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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 LUJUN WANG,

12 Petitioner,
13

14 v.

15 KRISTI NOEM, et al.,

16 Respondents.
17

Case No. 26-cv-2686-JES-BJW

**RETURN IN OPPOSITION TO
PETITIONER'S AMENDED
HABEAS PETITION**

18
19 **I. INTRODUCTION**

20 Petitioner Lujun Wang has filed a second habeas petition. ECF No. 1. For the
21 reasons set forth below, the Court should deny Petitioner's requests for relief and
22 dismiss the petition.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 Petitioner is a citizen and national of China. Exhibit (Ex.) 1 (I-213). Petitioner
25 originally illegally entered the United States near San Luis, Arizona on or about
26 February 4, 2023, without inspection. *Id.*; Declaration of Deportation Officer Leticia
27 Rodriguez (Rodriguez Decl.) at ¶ 4. He was determined to be inadmissible under 8
28 U.S.C. § 1182(a)(6)(A)(i), placed in expedited removal proceedings pursuant to 8

1 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE)
2 custody pursuant to 8 U.S.C. § 1225(b)(1)(B). Ex. 2 (NTA). The filing of the NTA
3 initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner.
4 Petitioner was released on his own recognizance with conditions on February 8, 2023.
5 On August 23, 2023, Petitioner failed to appear at his immigration hearing and an
6 immigration judge ordered Petitioner removed to China. Rodriguez Decl. at ¶ 4.
7 Petitioner filed a motion to reopen his proceedings. An immigration judge granted his
8 motion on October 26, 2023. *Id.* at ¶ 5. On May 29, 2025, Petitioner was detained by
9 ICE in relation to an investigation into elder fraud. Ex. 1. On October 3, 2025, an
10 immigration judge granted Petitioner pre-conclusion voluntary departure by December
11 2, 2025. Rodriguez Decl. at ¶ 9. Both Parties waived appeal and the removal order
12 became final. *See Id.*; ECF No. 1 at 2. On March 18, 2026, China issued a travel
13 document for Petitioner. Declaration of DO Daniel Negrin (Negrin Decl.) at ¶ 12. ERO
14 scheduled a flight for April 4, 2026, for Petitioner's removal at which time Petitioner
15 refused to board the flight at Los Angeles International Airport. *Id.* at ¶ 13. Petitioner
16 remains mandatorily detained pursuant to 8 U.S.C. § 1231(a). Petitioner filed the instant
17 petition on April 27, 2026, preventing efforts to schedule another flight.

18 III. ARGUMENT

19 A. Petitioner's detention is lawful, and he has not established that there is no 20 significant likelihood of removal in the reasonably foreseeable future.

21 ICE's authority to detain noncitizens who are subject to a final order of removal
22 is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully
23 present in the United States and a final order of removal has been entered, the
24 government ordinarily secures the alien's removal during a subsequent 90-day statutory
25 "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General
26 "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

27 The Supreme Court held in *Zadvydas* that when removal is not accomplished
28 during the 90-day removal period, the statute "limits an alien's post-removal-period

1 detention to a period reasonably necessary to bring about the alien's removal from the
2 United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.
3 The Supreme Court has held that six months constitutes a "presumptively reasonable
4 period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief
5 where the presumptively reasonable six-month period has not yet elapsed. *See*
6 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
7 2025) ("The government is entitled to its six-month presumptive period before
8 Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-*
9 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
10 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not
11 been detained for more than six months. Petitioner has been in detention since May 29,
12 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations
13 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
14 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
15 the release based on changed circumstances, "the revocation would merely restart the
16 90-day removal period, not necessarily the presumptively reasonable six-month
17 detention period under *Zadvydas*").

18 Even after the period of presumptive reasonableness has run, release is not
19 required under *Zadvydas* unless "there is *no* significant likelihood of removal in the
20 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
21 Supreme Court instructed, "the habeas court must ask whether the detention in question
22 exceeds a period reasonably necessary to secure removal. It should measure
23 reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the*
24 *alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding,
25 the Supreme Court recognized that detention is presumptively reasonable pending
26 efforts to obtain travel documents, because the noncitizen's assistance is often needed
27 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
28

1 executable warrant of removal becomes a significant flight risk, especially if he or she
2 is aware that it is imminent.

3 The Supreme Court also instructed that detention could exceed six months: “This
4 6-month presumption, of course, does not mean that every alien not removed must be
5 released after six months. To the contrary, an alien may be held in confinement until it
6 has been determined that there is no significant likelihood of removal in the reasonably
7 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
8 reason to believe that there is no significant likelihood of removal in the reasonably
9 foreseeable future, the Government must respond with evidence sufficient to rebut that
10 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
11 alien to show, after a detention period of six months, that there is ‘good reason to believe
12 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
13 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
14 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

15 Petitioner has been detained just over six months since his removal order became
16 final on October 26, 2025. His claim fails because there is a significant likelihood of
17 removal in the reasonably foreseeable future. ERO received a travel document from
18 China and scheduled a flight for his removal on April 4, 2026. Negrin Decl. at ¶ 13. It
19 was only Petitioner’s non-compliance with removal efforts which prevented his
20 removal. ERO can obtain another flight once this petition is denied and the Respondents
21 are no longer enjoined from removing him from the District. *Id.* at ¶ 14-16; ECF No. 3.

