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13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF ARIZONA**

15 Jalal Al Chair,
16 Petitioner,
17 v.
18 John Cantu, et al.,
19 Respondents.

No. 25-cv-03704-KML (JFM)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

20 Petitioner is a Syrian national and has a sister, mother, and father still living in Syria.
21 The core premise of his habeas petition that Syria is not accepting deportees is factually
22 incorrect, as confirmed by the Department of Homeland Security here. Petitioner has, in fact,
23 refused to cooperate with the government regarding his travel documents and refused to board
24 transport flights to Syria. Under *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003), a noncitizen's
25 refusal to cooperate with securing travel documents negates any argument that the United
26 States is violating due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001). His detention is
27 valid because he himself holds "the keys to his freedom in his pocket . . ." *Pelich v. INS*, 329
28 F.3d 1057, 1060 (9th Cir. 2003) (brackets removed). Further, Petitioner is still within the
presumptively valid detention period of *Zadvydas*, so he has no viable due process claim. The
Court should deny this habeas petition.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Petitioner, who is currently 46 years old, was born in Syria but left that country in 2007
3 at the age of 28. Petition, Doc. 1, ¶ 15; Doc. 1-1 at 8. He then lived in Venezuela from 2007
4 to 2024. Doc. 1, ¶ 15. His documents reflect that he has a Venezuelan wife named Johaina
5 Kadamani Hanfouche, whom he married in 2021, and two small children also currently in
6 Venezuela. Doc. 1-1 at 9-10. Of his other close family members, he identifies one sibling in
7 the United States, one sibling in Venezuela, and two parents and a third sibling in Syria. Doc.
8 1-1 at 11.¹

9 In 2024, Petitioner left Venezuela because he alleges that a cartel extorted his restaurant
10 business in that country. Doc. 1, ¶ 23. Presenting at the United States border, he sought asylum,
11 participated in a credible fear interview with immigration officials, and was detained in June
12 2024. Doc. 1, ¶ 24; Exhibit 1, Declaration of Jason McElhaney, ¶ 4. On January 29, 2025, an
13 Immigration Judge (IJ) denied asylum, withholding of removal, and protection under the
14 Convention Against Torture. Doc. 1-1 at 33; Exhibit 1, ¶ 8. The IJ ordered Petitioner's removal
15 to Syria and in the alternative that he be removed to Venezuela. Exhibit 1, ¶ 8; Doc. 1-1 at 35.
16 Petitioner had the opportunity to appeal this order to the Board of Immigration Appeals (BIA),
17 but waived that right. Doc. 1-1 at 36. Petitioner alleges, and the government will not here
18 dispute, that his residency status in Venezuela is currently expired and Venezuela will not
19 accept him as a result.

20 On May 20, 2025, the Immigration Customs and Enforcement (ICE) provided
21 Petitioner with a temporary visa and a purchased flight to Syria. Exhibit 1, ¶ 9. Petitioner
22 refused to board the plane. Exhibit 1, ¶ 9. ICE issued him a formal Warning for Failure to
23 Depart, Form I-229a, on May 22, 2025, which Petitioner additionally refused to sign. Exhibit
24 1, ¶ 10; Exhibit 2, May 22, 2025. Notice. On or around June 23, 2025, ICE issued another I-

25
26 _____
27 ¹ Petitioner's own data on page 11 of his exhibits contradicts his counsel's assertion
28 of where his parents live. His exhibit states that his two parents live in Syria. Doc. 1-1 at
11. Counsel asserts that they live in California. Doc. 1 at 32. Since counsel references the
same exhibit, it appears to the government that Petitioner's counsel has read the exhibit
inaccurately.

