

1 ERIC GRANT
United States Attorney
2 SHELLEY D. WEGER
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

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

9 OSCAR ERNESTO LOPEZ SANTOS
10 Petitioner,
11 v.
12 MINGA WOFFORD, WARDEN OF THE
MESA VERDE DETENTION CENTER, et
13 al.,¹
14 Defendants.

CASE NO. 1:25-CV-00884-SAB

MOTION TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2254 AND
RULE 4; RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS

15
16 **I. INTRODUCTION**

17 Petitioner Oscar Ernesto Lopez Santos’s (“Petitioner” or “Santos”) petition for a writ of habeas
18 corpus should be dismissed because he has been constitutionally detained since September 12, 2023, to
19 effectuate a final order of removal. Santos’s removal has been administratively stayed because Santos
20 collaterally attacked the final administrative order of removal by filing a motion to reopen his removal
21 proceedings, and, when that motion was denied, by filing an appeal of the denial with the Bureau of
22 Immigration Appeals (“BIA”). That appeal is still pending. The Court should dismiss Petitioner’s
23 habeas petition because he has not met his burden of providing good reason to believe that there is no

24
25 ¹ Respondent moves to strike and to dismiss all improperly-named officials under 28 U.S.C. § 2241. A
26 petitioner seeking *habeas corpus* relief is limited to name only the officer having custody of him as the
27 respondent to the petition. *Riego v. Current or Acting Field Office Director*, Slip Op., 2024 WL 4384220 (E.D.
28 Cal. Oct. 3, 2024) (ordering Section 2241 petitioner, a non-citizen alien, to file a motion to amend his petition to
“name a proper respondent” and setting forth that “[f]ailure to amend the petition and state a proper respondent
will result in dismissal of the petition for lack of jurisdiction”). *See also* 28 U.S.C. § 2242; *Doe v. Garland*, 109
F.4th 1188, 1197 (9th Cir. 2024); *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81
F.3d 891, 894 (9th Cir. 1996).

1 significant likelihood of his removal in the reasonably foreseeable future as required by controlling
2 Supreme Court precedent in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In addition, Petitioner does not
3 have a statutory or constitutional right a bond hearing where the government bears the burden of proving
4 his dangerousness or flight risk. Respondents therefore request that the Court dismiss the Petition, or in
5 the alternative, deny the petition for the reasons stated herein.

6 **II. FACTUAL BACKGROUND**

7 Santos is a native and citizen of Honduras who illegally entered the United States on an unknown
8 date and time and has a final administrative order of removal. Decl. of Deportation Officer Patrick J.
9 Cruz (“Cruz Decl.”) ¶ 5, Exhibits 1 and 4 to Cruz Decl. (“Exs. 1, 4”). Santos first came to the attention
10 of ICE as a minor after Santos sustained charges for two counts of assault with a deadly weapon, not a
11 firearm. Cruz Decl. ¶ 6, Ex. 3. ICE records indicated that Santos appeared to have [REDACTED] gang
12 affiliation and had admitted [REDACTED] gang membership. Cruz Decl. ¶ 6. The United States
13 Department of Homeland Security (“DHS”) initiated removal proceedings against Santos by issuing a
14 Notice to Appear (“NTA”) on March 15, 2020, charging him with INA § 212(a)(6)(A)(i), 8 U.S.C.
15 § 1152(a)(6)(A)(i), aliens present without admission or parole. The Immigration Judge ultimately found
16 Santos admitted the allegations and removability was sustained. Cruz Decl. at Ex. 22.

17 After the issuance of the NTA in 2010, removal proceedings occurred over the next couple of
18 years during which time Santos asked for various continuances and was arrested for new criminal
19 offenses. Cruz Decl. ¶¶ 9–11. On September 23, 2013, an Immigration Judge granted Santos’s request
20 to administratively close his removal case, over DHS’s objection, so that he could seek collateral relief.
21 Cruz Decl. ¶ 13, Ex. 17. Santos’s application for collateral relief was subsequently denied. Cruz Decl.
22 ¶ 14, Ex. 18.

