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9 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 CESAR HERNANDEZ NAVARRO,
11 Petitioner,
12 v.
13

Case No. 2:26-cv-00359-RFB-BNW

**Federal Respondents' Response to
Petitioner's Petition for Writ of Habeas
Corpus and Complaint for Declaratory
and Injunctive Relief (ECF No. 1)**

14 **JOHN MATTOS**, Warden of Nevada
Southern Detention Center, in his
15 official capacity as well as his
16 successors and assigns; **TODD M.
LYONS**, Acting Director, U.S.
17 Immigration and Customs Enforcement, in
18 his official capacity as well as successors
and assigns; **KRISTI NOEM**, Secretary for
19 the U.S.
Department of Homeland, in her official
20 capacity as well as her successors and
21 assigns; **PAMELA BONDI**, Attorney
General, U.S. Department of Justice, in her
22 official capacity as well as her
successors and assigns,

23 Respondents.
24

25 Federal Respondents Pamela Bondi, Kristi Noem and Todd Lyons hereby file their
26 Response to Petitioner Cesar Hernandez Navarro's Petition for Writ of Habeas Corpus
27 pursuant to 28 U.S.C. § 2241 (ECF No. 1).
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I. Factual Background

This matter does not involve 8 U.S.C. § 1225(b)(2)(A) nor 8 U.S.C. § 1226(a). This matter involves 8 U.S.C. § 1231(a) because Petitioner Cesar Hernandez Navarro (“Petitioner”), who is a citizen of Mexico has a final order of removal. On February 14, 2000, Petitioner unlawfully entered the U.S. without inspection, admission or parole and returned to Mexico. See Form I-213 of Petitioner attached hereto as Exhibit A. On February 18, 2000, Petitioner unlawfully entered the U.S. without inspection, admission or parole and returned to Mexico. See Exhibit A. On March 7, 2000, Petitioner unlawfully entered the U.S. without inspection, admission or parole and returned to Mexico. See Exhibit A. Afterwards, at an unknown date and location, Petitioner again unlawfully entered the U.S. without inspection, admission or parole and returned to Mexico. See Exhibit A. On October 11, 2025, Petitioner was encountered by ICE in the Las Vegas jail following his arrest for driving under the influence. ICE determined that Petitioner was in the U.S. unlawfully pursuant to INA 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and issued him a Notice to Appear. See Notice to Appear attached hereto as Exhibit B. On December 4, 2025, a court hearing was conducted by the Immigration Judge (“IJ”) to determine the removability of Petitioner. See Order of the Immigration Judge dated December 4, 2025, attached hereto as Exhibit C. The IJ ruled that Petitioner is inadmissible under INA 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See Exhibit C. The IJ denied Petitioner’s application for cancellation of Removal for Nonpermanent Residents under INA 240A(b)(1). See Exhibit C. The IJ heard arguments from Petitioner and reviewed all the evidence and ordered Petitioner to be removed to Mexico. See Exhibit C. on December 30, 2025, Petitioner appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”). See Notice of Appeal from a Decision of an Immigration Judge attached hereto as Exhibit D. In the Notice to Appeal, Petitioner stated, “The immigration Judge erred in denying the Respondent’s Application for Cancellation of Removal for Nonpermanent Residents under INA 240(B)(1).” See Exhibit D, page 2. Petitioner further stated, “The immigration judge

1 failed to properly consider the evidence supporting the Respondent's eligibility for this form
 2 of relief." See Exhibit D, page. On January 21, 2026, after Petitioner was ordered removed
 3 to Mexico, Petitioner requested a bond hearing under 8 C.F.R. § 1236. The bond hearing
 4 request was denied. See Order of the Immigration Judge dated January 21, 2026, attached
 5 hereto as Exhibit E.

6 I. Legal Argument

7 A. There has been No Prolonged Detention in Violation of the Fifth Amendment 8 and under *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (Count I)

8 U.S.C. § 1231 governs the detention of non-citizens who are subject to final orders of
 9 removal. See 8 U.S.C. § 1231(a); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th
 10 Cir. 2022) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018)) (clarifying that §
 11 1231(a) supplies DHS's detention authority once a non-citizen is subject to a final removal
 12 order). The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a
 13 noncitizen detained under this statutory authority has no right to a bond hearing or release.
 14 See *Johnson v. Arteaga-Martinez*, 142 S. Ct. at 1832-34; *id.* at 1832 ("Section 1231(a)(6) does
 15 not expressly specify how long detention past the 90-day removal period may continue for
 16 those who fall within the four designated statutory categories."); *id.* at 1833. the Supreme
 17 Court has repeatedly "recognized detention during deportation proceedings as a
 18 constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523
 19 (2003); see also, e.g., *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process
 20 claim that "the INS procedures are faulty because they do not provide for automatic review
 21 by an immigration judge of the initial deportability and custody determinations"); *Abel v.*
 22 *United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of
 23 acceptance of the validity of statutes providing for administrative deportation arrest from
 24 almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952)
 25 ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United*
 26 *States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary
 27 confinement, as part of the means necessary to give effect to the provisions for the exclusion
 28 or expulsion of aliens, would be valid."). As the Supreme Court has explained, "[i]n the

1 exercise of its broad power over naturalization and immigration, Congress regularly makes
2 rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80
3 (1976). Petitioner’s substantive due process claim therefore fails. *See Demore*, 538 U.S. at
4 531; *see also Zadvydas*, 533 U.S. at 701 (recognizing a “presumptively reasonable period of
5 detention” of up to six months to effectuate a final removal order).

