

District Judge Jamal N. Whitehead

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

XIN SUN,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-01013-JNW

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
April 14, 2026

I. INTRODUCTION

This Court should deny Petitioner Xin Sun's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner brings a second habeas petition to again challenge his post-order detention at the Northwest Immigration Processing Center ("NWIPC"), which remains constitutional and lawful while he awaits removal from the United States. He also continues to be uncooperative in

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Camilla Wamsley.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 choosing a third country for U.S. Immigration and Customs Enforcement (“ICE”) to effectuate his
2 removal.

3 Previously, his first habeas petition was denied on February 24, 2026, because his request
4 for release under *Zadvydas* was premature. *Sun v. Hermosillo*, No. 2:26-cv-00215-LK, 2026 WL
5 510666, at *3 (W.D. Wash. Feb. 24, 2026) (“*Sun*”). His second habeas petition should be denied
6 because Petitioner’s detention remains constitutional under 8 U.S.C. § 1231(a)(6) and he fails to
7 demonstrate that there is good reason to believe that there is no significant likelihood of removal
8 in the reasonably foreseeable future. His claims alleging a violation of the Administrative
9 Procedure Act (“APA”) and other policy-related due process claims should also be denied for the
10 lack of specificity of these allegations, the same reason that these claims were denied in the first
11 habeas petition. *Id.* at *4.

12 Accordingly, Federal Respondents respectfully request the Court deny the Petition without
13 an evidentiary hearing. This return is supported by the pleadings and documents on file in this
14 case, the Declaration of Deportation Officer Anthony Rosa (“Rosa Decl.”), and the Declaration of
15 Jennifer Wong (“Wong Decl.”), with accompanying exhibits.

16 II. BACKGROUND

17 A. Legal Background

18 The Immigration and Nationality Act (“INA”) governs the detention and release of
19 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
20 U.S. 523, 527 (2021). The general detention periods are generally referred to as “pre-order”
21 (meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning
22 after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order
23 detention) *with* § 1231(a) (authorizing post-order detention).

1 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
2 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
3 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
4 removal and to protect the community from noncitizens who may present a danger, Congress has
5 mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2). Section 1231(a)(6)
6 authorizes ICE to continue detention of noncitizens after the expiration of the removal period.
7 Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any
8 temporal limit on the length of detention under that provision. 8 U.S.C. § 1231(a)(6).

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

15 **B. Petitioner Xin Sun**

16 Petitioner is a native and citizen of China. Rosa Decl. ¶ 3. On December 22, 2024,
17 Petitioner was encountered by United States Customs and Border Patrol (“CBP”) at or near Tecate,
18 California. Rosa Decl. ¶ 4; Wong Decl. at Ex. 1 (Form I-213). CBP determined that Petitioner was
19 inadmissible under the Immigration and Nationality Act (“INA”) § 235, 8 U.S.C. § 1225, and
20 placed him in expedited removal proceedings. Rosa Decl. ¶ 4. He was transferred to the NWIPC
21 on January 7, 2025. *Id.* ¶ 5. On March 25, 2025, Petitioner was served a Notice to Appear (“NTA”),
22 charging him as removable under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and INA §
23 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Rosa Decl. ¶ 8; Wong Decl. at Ex. 2 (Notice to
24 Appear).

1 On September 25, 2025, an Immigration Judge (“IJ”) ordered Petitioner removed to China,
2 denied his application for asylum, and granted his application for withholding of removal under
3 the INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). Rosa Decl. ¶ 10; Wong Decl. at Ex. 3 (Order of
4 Removal). Both Petitioner and DHS waived appeal. *Id.* The order of removal became
5 administratively final on September 25, 2025. 8 C.F.R. § 1241.1.

6 On January 9, 2026, ICE’s Enforcement and Removal Operations (“ERO”) served
7 Petitioner in writing with a Form I-229(a), Warning for Failure to Depart, requested him to choose
8 three to five countries that he could be removed to, and instructed him to select three to five
9 countries by January 19, 2026. Rosa Decl. ¶ 11. On January 20, 2026, ERO followed up with
10 Petitioner about a choice of countries, which Petitioner replied that he cannot choose a country of
11 removal. *Id.* ¶ 12.

