

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

Jingjing Lian	)	
Rihui Zhu	)	
	)	Petitioner,
	)	
versus	)	
	)	
Kristi Noem, Secretary,	)	
Department of Homeland Security,	)	
Ur M. Jaddou, Director,	)	
U.S. Citizenship & Immigration Services,	)	
	)	
Respondents.	)	
	)	

Docket #:

**Petition for Writ of Habeas Corpus and Writ of Mandamus**

1) Petitioners present this Petition before this Honorable Court requesting that Petitioner, Rihui Zhu, be released from Respondents' immigration custody, that Respondents expeditiously process an immigration Form I-730, Refugee/Asylee Relative Petition (I-730 Petition), which was filed by Petitioner, Jingjing Lian, for an immigration benefit of Petitioner, Rihui Zhu, and that Petitioners be granted other reliefs sought in this Petition based on Respondents' unlawful detention of Petitioner, Rihui Zhu, and Respondents' failure to act in accordance with the law.

**Jurisdictional Basis**

1) The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the action arises under the Immigration and Nationality Act. This Court has the power to issue a writ of habeas corpus pursuant to 28 U.S.C. § 1651, 2241, and 2242. Furthermore, Petitioners

invokes this Court's jurisdiction under 28 U.S.C. §§ 2201 and 2201, as well as under the United States Constitution.

- 2) The Court's jurisdiction over the present action is founded on 28 USC §1361 (Mandamus Act), 28 USC §1331 (federal question jurisdiction).
- 3) Judicial review of actions by agencies of the United States is authorized under 5 USC §701 et seq (Administrative Procedure Act or "APA").
- 4) The Court has authority to grant relief under 28 USC §1361 (mandamus), 28 USC §§2201, 2202 (declaratory judgment and further relief), 5 USC §706 (APA).
- 5) The Court has authority to grant attorney's fees and other expenses pursuant to Equal Access to Justice Act ("EAJA").

### **Venue**

- 6) Venue is proper pursuant to 28 USC §1391(e)(3), which provides that a civil action against the United States or its agencies may be brought in any judicial district in which Petitioner resides if no real property is involved. No real property is involved in the action, and one of the Petitioners resides in Brooklyn, New York, which is within this Court's judicial district under 5 USC §112(c).

### **Parties**

- 7) Petitioner, Jingjing Lian, (Petitioner Lian), is a native and citizen of the People's Republic of China ("China"). She presents this Petition because the government failed to act on her I-730 Petition she filed within a reasonable period of time. Her A number is

A .

8) Petitioner, Rui Hui Zhu (Petitioner Zhu), is a native and citizen of the People's Republic of China ("China"). He is the husband of Petitioner Lian. He presents this Petition based on Respondents unlawfully arresting him in New York City, unlawful detaining him in an immigration custody in the state of Virginia, and failure to act on I-730 Petition within a reasonable period time. Petitioner Zhu's A number is A [REDACTED]

9) Defendant, Kristi Noem, is the Secretary of Department of Homeland Security. She is named in this Petition solely in her official capacity.

10) Defendant, Ur M. Jaddou, is a director of the U.S. Citizenship & Immigration Service ("USCIS") performing the duties of the Director of USCIS. She is named in this Petition solely in her official capacity.

#### **Factual and Procedural Background**

11) Petitioner Lian married Petitioner Zhu on 06/18/2019.

12) Petitioners have a martial child, Arya Zhu, who was born in New York City on 11/16/2019.

13) Petitioner Lian was persecuted in China based on her violation of China's one-child policy.

14) Petitioner Lian was granted asylum status by an immigration judge in New York City, NY on 03/22/2024. Petitioner Lian is a native and citizen of the People's Republic of China. Her A-file is A [REDACTED]

15) On 04/08/2024, Petitioner Lian filed I-730 Petition on behalf of Petitioner Zhu with USCIS. The USCIS receipt number for the application is SR [REDACTED]

- 16) I-730 Petition has not yet been approved even though she filed it almost one year ago.
- 17) Petitioner Lian's attorney has written a letter on 01/03/2025 to USCIS to expeditiously process I-730 Petition.
- 18) Respondents has not responded the letter or begun to actively process I-730 Petition.
- 19) As of today, I-730 Petition is currently pending before USCIS.
- 20) On 03/17/2025, Petitioner Zhu went to Respondents' office at 26 Federal Plaza, New York, NY to meet his routine reporting requirements as set forth by Respondents.
- 21) Respondents arrested Petitioner Zhu during his reporting.
- 22) Petitioner Zhu informed Respondents that Petitioner Zhu has a pending I-730 Petition before Respondents and asked Respondents not to arrest him.
- 23) Respondents ignored Petitioner Zhu's request.
- 24) Petitioner Zhu further informed Respondents that he has a minor child at home and asked Respondents not to arrest him.
- 25) Respondents ignored Petitioner Zhu's request.
- 26) Respondents later relocated Petitioner Zhu to the state of Virginia.
- 27) Petitioner is currently detained Respondents' immigration custody in the state of Virginia.
- 28) Respondents are attempting to remove Petitioner Zhu from the United States to China.
- 29) Petitioner Zhu's removal from the United States is imminent.

**Count II. Unlawful Delay of I-730 Petition**

30) Petitioners repeat allegations 11 through the last allegation.

