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

10 KUMAR GAURAV,

11 Petitioner,

12 v.
13

14 KRISTI NOEM, Secretary of the
15 Department of Homeland Security, et al.,

16 Respondents.

Case No.: 26-cv-0609-DMS-AHG

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

17 **I. INTRODUCTION**

18 Petitioner requests the Court to order Immigration and Customs Enforcement
19 (ICE) to release him from custody because, he alleges, his detention is unlawful and
20 prolonged. On October 24, 2025, an Immigration Judge ordered Petitioner removed to
21 India and granted him withholding of removal to that country. Although Petitioner may
22 not be removed to India, he may be repatriated to a third country. Under *Zadvydas v.*
23 *Davis*, 533 U.S. 678 (2001), post-removal order confinement is presumptively
24 reasonable for six months. Because the presumptively reasonable period of detention
25 does not expire until April 24, 2026, this petition is not ripe for review. Even if the
26 Court declined to deny the petition on this basis, Petitioner cannot overcome the
27 presumption or show that there is no significant likelihood of removal in the reasonably
28 foreseeable future. Thus, the Court should deny the petition.

II. BACKGROUND

Petitioner is a native and citizen of India, who unlawfully entered the United States on November 21, 2024. *See* Declaration of Rosendo Martinez (“Martinez Decl.”) at ¶¶ 3–4. That same day, Petitioner was processed for expedited removal under 8 U.S.C. § 1225(b)(1) and booked into ICE custody for removal. *See id.* at ¶ 4; Exh. 1.¹ Petitioner was subsequently referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview. *See* Martinez Decl. at ¶ 5. On January 16, 2025, USCIS exercised its discretion to issue a Notice to Appear and place Petitioner in removal proceedings under 8 U.S.C. § 1229a before an IJ. *See id.* Petitioner was served with the NTA a few days later. *See id.* at ¶ 6; Exh. 2. Throughout his removal proceedings, Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

On October 23, 2025, the IJ ordered Petitioner removed to India and granted him withholding of removal under the Immigration and Nationality Act. *See* Exh. 3. The order became final that same day because both Petitioner and the Department of Homeland Security waived appeal. *See id.*; Martinez Decl. at ¶ 7. Since Petitioner’s removal order, ICE has been working as expeditiously as possible to identify a third country where Petitioner may be removed, and those efforts remain ongoing. *See* Martinez Decl. at ¶¶ 8–11. Once Petitioner became subject to a final order of removal, his detention was mandated under 8 U.S.C. § 1231(a).²

III. ARGUMENT

“Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days

¹ The attached exhibits are true copies of documents obtained from ICE counsel.

² Because Petitioner is subject to post-final order mandatory detention under 8 U.S.C. § 1231(a), the Court cannot grant his request for a bond or parole. *See* ECF No. 1 at 4.

1 pending the government's efforts to secure the alien's removal through negotiations
2 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall
3 detain" the alien during the 90-day removal period under subsection (a)(1)).

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

13 If an individual ordered removed "is not removed to his or her country of choice
14 or citizenship, he or she shall be removed to any of the following countries" listed in 8
15 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).
16 The enumerated countries are:

- 17 (i) The country from which the alien was admitted to the United States.
- 18 (ii) The country in which is located the foreign port from which the alien
19 left for the United States or for a foreign territory contiguous to the United
20 States.
- 21 (iii) A country in which the alien resided before the alien entered the
22 country from which the alien entered the United States.
- 23 (iv) The country in which the alien was born.
- 24 (v) The country that had sovereignty over the alien's birthplace when the
alien was born.
- (vi) The country in which the alien's birthplace is located when the alien
is ordered removed.

25 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is
26 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another
27 country whose government will accept the alien into that country.'" *Id.* (quoting
28 § 1231(b)(2)(E)(vii)).

1 Here, Petitioner was granted withholding of removal to India—his country of
2 birth and citizenship, as well as the country designated during his removal proceedings.
3 Petitioner has not designated any other country for removal. Apart from India, there
4 appears to be no other country that would meet the definitions under subsections (i)
5 through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v.*
6 *Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15,
7 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation
8 of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C.
9 § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is
10 “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third
11 country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

12 As illustrated in various habeas filings in this district, recent developments in
13 international relations between the United States and several other countries have made
14 probable ICE’s removal of immigrants, like Petitioner, that it previously was unable to
15 remove to third countries. *See, e.g., Varona v. Noem et al.*, 25-cv-3328-JES-SBC, ECF
16 No. 1 at 6 (S.D. Cal. Nov. 26, 2025) (“The Trump administration reportedly has
17 negotiated with at least 58 countries to accept deportees from other nations.”). Against
18 this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues
19 to detain Petitioner for purposes of executing his removal order to a third country. *See*
20 *Martinez Decl.* at ¶ 8.

21 Petitioner’s removal order became final on October 24, 2025, when both
22 Petitioner and the government waived appeal of the IJ’s decision. *See* Exh. 3; 8 C.F.R.
23 § 1241.1. Petitioner has thus been in post-final order detention for three months and 20
24 days—well within the six months of post-removal confinement that *Zadvydas* found to
25 be presumptively reasonable.³ *See Zadvydas*, 533 U.S. at 700–01. Since Petitioner’s
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27 ³ While Petitioner asserts that he has been in immigration custody for fourteen months,
28 *see* ECF No. 1 at 4, almost all of that time was before his removal order became
administratively final and would thus not count toward the presumptively reasonable

1 removal order became final on October 24, 2025, ICE has worked as expeditiously as
2 possible to effectuate his resettlement in a third country. *See* Martinez Decl. at ¶ 8. On
3 November 5, 2025, the San Diego Enforcement and Removal Operations (ERO)
4 contacted its headquarters' Removal and International Operations (RIO) division in
5 Washington D.C. for assistance identifying a third country for removal in this case. *See*
6 *id.* at ¶ 9. San Diego ERO has since been regularly seeking updates from RIO on
7 whether it has identified a country where Petitioner may be removed, including on
8 December 5, 2025, December 31, 2025, and February 2, 2026. *See id.* at ¶ 10. Although
9 RIO is still in the process of identifying countries that may accept Petitioner for
10 removal, the record indicates that ICE is working as diligently as possible, and the
11 Executive continues to negotiate with other countries to accept U.S. deportees. *See id.*
12 at ¶¶ 8–11.

