U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, NY 11201

March 12, 2026

BY ECF
Honorable Diane Gujarati
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Man Chun Yam v. Kenneth Genalo, et al.*, Civil No. 26-1341 (Gujarati, J.)

Dear Judge Gujarati:

This Office represents Respondents in this action. Respondents write in response to the Court's March 9, 2026 Order to Show Cause ("OTSC")[1] and in opposition to Man Chun Yam's ("Petitioner") Petition for a Writ of Habeas Corpus ("Petition" or "Pet.") pursuant to 28 U.S.C. § 2241. *See* Dkt. No. 1.

Petitioner is subject to a final order of removal and is currently detained pursuant to 8 U.S.C. § 1231. Petitioner does not challenge the order of removal or his initial detention in June 2025. Instead, Petitioner challenges the length of his detention. However, Respondents have sufficient basis to continue to detain Petitioner as his removal in the reasonably foreseeable future is significantly likely. Accordingly, the Court should deny the Petition in its entirety.

I. Relevant Facts

A. Petitioner Is Convicted of Conspiracy to Transport and Conceal Illegal Aliens Into the United States and Is Placed in Deportation Proceedings

Petitioner has a long history with immigration enforcement. He is a native and citizen of the People's Republic of China ("the PRC") who was admitted into the United States as a Lawful Permanent Resident ("LPR") in April 1998. *See* Declaration of Mincheol So ("ICE Decl.") ¶ 3; Pet.¶ 32. Six years later, in July 1994, he was convicted in federal court of conspiracy to transport and conceal illegal aliens into the United States. *See* ICE Decl. ¶ 4.

In September 1994, the former Immigration and Naturalization Service ("INS") initiated deportation proceedings against Petitioner. *See* ICE Decl. ¶ 5. On February 6, 1997, an Immigration Judge ("IJ") found that deportability was established by clear and convincing evidence showing that Petitioner was deportable under § 241(a)(1)(E)(i)) of the Immigration and Nationality Act ("INA") "as an alien who knowingly encouraged, induced, assisted, abetted, or

[1] The Court ordered the Respondents to show cause in writing why a writ of *habeas corpus* should not be issued and directed the government to "file (under seal if necessary) any documents from Petitioner's immigration file relevant to the issues raised in the Petition." OTSC dated Mar. 9, 2026.

aided any other alien to enter or to try to enter the United States in violation of law" and ordered Petitioner deported to the PRC. *See* ICE Decl. ¶ 6 and copy of Oral Decision of the Immigration Judge, dated Feb. 6, 1997 ("Order of Removal") (Exhibit A to ICE Decl.).

Petitioner appealed the Order of Removal to the Board of Immigration Appeal ("BIA"), and in September 2001, the BIA affirmed the Order of Removal. *See* ICE Decl. ¶ 7. In September 2003, Petitioner filed a Motion to Reopen his proceedings with the BIA. *See* ICE Decl. ¶ 8. The BIA denied the Motion to Reopen as untimely in August 2004. In September 2004, Petitioner filed a Petitioner for Review ("PFR") with the Second Circuit Court of Appeal (docket number 04-4748). *See* ICE Decl. ¶ 9. In May 2006, the Second Circuit dismissed the PFR. *See* ICE Decl. ¶ 9 and Summary Order dated Mar. 16, 2006 (Exhibit D to ICE Decl.).

On August 9, 2008, ICE placed Petitioner on supervised parole pursuant to an Order of Supervision ("OSUP"), which required him to check-in with ICE monthly and to assist ICE in effectuating his removal. *See* ICE Decl. ¶ 10

B. Petitioner is Taken Into Custody in June 2025 While ICE Effectuates His Removal

On May 31, 2025, Form I-200, Warrant for Arrest of Alien, was issued for the arrest of Petitioner for removal proceedings. *See* ICE Decl. ¶ 11. On June 19, 2025, Form I-205, Warrant of Removal/Deportation, was issued. *Id.* ¶ 12.

