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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Victor Alfonso Aguilar Olarte,

17 Petitioner,

18 v.

19 United States Immigration and Customs
20 Enforcement, et al.,

21 Respondents.

No. CV-25-01662-PHX-DLR (ESW)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS,
MOTION FOR PRELIMINARY
INJUNCTION, AND MOTION FOR
LIMITED DISCOVERY**

22 **Introduction**

23 Respondents David R. Rivas, Warden, San Luis Regional Detention Center, Gregory
24 J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs
25 Enforcement (ICE), Pamela J. Bondi, Attorney General of the United States, and Kristi Noem,
26 Secretary of the Department of Homeland Security, hereby respond to the Petition for Writ of
27 Habeas Corpus, the Motion for Preliminary Injunction, and the Motion for Limited Discovery,
28 and request that the Court deny the requested relief.

Petitioner is a convicted criminal detained pursuant to an order of expedited removal,
which became final on January 21, 2025 – 192 days ago. He prematurely seeks a court order
directing ICE to immediately release him from immigration detention even though the

1 presumptively reasonable six-month period enunciated by *Zadvydas v. Davis*, 533 U.S. 678,
2 689 (2001), *i.e.*, the period that follows the 90-day removal period stated in 8 U.S.C.
3 § 1231(a)(1)(A), has not yet expired.

4 Because of his criminal conviction, and because his removal is likely to occur in the
5 reasonably foreseeable future, the Court should deny his habeas petition and request for
6 preliminary injunction. Finally, discovery is generally not permitted in habeas cases, and
7 because Petitioner has failed to establish good cause exists to permit discovery, the Court
8 should deny the request for limited discovery.

9 **I. Background.**

10 Petitioner Olarte is a national and citizen of Colombia. *See* Ex. A, Form I-213; Ex. B,
11 Declaration of Marielle Ceja, Supervisory Detention and Deportation Officer (SDDO), Otay
12 Mesa suboffice of the ICE ERO San Diego Field Office, at ¶ 3.

13 On June 10, 2023, Petitioner presented his Colombian passport and requested
14 admission to the United States at the San Ysidro, California port of entry. He did not have a
15 valid visa or permit authorizing his entry. He was issued a Notice to Appear (NTA) and was
16 paroled into the United States pending removal proceedings. *Id.* at ¶ 7.

17 On November 14, 2023, the DHS moved to dismiss removal proceedings against
18 Petitioner because his parole was current. *Id.* at ¶ 8. An Immigration Judge in San Diego,
19 California granted the DHS's motion to dismiss removal proceedings without prejudice. *Id.*

20 On February 14, 2024, United States Border Patrol (USBP) encountered Petitioner. *Id.*
21 at ¶ 9. The contact centered on their suspicion of alien smuggling. He was apprehended and
22 transferred to federal custody pending criminal prosecution. *Id.* On February 15, 2024,
23 Petitioner was charged with violating 8 U.S.C. § 1324(a)(1)(A)(ii), Transporting or Harboring
24 Illegal Aliens. *Id.* at ¶ 10.

25 On May 2, 2024, Petitioner pled guilty to violating 18 U.S.C. § 3, Accessory After the
26 Fact. *Id.* at ¶ 11.

27 Because ICE was alerted to this conviction on May 23, 2024, a Notice to Appear
28 (NTA) was issued to Petitioner. Ex. C, NTA. The NTA informed him that he was an

1 inadmissible alien, subject to expedited removal. He was therefore subject to mandatory
2 detention under 8 U.S.C. § 1225(b). *Id.* When Petitioner received the NTA, he was placed
3 in removal proceedings. Ex. B, Dec. of Ceja at ¶ 12.

4 On May 28, 2025, he was granted a bond hearing at Otay Mesa Detention Center
5 (OMDC) but subsequently withdrew his request to allow him time to locate a sponsor and hire
6 an attorney. *Id.* at ¶ 13.

7 On July 1, 2024, Petitioner filed the following applications before the Immigration
8 Court: Asylum, Withholding of Removal, and Deferral of Removal under the Convention
9 Against Torture (CAT). *Id.* at ¶ 14. On July 5, 2024, he was granted a second bond hearing
10 at OMDC, but subsequently withdrew his request to allow time to hire an attorney. *Id.* at ¶ 15.

