IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

XIAO BIN CHEN, Petitioner, vs. C. CARTER, Warden, FCI Leavenworth; TODD LYONS, Acting Director, ICE; KRISTI NOEM, Secretary, DHS; and PAM BONDI, Attorney General, Respondents.	)	Case No. 5:26-cv-03026-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Xiao Bin Chen ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained at FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. Doc. 1. In compliance with the Court's Order to Show Cause, Doc. 3, C. Carter, Warden, FCI Leavenworth; Todd Lyons, Acting Director, Immigration and Customs Enforcement; Troy Edgar, Deputy Secretary of Homeland Security; and Pam Bondi, Attorney General of the United States ("Respondents") respectfully submit this response.

STATEMENT OF FACTS

The following facts are part of the Declaration of Joseph L. Carroll, a Deportation Officer ("DO") for Enforcement and Removal Operations ("ERO") at United States Immigration and Customs Enforcement ("ICE"), of the Department of Homeland Security ("DHS"). Carroll Decl., Exhibit 1, ¶¶ 1-4. Petitioner is a native and citizen of the People's Republic of China. *Id.* ¶ 5. The People's Republic of China requires a travel document for anyone being removed who is not in possession of a valid passport. *Id.* ¶ 18. Nationality verification and travel document requests from the People's Republic of China routinely take four to five months to obtain. *Id.* ¶ 55. The People's

Republic of China is issuing travel documents for commercial removals and charter removals. *Id.* Additionally, ICE RIO confirmed they successfully executed charter removals in January, June, and December 2025. *Id.* ICE RIO is currently preparing a charter removal scheduled for March 2026 to repatriate approximately 300 nationals of the People's Republic of China. *Id.*

On or about June 20, 1993, Petitioner entered the United States at or near New York, New York. *Id.* ¶ 6. That same day, Petitioner was placed in exclusion proceedings through personal service of the Notice to Applicant for Admission/Deferred for Hearing before Immigration Judge. *Id.* ¶ 7. Petitioner was charged as removable from the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), section 212(a)(7)(B)(i)(I) of the INA, and section 212(a)(7)(B)(i)(II) of the INA. *Id.* Petitioner was deferred for hearing and released into the United States on this date. *Id.*

On or about March 30, 1994, Petitioner failed to appear and the Immigration Judge ordered Petitioner excluded from the United States *in absentia*. *Id.* ¶ 8. On or about November 9, 1998, a Warrant of Deportation was issued to the Petitioner. *Id.* ¶ 9. On or about April 15, 199, the Petitioner was served a Form I-166, Notice to Surrender. *Id.*¶ 10. On or about October 21, 2004, Petitioner filed a Motion to Reopen Proceedings with the Immigration Judge. *Id.* ¶ 11. The motion was granted and Petitioner was placed back in exclusion proceedings. *Id.*

On or about February 3, 2006, the Immigration Judge granted Petitioner's application for relief. *Id.* ¶ 12. On or about February 24, 2006, DHS filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 14. On or about July 28, 2008, the BIA sustained DHS's appeal, vacated the Immigration Judge's decision granting relief, and ordered Petitioner removed. *Id.* ¶ 15.

Petitioner filed a Petition for Review ("PFR") in the U.S. Court of Appeals for the Second Circuit ("Second Circuit") in *Xiao Bin Chen, Jin Xiu Liu v. Holder*, No 08-4001-AG, challenging

the removal order against him. *Id.* ¶ 19. On or about July 29, 2010, the Second Circuit denied Petitioner's PFR. *Id.* ¶ 20.

On or about December 8, 2010, Petitioner filed a Motion to Reopen with the BIA pursuant to 8 C.F.R. §1003.2. *Id.* ¶ 21. Petitioner also requested a stay of exclusion and deportation. *Id.* On or about January 28, 2011, Petitioner was taken into custody by ICE. *Id.* ¶ 22. He was subsequently released on an Order of Supervision (OSUP) and was told to report on February 15, 2011, with his passport. *Id.* ¶ 22. On or about February 15, 2011, Petitioner appeared at the local ICE office without his passport, claiming he lost it. *Id.* ¶ 23. On or about March 15, 2011, Petitioner reported at the local ICE office where his passport photo was taken, and a Chinese declaration was completed. *Id.* ¶ 24.

