

Liao Kun
El Paso SPC
8915 Montana Avenue
El Paso, TX 79925

Detained

FILED

OCT 24 2025
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
DEPUTY CLERK

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

Liao Kun
Petitioner,

v.

Angel Garite
ASSISTANT FIELD OFFICE DIRECTOR
EL PASO SERVICE PROCESSING CENTER

Mary De Anda Ybarra
ICE FIELD OFFICE DIRECTOR

Kristi Noem
SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY

Pamela Bondi
ATTORNEY GENERAL

Respondents.

Civil Action No. : 3:25 cv 418 LS

MEMORANDUM OF UNDERSTANDING

1/7 *Corrected by Liao Kun*

**Annex 1: Constitution Of The United States Of America
*Amendment IV, Amendment V, Amendment VI, Amendment XIV: section
1, 2, 3, 4, 5***

**Annex 2: The Universal Declaration Of Human Rights
*Article 7, 9, 10***

**Annex 3: Convention Against Torture And Other Cruel, Inhuman Or
Degrading Treatment Or Punishment
PART 1, *Article 11***

Annex 4: Subject's Requests

Annex 5: Notice To Appear from DHS (copy)

**Annex 6: The Order of dismissal of Petition for Review with Fifth Circuit Court,
case No. 25-60256 (copy) from 08/11/2025**

Annex 7: A summary denied custody re-determination from 01/24/2025

Annex 8: Sponsor's declaration

Annex 9: Sponsor's passport (copy)

Annex 10: Sponsor's documents to prove good standing

Annex 11: Immigration Appeal from 04/10/2025

Annex 12: Immigration Appeal from 06/03/2025

Annex 13: Immigration Appeal from 07/02/2025

Annex 14: Facts and Legal standing

2/27 corrected by Lina kun

CONSTITUTION OF THE UNITED STATES OF AMERICA

1. *Amendment IV*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. *Amendment V*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. *Amendment VI*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

4. *Amendment XIV*

Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously -taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, -including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 7

All are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

PART 1

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

SUBJECT'S REQUESTS

- The subject demands the application of the U.S. Constitution's Amendment IV declaring the Right of the People to be secure against unreasonable seizures.
- The subject challenges the time he has been under custody (more than 28 months) and demands just compensation for being deprived of freedom as stated on the U.S. Constitution's Amendment V.
- The subject demands the application of the U.S. Constitution's Amendment VI declaring the Right to a speedy trial.
- The subject demands the application of the U.S. Constitution's Amendment XIV, section 1, declaring that no State shall deprive any person within its jurisdiction the equal protection of the laws.
- The subject demands the application of Article 7 of the Universal Declaration of Human Rights stating that all are equal before the law and are entitled without any discrimination to equal protection.
The subject demands the application of Article 9 of the Universal Declaration of Human Rights stating that no one shall be subjected to arbitrary arrest, detention or exile.
- The subject demands the application of Article 10 of the Universal Declaration of Human Rights stating that everyone is entitled in full equality to a fair hearing.
- The subject demands the application of Article 11, PART 1 of the International Convention Against Torture stating that each adopting State shall keep under systematic review methods and practices as well as treatment of persons subjected to any form of arrest, detention or imprisonment.

In conclusion, the subject demands the compensation equal to the amount of **#\$155,000#**, one hundred and fifty-five thousand dollars; the subject demands an investigation to find out whether there has been negligent misshandling of his case and undertake any retaliatory measures necessary. The subject also demands a revision of methods and practices of arrest, detention and imprisonment of immigrants subject to Torture Convention and receiving a written notice at his sponsor's address explaining the measures taken to prevent a situation like this to happen again.

respectfully submitted on 10.22, 2025.

Liao Kun

Liao Kun, pro se

Facts and Legal standing

1. Petitioner is a native of China;
2. Petitioner had been detained in a CBP custody from May 7, 2023 to May 30, 2023;
3. Petitioner requested asylum on May 10, 2023.
4. Petitioner was separated in a medical room for around 4-5 days due to the flu that he had on around May 11 or 12, 2023;
5. Petitioner was subjected a Credible Fear Interview with two immigration officers in a trailer office in the CBP custody on around May 25, 2023;
6. Petitioner was transferred to El Paso SPC on May 30, 2025. And then he was separated in a medical room immediately for around 5 days after he arrived at Unit 1 in El Paso SPC. Right now he has been detained for more than 28 moths;
7. Petitioner's first assigned Deportation Officer J. Hernandez told him through a request by Tablet that the result of his Credible Fear Interview was positive, the request ID is ~~XXXXXXXXXX~~; an Organization named Casa Marianella confirmed this information and sent Petitioner a sponsor letter along with other sponsor papers to support his release on October, 2023;
8. Petitioner received a removal order from Immigration Judge on February 1, 2024, he then appealed this decision with the BIA;
9. Petitioner's case was remanded to the Immigration court due to the concern of his competency for the removal proceeding on July 2, 2024; after a forensic competency evaluation that Petitioner received, the IJ concludes that Petitioner was and remains competent to represent himself in removal proceedings on October 1, 2024; the competency evaluation caused Petitioner's removal proceeding sustantial delay;
10. Petitioner received his NTA(copy) for the first time, which was handed to him by his second assigned Deportation Officer Perez, P. on November, 2024; the NTA was full of errors:
 - 1) He had never been provided a NTA orally or in written until November 2024, which was handed to him by his second Assigned Deportation Officer Perez, P.;
 - 2) He indicated an intention to apply for Asylum on around May 10, 2023. He had a Credible Fear Interview on around May 25, 2023, the result is positive which was told by his first Assigned Deportation Officer J. Hernandez. The result also was confirmed by an organization Casa Marianella;
 - 3) On May 16, 2023, he was actually residing at a CBP custody;
 - 4) His first master hearing was on June 13, 2023;

