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UNITED STATES DISTRICT COURT
DISTRICT OF WESTERN WASHINGTON
SEATTLE DIVISION

Marco Antonio Barraza Enriquez,
Petitioner

v.

Kristi Noem, et al.,
Respondents

Case No. 2:25-cv-02352-LK

PETITIONER'S TRAVERSE

Noted for Consideration
January 26, 2026

Petitioner hereby submits this reply to Federal Respondent's Return Memorandum.

Introduction

The Respondent's Return relies on its mistaken claim that Petitioner has not met his burden of proof that there is a good reason to find that there is no significant likelihood of the removal of Petitioner in the reasonably foreseeable future. Petitioner accepts the statement of the Government that Petitioner is not being screened for third country removal and abandons that issue at this time. Petitioner, again, requests that he not be transferred from this jurisdiction during the pendency of this Petition.

Supplemental Statement of Facts: Re-Detention (I)

The final administrative removal order was dated October 1, 2024. The Respondent's Return, Respondent's Exhibit 4 include the Order of Supervision for Petitioner. The order of supervision is signed on October 1, 2024 by "C. Rodriguez". "C. Rodriguez" is a deportation officer. On a document titled Order of Supervision Processing Check list, Respondent's Exhibit 4, is a concurrence of the order of supervision by "A. Turla", Supervisory Detention and Deportation Officer. There is no memorandum or notice or any kind in the Government's Exhibits demonstrating who revoked Respondent's release. There is no record of any reasons for the revocation of his release or any proof of any post-revocation informal meeting with the Petitioner.

Summary of Argument: The Flawed Re-Detention Requires the Release of Petitioner (I)

See discussion at pages 8-9 of Amended Habeas Petition, which in summary states that only specific authorized individuals including the executive Associate Commissioner, District Director, or other officers delegated this authority including potentially the Asylum Office Director, Director of Field Operations, District Director for Interior Enforcement, District Director for Services, Field Office Director, Service Center Director or Special Agent in Charge. Release of the Petitioner is also required because of the failure to provide him with notice of revocation of release or with an informal interview upon the revocation of his release.

I. Re-Detention: Law and Argument

M.S.L. v. Bostock, et al, Civ. No. 6:25-cv-01204-AA, decided August 21, 2025 (U.S.D.C. Or. 2025), discussed at 7-8 of Amended habeas, held that a revocation of M.S.L.'s release by a Deputy Field Office Director who signed the revocation order was flawed. The remedy in M.S.L. was to release M.S.L.

Here, no official signed a notice of revocation of Petitioner's order of supervision, or provided notice of revocation signed by an official to revoke Petitioner's release or provided Petitioner with a prompt informal interview so that he could contest the reasons for his revocation. The failure to provide an informal interview upon re-detention violated procedural due process. The Courts have held

that release from detention is appropriate in this circumstance. See page 10 of Amended Habeas Petition for points and authorities thereon.

Aguilera v. Albarran, Case no. 1:25-cv-01619-JLT, filed December 4, 2025 (E.D. Cal. 2025) recognized that when a noncitizen is released on recognizance by immigration officials, they:

> "[N]ecessarily determined that Petitioner did not present a risk of flight or danger to the community. *See* 8 C.F.R. § 1236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.")." Page 2 of the order in Aguilera

Aguilera continues at page 20 of the order, quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), stating in pertinent part:

> "[R]elease from ICE custody constituted an "implied promise" that his liberty would not be revoked unless she "failed to live up to the conditions of his release." *Morrissey*, 408 U.S. at 482."

The remedy here is the release of this Petitioner.

The Government fails to address at all the re-detention argument made at pages 6-11 of the Amended Petition. The Court is asked to order immediate release from custody on the re-detention issue.

Supplemental Statement of Facts: Zadvydas (II)

The government appears to rely on Correa's declaration paragraph 11 for the proposition that:

> "The Petitioner has not been served with a notice of removal to a third country. However, if Petitioner's withholding of removal under the CAT is denied on appeal, ICE anticipates that there will be no obstacles to effectuating his removal to Mexico once it is permitted to do so."

However, if Petitioner's grant of Withholding of Removal under the CAT was reversed by the BIA upon the DHS/ICE appeal thereof, there would still be significant obstacles to effectuating his removal to Mexico. It would take years for the Petitioner's appeal from any decision that his CAT grant was reversed on appeal. Petitioner would immediately file a Petition for Review and for a temporary Stay request which is automatically granted to Petitioners with the Ninth Circuit Court of Appeals. Mr. Barraza Enriquez, at Petitioner's Exhibit 5 page 1 states:

> "I have no criminal record, I have never been arrested for any matter except by the immigration authorities. I would stay in custody in Tacoma, Washington, if required, while appeals are pending."

