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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICARDO MANUEL OBANDO VARGAS, [redacted]

Petitioner,

v.

TODD BLANCHE, *et al.*,

Respondents.

CASE NO. 1:26-CV-05343-DAD-AC

OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND ALL INJUNCTIVE RELIEF

I. INTRODUCTION

Petitioner is detained under 8 U.S.C. § 1231(a) as the government seeks to execute Petitioner's final order of removal to a third country, Mexico. There is no evidence in the record that Petitioner fears removal to Mexico. The only thing preventing Petitioner's removal to Mexico is his refusal to cooperate. Accordingly, the government is opposed to the Petition for Writ of Habeas Corpus ("Petition") and any injunctive relief should be denied because Petitioner's immigration detention is lawful.

II. BACKGROUND

Petitioner is a native and citizen of Nicaragua, with a final order of removal. *See* filed concurrently herewith the Declaration of Deportation Officer Noah Kichak ("DO Decl."), ¶ 6, Exhibits 1, 2; 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1003.39. On January 25, 2023, Petitioner was ordered

removed to Nicaragua and was granted withholding of removal. DO Decl., ¶ 6, Exhibit 1. Petitioner has a lengthy criminal history that includes theft, DUI, possession of controlled substances, and burglary. *Id.*, ¶ 7, Exhibit 2. On January 5, 2026, Petitioner was detained as amenable to removal from the United States to a Third Country. *Id.*, ¶ 8, Exhibits 3, 4. On January 6, 2026, Petitioner was served a Notice of Revocation and provided an Informal Interview. *Id.*, ¶ 9, Exhibits 5, 6. On February 5, 2026, Petitioner was served a Notice of Removal to Mexico as a third country. *Id.*, ¶ 10, Exhibit 7. On March 6, 2026, Petitioner was evaluated by United States Citizen and Immigration Services (USCIS) and determined he did not establish any fear claiming he would more likely than not be persecuted on account of a protected ground or tortured in Mexico. *Id.*, ¶ 11, Exhibit 8. On April 10, 2026, Petitioner was advised of his requirements to assist in his removal to a third country in compliance with his removal order and failed to cooperate. *Id.*, ¶ 12, Exhibit 9. On May 5, 2026, Petitioner was again advised of his requirements to assist in his removal to a third country in compliance with his removal order and also failed to cooperate. *Id.*, ¶ 13, Exhibit 10. On May 26, 2026, Petitioner was again Served a Notice of Third Country removal to Mexico and refused to sign. *Id.*, ¶ 14, Exhibit 11. On June 24, 2026, Petitioner was again Served a Notice of Third Country removal to Mexico and refused to sign. *Id.*, ¶ 15, Exhibit 12. On June 24, 2026, Petitioner was again advised of his requirements to assist in his removal to a third country in compliance with his removal order and failed to cooperate. *Id.*, ¶ 16, Exhibit 13. Petitioner was further advised if he failed to comply with the Notice of Third Country of Removal to Mexico, he would be considered in Failure-to-Comply (FTC) status. *Id.*, ¶ 17. Petitioner will be scheduled for a final service of Notice of Third Country removal to Mexico and request for compliance to complete Petitioner's FTC status. *Id.*, ¶ 18. Petitioner will be classified as non-compliant after this period and will be referred to ERO Headquarters for further evaluation thereafter. *Id.*, ¶ 19.

To date, Petitioner has not indicated to immigration authorities that he has any fear of removal to Mexico, nor does he make any such claim in his pleadings. *See generally*, Dkt. 1.

As Petitioner's removal to Mexico is reasonably foreseeable, Petitioner remains detained under 8 U.S.C. § 1231 until such removal is effectuated. The detention is therefore lawful.

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III. LEGAL STANDARD

A habeas petition contests the "legality or duration" of confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). The petitioner must make specific factual allegations that, if true, would entitle him to habeas corpus relief. *O'Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *United States v. Poopola*, 881 F.2d 811, 812 (9th Cir. 1989). A federal court may only grant a habeas petition if the petitioner shows that "he is in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241(c)(3). "[H]abeas is not available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." *Guetierrez-Chavez v. INS*, 298 F.3d 824, 828 (9th Cir. 2002). If the petitioner fails to show that his custody violates the Constitution or federal law, a motion to dismiss the petition is appropriate. *White v. Lewis*, 874 F.2d 599, 602-03 (9th Cir. 1989); *Schwarz v. Meinberg*, 478 F. App'x 394, 395 (9th Cir. 2012).