23 On February 29, 2016, DHS moved to re-calendar Santos’s removal proceedings based on
24 Santos’s 2015 arrest for child cruelty and the denial of his application for collateral relief. Cruz Decl.
25 ¶¶ 16, 17. The removal proceedings continued over the next two years as Santos obtained continuances,
26 Cruz Decl. ¶¶ 19, 20, and had further encounters with law enforcement, including for carrying a loaded
27 firearm on two occasions and for battery. Cruz Decl. ¶¶ 18, 21, 22. Santos last appeared in immigration
28 court on January 18, 2018. Cruz Decl. 22, Ex. 21 at n.4. Santos failed to appear at the next hearing on

1 February 28, 2019, and the Immigration Judge ordered Santos removed to Honduras in absentia. Cruz
2 Decl. ¶¶ 23–24, Ex. 22.

3 In 2020, Santos shot a firearm at a rival gang member and shot a bystander. Consequently, on
4 July 19, 2022, Santos was convicted of assault with a firearm and sentenced to four years in prison.
5 Cruz Decl. ¶¶ 26–28, Ex. 23. Santos was again brought to ICE’s attention in September 2023. Based on
6 the final order of removal, ICE apprehended Santos and placed him in ICE custody on September 12,
7 2023. Cruz Decl. ¶ 29, Ex. 24. On October 2, 2023, Santos filed a petition for an immigration benefit
8 with the United States Customs and Immigration Services (“USCIS”). Cruz Decl. ¶ 30; ECF 1 at 5.

9 On October 4, 2023, Santos, through counsel, filed a motion to rescind the February 28, 2019, in
10 absentia removal order and reopen removal proceedings. Cruz Decl. ¶ 31. Santos alleged in part that he
11 should be allowed to seek adjustment of status based on his petition pending before USCIS. Cruz Decl.
12 at Ex. 22. Santos’s motion initiated an automatic stay of removal. Cruz Decl. ¶ 31. The Immigration
13 Judge denied Santos’s motion to reopen on October 24, 2023. Cruz Decl. ¶ 31. In denying the motion,
14 the Immigration Judge found that there was no indication that Santos attempted to determine the status
15 of his case between his last appearance in January 2018, and his placement in ICE detention in 2023,
16 and that Santos’s petition for an immigration benefit pending before USCIS was unlikely to succeed.
17 Cruz Decl. at Ex. 22.

18 Santos filed an appeal of the denial to reopen his removal proceedings with the BIA.² Cruz Decl.
19 ¶ 32. Santos filed a brief in support of his appeal, and DHS filed a motion to remand proceedings to the
20 Immigration Judge, because the law at that time did not support in absentia removal orders.³ Cruz Decl.
21 ¶ 32. Since the filing of Santos’s appeal, the following has occurred. ICE has conducted two custody
22 reviews, one on November 7, 2024, and a second on September 19, 2025, and on both occasions found
23 Santos to be a danger and a flight risk. Cruz Decl. ¶¶ 33, 39. In February 2025, USCIS denied Santos’s
24 application for immigration benefits. Cruz Decl. ¶ 30. In June 2025, ICE contacted the BIA to alert
25

26 ² Part of Santos’s appeal brief is redacted in order to comply with statutory restrictions
prohibiting disclosure of information related to certain immigration benefits.

27 ³ While this appeal was pending, Santos was one of five aggressors who assaulted three other
28 individuals in ICE custody at the Mesa Verde Detention Center. Cruz Decl. ¶ 32, Ex. 30. Petitioner also
filed a motion for custody redetermination with the BIA on July 22, 2025. Cruz Decl. ¶ 34.

1 them to Santos’s detention status. Cruz Decl. ¶ 35. On July 3, 2025, the court clerk for the BIA
 2 confirmed with DHS that Santos’s appeal remained pending. Cruz Decl. ¶ 35. On July 24, 2025, DHS
 3 filed a motion to withdraw its prior motion seeking remand due to intervening Supreme Court case law,
 4 as well as, a motion for the BIA to issue a decision on Santos’s pending appeal on the denied motion to
 5 rescind and reopen removal proceedings. Cruz Decl. ¶ 37, Ex. 33–34. The BIA confirmed that Santos’s
 6 appeal remains pending, and the automatic stay is still in place. Cruz Decl. ¶ 38. Santos remains
 7 detained pursuant to 8 U.S.C. § 1231(a)(6). Cruz Decl. ¶ 40.

