**U.S. Department of Justice**

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November 19, 2025

**By ECF**
The Honorable J. Paul Oetken
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Zhi Ming Zhang v. Kenneth Genalo, et al.*, No. 25 Cv. 8772 (JPO)

Dear Judge Oetken:

Pursuant to the Court's Order (Dkt. 21) entered after the November 13, 2025 teleconference in the above-captioned habeas corpus action, the undersigned conferred with agency counsel, and the Government respectfully provides this supplemental report regarding (1) where the petitioner was located at the time of the filing of his petition; (2) the timing, nature, and terms of the ICE detainer lodged in connection with the petitioner's federal criminal case; (3) when the petitioner's removal period under 8 U.S.C. § 1231 began; and (4) under what legal authority the petitioner was returned to ICE custody on October 23, 2025.

## I. Petitioner's location at the time of the filing of his petition

Zhang filed his habeas petition in this Court at 8:59 a.m. on October 23, 2025. *See* Pet. (Dkt. 1, timestamp). At the time of filing, Petitioner was located in Brooklyn, New York, in the custody of the U.S. Marshals Service ("USMS"). As noted in the government's opposition papers, while ICE had initially detained Zhang on February 27, 2025, ICE released Zhang to the custody of the USMS pursuant to a warrant issued by the United States District Court for the Eastern District of New York to facilitate Zhang's sentencing in *United States v. Zhi Ming Zhang*, No. 18-CR-419 9BMC (E.D.N.Y.). Declaration of Deportation Officer Rocco Kish, ¶¶ 24, 28-29 (Dkt. 15); Return, Ex. J (Dkt. 14-10). From June 22 to October 23, 2025, Zhang was held by USMS in non-immigration detention at the Bureau of Prisons MDC Brooklyn facility to prevent his removal and ensure his appearance for sentencing in the federal criminal case. Kish Decl., ¶¶ 29-30.

After Zhang's sentencing hearing in the Eastern District of New York, on October 23, 2025 at approximately 10:46 a.m., USMS returned Zhang from MDC Brooklyn to ICE custody, and ICE transported him to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey, where he remains detained pending his removal from the United States. Kish Decl., ¶ 31. Accordingly, at the time the habeas petition was filed on October 23, 2025, the Eastern District of New York was is the one district where the habeas petition could have been filed.

A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be both (i) brought against the immediate custodian and (ii) filed in the district in which the petitioner is detained. The Supreme Court has made clear that in "core" habeas petitions—*i.e.*, petitions like the instant one that challenges the petitioner's present physical confinement—the petitioner must file the petition in the district in which he is confined (*i.e.*, the district of confinement) and name his warden as the respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004). For review of such "core" petitions, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Accordingly, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Id.* at 447; *see also id.* at 443 (explaining that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

Although *Padilla* addressed a habeas petition outside of the immigration context, the Supreme Court recently applied *Padilla* to a case within the immigration context in *Trump v. J.G.G.*, 604 U.S. 670 (2025). There, the Supreme Court held that for actions challenging immigration detention, they must be brought in habeas and filed in the district of confinement. *J.G.G.*, 604 U.S. at 672 ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement." (cleaned up)).

To determine whether a court acquired habeas jurisdiction, "the key is where [the petitioner] was detained when he filed his habeas petition." *Arevalo-Guasco v. Dubois*, 788 F. App'x 25, 26 n.1 (2d Cir. 2019). Here, there can be no dispute that Zhang was detained in the Eastern District of New York at the time he filed his habeas petition. Thus, venue is not proper in the Southern District of New York; instead, venue lies in the Eastern District of New York. *See Öztürk v. Hyde*, 136 F.4th 382, 391 (2d Cir. 2025) (noting that the petitioner was in custody in Vermont at the time the petition was filed, and so "Vermont is therefore the *only* district in which the petition could have been brought at the time it was filed" (emphasis in original)); *accord Khalil v. Joyce*, 771 F. Supp. 3d 268, 291 (S.D.N.Y. 2025) (holding that the court lacked jurisdiction over the habeas petition because the petitioner "was detained in the District of New Jersey at the time his lawyer filed the Petition," and further transferring the case to the District of New Jersey "given that the District of New Jersey is the one and only district in which [the petitioner] could have filed his Petition when he did").

