

1 ADAM GORDON
United States Attorney
2 MICHAEL D. WALLACE
Assistant U.S. Attorney
3 Maryland Bar No. 9912160256
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8714
Email: Michael.Wallace4@usdoj.gov
6 Attorneys for Respondent
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 NARGES MOHAMMADIAN,
12
13 Petitioner,
14 v.
15 ERNEST SANTACRUZ, et al.,
16
17 Respondents.
18
19

Case No. 26-cv-2626-DMS-JLB

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

20 **I. INTRODUCTION**

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
24 has been in custody for about 70 days since her removal order became final on February
25 24, 2026, Respondents respectfully ask the Court to deny this habeas petition.

26 ///

27 ///

28 ///

II. BACKGROUND

Petitioner is a native and citizen of Iran, who illegally entered the United States without inspection about four miles west of Roma, Texas, on April 10, 2025. Exhibit (Ex.) 1 (I-213).¹ Petitioner did not then have any valid entry documents to enter the United States and had not been admitted or paroled into the United States. She was determined to be inadmissible under 8 U.S.C. §1182(a)(6)(A)(i), placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). She was convicted of illegal entry in violation of 8 U.S.C. §1325(a)(1). She was interviewed by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B). After receiving a positive credible fear determination, on October 15, 2025, ICE issued a Notice to Appear (NTA) to Petitioner. Ex. 2 (NTA). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner.

On January 23, 2026, Petitioner's had an individual merits hearing before an immigration judge on her applications for relief. At the hearing, the immigration judge ordered Petitioner removed to Iran but withheld removal to Iran. Ex. 3 (IJ Order). Petitioner reserved appeal of the order, which was due by February 23, 2026. *Id.* Petitioner did not file a timely appeal of the removal order. Therefore, Petitioner's removal order became administratively final on February 24, 2026. 8 C.F.R. § 1241.1. Respondents are attempting to identify a third country for removal. ICE has Petitioner's valid Iranian passport. Petitioner remains mandatorily detained under 8 U.S.C. § 1231(a) pending her removal.

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

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel. Other facts have been obtained from ICE counsel.

1 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
2 (2022). The INA provides that an alien ordered removed must be detained for 90 days
3 pending the government’s efforts to secure the alien’s removal through negotiations
4 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
5 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

15 Petitioner filed a habeas petition, arguing that she is entitled to immediate release
16 or a bond hearing arguing incorrectly that her detention has continued beyond the 90
17 day removal period. *See* ECF No. 1. Petitioner’s removal order became final on
18 February 24, 2026, because Petitioner did not file an appeal the IJ’s decision by the
19 deadline after reserving appeal at the merits hearing. *See* 8 C.F.R. § 1241.1(c) (An IJ’s
20 order of removal “shall become final . . . [u]pon expiration of the time allotted for an
21 appeal if the respondent does not file an appeal within that time”).²

22 Because Petitioner is subject to a final, executable order of removal, her detention
23 is governed by 8 U.S.C. § 1231(a). *See Arteaga-Martinez*, 596 U.S. at 578 (explaining
24 that § 1231(a) “governs the detention, release, and removal of individuals ‘ordered
25 removed’”). That statute requires that Petitioner be detained for 90 days following “[t]he
26

27 ² In removal proceedings, Petitioner is referred to as the “respondent.” *See* 8 C.F.R.
28 § 1001.1(r) (“The term respondent means a person named in a Notice to Appear issued
in accordance with section 239(a) of the [INA]. . .”).

1 date the order of removal becomes administratively final” while the government seeks
2 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).

4 As previously noted, Petitioner’s removal period began about 10 weeks ago (70
5 days) when her removal order became administratively final—“so [s]he is still in the
6 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No. 25-cv-2704-
7 AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other words,”
8 Petitioner’s “detention is not merely legal, but required” at this time. *Id.* Because
9 Petitioner must be detained during the current 90-day statutory removal period, she
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
13 her removal for six months following the final order of removal. *See Zadvydas*, 533
14 U.S. at 701. This means that Petitioner’s claim of prolonged detention would not be ripe
15 until, at the earliest, August 24, 2026. *See id.*

16 To the extent Petitioner asserts that she has been in custody for over a year, almost
17 all of that time was before her removal order became administratively final and would
18 thus not count toward the 90-day removal period that governs her present custody. *See*
19 *Tumasov*, 2025 WL 3171897, at *1 (“Any pre-removal-order custody does not count
20 toward the 90-day removal period, which began once Tumasov’s removal order was
21 administratively final and during which the government shall detain him.”) (simplified,
22 quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021); 8 U.S.C.
23 § 1231(a)(1)(A)).

24 In the end, because Petitioner’s post-final order detention is within the 90-day
25 statutory removal period, Petitioner is in lawful custody under the INA. *See* 8 U.S.C.
26 § 1231(a). Thus, his petition for a writ of habeas corpus must be denied. *See Tumasov*,
27 2025 WL 3171897, at *1 (denying petitioner habeas relief because “he is still in the
28 90-day window of statutorily mandated detention”); *Prokopen v. LaRose*, No. 25-cv-

1 3441-JES-MSB, 2026 WL 50758, at *1–2 (S.D. Cal. Jan. 7, 2026) (same); *see also*
2 *Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal.
3 Nov. 5, 2025) (“[B]ecause the six-month period of presumptive reasonableness [under
4 *Zadvvdas*] has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem et*
5 *al.*, No. 25-CV-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025)
6 (same).

7 IV. CONCLUSION

8 For the reasons stated herein, Respondent respectfully requests the Court to deny
9 the habeas petition on its merits.

10 DATED: May 4, 2026

ADAM GORDON

11 United States Attorney

12 *s/ Michael D. Wallace*

13 MICHAEL D. WALLACE

14 Assistant United States Attorney

15 Attorneys for Respondent
16
17
18
19
20
21
22
23
24
25
26
27
28