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

10 Jesus Verdugo-Carrasco,
 11
 Petitioner,
 12 v.

Case No. 2:25-cv-02374-CDS-BNW
**Federal Respondents' Response to
 Petitioner's First Amended Petition
 (ECF No. 12)**

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

23
 24 Federal Respondents hereby file their Response to Petitioner Jesus Verdugo-
 25 Carrasco's First Amended Petition.

26 **I. Factual Background**

27 On June 8, 2015, Petitioner Jesus Verdugo-Carrasco ("Petitioner") was arrested by
 28 ICE for entering the United States without being inspected, admitted or paroled by a

1 United States immigration officer. See I-213 Form from June 8, 2015, attached hereto as
2 Exhibit A. Petitioner was issued a Notice to Appear. See Notice to Appear from June 8,
3 2015, attached hereto as Exhibit B. On January 13, 2016, the Immigration Judge (“IJ”)
4 denied Petitioner’s request for release on bond concluding that he presented a risk of flight.
5 See Bond Memorandum of the Immigration Judge, attached hereto as Exhibit C. The basis
6 for the decision was that DHS received an arrest warrant from Interpol that related to
7 Petitioner which indicated that he was wanted in the Sinaloa Criminal Court to face
8 charges of homicide in Mexico. See Exhibit C. Petitioner applied for asylum and
9 withholding of removal and protection under the Convention Against Torture (“CAT”).
10 On February 26, 2016, the IJ denied Petitioner’s application for asylum and withholding of
11 removal and protection under CAT. Petitioner appealed the decision of the IJ to the Board
12 of Immigration Appeals (“BIA”). On August 23, 2016, the BIA issued its decision and
13 affirmed the IJ’s determination that Petitioner is ineligible for asylum because he did not
14 file his application for that relief within 1 year of his arrival in the U.S. See BIA decision
15 from August 23, 2016, attached hereto as Exhibit D. The BIA also affirmed the IJ’s
16 determination that Petitioner is ineligible for asylum and withholding of removal under
17 both the Act and the CAT because there were serious reasons for believing that Petitioner
18 had committed a serious nonpolitical crime prior to his arrival in the United States. See
19 Exhibit D. Additionally, the BIA affirmed the IJ’s determination that the crime the
20 Petitioner admitted he committed was serious which was an attempted hijacking of a truck
21 traveling on a road in Mexico and the BIA concluded there are serious reasons for
22 believing that Petitioner committed a serious nonpolitical crime outside the United States
23 prior to arriving in the United States and is therefore ineligible for asylum and withholding
24 of removal under both the Act and the CAT. See Exhibit D. With respect to Petitioner’s
25 application for deferral of removal under the CAT, the BIA found clear error in the IJ’s
26 adverse credibility finding and remanded proceedings to the IJ to reassess whether the
27 Petitioner met his burden of proof to establish eligibility for deferral of removal under the
28 CAT in light of their decision. See Exhibit D. On October 7, 2016, the IJ granted Petitioner

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

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

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

21 **JURISDICTION AND BURDEN OF PROOF**

22 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
23 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon*
24 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).
25 "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789
26 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1974 n. 20
27 (2020). Section 2241 of Title 28 provides district courts with jurisdiction to hear federal
28 habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in

1 custody in violation of the Constitution or laws or treatises of the United States to warrant
2 relief. *See* 28 U.S.C. § 2241(c).

3 **A. Ground One: ICE Did Not Violate its own regulations, No violations of Fifth**
4 **Amendment Due Process and the Administrative Procedures Act Occurred**

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

15 Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(6) as he has been issued a
16 final order of removal, the ninety-day mandatory removal period set forth in 8 U.S.C. §
17 1231(a)(1)(A) has not passed.

18 8 U.S.C. § 1231(a)(6) states:

19 **(6) Inadmissible or criminal aliens**

20 An alien ordered removed who is inadmissible under section 1182 of this title,
21 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who
22 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).

