

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

WAN XIN JIANG,

Petitioner,

v.

Case No. 26-3006-JWL

CRYSTAL CARTER, DO Officer,  
TODD LYONS, PAM BONDI, and  
ALEJANDRO MAYORKAS,

Respondents.

**RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE**

This matter is before the Court on the *pro se* petition of Wan Xin Jiang (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, subject to an order of removal, asks the Court to release him from detention at the Federal Correctional Institution in Leavenworth, Kansas (“Leavenworth FCI”).

**I. Nature of the Case**

Petitioner presents five claims for relief. The first claim alleges that Petitioner has been detained more than six months with no significant likelihood of removal in the reasonably foreseeable future, in violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001). Doc. 1 at 3. The second claim asserts a Fifth Amendment violation based on arbitrary and indefinite civil detention. Doc. 1 at 3. The third claim asserts a due process claim, alleging that detention is punitive as his removal is not foreseeable. Doc. 1 at 3. The fourth claim raises constitutional concerns based on indefinite detention. Doc. 1 at 3. Finally, the fifth claim reasserts a *Zadvydas* claim, as Petitioner has been detained for more than six months and removal is not reasonably foreseeable. Doc. 1 at 4.

## II. Facts

1. Petitioner is a native and citizen of the Peoples Republic of China. (Ex. 1, Swanson Affidavit, ¶ 5; Doc. 1, ¶ 5).
2. Petitioner initially entered the United States at Chicago, Illinois on or about December 7, 1990, as a Lawful Permanent Resident. (Ex. 1, ¶¶ 6, 7).
3. On or about June 25, 1997, Petitioner was convicted in the Circuit Court of the Eighteenth Judicial Circuit, County of Du Page, Illinois of Retail Theft in violation of Chapter 720, Act 5, Section 16A-3-A of the Illinois Compiled Statutes. (Ex. 1, ¶ 8).
4. On or about October 20, 1997, Petitioner was convicted in the Circuit Court of Cook County, Illinois of Retail Theft in violation of Chapter 720, Act 5, Section 16A-3 of the Illinois Compiled Statutes. (Ex. 1, ¶ 9).
5. On or about November 2, 1999, Petitioner was convicted in the Circuit Court of Cook County, Illinois of Retail Theft in violation of Chapter 720, Act 5, Section 16A-3A of the Illinois Compiled Statutes. (Ex. 1, ¶ 10).
6. On or about October 5, 2000, Petitioner was convicted in the Circuit Court of Cook County, Illinois of Retail Theft/Shoplifting in violation of Chapter 720, Act 5, Section 16A-3-A of the Illinois Compiled Statutes. (Ex. 1, ¶ 11).
7. On or about August 13, 2004, Petitioner was placed in removal proceedings through issuance of a Notice to Appear (“NTA”), charging him as removable from the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (“INA”), 8 U.S.C. §1182(a)(2)(A)(i)(I). (Ex. 1, ¶ 12).
8. On or about August 26, 2004, Petitioner filed an application for relief with the Immigration Court. (Ex. 1, ¶ 13).

9. On May 8, 2006, the Immigration Judge issued a decision determining that the Petitioner was statutorily ineligible for the relief sought and ordering him removed from the United States to the People's Republic of China. (Ex. 1, ¶ 14; Doc. 1, ¶ 12).<sup>1</sup>

10. On May 26, 2006, Petitioner filed a Motion to Reconsider asking the Immigration Judge to reconsider the decision of May 8, 2006. (Ex. 1, ¶ 15).

11. On June 13, 2006, the Immigration Judge denied the Petitioner's Motion to Reconsider. (Ex. 1, ¶ 16; Doc. 1, ¶ 13).<sup>2</sup>

12. On or about July 5, 2006, Petitioner filed an appeal of the Immigration Judge's decision with the BIA. (Ex. 1, ¶ 18).

13. On or about December 26, 2006, the BIA affirmed the Immigration Judge's decision. (Ex. 1, ¶ 19).

14. The Petitioner failed to depart the United States as required under the order of removal. (Ex. 1, ¶ 21).

15. On May 23, 2025, Petitioner was encountered by ICE in Chicago, Illinois and subsequently taken into ICE custody. (Ex. 1, ¶ 22; Doc. 1, ¶ 14).<sup>3</sup>

16. Petitioner has been in custody since May 23, 2025. (Doc. 1, ¶¶ 15, 16).

17. The People's Republic of China requires a travel document for anyone being removed who is not in possession of a valid passport. (Ex. 1, ¶ 25).

18. On or about June 24, 2025, ERO contacted ICE's Removal and International Operations ("RIO") for assistance in obtaining a travel document for Petitioner. (Ex. 1, ¶ 26).