1 229a form to Petitioner, which he again refused to sign. Exhibit 1, ¶ 10; Doc. 1-1 at 40-41.
2 ICE then issued a Notice of Failure to Comply to Petitioner on July 11, 2025, stating:

3 On June 20, 2025, you were advised ... of specific
4 requirements to complete and were given 30 days to comply
5 with your obligation to assist in in your removal. Pursuant to
6 Section 241(a)(1)(C) of the [INA], you are required to make
7 timely applications in good faith for travel or other documents
8 necessary for your removal from the United States. Further,
9 you may not conspire or act to prevent your removal subject to
10 an order of removal. If you fail to make these efforts, Section
11 241(a)(1)(C) allows for the extension of the removal period.

12 As you are still within the removal period, you are to remain in
13 ICE custody until you demonstrate that you are making a
14 reasonable effort to comply with the order of removal and that
15 you are cooperating with ICE's efforts to remove you. You are
16 also advised that continued willful failure or refusal on your
17 part to make timely application in good faith for travel or other
18 documents necessary for your departure, or any conspiracy or
19 actions to prevent your removal or obstruct the issuance of a
20 travel document, may subject you to criminal prosecution
21 under 8 U.S.C. Section 1253(a).

22 Exhibit 3. Petitioner refused to sign this notice as well. Exhibit 3; Exhibit 1, ¶ 10. ICE issued
23 another I-229a to Petitioner on August 20, 2025, part of which he signed and part of which he
24 refused to sign. Exhibit 4; Exhibit 1, ¶ 10. Most recently, ICE issued an I-229a to him on
25 September 19, 2025, which Petitioner again refused to sign. Exhibit 5.

26 ICE has confirmed with ICE Headquarters Removal and International Operations—
27 HQ RIO²—that Syria is currently accepting removals from the United States. Exhibit 1, ¶ 11.
28 Deportation Officer McElhaney obtained this confirmation by telephone on today's date,
October 15, 2025. Exhibit 1, ¶ 11.

² See *Tkachev v. ICE Field Office Director*, No. C20-532-RSL-MLP, 2020 WL 6947356 (W.D. Wash. Oct. 9, 2020) (referring to HQ RIO).

1 LAW AND ARGUMENT

2 Petitioner appears to primarily assert a *Zadvydas* claim, arguing that ICE is detaining
3 him indefinitely with no reasonable prospect of any country accepting him. This brief will
4 demonstrate that, in addition to Petitioner's detention period not even meeting the six-month
5 presumptively reasonable *Zadvydas* threshold in the first place, his argument at large fails,
6 since Syria *is* currently accepting removed noncitizens from the United States. He is thus not
7 in a scenario of indefinite detention. Since it is Petitioner's own refusal to board a flight to
8 Syria that has resulted in his current detention, this case is subject to the Ninth Circuit's holding
9 in *Lema*, 341 F.3d at 856, which means that there is no factual or legal basis for a writ of
10 habeas corpus to issue.

11 **I. Statutory Framework Governing Detention of Noncitizens Pending Removal.**

12 The detention, release, and removal of noncitizens subject to a final order of removal
13 is governed by § 241 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231.
14 Pursuant to INA § 241(a), the Attorney General has 90 days to remove a noncitizen from the
15 United States after an order of removal becomes final. During this "removal period," detention
16 of the noncitizen is mandatory. *Id.* After the 90-day period, if the noncitizen has not been
17 removed and remains in the United States, his detention may be continued, or he may be
18 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3)
19 and (6). Under this section, ICE may detain a noncitizen for a "reasonable time" necessary to
20 effectuate the noncitizen's deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite
21 detention is not authorized. *Id.*

22 In *Zadvydas*, 533 U.S. at 701, the Supreme Court defined six months as a
23 presumptively reasonable period of detention. *Zadvydas* places the burden on the noncitizen
24 to show, *after* a detention period of six months, that there is "good reason to believe that there
25 is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the
26 noncitizen makes that showing, the government must then produce evidence to refute that
27 assertion. *See id.*; *see also Xi v. INS*, 298 F.3d 832, 839-40 (9th Cir. 2002).

