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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VICTOR HUGO QUINTANA CHAGOLLA,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary of the United States Department of Homeland Security; MICHAEL BERNACKE, Field Director, West Valley City Office; TODD LYONS, Acting Director; JOHN MATTOS, Warden at Southern Nevada Detention Center,

Respondents.

Case No. 2:25-cv-02435-MMD-EJY

Federal Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus

Federal Respondents hereby file their Response to Petitioner Victor Hugo Quintana Chagolla's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1-1).

I. Factual Background

Petitioner Victor Hugo Quintana Chagolla ("Petitioner") is a citizen and native of Mexico. On April 26, 2024, Petitioner was arrested and charged with the crime of Enticement of Minor for Indecent Purposes in Clark County, Nevada which resulted in a conviction on September 20, 2024. See attached I-213 Form of Victor Hugo Quintana Chagolla attached hereto as Exhibit A. Petitioner pled guilty and was placed on probation for five (5) years. See Judgment of Conviction (Plea of Guilty) attached hereto as Exhibit

B. On or about April 1, 2025, Petitioner was arrested by ICE officers who conducted a targeted immigration enforcement in compliance with federal law and agency policy. See Exhibit A. Petitioner requested a custody redetermination hearing and on May 13, 2025, the Immigration Judge ("IJ") denied a change in custody status because the IJ found that Petitioner is a danger to the community. See May 13, 2025, Order of the Immigration Judge attached hereto as Exhibit C. On September 12, 2025, the IJ ordered Petitioner be removed to Mexico. On October 1, 2025, Petitioner filed a Notice of Appeal asserting that he is a U.S. citizen since his father was born in the U.S. and resided in the U.S. for over 10 years and that Petitioner is a U.S. citizen despite being born in Mexico. See Notice of Appeal from a Decision of an Immigration Judge attached hereto as Exhibit D. On October 9, 2025, Petitioner filed a Motion for Emergency Stay of Removal with the Board of Immigration Appeals ("BIA"). See Motion attached hereto as Exhibit E. This matter is currently pending before the BIA for further proceedings.

For the reasons set forth in this Response, Federal Respondents' position is that the Petition should be denied, because Petitioner has been afforded due process throughout and during his removal proceedings and detention, was denied bond and ordered removed by the IJ due to a finding that he is a danger to the community due to his conviction of enticement of a minor for indecent purposes in Clark County, Nevada and he has not exhausted his administrative remedies since there is currently an appeal pending before the BIA.

JURISDICTION AND BURDEN OF PROOF

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

habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States to warrant relief. *See* 28 U.S.C. § 2241(c).

II. Legal Argument

A. There was no Violation of Fifth Amendment Due Process in Initial Bond Hearing

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

In this case, Petitioner was provided with a bond hearing on May 13, 2025. The IJ denied bond due to finding that Petitioner is a danger to the community because of his recent conviction for the crime of Enticement of Minor for Indecent Purposes in Clark County, Nevada. Petitioner reserved his right to appeal that decision by June 12, 2025. However, Petitioner failed to appeal that decision. Petitioner was provided with the Order and had an opportunity to appeal the IJ's decision to deny bond. There was no violation of Fifth Amendment rights of Petitioner during the initial bond. Petitioner alleges that he had counsel, and that counsel entered appearance in the case but allegedly did not appear at the bond hearing. See ECF No. 1-1, Page 3 of 5 Ground One. It appears Petitioner is alleging

that the Respondents violated his Fifth Amendment right for the alleged failure of his counsel to appear at his initial bond hearing despite making an appearance in the case. This argument is unpersuasive. Federal Respondents' have no control of who Petitioner retains as counsel and whether that counsel appears on behalf of Petitioner. Therefore, the Court should deny the Petition because Petitioner was provided with a bond hearing which the IJ denied bond based on the evidence and Petitioner had an opportunity to appeal that decision but failed to do so.

