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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Henry Medina,

Petitioner,

v.

Chief Council, *et al.*,

Respondents.

Case No. 2:25-cv-02623-APG-DJA

**Reply to Respondents' Response to Petition for Writ of Habeas Corpus (ECF No. 12)**

## INTRODUCTION

Petitioner Henry Medina came to the United States in April of 2000 when he was only 16 years old. He was ordered removed *in absentia* by an Immigration Court on March 11, 2002. Mr. Medina subsequently reentered the United States and was removed by the Department of Homeland Security (DHS) following reinstatement of his 2002 deportation order. Mr. Medina has been in immigration custody since April 17, 2025. He has not had the opportunity to seek release on bond in over ten months. His prolonged detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution.

## FACTUAL BACKGROUND

Petitioner Henry Medina entered the United States without admission in April of 2000. *See* Exhibit 1 at 4. He was placed in removal proceedings and, on March 11, 2002, was ordered removed *in absentia*. *Id.* Since then, Mr. Medina has had his original removal order reinstated and has been removed from the United States at least once in 2019. *Id.* On April 17, 2025, Mr. Medina was arrested for the offense of "possession of drugs." *Id.* at 3. He was immediately transferred to immigration custody. *Id.* On April 18, 2025, Mr. Medina's prior order of removal was reinstated by the DHS. *Id.* at 1. On May 20, 2025, Mr. Medina expressed a fear of returning to Honduras and received a Reasonable Fear Interview (RFI) pursuant to 8 C.F.R. § 208.31. Exhibit 2. That same day, DHS found that no reasonable fear of persecution had been established. *Id.* at 21-22. Namely, the DHS officer found that—although Mr. Medina was credible with regards to claims of violence inflicted upon him and/or his relatives in Honduras—his fear was "not on account of a protected ground." *Id.* Mr. Medina requested a review by an immigration judge. Exhibit 3. On August 21, 2025, Immigration Judge An Mai Nguyen entered an

order concurring with DHS. Exhibit 6. Mr. Medina appealed the Immigration Court's decision to the Board of Immigration Appeals ("BIA"), where it remains pending.

On July 17, 2025—while review of the RFI was pending—Mr. Medina delivered a letter to the Immigration Court noting he "would like a bond to continue to fight [his] case outside in freedom." Exhibit 4 at 2. The Immigration Court refused to entertain the bond motion, noting it "lack[ed] jurisdiction to consider the applicant's request." Exhibit 5. To date, Mr. Medina has not been provided with a bond hearing. Mr. Medina's family ties in the United States include his 10-year-old son, [redacted], who, upon information and belief, is in the care of a foster family and undergoing removal proceedings.

On November 24, 2025, Mr. Medina dispatched his *pro se* Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. ECF No. 5 at 11. In his petition, Mr. Medina argued, in part, that he was "[b]eing held to[o] long . . . ." *Id.* at 8. On January 7, 2026, this Court appointed the Office of the Federal Public Defender for the District of Nevada to represent Mr. Medina. ECF No. 4. The Court did not order Mr. Medina to file a counseled amended petition. To the extent Mr. Medina raises new claims—which he does not, *see* ECF No. 5 at 8—he respectfully asks this Court to construe this pleading as an amended petition. Nothing in this reply should be construed as a waiver of the right to amend should this Court later determine that amendment would be appropriate. Mr. Medina is amenable to receiving a ruling on the papers and is willing to waive a hearing, unless this Court believes that Mr. Medina has failed to establish that relief is warranted, in which case Mr. Medina would appreciate the opportunity for oral argument.

## ARGUMENT

### I. Respondents are wrong that this Court does not have jurisdiction over Mr. Medina's case.

In their response to the petition, Respondents incorrectly state that this Court "lacks subject matter jurisdiction to consider Petitioner's claims." ECF No. 12 at 1. The Immigration and Nationality Act (INA) limits judicial review in many instances. Namely, 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to "commence proceedings, adjudicate cases, or execute removal orders against any alien." In this case, however, Mr. Medina is not challenging his removal order. Rather, the central issue is his continued detention without a bond hearing for the last 10 months. And whether Mr. Medina's continued detention violates his right to due process can be adjudicated without addressing the merits of any final order of removal or considering any discretionary decision by the Attorney General. Thus, this Court has the authority to review Mr. Medina's case and assess whether his continued detention without a bond hearing violates due process. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that § 1252(g) precludes judicial review only as to the three areas specifically outlined in the subsection); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

### II. The prolonged detention of Mr. Medina under 8 U.S.C. § 1231(a)(6) without a bond hearing violates his right to due process under the Fifth Amendment of the United States Constitution.

