IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00298-DDD-CYC

YAO LE,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security;
PAMELA JO BONDI, in her official capacity as Attorney General of the United States;
TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;
KELEI WALKER, in her official capacity as Deputy Field Office Director for Denver, U.S. Immigration and Customs Enforcement;
UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

RESPONSE TO MOTION FOR A PRELIMINARY INJUNCTION (ECF No. 2) AND ORDER TO SHOW CAUSE (ECF No. 9)

Pursuant to the Court's January 27, 2026, ECF No. 6, and February 11, 2026, ECF No. 9, Orders, Respondents hereby respond to Petitioner Yao Le's Application for a Writ of Habeas Corpus, ECF No. 1 (filed January 26, 2026) (the "Application") and Motion for a Preliminary Injunction, ECF No. 2 (the "Motion").[1] Pursuant to 28 U.S.C. § 2241, Petitioner asserts that his

[1] Because the Court has ordered simultaneous briefing on both the Petition and Motion, and the Petition and Motion request the same relief, the merits of the underlying habeas petition will be ripe for a decision, which will moot the Motion. ECF No. 9; *see* ECF No. 1 at 6 (seeking an order for "Respondents to release Mr. Le"); ECF No. 2 at 1 (requesting "Respondents to release him"); *Su v. Ascent Construction, Inc.*, 104 F.4th 1240, 1244-46 (10th Cir. 2024) (finding that where permanent relief is granted, a preliminary injunction merges into the final judgment and is moot) (citing *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999)). Respondents therefore address the underlying merits of the Petition and Motion without addressing the preliminary injunction factors.

continued detention by Immigration and Customs Enforcement ("ICE") violates his substative and procedural due process rights under the Fifth Amendment of the United States Constitution and Section 1226[2] of the Immigration and Nationality Act ("INA"). ECF No. 1 at 5-6. He alleges that he has been detained "for more than six months following a final order of removal" and "ICE has not demonstrated that removal is significantly likely in the reasonably foreseeable future." *Id.* ¶ 14; *see also* ECF No. 2 at 3. Petitioner advances three claims for relief: (1) violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001); (2) violation of procedural due process; and (3) violation of substantive due process. *See* ECF No. 1 ¶¶ 19-22; *see also* ECF No. 2 at 2-3. As relief, Petitioner seeks release from ICE custody. ECF No. 1 at 6; ECF No. 2 at 1.

FACTUAL BACKGROUND

Petitioner's entry into the United States. Petitioner is a native and citizen of China. Ex. A, Declaration of Aaron Johnson, ¶ 4. On December 20, 2024, U.S. Customs and Border Protection ("CBP") apprehended Petitioner at or near Boulevard, California shortly after he illegally entered the United States by crossing the United States-Mexico border. *Id.* ¶ 5. Petitioner was not inspected and admitted or paroled into the United States. *Id.* CBP determined that Petitioner is inadmissible to the United States and processed him for expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). *Id.* ¶ 6.

Petitioner's removal proceedings. On December 30, 2024, Petitioner was transferred to ICE custody to facilitate his removal from the United States to China. *Id.* ¶ 7. On or about

[2] Though Petitioner cites to Section 1226, as discussed below, the basis for his detention is 8 U.S.C. § 1231.

January 5, 2025, Petitioner claimed fear of persecution if returned to China. *Id.* ¶ 8. ICE referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.*

On January 26, 2025, USCIS issued a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 10. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document) and 8 U.S.C. § 1182(a)(6)(A)(i) (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). *Id.* Petitioner conceded inadmissibility as charged in the NTA. *Id.* ¶ 11.

During his removal proceedings, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal. *Id.* ¶ 12.

The Immigration Judge's ("IJ's") order of removal. On July 1, 2025, Petitioner appeared before the Immigration Judge ("IJ") for an individual hearing on the merits of his application. *Id.* ¶ 13. At the conclusion of the hearing, the IJ found Petitioner inadmissible as charged in the NTA, denied his application for asylum and ordered him removed to China. *Id.* The IJ also granted Petitioner's application for withholding of removal to China under 8 U.S.C. § 1231(b)(3). *Id.* Petitioner waived his right to appeal, but DHS reserved its right to appeal. *Id.* Any appeal of the IJ's decision was due to the Board of Immigration Appeals by July 31, 2025. *Id.* ¶ 14. DHS did not file an appeal, and as such, the removal order became administratively final on July 31, 2025. *Id.*

Continued detention under § 1231 and efforts to remove Petitioner. Petitioner is detained pursuant to 8 U.S.C. § 1231. Ex. A ¶ 15. ICE is pursuing Petitioner's removal to alternative countries pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 16. DHS and the U.S. Department of State are working in coordination to evaluate and select a third country for removal. *Id.* ¶ 21.

