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8 *Attorneys for the Federal Respondents*

9  
 10 **UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

11 Jesus Verdugo-Carrasco,

12 Petitioner,

13 v.

14 THE UNITED STATES OF AMERICA,  
 KRISTI NOEM, in her Official Capacity,  
 15 Secretary of the United States Department of  
 Homeland Security; PAMELA BONDI, in  
 16 her Official Capacity, Attorney General,  
 Department of Justice; KERRI ANN  
 17 QUIHUIS, in her Official Capacity, ICE  
 Field Office Director, Detention and  
 18 Removal, Las Vegas, Nevada (ICE Local);  
 MICHAEL BERNACKE, in his Official  
 19 Capacity, Field Office Director, Salt Lake  
 City Field Office, U.S. Immigration and  
 20 Customs Enforcement; TODD LYONS, in  
 his Official Capacity, Acting Director,  
 21 Immigration & Customs Enforcement;  
 JOHN MATTOS, in his Official Capacity,  
 22 Warden of Immigration Detention Facility,  
 Nevada Southern Detention Center,

23 Respondents.  
24

Case No. 2:25-cv-02374-CDS-BNW

**Federal Respondents' Response to  
 Petitioner's Petition for Writ of Habeas  
 Corpus Pursuant to 28 U.S.C. § 2241  
 (ECF No. 1-1)**

25 Federal Respondents hereby file their Response to Petitioner Jesus Verdugo-  
 26 Carrasco's Petition for Writ of Habeas Corpus Pursuant to Under 28 U.S.C. § 2241 (ECF  
 27 No. 1-1).

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**I. Factual Background**

1  
2 On June 8, 2015, Petitioner Jesus Verdugo-Carrasco (“Petitioner”) was arrested by  
3 ICE for entering the United States without being inspected, admitted or paroled by a  
4 United States immigration officer. See I-213 Form from June 8, 2015, attached hereto as  
5 Exhibit A. Petitioner was issued a Notice to Appear. See Notice to Appear from June 8,  
6 2015, attached hereto as Exhibit B. On January 13, 2016, the Immigration Judge (“IJ”)  
7 denied Petitioner’s request for release on bond concluding that he presented a risk of flight.  
8 See Bond Memorandum of the Immigration Judge, attached hereto as Exhibit C. The basis  
9 for the decision was that DHS received an arrest warrant from Interpol that related to  
10 Petitioner which indicated that he was wanted in the Sinaloa Criminal Court to face  
11 charges of homicide in Mexico. See Exhibit C. Petitioner applied for asylum and  
12 withholding of removal and protection under the Convention Against Torture (“CAT”).  
13 On February 26, 2016, the IJ denied Petitioner’s application for asylum and withholding of  
14 removal and protection under CAT. Petitioner appealed the decision of the IJ to the Board  
15 of Immigration Appeals (“BIA”). On August 23, 2016, the BIA issued its decision and  
16 affirmed the IJ’s determination that Petitioner is ineligible for asylum because he did not  
17 file his application for that relief within 1 year of his arrival in the U.S. See BIA decision  
18 from August 23, 2016, attached hereto as Exhibit D. The BIA also affirmed the IJ’s  
19 determination that Petitioner is ineligible for asylum and withholding of removal under  
20 both the Act and the CAT because there were serious reasons for believing that Petitioner  
21 had committed a serious nonpolitical crime prior to his arrival in the United States. See  
22 Exhibit D. Additionally, the BIA affirmed the IJ’s determination that the crime the  
23 Petitioner admitted he committed was serious which was an attempted hijacking of a truck  
24 traveling on a road in Mexico and the BIA concluded there are serious reasons for  
25 believing that Petitioner committed a serious nonpolitical crime outside the United States  
26 prior to arriving in the United States and is therefore ineligible for asylum and withholding  
27 of removal under both the Act and the CAT. See Exhibit D. With respect to Petitioner’s  
28 application for deferral of removal under the CAT, the BIA found clear error in the IJ’s

1 adverse credibility finding and remanded proceedings to the IJ to reassess whether the  
2 Petitioner met his burden of proof to establish eligibility for deferral of removal under the  
3 CAT in light of their decision. See Exhibit D. On October 7, 2016, the IJ granted Petitioner  
4 the application for deferral of removal under the CAT and indicated the following  
5 conditions of the CAT deferral grant: 1) the order does not confer upon him a lawful  
6 immigration status; 2) the order will not necessarily result in his release from custody; 3)  
7 the order is effective only until termination; and 4) the order is subject to termination and  
8 review if the IJ concludes at a subsequent hearing that it is not likely that he would be  
9 tortured in Mexico. See Written Decision of the Immigration Judge from October 7, 2016,  
10 attached hereto as Exhibit E. The IJ also ruled that Petitioner shall be removed from the  
11 United States to any country which is willing to accept him, and he shall not be removed to  
12 Mexico. See Exhibit E.

