

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada State Bar No. 11479
3 ALLIE WILSON
Assistant Federal Public Defender
4 New York State Bar No. 5479597
200 S. Virginia Street, Suite 340
5 Reno, Nevada 89501
Allie_Wilson@fd.org
6 (702) 388-6577/Phone
7 (702) 388-6261/FAX

8 Attorneys for Petitioner Yancarlos Cartaya Benitez

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 Yancarlos Cartaya Benitez,

13 Petitioner,

14 v.

15 John Mattos, NSDC Warden; Michael Bernacke,
Field Director, West Valley City Office of ICE
16 ERO; Todd Lyons, ICE Acting Director; Kristi
Noem DHS Secretary; Pam Bondi, U.S. Attorney
General,

17 Respondents.
18
19

Case No. 2:26-cv-00410-ART-BNW

**Reply in Support of First Amended
Petition**

20 Undersigned counsel is flabbergasted by the Respondents' answer. It lacks a basic
21 understanding of the laws that govern immigration detention. It appears that it is simply a copy
22 and paste job of a response to a *Zadvydas*-type prolonged detention argument. The government
23 inexplicably argues that Mr. Cartaya's detention is authorized by 8 U.S.C. § 1231 because his
24 removal order is administratively (but not judicially) final while simultaneously arguing that he is
25 not subject to the statutory and constitutional limits of that same statute because his removal order
26 is subject to a stay of removal pending judicial review by the Ninth Circuit.
27

1 But Mr. Cartaya's detention is not governed by *Zadvydas* nor is it authorized by 8 U.S.C.
2 § 1231. The Ninth Circuit stayed his removal pending resolution of a petition for review. The plain
3 language of § 1231 removes him from its purview.

4 As a result, Respondents have not identified any law that authorizes Mr. Cartaya's
5 detention. Nor have they have offered any change of circumstances that would justify his re-
6 detention. Mr. Cartaya, therefore, should be immediately released.

7 **1. Respondents have not identified any law that justifies Mr. Cartaya's detention.**

8 Rather than identify a law to justify their actions, Respondents seek to place Mr. Cartaya
9 in a loophole. They simultaneously argue that his detention is authorized by 8 U.S.C. § 1231 and
10 yet that it is not subject to the constitutional and statutory limits placed on immigration detention
11 under that statute. Respondents, however, are wrong. The Ninth Circuit's stay of removal removes
12 Mr. Cartaya from the detention authority of § 1231. § 1231 is not a source of authority for Mr.
13 Cartaya's detention.

14 As Respondents note, 8 U.S.C. § 1231 mandates detention for a 90-day "removal period"
15 that is triggered by one of three events: "(i) The date the order of removal becomes administratively
16 final. (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of
17 the alien, the date of the court's final order. (iii) If the alien is detained or confined (except under
18 an immigration process), the date the alien is released from detention or confinement." 8 U.S.C. §
19 1231(a)(1)(B).

20 Mr. Cartaya falls under subsection (ii). He has a petition for review pending before the
21 Ninth Circuit. The Ninth Circuit issued a stay of removal. His detention is not authorized under §
22 1231 because the removal period will not begin unless and until the Ninth Circuit denies his
23 petition for review.

24 Respondents' claim that Mr. Cartaya is detained pursuant to § 1231 contradicts the plain
25 language of the statute and clear Ninth Circuit precedent. The Ninth Circuit has been abundantly
26 clear that § 1231 does not apply while an administrative order of removal is under judicial review
27 and subject to a stay of removal via a timely filed petition for review in a circuit court. "As a matter
of text and logic, § 1231(a) does not provide detention authority over an alien who has been granted

1 a stay of removal pending a court of appeals' resolution of his petition for review of his removal
2 order." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th Cir. 2008) (holding that the BIA's
3 interpretation that § 1231 applies after an administrative order of removal contradicts "the plain
4 and sensible meaning" of Congressional "intent" that is "readily ascertainable using the traditional
5 tools of statutory interpretation."); *see also Avilez v. Garland*, 69 F.4th 525, 530-31 (9th Cir. 2023)
6 ("Section 1231(a) does not apply to detention during the pendency of administrative or judicial
7 removal proceedings.").

8 Despite clear statutory language and Circuit precedent to the contrary, Respondents
9 inexplicably state as follows:

10 Here, Petitioner has not reached the 90-day removal period. Petitioner is subject to
11 a final order of removal, however, there is a stay of removal entered. This tolls the
12 beginning of the removal period. The removal order is administratively final
13 because the BIA dismissed the appeal. The detention is lawful under § 1231 to
14 effectuate the final removal order.

15 ECF No. 11 at 10.

16 Counsel cannot make sense of this reasoning. Not only does it contradict the plain language
17 of the statute and clear Ninth Circuit precedent; it is also simply nonsensical. How could detention
18 be lawful under § 1231 "to effectuate the final removal order," when the ninety-day removal period
19 has not begun because the removal order has been stayed? Clearly, the government is not
20 effectuating the removal order. It has been stayed. The appeal has not been litigated for years, *on*
21 *the government's own motion*.

