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Department of Homeland Security

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 JONATHAN OMAR CALDERON,
14 Petitioner,
15 v.
16 DEPARTMENT OF HOMELAND
17 SECURITY,
18 Respondent.

No. 5:25-cv-01815-RGK-JPR

**RESPONDENT'S NOTICE OF
MOTION AND MOTION TO DISMISS**

*[Declaration of Luz Robles and Proposed
Order filed concurrently herewith]*

Honorable Jean P. Rosenbluth
United States Magistrate Judge

NOTICE OF MOTION AND MOTION TO DISMISS

Respondent Department of Homeland Security (“Respondent”) hereby moves to dismiss the Petition for a Writ of Habeas Corpus under Fed. R. Civ. P. 12(b)(6) on the ground that Petitioner Jonathan Omar Calderon (“Petitioner”) fails to state a claim for habeas relief pending his removal. This motion is made before the Honorable Jean P. Rosenbluth, United States Magistrate Judge. This motion is made in accordance with the Court’s Order requiring a response to the Petition for Writ of Habeas Corpus. Dkt. 5.

This motion is noticed without a hearing date pursuant to the Court’s Order stating, “this case will be deemed submitted on the day following the date Respondent’s reply to Petitioner’s opposition to a motion to dismiss or Petitioner’s reply to Respondent’s answer is due.” Dkt. 5 ¶ 12. Petitioner’s opposition is due within 14 days of the service of this motion. *See* Dkt. 5 ¶ 5.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, Declaration of Luz Robles, and all pleadings, records, and other documents on file with the Court in this action.

The parties are exempt from compliance with Local Rule 7-3. *See* L.R. 16-12(a) and (c).

Dated: August 12, 2025

Respectfully submitted,

BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Alexander L. Farrell
ALEXANDER L. FARRELL
Assistant United States Attorney

Attorneys for Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner, a native and citizen of Guatemala, brings this Petition for Writ of Habeas Corpus (“Petition”) challenging his detention under the Fourth and Fifth Amendment of the Constitution and challenging his removal proceeding under immigration laws. *See* Dkt. 1 ¶ 13.

The Petition should be denied because Petitioner fails to state a claim for habeas relief for lack of subject matter jurisdiction. Petitioner was and has been lawfully detained under 8 U.S.C. § 1231(a)(2), which authorizes the detention of aliens during the removal period.

Petitioner was ordered removed in 2010 by an Immigration Judge after his asylum application was denied. Petitioner was ordered a deferral of removal in that he could not be removed back to Guatemala but rather could be removed to a third country. On July 5, 2025, Petitioner was detained by Immigration and Customs Enforcement (“ICE”) who seeks to remove Petitioner to a third country other than Guatemala.

Petitioner has received all due process to which he is entitled and his continued detention pending removal to a country other than Guatemala is lawful. Respondent respectfully requests that the Court dismiss and deny the Petition.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Petitioner’s Criminal Activity in the United States

Petitioner is a native and citizen and national of Guatemala. Declaration of Luz Robles (“Robles Decl.”) ¶ 4.¹ Petitioner’s citizenship and national origin is confirmed by a copy of his Guatemalan birth certificate contained in the A-file. *Id.*

On July 1, 2008, Petitioner was convicted in the Superior Court of California, County of Los Angeles for the offense of “lewd act upon a child” in violation of

¹ To the extent that the Court seeks to review pertinent records from the Petitioner’s immigration proceeding, in conjunction with the Robles Declaration, Respondent can lodge a certified record of proceedings.

1 California Penal Code Sections 288A, a felony, and was sentenced to 1 year in jail and 5
2 months of probation. *Id.* ¶ 5.

3 On or about July 1, 2025, Petitioner was arrested by the Riverside County
4 Sheriff's Department. *Id.* ¶ 10. Petitioner was charged for the offenses of forging an
5 official seal, driving under the influence of alcohol, and driving on a suspended license.
6 *Id.* ¶ 10. On or about July 5, 2025, Petitioner was encountered at the Riverside County
7 Jail in Banning, California. *Id.* ¶ 11.

