LEOBARDO CHAVEZ BARRIENTOS
A-FILE# [redacted]
MESA VERDE PROCESSING CENTER
425 GOLDEN STATE AVE
BAKERSFIELD, CA 93301

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEOBARDO CHAVEZ BARRIENTOS
A-FILE # [redacted]
Pro Se, Petitioner,

v.

U.S. ATTORNEY GENERAL, ET AL.,
Respondents

Case No. 1:25-CV-00258-SKO
PETITIONER'S OPPOSITION TO RESPONDENT RESPONSE AND MOTION TO DISMISS

On February 7, 2025 petitioner mail to this court its current petition, which was not field until the 28th of the same month. While waiting for a response from this court, Respondent provide petitioner with a Bond Hearing on February 12, 2025. Petitioner was not aware of such proceedings or requested for such proceedings. On such date petitioner ask for a continuance, in order for petitioner to obtain documentation and letters of support from family, finally a date for March 31 was set. On such date the Immigration Court only determine dangerousness and flight risk, there was no determination of Alienage, release was denied nor was bond granted; See Exhibit 24 to Declaration of Deportation Officer, Christopher Jerome, here on (DDO) to Respondent, Motion to Dismiss and Response. Petitioner appeal the IJ decision.

BACKGROUND

Petitioner has been in civil detention under Immigration Nationality Act (INA) § 1231(a)(6) assuming there is a valid Reinstatement Order, since August 09, 2024. While petitioner was serving his Sixty month sentence in the custody of the Bureau of Prisons, Petitioner filed in the Ninth Circuit, a citizenship claim under INA § 242 (b)(5). This claim was field on March 7, 2024, prior to the reinstatement order issue on April 26, 2024 see Exhibit A, of ECF 1.

On April 25, 2025 The Ninth Circuit, denied the Governments Motion to Dismiss and granted Petitioner's Motion for Stay pending review of the Citizenship claim. Case # 24-1439 see **Exhibit A** to this opposition. Government is due to filed their Opening Brief on June 11 of this year. Meanwhile Petitioner will be waiting for the court mandate, in Custody unlawfully detain past the "Removal Period" provided in INA § 241(a)(1). Without being place in Removal Proceedings.

ARGUMENT

Petitioner's case is governed by Zadvydas v. Davis, 533 U.S. 678 (2001). In Zadvydas, the Supreme Court held INA § 241(a)(6) implicitly limits a noncitizen's detention to a period reasonably necessary to bring about that individual's removal from the United States and does not permit "indefinite" detention. 533 U.S. at 701. An alien is entitled to habeas relief after a presumptively reasonable six-month period of detention under INA § 241(a)(6) only upon demonstration that the 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." Zadvydas, 533 U.S. at 701; see also Clark v. Suarez-Martinez, 543 U.S. 371, 377-78, 125 S. Ct. 716, 160 L. Ed. 2D 734 (2005) (extending Zadvydas to aliens who are detained under INA § 241(a)(6) and inadmissible under INA § 212). Continued detention is permitted by statute, however, due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." See Zadvydas, 533 U.S. at 690-91 (internal quotation marks omitted). There is an important difference between whether detention is statutorily authorized and whether it has been adequately determined to be necessary as to any particular person.

FIRST

The rule of Zadvydas is easily applied in routine cases in which there is no question about when the removal period began to run. An alien challenging his confinement beyond six months from the beginning of the removal period bears the burden of "providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Id. at 701. The government then bears the burden of "responding with evidence sufficient to rebut that showing." Id. The more prolonged the alien's detention, the lower his or her burden, because "what counts as the 'reasonably foreseeable future'" shrinks as the alien's detention drags on. Id.

In this particular cases, the starting point of the "Removal Period" is a bit complicated. This difficulty results from how INA § 241(a)(1)(B) defines the beginning of the removal period. Under that provision, the removal period begins on "the latest of several events. This necessarily means that one can only determine retrospectively when (or even whether) the removal period began.

While the facts of the case are, the original removal order was April 10, 1998 ; see Exhibit 5 of (DDO). This prior removal may be reinstated as many time as necessarily under INA § 241(a)(5), as long as it complies with, 8 CFR § 241.8 (a), Reinstatement of removal orders. One of the requirements for a prior order to be reinstatement is, the subject, the alien, Petitioner would have to entered the country Illegally. In this particular case there was no illegal entry; see Exhibit 15 of (DDO), see. Statement 7

Under INA § 101(a)(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

Can the "Removal Period" start with a reinstatement order that doesn't comply with the reinstatement regulations 8 CFR § 241.8 (a)(1)-(3) or did the removal period start when petitioner was release from Bureau of Prisons (BOP) custody on August 09, 2024 ?

