IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERNESTO PABLO LORENZO,

Petitioner,

vs. No. 2:25-cv-923 KWR/GJF

PAMELA BONDI, in her official capacity as Attorney General of the United States, KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, MARY DE-ANDA-YBARRA, Field Office Director, and DORA CASTRO, Warden of Otero County Processing Center,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Background

1. Petitioner, Ernesto Pablo Lorenzo, a citizen of Guatemala, entered the United States at a port of entry, on November 9, 2014, as an arriving alien who was inadmissible at the time of his application for admission because he lacked valid entry documents. Exhibit 1. He was apprehended and detained on this same date and charged with being an inadmissible noncitizen under 212(a)(7)(A)(i)(II). 8 USC § 1182. Exhibit 2.

2. On November 12, 2014, the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) issued an order of expedited removal. Exhibit 3.

3. On November 13, 2014, Petitioner stated that he had a fear of being returned to Guatemala. Exhibit 4.

4. On November 24, 2014, U.S. Citizenship and Immigration Services (USCIS) made a positive fear determination and issued the alien a Notice to Appear, placing him into removal proceedings. *Id*.

5. On December 16, 2014, Petitioner was released on bond. Exhibit 5.

6. On December 20, 2017, an immigration judge issued a final order of removal, which granted withholding of removal to Guatemala but ordered that Petitioner be removed from the United States to any country other than Guatemala. Exhibit 3.

7. On April 24, 2018, Petitioner reported to an ERO field office, was placed on an order of supervision and his bond was cancelled. Exhibit 4.

8. On June 10, 2025, Petitioner was encountered during an ERO enforcement operation in Los Angeles, California, and was arrested and detained. Exhibit 4.

9. On June 11, 2025, Lorenzo was transferred to a detention facility in El Paso, and on the following day, he was issued a Notice of Third Country Removal to Mexico. *Id*.

10. On August 20, 2025, ERO submitted an email for acceptance of Petitioner under CVNH program to Mexico, and on that same day, Petitioner expressed fear of being removed to Mexico. *Id*.

11. On August 25, 2025, ERO referred Lorenzo to USCIS for a credible fear adjudication. *Id*.

12. On September 19, 2025, USCIS issued a negative credible fear determination regarding removal to Mexico. *Id*.

13. On September 24, 2025, ERO attempted to remove Lorenzo to Mexico, but he was not removed due to issues raised by his legal counsel regarding his legal representation at his September 19, 2025, USCIS credible fear interview. *Id*.

14. On October 14, 2025, USCIS conducted a second credible fear interview of Petitioner with his legal counsel present. At that time a second negative credible fear determination regarding removal to Mexico was made. *Id*.

15. ERO continues to pursue third country removal for Lorenzo.

LEGAL STANDARDS

Inadmissibility

16. Once an alien has been ordered removed through an expedited removal process, found at 8 U.S.C. §1225(b)(1), that individual is inadmissible for five years from the date of their removal. 8 U.S.C. § 1182 (a)(9)(A)(i-ii). Though considered inadmissible for five years after their removal the individual can request permission to reapply for entry to the United States prior to the end of the five-year period under a nonimmigrant visa (tourism, business study) or nonresident border crossing card. 8 C.F.R. § 212.2 (b).

Removal

17. "The Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). *See also* 8 C.F.R. § 208.31. Once it has been determined that such a threat does exist, a withholding of removal is ordered. An alien who is granted withholding of removal, may not be removed to the country

to which his or her removal is ordered withheld unless the withholding order is terminated. 8 C.F.R. § 208.22

18. "Withholding of removal is a 'country-specific' form of relief, i.e., it bars removal to the nation of persecution, but it does not prevent exclusion and deportation to a hospitable third country." Huang v. I.N.S., 436 F.3d 89, 95 (2d Cir. 2006). Indeed "[n]othing shall prevent the removal of an alien to a third country other than the country to which removal has been withheld or deferred." 8 C.F.R. § 1208.16(f). *See also* 8 U.S.C. § 1231(b)(2)(E) (If it is impracticable, inadvisable, or impossible to remove an alien to a country where they have ties whether through birth, residence, or passage on their way to the United States the Attorney General shall remove the alien to an[y] country whose government will accept the alien into that country.)

