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

10 MAKE CHAN,

Petitioner,

11 v.

12 KRISTI NOEM, *et al.*,

13 Respondents.  
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Case No.: 26-cv-02054-RSH-JLB

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

1 I. INTRODUCTION

2 Petitioner Make Chan has filed a petition for writ of habeas corpus. For the  
3 reasons set forth below, the Court should deny Petitioner’s requests for relief and  
4 dismiss the petition.

5 II. FACTUAL BACKGROUND

6 Petitioner is a native and citizen of China. On or about August 21, 2019,  
7 Petitioner was admitted to the United States under a nonimmigrant student that expired  
8 on May 9, 2024. On August 13, 2022, Petitioner was convicted of indecent assault of a  
9 person less than 13 years of age in violation of Pennsylvania State Code 18 § 1326(a)(7),  
10 for which he was sentenced to five years of probation and required to register as a Tier  
11 III sexual offender. On September 27, 2025, Petitioner was taken into immigration  
12 custody. He was served with a Notice to Appear and charged with removability for  
13 overstaying his visa under the Immigration and Nationality Act (INA) § 237(a)(1)(B)  
14 and for having been convicted of a crime involving moral turpitude under INA §  
15 237(a)(2)(A)(i). Declaration of Terrilyn Hunter (“Hunter Decl.”) ¶¶ 3-6.

16 On October 22, 2025, an Immigration Judge (IJ) ordered Petitioner removed to  
17 China. Both Petitioner and DHS waived appeal. The IJ’s order became final on October  
18 22, 2025. Accordingly, Immigration and Customs Enforcement (ICE) is not seeking to  
19 remove Petitioner to a third country. Since Petitioner’s detention in September 2025,  
20 ICE has worked diligently to effectuate his removal to China and Petitioner has  
21 expressed a desire to expedite his removal to China. Hunter Decl. ¶¶ 7-9; *see also*  
22 Exhibit 4 at 1 (IJ Order noting Petitioner’s admissions/concessions).

23 On or about March 26, 2026, ICE received a travel document for Petitioner and  
24 can effectuate his removal promptly. More specifically, Petitioner currently has a  
25 removal flight booked for April 26, 2026. Accordingly, Respondents believe there is a  
26 significant likelihood of his removal in the reasonably foreseeable future. Hunter Decl.  
27 ¶¶ 10-12.

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### III. ARGUMENT

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

12 In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the  
13 detention in question exceeds a period reasonably necessary to secure removal. It should  
14 measure reasonableness primarily in terms of the statute's basic purpose, namely,  
15 *assuring the alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added).  
16 In so holding, the Court recognized that detention is presumptively reasonable pending  
17 efforts to obtain travel documents, because the noncitizen's assistance is needed to  
18 obtain the travel documents, and a noncitizen who is subject to an imminent, executable  
19 warrant of removal becomes a significant flight risk, especially if he or she is made  
20 aware that removal is imminent.

21 The Supreme Court also held that the detention could exceed six months: "This  
22 6-month presumption, of course, does not mean that every alien not removed must be  
23 released after six months. To the contrary, an alien may be held in confinement until it  
24 has been determined that there is no significant likelihood of removal in the reasonably  
25 foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good  
26 reason to believe that there is no significant likelihood of removal in the reasonably  
27 foreseeable future, the Government must respond with evidence sufficient to rebut that  
28 showing and that the noncitizen has the initial burden of proving that removal is not

1 significantly likely.” *Id.*

2 Here, the Petition should be denied as Petitioner has a valid travel document from  
3 China and ICE is currently prepared to effectuate his removal on April 26, 2026. Hunter  
4 Decl. ¶¶ 10-11. Accordingly, Petitioner cannot demonstrate that there is no significant  
5 likelihood of removal in the reasonably foreseeable future. Furthermore, Petitioner has  
6 been in custody for less than six months since his order of removal became  
7 administratively final on October 22, 2026. *Id.* at 7. “*Zadvydas* places the burden on the  
8 alien to show, *after a detention period of six months*, that there is ‘good reason to believe  
9 that there is no significant likelihood of removal in the reasonably foreseeable future.’”  
10 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701)  
11 (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Petitioner’s  
12 presumptively reasonable removal period here should therefore extend to  
13 approximately April 22, 2026, before any challenge should be entertained. *See Ali v.*  
14 *Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition was  
15 unripe for review where *Zadvydas* six-month period had not expired; dismissing  
16 petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM),  
17 2012 WL 6111358, at \*4–5 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No.  
18 CVF051036RECSMSHC, 2005 WL 2671406, at \*1 (E.D. Cal. Oct. 19, 2005) (same).  
19 *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did  
20 the *Zadvydas* Court preclude a noncitizen from challenging their detention before the  
21 end of the presumptively reasonable six-month period.”). Even if the removal period  
22 here had extended beyond six months, Petitioner cannot show that there is no significant  
23 likelihood of removal in the reasonably foreseeable future as he has valid travel  
24 documents and a removal flight scheduled for April 26, 2026.

25 To the extent Petitioner is challenging ICE’s decision to detain him for the  
26 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)  
27 (“Except as provided in this section and *notwithstanding any other provision of law*  
28 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*

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

#### 14 IV. CONCLUSION

15 For the foregoing reasons, the Court should deny the petition on the merits.

16  
17 DATED: April 8, 2026

18 Respectfully submitted,

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20 United States Attorney

21 *s/ Hunter V. Norton*  
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23 Assistant United States Attorney  
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