District Judge Jamal N. Whitehead
Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| ARIEL VALDEZ-BATISTA,<br><br>Petitioner,<br><br>v.<br><br>IMMIGRATION AND CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR,<br><br>Respondent(s). | Case No. 2:25-cv-02510-JNW-GJL<br><br>FEDERAL RESPONDENTS' RETURN MEMORANDUM<br><br>Noted for Consideration:<br>January 20, 2026 |

## I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Ariel Valdez-Batista, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention. In response, Federal Respondent submits the following factual background as contained in the records of Petitioner's immigration case and as set forth in the Declaration of Deportation Officer Hubbard ("Hubbard Decl."), as well as the relevant legal authorities.



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## II. LEGAL STANDARD

To succeed on a habeas petition, Petitioner "must show [he] is in custody in violation of the Constitution or laws or treaties of the United States." *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28 U.S.C. § 2241). Because habeas proceedings are civil in nature, the "[p]etitioner 'bears the burden of proving that he is being held contrary to law, . . . [and] he must satisfy his burden of proof by a preponderance of the evidence.'" *Aditya W. H. v. Trump*, No. 25-cv-1976, 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (citations omitted)).

## III. DETENTION AND REMOVAL AUTHORITY

### A. Post-Order Detention

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2).



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Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701. Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h).

**B. Third Country Removal**

When the Government seeks to remove an individual, it may do so through removal proceedings involving an evidentiary hearing before an Immigration Judge ("IJ"). 8 U.S.C. § 1229a. In removal proceedings, the IJ determines both whether the individual may be removed from the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The Immigration and Nationality Act ("INA") sets out the process for determining the country of removal.



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First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C. § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ must first select the "country of which the alien is a subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Lastly, § 1231(b)(2)(E)(vii) provides that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country" described above, the statute permits removal to any "country whose government will accept the" noncitizen. *Id.* § 1231(b)(2)(E)(vii).

The government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a person to a country where they would be tortured, a form of protection known as protection under the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and CAT protection are mandatory, but "only restrict *where* the Government may remove a noncitizen to, not *whether* the noncitizen is subject to removal." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the



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IJ grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

If the government has a removal order but no country to which an IJ has authorized removal, it can remove the noncitizen to a third country, meaning any country not designated on the removal order. It remains the case that the government cannot remove an alien to any third country where they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

**C. DHS Policy on Third-Country Removals**

On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third country removals. *See* U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem, March 30, 2025, *available at* https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited January 13, 2026) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited January 13, 2026) (hereinafter "July 9 Memo"); *see also Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two);

The DHS memo discusses DHS's policies and procedures regarding the removal of individuals with final orders of removals to countries other than those designated for removal in those orders (referred to as "third country removals"). July 9 Memo. According to the guidance



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outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the individual that DHS seeks removal to that country. *Id.*, at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to the U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview, to screen that person for protection against removal to that country. *Id.*

After the interview is conducted, USCIS will determine whether the individual would more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen their prior removal proceedings at any time they so choose, based on a request for asylum, withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

## IV. FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. Hubbard Decl., ¶ 3. He was paroled into the United States on January 13, 1995. *Id.* On November 5, 1997, he became a lawful permanent resident, retroactive to his entry date. Hubbard Decl., ¶ 4. Petitioner accrued various felony convictions from 2008 to 2012, including Possession of a Stolen Vehicle, Unauthorized Use of a Vehicle. Hubbard Decl., ¶ 5a-e. On May 30, 2013, Valdez-Batista was arrested by ICE and on June 3, 2013, he was issued a Notice to Appear. Hubbard Decl., ¶¶ 8-9. He was charged with removal under INA §§ 237(a)(2)(A)(iii) and 237(a)(2)(B)(i). Steveson Decl., Exh. A, NTA.



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On July 9, 2013, an immigration judge ordered Valdez-Batista removed from the United States. Hubbard Decl., ¶ 10; Steveson Decl., Exh. B, Removal Order. ERO was unable to remove Valdez-Batista and he was released by OSUP on October 3, 2013. Hubbard Decl., ¶ 11. Valdez-Batista was convicted of additional felonies in 2014 and 2015, which violated his conditions release. Hubbard Decl., ¶¶ 5f-g. On November 4, 2016, Valdez-Batista was re-detained by ICE but then released on an updated OSUP that same date. Hubard Decl. ¶ 14; Steveson Decl., Exh. C, 2016 OSUP. One of the terms of Valdez-Batista's OSUP is to "not commit any crimes while on this Order of Supervision." Steveson Decl., Exh. C, 2016 OSUP.

Valdez-Batista was convicted of Identity Theft on November 2, 2018. Hubbard Decl., ¶5. On February 20, 2020, he was taken back into custody by ICE but released that same date on an OSUP. Hubbard Decl., ¶ 15. Valdez-Batista missed his first check-in with ICE but he made annual check-ins from 2021 to 2025. Hubbard Decl., ¶¶ 16-21.

Valdez-Batista was arrested March 26, 2021, for attempting to elude a police officer. Hubbard Decl., ¶ 22. On March 30, 2021, he had a parole violation. *Id.* On April 14, 2022, Valdez-Batista was convicted of Felon in Possession of a Weapon. *Id.* On November 15, 2025, Valdez-Batista was arrested by ICE and his OSUP revoked due to these activities. Hubbard Decl., ¶¶ 22-23; Steveson Decl., Exh. D, Notice of Revocation of Release.

ICE sought to remove Valdez-Batista and requested a travel document from Cuba. Hubbard Decl., ¶ 25. Cuba denied the request on December 16, 2025. *Id.* Deportation Officer Hubbard learned of this denial on January 7, 2025. *Id.* ICE is seeking permission from Mexico for a third country removal. Hubbard Decl., ¶ 26. Although Valdez-Batista has already informed ICE that he would not agree to a third-country removal, ICE will give Valdez-Batista an opportunity to nominate a different country for removal. Hubbard Decl. ¶¶ 24, 27.

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Respectfully submitted,

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*I certify that this memorandum contains 2051 words, in compliance with Local Civil Rules*