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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Diolinda Pintado-Granda,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; et al.

Respondents.

Case No. '26CV3291 CAB AHG

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Diolinda Pintado Granda respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner is a Peruvian mother and survivor of severe domestic violence who presented herself at the United States border seeking protection, was detained by U.S. Immigration and Customs Enforcement at the Otay Mesa Detention Center, and then won protection under the Convention Against Torture in Immigration Court. Respondents nevertheless continue to hold her in civil immigration detention after the immigration judge determined that she cannot lawfully be removed to Peru because she is more likely than not to be tortured there.

This Petition does not ask this Court to review the merits of the Immigration Judge's CAT determination, to decide Petitioner's applications for protection, or to interfere with removal proceedings. It challenges only Respondents' continuing physical custody over Petitioner after she obtained mandatory protection from removal to Peru. Her continued detention no longer serves any reasonably foreseeable removal purpose, and Respondents have not provided constitutionally adequate custody review, a meaningful individualized release determination, or a reasoned basis for continuing to imprison a noncriminal torture survivor with a stable release plan and compelling reasons to comply with all immigration requirements.

Petitioner therefore requests immediate release under reasonable conditions of supervision. In the alternative, Petitioner requests an individualized bond hearing under 8 U.S.C. § 1226(a) before a neutral immigration judge within five days, with the Government bearing the burden by clear and convincing evidence and with express consideration of bond, ability to pay, and less restrictive alternatives.

I. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. §§ 2242–2243 because Petitioner is in federal custody within this District and alleges that his custody violates the Constitution and laws of the United States. Federal district courts retain jurisdiction over collateral challenges to present physical detention. See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

Venue is proper in this District because Petitioner is detained at the Otay Mesa Detention Center in San Diego County, California.

This Petition does not ask the Court to review the merits of any removal order, decide Petitioner's asylum application, or supervise the conduct of removal proceedings generally. It challenges only the legality of Petitioner's ongoing detention under 8 U.S.C. § 1226(a) and the adequacy of the custody procedures afforded to her. Accordingly, jurisdiction is not barred by 8 U.S.C. §§ 1252(a)(5), (b)(9), (g). See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Singh v. Holder*, 638 F.3d 1196, 1200–03 (9th Cir. 2011).

II. PARTIES

Petitioner Diolinda Pintado Granda is a native and citizen of Peru. Her Alien Registration Number is [redacted]. She is currently detained by ICE at the Otay Mesa Detention Center in San Diego, California..

Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center and Petitioner's immediate physical custodian.

Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner's immigration custody and continued detention within this District. He is sued in his official capacity only.

Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens.

This Petition challenges Petitioner's present physical confinement under 28 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner's custody and continued detention.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner fled severe domestic violence and presented herself at the border seeking protection.

Petitioner was born [redacted] in Ayabaca, Peru. She is the mother of two children who remain outside the United States. She entered the United States near the San Ysidro Port of

Entry on or about October 17, 2025, after fleeing Peru and seeking refuge from the man who had [redacted]

Petitioner fled Peru because she reasonably feared for her life. Her immigration case was not an attempt to evade the law. She came to the border seeking protection and was detained in immigration custody while pursuing asylum, withholding of removal, and CAT protection.

B. The Immigration Court granted deferral of removal under CAT.

Petitioner was detained at Otay Mesa while her removal proceedings were pending before the Otay Mesa Immigration Court. Her individual hearing was scheduled before Immigration Judge Ferdinand J. Ortiz on April 3, 2026. The Immigration Court granted Petitioner deferral of removal under the Convention Against Torture.

The grant of deferral means that Petitioner may not be removed to Peru while the deferral order remains in effect unless DHS lawfully terminates deferral through the procedures provided by regulation. 8 C.F.R. § 1208.17(d). DHS may not simply disregard the Immigration Judge's finding that Petitioner is more likely than not to be tortured in Peru.

The CAT deferral order is legally significant for custody. It eliminates Peru as a presently available country of removal. Respondents have not identified any third country that has agreed to accept Petitioner, any lawful travel document permitting her removal to a third country, or any concrete plan that makes removal reasonably foreseeable. Petitioner is Peruvian, her CAT deferral bars removal to Peru, and continued detention no longer serves the ordinary statutory purpose of effectuating removal.

C. Petitioner has been detained for more than seven months and remains confined despite the CAT deferral grant.

Petitioner has remained in ICE custody since approximately October 17, 2025. As of the filing of this Petition, she has been detained for more than seven months, including the period after the Immigration Court granted CAT deferral. She is a civil detainee, not a criminal prisoner. Her detention has occurred despite her status as a torture survivor, her lack of any identified lawful path for removal to Peru, and the availability of supervised release.

Petitioner has strong reasons to comply with all future legal requirements. She won CAT deferral after presenting herself for the immigration process. She has a concrete interest in preserving her protection, and a continuing need to comply with ICE and immigration court requirements. There is no evidence that she is dangerous, that she has a violent criminal history, or that she cannot be supervised in the community.

