

1 ADAM GORDON
United States Attorney
2 ANTONIO ESTRADA
Special Assistant U.S. Attorney
3 California Bar No. 321247
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8664
Facsimile: (619) 546-7751
6 Email: Antonio.Estrada@usdoj.gov

7 Attorneys for Respondents

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 DONGXING CHI,

12 Petitioner,

13 v.

14 JEREMY CASEY, et. al.,

15 Respondents.
16

Case No. 26-cv-02540-AGS-SBC

**RESPONSE IN OPPOSITION
TO PETITIONER'S HABEAS
PETITION**

17 **I. INTRODUCTION**

18
19 Petitioner requests this Court to order Immigration and Customs Enforcement
20 (ICE) to release him from custody because, he alleges, his detention is unlawful and
21 prolonged. Petitioner is subject to a final, executable order of removal, which means
22 that he has no right to remain in the United States. Under 8 U.S.C. § 1231(a), ICE has
23 authority to detain a noncitizen for 90 days to execute removal, and the Supreme Court
24 has held that detention is presumptively reasonable for six months. Here, the
25 presumptively reasonable six-month period of post-final order detention has not ended.
26 ICE is actively working to effect Petitioner's removal to China. Petitioner has not
27 provided good reason to believe that there is no significant likelihood of removal in the
28 reasonably foreseeable future. As such, the Court should deny the petition.

II. FACTUAL BACKGROUND

Petitioner is a citizen and national of China who was previously removed on or about January 6, 2025, pursuant to an administratively final removal order entered by an Immigration Judge (IJ) on March 5, 2020. *See* Declaration of Adrian Gonzalez (“Gonzalez Decl.”) at ¶¶ 5, 7. Exh. 1.¹ On May 31, 2025, Petitioner was arrested by U.S. Customs at the Port of Entry in San Ysidro, California following his attempt to enter the United States by presenting a United States passport book not lawfully issued to him and to which he was an imposter. *See id.* at ¶ 6; *see also* Exhibit 1 (I-213) at 2. Following his attempted entry on May 31, 2025, U.S. Customs paroled Petitioner into the United States pursuant to Immigration & Nationality Act (INA) § 212(d)(5)/ 8 C.F.R. § 212.5(b)(5) for detention by the Federal Bureau of Investigations as a material witness. *See* Gonzalez Decl. at ¶ 8 (emphasis added). His parole was valid through August 30, 2025, and was not thereafter extended. *See id.*

On June 25, 2025, Petitioner was taken into ICE custody. *See* Gonzalez Decl. at ¶ 9. He was on that date served with a Notice and Order of Expedited Removal (ER) pursuant to INA § 235(b)(1)/ 8 C.F.R. § 1225(b)(1). *See id.* The ER Notice and Order charged that Petitioner was inadmissible to the United States pursuant to INA § 212(a)(7)(A)(i)(I)/ 8 C.F.R. § 1882(a)(7)(A)(i)(I) in that he is an immigrant not in possession of valid entry documents at the time of an application for admission. *See id.* On July 8, 2025, an Asylum Officer administered an assessment to Petitioner to determine whether it was more likely than not that he would be tortured if removed to China. *See id.* at ¶ 10. Following a positive determination, Petitioner was placed into removal proceedings before an IJ via the filing of a Notice to Appear (NTA) dated July 11, 2025. *See id.*; *see also* Exhibit 2 (NTA). On November 19, 2025, the IJ ordered Petitioner removed to China. *See id.*; *see also* Exhibit 3 (IJ order dated November 19,

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

2025). Petitioner reserved appeal. *See* Exhibit 3. On December 2, 2025, Petitioner, through counsel, filed a written notice waiving appeal of the Immigration Judge's order of removal. *See* Gonzalez Decl. at ¶ 12; *see also* Exhibit 4 (Petitioner's Waiver of Appeal). Petitioner's removal order is therefore administratively final. 8 CFR § 1003.6(a) (appealable order may not be executed unless waiver of right to appeal is filed); 8 CFR § 1003.39 (decision of IJ becomes final upon waiver of appeal).