6 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right
7 to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a due
8 process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In *Zadvydas*,
9 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s demands”,
10 “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would raise a
11 “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme Court
12 proceeded to conclude that detention of a noncitizen for up to six months under 8 U.S.C.
13 § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides good
14 reason to believe that there is no significant likelihood of removal in the reasonably
15 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that
16 showing.” *Id.* at 700-01. The mandatory removal period begins on the latest of three
17 possible dates: (1) the date an order of removal becomes “administratively final,” (2) the
18 date of the final order of any court that entered a stay of removal, or (3) the date the alien is
19 released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three
20 potential outcomes in the event the government does not remove an alien during the 90-day
21 mandatory removal period. First, the government may release the alien subject to
22 conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may
23 extend the removal period if the alien “fails or refuses to make timely application in good
24 faith for travel or other documents necessary to the alien’s departure or conspires or acts to
25 prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C). And
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1 finally, the government may further detain certain categories of aliens, including those
2 “inadmissible” under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under
3 this latter category is often referred to as the “post-removal-period.” *Johnson v. Guzman*
4 *Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how
5 long detention during the “post-removal-period” can last. *See Johnson v. Arteaga-Martinez*,
6 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only
7 detain aliens in the post-removal-period for the time “reasonably necessary to bring about
8 that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).
9 And the Supreme Court further clarified that a six-month period of detention is
10 “presumptively reasonable.” *Id.* at 701. “After this 6-month period, once the alien provides
11 good reason to believe that there is no significant likelihood of removal in the reasonably
12 foreseeable future, the Government must respond with evidence sufficient to rebut that
13 showing.” *Id.*

16 In this case, Petitioner was ordered removed on December 4, 2025, by the IJ. Petitioner
17 appealed the decision to the BIA on December 30, 2025. Because the prospect of
18 indeterminate detention raises grave and obvious constitutional concerns, the Supreme
19 Court has held that such a non-citizen “may be held in confinement for a period reasonably
20 necessary to bring about that alien’s removal” and post-removal period detention under 8
21 U.S.C. § 1231(a)(6) for six months or less, inclusive of the removal period, is “presumptively
22 reasonable” (and therefore does not, on its own, result on constitutional injury). *Zadvydas v.*
23 *Davis*, 533 U.S. 678, 683, 701 (2001). Petitioner has been detained for less than six months
24 since his final order of removal was issued and the order became “administratively final”.
25 As of the date of this filing, Petitioner has been detained for 78 days since the order of
26 removal was issued which is when the removal period begins. Under *Zadvydas*, it is
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1 presumptively reasonable for Petitioner to be detained up to six months 8 U.S.C. § 1231. *Id.*
2 at 700-01. Petitioner's argument is not persuasive because six months have not passed since
3 his final removal order was issued for him to legitimately argue a due process violation
4 under *Zadvydas* nor that his detention has been "prolonged". Furthermore, there is a
5 significant likelihood of removal of Petitioner in the reasonably foreseeable future since six
6 months have not lapsed in this matter. It is only after six months have lapsed, that Petitioner
7 may argue that there is no significant likelihood of removal in the reasonably foreseeable
8 future, and then the Government must respond with evidence sufficient to rebut that
9 showing. In this matter, six months have not lapsed for Petitioner to legitimately argue
10 *Zadvydas*. Therefore, Petitioner has not yet been in detention pursuant to 8 U.S.C. § 1231 for
11 six months since his final removal order was issued, and his detention to effectuate his final
12 order of removal is presumptively reasonable. Petitioner's detention under 8 U.S.C. §
13 1231(a)(6) is, as interpreted by the Supreme Court, squarely in accordance with the
14 government's statutory authority and thus, the relief he seeks, is not warranted by statute.
15 *See* 8 U.S.C. § 1231(a)(6); *See Johnson v. Arteaga-Martinez*, 142 S. Ct. at 1832-34. Petitioner's
16 detention under 8 U.S.C. § 1231(a)(6) does not violate his due process rights as he has not
17 met his burden of setting forth good reason to believe that there is no significant likelihood
18 of his removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. Petitioner
19 is lawfully detained under 8 U.S.C. § 1231(a)(6) as he has been issued a final order of
20 removal.
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24 8 U.S.C. § 1231(a)(6) states:
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26 **(6) Inadmissible or criminal aliens**

27 An alien ordered removed who is inadmissible under section 1182 of this title,
28 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who
has been determined by the Attorney General 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).

Therefore, Petitioner fails to demonstrate that he meets *Zadvydas*' six-month detention requirement after final order of removal was issued, and Petitioner's detention is thus presumed lawful and constitutional, and his Petition should be denied.

B. Petitioner Who Has a Final Order of Removal is Not Entitled to a Bond Hearing (Count II)

The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a noncitizen detained under this statutory authority has no right to a bond hearing or release. See *Johnson v. Arteaga-Martinez*, 142 S. Ct. at 1832-34; *id.* at 1832 ("Section 1231(a)(6) does not expressly specify how long detention past the 90-day removal period may continue for those who fall within the four designated statutory categories."); *id.* at 1833.

In this case, Petitioner has a final order of removal and has no right to a bond hearing nor release under § 1231(a)(6) and therefore his Petition should be denied.

C. No Declaratory Relief is Warranted

Petitioner argues that he should be granted a bond hearing, and his removal proceedings are governed by 8 U.S.C. § 1226(a). See ECF No. 1 ¶ 66. Petitioner is subject to 8 U.S.C. § 1231, not 8 U.S.C. § 1226(a) because he has been issued a final order of removal. As such, Petitioner is not entitled to a bond hearing. Therefore, his Petition should be denied.

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II. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted this 19th day of February 2026.

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