23 The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a
24 noncitizen detained under this statutory authority has no right to a bond hearing or release.
25 *See Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 at 1832-34; ("Section 1231(a)(6) does not
26 expressly specify how long detention past the 90-day removal period may continue for those
27 who fall within the four designated statutory categories."); *id.* at 1833. The Supreme Court
28 has repeatedly "recognized detention during deportation proceedings as a constitutionally

1 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also*,
2 *e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the
3 INS procedures are faulty because they do not provide for automatic review by an
4 immigration judge of the initial deportability and custody determinations”); *Abel v. United*
5 *States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive historical evidence of acceptance
6 of the validity of statutes providing for administrative deportation arrest from almost the
7 beginning of the Nation”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is
8 necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228,
9 235 (1896) (“We think it clear that detention or temporary confinement, as part of the
10 means necessary to give effect to the provisions for the exclusion or expulsion of aliens,
11 would be valid.”). As the Supreme Court has explained, “[i]n the exercise of its broad power
12 over naturalization and immigration, Congress regularly makes rules that would be
13 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner’s
14 substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*,
15 533 U.S. at 701 (recognizing a “presumptively reasonable period of detention” of up to six
16 months to effectuate a final removal order).

17 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory
18 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a
19 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In
20 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s
21 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would
22 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme
23 Court proceeded to conclude that detention of a noncitizen for up to six months under 8
24 U.S.C. § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides
25 good reason to believe that there is no significant likelihood of removal in the reasonably
26 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that
27 showing.” *Id.* at 700-01. Petitioner also asserts an APA claim. Civil APA claims are not
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1 cognizable in the habeas context *See, e.g., Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir.
2 2009) (holding that petition asserting APA claim “does not state a habeas claim”).

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

5 Petitioner argues that his detention removal period began in October 2016 and
6 hence it has been more than 90 days since he was ordered removed. See ECF No. 12, lines
7 1-3. Petitioner has not been detained since October 7, 2016. Petitioner has been detained
8 since November 5, 2025. Therefore, the 90 days removal period began on November 5,
9 2025. On October 7, 2016, the IJ ruled that Petitioner shall not be removed to Mexico.
10 See Exhibit E. Federal Respondents have no intention nor plans to remove Petitioner to
11 Mexico because he was granted deferral of removal to Mexico under the CAT by the IJ.
12 See Exhibit E. The IJ Ordered that Petitioner be removed from the United States to any
13 country which is willing to accept him since Petitioner was denied asylum. See Exhibit E.
14 Since November 5, 2025, when Petitioner was detained, Federal Respondents have been
15 actively working to remove Petitioner to a third country. At the time of the filing of this
16 response, it would not have been sixty-two days since his detention and hence there has
17 been no violation of 8 U.S.C. § 1231(a)(6). Since his detention, Petitioner has filed a
18 Petition for Review and a Motion to Stay Removal with the Ninth Circuit which is
19 currently pending. At this stage it is unclear whether decisions from the Ninth Circuit will
20 be rendered within six months or afterwards. Petitioner may elect to pursue his legal
21 options as he sees fit in seeking to forestall or reverse his removal order; however, he
22 cannot rely on the resulting delay and time it takes for such events to be adjudicated to
23 claim that the United States government has violated his due process rights by continuing
24 to detain him during such time. *See Demore*, 123 S. Ct. at 1721fn. 14 (stating “there is no
25 constitutional prohibition against requiring parties” to “mak[e] ... difficult judgments.” It is
26 likely that removal of Petitioner to a third country will take place in the reasonably
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28

1 foreseeable future given that he has been detained for 62 days as of the date of this filing.

2 Furthermore, if the Ninth Circuit were to deny his Petition for Review and stay of removal,
3 that will also increase the likelihood. Therefore, Petitioner's First Amended Petition should
4 be denied.

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6 **C. Ground Three: Petitioner's continued detention does not violate 8 U.S.C.
1231(a)(6)**

7 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed § 1231 "to
8 contain an implicit 'reasonable time' limitation, the application of which is subject to federal-
9 court review." 533 U.S. at 682. When a removable alien is detained beyond this reasonable
10 time and "removal is not reasonably foreseeable, the court should hold continued detention
11 unreasonable." *Id.* at 699. The Court adopted a six-month period of presumptive
12 reasonableness and confirmed that "an alien may be held in confinement until it has been
13 determined that there is no significant likelihood of removal in the reasonably foreseeable
14 future." *Id.* at 710.

