

1 ADAM GORDON
United States Attorney
2 ANTONIO ESTRADA
Special Assistant U.S. Attorney
3 California Bar No. 321247
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8664
Facsimile: (619) 546-7751
6 Email: Antonio.Estrada@usdoj.gov

7 Attorneys for Respondents

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

11 **POUYA GOLESTANEH,**

12
13 **Petitioner,**

14 **v.**

15 **CHRISTOPHER J. LAROSE, et al.,**

16
17 **Respondents.**

Case No. 26-cv-03588-DMS-SBC

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

18
19 **I. INTRODUCTION**

20 Post-removal order detention is statutorily mandated under 8 U.S.C. § 1231(a)
21 for a period of 90 days following the date that a noncitizen's removal order becomes
22 final. As more fully explained below, because Petitioner has been in custody for less
23 than a month since his removal order became final, this habeas petition is premature. In
24 addition, Petitioner's administrative procedure claims are without merit. Thus,
25 Respondents respectfully ask the Court to deny this petition.

26 ///

27 ///

28 ///

II. BACKGROUND

Petitioner is a native and citizen of Iran, who was lawfully admitted to the United States for permanent residence on a conditional basis. *See* Exhibit 1 (Notice to Appear); *see also* Exhibit 2 (I-213 dated October 21, 2025). On September 23, 2022, petitioner's status as a conditional resident was terminated. *See* Exhibit 1; *see also* Exhibit 2; *see also* Exhibit 3 (Personal Centric Identity Services printout). On November 26, 2025, Petitioner was issued a Notice to Appear (NTA), placing him in removal proceedings. *See* Exhibit 1. On January 26, 2026, Petitioner failed to appear for his removal proceedings, thus the immigration judge (IJ) ordered Petitioner removed *in absentia*. *See* Exhibit 4 (IJ Order dated January 26, 2026). Petitioner's removal order became final that same day. *See* 8 CFR § 1241.1(e) (An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final... [i]f an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order). On May 11, 2026, Petitioner filed a motion to reopen his removal order, which the IJ denied. *See* Exhibit 5 (IJ Order dated May 11, 2026). On June 1, 2026, Petitioner filed an appeal of the denial of his motion to reopen to the Board of Immigration Appeals (BIA). *See* Exhibit 6 (BIA appeal receipt). The appeal remains pending. *See id.*

On June 1, 2026, Petitioner was encountered by ICE officers and was taken to into custody. *See* Exhibit 7 (I-213 dated June 1, 2026). Petitioner has remained detained since.

III. ARGUMENT

A. Petitioner is lawfully detained pursuant to 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

1 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
2 detain” the alien during the 90-day removal period under subsection (a)(1)).

3 Section 1231(a)(6) “authorizes further detention if the Government fails to
4 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
5 Detention authority under this statute, however, is limited to “a period reasonably
6 necessary to bring about the alien’s removal from the United States” and “does not
7 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
8 period of post-removal detention constitutes a “presumptively reasonable period of
9 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
10 period unless “there is no significant likelihood of removal in the reasonably foreseeable
11 future.” *Id.*

12 Here, Petitioner’s removal order became final on January 26, 2026, when the IJ
13 ordered him removed *in absentia*. 8 CFR § 1241.1(e)(An order of removal made by
14 the immigration judge at the conclusion of proceedings under section 240 of
15 the Act shall become final... [i]f an immigration judge orders an alien removed in the
16 alien's absence, immediately upon entry of such order). The INA requires that a
17 noncitizen ordered removed be detained for 90 days following “[t]he date the order of
18 removal becomes administratively final” while the government seeks to execute
19 removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is known as the “removal period.” *Id.*
20 § 1231(a)(1).

21 Petitioner’s removal period began less than a month ago, “so he is still in the
22 90-day window of statutorily mandated detention.” *Tumasov v. Doe I*, No. 25-CV-
23 2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,”
24 as Judge Schopler has put it, a petitioner’s “detention is not merely legal, but required”
25 at this time. *Id.* Indeed, under § 1231(a)(6) and Supreme Court precedent, Petitioner’s
26 post-final order detention is presumptively reasonable pending the government’s efforts
27 to effectuate his removal for six months following the final order of removal. *See*
28 *Zadvydas*, 533 U.S. at 701. This means that Petitioner’s claim of prolonged detention

1 would not be ripe until, at the earliest, December 1, 2026. *See id.*

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 **B. Petitioner’s Administrative Procedure Claims Are Without Merit**

12 The Administrative Procedure Act (APA) does not provide an avenue for relief
13 in this case. The APA places limits on when agency action is subject to judicial review.
14 “Agency action made reviewable by statute and final agency action for which there is
15 no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704;
16 *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017)
17 (“[Section] 704’s requirement that to proceed under the APA, agency action must be
18 final or otherwise reviewable by statute is an independent element without which courts
19 may not determine APA claims.”). Reviewable “agency action” is defined to include
20 “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent
21 or denial thereof, or failure to act.” 5 U.S.C. § 551(13). “While this definition is
22 ‘expansive,’ federal courts ‘have long recognized that the term [agency action] is not so
23 all-encompassing as to authorize . . . judicial review over everything done by an
24 administrative agency.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th
25 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460
26 F.3d 13, 19 (D.C. Cir. 2006)).

27 Here, it is not altogether clear what final agency action Petitioner seeks review
28 over. Importantly, habeas relief is available to challenge only the legality or duration of

1 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140
2 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for
3 review of agency actions, which are governed by the Administrative Procedure Act,
4 while habeas corpus refers to habeas petitions brought directly in district court to
5 challenge illegal confinement.”). The Court should therefore reject Petitioner’s APA
6 claims.

7 IV. CONCLUSION

8 For the reasons stated herein, Respondents respectfully request that the Court
9 deny the habeas petition.

10
11 DATED: June 25, 2026

ADAM GORDON

United States Attorney

13 s/ Antonio Estrada

14 ANTONIO ESTRADA

Special Assistant United States Attorney

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