- 5) He had never received a credible fear worksheet and had never refused to sign NTA;
- 6) the NTA was not supposed to issue to him before he was subjected a Credible Fear Interview after he intended to request asylum;
11. Petitioner filed a request with Immigration Court for a bond hearing on January 17, 2025; the IJ summarily denied his bond request by an invalid reason, which was "The respondent has a removal order on appeal to the Board." on January 24, 2025; Petitioner appealed the decision to the BIA;
12. The BIA dismissed Petitioner's appeal on removal order on April 10, 2025. That means that Petitioner exhausted all administrative remedies in his removal proceeding, thus his removal order became final on the same date; Petitioner filed a Petition for Review with the 5th Circuit Court, the case No. was 25-60256, he then filed a motion to reconsider and a motion to reopen with BIA;
13. Petitioner's bond appeal was dismissed as moot on June 3, 2025;
14. Petitioner's motion to reconsider and motion to reopen were denied on July 2, 2025; his motion to reconsider was denied on "untimely filing"; he then filed a second petition for review, case No. 25-60427 with the 5th Circuit Court;
15. Petitioner was qualifying for supervision release on 90-day review after 90 days passed on July 11, 2025; he haven't received any information about his 90-day review;
16. Petitioner's Petitioner for Review, case No. 25-60256 was dismissed on "failed to timely file the Petitioner's brief" on August 11, 2025;
17. On August 19, 2025, Petitioner was taken to Los Angeles airport for getting on an airplane to China without any notice; he refused to get on the airplane;
18. Petitioner's motion to expedite the petitioner for review was granted on August 20, 2025;
19. The 5th Circuit Court issued a Temporary administrative stay of Petitioner's removal on September 5, 2025; Petitioner's petitioner for review, case No. 25-60427 is still pending;
20. On September 9, 2025, Petitioner was taken to El Paso airport for going to somewhere he didn't know, also without any notice; he was brought back to the El Paso SPC, the ICE officer told him his case was changed, but without further explanation;
21. Petitioner has never received any notice about his Credible Fear Interview, parole determination, detention determination, 90-day review; the forensic evaluation report is full of errors and he had no chance to exam it until the 5th circuit court sent it to him as administrative records;
22. No Chinese to English translation service available in El Paso SPC, including no Chinese language input on Tablet even after he requested, no adequate Chinese to English dictionary, no Chinese to English translation assistance; his immigration hearing had been delayed for many months due to his untranslated declaration; the unavailable translation service caused Petitioner's preceeding substantial delay;

23. The forensic psychologist who performed the evaluation of the Petitioner came to the same conclusion as the Court does, acknowledges that the basis for the Petitioner's claim of persecution is delusional and in fact she has diagnosed the Petitioner with Delusional Disorder, Persecutory Type with Bizarre Content. However, the psychologist concluded by stating "the Petitioner' is fully competent to proceed with self-representation in his immigration case. He has a factual and rational understanding of all points relevant to a determination of own best interest." The psychologist actually came to two opposing conclusions about Petitioner's evaluation.

The forensic evaluation report has many pages missing and is full of factual errors, it was also frivolous, because it's not a help to Petitioner, not at all.

Conditions of Confinement

1) A constitutional rights violation, which violate prohibition against imposition of cruel and unusual punishment, including inadequate heating, inadequate clothes, abusive and arbitrary disciplinary, failing to investigate complains of abuse by guards.

2) The Equal Protection Clause of the Fourteenth Amendment protects against arbitrary classifications by state actors.

3) In an equal protection inquiry, a Petitioner must make a threshold showing (i) that the has been treated differently from others with whom he is similarly situated and (ii) that the unequal treatment was a result of purposeful discrimination.

4) The fifth Circuit considers "a person detained for deportation to be the equivalent of a pretrial detainee, a pretrial detainee's constitutional claims are considered under the due process clause instead of the Eighth Amendment." A pretrial detainee may not be punished. "A pretrial detainee's due process rights are 'at least as great as the Eighth Amendment protections available to a convicted prisoner.'"

