

District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JIAN QIN CHEN,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00067-JNW

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
January 27, 2026.

I. INTRODUCTION

This Court should deny Petitioner Jian Qin Chen's Petition for Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). Petitioner challenges his post-order immigration detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States. Dismissal is appropriate here because Petitioner, a noncitizen subject to an administratively final order of removal, is lawfully detained pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. He has not met his burden here by providing a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In contrast, U.S. Immigration and Customs Enforcement ("ICE") is actively seeking his removal to China and

1 anticipates that his removal will occur in the reasonably foreseeable future.

2 Accordingly, Federal Respondents (the “Government”) respectfully request that the Court
3 deny the Petition. This motion is supported by the pleadings and documents on file in this case,
4 the Declaration of ICE Deportation Officer Anthony Rosa (“Rosa Decl.”), and the Declaration of
5 Alixandria K. Morris (“Morris Decl.”) with exhibits attached thereto. The Government does not
6 believe that an evidentiary hearing is necessary.

7 II. FACTUAL AND PROCEDURAL BACKGROUND

8 A. Detention Authorities and Removal Procedures

9 The INA governs the detention and release of noncitizens during and following their
10 removal proceedings. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280 (2021). The general
11 detention periods are generally referred to as “pre-order” (meaning before the entry of a final
12 order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of
13 removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing
14 post-order detention).

15 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
16 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
17 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
18 removal and to protect the community from dangerous noncitizens while removal is being
19 affected, Congress mandated detention:

20 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
21 [noncitizen]. Under no circumstance during the removal period shall the
22 [Secretary] release [a noncitizen] who has been found inadmissible under section
212(a)(2) or 212(a)(3)(B) of this title or deportable under section 237(a)(2) or
237(a)(4)(B) of this title.

23
24 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this
authority to the Secretary of the Department of Homeland Security (“DHS”). *See also* 6 U.S.C. § 251.

8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes DHS to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

[A noncitizen] ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE is charged with attempting to effectuate removal of the noncitizen from the United States.² 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen’s removal. *Id.*, at 701.

B. Petitioner Jian Qin Chen

Petitioner is a native and citizen of China. Rosa Decl. ¶ 3. On or about September 27, 1992, Petitioner entered the United States at New York, New York, and was not then in possession of a valid travel document. Immigration officials placed Petitioner in removal proceedings. *Id.* ¶ 4; Morris Decl., Exs. 1-2 (Order to Appear; I-213). Petitioner was not detained during his removal proceedings. Rosa Decl. ¶ 5. On or about February 16, 1994, an immigration judge denied

² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 Petitioner's asylum application and ordered Petitioner excluded and deported. *Id.* ¶ 6. Petitioner
2 did not appeal the decision. *Id.*

3 On or about July 21, 1999, Petitioner submitted an application to adjust status. *Id.* ¶ 7. The
4 application was subsequently denied on November 13, 2000. *Id.* On or about August 21, 2001,
5 Petitioner again submitted an application to adjust status. The application was subsequently
6 denied on November 28, 2003. *Id.* ¶ 8. On September 16, 2006, Petitioner filed a motion to reopen
7 with the immigration court to reapply for asylum. *Id.* ¶ 9. On November 13, 2006, an immigration
8 judge denied Petitioner's motion to reopen and reapply for asylum. *Id.* ¶ 10. Petitioner appealed
9 the decision. *Id.*

10 On December 10, 2007, Petitioner's appeal of the motion to reopen was denied by the
11 Board of Immigration Appeals. *Id.* ¶ 11. On September 29, 2010, immigration officials
12 encountered Petitioner and took him into custody. *Id.* ¶ 12. On November 9, 2010, a travel
13 document request ("TDR") was submitted to the Chinese consulate for issuance of a travel
14 ("TD"). *Id.* ¶ 13. ERO followed up with the Chinese consulate for a travel document on three
15 separate occasions between November 2010 and January 2011. *Id.* ¶ 14.

16 On or about January 19, 2011, Petitioner was released on an Order of Supervision
17 ("OSUP"), imposing reporting requirements and other conditions on his release. *Id.* ¶ 15; Morris
18 Decl., Ex. 3; Pet., pgs. 11-13, 57-58.

19 On April 15, 2015, Petitioner was served a revised copy of OSUP paperwork, maintaining
20 the imposition of reporting requirement and other conditions on his release. Rosa Decl. ¶ 16; Pet.,
21 pgs. 11-13, 57-58. On January 9, 2019, Petitioner failed to report to ERO for a scheduled check-
22 in. Rosa Decl. ¶ 17. On November 8, 2021, Petitioner again applied to adjust status. *Id.* ¶ 18. The
23 application was subsequently denied on September 13, 2024. *Id.* On June 10, 2025, Petitioner
24 reported for an ERO check-in and was taken into custody. *Id.* ¶ 19.

