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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RENATA NIGIEMATULINA,

Petitioner,

v.

WARDEN OF OTAY MESA DETENTION CENTER, et al.,

Respondents.

Case No.: 25-cv-2933-BAS-BJW

RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION

I. Introduction

Petitioner requests that this Court order Immigration and Customs Enforcement (ICE) to release her from custody because, she alleges, her detention is unlawful and prolonged. She was ordered removed from the United States on June 20, 2025, and was granted withholding of removal to Russia that same day. Petitioner is subject to a final, executable order of removal, which means that she has no right to remain in the United States. Although she may not be repatriated to Russia, she may be resettled in a third country. Under 8 U.S.C. § 1231(a), ICE has authority to detain a noncitizen for 90 days to execute removal, and the Supreme Court has held that detention is presumptively reasonable for six months. Here, the presumptively reasonable six-month removal period for ICE to effect removal has not ended. ICE is actively working to effect Petitioner's removal to a third country. Petitioner has not provided good reason to believe that there is no significant likelihood of her removal in the reasonably foreseeable future. For the reasons set forth below, the Court should dismiss the petition.

II. Factual Background

Petitioner is a native and citizen of Russia. On or about November 1, 2024, Petitioner arrived at the Otay Mesa Port of Entry, with no entry documentation in her possession. At that time, Petitioner was detained by the Department of Homeland Security (DHS) in immigration proceedings at the Otay Mesa Detention Facility. *See* ECF No. 1 at 2. On June 20, 2025, after a full merits hearing, an Immigration Judge (IJ) denied Petitioner asylum, ordered Petitioner removed from the United States to Russia, and granted her Withholding of Removal from Russia under the Immigration and Nationality Act (INA) § 241(b)(3). *See id.* at 2. As of this writing, there is no record of any appeal filed with the Board of Immigration Appeals, thus making the IJ's order administratively final on July 21, 2025. *See id.*, at 2; *See* 8 C.F.R. § 1003.39; 8 C.F.R. § 1241.1. Since that time, Petitioner has remained in DHS custody at the Otay Mesa Detention Center pursuant to 8 U.S.C. § 1231(a).

Since Petitioner's removal order became administratively final, ICE has been

actively working as expeditiously as possible to locate a third country for resettlement and to effect Petitioner's removal to a third country. On August 7, 2025, ICE submitted resettlement requests to Turkiye, Brazil, and Norway. Declaration of David Townsend, at 7. On August 27, 2025, ERO sent a resettlement request to Spain. *Id.* Norway and Spain have declined. Id. Requests to Turkiye and Brazil remain pending. *Id.* ICE remains actively working to locate a third country for resettlement and to effect Petitioner's removal to a third country. *Id.*

III. Argument

A. Petitioner is Lawfully Detained

Authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001).

Petitioner is subject to a final, executable order of removal, which means that she has no right to remain in the United States. She has a temporary right not to be repatriated to Russia, but she has no right not to be resettled in a third country. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner, who have received protection against removal to the designated country (either withholding of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled in third countries.

Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall remove the noncitizen to any of the following countries:

> (i) The country from which the alien was admitted to the United States.
>
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
>
> (iv) The country in which the alien was born.
>
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
>
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
>
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Id.

Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

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); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. 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 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005) ("[T]he presumptive period during which the detention of an alien is reasonably necessary to effectuate his removal is six months…"); *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003).

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." *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377. The Supreme Court limited the statute, allowing post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. "[O]nce removal

is no longer foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. Ultimately, "an alien can be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future [("SLRRFF")]." *Id.*

The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). The alien must make such a showing to shift the burden to the government.

> [O]nce the alien 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 the showing. And for the detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink.

Zadvydas, 533 U.S. at 701.

Petitioner's case is premature as the six-month presumptively reasonable removal period will not end until approximately December 20, 2025. *See Khalilova v. Smith*, No. 25-cv-2140 JLS (DDL), 2025 WL 3089522, at *3 (S.D. Cal. Nov. 5, 2025) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-610 (E.D. Va. 2006) (same); *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Even if the removal period had extended beyond six months, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable

future. ICE is in the process of obtaining travel documents from a third country pursuant to 8 U.S.C. § 1231(b)(2)(E), so it is premature for Petitioner to seek administrative or judicial review of that process. If ICE obtains travel documents for resettlement in a third country, Petitioner will have an opportunity to seek to reopen her removal proceedings. *See* 8 U.S.C. § 1229a(c)(7) (Motions to reopen); 8 C.F.R. § 1003.23(b) ("Reopening or reconsideration before the immigration court"). Movants can also seek an emergency stay of removal. *See generally* 8 C.F.R. §§ 1003.2(f), 1003.23(b)(v). Judicial review of that process will be exclusive to the Ninth Circuit. *See* 8 U.S.C. § 1252(b)(6), (9). ICE is actively working to effect Petitioner's removal to a third country and her continued detention is not unconstitutionally indefinite. On this record, Petitioner could not sustain her burden, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to effect Petitioner's removal.

To the extent Petitioner is challenging ICE's decision to detain her for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to

arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

B. An Evidentiary Hearing is Not Needed

Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

C. Conditions of Confinement Allegations are Not Proper Habeas Claims

To the extent Petitioner asserts claims regarding conditions of her confinement, [*see generally*, ECF No. 1], the Court lacks jurisdiction over such claims because they do not challenge the lawfulness of her custody. An individual may seek habeas relief under 28 U.S.C. § 2241 if she is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release."). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the petitioner's claim would "necessarily lead to immediate or speedier release."). Here, Petitioner's claims regarding the conditions of her confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 ("We have long held that prisoners may not challenge mere conditions of confinement in habeas corpus."); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in

Pinson, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release). Thus, Petitioner's claims do not arise under § 2241 and the petition should be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court should deny and dismiss the petition. *See Khalilova v. Smith*, No. 25-cv-2140 JLS (DDL), 2025 WL 3089522, at *3 (S.D. Cal. Nov. 5, 2025).

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Respectfully submitted,

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