Apprehension

19. Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant--

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.

(2) …or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

- 8 U.S.C. § 1357(a)(1)(2)

20. With regards to the above cited statute, "'reason to believe" must be considered the equivalent of probable cause." Au Yi Lau v. U.S. Immigr. & Naturalization Serv., 445 F.2d 217, 222 (D.C. Cir. 1971).

21. The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. United States v. Arvizu, 534 U.S. 266, 273 (2002).

22. "[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot. *Id*.

23. The determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. Illinois v. Wardlow, 528 U.S. 119, 125 (2000) citing United States v. Cortez, 449 U.S. 411, 418 (1981).

24. "The process [of determining the existence of reasonable suspicion] does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers." *Id*.

25. The standard "depends on the factual and practical considerations of everyday life on which *reasonable and prudent men*, not legal technicians, act." Kansas v. Glover, 589 U.S. 376, 380 (2020).

26. Law enforcement officers are permitted to use more than the common sense derived from law enforcement experience and limiting them to that "defies the 'common sense' understanding of common sense, i.e., information that is

accessible to people generally, not just some specialized subset of society." – *Id*. at 383–84.

Detention

27. The detention of a noncitizen following reinstatement of a prior order of removal is governed by 8 U.S.C. § 1231(a). *See* Johnson v. Guzman Chavez, 594 U.S. 523, 526 (2021). That statute provides that with certain exceptions, once an individual is ordered removed, they shall be removed within a period of 90 days ("removal period"). 8 U.S.C. § 1231(a)(1)(A). Two such exceptions provide that an alien ordered removed as they are classified as inadmissible under §1182 as well as those that are considered by the Attorney General to be unlikely to comply with the order of removal may be detained beyond the removal period. 8 U.S.C. § 1231(a)(6).

Continued Detention

28. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. Zadvydas v. Davis, 533 U.S. 678, 701 (2001).

29. In Zadvydas v. Davis, the Supreme Court held that § 1231(a)(6) does not authorize the Attorney General to detain aliens indefinitely beyond the removal period, but "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. 678, 689 (2001).

30. In Nagorskiy v. Weber, the Court ruled that a Petitioner's detention continued to be authorized as nothing alleged in his Petition provides good reason to believe that the is no significant likelihood or removal in the reasonably foreseeable future as required by Zadvydas to make the government "respond with evidence sufficient to rebut that showing". Nagorskiy v. Weber, No. CIV. 10-2406 (PGS), 2010 WL 2024489, at *3 (D.N.J. May 18, 2010)

31. To state a claim of unauthorized detention under Zadvydas, a petitioner must provide "good reason to believe that there is no likelihood of removal in the reasonably foreseeable future." Zadvydas, 533 U.S. at 701. *See* Joseph v. United States, 127 Fed. App'x 79, 81 (3d Cir.2005) (affirming dismissal of § 2241 petition challenging detention pursuant to § 1231(a)(6): "Under Zadvydas, a petitioner must provide 'good reason' to believe there is no likelihood of removal, 533 U.S. at 701, and Alva has **failed** to make that showing here"); Soberanes v. Comfort, 388 F.3d 1305 (10th Cir.2004) (affirming dismissal of §2241 petition challenging detention pursuant to § 1231(a)(6) where petitioner **failed** to provide good reason to believe that there is no likelihood of removal); Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir.2002) ("in order to state a claim under Zadvydas the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future"); Pierre v. Weber, 2010 WL 1492604 (D.N.J. April 14, 2010) (summarily dismissing § 2241 petition as premature under Zadvydas and § 1231(a)(6) where petitioner

filed petition during presumptively reasonable six-month period after removal became final and **failed** to assert facts showing his removal is not reasonably foreseeable). Cases collected in Nagorskiy v. Weber, No. CIV. 10-2406 (PGS), 2010 WL 2024489, at Note 2 (D.N.J. May 18, 2010).

