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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LAZARO CALVIAC-DIAZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, et al.

Respondents.

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

Traverse

I. Introduction

Mr. Calviac-Diaz (a Cuban national ordered removed back in 2018) argued in his habeas petition that he should be immediately released because he has been detained for six months and there is no significant likelihood of removal in the reasonably foreseeable future.

In its response, Respondents acknowledge that Cuba will not accept Mr. Calviac-Diaz for repatriation. It also acknowledges that they have not yet identified a third country for removal.

Respondents only argument for continued detention past the six months is that Mr. Calviac-Diaz does not willingly want to go to Mexico. Respondents cannot predicate detention on truthful statements. Immigrants can be detained for bad faith obstruction, but not for telling the truth or taking advantage of legally viable paths to relief.

Finally, if—despite all evidence to the contrary—ICE is able to remove Petitioner to a third country, ICE must at a minimum give Petitioner the process set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). Twenty-four hours' notice is not near enough to satisfy the Constitution.

This Court should therefore grant this petition on all counts.

II. Argument

A. Claim 1: Petitioner's six-month immigration detention following the detainer violates *Zadvydas* and 8 U.S.C. § 1231.

Petitioner's continued detention violates 8 U.S.C. § 1231 as interpreted in *Zadvydas*, because there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.

1. Petitioner has been detained for six months.

The government does not contest that the presumptively reasonable period of detention has passed. ECF 4 at 4. *Zadvydas* established the six-month grace period to give ICE a fair chance to effectuate the removal before a court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the grace period beyond the 90-day statutory removal period: because Congress likely did not "believe[] that all reasonably foreseeable removals could be accomplished in that time." *Id.* at 701. Now that the six months have passed, Respondents still do not know when or where Mr. Calviac-Diaz will be removed.

2. There is no evidence of removal to any country in the reasonably foreseeable future.

Respondents have not provided any evidence that Mr. Calviac-Diaz will be removed to Cuba, Mexico, or any other third country.

First, Respondents confirm that Cuba will not issue travel documents. *Id.* at ¶ 13. ECF 4-2, Decl. of DO Sergio Prieto, at 2, ¶ 12. Thus, he cannot be sent to Cuba.

Second, Mr. Calviac-Diaz cannot be removed to Mexico. He said he did not want to go to Mexico. *Id.* ¶12. Several district courts have recognized that "the Mexican government does not accept individuals who do not willingly accept removal to Mexico." *Rea-Hernandez v. Bondi*, No. 2:25-CV-02609-TL, 2026 WL 322874, at *5 (W.D. Wash. Feb. 6, 2026); *Lambert v. Warden*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D.Tex. Apr. 6, 2026) (granting release noting "Respondents now make clear removal to Mexico is not an option given 'Mexico will only accept third country nationals if they consent to removal to Mexico[,]' and Petitioner has refused to consent to removal

to Mexico."); *Constant v. Perry*, No. 1:25-CV-1916 (RDA/WEF), 2026 WL 1463965, at *5 (E.D. Va. Feb. 11, 2026); *Coke v. Bondi*, No. C26-71, 2026 WL 221514, at *2 (W.D. Wash. Jan. 28, 2026) (finding no reasonably likelihood of removal after noting Respondents "do not respond to or acknowledge the evidence" of Mexico only accepting those that willingly want to enter); *Olea Sanchez v. Bondi*, No. C25-2573, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026) (granting release noting Respondents do not respond to "evidence showing that Mexico could refuse to accept" petitioner if he is unwilling to go to Mexico); *Suarez-Ramirez v. Bondi*, 2026 WL 115020, at *2 (D. Nev. Jan 15, 2026) (granting release noting "Respondents fail to 'respond with evidence sufficient to rebut that showing'" tht petitioner cannot be sent to Mexico if he does not voluntarily agree); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *1, *3, *4 (D. Colo. Nov. 24, 2025) (noting ICE officers "attempted to persuade petitioner to voluntarily go to Mexico" and "transferred petitioner to several [detention] locations during its efforts to convince petitioner to voluntarily go to Mexico."); *see also Capote v. Warden*, Glades Cnty. Det. Ctr., No. 2:26-CV-1348-JES-NPM, 2026 WL 1453372, at *2, n.2 (M.D. Fla. May 22, 2026). This evidence of Mexico's acceptance policy casts further doubt on the Government's ability to remove" petitioner. *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025).

What's more, even if Mr. Calviac-Diaz had agreed to go to Mexico, it is unknown whether Mexico would have even accepted him. In other district court cases, Respondents have acknowledged that it is not known whether Mexico will accept a non-Mexico until the person arrives at the border. *Carcamo-Ortiz v. Noem*, No. 1:26-CV-01352-DAD-EFB, 2026 WL 1864503, at *4 (E.D. Cal. June 29, 2026), report

and recommendation adopted sub nom. 2026 WL 2096316 (E.D. Cal. July 20, 2026). Removing a noncitizen to "Mexico involves respondents moving the alien to 'a staging area in Texas or somewhere close to the southern border, where there they will present the alien to Mexican officials' and 'that moment is when Mexico will decide whether or not to accept the petitioner into their country.'" *Id.* (cleaned up) (citing transcript from *Constant v. Perry*, No. 1:25-CV-1916 (RDA/WEF), 2026 WL 1463965, at *2 (E.D. Va. Feb. 11, 2026)). Thus, there is no significant likelihood of Mr. Calviac-Diaz's removal to Mexico in the reasonably foreseeable future.