On or about April 6, 2011, Petitioner requested a Stay of Deportation or Removal from local ERO. *Id.* ¶ 25. On or about April 14, 2011, Petitioner reported at the local ICE office and completed additional documents needed for a travel document request. *Id.* ¶ 26. The travel document request was submitted to the Consulate General of the People's Republic of China in Chicago, Illinois. *Id.* On or about May 20, 2011, the Deputy Field Office Director denied Petitioner's request for Stay of Deportation or Removal. *Id.* ¶ 27. On or about August 26, 2011, the BIA denied Petitioner's Motion to Reopen and denied Petitioner's stay request. *Id.* ¶ 28.

On or about July 9, 2012, Petitioner filed a Motion to Reopen with the BIA. *Id.* ¶ 29. On or about February 14, 2013, the BIA denied Petitioner's Motion to Reopen. *Id.* ¶ 30. Petitioner remained on OSUP and reported in as required on or about the following dates: March 15, 2013, March 17, 2014, March 12, 2015, March 14, 2016, March 10, 2017, March 8, 2019, March 10, 2020, March 9, 2021, March 8, 2022, March 7, 2023, and March 5, 2024. *Id.* ¶ 31. On or about March 5, 2024, Petitioner was told by local ERO to report back on August 14, 2024, with proof of attempts to obtain travel documents. *Id.* ¶ 32. On or about August 13, 2024, Petitioner reported to

local ERO that he had no success in trying to obtain a travel document but provided no proof of attempts. *Id.* ¶ 33.

On or about August 12, 2025, ERO revoked Petitioner's OSUP. *Id.* ¶ 34. On or about August 13, 2025, Petitioner was taken into custody by ICE. *Id.* ¶ 35. Local ERO uploaded the travel document request package to the Consulate General of the People's Republic of China the same day. *Id.* On or about August 16, 2025, ICE's Removal and International Operations ("RIO") reviewed Petitioner's travel document request. *Id.* ¶ 36. On or about August 19, 2025, local ERO contacted RIO to clarify if a household register document would suffice as a travel document or if another travel document was needed. *Id.* ¶ 37. On or about August 22, 2025, Petitioner's file was provided to the Travel Document Request Unit ("TDR Unit") for assistance with the travel document request. *Id.* ¶ 38.

On or about September 2, 2025, local ERO requested an update on the travel document request from the Deportation and Detention Officer ("DDO") and the TDR Unit. *Id.* ¶ 39. On or about September 17, 2025, the DDO with ICE's Removal Management Division ("RMD") reviewed Petitioner's file and requested a copy of the travel document request. *Id.* ¶ 40. On or about September 26, 2025, local ERO emailed the travel document request packet to the DDO. *Id.* ¶ 41. On or about September 27, 2025, local ERO mailed a copy of the travel document request packet to the DDO. *Id.* ¶ 42. On or about September 29, 2025, local ERO submitted an Electronic Travel Authorization ("ETA") to the Supervisory Deportation and Detention Officer ("SDDO") for review and approval. *Id.* ¶ 43. On or about September 30, 2025, the SDDO completed review of the ETA. *Id.* ¶ 44.

On or about December 23, 2025, the DDO advised local ERO that ICE is waiting for the People's Republic of China to verify Petitioner's identity and the travel documents are still pending. *Id.* ¶ 45. On or about December 31, 2025, the 90-day Post-Order Custody Review

("POCR"), Notice to Alien of File Custody Review ("NAFCR"), and Form I-229(a), Warning for Failure to Depart, were prepared and scheduled to be served on January 2, 2026. *Id.* ¶ 46. On or about January 2, 2026, the 90-day POCR, NAFCR, and Form I -229(a), Warning for Failure to Depart were served on Petitioner. *Id.* ¶ 47. On or about January 8, 2026, local ERO submitted an inquiry to the DDO on the status of Petitioner's travel documents. *Id.* ¶ 48. On or about January 13, 2026, local ERO was notified the travel documents are still pending verification of Petitioner's identity from the People's Republic of China. *Id.* ¶ 49.

On or about January 16, 2026, local ERO confirmed the travel documents are still pending verification of Petitioner's identity by the People's Republic of China. *Id.* ¶ 50. On or about January 21, 2026, local ERO confirmed the travel documents are still pending verification of Petitioner's identity by the People's Republic of China. *Id.* ¶ 51. On or about February 25, 2026, ICE RIO confirmed the 180-day POCR was pending. *Id.* ¶ 52. On or about February 28, 2026, local ERO confirmed the travel documents are still pending verification of Petitioner's identity by the People's Republic of China. *Id.* ¶ 53.