15 Petitioner has been detained since November 5, 2025. Petitioner's current period of
16 detention—less than six months at the time of this filing—remains within the range deemed
17 presumptively reasonable under governing precedent. Additionally, nothing in the record
18 suggests, beyond speculation, that his removal is not reasonably foreseeable.

19 To the extent the Court reviews this matter *after* the six month presumptively
20 reasonable time has expired, Petitioner fares no better, as release from detention is not
21 automatic. After six months, the burden shifts to the petitioner to show "good reason to
22 believe that there is no significant likelihood of removal in the reasonably foreseeable future"
23 before the burden reverts to the government to rebut that showing *Id.* at 701. The Supreme
24 Court has recognized that "detention during deportation proceedings [is] a constitutionally
25 valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When
26 evaluating "reasonableness" of detention, the touchstone is whether an alien's detention
27 continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the
28 moment of removal." *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for

1 § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th
2 750, 760 (4th Cir. 2024) (explaining that “*Zadvydas*, largely, if not entirely forecloses due
3 process challenges to § 1231 detention apart from the framework it established.”).

4 Here, Petitioner was detained in November 5, 2025. However, crossing the six-month
5 temporal threshold does not itself entitle a detainee to relief. Once the six-month mark passes,
6 the burden shifts to the Petitioner to provide evidence giving rise to a “reason to believe” that
7 there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner
8 has not met that burden. Petitioner’s detention under 8 U.S.C. § 1231(a)(6) has been lawful
9 and therefore his First Amended Petition must be denied.

10 **D. Ground Four: ICE’s policy does not violate Petitioner’s Fifth Amendment**
11 **right to due process and there has been no violation of the Administrative**
12 **Procedure Act.**

13 The Ninth Circuit has made clear that, in the context of third-country removals, due
14 process protections—including notice and an opportunity to reopen to pursue withholding
15 or CAT claims—are triggered when the agency identifies a third country of removal. *See*
16 *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (“[A]n applicant is not entitled to
17 have the agency adjudicate claims of relief that relate ‘to a country that nobody is trying to
18 send them to.’”)

19 In this case, ICE has not designated a third country for Petitioner’s removal, nor has
20 it issued a Notice of Removal identifying any third country. Absent such agency action,
21 Petitioner’s due process claim rests entirely on speculation. Until ICE identifies a third
22 country of removal and provides formal notice, there is no cognizable deprivation of liberty
23 or statutory right, and therefore no ripe due process claim for the Court to adjudicate.
24 Petitioner has not shown that a third-country removal is occurring or even imminent and
25 hence he cannot demonstrate that ICE has failed to provide constitutionally required
26 process and his First Amended Petition should be denied.
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2 **E. Ground Five: Petitioner’s Detention Does not Violate Due Process Clause of**
3 **the Fifth Amendment Regarding Third Country Removal**

4 Section 1231(a)(6) satisfies both the substantive and procedural components of the
5 Due Process Clause. The Supreme Court has explained that detention is “a
6 constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510,
7 523 (2003). Post-order detention helps ensure the removal of noncitizens who have
8 already been “ordered removed” from the United States. 8 U.S.C. § 1231(a)(6).
9 Furthermore, § 1231(a)(6), as implemented by the existing regulations, does not violate
10 the Due Process Clause “[w]hen detention crosses the six-month threshold.” *Diouf v.*
11 *Napolitano (“Diouf II”)*, 634 F.3d 1091 (9th Cir. 2011).

12 In this case, as explained above Petitioner has not been detained for less than six
13 months and hence his detention has not violated due process clause of the Fifth
14 Amendment regarding third country removal and his First Amended Petition should be
15 denied.

16 **III. Conclusion**

17 For the foregoing reasons, Federal Respondents respectfully request that the Court
18 deny Petitioner’s First Amended Petition.

19 Respectfully submitted this 5th day of January 2026.

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22 SIGAL CHATTAH
23 First Assistant United States Attorney

24 /s/ Tamer B. Botros
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