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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

CARLOS ESQUIVEL-MENDOZA,  
Petitioner,  
v.  
BRUCE SCOTT, et al.,  
Respondents.

Case No. 2:25-cv-02745-DGE

PETITIONER'S TRAVERSE TO  
RESPONDENT'S RETURN

For the reasons set forth in Petitioner's Petition for Writ of Habeas Corpus, immediate release is warranted.

At the outset, this habeas petition challenges only the legality of Petitioner's present physical detention. Petitioner does not seek review of the merits of his removal proceedings, the underlying charge of inadmissibility, or the denial of his applications for asylum or related relief.

On February 23, 2026, Respondents filed a response arguing that this Court should deny the Petition. Respondents' arguments rest on a mischaracterization of the record and the governing statutes and authorities.

1 Respondents contend that Petitioner's detention is governed by 8 U.S.C. § 1225 because  
2 his petition for review remains pending before the Ninth Circuit and, in their view, there is no  
3 final order of removal. That argument is incorrect. The Board of Immigration Appeals issued its  
4 final decision on Petitioner's appeal on November 19, 2020. Petitioner thereafter sought review  
5 in the Ninth Circuit.

6 Under 8 U.S.C. § 1101(a)(47)(B), an order of removal becomes final upon the earlier of  
7 the Board's affirmance of the Immigration Judge's decision, waiver of appeal, or expiration of  
8 the time to seek review. The governing regulation confirms the same rule. 8 C.F.R. § 1241.1  
9 provides that an order becomes final upon dismissal of an appeal by the Board, waiver of appeal,  
10 or expiration of the time allotted to file an appeal.

11 Courts have applied this rule consistently. In Li v. Holder, 656 F.3d 898, 904 (9th Cir.  
12 2011), the court explained that an order is final when the BIA has decided all matters before it  
13 and nothing remains pending before the Board. In Abdisalan v. Holder, 774 F.3d 517 (9th Cir.  
14 2014) (en banc), the court reaffirmed that finality does not attach where proceedings remain  
15 pending before the agency. Here, the Board issued its decision. Nothing remained pending before  
16 the agency. Respondents' attempt to subject Petitioner to a different statutory scheme is contrary  
17 to the governing statute and regulations. Accordingly, Petitioner's detention is governed by 8  
18 U.S.C. § 1231.

19 Respondents also argue that Petitioner is not entitled to due process protections. That  
20 contention is inconsistent with binding authority. The Fifth Amendment provides that no person  
21 shall be deprived of life or liberty without due process of law. U.S. Const. amend. V. In  
22 Zadvydas v. Davis, 533 U.S. 678, 693 (2001), the Supreme Court explained that although certain

1 constitutional protections do not extend to aliens outside the United States, “once an alien enters  
2 the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’  
3 within the United States, including aliens, whether their presence here is lawful, unlawful,  
4 temporary, or permanent.”

5 The Supreme Court has also recognized that civil detention is permissible only in limited,  
6 nonpunitive circumstances and must be supported by adequate justification and safeguards. See  
7 United States v. Salerno, 481 U.S. 739 (1987); Foucha v. Louisiana, 504 U.S. 71, 80 (1992);  
8 Kansas v. Hendricks, 521 U.S. 346, 356 (1997). When the government withdraws conditional  
9 liberty, it imposes the “grievous loss” described in Morrissey v. Brewer, 408 U.S. 471, 482  
10 (1972).

11 Consistent with this framework, courts apply the balancing test set forth in Mathews v.  
12 Eldridge, 424 U.S. 319 (1976), to determine what process is required before depriving a person  
13 of a protected liberty interest. An as-applied constitutional challenge proceeds in two steps: first,  
14 whether a protected liberty interest exists; and second, what procedures are necessary to ensure  
15 that any deprivation accords with the Constitution.

