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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ZERETH RUEDA PENA,
12

13 Petitioner,
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15 v.
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17 CHRISTOPHER J. LAROSE, et al.,
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19 Respondents.
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Case No.: 26-cv-2804-JES-DDL

**RESPONSE IN OPPOSITION TO
AMENDED HABEAS PETITION**

I. INTRODUCTION

Petitioner requests that the Court order her release from Immigration and Customs Enforcement (ICE) custody or require that she be afforded a bond hearing. As an arriving alien found to have a credible fear of persecution, however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of her removal proceedings. As Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny Petitioner's requests for relief.

II. BACKGROUND¹

Petitioner is a native and citizen of Colombia, who attempted to enter the United States illegally and without inspection three miles east of the Otay Mesa Point of Entry in California, on July 18, 2025. Exhibit (Ex.)1 (Form I-213); Declaration of Deportation Officer David Townsend (Townsend Decl.) at ¶ 10. Petitioner did not then have any valid entry documents to enter the United States and had not been admitted or paroled into the United States. She was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). An asylum officer interviewed Petitioner on January 21, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B) and made a positive credible fear finding. On January 27, 2025, Petitioner was issued a Notice to Appear (NTA). Ex. 2 (Notice to Appear). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner, and those proceedings remain ongoing. Within her removal proceedings under § 1229a, Petitioner had the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. On November 21, 2025, an immigration judge ordered Petitioner removed to Colombia but withheld

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

1 removal to Colombia. Ex. 3 (IJ Order). Petitioner waived appeal. DHS initially filed
2 an appeal but later withdrew its appeal. As a result, the removal order became
3 administratively final. Petitioner is mandatorily detained pursuant to 8 U.S.C. §
4 1231(a).

5 In February 2026, ICE Enforcement and Removal Operations (ERO)
6 determined that Petitioner met the criteria for removal to Mexico. Townsend Decl. at ¶
7 13. Petitioner refused to be removal to Mexico. *Id.* On March 26, 2026, ERO served
8 Petitioner with a notice of third country removal to the Democratic Republic of
9 Congo. *Id.* at ¶ 14. Petitioner refused the notice and stated, despite her prior refusal of
10 removal to Mexico, she would not go anywhere that did not speak Spanish. *Id.* at ¶ 15.
11 ERO also manifested Petitioner for removal to Ghana in April 2026 but terminated
12 that option due to the pending DHS appeal. *Id.* ERO has again requested a third
13 country for removal. *Id.* at ¶ 20.

14 III. ARGUMENT

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. Courts have repeatedly declined to grant habeas relief where the

1 presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v.*
2 *Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) (“The
3 government is entitled to its six-month presumptive period before Petitioner’s continued
4 § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-Castro v. Parra*, No.
5 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (“The
6 Court finds that the Petition is premature because Petitioner has not been detained for
7 more than six months. Petitioner has been in detention since May 29, 2025; therefore,
8 his two-month detention is lawful under *Zadvydas*.”) (citations omitted); *Farah v. INS*,
9 No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding
10 that when the government releases a noncitizen and then revokes the release based on
11 changed circumstances, “the revocation would merely restart the 90-day removal
12 period, not necessarily the presumptively reasonable six-month detention period under
13 *Zadvydas*”). Here, Petitioner has been detained for about five and a half months since
14 the removal order became final. This falls within the six-month presumptively
15 reasonable period. Release is still not mandated after the expiration of the six-month
16 period unless “there is no significant likelihood of removal in the reasonably foreseeable
17 future.” *Id.*

18 Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi*
19 *v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008)
20 (denying *Zadvydas* petition where petitioner had been detained more than 14 months
21 post-final order); *Nicia v. ICE Field Office Dir.*, No. C13-0092-RSM, 2013 WL
22 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to satisfy his
23 burden of showing that there is no significant likelihood of his removal in the reasonably
24 foreseeable future” where he had been detained more than seven months post-final
25 order).

26 Even after the period of presumptive reasonableness has run, release is not
27 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
28 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the

1 Supreme Court instructed, “the habeas court must ask whether the detention in question
2 exceeds a period reasonably necessary to secure removal. It should measure
3 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
4 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,
5 the Supreme Court recognized that detention is presumptively reasonable pending
6 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
7 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
8 executable warrant of removal becomes a significant flight risk, especially if he or she
9 is aware that it is imminent.

