

1 ADAM GORDON
United States Attorney
2 KIM A. C. GREGG
Assistant U.S. Attorney
3 California Bar No. 318764
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8437
Facsimile: (619) 546-7751
6 Email: Kim.Gregg@usdoj.gov

7 Attorneys for Respondents

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

11 NIKITA PROKOPEV,

12
13 Petitioner,

Case No. 25-cv-03494-JES-BLM

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

14 v.

15 CHRISTOPHER J. LAROSE, Warden,
16 Otay Mesa Detention Center, et al.;

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 November 28, 2025, this habeas
24 petition is premature. Thus, Respondents respectfully ask the Court to deny this petition.

25 **II. BACKGROUND**

26 Petitioner is a native and citizen of Russia, who entered the United States on
27 November 20, 2024, applied for admission into the country, and was denied because he
28 was not in possession of a valid entry document. *See* Declaration of Marcus Vera ("Vera

1 Decl.”) at ¶ 5. He was subsequently taken into Immigration and Customs Enforcement
2 (ICE) custody and placed in removal proceedings. *See id.* at ¶¶ 4, 6; Exh. 1, Notice to
3 Appear.¹ On June 2, 2025, an Immigration Judge (“IJ”) denied Petitioner’s applications
4 for relief and ordered him removed to Russia. *See Vera Decl.* at ¶ 8; Exh. 2, Order of
5 the Immigration Judge. Petitioner appealed the IJ’s decision to the Board of
6 Immigration Appeals (BIA). *See id.* at ¶ 9. On November 28, 2025, the BIA affirmed
7 the IJ’s decision. *See id.*; Exh. 3, BIA Decision.

8 Since the removal order became final, ICE has commenced efforts to execute
9 Petitioner’s removal to Russia. *See Vera Decl.* at ¶¶ 9, 12. Those efforts remain ongoing.

10 III. ARGUMENT

11 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
12 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
13 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
14 (2022). The INA provides that an alien ordered removed must be detained for 90 days
15 pending the government’s efforts to secure the alien’s removal through negotiations
16 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
17 detain” the alien during the 90-day removal period under subsection (a)(1)).

18 Section 1231(a)(6) “authorizes further detention if the Government fails to
19 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
20 Detention authority under this statute, however, is limited to “a period reasonably
21 necessary to bring about the alien’s removal from the United States” and “does not
22 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
23 period of post-removal detention constitutes a “presumptively reasonable period of
24 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
25

26
27
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 period unless “there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Id.*

3 Here, Petitioner’s removal order became final on November 28, 2025, when the
4 BIA dismissed his appeal of the IJ’s decision ordering him removed to Russia. *See* 8
5 C.F.R. § 1241.1(a) (An IJ’s order of removal “shall become final . . . [u]pon dismissal
6 of an appeal by the Board of Immigration Appeals”). The INA requires that a noncitizen
7 ordered removed be detained for 90 days following “[t]he date the order of removal
8 becomes administratively final” while the government seeks to execute removal.
9 8 U.S.C. § 1231(a)(1)(B)(i). This period is known as the “removal period.” *Id.*
10 § 1231(a)(1).

11 Petitioner’s removal period began less than a month ago, “so he is still in the
12 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-CV-
13 2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,”
14 as Judge Schopler has put it, a petitioner’s “detention is not merely legal, but required”
15 at this time. *Id.* As the record reflects, Petitioner remains detained under § 1231(a) while
16 the government actively seeks to execute his removal to Russia. *See Vera Decl.* at ¶ 12.
17 Indeed, under § 1231(a)(6) and Supreme Court precedent, Petitioner’s post-final order
18 detention is presumptively reasonable pending the government’s efforts to effectuate
19 his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S.
20 at 701. This means that Petitioner’s claim of prolonged detention would not be ripe
21 until, at the earliest, May 28, 2026. *See id.*

22 While Petitioner asserts that he has been in immigration custody for over eleven
23 months, almost all of that time was before his removal order became administratively
24 final and would thus not count toward the 90-day removal period that governs his
25 present custody. *See Tumasov*, 2025 WL 3171897, at *1 (“Any pre-removal-order
26 custody does not count toward the 90-day removal period, which began once Tumasov’s
27 removal order was administratively final and during which the government shall detain
28 him.”) (simplified, quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021); 8

1 U.S.C. § 1231(a)(1)(A)).

2 Petitioner also contends that Respondents have violated § 1231 and its
3 implementing regulations by failing to provide him with “periodic custody reviews.”
4 ECF No. 1 at 7–8. The time for the government to conduct a post-order custody review
5 in his case, however, has not yet lapsed. *See Vera Decl.* at ¶ 10 (“ICE has ninety days
6 from the date of the final order of removal to make a Post Order Custody Review.”).

7 To the extent Petitioner challenges his conditions of confinement, *see* ECF No. 1
8 at 5, such claims are not cognizable here. Habeas relief “is limited to attacks upon the
9 legality or duration of confinement.” *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir.
10 2023). Claims alleging “unconstitutional conditions of confinement, is not cognizable
11 in habeas.” *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL
12 3103811, at *3 (S.D. Cal. Apr. 25, 2023). Because a Section 2241 habeas petition is not
13 the proper vehicle for challenging conditions of confinement, the Court lacks
14 jurisdiction over these claims here. *See id.* (citing *Nettles v. Grounds*, 830 F.3d 922, 933
15 (9th Cir. 2016) (“We have long held that prisoners may not challenge mere conditions
16 of confinement in habeas corpus.”)); *Giron Rodas v. Lyons*, No. 25-cv-1912-LL-AHG,
17 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
18 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
19 attacking ‘the legality or duration of confinement.’”) (citation omitted).

20 In the end, because Petitioner’s post-final order detention is within the 90-day
21 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.
22 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied at this time. *See*
23 *Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief because “he is still
24 in the 90-day window of statutorily mandated detention”); *see also Khalilova v. Smith*,
25 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025)
26 (“[B]ecause the six-month period of presumptive reasonableness [under *Zadvvdas*] has
27 not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-
28 03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

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

DATED: December 15, 2025

ADAM GORDON

United States Attorney

s/ Kim A. C. Gregg

KIM A. C. GREGG

Assistant United States Attorney

Attorneys for Respondents