16 Respondents’ position that Petitioner was not entitled to a pre-deprivation hearing is  
17 contrary to persuasive authority. Courts have expressly recognized that “[n]umerous courts have  
18 concluded that individuals like Petitioner, who were released from immigration detention, [are]  
19 entitled to a pre-deprivation hearing prior to any rearrest or detention as a matter of due process.”  
20 J.C.E.P. v. Wofford, CV-25-01449-EFB (HC), 2025 WL 3268273, at \*6 (E.D. Cal. Nov. 24,  
21 2025). See also Ramirez Clavijo v. Kaiser, CV-25-06248-BLF, 2025 WL 2419263, at \*3 (N.D.  
22 Cal. Aug. 21, 2025) (“[Petitioner] is entitled to a pre-deprivation hearing before a neutral  
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1 decision maker prior to any re-arrest or detention under the Due Process Clause”); Singh v.  
2 Andrews, CV-25-00801-KES-SKO (HC), 2025 WL 1918679, at \*8 (E.D. Cal. July 11, 2025)  
3 (holding “on the balance, the Mathews factors show that petitioner is entitled to due process, and  
4 that process should have been provided before petitioner was detained.”).

5 When the government grants release into the community, it creates a protected liberty  
6 interest. Once release occurs, that liberty cannot be revoked arbitrarily. As the Supreme Court  
7 recognized in Morrissey v. Brewer, 408 U.S. 471, 481–84 (1972), termination of conditional  
8 liberty inflicts a grievous loss. See also T.M. v. Wofford, No. 1:2025cv01141 (E.D. Cal. Sept.  
9 2025).

10 As applied here, Petitioner entered the United States in 2014. He was detained and  
11 released on bond in 2015 in the amount of \$7,500 and was issued documentation authorizing his  
12 presence during the pendency of his proceedings. He was re-arrested in 2016 and granted bond  
13 again in 2018. He thereafter remained at liberty under supervision from 2018 until August 2025,  
14 when he was re-arrested at a scheduled ICE check-in while complying with the conditions of his  
15 release. DHS did not allege any violation of his bond conditions or identify any material change  
16 in circumstances to justify re-detention. As Zadvydas makes clear, persons physically present in  
17 the United States are entitled to due process protection. Yet DHS revoked Petitioner’s liberty  
18 without notice or a pre-deprivation hearing. Accordingly, his detention is unlawful.

19 Petitioner independently seeks release from custody because his detention has become  
20 prolonged in violation of due process. In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme  
21 Court recognized that indefinite immigration detention raises serious constitutional concerns. To  
22 avoid those concerns, the Court construed 8 U.S.C. § 1231 to contain a temporal limitation and  
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1 established a presumptively reasonable period of six months following the commencement of the  
2 removal period. Id. at 701.

3 After six months, once a noncitizen provides good reason to believe that there is no  
4 significant likelihood of removal in the reasonably foreseeable future, the Government must  
5 respond with evidence sufficient to rebut that showing. Id. The Court made clear that civil  
6 detention may not continue indefinitely and must remain reasonably related to its regulatory  
7 purpose of effectuating removal. Id. at 689–90.

8 Here, Petitioner has now been detained for six months. His confinement has reached the  
9 presumptively reasonable period recognized in Zadvydas. Continued detention beyond this point  
10 raises substantial constitutional concern.

11 Because immigration detention is civil and not punitive, it must bear a reasonable relation  
12 to the Government’s stated purpose. Once detention becomes prolonged without a demonstrated  
13 likelihood of removal, its constitutional footing diminishes. Under Zadvydas, continued  
14 confinement under these circumstances is not authorized.

15 Accordingly, Petitioner’s continued detention is unlawful, and he is entitled to release. As the  
16 Court explained in Preiser v. Rodriguez, 411 U.S. 475, 484 (1973), “the essence of habeas corpus  
17 is an attack by a person in custody upon the legality of that custody, and the traditional function  
18 of the writ is to secure release from illegal custody.”

19 For these reasons, Petitioner respectfully requests that the Court reject Respondents’  
20 arguments and grant the Petition for Writ of Habeas Corpus, ordering Petitioner’s immediate  
21 release.

22 Dated: March 2, 2026

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2026, a true and correct copy of the foregoing Supplemental Filing in Support of the Amended Habeas Petition was served on all counsel of record via the Court's CM/ECF electronic filing system.

DATED this 2nd day of March, 2026.

/s/ **Theodora E. Adoghe**

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