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

10 **LUIS ALONSO VALLE**



12 Petitioner,

13 v.

Civil Action No.:
3:26-cv-03731-LL-AHG

14 **CHRISTOPHER LAROSE**, Warden of Otay Mesa
Detention Center; **DANIEL BRIGHTMAN**, Acting
15 Field Office Director, San Diego Office; **TODD**
LYONS, in his official capacity as Acting Director
of Immigration and Customs
16 Enforcement; **MARKWAYNE MULLIN**, U.S.
Department of Homeland Security; and **TODD**
17 **BLANCHE**, Acting U.S. Attorney General.

18 Respondents.
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20 **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS**

21 **CORPUS**
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INTRODUCTION

Respondents' two-page response rests on a conflation the statute does not permit. The Immigration Judge ordered Petitioner removed. DHS prevailed on removability and obtained the removal order it sought. The only ruling adverse to DHS was the Immigration Judge's grant of deferral of removal under the Convention Against Torture ("CAT"). DHS's own BIA brief confirms the point: DHS appealed only the grant of CAT deferral, not the removal order. Exhs. 1–2.

That distinction controls. For detention purposes, Section 1231(a)(1)(B)(i) states that the "removal period begins on the date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Congress separately defines an order of removal as the administrative order "concluding that the [noncitizen] is deportable or ordering deportation." 8 U.S.C. § 1101(a)(47)(A). Such an order becomes final "upon the earlier of—(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the **expiration of the period in which the [noncitizen] is permitted to seek review of such order** by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B).

Petitioner waived appeal on the same day the removal order was entered, and therefore the removal order became final that day. It is the removal order and not DHS's challenge to country-specific CAT protection that triggers § 1231. DHS's appeal concerns only whether Petitioner may be removed to a country where the IJ found he would likely be tortured. It does not challenge Petitioner's removability, the existence of the removal order, or the validity of the removal order.

Respondents cite only 8 C.F.R. § 1003.39. But that regulation cannot override the statute or Supreme Court precedent. Nor does it say what Respondents need it to say. Section 1003.39 addresses when an Immigration Judge's decision becomes final upon waiver of appeal or expiration of the appeal period. It does not magically transform DHS's appeal of CAT deferral

1 into an appeal of the removal order. And it does not authorize DHS to avoid § 1231's custody
2 framework by appealing only the portion of the IJ's decision that protects Petitioner from torture.

3 The Court should reject Respondents' attempt to detain Petitioner in a statutory no-man's
4 land. The removal order is final for purposes of § 1231. At minimum, even if the Court accepts
5 Respondents' unsupported theory that § 1226(c) continues to govern during DHS's CAT appeal,
6 due process requires an individualized bond hearing.

7 ARGUMENT

8 9 I. THE STATUTORY TEXT MAKES FINALITY OF THE "ORDER OF 10 REMOVAL" THE RELEVANT TRIGGER.

11 Section 1231 governs detention after a removal order becomes final. It provides that, except
12 in circumstances not relevant here, the removal period begins on "the date the order of removal
13 becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Section 1231 does not say that the
14 removal period begins when both sides have exhausted their appeals, as Respondents would have
15 this Court believe. Instead, Congress chose the "order of removal" as the operative statutory
16 trigger. Section 1231(a)(2) then provides that detention is mandatory during the 90-day removal
17 period. After that period, continued detention is permitted only under § 1231(a)(6), subject to the
18 constitutional limits recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

20 Congress did not leave the term "order of removal" undefined. Section 1101(a)(47)(A)
21 defines an "order of deportation," now understood to include an order of removal, as "the order of
22 the special inquiry officer, or other such administrative officer to whom the Attorney General has
23 delegated the responsibility for determining whether a [noncitizen] is deportable or ordering
24 deportation." Section 1101(a)(47)(B) then defines when such an order becomes final:

26 "An order of deportation or an order of removal shall become final **upon the earlier of—**
27 **(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the**
28 **expiration of the period in which the [noncitizen] is permitted to seek review of such**
order by the Board of Immigration Appeals." (emphasis added)