22 Respondents also inexplicably elaborate at length about the purpose of the removal period
23 and the Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), stating that detention
24 is authorized for a period "reasonably necessary to bring about the alien's removal from the United
25 States and that detention for six months is "presumptively reasonable." *Id.* at 3, 10. (quoting
26 *Zadvydas v. Davis*, 533 U.S. at 701). The government goes on to state that, after six months, the
27 burden falls on the noncitizen to prove that "there is no significant likelihood of removal in the
reasonably foreseeable future. *Id.* at 10 (quoting *Zadvydas*, 533 U.S. at 689). Respondents cite 8

1 U.S.C. § 1231(a)(1)(C), which allows the extension of the removal period if the prolongation of
2 that period is the result of a noncitizens' refusal to participate in the process. ECF No. 11 at 5, 10.

3 Ironically, if this case were governed by *Zadvydas*, Mr. Cartaya would also have to be
4 released. He has now been detained for seven months, and the government cannot deport him for
5 the foreseeable future. That is because *the government* chose not to litigate his appeal. The
6 government now owes the Ninth Circuit an answering brief, which is the only way to conclude the
7 appeal and, if the conclusion is favorable to the government, to deport Mr. Cartaya.¹ The reference
8 to 8 U.S.C. § 1231(a)(1)(C) is even more ironic because, here, it is *the government* that decided
9 not to participate in the process, not Mr. Cartaya.

10 But despite repeated references to *Zadvydas*, Respondents also recognize that this case is
11 not governed by *Zadvydas*. Respondents appear to be arguing instead that Mr. Cartaya's detention
12 exists in some loophole where there are no limits on his detention. Somehow, Respondents seem
13 to believe that they have the authority to detain Mr. Cartaya indefinitely due to their own decision
14 not to litigate his appeal years ago while simultaneously treating him as if he is post-final order for
15 the purposes of the mandatory detention provision of 8 U.S.C. § 1231 and treating him as if he is
16 not final post-final order for the purposes of the statutory and constitutional limits on detention
under 8 U.S.C. § 1231.

17 But the loophole the government seeks to create does not actually exist. Respondents have
18 failed to identify any correct statutory authority to detain Mr. Cartaya. He should be released.

19 **2. Respondents ignore decades of Supreme Court precedent to argue that Mr. Cartaya's**
20 **prolonged detention is unreviewable in this Court.**

21 It gets worse. Respondents then claim that not only do they have the authority to
22 indefinitely detain Mr. Cartaya despite that it is on the government's motion that his appeal is
23 unresolved, they also argue that they have the authority to do it without any judicial review.

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26 ¹ Since filing the Amended Petition, the Ninth Circuit has granted the government's
27 motion to reopen the appeal, on March 12, 2026. The government's answering brief is due June
12, 2026. *See Order, Yancarlos Cartaya v. Bondi*, Case No. 20-70129 (9th Cir. Mar. 12, 2026),
ECF No. 43.

1 Respondents claim that this Court does not have jurisdiction to consider this habeas petition under
2 8 U.S.C. § 1252(b)(9) and (g). ECF No. 11 at 5-9.

3 This argument is entirely meritless. Those statutes govern judicial review of orders of
4 removal, not detention. A noncitizen may not challenge an order of removal by way of a habeas
5 petition. *See* 8 U.S.C. § 1252(g) (“no court shall have jurisdiction to hear any cause or
6 claim....arising from the decision or action by the Attorney General to commence proceedings,
7 adjudicate cases, or execute removal orders against any noncitizen”); 8 U.S.C. § 1252(b)(9)
8 (stating that habeas is unavailable as a remedy to review a final order of removal). The statutes say
9 nothing about challenges to detention.

10 Unfortunately for Respondents’ position, the Constitution and § 2241 still protect Mr.
11 Cartaya and others like him. Clearly, this Court has jurisdiction to consider a challenge to the
12 constitutionality of prolonged immigration detention. That is beyond question. That question was
13 decided over two decades ago when the Supreme Court decided *Zadvydas v. Davis*. 533 U.S. at
14 688 (“habeas corpus proceedings remain available as a forum for statutory and constitutional
15 challenges to post-removal-period detention.”).

16 The government’s reference to *Tazu v. Att’y Gen. United States*, 975 F.3d 292 (3d 2022) is
17 entirely misplaced. In *Tazu*, the Third Circuit considered a short period of detention to effectuate
18 removal to be unreviewable by a district court because the period of detention was specifically for
19 the purpose of effectuating removal. The Third Circuit specifically stated: the INA “does not
20 foreclose all claims by an immigration detainee If Tazu had challenged the length of his
21 confinement, for instance, he could have pursued that challenge outside a petition for review. That
22 is because prolonged detention suggests that removal is not reasonably foreseeable. Challenges to
23 the length or conditions of an alien’s confinement are not directly about removal.” *Id.* at 299
(internal citations and quotations omitted).