5) "To prove an underlying constitutional violation in an episodic acts case, the detainee must establish that the official acted with subjective deliberate indifference." where the "act or omission" has been undertaken by individuals, plaintiffs "must establish that the officials acted with subjective deliberate indifference to prove a violation of [their] constitutional rights." subjective deliberate indifference can be established when "the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee but responded with deliberate indifference to that risk."

24. Arbitrary arrest and disciplinary and search, misconduct, mistreatment and retaliation during detention.

Petitioner had reported a lot of problems which had happened in El Paso SPC, like meal, new white clothes, the noises, the medical related, library, abuse, discrimination. He had written a lot of grievances about those problems, in return, he had received many times disciplinary, mistreatment, misconduct even retaliation. For every time, after he reported, he would be transferred to another unit or subjected disciplinary for up to 8 hours in processing center room, it's very cold there but it's very difficult form him to be provided blanket after he had kept requesting. For every time when he was doing hunger strike, he would be disciplined in processing small room for up to 8 hours.

On around April 15, 2025, unit 1, the whole dorm was conducted a search by officers. We were all commanded getting out of our dorm. My locker was left opening after the search finished and the officers left. I had a lot of sensitive documents in the locker, and I also lost a cup which I bought from commissary.

On around June 24, 2025 in Unit 2, during the lunch time, there were two detainees sat near my bed and kept calling me "Jin shampoo", "ma cc", "china". After I reported to the officer Lopez, he reported to the captain. Three officials, including Captain Quezada, Captain Flores and a lady official I didn't know her name. I had abused but I was commanded to go to processing solely for questioning. The officials made people in the dorm thinking that I was the one caused the trouble, they were actually encouraged. That was why they became three people and kept humiliating me by saying the same words toward me when I was leaving and they became 4 people after I returned to the unit 2. The Captain Quezada even had blamed on me that I was a trouble maker. He said I made another trouble around two months ago when I was at unit 3. But that was actually at unit 4 on May 2, 2025. I was assaulted by three detainees after I stopped them from making extremely loud noises by gambling. Then I got humiliated by the whole dorm. There was a clear shoe print on my pants that means someone kicked me on my thigh.

I did hunger strike to protest discrimination and misconduct, then I received 8 hours disciplinary. After that, I was transferred to unit 6. On June 26, 2025, that night, many people called me "Jin shampoo", "ma cc" until very late night. On July 2, 2025, unit 6, at around 10am, during the count time, every one was sleeping. There were 5 detainees around my bed talking very loudly. I just tried to remind them keep voice down. A detainee named [REDACTED] threw two objects on my head, one was a big soap bar, it hit my chin with great force. I felt extremely painful, the pain lasted 4 days after I took some pain killers. Officer Gallegos took a picture of my chin. The detainee was called to processing and spent 6 hours there and returned to unit 6. After I complained about this, he was transferred to another blue low unit, I met him near the unit 3 and unit 4's gate another day. Then I made a grievance about why a detainee would not be punished after he assaulted someone? Then I was called to processing by officer Ramirez. I was charged horse play and forced to change blue uniform to orange and transferred to unit 7D. Then he was transferred to 7C and 7A.

I had requested many time for reinvestigation about misconduct, mistreatment and retaliation , nothing's happened yet.

25. Equal Protection

Physical and Verbal Assault from detainees, the officers acted with subjective deliberate indifference which violated my constitutional rights.

Petitioner had been assaulted by detainees for three times. The first time was at unit 4 on around May 2, 2023; the second time was at unit 6 on around July 2, 2023; the third time was at unit 7D on July 15, 2023. The second time, there was a detainee throwing objects to him hitting my head for twice. The second hit, the detainee threw a big soap bar onto Petitioner's head with great force which hit Petitioner's chin, he felt extremely painful, the pain lasted for 4 days. Petitioner was victim, but he was the one got punished. He was forced to change uniform from blue-low to orange mid-high by officers. He then was transferred from unit 6 to unit 7D. He can only have around 15 hours law library time in a week when he is in unit 7 after he sent many requests for additional law library time. He could be in law library for the whole day when he was blue-low. He lost his privilege after He got assaulted when

he was in unit 7D, in a morning, a detainee took the Tablets from him by force for two times. Petitioner tried to get one of them back, he got surrounded by many detainees soon, and one of them kick him in the belly. Then he got mistakenly arrested by two officers. One of the officers, named Dorrese, twisted his arms with great force. After that, Petitioner was transferred to unit 7C then 7A.

Petitioner has suffered verbal abuse for almost two years.

