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

10
11 Elena Kashpirova,

12 Petitioner,

13
14 v.

15 Christopher J. Larose, et al.;

16 Respondents.
17

Case No. 26-cv-01835-LL-DEB

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

18 **I. INTRODUCTION**

19 Post-removal order detention is statutorily mandated under 8 U.S.C. § 1231(a)
20 for a period of 90 days following the date that a noncitizen’s removal order becomes
21 final. As more fully explained below, because Petitioner has been in custody for less
22 than a month since her removal order became final on January 15, 2025, this habeas
23 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 Russia, who on February 25, 2023, applied for admission into the United States. *See* Exhibit 1 (Notice to Appear).¹ Petitioner was issued a Notice to Appear (NTA) and was paroled into the U.S. pending her removal proceedings. *See* Exhibit 1; *See also* Exhibit 2 (I-213). On December 2, 2024, Petitioner failed to appear for her removal proceedings, and an Immigration Judge (IJ) ordered Petitioner removed *in absentia*. *See* Exhibit 3 (IJ Removal Order). Petitioner timely filed a Motion to Reopen the *in absentia* removal order with the IJ. *See* Exhibit 4 (IJ Order Denying First Motion to Reopen) at 3. On January 15, 2025, the IJ denied Petitioner's Motion to Reopen, making the IJ's removal order administratively final. *See id.* at 4. Petitioner did not appeal this decision to the Board of Immigration Appeals (BIA). On February 19, 2025, Petitioner filed a second Motion to Reopen. *See* Exhibit 5 (IJ Order Denying Second Motion to Reopen) at 2. Petitioner filed an appeal of the denial of the second Motion to Reopen with the BIA. *See* Exhibit 6 (BIA Filing Receipt). The BIA accepted Petitioner's brief on December 29, 2025. *See* Exhibit 7 (BIA Notice of Action). On March 14, 2026, Petitioner was detained by ICE and transferred to the Otay Mesa Detention Center. *See* Exhibit 2. Petitioner remains detained at the Otay Mesa Detention Center.

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

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

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 15, 2025, when the IJ
13 denied Petitioner’s Motion to Reopen the Removal order in absentia, making the IJs
14 removal order administratively final. *See* 8 C.F.R. § 1241.1(e) (An IJ’s order of removal
15 “shall become final . . . [i]f an immigration judge orders an alien removed in the alien's
16 absence, immediately upon entry of such order”). The INA requires that a noncitizen
17 ordered removed be detained for 90 days following “[t]he date the order of removal
18 becomes administratively final” while the government seeks to execute removal.
19 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 1*, 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.* As the record reflects, Petitioner remains detained under § 1231(a) while
26 the government actively seeks to execute her removal to Russia. Indeed, under
27 § 1231(a)(6) and Supreme Court precedent, Petitioner’s post-final order detention is
28 presumptively reasonable pending the government’s efforts to effectuate her removal

1 for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701.
2 This means that Petitioner’s claim of prolonged detention would not be ripe until, at the
3 earliest, September 14, 2026. *See id.*

4 To the extent Petitioner challenges his conditions of confinement, *see* ECF No. 1
5 at 7, such claims are not cognizable here. Habeas relief “is limited to attacks upon the
6 legality or duration of confinement.” *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir.
7 2023). Claims alleging “unconstitutional conditions of confinement, is not cognizable
8 in habeas.” *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL
9 3103811, at *3 (S.D. Cal. Apr. 25, 2023). Because a Section 2241 habeas petition is not
10 the proper vehicle for challenging conditions of confinement, the Court lacks
11 jurisdiction over these claims here. *See id.* (citing *Nettles v. Grounds*, 830 F.3d 922, 933
12 (9th Cir. 2016) (“We have long held that prisoners may not challenge mere conditions
13 of confinement in habeas corpus.”)); *Giron Rodas v. Lyons*, No. 25-cv-1912-LL-AHG,
14 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
15 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
16 attacking ‘the legality or duration of confinement.’”) (citation omitted).

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 *Zadvvdas*] 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).

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IV. CONCLUSION

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

DATED: March 31, 2026

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