11 On August 30, 2024, Petitioner was granted a third bond hearing at OMDC. The
12 Immigration Judge denied bond finding lack of jurisdiction under INA § 235(b)(2)(A). *Id.* at
13 (second) ¶ 15.

14 On December 19, 2024, an Immigration Judge ordered Petitioner's removal from the
15 United States. Petitioner never filed an appeal with the Board of Immigration Appeals. *Id.* at
16 ¶ 16. The Order was not administratively final until *January 21, 2025*, the date on which the
17 period for filing an appeal expired. *See* INA § 101(a)(47)(B)(ii), 8 U.S.C. § 1101. *See also*
18 Ex. D, Minute Entry as to March 18, 2025 Bond Hearing at 1. Also on that date, he was
19 granted deferral from removal to Colombia under the CAT. *Id.*

20 On December 30, 2024, Enforcement and Removal Operations (ERO) began seeking
21 Petitioner's removal to several third countries, Peru, Argentina, and Chile, pursuant to INA
22 § 241 (b)(2)(E)(vii). *Id.* at ¶ 18. On January 23, 2025, ERO received notice from Argentina
23 and Chile declining to accept him. *Id.* at ¶ 19. On March 7, 2025, ERO sent a second request
24 to Peru seeking acceptance of Petitioner. *Id.* at ¶ 20. That request is pending. *Id.*

25 On March 19, 2025, Petitioner was granted a fourth bond hearing at OMDC. The
26 Immigration Judge denied bond finding lack of jurisdiction under INA § 241 (a)(2). On March
27 21, 2025, Petitioner was transferred to the San Luis Regional Detention Center pending
28 removal. *Id.* at ¶ 21.

1 On July 30, 2025, ERO forwarded a request to the consulate of Mexico seeking
2 acceptance of Petitioner. That request remains pending. *Id.* at ¶ 23.

3 Additionally, Petitioner was served with a post order custody review decision (POCR)
4 on July 31, 2025. *Id.* at ¶ 24.

5 **II. The habeas petition should be denied.**

6 *A. Standard governing detention of Aliens with final removal orders.*

7 Section 241 of the INA, 8 U.S.C. § 1231, governs the detention, release, and removal
8 of aliens subject to a final order of removal. Under INA § 241(a), the Attorney General has
9 90 days to remove an alien from the United States after an order of removal becomes final.
10 The Order became final in this case on January 21, 2025. Ex. D, Minute Entry as to March
11 18, 2025 Bond hearing at 1. During this “removal period,” the detention of an alien is
12 mandatory. *Id.* After the 90-day period, if the alien has not been removed and remains in the
13 United States, his detention may be continued, or he may be released under the supervision of
14 the Attorney General. INA, § 241, 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain an alien
15 for a “reasonable time” necessary to effectuate the alien’s removal. INA § 241(a), 8 U.S.C.
16 § 1231(a). However, indefinite detention is not authorized by the statute. *Zadvydas v. Davis*,
17 533 U.S. 678, 689 (2001).

18 In *Zadvydas*, the Supreme Court defined *six months* as a presumptively reasonable
19 period of detention for aliens like Petitioner who are detained under 8 U.S.C. § 1231(a).
20 *Zadvydas*, 533 U.S. at 701-02. In this case, Petitioner’s removal order became final on January
21 21, 2025. Under 8 U.S.C. § 1231, he was then subject to mandatory detention during the
22 statutorily proscribed 90-day period, to and until April 21, 2025. Under *Zadvydas*,
23 Respondents then have a six-month presumptively reasonable time period to effectuate
24 Petitioner’s removal. *Zadvydas*, 533 U.S. at 689. Here, the presumptively reasonable six-
25 month period Respondents have to effectuate Petitioner’s removal *will not expire until October*
26 *18, 2025*. *Zadvydas* places the burden on the Alien to show, *after* that detention period of six
27 months, that there is “good reason to believe that there is no significant likelihood of removal
28 in the reasonably foreseeable future.” *Id.* at 701. If the alien makes that showing, the

1 Government must then introduce evidence to refute that assertion to keep the alien in custody.
2 *Id.*; see also *Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir.2002).