Respondents can impose ordinary conditions of supervision, including reporting, address updates, check-ins, electronic or telephonic monitoring, and any other reasonable noncustodial conditions. Continued confinement is therefore not necessary to serve any legitimate regulatory objective.

D. Custody posture and exhaustion.

If neither party appealed the Immigration Judge's decision, Petitioner's removal order became administratively final when the appeal period expired. See 8 C.F.R. § 1241.1(c). In that posture, detention is governed, at most, by 8 U.S.C. § 1231(a), and prolonged or purposeless detention is limited by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

DHS did not appeal the CAT deferral grant. Respondents cannot rely on 8 U.S.C. § 1231(a) as a basis for mandatory post-order detention. Petitioner's detention would instead remain pre-final-order detention under 8 U.S.C. § 1226(a), requiring a constitutionally adequate individualized custody hearing when detention becomes prolonged. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Hernandez v. Sessions*, 872 F.3d 976, 990–1001 (9th Cir. 2017).

To the extent Respondents argue that Petitioner was required to pursue additional administrative custody review before filing habeas, exhaustion should be excused. Petitioner challenges ongoing physical confinement after winning CAT deferral; administrative review cannot provide timely relief from the ongoing deprivation of liberty where removal is not reasonably foreseeable and release conditions are available. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004).

IV. LEGAL STANDARD

Habeas corpus under 28 U.S.C. § 2241 is the traditional means for a person in custody to challenge the legality of that custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The writ remains available to noncitizens held in immigration detention who contend that their detention violates the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 687–88; *Demore*, 538 U.S. at 516–17.

The Fifth Amendment protects persons in civil immigration detention. *Zadvydas*, 533 U.S. at 693. Because immigration detention is civil rather than punitive, detention must remain reasonably related to a legitimate regulatory purpose and must be accompanied by meaningful

procedures adequate to prevent erroneous deprivation of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

Under *Zadvydas*, detention after a final order of removal is constitutionally limited. Once a noncitizen provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Zadvydas*, 533 U.S. at 701. Section 1231(a)(6) does not authorize indefinite or purposeless civil detention.

The post-order custody regulations likewise recognize that continued detention must be tied to a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13. That regulation applies where a person subject to a final order provides good reason to believe that there is no significant likelihood of removal to the country ordered removed, or to a third country, in the reasonably foreseeable future. 8 C.F.R. § 241.13(a).

Deferral of removal under CAT does not confer lawful immigration status and does not eliminate the final removal order. But it does bar removal to the country of torture while deferral remains in effect. 8 C.F.R. § 1208.17(a), (d). DHS may seek termination only through the regulatory termination process. Unless and until DHS lawfully terminates deferral or identifies a viable third country of removal, continued detention must be justified by a real, not theoretical, removal purpose.

V. CLAIM ONE: CONTINUED DETENTION AFTER FINAL CAT DEFERRAL VIOLATES DUE PROCESS BECAUSE REMOVAL IS NOT REASONABLY FORESEEABLE

Petitioner's continued detention violates due process because Respondents are holding her after the Immigration Court granted deferral of removal under the Convention Against Torture, DHS did not appeal, and the order became administratively final. The final CAT deferral order bars removal to Peru while the order remains in effect. Respondents have not identified a third country willing to accept her, a travel document for removal to a third country, or any concrete plan making removal reasonably foreseeable.

The statutory purpose of post-order detention is to effectuate removal. 8 U.S.C. § 1231(a)(1)(A). Where removal cannot be carried out in the reasonably foreseeable future, continued detention ceases to serve that purpose. *Zadvydas*, 533 U.S. at 699–701. That principle applies with special force where DHS did not appeal the Immigration Judge's CAT deferral order and is now bound by a final administrative determination that Petitioner may not be removed to Peru.

Petitioner has provided good reason to believe removal is not reasonably foreseeable. She is a citizen of Peru. The Immigration Court granted CAT deferral because removal to Peru would expose her to torture. DHS did not appeal. Respondents have not identified any alternate country available for removal. Continuing to hold her under these circumstances transforms civil detention into detention for detention's sake. The Due Process Clause does not permit that result.

CAT deferral may be terminated only through the regulatory process if DHS later proves that Petitioner is no longer likely to be tortured or obtains sufficient assurances that torture will not occur. 8 C.F.R. § 1208.17(d). Unless and until that happens, Peru is not a reasonably available country of removal, and Respondents must justify custody by more than the theoretical possibility of future termination.

VI. CLAIM TWO: RESPONDENTS HAVE NOT PROVIDED CONSTITUTIONALLY ADEQUATE POST-ORDER CUSTODY REVIEW

Respondents have not provided a meaningful individualized custody determination that justifies continued detention after the final CAT deferral grant. Because DHS did not appeal, Petitioner is in post-order custody. But post-order custody does not eliminate due process. It must remain tied to a legitimate removal purpose, and custody review must meaningfully evaluate whether removal is reasonably foreseeable and whether continued detention is necessary.

The governing post-order custody regulations require consideration of whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.4, 241.13. Those regulations cannot be applied mechanically. In Petitioner's case, the most important custody fact is the final CAT deferral order. That order bars removal to Peru, the only country identified in the record. Respondents have not shown that a third country is available. A custody review that fails to address those facts is not meaningful.

