UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

XIAOLANG ZHANG,

Petitioner,

v.

PAMELA JO BONDI, United States Attorney General;

KRISTI LYNN NOEM, Secretary of Homeland Security; and,

MARY DE ANDA-YBARRA, El Paso Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement and Director of El Paso Service Processing Center;

In their official capacities;

Respondents.

Civil No.: 3:26-CV-00252-KC

PETITIONER'S CORRECTED/AMENDED REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Xiaolang Zhang (hereinafter "Petitioner" or "Mr. Zhang"), through undersigned counsel, files this his corrected/amended reply to the Respondents' Response to his Petition for a Writ of Habeas Corpus and supplement to his petition for a writ of habeas corpus. Petitioner submits that his prolonged detention while in removal proceedings is unreasonable and violates the Due Process

Clause of the United States Constitution.[1] As argued below, the Court should grant habeas relief to Petitioner. In support of this reply, Petitioner states as follows:

I. FACTS AND PROCEDURAL HISTORY

Petitioner hereby repeats and re-alleges the facts contained in his petition, but highlights the following facts as particularly relevant to the instant reply. ECF No. 1. Mr. Zhang adjusted his status to that of a lawful permanent resident on October 23, 2017. ECF No. 1 at ¶ 20. On August 22, 2022, Mr. Zhang pleaded guilty to violating 18 U.S.C. § 1832(a)(1), commonly referred to as theft of trade secrets, and on February 14, 2024, a federal judge sentenced him to 120 days in prison. *Id.* at ¶ 25. Mr. Zhang began serving his sentence at the Bureau of Prisons in California, but then was transferred to Texas. *Id.* at ¶¶ 26-27.

On September 18, 2024, Respondents Noem and De Anda-Ybarra took custody of Mr. Zhang and initiated removal proceedings against him by filing a Notice to Appear. *Id.* at ¶ 28. The Notice to Appear charged Mr. Zhang as deportable under 8 U.S.C. § 1227(a)(2)(A)(iii), for having committed an aggravated felony theft offense that "involve[d] fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. § 1101(a)(43)(M)(i). *Id.* at ¶ 29.

A. Bond Proceedings

Early in his removal proceedings, Mr. Zhang requested to be released on bond and the immigration judge denied bond on November 20, 2024 concluding that Mr. Zhang was subject to mandatory detention under § 1226(c) because his conviction is an aggravated felony. *Id.* at ¶ 44. Mr. Zhang appealed the bond decision to the Board of Immigration Appeals ("BIA"). *Id.* at ¶ 45.

[1] Respondents did not present any argument responsive to Petitioner's claim that he is wrongly classified as an aggravated felony because of his conviction for violating 18 U.S.C. § 1832(a)(1). Petitioner submits that the minimum conduct necessary to obtain a conviction under § 1832(a)(1) does not involve fraud or deceit and therefore, Respondents have wrongly classified as subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(B).

Respondents Noem and De Anda-Ybarra requested that the bond case be remanded to the immigration court and the BIA granted the request. *Id.*

On remand, the immigration judge again denied bond concluding that Mr. Zhang's conviction is an aggravated felony, which subjects him to mandatory detention. *Id.* at ¶ 46. Petitioner appealed to the BIA and on July 30, 2025, the BIA affirmed the immigration judge's decision and dismissed the appeal. *Id.* at ¶ 47.

B. Removal Proceedings

The September 2024 Notice to Appear improperly charged Mr. Zhang as an arriving alien. *Id.* at ¶ 30. Respondents Noem and De Anda-Ybarra then filed amended deportation charges on October 30, 2024. *Id.* Respondents also filed amended charges on February 25, 2025 and July 3, 2025, two weeks before Mr. Zhang's final immigration hearing. *Id.* at ¶ 31.

On July 3, 2025, in lieu of the previous deportation charges, Respondents charged Mr. Zhang as deportable under 8 U.S.C. § 1227(a)(4)(A)(i) for engaging in any activity that violates any law relating to espionage. *Id.* at ¶ 32. At his final hearing on July 16, 2025, Mr. Zhang objected to the late-filed charge and denied the allegation. The immigration judge did not make a finding of removability, but instead proceeded directly to take testimony in support of Mr. Zhang's application to re-adjust status to permanent residence and for a waiver. *Id.* at ¶ 33.

The presentation of evidence was not concluded on July 16, 2025, and the final hearing was continued until August 27, 2025. *Id.* at ¶ 34. Before the next hearing, Respondents again revised the deportation charges on July 24, 2025. *Id.* at ¶ 35. Petitioner responded to the charges by filing written pleadings. *Id.* Because Petitioner's counsel was unavailable on August 27, 2025, he requested a short continuance, and the immigration court continued the final hearing to

September 11, 2025. *Id.* at ¶ 36. The September 11, 2025 hearing did not go forward because the immigration court cancelled it shortly before it was due to start. *Id.* at ¶ 37.

