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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 MUKHTAR KHAN,

12 Petitioner,

13  
14 v.

15 WARDEN, Otay Mesa Detention Center,

16 Respondent.  
17  
18  
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Case No. 26-cv-02785-RSH-AHG

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

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21  
22 **I. INTRODUCTION**

23 Respondent requests the Court deny this petition on the ground that the post-  
24 removal order detention is statutorily mandated under 8 U.S.C. § 1231(a) for a period  
25 of 90 days following the date that a noncitizen's removal order becomes final. Because  
26 Petitioner has been in custody for about 84 days since his removal order became final  
27 on February 17, 2026, Respondent respectfully asks the Court to deny this habeas  
28 petition.

1 **II. BACKGROUND**

2 Petitioner is a native and citizen of India, who attempted to enter the United States  
3 at the San Ysidro Port of Entry in California, on February 16, 2026. *See* Declaration of  
4 Hugo Lara Ramirez (“Ramirez Decl.”) at ¶ 4; Exhibit 1 (Form I-213).<sup>1</sup> Petitioner falsely  
5 claimed to be a U.S. Citizen using a California driver’s license. *Id.* Petitioner did not  
6 have any valid entry documents to enter the United States and had not been admitted or  
7 paroled into the United States. Petitioner was determined to be inadmissible under  
8 U.S.C. § 1182(a)(6)(C)(ii), for falsely representing himself as a U.S. Citizen, and under  
9 8 U.S.C. § 1182(a)(7)(A)(i)(I), an immigrant who at the time of application for  
10 admission, was not in possession of any valid entry documents. *Id.* A Notice and Order  
11 of Expedited Removal issued the next day (February 17, 2026) pursuant to 8 U.S.C.  
12 1225(b)(1). *See* Exhibit 2 (Notice and Order of Expedited Removal). Petitioner has no  
13 fear of returning to India. Ramirez Decl. at ¶ 5. Immigration and Customs Enforcement  
14 (ICE) placed Petitioner into custody pursuant to 8 U.S.C. § 1231(a). On March 20,  
15 2026, Petitioner withdrew his bond hearing in front of an immigration judge to “gather  
16 evidence.” *See* Exhibit 3 (Order of the Immigration Judge). Since that time, ICE has  
17 been actively working to obtain a travel document in order to remove Petitioner to India.  
18 *See* Ramirez Decl. at ¶¶ 7-8.

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

21 **III. ARGUMENT**

22 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8  
23 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered  
24 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575  
25 (2022). The INA provides that an alien ordered removed must be detained for 90 days

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27 <sup>1</sup> 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 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 Petitioner filed a habeas petition, arguing that he is entitled to immediate release  
14 or a bond hearing because his detention has become unconstitutionally prolonged. *See*  
15 ECF No. 1. At the time his petition was filed on May 1, 2026, Petitioner was subject to  
16 a final removal order. *See* Exhibit 2. ICE issued an Order of Expedited Removal in  
17 compliance with 8 C.F.R. §235.3(b)(7) on February 17, 2026. *See id.*; 8 C.F.R.  
18 §235(b)(7)(“Any removal order entered by an examining immigration officer pursuant  
19 to section 235(b)(1) of the Act must be reviewed and approved by the appropriate  
20 supervisor before the order is considered final.”). On March 28, 2026, ICE submitted a  
21 travel document request to the Indian consulate in San Francisco. *See* Ramirez Decl. at  
22 ¶ 7. Petitioner cannot, and has not, challenged the issuance or execution of the expedited  
23 removal order. *See Mendoza-Linares v. Garland*, 51 F.4<sup>th</sup> 1146, 1153-1160 (9<sup>th</sup> Cir.  
24 2022)(Holding that the Court does not have jurisdiction under 8 U.S.C. §1252 over due  
25 process challenges to the implementation or operation of an expedited order of removal  
26 issued pursuant to 8 U.S.C. §1225(b)(1)). Finally, Petitioner was granted a bond  
27 hearing on March 20, 2026, however, he elected to vacate the hearing. *See* Exhibit 3.

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

8           As previously noted, Petitioner’s removal period began 84 days ago when his  
9 removal order became administratively final—“so he is still in the 90-day window of  
10 statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-cv-2704-AGS-JLB, 2025  
11 WL 3171897, at \*1 (S.D. Cal. Nov. 13, 2025). “In other words,” Petitioner’s “detention  
12 is not merely legal, but required” at this time. *Id.* Because Petitioner must be detained  
13 during the current 90-day statutory removal period, he cannot demonstrate that he “is  
14 in custody in violation” of the law. *See* 28 U.S.C. § 2241(c)(3). Moreover, under  
15 § 1231(a)(6) and *Zadvydvas*, Petitioner’s post-final order detention is presumptively  
16 reasonable pending the government’s efforts to effectuate his removal for six months  
17 following the final order of removal. *See Zadvydvas*, 533 U.S. at 701. This means that  
18 Petitioner’s claim of prolonged detention would not be ripe until, at the earliest, August  
19 17, 2026. *See id.*

20           In the end, because Petitioner’s post-final order detention is within the 90-day  
21 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.  
22 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied. *See Tumasov*,  
23 2025 WL 3171897, at \*1 (denying petitioner habeas relief because “he is still in the  
24 90-day window of statutorily mandated detention”); *Prokopev v. LaRose*, No. 25-cv-  
25 3441-JES-MSB, 2026 WL 50758, at \*1–2 (S.D. Cal. Jan. 7, 2026) (same); *see also*  
26 *Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at \*4 (S.D. Cal.  
27 Nov. 5, 2025) (“[B]ecause the six-month period of presumptive reasonableness [under  
28 *Zadvvdas*] has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et*

1 *al.*, No. 25-CV-03256-BAS-VET, 2025 WL 3535207, at \*1 (S.D. Cal. Dec. 9, 2025)  
2 (same).

3 **IV. CONCLUSION**

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

6 DATED: May 13, 2026

ADAM GORDON

United States Attorney

7 *s/ Camille Savedra*

8 CAMILLE SAVEDRA

9 Assistant United States Attorney

10 Attorneys for Respondent

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