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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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15 FENG CHEN,
16 Petitioner,
17 v.
18 DAVID MARIN, et al.,
19 Respondents.

No. 5:25-cv-03306-DOC-SK

**FEDERAL RESPONDENTS' ANSWER
TO PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS**

[Declaration of Jorge Suarez]

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1 **I. INTRODUCTION**

2 Petitioner Feng Cheng is a former lawful permanent resident who was convicted
3 of first-degree murder. See Declaration of Jorge Suarez (“Suarez Decl.”). Upon being
4 released from prison after serving his lengthy criminal sentence, he was immediately
5 arrested and detained by Immigration and Customs Enforcement (“ICE”) on February
6 24, 2025. Suarez Decl. at ¶ 6. Petitioner has filed a Petition for a Writ of Habeas Corpus
7 [Dkt. no. 1].

8 Petitioner asks that the Respondents be ordered to immediately release him.
9 Petitioner claims this is required because he cannot be timely removed back to China.
10 Since Petitioner was ordered removed on March 13, 2025 (Decl. of Suarez at 7), ICE has
11 been actively working to effectuate his removal from the United States. *Id* at ¶ 9.
12 Petitioner asserts that he is being subjected to indefinite detention because ICE has not
13 yet obtained a travel document from China. However, he has failed to establish that
14 “there is no significant likelihood of removal in the reasonably foreseeable future.”
15 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Ninth Circuit has explained that the
16 *Zadvydas* language requires an alien to show that “he is stuck in a ‘removable-but-
17 unremovable limbo,’ as the petitioners in *Zadvydas* were[;]” that is, the alien must show
18 he “is unremovable because the destination country will not accept him or his removal is
19 barred by our own laws.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

20 Here, Petitioner was ordered removed to China, his home country. ICE is actively
21 taking steps to remove him and has requested a travel document for China. Petitioner has
22 failed to establish entitlement to immediate release from ICE custody. The Petition
23 should be denied.

24 **II. STATEMENT OF FACTS**

25 Petitioner is a native and citizen of China who was admitted to the United States
26 as a lawful permanent resident on September 10, 1982. Suarez Decl., ¶ 2.

27 On or about November 26, 1996, Petitioner was convicted of grand theft from a
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1 person in violation of California Penal Code (CPC) §487(c). Id at ¶ 3. On or about April
2 20, 1998, Petitioner was convicted of first-degree murder in violation of CPC §187(a)
3 and sentenced to twenty-five years to life in prison. Id at ¶ 4.

4 Petitioner was taken into ICE custody on or about February 24, 2025 to be
5 processed for removal and served with a Notice to Appear as an alien convicted of two
6 crimes of moral turpitude. It at ¶ 6. On or about March 13, 2025, Petitioner was ordered
7 removed to China and waived appeal of that decision. Id at ¶ 7. He has been detained at
8 Adelanto ICE Processing Center since this date. See Dkt. 1 p. 2. A custody review was
9 conducted on November 22, 2025 and it was determined that Petitioner should remain
10 detained. Suarez Decl. at ¶ 8.

11 **III. ARGUMENT**

12 **A. Petitioner Has Not Shown That There Is No Significant Likelihood Of** 13 **Removal In The Reasonable Future.**

14 The TRO Application should be denied because it fails to show that there is no
15 significant likelihood of removal in the reasonably foreseeable future, as required by
16 *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas*, the Supreme Court held that an
17 alien is not entitled to habeas relief, after a post-removal detention period of six months,
18 unless the alien can show that there is “good reason to believe that there is no
19 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701;
20 *see also Bonilla-Montano v. Holder*, 2010 WL 1727803 (C.D Cal. Mar. 25, 2010) (M.J.
21 Abrams) (discussing *Zadvydas* and recommending denial of petition for writ of habeas
22 corpus), *adopted* 2010 WL 1727808 (C.D. Cal. April 26, 2010). The Ninth Circuit has
23 explained that under *Zadvydas*, an alien must show that “he is stuck in a ‘removable-
24 but-unremovable limbo.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).
25 This means that the alien must show he “is unremovable because the destination
26 country will not accept him or his removal is barred by our own laws.” *Id.* If the alien
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1 meets this burden, the United States must respond with sufficient rebuttal evidence. *See*
2 *Zadvydas*, 533 U.S. at 701.

3 While Petitioner has been detained for almost a year pursuant to a final order of
4 removal, the six-month presumption established by the Supreme Court in *Zadvydas* just
5 shifts the evidentiary burden:

6 After this 6-month period, once the alien provides good reason to believe
7 that there is no significant likelihood of removal in the reasonably
8 foreseeable future, the Government must respond with evidence sufficient
9 to rebut that showing. And for detention to remain reasonable, as the period
10 of prior post removal confinement grows, what counts as the “reasonably
11 foreseeable future” conversely would have to shrink. This 6-month
12 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.

13 *Zadvydas*, 533 U.S. at 701. Thus, the noncitizen “may be held in
14 confinement until it has been determined that there is *no significant likelihood of*
15 *removal in the reasonably foreseeable future.*” *Id.* (italic emphasis added).

