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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 NELSON MAYOR MARTINEZ,
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Petitioner,
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v.
14 PAMELA BONDI, *ET AL.*,¹
15
Respondents.
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CASE NO. 1:25-CV-01633-DJC-EFB

**OPPOSITION TO REQUEST FOR
PRELIMINARY INJUNCTIVE RELIEF AND
RETURN TO PETITION FOR WRIT OF
HABEAS CORPUS**

17 **I. INTRODUCTION**

18 Petitioner Nelson Mayor Martinez, who is subject to a final order of removal and
19 detained pursuant to discretionary detention authority under 8 U.S.C. §1231(a)(6), seeks
20 release from the United States Department of Homeland Security ("DHS") Immigration and
21 Customs Enforcement ("ICE") custody pending efforts to effectuate his removal. Petitioner
22 argues he is entitled to release because his detention has exceeded the 90-day statutory
23 removal period under §1231(a). However, the Supreme Court has held that §1231 "read in
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25 ¹ Respondents move to strike and dismiss all unlawfully named officials under § 2241.
26 A petitioner seeking habeas corpus relief is limited to name only the officer having custody of
27 him as the respondent to the petition. See 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S.
28 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding that warden of
the private detention facility at which noncitizen petitioner was held was the proper § 2241
respondent). Here, Petitioner's custodian is the facility administrator of the Golden State
Annex in McFarland, California.

light of the Constitution's demands" provides for a presumptively reasonable six-month time period for release that may be prolonged absent a showing by the petitioner that there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 690 and 701 (2001). As demonstrated in the accompanying Declaration of Deportation Officer Refugia Guerra ("Guerra Declaration"), ICE has been actively pursuing Petitioner's removal to a third country. Petitioner has failed to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future, and his request for immediate release should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Cuba, entered the United States in or about May 1980. Guerra Decl., ¶ 7. Petitioner stated that Cuban authorities released him to the United States while he was serving a sentence for his third robbery conviction in Cuba. Guerra Decl., ¶ 7.

In November 1980, Petitioner's asylum application was denied. Guerra Decl., ¶ 8. A month later, he was found excludable from the United States and was ordered deported. Guerra Decl., ¶¶ 8-9. Nonetheless, he was paroled into the United States until April 5, 1983. Guerra Decl., ¶ 10.

In December 1990, Petitioner was arrested for attempted murder/aggravated mayhem in San Diego, California. Guerra Decl., ¶ 11. Then, in December 1991, Petitioner was convicted of distributing cocaine base and was sentenced to serve 108 months in federal prison.² Guerra Decl., ¶ 12.

In August 1999, Petitioner was served with a Notice to Appear, which alleged he was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act ("INA"). Guerra Decl., ¶ 13. The charge was later amended to additionally allege Petitioner was also inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the INA. Guerra Decl., ¶ 13. Then, in September 1999, an Immigration Judge ordered Petitioner's

² The Form I-213, dated Sept. 10, 2025, incorrectly states that Petitioner has no criminal history. See Guerra Decl., Exh. 4, pg. 13. The conviction records from the 1991 federal drug trafficking conviction are attached to the Guerra Declaration as Exhibit 2.

1 removal to Cuba. Guerra Decl., ¶ 14. Three months later, however, a review panel
2 determined that Petitioner met the standards in the Cuban Review Plan and granted his
3 release. Guerra Decl., ¶ 15. Petitioner was warned that his failure to maintain good behavior
4 could result in his continued detention. Guerra Decl., ¶ 15. He was then released. Guerra
5 Decl., ¶ 15.

6 ICE re-detained Petitioner on September 10, 2025. Guerra Decl., ¶ 16. In conjunction
7 with his re-detention, ICE served Petitioner with a warrant of removal and notice of custody
8 determination. Guerra Decl., ¶ 16. Cuba denied ICE's request to remove Petitioner to Cuba,
9 however. Guerra Decl., ¶ 16.

10 ICE then served Petitioner with a notice of third country removal on October 20, 2025,
11 which notified Petitioner of ICE's intent to remove him to Mexico. Guerra Decl., ¶ 17. Two
12 days later, Petitioner was transferred to the Florence Detention Center for removal to Mexico.
13 Guerra Decl., ¶ 18.

14 On October 24, 2025, Petitioner claimed fear of removal to Mexico. Guerra Decl., ¶ 19.
15 Accordingly, ICE returned him to the Golden State Annex facility. Guerra Decl., ¶ 19. An
16 asylum officer interviewed Petitioner on November 7 to assess his fear claim. Guerra Decl., ¶
17 20. The asylum officer found that Petitioner had not proven it was more likely than not that he
18 would be tortured in Mexico. Guerra Decl., ¶ 20.

