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

XIN SUN
Petitioner,

vs

JULIO HERNANDEZ, et al
Respondents.

Case No.: 2:26-cv-01013

**PETITIONER'S TRAVERSE AND
RESPONSE TO RESPONDENTS'
RETURN MEMORANDUM**

INTRODUCTION

Comes now, Xin Sun, by and through undersigned counsel, Ji Min Kim, respectfully submits this Traverse in response to Respondent's Return to the Petition for Writ of Habeas Corpus. This Court should approve Petitioner Xin Sun's Petition for Writ of Habeas Corpus. Civil detention by the Department of Homeland Security that spans two Christmases and New Year's violates the Due Process Clause of the 5th Amendment of the Constitution. Furthermore, it has now been 201 days since the start of Petitioner's post-order detention at the Northwest ICE Processing Center. In *Zaydvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court made it clear that the 180 days is presumptively reasonable for post-order detention. After this period, detention is no longer constitutional nor authorized by statute.

RESPONSIVE STATEMENT OF FACTS

Mr. Sun was given a list of countries that are visa-free for Chinese passport holders. The document says "Visa Free Chinese" on the top left corner. [*Exhibit 1, "Visa Free Chinese"*]. This document was given to Mr. Sun at 2 occasions by ERO. First time, it was on January 9, 2026 ("Declaration of Deportation Officer Anthony Rosa," Para. 11). The second time, it was provided to Mr. Sun on February 25, 2026. ICE informed Mr. Sun that should he not select a country from the list, he would then face ten (10) years in prison. [*Exhibit 2, "Conversation Record of February 25, 2026 by Xin SUN, with Translation"*]

"Visa Free Chinese" is a list of country names with the number of days that a Chinese passport holder could enter and *temporarily* stay in the country without a visa. It ranges from the longest stay of "Seychelles (3 months)" to "Palestine (Arrival by sea to Gaza Strip not allowed)" to "Brunei (14 days)," among others.

Mr. Sun has not chosen a visa-free country is not because Mr. Sun chooses not to cooperate, but rather because none of these countries would allow Mr. Sun to work and live there long-term. Mr. Sun has no notion of where he would go afterward, how he would be treated, potentially leaving himself open to be persecuted and/or tortured, or how to communicate as he does not have proficiency in any other language except for Chinese Mandarin. None of the countries have diplomatic agreements with China to allow Chinese asylum seekers to settle and work long term within their borders. Furthermore, Mr. Sun expressed reasonable and genuine fear that he would be deported back to China if he traveled to any of those countries and the visa-free period expired.

ARGUMENT

Third Country Removal is Unlikely

Petitioner has been detained for over 200 days following the grant of Withholding of Removal by an Immigration Judge. There is no dispute that the Petitioner cannot be removed to China. Accordingly, Respondents bore and failed to meet the burden of demonstrating that removal to an alternative country is significantly likely in the reasonably foreseeable future. *Zadvydas v. Davis* 533 U.S. 678 (2001).

Respondents rely on the possibility of removal to unspecified third countries. However, they identify no country that has agreed to accept Petitioner for lawful admission and sustained residence. Instead, Respondents reference countries where Petitioner lacks legal resident status and cannot remain for more than a brief, temporary period. Such speculative and legally unworkable options do not constitute a “significant likelihood of removal in the reasonably foreseeable future” under *Zadvydas*.

If removal is not effectuated and a non-citizen is detained for longer than 180 days post-order, ICE must justify that continued detention by putting forth “special circumstances” – such as national security or public health concerns. It may likewise argue that the non-citizen is “specially dangerous” and as such should remain detained. 8 C.F.R. § 241.14(b)-(f). ICE has failed to put forth any of these justifications in Mr. Sun’s case, and thus Mr. Sun’s continued detention is not authorized by statute.

Additionally, third country removal for Mr. Sun is neither reasonable nor likely in the reasonable future. In reference to the “any of the following countries” listed in 8 USC § 1231(b)(2)(E), a one-by-one analysis is as follows:

1. *The country from which the alien was admitted to the United States.*

Answer: Mexico. Note that this country is not on the “visa free Chinese” sheet provided by ICE.

2. *The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.*

Answer: Mexico and Canada. Note that neither of these countries are not on the “visa free Chinese” sheet provided by ICE.

