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

LEANDRO DAVID ALVAREZ-
ALMAGUER,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden,
Otay Mesa Detention Center, et al.;

Respondents.

Case No. 26-cv-02950-RBM-SBC

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

I. INTRODUCTION

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. As more fully explained below, because Petitioner has been in custody for less than two weeks since his removal order became final on May 7, 2026, this habeas petition is premature. Thus, Respondents respectfully ask the Court to deny this petition.

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II. BACKGROUND

Petitioner is a native and citizen of Cuba, who on October 21, 2025, applied for admission into the country, and was denied because he was not in possession of a valid entry document. *See* Exhibit 1 (Notice to Appear).¹ He was subsequently taken into Immigration and Customs Enforcement (ICE) custody and placed in removal proceedings. *See id.* Within his removal proceedings under § 1229a, Petitioner had the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture (CAT). On February 10, 2026, Petitioner filed his application for asylum, withholding of removal and CAT. *See* Exhibit 2 (IJ Order dated March 16, 2026).

On February 18, 2026, the Department of Homeland Security (DHS) filed a motion to pretermite Petitioner's application for asylum, withholding of removal and CAT due to an asylum cooperation agreement between the U.S. and Ecuador. *See* Exhibit 2. On March 16, 2026, the IJ granted DHS' motion to pretermite and ordered Petitioner removed to Ecuador. *See id.* Petitioner filed an appeal of his removal order to the Board of Immigration Appeals (BIA). *See* Exhibit 3 (BIA decision dated May 7, 2026). On May 7, 2026, the BIA summarily dismissed Petitioner's appeal, due to Petitioner's untimely filing of the appeal, making Petitioner removal order final on that day. *See id.*; *see also* 8 CFR § 1241.1(a) ("An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final upon dismissal of an appeal by the Board of Immigration Appeals"). Petitioner has now filed this habeas Petition less than two weeks after his removal order became final.

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

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 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.*

Here, Petitioner’s removal order became final on May 7, 2026, when the BIA summarily dismissed his appeal of the IJ’s decision ordering him removed to Ecuador. *See* 8 C.F.R. § 1241.1(a) (An IJ’s order of removal “shall become final . . . [u]pon dismissal of an appeal by the Board of Immigration Appeals”). The INA requires that a noncitizen ordered removed be detained for 90 days following “[t]he date the order of removal becomes administratively final” while the government seeks to execute removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is known as the “removal period.” *Id.* § 1231(a)(1).

Petitioner’s removal period began less than a two weeks ago, “so he is still in the 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-CV-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,”

1 as Judge Schopler has put it, a petitioner’s “detention is not merely legal, but required”
2 at this time. *Id.* As the record reflects, Petitioner remains detained under § 1231(a) while
3 the government actively seeks to execute his removal to Ecuador. Indeed, under
4 § 1231(a)(6) and Supreme Court precedent, Petitioner’s post-final order detention is
5 presumptively reasonable pending the government’s efforts to effectuate his removal
6 for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701.
7 This means that Petitioner’s claim of prolonged detention would not be ripe until, at the
8 earliest, August 5, 2026. *See id.*

9 While Petitioner asserts that he has been in immigration custody for over six
10 months, almost all of that time was before his removal order became administratively
11 final and would thus not count toward the 90-day removal period that governs his
12 present custody. *See Tumasov*, 2025 WL 3171897, at *1 (“Any pre-removal-order
13 custody does not count toward the 90-day removal period, which began once Tumasov’s
14 removal order was administratively final and during which the government shall detain
15 him.”) (simplified, quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021); 8
16 U.S.C. § 1231(a)(1)(A)).

17 In the end, because Petitioner’s post-final order detention is within the 90-day
18 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.
19 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied at this time. *See*
20 *Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief because “he is still
21 in the 90-day window of statutorily mandated detention”); *see also Khalilova v. Smith*,
22 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025)
23 (“[B]ecause the six-month period of presumptive reasonableness [under *Zadvydas*] has
24 not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-
25 03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 deny the habeas petition.

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5 DATED: May 19, 2026

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6
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9 Attorneys for Respondents
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