12 Petitioner filed his first habeas petition on January 20, 2026, and the Court denied it without
13 prejudice on February 24, 2026. *Id.* ¶¶ 13-14.

14 On February 25, 2026, ERO ceased efforts to remove Petitioner to Uganda. *Id.* ¶ 15.² On
15 the same day, ERO again served Petitioner in writing with a Form I-229(a), Warning for Failure
16 to Depart, he could travel to without obtaining a visa by March 11, 2026. Rosa Decl. ¶ 16; Wong
17 Decl. at Ex. 6 (Warning for Failure to Depart). Petitioner again informed ERO that he would not
18 select a country for removal. *Id.* ¶ 16.

19 On March 25, 2026, Petitioner filed his second habeas petition in the instant case. *Id.* ¶ 17.

20 //

21 //

22
23 ² Petitioner had been served with a Notice of Removal to Uganda on February 12, 2026, but ICE no longer intends to
24 seek his removal to Uganda at this time. Rosa Decl. ¶ 15; Wong Decl. at Ex. 4 (Notice of Removal). Records indicate
that Petitioner’s custody status was reviewed on or about February 13, 2026. Wong Decl. at Ex. 5 (Notice to Alien of
File Custody Review).

At this time, ERO is in possession of Petitioner's passport from the People's Republic of China, with an expiration date of January 9, 2033. *Id.* ¶ 18. ERO continues to work on identifying a third country for Petitioner's removal. *Id.* ¶ 19.

III. ARGUMENT

A. Petitioner's continuing detention is lawful and not indefinite.

Petitioner's detention is constitutionally and statutorily lawful as he is detained pursuant to 8 U.S.C. § 1231(a)(6). 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. In *Zadvydas*, the Supreme Court determined that it is "presumptively reasonable" for DHS to detain a noncitizen for six months following entry of a final removal order while it works to remove the noncitizen from the United States. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").

Although the six-month presumptively reasonable period has just ended – with the second habeas petition being filed on the last day of this six-month period, Petitioner's detention continues to be constitutional because he remains uncooperative and fails to demonstrate that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

Petitioner's argument that Federal Respondents "inappropriately blamed [him] for his continued detention, alleging that he failed to select any countries to which he may be sent and as such was uncooperative" lacks merit. Pet. at 14. It is well-recognized that Petitioner has the initial burden to demonstrate that there is "good reason to believe that there is no significant likelihood

1 of removal in the reasonably foreseeable future,” and this burden cannot be met when he refuses
2 to cooperate fully and honestly with officials to secure travel documents from a foreign
3 government. *See, e.g., Nguyen v. Field Office Director, et al.*, No. 2:26-cv-00394-DGE, 2026 WL
4 538487, at *3 (W.D. Wash. Feb. 26, 2026) (“*Zadvydas* ‘places the burden on the [noncitizen] to
5 show, after a detention period of six months, that there is ‘good reason to believe that there is no
6 significant likelihood of removal in the reasonably foreseeable future.’”); *Nguyen v. Hermosillo,*
7 *et al.*, No. 2:26-cv-00335-GJL, 2026 WL 538497, at *3 (W.D. Wash. Feb. 26, 2026) (“[T]he
8 noncitizen carries the initial burden of providing “good reason to believe that there is no significant
9 likelihood of removal in the reasonably foreseeable future.”); *Lema v. I.N.S.*, 341 F.3d 853, 856
10 (9th Cir. 2003) (holding that a noncitizen who “refuses to cooperate fully and honestly with
11 officials to secure travel documents from a foreign government” cannot meet her “burden to show
12 there is no significant likelihood of removal in the reasonably foreseeable future.”); *see also* 8
13 U.S.C. § 1231(a)(1)(C) (extending detention period pending removal if a noncitizen “fails or
14 refuses to make timely application in good faith for travel or other documents necessary to [their]
15 departure”). Only after Petitioner meets burden to provide good reason that there is no significant
16 likelihood of removal in the reasonably foreseeable future does the burden shift to the government
17 to show that removal remains likely within a reasonable timeframe. *Nguyen v. Field Office*
18 *Director, et al.*, 2026 WL 538487, at *3.

