The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TOMAS ALVARADO-RAMIREZ, Petitioner, v. IMMIGRATION AND CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR, Respondent.	Case No. 2:25-cv-02721-TSZ RESPONDENT'S RETURN MEMORANDUM Noted for Consideration: January 28, 2026

Pursuant to this Court's Order (Dkt. No. 5), Respondent U.S. Immigration and Customs Enforcement ("ICE") submits the following factual background as contained in the records of Petitioner Tomas Alvarado-Ramirez's immigration proceedings, the declaration of Christopher Hubbard ("Hubbard Decl.") as well as the relevant detention authority.

I. DETENTION AUTHORITIES AND REMOVAL PROCEDURES

A. Detention pending removal

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general detention periods are generally referred to as "pre-order"

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

(meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] 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).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE[1] is charged with attempting to effectuate removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). 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 v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has

[1] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701.

B. Release

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, U.S. Department of Homeland Security ("DHS") may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). The right to remain released on an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.*, § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed in the reasonably foreseeable future is determined by assessing a series of factors, including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries ... and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question." *Id.*, § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

Section 241.13(i)(3) provides that upon revocation, the alien "will be notified of the reasons for revocation of his or her release" and will receive an "initial informal interview promptly" after being detained, to "afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.13(i)(3). During such an interview, the noncitizen "may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.* "The revocation custody review will include an evaluation of any contested facts

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* Then, if the alien's request for release is denied, he or she "may submit a request for review of his or her detention . . . six months after [DHS's] last denial of release[.]" *Id.* § 241.13(j).

C. Third Country Removal

When the Government seeks to remove an individual, it may do so through removal proceedings involving an evidentiary hearing before an immigration judge. 8 U.S.C. § 1229a. In removal proceedings, the immigration judge determines whether the individual may be removed from the United States and designates the country to which they will be removed. *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country of removal.

First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the alien declines, the immigration judge will designate one and may also designate alternative countries. 8 U.S.C. §§ 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the immigration judge must first select the "country of which the alien is a subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible, the immigration judge may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E). Section 1231(b)(2)(E)(vii) provides that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country" described above, the statute permits removal to any "country whose government will accept the" noncitizen. *Id.* § 1231(b)(2)(E)(vii).

The Government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a person to a country where they would be tortured, a form of protection known as protection under

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

the Convention Against Torture ("CAT"). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and CAT protection are mandatory, but "only restrict *where* the Government may remove a noncitizen to, not *whether* the noncitizen is subject to removal." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the immigration judge grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

If the Government has a removal order but no country to which an IJ has authorized removal, it can remove the noncitizen to a third country, meaning any country not designated on the removal order. *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). It remains the case that the Government cannot remove an alien to any third country where they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

II. FACTUAL BACKGROUND

Petitioner is a native of and citizen of Cuba who was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5) as part of the Mariel Boatlift in 1980. Hubbard Decl., ¶ 5. He had various arrests after his entry. Hubbard Decl., ¶ 6. In 1983, Petitioner was convicted of aggravated assault in Kansas, with a sentence of no less than two years or more than five years in prison. Hubbard Decl., ¶ 7. He was incarcerated for about a year. Hubbard Decl., ¶ 7. In 1984, the former U.S. Immigration and Naturalization Service ("INS") revoked his conditional parole and took him into

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

custody. Hubbard Decl., ¶ 8. In 1985, INS terminated his parole pursuant to 8 C.F.R. § 212.5 due to his 1983 criminal conviction. Hubbard Decl., ¶ 9; Lambert Decl., Ex. A.

On June 14, 1985, an immigration judge ordered Petitioner to be removed to Cuba. Hubbard Decl., ¶ 10; Lambert Decl., Ex. B. The Board of Immigration Appeals dismissed Petitioner's administrative appeal of the removal order in September 1985. Hubbard Decl., ¶ 10; Lambert Decl., Ex. C. In 1988, approximately three years after his removal order became final, INS released from immigration custody. Hubbard Decl., ¶ 11. Between 1993 and 2013, Petitioner was convicted of various crimes resulting in him being in and out of criminal detention and immigration detention. Hubbard Decl., ¶¶ 12-28; Lambert Decl., Exs. D & E. In 2013, Petitioner was last released from immigration detention on an OSUP. Hubbard Decl., ¶ 28; Lambert Decl., Ex. F (most recent OSUP in Petitioner's alien file).

On December 19, 2025, DHS detained Petitioner based on his existing final order of removal and criminal history while attending a regularly scheduled check-in.[2] Hubbard Decl., ¶ 29; Lambert Decl., Exs. G, H, I. A few days later, DHS served Petitioner with notice of removal to Mexico after Cuba refused to accept him. Hubbard Decl., ¶ 30; Lambert Decl., Ex. J.

ICE detains Petitioner at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1231(a)(6). Hubbard Decl., ¶ 31.

III. CONCLUSION

Respondent does not believe that an evidentiary hearing is necessary.

//

//

//

[2] Undersigned counsel has not located any documentation demonstrating a revocation of Petitioner's OSUP.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

DATED this 23rd day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorneys for Respondent

I certify that this memorandum contains 1,689 words, in compliance with the Local Civil Rules.