The Notice of Intent, Decision to Reinstate Prior Order was given to Petitioner on April 26, 2024 prior to his release from BOP. Which Deportation Officer Christopher Jerome fails to provide such, Reinstatement order with Exh. 23. see Exhibit A to ECF 1.

Prior to the Reinstatement order, on March 7, 2024. Petitioner submitted with the Ninth Circuit, a petition for the review of the denial of his U.S. citizenship claim, see (DDO), statement 10. When an alien is removable because he committed a crime specified in INA § 242 (a)(2)(C), immigration law bars judicial review of the noncitizen's factual challenges to his final order of removal, including reinstatement orders.

Petitioner will make note that the March 7 petition predates the reinstatement order, petitioner can't possibly be contesting a removal order that was not reinstated on such date. The Ninth Circuit have made clear in Villa-Anguiano, 727 F.3d 873, (9th Cir. 2013) and Garcia de Rincon, 539 F.3d 1133, (9th Cir. 2008) that INA § 242 (a)(1) authorizes judicial review of reinstatement orders. The Court also knew that INA § 242 (b)(1) establishes the time limit for bringing a challenge under INA § 242 (a)(1). The question is whether INA § 242 (b)(1) establishes the time limit not only for challenging final orders of removal, but also for challenging final reinstatement orders. The answer is "yes." The phrase "final order of removal" in INA § 242 (b)(1) refers to both a final order of removal and a reinstatement order. The petition for review need to be filed after the reinstatement order issue date.

Respondent claims that Petitioner's, Petition contesting his Citizenship claim with the Motion for stay. Stays the removal period from the beginning date of August 9. Ninth Circuit precedent says different see; Diouf v. Mukasey 542 F.3d 1222, 1230 (9th Cir. 2008) see also Prieto-Romero 534 F.3d 1053 at 1060 N.6 (9th Cir. 2008) see also Fonua v. United States 2024 U.S. Dist. LEXIS 175199 , Lexis *8.

The beginning of the removal period is not delayed by every judicially entered stay, because the exclusive means for judicial review of a removal order is a petition for review filed with the appropriate court of appeals. See INA § 241(a)(1)(B)(ii), 242(a)(5). Therefore, the entry of a stay of removal for any other reason -- for example, a stay entered while a court reviews an alien's § 2241 habeas petition or petition for review of the BIA's denial of a motion to reopen – does not prevent the removal period from beginning. The date release form imprisonment. INA § 241(a)(B)(iii)

In this particular case the judicial review is to a, denial of an N-600 Application for Naturalization by the United States Citizenship and Immigration Services ("USCIS"); see Exhibit 16 to (DDO). The Removal period started on August 9, 2024 petitioner has been in civil detention with out being place in removal proceedings for over ninth months. see Prieto-Romero v. Clark, 534 F.3d at 1061 (9th Cir. 2008).

Respondent needs to demonstrate how is Petitioner going to be remove in the reasonably foreseeable future, if petitioner is not place in removal proceedings. The "Removal Period" has expired more then three months ago, the United States Supreme Court held that such detention was constitutionally impermissible once it became clear that removal was no longer reasonably foreseeable. By failing to place petitioner in removal proceedings his detention is indefinite. There is not a clear date or time frame, to when Respondent will place Petitioner in removal Proceedings making his detention indefinite.

SECOND

Respondent is depriving petitioner, from being place in removal proceedings by claiming that they have a valid reinstatement order that was issue on April 26, 2024. The reinstatement regulations are clearly stated in 8 C.F.R. § 241.8 (a). Respondent does not dispute that petitioner was release from custody on September 4, 2015. Furnishing Petitioner a lawful entry, the regulations clearly states, only if the requirements of paragraph (a) of this section are met, may the alien be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act. 8 C.F.R. § 241.8(c).

The Appellant court to this Circuit has order that when the requirements are not met petitioner should be place in regular removal proceedings before an IJ under § 1229a. see (Tomczyk v. Wilkinson, 987 F.3d 815, 826, 9th Cir., Feb. 3, 2021), also see Mariscal-Sandoval v. Ashcroft, 370 F.3d 851 at 855 (9th Cir 2004). Here petitioner has been held in detention since August 9, 2024, with no removal hearing.

