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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 OSMEL CARDENAS DIAZ,

14 Petitioner,

15 v.

16 MARKWAYNE MULLIN, Secretary of
17 Homeland Security,

18 Respondent.

Case No.: 26-cv-02208-JO-BLM

**RESPONSE IN OPPOSITION TO
AMENDED HABEAS PETITION**

I. INTRODUCTION

Osmel Cardenas Diaz (“Petitioner”) has filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his immediate release from custody or, in the alternative, provide Petitioner with an individualized bond hearing. However, a bond hearing is not the appropriate remedy and Petitioner’s request is not ripe for review. Respondent therefore requests the Court deny the habeas petition.

II. BACKGROUND

Petitioner is a citizen and national of Cuba. Exhibit 1¹ (Record of Deportable/Inadmissible Alien); Declaration of Detention Officer Adrian Gonzalez (“Gonzalez Decl.”) at ¶ 4. Petitioner originally entered the United States on or about October 24, 2021. Gonzalez Decl. at ¶ 5. At that time, Petitioner was issued a Notice to Appear (NTA) under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States who has not been admitted or paroled and released on his own recognizance. *Id.*; Exhibit 2 (Bond Memorandum of the Immigration Judge).

On September 23, 2025, Petitioner was encountered by U.S. Border Patrol in Florida, taken into Immigration and Customs Enforcement (ICE) custody, and issued a new NTA. Gonzalez Decl. at ¶ 6; Exhibit 3. On October 22, 2025, the Immigration Court conducted a custody redetermination hearing at the request of Petitioner. *See* Exhibit 2. The Court denied Petitioner’s request due to lack of jurisdiction and Petitioner timely appealed. *Id.* On December 8, 2025, an Immigration Judge (IJ) ordered Petitioner removed to Cuba but granted withholding of removal under INA § 241(b)(3). Gonzalez Decl. at ¶ 7; Exhibit 4 (IJ Removal Order). Since Petitioner and the government waived appeal, the removal order became final on December 8, 2025. *Id.*

¹The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel

1 On January 8, 2026, Petitioner declined removal to Mexico and requested to be
2 removed to Germany instead. Gonzalez Decl. at ¶ 8. Since that time, ICE has been
3 actively working to identify a third country, including Germany, to which Petitioner
4 may be removed. *Id.* at ¶¶ 9-11. Once a third country is identified for removal, ICE will
5 provide Petitioner with at least 24 hours written notice prior to removal. *Id.* at ¶ 12.

6 III. ARGUMENT

7 A. Petitioner's Detention is Lawful and He Has Not Established That There 8 is No Significant Likelihood of Removal in the Reasonably Foreseeable 9 Future

10 Petitioner's petition should be denied because he is properly detained under 8
11 U.S.C. § 1231(a). Respondent is working expeditiously to identify a third country and
12 acquire the necessary travel document in order to effectuate Petitioner's removal.
13 Petitioner has not met his burden of rebutting the presumptively reasonable period of
14 detention.

15 "Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
16 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
17 removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
18 (2022). The INA provides that an alien ordered removed must be detained for 90 days
19 pending the government's efforts to secure the alien's removal through negotiations
20 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall
21 detain" the alien during the 90-day removal period under subsection (a)(1)).

22 Section 1231(a)(6) "authorizes further detention if the Government fails to
23 remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
24 Detention authority under this statute, however, is limited to "a period reasonably
25 necessary to bring about the alien's removal from the United States" and "does not
26 permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month
27 period of post-removal detention constitutes a "presumptively reasonable period of
28 detention." *Id.* at 701. Release is not mandated after the expiration of the six-month

1 period unless “there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Id.*

3 If an individual ordered removed “is not removed to his or her country of choice
4 or citizenship, he or she shall be removed to any of the following countries” listed in 8
5 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).
6 The enumerated countries are:

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

16 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
17 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
18 country whose government will accept the alien into that country.’” *Id.* (quoting
§ 1231(b)(2)(E)(vii)).

