created. Had ICE submitted the travel document request on March 12, Hong Kong would have had substantially more time to respond.

This delay alone compels release.

B. Hong Kong's Complete Silence Confirms No Progress Toward Removal

Even after the government finally acted on May 26, 2025, the result has been complete silence. Two hundred and twenty-eight (228) days have passed since the request was submitted. Hong Kong has not responded, acknowledged receipt, requested additional documentation, provided any timeline for consideration. It has given no indication whatsoever that it will cooperate with Mr. Kwong's removal.

This silence is not surprising. In 2011, ICE detained Mr. Kwong for more than six months while attempting removal to Hong Kong. Hong Kong did not cooperate. See Respondent's Opposition, pg. 2. The government ultimately released Mr. Kwong on an Order of Supervision, implicitly conceding that removal was not reasonably foreseeable. Now, four years later, the government has re-arrested Mr. Kwong without any evidence that Hong Kong's position has changed.

History is evidence. When a foreign government has previously refused to accept an individual for removal, that refusal is powerful evidence that the

government will refuse again absent changed circumstances. The government bears the burden of showing such changed circumstances exist. Here, the government shows nothing.

Foreign government intransigence is precisely what the record shows here. Fifteen days of complete silence from Hong Kong, combined with Hong Kong's prior refusal to cooperate in 2021, demonstrates that removal is not imminent. Officer Ward's declaration contains a telling admission. He states that "As of December 29, 2025, ERO is still waiting on the issuance of a travel documents for Petitioner." This deeply qualified language reveals uncertainty about whether Hong Kong will cooperate in any specific case.

The declaration provides no timeline for when Hong Kong might respond. *See generally* Ward Decl. It offers no examples of how long Hong Kong typically takes to process travel document requests. It cites no communications from Hong Kong officials about Mr. Kwong's case specifically. The absence of any concrete information underscores that removal is speculative, not reasonably foreseeable.

Absent some explanation for why a travel document would actually be forthcoming, there is nothing to suggest he would be suddenly issued one, especially where, with no "exceptions," the embassy requires original identity documents to issue a passport that would allow entry. See https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Hong Kong.html; *see Hau Cheong Chan V. Mayorkas*, Case

No. 24-CV-1315 JLS (MSB) (SD Cal. 2024) (requiring government to justify continued detention despite having "set forth evidence demonstrating attempts to secure travel documents for Petitioner's removal, and evidence revealing such travel documents have been secured before" but "Petitioner has now been detained for over a year and it is unclear whether or when the Hong Kong Immigration Department will issue a travel document").

Petitioner need not demonstrate "the absence of *any* prospect of removal" to show it is not foreseeable. *Zadvydas*, 533 U.S. at 702 (emphasis in original). Under the circumstances, that Respondent has made yet another attempt to obtain travel documents with no response from the consulate. Respondent's renewed attempt to secure travel documents after two months of detention cannot justify continued confinement, particularly where Petitioner was fully compliant to ICE supervision and actively making unbroken efforts to secure travel documents. *See Demore v. Kim*, 538 US 510, 614 (2003) ("[w]ere there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons") (Kennedy, J., concurring).

The record demonstrated that removal to Hong Kong is not "practically attainable" *Guerrero-Sanchez*, 905 F. 3d at 220 (quoting *Demore*, 538 U.S. at 527) (citing *Zadvydas* 533 U.S. at 689)); *see Shokeh*, 369 F. 3d at 867, 873 (finding

removal not "practicably attainable" and petitioner entitled to release where Respondent "unsuccessfully attempted to procure travel documents" which had the "effect of preventing an immigrant's release," noting that "[w]here detention's goal is no longer practically attainable, detention no longer bear[s a] reasonable relation to the purpose for which the individual [was] committed'") (quoting *Zadvydas*, 533 U.S. at 682).