1 The statutory text could not be clearer: finality turns on the expiration of the period in which
2 the noncitizen, and **only** the noncitizen, may seek review of the removal order. 8 U.S.C. §
3 1101(a)(47)(B)(ii). Respondents had no reason to appeal the removal order itself because they
4 prevailed on removability and obtained the order they sought. One generally does not appeal a
5 victory. But even if Respondents could appeal an issue on which they already prevailed, finality
6 of the removal order would still not turn on DHS's actions because the statute turns on the
7 noncitizen's opportunity to seek review of the removal order.

8
9 Here, the IJ entered an order of removal on September 10, 2025. ECF No. 1, Exh. C.
10 Petitioner, the noncitizen, waived appeal on the same day. *Id.* Because Respondents prevailed on
11 removability, they did not appeal the order of removal. Respondents reserved appeal of the CAT
12 grant, and appealed that to the Board. Under § 1101(a)(47)(B), the removal order became final
13 when Petitioner waived appeal on September 10, 2025, because that is the earlier of the two events
14 specified in the statute: "the expiration of the period in which the [noncitizen] is permitted to seek
15 review of such order by the Board of Immigration Appeals."

16
17 Accordingly, under the relevant statutes, the removal order is final, and Petitioner is in the
18 § 1231 detention framework.

19 **II. A REMOVAL ORDER AND A CAT DEFERRAL ORDER ARE LEGALLY** 20 **DISTINCT.**

21 **A. The Supreme Court Has Held CAT Orders Are Separate from Removal Orders.**

22 The Supreme Court has held that "a CAT order is distinct from a final order of removal and
23 does not affect the validity of a final order of removal." *Nasrallah v. Barr*, 590 U.S. 573, 582
24 (2020). Further, the Court has found that a CAT claim "does not affect the validity of the final
25 order of removal and therefore does not merge into the final order of removal." *Id.* The Supreme
26 Court has also held that "the finality of [an] order of removal does not depend in any way on the
27 outcome of the withholding-only proceedings." *Riley v. Bondi*, 606 U.S. 259, 266 (2025)
28

1 (quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 539-40 (2021)). The Ninth Circuit has
2 likewise held that withholding-only proceedings do not affect finality for detention purposes,
3 noting that “the touchstone of section 1226 is the nature of the decision to be made, not the identity
4 of the decision-maker.” *Padilla-Ramirez v. Bible*, 882 F.3d 826, 831 (9th Cir. 2017). CAT relief
5 “only restricts where the Government may remove a noncitizen to, not whether the noncitizen is
6 subject to removal.” *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D.
7 Wash. Nov. 17, 2025).

8
9 As the Supreme Court has explained, the finality of a removal order does not depend on the
10 outcome of further proceedings addressing only where removal may occur or whether it would be
11 withheld. *Riley*, 606 U.S. at 266; *Guzman Chavez*, 594 U.S. at 539-40. Although *Guzman Chavez*,
12 *Padilla-Ramirez*, and *Riley* involved reinstated removal orders and withholding-only proceedings,
13 the principle they establish is that further proceedings as to whether removal can occur, or where
14 removal can occur, do not affect the finality of the underlying removal order. The removal order
15 itself remains final even if further proceedings affect execution of that order to a particular country.
16 In other words, even if Petitioner prevails on appeal, he would still have a removal order. The only
17 question is where he may be removed. But that question does not affect the finality of the removal
18 order itself.