10 The Supreme Court also instructed that detention could exceed six months: “This
11 6-month presumption, of course, does not mean that every alien not removed must be
12 released after six months. To the contrary, an alien may be held in confinement until it
13 has been determined that there is no significant likelihood of removal in the reasonably
14 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
15 reason to believe that there is no significant likelihood of removal in the reasonably
16 foreseeable future, the Government must respond with evidence sufficient to rebut that
17 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
18 alien to show, after a detention period of six months, that there is ‘good reason to believe
19 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
20 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
21 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

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

- 26 (i) The country from which the alien was admitted to the United States
27 (ii) The country in which is located the foreign port from which the alien
28 left for the United States or for a foreign territory contiguous to the United
States.

1 (iii) A country in which the alien resided before the alien entered the
2 country from which the alien entered the United States.

3 (iv) The country in which the alien was born.

4 (v) The country that had sovereignty over the alien's birthplace when the
5 alien was born.

6 (vi) The country in which the alien's birthplace is located when the alien
7 is ordered removed.

8 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
9 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
10 country whose government will accept the alien into that country.’” *Id.* (quoting
11 § 1231(b)(2)(E)(vii)).

12 Here, Petitioner refused removal to Mexico and Congo. Townsend Decl. at ¶¶
13 13, 14. The Petitioner has not designated any other country that she would accept for
14 removal. Apart from Mexico, there appears to be no other country that would meet the
15 definitions under subsections (i) through (vi), and Petitioner has made no showing to
16 the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL
17 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A prisoner bears the burden of
18 demonstrating that ‘he is in custody in violation of the Constitution or laws or treaties
19 of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because
20 removal to the above enumerated countries is “impracticable, inadvisable, or
21 impossible,” ICE may remove Petitioner to a third country that will accept Petitioner’s
22 removal. 8 U.S.C. § 1231(b)(2)(E)(vii). In invoking its authority under 8 U.S.C. §
23 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of executing her removal
24 order to a third country.

25 Petitioner’s conduct in refusing to leave the United States is akin to an individual
26 who seeks to undermine and frustrate the removal process by failing to cooperate with
27 ICE. In addition, 8 U.S.C. § 1231(a)(1)(C) provides that “the removal period shall be
28 extended beyond a period of 90 days and the alien may remain in detention during such
extended period if the alien ... conspires or acts to prevent the alien’s removal subject
to an order of removal.” In *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), the Ninth

1 Circuit analyzed section 1231(a)(1)(C) in the context of the government's detention of
2 a noncitizen past the presumptively reasonable six months recognized by *Zadvydas*
3 where the noncitizen refused to cooperate with the Immigration and Naturalization
4 Service's (INS) efforts to remove him:

5 There is significant evidence in the record that, unlike the detainees in
6 *Zadvydas*, Pelich himself is responsible for his plight. Pelich has
7 steadfastly refused to fill out a Polish passport application, which directly
8 impedes Poland's ability to determine whether Pelich qualifies for Polish
9 travel documents. In the January letter, the Polish consulate explicitly
10 reserved its determination of Pelich's citizenship status pending review of
11 the information requested in the letter, including the passport application.
12 Compounding the dilemma is the fact that Pelich has provided the INS
13 with conflicting information regarding his name, his parents' names, his
14 parents' birthplaces and residences, his birthplace and his nationality.

15 ... The risk of indefinite detention that motivated the Supreme Court's
16 statutory interpretation in *Zadvydas* does not exist when an alien is the
17 cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the
18 "keys[to his freedom] in his pocket" and could likely effectuate his
19 removal by providing the information requested by the INS. ...

20 ...

21 Since Pelich falls within the category of non-cooperative detainee, he
22 cannot legitimately object to his continued detention when that very
23 detention is caused by his own conduct. Pelich could likely effectuate his
24 own removal (and free himself from detention) by providing the Polish
25 government with the requested information. It naturally follows that his
26 detention is not destined to be indefinite. To the contrary, Pelich's behavior
27 places him within that class of aliens properly detained pursuant to 8
28 U.S.C. § 1231(a)(1)(C).

Pelich, 329 F.3d at 1059–60.

The Ninth Circuit later held:

[C]onsistent with *Zadvydas* and *Pelich*, that when an alien refuses to
cooperate fully and honestly with officials to secure travel documents from
a foreign government, the alien cannot meet his or her burden to show there
is no significant likelihood of removal in the reasonably foreseeable future.
We cannot know whether an alien's removal is a "remote possibility," until

1 the alien makes a full and honest effort to secure travel documents. A
2 particular alien may have a very good chance of being removed, but if that
3 alien is refusing to cooperate fully with officials to secure travel
4 documents, neither the INS nor a court can sensibly ascertain the alien's
5 chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C),
6 interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*,
7 authorizes the INS's continued detention of a removable alien so long as
8 the alien fails to cooperate fully and honestly with officials to obtain travel
9 documents.

