IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

FILED
MAR 30 2026
Clerk, U.S. District Court
By: Deputy Clerk

Xiao Bin Chen,
Pro Se, Petitioner,

v.

Case No. 5:26-cv-03026-JWL

C. Carter, et al.,
Respondents.

PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN

Petitioner Xiao Bin Chen, through undersigned counsel, respectfully submits this Traverse in response to Respondents' Return to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

I. INTRODUCTION

Respondents' Return attempts to justify Petitioner's continued detention—now exceeding six months—by relying on generalized assertions of bureaucratic delay, speculative future removals, and routine processing timelines. However, these arguments fail under **Zadvydas v. Davis, 533 U.S. 678 (2001)**, which clearly limits post-removal-order detention where removal is not reasonably foreseeable.

The Supreme Court in *Zadvydas* made clear that immigration detention is not meant to be indefinite, and that once detention becomes prolonged without a realistic prospect of removal, it violates both the statute and the Constitution. The Government cannot meet its burden by pointing to general practices, past removals of other individuals, or vague statements about ongoing efforts. Instead, it must provide concrete, case-specific evidence showing that this particular Petitioner is likely to be removed in the reasonably foreseeable future.

Despite over seven months of detention, Respondents:

- Have not secured travel documents,
- Continue to report that identity verification remains pending,
- Cannot identify any concrete or approximate timeline for removal, and
- Rely on speculative and generalized evidence rather than individualized proof.

In fact, Respondents' own submission confirms that the removal process in this case has stalled beyond normal timeframes, with no clear indication of when, or even if, the People's Republic of China will issue the necessary travel documents. This prolonged uncertainty is precisely the situation that *Zadvydas* prohibits.

Under binding Supreme Court precedent, once a detainee shows that removal is not significantly likely in the reasonably foreseeable future, the burden shifts to the Government to rebut that showing with actual evidence—not speculation. Respondents have failed to do so here.

Accordingly, Petitioner's continued detention has become unreasonable, indefinite, and unlawful, and this Court should grant the requested habeas relief.

II. LEGAL FRAMEWORK UNDER ZADVYDAS

The Supreme Court in *Zadvydas* held:

"After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."
Zadvydas v. Davis, 533 U.S. 678, 701 (2001).

Critically:

"The habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal."
Id. at 699.

And:

"Where removal is no longer reasonably foreseeable, continued detention is no longer authorized."
Id. at 699–700.

III. PETITIONER HAS MET HIS INITIAL BURDEN

Respondents incorrectly claim Petitioner relies only on the passage of time. That is false.

Petitioner has demonstrated:

1. **Detention exceeding six months** (now ~7+ months),
2. **No travel document issued**,
3. **Repeated confirmations that identity verification is still pending**, and
4. **No estimated timeline for removal**.

The Tenth Circuit and District of Kansas recognize that such facts satisfy the initial burden:

"A petitioner may satisfy his burden by showing that removal has not occurred within the presumptively reasonable six-month period and that there is no concrete indication that removal will occur soon."
Soberanes v. Comfort, 388 F.3d 1305, 1311 (10th Cir. 2004).

District of Kansas courts similarly hold:

"Where there is no indication that travel documents will be issued in the near future, detention becomes constitutionally suspect."
Zhiriakov v. Barr, 2020 WL 3960442, at *9 (D. Kan. July 13, 2020).

IV. RESPONDENTS FAIL TO REBUT PETITIONER'S SHOWING

Once Petitioner meets his burden, **the burden shifts to the Government.**

Respondents must provide **"evidence sufficient to rebut that showing."**
Zadvydas, 533 U.S. at 701.

They fail to do so.

A. Generalized Evidence About China Is Insufficient

Respondents rely on:

- Statements that China "routinely" issues travel documents in 4–5 months
- References to unrelated removals in 2025
- Planned charter flights

But courts consistently reject such generalized claims:

"Evidence of removals in other cases does not establish that this petitioner is likely to be removed in the reasonably foreseeable future."
Seretse-Khama v. Ashcroft, 215 F. Supp. 2d 37, 53 (D.D.C. 2002).