Finally, Respondents state that Mr. Calviac-Diaz will be detained until a third country is found. *Id.* at ¶¶ 15–18. But it cannot identify a country, nor can it give an estimate as to when a third country will be found. *Id.* "[M]ere generalizations, divorced from any documentary support," do not "suffice for *Zadvydas* purposes." *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *4 n.3. (S.D. Cal. Dec. 10, 2025). Thus, Respondents have not proved that Petitioner will be removed in the reasonably foreseeable future. Respondents give generalities likely because third country removals is already exceedingly unlikely, a "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part because "the Government's minimal work on [the] case . . . [did] not instill confidence that it will be able to secure [CAT] Petitioner's removal in the reasonably foreseeable future").

3. Mr. Calviac-Diaz's truthful answer that he does not want to go to Mexico does not justify continued detention.

Finally, Respondents argue that Mr. Calviac-Diaz can be detained longer because he would not voluntarily go to Mexico. ECF 4 at 4-6. That is incorrect. True, the removal period can be extended if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). But the case law in the Ninth Circuit is clear, "1231(a)(1)(C) pertains only to *intentionally obstructionist, bad faith tactics* that are designed to frustrate the government's attempts to effectuate a removal order . . . ." *Diouf v. Mukasey*, 542 F.3d 1222, 1232 (9th Cir. 2008) (emphasis added); *accord Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th Cir. 2008) ("We have previously held that an alien engages in [noncompliant] behavior when he willfully refuses to cooperate with the government in processing his deportation papers."). In other words, the obstruction must be (1) in bad faith, and (2) designed to obstruct the present removal.

In *Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003), for example, the court held that there was elements of bad faith/obstruction where petitioner repeatedly obstructed removal efforts by lying about his nationality, refusing to accept a letter requiring him to apply for travel documents, refusing to provide the government with relevant documents, and refusing to contact the consulate.

Similarly, in *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003), the petitioner gave conflicting information regarding his name, his parents' names, his parents' birthplaces and residences, his birthplace and his nationality and refused to fill out passport application to his

native country.

But telling the truth cannot be considered an act of obstruction, even if it deters the foreign officials from accepting removal. In *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 51-53 (D.D.C. 2002), the fact that the deportee honestly told the consul on the phone that he did not want to return to Liberia, prompting a refusal, was not an act of obstruction triggering § 1231 suspension. The district court noted that, as here, no evidence showed the typical acts of obstruction seen in *Pelich* and *Lema*, and Seretse-Khama's "obstruction" consisted solely in telling the truth. *Id.* at 51. "[P]etitioner's simple and honest explanation that he did not want to return to a country to which he had no ties, without any accompanying affirmative lack of cooperation, is not a refusal to cooperate that supports an extension of detention." *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 53 (D.D.C. 2002). "Respondents cite no case law to support their view that petitioner's truthful (and somewhat self-evident) statement constitutes a lack of cooperation or failure to assist in his removal under 8 U.S.C. § 1231(a)(1)(C)." *Id.* at 51. *Seretse-Khama* therefore rejected the suspension argument and granted release. *See id.* at 54.

Similarly, in *Rajigah v. Conway*, 268 F. Supp. 2d 159, 165 (E.D.N.Y. 2003), the deportee's lawyer truthfully told the Guyanese ambassador that Rajigah was considering taking further court action to fight his removal, even though the embassy had a policy not to accept repatriation while appeals were still pending; this was not bad-faith obstruction, and so the petition was granted over a § 1231 suspension claim. *See id.* at 166 ("Respondents cite no case law, however, to support its argument that such truthful communication to an embassy falls within the purview of § 1231(a)(1)(C).").

Here, Petitioner did not obstruct. He simply told the truth to the question of whether he wanted to go to Mexico. The government has not provided any case where this factual scenario is considered to be obstruction. To the contrary, in the cases where the district courts have evaluated Mexico's acceptance policy, they have granted immediate release despite the noncitizen's unwillingness to go to Mexico. *See above*, II.A.2; *see also Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC, Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds for Cuban national that did not agree to self-deport to Mexico); *Hernandez Blanco v. Noem*, 26cv0425-DMS-JLB, Doc. 8 (same); *D.A.M. v. Noem*, 25-cv-02657-JLS-VET, Doc. 28 (granting on *Zadvydas* grounds for Salvadorian national that did not agree to self-deport to Mexico).

Thus, Petitioner did not engage in bad faith obstruction by truthfully notifying the authorities that Petitioner did not meet Mexico's criteria for third-country deportees. Petitioner was not required to pretend that Petitioner consented. Telling the truth was not bad faith obstruction.

III. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court grant the relief requested in the habeas petition:

1. Order and enjoin Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from removing Petitioner to a third country, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):

a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 27, 2026

s/ Zandra L. Lopez
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