10 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003); *see also Parra v. Perryman*,
11 172 F.3d 954, 958 (9th Cir. 1999) (“A criminal alien who insists on postponing the
12 inevitable has no constitutional right to remain at large during the ensuing delay, and
13 the United States has a powerful interest in maintaining the detention in order to ensure
14 that removal actually occurs”); *Ford v. Quarantillo*, 142 F. Supp. 2d 585, 588 (D.N.J.
15 2001) (in deciding propriety of continued detention, the court determined whether the
16 alien’s “continued detainment [was] the result of his conspiring or acting to prevent his
17 removal”); *Moro v. I.N.S.*, 58 F. Supp. 2d 854, 859 (N.D. Ill. 1999) (8 U.S.C.
18 § 1231(a)(1)(C) “places a burden of good-faith cooperation on aliens in securing their
19 removal”); *Castillo-Gradis v. Turnage*, 752 F. Supp. 937, 941 (S.D. Cal. 1990)
20 (requiring release “absent a showing of . . . delay caused by the alien’s own actions”)
21 (citing *Dor v. District Director*, 891 F.2d 997, 1003 (2d Cir. 1989) (refusing to order
22 release when petitioner was “largely responsible for the very delay of deportation of
23 which he complain[ed]”)); *See Matevosyan v. Warden, Desert View Annex Detention*
24 *Facility*, No. CV-24-01570-PA (DFM), 2025 WL 978153, at *7 (C.D. Cal. Feb. 24,
25 2025), *adopted by* 2025 WL 975009 (C.D. Cal. March 31, 2025) (“Given Petitioner's
26 lack of cooperation, he cannot satisfy his burden under *Zadvydas* to show that there is
27 no significant likelihood of removal in the reasonably foreseeable future.”). Petitioner
28 should not receive a windfall in the form of release simply because she refuses to
remove herself from the United States.

ICE ERO has worked expeditiously to effectuate her resettlement in a third

country to include their efforts to remove Petitioner to Mexico, Congo and Ghana. These efforts would have been successful, but for the Petitioners refusal to cooperate with his removal to Mexico or Congo. Townsend Decl. at ¶¶ 13-15. As a result, ERO, during the nine days since DHS withdrawal of its appeal and the filing of current petition, worked to identify a third country which will accept the Petitioner. The record indicates that ICE is working diligently. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts “to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.”).

As it stands, it would be premature to conclude that there is no significant likelihood of removal in the reasonably foreseeable future before permitting ICE an opportunity to complete the diligent efforts it has made to affect Petitioner’s removal. ICE has taken the exact steps it needs to take to ensure their removal efforts bear fruit. Evidence of progress, even slow progress, in negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because “Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner’s removal”).

Any suggestion by Petitioner that once a third country is identified, ICE will immediately deport him there without being given adequate time to investigate whether he could be persecuted in that country is not supported by the evidence. ICE attests, however, that once a third country is identified, it will again provide Petitioner with written notice of third country removal consistent with DHS policy and procedures. Townsend Decl. at ¶ 21. This is also supported by the fact that ICE provided the

1 Petitioner with notice prior to her removal to Mexico and Congo which allowed her to
2 refuse her removal. Thus, any concern that she will not receive adequate notice and an
3 opportunity to be heard prior to her third country removal is not borne out by the
4 evidence in this case.

5 To the extent Petitioner is challenging ICE's decision to detain her for the
6 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
7 ("Except as provided in this section and *notwithstanding any other provision of law*
8 (statutory or non-statutory), *including section 2241 of Title 28, or any other habeas*
9 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
10 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
11 decision or action by the Attorney General to commence proceedings, adjudicate cases,
12 or *execute removal orders* against any alien under this chapter.") (emphasis added); *see*
13 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There
14 was good reason for Congress to focus special attention upon, and make special
15 provision for, judicial review of the Attorney General's discrete acts of "commenc[ing]
16 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent
17 the initiation or prosecution of various stages in the deportation process."); *Limpin v.*
18 *United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly
19 dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to
20 arrest and detain an alien at the commencement of removal proceedings are not within
21 any court's jurisdiction").

22 Because the record shows that Petitioner is not entitled to habeas relief, there is
23 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.
24 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise
25 precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 dismiss the amended petition or, in the alternative, deny the relief requested in the
4 amended petition.

5 DATED: May 7, 2026

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