3 Even if the presumptively reasonable period of detention for Petitioner had expired –
4 which it has not – Respondents have shown that his removal is significantly likely in the
5 reasonably foreseeable future. Ex. B at ¶¶ 20, 23, 26. The usual question, *viz.*, whether the
6 detention in question exceeds a period reasonably necessary to secure removal is merely an
7 academic one here since the period has not expired. However, the Court can find the current
8 detention is reasonable because it will assure the Alien’s presence at the moment of removal
9 (*see Zadvydas*, 533 U.S. at 699) – which will likely occur before the end of the six-month
10 period.

11 *B. Petitioner’s detention is constitutionally permitted since his detention falls*
12 *within the presumptively reasonable six-month period that does not expire*
until October 18, 2025.

13 Moreover, under *Zadvydas*, an Alien is not automatically entitled to release even after
14 six months of detention. *Id.* at 701. Rather, he or she may be held until the government has
15 determined that no significant likelihood of removal in the reasonably foreseeable future
16 exists. The passage of time alone is insufficient to establish that no significant likelihood of
17 removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F.Supp.2d 1116, 1118
18 (W.D.Wash. 2002). In *Lema*, the alien was detained for more than a year. The district court
19 held that the passage of time was only the first step in the analysis, and that the alien must then
20 provide good reason to believe that no significant likelihood of removal exists in the
21 reasonably foreseeable future. *Id.*

22 Here, Petitioner’s December 19, 2024 removal order was not final until January 21,
23 2025. His 90-day removal period under 8 U.S.C. § 1231(a) started that day and ended on *April*
24 *21, 2025*. *Zadvydas*’ presumptively reasonable six-month detention period thus only began
25 on *April 21, 2025*, and will not expire until *October 18, 2025*, six months after April 21, 2025.
26 His claims are thus premature.

27 Moreover, Respondents have established that there is a significant likelihood of
28 removal in the reasonably foreseeable future given that it is in contact with the Mexican

1 consulate, and made a second request for travel documents for Petitioner's removal to Peru.

2 There is no current impediment to Petitioner's removal.

3 Accordingly, because Petitioner is still within the six-month presumptively reasonable
4 time period to effectuate removal, established by *Zadvydas*, and even if he were not, because
5 his removal is significantly likely in the reasonably foreseeable future, the Court should deny
6 Petitioner's amended habeas petition.

7 **III. Petitioner's argument that he is entitled to an extra-statutory remedy fails**
8 **since he is a member of a class litigating that issue in *D.V.D.***

9 Petitioner argues that removing him to other countries would violate the law and would
10 contravene 8 U.S.C. § 1231, entitling him to notice in order to contest removal to any third
11 country before it occurs. Amended Petition at 8. Petitioner's proposal to require that ICE
12 comply with unspecified, extra-statutory procedures both substantially overlaps and conflicts
13 with an existing nationwide class action entitled *D.V.D. v. U.S. Dep't of Homeland Sec.*, No.
14 CV 25-10676-BEM, 2025 WL 1142968, at *11 (D.Mass. Apr. 18, 2025), *opinion clarified*,
15 No. CV 25-10676-BEM, 2025 WL 1323697 (D.Mass. May 7, 2025), and *opinion clarified*,
16 No. CV 25-10676-BEM, 2025 WL 1453640 (D.Mass. May 21, 2025), *reconsideration denied*
17 *sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517
18 (D.Mass. May 26, 2025).

19 Indeed, on April 18, 2025, pursuant to Fed.R.Civ.P. 23(b)(2), the court in *D.V.D.*
20 certified a class of individuals defined as follows:

21 All individuals who have a final removal order issued in proceedings under Section
22 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom
23 DHS has deported or will deport on or after February 18, 2025, to a country (a) not
24 previously designated as the country or alternative country of removal, and (b) not
identified in writing in the prior proceedings as a country to which the individual would
be removed.