26. Inadequate Medical Care

Petitioner had a lot of healthy issues, like his tooth, there are a lot of deep cracks on his tooth and the most left of his tooth has always made him stinking and painful. Petitioner had requested many times to take it out, the requests were refused; he only have left part of his lungs function-able due to the TB he had 18 years ago, the right part of his lungs was severely damaged. he have chest pain from time to time. He've been detained here for two years, but the cause of his chest pain has not been identified. Petitioner have a hepatic cyst and possible malignancies. He have a bump on the bone of his right leg, it would make him extremely painful when he rub it, he requested for examination, but the doctor refused. Petitioner has an ear-ringing problem and his eardrum is extremely vulnerable, he reported to the medical for many times that he need a treatment for that, but nothing has happened. The loud noises in the dorm would make his ears hurting and it might damage his hearing permanently. Sometimes it's very difficult to get medical care from the sick call, Petitioner needs to sign for it for many days so he might have an appointment. For example, he had had poop problems sometimes, that he couldn't poop for 15 days or a week, but during the time sick call was not available, no one called him after he signed for every day.

There were two times that Petitioner had taken the van for going to hospital without air conditioner. During the time, the temperature was around 105 F°, the van didn't have an open window, it was extremely hot in the van. And the van had been waiting outside of facility for more than half an hour with unknown reason. It was not the count time. These happened on around May, 2025 and June 19, 2025.

The temperature of the unit had been very cold, especially in the night. When I was in unit 6, one night, the air conditioner was running in an unbelievable way, it's extremely cold, I woke up because it's freezing. I asked the officer turned off the air conditioner, he said he had already raise the temperature to 75 F°, but I still felt freezing. I don't know what the temperature had been if 75 F° is normal. The thing is we had 80 years old people Mr. ~~██████████~~ and some other older than 60 people in the dorm during the time; the temperature in the law library is always very cold, I had been always shaking when I was doing law library time.

27. housing conditions

(1) No locker provided for protecting our privacy and sensitive documents for a very long time, more than 5 months.

(2) Shower water sometimes was extremely cold or hot, and the air conditioner would blow into the bathroom violently for a while when I was in unit 1 and 2, I would scare to take shower.

(3) No adequate new white clothes provided for a very long time, more than a year. I have to share used white clothes with someone else.

(4) The dorm are too crowd, sometimes had 80 people in a room. It's also very noisy.

(5) Housing of Detainees with Convicted Inmates

I don't have criminal records, I'm here seeking for asylum. I'm a peaceful man, but I received misconduct and was transferred to unit 7 where are housing of detainees with convicted inmates;

28. Access to the Courts/ Law library

I had appeal with the BIA between February, 2023 to July, 2025; I had a Petition for Review with the Fifth Circuit Court between April, 2025 to August, 2025, case No. 25-60256; I have a Petitioner for Review with the Fifth Circuit Court between August, 2025 to present time, case No. 25-60427. The cage officers sometimes would stop me from going to law library, sometimes, library officers would not call me until very late time. Photocopying cervices in law library hadn't been available for two months due to the alleged reasons, like the photo copier machine broken, out of ink, out of papers.

After he got transferred from blue low unit to mid high unit, he lost his privilege to be spending the whole day in law library. Petitioner didn't speak English before he came to the United States. He represent himself as pro se. The due process rights entitle him to have adequate law library time. "adequate", it means good enough, sufficient to satisfy the requirements, although it's not limitless in the light of the law, but the El Paso SPC facility has the capability and condition to fulfill Petitioner's this requirement, it's applicable with just little efforts that allow Petitioner to be in law library with the detainees from other mid high unit, since he had been living in those units and he also had been allowed to be in law library for the whole day before, that means there's no obstacle to fulfill his requirement, not at all.

Due to the reasons above, my motion to reconsider the dismissed of my appeal of the removal order with the BIA was denied on untimely filing; my petition for review, case No. 25-60427 was dismissed on "failed to timely file the Petitioner's brief".

The documents for the appeals with the courts were also filed in a rush for every time. Because I needed to finish it before the deadline but I hadn't had adequate law library time to prepare my appeals. I had to omit some of my points or arguments. I had to use priority mail service for many times which costed me more than 200 dollars if my memory is correct. I had been working in the kitchen in this facility, I could make 5 dollar in a week, but after more than 1 year work, I had no money left. That's why I barely bought drinks, snacks from vendor machine, and noodle soup fro commissary in more than two years detention, because I need to save money for mail service, also including phone calls. Even though, it's not enough, I had to borrow money from other detainees frequently, some of my friends I met here might give me some money too.

29. §1983, civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to be deprivation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes

of this section, any Act or Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

30. Pro se complaints involving civil rights issues should be liberally construed.

31. The department violated Petitioner's due process rights by denying his notice and opportunity to respond to the charge of removability. Noncitizens in removal proceedings have the right to due process under the Fifth Amendment. *Lapaix v. U.S. Att'y Gen.*, 605 F.3d 1138, 1143 (11th Cir. 2010). Due process requires that they be given notice and an opportunity to be heard. To establish a due process violation in a deportation proceeding, a Petitioner must show that he was deprived of his liberty without due process and that the alleged error caused him substantial prejudice. And to establish substantial prejudice, the Petitioner must show that the alleged deprivation of due process affected the outcome of the proceeding. *Petlechkov v. United States AG*, 2024 U.S. App. LEXIS 8086.

