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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 **MAKE CHEN,**

13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
20 **Enforcement, JESUS ROCHA, Acting**
21 **Field Office Director, San Diego Field**
22 **Office, CHRISTOPHER LAROSE,**
23 **Warden at Otay Mesa Detention Center,**

24 **Respondents.**

Civil Case No.: 26-cv-2687-RSH-BJW

Traverse in
Support of
Petition for Writ of
Habeas Corpus

1 INTRODUCTION

2 Respondents admit that Petitioner Make Chen's order of removal became
3 final nearly seven months ago. ECF 7 at 2-3. Respondents also admit that they
4 have tried and failed three times to deport Mr. Chen. Yet they keep asking this
5 Court for more time to do the thing they keep failing to do. This Court should not
6 give Respondents unlimited opportunities at the expense of Mr. Chen's liberty.

7 ARGUMENT

8 Through a declaration from a deportation officer, Respondents admit that
9 Mr. Chen was confirmed for a flight that was "scheduled to depart on March 24,
10 2026." ECF 8 at ¶ 15. Respondents then sent Mr. Chen to Texas, then to Arizona,
11 then to Utah, then back to Texas, then to Arizona, and finally back to San Diego
12 in the space of eight days, but did not deport him. ECF 1, Exh. A at ¶ 4. Instead,
13 Respondents claim that they cancelled his removal on a chartered flight "in favor
14 of removal via commercial air." ECF 8 at ¶ 15.

15 Mr. Chen filed a petition for habeas corpus. *See Chen v. Mullin, et al*, 26-
16 cv-2054-RSH-JLB (S.D. Cal.). In response, Respondents contended that
17 Mr. Chen was slated for a "commercial removal flight scheduled to depart on
18 April 26, 2026." ECF 1, Exh. C at 2. They relied on this in their Return to argue
19 that "Respondents believe there is a significant likelihood of his removal in the
20 reasonably foreseeable future." ECF 1, Exh. C, at 2. Based on these
21 representations, this Court denied the habeas petition without prejudice. ECF 1,
22 Exh. D at 2.

23 But Respondents did *not* remove Mr. Chen on April 26, 2026. Instead, they
24 claim that his flight was "cancelled due to the Chinese Government's delay in
25 issuing an entry visa to the officer assigned to escort Petitioner on the flight."
26 ECF 8 at ¶ 15.

27 Then Respondents purportedly scheduled Mr. Chen on a commercial flight
28 for May 10, 2026. ECF 8 at ¶ 15. But for the third time, they did not remove

1 Mr. Chen on the date they said they would. Again, they claimed his flight was
2 “cancelled due to the Chinese Government’s delay in issuing an entry visa to the
3 officer assigned to escort Petitioner on the flight.” ECF 8 at ¶ 15.

4 Now, however, Respondents admit that when an officer escorts a noncitizen
5 on a commercial flight, “the Chinese Government requires that the officer first
6 apply for, and be issued, an entry visa,” a process that “typically takes about three
7 weeks in total.” ECF 8 at ¶ 18. Respondents also claim that this visa will be
8 delivered in time for Mr. Chen’s next scheduled flight, which “will be departing
9 from the United States during the week of May 24, 2026.” ECF 8 at ¶ 21. Thus,
10 even though Respondents failed to remove Mr. Chen the first three times they said
11 they would, they ask this Court for permission to continue to detain Mr. Chen.

12 The problem with Respondents’ latest explanation is that it effectively
13 concedes that they have not been upfront with this Court. By Respondents’ own
14 admission, they have gone through the process of obtaining an entry visa for an
15 ICE officer escort more than a hundred times—at least one third of which were
16 over a year ago. ECF 8 at ¶ 21. Thus, Respondents *knew* that an officer must “first
17 apply for, and be issued, an entry visa,” which “typically takes about three weeks
18 in total.” ECF 8 at ¶ 18. Because Respondents expect to receive the visa on
19 approximately May 21, 2026, ECF 8 at ¶ 19, this means they likely applied for it
20 on May 1, 2026.

21 In other words, Respondents told this Court that Mr. Chen would be
22 deported on March 24 and April 26 *knowing* that they had not even applied for the
23 officer’s visa yet. Respondents then told this Court that Mr. Chen would be
24 deported on May 10 *knowing* that the officer’s visa would not arrive in time.
25 These representations suggest that Respondents keep telling this Court that
26 Mr. Chen will be deported several weeks in the future regardless of whether his
27 removal is actually likely.
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