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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WAAD SALAM ALKHAFAJI,

Petitioner,

v.

MARKWAYNE MULLIN; *et al.*,

Respondents.

Case No.: 26-cv-02262-RBM-BJW

RETURN TO THIRD AMENDED PETITION FOR WRIT OF HABEAS CORPUS[1]

[1] Respondents' counsel again sincerely apologizes to the Court for not filing a response pursuant to the Court's May 28, 2026 Order.

I. INTRODUCTION

Waad Salem Alkhafaji ("Petitioner") has filed a third amended petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his immediate release from custody. However, as with Petitioner's previous petitions, Petitioner's request is still not ripe for review. Respondents therefore request the Court deny the habeas petition.

II. BACKGROUND

Petitioner is a citizen and national of Iraq. Exhibit 1 (I-213).[2] 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. *See* Exhibit 2 (Notice to Appear). On February 24, 2026, an Immigration Judge (IJ) ordered Petitioner removed to Iraq but deferred removal under the Convention Against Torture Act. *See* 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 expired on May 24,

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

2026. Petitioner remains lawfully detained under 8 U.S.C. § 1231(a) while ICE actively works to identify a third country to which Petitioner may be removed.

III. ARGUMENT

A. Petitioner's Detention is Lawful and He Has Not Established That There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

Petitioner's petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Since February 24, 2026, the date the removal order became administratively final, Respondents have been working on identifying a third country to remove Petitioner to. Petitioner has not met his burden of rebutting the presumptively reasonable period of detention.

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

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

If an individual ordered removed "is not removed to his or her country of choice

or citizenship, he or she shall be removed to any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007). The enumerated countries are:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (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.

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

Here, Petitioner was granted withholding of removal to Iraq—his country of birth and citizenship. Apart from Iraq, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in custody in violation of the Constitution or laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is "impracticable, inadvisable, or impossible," ICE may remove Petitioner to a third country that will accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii). In his third amended petition, Petitioner cites the military conflict in the Iran to support his argument that there is no significant likelihood of removal to a countries in the Middle East. *See* ECF No. 19 at 4-6. However, there is no evidence at this time that Petitioner will be removed to a country

in the Middle East as ICE has not yet identified a third country for Petitioner's removal.

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

Petitioner's removal order became final on February 24, 2026, when the Petitioner waived appeal the immigration judge's decision. *See* Exhibit 3; 8 C.F.R. § 1241.1. Petitioner has thus been in post-final order detention, under 8 U.S.C. § 1231(a), for a little over three months, which is well within the six months of post-removal confinement that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–01. This means that Petitioner's claim of prolonged detention would not be ripe until, at the earliest, August 24, 2026. *See id.* Moreover, since Petitioner's removal order became final, ICE is actively working to identify a third that will accept Petitioner. Therefore, ICE is working diligently to effect Petitioner's removal. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

On this record, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably

lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added)*; see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of commencing proceedings, adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process.") (simplified); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request the Court deny the relief requested in the third amended habeas petition.

DATED: June 18, 2026

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