



1 On August 18, 2025, Petitioner was taken into federal custody in Vernon, California, and  
2 was subsequently transferred to the Northwest ICE Processing Center (“NWIPC”) on August 26,  
3 2025. Petitioner’s prior order of removal was reinstated pursuant to 8 U.S.C. § 1231(a)(5) on  
4 October 5, 2025, and he is currently detained pursuant to 8 U.S.C. § 1231(a)(6).

5 Petitioner challenges his post-order detention at the NWIPC as unconstitutional and  
6 unlawful while he awaits removal from the United States. Petitioner’s detention is lawful. The  
7 reinstatement of his removal order here, and subsequent detention, does not violate due process.  
8 *See Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 497–98 (9th Cir. 2007) (reinstatement meets  
9 due process); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (detention is a constitutionally  
10 permissible aspect of the government’s enforcement of the immigration laws).

11 While his Petition discusses removal to a third country, Petitioner has not been served  
12 with a notice of removal to a third country. Consequently, any third country claim is not ripe for  
13 review.

14 Accordingly, Federal Respondents respectfully request the Court deny the Petition. This  
15 return is supported by the pleadings and documents on file in this case, the Declaration of  
16 Deportation Officer Adrian Leyba (“Leyba Decl.”) and the Declaration of Jennifer Wong (“Wong  
17 Decl.”), with accompanying exhibits. Federal Respondents do not believe any hearing is  
18 necessary.

## 19 II. BACKGROUND

### 20 A. Legal Background

21 The Immigration and Nationality Act (“INA”) governs the detention and release of  
22 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*,  
23 594 U.S. 523, 527 (2021). This includes an expedited process for noncitizens who reenter the  
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1 United States without authorization after having already been removed. *See* 8 U.S.C. §  
2 1231(a)(5) (reinstatement of removal orders).

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4 If the Attorney General finds that an alien has reentered the United States illegally  
5 after having been removed or having departed voluntarily, under an order of  
6 removal, the prior order of removal is reinstated from its original date and is not  
subject to being reopened or reviewed, the alien is not eligible and may not apply  
for any relief under this Act, and the alien shall be removed under the prior order  
at any time after the reentry.

7 *Id.*; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order). While a  
8 noncitizen may not seek most discretionary relief from the terms of the reinstated order, a  
9 noncitizen may pursue withholding-only relief and protection under the Convention Against  
10 Torture to prevent his or her removal to the country listed in the reinstated removal order.  
11 *Johnson*, 594 U.S. at 530-31. The Immigration Judge’s (“IJ”) decision on the application for  
12 withholding of removal or protection under the Convention Against Torture may be appealed to  
13 the Board of Immigration Appeal (“BIA”). 8 C.F.R. § 1208.31(g)(2)(ii). The BIA’s decision may  
14 be judicially reviewed by the Court of Appeals. *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958-60 (9th  
15 Cir. 2012). While withholding only proceedings are pending before the IJ or the BIA, ICE cannot  
16 execute a reinstated order of removal. *See id.* at 957. Detention during this process is pursuant to  
17 8 U.S.C. § 1231(a). *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017).

18 **B. Petitioner Alfredo Acosta-Ginori**

19 Petitioner is a native and citizen of Cuba, who first entered the United States in 1980 and  
20 later adjusted status to that of a lawful permanent resident in 1989. Leyba Decl. ¶¶ 4-6. On  
21 March 23, 2018, Petitioner was arrested in California for murder, robbery, burglary and rape, and  
22 robbery, but his robbery charge was dismissed, and he was convicted of burglary first degree  
23 under California Penal Code (“CPC”) § 459; robbery in the first degree under CPC § 211; and  
24 sexual battery under CPC § 243.4. *Id.* ¶ 7. He was sentenced to 292 months in prison. *Id.* On

1 October 23, 2002, Petitioner was issued a Notice to Appear (“NTA”) and charged with INA §  
2 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii). Leyba Decl. ¶ 8; Wong Decl. at Exs. 1, 2 (Notice  
3 to Appear; I-213). He was ordered removed from the United States to Cuba on or about  
4 November 7, 2002. Leyba Decl. ¶ 9; Wong Decl. at Ex. 3 (Order of Removal 2002 (“2002  
5 Removal Order”). The parties waived appeal to this decision. Leyba Decl. ¶ 9.

