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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CONSTANTINO SALAZAR-RUBIO,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL DETENTION FACILITY, *et al.*,

Respondents.

Case No.: 26-cv-03311-JES-SBC

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner has filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests the Court to order his immediate release from custody. However, as Petitioner is subject to a final order, his detention is mandatory under 8 U.S.C. § 1231(a), and Respondents are able to effectuate Petitioner's removal to Mexico expeditiously (once the Court lifts its enjoinment against transfer). Respondents therefore respectfully request the Court deny the habeas petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Mexico. On May 14, 1999, he was convicted in the Superior Court of California for Los Angeles County of the offense of second-degree murder in violation of California Penal Code § 187(a) following a jury trial. In finding him guilty of murder, the jury also found that the People had proven that Petitioner had personally used a firearm in the commission of the murder. For those offenses, the Superior Court sentenced Petitioner to a term of imprisonment of 15 years to life with the possibility of parole and 10 years' imprisonment for the firearm enhancement, to be served consecutively to the principal term. After serving his sentence, Petitioner was removed from the United States on or about August 28, 2023.

Petitioner's most recent attempt to enter the United States occurred on October 2, 2024, when he applied for admission at the San Ysidro Port of Entry in San Ysidro, California. On October 2, 2024, Petitioner did not then possess legal documentation to be in or enter the United States. He was determined to be an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 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). After receiving a positive credible fear determination, Petitioner was issued a Notice to Appear (NTA). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. Within his 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 March 16, 2026, an Immigration Judge denied Petitioner's applications for relief from removal and ordered him removed to Mexico. On March 24, 2026, Petitioner, through counsel, appealed the removal order to the Board of Immigration Appeals (BIA). On May 22, 2026, Petitioner, through counsel, filed a motion to withdraw his appeal with the BIA. On June 3, 2026, the Board of Immigration Appeals granted Petitioner's motion to withdraw his appeal, which made his removal order administratively final. *See* 8 C.F.R. §§ 1003.39, 1241.1.

Since Petitioner's removal order became administratively final, Respondents have been ready and able to effectuate Petitioner's removal to Mexico. Once this Court denies the petition and/or lifts its order enjoining transfer, Respondents will expeditiously remove Petitioner from the United States to Mexico.

III. ARGUMENT

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should

measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is made aware that removal is imminent.

The Supreme Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.*

Here, the petition should be denied as unripe. Petitioner brought this challenge approximately one week after he moved, through counsel, to dismiss his appeal before the BIA. The BIA dismissed Petitioner's appeal on June 3, 2026, making his removal order final on that date. *See* 8 C.F.R. § 1241.1(a). Petitioner "is still in the 90-day window of statutorily mandated detention." *Tumasov v. Doe 1*, No. 25-cv-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). "In other words," Petitioner's "detention is not merely legal, but required" at this time. *Id.* Because Petitioner must be detained during the current 90-day statutory removal period, he cannot demonstrate that he "is in custody in violation" of the law. *See* 28 U.S.C. § 2241(c)(3). Moreover, under § 1231(a)(6) and *Zadvydas*, Petitioner's post-final order detention is presumptively reasonable pending the government's efforts to effectuate his removal for six months following the final order of removal. *See Zadvydas*, 533 U.S. at 701. Thus, his petition

for a writ of habeas corpus must be denied. *See Tumasov*, 2025 WL 3171897, at *1 (denying petitioner habeas relief because "he is still in the 90-day window of statutorily mandated detention"); *Prokopev v. LaRose*, No. 25-cv-3441-JES-MSB, 2026 WL 50758, at *1–2 (S.D. Cal. Jan. 7, 2026) (same); *see also Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at *4 (S.D. Cal. Nov. 5, 2025) ("[B]ecause the six-month period of presumptive reasonableness [under *Zadvvdas*] has not passed, Petitioner's claim is not ripe for review[.]"); *Ao v. Noem et al.*, No. 25-CV-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (same).

Moreover, the Ninth Circuit has emphasized that "*Zadvydas* places the burden on the alien to show, *after a detention period of six months*, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Accordingly, Petitioner's detention in this case should be presumed reasonable until at least December 2026. *See Ali v. Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM), 2012 WL 6111358, at *4–5 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No. CVF051036RECSMSHC, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the relief requested and dismiss the petition.

DATED: June 22, 2026

Respectfully submitted,

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