The next final hearing was set for September 22, 2025. *Id.* at ¶ 38. Although Mr. Zhang had testified previously and was cross-examined by the ICE attorney, the immigration judge allowed the ICE attorney to once again cross-examine Mr. Zhang even though he did not testify on re-direct. *Id.* On October 23, 2025, Respondents Noem and Anda-Ybarra once again filed amended deportation charges. *Id.* at ¶ 39. That same day at the third final hearing, the court took more testimony and then heard argument from counsel for both parties. *Id.* The immigration court then scheduled Petitioner's final hearing for December 11, 2025. *Id.* Before the December 11, 2025 hearing, Mr. Zhang filed his response to the revised deportation charges and a brief concerning his eligibility for relief. *Id.* at ¶ 40. At the December 11, 2025 hearing, the immigration court heard argument from counsel and requested written final closing arguments from the parties. *Id.* at ¶ 41.

The parties appeared in person for a fifth final hearing on January 30, 2026. *Id.* at ¶ 42. That day, the immigration judge found Petitioner deportable for having been convicted of a crime involving moral turpitude (CIMT) within five years of his admission, 8 U.S.C. § 1227(a)(2)(A)(i) and also under 8 U.S.C. § 1227(a)(4)(A)(i) for engaging in any activity that violates any law relating to espionage. *Id.* The immigration judge also denied Petitioner's applications for adjustment of status and a waiver because he is inadmissible under 8 U.S.C. § 1182(a)(3)(A)(i). *Id.* at ¶ 43. On February 26, 2026, Petitioner appealed the immigration judge's decision to the BIA. *See* Exh. A (BIA Receipt for Notice of Appeal). Mr. Zhang's removal proceedings are ongoing and have not been concluded. *Id.* at ¶ 48. As of the date of this filing, Petitioner has been detained for 17 months, 10 days.

II. ARGUMENT

A. Mr. Zhang's Continued Detention Violates the Due Process Clause of the United States Constitution

Respondents' argument that Mr. Zhang is "not entitled to be released under any circumstances other than those expressly recognized by statute" falls short of the protections afforded to Mr. Zhang under the Due Process Clause of the United States Constitution. ECF No. 5 at 3.

The Due Process Clause of the Fifth Amendment of the United States Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a legal permanent resident, Mr. Zhang is entitled to the protections of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Freedom from detention "lies at the heart of the liberty that Clause protects." 533 U.S. at 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil detention is permitted only under narrow circumstances in which there is a legitimate governmental interest at stake. *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *Kambo v. Poppell*, 2007 WL 3051601, *10 (W.D. Tex. Oct. 18, 2007) at *18 (there must be a sufficiently compelling government interest…that outweighs the individual's constitutionally protected interest in avoiding physical restraint."). Moreover, detention must be imposed by constitutionally adequate procedural safeguards. *Demore v. Kim,* 538 U.S. 510, 523-24 (2003).

The Department of Homeland Security ("DHS") generally has the discretionary authority to detain a noncitizen during their removal proceedings. 8 U.S.C. § 1226(a). A noncitizen detained under § 1226(a) may seek a bond hearing before an immigration judge to show that he or she is not a flight risk or a danger. 8 C.F.R. § 236.1(c)(8). For noncitizens who have committed certain criminal offenses, however, Congress made detention during removal proceedings mandatory, except for witness protection purposes. 8 U.S.C. § 1226(c).

However, "mandatory detention" does not mean prolonged, unreasonable, or indefinite detention. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."). The Court in *Demore* held that the statute authorized mandatory detention only for the "limited period of [the alien's] removal proceedings," which the Court estimated "lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal" his removal order to the BIA. *Demore*, 538 U.S. at 530. As the Court in *Demore* held, the mandatory detention regime is "narrow" and closely linked to the purpose of effectuating removal and protecting public safety. 538 U.S. at 513-14, 526, 528, 529 n. 12.

If Mr. Zhang is detained under § 1226(c)[2], his detention for over seventeen months far surpasses the limited period of detention anticipated by the Court in *Demore*. Throughout Mr. Zhang's removal proceedings, Respondents and the immigration court have contributed to the delay in his removal proceedings. The DHS initiated removal proceedings in September 2024, and, after several master calendar hearings and five final hearings, the immigration judge denied relief on January 30, 2026. Respondents Noem and De Anda-Ybarra have added, revised, and withdrawn removal charges, *including several times after the final hearing had begun*, something that is highly unusual. Whereas Petitioner has not been responsible for the unreasonable delay. His counsel requested two short continuances, but withdrew one of those requests. Also, counsel for Petitioner filed four motions requesting that the hearings be set on an earlier date. ECF No. 1 at ¶ 50. In terms of numbers alone, seventeen plus months of detention exceeds the five months a "minority" of cases were completed by in *Demore*. 538 U.S. at 530.