Respondents also have not shown that Petitioner is dangerous, that she is likely to flee, or that supervision would be inadequate. Petitioner's detention cannot be justified by generalized final-order custody authority. The Constitution requires custody to be reasonably related to a lawful regulatory purpose. Where the Government cannot identify a reasonably foreseeable removal destination and cannot show that supervised release would be inadequate, continued detention becomes arbitrary.

VII. CLAIM THREE: THE RECORD DOES NOT SUPPORT DETENTION AS NECESSARY TO PREVENT DANGER OR FLIGHT

Petitioner is a domestic-violence survivor who sought protection at the border, remained detained through her immigration proceedings, and won CAT deferral. The record does not show that she is a present danger to the community. There is no identified violent criminal history, weapons history, gang history, or conduct suggesting that she cannot be safely released under supervision.

Nor does the record show that Petitioner is likely to flee. She has every reason to comply with legal requirements. She won CAT deferral, she must preserve that protection, and she remains subject to immigration supervision. A person who has just prevailed on a torture-protection claim has a strong incentive to maintain address information, comply with ICE, and avoid any conduct that could jeopardize her protection.

Any legitimate government concern can be addressed through less restrictive alternatives. ICE can require an order of supervision, check-ins, address reporting, telephonic reporting, electronic monitoring, or other conditions. The availability of these measures makes continued incarceration unnecessary and disproportionate.

VIII. CLAIM FOUR: CONTINUED DETENTION IS PUNITIVE IN EFFECT AND DISPROPORTIONATE TO ANY CIVIL PURPOSE

Immigration detention is civil. It is not punishment. Once detention is no longer reasonably related to securing removal or protecting the community, it becomes punitive in effect and violates due process. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80.

Petitioner's detention is especially disproportionate because she is a torture survivor who was detained after presenting herself at the border seeking refuge. The Immigration Court has already determined, in a final order unappealed by DHS, that removal to Peru would expose her to torture. Continued detention after that ruling compounds the trauma that CAT protection was designed to prevent and serves no legitimate purpose that could not be achieved through supervision.

The Constitution does not permit civil detention to continue merely because release has not yet been administratively processed. Where the Government cannot show that removal is reasonably foreseeable, that Petitioner is dangerous, or that conditions of release would be inadequate, continued confinement violates the Fifth Amendment.

IX. EXHAUSTION DOES NOT BAR RELIEF

Exhaustion is prudential, not jurisdictional, in this context and may be excused where administrative review would be inadequate, futile, or incapable of preventing irreparable harm. *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004); *Leonardo v. Crawford*, 646 F.3d 1157, 1160–61 (9th Cir. 2011).

Requiring further administrative steps would not cure the ongoing constitutional injury. Petitioner remains physically confined despite winning CAT deferral in a final, unappealed order. The core question is not a routine discretionary bond disagreement, but whether continued detention after final CAT deferral serves any lawful purpose and whether Respondents have provided constitutionally adequate post-order custody review. Habeas is the proper vehicle to test that custody.

X. IMMEDIATE RELEASE IS THE PROPER REMEDY; ALTERNATIVELY, PROMPT MEANINGFUL POST-ORDER CUSTODY REVIEW IS REQUIRED

The traditional function of habeas corpus is release from unlawful custody. *Preiser*, 411 U.S. at 484. This Court has broad authority under 28 U.S.C. §§ 2241–2243 to order relief that cures unconstitutional detention.

Immediate release is warranted. Petitioner won CAT deferral. DHS did not appeal. Removal to Peru is barred while the deferral order remains in effect. Respondents have not identified a reasonably foreseeable third-country removal. Petitioner is not dangerous, has compelling reasons to comply, and can be supervised through ordinary ICE conditions.

At minimum, if the Court declines to order immediate release, it should order Respondents to provide prompt, meaningful post-order custody review with explicit instructions that Respondents must consider the final CAT deferral order, the absence of a reasonably foreseeable country of removal, the lack of any third-country removal plan, Petitioner's lack of danger, her incentives to comply, her release plan, and the availability of conditions of supervision. Any continued detention should be supported by a reasoned written decision explaining why removal is significantly likely in the reasonably foreseeable future and why supervision would be inadequate.

XI. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court issue a writ of habeas corpus under 28 U.S.C. § 2241; declare that Petitioner's continued detention violates the Fifth Amendment and the immigration laws; order Respondents to immediately release Petitioner

under reasonable conditions of supervision; enjoin Respondents from re-detaining Petitioner absent lawful process; and grant any further relief this Court deems just and proper.

In the alternative, Petitioner requests that the Court order Respondents to provide prompt, constitutionally adequate post-order custody review that meaningfully addresses the final CAT deferral order, the absence of reasonably foreseeable removal, Petitioner's release plan, and the availability of supervision, and that any decision to continue detention be supported by a reasoned written explanation.

Respectfully submitted,

DATED this May 28, 2026

/s/ Jose Torres
Jose Torres
Counsel for Petitioner