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6
7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 GUSTAVO QUIROZ,

Petitioner,

10 v.

11 KRISTI NOEM, et al.,¹

12 Respondents.
13
14

CASE NO. 1:25-CV-765-KES-SAB

**REPLY BRIEF SUPPORTING MOTION TO
DISMISS PETITION FOR WRIT OF HABEAS
CORPUS**

15 “[S]imply repeating an assertion does not make it true.” *Security Walls, LLC v. NLRB*, 80 F.4th
16 1277, 1291 n.16 (11th Cir. 2023). But that has been Quiroz’s strategy in his habeas petition and his
17 opposition to Respondents’ Motion to Dismiss.

18 Quiroz primarily argues that USCIS’s prima facie determination on his VAWA application
19 grants him “immediate eligibility” for lawful status and overrides reinstatement of his removal order. It
20 does not, and Quiroz has not cited a single case holding as much. By contrast, Respondents have
21 offered numerous cases (none of which Quiroz addresses) holding that 8 U.S.C. § 1231(a)(5) bars aliens
22 subjected to reinstated removal orders from relief under any provisions of the Immigration and
23 Nationality Act, including *VAWA self-petitioners*. Respondents also cited numerous cases (again
24 unaddressed by Quiroz) holding that Quiroz’s argument necessarily challenges his reinstatement order,
25 and thus the Court lacks jurisdiction to consider it under 8 U.S.C. § 1252(g).

26 Quiroz also continues to assert that he was not provided a proper notice of reinstatement under 8

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28 ¹ The Government reiterates that all Respondents other than Tonya Andrews should be dismissed
from this case as improper parties. *See* Mot. at 1 n.1. Quiroz has not opposed their dismissal.

1 C.F.R. § 241.8(b). Quiroz argues not just against Respondents, but against himself—his habeas petition
2 explicitly states that he *was* given that notice when he was arrested on May 7, 2025. And the Notice of
3 Reinstatement expressly documents that on May 7, 2025, Quiroz was notified (in Spanish, no less) of
4 the reinstatement and his right to make an oral or written statement. But all that is beside the point. A
5 due process violation requires a showing of prejudice, but Quiroz admits that he does not contest the
6 factual predicates for reinstating his removal order.

7 In short, Quiroz satisfied the minimal § 1231(a)(5) prerequisites for reinstatement of his removal
8 order. Section 1231 requires his detention pending his removal, and he has identified no legal basis to
9 override that statutory command. His habeas petition should be dismissed.

10 **I. Quiroz’s VAWA self-petition does not override his reinstated removal order.**

11 Quiroz repeatedly characterizes the USCIS prima facie determination on his VAWA self-petition
12 as granting him “protection status” or the right to remain in the United States. *See, e.g.*, Opp. at 2, 6, 8.
13 It doesn’t. Regulations explicitly state that a prima facie determination does not establish eligibility for
14 the underlying petition. Mot. at 6 (citing regulations). And even an *approved* VAWA self-petition does
15 not adjust an alien’s status—it is only “one step” in the process that gives the Attorney General
16 exclusive discretion to adjust the status of the VAWA self-petitioner. Mot. at 6 (citing statute and
17 cases). Quiroz has provided no reason to believe that the Attorney General will choose to exercise her
18 discretion in his favor.

19 But more importantly for this case, Quiroz is subject to a reinstated removal order, which he
20 explicitly acknowledges he does not challenge here.² Once a removal order is reinstated, § 1231(a)(5)

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22 ² *See* Opp. at 2 (“This habeas petition challenges ICE’s statutory and constitutional authority to
23 detain, not the validity of the underlying reinstatement order.”); *id.* at 4 (“This petition challenges ICE’s
24 statutory authority to detain under current circumstances, not the validity of the reinstatement order
25 itself.”); *id.* at 6 (“This case presents a detention authority challenge, not an immunity from removal
26 claim.”).