28 Petitioner has the burden to show that his removal is not likely in the reasonably

1 foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then would the burden shift to the
2 government to show that removal is substantially likely in the reasonably foreseeable future.
3 *Id.* In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable
4 period of time to allow the government to remove a noncitizen detained under 8 U.S.C. §
5 1231(a)(6), but importantly, a noncitizen is not entitled to release after six months detention.
6 *Id.* at 701 (“This 6-month presumption, of course, *does not mean that every alien not removed*
7 *must be released after six months.* To the contrary, a noncitizen may still be held in
8 confinement until it has been determined that there is no significant likelihood of removal in
9 the reasonably foreseeable future.”) (emphasis added).

10 **A. The government has not detained Petitioner for over six months.**

11 While the government explains below why Petitioner’s refusal to board a flight to
12 Syria is fatal to his *Zadvydas* claim, it is important to note that Petitioner has not even qualified
13 under the time parameters of *Zadvydas* as a threshold matter in the first place. The date of his
14 final order of removal was January 29, 2025. The statutory 90-day removal period thus ended
15 on April 29, 2025. The six-month presumptive limit on his detention would thereby expire on
16 October 29, 2025. The date of this filing is October 15, 2025. As a matter of law, Petitioner’s
17 habeas action is premature and meritless on its face.

18 Even if this Court were to hypothesize that in two weeks the six-month limit will
19 expire and Petitioner’s argument would then ripen, date calculations in a vacuum are not the
20 standard by which to assess whether a *Zadvydas* violation is at issue. *Zadvydas* itself did not
21 instruct federal courts to merely ask whether six months had expired, at which point a writ of
22 habeas must issue. Rather, if six months have lapsed, “the habeas court must ask whether the
23 detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*,
24 533 U.S. at 699. The Ninth Circuit clarified this point in *Prieto-Romero v. Clark*, 534 F.3d
25 1053 (9th Cir. 2008), where the government had detained a noncitizen for three years.
26 Although the noncitizen’s detention had endured for three years, the period of time was the
27 result of the noncitizen’s own “pursuit of judicial review” of his removal order. *Id.* at 1063.
28 As such, the petitioner there was “not stuck in a ‘removable-but-unremovable limbo’” as

1 contemplated by *Zadvydas. Prieto-Romero*, 534 F.3d at 1063. “It is true that Prieto-Romero’s
2 detention lacks a certain end date, but this uncertainty alone does not render his detention
3 *indefinite* in the sense the Supreme Court found constitutionally problematic in *Zadvydas*.” *Id.*
4 at 1063 (emphasis in original). The holding of *Prieto-Romero*, in short, requires Petitioner here
5 to show not only that he is beyond the time parameters of *Zadvydas* but also that his detention
6 is indeed foreseeably indefinite. *Prieto-Romero*, 534 F.3d at 1064-65.

7 Applying this analysis to Petitioner’s circumstances, he has not been in detention for
8 longer than six months, and nor can he show that he actually faces the prospect of indefinite
9 detention.

10 **B. Petitioner’s refusal to board flights is dispositive of his habeas claim.**

11 Regardless of the analysis above in subsection (A) of this brief, Petitioner’s refusals
12 to cooperate with ICE in arranging for his travel to Syria eliminates his entitlement to habeas
13 relief. In *Lema v. INS*, a noncitizen in removal proceedings applied to the Ethiopian Embassy
14 for travel documents, but refused to cooperate with Ethiopian officials by telling them that “he
15 is Eritrean, not Ethiopian.” 341 F.3d at 855. This resulted in Ethiopia refusing to issue him
16 travel documents. Petitioner Lema further refused to reapply for travel documents and
17 generally refused to provide appropriate evidence of his Ethiopian nationality to the Ethiopian
18 government. *Id.* When the government continued to detain him, Petitioner Lema sued for
19 habeas relief under *Zadvydas*, claiming he was facing indefinite detention. *Id.*

20 The Ninth Circuit rejected his argument, holding that “when an alien refuses to
21 cooperate fully and honestly with officials to secure travel documents from a foreign
22 government, the alien cannot meet his or her burden to show that there is no significant
23 likelihood of removal in the reasonably foreseeable future.” *Id.* at 856. The court held that the
24 noncitizen must make “a full and honest effort to secure travel documents,” and that if he “is
25 refusing to cooperate fully with officials to secure travel documents,” the “due process
26 concerns” of *Zadvydas* “do not apply . . .” *Id.*, see also *Pelich*, 329 F.3d at 1060.