25 Petitioner fails to mention his class membership in his Petition.

26 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2) (*see D.V.D.*, 2025 WL
27 1142968, at *14, 18, and 25), class membership is mandatory and provides no opportunity to
28 opt out. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (Rule 23 "provides no

1 opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the [d]istrict
2 [c]ourt to afford them notice of the action”); *Sanderson v. Whoop, Inc.*, 2025 WL 744036, at
3 *15 (N.D.Cal. Mar. 7, 2025) (noting that “23(b)(2) class members have no opportunity to opt
4 out”). The *D.V.D.* court entered a nationwide preliminary injunction requiring the DHS to
5 comply with various procedures prior to removing a class member to a third country. The
6 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in the
7 First Circuit and a petition for a writ of certiorari. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S.Ct.
8 2153 (2025). The case remains pending. As a member of the certified class, Petitioner is bound
9 by any relief the *D.V.D.* court ultimately grants, including any applicable injunctive relief.

10 Thus, this Court should dismiss Petitioner’s claims seeking additional procedures prior
11 to his removal to a third country because these claims are subsumed by the issues in *D.V.D.*
12 Otherwise, the intent of Rule 23 – to ensure consistency of treatment for similarly situated
13 individuals – would be undermined. *Howard v. Aetna Life Ins. Co.*, 2024 WL 1098789, at *11
14 (C.D.Cal. Feb. 27, 2024). Granting Petitioner’s claims would also open the floodgates of
15 parallel litigation in district courts nationwide and ultimately threaten the certification of the
16 underlying class, by creating differences among the class members. Since another court is
17 already considering Petitioner’s argument pertaining to putative constitutional rights to extra-
18 statutory procedures he proposes on the issue of whether an alien can be removed to a third
19 country, this Court should deny his claims seeking this relief.

20 **IV. A preliminary injunction is both improper and not warranted.**

21 As for his motion for injunctive relief, the motion is improper. Petitioner is not seeking
22 to merely preserve the status quo on a temporary basis. Rather, he seeks an injunction that
23 would alter the status quo by providing him the ultimate relief he seeks in this litigation. As a
24 matter of law, he is not entitled to what amounts to a judgment on the merits at a preliminary
25 stage. *Mendez v. U.S. Immigration and Customs Enforcement*, 2023 WL 2604585 at *3
26 (N.D.Cal. Mar. 15, 2023), quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th
27 Cir.1992) (“judgment on the merits in the guise of preliminary relief is a highly inappropriate
28 relief.”). The motion should be denied on this basis.

1 Further, a “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v.*
2 *Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction
3 only “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*
4 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction,
5 the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims;
6 (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the
7 balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest.
8 *Id.* at 20. These factors are mandatory. As the Supreme Court states, “[a] stay is not a matter
9 of right, even if irreparable injury might otherwise result” but is instead an exercise of judicial
10 discretion that depends on the particular circumstances of the case. *Nken v. Holder*, 556 U.S.
11 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)).

12 *A. Petitioner cannot establish a likelihood of success on the merits.*

13 As shown, Petitioner is unlikely to succeed on the merits of his habeas petition – where
14 he has been detained for less than the presumptively reasonable six-month period to effectuate
15 a removal, as defined by *Zadvydas*. 533 U.S. at 701. Beyond that, Petitioner cannot meet his
16 burden to establish that his removal is not significantly likely in the reasonably foreseeable
17 future. Ex. B, Ceva Dec. at ¶¶ 20, 23, 26. Respondents have rebutted Petitioner’s assertion
18 that he will not likely be removed in the foreseeable future. Petitioner cannot establish a
19 likelihood of success on the merits of his amended habeas petition. His request for injunctive
20 relief should therefore be denied.

21 *B. Plaintiff cannot establish irreparable harm.*

22 The only claim Petitioner makes as to irreparable harm is that his “illegal confinement
23 is quintessentially irreparable harm.” Dkt. 13 at 2. But as shown, Petitioner’s confinement is
24 neither illegal nor unconstitutional but rather necessary to assure his presence at the time of
25 removal. *Zadvydas*, 533 U.S. at 701. Because his removal is significantly likely to occur in
26 the reasonably foreseeable future, and well within the six-month period, the Court should not
27 grant relief since he has not established any irreparable harm from his continued detention
28 while the Government seeks to assure his presence and execute the valid final removal order.