27 Quiroz asserts that his pending Ninth Circuit petition for review “does challenge reinstatement.”
28 Opp. at 3. This is false. Quiroz’s petition for review only challenges denial of his withholding-only
claim. *See* Petition for Review at 3, *Quiroz v. Bondi*, 9th Cir. No. 25-3912, Dkt. Entry 1 (June 23, 2025)
 (“[T]he Asylum Office and IJ incorrectly concluded that [Quiroz] is not eligible for asylum or
withholding because, according to them, he could not demonstrate that he would face persecution if
returned to Mexico ‘on account of’ his membership in a cognizable social group and Political Opinion.
They also failed to find exigent humanitarian circumstances.”). Even if Quiroz prevailed in the Ninth
Circuit, he still will be removed *from the United States*—he just could not be removed *to Mexico*. *See*
Johnson v. Guzman Chavez, 594 U.S. 523, 536 (2021); Mot. at 4.

1 requires that the alien “shall be removed” and is “not eligible and may not apply for any relief under”
2 the INA. Courts have stringently applied this bar to innumerable INA statutes, *including VAWA self-*
3 *petitions and Form I-485 adjustments* that Quiroz now relies on. Mot. at 8 & n.5 (citing cases). Further,
4 courts have repeatedly held that requests like Quiroz’s to prohibit ICE from executing a reinstated
5 removal order while the alien seeks relief—including *VAWA self-petitioners*—necessarily challenge the
6 underlying removal order and thus are jurisdictionally barred under 8 U.S.C. § 1252(g). Mot. at 8-9 &
7 n.6. Quiroz does not address any of those cases.

8 Put simply, Quiroz’s pending VAWA self-petition has no bearing on his reinstated removal
9 order. The VAWA self-petition is an entirely separate process that can continue to be adjudicated after
10 Quiroz is removed.³ And since § 1231(a)(2) requires detention once a removal order is final, ICE is
11 *required* to detain Quiroz until his removal. *See* Mot. at 3 (citing statutes and cases).

12 Quiroz does not contest that he is statutorily subject to mandatory detention. Instead, he argues
13 that he has been detained beyond the 90-day removal period in 8 U.S.C. § 1231(a)(1)(A), thereby
14 making “his detention period indefinite in nature” and “requir[ing] additional justification.” Opp. at 7.
15 But ICE may unconditionally extend the 90-day removal period for any “inadmissible” aliens. 8 U.S.C.
16 § 1331(a)(6). And Quiroz is “inadmissible,” as he was present in the United States without being
17 admitted or paroled. 8 U.S.C. § 1227(a)(6)(A)(i).⁴ Although § 1231 does not limit how long ICE may
18 detain an alien during a post-removal period, the Supreme Court has held that it permits post-removal
19 period detention to that “reasonably necessary to bring about that alien’s removal from the United

20 ³ USCIS allows a VAWA self-petition to be processed through consulates outside the United
21 States. *See* <https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents>. Thus, even if he
22 is removed, Quiroz’s VAWA self-petition will be adjudicated. And *if* Quiroz’s VAWA self-petition is
23 granted, *and* he applies to the Attorney General for adjustment of status, *and* the Attorney General
exercises her absolute discretion in his favor, Quiroz would be admissible to and could legally enter the
United States. But those events (especially the Attorney General’s ultimate decision) are speculative.

24 ⁴ The exception for certain VAWA self-petitioners does not apply here. A VAWA self-
25 petitioner claiming an exception from inadmissibility must show, among other things, that there is a
26 “substantial connection between the battery . . . and [his] unlawful entry into the United States.” 8
27 U.S.C. § 1182(a)(6)(A)(ii)(III). No such connection exists here. Quiroz’s allegedly abusive son was
28 born in 2002 and was nine years old when Quiroz illegally re-entered the United States. *See* ECF 2-2 at
36. Quiroz alleges that his son began having behavior problems when he was 12-13 years old, years
after Quiroz’s illegal re-entry. ECF 2-2 at 37; *see Emokah v. Mukasey*, 523 F.3d 110, 118 (2d Cir. 2008)
(no “substantial connection” existed between battery and illegal re-entry where abuse occurred after re-
entry; “[t]he language of the statute makes clear that it applies where mistreatment somehow prompts or
leads to illegal entry, not where a petitioner claims unrelated mistreatment following such entry”).