## II. The ICE detainer lodged in petitioner's federal criminal case and authority to return him to ICE

Six weeks after ICE detained Zhang on February 27, 2025 for purposes of executing his final order of removal, the EDNY court issued a warrant for Zhang's arrest in the federal criminal case. Kish Decl., ¶¶ 23, 28; Return, Ex. J. Four months after ICE detained Zhang, on June 22, 2025, he was released to USMS custody pending adjudication of his federal criminal case. Kish Decl., ¶ 29. According to agency counsel, the Department of Homeland Security ("DHS") lodged a detainer in the federal criminal case on or about August 21, 2025 that identified Zhang as removable pursuant to a final order of removal and requested that upon completion of the proceeding or investigation, it intended to resume custody of Zhang to complete processing of his removal.[1] *See* 8 C.F.R. § 287.7 (detainer provisions).

[1] The prosecutors in the federal criminal case needed Zhang to appear for a sentencing hearing set for June 18, 2025, so when the HSI case agents learned that ICE-ERO had detained him, the

On the day of Zhang's sentencing, October 23, 2025, pursuant to the DHS detainer, USMS returned Zhang to ICE custody for removal, *i.e.*, 28 days ago. Consequently, ICE's detention of Zhang for purposes of executing his final order of removal was interrupted by a four-month period of non-immigration detention by USMS in his federal criminal case. During that time, ICE did not have possession, custody, or control over Zhang's person or the terms and conditions of his custody or impending sentence in the federal criminal case.

The factual and legal basis for ICE's detention of Zhang, initially on February 27, 2025, is that he has been subject to a final order of removal since January 26, 1998, his criminal history includes multiple state and federal convictions, and subsequently on October 23, 2025, for the additional reason that that Zhang's deferred action status based on his participation in the federal criminal case had ended. Kish Decl. ¶¶ 7, 15, 19, 22, 24, 30. Zhang's detention comports with ICE's prioritization of detention and removal of aliens with final orders of removal and criminal convictions.

### III. Petitioner's removal period under 8 U.S.C. § 1231

Zhang's 90-day removal period began no later than October 1, 2010, the date that the Court of Appeals for the Second Circuit denied his petition for review of the Board of Immigration Appeals' order (assuming the Second Circuit had issued a stay of removal), dated February 1, 2008, that dismissed his appeal of the final order of removal entered on January 26, 1998. The detention of aliens subject to final removal orders is governed by 8 U.S.C. § 1231(a), which establishes a 90-day "removal period" within which the government generally must secure removal after a removal order becomes final, and during which the government "shall" detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). When the government is unable to secure removal within the removal period, while detention is no longer mandatory, the government "may" continue to detain four categories of aliens: (1) "inadmissible" aliens, (2) aliens who are "removable" for national-security or foreign-policy reasons or for violating entry conditions, status requirements or certain criminal laws, (3) aliens who pose a "risk to the community," and (4) aliens who are "unlikely to comply with the order of removal." *See* 8 U.S.C. § 1231(a)(6). Aliens who fall outside those categories are subject to supervision upon release. 8 U.S.C. § 1231(a)(3)&(6).

While § 1231(a)(2) provides for a 90-day period of mandatory detention during the removal period (which elapsed years ago),[2] § 1231(a)(6) authorizes detention beyond the 90-day removal period. Section 1231(a)(6) does not expressly specify how long detention may continue after the removal period expires. The Supreme Court addressed ICE's authority to detain aliens after their

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prosecutors sought and obtained a warrant for USMS to take Zhang into custody to prevent ICE from removing him before his sentencing hearing. Zhang's sentencing hearing was continued to October 23, 2025, after which he was returned to ICE custody. ICE could neither predict the sentence that would be imposed in the federal criminal case nor effect his removal during the four months that he was in USMS custody pending his sentencing.

[2] Removal can be delayed by arrangements that need to be made with the destination country for deportation and various superseding events, like detention on criminal charges, that re-start the removal period. *See Gosling v. Mueller*, Civil Action No. 12–1043 CCC, 2013 WL 868253, at * 4 (D.N.J. Feb. 28, 2013) (citing *Sayed v. Holder*, Civil Action No. 11–7324 (DRD).2012 WL 458424 (D.N.J. Feb. 9, 2012)).

removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Supreme Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States and recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. 533 U.S. at 699–701. However, the Court did not require the government to release every alien whose detention exceeds six months. Rather, the Supreme Court held:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as "reasonably foreseeable future" conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, 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.*

*Id. (emphasis added)*. Thus, the Supreme Court placed the initial burden on the alien. *Id.* If the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *Id.* Following *Zadvydas*, the government promulgated regulations requiring ICE to conduct custody reviews for aliens whose post-removal-order detention has exceeded six months. *See* 8 C.F.R. §§ 241.4, 241.13.