8 **B. Petitioner's Removal Proceedings**

9 On October 3, 2008, removal proceedings were commenced with the issuance of a
10 Notice of Appear to Petitioner. *Id.* ¶ 6. After removal proceedings commenced, Petitioner
11 applied for asylum from his home country of Guatemala. *Id.* ¶ 7. Petitioner's asylum
12 application was denied because he was ineligible for asylum because of his conviction of
13 an aggravated felony. *Id.*

14 On March 18, 2010, an immigration judge issued a final order of removal for
15 Petitioner but granted withholding of removal to Guatemala, based on the restriction on
16 removal to a country where alien's life or freedom would be threatened. *See Id.* ¶ 8; *see*
17 *also* Immigration and Nationality Act ("INA") § 241(b)(3); *see also* 8 U.S.C. § 1231(b)(3).

18 Since the issuance of the final order of removal, Petitioner has not appealed the
19 immigration judge's decision and has not filed a motion to reopen the immigration
20 proceedings. *Id.* ¶ 9.

21 After the July 2025 detention at the Riverside County Jail, ERO conducted Post
22 Order Custody Review of Petitioner and determined that his detention was warranted. *Id.*
23 ¶ 11.

24 On or about July 5, 2025, an immigration judge issued a warrant of removal and
25 deportation for Petitioner. *Id.* ¶ 12. Petitioner was then transferred into the custody of the
26 ERO and was placed in the Adelanto ICE Processing Center. *Id.*

27 On or about July 9, 2025, Petitioner was served as a Notice of Removal to a Third
28 Country. *Id.* ¶ 13. Petitioner was informed that ERO intended to remove him to the country

1 of Mexico. *Id.* Petitioner signed the Notice of Removal to a Third Country. *Id.*; Ex. 1.

2 On July 9, 2025, Petitioner had an interview with the Guatemalan Consulate to
3 verify his identity and determine if travel documents were necessary to obtain. *Id.* ¶ 14.
4 ERO did not request travel documents for Petitioner because the immigration judge's final
5 order granted removal but withholding of removal to Guatemala. *Id.* ¶ 15. ERO still
6 intends to remove Petitioner to a third country *Id.*

7 Petitioner currently remains in ICE custody during the pendency of his removal to
8 a third country, pursuant to INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A). *Id.* ¶ 16.

9 Petitioner has been detained in ICE custody for approximately 38 days, since July
10 5, 2025. *Id.* ¶ 17.

11 **C. Petitioner's Habeas Petition**

12 On July 17, 2025, Petitioner filed the instant action challenging his detention and
13 seeking release from immigration custody. Dkt. 1. Petitioner alleges that his detention is
14 unconstitutional because he is not removable under the INA. *Id.*

15 **III. ARGUMENT**

16 **A. Petitioner's Claims Run Afoul of the INA's Jurisdiction Stripping** 17 **Provisions**

18 Petitioner is currently subject to a final removal order; he is not merely in removal
19 proceedings. To the extent he contests the decision to enforce it via arrest, that runs afoul
20 of 8 U.S.C. § 1252(g), where Congress provided that "no court" has jurisdiction over
21 "any cause or claim" arising from the execution of removal orders, "notwithstanding any
22 other provision of law," whether "statutory or non-statutory," including habeas,
23 mandamus, or the All Writs Act. Accordingly, by its terms, this jurisdiction-stripping
24 provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to
25 the All Writs Act and Administrative Procedure Act) of claims arising from a decision or
26 action to "execute" a final order of removal. *See Reno v. American-Arab Anti-*
27 *Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999).

28 Here, Petitioner's claims arise from his concerns about the execution of his

1 removal order, which is barred by Section 1252(g). Indeed, his petition seeks to require
2 ICE to provide him with additional procedures not authorized by statute or regulation
3 prior to his removal or even any arrest to effectuate his removal.

