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

11
12 **HAOXU YIN,**

13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

20 **Respondents.**

Civil Case No.: 26-cv-2668-GPC-GC

Traverse in
Support of
Petition for Writ of
Habeas Corpus

INTRODUCTION

This Court should grant the petition because there is no evidence to satisfy the success element (“a significant likelihood of removal”) or timing element (“in the reasonably foreseeable future”) of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Five months after Mr. Yin’s removal order became final, ICE has yet to submit a travel document request to China. Instead, ICE have sent an internal request for a travel document from one part of ICE to its headquarters. It remains “pending.” Dkt. 4-1, ¶ 11.

Given the government’s failure to request a travel document from China yet—combined with the government’s naming of China as one of the most uncooperative countries in the world, and the absence of proof that China will actually issue a travel document once it is requested—there is not a significant likelihood of removal in the reasonably foreseeable future. This is a common problem for Chinese nationals ordered removed. *See, e.g., Huan v. Noem*, No. 26-cv-512-JLS, 2026 WL 412609 (S.D. Cal. Feb. 13, 2026) (granting *Zadvydas* petitions as to Chinese nationals ordered removed who had been held for nine, seven, and five respective months post-order of removal, and as to whom ICE had pending travel document requests with headquarters); *Xiao v. Noem*, No. 26-cv-474-LL-BJW, ECF No. 7 (same as to Chinese national ordered removed who had been held for six months, as to whom ICE had a pending identification request with its headquarters); *see also Yang v. Kaiser*, No., 2025 WL 2791778, *1–*2, *6 (E.D. Cal. Aug. 20, 2025) (granting temporary restraining order and ordering release of re-detained Chinese national as to whom ICE had not been able to get a travel document for seven years).

As other courts have done, this Court should grant the habeas petition and order Mr. Yin released.

ARGUMENT

I. There is not a significant likelihood of removal in the reasonably foreseeable future.

Respondents identify the following relevant dates as to Mr. Yin:

- Detained: January 26, 2025
- Credible fear interview: May 15, 2025
- Order of removal issued: November 4, 2025
- Order of removal final: December 5, 2025
- Request to ICE’s RIO: February 18, 2026

Dkt. 4-1, ¶¶ 4–10.

Mr. Yin has now been detained for six months since his removal order issued and five months since it became final. In this last month, because the *Zadvydas* “six-month period is a presumption that can be rebutted,” Mr. Yin can prove outright that his removal is not significantly likely in the reasonably foreseeable future. *Huan*, 2026 WL 412609 at *2.

Regardless, the six-month grace period under *Zadvydas* will soon pass for Mr. Yin. once the burden rests with the government, it certainly cannot prove either criterion. *Zadvydas*, 533 U.S. at 701.

First, ICE has still not submitted a request for a travel document to China. Instead, the officer states only that they have “submitted a travel document request” to “ERO’s Removal and International Operations (RIO)”—i.e., the agency headquarters in Washington D.C. Dkt. 4-1 at ¶ 10. It is difficult to believe that Petitioners’ removal is “significantly likely” when Respondents have not even submitted a request for a travel document to China.

Second, the deportation officer did not explain the reasons for the numerous delays in Mr. Yin’s case. Those delays include (1) the period between when Mr. Yin’s removal order became final on December 5 and when local ICE submitted a travel document request to ICE headquarters on February 18, and (2) the period between February 18 and the present. The officer states only that

1 headquarters informed local ICE that “verification by Peoples Republic of China
2 immigration officials is taking several months to complete,” and that, “[o]nce
3 identity is confirmed, the [travel document request] will be presented to the
4 embassy.” Dkt. 4-1 at ¶ 12. The officer does not provide any sort of timeline for
5 when that verification process will begin. Nor does the office provide a timeline
6 for how long China takes to issue travel documents after the verification process
7 concludes.

