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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Le, Yao

Petitioner,

V.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAM BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; Kelei Walker, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents

[redacted]

Case File No.: 26-cv-00298-DDD-CYC

Immigration file No.: [redacted]

PETITIONER'S REPLY

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE (ECF No. 10) TO MOTION FOR A PRELIMINARY INJUNCTION AND ORDER TO SHOW CAUSE

I. INTRODUCTION

Respondents' Response confirms—rather than cures—the constitutional defects in Mr. Le's continued detention. Mr. Le has now been detained well beyond the six-month presumptively reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001) following a final order of removal, yet Respondents concede that

removal to his home country is barred and that removal to a third country remains speculative, indeterminate, and unplanned.

Unable to show a significant likelihood of removal in the reasonably foreseeable future, Respondents attempt to justify continued detention by (1) reframing *Zadvydas* as permissive rather than limiting, (2) relying on internal custody reviews in place of judicial process, and (3) suggesting that a future status report could substitute for constitutionally required relief. None of these arguments withstand scrutiny.

Because Respondents have failed to rebut the *Zadvydas* presumption, Mr. Le's continued detention violates the Fifth Amendment and must end.

II. THE GOVERNMENT MISSTATES AND MISAPPLIES ZADVYDAS

A. The Six-Month Presumption Has Long Since Expired

Respondents do not dispute the critical timeline: Mr. Le's removal order became administratively final on July 31, 2025, the 90-day removal period expired on October 29, 2025, and Mr. Le has now been detained more than seven and a half months beyond finality.

Under *Zadvydas*, detention beyond six months is presumptively unreasonable, and once that threshold is crossed, the burden shifts. Here, there is easily "good reason to believe" removal is not likely in the reasonably foreseeable future where zero arrangements have been made to remove Retitioner from the U.S. Indeed,

there is not even a country willing to receive him. The Government had the opportunity to rebut these facts with evidence but did not.

Mr. Le has met his burden. Respondents have not.

B. Speculative Third-Country Removal Does Not Satisfy Zadvydas

Respondents' sole justification for continued detention is that DHS and the Department of State are "working in coordination to evaluate and select a third country for removal."

This is precisely the kind of indefinite, speculative removal theory rejected by *Zadvydas*. The Supreme Court made clear that detention may continue only where removal is significantly likely in the reasonably foreseeable future, not merely possible in theory. 533 U.S. at 701.

Respondents offer:

- No identified third country
- No agreement or acceptance
- No timeline
- No evidence that removal efforts are near fruition

Courts routinely hold that such open-ended assertions are insufficient. As detention lengthens, the "reasonably foreseeable future" must shrink, not expand. *Id.*

Here, Respondents ask the Court to accept hope as evidence. The Constitution requires more.

III. POST-ORDER CUSTODY REVIEWS DO NOT CURE UNLAWFUL DETENTION

Respondents argue that Mr. Le has received all the process he is due because ICE conducted a Post-Order Custody Review ("POCR") and a panel interview.

This argument fails for three independent reasons.

A. Internal ICE Reviews Are Not a Substitute for Judicial Review

Zadvydas itself makes clear that post-order detention is subject to federal court review. 533 U.S. at 682. Internal agency reviews conducted by the detaining authority do not satisfy constitutional due process when liberty is at stake.

ICE's conclusion that Mr. Le is a flight risk is unsupported by individualized evidence and contradicted by the record developed in the habeas petition, including his cooperation with removal and lack of dangerousness.

B. POCR Findings Do Not Establish Likely Removal

Even if POCR procedures were constitutionally sufficient (they are not), they do not address the controlling *Zadvydas* question: Is removal significantly likely in the reasonably foreseeable future?

Respondents' POCR determination merely asserts that removal is "practicable" and "likely," without identifying how, when, or where removal will occur. Such conclusory statements cannot rebut the *Zadvydas* presumption.

C. Due Process Requires Release, Not More Delay

Respondents suggest that the appropriate remedy is additional process or a future status report. But *Zadvydas* holds that when detention becomes unreasonable, release is required, subject to appropriate conditions of supervision. 533 U.S. at 699–700.

The Government may not prolong unconstitutional detention simply by promising future updates.

IV. THE GOVERNMENT'S PROCEDURAL DUE PROCESS ARGUMENT MISFRAMES THE CLAIM

Respondents argue that *Zadvydas* supplies the exclusive due-process framework and forecloses independent procedural protections. This misreads both *Zadvydas* and the Petition.

Mr. Le's claim is straightforward: continued civil detention without a realistic prospect of removal violates due process. That violation is substantive in nature, and the remedy is release.

Even assuming a separate procedural claim were required, prolonged detention based on internal, non-neutral reviews—without a meaningful opportunity to challenge the factual basis for continued confinement—fails constitutional scrutiny.

V. RELEASE IS THE PROPER AND REQUIRED REMEDY

Respondents concede that, if release is ordered, ICE has authority to impose conditions of supervision. That concession underscores the weakness of their position.

Zadvydas expressly contemplates supervised release as the constitutional alternative to indefinite detention. 533 U.S. at 695. Mr. Le seeks exactly that relief—no more, no less.

Continued detention serves no legitimate government purpose where removal is not reasonably foreseeable.

VI. CONCLUSION

Respondents have failed to carry their burden under *Zadvydas*. After more than six months of post-final-order detention, they offer only speculation, internal reviews, and requests for more time. The Constitution does not permit indefinite civil confinement on that basis. Petitioner respectfully requests this Court to order his immediate release.

Respectfully submitted,

/s/ Stacey King

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Stacey King

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