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8
9 UNITED STATES DISTRICT COURT
10
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 OSMEL CARDENAS DIAZ,

14 Plaintiff,

15 vs.

16 MARKWAYNE MULLIN, SECRETARY OF
17 HOMELAND SECURITY, ET AL.,

18 Defendant

Case No.:

'26CV2208 JO BLM

PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

19 I. INTRODUCTION

20 Osmel Cardenas Diaz, Petitioner, challenges his continued detention under 8 U.S.C.
21 §1231(a)(6) as unconstitutional pursuant to the matter of Zadvydas v. Davis, 533 U.S. 678
22 (2001). Despite a final order of removal, an Immigration Judge granted withholding of removal
23 on December 8, 2025, legally prohibiting the petitioner's removal to Cuba. Petitioner remains
24 detained at the Imperial Regional Detention Center without any significant likelihood of being
25 removed in the reasonably foreseeable future.

26 II. JURISDICTION AND VENUE

27 This Court has jurisdiction over this matter under 28 U.S.C. § 2241. Venue is proper in this
28 district as the Petitioner is being held by respondents at the Imperial Regional Detention
Center in Calexico, California.

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 1

III. FACTUAL BACKGROUND

On or about October 15, 2025, the Petitioner Osmel Cardenas Diaz was taken into custody by ICE after a traffic stop by the Florida Police department that subsequently reported Mr.

Cardenas to ICE. The petitioner in this matter has been in the United States since October 24, 2021. At the time of his detention, the petitioner did not have any criminal history or history of any failures to appear. The petitioner prior to his detention, was employed as a delivery driver in the state of Florida. Now the petitioner is married to a lawful permanent resident and does not pose a threat to public safety or national security.

Petitioner was initially detained at "Alligator Alcartaz" in Florida and later was transferred to the Imperial Regional Detention center for his pending removal proceedings.

On December 8, 2025, an Immigration Judge at the Imperial Immigration Court in Imperial California, granted the petitioner withholding of removal under INA § 241 (b)(3). The order was final and both parties waived appeal. Petitioner cannot be removed to Cuba as a matter of law. The Department of Homeland Security has not identified a third country for removal, nor is a removal date scheduled for petitioner.

On December 19, 2025, officer Olvera took the petitioner to the Mexico international border at approximately 2:00 am. The country of Mexico declined to accept petitioner into their country. While in ICE custody, the petitioner married his Lawful Permanent Resident spouse Anisley Serra Rodriguez further strengthening his equities. To date, the department of Homeland Security has not designated a third country for removal, nor have they made any efforts to contact Petitioner's counsel of record to discuss the removal.

IV. LEGAL STANDARD

1 Post removal order detention is governed by 8 U.S.C. § 1231 (a)(6), but that statute is
2 constitutionally limited by the Supreme Court's holding in *Zadvydas v. Davis*.

3 In the matter of *Zadvydas*, the Supreme Court held that immigration detention is not
4 indefinite and must be strictly limited to a period reasonably necessary to effectuate removal.
5 The Court established a presumptively reasonable six-month period of detention, after which
6 continued detention, after which continued detention is unconstitutional unless the
7 Government can demonstrate that removal is significantly likely in the reasonable
8 foreseeable future. Critically, once a petitioner provides "good reason to believe that there is
9 no significant likelihood in the reasonably foreseeable future," the burden shifts to the
10 Government to rebut that showing with evidence. *Id.* at 701.

11 The Supreme Court made clear that detention under § 1231(a)(6) is not punitive and cannot
12 be used to warehouse noncitizens where removal is not practically attainable. *Id.* at 690.
13 Rather, detention must bear a reasonable relation to its purpose effectuating removal and
14 becomes unconstitutional once that purpose cannot be achieved.

15 The Ninth Circuit has repeatedly reinforced these constitutional limitations and holding that
16 prolonged detention without a realistic prospect of removal violates due process. See *Diouf v.*
17 *Napolitano* (634 f.3d 1081, 9th Cir. 2011) the court recognized heightened procedural
18 protections for prolonged detention; See matter of *Prieto-Romero v. Clark* 534 F.3d 1053 (9th
19 Cir. 2008) the court found that detention is permissible only where removal remains
20 reasonably foreseeable.

21 Courts within this Circuit consistently grant Habeas relief where, removal is legally barred or
22 constrained, the Government lacks a functioning repatriation pathway, or there is not
23 concrete evidence of imminent removal. Whereas here, removal is speculative or impossible.

1 Continued detention serves no regulatory purpose and becomes arbitrary executive detention
2 in violation of the Fifth Amendment.

3 While Zadvydas identifies six months as a presumptively reasonable period, courts have
4 consistently recognized that habeas relief is appropriate even before the six months where the
5 record demonstrates that removal is not foreseeable. The Constitution does not require a
6 detainee to endure prolonged confinement where the Government cannot effectuate removal.
7

8 **V. ARGUMENT**

9 **A. PETITIONER'S DETENTION IS CONSTITUTIONALLY INDEFINITE UNDER**

10 **ZADVYDAS V. DAVIS**

11
12 Petitioner is detained under 8 U.S.C. § 1231(a)(6) following a final order of removal,
13 however, his continued detention violates the Due Process Clause because there is no
14 significant likelihood of removal in the reasonably foreseeable future. The Immigration
15 Judge's final order confirms that: Petitioner was granted withholding of removal, legally
16 prohibiting petitioners' removal to Cuba; a removal order exists only in form, not in practical
17 effect. No alternative country of removal has been identified.
18

19 Under these circumstances, petitioner's detention no longer serves its regulatory purpose. It
20 is instead indefinite and unconstitutional.