4 Furthermore, Sections 1252(a)(5) and 1252(b)(9) of the INA also bar review in
5 this Court. By law, “the sole and exclusive means for judicial review of an order of
6 removal” is a “petition for review filed with an appropriate court of appeals,” that is, “the
7 court of appeals for the judicial circuit in which the immigration judge completed the
8 proceedings.” 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via
9 “section 2241 of Title 28, or any other habeas corpus provision.” 8 U.S.C. § 1252(a)(5).
10 Section 1252(b)(9) then eliminates this Court’s jurisdiction over Petitioner’s claims by
11 channeling “all questions of law and fact, including interpretation and application of
12 constitutional and statutory provisions, arising from any action taken or proceeding
13 brought to remove an alien” to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the
14 law is clear that “no court shall have jurisdiction, by habeas corpus” or other means. *Id.*
15 (emphasis added).

16 Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
17 review of all” claims arising from deportation proceedings to a court of appeals in the
18 first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, “[t]aken together, §§
19 1252(a)(5) and [(b)(9)] mean that any issue— whether legal or factual—arising from any
20 removal-related activity can be reviewed only through the [petition for review] process.”
21 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 (“§§ 1252(a)(5)
22 and 1252(b)(9) channel review of all claims, including policies-and- practices
23 challenges, through the PFR process whenever they ‘arise from’ removal proceedings”).

24 Insofar as Petitioner seeks to effectively block his arrest and removal, his claims
25 are precluded by these jurisdiction stripping provisions.

26 **B. Petitioner Is Lawfully Detained Pending His Removal Under 8 U.S.C. §**
27 **1231.**

28 Petitioner is being lawfully detained pending his removal. 8 U.S.C. §

1 1231(a)(2)(A) provides that “[d]uring the removal period, the Attorney General shall
2 detain the alien.” 8 U.S.C. § 1231(a)(2)(A). Under 8 U.S.C. § 1231(a)(1)(A), the
3 government generally has 90 days to facilitate the alien’s removal. *Thai v. Ashcroft*, 366
4 F.3d 790, 793 (9th Cir. 2004) (citation omitted); *see also* 8 U.S.C. § 1231(a)(1)(A).
5 Where removal cannot be accomplished within the 90-day removal period, continued
6 detention is authorized by 8 U.S.C. § 1231(a)(6) (“An alien ordered removed ... who has
7 been determined by the Attorney General to be a risk to the community or unlikely to
8 comply with the order of removal, may be detained beyond the removal period...”).

9 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C.
10 § 1231(a)(6) contained an implicit “reasonable time” limitation. *Zadvydas*, 533 U.S. at
11 682. The Court concluded that, for the sake of uniform administration in the federal
12 courts, six months was a presumptively reasonable period of detention pending removal.
13 *Id.* at 701. The Court elaborated:

14 After this 6-month period, once the alien provides good reason to believe that
15 there is no significant likelihood of removal in the reasonably foreseeable
16 future, the Government must respond with evidence sufficient to rebut that
17 showing ... This 6-month presumption, of course, does not mean that every
18 alien not removed must be released after six months. To the contrary, an alien
19 may be held in confinement until it has been determined that there is no
20 significant likelihood of removal in the reasonably foreseeable future.

21 *Zadvydas*, 533 U.S. at 701.

22 Thus, even when an alien is detained for longer than six months, the alien is not
23 automatically entitled to habeas relief. He still has the burden to show that there is “good
24 reason to believe that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.*; *see also* *Clark v. Suarez-Martinez*, 543 U.S. 371, 377–78
26 (2005). The Ninth Circuit has held that meeting this burden requires the alien to show
27 that he “is unremovable because the destination country will not accept him or his
28 removal is barred by our own laws.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th

1 Cir. 2008). Only if the alien can make this showing does the burden shift to Respondents
2 to provide rebuttal evidence. *Zadvydas*, 533 U.S. at 701.