32. Touchstone of due process is protection of individual against arbitrary action of government.

To make out prima facie claim that they have been denied due process, plaintiffs must establish two elements: (1) that their liberty or property interest have been invaded by government without opportunity to challenge that invasion, and (2) that purported justification for invasion is at least plausibly disputable. *Jacobson v. Tahoe Regional Planning Agency* (1977, CA9 Cal) 558 F.2d 928, *op. replaced* (1977, CA9 Cal) 556 F.2d 1353, *aff'd in part and rev'd in part on other grounds* (1979) 440 U.S. 391, 99 S Ct 1171, 59 L Ed. 2d 401, 12 Env't Rep Cas 1881 (criticized in *Goldman v. SEPTA* (2012) 618 Pa 501, 57 A3d 1154)

33. Aliens, as well as citizens, are entitled to protection of Fifth Amendment. *United States v. Pink* (1942) 315 U.S. 203, 86 L Ed. 796, 62 S Ct. 552. Due Process Clause of Federal Constitution's Fifth Amendment applies to all "person" within United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis* (2001) 533 U.S. 678, 121 S. Ct. 2491, 150 L Ed 2d 653, 2001.

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted this on

10-22-2025

Lao KCM
Respondent, *pro se*



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
EL PASO SPC IMMIGRATION COURT

8D
9C

Respondent Name:

LIAO, KUN

To:

LIAO, KUN
EL PASO SERVICE PROCESSING CEN
8915 MONTANA AVENUE
EL PASO, TX 79925

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

01/24/2025

DETAINEE MAIL

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because
The respondent has a removal order on appeal to the Board.

Granted. It is ordered that Respondent be:
 released from custody on his own recognizance.
 released from custody under bond of \$
 other:

Other:

2025 FEB 18 11:13:00
BOARD OF
HEARINGS AND APPEALS
OFFICE OF THE CLERK
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
DEPARTMENT OF JUSTICE

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Kun LIAO, A 

Respondent

FILED
Apr 10, 2025

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, El Paso, TX

Before: Goodwin, Appellate Immigration Judge

GOODWIN, Appellate Immigration Judge

The respondent, a native and citizen of China, appeals from an Immigration Judge's February 1, 2024, decision denying his application for asylum under section 208 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158; withholding of removal pursuant to section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3); and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security ("DHS") has not filed a brief in response. The appeal will be dismissed.

We review the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

This matter was last before the Board on July 2, 2024, when we remanded the record for the Immigration Judge to evaluate the respondent's mental competency, considering the delusional nature of certain claims in his testimony and written filings. *See Matter of M-A-M-*, 25 I&N Dec. 474, 479-81 (BIA 2011) (describing measures to determine whether a respondent is competent to participate in removal proceedings when there are indicia of incompetency). On remand, a forensic psychologist conducted a Forensic Competency Evaluation of the respondent (Exh. 4). The forensic psychologist found that the respondent has a rational and factual understanding of the nature and purpose of removal proceedings, and he is competent to represent himself, notwithstanding irrational and delusional beliefs that he was persecuted by the Chinese government (Exh. 4). Considering this report and the Immigration Judge's interactions with the respondent during the hearing, we discern no clear error in the Immigration Judge's

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.



October 1, 2024, finding that the respondent is competent for purposes of removal proceedings (IJ 10/1/24 at 2-3; Tr. at 1-4, 8-9, 11-12, 14-16, 19-23, 25-29, 32-40).² See *Matter of J-S-S*, 26 I&N Dec. 679, 684 (BIA 2015) (holding that a finding of competency is a factual determination that the Board reviews for clear error). The Immigration Judge thus properly certified the record to the Board for adjudication of the respondent's appeal from his February 1, 2024, decision.

We reject the respondent's assertion that the Immigration Judge lacked impartiality and denied him due process (Respondent's Br., filed on December 27, 2024, at 4; Respondent's Br., filed on March 29, 2024, at 7-8). The record reflects that the Immigration Judge acted within his authority by questioning the respondent about the claim and managing the proceedings. See INA § 240(b)(1), 8 U.S.C. § 1229a(b)(1) ("The Immigration Judge shall . . . interrogate, examine, and cross-examine the alien and any witnesses."). We conclude that the respondent received a full and fair hearing in accordance with due process. See *Arteaga-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020). We further conclude that the new details provided on appeal concerning threats that the respondent perceived during his journey from China to the United States would not change the outcome of the case (Respondent's Br., filed on December 27, 2024, at 5-8, 14-16; Respondent's Br., filed on March 29, 2024, at 9-10, 12-17). We thus decline to remand this matter.

The respondent asserts that he is not removable as charged under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), because he fled persecution and attempted to comply with the law before crossing the United States-Mexico border (Respondent's Br., filed on December 27, 2024, at 1-2). We disagree. The record supports the Immigration Judge's determination that the respondent admitted the factual allegations and conceded the charge of removability in the Notice to Appear (Form I-862) (IJ at 1; Tr. at 4-6; Exh. 1).³ We therefore affirm the holding that the respondent is removable pursuant to section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i).