21 In this matter, the respondents are unable to meet their burden of proof under Zadvydas
22 because removal to Cuba is legally barred, no third country has been designated for removal,
23 no travel documents have been issued, and there is no concrete evidence of any efforts being
24 underway for removal.
25

26 **B. WITHHOLDING OF REMOVAL ELIMINATES ANY REALISTIC PROSPECT**

27 **OF REMOVAL**

28 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 4

1 The granting of withholding of removal is not a procedural delay, it is a binding legal
2 prohibition on removal to the designated country. In this matter, the Respondents are
3 detaining the Petitioner based on a removal order that they cannot lawfully execute. The
4 respondents are barred from removing the Petitioner to Cuba and have not designated a third
5 country for removal. Courts have repeatedly rejected such detention where the Government
6 lacks a viable country of removal. Given that respondents have not designated or identified a
7 third country for removal willing to accept the petitioner, removal is not delayed it is not
8 foreseeable.
9

10 **C. CUBAN NATIONALS FACE SYSTEMIC BARRIERS TO REPATRIATION**

11 Petitioner is a citizen of Cuba, a country with a long-documented history of limited and
12 inconsistent repatriation practices. Courts routinely recognize that the removal of Cuban
13 nationals is unpredictable, diplomatically constrained, and not reasonably foreseeable for an
14 extended period of time. When combined with a removal order, these barriers render removal
15 speculative and unforeseeable.
16

17 **D. CONTINUED DETENTION IS PUNITIVE BECAUSE PETITIONER POSES NO** 18 **FLIGHT RISK OR DANGER**

19 Even if the Government were to argue that detention is justified for purposes of supervision
20 fails here. Petitioner has no criminal history or any failures to appear. The petitioner also has
21 strong ties to the United States; the petitioner's spouse is a Lawful Permanent Resident.
22

23 These facts alone eliminate any legitimate justification for continued detention.
24

25 Detention under § 1231(a)(6) is civil, not punitive. Where there is no realistic prospect of
26 removal and no public safety concerns, continued detention serves no permissible
27

1 governmental purpose. Instead, it becomes arbitrary and punitive detention, in direct
2 violation of the Fifth Amendment.

3 **E. THE GOVERNMENT CANNOT JUSTIFY DETENTION BASED ON**
4 **HYPOTHETICAL FUTURE REMOVAL**

5
6 Respondents may argue that removal could occur at some undefined point in the future,
7 however, that argument is legally insufficient. Under the matter of *Zadvydas v. Davis*, the
8 government must show that removal is significantly likely in the reasonably foreseeable
9 future, and not nearly possible in theory. Speculation, hope, or generalized assertions about
10 diplomatic relations do not satisfy this standard. Whereas here in this matter, there is a legal
11 barrier preventing respondents from removing the petitioner to Cuba, no country has agreed
12 to accept the petitioner, and no realistic timeline for removal exists. Therefore, continued
13 detention is indefinite by definition and therefore unconstitutional. The Department of
14 Homeland Security and ICE has not made any reasonable efforts to meet and confer with
15 Petitioner's counsel regarding removal. On several occasions ICE has approached the
16 petitioner regarding removal while inside the detention facility. The petitioner has asked ICE
17 to speak with his attorney before he signs anything, and ICE simply claims that is not their
18 job. ICE has refused to cooperate with the Petitioner and his attorney for record.
19
20
21

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23 **F. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY**

24 The petitioner's detention is unconstitutional, the appropriate remedy is immediate release,
25 without further delay. The petitioner does not pose a threat to public safety or national
26 security; the petitioner also has strong ties to the United States with his union with his spouse
27 who is an LPR. There is no basis to prolonged detention through additional proceedings. At
28 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 6

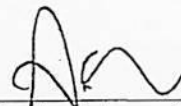
1 most, the Court may impose reasonable conditions of supervision, however, continued
2 physical detention is unlawful and must cease immediately.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner Osmel Cardenas Diaz respectfully requests that this Court grant
5 the Petition for Writ of Habeas Corpus and provide the following relief:
6

- 7 1. Declare that Petitioners continued detention under 8 U.S.C. § 1231(a)(6) violates the Due
8 Process Clause of the Fifth Amendment as interpreted by *Zadvydas v. Davis*;
9
10 2. Order Respondents to immediately release Petitioner from Immigration custody under
11 reasonable conditions of supervision, as continued detention is unconstitutional and no
12 significant likelihood of removal exists;
13
14 3. Alternatively, in the event the Court does not order immediate release, order Respondents
15 to provide petitioner with an individualized bond hearing before an Immigration Judge
16 within (7) days;
17
18 4. Enjoin Respondents from re-detaining Petitioner absent a material change in
19 circumstances demonstrating that removal has become significantly likely in the
20 reasonably foreseeable future;
21
22 5. Grant such other and further relief as this Court deems just and proper.

23 Dated this 6 of April 2026.



24 Alberto Sobero, Esq.
25 Attorney for Petitioner, Osmel Cardenas Diaz
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