IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00080-PAB

DAYAN HERNANDEZ CASTELLANO,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY,
KRISTI NOEM, Secretary U.S. Dept. Homeland Security, in her official capacity,
TODD LYONS, Director Immigration and Customs Enforcement, in his official capacity,
PAMELA BONDI, U.S. Attorney General, in her official capacity,
JUAN BALTASAR, Warden, Denver Contract Detention, in his official capacity,

Respondents.

RESPONSE TO MINUTE ORDER WITH ORDER TO SHOW CAUSE (ECF No. 8)

Pursuant to the Court's Order, ECF No. 8, Respondents hereby respond to Petitioner Dayan Hernandez Castillo's Petition for Writ of Habeas Corpus, ECF No. 1. Petitioner advances two claims for relief: (1) violation of due process under *Zadvydas*;[1] and (2) violation of 8 U.S.C. § 1231(a). *Id.* at ¶¶ 31-38. As relief, Petitioner seeks, *inter alia*, immediate release from immigration detention. *Id.* at 11. The Court should deny the petition because there is a significant likelihood of removal in the reasonably foreseeable future.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. Ex. 1 (Decl. of K. Benner) ¶ 4.

[1] *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

On January 14, 2024, U.S. Customs and Border Protection (CBP) agents apprehended Petitioner at or near Hidalgo, Texas, shortly after he illegally crossed the United States-Mexico border and entered the United States. *Id.* ¶ 5. Petitioner claimed fear of persecution if returned to Cuba. CBP detained Petitioner and processed him for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). *Id.* It also referred Petitioner to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.*

On January 18, 2024, USCIS determined that Petitioner had established a reasonable possibility of torture if he returned to Cuba. *Id.* ¶ 6.

On January 21, 2024, DHS issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review (EOIR). *Id.* ¶ 7. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.*

On January 22, 2024, Petitioner was released from custody on his own recognizance. *Id.* ¶ 8.

On March 25, 2024, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal with EOIR. *Id.* ¶ 9.

On January 26, 2025, ICE officers encountered Petitioner and took him into custody pending resolution of removal proceedings. *Id.* ¶ 10.

On June 10, 2025, the Immigration Judge (IJ) held an individual hearing on the merits of Petitioner's application. *Id.* ¶ 11. At the conclusion of the hearing, the IJ reserved her decision and advised she would issue a written decision on the case. *Id.*

On June 16, 2025, the IJ issued a written decision. *Id.* ¶ 12. The IJ denied Petitioner's application for asylum and ordered him removed to Cuba. *Id.* However, the IJ granted Petitioner's application for withholding of removal to Cuba under 8 U.S.C. § 1231(b)(3). *Id.* The IJ reserved the parties' right to appeal the decision. *Id.* On June 23, 2025, Petitioner filed a motion to reconsider with EOIR. *Id.* ¶ 13. On July 2, 2025, the IJ denied Petitioner's motion to reconsider. *Id.* ¶ 14. Neither party filed an appeal of the IJ's June 16, 2025 order. *Id.* ¶ 15. The IJ's order became administratively final on July 16, 2025. *Id.*[2] Thereafter, ICE pursued Petitioner's removal to a third country pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 16.

On August 27, 2025, ICE notified Petitioner that he would be removed to Mexico and served him with a Notice of Removal. Petitioner refused to sign the notice. *Id.* ¶ 17. On August 28, 2025, ICE transferred Petitioner to the Florence Service Processing Center (Florence SPC) in Arizona for staging for removal to Mexico. *Id.* ¶ 18. Due to operational issues, ICE did not effectuate Petitioner's removal at that time and returned him to the Denver CDF on August 31, 2025. *Id.*

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[2] Petitioner calculates his detention from June 16, 2025, when he contends his removal order became final, but that is incorrect. Per § 1231(a)(1)(B), the removal-period clock begins to run on "[t]he date the order of removal becomes administratively final." (The statute provides for other dates the latest of which may start the clock running, which do not apply here.) Here, Petitioner's removal order became administratively final "[u]pon the expiration of the time allotted for an appeal" of the IJ's order of removal, because no appeal was filed within that time. 8 C.F.R. § 1241.1(c).

On November 3, 2025, ICE notified Petitioner that he would be removed to Mexico and served him with a Notice of Removal. *Id.* ¶ 19. Petitioner refused to sign the notice. *Id.* On November 4, 2025, ICE transferred Petitioner to the Florence Service Processing Center in Arizona for staging for removal to Mexico. *Id.* ¶ 20. At that point, Petitioner claimed fear of persecution if removed to Mexico. *Id.* ¶ 21. On November 9, 2025, ICE transferred Petitioner back to the Denver CDF and referred him to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *Id.*

On or about November 26, 2025, ICE served Petitioner with a Notice of File Custody Review, which advised him that ICE will review his custody status and potential for release on an order of supervision. *Id.* ¶ 22. The notice also advised Petitioner of some of the criteria that ICE will consider when deciding whether to release or continue to detain him. *Id.* Additionally, the notice advised Petitioner that he can submit documents in support of his release. *Id.*

On December 1, 2025, ICE conducted a Post Order Custody Review pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 23. ICE determined that Petitioner did not satisfy the criteria for release because he poses a significant risk of flight if released pending removal. *Id.* ICE also determined that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ICE therefore continued to detain Petitioner. *Id.*

USCIS conducted a third-country screening interview with Petitioner. *Id.* ¶ 24. On December 2, 2025, USCIS determined that Petitioner failed to establish that it is more likely than not that he will be persecuted or tortured in Mexico. *Id.*