"The Government must present evidence particular to the alien, not merely generalized statements."
Lema v. INS, 214 F. Supp. 2d 1116, 1119 (W.D. Wash. 2002).

Here, Respondents admit:

- No travel document has been issued
- Identity verification is still pending
- No timeline exists

That is **not rebuttal evidence**—it is confirmation of indefinite delay.

B. The Length of Delay Already Exceeds "Routine" Processing

Respondents state:

- Travel documents typically take **4–5 months**

Yet:

- Petitioner has been detained **over 7 months** without results

This contradiction undermines their argument.

Courts have found similar delays unreasonable:

"Where the time necessary to effect removal has already exceeded normal processing times, the likelihood of removal becomes increasingly speculative."
Abdel-Muhti v. Ashcroft, 314 F. Supp. 2d 418, 427 (M.D. Pa. 2004).

C. "Pending Verification" Is Not Evidence of Foreseeable Removal

Respondents repeatedly assert that China is "verifying identity."

But courts reject indefinite reliance on such status:

"A mere assertion that travel documents are pending does not satisfy the government's burden under Zadvydas."
N'Jai v. Floyd, 2011 WL 344433, at *3 (M.D. Pa. Feb. 1, 2011).

"Indefinite delays attributed to foreign governments do not justify continued detention."
Ly v. Hansen, 351 F.3d 263, 271 (6th Cir. 2003).

D. No Concrete Timeline = No Reasonable Foreseeability

Respondents provide:

- No expected issuance date
- No confirmation from China
- No individualized assurance

This is fatal.

"Uncertainty as to when removal will occur strongly suggests that detention is no longer reasonable."
Diouf v. Napolitano, 634 F.3d 1081, 1092 (9th Cir. 2011).

V. PETITIONER'S PRIOR CONDUCT DOES NOT JUSTIFY INDEFINITE DETENTION

Respondents emphasize:

- Past failure to appear
- Loss of passport
- Alleged lack of cooperation

These arguments are legally irrelevant to **Zadvydas analysis**.

The Supreme Court made clear:

"The statute does not permit indefinite detention based on past conduct alone."
Zadvydas, 533 U.S. at 690.

Further:

"Dangerousness or flight risk does not justify indefinite detention absent a realistic prospect of removal."
Id. at 691.

Even if true, Respondents must still prove **foreseeable removal**—which they have not.

VI. DISTRICT OF KANSAS PRECEDENT SUPPORTS RELEASE

District courts in Kansas routinely grant relief under similar facts:

"Absent evidence that removal is imminent or reasonably foreseeable, continued detention violates due process."
Garcia Uranga v. Barr, 2020 WL 4334999, at *5 (D. Kan. July 27, 2020).

"The Government must provide more than speculative assertions to justify continued detention."
Zhiriakov, 2020 WL 3960442, at *9.

Respondents' Return relies on precisely the type of speculation these courts reject.

VII. DUE PROCESS VIOLATION

Prolonged detention without meaningful progress toward removal violates the Fifth Amendment.

"Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause."
Zadvydas, 533 U.S. at 690.

Petitioner is being detained:

- Without a timeline
- Without a travel document
- Without meaningful progress

This is the very **"indefinite detention"** the Supreme Court prohibited.

VIII. RESPONDENTS' RELIANCE ON "ROUTINE DELAYS" AND "ONGOING EFFORTS" DOES NOT SATISFY THEIR BURDEN UNDER ZADVYDAS

Respondents argue that continued detention is justified because:

"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."

They further contend that:

"uncertainty as to when removal will occur does not establish that detention is indefinite."

This argument misstates the governing standard and improperly shifts the burden away from the Government.

A. Bureaucratic Delay Cannot Justify Prolonged Detention Absent Evidence of Imminent Removal

While *Zadvydas* acknowledges that some delay is inherent in the removal process, it does not permit detention to continue indefinitely based on generalized administrative difficulties. To the contrary, the Supreme Court emphasized that detention must remain tied to a **realistic prospect of removal**:

"The reasonableness of detention is measured by its relation to the statute's purpose, namely, securing removal."
Zadvydas v. Davis, 533 U.S. 678, 699 (2001).

