UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVSIION

Wen Qing Lu, Petitioner, v. U.S. Attorney General Pamela Bondi, *et. al.*, Respondents.	Civ. Action No. 5:25-cv-01865-XR

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S VERIFIED HABEAS PETITION

INTRODUCTION

Petitioner Wen Qing Lu respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus. The Government's Opposition fails to justify Mr. Lu's continued detention under the framework established by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Rather than demonstrating that removal is significantly likely in the reasonably foreseeable future, the Government relies on generic statistics that shed no light on Mr. Lu's individual circumstances and a declaration so devoid of substantive content that it raises more questions than it answers.

Mr. Lu has been detained for over six months. The Government waited six months after his detention even to submit a travel document request to China. The government failed to follow the custody revocation procedures and no proper three-month or six-month custody review despite Mr. Lu's decades of compliance with an Order of Supervision. The Government makes no allegation that Mr. Lu poses a danger to the community or a flight risk. Under these circumstances, Mr. Lu's continued detention violates the statutory framework of 8 U.S.C. section 1231(a)(6) as interpreted by *Zadvydas*, and he is entitled to immediate release.

ARGUMENT

POINT ONE: THE GOVERNMENT HAS FAILED TO MEET ITS BURDEN OF DEMONSTRATING THAT REMOVAL IS SIGNIFICANTLY LIKELY IN THE REASONABLY FORESEEABLE FUTURE

The Government cannot meet its burden of showing that Mr. Lu's removal to China is significantly likely in the reasonably foreseeable future. Under the framework established by the Supreme Court and applied by the Fifth Circuit, once a petitioner has been detained beyond six months and provides good reason to believe removal is not foreseeable, the burden shifts to the Government to rebut that showing with evidence specific to the petitioner's circumstances. The Government has utterly failed to make such a showing here.

The Supreme Court in *Zadvydas* held that 8 U.S.C. section 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about that alien's removal from the United States" and "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. The Court recognized a presumptively reasonable detention period of six months, after which a detainee who provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" is entitled to release unless the Government can rebut that showing. *Id.* at 701.

Mr. Lu has been detained since June 6, 2025, a period now exceeding six months. His removal order dates to December 11, 1991, over thirty-three years ago.

Despite this decades-old order, China has never issued travel documents permitting his removal. Mr. Lu was previously released by ICE and placed on an Order of Supervision, under which he complied for decades without incident. These facts provide ample "good reason to believe" that removal is not significantly likely in the reasonably foreseeable future.

A. Generic Statistics Cannot Overcome Three Decades of Specific Evidence

With blaring trumpets proclaiming that ICE removed 517 Chinese nationals in Fiscal Year 2024, the Government's statistic is meaningless without critical context the Government conspicuously refuses to provide. *See* ECF # 4, page 2. The Government fails to answer dispositive questions that would reveal whether its statistic has any bearing whatsoever on Mr. Lu's case. *See generally* ECF # 4.

First, how many of those 517 individuals had removal orders that were over thirty years old? Mr. Lu's removal order dates to 1991. *Id.* The Government's silence on whether any of the 517 removed individuals had similarly aged removal orders speaks volumes. If China routinely accepted the return of individuals with decades-old removal orders, the Government would surely trumpet that fact. Its silence creates a compelling inference that the answer is zero or negligible. *Id.*

Second, what percentage of attempted removals does 517 represent? If ICE attempted to remove 10,000 Chinese nationals and succeeded with only 517, a five-percent success rate would demonstrate that removal is not reasonably

foreseeable. The Government's refusal to provide denominator data, despite having complete access to removal statistics, suggests the success rate is embarrassingly low.

Third, and most critically, how many individuals like Mr. Lu, who were previously released on Orders of Supervision because removal was not foreseeable, has ICE subsequently removed to China? The Government's failure to address this question, despite having complete access to its own records, creates a compelling inference that the answer undermines its position. The Government cannot utilize sleight-of-pen to meet its otherwise unsupported claim of imminent removal.

Generic numbers about Chinese removals cannot demonstrate that removal of an individual with a thirty-three-year-old removal order like Mr. Lu is reasonably foreseeable, particularly where China has consistently declined to issue travel documents for him throughout that entire period. As courts in this Circuit have recognized, such generic speculation is insufficient to demonstrate the likelihood of removal. *Khan v. Gonzales*, 481 F. Supp. 2d 638, 643 (W.D. Tex. 2006) (The government's argument that "because Petitioner has recently spoken with the Bangladeshi consulate for a second time, issuance of the travel documents must be imminent…is speculative at best.").

