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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 KENNY MOISES RODRIGUEZ-SILVA,

13 Petitioner,

14 v.

15 PATRICK DIVVER; et al.,

16 Respondents.
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Case No.: 26-cv-2411-TWR-VET

RESPONSE TO PETITION

21 Respondents request the Court deny this petition on the ground that post-removal
22 order detention is statutorily mandated under 8 U.S.C. § 1231(a) for a period of 90 days
23 following the date that a noncitizen's removal order becomes final. Because Petitioner was
24 transferred into immigration custody from criminal custody pursuant to an immigration
25 detainer and is now subject to a final order of removal that Respondents are ready to
26 effectuate within the next ten days, Respondents respectfully ask the Court to deny this
27 habeas petition.
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I. FACTUAL BACKGROUND

Petitioner is a native and citizen of Venezuela who is currently detained at the Otay Mesa Detention Center. On December 29, 2023, Petitioner illegally entered the United States near McAllen, Texas. He was apprehended by Border Patrol on the same date. On December 30, 2023, Petitioner was served with a Notice to Appear for Immigration and Nationality Act § 240 removal proceedings before an Immigration Judge. The Notice to Appear charged him with inadmissibility under INA § 212(a)(6)(A)(I) as an alien who is present in the United States without having been admitted or paroled or who arrived at a time or place other than as designated. On or about December 31, 2023, ERO released Petitioner on his own recognizance upon his release from Border Patrol custody.

On October 8, 2025, Petitioner was encountered by ICE at the Miami Dade County Jail. An immigration detainer (Form I-247) was issued and Petitioner was remanded back to ERO custody. He has been detained by ICE since that time. On December 5, 2025, the Immigration Judge denied all relief and ordered Petitioner removed to Venezuela. Petitioner filed a timely appeal of the Immigration Judge's order with the Board of Immigration Appeals (BIA). On March 12, 2026, the BIA dismissed Petitioner's appeal, making Petitioner subject to a final order of removal.

On March 2, 2026, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 before Judge Bencivengo, where he also challenged the legality of his ICE detention. *See Rodriguez-Silva v. Divver*, No. 26-cv-1315-CAB-MSB (S.D. Cal.). Judge Bencivengo dismissed the previously filed petition on March 3, 2026, for lack of information and provided Petitioner 30 days to file an amended complaint. *See id.* at ECF No. 2. As Petitioner did not file an amended petition by the deadline set by the Court, the Court closed the case on April 13, 2026.

When Petitioner's removal order became final, he became subject to mandatory detention under 8 U.S.C. § 1231(a) and ICE/ERO began making arrangements to execute removal. On April 14, 2026, ICE/ERO confirmed that the previous habeas petition had been

1 dismissed and that Petitioner had not sought an appeal or stay before the Ninth Circuit. As
2 of April 14, 2026, ERO is set to transfer Petitioner to Florence, Arizona within 5 days as no
3 Travel Document is required for removal to Venezuela. Upon transfer to Florence, Arizona,
4 Petitioner's flight will be confirmed and he will be removed to Venezuela within 7 days.

5 II. ARGUMENT

6 "Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
7 § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the
8 United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides
9 that an alien ordered removed must be detained for 90 days pending the government's
10 efforts to secure the alien's removal through negotiations with foreign governments. *See* 8
11 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day
12 removal period under subsection (a)(1)).

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

21 Petitioner filed a habeas petition, arguing that he is entitled to release or a bond
22 hearing. At the time his petition was filed, Petitioner was subject to a final removal order.
23 Petitioner's removal order became final on March 12, 2026. *See* 8 C.F.R. § 1241.1(a).

24 Because Petitioner is now subject to a final, executable order of removal, his
25 detention is governed by 8 U.S.C. § 1231(a). *See Arteaga-Martinez*, 596 U.S. at 578
26 (explaining that § 1231(a) "governs the detention, release, and removal of individuals
27 'ordered removed'"). That statute requires that Petitioner be detained for 90 days following
28

1 “[t]he date the order of removal becomes administratively final” while the government
 2 seeks to execute removal. 8 U.S.C. § 1231(a)(1)(B)(i). This period is known as the “removal
 3 period.” *Id.* § 1231(a)(1). Petitioner’s reference to certain requirements set forth within 8
 4 C.F.R. § 1236.1 are inapplicable as Petitioner was remanded back into ICE custody
 5 pursuant to an immigration detainer.

6 Petitioner “is still in the 90-day window of statutorily mandated detention.” *Tumasov*
 7 *v. Doe I*, No. 25-cv-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025).
 8 “In other words,” Petitioner’s “detention is not merely legal, but required” at this time. *Id.*
 9 Because Petitioner must be detained during the current 90-day statutory removal period, he
 10 cannot demonstrate that he “is in custody in violation” of the law. *See* 28 U.S.C.
 11 § 2241(c)(3). Moreover, under § 1231(a)(6) and *Zadvydas*, Petitioner’s post-final order
 12 detention is presumptively reasonable pending the government’s efforts to effectuate his
 13 removal for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701.

14 Thus, his petition for a writ of habeas corpus must be denied. *See Tumasov*, 2025 WL
 15 3171897, at *1 (denying petitioner habeas relief because “he is still in the 90-day window
 16 of statutorily mandated detention”); *Prokopev v. LaRose*, No. 25-cv-3441-JES-MSB, 2026
 17 WL 50758, at *1–2 (S.D. Cal. Jan. 7, 2026) (same); *see also Khalilova v. Smith*, No. 25-
 18 CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the
 19 six-month period of presumptive reasonableness [under *Zadvvdas*] has not passed,
 20 Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et al.*, No. 25-CV-03256-BAS-
 21 VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

22 III. CONCLUSION

23 For the foregoing reasons, the Court should deny Petitioner’s request for relief.

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 25 DATED: April 16, 2026

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