Since Petitioner's removal order became final, ICE has worked as expeditiously as possible to effectuate his removal to China. *See* Gonzalez Decl. at ¶¶ 13- 20. ICE is currently in the process of obtaining a travel document from China on Petitioner's behalf. *See id.* at ¶ 13. Before China will issue a travel document to facilitate removal by ICE, it first requires verification of the identity and nationality of the putative Chinese citizen who is subject to removal from the United States. *See id.* Once China has verified the identity and nationality of its citizen, it will then accept a request for issuance of a travel document. *See id.* Headquarters Removal and International Operations (HQ RIO) advised that verification by China immigration officials is taking several months to complete. *See id.* On or about January 18, 2026, Petitioner refused ERO's request that he complete verification of identity and nationality forms in his native language for forwarding to the Chinese government. *See id.* at ¶ 15 (Emphasis Added). He wrote the following in response to ERO's request: "I beg you. I need to feed seven family members." *See id.*

On April 15, 2026, HQ RIO notified the ERO San Diego Field Office that Petitioner's identity and nationality verification is pending action by the Chinese Government. *See* Gonzalez Decl. at ¶ 17. Once Petitioner's nationality and identity are verified by the Chinese Officials, the ERO San Diego Field Office will complete a travel document request for routing to the Chinese Government. *See id.* at ¶ 18. Significantly, China previously accepted Petitioner for removal in January 2025. *See id.* at ¶ 19. It is therefore highly probable that China will positively verify Petitioner's identity and nationality and thereafter issue a travel document to ICE on his behalf. *See id.* Under

1 these circumstances, ICE believes “that there is a significant likelihood that Petitioner’s
2 removal to China may be effectuated in the reasonably foreseeable future.” *See id.* at
3 ¶ 20.

4 III. ARGUMENT

5 A. Petitioner’s First Claim Fails Because ICE was not required to 6 Provided Petitioner with the Notice of Revocation of Release and 7 Informal Interview Under the Regulations Because He Was Never 8 Released From Custody.

9 A noncitizen who is not removed within the statutory removal period may be
10 released from ICE custody “pending removal . . . subject to supervision under
11 regulations prescribed by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A),
12 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under
13 8 C.F.R. § 241.4, and the order may be revoked under 8 C.F.R. § 241.4(l)(2) where, for
14 example, the noncitizen “violates any condition of release” or where “appropriate to
15 enforce a removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal
16 period). ICE may also revoke the order of supervision where, “on account of changed
17 circumstances, [ICE] determines that there is a significant likelihood that the alien may
18 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
19 regulations further provide:

20 Upon revocation, the alien will be notified of the reasons for revocation of
21 his or her release or parole. The alien will be afforded an initial informal
22 interview promptly after his or her return to Service custody to afford the
23 alien an opportunity to respond to the reasons for revocation stated in the
24 notification.

25 8 C.F.R. § 214.4(l).

26 Here, as previously stated, Petitioner was removed on January 6, 2025. He
27 attempted to re-enter the U.S. on May 31, 2025, and has been in custody ever since.
28 Petitioner’s removal order became final on December 2, 2025, and Petitioner was not
released on an order of supervision. Because Petitioner was at no time released on an

1 order of supervision, the Government was never required to provide Petitioner with
2 Notice of Revocation of Release or Informal Interview. As such, Petitioner's first claim
3 fails.

4 **B. Petitioner's Second Claim Because his Re-Detention Claims Are**
5 **Unfounded.**

6 The Constitution limits federal judicial power to designated "cases" and
7 "controversies." U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
8 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
9 a "case" or "controversy" within the meaning of Article III). "Absent a real and
10 immediate threat of future injury there can be no case or controversy, and thus no Article
11 III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-
12 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
13 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a
14 lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by
15 demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful
16 behavior will likely occur or continue, and that the threatened injury is certainly
17 impending.") (simplified)). At the "irreducible constitutional minimum," standing
18 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
19 traceable to the challenged action of the United States and (3) likely to be redressed by
20 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

21 Here, Petitioner seeks relief based on allegations concerning the revocation of his
22 release. However, Petitioner's May 31, 2025 apprehension was his first DHS
23 apprehension after his previous January 2025 removal was executed, so there was no
24 prior release to revoke. As such, there is no controversy concerning re-detention/release
25 for this Court to resolve. Federal courts do not have jurisdiction "to give opinions upon
26 moot questions or abstract propositions, or to declare principles or rules of law which
27 cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v.*
28 *United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). "A

claim is moot if it has lost its character as a present, live controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

C. Petitioner’s Third Claim Fails Because the Government Has Rebutted Any Showing that There is No Significant Likelihood of Removal to China in the Reasonably Foreseeable Future.

“Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days pending the government’s efforts to secure the alien’s removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien during the 90-day removal period under subsection (a)(1)).