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<sup>1</sup> Petitioner alleges the Order of Removal was in 2004. The Order of Removal was issued in 2006. (Ex. 1, ¶ 14).

<sup>2</sup> Petitioner alleges the Order of Removal became administratively final in 2004. Respondent believes the Order of Removal became final when the Immigration Judge denied the Motion to Reconsider. (Ex. 1, ¶¶ 19, 20).

<sup>3</sup> Petitioner asserts he was taken into custody on May 23, 2024, (Doc. 1, ¶ 14). Petitioner next alleges that as of January 2026, he has been in custody for 180 days. (Doc. 1, ¶ 15). Respondent clarifies that Petitioner was taken into custody on May 23, 2025, not May 23, 2024. (Ex. 1, ¶ 22).

19. On July 22, 2025, the Petitioner filed an Application for a Stay of Deportation or Removal, Form I-246. (Ex. 1, ¶ 27).

20. On August 13, 2025, the Petitioner's Application for a Stay of Deportation or Removal was denied. (Ex. 1, ¶ 28).

21. On or about August 26, 2025, a File Custody review was conducted. (Ex. 1, ¶ 29).

22. On or about October 16, 2025, ERO contacted ICE RIO to resubmit the travel document request for Petitioner. (Ex. 1, ¶ 30).

23. On or about October 20, 2025, this matter was presented to the People's Republic of China immigration officials for nationality verification. (Ex. 1, ¶ 31).

24. On November 18, 2025, ERO conducted an 180-day review interview with Petitioner. (Ex. 1, ¶ 32; Doc. 1, ¶ 17).

25. ERO contacted ICE RIO on November 26, 2025, December 22, 2025, January 8, 2026, and February 2, 2026, for assistance in obtaining a status update on Petitioner's travel document application. (Ex. 1, ¶ 33).

26. On December 22, 2025, ICE RIO advised ERO that Petitioner's case is pending identification verification by the People's Republic of China immigration officials. Once the Petitioner's identity is confirmed, the travel document application will be presented to the embassy. (Ex. 1, ¶ 34).

27. As of today's date, the verification process remains pending and a travel document has not been received. ICE will continue its efforts to obtain a travel document for Petitioner. (Ex. 1, ¶¶ 35, 36).

### III. Argument

To obtain habeas corpus relief, a petitioner must demonstrate that “[h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). “The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal.” *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, \*6 (D. Kan. July 13, 2020).

#### A. Is Removal Foreseeable and Application of *Zadvydas v. Davis* (Claim 1, 3, 5)

Upon the entry of a final removal order, “the Government ordinarily secures the alien’s removal during a subsequent 90-day statutory ‘removal period,’ during which time the alien normally is held in custody.” *Zadvydas*, 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) “authorizes further detention.” *Id.* In *Zadvydas*, the Supreme Court held a 6-month period of detention is presumptively reasonable. *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* The presumption does not mean that “every alien not removed must be released after six months,” but instead that the alien may be held in confinement until “it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

An order of removal becomes final upon the decision of the Board of Immigration Appeal, in this case, on December 26, 2006. Ex. 1, ¶ 19; 8 C.F.R. § 1241.1(d). In this case, Petitioner’s crimes of convictions qualify as crimes involving moral turpitude, specifically, retail theft, and he is therefore subject to removal. Ex. 1, ¶ 12; 8 U.S.C. § 1182(a)(2)(A)(i)(I). His removal was

ordered in 2006, but Petitioner remained in the United States until he was picked up on May 23, 2025.

Respondent recognizes that Petitioner has been in continuous custody for more than six months. (Ex. 1, ¶¶ 15, 16). However, Respondent has worked diligently to obtain travel documents for Petitioner. (Ex. 1, ¶¶ 26, 29, 30, 31, 32, 33, 34). A “mere delay” in obtaining travel documents “does not trigger the inference that an [individual] will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.” *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, \*4 (W.D. Okla. Aug. 27, 2024) (citation modified), *adopted*, 2025 WL 486679, \*1-4 (W.D. Okla. Feb. 13, 2025). And even when the Government “has not identified a specific date by which it expects a travel document to issue,” it remains true that “uncertainty as to when removal will occur does not establish that detention is indefinite.” *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, \*4 (W.D. Wash. May 10, 2024).

Respondent is aware that this Court recently ruled that failed or delayed attempts to obtain travel documents, without additional facts to show when the travel documents will be approved or that the travel request will be approved very soon is simply insufficient to rebut the presumption of release after Petitioner has been detained for more than six months. *Paulos v. Noem*, Case No. 25-3266-JWL; 2026 WL 205564, at \*2-3 (Jan. 27, 2026). This Court requires that Respondent “provide evidence or point to any specific fact that creates a significant likelihood that...petitioner will nonetheless be removed in the reasonably foreseeable future.” *Id.*, at \*3. Respondent continues to make efforts to obtain travel documents for Petitioner for deportation. Cognizant of this Court’s prior rulings, Respondent requests a decision on the merits of this matter.

