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

12
13 WAAD SALAM ALKHAFAJI,

14 Petitioner,

15 v.

16 MARKWAYNE MULLIN; et al.,

17 Respondents.
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19
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Case No.: 26-cv-02262-RBM-BJW

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

21 **I. INTRODUCTION**

22 Respondent requests 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 56 days since his removal order became final on February
26 24, 2026, Respondents respectfully ask the Court to deny this habeas petition.

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II. BACKGROUND

Petitioner is a citizen and national of Iraq. Exhibit 1 (I-213).¹ Petitioner originally entered the United States, as a child, on or about March 3, 1993. *Id.* At that time, Petitioner was issued an I-94 Visa and classified as “Refugee-Not adjusted to Lawful Permanent Resident Status” with an expiration date of December 31, 1999. *Id.* On August 18, 1993, Petitioner’s status changed to “adjusted child of a refugee” with an expiration date of December 3, 2019. *Id.* Petitioner has not filed any documentation with U.S. Citizenship and Immigration Services (USCIS) in order to maintain his refugee status. *Id.*

On November 10, 2025, Petitioner was taken into Immigration and Customs Enforcement (ICE) custody upon his release from jail in Glendale, Arizona. *See* Exhibit 1. Petitioner was charged with violating a domestic violence court order. *Id.* Notably, Petitioner has a lengthy criminal history of violence, drug possession and sales, fraud, and fleeing from law enforcement. *Id.* On November 25, 2025, ICE issued a Notice to Appear (NTA) to Petitioner, which initiated removal proceedings. Exhibit 2. On February 24, 2026, an Immigration Judge (IJ) ordered Petitioner removed to Iraq but deferred removal under the Convention Against Torture Act. Exhibit 3 (IJ Removal Order). Petitioner waived appeal, so the removal order became final on February 24, 2026. *Id.* Petitioner’s 90-day removal period ends on May 24, 2026.

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 pending the government’s efforts to secure the alien’s removal through negotiations

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

1 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
2 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

12 Petitioner filed a habeas petition, arguing that he is entitled to release or a bond
13 hearing because his detention has become unconstitutionally prolonged. *See* ECF No.
14 1. At the time his petition was filed on April 9, 2026, Petitioner was subject to a final
15 removal order. Petitioner’s removal order became final on February 24, 2026, because
16 Petitioner waived appeal of the IJ’s decision. *See* 8 C.F.R. § 1241.1(b) (An IJ’s order
17 of removal “shall become final . . . [u]pon waiver of appeal by the Respondent”).²

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

25 As previously noted, Petitioner’s removal period began less than eight weeks ago
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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]. . .”).

(56 days) when his removal order became administratively final—“so he is still in the 90-day window of statutorily mandated detention.” *Tumasov v. Doe I*, No. 25-cv-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,” Petitioner’s “detention is not merely legal, but required” at this time. *Id.* Because Petitioner must be detained during the current 90-day statutory removal period, he cannot demonstrate that he “is in custody in violation” of the law. *See* 28 U.S.C. § 2241(c)(3). Moreover, under § 1231(a)(6) and *Zadvydas*, Petitioner’s post-final order detention is presumptively reasonable pending the government’s efforts to effectuate his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701. This means that Petitioner’s claim of prolonged detention would not be ripe until, at the earliest, August 24, 2026. *See id.*

To the extent Petitioner asserts that he has been under prolonged custody, almost all of that time was before his removal order became administratively final and would thus not count toward the 90-day removal period that governs his present custody. *See Tumasov*, 2025 WL 3171897, at *1 (“Any pre-removal-order custody does not count toward the 90-day removal period, which began once 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)).

Thus, his petition for a writ of habeas corpus must be denied. *See Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief because “he is still in the 90-day window of statutorily mandated detention”); *Prokopev v. LaRose*, No. 25-cv-3441-JES-MSB, 2026 WL 50758, at *1–2 (S.D. Cal. Jan. 7, 2026) (same); *see also Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of presumptive reasonableness [under *Zadvydas*] has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request the Court
3 immediately lift the order enjoining removal out of the District and deny the habeas
4 petition on its merits.

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6 DATED: April 21, 2026

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