The six-month period begins when the alien is detained; it does not always start at the conclusion of the 90-day removal period set forth in 8 U.S.C. § 1231 (particularly where an alien may not be detained during the removal period). *See, e.g., De Oliveira Jimenez v. Searls*, No. 22 Civ. 960 (JLS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (collecting cases). In this case, the presumptively reasonable six-month period of ICE detention has yet to elapse.[3] As stated above, four months after ICE detained Zhang, he was released to USMS custody pending adjudication of his federal criminal case.

Indeed, Zhang was held in non-immigration detention by USMS for four months during which ICE could not effectuate his removal. Since Zhang was returned to ICE 28 days ago, ICE has obtained his identification verification and submitted it for translation. Kish Decl., ¶ 32. ICE received the translated documents last week, which are now pending review for submission to the Chinese Embassy to obtain current travel documents for Zhang's removal to China. ICE has recently received travel documents from China for other detainees,[4] and it has previously received travel documents for Zhang. Kish Decl., ¶ 16. There is nothing in the record to indicate that ICE will be unable to obtain new travel documents for Zhang, and so his removal remains significantly

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[3] Zhang has been in ICE detention for a total of 144 days comprised of 116 days from February 27, 2025 to June 22, 2025, plus 28 days since USMS returned him to ICE on October 23, 2025. Zhang spent 124 days from June 22, 2025 to October 23, 2025 in non-immigration detention pending adjudication in his federal criminal case. During that time, ICE could not effectuate his removal. Accordingly, ICE has 36 days until the 180-day presumptively reasonable period for detention pending removal expires.

[4] The Government has requested that agency personnel obtain more specific data from its headquarters to file a supplemental declaration detailing how many detainees have been removed to China and the timeframe associated with those removals.

likely to occur in the reasonably foreseeable future. *Guangzu Zheng v. Decker*, 618 F. App'x 26, 28 (2d Cir. 2015) (affirming denial of habeas petition where the Chinese government had issued a travel document valid for three months that lapsed during petitioner's stay of removal, holding that because China had previously issued a travel document, there was no reason to believe it would not do so again, thus petitioner had failed to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future (citing *Zadvydas*, 533 U.S. at 701)).

Since being detained this year for purposes of removal, Zhang has been in ICE detention for less than six months (whether in aggregate time or otherwise). His petition therefore should be rejected as premature.

## IV. No impermissible delegation of authority in revoking supervision

During the hearing, the Court inquired about another court's recent opinion in *E.M.M. v. Almodovar*, No. 25-cv-8212, in which Judge Garnett held that the revocation of an order of supervision signed by Assistant Field Officer Darius Robinson—the same official who signed Zhang's revocation order—violated 8 C.F.R. § 241.4(l)(1), (2). *See E.M.M. v. Almodovar*, No. 25-cv-8212 (MGG), 2025 WL 3077995 (S.D.N.Y. Nov. 4, 2025). The Government respectfully submits that *E.M.M.* is a non-precedential opinion that is not binding on this Court, and this Court should not follow it because it was wrongly decided.

Supervision of aliens subject to final orders of removal after the 90-day removal period is governed by regulations promulgated pursuant to 8 U.S.C. § 1231(a)(3). Under the regulation at issue here, 8 C.F.R. § 241.4(l)(2), the "Executive Associate Commissioner[5] shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." The authority to make these custody determinations may be further delegated to "any person or persons (including a committee) designated in writing by the Executive Associate Commissioner." 8 C.F.R. § 241.4(c)(4). In accordance with these regulations, by order dated July 25, 2019, Executive Associate Director Nathalie R. Asher re-delegated her "Authority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention" to, among others, Assistant Field Officers. Exhibit L is attached hereto to supplement the Government's Return.

