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

10 MAKE CHAN,

Petitioner,

11 v.

12 MARKWAYNE MULLIN, *U.S.*
13 *Department of Homeland Security, et al.,*

14 Respondents.

Case No.: 26-cv-02687-RSH-BJW

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

1 Petitioner Make Chan has filed a second petition for writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 less than two weeks after this Court denied his first
3 Petition (Petition 1). *See* Exhibit (Ex.) 7 (Order Denying Petition). In denying Petition
4 1, the Court found (1) “Petitioner still falls within the six-month presumptively
5 reasonable period of detention” under *Zadvydas v. Davis*; and (2) that because ICE
6 received a travel document and was attempting to remove Petitioner on April 26, 2026,
7 “the Court is not persuaded that Petitioner has rebutted the presumption that his
8 detention pending removal is unreasonable.” Ex. 7 at 2; 533 U.S. 678, 689 (2001).
9 Petitioner argues now that his removal period has extended 20 days beyond the six-
10 month presumptively reasonable period of detention, and because he was not removed
11 on April 26, 2026, “this Court should immediately grant [his] habeas petition” and
12 “[o]rder Respondents to immediately release Petitioner from custody.” ECF No. 1
13 (Petition 2) at 6, *Id.* at 7 (“Prayer for relief”).

14 Because there is still good reason to believe there is a significant likelihood of
15 removal in the reasonably foreseeable future, the Court should deny Petition 2.

16 II. FACTUAL BACKGROUND

17 Petitioner is a native and citizen of China. On or about August 21, 2019,
18 Petitioner was admitted to the United States under a nonimmigrant student that expired
19 on May 9, 2024. On August 13, 2022, Petitioner was convicted of indecent assault of a
20 person less than 13 years of age in violation of Pennsylvania State Code 18 § 1326(a)(7),
21 for which he was sentenced to five years of probation and required to register as a Tier
22 III sexual offender. Ex. 6 at ¶¶ 3-5. On September 27, 2025, Petitioner was taken into
23 immigration custody. He was served with a Notice to Appear and charged with
24 removability for overstaying his visa under the Immigration and Nationality Act (INA)
25 § 237(a)(1)(B) and for having been convicted of a crime involving moral turpitude
26 under INA § 237(a)(2)(A)(i). *Id.* at ¶ 6.

27 On October 22, 2025, an Immigration Judge (IJ) ordered Petitioner removed to
28 China. Both Petitioner and DHS waived appeal. The IJ’s order became final on October

22, 2025. Accordingly, Immigration and Customs Enforcement (ICE) is not seeking to remove Petitioner to a third country. Since Petitioner's detention in September 2025, ICE has worked diligently to effectuate his removal to China and Petitioner has expressed a desire to expedite his removal to China. *Id.* at ¶¶ 7-9; *see also* Exhibit 4 (IJ Order) at 1 (noting Petitioner's admissions/concessions at a prior hearing).

On or about March 26, 2026, ICE received a travel document for Petitioner and can effectuate his removal promptly. Petitioner was originally scheduled to be removed on has a removal flight booked for April 26, 2026. *Id.* at ¶ 11. However, Petitioner's removal was rescheduled for removal via a commercial flight on May 10, 2026.¹

III. ARGUMENT

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added). In so holding, the Court recognized that detention is presumptively reasonable pending

¹The undersigned was informed by Respondents that Petitioner's removal needed to be rescheduled to May 10, 2026. Once the undersigned receives a declaration confirming whether or not Petitioner was removed on May 10, 2026, and if not, why, Respondents will file it as a supplement to this Return.

1 efforts to obtain travel documents, because the noncitizen's assistance is needed to
2 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
3 warrant of removal becomes a significant flight risk, especially if he or she is made
4 aware that removal is imminent.

5 The Supreme Court also held that the detention could exceed six months: "This
6 6-month presumption, of course, does not mean that every alien not removed must be
7 released after six months. To the contrary, an alien may be held in confinement until it
8 has been determined that there is no significant likelihood of removal in the reasonably
9 foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good
10 reason to believe that there is no significant likelihood of removal in the reasonably
11 foreseeable future, the Government must respond with evidence sufficient to rebut that
12 showing and that the noncitizen has the initial burden of proving that removal is not
13 significantly likely." *Id.*

14 Here, the Court should deny the Petition as there is 'good reason to believe that
15 there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F.3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701)
16 (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Plainly,
17 Petitioner's sole basis for challenging the legality of his current detention is that his
18 detention is no longer presumed reasonable. However, he fails to provide any
19 explanation for why detention is not still reasonable given there is still a significant
20 likelihood of removal. There is still a valid travel document and ICE continues to
21 attempt to effectuate his removal.
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1 IV. CONCLUSION

2 For the foregoing reasons, Respondents respectfully request that the Court deny
3 Petitioner's second petition for writ of habeas corpus.

4 DATED: May 12, 2026

Respectfully submitted,

5 ADAM GORDON
6 United States Attorney

7 s/ Hunter V. Norton

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10 Attorney for Respondents
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