19
20 The distinction is not semantic. A removal order and a CAT deferral order do different legal
21 work. A removal order establishes that a noncitizen is removable from the United States. CAT
22 deferral protects the person from removal to a particular country where torture is likely. CAT
23 deferral does not vacate the removal order, confer lawful status, negate removability, or prevent
24 DHS from seeking removal to another lawful country consistent with statutory and constitutional
25 protections. It is a limitation on execution of removal to a particular country, not a defense to the
26 existence of the removal order itself.
27
28

1 Respondents' contrary position collapses two different questions: whether Petitioner is
2 removable, and whether DHS may remove him to a particular country. Congress made the first
3 question dispositive for § 1231 purposes. Petitioner has already waived his right to appeal that
4 question. And once he waived that right, the removal order became administratively final, and
5 detention authority shifted to § 1231. DHS's separate appeal of CAT deferral may affect where or
6 whether removal can be executed consistent with CAT, and due process, but it does not alter the
7 finality of the removal order that DHS already obtained.
8

9 **B. Respondents Are Estopped from Taking a Contrary Position.**

10 Respondents cannot now take the position that these two orders are not separate and distinct.
11 In Respondents' own petition for certiorari in *Johnson v. Guzman Chavez*, the Solicitor General
12 wrote:

13 "A grant of withholding or deferral of removal...leaves the final order of removal
14 undisturbed and leaves the government free to remove the [noncitizen] to another country."
15 Petition for Writ of Certiorari at 3, *Albence v. Guzman Chavez*, No. 19-897 (U.S. filed Feb.
7, 2020).

16 At the time, Respondents successfully persuaded the Supreme Court to accept that position. Now,
17 Respondents argue their pending appeal of a CAT deferral means there is "no final order of
18 removal." ECF No. 4 at 1. These positions are directly contradictory. Judicial estoppel prevents
19 the government from taking inconsistent positions in different proceedings to gain an unfair
20 advantage. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Respondents cannot argue that a
21 CAT grant does not disturb a removal order when that position benefits them, and then argue that
22 their appeal of a CAT grant makes a removal order nonfinal when the opposite position benefits
23 them. They are playing "fast and loose with the courts." *Id.* at 750. This Court should reject their
24 inconsistent position.
25

26 **III. RESPONDENTS' RELIANCE ON 8 C.F.R. § 1003.39 DOES NOT OVERRIDE**
27 **THE STATUTORY TEXT.**
28

1 Respondents' entire argument rests on a single regulation, 8 C.F.R. § 1003.39. That
2 regulation provides that, "[e]xcept when certified to the Board, the decision of the Immigration
3 Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal
4 is taken, whichever occurs first." But this regulation does not define when an "order of removal"
5 becomes final for purposes of detention under § 1231. Congress did that in 8 U.S.C. §
6 1101(a)(47)(B).

7
8 Nothing in § 1003.39 says that DHS's appeal of CAT deferral prevents the removal order
9 from becoming final for purposes of detention under § 1231. And here, the record confirms that
10 DHS did not appeal the removal order. The BIA briefing schedule identifies the appeal as filed by
11 DHS. Exh. 1. DHS's own BIA brief then identifies the appeal as one from the Immigration Judge's
12 "decision granting the respondent protection" under CAT and asks the Board to "reverse the
13 Immigration Judge's decision granting deferral of removal to El Salvador pursuant to the CAT."
14 Exh. 2 at 1. The "Issue Presented" likewise asks only whether the IJ erred "in granting the
15 respondent's application for CAT deferral of removal." *Id.* at 2. DHS's sole argument heading is
16 that Petitioner "has not met his burden to establish eligibility for deferral of removal under the
17 CAT." *Id.* at 4. Nothing in DHS's appeal challenges removability, the entry of the removal order,
18 or the validity of the removal order.
19

20 That is dispositive. Section 1231 does not ask whether the "case" remains pending before
21 the Board. It asks when "the order of removal becomes administratively final." 8 U.S.C. §
22 1231(a)(1)(B)(i). The statutory object is the removal order. Respondents' argument depends on a
23 conflation that § 1003.39 does not make. DHS appealed only a country-specific protection ruling.
24 That appeal may affect whether DHS can remove Petitioner to El Salvador. It does not suspend
25 finality of the unappealed removal order for purposes of § 1231(a)(1)(B)(i).
26