B. Fifth Amendment Due Process Claim (Claim 2)

Petitioner asserts his detention violates 8 U.S.C. § 1231(a)(6) and *Zadvydas*, and also violates his substantive due process rights. (Doc. 1, ¶¶ 32-35). “The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person...of...liberty...without due process of law.’” *Zadvydas*, 533 U.S. at 690.

Until Petitioner has shown a viable *Zadvydas* claim, he cannot show a violation of due process. *See, e.g., Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, \*5-6 (W.D. Okla. Aug. 27, 2024) (“Courts, including this one, have held that a petitioner’s failure to establish that his detention violates *Zadvydas* negates a substantive due process claim.”), *adopted*, 2025 WL 486679, \*1-4 (W.D. Okla. Feb. 13, 2025). Many other cases support this conclusion. *See H.N. v. Warden*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, \*3 (M.D. Ga. Sept. 15, 2021) (“As for any separate substantive due process challenges to the length of his detention, *Zadvydas* forecloses those claims.”); *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, \*7 & n.3 (W.D. Tex. Mar. 23, 2020) (“[T]he record does not support Petitioner’s claim that his detention threatens to be either indefinite or potentially permanent so as to implicate *Zadvydas* and substantive due process concerns.”); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, \*3 (W.D.N.Y. Sept. 16, 2019) (“Conversely, if detention is valid under *Zadvydas*, it cannot violate substantive due process.”); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, \*4 (S.D. Tex. Oct. 30, 2018) (“[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*[,] as well as substantive due process protections.”) (citation modified); *Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 2710200, \*5 (C.D. Cal. June 1, 2016) (“[W]here Petitioner has failed to meet his burden to show there is no significant likelihood

of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process.”) (citation modified).

“[N]ot every procedural misstep or difficulty raises anything like a constitutional issue. Procedural due process protects a right to a fundamentally fair proceeding; but few proceedings are perfect and one can have real errors, including ones that adversely affect a party’s interests, without automatically violating the Constitution.” *Matias v. Sessions*, 871 F.3d 65, 71 (1st Cir. 2017). Petitioner “is entitled only to the Fifth Amendment guarantee of fundamental fairness, or in other words, only to procedural due process, which provides the opportunity to be heard at a meaningful time and in a meaningful manner.” *Alzainati v. Holder*, 568 F.3d 844, 851 (10th Cir. 2009) (citation modified).<sup>4</sup> In this situation, the Tenth Circuit has stated “[t]o prevail on a due process claim, an alien must establish not only error, but prejudice.” *Id.* Accordingly, “[i]n order to prevail on his due process challenge” in the BIA context, a petitioner “must show he was prejudiced by the actions he claims violated his Fifth Amendment rights.” *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004); *see also Novitskiy v. Holder*, 514 F. App’x 724, 727 (10th Cir. 2013) (relying on *Berrum-Garcia* to conclude a lack of prejudice meant “Petitioner has failed to demonstrate a due process violation”).

In this matter, Petitioner has not alleged any facts that would allow the Court to find prejudice. Petitioner was provided due process through the immigration courts and participating in this review process. Petitioner has shown no such prejudice here. Although Petitioner argues that his continued detention violates due process, petitioner is not entitled to any process beyond that granted in the applicable immigration statutes, which he does not dispute he received.

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<sup>4</sup> *Alzainati* was abrogated in part on other grounds by *Wilkinson v. Garland*, 601 U.S. 209, 217-18 (2024). *See Torres-Martinez v. Garland*, No. 23-9549, 2024 WL 2076194, \*2 & n.2 (10th Cir. May 9, 2024) (explaining the effect of *Wilkinson* on *Alzainati*).

*Esahaqzada v. U.S. Immigration and Customs Enforcement, et al*, 25-3145-JWL, 2025 WL 2933890, at \*1 (Sept. 5, 2025). Petitioner also does not allege that his detention violates any statute.

Petitioner's Fifth Amendment claim is subject to dismissal.

C. Constitutional and Human Rights Violations (Fourth Claim)

Petitioner makes a general claim that his detention raises due process, constitutional, and human rights concerns, but does not specify how this claim is different from his other claims. Petitioner's bare legal assertions, without factual support, are insufficient and should not be considered. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

**IV. Conclusion**

The Respondents respectfully request the Court deny the petition for the reasons stated above.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail, postage prepaid, addressed to the following non-CM/ECF participant:

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