IV. ARGUMENT

A. Petitioner's detention under 8 U.S.C. § 1231 remains lawful.

Noncitizens subject to final removal orders are subject to detention pursuant to 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021). Here, Petitioner's quintessential claim is that removal to Mexico is not foreseeable and as a result, his detention has become prolonged. Dkt. 1 at 14. However, the government has notified Petitioner of its intent to remove him to a third country, Mexico. Petitioner has not indicated to immigration authorities that he has any fear of removal to Mexico, nor does he make any such claim in his pleadings. *See generally*, Dkt. 1. Likewise, Petitioner has not indicated in his pleadings whether he will consent to removal to Mexico. *See generally, id.* In fact, Petitioner omits two significant factors impacting his detention. First, Petitioner's refusal to cooperate with removal and his refusal without claiming a fear of removal to Mexico, 8 U.S.C. § 1231(a)(1)(C) authorizes the continued detention of a removable alien so long as the alien fails to cooperate fully and honestly with officials. *Lema v. I.N.S.*, 341 F.3d 853, 857 (9th Cir. 2003).

Furthermore, it is Petitioner's burden to show under *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) that there is good reason to believe that his removal is not reasonably foreseeable. Under the facts of this case, Petitioner has not met that initial burden as he has not even addressed the fact that the

government has notified him that it intends to removal him to Mexico. Nor has he indicated that he is cooperating with the government's efforts to remove him to Mexico. Nor has he claimed any fear of removal to Mexico. Thus, for the foregoing reasons, the government respectfully requests that the Court deny injunctive relief and deny Petitioner's Petition.

Second, after the initial 90-day period of removal has lapsed, continued detention under § 1231(a)(6) is authorized for "four categories of people: (1) those who are 'inadmissible' on certain specified grounds; (2) those who are 'removable' on certain specified grounds; (3) those it determines 'to be a risk to the community'; and (4) those it determines to be 'unlikely to comply with the order of removal.'" *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578-79 (2022) (quoting 8 U.S.C. § 1231(a)(6)). Petitioner falls within three of the four categories.

Inadmissibility. By Order of the Immigration Judge, Petitioner is inadmissible under §§ 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act. DO Decl., Exhibit 1.

Risk to the Community. As evidenced by Petitioner's lengthy and long-standing criminal history, set forth below, no one and nowhere is safe were Petitioner to be released:

1999 – Theft conviction

2002 – Theft conviction

2003 – Burglary conviction

2003 – Petty theft conviction

2004 – Solicitation of drug crimes conviction

2018 – DUI conviction

Not to mention the many arrests for fraud, probation violations, failure to appear, trespassing, transporting drugs, drug possession, and battery. DO Decl., Exhibit 2.

Unlikely to comply with removal. Petitioner has demonstrated his non-compliance. *See* DO Decl., ¶¶ 12-16.

An analysis of the above criminal history would likely result in many of the convictions and arrests as qualifying "removable" offenses; it is apparent what Petitioner chooses to do with the purported liberty interest he believes he has. More significant still is that Petitioner has decided to conceal from this Court his career criminal history, which is a significant and weighty factor that §

1231(a)(6) contemplated.

B. Petitioner's Detention is not Prolonged and does not Violate Due Process

In *Zadvydas*, the Supreme Court held that the immigration laws "do[] not permit indefinite detention" and instead "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. *Zadvydas*, 533 U.S. at 689. Put differently, "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. Detention within this period is presumptively constitutional. *See Leslie v. Mule*, 426 Fed.Appx. 29, 1 (2nd Cir. 2011) (unpub).

Moreover, the use of a multi-factor balancing test to analyze Petitioner's statutorily-authorized detention during the pendency of his removal proceedings is unsupported by Supreme Court authority. Across numerous cases involving the INA, the Supreme Court has not adopted a multi-factor balancing test for constitutional due process challenges to civil detention in removal proceedings. *See Dusenbery v. United States*, 534 U.S. 161, 168 (2002) ("(W]e have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims."); *Demore*, 538 U.S. at 513; *Jennings*, 583 U.S. at 303 to 306; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (stating "the [Supreme] Court has recently backed away from multi-factorial 'grand unified theor[ies]' for resolving legal issues").