13 On November 5, 2025, a warrant of arrest was issued for Petitioner for entering the  
14 United States without inspection by U.S. Immigration authorities and he was detained by  
15 ICE. See I-213 Form and Warrant for Arrest of Alien from November 5, 2025, attached  
16 hereto as Exhibit F. On November 17, 2025, Petitioner filed with the Ninth Circuit Court  
17 of Appeals a Petition for Review which included a request for stay of removal. See Ninth  
18 Circuit Court of Appeals Docketing Notice, attached hereto as Exhibit G.

19 For the reasons set forth in this Response, Federal Respondents' position is that the  
20 Petition should be denied, because there have been no due process violations since  
21 Petitioner has only been in detention since November 5, 2025, and there has been no  
22 indefinite detention beyond six months. Federal Respondents are actively working on his  
23 case in finding a suitable third country to remove Petitioner to.

#### 24 **JURISDICTION AND BURDEN OF PROOF**

25 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited  
26 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon*  
27 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).  
28 “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789

1 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1974 n. 20  
2 (2020). Section 2241 of Title 28 provides district courts with jurisdiction to hear federal  
3 habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in  
4 custody in violation of the Constitution or laws or treaties of the United States to warrant  
5 relief. *See* 28 U.S.C. § 2241(c).

## 6 7 **II. Legal Argument**

### 8 **A. Regarding Count ONE: Petitioner's Detention Does Not Violate His Fifth** 9 **Amendment Right to Due Process because he has only been in detention since** 10 **November 5, 2025, and his removal is reasonably foreseeable.**

11 The Ninth Circuit, applying the Supreme Court's holding in *Thuraissigiam*, has  
12 explicitly stated that, "[a]ccordingly, any rights [an inadmissible alien] may have in regard  
13 to removal or admission are purely statutory in nature and are not derived from, or  
14 protected by, the Constitution's Due Process Clause." *Mendoza-Linares v. Garland*, 51 F.4th  
15 1146, 1167 (9th Cir. 2022). Ultimately, "[t]he recognized liberty interests of U.S. citizens  
16 and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the  
17 proposition that Congress may make rules as to aliens that would be unacceptable if  
18 applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)  
19 (quoting *Demore v. Kim*, 538 U.S. 510, 522, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)).  
20 *Zelaya-Gonzalez v. Matuszewski*, 2023 U.S. Dist. LEXIS 72761, \*10.

21 Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(6) as he has been issued a  
22 final order of removal, the ninety-day mandatory removal period set forth in 8 U.S.C. §  
23 1231(a)(1)(A) has not passed.

24 8 U.S.C. § 1231(a)(6) states:

#### 25 **(6) Inadmissible or criminal aliens**

26 An alien ordered removed who is inadmissible under section 1182 of this title,  
27 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who  
28 has been determined by the Attorney General to be a risk to the community or  
unlikely to comply with the order of removal, may be detained beyond the removal  
period and, if released, shall be subject to the terms of supervision in paragraph (3).

1 The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a  
2 noncitizen detained under this statutory authority has no right to a bond hearing or release.  
3 See *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 at 1832-34; (“Section 1231(a)(6) does not  
4 expressly specify how long detention past the 90-day removal period may continue for those  
5 who fall within the four designated statutory categories.”); *id.* at 1833. The Supreme Court  
6 has repeatedly “recognized detention during deportation proceedings as a constitutionally  
7 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); see also,  
8 e.g., *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the  
9 INS procedures are faulty because they do not provide for automatic review by an  
10 immigration judge of the initial deportability and custody determinations”); *Abel v. United*  
11 *States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive historical evidence of acceptance  
12 of the validity of statutes providing for administrative deportation arrest from almost the  
13 beginning of the Nation”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is  
14 necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228,  
15 235 (1896) (“We think it clear that detention or temporary confinement, as part of the  
16 means necessary to give effect to the provisions for the exclusion or expulsion of aliens,  
17 would be valid.”). As the Supreme Court has explained, “[i]n the exercise of its broad power  
18 over naturalization and immigration, Congress regularly makes rules that would be  
19 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner’s  
20 substantive due process claim therefore fails. See *Demore*, 538 U.S. at 531; see also *Zadvydas*,  
21 533 U.S. at 701 (recognizing a “presumptively reasonable period of detention” of up to six  
22 months to effectuate a final removal order).

