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December 3, 2025

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

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

Dear Judge Oetken:

I respectfully submit this letter in accordance with the Court's Order (ECF No. 27) directing Petitioner to submit a reply to the government's submission of December 1, 2025.

A defense to a claim for relief must be raised in the responsive pleading. Fed. R. Civ. P. 12(b). A defense of improper venue may be asserted by motion but such a motion must be made prior to the responsive pleading. *Id.* Here, the defendants failed to object in their pleadings or via pre-pleading motion to the filing of the instant habeas petition in this district; therefore, the defendants have waived this argument.

If the Court is instead considering a transfer pursuant to 28 U.S.C. § 1404(a), the Court should conduct a two-part inquiry: "[F]irst, the court must establish whether the case could have been filed in the proposed transferee district, and second, the court must determine whether the convenience of the parties and the interests of justice favor transfer." *See Speedfit LLC v. Woodway USA, Inc.*, 642 F. Supp. 3d 429, 437 (S.D.N.Y. 2022) (citing *Speedfit LLC v. Woodway USA, Inc.*, 642 F. Supp. 3d 429, 437[(S.D.N.Y. 2022"(T)he party requesting transfer carries the burden of making out a strong case for transfer." *N.Y. Marine & Gen. Ins. Co. v. Lafarge N. Am., Inc.*, 599 F.3d 102, 114 (2d Cir. 2010)].

The defendants made no argument whatsoever as to the question of venue in their initial opposition pleadings, even though the pleadings annexed a declaration by ICE deportation officer Rocco Kish alleging that on October 23, 2025, the agency transferred petitioner Zhi Ming Zhang from Brooklyn Metropolitan Detention Center to his current place of detention in

Elizabeth, New Jersey. Notably, Kish's declaration makes no mention of the fact that Mr. Zhang spent most of October 23, 2025 within the boundaries of the Southern District of New York, where he was detained until early evening at the ICE facility located at 26 Federal Plaza. The defendants first claimed that this district is the wrong venue for Mr. Zhang's petition in their letter to the court of November 19, 2022 (ECF No. 22), which repeats the allegation that ICE transported Mr. Zhang from Brooklyn to New Jersey the morning of October 23 and makes no mention whatsoever of 26 Federal Plaza.

After Mr. Zhang submitted evidence that he was detained at 26 Federal Plaza throughout the morning and afternoon of October 23, 2025, and after the Court noted that ICE routinely processes New York City detainees at 26 Federal Plaza prior to transporting them to their ultimate detention site, the defendants submitted a declaration by a different deportation officer, Reese Clewes, alleging that on October 23 his office took custody of Mr. Zhang in the Eastern District of New York "at approximately 10:00 a.m." and then took him to 26 Federal Plaza. According to the declaration, Clewes's basis of knowledge for the claims contained in his declaration is "my review of Zhang's administrative file, consultation with my colleagues, and ICE electronic records." Yet the earlier declaration submitted by his fellow officer Rocco Kish was also based on "my review of Zhang's administrative file, consultation with my colleagues, and ICE electronic records" — and the earlier declaration makes no mention of 26 Federal Plaza and incorrectly alleges only that ICE took Mr. Zhang from Brooklyn to Elizabeth on the morning of October 23. The discrepancy between the two declarations is cause for concern, as is the lack of precision with respect to the time at which Mr. Zhang was moved to the Southern District of New York.

If the Court construes the respondent's opposition as to venue as a motion to transfer the matter to the Eastern District, it should deny the motion because (1) the respondents have failed to establish that Mr. Zhang could have reasonably filed the petition in the Eastern District, given the uncontested fact that Mr. Zhang left Brooklyn MDC between 6:00 and 7:00 a.m. on October 23, and ICE's routine practice of processing detainees in Manhattan and not in Brooklyn; and (2) neither convenience nor the interests of justice favor transfer. The defendants' pivot toward seeking a change of venue does little to further the interest of justice or the convenience of the parties, who have already entered pleadings and meaningfully conferenced the matter before this Court -- but it will result in prolonging Mr. Zhang's detention.

In its most recent letter to the Court, the defendants cite agency statistics to suggest that Mr. Zhang's removal is reasonably foreseeable. Yet Mr. Zhang has been detained for nearly 10 months and the defendants have failed so far to effect his removal or even to obtain a travel document for him. This state of affairs is what prompted Mr. Zhang to file his habeas; little has changed since he did so five weeks ago, and the government now delay his release further by seeking a change of venue. The Court should deny its request.

In light of the foregoing, we respectfully renew our prayer that this Court enter an order releasing Mr. Zhang from Respondents' custody and enjoining Respondents from redetaining him.

Respectfully submitted,

/s/ Edgar Loy Fankbonner
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Attorney for Petitioner