3 Petitioner has been detained by ICE for 38 days, or since July 5, 2025. Petitioner's
4 detention has not extended beyond the 90-day removal period the government is allowed
5 under 8 U.S.C. § 1231(a)(1)(A). Petitioner's removal proceedings concluded with the
6 Immigration Judge issuing a Final Order of Removal but withholding of removal to
7 Guatemala. Robles Decl. ¶ 8. ICE is currently in the process of preparing Petitioner's
8 removal to a third country. *Id.* ¶ 15.

9 While Petitioner may prefer to be out of ICE custody, Petitioner cannot establish a
10 claim for habeas relief based on his detention pending his removal to a third county after
11 the issuance of a Final Order of Removal.

12 **IV. CONCLUSION**

13 Based on the foregoing, Respondent requests that the Court deny the habeas
14 petition and dismiss the action.

15 Dated: August 12, 2025

Respectfully submitted,

16 BILAL A. ESSAYLI

Acting United States Attorney

17 DAVID M. HARRIS

Assistant United States Attorney

18 Chief, Civil Division

DANIEL A. BECK

19 Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

20 /s/ Alexander L. Farrell

21 ALEXANDER L. FARRELL

Assistant United States Attorney

22 Attorneys for Respondent

23 **Local Rule 11-6.2 Certificate of Compliance**

24 The undersigned counsel of record certifies that this memorandum contains 1,820
25 words which complies with the word limit set by L.R. 11-6.1.

26 Dated: August 12, 2025

27 /s/ Alexander L. Farrell

28 ALEXANDER L. FARRELL

Assistant United States Attorney

DECLARATION OF LUZ E. ROBLES

I, Luz E. Robles, hereby declare:

1. I am employed as a Deportation Officer ("DO") with the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") I have been employed by DHS since March 1, 2020. I and am currently assigned to the Adelanto Field Office at the Adelanto, California.

2. The following information is based upon my personal knowledge and my review of information obtained from other individuals employed by DHS, information obtained from government databases maintained by both DHS and ICE, the Petitioner Jonathan Calderon's (hereinafter "Petitioner" or "CALDERON") alien file ("A-file") and other official government records related to the Petitioner. And unless otherwise stated, this declaration is based on my review. If called as a witness, I could and would testify competently thereto.

3. My responsibilities as DO include the review of detained alien cases. As part of my duties, I have reviewed the case of CALDERON.

4. CALDERON is a native and citizen and national of Guatemala. Petitioner's citizenship and national origin is confirmed by a copy of his Guatemalan birth certificate contained in the A-file.

5. On July 1, 2008, CALDERON was convicted in the Superior Court of California, County of Los Angeles for the offense of "lewd act upon a child" in violation of California Penal Code Sections 288A, a felony, and was sentenced to 1 year in jail and 5 months of probation.

6. On October 3, 2008, removal proceedings were commenced with the issuance of a Notice of Appear to CALDERON.

7. After removal proceedings commenced, CALDERON applied for asylum from his home country of Guatemala. CALDERON's asylum application was denied because he was ineligible for asylum because of his conviction of an aggravated felony.

1 8. On March 18, 2010, an immigration judge issued a final order of removal for
2 CALDERON but granted withholding of removal to Guatemala, based on the restriction
3 on removal to a country where alien's life or freedom would be threatened. *See*
4 Immigration and Nationality Act ("INA") § 241(b)(3); *see also* 8 U.S.C. § 1231(b)(3).

5 9. Since the issuance of the final order of removal, CALDERON has not
6 appealed the immigration judge's decision and has not filed a motion to reopen the
7 immigration proceedings.

8 10. On or about July 1, 2025, CALDERON was arrested by the Riverside County
9 Sheriff's Department. CALDERON was charged for the offenses of forging an official
10 seal, driving under the influence of alcohol, and driving on a suspended license.