23 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory  
24 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a  
25 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In  
26 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s  
27 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would  
28 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme

1 Court proceeded to conclude that detention of a noncitizen for up to six months under 8  
2 U.S.C. § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides  
3 good reason to believe that there is no significant likelihood of removal in the reasonably  
4 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that  
5 showing.” *Id.* at 700-01.

6 In this case, there has been no “indefinite and potentially permanent” detention  
7 under 8 U.S.C. § 1231 that would raise a “serious question” under the Fifth Amendment’s  
8 Due Process Clause. Petitioner has been detained since November 5, 2025. At the time of  
9 the filing of this Response it would not have even been sixty days that Petitioner has been  
10 detained. Under *Zadvydas*, it is presumptively reasonable for Petitioner to be detained up to  
11 six months 8 U.S.C. § 1231. *Id.* at 700-01. Petitioner’s argument is not persuasive since his  
12 detention has only commenced on November 5, 2025, and six months have not passed for  
13 him to legitimately argue a due process violation under *Zadvydas*. Therefore, Petitioner has  
14 not yet been in detention pursuant to 8 U.S.C. § 1231 for six months, and his detention in  
15 order to effectuate his final order of removal is presumptively reasonable. Petitioner’s  
16 detention under 8 U.S.C. § 1231(a)(6) is, as interpreted by the Supreme Court, squarely in  
17 accordance with the government’s statutory authority and thus, the relief he seeks, is not  
18 warranted by statute. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-Martinez*, 142 S. Ct. at 1832-34.  
19 Petitioner’s detention under 8 U.S.C. § 1231(a)(6) does not violate his due process rights as  
20 he has not met his burden of setting forth good reason to believe that there is no significant  
21 likelihood of his removal to a third country in the reasonably foreseeable future when he has  
22 only been in detention since November 5, 2025. *See Zadvydas*, 533 U.S. at 701. Therefore,  
23 Petitioner fails to demonstrate that he meets *Zadvydas*’ six-month detention requirement,  
24 and Petitioner’s detention is thus presumed lawful and constitutional and his Petition  
25 should be denied.

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1           **B. Regarding Count TWO: There Have been no Statutory Violations because**  
2           **Federal Respondents will not be removing Petitioner to Mexico.**

3           On October 7, 2016, the IJ ruled that Petitioner shall not be removed to Mexico. See  
4 Exhibit E. Federal Respondents have no intention nor plans to remove Petitioner to Mexico  
5 because he was granted deferral of removal to Mexico under the CAT by the IJ. See Exhibit  
6 E. The IJ Ordered that Petitioner be removed from the United States to any country which  
7 is willing to accept him since Petitioner was denied asylum. See Exhibit E. Since November  
8 5, 2025, when Petitioner was detained, Federal Respondents have been actively working to  
9 remove Petitioner to a third country. At the time of the filing of this response, it would not  
10 have been sixty days since his detention and hence there has been no violation of 8 U.S.C. §  
11 1231(a)(6). Since his detention, Petitioner has filed a Petition for Review and a Motion to  
12 Stay Removal with the Ninth Circuit which is currently pending. At this stage it is unclear  
13 whether decisions from the Ninth Circuit will be rendered within six months or afterwards.  
14 Petitioner may elect to pursue his legal options as he sees fit in seeking to forestall or reverse  
15 his removal order; however, he cannot rely on the resulting delay and time it takes for such  
16 events to be adjudicated to claim that the United States government has violated his due  
17 process rights by continuing to detain him during such time. *See Demore*, 123 S. Ct. at 1721  
18 fn. 14 (stating “there is no constitutional prohibition against requiring parties” to “mak[e] ...  
19 difficult judgments.”

20           **C. Regarding Count Three: There Has been No Substantive Due Process**  
21           **Violation Since No Indefinite Detention Has Occurred.**

22           Petitioner’s removal is reasonably foreseeable given that he has been recently  
23 detained on November 5, 2025. Petitioner’s argument that there has been a substantive due  
24 process violation due to Petitioner’s “indefinite detention” is unpersuasive given that his  
25 detention has not passed ninety days let alone more than six months to legitimately argue  
26 any prolonged detention under *Zadvydas*. Therefore, the Petition should be denied.

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