Zandra Luz Lopez
California State Bar. No. 216567
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Zandra_Lopez@fd.org

Attorneys for Mr. Batista

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO BATISTA,

Petitioner,

v.

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

Respondents.

Case No.: 26-cv-4052-JO-JAC

Traverse

I. Introduction

Mr. Batista, a Cuban national who was ordered removed many years ago, argued in his habeas petition that he should be immediately released because he has been detained for over 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. Batista for repatriation. Decl. DO Cole, ECF 5-1 at ¶ 14. Respondents also state that they have attempted to remove Mr. Batista to Mexico but "Mexico would not accept Petitioner for repatriation at that time." *Id.* at ¶ 16.

The only argument Respondents make is that they will continue to try to remove Mr. Batista to Mexico and his unwillingness to go to Mexico justifies further detention. But 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. Count 1: Petitioner's over six month 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 approximately seven months following the immigration detainer.

The government does not contest that the presumptively reasonable period of detention has passed. Cole Decl., ECF 5-1, at ¶ 13 (stating he was remanded into ICE custody on Dec. 1, 2025). *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.

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

Respondents have not provided any evidence that Mr. Batista will be removed to Cuba or Mexico.

First, Respondents confirm that Cuba will not issue travel documents. Cole Dec. ¶ 14. Thus, he cannot be sent to Cuba.

Second, Mr. Batista cannot be removed to Mexico. 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).

That policy is consistent with what has happened in this case. Mr. Batista stated that a few months ago, ICE brought him from Miami to San Diego and then took him to the border with Mexico. There, he and others in the van were "told whoever wants to go to Mexico get off and if you do not want to go, stay in the van." ECF 3, Decl. of Bautista at ¶ 4. Mr. Batista does not want to go to Mexico so he "stayed in the van." *Id.* Because Mr. Batista expressed an unwillingness to go to Mexico, Respondents concluded "Mexico would not accept Petitioner for repatriation at that time. Petitioner was returned to Miami on February 4, 2026." ECF 5-1, Cole Decl. at ¶ 16.

What's more, even if Mr. Batista 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. Batista's removal to Mexico in the reasonably foreseeable future.

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

Finally, in a parenthetical, the government appears to argue that Mr. Batista can be detained further because his unwillingness to go to Mexico qualifies as a refusal to cooperate under 8 U.S.C. § 1231(a)(1)(C). ECF 5 at 6 (citing *Bora v. OMDC*, No. 26-CV-3115-JES-DEB, 2026 WL 2100490, at *2 (S.D. Cal. July 21, 2026)). But 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.

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).

Furthermore, the one case cited by Respondents, *Bora,* 2026 WL 2100490, is distinguishable. In *Bora*, the Petitioner was set to be removed via commercial flight to her native country of Turkey. 2026 WL 2100490, at *2. There was no impediment to her removal. There was no need to determine whether petitioner willingly agreed to be sent to Turkey. She had no option. Because the petitioner refused to get on the commercial flight, the district court agreed that her detention could be continued. *Id.*

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
Zandra L. Lopez
Federal Defenders of San Diego, Inc.

Attorneys for Petitioner