On November 25, 2025, ICE served Petitioner with a Notice of File Custody Review, which advised him that ICE will review his custody status and potential for release on an order of supervision. *Id.* ¶ 18. On December 3, 2025, ICE conducted a Post Order Custody Review ("POCR") pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 19. ICE determined that Petitioner did not satisfy the criteria for release because he poses a significant risk of flight pending removal from the United States and his removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest. *Id.*

After ICE rendered its POCR decision, Petitioner requested a personal interview in support of his release. *Id.* On February 17, 2026, ICE conducted a panel interview with Petitioner. *Id.* ¶ 20. ICE is reviewing the information obtained from the interview and will use that information in a subsequent POCR. *Id.*

Petitioner's habeas petition. In the Petition and Motion, Petitioner asserts that his continued detention is a due process violation under the Fifth Amendment of the U.S. Constitution and Sections 1226 and 1231 of the INA. *See* ECF No. 1 ¶¶ 19-22; ECF No. 2 at 3. Specifically, Petitioner alleges that his detention after final order of removal has exceeded the presumptively reasonable six-month period and that his removal from the United States is not likely to occur in the reasonably foreseeable future. ECF No. 2 at 3. As relief, Petitioner seeks release from ICE custody. *Id.* at 1.

On January 26, 2026, the Court ordered Respondents respond to the Motion within two weeks of service. ECF No. 6. Respondents were served via certified mail on February 5, 2026. On February 11, 2026, the Court ordered Respondents to show cause why the Petition should not be granted on the same day as the response to the Motion. ECF No. 9.

ARGUMENT

I. Petitioner's habeas claims

Petitioner claims that he is entitled to immediate release because his continued detention violates three provisions of law: (1) violation of 8 U.S.C. § 1231(a)(6)[3] and *Zadvydas*; (2) violation of procedural due process; and (3) violation of substantive due process. ECF No. 1 ¶¶ 19-22; *see also* ECF No. 2 at 2-3. These claims merge into a single question: whether Petitioner's detention is consistent with the Supreme Court's decision in *Zadvydas*. 533 U.S. 678.

Petitioner is detained pursuant to 8 U.S.C. § 1231(a), which provides for the "detention, release, and removal of [noncitizens] *ordered removed*." 8 U.S.C. § 1231(a) (emphasis added). Under § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period." *Id.* § 1231(a)(2). When the removal period begins, the government is instructed to "remove the [noncitizen] from the United States within a period of 90 days." *See* 8 U.S.C. § 1231(a)(1)(A). The removal period is the 90-day period that begins on the latest of the following:

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[3] Petitioner asserts without explanation that his detention is in violation of 8 U.S.C. § 1226. ECF No. 1 ¶ 22. Because Petitioner has been ordered removed, he is detained pursuant to 8 U.S.C. § 1231, and § 1226 does not apply. Ex. A ¶ 15; *see also* 8 U.S.C. § 1226(a) (providing for detention "*pending a decision* on whether the alien is to be removed from the United States" (emphasis added)); 8 U.S.C. § 1231(a)(1)-(2) (providing that "[d]uring the removal period,"—that is, the period immediately after an alien is ordered removed—"the Attorney General shall detain the alien").

(i) The date the order of removal becomes administratively final[;]
(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order[; or]
(iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.

See 8 U.S.C. § 1231(a)(1)(B).

Here, Petitioner's order of removal became administratively final on July 31, 2025. *See* Ex. A ¶ 14; *see also* 8 U.S.C. § 1231(a)(1)(B). Thus, Petitioner's 90-day mandatory removal period concluded on October 29, 2025 (90 days after July 31, 2025).

In *Zadvydas*, the Supreme Court construed 8 U.S.C. § 1231(a)(c) to contain an implicit "reasonable time" limitation, the application of which is subject to federal-court review. 533 U.S. at 682. The Court further held that, consistent with due process, the detention of a noncitizen for up to six months after a final order of removal under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700-01.