As of today's date, a travel document has not been received. *Id.* ¶ 56. ICE will continue its efforts to obtain a travel document for Petitioner. *Id.*

ARGUMENT

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Upon the entry of a final removal order, "the Attorney General 'shall detain the alien' during the 90-day removal period established under 8 U.S.C. § 1231(a)(2)." *Zhiriakov*, 2020 WL

3960442, at *8 (citations omitted). "Generally, the government is required to remove the alien held in its custody within the 90-day removal period." *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, *4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, "[i]f removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances." *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, "the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal." *Zhiriakov*, 2020 WL 3960442, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). "Beyond that period, if the alien shows that there is 'no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). "The six-month presumption" thus "does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

Here, Petitioner alleges that he has been a "legally admitted noncitizen since 1993." Doc. 1, ¶ 1. But, Plaintiff was never lawfully admitted to the United States. Rather, Petitioner was immediately placed in exclusion proceedings upon his entry to the United States in 1993. Carroll Decl., Exhibit 1, ¶¶ 6-7. Petitioner then failed to appear and was ordered excluded *in abstenia*. *Id.* ¶ 8. Petitioner remained in the United States unlawfully for 10 years before filing a Motion to Reopen Proceedings. *Id.* ¶¶ 8-11. Petitioner's order of removal became final on July 28, 2008, and in January 2011, Petitioner was placed on an OSUP. *Id.* ¶¶ 15, 22. After the United States had success in removals to the People's Republic of China, Petitioner's OSUP was revoked on August 12, 2025. *Id.* ¶¶ 34, 54-55.

Although Petitioner states that he believes the People's Republic of China does not recognize him as its citizen, Petitioner provides no basis for this belief. Doc. 1, ¶ 17. Moreover, Petitioner once possessed a Chinese passport, but purportedly lost the passport and failed to provide proof to ICE of his reported attempts to obtain a new Chinese travel document. *Id.* ¶ 23, 32-33. Thus, the evidence does not support the conclusion that the People's Republic of China does not recognize Petitioner as a citizen but, rather, that a travel document simply has not yet been obtained. During the seven months that Petitioner has been detained, ICE has worked actively to obtain a travel document, including by promptly preparing a travel document request, elevating review of the travel document request within the agency, and regularly following up on the status of the travel document request. Carroll Decl., Exhibit 1, ¶¶ 34-53

Respondents recognize that the Court has requested specific details or specific information supporting the contention that the United States has recently had more success in obtaining travel documents from the People's Republic of China or detail regarding the likely duration of the travel document request process. *See, e.g.*, *Wan Xin Jiang v. Carter*, No. 26-3006-JWL, 2026 U.S. Dist. LEXIS 39707, at *6 (D. Kan. Feb. 26, 2026); *Ping Heng Qui v. Carter*, No. 25-3131-JWL, 2025 U.S. Dist. LEXIS 190236, at *9 (D. Kan. Sep. 26, 2025). Here, the declarant is aware of at least three aliens detained by ERO in Kansas City that ICE was able to successfully obtain travel documents for and remove to the People's Republic of China between April 20, 2025, and October 27, 2025. *Id.* ¶ 54. Although the delay in receiving a response from the People's Republic of China here is greater than average, the People's Republic of China is issuing travel documents for commercial removals and charter removals. *Id.* ¶¶ 55. Additionally, ICE RIO confirmed it has successfully executed charter removals in January, June, and December 2025, with a fourth flight scheduled this month. *Id.*

As recognized by the Supreme Court in *Zadvydas*, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, "an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701); *see also Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *report and recommendation adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025) ("But a mere delay does not trigger the inference that an individual will not be removed in the reasonably foreseeable future because 'the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.'") (alteration and citation omitted); *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, *3 (S.D. Tex. Oct. 21, 2024) ("Speculation and conjecture are not sufficient to carry [Petitioner's] burden, 'nor is a lack of visible progress' in his removal sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future.") (citation omitted). Even when the government "has not identified a specific date by which it expects a travel document to issue," it remains true that "uncertainty as to when removal will occur does not establish that detention is indefinite." *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, *4 (W.D. Wash. May 10, 2024).

Because Petitioner's argument that there is no significant likelihood of removal in the reasonably foreseeable future rests solely on the passage of the presumptively reasonable six-month period and his unexplained belief that China will not recognize him as a citizen, Petitioner has not met his burden under *Zadvydas*. *See Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). Regardless, Respondents have produced evidence of success in removing Chinese citizens in the past year and diligence in requesting a travel document for

Petitioner. The Court should therefore conclude that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future and deny Petitioner's requested relief.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 13, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I will cause a copy of the foregoing filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

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