1 States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *see also Johnson*, 594 U.S. at 529. *Zadvydas*
2 created a presumption of constitutionality for § 1231 detentions up to six months. 533 U.S. at 701.
3 After that six-month period, the *alien* must “provide[] good reason to believe that there is no significant
4 likelihood of removal in the reasonably foreseeable future” before the Government is obligated to justify
5 continued detention. 533 U.S. at 701.⁵

6 Here, the presumptive six-month period has not yet elapsed, and thus Quiroz’s request for release
7 is premature. But even if the six-month period had run, Quiroz has not provided a good reason to
8 believe that there is no significant likelihood of removal in the reasonably foreseeable future. Unlike in
9 *Zadvydas*, which involved an alien who could not be removed to any country and thus faced an
10 “indefinite, perhaps permanent, detention” (533 U.S. at 690-91, 698), Quiroz’s removal will be
11 effectuated once the Ninth Circuit decides his petition for review. The mere fact that Quiroz’s detention
12 lacks a certain end date does not in itself render his detention impermissibly indefinite. *Prieto-Romero*
13 *v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008); *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008).
14 Rather, Quiroz “must show that he would be unremovable even if the government defeated his petition
15 for review” before the Ninth Circuit. *Diouf*, 542 F.3d at 1233; *see also Prieto-Romero*, 534 F.3d at 1063
16 (*Zadvydas* requires that a petitioner show he is stuck in a “removable-but-unremovable limbo.”). That is
17 not the case here. If the Government defeated Quiroz’s petition for review, nothing would prevent his
18 removal to Mexico—indeed, he was previously removed to Mexico in 2011 without issue. *See Mot.* at
19 4; *Diouf*, 542 F.3d at 1233 (government could detain petitioner beyond six-month period because there
20 was no evidence his home country “would refuse to accept him, or that his removal is barred by our own
21 laws”); *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (alien’s detention pending Ninth
22 Circuit’s petition for review was not excessive because it “is neither indefinite nor potentially permanent
23 . . . [but is] directly associated with a judicial review process that has a definite and evidently impeding
24 termination point, and, thus, is more akin to detention during the administrative review process, which
25 was upheld in *Demore v. Kim*, 538 U.S. 510, 527-29 (2003)”).

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27 ⁵ This refutes Quiroz’s assertion that under *Zadvydas*, the government bears the burden of
28 demonstrating that detention is lawful, serves legitimate purposes, and is constitutional. *Opp.* at 4.
Zadvydas says no such thing, and in fact places the initial burden on the alien.

1 Quiroz also argues that USCIS’s prima facie determination constitutes a “changed circumstance”
2 under *Villa-Anguiano v. Holder*, 727 F.3d 873 (9th Cir. 2013). Opp. at 6, 8-9. But as the Ninth Circuit
3 has held (and Quiroz does not address), *Villa-Anguiano* is not a free-wheeling license to consider any
4 new circumstances—it applies only where the underlying removal order becomes invalid and thus can
5 no longer be reinstated. See Mot. at 10. But Quiroz does not challenge the underlying removal order or
6 the three predicates for its reinstatement, and thus *Villa-Anguiano* does not apply. *Id.*

7 **II. ICE complied with necessary 8 C.F.R. § 241.8 procedures.**

8 Quiroz speculates that he may not have been served with the reinstatement Notice because “the
9 government provides no contemporaneous documentation demonstrating compliance with” § 241.8.
10 Opp. at 8. This assertion is baseless. Quiroz admits in his own habeas petition that he was “served with
11 a Notice of Intent to Reinstatement the Prior Removal Order” on May 7, 2025. Petition ¶ 31. Further, the
12 Notice (which both parties have provided to the Court) includes a signature from an immigration official
13 verifying that he communicated to Quiroz (in Spanish) “[t]he facts that formed the basis of this
14 [reinstatement] determination, and the existence of a right to make a written or oral statement contesting
15 this determination.” Meneses Decl. Ex. 7 (p.15). Another immigration officer signed the Notice
16 certifying his determination to reinstate Quiroz’s prior removal order based on “all available evidence,
17 the administrative file and any statements made or submitted in rebuttal.” *Id.*; see also Mot. at 11.

18 Quiroz also raises a new basis for an alleged due process violation: that when he attempted to
19 raise his “VAWA protection status” after being served with the Notice, ICE told him that information
20 would be disregarded as irrelevant. Opp. at 3, 8. Aside from the impropriety of alleging new facts in an
21 opposition brief⁶ (and the perfunctory mischaracterization of a VAWA prima facie determination as
22 “protection status”), Quiroz’s VAWA self-petition *is* irrelevant to whether his removal order should be
23 reinstated. As are any of the other circumstances Quiroz allegedly wanted to raise, such as his strong
24 community ties, lack of public safety concerns, or pending requests for relief. See Opp. at 9.

