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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LAZARO CALVIAC-DIAZ,

Petitioner,

v.

MARKWAYNE MULLIN, et al.,

Respondents.

Case No. 26-cv-3988-RSH-AHG

RETURN IN OPPOSITION TO PETITIONER'S AMENDED HABEAS PETITION

I. INTRODUCTION

Petitioner Lazaro Calviac-Diaz has filed a habeas petition. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Cuba. Exhibit (Ex.) 1 (I-213). Petitioner originally entered the United States in 1995. *Id.* While in the United States on parole, Petitioner committed several violent and dangerous offenses. *Id.* On June 24, 1997, Petitioner was convicted of Burglary. *Id.;* Ex. 2 (Conviction Documents). On February 27, 1998, Petitioner was again convicted of burglary. *Id.* On August 13, 1998, Petitioner

was convicted of aggravated mayhem, assault with a deadly weapon, and voluntary manslaughter for which he was sentenced to life with the possibility of parole. *Id.* On August 2, 2024, Petitioner was convicted of two counts of selling methamphetamine. *Id.;* Declaration of Deportation Officer Santiago Prieto (Prieto Decl.) at ¶ 8. On December 12, 2018, an immigration judge ordered Petitioner's removal to Cuba. Prieto Decl. at ¶ 3. Due to an inability in 2018 to remove individuals to Cuba, ICE ERO released Petitioner on an Order of Supervision. *Id.* at ¶ 4. ICE ERO detained Petitioner after his release from jail pursuant to an ICE detainer on January 15, 2026. *Id.* at ¶ 10. Petitioner received a notice of revocation and release the same day describing the reason for his detention by ICE. *Id.;* Ex. 3 (Notice of Revocation). ICE ERO immediately requested travel authorization from Cuba through ERO's Removal and International Operations (RIO) Headquarters. Prieto Decl. at ¶¶ 10-11. On February 7, 2026, Petitioner preemptively refused any removal effort to Mexico. *Id.* at ¶ 12. Cuba denied travel authorization for the Petitioner on April 6, 2026. *Id.* at P 13. Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1231(a).

III. ARGUMENT

A. Petitioner's detention is lawful, and he has not established that there is no significant likelihood of removal in the reasonably foreseeable future.

ICE's authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.

The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas.*") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the Supreme Court instructed, "the 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 Supreme Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is often needed to obtain the travel documents, and because a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

The Supreme Court also instructed that 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." *Id.* The Ninth Circuit has emphasized, "*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); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Petitioner has been detained just over six months since his detention on January 16, 2026. His claim fails because there is a significant likelihood of removal in the reasonably foreseeable future. It was only Petitioner's non-compliance with removal efforts which has prevented his removal to Mexico when Petitioner expressed his preemptive refusal to ERO.

Petitioner's conduct in refusing to leave the United States is akin to an individual who seeks to undermine and frustrate the removal process by failing to cooperate with ICE. In addition, 8 U.S.C. §1231(a)(1)(C) provides that "the removal period shall be 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 Circuit analyzed section 1231(a)(1)(C) in the context of the government's detention of a noncitizen past the presumptively reasonable six months recognized by *Zadvydas* where the noncitizen refused to cooperate with the Immigration and Naturalization Service's (INS) efforts to remove him:

> There is significant evidence in the record that, unlike the detainees in *Zadvydas*, Pelich himself is responsible for his plight. Pelich has steadfastly refused to fill out a Polish passport application, which directly

> impedes Poland's ability to determine whether Pelich qualifies for Polish travel documents. In the January letter, the Polish consulate explicitly reserved its determination of Pelich's citizenship status pending review of the information requested in the letter, including the passport application. Compounding the dilemma is the fact that Pelich has provided the INS with conflicting information regarding his name, his parents' names, his parents' birthplaces and residences, his birthplace and his nationality.
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> . . . The risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the "keys[to his freedom] in his pocket" and could likely effectuate his removal by providing the information requested by the INS. . . .
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> . . .
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> Since Pelich falls within the category of non-cooperative detainee, he cannot legitimately object to his continued detention when that very detention is caused by his own conduct. Pelich could likely effectuate his own removal (and free himself from detention) by providing the Polish government with the requested information. It naturally follows that his detention is not destined to be indefinite. To the contrary, Pelich's behavior places him within that class of aliens properly detained pursuant to 8 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 the alien makes a full and honest effort to secure travel documents. A particular alien may have a very good chance of being removed, but if that alien is refusing to cooperate fully with officials to secure travel documents, neither the INS nor a court can sensibly ascertain the alien's chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C), interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*, authorizes the INS's continued detention of a removable alien so long as the alien fails to cooperate fully and honestly with officials to obtain travel

documents.

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

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the

decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

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

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petitioner's petition.

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