B. The Government's Declaration Is Vapid, Unsupported, and Raises More Questions Than It Answers

The Declaration of ERO Officer Sergio Vasquez is remarkable for what it fails to say. The declaration asserts that China "typically" responds to travel document requests within thirty days. But the Government provides no citation, no statistics, no official policy document, and no evidentiary basis whatsoever for this assertion. *See* ECF # 4-1. Page 2. The Court is left to wonder whether this claim represents official Chinese government policy, ICE institutional knowledge based on documented data, the single officer's anecdotal experience, or mere speculation and wishful thinking. *Id.*

The Government bears the burden of proof yet offers nothing more than an unsupported assertion from a single officer. If China truly "typically" responds within thirty days, the Government could easily document this with statistics showing response times across a meaningful sample of cases. The Government's failure to provide such documentation, when it would be readily available if the claim were true, suggests the claim cannot withstand scrutiny. *Id.*

More fundamentally, even if China does "typically" respond within thirty days, the declaration fails to address the critical question: what does that response typically say? *Id.* A prompt rejection is still a rejection. The declaration's assertion that there is "no indication" China will refuse is not evidence that China will accept. *Id.* at page 2, ¶ 9. The relevant question under *Zadvydas* is whether there

is affirmative indication that removal is significantly likely. On that question, the declaration offers nothing but silence. *See generally* ECF # 4-1.

The declaration also fails to explain what has changed since China previously declined to issue travel documents for Mr. Lu. For over thirty years, China has not facilitated his removal. The declaration offers no explanation for why this request will succeed where all previous efforts failed. It identifies no change in diplomatic relations, no new agreement between the United States and China regarding repatriation, and no case-specific factor that would lead China to act differently now. The declaration's bald assertion that removal is being "actively pursued" is meaningless when active pursuit has proven fruitless for three decades. *Id.*

Recent decisions from U.S. district courts in this Circuit confirm that such conclusory declarations cannot satisfy the Government's burden. In *Puertas-Mendoza v. Bondi*, No. 5:25-CV-0890-XR, 2025 WL 3142089 (W.D. Tex. Oct. 22, 2025), the court granted habeas relief where the Government relied on similar generic evidence and conclusory assertions. The court found that "the initial lack of any explanation for Puertas's detention in 2025, and the cursory explanation ultimately provided show that Puertas's removal is not reasonably foreseeable", despite presenting generalized statements about the likelihood of removal. *Id.* at *4. In *Villanueva v. Tate*, No. H-25-3364, 2025 WL 2774610 (S.D. Tex. Sept. 26,

2025), the court similarly rejected the Government's reliance on generalized statements about intent to enforce outstanding orders of removal without specific evidence showing the actual existence of likely removal. *Id.* at *6-11. And in *Marquez-Amaya v. Thompson*, No. 5:25-CV-1501-JKP, 2025 WL 3654327 (W.D. Tex. Dec. 15, 2025), the court granted habeas relief where the Government could not demonstrate case-specific likelihood of removal. Id. at * 6-7.

POINT TWO: THE GOVERNMENT'S UNEXPLAINED SIX-MONTH DELAY IN SUBMITTING A TRAVEL DOCUMENT REQUEST DEMONSTRATES BAD FAITH AND SUPPORTS RELEASE

The Government's conduct in this case shocks the conscience and independently supports release. Mr. Lu was detained on June 6, 2025. Yet the Government did not submit a travel document request to China until December 22, 2025, more than six months later. This extraordinary unexplained delay demonstrates that the Government has not acted with the diligence required to justify continued detention and is more interested in wholesale detention rather than affording individualized review and process due by law and the Constitution.

The Supreme Court in *Zadvydas* emphasized that the Government must make reasonable efforts to effectuate removal during the detention period. *Zadvydas*, 533 U.S. at 701. In fact, the statute commands it: "the Attorney General shall remove the alien from the United States within a period of 90 days [from the date of the order of removal] (in this section referred to as the "removal period")."

8 U.S.C. § 1231(a)(1)(A). That the government waited *double* the amount of time to carry out its mandate (even assuming, *arguendo*, that the "90-day" removal period had not expired three decades ago), wholly undermines the justification for continued detention and places ICE in direct violation of the statutory mandate. Where the Government fails to pursue removal with reasonable diligence, detention cannot be justified as necessary to effectuate removal.

