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8 *Attorneys for the Federal Respondents*

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

11 JOSE ROJAS-LARA,
 12
 Petitioner,
 13
 v.

Case No. 2:25-cv-02544-RFB-EJY
Response to Petition for Writ of Habeas

14 THE UNITED STATES OF AMERICA,
 Kristi NOEM, in her Official Capacity,
 15 Secretary of the Department of Homeland
 Security, Pamela J. BONDI, in her Official
 Capacity, Attorney General, Department of
 16 Justice, Kerri Ann QUIHUIS, in her Official
 Capacity, ICE Field Office Director,
 17 Detention and Removal, Las Vegas, Nevada
 (ICE Local) Michael BERNACKE, in his
 18 Official Capacity, Field Office Director, Salt
 Lake City Field Office, U.S. Immigration
 and Customs Enforcement, Todd LYONS,
 19 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 United States of America, Kristi Noem, Pamela Bondi, Kerri
 25 Ann Quihuis, Michael Bernacke, and Todd Lyons, hereby file their response to Petitioner
 26 Jose Rojas-Lara's Petition for Writ of Habeas. The petition should be denied for the
 27 reasons stated below. This response is supported by the following memorandum of points
 28 and authorities.

1 Respectfully submitted this 6th day of January 2026.

2 TODD BLANCHE
3 Deputy Attorney General of the United States
4 SIGAL CHATTAH
5 First Assistant United States Attorney

6 /s/ Virginia T. Tomova
7 VIRGINIA T. TOMOVA
8 Assistant United States Attorney

9 Memorandum of Points and Authorities

10 I. Introduction

11 Petitioner is subject to removal to Honduras pursuant to a final removal order by an
12 Immigration Judge, dated November 26, 2025. *See* Immigration Judge Order, attached as
13 Exhibit A.¹ Petitioner was previously apprehended by Customs and Border Patrol (CBP)
14 and was expeditiously removed following a negative determination of a credible fear
15 interview on or about May 14, 2017. *See* I-213, attached as Exhibit B. Petitioner was
16 expeditiously removed to El Salvador in 2017. Subsequently, the Petitioner and his family
17 entered the United States on or about September 4, 2022, without being admitted into the
18 United States. Instead, at around the time of the illegal entry, the respondent was
19 apprehended by CBP and processed for expedited removal from the United States and given
20 a credible fear interview. After making a negative credibility determination, the alien
21 requested review by an Immigration Judge. On November 23, 2022, the Immigration Judge
22 vacated the negative credible fear finding of the asylum officer and ICE commenced
23 removal proceedings against the respondent by filing and serving a Notice to Appear. In the
24 Notice to Appear, the respondent was designated as an arriving alien. Petitioner is a
25 suspected MS-13 gang member. *See id.* On December 20, 2022, the respondent was paroled
26 from DHS custody. *See* Interim Notice Authorizing Parole, attached as Exhibit C.
27 Thereafter, on or about July 16, 2025, after a targeted investigation, ICE revoked parole and
28 apprehended the respondent. On July 23, 2025, DHS issued a Notice to Appear with a
hearing date before an Immigration Judge on August 18, 2025. *See* Notice to Appear,

¹ A request is made to DHS regarding the IJ removal order dated November 2025. The record will be supplemented once received. Petitioner however has referenced his appeal from such order to the BIA throughout his petition.

1 attached as Exhibit D. On October 6, 2025, the respondent filed an Application for Asylum
2 and Withholding of Removal. On November 26, 2025, the Immigration Judge ordered him
3 removed to Honduras. On or about December 8, 2025, Petitioner filed an appeal of that
4 final removal order at the Board of Immigration Appeals and that appeal is still pending.
5 The petition should be denied, because Petitioner has been afforded due process throughout
6 and during his removal proceedings and detention, by being given a bond hearing, a credible
7 fear interview by an asylum officer, a review by an Immigration Judge of his alleged
8 credible fear, a final order of removal and a current pending appeal before the BIA. An
9 Immigration Judge denied Petitioner a bond after finding that he is an arriving alien subject
10 to detention under INA § 235(b); 8 C.F.R. § 1001.1(q). *See* Order of an Immigration Judge,
11 attached as Exhibit E. An Immigration Judge ordered him removed to Honduras. Petitioner
12 is currently appealing the Immigration Judge's final order before the BIA. Petitioner also
13 has failed to exhaust his administrative remedies since there is currently an appeal pending
14 before the BIA.