On June 19, 2025, ICE took Petitioner into custody. *Id.* ¶ 13. He was taken to 26 Federal Plaza for post-arrest processing. *Id.* ¶ 14. On June 20, 2025, Petitioner was transferred to the Brooklyn Metropolitan Detention Center. *Id.* ¶ 15. On July 3, 2025, ICE sent a travel document request to ICE headquarters in Washington, D.C., for submission to the Embassy of the PRC in Washington, D.C. *Id.* ¶ 17.

In September 2025, ICE completed a 90-day post-order custody review ("POCR") of Petitioner's continued custody. *Id.* ¶ 20. ICE determined, based on a review of his file and the factors for considerations in 8 C.F.R. § 241.4(e), (f), and (g), Petitioner would remain detained. *Id.*

In January 2026, ICE completed an 180-day POCR of Petitioner's continued custody. *Id.* ¶ 21. Petitioner was interviewed on December 5, 2025. On January 8, 2026, a panel of ICE reviewing officers recommended that Petitioner continue to be detained because ICE believes that Petitioner remains a significant threat to the community based upon his criminal convictions. *See* Exhibit K to ICE Decl. On January 16, 2026, ICE issued to Petitioner a Decision to Continue Detention. *See* Exhibit L to ICE Decl.

II. Petitioner's Habeas Petition

Petitioner argues that "without a constitutionally adequate individualized hearing," his continued detention in the MDC violates the Fifth Amendment Due Process Clause Pet., ¶¶ 45-60. He also alleges, without identifying a specific provision, that the continued detention violates the INA. *Id.* ¶¶ 61-62. Petitioner seeks an order ordering Respondents to, *inter alia*, release Petitioner on his own recognizance or under parole, a low bond, or reasonable conditions of supervision.

Petition, ¶ 65, Prayer for Relief.

III. Petitioner's Detention Is Lawful Under § 1231 and the Petition Should Be Denied

Under 8 U.S.C. § 1231(a)(1)(A), "aliens ordered removed shall be removed by the Attorney General within [a] 90-day 'removal period.'" *Turkmen v. Ashcroft*, 589 F.3d 542, 547 (2d Cir. 2009). During the 90-day removal period, detention is not merely permissible; it is mandatory. In particular, "[t]he government is required to detain an alien ordered removed until removal is effected, at least for the [90-day] removal period." *Turkmen*, 589 at 547 (citing 8 U.S.C. § 1231(a)(2)).

In general, if an alien is not removed during the 90-day removal period, continued detention is governed by 8 U.S.C. § 1231(a)(6). Section 1231(a)(6) authorizes immigration detention beyond the 90-day removal period for a period reasonably necessary to effectuate the alien's removal from the United States; a period of six months is a presumptively reasonable period of time for the government to effectuate the alien's removal without violating the alien's rights under the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001). In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to effectuate the alien's removal from the United States, and that six months is a presumptively reasonable period of time for the Government to effectuate the alien's removal. *Id.* at 699-701. But the Court made it clear that this "presumption . . . does not mean that every alien not removed must be released after six months." *Id.* at 701. The *Zadvydas* six-month period does not begin until ICE detains the alien. *See Callender v. Shanahan*, 281 F. Supp.3d 428, 435 (S.D.N.Y. 2017).

After the six-month period expires, the initial burden is on the alien to show "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S.at 701; *Callender*, 281 F. Supp. 3d at 434 (citing *Pineda v. Shanahan*, 258 F.Supp.3d 372, 379 (S.D.N.Y. 2017)). The alien must present more than "mere assertions that removal is unforeseeable." *Callender*. 281 F. Supp. 3d at 434 . (quotation omitted). "Unsupported allegations that the relevant embassy or consulate 'will not issue a travel document in the foreseeable future' are insufficient." *Id.* "Nor is it sufficient for the petitioner to show that the Government has been unable to obtain a travel document to date." *Id.* at 434-35.

