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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JAKELIN BORREGO MARQUEZ,
11
12 **Petitioner,**

13 **v.**

14 CHRISTOPHER J. LAROSE, *et al.*,
15
16 **Respondents.**

Case No.: 3:25-cv-03538-LL-VET

**RESPONDENTS' RETURN TO
PETITIONER'S HABEAS PETITION**

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1 I. INTRODUCTION

2 Petitioner Jakelin Borrego Marquez filed a habeas petition pursuant to 28 U.S.C.
3 § 2241. For the reasons set forth below, the Court should deny Petitioner’s requests for
4 relief and dismiss the petition.

5 II. FACTUAL AND PROCEDURAL BACKGROUND

6 Petitioner is a citizen and national of Cuba. Decl. of Daniel Negrin (Negrin Decl.)
7 ¶ 4. On October 29, 2003, Petitioner attempted to enter the United States through the
8 San Ysidro Port of Entry by falsely claiming United States citizenship. *Id.* She was
9 subsequently taken into Immigration and Customs Enforcement (ICE) custody. *Id.*
10 After being released on bond, Petitioner moved to Mexico. *Id.*

11 Once again, on July 16, 2004, Petitioner attempted to enter the United States by
12 falsely claiming United States citizenship. *Id.* ¶ 5. She was then taken into ICE custody
13 and issued a Notice to Appear charging her with inadmissibility under 8 U.S.C. §
14 1182(a)(6)(C)(ii) for falsely claiming United States citizenship and 8 U.S.C. §
15 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid entry document. *Id.* On
16 July 19, 2004, Petitioner was released on bond. *Id.* ¶ 6. An immigration judge, on
17 August 23, 2004, ordered her removed to Mexico, and on that same day, she was
18 removed. *Id.* ¶ 7; Ex. 1.

19 On January 17, 2019, Petitioner applied for admission into the United States.
20 Negrin Decl. ¶ 9. She was determined to be inadmissible under 8 U.S.C. §
21 1182(a)(7)(A)(i)(I) and taken into ICE custody. *Id.* Petitioner was issued a Notice to
22 Appear, initiating removal proceedings. *Id.* On October 15, 2019, an immigration judge
23 ordered Petitioner removed to Cuba. *Id.* ¶ 10; Ex. 2. However, on November 20, 2019,
24 Petitioner was released under an order of supervision (OSUP) because the government
25 had been unable to remove her to Cuba. Negrin Decl. ¶ 11; ECF No. 1 ¶ 25.

26 On January 29, 2025, ICE re-detained Petitioner following a review of records
27 revealing multiple criminal arrests and immigration violations from 1999 to 2022.
28 Negrin Decl. ¶ 12. Shortly after, on February 14, 2025, Petitioner was removed to

1 Mexico. *Id.*; ECF No. 1 ¶ 26.

2 On May 11, 2025, Petitioner unlawfully entered the United States and was
3 apprehended by United States Border Patrol agents. *Id.* ¶ 13; *Id.* She was then placed in
4 federal custody for criminal prosecution. *Id.*; *Id.* ¶ 27. On August 19, 2025, Petitioner
5 was transferred from federal criminal custody pursuant to an ICE Enforcement and
6 Removal Operations (ERO) detainer. *Id.* ¶ 14; *Id.* On that same day, Petitioner was
7 placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1) and
8 mandatorily detained under 8 U.S.C. § 1225(b)(1)(B). Negrin Decl. ¶ 15. She was then
9 interviewed by an asylum officer who found that she did not have a credible fear of
10 persecution or torture with respect to Cuba. *Id.* ¶ 16. On October 14, 2025, an
11 immigration judge affirmed the Department of Homeland Security's (DHS) credible
12 fear determination and referred the case back to DHS to execute Petitioner's removal.
13 *Id.* ¶ 17; Ex. 3.

14 ICE is working expeditiously to effectuate Petitioner's removal. Negrin Decl. ¶
15 18. Because Cuba previously declined to allow Petitioner to return, ERO looked for a
16 third country removal. *Id.* At Petitioner's initial intake in August 2025, she expressed a
17 desire to be voluntarily removed to Mexico as part of the Incentivized Voluntary
18 Departure program. *Id.* ¶ 14. In light of this request, on October 22, 2025, ICE attempted
19 to remove Petitioner to Mexico, but Petitioner failed to comply. *Id.* ¶ 18. Petitioner,
20 however, did not assert a fear-based claim of removal to Mexico. *Id.*

21 On October 24, 2025, ERO contacted ERO Removal and International
22 Operations (RIO) to seek a third country for removal. *Id.* ¶ 19. ERO, on November 17,
23 2025 and December 4, 2025, requested updates on a third country. *Id.* ¶ 20. These
24 requests remain pending. *Id.*

25 III. ARGUMENT

26 As an initial matter, Petitioner raises two issues: (1) the agency's reason for
27 revoking her 2019 OSUP, ECF No. 1 ¶¶ 29-37 (Petitioner's first claim for relief); and
28 (2) whether her current detention runs afoul of the Supreme Court's holding in *Zadyvdas*

1 *v. Davis*, 533 U.S. 678, 689 (2001), ECF No. 1 ¶¶ 38-31 (Petitioner’s second claim for
2 relief). Petitioner, however, improperly brings the first issue before this Court. Because
3 Petitioner was removed on February 14, 2025, after revocation of the 2019 OSUP, her
4 *current detention* does not stem from a revocation of an OSUP. Instead, her current
5 detention, starting on August 19, 2025, when she was transferred federal custody to ICE
6 custody, stems from her unlawful entry on May 11, 2025. In turn, Petitioner has no due
7 process or regulatory rights stemming from the issuance or revocation of the 2019
8 OSUP, as it was mooted upon revocation and removal. Thus, the only issue before this
9 Court is whether her *current detention* is unconstitutionally prolonged under *Zadyvdas*.