However, the Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court stated that after six months, if "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.* at 701*; see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("the onus is on the [noncitizen] to 'provide[ ] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing)'" (quoting *Zadvydas*, 533 U.S. at 701)). "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701.

Here, Petitioner has been detained for approximately seven and half months since his order of removal became final. He has withholding of removal to China, his home country, and he alleges that Respondents have failed to show that his removal to a third country is likely to occur in the reasonably foreseeable future. *See* ECF No. 1 ¶ 13; ECF No. 2 at 3. ICE states that it continues to pursue Petitioner's removal to a third country. Ex. A ¶ 16. Specifically, DHS and the U.S. Department of State are working in coordination to evaluate and select a third country for removal. *Id.* ¶ 21. If the Court so orders, Respondents will submit a status report within thirty days concerning the status of their efforts to remove Petitioner.

If the Court orders Petitioner released, ICE may impose conditions of supervision. *See Zadvydas*, 533 U.S. at 695 (noting the Attorney General's discretion to impose "supervision with conditions when [a noncitizen is] released from detention, or to incarcerate them where appropriate for violations of those conditions."); 8 U.S.C. § 1231(a)(3) (granting the Attorney General the authority to prescribe regulations governing supervision of aliens not removed within 90 days); 8 C.F.R. §§ 241.13(h), 241.4(*l*), 241.5 (regulations relating to conditions of supervision).

II. Petitioner's procedural due-process claim.

In addition to challenging his continued detention as a violation of due process, Petitioner asserts a procedural due process violation. ECF No. 1 ¶ 20.

As an initial matter, the Supreme Court in *Zadvydas* set a unitary due process standard to govern when the government may detain a noncitizen for more than six months after a final order of removal. That is the standard described above—whether there is significant likelihood of removal in the reasonably foreseeable future—and the Court indicated that if this standard is

met, the detention is not unconstitutionally prolonged for purposes of due process. *See Zadvydas*, 533 U.S. at 701 (explaining that "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" (emphasis added)). The Court thus should evaluate the constitutionality of Petitioner's prolonged detention *solely* under the *Zadvydas* standard.

Further, the Supreme Court has made clear that, as to noncitizens who have no legal right to be in the United States, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, ***are*** due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (emphasis added and citation omitted). Section 1231(a)(6) provides that a noncitizen who is inadmissible under § 1182 (like Petitioner, *see* Ex. A, ¶¶ 10, 13) "may be detained beyond the removal period," and the implementing regulations at 8 C.F.R. § 241.4 in turn set out the POCR procedures for such noncitizens who remain detained.

To the extent Petitioner asserts a *procedural* due process violation—separate from the *substantive* due process argument which must be evaluated under *Zadvydas*—he has not established such a violation. Petitioner's continued detention has been reviewed via a POCR under 8 C.F.R. § 241.4, conducted on December 3, 2025. Ex. A ¶ 19. Furthermore, on February 17, 2026, ICE conducted a panel interview with Petitioner regarding his continued detention. *Id.* ¶ 20. Thus, he has received the notice and opportunity to be heard that he is due.

To the extent Petitioner's procedural-due-process claim turns on an allegation that he was not provided proper notice for why his detention was continued after those reviews, he has not shown prejudice, as required to establish a due-process violation in the immigration context. *See Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due

process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). That is, assuming *arguendo* Petitioner did not receive appropriate notice of the detention determination following his POCR, that does not change the underlying decision to continue his detention.

Even if Petitioner had shown some deviation from the procedure prescribed by regulation, that would not entitle Petitioner to the relief he seeks. A procedural-due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention, and the proper remedy for lack of procedural due process should be additional process, not immediate release. Various district courts have declined to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day custody redetermination was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 C.F.R. § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *see also Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

CONCLUSION

As set forth herein, if the Court so orders, Respondents will submit a status report within thirty days concerning the status of their efforts to remove Petitioner. If the Court orders Petitioner immediately released, that release should be with conditions to be set by DHS, consistent with § 1231(a)(3) and implementing regulations and the Supreme Court's holding in *Zadvydas*.

Dated: February 17, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: julia.prochazka@usdoj.gov

Counsel for Respondents

Counsel for Defendant hereby certifies that the foregoing pleading, which includes 2,700/4,000 words, complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III.A.1.

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
Counsel for Respondents