Nevertheless, were the Court to apply the *Mathews* test, it would favor Respondents. The test laid out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), is a flexible analysis that accounts for the heightened governmental interest in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Under *Mathews*, the "identification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 334-35. Even if *Mathews* were applied here, Petitioner's claims would fail.

1. <u>The Private Interest That Will Be Affected.</u>

The first *Mathews* factor weighs in favor of Respondents. As the Supreme Court noted in

Demore, while decisions to prolong one's own detention may be difficult, "the legal system . . . is replete with situations requiring the making of difficult judgments as to which course to follow," and "even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices." *Demore v. Kim*, 538 U.S. 510, 530 n. 14 (2003) (quoting *McGautha v. California*, 402 U. S. 183, 213 (1971). While an alien's private interest in "freedom from prolonged detention" is "unquestionably substantial," *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011), *abrogated on other grounds as recognized by Rodriguez Diaz*, 53 F.4th at 1202, the same cannot be said for freedom from all detention itself. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (stating that an alien is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under 8 U.S.C. § 1231(a)(6) unless he can show that his detention is "indefinite"—*i.e.*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future"). Here, as noted above, Petitioner's detention is permissible per § 1231(a)(6), his detention is not prolonged, and he cannot demonstrate that it will be prolonged. This factor favors Respondents.

2. *The Risk of an Erroneous Deprivation.*

The second *Mathews* factor is "the risk of an erroneous deprivation of [the petitioner's] interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. This factor again favors Respondents. Petitioner is subject to an executable final removal order. Immigration authorities have determined he lacks a reasonable fear of torture or persecution if removed to Mexico. Thus, Petitioner has received all the process he is due and there is no risk of erroneous deprivation.

3. *The Government's Interest.*

Under the third *Mathews* factor, "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 518). Here, the Government has a strong interest in detaining Petitioner. "Enforcement of our immigration law serves both a domestic law enforcement and foreign relations function." *Id.* "The Supreme Court has thus specifically instructed that in a *Mathews* analysis, we 'must weigh heavily in the balance that control over matters of

immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Id.* (quoting *Landon v. Placencia*, 459 U.S. 21, 34 (1982)). "Over no conceivable subject is the legislative power of Congress more complete." *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 305 (1993)). "Through detention, the government likewise seeks to 'increas[e] the chance that, if ordered removed, the aliens will be successfully removed.'" *Id.* (quoting *Demore*, 538 U.S. at 528); *see also Nken v. Holder*, 556 U.S. 418, 436 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable . . . permits and prolongs a continuing violation of United States law."). In addition, "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent." *Rodriguez Diaz*, 53 F.4th at 1208. This factor weighs heavily in Respondent's favor as Petitioner is subject to a removal order and the government is actively working to effectuate that removal order.

Petitioner has shown unwillingness to follow the immigration laws of the United States. His refusal to cooperate, when paired with his multiple criminal arrests and convictions demonstrate that if Petitioner is released, he will not obey the removal order and depart the United States.

C. Response to Court's July 13, 2026, Order

Respondent does not oppose the Court converting the motion for temporary restraining order into one for a preliminary injunction. Respondent does not oppose, and in fact, respectfully requests that the Court resolve the underlying habeas petition on the current briefing and without a hearing.

Respondent identifies several distinguishing factors between the instant case and those cited in the Court's order. Dkt. 4. First, Petitioner here is subject to final order of removal and the analysis involves § 1231(a)(6) where the other petitioners' detention fell under §§ 1225 or 1226 analysis. Second, Petitioner entirely omits his laundry list of criminal offenses. The other petitioners were without criminal histories or serious criminal conduct as Petitioner is here. Third, the other petitioners were engaged some form of immigration compliance program and their detention occurred following a check-in. Here however, Petitioner's record in both the criminal and immigration context establishes that Petitioner is anything but compliant – he acts in consistent disregard for U.S. laws intended to protect its citizens and lately, he has shown non-compliance with the immigration laws. Finally, the other petitioners did not present as dangers to the community, whereas Petitioner most certainly does.

IV. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus and all injunctive relief should be denied.

Respectfully submitted,

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United States Attorney

Dated: July 14, 2026

By: */S/ ELISA M. RODRIGUEZ*
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