8 On July 21, 2025, Santos filed the instant petition for a writ of habeas corpus with this Court,
 9 contending his detention since September 2023 without a hearing to assess his danger to the community
 10 or flight risk violates the Due Process Clause of the Fifth Amendment. Santos seeks either (1) release
 11 from immigration detention following a hearing at which Santos contends it will be shown that he does
 12 not present a risk of flight or danger; or (2) in the alternative, release from immigration detention within
 13 30 days unless Respondents schedule a hearing before an immigration judge where the Government
 14 “must establish by clear and convincing evidence that Santos presents a risk of flight or danger, even
 15 after consideration of alternatives to detention that could mitigate any risk that Santos’s release would
 16 present.” ECF 1 at 14. Santos also seeks a declaration that his ongoing detention violates the Due
 17 Process Clause of the Fifth Amendment. *Id.*

18 **III. ARGUMENT**

19 **A. Detention Following a Final Order of Removal**

20 When an alien becomes subject to a final administrative removal order, 8 U.S.C. § 1231(a)(2)
 21 provides that the government “shall” detain the alien during a 90-day removal period.⁴ 8 U.S.C.
 22 § 1231(a)(2). After the removal period ends, the government “may” detain four categories of aliens: (1)
 23 those who are inadmissible on certain specified grounds; (2) those who are removable on certain
 24 specified grounds; (3) those it determines “to be a risk to the community”; and (4) those it determines to
 25

26 ⁴ The removal period begins on the latest of the following dates: (i) “[t]he date the order of
 27 removal becomes administratively final;” (ii) “[i]f the removal order is judicially reviewed and if a court
 28 orders a stay of the removal of the [alien], the date of the court’s final order;” or (iii) “[i]f the [alien] is
 detained or confined (except under an immigration process), the date the [alien] is released from
 detention or confinement.” 8 U.S.C. § 1231(a)(1)(B)(i)-(iii).

1 be “unlikely to comply with the order of removal.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–79
2 (2022) (quoting 8 U.S.C. § 1231(a)(6)). Here, the parties agree that Santos is detained pursuant to INA
3 § 241(a)(6), 8 U.S.C. § 1231(a)(6).⁵ See ECF 1 at 11; Cruz Decl. ¶ 37.

4 In *Arteaga-Martinez*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not require a bond
5 hearing before an Immigration Judge after six months of detention in which the government bears the
6 burden of proving by clear and convincing evidence that an alien poses a flight risk or a danger to the
7 community. *Arteaga-Martinez*, 596 U.S. at 573, 580–81 (2022) (stating that the text of section
8 1231(a)(6) does not address or even hint at the requirement of a bond hearing after six months of
9 detention). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), however, the Supreme Court held that section
10 1231(a)(6) “does not permit indefinite detention” and instead “limits an alien’s post-removal-period
11 detention to a period reasonably necessary to bring about that alien’s removal from the United States.
12 *Zadvydas*, 533 U.S. at 689. The Court stated that, after six months of detention, once the alien provides
13 good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
14 future, the government must respond with evidence sufficient to rebut that showing. *Id.* at 701. The
15 Court was careful to note, however, that:

16 “This 6–month presumption, of course, does not mean that every alien not removed must
17 be released after six months. To the contrary, an alien may be held in confinement until it
18 has been determined that there is no significant likelihood of removal in the reasonably
foreseeable future.”

19 *Id.* at 701.

20 In the Ninth Circuit, “no significant likelihood of removal in the reasonably foreseeable future”
21 means that “the alien must show that he would be unremovable even if the government defeated his
22 petition for review.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008). Uncertainty about when
23 removal will occur does not per se establish that detention is indefinite. *Id.* Examples of when there
24 may not be a significant likelihood of removal in the reasonably foreseeable future are when the country
25 to which the alien is to be removed would refuse to accept him or her, or when removal is barred by the

26 _____
27 ⁵ A stay of removal for the BIA to consider Petitioner’s appeal of the denial of his motion to
28 reopen his removal proceedings does not affect the finality of the removal order or prevent the removal
period from beginning. Accordingly, detention is authorized under § 1231(a) during the pendency of
such proceedings. *Prieto-Romero*, 534 F.3d 1053, 1060 n.6 (9th Cir. 2008)

1 laws of the United States. *Id.* at 1233.