25 Rather, only three factors are relevant to reinstating a removal order: (1) the alien was subject to
26 a prior order of removal; (2) the alien’s reentry was unauthorized; and (3) the alien’s identity has been

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28 ⁶ These newly-fabricated factual allegations also do not appear in Quiroz’s declaration submitted
with his since-withdrawn TRO motion. See ECF 2-2 at 4-8.

1 verified. Mot. at 3 (citing authority). An immigration officer only considers information pertaining to
2 those factors, such as that an alien is not in fact the alien who was previously removed (§ 241.8(a)(2)) or
3 that an alien in fact was lawfully admitted when he reentered the United States (§ 241.8(a)(3)).

4 But Quiroz does not contest any of those three factors. He does not claim mistaken identity or
5 dispute that he was subject to a prior removal order and unlawfully reentered the United States. Thus,
6 even if Quiroz could show some procedural error in the giving of notice under § 241.8(a) or (b), his
7 failure to contest any of the three relevant factors underlying his reinstated removal order means he
8 cannot show a due process violation under Ninth Circuit precedent. *See* Mot. at 11 (citing cases).
9 Quiroz does not address that precedent, nor does he cite any legal authority that his VAWA self-petition
10 bears on any of the three reinstatement factors. *Cf.* Section I, *supra*; Mot. at 8 & n.5.

11 Lastly, Quiroz faults ICE for not conducting an “‘extraordinary circumstances’ analysis required
12 under § 241.8(c)(5).” Opp. at 9. This assertion is frivolous. There is no 8 C.F.R. § 241.8(c)(5), and the
13 term “extraordinary circumstances” does not appear in *any* of 8 C.F.R. Part 241, let alone in 8 C.F.R.
14 § 241.8. Nor has Quiroz cited legal authority requiring consideration of any information beyond the
15 three enumerated factors for reinstating a removal order in § 1231(a)(5). In fact, courts have repeatedly
16 held otherwise. *See* Mot. at 3, 11 (citing cases).

17 **III. The record is sufficient to dismiss Quiroz’s habeas petition.**

18 Quiroz does not challenge the validity of his reinstated removal order. Opp. at 2, 4, 6. Nor does
19 he contest that he was subject to mandatory detention upon reinstatement of his removal order. *See* Mot.
20 at 3 (citing authority). And as indicated above and in Respondents’ Motion, the validity of Quiroz’s
21 detention hinges entirely on governing statutes and case law interpreting them.

22 Quiroz entirely ignores those statutes and case law. Instead, he argues that the Government’s
23 Motion should be denied because the record is purportedly missing relevant documents. Opp. at 10-11.
24 This is simply untrue. Contrary to Quiroz’s assertion (Opp. at 10), the Government has provided
25 contemporaneous records of the May 7, 2025 process and evidence of § 241.8(b) notice. *See* Section I,
26 *supra*; Mot. at 4-5 (citing record). *Zadvydas* does not require the Government to show “current
27 detention necessity” (Opp. at 10)—rather *Quiroz* must show a good reason to believe that there is no
28 significant likelihood he will be removed in the reasonably foreseeable future, which he has not done.

1 *See* Section I, *supra*. And the remaining allegedly missing items are irrelevant to the legality of
2 Quiroz’s detention. ICE was not required to consider “evidence of VAWA status consideration” (Opp.
3 at 10) in deciding whether to reinstate Quiroz’s removal order. *See* Section II, *supra*. And the
4 undefined “constitutional compliance measures” (Opp. at 10), which Respondents presume relate to
5 conditions of confinement, are not cognizable in habeas proceedings. Mot. at 12.

6 In short, the Court has all the information necessary to decide the narrow issues raised by
7 Quiroz’s habeas petition. Nearly all of the issues are matters of law, directly answerable by the relevant
8 statutes, regulations, and case law. And the few factual issues relevant to Quiroz’s habeas petition—the
9 factual predicates for reinstating his removal order, or the nature of the § 241.8(b) notice Quiroz
10 received on May 7, 2025—are documented in the declaration and exhibits attached to Respondents’
11 Motion to Dismiss.

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14 For the foregoing reasons, Quiroz’s Petition for Writ of Habeas Corpus should be dismissed.

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17 Dated: September 25, 2025

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