Section 1231(a)(6) “authorizes further detention if the Government fails to remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The statute, however, is limited to “a period reasonably necessary to bring about the alien’s removal from the United States” and “does not permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month period unless “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

Petitioner has been in post-final order detention for about 5 months. *See* Gonzalez Decl. at ¶¶ 12. This is well within the presumptively reasonable six month standard set forth in *Zadvydas*.² *See* 533 U.S. at 701. The burden is thus on Petitioner to show a

² Because *Zadvydas* focused on detention and answered the question of what length of detention pending removal efforts would run afoul the Constitution, the Court should reject Petitioner’s position that the presumptively reasonable period of detention under *Zadvydas* could run during a time that Petitioner was not actually in detention. *See* 533 U.S. at 701 (noting that “Congress previously doubted the constitutionality of *detention* for more than six months” and thereafter recognizing that period of detention to be presumptively reasonable) (emphasis added); accord *Kim Ho Ma v. Ashcroft*, 257 F.3d

1 “good reason to believe that there is no significant likelihood of removal in the
2 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. As explained below, he
3 cannot meet his burden, and even if he did, the government has presented evidence
4 sufficient to rebut the showing.

5 The record does not support a finding that “there is no significant likelihood of
6 removal in the reasonably foreseeable future.” *Id.* Petitioner was, after all, successfully
7 removed to China very recently. In addition, ICE is working diligently to obtain a travel
8 document that will allow for Petitioner’s removal. That ICE has re-detained Petitioner
9 without a travel document in hand or a specific removal date is not dispositive.
10 *Zadvydas* does not require the government to pre-arrange a noncitizen’s removal before
11 arresting them; this would be extremely difficult, if not impossible, in most cases, as
12 “[t]he risk of a detainee absconding . . . inevitably escalates as the time for removal
13 becomes more imminent.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208–09 (9th
14 Cir. 2022); *see Zadvydas*, 533 U.S. at 699 (emphasizing that § 1231(a)’s basic purpose
15 is “assuring the alien’s presence at the moment of removal.”). Moreover, the
16 constitutional standard is whether there is “a significant likelihood of removal in the
17 reasonably foreseeable future”—not whether a removal will occur imminently.
18 *Zadvydas*, 533 U.S. at 701. The Supreme Court was clear that the Constitution prevents
19 only “indefinite” or “potentially permanent” detention. *Id.* at 696, 699.

20 As it stands, it would be premature to conclude that there is no significant
21 likelihood of removal in the reasonably foreseeable future before permitting ICE an
22 opportunity to complete its diligent efforts to effect Petitioner’s removal. ICE has taken
23 the exact steps it needs to take to ensure their removal efforts bear fruit. Evidence of
24 progress, even slow progress, in negotiating a petitioner’s repatriation will satisfy
25 *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See Kim v.*

27 1095, 1102 n.5 (9th Cir. 2001). (“Supreme Court read the statute to permit a
28 ‘presumptively reasonable’ *detention* period of six months after a final order of removal.
.”) (emphasis added).

1 *Ashcroft*, Case No. 02cv1524-J (LAB), ECF No. 25 at 8 (S.D. Cal. June 2, 2003)
2 (finding that petitioner’s one year and four-month detention does not violate *Zadvydas*
3 given respondent’s production of evidence showing governments’ negotiations are in
4 progress and there is reason to believe that removal is likely in the foreseeable future);
5 *see Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug.
6 15, 2019) (“the record at this stage in the litigation does not support a finding that there
7 is no significant likelihood of Petitioner’s removal in the reasonably foreseeable
8 future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3
9 (denying petition because “Respondents have set forth evidence that demonstrates
10 progress and the reasons for the delay in Petitioner’s removal”). Given ICE’s diligent
11 efforts to obtain Petitioner’s travel document and its demonstrated ability to execute
12 removal orders to China (including Petitioner’s previous removal), the circumstances
13 of Petitioner’s case do not support a finding that his case would be stuck in limbo such
14 that his detention would be unreasonably lengthy—let alone indefinite.

15 IV. CONCLUSION

16 For the reasons stated herein, Respondents respectfully request the Court to deny
17 the habeas petition.

18
19 DATED: April 30, 2026

ADAM GORDON
United States Attorney

20
21 s/ Antonio Estrada
ANTONIO ESTRADA
Special Assistant United States Attorney

22
23 Attorneys for Respondents
24
25
26
27
28