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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 YOUB PEK,) Case No. 1:25-cv-01696-DC-SCR
11)
Petitioner,)
12 vs.) **PETIONER’S REPLY TO RESPONDENT’S**
13) **RETURN TO PETITION FOR WRIT OF**
WARDEN OF THE GOLDEN STATE) **HABEAS CORPUS**
14 ANNEX, ET AL.,)
15 Respondents.)

16 **I. Introduction**

17 Mr. Pek was ordered removed to Cambodia in 1999. Since then, he has been detained for
18 far more than a total of six months since that removal order became final. United States
19 Immigration and Customs Enforcement (“ICE”) has not been able to remove him in the 26 years
20 since he was ordered deported. For the reasons set forth in Mr. Pek’s petition and below, this
21 Court should grant Mr. Pek’s petition.

22 **II. Statement of Facts**

23 Respondents state that Mr. Pek was ordered removed to Cambodia on February 2, 1999.
24 ECF 14-1, p. 3. In 1999, the Immigration and Naturalization Service (INS) requested a travel
25 document for Mr. Pek from the Consulate of Cambodia, but Cambodia did not issue a travel
26 document. *Id.*

27 On May 5, 2000, after having spent one year, three months, and three days, in post-final-
28 order detention, the INS released Mr. Pek under an Order of Supervision. *Id.* The parties agree

1 that in the more than 25 years since his first release from ICE custody, Mr. Pek has been in ICE
2 custody numerous times, and Cambodia has continued to refuse to issue a travel document that
3 would enable ICE to deport Mr. Pek. ECF 1, p. 2; ECF 14-1, p. 3.

4 On October 14, 2025, the Department of Homeland Security (DHS) arrested Mr. Pek
5 upon his release from the California Department of Corrections and Rehabilitation, where he had
6 finished serving a prison term. ECF 14-1, p. 4. On the same day DHS revoked Mr. Pek's order
7 of supervision on the ground that he had criminal convictions and on the ground that "it believed
8 it would be able to effectuate his removal to Cambodia in the foreseeable future." ECF 14-1, pp.
9 4, 6-7. On December 9, 2025, ICE submitted a travel document request to the Cambodian
10 Embassy, and on December 22, 2025, Mr. Pek was scheduled for an interview at the Cambodian
11 Embassy. ECF 14-1, p. 4. As of December 23, 2025, Mr. Pek has been detained by ICE for a
12 total of two months and 10 days during 2025.

13 III. Argument

14 A. Because Mr. Pek Has Been Detained for Significantly More than 15 Six Months Following His Removal Order and the Government 16 Cannot Show He Is Likely To Be Removed in the Reasonably Foreseeable Future, Mr. Pek's Detention is Unlawful.

17 In Ground One of his petition, Mr. Pek argues that his detention is no longer authorized
18 under 8 U.S.C. § 1231(a)(6). ECF 1, pp. 13-14.

19 When a noncitizen is ordered removed, the DHS (of which ICE is a part) has 90 days in
20 which to accomplish removal. 8 U.S.C. § 1231. During that 90-day removal period, the
21 noncitizen must be detained. 8 U.S.C. § 1231(a)(2). When the government fails to remove the
22 noncitizen during that period, detention may continue if the noncitizen falls within certain
23 categories, including being removable for violations of criminal law. 8 U.S.C. § 1231(a)(6);
24 *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Because Mr. Pek is removable for violations of
25 criminal law, his detention is governed by § 1231(a)(6).

26 Even if detention past the statutory 90-day removal period is justified under 8 U.S.C. §
27 1231(a)(6), the Immigration and Nationality Act does not permit indefinite detention. *Zadvydas*,
28 533 U.S. at 682 (finding that, in order to avoid serious constitutional concerns, the INA must be

1 interpreted to limit detention following entry of a removal order to a “period reasonably
2 necessary to secure [the noncitizen’s] removal” from the United States) (emphasis in original).
3 In *Zadvydas*, the Supreme Court adopted a presumptively reasonable period of detention of six
4 months. *Id.* at 700-01. After six months of detention, a noncitizen may seek release by showing
5 “good reason to believe that there is no significant likelihood of removal in the reasonably
6 foreseeable future.” *Id.* at 701. The burden then shifts to the government to present “evidence
7 sufficient to rebut that showing.” *Id.* If the government is unable to meet its burden, then the
8 noncitizen must be released from detention. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

9 In the present case, Mr. Pek has been detained following his removal order for a total
10 length of time far exceeding six months. He was initially detained following his removal order
11 for one year, three months, and three days. During 2025 he has been detained for an additional
12 two months and 10 days. The post order detention period is cumulative; the six-month
13 presumptively reasonable period to carry out a removal order “does not reset when the
14 government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-
15 detains him again.” *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Nguyen*
16 *v. Charles*, No. 1:25-CV-01592-TLN-CSK, 2025 WL 3492117, at *5 (E.D. Cal. Dec. 4, 2025)
17 (same); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 721 (W.D. Wash. 2025) (same); *Siguenza v.*
18 *Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (“Most courts to consider the issue
19 have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the
20 federal government could otherwise detain noncitizens indefinitely by continuously releasing and
21 re-detaining them.”) (collecting cases).

22 In his petition, Mr. Pek showed that his removal in the reasonably foreseeable future is
23 unlikely. He explained that he has been detained four times since he was ordered removed in
24 1999 and in all those years Cambodia has never issued a travel document allowing the
25 government to carry out his removal order. ECF 1, p. 2. In response to Mr. Pek’s petition, the
26 government has not met its burden of showing Mr. Pek’s removal is likely to occur in the
27 reasonably foreseeable future. It cites to the fact that it has submitted a new travel document
28 request to the government of Cambodia and has arranged for Mr. Pek to be interviewed at the

1 Cambodian Embassy, ECF 14, p. 5, but neither of these facts fulfill the government’s burden to
2 show removal is likely in the reasonably foreseeable future. Many courts have agreed that
3 requesting travel documents does not itself make removal reasonably likely. *See, e.g., Hoac v.*
4 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
5 (“[t]he fact that Respondents intend to complete a travel document request for Petitioner does not
6 make it significantly likely he will be removed in the foreseeable future.”); *Andreasyan v.*
7 *Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s
8 case was “still under review and pending a decision” did not meet respondents’ burden); *Islam v.*
9 *Kane*, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*,
10 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh
11 Consulate that the travel document request is pending does not provide any insight as to when, or
12 if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala.
13 2011) (granting petition despite pending travel document request, where “[t]he government
14 offers nothing to suggest when an answer might be forthcoming or why there is reason to believe
15 that he will not be denied travel documents”); *Mohamed v. Ashcroft*, 2002 WL 32620339, at *1
16 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

17 Respondents state: “DHS believes it will be able to effectuate [Mr. Pek’s] removal to
18 Cambodia in the reasonably foreseeable future,” (ECF 14, p. 5:13-14), but when a petitioner has
19 shown that over many years their country of birth has refused to issue travel documents to allow
20 removal, “Courts in [the Ninth Circuit] have regularly refused to find Respondents’ burden met
21 where Respondents have offered little more than generalizations regarding the likelihood that
22 removal will occur.” *Nguyen*, 796 F. Supp. 3d at 725; *see also Zheng v. Albarran, et al.*, No.
23 1:25-CV-01685-DJC-CKD, 2025 WL 3640676, at *3 (E.D. Cal. Dec. 16, 2025) (“in light of the
24 specific evidence regarding both the Government and Petitioner’s personal inability to obtain
25 travel documents for Petitioner, the Court affords little weight to the general representations that
26 ICE has had some success obtaining travel documents from China.”).

27 This Court should grant Mr. Pek’s petition on Ground One because he has been detained
28 for more than six months since he was ordered removed and his removal is not likely in the

1 reasonably foreseeable future.¹

2 **B. Because ICE's Current Procedures for Effectuating Third**
3 **Country Removals Are Unlawful, this Court Should Grant Mr.**
4 **Pek's Petition and Enjoin Respondents from Removing Him to a**
5 **Third Country Without Adequate Notice and Process.**

6 In Ground Two of his petition, Mr. Pek argues that the DHS's current third country
7 removal process violates the Fifth Amendment to the Constitution, 8 U.S.C. § 1231, the
8 Convention Against Torture and its implementing regulations, and the Administrative
9 Procedures Act. ECF 1, pp. 14-15. In Ground Three of his petition, Mr. Pek argues that to the
10 extent DHS removes him as punishment, his removal would violate the Fifth and Eighth
11 Amendments to the United States Constitution.

12 Respondent does not address Grounds Two and Three of Mr. Pek's petition. For the
13 reasons set forth in the petition and in numerous cases agreeing with Mr. Pek's arguments,² this
14 Court should grant the petition and issue an order providing:

15 Respondents and their officers, agents, servants, employees, and persons acting on their
16 behalf in concert or in participation with them, are enjoined from removing Petitioner via a third-
17 country deportation to any country without providing him and his counsel meaningful notice and
18 opportunity to assert a fear-based claim for relief from removal:

19 a. A minimum of ten (10) days to raise a fear-based claim for relief from removal to the
20 identified country;

21 b. If Petitioner does assert a fear-based claim for relief from removal, Petitioner may not

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23 ¹ In Ground Four of his petition, Mr. Pek challenges the process ICE used to revoke his release
24 under supervision. Because it appears ICE revoked Mr. Pek's supervision in part based on a
25 violation of the terms of his order of supervision due to a new criminal conviction, and because it
26 appears ICE gave Mr. Pek written notification and an informal interview, Mr. Pek submits as to
27 Ground Four.

28 ² See, e.g., *A.A.M. v. Andrews, et al.*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL 3685159, at
*1 (E.D. Cal. Dec. 19, 2025); *Escobar v. Chestnut, et al.*, No. 1:25-CV-01801-DJC-EFB, 2025
WL 3687639, at *4 (E.D. Cal. Dec. 19, 2025) (collecting cases); *G.A.A. v. Chestnut*, No. 1:25-
CV-01102-EPG-HC, 2025 WL 3251316, at *7 (E.D. Cal. Nov. 21, 2025); *Nguyen*, 796 F. Supp.
3d at 728 (ICE's third country removal process, as laid out in July 9, 2025, ICE memo
"contravenes Ninth Circuit law,.").

1 be removed to the third country without first providing him a meaningful opportunity to be heard
2 on his fear-based claim before an immigration judge in compliance with due process.

3 **IV. Conclusion**

4 For the foregoing reasons and the reasons set forth in Mr. Pek's petition, this Court
5 should grant Mr. Pek's petition and order

6 1. Respondents SHALL IMMEDIATELY RELEASE Petitioner under appropriate
7 conditions of supervision set forth in 8 C.F.R. § 241.5;

8 2. Respondents and their officers, agents, servants, employees, and persons acting on
9 their behalf in concert or in participation with them, are enjoined from removing Petitioner via a
10 third-country deportation to any country without providing him and his counsel meaningful
11 notice and opportunity to assert a fear-based claim for relief from removal:

12 a. A minimum of ten (10) days to raise a fear-based claim for relief from removal to the
13 identified country;

14 b. If Petitioner does assert a fear-based claim for relief from removal, Petitioner may not
15 be removed to the third country without first providing him a meaningful opportunity to be heard
16 on his fear-based claim before an immigration judge in compliance with due process.

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18 Respectfully submitted,

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21 Date: December 23, 2025

22 /s/ Carolyn M. Wiggin
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