27 **IV. BECAUSE § 1231 APPLIES, ZADVYDAS GOVERNS PETITIONER'S**
28 **CONTINUED DETENTION.**

1 Because Petitioner's removal order became administratively final on September 10, 2025,
2 his detention is governed by § 1231. The 90-day removal period began on that date. 8 U.S.C. §
3 1231(a)(1)(B)(i). During that period, detention was mandatory. 8 U.S.C. § 1231(a)(2). After that
4 period expired, any continued detention had to be justified, if at all, under § 1231(a)(6), as limited
5 by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

6 *Zadvydas* held that § 1231(a)(6) does not authorize indefinite civil detention. *Id.* at 689–
7 701. To avoid serious constitutional concerns, the Supreme Court construed the statute to authorize
8 detention only for a period reasonably necessary to effectuate removal. *Id.* at 699–700. Once
9 detention exceeds six months, and the noncitizen provides good reason to believe there is no
10 significant likelihood of removal in the reasonably foreseeable future, the Government must
11 respond with evidence sufficient to rebut that showing. *Id.* at 701. As the period of detention grows
12 longer, what counts as the “reasonably foreseeable future” grows shorter. *Id.*

14 Because Petitioner's removal order became final on September 10, 2025, the presumptively
15 reasonable six-month period recognized in *Zadvydas* expired on or about March 10, 2026.
16 Respondents therefore cannot rely on mandatory detention under § 1231(a)(2). They must show
17 that Petitioner's removal is significantly likely in the reasonably foreseeable future.

19 They have not done so. DHS's own appeal confirms that removal to El Salvador is not
20 presently executable because the Immigration Judge granted CAT deferral after finding that
21 Petitioner would likely be tortured there. Exh. 2. DHS asks the Board to reverse that protection
22 order, but the mere possibility that DHS may prevail in future appellate proceedings is not evidence
23 that removal is significantly likely in the reasonably foreseeable future. Nor may Respondents rely
24 on the abstract possibility of third-country removal without evidence that any third country has
25 accepted or is likely to accept Petitioner, or that DHS can remove him to a third country.

27 The Government's contrary position that § 1231 does not apply would defeat *Zadvydas* by
28 procedural manipulation. DHS could appeal protection from torture, deny that § 1231 applies

1 because its appeal is pending, and then use that same pending appeal to justify continued detention.
2 That is not what Congress authorized. Once the removal order became final, § 1231 applied. And
3 once detention exceeded the presumptively reasonable six-month period, Respondents bore the
4 burden to rebut Petitioner's showing that removal is not significantly likely in the reasonably
5 foreseeable future.

6 Respondents have not met that burden. Nor should Respondents be given another
7 opportunity to recast their theory. Respondents had the opportunity to justify Petitioner's
8 detention. They filed a two-page response and relied only on 8 C.F.R. § 1003.39. They did not cite
9 the statutes governing the definition and finality of removal orders, including 8 U.S.C. §
10 1101(a)(47)(A)–(B). They did not address the Supreme Court precedent distinguishing CAT
11 protection from removal orders. They did not show that DHS appealed the removal order. The
12 Court should decide the Petition on the record and arguments Respondents chose to present.
13

14 CONCLUSION

15 For the foregoing reasons, the Court should reject Respondents' unsupported contention
16 that Petitioner is not detained under § 1231. Petitioner's removal order became administratively
17 final on September 10, 2025, when he waived appeal. DHS appealed only the separate grant of
18 CAT deferral, not the removal order itself. Because the presumptively reasonable detention period
19 under *Zadvydas* has expired and Respondents have not shown that removal is significantly likely
20 in the reasonably foreseeable future, the Petition should be granted and Petitioner should be
21 released under appropriate conditions of supervision.
22

23 Date: June 24, 2026

24 Respectfully Submitted,

25 /s/ Prerna P. Lal
26 Prerna Preshika Lal

27 *Attorney for Petitioner*
28

1 Exhibit 1: BIA Notice / Briefing Schedule showing DHS filed the appeal.

2 Exhibit 2: DHS BIA Brief showing the appeal challenges only CAT deferral.