3. *A country in which the alien resided before the alien entered the country from which the alien entered the United States.*

Answer: Mr. Sun was in Japan for less than 2 weeks before he went to Mexico. If one to count such a temporary residency, then Japan would be considered. However, this country is not on the “visa free Chinese” list provided by ICE. Additionally, the current and historic volatility between China and Japan as well as the current geo-political problems make this country potentially unsafe for Mr. Sun.

4. *The country in which the alien was born.*

Answer: China. Mr. Sun was already granted protection from being removed to China by EOIR.

5. *The country that had sovereignty over the alien's birthplace when the alien was born.*

Answer: China. Mr. Sun was granted protection from being removed to China by EOIR.

6. *The country in which the alien's birthplace is located when the alien is ordered removed.*

Answer: China. Mr. Sun was granted protection from being removed to China by EOIR.

7. *If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.*

Answer: This is a catch-all provision, but it contravenes the Withholding of Removal order from the Immigration Judge. The DHS still has not identified any countries that would let Mr. Sun settle and protect him from being deported back to China. None of the countries on the “Visa-Free Chinese” list offers long term visas or opportunities to work or reside there permanently. If DHS sends Mr. Sun to any of the visa-free countries, Mr. Sun would certainly be deported back to China where persecution and torture await him.

Third Country Removal is Unconstitutional

Although under appeal, *D.V.D. v. DHS* (1:25-cv-10676, D. Mass. Feb. 25, 2026) says that the DHS’s practice of deporting non-citizens to countries where they are not nationals, without adequate notice or an opportunity to contest the removal, is unconstitutional. The ruling invalidated a 2025 ICE policy that had expanded such removals and deportations without meaningful notice. Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 29, 2025).

The court found that this policy violated 5th Amendment Due Process by providing no meaningful opportunity for individuals to raise claims of potential persecution or torture in the designated country of removal. The court further criticized the government’s reliance on unverified diplomatic assurances and noted that the policy improperly targeted individuals who had already been granted protection from removal to their home countries, only to be sent instead to unfamiliar third countries where they had no ties. *Doe v. Noem*, No. 25-cv-10495, slip op. at 1–2, 15–18 (D. Mass. Feb. 25, 2026)

CONCLUSION

More than two-hundred days have now passed. During that time, Respondents have not obtained acceptance from any country or provided a concrete timeline for the Petitioner’s Removal. Rather, the record reflects a pattern of shifting and hypothetical third-country possibilities, none

of which have materialized. For instance, Respondent had wanted to deport the Petitioner to Uganda, but had since abandoned such plan. (“Declaration of Deportation Officer Anthony Rosa,” para. 15) This is precisely the type of indefinite detention that *Zadvydas* prohibits.

Because there is no realistic prospect of removal, continued detention is unlawful. Accordingly, Petitioner respectfully requests that this Court grant the Petition and order his immediate release under appropriate conditions of supervision. Third country removal is unlikely in the reasonable future for Mr. Sun. Meanwhile, Mr. Sun has been in detention since December 2024. It is now April 2026.

DATED this 14th day of April, 2026

Respectfully submitted,

//s// Ji Min Kim
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I certify that this memorandum contains 1415 words in compliance with the Local Civil Rules.

EXHIBITS

Visa Free Chinese

Europe

- AL Albania (90 days)
- BY Belarus (30 days)
- BA Bosnia and Herzegovina (90 days)
- RU Russia (30 days)
- SM San Marino (90 days.)
- RS Serbia (30 days)

Africa

- AO Angola (30 days)
- BJ Benin (N/A)
- MW Malawi (30 days)
- MU Mauritius (90 days)
- MA Morocco (90 days)
- SC Seychelles (3 months)
- TN Tunisia (90 days)
- ZM Zambia (30 days)

Americas

- AG Antigua and Barbuda (30 days)
- BS Bahamas (3 months)
- BB Barbados (30 days)
- CU Cuba (90 days)
- DM Dominica (30 days)
- GD Grenada (30 days)

- HT Haiti (3 months)
- JM Jamaica (30 days)
- LC Saint Lucia (6 weeks)
- SR Suriname (30 days)
- VG British Virgin Islands (6 months for business and tourism purposes)
- TC Turks and Caicos Islands (90 days)