1 On January 7, 2026, a TDR was sent to ERO HQ for review and approval. ERO HQ has
2 since approved the TDR. ERO is preparing to send the TDR packet to the Chinese consulate. *Id.*
3 ¶ 20. Deportation Officer Rosa has been in touch with ERO HQ and was informed that there
4 is significant likelihood of removal in the reasonably foreseeable future to China. *Id.* ¶ 21. It is
5 Deportation Officer Rosa's understanding that China is cooperating with the US government and
6 is issuing TDs for individuals ordered removed from the United States such as Petitioner. *Id.*
7 Based on the above information, ICE expects that a travel document for Petitioner will
8 be issued, and ICE will be able to effect Petitioner's removal to China in the
9 reasonably foreseeable future. *Id.* ¶ 22.

10 III. LEGAL STANDARD

11 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
12 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
13 *Corp. v. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
14 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
15 day." *Thuraissigiam*, 591 U.S. at 125 n. 20. Title 28 U.S.C. § 2241 provides district courts with
16 jurisdiction to hear federal habeas petitions.

17 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
18 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
19 § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

20 III. ARGUMENT

21 Petitioner argues that his continued detention is unlawful under *Zadvydas v. Davis*, 533
22 U.S. 678 (2001). Under *Zadvydas*, the burden initially rests with the petitioner to provide "good
23 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
24 future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*, 533 U.S. at 701).

1 Only if the petitioner satisfies this evidentiary burden does the burden shift to the government to
2 rebut the petitioner's showing. *Id.*

3 Petitioner fails to meet his initial burden here. His argument rests solely on the
4 unsupported assertion that China's alleged lack of cooperation in the past renders his removal
5 unlikely at present. Such a conclusory claim, unaccompanied by evidence, does not establish good
6 reason to believe that removal is not significantly likely in the reasonably foreseeable future. *See*
7 *Pelich*, 329 F.3d at 1061.

8 Absent evidence demonstrating that removal efforts have stalled, been formally refused,
9 or are otherwise futile, Petitioner's reliance on past difficulties—without more—amounts to
10 speculation. Speculation alone is insufficient to trigger the government's obligation to produce
11 rebuttal evidence under *Zadvydas*. Accordingly, Petitioner has failed to demonstrate that his
12 continued detention is unlawful.

13 Even if the Court found Petitioner to have met his burden, Petitioner's detention has not
14 become "indefinite" or unconstitutional. Pet., ¶¶ 24-29. In *Zadvydas*, the Supreme Court found
15 that post-order detention could be potentially indefinite as authorized under the open-ended terms
16 of Section 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme
17 Court clarified that there is a point at which Congress's interest in detaining a noncitizen to
18 facilitate his removal may eventually give way to the noncitizen's liberty interest. This shift
19 occurs when detention becomes potentially indefinite. *Zadvydas*, 533 U.S. at 690 ("A statute
20 permitting indefinite detention of an [noncitizen] would raise a serious constitutional problem.").

21 The Supreme Court determined that it is "presumptively reasonable" for DHS to detain a
22 noncitizen for six months following entry of a final removal order while it worked to remove the
23 noncitizen from the United States. *Zadvydas*, 533 U.S. at 701. The *Zadvydas* Court recognized
24 that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing

1 lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain
2 reasonable, as the period of postremoval confinement grows, what counts as the 'reasonably
3 foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly
4 recognized that six months is the *earliest* point at which a noncitizen's detention could raise
5 constitutional issues. *Id.*

6 "This 6-month presumption, of course, does not mean that every [noncitizen] not removed
7 must be released after six months." *Id.* "After this 6-month period, once the [noncitizen] provides
8 good reason to believe that there is no significant likelihood of removal in the reasonably
9 foreseeable future, the Government must respond with evidence sufficient to rebut that showing."
10 *Id.*

11 There is no dispute that the "presumptive period" for Petitioner's detention has ended. He
12 filed this Petition approximately seven months after he was detained on June 10, 2025. Yet he
13 fails to demonstrate that there is good reason to believe that there is no significant likelihood of
14 removal in the reasonably foreseeable future. Although he is correct that China has not yet issued
15 him a travel document, ICE is actively working to obtain a travel document to remove him to
16 China. Rosa Decl., ¶¶ 20-22.

17 China is cooperating with the United States government and is issuing TDs for individuals
18 ordered removed from the United States, such as Petitioner. *Id.* ¶ 21. Based on China's
19 cooperation, ICE expects that a travel document for Petitioner will be issued, and ICE will be able
20 to effect Petitioner's removal to China in the reasonably foreseeable future. *Id.* ¶ 22. Therefore,
21 Petitioner's continued detention furthers Congress's goal of ensuring his presence for removal
22 and does not violate due process. Accordingly, Petitioner has failed to meet his burden, and the
23 Petition should be denied.

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

Dated this 22nd day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Alixandria K. Morris
ALIXANDRIA K. MORRIS, TX No. 24095373
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-7970
Fax: 206-553-4067
Email: alixandria.morris@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 2,039 words, in compliance with the Local Civil Rules.