11 11. On or about July 5, 2025, CALDERON was encountered at the Riverside
12 County Jail in Banning, California. ERO conducted Post Order Custody Review of
13 CALDERON and determined that his detention was warranted.

14 12. On or about July 5, 2025, an immigration judge issued a warrant of removal
15 and deportation for CALDERON. CALDERON was then transferred into the custody of
16 the ERO and was placed in the Adelanto ICE Processing Center.

17 13. On or about July 9, 2025, CALDERON was served as a Notice of Removal
18 to a Third Country. CALDERON was informed that ERO intended to remove him to the
19 country of Mexico. CALDERON signed the Notice of Removal to a Third Country.
20 Attached to this declaration as **Exhibit 1** is the signed Notice.

21 14. On July 9, 2025, CALDERON had an interview with the Guatemalan
22 Consulate to verify his identity and determine if travel documents were necessary to
23 obtain.

24 15. ERO did not request travel documents for CALDERON because the
25 immigration judge's final order granted removal but withholding of removal to
26 Guatemala. ERO still intends to remove CALDERON to a third country

27 16. CALDERON currently remains in ICE custody during the pendency of his
28 removal to a third country, pursuant to INA § 241(a)(1)(A); 8 U.S.C. § 1231(a)(1)(A).

1 17. CALDERON has been detained in ICE custody for approximately 38 days,
2 since July 5, 2025.

3 I declare under the penalty of perjury under the laws of the United States that the
4 foregoing is true and correct.

5 Executed on August 12, 2025, in Adelanto, California.

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9 Luz E. Robles
10 Deportation Officer
11 DHS/ICE/ERO
12 Adelanto, California
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Exhibit 1

**U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement**

Alien Name: **Calderon, Jonathan**

Alien Number (A #): [REDACTED]

Date:

NOTICE OF REMOVAL

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) intends to remove you to Mexico.

CERTIFICATE OF SERVICE

I certify that, on today's date, the contents of this notice were read to **Calderon, Jonathan** in the SPANISH language, and I served the alien a copy of this notice in person.

Jonathan Calderon
Signature of Alien

7/9/25
Date of Service

L. ROBES
Title and Signature of ICE Official

11:19
Time of Service

N | A
Name or Number of Interpreter (if applicable)

back

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JONATHAN OMAR CALDERON,

Petitioner,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Respondent.

No. 5:25-cv-01815-RGK-JPR

**[PROPOSED] ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS**

Honorable Jean P. Rosenbluth
United States Magistrate Judge

1 On August 12, 2025, Respondent Department of Homeland Security
2 (“Respondent”) filed a Motion to Dismiss the Petition for a Writ of Habeas Corpus.
3 Respondent’s Motion was made in accordance with the Court’s Order requiring a
4 response to the Petition for Writ of Habeas Corpus. Dkt. 5. The Court, having considered
5 the Motion, as well as the arguments of the parties and the papers submitted, and finding
6 good cause, it is hereby ordered that:

7 The Respondent’s Motion to Dismiss is GRANTED.

8 IT IS SO ORDERED.

9
10 Dated: _____

11 HONORABLE JEAN P. ROSENBLUTH
12 UNITED STATES MAGISTRATE JUDGE
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PROOF OF SERVICE BY MAIL

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California, and am readily familiar with the practice of this office for collection and processing collection and mailing. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On **August 12, 2025**, I served a **RESPONDENT'S NOTICE OF MOTION AND MOTION TO DISMISS** on persons or entities named below by enclosing a copy in a sealed envelope with postage fully prepaid and addressed as shown below and placing the envelope for collection and mailing with the United States Postal Service on the date and at the place shown below following our ordinary office practices.

Date of mailing: **August 12, 2025**. Place of mailing: Los Angeles, California.

Person(s) and/or Entity(s) To Whom Mailed:

Jonathan Omar Calderon

A No 
Adelanto Ice Processing Center West
10250 Rancho Road
Adelanto, CA 92301

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **August 12, 2025** at Los Angeles, California.



Alexander L. Farrell