2 **B. Santos's Detention is Constitutional.**

3 Santos fails to allege sufficient facts to state a claim for habeas corpus relief, and alternatively,
4 his claims fail on the merits. Santos has not met his burden of showing that his detention is “indefinite”
5 or that there is “no significant likelihood of [his] removal in the reasonably foreseeable future.”
6 *Zadvydas*, 533 U.S. at 701. Santos has not provided any evidence to show that he is unremovable even
7 if the government defeats his petition for review. Santos provides no evidence that removal to Honduras
8 or, alternatively, a third country, is not feasible, or that his removal is barred by the laws of the United
9 States. Santos has applied for various forms of collateral relief, and they have each been denied.
10 *Compare* Cruz Decl. ¶¶ 13–14, 30, Exs. 18, 25 with ECF 1 at 5 (relying on an application that has been
11 denied as the basis for why his removal is unlikely). Santos remains subject to a final administrative
12 order of removal.

13 Here, Santos's detention has a logical end point, which is the conclusion of his administrative
14 appeal of the order denying his motion to rescind the removal order and reopen removal proceedings.
15 The only reason ICE has not taken steps to effectuate Santos's removal is because immediately upon
16 being placed into custody Santos filed a motion to reopen his removal proceedings, and then, when that
17 motion was denied, he filed an appeal with the BIA. These proceedings have resulted in an automatic
18 administrative stay of his removal. Cruz Decl. ¶¶ 31, 38. Although the end date of these proceedings is
19 not currently known, that does not make Santos's detention indefinite. *See Diouf*, 542 F.3d at 1233.
20 This is not a case like *Zadvydas*, because here, detention lasts for the duration of a proceeding with a
21 definite end date, which fundamentally differs from the detention in *Zadvydas* that could last indefinitely
22 because no country was willing to accept him. *See* 533 U.S. 684–85.

23 In this case, detention remains reasonably necessary to bring about Santos's removal from the
24 United States. Here, the prolonged detention is largely, if not entirely, due to Santos's actions. Delay
25 caused by an alien's litigation strategy should not turn prolonged detention into a Constitutional claim.
26 If release is effectively contingent on an alien's litigation choices, this would create a perverse incentive
27 for aliens to prolong their proceedings by filing meritless appeals or collateral attacks in the hope of
28 winning release, after which their proceedings will be even further slowed, and they may never return to

1 comply with the removal order.

2 Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets
3 the Due Process Clause “consistent with longstanding precedent recognizing that the process due aliens
4 must account for the government’s countervailing interests in immigration enforcement – considerations
5 that do not apply to U.S. citizens.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022).
6 It is well-established that “Congress may make rules as to aliens that would be unacceptable if applied to
7 citizens.” *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because “any policy toward aliens is
8 vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign
9 relations, the war power, and the maintenance of a republican form of government, which are core
10 sovereign powers.” *Id.* “The Supreme Court has accordingly long upheld Congress’s authorization of
11 ‘detention during deportation proceedings as a constitutionally valid aspect of the deportation process.’”
12 *Id.* at 523. Here, *Zadvyras* provides whatever balancing is necessary to satisfy due process. *See Banyee*
13 *v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024). And under the standard in *Zadvyras*, Santos’s petition
14 should be dismissed or denied.

15 **C. Santos Should Not Be Ordered Released Because He is a Danger and a Flight Risk.**

16 If, for the sake of argument, this Court were to reach the merits of Santos’s petition, Santos
17 should not be ordered released because he is a danger and a flight risk. Santos has a lengthy record of
18 encounters with law enforcement dating back to is youth for violent crimes including aggravated assault
19 with a deadly weapon, Cruz Decl. ¶ 6; firearm offenses, Cruz Decl. ¶ 18; obstructing a public officer,
20 Cruz Decl. ¶ 25; battery, Cruz Decl. ¶ 22; robbery and carjacking, Cruz Decl. ¶ 10; and most recently
21 assault with a firearm, Cruz Decl. ¶ 28. The most recent incident involved shooting at a rival gang
22 member and intentionally shooting a bystander. Cruz Decl. ¶ 26. Although not all of his arrests have
23 resulted in convictions, Santos’s pattern shows he is a recidivist and that his conduct has only escalated
24 and become more dangerous. Santos is also a flight risk because he has a final order of removal and
25 incentive to attempt to evade DHS’s efforts to remove him from the United States.

