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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DIOLINDA PINTADO-GRANDA,

Petitioner,

v.

PATRICK DIVVER, et al.,

Respondents.

Case No. 26-cv-03291-CAB-AHG

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 a month since her removal order became final on May 19, 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 Peru, who entered the United States without inspection on October 24, 2025. *See* Exhibit 1 (Notice to Appear)[1]; *see also* Exhibit 2 (I-213). She was subsequently taken into Immigration and Customs Enforcement (ICE) custody and placed in removal proceedings. *See* Exhibit 1; *see also* Exhibit 2. On April 17, 2026, an immigration judge (IJ) ordered Petitioner removed from the United States and granted her withholding of removal under the convention against torture to Peru that same day. *See* Exhibit 3 (IJ Order dated April 17, 2026). Both parties reserved appeal of the IJs order; both parties were given an appeal deadline of May 18, 2026. *See id.* Neither party filed an appeal of the IJs order to the Board of Immigration Appeals (BIA), making Petitioner's removal order a final order of removal on May 19, 2026. *See id.*; *see also* Exhibit 4 (Department of Justice – Executive Officer for Immigration Review Case Details) at 3.

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

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

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 19, 2026, when both parties failed to file an appeal before the BIA. *See* 8 C.F.R. § 1241.1(c) (An IJ's order of removal "shall become final . . . [u]pon expiration of the time allotted for an appeal if the [Petitioner] does not file an appeal within that time"). 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 month ago, "so [s]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," as Judge Schopler has put it, a petitioner's "detention is not merely legal, but required" at this time. *Id.* As the record reflects, Petitioner remains detained under § 1231(a). Indeed, under § 1231(a)(6) and Supreme Court precedent, Petitioner's post-final order detention is presumptively reasonable pending the government's efforts to effectuate his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701. This means that Petitioner's claim of prolonged detention would not be ripe until, at the earliest, November 19, 2026. *See id.*

While Petitioner asserts that she has been in immigration custody for over seven months, almost all of that time was before her removal order became administratively final and would thus not count toward the 90-day removal period that governs her present custody. *See Tumasov*, 2025 WL 3171897, at *1 ("Any pre-removal-order custody does not count toward the 90-day removal period, which began once Tumasov's

removal order was administratively final and during which the government shall detain him.") (simplified, quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021); 8 U.S.C. § 1231(a)(1)(A)).

Petitioner also contends that Respondents have violated § 1231 and its implementing regulations by failing to provide him with "periodic custody reviews." ECF No. 1 at 10. The time for the government to conduct a post-order custody review in his case, however, has not yet lapsed.[2] ("ICE has ninety days from the date of the final order of removal to make a Post Order Custody Review.").

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

IV. CONCLUSION

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

DATED: June 5, 2026

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United States Attorney

s/ *Antonio Estrada*
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Attorneys for Respondents

[2] This assertion is based on information conveyed to Respondents' Counsel by ICE Counsel.