19 Here, Petitioner was granted withholding of removal to Cuba—his country of
20 birth and citizenship. Apart from Cuba, there appears to be no other country that would
21 meet the definitions under subsections (i) through (vi), and Petitioner has made no
22 showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025
23 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A prisoner bears the burden of
24 demonstrating that ‘he is in custody in violation of the Constitution or laws or treaties
25 of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because
26 removal to the above enumerated countries is “impracticable, inadvisable, or
27 impossible,” ICE may remove Petitioner to a third country that will accept Petitioner's
28 removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

1 As illustrated in various habeas filings in this district, recent developments in
2 international relations between the United States and several other countries have made
3 probable ICE's removal of immigrants, like Petitioner, that it previously was unable to
4 remove to third countries. *See, e.g., Varona v. Noem et al.*, 25-cv-3328-JES-SBC, ECF
5 No. 1 at 6 (S.D. Cal. Nov. 26, 2025) ("The Trump administration reportedly has
6 negotiated with at least 58 countries to accept deportees from other nations."). Against
7 this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues
8 to detain Petitioner for purposes of executing his removal order to a third country. *See*
9 *Gonzalez Decl.* at ¶¶ 7-8.

10 Here, Petitioner's removal order became final on December 8, 2025, when both
11 Petitioner and the government waived appeal of the IJ's decision. *See* Exhibit 4; 8
12 C.F.R. § 1241.1. Petitioner has thus been in post-final order detention, under 8 U.S.C.
13 § 1231(a), for 4 months and 7 days, which is within the six months of post-removal
14 confinement that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533
15 U.S. at 700–01. Petitioner claims that "there is no concrete evidence of any efforts being
16 underway for removal." ECF No. 1 at 4. However, the record shows ICE is working
17 expeditiously to effectuate Petitioner's resettlement in a third country. One month after
18 the removal order became final, ICE attempted to remove Petitioner to Mexico, but
19 Petitioner refused. *Gonzalez Decl.* at ¶ 8. Petitioner instead requested he be removed to
20 Germany. *Id.* As a result, ICE has been trying to locate a third country, including
21 Germany, which will accept the Petitioner. *Id.* at ¶ 9-11. Therefore, contrary to
22 Petitioner's assertions, ICE is working diligently to effect Petitioner's removal. *See also*
23 *Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the
24 Government's foreign policy judgments, including, for example, the status of
25 repatriation negotiations, are at issue, and to grant the Government appropriate leeway
26 when its judgments rest upon foreign policy expertise.").

27 On this record, Petitioner cannot show that there is no significant likelihood of
28 removal in the reasonably foreseeable future, and it would be premature to reach that

1 conclusion before permitting ICE an opportunity to complete its diligent efforts to affect
2 his removal. “[E]vidence of progress, albeit slow progress, in negotiating a petitioner’s
3 repatriation will satisfy *Zadvydas* until the petitioner’s detention grows unreasonably
4 lengthy.” *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2,
5 2003) (finding that petitioner’s one-year and four-month detention does not violate
6 *Zadvydas* given respondent’s production of evidence showing governments’
7 negotiations are in progress and there is reason to believe that removal is likely in the
8 foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH
9 AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (“the record at this stage in the
10 litigation does not support a finding that there is no significant likelihood of Petitioner’s
11 removal in the reasonably foreseeable future.”) [Exs. 35-39.]; *Marquez v. Wolf*, Case
12 No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because
13 “Respondents have set forth evidence that demonstrates progress and the reasons for
14 the delay in Petitioner’s removal”).

15 To the extent Petitioner is challenging ICE’s decision to detain him for the
16 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
17 (“Except as provided in this section and *notwithstanding any other provision of law*
18 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
19 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
20 on behalf of any alien arising from the decision or action by the Attorney General to
21 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
22 under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
23 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus
24 special attention upon, and make special provision for, judicial review of the Attorney
25 General’s discrete acts of commencing proceedings, adjudicating cases, and executing
26 removal orders—which represent the initiation or prosecution of various stages in the
27 deportation process.”) (simplified); *Limpin v. United States*, 828 Fed. App’x 429 (9th
28 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)

1 “because claims stemming from the decision to arrest and detain an alien at the
2 commencement of removal proceedings are not within any court’s jurisdiction”).

3 Finally, Respondent contends Petitioner’s request for the Court to order an
4 individualized bond hearing is not an appropriate remedy, since Petitioner is subject to
5 a final removal order. Moreover, prior to the final removal order, Petitioner was
6 provided with a bond hearing on October 22, 2025. *See* Exhibit 2. Accordingly,
7 Petitioner’s request should be denied.

8 **IV. CONCLUSION**

9 For the reasons stated herein, Respondent respectfully requests that the Court
10 deny the relief requested in the petition.

11
12 DATED: April 15, 2026

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