26 Even if the Court disagrees about Santos’s dangerousness or risk of flight, it should order a bond
27 hearing and should not order compelled release. “[C]ompelled release of detainees is surely a remedy of
28 last resort.” *Fraihat*, 16 F.4th at 642. In the event that the petition is granted, the only appropriate relief

1 is a bond hearing, not release from detention. *See, e.g., Demore*, 538 U.S. at 532 (Kennedy, J.,
2 concurring) (explaining that “an individualized determination as to his risk of flight and dangerousness”
3 is the proper remedy “if the continued detention became unreasonable or unjustified”); *Prieto-Romero v.*
4 *Clark*, 534 F.3d 1053, 1065–66 (9th Cir. 2008) (discussing how detainee “had an opportunity to contest
5 the necessity of his detention before a neutral decisionmaker and an opportunity to appeal that
6 determination to the BIA”); *Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at
7 *4 (S.D. Cal. Feb. 13, 2018) (Immigration Judges are well suited to assess eligibility for release, while a
8 district court “lacks the factual support to make a determination about Santos’s risk of flight or
9 dangerousness to the community”).

10 **D. Santos is Not Entitled to a Bond Hearing, at Which the Government Must Bear the**
11 **Burden of Establishing his Dangerousness and Flight Risk by Clear and Convincing**
12 **Evidence.**

13 Santos further argues that constitutional due process principles require that he receive a bond
14 hearing while he awaits his removal from the United States, and that the government should bear the
15 burden of justifying his detention by clear and convincing evidence. ECF 1 at 12–13. The Court should
16 reject his contention.

17 First, Santos’s argument glosses over the fact the Supreme Court already engaged in the kind of
18 balancing analysis he asks the Court to undertake here. *See Banyee*, 115 F.4th at 933 (noting that
19 *Zadvydas* “ha[s] already done whatever balancing is necessary” to satisfy due process). Indeed, the
20 Supreme Court in *Zadvydas* linked the reasonableness of an alien’s post-removal detention to the
21 likelihood of the alien’s removal in the foreseeable future. *Zadvydas*, 533 U.S. at 682 (“Based on our
22 conclusion that indefinite detention of aliens in the former category would raise serious constitutional
23 concerns, we construe the statute to contain an implicit ‘reasonable time’ limitation . . .”). This
24 analysis demonstrates that Santos should remain detained without a bond hearing because his removal is
25 likely in the reasonably foreseeable future.

26 Should the Court order a bond hearing, Santos is mistaken that the burden should be on the
27 government to justify his detention by clear and convincing evidence. The Supreme Court has expressly
28 said that Section 1231(a)(6) has no such requirement. *Artega-Martinez*, 596 U.S. at 580. And the
Constitution does not require the government to bear the burden of establishing that the alien will be a

1 flight risk or danger—much less that the government be subject to a clear-and-convincing-evidence
2 standard—to justify detention in connection with removal proceedings. The Supreme Court has
3 consistently affirmed the constitutionality of detention pending removal proceedings, notwithstanding
4 that the government has never borne the burden to justify that detention by clear and convincing
5 evidence. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Zadvydas*,
6 533 U.S. at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal
7 proceedings on the basis of a categorical, rather than individualized, assessment that a valid immigration
8 purpose warranted interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342
9 U.S. at 538. And in *Zadvydas*, which, like here, involved a final order of removal, the Court placed the
10 burden on the alien, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S.
11 at 701 (the alien must first “provide good reason to believe that there is no significant likelihood of
12 removal in the reasonably foreseeable future,” only after which “the Government must respond with
13 evidence sufficient to rebut that showing”). Accordingly, the Court should deny a bond hearing, or at a
14 minimum, should not require the government to justify Santos’s detention by clear and convincing
15 evidence.

16 IV. CONCLUSION

17 The Court should reject Ernesto Santos’s petition for habeas corpus. Santos has exercised his
18 right to collaterally attack his removal order before the immigration court and the BIA, prolonging his
19 detention. Santos’s detention is constitutional because it is not indefinite, and Santos’s has not shown it
20 is not unduly prolonged given the facts of this case, since there is a likelihood of his removal in the
21 reasonably foreseeable future. Nothing in his petition demonstrates that he is entitled to a bond hearing
22 while he waits. Accordingly, the Court should dismiss his habeas petition.

23
24 Dated: September 19, 2025

ERIC GRANT
United States Attorney

25
26 By: /s/ SHELLEY D. WEGER
27 SHELLEY D. WEGER
Assistant United States Attorney
28

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on September 19, 2025, she served a copy of the MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 AND RULE 4; RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

 Oscar Ernesto Lopez Santos
 PRO SE
Addressee: Mesa Verde Processing Center
 425 Golden State Avenue
 Bakersfield, CA 93301

/s/ Shelley Weger

Shelley Weger