10 An alien ordered removed must be detained for ninety (90) days pending the
11 government’s efforts to secure the alien’s removal through negotiations with foreign
12 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
13 during the 90-day removal period). The statute “limits an alien’s post-removal detention
14 to a period reasonably necessary to bring about the alien’s removal from the United
15 States” and does not permit “indefinite detention.” *Zadvydas* 533 U.S. at 689. The
16 Supreme Court has held that a six-month period of post-removal detention constitutes
17 a “presumptively reasonable period of detention.” *Id.* at 683. Release is not mandated
18 after the expiration of the six-month period unless “there is no significant likelihood of
19 removal in the reasonably foreseeable future.” *Id.* at 701.

20 The Court also held that the detention could exceed six months: “This 6-month
21 presumption, of course, does not mean that every alien not removed must be released
22 after six months. To the contrary, an alien may be held in confinement until it has been
23 determined that there is no significant likelihood of removal in the reasonably
24 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
25 reason to believe that there is no significant likelihood of removal in the reasonably
26 foreseeable future, the Government must respond with evidence sufficient to rebut that
27 showing and that the noncitizen has the initial burden of proving that removal is not
28 significantly likely.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the

1 burden on the alien to show, after a detention period of six months, that there is ‘good
2 reason to believe that there is no significant likelihood of removal in the reasonably
3 foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting
4 *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

5 Petitioner has failed to meet this burden. Since Petitioner’s Order of Expedited
6 Removal became final on October 14, 2025, ERO has worked diligently to execute her
7 removal to a third country. Negrin Decl. ¶¶ 18-20. Because the Cuban government has
8 previously rejected Petitioner for removal, ERO is entitled to pursue Petitioner’s
9 removal to a third country under 8 U.S.C. § 1231(b). *See* 8 U.S.C. § 1231(b)(2)(C)
10 (allowing for third country removal where the petitioner’s country of designation is not
11 willing to accept him); § 1231(b)(2)(E) (allowing third country resettlement where
12 removal to the country designated in the final order is “impracticable, inadvisable, or
13 impossible”).

14 Here, Petitioner’s six-month presumptively reasonable removal period has not
15 concluded. Courts have repeatedly declined to grant habeas relief where the
16 presumptively reasonable six-month period has not yet elapsed. *See Khalilova v. Smith*,
17 No. 25-cv-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025); *Ghamelian*
18 *v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) (“The
19 government is entitled to its six-month presumptive period before Petitioner’s continued
20 § 1231(a)(6) detention poses a constitutional issue”); *Guerra-Castro v. Parra*, No. 25-
21 cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (“The Court
22 finds that the Petition is premature because Petitioner has not been detained for more
23 than six months; *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-10 (E.D. Va. 2006) (finding
24 habeas petition was unripe for review where *Zadvydas* six-month period had not
25 expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12-
26 1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*,
27 No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see*
28 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did the

1 *Zadvydas* Court preclude a noncitizen from challenging their detention before the end
2 of the presumptively reasonable six-month period.”).

3 Moreover, one week after the removal order became final, ICE diligently pursued
4 and demonstrated its ability to promptly resettle Petitioner in Mexico. Negrin Decl. ¶
5 18. Evidence of progress, indeed even slow progress, in this regard will satisfy
6 *Zadvydas* until a petitioner’s detention grows unreasonably lengthy. *See, e.g., Sereke v.*
7 *DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019)
8 (“The record at this stage in the litigation does not support a finding that there is no
9 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”);
10 *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D.
11 Cal. Oct. 13, 2020) (denying petition because “Respondents have set forth evidence that
12 demonstrates progress and the reasons for the delay in Petitioner’s removal”).

13 The record does not support a finding that Petitioner’s detention has been
14 unreasonably lengthy or will be indefinite. ERO has laid out the steps it has and
15 continues to take to enforce Petitioner’s removal and attests that “there is a significant
16 likelihood of Petitioner’s removal to a third country in the reasonably foreseeable
17 future.” Negrin Decl. ¶ 22. Because *Zadvydas* dictates that “an alien may be held in
18 confinement until it has been determined that there is no significant likelihood of
19 removal in the reasonably foreseeable future,” the Constitution’s due process
20 protections do not entitle Petitioner to release at this time. 533 U.S. at 701.

21 Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi*
22 *v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008)
23 (denying *Zadvydas* petition where petitioner had been detained more than 14 months
24 post-final order); *Nicia v. ICE Field Off. Dir.*, No. C13-0092-RSM, 2013 WL 2319402,
25 at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to satisfy his burden of
26 showing that there is no significant likelihood of his removal in the reasonably
27 foreseeable future” where he had been detained more than seven months post-final
28 order).

1 Thus, because Petitioner cannot establish a violation under *Zadvydas*, the Petition
2 must be denied.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court deny
5 Petitioner's requests for relief and dismiss the habeas petition.

6 DATED: January 2, 2026

7 Respectfully submitted,

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13 Attorney for Respondents
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