[2] At all times, Mr. Zhang has maintained that he is not subject to mandatory detention under 8 U.S.C. § 1226(c) because his conviction is not an aggravated felony. ECF No. 1 at 9-15.

Mr. Zhang's removal proceedings are not done yet; they are ongoing as he has appealed the immigration judge's denial of his re-adjustment and waiver to the BIA. *See M.D.F. v. Johnson*, No. 3:20-CV-0829-GBK, 2020 U.S. Dist. LEXIS 227595 (N.D. Tex. Dec. 3, 2020) (citing *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 212 (3d Cir. 2020) ("[t]he Constitution does not hold exhaustion of legal remedies against a detainee."))). Mr. Zhang intends to continue vigorously defending his right to remain in the United States. There is no telling how many months or years his detention will last. Where civil detention has become unreasonably prolonged and no longer bears a reasonable relation to its regulatory purpose, release – not merely a bond hearing – is the appropriate constitutional remedy. *See Zadvydas v. Davis*, 533 U.S. at 690.

As specified in Petitioner's Writ of Habeas Corpus, his detention is unreasonably and unjustifiably prolonged under the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test and the Third Circuit's four-factor test. ECF No. 1 at ¶¶ 84-96. Both tests weigh in Petitioner's favor. *Id.* And, contrary to the government's assertion in its response, Justice Kennedy's concurrence in *Demore* is not the test used.

Should Petitioner not be released immediately and he instead is granted a bond hearing, the Due Process Clause requires that the Court impose the burden on Respondents Noem and De Anda-Ybarra to demonstrate by clear and convincing evidence that Mr. Zhang is a flight risk or a danger. *See id.* at ¶¶ 97-114.[3]

[3] And if a bond hearing is ordered, Petitioner urges the Court to instruct Respondents that they must ensure that Petitioner is afforded a fair hearing with an impartial immigration judge. At the previous bond hearings, the immigration judge appeared to reach a pre-determined conclusion without the DHS presenting any evidence of flight risk or, as the immigration judge concluded, that Petitioner was a "national security risk." Petitioner submits that a fair hearing in his case is one where the DHS bears the burden of proof to demonstrate by clear and convincing evidence that Petitioner is a flight risk to a neutral decisionmaker who is not biased.

III. CONCLUSION

For the foregoing reasons, this Court should issue an order immediately releasing Mr. Zhang or, in the alternative, order an individualized bond hearing where Respondents bear the burden of demonstrating by clear and convincing evidence that Petitioner is a flight risk or danger to the community.

Dated: March 3, 2026

Respectfully submitted,

/s/ Javier N. Maldonado
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ATTORNEY FOR PETITIONER

EXH. A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

Maldonado, Javier
Law Office of Javier N. Maldonado
8620 N. New Braunfels Ave.
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11541 MONTANA AVENUE, SUITE O
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Name:
ZHANG, XIAOLANG

Riders:

Date of Notice: 02/27/2026

FILING RECEIPT FOR APPEAL OR MOTION

The Board of Immigration Appeals (Board or BIA) acknowledges receipt of the appeal or motion and fee or fee waiver request (where applicable) on 02/26/2026 , in the above-referenced case, filed by the Respondent

Additional Comments
N/A

WARNING FOR APPEALS:

Departure. If you leave the United States after filing this appeal but before the Board issues a decision, your appeal may be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

Proof of posting voluntary departure bond. If you have been granted voluntary departure by the Immigration Judge, you must submit proof of having posted the voluntary departure bond set by the Immigration Judge to the Board. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.2(c)(3)(ii).

Autostay Bond Appeals. Please note that the automatic stay will expire 90 days from the date of receipt of the DHS' appeal. 8 C.F.R. § 1003.6(c)(3). If the Board grants the respondent's request for additional briefing time, then the 90-day automatic stay period will be tolled for the same number of days. 8 C.F.R. § 1003.6(c)(4).

Form EOIR-27. If the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

WARNING FOR MOTIONS:

Stay of removal. Filing a motion with the Board does not automatically stop the DHS from executing an order of removal. If the respondent/applicant is in DHS detention and is about to be removed, you may request the Board to stay the removal on an emergency basis. For more information, call the Clerk's Office at (703) 605-1007.

Form EOIR-27. If the motion was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

FILING INSTRUCTIONS:

If you have any questions about how to file something at the Board, please review the Board's Practice Manual which is available on EOIR's website at www.justice.gov/eoir.

Accepted by: LeH

CC