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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Warley Batista Silva,

Petitioner,

vs.

Gregory John Archambeault, ET AL,

Respondents.

Case No.: 3:25-cv-03158-AGS-
BLM

**PLAINTIFF’S RESPONSE TO
COURT’S ORDER TO SHOW
CAUSE**

Petitioner, acting through undersigned counsel, responds as follows to the Court’s Order to Show Cause issued on December 18, 2025. The Court requests that Petitioner explain why this case should not be dismissed in light of Respondents’ assertion that a final order of removal was issued earlier this month, thereby subjecting Petitioner to mandatory detention under 8 U.S.C. § 1231(a), and Petitioner’s failure to file a reply contesting those assertions.

In the initial Petition, Petitioner sought habeas relief on the ground that he was improperly classified as subject to mandatory detention under 8 U.S.C. §

1 1225(b)(2). Respondents now contend that subsequent events, namely, the issuance
2 of a final order of removal have altered the statutory basis for detention. While
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4 Petitioner acknowledges Respondents' position, dismissal of this action is not
5 warranted, as the Court retains jurisdiction to review the lawfulness of Petitioner's
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7 continued detention and the proper application of the governing detention statutes.

8 Under 28 U.S.C. § 2241, federal courts maintain habeas jurisdiction to
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10 review the legality of immigration detention. The issuance of a final order of
11 removal does not automatically divest the Court of authority, nor does it render a
12 habeas petition moot. Rather, courts routinely recognize that where a petitioner
13 remains in custody and seeks release from allegedly unlawful detention, a live case
14 or controversy persists.
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16 Respondents rely on 8 U.S.C. § 1231(a)(2), which provides for
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18 detention during the 90-day removal period. However, although detention during
19 that period is described as mandatory, such statutory language does not foreclose
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21 judicial review. Federal courts retain authority to assess whether detention is lawful
22 in fact and application, whether the government is properly applying § 1231 as
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24 opposed to another detention provision, and whether continued detention comports
25 with constitutional due process requirements.

26 Additionally, the removal period under § 1231(a) begins only when a
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28 removal order is final and executable. To the extent there is any uncertainty

1 regarding the finality of the order, the commencement of the removal period, or the
2 government's ability to effectuate removal within the statutory timeframe, judicial
3 oversight remains appropriate. The Court therefore retains authority to inquire
4 whether Petitioner's detention is reasonably related to the statutory purpose of
5 effectuating removal and whether Respondents are acting with reasonable diligence.
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8 With respect to Petitioner's failure to file a reply by the prior deadline,
9 Petitioner respectfully submits that this omission does not constitute a concession
10 of Respondents' legal arguments nor mandate dismissal. Courts have consistently
11 held that failure to file a reply brief does not waive jurisdictional or constitutional
12 claims, particularly where a petitioner's liberty interests are implicated. There is no
13 evidence of bad faith, willful neglect, or deliberate failure to prosecute on
14 Petitioner's part.
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18 Although district courts possess inherent authority to dismiss actions
19 *sua sponte* in appropriate circumstances, dismissal is a drastic remedy that should
20 be reserved for extreme situations. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th
21 Cir. 1992). The Ninth Circuit has repeatedly emphasized that dismissal is
22 inappropriate absent a showing of willfulness, bad faith, or fault, and that courts
23 should consider less drastic alternatives before terminating an action. *Henderson v.*
24 *Duncan*, 779 F.2d 1421, 1423–24 (9th Cir. 1986); *Nealey v. Transp. Maritima*
25 *Mexicana, S.A.*, 662 F.2d 1275, 1280 (9th Cir. 1980).
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1 Here, there is no bad faith or deliberate misconduct. Petitioner
2 continues to be detained and seeks judicial review of that detention. The issues
3 presented remain justiciable, and the Court retains authority to assess whether
4 Petitioner's continued custody is lawful notwithstanding Respondents' reliance on
5 § 1231(a).
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8 Accordingly, Petitioner respectfully submits that dismissal is neither
9 required nor appropriate at this stage. Petitioner requests that the Court discharge
10 the Order to Show Cause and allow this matter to proceed, or, in the alternative,
11 permit further briefing as the Court deems appropriate to address the jurisdictional
12 and detention issues raised.
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18 /s/ Marcelo Gondim

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1 **CERTIFICATE OF SERVICE**

2 I, hereby certify that on December 19, 2025, the foregoing Motion for
3
4 Telephonic Appearance was electronically filed with the Clerk of this U.S. District
5 Court through the CM/ECF NextGen electronic filing system via PACER, which
6
7 will send notification of such filing to registered participants.

8 DATED: December 19, 2025.

9 Respectfully submitted,
10

11 /s/ Marcelo Gondim

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