15 **JURISDICTION AND BURDEN OF PROOF**

16 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
17 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon*
18 *Mobil Corp. v. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).
19 "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789
20 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1974 n. 20
21 (2020). Section 2241 of Title 28 provides district courts with jurisdiction to hear federal
22 habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in
23 custody in violation of the Constitution or laws or treaties of the United States to warrant
24 relief. *See* 28 U.S.C. § 2241(c).

25 **II. Legal Argument**

26 **A. There was no Violation of Fifth Amendment Due Process**

27 The Ninth Circuit, applying the Supreme Court's holding in *Thuraissigiam*, has
28 explicitly stated that, "[a]ccordingly, any rights [an inadmissible alien] may have in regard

1 to removal or admission are purely statutory in nature and are not derived from, or
2 protected by, the Constitution's Due Process Clause." *Mendoza-Linares v. Garland*, 51 F.4th
3 1146, 1167 (9th Cir. 2022). Ultimately, "[t]he recognized liberty interests of U.S. citizens
4 and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the
5 proposition that Congress may make rules as to aliens that would be unacceptable if
6 applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)
7 (quoting *Demore v. Kim*, 538 U.S. 510, 522, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)).
8 *Zelaya-Gonzalez v. Matuszewski*, 2023 U.S. Dist. LEXIS 72761, *10.

9 On or about July 16, 2025, after a targeted investigation, ICE revoked parole and
10 apprehended the Petitioner, who is a suspected MS-13 gang member. DHS issued an NTA
11 on July 23, 2025, because Petitioner is in removal proceedings. Exhibit D. Petitioner had a
12 scheduled hearing before an Immigration Judge on August 18, 2025. *Id.* While in
13 detention, Petitioner was provided with a bond hearing on August 26, 2025. Exhibit E. The
14 IJ denied bond due to finding that Petitioner is an arriving alien, and he is subject to
15 detention under INA § 235(b). *Id.* Petitioner reserved his right to appeal that decision by
16 September 26, 2025. However, Petitioner failed to appeal that decision. Petitioner was
17 provided with the Order and had an opportunity to appeal the IJ's decision to deny bond.
18 There was no violation of Fifth Amendment rights of Petitioner during the initial bond.

19 On October 6, 2025, the respondent filed an Application for Asylum and
20 Withholding of Removal. On November 26, 2025, an Immigration Judge ordered
21 Petitioner's removal to Honduras. On or about December 8, 2025, Petitioner filed an
22 appeal at the Board of Immigration Appeals and that appeal is still pending. ECF No. 1-1,
23 ¶ 41. The Court should deny the Petition because Petitioner was provided with a bond
24 hearing which the IJ denied bond based on the evidence and Petitioner has appealed that
25 decision including the Immigration Judge's removal order before the BIA.

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B. Petitioner was Found by the Immigration Judge to Be an Arriving Alien Subject to Mandatory Detention under INA § 235(b)

While in detention, Petitioner was provided with a bond hearing on August 26, 2025.

Exhibit E. The IJ denied bond due to finding that Petitioner is an arriving alien, and he is subject to detention under INA § 235(b). Exhibit E.

Arriving aliens are not entitled to bond. 8 C.F.R. § 1003.19(h)(2)(i)(B).

(i) Upon expiration of the Transition Period Custody Rules set forth in section 303(b)(3) of Div. C. of Pub. L. 104-208, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

...

(B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act.

Pursuant to the Immigration Judge’s order, Petitioner is detained under § 235(b) of the INA. As set forth in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018). While ICE paroled Petitioner from custody (Exhibit C), the subsequent arrest and revocation of parole, authorizes DHS to continue to detain Petitioner until the removal proceedings are completed. *Id.* Further, an alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. *Matter of M-S-*, 27 I&N Dec. 509, 518-519 (A.G. 2019). As a result, DHS is lawfully detaining Petitioner until the conclusion of the removal proceedings. Therefore, the Petition should be denied.

