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

11 Gojun Liu,

12  
13 Petitioner,

Case No. 26-cv-01757-BJC-MMP

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

14 v.

15 Kristi Noem, et al.;

16  
17 Respondents.

18  
19 **I. INTRODUCTION**

20 Post-removal order detention is statutorily mandated under 8 U.S.C. § 1231(a)  
21 for a period of 90 days following the date that a noncitizen’s removal order becomes  
22 final. As more fully explained below, because Petitioner has been in custody for less  
23 than a month since his removal order became final on March 17, 2026, this habeas  
24 petition is premature. Thus, Respondents respectfully ask the Court to deny this petition.

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1 **II. BACKGROUND**

2 Petitioner is a native and citizen of China who was encountered entering the  
3 United States without inspection on April 18, 2024. *See* Exhibit 1 (Notice to Appear) at  
4 1; *See also* Exhibit 2 (I-213).<sup>1</sup> He was released on his own recognizance and placed in  
5 removal proceedings. *See id.* On November 25, 2025, Petitioner was then encountered  
6 again by ICE and was taken into DHS custody. *See* Exhibit 2. On February 13, 2026,  
7 an Immigration Judge (IJ) ordered Petitioner removed to China but granted him  
8 withholding of removal under the Immigration and Nationality Act. *See* Exhibit 3 (IJ  
9 Order). Both Petitioner and DHS reserved appeal; any appeal by ether party was due to  
10 the Board of Immigration Appeals (BIA) no later than March 16, 2026. *See id.* On  
11 March 17, 2026, Petitioner’s removal order became final when neither the Petitioner  
12 nor DHS filed an appeal of the IJ decision. Once Petitioner became subject to a final  
13 order of removal, his detention was mandated pursuant to 8 U.S.C. § 1231(a).

14 **III. ARGUMENT**

15 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8  
16 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered  
17 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575  
18 (2022). The INA provides that an alien ordered removed must be detained for 90 days  
19 pending the government’s efforts to secure the alien’s removal through negotiations  
20 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall  
21 detain” the alien during the 90-day removal period under subsection (a)(1)).

22 Section 1231(a)(6) “authorizes further detention if the Government fails to  
23 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).  
24 Detention authority under this statute, however, is limited to “a period reasonably  
25 necessary to bring about the alien’s removal from the United States” and “does not  
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28 <sup>1</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month  
2 period of post-removal detention constitutes a “presumptively reasonable period of  
3 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month  
4 period unless “there is no significant likelihood of removal in the reasonably foreseeable  
5 future.” *Id.*

6 Here, Petitioner’s removal order became final on March 17, 2026, when neither  
7 DHS nor Petitioner filed an appeal of the IJs decision granting withholding of removal.  
8 *See* 8 C.F.R. § 1241.1(c) (An IJ’s order of removal “shall become final . . . [u]pon  
9 expiration of the time allotted for an appeal if the respondent does not file an appeal  
10 within that time”). The INA requires that a noncitizen ordered removed be detained for  
11 90 days following “[t]he date the order of removal becomes administratively final”  
12 while the government seeks to execute removal. 8 U.S.C. § 1231(a)(1)(B)(i). This  
13 period is known as the “removal period.” *Id.* § 1231(a)(1).

14 Petitioner’s removal period began less than a month ago, “so he is still in the  
15 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-CV-  
16 2704-AGS-JLB, 2025 WL 3171897, at \*1 (S.D. Cal. Nov. 13, 2025). “In other words,”  
17 as Judge Schopler has put it, a petitioner’s “detention is not merely legal, but required”  
18 at this time. *Id.* As the record reflects, Petitioner remains detained under § 1231(a).  
19 Indeed, under § 1231(a)(6) and Supreme Court precedent, Petitioner’s post-final order  
20 detention is presumptively reasonable pending the government’s efforts to effectuate  
21 his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S.  
22 at 701. This means that Petitioner’s claim of prolonged detention would not be ripe  
23 until, at the earliest, September 17, 2026. *See id.*

24 While Petitioner asserts that he has been in immigration custody for over four  
25 months, almost all of that time was before his removal order became administratively  
26 final and would thus not count toward the 90-day removal period that governs his  
27 present custody. *See Tumasov*, 2025 WL 3171897, at \*1 (“Any pre-removal-order  
28 custody does not count toward the 90-day removal period, which began once Tumasov’s

1 removal order was administratively final and during which the government shall detain  
2 him.”) (simplified, quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021); 8  
3 U.S.C. § 1231(a)(1)(A)).

4 To the extent Petitioner challenges his conditions of confinement, *see* ECF No. 1  
5 at 9, such claims are not cognizable here. Habeas relief “is limited to attacks upon the  
6 legality or duration of confinement.” *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir.  
7 2023). Claims alleging “unconstitutional conditions of confinement, is not cognizable  
8 in habeas.” *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL  
9 3103811, at \*3 (S.D. Cal. Apr. 25, 2023). Because a Section 2241 habeas petition is not  
10 the proper vehicle for challenging conditions of confinement, the Court lacks  
11 jurisdiction over these claims here. *See id.* (citing *Nettles v. Grounds*, 830 F.3d 922, 933  
12 (9th Cir. 2016) (“We have long held that prisoners may not challenge mere conditions  
13 of confinement in habeas corpus.”)); *Giron Rodas v. Lyons*, No. 25-cv-1912-LL-AHG,  
14 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks  
15 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as  
16 attacking ‘the legality or duration of confinement.’”) (citation omitted).

17 In the end, because Petitioner’s post-final order detention is within the 90-day  
18 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.  
19 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied at this time. *See*  
20 *Tumasov*, 2025 WL 3171897, at \*1 (denying petitioner habeas relief because “he is still  
21 in the 90-day window of statutorily mandated detention”); *see also Khalilova v. Smith*,  
22 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at \*4 (S.D. Cal. Nov. 5, 2025)  
23 (“[B]ecause the six-month period of presumptive reasonableness [under *Zadvvdas*] has  
24 not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-  
25 03256-BAS-VET, 2025 WL 3535207, at \*1 (S.D. Cal. Dec. 9, 2025) (same).

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**IV. CONCLUSION**

For the reasons stated herein, Respondents respectfully request that the Court deny the habeas petition.

DATED: March 30, 2026

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s/ Antonio Estrada

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