

1 ADAM GORDON
United States Attorney
2 CAMILLE SAVEDRA
California Bar No. 336490
3 Office of the U.S. Attorney
880 Front Street, Room 6293
4 San Diego, CA 92101-8893
Telephone (619) 546-5084
5 Email: camille.savedra@usdoj.gov

6 Attorneys for Respondents
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 DERICK JOSE AGUILAR GONZALEZ,

Case No. 26-cv-02923-DMS-SBC

12 Petitioner,
13

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

14 v.

15 OTAY MESA DETENTION CENTER
16 SENIOR WARDEN; *et al.*,

17 Respondents
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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 66 days since his removal order became final on March
25 16, 2026, Respondents respectfully ask the Court to deny this habeas petition.

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1 **II. BACKGROUND**

2 Petitioner is a citizen and national of Venezuela. *See* ECF No. 1 at 11; Exhibit 1
3 (Form I-213).¹ Petitioner originally entered the United States on or about September
4 18, 2022 near the El Paso, Texas port of entry and was detained by Immigration and
5 Customs Enforcement (ICE). *See id.* Petitioner was subsequently issued a Notice to
6 Appear (NTA) under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA)
7 and released on his own recognizance. *See id.* In November 2023, an immigration judge
8 terminated Petitioner's removal proceedings for an unknown reason. *Id.* On September
9 23, 2026, Petitioner was re-detained by ICE several months after his arrest for felony
10 vandalism and obstructing the duties of a police officer in San Diego, California. *See*
11 *id.* Petitioner was subsequently issued a new NTA, which initiated removal proceedings
12 against Petitioner, pursuant to 8 U.S.C. § 1229a. *See* Exhibit 2 (Notice to Appear).
13 Within his removal proceedings, Petitioner filed asylum applications for relief from
14 removal.

15 On January 30, 2026, the Department of Homeland Security (DHS) filed a
16 Motion to Pretermitt ("Motion") the Petitioner's applications for relief because
17 Petitioner is subject to the Asylum Cooperative Agreement (ACA) with Ecuador. *See*
18 Exhibit 3 (Decision and Order of the Immigration Judge). On February 12, 2026, an
19 Immigration Judge denied Petitioner's applications for relief, granted the Motion, and
20 ordered Petitioner removed to Ecuador. *See id.*

21 On April 6, 2026, Petitioner's appeal was summarily dismissed by the Board of
22 Immigration Appeals (BIA) because his notice of appeal was untimely filed. *See* Exhibit
23 4 (BIA Decision). As such, the removal order became administratively final on March
24 16, 2026, the date the appeal period expired. *See id.* As such, Petitioner remains
25 mandatorily detained under 8 U.S.C. § 1231(a) pending his removal to Ecuador.

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28 ¹The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel. Other facts have been obtained from ICE counsel.

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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 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.*

Petitioner filed a habeas petition, arguing that he is entitled to release or a bond hearing because his detention has become unconstitutionally prolonged. *See* ECF No. 1. At the time his petition was filed on April 8, 2026, Petitioner was subject to a final removal order. Petitioner’s removal order became final on March 16, 2026, because the BIA summarily dismissed Petitioner’s appeal for being filed untimely. *See* Exhibit 4.

Because Petitioner is now subject to a final, executable order of removal, his detention is governed by 8 U.S.C. § 1231(a). *See Arteaga-Martinez*, 596 U.S. at 578 (explaining that § 1231(a) “governs the detention, release, and removal of individuals ‘ordered removed’”). That statute requires that Petitioner 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

1 known as the “removal period.” *Id.* § 1231(a)(1).

2 As previously noted, Petitioner’s removal period began approximately nine
3 weeks ago (66 days) when his removal order became administratively final—“so he is
4 still in the 90-day window of statutorily mandated detention.” *Tumasov v. Doe 1*, No.
5 25-cv-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). “In other
6 words,” Petitioner’s “detention is not merely legal, but required” at this time. *Id.*
7 Because Petitioner must be detained during the current 90-day statutory removal period,
8 he cannot demonstrate that he “is in custody in violation” of the law. *See* 28 U.S.C.
9 § 2241(c)(3). Moreover, under § 1231(a)(6) and *Zadvydas*, Petitioner’s post-final order
10 detention is presumptively reasonable pending the government’s efforts to effectuate
11 his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S.
12 at 701. This means that Petitioner’s claim of prolonged detention would not be ripe
13 until, at the earliest, September 16, 2026. *See id.*

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

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

1 03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

2 **IV. CONCLUSION**

3 For the reasons stated herein, Respondents respectfully request the Court
4 immediately lift the order enjoining removal out of the District and deny the habeas
5 petition on its merits.

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7 DATED: May 21, 2026

ADAM GORDON

United States Attorney

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s/ Camille Savedra

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CAMILLE SAVEDRA
Assistant United States Attorney

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Attorneys for Respondents

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