B. Petitioner was Found by the Immigration Judge to Be a Danger to the Community

As discussed above, due to the nature of Petitioner's conviction which involved a Enticement of Minor for Indecent Purposes, the IJ considered all the evidence presented and denied bond to Petitioner because in the IJ's view, Petitioner is a danger to the community. See Exhibit C. Petitioner disagreed with the IJ decision. Petitioner had the opportunity to appeal that decision to the BIA. Petitioner had counsel and it was certainly within his means to file the appeal. However, Petitioner did not file an appeal of the bond decision to the BIA. Instead, Petitioner waited until the order of removal was entered on September 12, 2025, to file an appeal to the BIA for an emergency motion to stay removal to Mexico. Given the circumstances and the nature of conviction of Petitioner, the IJ's decision was reasonable and based on the evidence. Although Petitioner had an opportunity to appeal that initial bond decision, he failed to do so. Therefore, his Petition should be denied.

C. There has been no Prolonged Detention and no violation of Due Process

The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a noncitizen detained under this statutory authority has no right to a bond hearing or release. *See Arteaga-Martinez*, 142 S. Ct. at 1832-34; *id.* at 1832 ("Section 1231(a)(6) does not

expressly specify how long detention past the 90-day removal period may continue for those who fall within the four designated statutory categories."); *id.* at 1833. the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner's substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention" of up to six months to effectuate a final removal order).

While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In *Zadvydas*, 533 U.S. at 689, the Supreme Court held that "in light of the Constitution's demands", "indefinite and potentially permanent" detention under 8 U.S.C. § 1231 would raise a "serious question" under the Fifth Amendment's Due Process Clause. The Supreme Court proceeded to conclude that detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable", but added that "once the [noncitizen] provides good

reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.* at 700-01. The mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably

foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

In this case, Petitioner was ordered removed on September 12, 2025, by the IJ. Petitioner appealed the decision to the BIA on October 1, 2025. Because the prospect of indeterminate detention raises grave and obvious constitutional concerns, the Supreme Court has held that such a non-citizen "may be held in confinement for a period reasonably necessary to bring about that alien's removal" and post-removal period detention under 8 U.S.C. § 1231(a)(6) for six months or less, inclusive of the removal period, is "presumptively reasonable" (and therefore does not, on its own, result on constitutional injury). *Zadvydas v. Davis,* 533 U.S. 678, 683, 701 (2001). Petitioner has been detained for less than six months since his final order of removal was issued and the order became "administratively final". Under *Zadvydas*, it is presumptively reasonable for Petitioner to be detained up to six months 8 U.S.C. § 1231. *Id.* at 700-01. Petitioner's argument is not persuasive because six months have not passed since his final removal order was issued for him to legitimately argue a due process violation under *Zadvydas* nor that his detention has been "prolonged". Therefore, Petitioner has not yet been in detention pursuant to 8 U.S.C. § 1231 for six months since his final removal order was issued, and his detention to effectuate his final order of removal is presumptively reasonable. Petitioner's detention under 8 U.S.C. § 1231(a)(6) is, as interpreted by the Supreme Court, squarely in accordance with the government's statutory authority and thus, the relief he seeks, is not warranted by statute. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-Martinez*, 142 S. Ct. at 1832-34. Petitioner's detention under 8 U.S.C. § 1231(a)(6) does not violate his due process rights as he has not met his burden of setting forth good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701.

Therefore, Petitioner fails to demonstrate that he meets *Zadvydas*' six-month detention requirement after final order of removal was issued, and Petitioner's detention is thus presumed lawful and constitutional, and his Petition should be denied.

D. There were no Arbitrary and Capricious Action under the Administrative Procedure Act

The Ninth Circuit identified three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency's "expertise" makes its "consideration necessary to generate a proper record and reach a proper decision." *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages "the deliberate bypass of the administrative scheme." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*, 488 F.3d at 815. The Court should dismiss the Petition. "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145.

In this case, Petitioner has not exhausted his administrative remedies first before bringing this Petition since there is a current pending appeal before the BIA that Petitioner filed. Petitioner also asserts an APA claim. Civil APA claims are not cognizable in the habeas context *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that

petition asserting APA claim "does not state a habeas claim"). Petitioner's APA claim fails as a matter of law. Furthermore, there has no due process violation since Petitioner has been detained for less than six months and thus his Petition should be denied.

III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted this 6th day of January 2026.

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