19 After the negative fear finding, ICE has resumed the process of removing Petitioner to
20 Mexico. Guerra Decl., ¶ 21. ICE anticipates that Petitioner's removal should occur in the
21 reasonably foreseeable future. Guerra Decl., ¶ 21.

22 III. LEGAL FRAMEWORK

23 Congress enacted a multi-layered statute that provides for the continued civil detention
24 of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).
25 The detention and removal of aliens, like Petitioner, who are subject to a final order of removal
26 issued after removal proceedings, is governed by 8 U.S.C § 1231. Under this statute, there is
27 a 90-day "removal period," during which detention is mandatory. 8 U.S.C. § 1231(a)(1), (2);
28 *Zadvydas*, 533 U.S. at 683. Once the mandatory removal period ends, ICE has discretion to

1 continue detaining aliens pending their removal. 8 U.S.C. § 1231(a)(6).

2 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) did not authorize the
3 government to detain a removable alien indefinitely beyond the 90-day statutory removal
4 period; rather, the Court construed the statute to contain an implicit “reasonable time”
5 limitation. 533 U.S. at 682. The Court concluded that six months was a presumptively
6 reasonable period of detention which should be read into the statute. *Id.* at 701. After six
7 months, an alien is entitled to habeas relief only if he can show “there is no significant
8 likelihood of removal in the reasonably foreseeable future.” *Id.* The Ninth Circuit has
9 explained that *Zadvydas* requires an alien to show he is “stuck in a ‘removable-but-
10 unremovable limbo,’ as the petitioners in *Zadvydas* were.” *Prieto-Romero v. Clark*, 534 F.3d at
11 1063 (internal citation omitted). That is, the alien must show he “is unremovable because the
12 destination country will not accept him or his removal is barred by our own laws.” *Id.* (citing
13 *Zadvydas*, 533 U.S. at 697).

14 While an alien's detention is no longer presumed to be reasonable after six months,
15 “there is nothing in *Zadvydas* which suggests that the Court must or even should assume that
16 any detention exceeding that length of time is unreasonable.” *Lema v. U.S. I.N.S.*, 214 F.
17 Supp. 2d 1116, 1118 (W.D. Wash. 2002), *aff'd sub nom. Lema v. I.N.S.*, 341 F.3d 853 (9th Cir.
18 2003).

19 IV. ARGUMENT

20 Petitioner's detention is lawful. While the Petitioner's post-removal-period detention has
21 exceeded the presumptively reasonable six-month period, he has failed to sustain his burden
22 of showing there is no significant likelihood of removal in the reasonably foreseeable future.
23 *Zadvydas*, 533 U.S. at 701. He has not shown he is stuck in “removable-but-unremovable
24 limbo.” *Prieto-Romero v. Clark*, 534 F.3d at 1063. Petitioner has not alleged that no third
25 country will ever accept him. Nor has he cited to any United States law that bars his removal.
26 Thus, he is not in a “removable-but-unremovable limbo.” ICE is actively pursuing Petitioner's
27 removal to a third country. Guerra Declaration, ¶¶ 17-21. Although his removal is not currently
28 scheduled, the removal process takes time, and removal to a third country involves processes

1 to assure the Petitioner is not being sent to a receiving country where he may also fear
2 torture.³ The fact his detention “does not have a certain end date does not change the
3 analysis.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (citing *Prieto-Romero*, 534
4 F.3d at 1063).

5 Accordingly, Petitioner has failed to establish that there is no significant likelihood of
6 removal in the reasonably foreseeable future.

7 **V. CONCLUSION**

8 Based on the foregoing, the Court should find that Petitioner’s detention continues to be
9 lawful under 8 U.S.C. § 1231(a)(6), and deny the Petition for Writ of Habeas Corpus.

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11 Dated: December 2, 2025

ERIC GRANT
United States Attorney

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13 By: /s/ ELLIOT WONG
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Assistant United States
15 Attorney
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26 ³ Petitioner’s habeas petition additionally contains boilerplate arguments asserting he
27 has been denied notice and an opportunity to contest ICE’s intent to remove him to a third
28 country. This is factually incorrect. ICE provided him with notice of third country removal.
Guerra Declaration, ¶ 17. After Petitioner claimed fear of removal to Mexico, an asylum officer
interviewed Petitioner to assess his fear claim and found that Petitioner did not prove it was
more likely than not that he would be tortured in Mexico. Guerra Declaration, ¶ 20.