22 Petitioner’s conduct in refusing to leave the United States is akin to an individual
23 who seeks to undermine and frustrate the removal process by failing to cooperate with
24 ICE. In addition, 8 U.S.C. §1231(a)(1)(C) provides that “the removal period shall be
25 extended beyond a period of 90 days and the alien may remain in detention during such
26 extended period if the alien ... conspires or acts to prevent the alien’s removal subject
27 to an order of removal.” In *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), the Ninth
28 Circuit analyzed section 1231(a)(1)(C) in the context of the government’s detention of

1 a noncitizen past the presumptively reasonable six months recognized by *Zadvydas*
2 where the noncitizen refused to cooperate with the Immigration and Naturalization
3 Service's (INS) efforts to remove him:

4 There is significant evidence in the record that, unlike the detainees in
5 *Zadvydas*, Pelich himself is responsible for his plight. Pelich has
6 steadfastly refused to fill out a Polish passport application, which directly
7 impedes Poland's ability to determine whether Pelich qualifies for Polish
8 travel documents. In the January letter, the Polish consulate explicitly
9 reserved its determination of Pelich's citizenship status pending review of
10 the information requested in the letter, including the passport application.
11 Compounding the dilemma is the fact that Pelich has provided the INS
12 with conflicting information regarding his name, his parents' names, his
13 parents' birthplaces and residences, his birthplace and his nationality.

14 . . . The risk of indefinite detention that motivated the Supreme Court's
15 statutory interpretation in *Zadvydas* does not exist when an alien is the
16 cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the
17 "keys[to his freedom] in his pocket" and could likely effectuate his
18 removal by providing the information requested by the INS. . . .

19 . . .

20 Since Pelich falls within the category of non-cooperative detainee, he
21 cannot legitimately object to his continued detention when that very
22 detention is caused by his own conduct. Pelich could likely effectuate his
23 own removal (and free himself from detention) by providing the Polish
24 government with the requested information. It naturally follows that his
25 detention is not destined to be indefinite. To the contrary, Pelich's behavior
26 places him within that class of aliens properly detained pursuant to 8
27 U.S.C. § 1231(a)(1)(C).

28 *Pelich*, 329 F.3d at 1059–60.

The Ninth Circuit later held:

[C]onsistent with *Zadvydas* and *Pelich*, that when an alien refuses to
cooperate fully and honestly with officials to secure travel documents from
a foreign government, the alien cannot meet his or her burden to show there
is no significant likelihood of removal in the reasonably foreseeable future.
We cannot know whether an alien's removal is a "remote possibility," until
the alien makes a full and honest effort to secure travel documents. A

1 particular alien may have a very good chance of being removed, but if that
 2 alien is refusing to cooperate fully with officials to secure travel
 3 documents, neither the INS nor a court can sensibly ascertain the alien's
 4 chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C),
 5 interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*,
 6 authorizes the INS's continued detention of a removable alien so long as
 7 the alien fails to cooperate fully and honestly with officials to obtain travel
 8 documents.

9 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003); *see also Parra v. Perryman*,
 10 172 F.3d 954, 958 (9th Cir. 1999) (“A criminal alien who insists on postponing the
 11 inevitable has no constitutional right to remain at large during the ensuing delay, and
 12 the United States has a powerful interest in maintaining the detention in order to ensure
 13 that removal actually occurs”); *Ford v. Quarantillo*, 142 F. Supp. 2d 585, 588 (D.N.J.
 14 2001) (in deciding propriety of continued detention, the court determined whether the
 15 alien's “continued detainment [was] the result of his conspiring or acting to prevent his
 16 removal”); *Moro v. I.N.S.*, 58 F. Supp. 2d 854, 859 (N.D. Ill. 1999) (8 U.S.C.
 17 § 1231(a)(1)(C) “places a burden of good-faith cooperation on aliens in securing their
 18 removal”); *Castillo-Gradis v. Turnage*, 752 F. Supp. 937, 941 (S.D. Cal. 1990)
 19 (requiring release “absent a showing of . . . delay caused by the alien's own actions”)
 20 (citing *Dor v. District Director*, 891 F.2d 997, 1003 (2d Cir. 1989) (refusing to order
 21 release when petitioner was “largely responsible for the very delay of deportation of
 22 which he complain[ed]”)); *See Matevosyan v. Warden, Desert View Annex Detention*
 23 *Facility*, No. CV-24-01570-PA (DFM), 2025 WL 978153, at *7 (C.D. Cal. Feb. 24,
 24 2025), *adopted by* 2025 WL 975009 (C.D. Cal. March 31, 2025) (“Given Petitioner's
 25 lack of cooperation, he cannot satisfy his burden under *Zadvydas* to show that there is
 26 no significant likelihood of removal in the reasonably foreseeable future.”). Petitioner
 27 should not receive a windfall in the form of release simply because he refuses to remove
 28 himself from the United States.

To the extent Petitioner is challenging ICE's decision to detain him for the
 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)

(“Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation or prosecution of various stages in the deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court’s jurisdiction”).

Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petitioner’s petition.

DATED: May 1, 2026

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