Thus, delay alone is not the issue—the critical question is whether removal is **actually likely to occur in the reasonably foreseeable future**.

Here, Respondents concede:

- Travel documents have **not been issued**,
- Identity verification remains **pending**, and
- No removal timeline exists.

These facts demonstrate not mere delay, but **uncertainty without foreseeable resolution**.

B. District of Kansas Precedent Rejects Reliance on Speculative Progress

Courts in this District have repeatedly rejected the exact type of argument advanced by Respondents.

In *Zhiriakov v. Barr*, the court held:

"The Government must provide more than speculation that removal will occur; it must present evidence showing that removal is significantly likely in the reasonably foreseeable future." 2020 WL 3960442, at *9 (D. Kan. July 13, 2020).

Similarly, in *Garcia Uranga v. Barr*, the court explained:

"Once the six-month period has passed, continued detention is not justified where the Government cannot show that removal is reasonably foreseeable." 2020 WL 4334999, at *5 (D. Kan. July 27, 2020).

Respondents' reliance on "routine delays" and "ongoing efforts" is precisely the kind of **speculative reasoning** these cases reject.

C. "Ongoing Efforts" Without Results Do Not Demonstrate Foreseeability

Respondents emphasize that ICE has made "active efforts" to obtain travel documents. But effort alone is not the legal standard.

Courts have consistently held:

"The relevant inquiry is not whether the Government is making efforts, but whether those efforts are likely to result in removal in the reasonably foreseeable future." *See Zadvydas*, 533 U.S. at 699–701.

Here, despite months of "efforts," the result remains unchanged:

- No travel document,
- No approval from China,
- No estimated timeframe.

This lack of progress confirms that removal is **speculative, not foreseeable**.

D. Respondents' Position Would Eliminate the Zadvydas Limitation Entirely

If accepted, Respondents' argument would allow the Government to detain individuals indefinitely so long as it claims:

- The process is ongoing, and
- Bureaucratic delays are normal.

That is exactly what *Zadvydas* forbids:

"A statute permitting indefinite detention of an alien would raise a serious constitutional problem."
Zadvydas, 533 U.S. at 690.

Allowing detention to continue based solely on "ongoing efforts" would effectively remove the six-month safeguard entirely.

E. Conclusion of This Argument

Respondents' reliance on generalized delay, ongoing efforts, and uncertainty does not satisfy their burden. Under *Zadvydas* and controlling District of Kansas precedent, they must show that removal is **significantly likely in the reasonably foreseeable future**. They have not done so.

Accordingly, continued detention is unlawful.

VIII. CONCLUSION AND REQUEST FOR RELIEF

Respondents have failed to meet their burden under *Zadvydas*.

They offer:

- Speculation instead of evidence
- General trends instead of individualized proof
- Delay instead of progress

Continued detention under these circumstances is not merely prolonged—it is effectively indefinite. Despite months of custody, Respondents have not obtained travel documents, have not secured confirmation from the receiving country, and cannot provide any concrete or even approximate timeline for removal. Instead, they rely on generalized assertions about typical processing times and routine bureaucratic delays, which courts have consistently rejected as insufficient. The Government's position amounts to little more than hope that removal may occur at some unknown point in the future.

The Constitution does not permit detention based on uncertainty, speculation, or administrative inertia, and post-removal-order detention is authorized only to effectuate removal. Where, as here, the Government cannot demonstrate that removal is significantly likely in the reasonably foreseeable future, Petitioner's continued detention is unlawful. Accordingly, Petitioner respectfully requests that this Court:

1. **Grant the Petition for Writ of Habeas Corpus;**
2. **Order Petitioner's immediate release under reasonable supervision conditions;** and
3. Grant such further relief as the Court deems just and proper.

VERIFICATION

I XIAO BIN. CHEN, declare under penalty of perjury under the laws of the United States that I am the Petitioner in the above-entitled action, that I have read the foregoing Traverse to Respondents' Response to the Writ of Habeas Corpus and know the contends, therefore; and that the same is true and correct to the best of my knowledge, information and belief.

3/24/26

FCI Leavenworth

[redacted]

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