6 Petitioner entered the United States on March 25, 2007, as a passenger in a vehicle at the  
7 vehicle lanes at the Otay Mesa Port of Entry, coming into the United States from Mexico. Leyba  
8 Decl. ¶ 10. He was served an NTA charging him under INA § 212(a)(6)(C)(ii); 212(a)(7)(A)(i)(I);  
9 212(a)(9)(A)(ii); 8 U.S.C. § 1182. Leyba Decl. ¶ 11. He was then ordered removed to Cuba by a  
10 San Diego Immigration Judge on April 4, 2007. *See* Leyba Decl. ¶ 11; Wong Decl. at Ex. 4 (Order  
11 of Removal 2007). He was released on an Order of Supervision (“OSUP”) on July 11, 2007, with  
12 conditions including to not leave the State of California without prior permission. Leyba Decl. ¶  
13 13; Wong Decl. at Ex. 5 (OSUP).

14 Petitioner entered the United States on September 6, 2011, and was apprehended by CBP  
15 after he was witnessed jumping the border fence between the United States and Mexico near  
16 Jacumba, California. Leyba Decl. ¶ 14. On the same day, he was served with Notice of  
17 Intent/Decision to Reinstate Prior Order that noted his prior 2002 Removal Order. Leyba Decl. ¶  
18 15; Wong Decl. at Ex. 6 (Notice of Intent/Decision to Reinstate Prior Order 2011). He was  
19 convicted for Entry after Deportation 8 U.S.C. § 1326 and sentenced to 30 months in prison on  
20 October 15, 2012. Leyba Decl. ¶ 16.

21 Petitioner entered the United States on August 26, 2023, and applied for admission into  
22 the United States from Mexico through the San Ysidro Port of Entry pedestrian lanes in  
23 California. Leyba Decl. ¶ 17. He presented a California Driver’s License to Border Patrol. *Id.* A  
24 computer generated alert for a wanted person appeared and Petitioner was referred to secondary

1 inspection. *Id.* He was paroled into the United States pending criminal arraignment. *Id.* On  
2 February 15, 2024, Petitioner was convicted of Statements or Entries Generally and sentenced to  
3 6 months of confinement and 24 months of supervised visitation. *Id.* ¶ 18.

4 On February 27, 2024, an Immigration Detainer and Warrant of Removal were lodged by  
5 the Office of Enforcement and Removal Operations (“ERO”) concerning Petitioner after ERO  
6 was notified that Petitioner was arrested for failure to Register as a Sex Offender under CPC §  
7 290.013(A). *Id.* ¶ 19. He was convicted for failure to register as a sex offender under CPC §  
8 290.013(A) on August 8, 2024, and was sentenced to two years of probation. *Id.* ¶ 20.

9 On August 18, 2025, Petitioner was taken into custody in Vernon, California. *Id.* ¶ 21. He  
10 was served with DHS’s Notice of Custody Determination that he would be detained, and he signed  
11 the Notice of Custody Determination stating that he did not request an immigration judge to  
12 review the custody determination. Leyba Decl. ¶ 21; Wong Decl. at Ex. 7 (Notice of Custody  
13 Determination).

14 Petitioner was transferred to NWIPC on August 26, 2025, and he was issued a Notice of  
15 Intent/Decision to Reinstate Prior Order (Form 1871) that noted his 2002 Removal Order on  
16 October 5, 2025. Leyba Decl. ¶¶ 23-24; Wong Decl. at Ex. 8 (Notice of Intent/Decision to  
17 Reinstate Prior Order 2025). Petitioner asked to be removed to Mexico with his family. Leyba  
18 Decl. ¶ 24. On October 7, 2025, Petitioner signed Form 1871, stating that he did not wish to make  
19 a statement contesting the determination. *Id.* ¶ 25.

20 On November 5, 2025, Petitioner asked ERO to be removed to Cuba or Mexico. *Id.* ¶ 26.  
21 On November 13, 2025, ERO emailed IOD-Cuba concerning Petitioner. *Id.* ¶ 27. On December 7,  
22 2025, ERO emailed IOD-Cuba requesting a status update concerning Petitioner. *Id.* ¶ 28.

23 As of the date of this filing, Petitioner has not been served with a notice of removal to a  
24 third country. *Id.* ¶ 29. Petitioner is in custody pursuant to INA § 241; 8 U.S.C. § 1231. *Id.* ¶ 30

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**III. ARGUMENT**

**A. Petitioner’s continuing detention does not violate due process.**

Petitioner’s detention is constitutionally and statutorily lawful. Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6). Petitioner is subject to an administratively final removal order. *See Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017) (finding that detention during withholding only proceedings is pursuant to Section 1231 and not Section 1226). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 689.