Here, the Government's six-month delay in even initiating the travel document process is inexplicable and indefensible. If removal to China were truly feasible, the Government would have submitted the request immediately upon detention. The delay suggests that the Government itself recognizes the futility of attempting to remove Mr. Lu to China and detained him for purposes other than effectuating removal. This is precisely the type of punitive detention that *Zadvydas* prohibits.

The delay also eviscerates any claim that removal is imminent. The Government now claims that China "typically" responds to travel document requests within thirty days. *See* ECF 4-1, page 2. But the Government waited six months to submit the request. *See generally* ECF 4. Even accepting the Government's unsupported timeline, any response from China would come more than seven months after Mr. Lu's initial detention. And given China's three-decade

history of declining to issue travel documents for Mr. Lu, there is no reason to believe a favorable response is forthcoming at all.

POINT THREE: THE GOVERNMENT FAILED TO CONDUCT REQUIRED CUSTODY REVIEWS

The Government's failure to conduct proper custody reviews further demonstrates that Mr. Lu's detention violates applicable law. The regulations governing post-removal-period detention require periodic custody reviews to ensure that continued detention remains justified. The Government has failed to comply with these requirements.

Under 8 C.F.R. § 241.4, ICE must conduct custody reviews at specified intervals to determine whether continued detention is warranted. The regulations require consideration of factors including the detainee's criminal history, flight risk, and danger to the community. Where a detainee poses neither a flight risk nor a danger, continued detention is not justified.

Here, the Government makes no allegation that Mr. Lu poses a danger to the community. The Government makes no allegation that Mr. Lu poses a flight risk. Mr. Lu complied with his Order of Supervision for decades without incident. There is no basis in the record to conclude that he would fail to comply with conditions of release. Under these circumstances, the regulatory framework does not support continued detention.

Moreover, the regulations governing re-detention after release impose additional requirements that the Government has not satisfied. Under 8 C.F.R. § 241.13(i)(2), when ICE re-detains an alien who was previously released, it must provide justification for the changed circumstances warranting re-detention. The Government has offered no such justification here. Mr. Lu's circumstances have not changed. China has not indicated a new willingness to accept his return. The removal order remains the same decades-old order that existed when ICE previously released him. The Government has provided no explanation for why re-detention was warranted when nothing material has changed.

The failure to conduct proper reviews and provide required justifications renders Mr. Lu's detention arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. section 706(2)(A). Agency action that fails to comply with the agency's own regulations is by definition arbitrary and capricious. The Government's failure to follow required procedures independently requires release.

POINT FOUR: MR. LU'S DECADES OF COMPLIANCE WITH SUPERVISION DEMONSTRATE THAT DETENTION IS UNNECESSARY

Mr. Lu's long history of compliance with supervision further supports release. He was previously released by ICE in May of 2018 and placed on an Order of Supervision. He complied with all requirements of that supervision for the past

seven years. He reported as required. He did not abscond. He did not commit additional crimes. He lived as a law-abiding member of his community.

This history is directly relevant to the *Zadvydas* analysis. The Supreme Court recognized that detention is justified only to the extent necessary to prevent flight or danger to the community. *Zadvydas*, 533 U.S. at 690-91. Where a detainee has demonstrated through years of compliance that he poses neither risk, their continued detention serves no legitimate purpose.

The Government has offered no evidence that Mr. Lu poses a flight risk or danger. His decades of compliance speak louder than any speculation about what he might do if released. Courts have recognized that a history of compliance with supervision is strong evidence against flight risk. Mr. Lu has proven through his conduct that he will comply with release conditions. There is no justification for continued detention.

CONCLUSION

Mr. Lu has been detained for over six months. The Government waited six months to submit a travel document request. China has declined to issue travel documents for Mr. Lu for over thirty years. The Government offers only generic statistics that shed no light on Mr. Lu's individual circumstances and a declaration so devoid of substance that it cannot satisfy the Government's evidentiary burden. There has been no proper custody review and no justification for re-detention. Mr.

Lu poses no danger and no flight risk, as demonstrated by decades of compliance with supervision. Under *Zadvydas*, *Andrade*, and the weight of authority in this Circuit, Mr. Lu's continued detention is unlawful.

For all of these reasons, Petitioner Wen Qing Lu respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release from custody under appropriate conditions of supervision.

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Respectfully submitted,

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