13 Instructive here, the Supreme Court established a six-month period of post-final
14 order detention to be presumptively reasonable “for the sake of uniform administration
15 in the federal courts” and “to limit the occasions when courts will need to make”
16 difficult judgments involving foreign policy matters. *See Zadvydas*, 533 U.S. at 700–
17 01. Because Petitioner’s detention is within the presumptively reasonable period of
18 detention, his claim is not ripe for review, and it would be premature to conclude that
19 there is no significant likelihood of removal in the reasonably foreseeable future before
20 permitting ICE an opportunity to complete its diligent efforts to effect Petitioner’s
21 removal. *See, e.g., Khalilova v. Smith*, No. 25-cv-2140 JLS-DDL, 2025 WL 3089522,
22 at *4 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of presumptive
23 reasonableness has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem*

24
25 period of post-removal confinement. *See, e.g., Tumasov v. Doe 1*, No. 25-CV-2704-
26 AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025) (“Any pre-removal-order
27 custody does not count toward the [statutory] removal period, which began once
28 Tumasov’s removal order was administratively final and during which the government
shall detain him.”) (simplified, quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533
(2021); 8 U.S.C. § 1231(a)(1)(A)).

1 *et al.*, No. 25-cv-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025)
2 (same). *See also Zadvydas*, 533 U.S. at 700 (instructing district courts “to listen with
3 care when the Government’s foreign policy judgments, including, for example, the
4 status of repatriation negotiations, are at issue, and to grant the Government appropriate
5 leeway when its judgments rest upon foreign policy expertise.”).⁴ Respondents thus
6 respectfully ask the Court to apply the *Zadvydas* presumption and deny the petition at
7 this time.

8 Should the Court decline and find the presumption to be rebuttable, Petitioner has
9 not presented evidence to overcome it. Petitioner points only to the passage of the
10 90-day statutory removal period and his grant of withholding of removal to India. *See*
11 ECF No. 1 at 5. But as explained above, the Supreme Court has held that detention is
12 presumptively reasonable for another three months, until April 24, 2026. And even then,
13 the presumption “does not mean that every alien not removed must be released after six
14 months.” *Zadvydas*, 533 U.S. at 701. Although he cannot be removed to India, the
15 current Administration has had recent success negotiating with other countries to accept
16 individuals subject to final orders of removal. Given the Executive’s active negotiations
17 with other countries for third country resettlement, ERO’s pending request for such
18 resettlement for Petitioner, and his detention being well within the presumptively
19 reasonable period, Petitioner cannot overcome the *Zadvydas* presumption or show that
20 there is no significant likelihood of removal in the reasonably foreseeable future. *See*
21 *id.*; *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (explaining that a
22 showing of “no significant likelihood of removal in the reasonably foreseeable future”
23 under *Zadvydas* would include where “no country would accept the deportees,” “the
24 United States lacked an extradition treaty with [the] receiving countries,” or the
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26
27 ⁴ The Supreme Court also noted in *Zadvydas* that “[o]rdinary principles of judicial
28 review in this area recognize Executive Branch primacy in foreign policy matters.” *Id.*
at 700. This case touches on such matters because it is part of a centralized resettlement
effort that entails negotiations with and cooperation by foreign governments.

1 government is no longer involved in repatriation negotiations with the country).
2 Because *Zadvydas* does not entitle Petitioner's release at this time, Respondents ask the
3 Court to deny his habeas petition.

4 To the extent Petitioner argues that he is at risk of being deported to a third
5 country without being given adequate notice and an opportunity to be heard, the record
6 shows that once a third country is identified, it "will provide Petitioner with written
7 notice, and if Petitioner claims a fear of removal to the identified country, he will be
8 referred to an asylum officer for processing of the fear-based claims." Martinez Decl.
9 at ¶ 13. The evidence further shows that ICE will wait at least 24 hours following the
10 notice of third country removal before executing it, and under no circumstances would
11 removal be executed in less time than that without the noncitizen being provided
12 "reasonable means and opportunity to speak with an attorney prior to removal." *Id.* at
13 ¶ 12.

14 To the extent Petitioner is challenging ICE's decision to detain him for the
15 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
16 ("Except as provided in this section and *notwithstanding any other provision of law*
17 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
18 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
19 on behalf of any alien arising from the decision or action by the Attorney General to
20 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
21 under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
22 *Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus
23 special attention upon, and make special provision for, judicial review of the Attorney
24 General's discrete acts of commencing proceedings, adjudicating cases, and executing
25 removal orders—which represent the initiation or prosecution of various stages in the
26 deportation process.") (simplified); *Limpin v. United States*, 828 Fed. App'x 429 (9th
27 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)

1 “because claims stemming from the decision to arrest and detain an alien at the
2 commencement of removal proceedings are not within any court’s jurisdiction”).

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

17 IV. CONCLUSION

18 For the reasons stated herein, Respondents respectfully request the Court to deny
19 the habeas petition.

20 DATED: February 12, 2026

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