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

YANDY ERNESTO MACHIN-ROSAL,
Petitioner,

v.

MARKWAYNE MULLIN, et al.,
Respondents.

Case No. 26-cv-2796-RBM-AHG

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

I. INTRODUCTION

Respondents request the Court deny this petition on the ground that post-removal order detention is statutorily mandated under 8 U.S.C. § 1231(a) for a period of 90 days following the date that a noncitizen's removal order becomes final. Because Petitioner has been in custody for about 12 days since his removal order became final on May 15, 2026, Respondents respectfully ask the Court to deny this habeas petition.

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II. BACKGROUND

Petitioner is a native and citizen of Cuba who re-entered the United States on January 16, 2026.¹ Exhibit 1 (I-213). Petitioner had been previously ordered removed from the United States on November 3, 2025, and removed from the United States on November 17, 2025. Ex. 2 (IJ Order). Petitioner was apprehended on April 14, 2026. Ex. 1. A Notice of Order of Intent/Decision to Reinstate Prior Order issued the same day pursuant to 8 U.S.C. 1225(b)(1). Ex. 3 (Notice of Order). Petitioner then claimed fear of persecution. An asylum officer interviewed Petitioner and made a negative fear determination. An immigration judge affirmed the credible fear determination on May 15, 2026. Ex. 4 (IJ Neg RF Order). Based on this ruling, ICE reinstated the prior removal order as a final order of removal. Immigration and Customs Enforcement's (ICE) placed Petitioner into custody pursuant to 8 U.S.C. § 1231(a).

Petitioner has an administratively final order of removal and remains mandatorily detained under 8 U.S.C. § 1231(a).

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 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

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

1 necessary to bring about the alien's removal from the United States" and "does not
2 permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month
3 period of post-removal detention constitutes a "presumptively reasonable period of
4 detention." *Id.* at 701. Release is not mandated after the expiration of the six-month
5 period unless "there is no significant likelihood of removal in the reasonably foreseeable
6 future." *Id.* At the time his petition was filed on May 20, 2026, Petitioner was subject
7 to a final removal order. The Notice of Reinstatement of a prior removal order became
8 a final order when the immigration judge confirmed the negative fear finding of the
9 asylum officer on May 15, 2026.

10 Because Petitioner is now subject to a final, executable order of removal, his
11 detention is governed by 8 U.S.C. § 1231(a). *See Arteaga-Martinez*, 596 U.S. at 578
12 (explaining that § 1231(a) "governs the detention, release, and removal of individuals
13 'ordered removed'"). That statute requires that Petitioner be detained for 90 days
14 following "[t]he date the order of removal becomes administratively final" while the
15 government seeks to execute removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is
16 known as the "removal period." *Id.* § 1231(a)(1).

17 As previously noted, Petitioner's removal period began 12 days ago when his
18 removal order became administratively final—"so he is still in the 90-day window of
19 statutorily mandated detention." *Tumasov v. Doe 1*, No. 25-cv-2704-AGS-JLB, 2025
20 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). "In other words," Petitioner's "detention
21 is not merely legal, but required" at this time. *Id.* Because Petitioner must be detained
22 during the current 90-day statutory removal period, he cannot demonstrate that he "is
23 in custody in violation" of the law. *See* 28 U.S.C. § 2241(c)(3). Moreover, under
24 § 1231(a)(6) and *Zadvydas*, Petitioner's post-final order detention is presumptively
25 reasonable pending the government's efforts to effectuate his removal for six months
26 following the final order of removal. *See Zadvydas*, 533 U.S. at 701. This means that
27 Petitioner's claim of prolonged detention would not be ripe until, at the earliest,
28 November 15, 2026. *See id.*

Petitioner has been previously removed to Mexico. ICE is seeking to remove Petitioner to Mexico not an alternative third country. Therefore, Petitioner's complaint as notice prior to removal is moot.

In the end, because Petitioner's post-final order detention is within the 90-day statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C. § 1231(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 *Zadvvdas*] 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).

IV. CONCLUSION

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

DATED: May 27, 2026

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s/ Michael D. Wallace

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