24 Moreover, the Supreme Court has already repeatedly rejected the same jurisdictional
25 argument in similar contexts. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018) (holding
26 that 8 U.S.C. § 1252(g) “does not present a jurisdictional bar” because respondents were
27 challenging their immigration detention and not “any part of the process by which their

removability will be determined”); *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (holding that a challenge to the rescission of the DACA program was not subject to the jurisdictional bars of 8 U.S.C. § 1252(b)(9) or § 1252(g) because the bars are “narrow” and inapplicable when a party is “not challenging any removal proceeding.”) And, despite Respondents repeatedly making this jurisdictional argument in response to the recent wave of habeas petitions from immigration detainees, courts in this district and others have routinely rejected it. *See, e.g., Alkarori v. Nev. S. Det. Ctr.*, Case No 2:25-cv-2567-MMD-MDC, 2026 WL 266756, at *1 (D. Nev. Feb. 2, 2026); *Matias-Gonzalez v. Noem*, Case No. 2:26-cv-326-RFB-MDC, 2026 WL 458459, at *2 (D Nev. Feb. 18, 2026); *Manoukyan v. Lyons*, Case No. 5:26-cv-524, 2026 WL 712221, at *4 (C.D.Cal. Mar. 4, 2026); *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F.Supp.3d 1163, 1169-70 (W.D.Wash. 2023).

Mr. Cartaya has followed the processes set out in the INA to the T. He filed a petition for review in the Ninth Circuit in which he seeks judicial review of his removal order, as required. The government chose not to litigate it, then detained him without even seeking to reopen his appeal for months. Many months later, he filed in this Court a challenge to his prolonged detention. No statute nor any precedent from any court suggests that this court lacks jurisdiction to hear his claim.

3. The appropriate remedy is release.

Respondents’ conduct in this matter is egregious, as is the response to this Petition. They cite no valid authority to detain Mr. Cartaya. They ignore the plain language of § 1231 and clear Ninth Circuit precedent to incorrectly argue that Mr. Cartaya’s detention is mandatory under § 1231 and subject to no constitutional or statutory limits. They raise a jurisdiction stripping argument that contradicts decades of Supreme Court precedent and repeated decisions by judges in this and other districts, all while failing to cite overwhelming contrary authority. In effect, Respondents argue that they may indefinitely detain Mr. Cartaya with no checks on their power.

They may not. Under these circumstances, the appropriate remedy is release. Courts across the country have ordered release in response to clear abuses of power by government actors against immigration detainees. As one judge put it: “This Court does not have the power to impede

1 removal proceedings, but it does have the power to ensure that the Government follows the law
2 when it detains people. It did not, so the Court ordered Petitioner's immediate release. In this
3 country, we don't enforce the law by breaking the law." *Rivero v. Mina*, Case No. 6:26-cv-66,
4 2026 WL 199319 (M.D.Fla. Jan. 26, 2026) (further ordering that respondents show cause as to
5 why they should not be subject to Rule 11 sanctions for failing to cite the "overwhelming weight
6 of persuasive authority" that contradicted their position); *see also Meza v. Lewis*, Case No. 4:25-
7 cv-171-RGJ, 2026 WL 92102, at *12 (W.D.Ky. Jan. 13, 2026) (ordering immediate release
8 "because of the United States' illegal actions it undertook in Meza's detention."); *J.L.R.P. v.*
9 *Wofford*, Case No. 1:25-cv-1464, 2025 WL 3190589, at *10 (E.D.Cal. Nov. 14, 2025) (ordering
10 immediate release after finding that the government violated its own policies by re-detaining an
11 asylum seeker); *Roble v. Bondi*, 803 F.Supp. 766, 774 (D. Minn. 2025) (ordering release from
12 custody under prior terms of supervision "as a remedy for ICE's illegal re-detention" of
13 noncitizen); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31
14 (E.D.N.Y. Nov. 28, 2025) (ordering release instead of a bond hearing because "a bond
15 determination by a DHS officer or an immigration judge would not remedy the core constitutional
16 violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE
17 detained her under the wrong statute and without any notice or opportunity to be heard, much less
18 the procedures required under Section 1226(a)").

19 Mr. Cartaya should be immediately released.

20 Dated March 24, 2026

21 Respectfully submitted,

22 Rene L. Valladares
23 Federal Public Defender

24 /s/ Allie Wilson

25 Allie Wilson
26 Assistant Federal Public Defender
27

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2026, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Virginia Tomova

Martin Mayer

US Attorney's Office, District of Nevada

501 Las Vegas Blvd. South

Suite 1100

Las Vegas, NV 89101

Attorneys for Respondents Bondi, Noem, Bernacke, and Lyons

Ashlee Hesman

Struck Love Acedo, PLC

3100 West Ray Road, Suite 300

Chandler, AZ 85226

James Ernest Harper

Harper Wixom

1935 Village Center Circle

Las Vegas, NV 89134

Attorneys for Respondent John Mattos

Sigal Chattah

Summer Allegra Johnson

US Attorney's Office, District of Nevada

501 Las Vegas Blvd. South

Suite 1100

Las Vegas, NV 89101

Attorneys for Interested Party USA

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, for delivery within three calendar days, to the following people:

Yancarlos Benitez Cartaya

Nevada Southern Detention Center

2190 E Mesquite Avenue

Pahrump, NV 89060

/s/ Katrina Burden

Employee of the Federal Public Defender