At Petitioner's Exhibit 5, page 4, Petitioner's Declaration in support states in pertinent part:

> "My counsel has filed a reply to an appeal where the government is seeking to overturn the grant of Withholding of Removal under the Convention Against Torture issued on August 12, 2025. Counsel has also filed an appeal asking the BIA to reverse the finding of the IJ that my proffered particular social group of "miners" is not cognizable in the mining areas of Durango and Sinaloa in Mexico. If this appeal is granted, I would likely be granted Withholding of Removal under the Immigration and Nationality Act on any re-hearing, if needed. If this appeal is denied by the BIA, I would appeal that

> decision to the Ninth Circuit. I understand appeals to the Ninth Circuit can take 12-24 months, if not longer, between the time they're filed and the time of a decision. I would stay in custody while this appeal was pending. If the government's appeal was granted, I would appeal from that denial, even if it meant I needed to continue to stay in custody while the appeal(s) are pending."

Of course, appeals to the Ninth Circuit from denials of CAT relief are common fare in the Ninth Circuit. The deportation of Petitioner is not reasonably foreseeable. It is not reasonably foreseeable that the BIA will reverse Petitioner's grant of Withholding of Removal under the CAT under the circumstances of the Government's appeal. Moreover, if the BIA were to reverse the grant of CAT, it's extremely likely that the BIA's reversal would be reversed by the Ninth Circuit. Thus, there is absolutely no likelihood of removal of Petitioner in the reasonably foreseeable future.

Summary of Argument: Zadvydas (II)

Under 8 C.F.R. § 1003.1(d)(3)(i), the BIA is required to use the clear error standard when reviewing the IJ's credibility findings and fact finding. In our case, Mr. Barraza Enriquez was found credible by the IJ. The IJ's predictive finding was that Mr. Barraza Enriquez is clearly subject to more likely than not being tortured by the Mexican government or by third parties the government is unable/unwilling to control if he is deported to Mexico. This fact finding was supported by substantial evidence. There's no likelihood of Petitioner's removal in the reasonably foreseeable future for these specific reasons.

II. Zadvydas: Law and Argument: There is no Likelihood of Removal in the Reasonably Foreseeable Future

There's no reason to believe there's a significant likelihood of removal within the reasonable foreseeable future because:

1. Petitioner would appeal to the Ninth Circuit if the Board of Immigration Appeals reversed the Immigration Judge's grant of Withholding of Removal under the Convention Against Torture. The Ninth Circuit Court of Appeals provide for an automatic temporary stay of removal upon the filing of a Petition for Review with a Motion for Stay (Ninth Circuit General Orders 6.4(c)(1)). In many instances, the stay of removal is unopposed by the government and the Stay remains in place during the entirety of the appellate proceedings.
2. Moreover, in this case, if the government opposed the stay before the Ninth, it is still extremely likely the Stay would remain in place. Under Nken v Holder, 556 U.S. 418 (2009), the factors to look at in considering a Stay are:
    a. Likelihood of success
    b. Irreparable injury
    c. Substantial Injury, and
    d. Public Interest
3. Petitioner is likely to win any stay litigation on the merits. He would suffer irreparable harm including more likely than not being severely injured if he

was deported as well as harmed due to separation from his family. The public interest factor of a just result merges with a claim of substantial injury to the Government as the Government necessarily seeks just results in litigation. The equities on any contested Stay of removal would clearly tip sharply in favor of this Petitioner.

Petitioner's Reply Brief filed with the BIA, Exhibit 7, page 21, provides as follows:

> "Respondent had no choice but to flee as, clearly, the [redacted] would kill him and his family for lying to them about when Respondent agreed to become a member of the cartel following his torture on January 24, 2023.
> The IJ is attentive to these facts. DHS intentionally ignores them.
> Respondent came to the United States on September 30, 2024. He fled from Contrastaeca only shortly before he fled to the United States, thereby saving his life, along with the life of his wife and three children."

