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

11 MALIK SAIR JAN,

12
13 Petitioner,

Case No. 26-cv-03443-DMS-VET

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

14 v.

15 CHRISTOPHER J. LAROSE, et al.;

16
17 Respondents.

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19 **I. INTRODUCTION**

20 Petitioner has filed his second Petition for writ of habeas corpus. Post-removal
21 order detention is statutorily mandated under 8 U.S.C. § 1231(a) for a period of 90 days
22 following the date that a noncitizen's removal order becomes final. As more fully
23 explained below, because Petitioner has been in custody for less than 90 days since his
24 removal order became final on March 24, 2026, this habeas petition is premature. Thus,
25 Respondents respectfully request that the Court to deny this petition.

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II. BACKGROUND

Petitioner is a native and citizen of Afghanistan, who entered the United States on January 9, 2024, without inspection. *See* Exhibit 1 (Notice to Appear).¹ He was subsequently taken into the custody of the Department of Homeland Security (DHS) and placed in removal proceedings. *See id.* On December 23, 2024, an immigration judge (IJ) ordered Petitioner removed, but granted Deferral of Removal under the Convention Against Torture (DCAT) to Afghanistan that same day. *See* Exhibit 2 (IJ Order dated December 23, 2024). DHS timely appealed the IJ's decision to the Board of Immigration Appeals (BIA). *See* Exhibit 3 (BIA Receipt). On August 1, 2025, the BIA vacated the IJ's grant of DCAT, and ordered that Petitioner's matter be remanded back to the IJ for further fact finding. *See* Exhibit 4 (BIA Decision).

On January 2, 2026, Petitioner filed his first petition for writ of habeas corpus. *M.J. v. Larose et al*, 26-cv-00017-DMS-VET (S.D. Cal), ECF No. 1. On January 21, 2026, this Court granted Petitioner's habeas petition in part and "directed [Respondents] to arrange an individualized bond hearing for Petitioner before an immigration court within fourteen (14) days of this Order" *See id.*, ECF No. 11. On January 26, 2026, Respondents complied with the Court's order and provided Petitioner with a bond hearing before an IJ. *See* Exhibit 5 (IJ Order dated January 26, 2026). The IJ denied Petitioner bond, holding that he "has not met his burden of demonstrating he is not a danger to the community or a flight risk." *See id.* Petitioner did not appeal the IJ's decision denying bond to the BIA. *See id.*

On February 19, 2026, per the BIA's order, the IJ held a second merits hearing on Petitioner's application for DCAT. *See* Exhibit 6 (IJ Order dated February 19, 2026). At that hearing, the IJ denied Petitioner's DCAT application. *See id.* Petitioner had until March 23, 2026, to appeal the IJ's decision to deny his DCAT application. *See id.*

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

1 Petitioner failed to file an appeal of the IJ's decision, making his removal order final.
2 *See* Exhibit 7 (Executive Office for Immigration Review – Electronic Courts & Appeals
3 System printout).

4 Since the removal order became final, ICE has commenced efforts to execute
5 Petitioner's removal to Afghanistan.² Those efforts remain ongoing. On June 7, 2026,
6 Petitioner filed his second Petition for writ of habeas corpus. *Jan v. LaRose et al*, 26-
7 cv-03443-DMS-VET (S.D. Cal), ECF No. 1. Petitioner now argues that his detention
8 has become unconstitutionally prolonged. *See id.* at 10. For the reasons set forth below,
9 Petitioner's second habeas petition should be denied.

10 III. ARGUMENT

11 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
12 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
13 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
14 (2022). The INA provides that an alien ordered removed must be detained for 90 days
15 pending the government's efforts to secure the alien's removal through negotiations
16 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
17 detain” the alien during the 90-day removal period under subsection (a)(1)).

18 Section 1231(a)(6) “authorizes further detention if the Government fails to
19 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
20 Detention authority under this statute, however, is limited to “a period reasonably
21 necessary to bring about the alien's removal from the United States” and “does not
22 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
23 period of post-removal detention constitutes a “presumptively reasonable period of
24 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
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28 ² DHS Counsel provided this information to Counsel for Respondents.

1 period unless “there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Id.*

3 Here, Petitioner’s removal order became final on March 23, 2026, when he failed
4 to file an appeal of his DCAT denial to the BIA. *See* 8 C.F.R. § 1241.1(c) (An IJ’s order
5 of removal “shall become final . . . [u]pon expiration of the time allotted for an appeal
6 if the respondent does not file an appeal within that time”). The INA requires that a
7 noncitizen ordered removed be detained for 90 days following “[t]he date the order of
8 removal becomes administratively final” while the government seeks to execute
9 removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is known as the “removal period.” *Id.*
10 § 1231(a)(1).

11 Petitioner’s removal period began less than a ninety days ago, “so he is still in
12 the 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-CV-
13 2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,”
14 as Judge Schopler has put it, a petitioner’s “detention is not merely legal, but required”
15 at this time. *Id.* As the record reflects, Petitioner remains detained under § 1231(a) while
16 the government actively seeks to execute his removal to Afghanistan. Indeed, under
17 § 1231(a)(6) and Supreme Court precedent, Petitioner’s post-final order detention is
18 presumptively reasonable pending the government’s efforts to effectuate his removal
19 for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701.
20 This means that Petitioner’s claim of prolonged detention would not be ripe until, at the
21 earliest, September 24, 2026. *See id.*

22 While Petitioner asserts that he has been in immigration custody for over twenty-
23 nine months, almost all of that time was before his removal order became
24 administratively final and would thus not count toward the 90-day removal period that
25 governs his present custody. *See Tumasov*, 2025 WL 3171897, at *1 (“Any pre-
26 removal-order custody does not count toward the 90-day removal period, which began
27 once Tumasov’s removal order was administratively final and during which the
28 government shall detain him.”) (simplified, quoting *Johnson v. Guzman Chavez*, 594

1 U.S. 523, 533 (2021); 8 U.S.C. § 1231(a)(1)(A)).

2 In the end, because Petitioner’s post-final order detention is within the 90-day
3 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.
4 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied at this time. *See*
5 *Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief because “he is still
6 in the 90-day window of statutorily mandated detention”); *see also Khalilova v. Smith*,
7 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025)
8 (“[B]ecause the six-month period of presumptive reasonableness [under *Zadvvdas*] has
9 not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-
10 03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

11 **IV. CONCLUSION**

12 For the reasons stated herein, Respondents respectfully request that the Court
13 deny the habeas petition.

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15 DATED: June 15, 2026

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