"The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person . . . of . . . liberty . . . without due process of law.'" *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quoting U.S. Const. Amend. V). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). "Arbitrary civil detention is not a feature of our

American government. Liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (alteration and internal quotation marks omitted). Here, Mr. Medina demonstrates that his prolonged detention without a bond hearing for over 10 months violates his right to due process.

### A. Mr. Medina's prolonged detention pursuant to § 1231(a)(6) entitles him to a bond hearing in Immigration Court.

In this case, Mr. Medina was subject to the reinstatement of a removal order.[1] The Ninth Circuit has determined that individuals subject to reinstatement of a removal order, such as Mr. Medina are detained pursuant to 8 U.S.C. § 1231(a), which governs detention following the issuance of a final removal order. In *Padilla-Ramirez v. Bible*, 862 F.3d 881 (9th Cir. 2017), the Ninth Circuit reviewed whether an alien in administrative proceedings addressing only withholding of removal was detained pursuant to § 1226(a) or § 1231(a). In that case, DHS had reinstated a removal order and a DHS officer had conducted an RFI, referring Padilla-Ramirez to an immigration judge for withholding-only administrative proceedings. The Court held that Padilla-Ramirez' administrative proceedings were confined to his application for withholding and did not involve review of the reinstated removal order itself. *Id.* at 884. Thus, Padilla Ramirez' reinstated removal order was administratively final and § 1231(a) controlled. *Id.* at 886.

Mr. Medina, like Padilla-Ramirez, is subject to reinstatement of removal and his pending proceedings are confined to a withholding of removal claim. Thus, per the Ninth Circuit's decision in *Padilla-Ramirez*, Mr. Medina is "detained pursuant to [8 U.S.C. §] 1231(a)." 862 F.3d at 886; *see also Padilla-Ramirez v. Bible*, 882 F.3d 826, 834 (9th Cir. 2018) (holding that "the text and structure of the [Immigration

[1] When a removal order is reinstated, it is "reinstated from its original date and is not subject to being reopened or reviewed . . . ." 8 U.S.C. § 1231(a)(5).

and Nationality Act] indicate that Congress intended for section 1231(a) to govern detention of aliens subject to reinstated removal orders."). And contrary to Respondents' suggestions, the stay of removal issued by the Ninth Circuit in Mr. Medina's case does not amount to a judicial review of his removal order. ECF No. 12 at 2; *see Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir. 2008) (*Diouf I*) ("although Diouf's appeals to this court resulted in several stays of removal, those appeals did not entail judicial review of a removal order, [but only] of his motions to reopen.").

Because only two provisions of § 1231(a) authorize detention—§ 1231(a)(2) (authorizing detention during the 90-day removal period) and § 1231(a)(6) (authorizing detention beyond the 90-day removal period)—*Padilla-Ramirez* indicates that an alien who is detained while in proceedings addressing only withholding of removal must be detained pursuant to either § 1231(a)(2) or § 1231(a)(6). Section 1231(a)(2) authorizes mandatory detention during the 90-day removal period immediately after an alien's removal order becomes final, while § 1231(a)(6) authorizes detention "beyond the [90-day] removal period" of an alien "who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal."

Here, Mr. Medina has been held for over 7 months following the conclusion of the the 90-day removal period, which begun to run on April 18, 2025 when his removal order was reinstated. *See* Exhibit 1. That Mr. Medina's withholding of removal claim is pending in the Ninth Circuit and that the Court has stayed his removal does not alter this conclusion. *See L.R. v. Noem*, No. 2:25-cv-02019-RFB-BNW, 2026 WL 161605, 2026 U.S. Dist. LEXIS 10550, *24 (D. Nev. January 21, 2026) (rejecting Respondents' argument that a removal order is not administratively final and that the removal period under § 1231(a) does not begin to run while Petitioner's withholding-only proceeding is on appeal and his removal is stayed). In *Johnson v. Guzman Chavez,* 594 U.S. 523 (2021), the Supreme Court

addressed the issue of whether a removal order may become administratively final while withholding-only proceedings are ongoing. The Court held that, "[b]ecause the validity of removal orders is not affected by the grant of withholding-only relief, an alien's initiation of withholding-only proceedings does not render non-final an otherwise "administratively final" reinstated order of removal." *Id.* at 524.