The Fifth and the Fourteen Amendment's forbids the Government to "deprive" any "person" of liberty without due process of law." Freedom from imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that Clause protects. See Foucha v. Louisiana,504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992). The Supreme Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, see United States v. Salerno, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987), or, in certain special and "narrow" non-punitive "circumstances," Foucha, supra, at 80, where a special justification, such as harm-threatening mental illness, outweighs the "individual's constitutionally protected interest in avoiding physical restraint." Kansas v. Hendricks, 521 U.S. 346, 356, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997).

Respondent will argue Petitioners Status and his petition with the Ninth Circuit Court of Appeals gives them authority to denied Petitioner's Due Process by not placing Petitioner in removal proceedings an, from a statutory perspective, alien Criminal status itself can justify indefinite detention. Thus, it has long been held that an alien is entitled to a fair hearing before deportation. Fong Yue Ting v. United States, 149 US 698, 37 L ed 905, 13 S Ct 1016; Japanese Immigrant Case (Yamataya v. Fisher) 189 US 86, 47 L ed 721, 23 S Ct 611; Wong Yang Sun v. McGrath, 339 US 33, 94 L ed 616, 70 S Ct 445.

In Demore v. Kim, 538 U.S. 510, 123 S. Ct. 1708, 155 L. Ed. 2D 724 (2003), The Supreme Court held that the Government could constitutionally hold without bail noncitizens who had committed certain crimes, had completed their sentences, and were in **removal proceedings**. The Court then found detention constitutional ``during the limited period" necessary to arrange for removal, and the court contrasted that period of detention with the detention at issue in Zadvydas, referring to the detention in Demore

as being ``of a much shorter duration." 538 U. S., at 526, 528.

Detentions are lawful while detainees are in removal proceedings or have a valid removal order, Petitioner argues that his continued detention violates due process because there are less harsh viable alternatives to detention that would accomplish the same purpose. If Respondent is not providing access to Removal proceedings what is the purpose of Petitioners detention. The rule has been clear for decades: "[d]etention during deportation proceedings [i]s . . . constitutionally valid." Demore v. Kim, 538 U.S. 510, 523, 123 S. Ct. 1708, 155 L. Ed. 2D 724 (2003). The Supreme Court has held more than a century ago that civil detention of a removable noncitizen violates the Constitution if it is punitive. Wong Wing v. United States, 163 U.S. 228, 237-38, 16 S. Ct. 977, 41 L. Ed. 140(1896).

Accordingly, even though mandatory civil detention under INA is permissible at the outset of removal proceedings, that detention violates due process if it becomes punitive and the detainee has not been accorded the full constitutional protections required before such punishment may be imposed. The Government has suggested "that detention during removal proceedings "can never be excessive" as long as proceedings are still pending" see JOHN DOE, v. MOISES BECERRA 732 F. Supp. 3D 1082 (N.D. Cal. 2023)

CONCLUSION

Respondent is not providing the adequate due process establish by the Fifth and the Fourteen Amendment. Petitioner is being held pass the limit of the "Removal Period" authorize by statutory mandate. Petitioner confinement has become indefinite and punitive.

Respectfully Submitted
Dated : May 16 2025

LEOBARDO CHAVEZ BARRIENTOS
Pro Se
A-FILE# [redacted]
MESA VERDE PROCESSING CENTER
425 GOLDEN STATE AVE
BAKERSFIELD, CA 93301

CERTIFICTE OF SERVICE

I here certify that a true copy of this Certificate of Service and Petitioners Opposition to Respondent Response and Motion to Dismiss, was place in a prepaid postage envelope and deposited at the Mesa Verde ICE Processing Center, mailing system authorize by the detainees on May 16, 2025 in Bakersfield, CA address to the following

Office of the Clerk
United States District Court
Eastern District of California
2500 Tulare Street, Suite 1501
Fresno, CA 93721

U.S. Department of Justice
United States Attorneys Office
Eastern District of California
501 I Street, Suite 10-100
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

LEOBARDO CHAVEZ BARRIENTOS
Pro Se
A-FILE# [redacted]
MESA VERDE PROCESSING CENTER
425 GOLDEN STATE AVE
BAKERSFIELD, CA 93301

EXHIBIT A

FILED

APR 25 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEOBARDO CHAVEZ BARRIENTOS,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 24-4238

Agency No. A[redacted]

ORDER

Before: TASHIMA, OWENS, and DESAI, Circuit Judges.

The motion (Docket Entry No. 35) to dismiss or for summary disposition is denied because the questions raised by this petition are sufficient to warrant full briefing. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982).

The supplemented motion (Docket Entry Nos. 2, 9, 14) to stay removal is granted. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 964-65 (9th Cir. 2011). The stay of removal remains in place until the mandate issues.

The answering brief is due June 11, 2025. The optional reply brief is due 21 days after the answering brief is served.