31) 8 U.S.C. 1158(b)(3) provides that a spouse of asylee (an alien who is granted asylum) may, if not otherwise eligible for asylum under this section, be granted the same status as the asylee.

32) Petitioner Zhu is eligible to be granted the same status as his wife was—he is eligible to be granted an asylum status.

33) Petitioner Zhu is still in the process of getting I-730 Petition approved.

34) Petitioners have rights to present additional documents to support I-730 Petition.

35) Detention of Petitioner Zhu deprives him of his right to pursue the same immigration status as that of his spouse per 8 U.S.C. 1158(b)(3).

36) Article 45 of the Fourth Geneva Convention protects the rights of asylum seekers against non-refoulement. The core obligation of signatories to the Convention is this practice of non-refoulement, or not sending someone back into a situation of possible persecution: “In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.” *Article 45, Fourth Geneva Convention, Adopted in 1949.*

37) Petitioner Zhu shall not be removed from the U.S. or sent back to China pursuant to the Article 45 of the Fourth Geneva Convention.

38) Detention of Petitioner Zhu is unlawful and unreasonable.

39) Petitioner Zhu's removal and sending him to China, a totalitarian country from which Petitioner Lian fled based on her past persecution and fear of future persecution violate Petitioner Zhu's rights under the due process clauses of the 5th

and 14th Amendments to the U.S. Constitution, as well as Petitioner Zhu's rights under the non-refoulement principle in Article 45 of the Fourth Geneva Convention.

40) Respondents gained nothing by removing the Petitioner Zhu while I-730 Petition is pending before USCIS.

41) If Petitioner Zhu is removed from the U.S., Petitioner Zhu will be presumably barred from reentering the U.S. for a period of ten years based on current immigration laws.

42) The Respondents' actions constitute a capricious and unreasonable abuse of their discretion when Petitioner Zhu is being detained while I-730 Petition is pending.

#### **Count II. Unlawful Delay of I-730 Petition**

43) Petitioners repeat allegations 11 through the last allegation

44) Respondents have a duty to complete processing Petitioners' I-730 Petition within reasonable time.

45) Under the Administrative Procedures Act, as codified under 5 U.S.C. § 555(a), agencies are required to proceed with reasonable dispatch to conclude matters presented to them. Under the APA, 5 U.S.C. §706(a), the District Court has the power to compel agency action which has been unlawfully or unreasonably withheld or delayed.

46) The processing of a case may not be withheld except in cases where "an investigation has been undertaken involving matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition...." 8 CFR §103.2(b)(18). If a case is validly withheld, it may not be withheld for more than one year. *Id* If a case is withheld for more than one year, the district director must review the case and may grant only two six-month extensions where appropriate. *Id*. If the

investigation is not completed by the second anniversary, the case must be referred to a regional commissioner. *Id.*

47) Processing I-730 Petitions is not discretionary.

48) Petitioners' I-730 Petition have been unreasonably and unlawfully delayed.

49) Respondents have no legitimate reason not to expeditiously process I-730 Petition

50) Respondents are not in good faith in performing their official duty.

51) Under the Administrative Procedures Act, as codified under 5 U.S.C. § 555(a), agencies are required to proceed with reasonable dispatch to conclude matters presented to them. Under the APA, 5 U.S.C. §706(a), the District Court has the power to compel agency action which has been unlawfully or unreasonably withheld or delayed.

52) The processing of a case may not be withheld except in cases where “an investigation has been undertaken involving matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition....” 8 CFR §103.2(b)(18). If a case is validly withheld, it may not be withheld for more than one year. *Id.* If a case is withheld for more than one year, the district director must review the case and may grant only two six-month extensions where appropriate. *Id.* If the investigation is not completed by the second anniversary, the case must be referred to a regional commissioner. *Id.*

#### **Right to Attorney's Fees**

53) Petitioners are entitled to costs and attorney's fees associated with this action.

Congress has authorized fee recovery by prevailing parties in the Equal Access to Justice Act. Under EAJA, the prevailing litigant is entitled to attorney's fees and costs if the

government fails to show that its position was substantially justified or that special circumstances make an award unjust and (3) the requested fees and costs are reasonable *Perez-Arellano v Smith*, 279 F.3d 791, 793 (9th Cir. 2002) (citing 28 U.S.C. § d)(1)(A)).

**Prayer for Relief**

WHEREFORE, Petitioner respectfully prays the Court to:

- I. Declare that the Respondents actions were and continue to be unreasonable, injurious, and in violation of the Geneva Convention and the U.S. Constitution;
- II. Issue a Writ of Habeas Corpus, directing the Respondents to bring Petitioner Zhu back to New York City immediately;
- III. Issue a Writ of Habeas Corpus, directing the Respondents to release Petitioner Zhu immediately;
- IV. Issue a writ of mandamus to compel Respondents to complete processing I-730 Petition in an expeditious manner;
- V. Declare that Respondents have a duty to complete processing Petitioners' I-730 Petition immediately without any further delay;
- VI. Declare that Respondents' failure to diligently process Petitioners' I-730 Petition is unlawful;
- VII. Declare that Respondents' actions are unreasonably and in bad faith.
- VIII. Grant such other and further relief as this Honorable Court deems just and appropriate.

RESPECTFULLY submitted this 3/18/2025



/s/ Zhou Wang

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