16 Here, the government is in the process of obtaining a travel document from China
17 For Petitioner and does believe one will be issued in the reasonably foreseeable future.
18 Suarez decl. at ¶ 9-10. Courts properly deny *Zadvydas* claims under such circumstances.
19 *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008)
20 (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than
21 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL2319402, at *3
22 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner “failed to satisfy his
23 burden of showing that there is no significant likelihood of his removal in the
24 reasonably foreseeable future” where he had been detained more than seven months
25 post-final order). That Petitioner does not yet have a specific date of anticipated
26 removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,

1 1233 (9th Cir. 2008) (where there is no evidence that the country of removal would
2 refuse to accept the petitioner or that removal is barred by the laws of the United States,
3 that the detention did not have a certain end date did not demonstrate that detention was
4 “indefinite”).

5 Petitioner has not shown that the government of China will not issue a travel
6 document for him, or that there are any insurmountable barriers precluding his removal.
7 More generally, there are no institutional barriers to removing Petitioner to China.
8 Additionally, Petitioner has consistently met with ICE officials to re-evaluate his
9 custody status. See Dkt. 1, Exhibit #2 (Notice to Alien of File Custody Review and
10 Decision to Continue Detention dated November 25, 2025). Considerations include
11 whether Petitioner poses a danger to the community or if he would be a flight risk. *Id.*
12 Given Petitioner’s very serious criminal history, the determination has continued to be
13 made that Petitioner is unable to demonstrate he will not pose a danger to the
14 community, to the safety of other persons, or to property. ICE also believes Petitioner
15 would be a flight risk. *Id.* Consequently, Petitioner’s continued detention is
16 permissible.

17 **B. The Balance of Interests Favors the Government**

18 It is well settled that the public interest in enforcement of the United States’s
19 immigration laws is significant, particularly when it involves the enforcement of a final
20 removal order (as here). *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–
21 58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
22 1981) (“The Supreme Court has recognized that the public interest in enforcement of
23 the immigration laws is significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S.
24 418, 435 (2009) (“There is always a public interest in prompt execution of removal
25 orders[.]”). This public interest outweighs Petitioner’s private interest here.

26 **IV. CONCLUSION**

27 The Federal Respondents respectfully request that the Court deny the Petition.
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1 Dated: January 20, 2026

Respectfully submitted,

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3 TODD BLANCHE
Deputy Attorney General
4 BILAL A. ESSAYLI
First Assistant United States Attorney
5 DAVID M. HARRIS
Assistant United States Attorney
6 Chief, Civil Division
7 DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

8 /s/ Karen E. Smith

Karen E. Smith
Special Assistant United States Attorney

10 Attorneys for Federal Respondents

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12 **CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

13 The undersigned, counsel of record for Respondents, certifies that the
14 memorandum of points and authorities contains 1337 words, which complies with the
15 word limit of L.R. 11-6.1.

16
17 Dated: January 20, 2026

/s/ Karen E. Smith

Karen E. Smith
Special Assistant United States Attorney

DECLARATION OF JORGE SUAREZ

I, Jorge Suarez, declare as follows:

1. I am employed as a Deportation Officer (DO) with the U.S. Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”), and am presently assigned to the ICE Adelanto Processing Center (the “APC”) in Adelanto, California. I am providing this declaration based upon my personal knowledge and review of administrative and court records. If called as a witness, I could and would competently testify thereto.

2. Petitioner Feng Chen (“Chen”) is a native and citizen of China. On September 10, 1982, Chen was admitted to the United States as a lawful permanent resident at or near San Francisco, California.

3. On or about November 26, 1996, Chen was convicted in the Superior Court of California, County of Los Angeles, for the offense of Grand Theft from Person, a Felony, in violation of CPC § 487(c). He was sentenced to two years in prison.

4. On or about April 20, 1998, Chen was convicted in the Superior Court of California, County of Los Angeles, for the offense of First-Degree Murder, in violation of CPC § 187(a). He was sentenced to 25 years to life in prison.

5. On or about April 14, 1999, ICE lodged an Immigration Detainer against Chen. The detainer was not honored.

6. On or about February 24, 2025, ICE took Chen into custody and served him with a Notice to Appear, charging him with removal pursuant to Immigration and Nationality Act (“INA”) § 237(a)(2)(A)(ii), as an alien convicted of two crimes of moral turpitude not arising out of a single scheme of criminal misconduct, and § 237(A)(2)(A)(iii), as an alien convicted of an aggravated felony as defined in INA § 101(a)(43)(A), a law relating to Murder.

7. On or about March 13, 2025, Chen appeared at a master calendar hearing in the Immigration Court with his attorney. Chen admitted the factual allegations contained

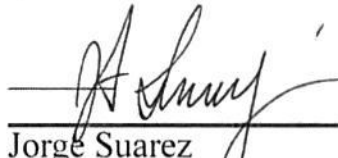
1 in the Notice to Appear and conceded the charges of removability. Chen was ordered
2 removed to China and he waived appeal from that decision.

3 8. On or about November 22, 2025, ICE conducted a custody review. After
4 reviewing the totality of the circumstances presented, DHS determined that Chen should
5 remain detained.

6 9. ICE is in process of obtaining travel documents for Chen and arranging for
7 his travel to China.

8 10. Based on the above information, ICE expects that a travel document for Chen
9 will be issued and ICE will be able to effectuate his removal to China in the reasonably
10 foreseeable future. I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 20th day of January 2026, at Adelanto, California.

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14 _____
15 Jorge Suarez
16 Deportation Officer
17 U.S. Department of Homeland Security
18 Immigration and Customs Enforcement
19 Enforcement and Removal Operations
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