ADMINISTRATIVE PROCESS FOR RELIEF

28. In response to a request from a detained alien the Headquarters Post-order Detention Unit (HQPDU) shall conduct a review in order to determine whether there is no significant likelihood that the alien will be removed in the reasonably foreseeable future. If so, the HQPDU shall determine whether the alien should be released from custody under appropriate conditions of supervision or should be referred for a determination under § 241.14 as to whether the alien's continued detention may be justified by special circumstances. 8 C.F.R. § 241.13(c)

29. The HQPDU shall issue a written decision based on the administrative record, including any documentation provided by the alien, regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future under the circumstances. The HQPDU shall provide the decision to the alien, with a copy to counsel of record, by regular mail. 8 C.F.R. § 241.13(g). If there is a finding of no significant likelihood of removal in the reasonably foreseeable future, absent special circumstances prompt arrangements shall be made for the release of the alien. If it is determined that there is a significant likelihood of removal in the

reasonably foreseeable future, then detention will continue and there is no administrative appeal available of that denial. 8 C.F.R. § 241.13(g)(1-2).

Habeas Relief

30. Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

31. Administrative exhaustion can be either statutorily required or judicially imposed as a matter of prudence. Tyson v. Jeffers, 115 F. App'x 34, 39 (10th Cir. 2004). Citing Noriega–Lopez v. Ashcroft, 335 F.3d 874, 881 (9th Cir.2003) ("Aside from statutory exhaustion requirements, courts may prudentially require habeas petitioners to exhaust administrative remedies."). Prudential limits, like jurisdictional limits and limits on venue, are ordinarily not optional. Tyson v. Jeffers, 115 F. App'x 34, 38 (10th Cir. 2004) citing Castro-Cortez v. INS. 239 F.3d 1037, 1046-47 (9th Cir.2001). Federal courts should exercise habeas jurisdiction only when all other judicial and administrative avenues have been exhausted. *Id.* The suspension of the "prudential requirement that habeas corpus is available only after other avenues of review have been exhausted, would eviscerate Congress's efforts to streamline the removal process. Purely legal due process challenges would be exempt from any statutory time limits, since they could be advanced in a habeas petition filed at any time prior to actual removal or release from custody." Tyson, 115 F. App'x 39.

32. The exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although we recognize that the statute itself does not expressly contain such a requirement. Garza v. Davis, 596 F.3d 1198, 1203 (10th Cir. 2010). citing *Williams v. O'Brien,* 792 F.2d 986, 987 (10th Cir.1986) ("judicial intervention is usually deferred until administrative remedies have been exhausted"). A narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile. *Id*. As agencies are in a superior position to investigate the facts, judicial intervention is usually deferred until administrative remedies have been exhausted. Williams v. O'Brien, 792 F.2d 986, 987 (10th Cir. 1986). citing Smoake v. Willingham, 359 F.2d 386 (10th Cir.1966); United States v. Steel, 400 F.Supp. 39 (E.D.Okla.1975).

33. The 10th Circuit is not alone in maintaining this position. "Prudential exhaustion may be required if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007), see also Moscato v. Fed. Bureau of Prisons, 98 F.3d 757, 761 (3d Cir. 1996) in which the 3rd Circuit stated that its requirement for exhaustion was grounded in the same three reasons.

ARGUMENT

34. Petitioner's request for a writ of habeas corpus should not be granted at this time as Petitioner has not exhausted his administrative remedies. Setting that failure aside, Petitioner also has not met his burden of showing that there is no likelihood of removal to a third country in the reasonably foreseeable future nor has he shown that his initial and continued detention is in violation of his Constitutional rights.

Petitioner has failed to exhaust his administrative remedies

35. Petitioner has not made an effort to pursue the administrative remedies that are available to him, has not shown that doing so would be futile and prudential exhaustion should be required.