As was the case for the petitioner in *Guzman Chavez*, Mr. Medina was ordered removed and only raised a collateral challenge to a specific aspect of his deportation, i.e., removal to Honduras where he claims he will be persecuted. *See* 594 U.S. at 532. Thus, his removal order became final when his removal order was reinstated on April 18, 2025; he has been detained past the 90-day removal period; and it is beyond dispute that he is being detained pursuant to § 1231(a)(6).

**B. Mr. Medina's prolonged detention without a bond hearing for over ten months violates his right to due process.**

As a result of his detention under § 1231(a), Mr. Medina has been denied a bond hearing. *See* Exhibit 5; 8 U.S.C. § 1231(a); 8 C.F.R. § 1003.19 (providing jurisdiction for Immigration Judges to review only custody determinations under 8 C.F.R. § 1236). However, as the Ninth Circuit explained in *Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) (*Diouf II*), the due process requirements for prolonged detention apply to detentions under § 1231(a)(6) and compel that this Court order a bond hearing in immigration court.

In *Diouf II,* the Ninth Circuit addressed the due process requirements for prolonged detention under both § 1226(a) and § 1231(a)(6). The Court held that, because prolonged detention of an alien without an individualized determination of flight risk and danger would "raise serious constitutional concerns," aliens are entitled to a bond hearing after six months of detention. *Diouf II*, 634 F.3d at 1092; *see also Aleman Gonzalez v. Barr*, 955 F.3d 762, 765-66 (9th Cir. 2020) (reaffirming *Diouf II's* holding). The court emphasized that the "focus . . . is upon prolonged

detention," as the term is used in *Zadvydas*, *supra*. *Diouf II*, 634 F.3d at 1091 (emphasis in original). Specifically, the court held that the government must provide a bond hearing "when detention crosses the six-month threshold and release or removal is not imminent." *Id.* at 1091-92 (emphasis added); *see also id.*, at 1092 n.13 ("As a general matter, detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months."). Various courts in this circuit have likewise concluded that "*Diouf II* compels a bond hearing for aliens in withholding proceedings whose detention has been prolonged." *Herrera v. United States AG*, No. 16-cv-03931-PHX-DJH, 2017 U.S. Dist. LEXIS 72862, *8 (D. Ariz. May 10, 2017) (collecting cases).

Here, as discussed above, Mr. Medina's post-removal period begun on July 17, 2025, and as of the present date amounts to 7 months and 3 days. *See Rodriguez v. Nielsen*, No. 18-cv-04187-TSH, 2019 U.S. Dist. LEXIS 4228, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) (applying a bright-line rule that "detention becomes prolonged after six months and entitles [the petitioner] to a bond hearing"). His detention is well outside the presumptively reasonable six-month period. *Zadvydas*, 533 U.S. at 701. His detention is prolonged in part due to the Ninth Circuit's stay of removal. But the Ninth Circuit's stay does not undercut his right to a bond hearing. *See Khalafala v. Kane*, 836 F. Supp. 2d 944, 957 (D. Ariz. 2011) ("an intervening stay of removal in connection with the review of a motion to reopen renders prolonged detention a near certainty" and entitles alien to a bond hearing), aff'd, No. 12-15008, 2012 U.S. App. LEXIS 27424 (9th Cir. July 11, 2012). And Mr. Medina is likely to remain detained in the near term due to his pending appeal in the Ninth Circuit. Moreover, Mr. Medina is blameless for the delays in his removal. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (considering "the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government").

Through his appeal to the Ninth Circuit, Mr. Medina merely seeks review of DHS' denial of withholding of removal relief, which failed to adequately account for the violence and threats of violence directed at him and his family in Honduras. *See* Exhibit 2 at 12-15 (noting Mr. Medina's brother was murdered by retired police officers, that Mr. Medina was assaulted by three individuals on account of his employment with a political representative, and that Mr. Medina fears individuals will harm him if he returns to Honduras on account of [redacted] *see also* Exhibit 6 at 14-16 (same). Accordingly, Mr. Medina demonstrates that he has been subject to a prolonged detention that entitles him to a bond hearing in Immigration Court.

## CONCLUSION

Mr. Medina's prolonged detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution.

Accordingly, Mr. Medina respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Henry Medina brought before the Court so that he may be discharged from his unconstitutional confinement within 30 days unless Respondents schedule a bond hearing before an immigration judge at which the judge must order the release of Mr. Medina unless ICE can establish by clear and convincing evidence that he presents a risk of flight or danger.

2. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated February 20, 2026.

Respectfully submitted,
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*/s/ Martin L. Novillo*
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