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

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11 SAROJ PARIYAR,

Petitioner,

Case No. 26-cv-0386-TWR-BJW

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

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14 v.

15 FIELD OFFICE DIRECTOR, ICE SAN
16 DIEGO, et al.,

Respondents.

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I. INTRODUCTION

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22 Respondents request the Court deny this petition on the ground that post-removal
23 order detention is statutorily mandated under 8 U.S.C. § 1231(a) for a period of 90 days
24 following the date that a noncitizen's removal order becomes final. Because Petitioner
25 has been in custody for about 70 days since his removal order became final on
26 November 25, 2025, Respondents respectfully ask the Court to deny this habeas
petition.

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1 **II. BACKGROUND**

2 Petitioner is a native and citizen of Nepal, who entered the United States without
3 inspection near Tecate, California, on December 3, 2024. Declaration of Deportation
4 Officer Ramon Meraz (Meraz Decl.) at ¶ 3.¹ Petitioner did not then have any valid entry
5 documents to enter the United States and had not been admitted or paroled into the
6 United States. He was determined to be inadmissible under 8 U.S.C.
7 § 1182(a)(7)(A)(i)(I) and 8 U.S.C. § 1182(a)(6)(A)(i), placed in expedited removal
8 proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs
9 Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). He was then
10 interviewed by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving
11 a positive credible fear determination, on February 11, 2025, an asylum officer issued
12 a Notice to Appear (NTA) to Petitioner. The filing of the NTA initiated removal
13 proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner.

14 On October 23, 2025, Petitioner's had an individual merits hearing before an
15 immigration judge on his applications for relief. At the hearing, the immigration judge
16 denied Petitioner's requests for relief from removal and ordered Petitioner removed to
17 Nepal. *Id.* at ¶ 7. Petitioner reserved appeal of the order, which was due by November
18 24, 2025. *Id.* Petitioner failed to file an appeal of the removal order. *Id.* Therefore,
19 Petitioner's removal order became administratively final that day. *Id.*; 8 C.F.R.
20 § 1241.1. Petitioner moved to reopen the merits hearing which an immigration judge
21 denied on December 4, 2025. *Id.* at ¶ 8. Petitioner filed an appeal of the denial of the
22 motion to reopen the merits hearing with the Board of Immigration Appeals (BIA) on
23 December 19, 2025. *Id.* at ¶ 9. The appeal is still pending. ICE is waiting for the BIA
24 to adjudicate the pending appeal before commencing removal efforts. Once the BIA
25 rules, ICE can execute Petitioner's removal to Nepal promptly. *Id.* at ¶ 10. While his

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27 ¹ The attached exhibits are true copies, with redactions of private information, of
28 documents obtained from Immigration and Customs Enforcement (ICE) counsel. Other
facts have been obtained from ICE counsel.

1 BIA appeal remains pending, Petitioner remains mandatorily detained under 8 U.S.C. §
2 1231(a).

3 **III. ARGUMENT**

4 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
5 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
6 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
7 (2022). The INA provides that an alien ordered removed must be detained for 90 days
8 pending the government’s efforts to secure the alien’s removal through negotiations
9 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
10 detain” the alien during the 90-day removal period under subsection (a)(1)).

11 Section 1231(a)(6) “authorizes further detention if the Government fails to
12 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
13 Detention authority under this statute, however, is limited to “a period reasonably
14 necessary to bring about the alien’s removal from the United States” and “does not
15 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
16 period of post-removal detention constitutes a “presumptively reasonable period of
17 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
18 period unless “there is no significant likelihood of removal in the reasonably foreseeable
19 future.” *Id.*

20 Petitioner filed a habeas petition, arguing that he is entitled to immediate release
21 or a bond hearing because his detention has become unconstitutionally prolonged. *See*
22 ECF No. 1 at 2. At the time his petition was filed on January 20, 2026, Petitioner was
23 subject to a final removal order. Meraz Decl. at ¶ 7. Petitioner’s removal order became
24 final on November 25, 2025, because Petitioner failed to appeal the IJ’s decision by the
25 deadline and DHS waived appeal of the IJ’s decision. *See* 8 C.F.R. § 1241.1(c) (An IJ’s
26 order of removal “shall become final . . . [u]pon expiration of the time allotted for an
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1 appeal if the respondent does not file an appeal within that time”).²

2 Because Petitioner is now subject to a final, executable order of removal, his
3 detention is governed by 8 U.S.C. § 1231(a). *See Arteaga-Martinez*, 596 U.S. at 578
4 (explaining that § 1231(a) “governs the detention, release, and removal of individuals
5 ‘ordered removed’”). That statute requires that Petitioner be detained for 90 days
6 following “[t]he date the order of removal becomes administratively final” while the
7 government seeks to execute removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is
8 known as the “removal period.” *Id.* § 1231(a)(1).

9 As previously noted, Petitioner’s removal period began less than eight weeks ago
10 when his removal order became administratively final—“so he is still in the 90-day
11 window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-cv-2704-AGS-
12 JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,” Petitioner’s
13 “detention is not merely legal, but required” at this time. *Id.* Because Petitioner must be
14 detained during the current 90-day statutory removal period, he cannot demonstrate that
15 he “is in custody in violation” of the law. *See* 28 U.S.C. § 2241(c)(3). Moreover, under
16 § 1231(a)(6) and *Zadvydas*, Petitioner’s post-final order detention is presumptively
17 reasonable pending the government’s efforts to effectuate his removal for six months
18 following the final order of removal. *See Zadvydas*, 533 U.S. at 701. This means that
19 Petitioner’s claim of prolonged detention would not be ripe until, at the earliest, May
20 25, 2026. *See id.*

21 To the extent Petitioner asserts that he has been in custody for 14 months, almost
22 all of that time was before his removal order became administratively final and would
23 thus not count toward the 90-day removal period that governs his present custody. *See*
24 *Tumasov*, 2025 WL 3171897, at *1 (“Any pre-removal-order custody does not count
25 toward the 90-day removal period, which began once Tumasov’s removal order was

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27 ² In removal proceedings, Petitioner is referred to as the “respondent.” *See* 8 C.F.R.
28 § 1001.1(r) (“The term respondent means a person named in a Notice to Appear issued
in accordance with section 239(a) of the [INA]. . .”).

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

4 In the end, because Petitioner’s post-final order detention is within the 90-day
5 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.
6 § 1231(a). Moreover, the record does not support a finding that Petitioner would be
7 indefinitely detained because ICE can promptly execute his removal to Nepal
8 expeditiously. Meraz Decl. at ¶ 10. Thus, his petition for a writ of habeas corpus must
9 be denied. *See Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief
10 because “he is still in the 90-day window of statutorily mandated detention”); *Prokopen*
11 *v. LaRose*, No. 25-cv-3441-JES-MSB, 2026 WL 50758, at *1–2 (S.D. Cal. Jan. 7, 2026)
12 (same); *see also Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522,
13 at *4 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of presumptive
14 reasonableness [under *Zadvvdas*] has not passed, Petitioner’s claim is not ripe for
15 review[.]”); *Ao v. Noem et al.*, No. 25-CV-03256-BAS-VET, 2025 WL 3535207, at *1
16 (S.D. Cal. Dec. 9, 2025) (same).

17 **IV. CONCLUSION**

18 For the reasons stated herein, Respondent respectfully requests the Court to deny
19 the habeas petition on its merits.

20 DATED: February 2, 2026

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22 *s/ Michael D. Wallace*

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