

1 ADAM GORDON
United States Attorney
2 DANIELLE L. BROWN
Colorado Bar No. 57814
3 Special Assistant U.S. Attorney
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8693
Email: Danielle.Brown2@usdoj.gov

6 Attorneys for Respondent
7

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

11 ARSEN KUANDYKULY,

12 Petitioner,

13 v.

14 CHRISTOPHER J LAROSE,
15 *Warden, Otay Mesa Detention Center,*

16 Respondent.
17
18
19
20
21

Case No.: 26-cv-02831-BAS-GC

**RESPONSE IN OPPOSITION TO
HABEAS PETITION**

22 **I. INTRODUCTION**

23 Arsen Kuandykuly ("Petitioner") has filed a petition for a Writ of Habeas Corpus
24 pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his immediate
25 release from custody or, in the alternative, provide Petitioner with an individualized
26 bond hearing. However, a bond hearing is not the appropriate remedy and Petitioner's
27 request is not ripe for review. Respondent therefore requests the Court deny the habeas
28 petition.

II. BACKGROUND

Petitioner is a citizen and national of Kazakhstan. Exhibit 1¹ (Form I-213). On December 16, 2024, Petitioner was encountered by U.S. Border Patrol at the Otay Mesa, California Port of Entry, taken into Immigration and Customs Enforcement (ICE) custody, and issued a Notice to Appear (NTA) under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States. *Id.*; Exhibit 2 (NTA).

On March 19, 2026, the Immigration Court denied the Petitioner's asylum relief and ordered him removed but granted withholding of removal to Kazakhstan under INA § 241(b)(3). *See* Exhibit 3 (IJ Decision). Petitioner reserved appeal, however, an appeal was not filed, and the order became administratively final on April 20, 2026. *Id.* at 4.

III. ARGUMENT

Petitioner's Detention is Lawful and Not Ripe for Review

Petitioner's petition should be denied as unripe because he is still within the 90-day statutory removal period under 8 U.S.C. § 1231(a).

"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

¹The attached exhibits are true copies, with redactions of private information, of documents 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.*

7 Here, Petitioner was ordered removed to, and granted withholding of removal to,
8 Kazakhstan—his country of birth and citizenship. Though he reserved appeal of the
9 removal order, his appeal was due to the BIA on April 20, 2026. *See* Exhibit 3 at 4.
10 Because Petitioner did not file an appeal by this date, his order of removal became
11 administratively final on April 20, 2026. Since that date, Petitioner is 36 days into his
12 statutorily mandated 90-day removal period. *See* 8 U.S.C. § 1231(a)(2) (the Attorney
13 General “shall detain” the alien during the 90-day removal period under subsection
14 (a)(1)). Accordingly, his habeas Petition is not ripe for review by this Court.

15 To the extent Petitioner is challenging ICE’s decision to detain him for the
16 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
17 (“Except as provided in this section and *notwithstanding any other provision of law*
18 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
19 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
20 on behalf of any alien arising from the decision or action by the Attorney General to
21 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
22 under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
23 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus
24 special attention upon, and make special provision for, judicial review of the Attorney
25 General’s discrete acts of commencing proceedings, adjudicating cases, and executing
26 removal orders—which represent the initiation or prosecution of various stages in the
27 deportation process.”) (simplified); *Limpin v. United States*, 828 Fed. App’x 429 (9th
28 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)

1 “because claims stemming from the decision to arrest and detain an alien at the
2 commencement of removal proceedings are not within any court’s jurisdiction”).

3 Finally, Respondent contends Petitioner’s request for the Court to order an
4 individualized bond hearing is not an appropriate remedy, since Petitioner is subject to
5 a final removal order. Accordingly, Petitioner’s request should be denied.

6 **IV. CONCLUSION**

7 For the reasons stated herein, Respondent respectfully requests that the Court
8 deny the habeas petition as not ripe for review.

9
10 DATED: May 26, 2026

ADAM GORDON
United States Attorney

11 s/ Danielle L. Brown
12 DANIELLE L. BROWN
13 Assistant United States Attorney

14 Attorneys for Respondent
15
16
17
18
19
20
21
22
23
24
25
26
27
28