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

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

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

1 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme
2 Court proceeded to conclude that detention of a noncitizen for up to six months under 8
3 U.S.C. § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides
4 good reason to believe that there is no significant likelihood of removal in the reasonably
5 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that
6 showing.” *Id.* at 700-01. The mandatory removal period begins on the latest of three
7 possible dates: (1) the date an order of removal becomes “administratively final,” (2) the
8 date of the final order of any court that entered a stay of removal, or (3) the date the alien is
9 released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three
10 potential outcomes in the event the government does not remove an alien during the 90-day
11 mandatory removal period. First, the government may release the alien subject to conditions
12 of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the
13 removal period if the alien “fails or refuses to make timely application in good faith for
14 travel or other documents necessary to the alien’s departure or conspires or acts to prevent
15 the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C). And finally,
16 the government may further detain certain categories of aliens, including those
17 “inadmissible” under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under
18 this latter category is often referred to as the “post-removal-period.” *Johnson v. Guzman*
19 *Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how
20 long detention during the “post-removal-period” can last. *See Johnson v. Arteaga-Martinez*,
21 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only
22 detain aliens in the post-removal-period for the time “reasonably necessary to bring about
23 that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).
24 And the Supreme Court further clarified that a six-month period of detention is
25 “presumptively reasonable.” *Id.* at 701. “After this 6-month period, once the alien provides
26 good reason to believe that there is no significant likelihood of removal in the reasonably
27 foreseeable future, the Government must respond with evidence sufficient to rebut that
28 showing.” *Id.*

1 In this case, Petitioner was ordered removed by an Immigration Judge, on
2 November 26, 2025. Petitioner appealed the decision to the BIA on December 8, 2025.
3 That appeal is still pending before the BIA. Because the prospect of indeterminate
4 detention raises grave and obvious constitutional concerns, the Supreme Court has held
5 that such a non-citizen “may be held in confinement for a period reasonably necessary to
6 bring about that alien’s removal” and post-removal period detention under 8 U.S.C. §
7 1231(a)(6) for six months or less, inclusive of the removal period, is “presumptively
8 reasonable” (and therefore does not, on its own, result on constitutional injury). *Zadvydas v.*
9 *Davis*, 533 U.S. 678, 683, 701 (2001). Petitioner has been detained for less than six months
10 since his final order of removal was issued and the order became “administratively final”.
11 Under *Zadvydas*, it is presumptively reasonable for Petitioner to be detained up to six
12 months 8 U.S.C. § 1231. *Id.* at 700-01. Petitioner’s argument is not persuasive because six
13 months have not passed since his final removal order was issued for him to legitimately
14 argue a due process violation under *Zadvydas* nor that his detention has been “prolonged”.
15 Therefore, Petitioner has not yet been in detention pursuant to 8 U.S.C. § 1231 for six
16 months since his final removal order was issued on November 26, 2025, and his detention
17 to effectuate his final order of removal is presumptively reasonable. Petitioner’s detention
18 under 8 U.S.C. § 1231(a)(6) is, as interpreted by the Supreme Court, squarely in accordance
19 with the government’s statutory authority and thus, the relief he seeks, is not warranted by
20 statute. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-Martinez*, 142 S. Ct. at 1832-34. Petitioner’s
21 detention under 8 U.S.C. § 1231(a)(6) does not violate his due process rights as he has not
22 met his burden of setting forth good reason to believe that there is no significant likelihood
23 of his removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701.
24 Petitioner was previously removed to El Salvador in 2017. Therefore, Petitioner fails to
25 demonstrate that he meets *Zadvydas*’ six-month detention requirement after final order of
26 removal was issued, and Petitioner’s detention is thus presumed lawful and constitutional,
27 and his Petition should be denied.

28 / / /

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

3 The Ninth Circuit identified three reasons to require exhaustion before entertaining a
4 habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s
5 “expertise” makes its “consideration necessary to generate a proper record and reach a
6 proper decision.” *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).
7 Second, excusing exhaustion encourages “the deliberate bypass of the administrative
8 scheme.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, “administrative review is
9 likely to allow the agency to correct its own mistakes and to preclude the need for judicial
10 review.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*,
11 488 F.3d at 815. The Court should dismiss the Petition. “Exhaustion is generally required
12 as a matter of preventing premature interference with agency processes, so that the agency
13 may function efficiently and so that it may have an opportunity to correct its own errors, to
14 afford the parties and the courts the benefit of its experience and expertise, and to compile a
15 record which is adequate for judicial review.” *Global Rescue Jets, LLC v. Kaiser Foundation*
16 *Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S.
17 749, 765 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for
18 the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

19 In this case, Petitioner has not exhausted his administrative remedies first before
20 bringing this Petition since there is a current pending appeal before the BIA that Petitioner
21 filed less than a month ago. To the extent that a Petitioner is raising an APA claim, civil APA
22 claims are not cognizable in the habeas context *See, e.g., Mesina v. Wiley*, 352 F. App’x 240,
23 241-42 (10th Cir. 2009) (holding that petition asserting APA claim “does not state a habeas
24 claim”). Petitioner’s APA claim fails as a matter of law. Furthermore, there has no due
25 process violation since Petitioner has been detained for less than six months and thus his
26 Petition should be denied.

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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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SIGAL CHATTAH
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