4. The reason it's extremely unlikely the BIA would reverse the IJ's finding is that the BIA does not review the IJ factual findings de novo. Factual finding by the IJ includes:

   a. Petitioner's brief to the BIA states that the IJ makes the following factual findings:

      "7. The area the respondent resided and worked was historically controlled by the [redacted] which split into competing cartels referred to as [redacted] and [redacted]" Exhibit 7 page 3

   b. Petitioner's brief to the BIA continues at Petitioner's Exhibit 7, pages 3-4:

"The IJ in deciding Respondent's application for CAT relief should be granted stated:

> "The respondent has demonstrated a clear probability that he will be tortured by government actors or with the acquiescence of a government actor if returned to Mexico. The respondent was subject to harm amounting to torture while in Mexico, including beatings, electrocution, and waterboarding by state police under the direction of a criminal organization. The respondent was threatened with firearms by the officers and told that he must work for the organization. And he was threatened with death during a call made by the police to a member of the organization…
> Cartels have sought to recruit the respondent in the past, demonstrating that they value his experience and labor potential. Police actively work with cartels as demonstrated by the respondent's experience with the state police who tortured him. Cartels remain active in the state of Sinaloa, which remains the only state with which the respondent has family ties. Cartels have access to police locational data for citizens, further increasing the likelihood the respondent will be targeted in the future. Given the respondent was subjected to past torture, the brief length of time that has passed since that torture occurred, his lack of family support in other areas of Mexico, and the demonstrated ties between the cartels and police in Mexico, it is more likely than not the respondent would be subject to torture by a government actor or with their acquiescence if returned to Mexico. And his application for withholding of removal under the CAT should be granted.""

c. Petitioner's Reply Brief to the BIA concludes that:

"In order to reverse the IJ's grant of Withholding of Removal under the CAT, DHS has to demonstrate that the IJ's factual findings were clearly erroneous. If Respondent had successfully relocated to Contrastaeca, then he would not have had to flee with his family from this area in order to escape with their lives." Petitioner's Exhibit 7, page 4

Clear Error

Ninth Circuit cases that have reversed BIA decision that fail to follow the clear error standard include but are not limited to: Guerra v. Barr, 974 F.3d 909 (9th Cir. 2020); Bringas-Rodriguez v. Sessions, 850 F.3d 1051 (9th Cir. 2017); Zumel v. Lynch, 803 F.3d 463 (9th Cir. 2015); Vitug v. Holder, 723 F.3d 1056 (9th Cir. 2013); and, Brezilien v. Holder, 569 F.3d 403 (9th Cir. 2009).

In Guerra, in pertinent part, the Ninth Circuit considered a case where he had applied for deferral of removal under the CAT. Guerra was granted CAT relief, the BIA reversed. The opinion relies on the following principles in reversing the BIA:

> ""The governing regulations explicitly state that the BIA shall not `engage in *de novo* review of findings of fact determined by an immigration judge.'" *Id.* (quoting 8 C.F.R. § 1003.1(d)(3)(i)). Instead, "[f]acts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous." 8 C.F.R. § 1003.1(d)(3)(i). "Where the BIA engages in de novo review of an IJ's factual findings instead of limiting its review to clear error, it has committed an error of law." *Ridore*, 696 F.3d at 911 (quoting *Rodriguez*, 683 F.3d at 1170). "Further, the BIA may `not engage in factfinding in the course of deciding appeals.'" *Id.* (quoting 8 C.F.R. § 1003.1(d)(3)(iv))." Guerra at 912
>
> The Ninth Circuit, at 912-13 of Guerra also states:
>
> "Clear error review means that "the BIA may not make its own findings or rely `on its own interpretation of the facts.'" *Id.* (citation omitted). Instead, the BIA may find an IJ's factual finding to be clearly erroneous only "if it is `illogical or implausible,' or without `support in inferences that may be drawn from the facts in the record.'" *Rodriguez*, 683 F.3d at 1170 (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 577, 105 S.Ct. 913*913 1504, 84 L.Ed.2d 518 (1985)).[2] Importantly, the BIA may not reverse an IJ's finding "simply because it is convinced that it would have decided the case differently." *Id.* at 1171 (quoting *Anderson*, 470 U.S. at 573, 105 S.Ct. 1504). "Where there are two permissible views of the

> evidence, the [IJ]'s choice between them cannot be clearly erroneous." *Anderson*, 470 U.S. at 574, 105 S.Ct. 1504."

Guerra also notes that any "conclusory pronouncement that the IJ has erred is insufficient", citing to Zumel v. Lynch, 803 F.3d 463 (9th Cir. 2015) and Vitug v. Holder, 723 F.3d 1056 (9th Cir. 2013).

