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

MAKE CHEN,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security,
PAMELA JO BONDI, 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.: '26CV2054 RSH JLB

**Petition for Writ
of
Habeas Corpus**

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

1 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001). And due
2 process requires ICE to provide notice and an opportunity to be heard before any
3 removal to a third country.

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

6 **A. Legal background**

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

23 If federal law were understood to allow for “indefinite, perhaps permanent,
24 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
25 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
26 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 nearly expired.**

15 As an initial matter, the six-month grace period has nearly 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—almost six months ago.
20 Accordingly, his 90-day removal period began on that respective date. 8 U.S.C.
21 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months ago—on
22 January 22, 2026. The threshold requirement is therefore met.

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

25 Because the six-month grace period is about to expire, this Court must
26 evaluate Petitioner’s *Zadvydas* claim using the burden-shifting framework. At the
27 first stage of the framework, there must be “good reason to believe that there is no
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1 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
2 533 U.S. at 701. This standard can be broken down into three parts.

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

13 **“No significant likelihood of removal.”** This component focuses on
14 *whether* Petitioner will likely be removed: Continued detention is permissible
15 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
16 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
17 untapped possibilities, but also [the] probability of *success* in such possibilities.”
18 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
19 added). In other words, even if “there remains *some* possibility of removal,” a
20 petitioner can still meet its burden if there is good reason to believe that
21 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
22 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

23 **“In the reasonably foreseeable future.”** This component of the test
24 focuses on when Petitioner will likely be removed: Continued detention is
25 permissible only if removal is likely to happen “in the reasonably foreseeable
26 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
27 removal efforts. If the Court has “no idea of when it might reasonably expect
28 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal

1 is likely to occur—or even that it might occur—in the reasonably foreseeable
2 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
4 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
5 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that the Petitioner
6 “would *eventually* receive” a travel document, he can still meet his burden by
7 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
8 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

9 Mr. Chen has good reason to think that ICE cannot remove him, since six
10 months of effort have borne no fruit. Indeed, the last time ICE tried to deport Mr.
11 Chen, it transferred him five different times without being able to effectuate his
12 removal. *Id.* at ¶ 4. Thus, he has met his initial burden. And because the
13 government’s failure to remove him for six months shows that his removal is not
14 significantly likely in the reasonably foreseeable future, this Court should
15 immediately grant his habeas petition.

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

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

20 **III. Prayer for relief**

21 For the foregoing reasons, Petitioner respectfully requests that this Court:
22 1. Order Respondents to immediately release Petitioner from custody;

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2. Enjoin Respondents from re-detaining Petitioner unless and until ICE obtains a travel document for his removal; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 1, 2026

/s/ Kara Hartzler

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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 1, 2026

/s/ Kara Hartzler
Kara Hartzler