Thus, contrary to Respondent's claims, without any indication for why the consulate would suddenly act on the most recent request after not having done so for more than half a decade, "removal seems a remote possibility at best." *Id.* at 867-69 (petitioner ordered released where "INS unsuccessfully attempted to procure travel documents" but "issued a decision to continue detention following file review"); *see Clark,* 543 U.S. at 386-87 (the "Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months…the petitions for habeas corpus should have been granted"); *see also,* e.g., *Abdel-Muhti* v. *Ashcroft,* 314 F.Supp.2d 418, 424-26 (M.D.Pa. 2004) (Palestinian granted release where there was no concrete evidence that Palestinian authorities would accept him); *Rajigah* v. *Conway,* 268 F.Supp.2d 159, 166--67 (E.D.N.Y. 2003) (The fact that foreign government regularly issues travel documents does not make removal reasonably foreseeable); *Serets-Khama* v. *Ashcroft,* 215 F.Supp.2d 37, 49 (D.D.C. 2002) (detainee released where Service did not carry its burden under 8 C.F.R. §241.13(f) of reasonable foreseeable removal by stating they had removed

others to Liberia).

Accordingly, there is no likelihood of Petitioner's removal to Hong Kong in the reasonably foreseeable future without travel documents based solely on yet another request for one. There are alternative means to detention where the purpose of the post-removal statute had been served by supervised release, where Petitioner had been diligently reporting to ICE and making efforts to secure a passport since his release from criminal confinement, and there has been no change in his circumstances to suggest he is now a danger to the community where, due to the various positive factors discussed in the habeas writ, ICE determined this was not the case upon his release from criminal custody. *Zadvydas* 533 U.S. at 689. Indeed, under the circumstances of this case, the "statute's purpose of assuring the alien's presence at the moment of removal" can continue to be served by an order of supervision without his needless confinement: "[t]he choice, however, is not between imprisonment and the alien 'living at large' … It is between imprisonment and supervision under release conditions that may not be violated." *Id* at 691; *see Shokeh,* 369 F. 3d at 872 ("[T]he alien's release [post-removal-order] may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances....") (quoting *Zadvydas*, 533 U.S. at 700).

Respondent's reliance on *Jennings v. Rodriguez* does not change this analysis. *Jennings* simply reiterates that after six months, the detainee must show "good reason to believe that there is no significant likelihood of removal in the reasonably

foreseeable future." 138 S. Ct. at 843. Mr. Kwong has easily met that burden. He has a history of failed repatriation to Hong Kong, a prior period of post-order detention that ended in supervised release for precisely this reason, and nearly ten months of current detention without any response from the consulate. Those facts establish far more than "good reason"—they establish that removal is not realistically attainable.

Once that showing is made, the burden shifts to the government to rebut it with evidence. *Zadvydas*, 533 U.S. at 701. Respondent has offered none. The Ward Declaration does not state that Hong Kong has agreed to issue travel documents, that a timeline exists, or that any progress has been made. It merely confirms that ICE sent a request and is waiting. That is exactly the scenario *Zadvydas* forbids: indefinite detention justified by nothing more than diplomatic inertia.

Nor can ICE lawfully reset the *Zadvydas* clock by re-arresting Mr. Kwong in 2025. The removal period and the six-month presumptively reasonable period run from the final order of removal and the government's efforts to execute it, not from ICE's discretionary decision to take someone back into custody years later after prior removal efforts failed. Allowing ICE to restart the clock by re-detaining a noncitizen after years of known repatriation failure would permit precisely the kind of potentially permanent detention *Zadvydas* was designed to prevent.

For all of these reasons, Petitioner's continued detention is unlawful and Respondent's arguments to the contrary are unavailing. Because the purpose of the civil statute - to effectuate removal – is not further served by his detention, he should

be released immediately. *Guerrero-Sanchez*, 905 F. 3d at 222 ("due process requires us to recognize that, at a certain point — which may differ case by case — the burden to an alien's liberty outweighs a mere presumption that the alien will flee and/or is dangerous") (citing *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 474-75 (3d Cir.2015) (footnote omitted)); *see also Diop*, 656 F.3d at 232 ("continued detention becomes ... unconstitutional unless Respondent has justified its actions at a hearing inquiring into whether continued detention is consistent with the law's purposes of preventing flight and dangers to the community.").

For the foregoing reasons, the Court should reject Respondents' arguments and grant Petitioner's Writ of Habeas Corpus.

Dated: January 12, 2026

Respectfully submitted,

s/ Theodore N. Cox
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