Turning to the applications for relief from removal, the respondent claims that he experienced past persecution, and he has a well-founded fear of future persecution on account of his political opinion (IJ at 14; Exh. 2). On appeal, the respondent provides additional factual details and argument concerning what he terms "mistakes or misunderstandings" in the transcript regarding his claim (Respondent's Br., filed on March 29, 2024, at 1-8). We discern no clear error in the Immigration Judge's factual findings.

Specifically, the respondent testified that he lived with his parents in a "high rise" apartment building in a large city in the Hunan Province (IJ at 11; Tr. at 41-43, 55-56). The respondent completed the equivalent of high school, worked in sales, and then ran an online business selling access to films, which he admitted involved copyright infringement (IJ at 11; Tr. at 43-45, 47-48, 93-94).

² All citations to the transcript are to the pre-remand transcript.

³ Unless otherwise specified, citations to the Immigration Judge's decision are to the one issued on February 1, 2024.

A 

The respondent commented frequently online on a variety of topics and was sometimes critical of the Chinese government (IJ at 11; Tr. at 45-46). In the fall of 2015, a customer sent the respondent a direct message ("DM") telling him to "shut up," which the respondent found suspicious because he had not used his personally identifiable information in registering his online business (IJ at 11; Tr. at 47-53).

During the Chinese New Year in 2016 or 2017, the respondent went downstairs to pick up a package and while standing outside, noticed that his neighbor across the hall had covered the windows of the neighbor's apartment with newspaper (IJ at 11-12; Tr. at 54-57). This made the respondent suspicious, and he told his mother, who informed him that the neighbor rarely or never went outside (IJ at 12; Tr. at 57).

In the fall of 2016 or 2017, the respondent noticed many cigarette butts in his building's stairwell, which he found suspicious (IJ at 12; Tr. at 58-59). Around the same time, the electricity in the respondent's apartment went out even though no one else in the building had lost power (IJ at 12; Tr. at 59-60). The respondent discovered that an external outlet in the stairwell near his apartment was damaged, he called an electrician to fix it, and power was restored (IJ at 12; Tr. at 60-61).

In 2017, the respondent's parents did not timely receive their monthly retirement payments (IJ at 12; Tr. at 61-63). The respondent found this suspicious, as other retirees in the building had received their payments on time (IJ at 12; Tr. at 62).

On another occasion while the respondent's parents were out of town, he went out on his balcony, where he observed a large number of flies on the window and wall of his apartment (IJ at 12; Tr. at 63-65). The flies were an unusual species, and he believed that the government had placed them there as a kind of death threat (IJ at 12; Tr. at 65-67, 94).

In the winter of 2022, the respondent began noticing a constant noise in his apartment (IJ at 12; Tr. at 71). The noise blended with other ambient noise during the day, but it was more noticeable at night and interfered with his sleep (IJ at 12; Tr. at 72-73).

The respondent then discovered that his comments on an online news website were no longer accessible (IJ at 12; Tr. at 73-75). Because he did not attempt to make new comments, he does not know if the comments were blocked (IJ at 12; Tr. at 75).

In 2023, the respondent was watching the soccer World Cup on TikTok, which he had not used much beforehand (IJ at 12; Tr. at 67-68). The respondent gained a follower, who sent him a DM noting that he had begun commenting again (IJ at 12; Tr. at 68). The respondent did not answer and tried to investigate the follower's profile (IJ at 12; Tr. at 69). A few weeks later, the respondent discovered that the DM had been deleted (IJ at 12; Tr. at 70-71).

The respondent then decided to leave China (IJ at 12; Tr. at 75). While applying for a passport, the respondent's Samsung cell phone stopped working and could not be repaired (IJ at 12; Tr. at 76-77). The respondent then obtained an iPhone, which he needed to, among other things, transfer

A 

funds to pay the passport fee (IJ at 12; Tr. at 77, 79). The respondent received his passport within 20 days of his application (IJ at 13; Tr. at 78-79).

The respondent went to obtain a bank card with a microchip, which was necessary for use during travel (IJ at 13; Tr. at 78, 80). The respondent believed that some bank employees appeared nervous when he approached them (IJ at 13; Tr. at 80). Although there was a delay, the respondent eventually received the card (IJ at 13; Tr. at 81). He also requested and received an additional card (IJ at 13; Tr. at 81). While traveling to and from two bank branches to obtain his cards, the respondent noticed the same lesbian couple on the subway twice and thought they were following him (IJ at 13; Tr. at 81-83).

The respondent believes that agents of the Chinese government followed him during his trip through several countries to the United States (IJ at 13; Tr. at 105-07). The respondent fears that he could be killed if he returns to China (IJ at 13; Tr. at 89, 100, 102, 110).