8 *Third*, Respondents never address the evidence in Mr. Yin’s habeas petition
9 that ICE itself lists China as one of the 15 most “uncooperative” countries in
10 terms of accepting their nationals for deportation. *See* Dkt. 1, Exhibit D, ICE
11 Report on Uncooperative Countries at 8; *accord* Exhibit C. So even if ICE *had*
12 requested a travel document, it is far from clear that China would issue one.

13 Nevertheless, Respondents claim that they “are working expeditiously to
14 acquire the necessary travel document to effectuate Petitioner’s removal to
15 China.” Dkt. 4 at 1. But good faith efforts to secure a travel document do not
16 themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth
17 Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful as long
18 as good faith efforts to effectuate deportation continue and [the petitioner] failed
19 to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned up).
20 The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts
21 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

22 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does
23 not turn on the degree of the government’s good faith efforts. Indeed, the
24 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
25 Petitioner’s detention turns on “whether and to what extent the government’s
26 efforts are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019
27 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is
28 required to demonstrate the likelihood of not only the *existence* of untapped

possibilities, but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g., Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s case was “still under review and pending a decision” did not meet respondents’ burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where “[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

Additionally, even if ICE will eventually remove Mr. Yin, the government provides zero evidence that removal will happen “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. “[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea

1 of when it might reasonably expect [Petitioners] to be repatriated, this Court
 2 certainly cannot conclude that [their] removal is likely to occur—or even that it
 3 *might* occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F.
 4 Supp. 3d 93, 102 (W.D.N.Y. 2019).

5 Courts have routinely granted habeas petitions where, as here, there are
 6 problems as to *Zadvydas*’s timing element. *See, e.g., Balza v. Barr*, No. 6:20-CV-
 7 00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and*
 8 *recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La.
 9 Oct. 14, 2020) (“[A] theoretical possibility of eventually being removed does not
 10 satisfy the government’s burden[.]”); *Eugene v. Holder*, No. 408CV346-RH WCS,
 11 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) (“While Respondents contend
 12 Petitioner *could* be removed to Haiti, it has not been shown that it is significantly
 13 likely that Petitioner *will* be removed in the *reasonably foreseeable* future.”);
 14 *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting
 15 petition because even if “Petitioner’s removal will ultimately be effected . . . the
 16 Government has not rebutted the presumption that removal is not likely to occur
 17 in the reasonably foreseeable future”); *Seretse-Khama v. Ashcroft*, 215 F. Supp.
 18 2d 37, 50 (D.D.C. 2002) (granting petition where the
 19 government had not provided any “evidence . . . that travel documents will be
 20 issued in a matter of days or weeks or even months”).

21 In sum, then, there could be “some possibility that [China] will accept
 22 Petitioner at some point. But that is not the same as a significant likelihood that he
 23 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
 24 2419288, at *16. Mr. Yin therefore succeeds under *Zadvydas* and this Court
 25 should order his release on conditions set by ICE until China issues a travel
 26 document.

II. This Court should order Mr. Yin be subject to certain basic guarantees of due process should the government seek his removal to a third country.

Finally, Respondents do not respond to Mr. Yin's argument that ICE's current third-country removal policy does not provide him "with adequate notice and an opportunity to be heard before removing him to a third country." *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition and enjoining the respondents from removing the petitioner absent the process outlined in *DVD v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025)). Respondents have no response to his argument that it is proper for this Court to prohibit Respondents from removing him to a third country without first providing him notice of his statutory rights to apply for asylum and withholding from those third countries and a meaningful opportunity to be heard on those claims.

Because the government's current policy allows it to quickly pivot to a new country and deport Mr. Yin to it with between zero and twenty-four hours notice, and because that violates due process as Mr. Yin explained in his habeas petition, this Court should grant his petition on this claim as well.

CONCLUSION

For all these reasons, this Court should grant the petition and order Petitioners immediately released.

Respectfully submitted,

Dated: May 4, 2026

s/ Jessie Agatstein

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