> ""The BIA's failure to evaluate the `factual findings of the IJ that were key to the IJ's holding,' indicates the BIA was not reviewing the IJ's determination for clear error." *Id.* (quoting *Vitug*, 723 F.3d at 1064)." Guerra at 914

Guerra also states:

> "[T]he clear error standard does not allow the BIA to reweigh the evidence when the IJ's account of the evidence is plausible. *See* Rodriguez, 683 F.3d at 1171 (discussing *Anderson*, 470 U.S. at 573-74, 105 S.Ct. 1504)." Guerra at 914

The question of what is likely to happen, if a Petitioner is deported to a certain country, is a question of fact that the BIA may only reject for clear error, Ridore, 696 F.3d at 919. The Guerra Court states:

> "While the BIA may disagree with the inferences that the IJ drew, it failed to address the IJ's predicate factual findings and simply asserted that Guerra did not meet his burden. *See* Ridore, 696 F.3d at 919. "[T]he BIA cannot disregard the IJ's findings and substitute its own view of the facts. Either it must find clear error, explaining why; or, if critical facts are missing, it may remand to the IJ." *Id.*"

Summary of Argument: Entitled to a Bond Hearing (III)

In his amended petition for habeas relief, Petitioner, at pages 18-23, argued that procedural due process requires a bail hearing and the government had no response thereto.

III. Entitlement to a Bond Hearing: Law and Argument: Petitioner is Entitled to a Bond Hearing

In Cortez v. Sessions, 318 F.Supp.3d 1134, 1145 (N.D. Cal. 2018), the Northern California District Court states in pertinent part:

> "As the court noted in *Diouf II*[1], the Supreme Court in *Zadvydas* "rejected the argument that § 1231(a)(6) detainees possess no liberty interest in freedom from civil detention merely because they lack a `legal right' to live at large in the United States." 634 F.3d at 1087 n.8 (citing *Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491)."

Continuing, Cortez additionally states at 1146:

> "The Ninth Circuit subsequently held that the liberty interest identified in *Zadvydas* "applies not only to indefinite detention, but also to *prolonged detention*" of six months. *Diouf II*, 634 F.3d at 1087 n.8, 1092 n.13 (emphasis added). It concluded that noncitizens detained under section 1231(a)(6) are entitled to bond hearings after six months if removal is not imminent. *Id.* at 1092, n.13. Therefore, under *Zadvydas*, detention under section 1231(a)(6) is presumptively valid for a period of six months. 533 U.S. at 701, 121 S.Ct. 2491. After that period, under Ninth Circuit law, a noncitizen who is detained pursuant to section 1231(a)(6) is entitled to a bond hearing if removal is not imminent. *Diouf II*, 634 F.3d at 1092 n.13. There is no conflict between *Zadvydas* and *Diouf II*."

The Court ordered that Cortez be provided with a bond hearing. It stated that Diouf II remains good law after the *Jennings v. Rodriguez*, ___ U.S. ___, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) decision.

Cortez stated that:

> "[U]nder *Diouf II*, the government is required to provide noncitizens who are detained under section 1231(a)(6) with a bond hearing before an immigration judge after 180 days in custody. 634 F.3d at 1092. At such hearings, the government bears the burden of establishing by clear and

[1] Diouf v. Napolitano, 634 F.3d 1081 (9th Cir. 2011) (aka *Diouf II*)

convincing evidence that a noncitizen poses a risk of flight or a danger to the community in order to continue the detention. *Id.*; *Singh*, 638 F.3d at 1205."

Cortez also noted that Jennings did not address the holding in Diouf II, that noncitizens detained under 1231(a)(6) are entitled to a bond hearing after six months. *Also see* Senor v. Barr, 401 F.Supp.3d 420 (W.D. New York 2019), which ordered a bond hearing after more than nine months in custody. The government must meet its burden by clear and convincing evidence. *Also see* Guerrero-Sanchez v. Warden York County Prison, 905 F.3d 208 (3rd Cir. 2018).

Conclusion

Petitioner respectfully requests immediate release based upon the re-detention caselaw and/or because under Zadvydas he is not going to be removed in the reasonably foreseeable future. In the alternative, Petitioner respectfully requests a bond hearing.

Dated this 5th day of January, 2026

Respectfully Submitted,

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CERTIFICATE OF FILING AND SERVICE

I, Brad Gourley-Paterson, do hereby certify that on January 5, 2026, I electronically filed the foregoing PETITIONER TRAVERSE, for Case No. 25-2352, with the Clerk of the U.S. District Court, District of Western Washington, Seattle Division by using the CM/ECF PACER Electronic Filing.

Respectfully Submitted,

/s/Brad Gourley-Paterson
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