If the alien makes the required showing, the burden shifts to the Government to provide evidence that is sufficient to rebut that the alien's showing." *Beckford v. Lynch*, 168 F.Supp.3d 533, 539 (W.D.N.Y. 2016). 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." *Zadvydas*, 533 U.S. at 701; *Callender*, 281 F. Supp. 3d at 433-35 (citing *Clark v. Martinez*, 543 U.S. 371, 378 (2005)). Thus, in sum, the Supreme Court concluded, that if the alien fails to meet the burden, or if the government rebuts the alien's showing by establishing "significant likelihood of removal in the reasonably foreseeable future," then continued detention after six months is permissible. *Zadvydas*, 533 U.S. at 701; *Callender*, 281 F.Supp.3d at 434 (citing *Beckford*, 168 F.Supp.3d at 539.

"[A]s the period of prior postremoval confinement grows, what counts as the 'reasonably

foreseeable future' conversely [ ] shrink[s]," *Zadvydas*, 533 U.S. at 701, but the "mere passage of time" is "insufficient," standing alone, "to meet the petitioner's initial burden to demonstrate no significant likelihood of removal." *Beckford*, 168 F.Supp.3d at 539 (collecting cases). "In analyzing the likelihood of removal, courts consider a variety of factors, including the existence of a repatriation agreement with the target country, the target country's prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien." *Lin v. Warden, Orange Cty. Jail*, No. 25-cv-9039, 2026 WL 412115, *2 (S.D.N.Y. Feb. 6, 2026) (Woods, J.) (quotation omitted). "Due deference is owed to the government's views on these matters as well as its estimation of the likelihood of removal." *Id.* (quotation omitted).

Here, Petitioner makes no showing *at all* that there "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future" and therefore does not meet his initial burden. He does not even allege that the Embassy of the PRC will not issue a travel document in the foreseeable future. Instead, Petitioner makes the conclusory, self-serving assertion that "it is now clear that Respondents cannot remove him from the U.S." Pet. ¶ 39. This assertion is not sufficient to satisfy Petitioner's initial burden. *See Lin*, 2026 WL 412115, *3 (alien met his initial burden where he presented support for his assertion that his home country refuses to accept his return).

Even if the Court finds that Petitioner meets his initial burden, there is sufficient evidence showing that there is a significant likelihood of removal in the reasonably foreseeable future. Petitioner was detained in June 2025. Since that time, ICE has taken steps to obtain a travel document for Petitioner from the Embassy of the PRC. *See* ICE Decl. ¶ 17. On or about November 11, 2025, ICE headquarters confirmed that the travel document was pending with the Embassy of the PRC and was going through identification verification. *Id.* ¶ 17.

Since January 2025, the PRC has accepted citizens who were removed from the United States and has issued travel documents to its nationals who are in the United States. *Id.* ¶ 16. The PRC issues travel documents upon an individual's nationality being verified by the China National Immigration Administration. *Id.* The turnaround time for verification of an individual's nationality varies for each individual circumstance, but in more recent experience, can generally range from 3 days to several months. *Id.* In the Fiscal Year 2025, ICE removed 411 individuals to the PRC. *Id.* Once the travel document for Petitioner is issued, ICE will book Petitioner on the earliest and practicable commercial flight to the PRC. *Id.* A district court in this Circuit has held that evidence very similar to that provided by Respondents herein was sufficient to carry the government's burden of rebutting an alien's showing regarding the significant likelihood of removal in the reasonably foreseeable future. *Lin*, 2026 WL 412115, at *2-5 .

Thus, not only has Petitioner failed to meet his burden of proving the lack of a significant likelihood of removal in the foreseeable future, Respondents have affirmatively shown that there is such a significant likelihood. The Court should therefore deny the Petition.

Respondents thank the Court for their consideration of this submission.

Respectfully submitted,

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