Asia

- AM Armenia (90 days)
- AZ Azerbaijan (30 days)
- BN Brunei (14 days)
- GE Georgia (30 days)
- IR Iran (21 days)
- KZ Kazakhstan (30 days)
- KG Kyrgyzstan (21 days / 60 days)
- MY Malaysia (30 days)
- MV Maldives (30 days)
- OM Oman (14 days / 30 days)
- QA Qatar (30 days)
- SG Singapore (30 days)
- TJ Tajikistan (14 days / 60 days)
- TH Thailand (60 days)
- TR Turkey (90 days)
- AE United Arab Emirates (90 days)
- UZ Uzbekistan (30 days)

- PS Palestine (*Arrival by sea to Gaza Strip not allowed.*)

Oceania

- FJ Fiji (*4 months*)
- KI Kiribati (*90 days*)
- FM Micronesia (*30 days*)
- WS Samoa (*30 days*)
- SB Solomon Islands (*30 days*)
- TO Tonga (*30 days*)
- VU Vanuatu (*30 days*)
- CK Cook Islands (*31 days*)
- NU Niue (*30 days*)

2026年2月25日

ICE: 你那个人身保护令的案子输了,你知道吗?

我: 我不知道,我还没有联系律师,

ICE: 法官虽然判了你不能被遣返回中国,你可以选择去其它国家,比如去新加坡,新加坡也讲普通话。

我: 我不去,我去新加坡只能待一个月,然后去哪里?新加坡不是移民国家,地方很小,他们还是会遣返我回中国。

ICE: 我们现在有你的护照,这些国家都不需要签证,你不选我们也能送你去。

我: 我不选。

ICE: 你不做选择就违反了美国现在的政策,我们可以让你去坐监狱,十年以上。你选择去第三国还是去坐监狱?

我: 我需要问我的律师,我没办法回答你的问题。

ICE: 我再给你这个国家名单,你需要在3月26号之前做出选择。至少选三个国家。

我: 我不带这个,我也不会选择。我会找我的律师帮我想办法。我有一个问题想问,可以吗?

ICE: 你说。

我：有一个土耳其人，和我同一天进美国。他是7月3日打的庭，结果和我一样。为什么他可以被放进入美国？我不行？

ICE：每个人情况不一样。

我：他和我只有国籍不一样，案件结果是一样的。

ICE：你在这份文件上签个字。

我：我不签。

ICE：我会将你不签字的情况记录在案。这里也有录音录像。

我：好的我明白。我不签，我会找律师帮我。

以上内容属实，系我和ICE遣返官的真实对话。
如有虚假，愿承担伪证罪的法律后果。

孙欣

2026年3月8日。

February 25, 2026

ICE: Did you know that you lost your Habeas Corpus petition?

Me: I did not know. I did not contact my lawyer.

ICE: Even though the Judge decided that you cannot be deported back to China, you can still choose another country. For example, Singapore. Singapore speaks Chinese Mandarin.

Me: I cannot go there. I can only stay in Singapore for 1 month. Where will I go after that? Singapore is not an immigration country. The area is very small. Singapore will deport me back to China.

ICE: We have your passport now. These countries do not require a visa for you. Even if you do not choose a country, we can still send you there.

Me: I cannot choose.

ICE: If you do not choose a country, you are violating the current American law. We can send you to prison for minimum 10 years. You choose to go to a 3rd-country or go to prison?

Me: I need to ask my lawyer. I cannot answer your question.

ICE: I am going to give you the list of visa-free countries to you again. You need to choose before March 26th, a minimum of 3 countries.

Me: I do not want this. I also cannot choose. I will ask my lawyer for help. I have a question that I want to ask you, can I?

ICE: Go ahead.

Me: There is a guy from Turkey, who came to America on the same day as me. He had his individual hearing on July 3rd. His result was the same as mine. Why is he released into America? Why can't you release me too?

ICE: Everyone's situation is different.

Me: He and I only have different nationalities. Case result is the same.

ICE: Sign this document.

Me: I cannot sign.

ICE: I will record that you refused to sign the document. There is also video and audio recording.

Me: Ok, I understand. I cannot sign, I will ask my lawyer to help me.

The above conversation between ICE officer and me is true.

Should any falsification be found, I am willing to bear the legal liability for perjury.

Sun Xin (signature)

March 8, 2026

TRANSLATION CERTIFICATION
FOR
THE CONVERSATION RECORD OF FEBRUARY 25, 2026

I, Sara Liu, certify that this document has been translated to the English language from Chinese and that the translation is complete and accurate. I also certify that I am competent to translate from the Chinese Mandarin language into English.

Date: 4/13/26

Translator's Name: Sara Lin

Translator's Signature:



Translator's contact information:

