

Kara Hartzler
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Kara_hartzler@fd.org

Attorneys for Petitioner

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

MAKE CHEN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Center,

Respondents.

CIVIL CASE NO.: '26CV2687 JO B JW

**Petition for Writ
of
Habeas Corpus**

**[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]**

INTRODUCTION

Make Chen is a citizen of China who was ordered removed on October 22, 2025. In *Chen v. Mullin, et al*, 26-cv-2054-RSH-JLB (S.D. Cal.), Judge Huie denied Mr. Chen's habeas petition, finding that he "still falls within the six-month presumptively reasonable period of detention." 26-cv-2054-RSH-JLB, Dkt. 6 at 2 (also attached as Exhibit D). Judge Huie also relied on Respondents' assertion that Mr. Chen was "scheduled to be removed from the United States to China on April 26, 2026," to find that Mr. Chen had not "rebutted the presumption that his detention pending removal is reasonable." Exh. D at 2. Judge Huie thus denied the petition without prejudice. *Id.*

Mr. Chen has now been detained beyond the six-month presumptively reasonable period of detention. What's more, Respondents failed to remove Mr. Chen on April 26, 2026, as they claimed they would do. Thus, this Court should immediately order him released because Respondents' failure to abide by their own deadlines shows they have not met their burden to prove a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

Mr. Chen was born in China and entered the United States on a student visa in 2019. Exhibit A, Declaration of Make Chen at ¶ 1. He attended high school and then transferred to a community college before finally transferring to UC San Diego. *Id.* at ¶ 1.

On September 27, 2025, Mr. Chen went to an air show at a military base in Miramar. *Id.* at ¶ 2. He had to present an ID, and when he did so, the military officials claimed that his student visa had expired, which Mr. Chen was not aware of. *Id.* at ¶ 2.

1 ICE took Mr. Chen into custody and transferred him to Otay Mesa
2 Detention Center. *Id.* at ¶ 3. He agreed to a stipulated removal, which became
3 final on October 22, 2025. *Id.* at ¶ 3.

4 On February 23, 2026, Mr. Chen talked to an ICE deportation officer, who
5 told him he would be deported within one month. *Id.* at ¶ 4. On March 15, 2026,
6 ICE sent Mr. Chen to Texas, then to Arizona, then to Utah, then back to Texas,
7 then to Arizona, and finally back to San Diego in the space of eight days, but did
8 not deport him. *Id.* at ¶ 4.

9 On April 1, 2026, Mr. Chen filed a petition for a writ of habeas corpus,
10 arguing that his detention violated *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See*
11 *Chen v. Mullin, et al*, 26-cv-2054-RSH-JLB (S.D. Cal.). In their Return,
12 Respondents attached a declaration from a deportation officer claiming that “ICE
13 has booked a flight for Petitioner and he is currently scheduled to be removed
14 from the United States on April 26, 2026.” Exhibit B, Declaration of Terrilyn
15 Hunter, at ¶ 11. Respondents then relied on this in their Return to argue that
16 “Respondents believe there is a significant likelihood of his removal in the
17 reasonably foreseeable future” because “Petitioner currently has a removal flight
18 booked for April 26, 2026.” Exhibit C, Respondents’ Return at 2. Based on
19 Respondents’ representations, Judge Huie denied the habeas petition without
20 prejudice. Exh. D at 2.

21 However, no ICE officer ever told Mr. Chen that he would be removed on
22 April 26, 2026. Exh. A at ¶ 5. And April 26 came and went without ICE ever
23 deporting Mr. Chen or telling him when he would be deported. *Id.* at ¶ 5. To date,
24 Mr. Chen remains in custody at Otay Mesa Detention Center. *Id.* at ¶ 5.

25 CLAIMS FOR RELIEF

26 This Court should grant this petition and order Mr. Chen’s immediate
27 release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the
28 government to detain immigrants for whom there is “no significant likelihood of

1 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001). Because
2 Mr. Chen’s removal period now exceeds six months, and Respondents did not
3 remove Mr. Chen on April 26 as they claimed they would, Respondents have
4 failed to carry their burden.

5 **I. Count One: Petitioner’s detention violates *Zadvydas* and 8 U.S.C.**
6 **§ 1231.**

7 **A. Legal background**

8 Mr. Chen’s continued incarceration violates the statute authorizing
9 detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the
10 Supreme Court considered a problem affecting similarly situated people. Federal
11 law requires ICE to detain an immigrant during the “removal period,” which
12 typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C.
13 § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes
14 discretionary—ICE may detain the migrant while continuing to try to remove
15 them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive
16 detention, as removal happens within days or weeks. But some detainees cannot
17 be removed quickly. Perhaps their removal “simply require[s] more time for
18 processing,” or they are “ordered removed to countries with whom the United
19 States does not have a repatriation agreement,” or their countries “refuse to take
20 them,” or they are “effectively ‘stateless’ because of their race and/or place of
21 birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and
22 other circumstances, detained immigrants can find themselves trapped in
23 detention for months, years, decades, or even the rest of their lives.

24 If federal law were understood to allow for “indefinite, perhaps permanent,
25 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
26 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
27 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

1 As an initial matter, *Zadvydas* held that detention is “presumptively
2 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
3 for effectuating removals.

4 Following the six-month grace period, courts must use a burden-shifting
5 framework to decide whether detention remains authorized. First, the petitioner
6 must make a *prima facie* case for relief: He must prove that there is “good reason
7 to believe that there is no significant likelihood of removal in the reasonably
8 foreseeable future.” *Id.*

9 If he does so, the burden shifts to “the Government [to] respond with
10 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
11 proof rests with the government: The government must prove that there is a
12 “significant likelihood of removal in the reasonably foreseeable future,” or the
13 immigrant must be released. *Id.*

14 **B. The six-month grace period has now expired.**

15 As an initial matter, the six-month grace period has now expired for
16 Mr. Chen. The *Zadvydas* grace period lasts for “*six months* after a final order of
17 removal—that is, *three months* after the statutory removal period has ended.” *Kim*
18 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Chen’s
19 order of removal became final on October 22, 2025—over six months ago. The
20 threshold requirement is therefore met.

21 **C. There is good reason to believe that there is no significant**
22 **likelihood of removal in the reasonably foreseeable future.**

23 Because the six-month grace period has expired, this Court must evaluate
24 Petitioner’s *Zadvydas* claim using the burden-shifting framework. At the first
25 stage of the framework, there must be “good reason to believe that there is no
26 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
27 533 U.S. at 701. This standard can be broken down into three parts.
28

1 **“Good reason to believe.”** The “good reason to believe” standard is a
 2 relatively forgiving one. “A petitioner need not establish that there exists no
 3 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
 4 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
 5 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
 6 foreseeable, significant likelihood of removal or show that his detention is
 7 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
 8 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
 9 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
 10 Petitioner need only give a “good reason”—not prove anything to a certainty.

11 **“No significant likelihood of removal.”** This component focuses on
 12 *whether* Petitioner will likely be removed: Continued detention is permissible
 13 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
 14 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
 15 untapped possibilities, but also [the] probability of *success* in such possibilities.”
 16 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
 17 added). In other words, even if “there remains *some* possibility of removal,” a
 18 petitioner can still meet its burden if there is good reason to believe that
 19 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
 20 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

21 **“In the reasonably foreseeable future.”** This component of the test
 22 focuses on when Petitioner will likely be removed: Continued detention is
 23 permissible only if removal is likely to happen “in the reasonably foreseeable
 24 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
 25 removal efforts. If the Court has “no idea of when it might reasonably expect
 26 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
 27 is likely to occur—or even that it might occur—in the reasonably foreseeable
 28 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3

(S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that the Petitioner “would *eventually* receive” a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Here, Respondents have twice tried and failed to remove Mr. Chen. First, ICE told him in February 2026 that he would be leaving within one month. Exh. A at ¶ 4. But ICE simply sent Mr. Chen to Texas, then to Arizona, then to Utah, then back to Texas, then to Arizona, and finally back to San Diego in the space of eight days without ever deporting him. *Id.* at ¶ 4.

Then, in response to Mr. Chen’s habeas petition, Respondents argued that “there is a significant likelihood of his removal in the reasonably foreseeable future” because “Petitioner currently has a removal flight booked for April 26, 2026.” Exh. C at 2. An ICE deportation officer similarly claimed “under penalty of perjury” that “ICE has booked a flight for Petitioner and he is currently scheduled to be removed from the United States on April 26, 2026.” Exh. B at ¶ 11. But no ICE officer ever told Mr. Chen that he would be removed on April 26, 2026—nor was he. Exh. A at ¶ 5. To date, Mr. Chen remains in custody at Otay Mesa Detention Center. *Id.* at ¶ 5.

Previously, Judge Huie found that because Mr. Chen “still falls within the six-month presumptively reasonable period of detention” and was “scheduled to be removed from the United States to China on April 26, 2026,” Mr. Chen had not “rebutted the presumption that his detention pending removal is reasonable.” Exh. D at 2. Because the six-month period has now expired, and Respondents twice failed to remove Mr. Chen when they said they would, Respondents cannot show a significant likelihood of removal in the reasonably foreseeable future. Thus, this Court should immediately grant Mr. Chen’s habeas petition.

II. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Petitioner hereby requests such a hearing on any material, disputed facts.

III. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner unless and until ICE provides evidence that Mr. Chen is confirmed on a removal flight to China no more than two weeks in the future; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 27, 2026

/s/ Kara Hartzler

Kara Hartzler

Federal Defenders of San Diego, Inc.

Email: Kara.Hartzler@fd.org

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: April 27, 2026

/s/ Kara Hartzler
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