The only issue is whether the Delegation Order delegates the authority to revoke an Order of Supervision. For the reasons discussed below, it does. The Delegation Order delegates the "[a]uthority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and *release of aliens from detention*." (emphasis added). The Second Circuit interpreted the phrase "relating to" broadly, explaining that it encompasses more than the similar phrase "arising out of." *Coregis Ins. Co. v. American Health Foundation*, 241 F.3d 123, 128-29 (2d Cir. 2001) (Sotomayor, J.). The Second Circuit found that "[t]o 'arise' out of means 'to originate from a specified source.' . . . The phrase 'arising out of' is usually interpreted as 'indicat[ing] a causal connection.'" *Id.* at 128. By contrast, the Second Circuit held that "related to" must be interpreted more broadly:

[5] After the transfer of the functions of the former Immigration and Naturalization Service to the Department of Homeland Security and ICE, the "Executive Associate Commissioner" now refers to the "Executive Associate Director." *See* 8 C.F.R. § 1.2.

> The term "related to" is typically defined more broadly [than arising out of] and is not necessarily tied to the concept of a causal connection. Webster's Dictionary defines "related" simply as "connected by reason of an established or discoverable relation." . . . The word "relation," in turn, as "used esp[ecially] in the phrase 'in relation to,'" is defined as a "connection" to or a "reference" to. . . . Courts have similarly described the term "relating to" as equivalent to the phrases "in connection with" and "associated with," . . . and synonymous with the phrases "with respect to," and "with reference to," . . . and have held such phrases to be broader in scope than the term "arising out of."

*Id.* at 128-29; *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (finding that the "ordinary meaning" of "relating to" is "a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with'") (citing Black's Law Dictionary 1158 (5th ed. 1979)); *Diesel Props S.r.L. v. Greystone Business Credit II LLC*, No. 07 Civ. 9580 (HB), 2008 WL 4833001, at *8 (S.D.N.Y. 2008) (stating that "[t]he meaning of 'related to' is 'extremely broad.'") (citation omitted).

The Delegation Order applies the broad phrase "related to" in connection with the delegation of authority concerning the "release of aliens from detention." While this phrase does not expressly describe a revocation of an Order of Supervision, the concept of "detention" and "release" are unquestionably related to each other, as the opposite outcomes of the same binary custody question. Detention is a decision not to release, while release is a decision not to detain. Thus, the delegation of authority "relating to . . . release of aliens from detention" necessarily includes the authority to revoke such release. These intertwined concepts of detention and release are expressly covered by 8 C.F.R. § 241.4 within Part 241, and the language in the Delegation Order relating to the release of aliens from detention thus invokes the very provision at issue in this case. Section 241.4 is titled "Continued detention of inadmissible, criminal, and other aliens beyond the removal period," and it thus mirrors the "detention" language in the Delegation Order. Moreover, a review of the various provisions of Section 241.4 makes clear that this section of the regulation addresses both detention and release. *See, e.g.*, 8 C.F.R. § 241.4(a) (referring to the "authority to continue an alien in custody or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act [i.e., 8 U.S.C. §§ 1231(a)(6) and 8 U.S.C. § 1182(d)(5)(A)]"), (c) (referring to the "statutory authority to make custody determinations under"§ 1231(a)(6)), (d) (referring to a "decision . . . to release or to detain an alien"), (f) ("factors [that] should be weighed in considering whether to recommend further detention or release of a detainee"); and, most pertinent here, (l)(2) (addressing the discretion to revoke release when it is appropriate to enforce a removal order). Accordingly, the Delegation Order provides authority to Assistant Field Office Directors to address issues of detention and release, including the decision to revoke an Order of Supervision. Reaching the opposite conclusion, the court in *E.M.M.* failed to address the meaning of "related to" in applying an overly narrow reading of the Delegation Order, and further failed to examine how the various provisions of Section 241.4 coincide with the concepts of detention and release that are referenced in the Delegation Order. If the Court nevertheless finds the regulation ambiguous, the Court should defer to ICE's interpretation of its own Delegation Order and its own consistent practice. *See Kisor v. Wilkie*, 588 U.S. 558, 575–76 (2019) (deference to agency's interpretation of its own ambiguous regulation where the character and the context of the agency interpretation entitles it to controlling weight).

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For these reasons, and those contained in the government's opposition papers, Zhang's habeas petition should be dismissed or transferred to the Eastern District of New York, or alternatively denied. We thank the Court for its consideration of this supplemental submission.

Respectfully,

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