As a safeguard, we accept that the respondent believes what he has presented, even though his account may not be believable to others or otherwise sufficient to support his claim. See *Matter of J-R-R-A*, 26 I&N Dec. 609, 612 (BIA 2015). However, we are unpersuaded by the respondent's legal argument that the Immigration Judge erroneously found that he did not establish eligibility for asylum and statutory withholding of removal (Respondent's Br., filed on December 27, 2024, at 4-5, 8-14, 16-22; Respondent's Br., filed on March 29, 2024, at 18-19).

Persecution is an extreme concept, *Kumar v. Garland*, 52 F.4th 957, 970 (5th Cir. 2022), which "does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional." *Gjetani v. Barr*, 968 F.3d 393, 397 (5th Cir. 2020) (quotation omitted). "Examples of persecution include, but are not limited to, threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom." *Morales v. Sessions*, 860 F.3d 812, 816 (5th Cir. 2017) (quotation omitted).

The record supports the Immigration Judge's determination that the respondent experienced no physical harm (IJ at 14). We further affirm the Immigration Judge's determination that construing the DMs the respondent received as threats, they did not constitute persecution because they were mild, unspecific, and insufficiently imminent (IJ at 14). We also will not disturb the Immigration Judge's finding that the record does not show that government officials were following the respondent, as he had no direct encounters with officials (IJ at 14; Tr. at 92-93). Likewise, the Immigration Judge did not clearly err in finding insufficient evidence that the DMs were authored by government officials and demonstrate a nexus to the respondent's political opinion (IJ at 14, n.3). In addition, we affirm the determination that the remaining incidents are subject to reasonable explanations and cumulatively do not constitute persecution (IJ at 14). The Immigration Judge also permissibly found that the respondent's claim that the Chinese government followed him during his travel to the United States is speculative and implausible, considering that the government allowed him to obtain a passport and depart China (IJ at 14). We affirm the Immigration Judge's conclusion that, even crediting the respondent's perception that he was mistreated, his cumulative experience did not rise to the level of "persecution" under the INA (IJ at 14). See *Eduard v. Ashcroft*, 379 F.3d 182, 187-88 (5th Cir. 2004) (holding that a respondent



who experienced verbal threats and was injured on one occasion did not establish past persecution); *Abdel-Masieh v. INS*, 73 F.3d 579, 583-84 (5th Cir. 1996) (affirming a finding that a respondent who experienced two arrests, two detentions, and beatings did not demonstrate past persecution).

The respondent thus may not benefit from the regulatory presumption of a well-founded fear of persecution on account of a ground protected under the INA (IJ at 14). See 8 C.F.R. § 1208.13(b)(1). The respondent may, however, independently establish a well-founded fear of persecution on account of his political opinion. See 8 C.F.R. § 1208.13(b)(2)(i).

Considering the respondent's testimony about his experience in China and during his journey to the United States, we affirm the Immigration Judge's finding that while his fear of future harm is subjectively real, it is not objectively reasonable (IJ at 15). The Immigration Judge did not clearly err in finding that the respondent failed to explain why the Chinese government would allow him to obtain a passport and leave the country if it wanted to persecute him (IJ at 13 n.1). We will not disturb the Immigration Judge's finding that the record does not establish a reasonable possibility that the Chinese authorities would harm the respondent upon his return to China (IJ at 15). We therefore affirm the Immigration Judge's ruling that the respondent did not demonstrate an objectively reasonable well-founded fear of persecution (IJ at 15). See *Lopez-Gomez v. Ashcroft*, 263 F.3d 442, 445 (5th Cir. 2001).

For these reasons, we affirm the denial of asylum. See 8 C.F.R. § 1208.13(b); *Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008). We also uphold the denial of withholding of removal under the INA, which is governed by a more stringent burden of proof (IJ at 15). See 8 C.F.R. § 1208.16(b); *Dayo v. Holder*, 687 F.3d 653, 658-59 (5th Cir. 2012).

Finally, the Immigration Judge was correct in ruling that the harm the respondent experienced did not constitute "torture" within the meaning of 8 C.F.R. § 1208.18(a) (IJ at 15). See 8 C.F.R. § 1208.16(c)(3)(i) (identifying evidence of past torture as one relevant consideration in assessing the likelihood of future torture); *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019) (stating that if incidents specific to the respondent "do not even rise to the level of persecution . . . [i]t follows *a fortiori* they do not constitute torture"); *Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002) (stating that the CAT "does not require persecution, but the higher bar of torture"). Further, the Immigration Judge permissibly determined that the respondent did not establish that he more likely than not will be "tortured" within the meaning of the regulations in the future, given the speculative nature of his claim (IJ at 15-16). See *Matter of S-V-*, 22 I&N Dec. 1306, 1314 (BIA 2000) (concluding that it is necessary to establish a specific likelihood of torture, given the respondent's individual circumstances). Overall, we conclude that the Immigration Judge did not commit legal error or clear factual error in determining that the respondent did not demonstrate that he more likely than not will be tortured by or with the acquiescence (including the concept of willful blindness) of a public official of the Chinese government (IJ at 15-16). See 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a); *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 350-51 (5th Cir. 2006) (describing a respondent's burden of proving eligibility for protection under the CAT); *Matter of Z-Z-O-*,

A 

26 I&N Dec. 586, 590 (BIA 2015) (holding that the Board must review an Immigration Judge's factual predictions for clear error).