Since Petitioner cannot claim a statutory entitlement to release, he must establish that his detention has become indefinite as described by the Supreme Court in *Zadvydas*. Here, Petitioner’s detention has not become “indefinite” or unconstitutional. In *Zadvydas*, the Supreme Court found that post-order detention could be potentially indefinite as authorized under the open-ended terms of Section 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme Court clarified that there is a point at which Congress’s interest in detaining a noncitizen to facilitate his removal may eventually give way to the noncitizen’s liberty interest. This shift occurs when detention becomes potentially indefinite. *Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an [noncitizen] would raise a serious constitutional problem.”).

The Supreme Court determined that it is “presumptively reasonable” for DHS to detain a noncitizen for six months following entry of a final removal order while it worked to remove the noncitizen from the United States. *Zadvydas*, 533 U.S. at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that “for detention to remain

1 reasonable, as the period of post-removal confinement grows, what counts as the ‘reasonably  
2 foreseeable future’ conversely would have to shrink”). Thus, the Supreme Court implicitly  
3 recognized that six months is the *earliest* point at which a noncitizen’s detention could raise  
4 constitutional issues. *Id.*

5 Here, Petitioner has been in federal custody for less than five months. *See* Leyba Decl. ¶  
6 21.<sup>2</sup> While the Government does not concede that Petitioner’s presumptively reasonable period  
7 has ended,<sup>3</sup> even assuming arguendo that it has, Petitioner fails to demonstrate that there is good  
8 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable  
9 future. To the contrary, “[a noncitizen] may be held in confinement until it has been determined  
10 that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
11 533 U.S. at 701. Further, Petitioner’s OSUP conditions prohibited Petitioner from leaving the  
12 State of California without prior permission, but he was apprehended by CBP after he was  
13 witnessed jumping the border fence between the United States and Mexico near Jacumba,  
14 California. Leyba Decl. ¶¶ 13-14; Wong Decl. at Ex. 5 (OSUP). On the same day, he was served  
15 with a Notice of Intent/Decision to Reinstate Prior Order that noted the 2002 Notice of Removal.  
16 *Id.* ¶ 15.

17 Additionally, the fact that Petitioner does not yet have a specific date of anticipated  
18 removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir.

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21 <sup>2</sup> At the time that Petitioner was taken into custody, he was still under a 24-month supervised visitation order from his conviction for Statements or Entries Generally since February 15, 2024, and a two-year probation order for his conviction of Failure to Register as a Sex Offender since August 8, 2024. Leyba Decl. ¶¶ 15, 17.

22 <sup>3</sup> Federal Respondents acknowledge that Courts in this district disagree as to whether the presumptively reasonable period expires six months after a final order, regardless of detention. *See, e.g., Tran v. Bondi*, No. 25-cv-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at \*3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in that case, Federal Respondents do not agree with the *Tran* decision. In any event, Petitioner’s detention is still lawful even past the presumptively reasonable period for the reasons stated herein.

1 2008). Detention becomes indefinite in situations where the country of removal refuses to accept  
2 the noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation  
3 here. Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no  
4 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at  
5 701.

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7 **B. Petitioner lacks standing to pursue claims based on speculative removal to a third  
country, and his claim is speculative and not ripe for review.**

8 Petitioner purports to bring claims challenging the constitutionality of his possible  
9 removal to a third country as a likely violation of the Fifth Amendment, 8 U.S.C. § 1231, the  
10 Eighth Amendment, the Convention Against Torture, the INA, the APA, and relevant  
11 implementing regulations. Pet. at 24-26. Such claims are based on the hypothetical scenario of  
12 his removal to a third country, which are entirely speculative and not ripe for review. Petitioner  
13 has not been served with a notice of removal to a third country. *Leyba Decl.* ¶ 29. There is no  
14 case or controversy because there is no concrete indication that removal to any third country will  
15 occur. If Petitioner is provided notice of removal to a third country at a future date, then his claim  
16 would become ripe for review.

17 Further, at least one court in this district has found that such claims are not the proper  
18 subject of an immigration habeas petition, considering that Petitioner has not been served with a  
19 notice of removal to a third country. *See Tran v. Bondi*, No. 25-cv-01897-JLR, 2025 WL 3140462  
20 (W.D. Wash. Nov. 10, 2025). Therefore, Petitioner's claims are speculative and not part of a live  
21 controversy because there is no concrete indication that removal to a third country will occur.  
22 Thus, these claims should be dismissed as premature.

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**IV. CONCLUSION**

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition and dismiss this matter.

DATED this 14th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 2,470 words, in compliance with the Local Civil Rules.