27 Federal courts in this circuit have followed *Lema* and *Pelich* as required, and even
28 courts in other circuits have relied on them as persuasive authority. See *Agbanyo v. Cabral*,

1 518 F. Supp. 2d 326, 327 (D. Mass. 2007) (citing *Lema* and *Pelich* in rejecting *Zadvydas* relief,
2 where noncitizen was refused travel documents to Liberia because he told Liberia he was a
3 United States citizen). In *Glushchenko v. United States Dep't of Homeland Sec.*, a federal court
4 rejected a Russian citizen's habeas petition where the Russian citizen had refused to sign
5 papers needed to establish his Russian travel documents, and later walked out of a
6 speakerphone conference with Russian consular officials. 566 F. Supp. 693, 699 (W.D. Tex.
7 2021). They are, in any event, binding law here. See *Vardanyan v. Gonzales*, No. 1:07-cv-
8 01246-OWW, 2008 WL 4792968, at *2 (E.D. Cal. Oct. 31, 2008), *report and recommendation*
9 *adopted*, 2009 WL 330843 (E.D. Cal. Feb. 10, 2009) (rejecting relief where petitioner provided
10 false information about his identity to Armenian government); *Marks v. Clark*, No. C07-1897-
11 MJP, 2008 WL 4298793, at *2 (W.D. Wash. Sept. 18, 2008) (rejecting relief where petitioner
12 refused to assert citizenship of Trinidad as required by Trinidadian law); *Nadeem v. Crawford*,
13 No. CV-07-0145-PHX-FJM, 2008 WL 11343097, at *2 (D. Ariz. Mar. 27, 2008) (rejecting
14 relief where petitioner refused to state to South African officials that he wished to be released
15 to South Africa, and provided a fraudulent passport); *Lopatin v. Chertoff*, No. 1:08-cv-00199-
16 OWW, 2009 WL 1357445, at *1 (E.D. Cal. May 11, 2009) (rejecting relief where petitioner
17 refused to properly request travel documents from Russia).

18 In two cases found by the government, federal courts rejected habeas relief
19 specifically where the petitioner had refused to cooperate with air travel. *Bowen v. Garland*,
20 No. 1:22-cv-00402-SKO, 2022 WL 2672477, at *1 (E.D. Cal. July 11, 2022), *report and*
21 *recommendation adopted*, 2022 WL 17405867 (E.D. Cal. Dec. 2, 2022) (rejecting relief where
22 petitioner became aggressive while being transported to a flight to Belize resulting in his
23 removal from the flight); *Iwuoha v. Viator*, No. CIV. 6:14-0402, 2014 WL 4678860, at *1
24 (W.D. La. Sept. 19, 2014) (rejecting relief where petitioner became violent while boarding the
25 airplane resulting in his inability to travel).

26 The weight and clear consensus of all these decisions, and indeed the mandate of two
27 binding decisions by the Ninth Circuit in *Lema* and *Pelich*, require that this Court reject the
28 petition for habeas relief here. In addition to his detention time frame not being presumptively

1 unconstitutional or illegal in the first place, as a matter of law he cannot sustain a *Zadvydas*
2 claim because he has not cooperated with his legal obligations to board a transport aircraft to
3 Syria.

4 **CONCLUSION**

5 The government respectfully requests that this Court discharge the Order to Show
6 Cause in the government's favor, and dismiss this action with prejudice.

7 Respectfully submitted on October 15, 2025.

8
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