1 C. *The public interest and balance of the equities favors the government.*

2 Where the Government is the opposing party, the balance of equities and public interest
3 factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party, courts
4 “cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the
5 applicant’s favor.” *Id.* at 436 (citation and internal quotation marks omitted). Here, the public
6 interest weighs in favor of denying Petitioner’s motion for a preliminary injunction. “Control
7 over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Office of*
8 *Immigration Review*, 959 F.2d 742, 750 (9th Cir.1992). The public interest lies in the
9 Executive’s ability to enforce U.S. immigration laws and ensure presence of removable aliens
10 at the moment of removal. *Zadvydas*, 533 U.S. at 699. Given Petitioner’s undisputed criminal
11 history and the significant likelihood of removal, the public and governmental interest in
12 permitting his continued detention is significant. Thus, Petitioner has not established that he
13 merits a preliminary injunction.

14 D. *The Court should require a bond.*

15 If the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P.
16 65(c), which states “The court may issue a preliminary injunction or a temporary restraining
17 order only if the movant gives security in an amount that the court considers proper to pay the
18 costs and damages sustained by any party found to have been wrongfully enjoined or
19 restrained.” Fed.R.Civ.P. 65(c). Here, because Petitioner is subject to removal, the amount
20 of any bond should parallel the amount of an appearance bond.

21 **V. Limited discovery is also not warranted.**

22 A habeas petitioner is not entitled to discovery “as a matter of ordinary course.” *Bracy*
23 *v. Gramley*, 520 U.S. 899, 904, (1997); *see Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th
24 Cir.1993). Indeed, there is no general right to discovery in habeas proceedings. *Campbell v.*
25 *Blodgett*, 982 F.2d 1356, 1358 (9th Cir.1993). Rather, Rule 6 of the Rules Governing Section
26 2254 Cases provides that “[a] judge may, for good cause, authorize a party to conduct
27 discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery.”
28 Rule 6(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

1 Whether a petitioner has established “good cause” for discovery requires a habeas
2 court to determine the essential elements of the petitioner’s substantive claim and evaluate
3 whether “specific allegations before the court show reason to believe that the petitioner may,
4 if the facts are fully developed, be able to demonstrate that he is...entitled to relief.” *Bracy*,
5 520 U.S. at 908-09. Conversely, good cause “cannot arise from mere speculation” and “cannot
6 be ordered on the basis of pure hypothesis[.]” *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th
7 Cir.2006); *see also Farrow v. United States*, 580 F.2d 1339, 1360 (9th Cir.1978) (denying
8 further discovery because appellant failed to present more than conclusory allegations). Here,
9 Petitioner’s speculative and conclusory allegation that Respondents cannot remove Petitioner
10 is rebutted by the Declaration under penalty of perjury of DHS Marielle Ceja, Supervisory
11 Detention and Deportation Officer.

12 Though Petitioner captions his motion as one for “limited discovery,” there is nothing
13 limited about his proposed discovery requests. They ask for the entire government documents
14 concerning Petitioner. They also seek any and all requests from ICE to the embassies of
15 Colombia, Argentina, Chile and Peru and any other third country regarding his removal.
16 Petitioner should not be granted these overbroad and unwarranted discovery requests. *Farrow*,
17 580 F.2d at 1360. Since his claims are rebutted by the Ceva Dec., Ex. B, Petitioner has not
18 established requisite good cause to permit discovery in this habeas petition. *Id.*

19 Further, much of Petitioner’s overbroad discovery requests are simply not relevant to
20 whether there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable
21 future. This is the sole issue in this matter, and it is sufficiently addressed by the pleadings,
22 including this Response.

23 For all the foregoing reasons, the Petitions and motion should be denied.

24 RESPECTFULLY SUBMITTED August 1, 2025.

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