Agency expertise and Record Generation

36. An eligible alien may submit a written request for release to the HQPDU asserting the basis for the alien's belief that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future. The alien may submit whatever documentation to the HQPDU he or she wishes in support of the assertion that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Within ten business days of receiving that request HQPDU would be required to respond to Petitioner and explain the procedures that will be used to evaluate his request. 8 C.F.R. § 241.13(e). HQPDU could then forward Petitioner's request to the Department of State for information and assistance. The Department of State may provide an assessment of the accuracy of Petitioner's assertion that he

cannot be removed to a third country. Any information provided by the Department of State that is relied upon by HQPDU is made part of the record. The HQPDU shall issue a written decision based on the administrative record, including any documentation provided by the Petitioner that regarding the likelihood of removal in the foreseeable future. If the final report contains a finding that there is no significant likelihood of removal in the foreseeable future, absent special circumstances justifying continued detention, the Petitioner would be released. If HQPDU determined that there is a significant likelihood of removal in the foreseeable future, the Petitioner would remain in detention. Additionally, there is no administrative appeal from that decision. In effect, Petitioner would have exhausted the administrative process at that time. 8 C.F.R. § 241.13(e-g).

Deliberate bypass of the administrative scheme

37. Granting the petition at this time without first requiring the Petitioner to either exhaust his administrative remedies or show their futility would encourage the deliberate bypass of the administrative scheme. The risk of encouraging such a bypass of the administrative scheme is that it not only has an impact on the post detention process, but also on the preadmission administrative process.

Petitioner has not met his burden under Zadvydas

38. Petitioner may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. To state a claim of unauthorized detention under Zadvydas, a petitioner must

provide "good reason to believe that there is no likelihood of removal in the reasonably foreseeable future." Zadvydas at 701. Petitioner in this matter was previously on the cusp of being removed to Mexico before he was granted another hearing for evaluation of his claims of a credible fear. Now that the process has been completed a second time there is nothing that suggests that there is no significant likelihood or removal in the reasonably foreseeable future. Such facts could potentially be developed through the administrative process outlined above but at this time the Petition should not be granted.

Petitioner's detention in this matter did not violate his rights

39. On the morning of June 9, 2025, Petitioner was standing in the parking lot of Home Depot waiting for potential employment opportunities as a laborer along a group of other Latino men. Doc 1 at paragraph 21.

40. The arresting agency has thusfar been unable to produce records regarding the arrest of Petitioner, but those records should be forthcoming as 8 C.F.R. § 287.8 requires that adequate records must be maintained noting the results of every site inspection.

41. Despite the absence of records surrounding the arrest, day laborers gathered in the parking lot of Home Depot can provide a reasonable suspicion that individuals are present that are in the country illegally.[1]

[1] "Whether an officer has reasonable suspicion depends on the totality of the circumstances. Here, those circumstances include: that there is an extremely high number and percentage of illegal immigrants in the Los Angeles area; that those individuals tend to gather in certain locations to seek daily work; that those individuals often work in certain kinds of jobs, such as day labor, landscaping, agriculture, and construction, that do not require paperwork and are therefore especially attractive to illegal immigrants; and that many of those illegally in the Los Angeles area come from Mexico or Central America and do not speak much English. To be clear, apparent ethnicity alone cannot furnish

CONCLUSION

The Petitioner has failed to exhaust his administrative remedies, has not met his burden under Zadvydas of providing a good reason to believe that there is no likelihood of his removal in the immediate future, nor does his detention violate his constitutional rights. For the reasons the Court should deny the relief requested in his Petition and he should remain detained.

Respectfully submitted,
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/s/ Robert James Booth II11/13/25

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 14, 2025, I filed the foregoing pleading electronically through the CM/ECF system and emailed a copy to counsel of record.

/s/ Robert James Booth II
Robert James Booth II
Assistant United States Attorney

reasonable suspicion; under this Court's case law regarding immigration stops, however, it can be 'relevant factor' when considered along with other salient factors." Concurring opinion Noem v. Vasquez Perdomo, 2025 WL 2585637, at *3 (U.S. Sept. 8, 2025).