19 Since the denial of Petitioner’s first habeas petition, Petitioner again informed ERO that he
20 would not select a country for removal. Reed Decl. ¶ 15. ERO is continuing to work on obtaining
21 travel documents for whichever country that Petitioner may potentially removed to, once Petitioner
22 cooperates and selects a country of removal. *Id.* ¶ 18. ERO cannot effectuate Petitioner’s third
23 country removal without his cooperation.

1 Additionally, the fact that Petitioner does not yet have a specific date of anticipated removal
2 does not make her detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).
3 Detention becomes indefinite in situations where the country of removal refuses to accept the
4 noncitizen or if removal is legally barred. *Id.*

5 To the extent that Petitioner argues that third country removal is no longer constitutional,
6 Pet. at 17-18, existing DHS policy provides a procedure where Petitioner will receive notice and a
7 meaningful opportunity to respond for third country removal.³ However, any claim of fear of
8 removal to a third country is premature as Petitioner continues to be uncooperative and has not yet
9 selected a third country for which he may claim fear.

10 Accordingly, Petitioner's detention remains lawful under *Zadvydas* as he continues to fail
11 to provide sufficient evidence or argument to overcome the presumption that his continued
12 detention is reasonable. *Sun*, 2026 WL 510666, at *3.

13 **B. Petitioner's APA and policy-related due process claims should be denied.**

14 Petitioner alleges a violation of the APA and due process based on ICE's alleged failure to
15 follow its own policy in his second habeas petition. Pet. at 18-19 (Count II).

16 While Petitioner does not refer to a specific ICE policy in his allegation, he points to the
17 "2004 ICE Memorandum on Post-Relief Release (February 9, 2004)." Pet. at 11-12. He appears
18 to allege that ICE violated the policy outlined in this memorandum because ICE continued to
19 detain him after he was "granted protective immigration relief, without determining whether
20 exceptional circumstances warrant his continued detention." Pet. at 19. That is incorrect. This
21 policy (or ICE Policy 16004.1) does not apply to Petitioner. ICE Policy 16004.1 only applies in a

22
23 ³ See U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem,
24 March 30, 2025, available at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited Feb. 6, 2026) ("DHS Memo").

1 situation where an IJ has granted asylum or other protection, and “ICE has entered an appeal of
2 the decision which is pending before the Board of Immigration Appeals.” Wong Decl. at Ex. 7
3 (“ICE Policy 16004.1”). Neither Petitioner nor DHS appealed the order of removal. Reed Decl.
4 ¶ 4; Wong Decl. at Ex. 3. Because this policy is not applicable to Petitioner, ICE could not have
5 violated ICE Policy 16004.1 in this case.

6 Further, the Court had previously denied these claims, which were also raised in the first
7 habeas petition, based on the general, “shotgun approach” of these allegations. *Sun*, 2026 WL
8 510666, at *4. The Court had denied these claims because Petitioner failed to identify any
9 particular ICE policy in these claims, and stated that Petitioner “cannot simply list off various
10 regulations and policies in random places in his petition, incorporate all his allegations by reference
11 at the end, and then expect the Court to piece together the substance of his claims for him.” *Id.*
12 Here, Petitioner again makes the same allegations, using the same, unchanged language from his
13 first habeas petition, and does not refer to the memorandum or policy number in his allegations.
14 Pet. at 18-19 (Count II).

15 Therefore, Petitioner’s APA and policy-related due process claims should be denied.

16 IV. CONCLUSION

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

19
20 //

21
22 //

23
24 //

1 DATED this 9th day of April, 2026.

2 Respectfully submitted,

3 s/ Jennifer Wong

4 JENNIFER WONG, CA No. 341634

5 Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 700 Stewart Street, Suite 5220

9 Seattle, Washington 98101

10 Phone: 206-553-7970

11 Fax: 206-553-4067

12 Email: jennifer.wong@usdoj.gov

13 *Attorney for Federal Respondents*

14 I certify that this memorandum contains 2,182
15 words, in compliance with the Local Civil Rules.