Accordingly, the following order is entered.

ORDER: The appeal is dismissed.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to \$998 for each day the respondent is in violation. *See* INA § 274D, 8 U.S.C. § 1324d; 8 C.F.R. § 280.53(b)(14).



COPY

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Office of the Clerk

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*



LIAO, KUN

A 

**EL PASO SERVICE PROCESSING CEN
8915 MONTANA AVENUE
EL PASO TX 79925**

DHS/ICE Office of Chief Counsel - EPD

11541 MONTANA AVENUE, SUITE O

El Paso TX 79936

Name: LIAO, KUN

A 

Date of this Notice: 7/2/2025

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

John Seiler

Acting Chief Clerk

Enclosure

Userteam: Docket

GS

COPY

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Kun LIAO, A 

Respondent

FILED
Jul 02, 2025

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Goodwin, Appellate Immigration Judge

GOODWIN, Appellate Immigration Judge

The respondent is a native and citizen of China. This matter was last before the Board on April 10, 2025, when we dismissed the respondent's appeal from an Immigration Judge's February 1, 2024, decision denying his application for asylum under section 208 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158; withholding of removal pursuant to section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3); and protection under the regulations implementing the Convention Against Torture ("CAT").¹ Presently before the Board are motions to reconsider, reopen, expedite, and stay removal filed by the respondent. The Department of Homeland Security ("DHS") has not filed a brief in response. The motions will be denied.

The respondent filed his motion to reconsider on May 13, 2025, 33 days after the entry of our April 10, 2025, decision. The motion is therefore time-barred. *See* 8 C.F.R. § 1003.2(b)(2) (stating that a motion to reconsider must be filed with the Board within 30 days after the mailing of the Board decision). Furthermore, even were we to reach the merits of the motion, we would find that the motion does not identify factual or legal error in our prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). We thus will deny the motion to reconsider.

The respondent timely filed his motion to reopen on May 27, 2025. *See* 8 C.F.R. § 1003.2(c)(2) (stating that a motion to reopen must be filed with the Board no later than 90 days after the issuance of the final administrative decision). A motion to reopen must state the new facts that will be proven at a hearing to be held if the motion is granted and supported by affidavits and other evidentiary material. 8 C.F.R. § 1003.2(c)(1). A motion to reopen will not be granted unless the evidence sought to be offered is material and was unavailable and could not have been discovered

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

(continued...)

COPY



or presented at the previous hearing. *Id.* The respondent submitted no new evidence with the motion to reopen. Further, while the respondent asserts that he has been unable to access evidence that he saved on his cellular phone and Google drive, he has not shown that this proffered evidence is material to the dispositive legal rulings in our prior decision. Therefore, we will deny the motion to reopen.²

In light of the foregoing, we will deny the respondent's motions to expedite and stay removal, as moot.³

Accordingly, the following orders are entered.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to expedite is denied, as moot.

FURTHER ORDER: The motion to stay removal is denied, as moot.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to \$998 for each day the respondent is in violation. *See* INA § 274D, 8 U.S.C. § 1324d; 8 C.F.R. § 280.53(b)(14).

² We express no opinion on the respondent's assertions in his motions regarding the legality of his detention because bond proceedings are "separate and apart from, and shall form no part of, any . . . removal hearing or proceeding." 8 C.F.R. § 1003.19(d).

³ The records of this agency show that the respondent's petition for review of our April 10, 2025, decision is pending before the United States Court of Appeals for the Fifth Circuit. The parties should notify the circuit court of the instant decision.

Liao Kun
El Paso SPC
8915 Montana AVE.
El Paso, TX 79925

DETAINED

PROOF OF SERVICE

Corrected by Liao Kun
On (9/22), I, LIAO KUN
(date of mailing or delivery) (printed name of person signing below)

mailed or delivered a copy of PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241.
Facts and Legal standing, and Memorandum of Understanding
(name of document being served)

and any attached pages to DHS/ICE Office of Chief Counsel - EPD
(name of party served)

at the following address: 11541 MONTANA AVENUE, SUITE O, El Paso, TX 79936
(address of party served)

by first class mail
(method of delivery, for example: overnight courier, hand-delivery, first class mail)

Liao Kun
(Signature)

10-22-2025
(date)

~~LIAD KUN~~
A
EL Paso SPC
8715 Montana Ave.
EL Paso, TX 79925



EL PASO TX 799
THU 23 OCT 2025 PM

United States District Court

Western District Court of Texas, El Paso Division,
The Clerk Office

525 Magoffin Ave., Room 105
EL PASO, TX 79901