Based on the findings of USCIS, Petitioner is not eligible for protection from removal to Mexico under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 24. Thereafter, ICE began the process of preparing Petitioner for removal to Mexico. *Id.* ¶ 25. On January 16, 2026, ICE nominated Petitioner for removal to Mexico. *Id.* The nomination process involves providing background information on Petitioner to the Mexican government and going through the diplomatic process with the Mexican government

In recent months, ICE has successfully executed removals of Cubans to Mexico. *Id.* ¶ 26. Additionally, based on prior efforts to remove Petitioner to Mexico, ICE believes that he will be accepted for removal and can effectuate his removal in the reasonably foreseeable future. *Id.* ICE can effectuate Petitioner removal to Mexico as soon as two days or within approximately a couple of weeks of the Mexican government accepting him for removal. *Id.*

ARGUMENT

Petitioner claims that he is entitled to immediate release because his continued detention purportedly violates: (1) due process under *Zadvydas*; and (2) 8 U.S.C. § 1231(a). *Id.* at ¶¶ 31-38. These claims merge into a single question: whether Petitioner's detention is consistent with the Supreme Court's decision in *Zadvydas*. 533 U.S. 678.

In *Zadvydas*, the Supreme Court construed 8 U.S.C. § 1231(a)(6), the provision of the Immigration and Nationality Act governing post-removal detention. That provision states that, beyond the initial 90-day removal period—during which detention is

mandatory, *see* § 1231(a)(2)(A)—noncitizens "may be detained," § 1231(a)(6).[3] In so doing, the Supreme Court recognized the reality that not every noncitizen who is ordered removed could be removed during that initial 90-day removal period. *See Zadvydas*, 533 U.S. at 701 ("We doubt that when Congress shortened the removal period to 90 days in 1996 it believed that all reasonably foreseeable removals could be accomplished in that time."). For example, whether ICE seeks to detain and remove an individual may depend on resource constraints and practical obstacles. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 546 (2021) (recognizing that "DHS routinely holds aliens under [8 U.S.C. § 1231(a)] when geopolitical or practical problems prevent it from removing an alien within the 90-day period").

In order to "guide lower court determinations" and "limit the occasions when courts will need to make" "difficult judgments" in "recognizing Executive leeway," the Supreme Court construed § 1231(a)(6) to contain an implicit "reasonable time" limitation, the application of which is subject to federal-court review. 533 U.S. at 682, 700-01. The Court further held that, consistent with due process, the detention of a noncitizen with a final order of removal for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700-01.

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[3] *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022) ("§ 1231(a)(6) provides that after a 90-day removal period a noncitizen 'may be detained'" under certain circumstances) (internal quotation marks omitted); *Demore v. Kim*, 538 U.S. 510, 527 (2003) ("Section 1231(a)(6) provides . . . that when an alien who has been ordered removed is not in fact removed during the 90–day statutory 'removal period,' that alien 'may be detained beyond the removal period' in the discretion of the Attorney General").

However, the Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court stated that after six months, if "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.* at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("the onus is on the [noncitizen] to 'provide[ ] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing'" (quoting *Zadvydas*, 533 U.S. at 701)).

Here, Petitioner has been detained for just over six months since his order of removal became final,[4] *see* Ex. 1 ¶ 15, but he has not met his burden to provide good reason to believe there is not significant likelihood of his removal in the reasonably foreseeable future.[5] Petitioner alleges that, "on two occasions" he "was transferred from Colorado to another facility and told he was being removed to Mexico" but that he "was not removed and was subsequently returned to Colorado on both occasions." ECF No.

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[4] To the extent Petitioner argues that his period of detention should be calculated from the date he was detained, while his removal proceedings were still ongoing and before a final order of removal entered, that is inconsistent with Supreme Court authority. *See Demore*, 538 U.S. at 531 ("[d]etention during removal proceedings is a constitutionally permissible part of that process," which has a "definite termination point"); *Zadvydas*, 533 U.S. at 682, 689 (addressing the different issue of a "reasonably necessary" time limit on "*post-removal-period* detention," which could otherwise could potentially be "indefinite" (emphasis added)).

[5] Petitioner filed the habeas petition before he had been detained for six months (*see* ECF No. 1, filed January 8, 2026), but as of the date of this filing he has been detained for six months plus 11 days since the final order of removal.

1. ¶ 20. It is true that Petitioner was transferred to a facility in Arizona for staging for removal to Mexico twice. In the first in August 2025, the removal did not happen for operational reasons. *Id.* ¶ 18. In the second, in November 2025, removal did not happen because he claimed fear of persecution if he was removed to Mexico, so he was transferred back to the Denver CDF and referred to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶¶ 18-19. Petitioner's allegations are insufficient to meet his burden under *Zadvydas*. *Cf. Callender v. Shanahan*, 281 F. Supp. 3d 428, 434-35 (S.D.N.Y. Dec. 13, 2017) (petitioner does not meet burden by showing "that the government has been unable to obtain a travel document to date. He must also establish that the bottleneck is not due to his own continuing efforts to litigate his removal")

Even if Petitioner's allegations were sufficient, the government has offered evidence "sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. Under 8 U.S.C. § 1231(a)(1)(B)(i), the removal period started on July 16, 2025, when the removal order became administratively final. Ex. 1 ¶ 15; *see* 8 C.F.R. § 1241.1 (identifying when an order of removal becomes administratively final). That was when ICE was able to start efforts to remove Petitioner. However, the process was delayed by about a month because—after ICE notified Petitioner that he would be removed to Mexico—Petitioner, exercising his rights, claimed a fear of persecution if removed there. *See* Ex. 1 ¶ 21. USCIS ultimately found that Petitioner did not establish that it was more likely than not that he would be persecuted if sent to Mexico. *Id.* ¶ 24. On January 16, 2026, ICE nominated Petitioner for removal to Mexico. Id. ¶ 25. In recent months, ICE has

successfully executed removals of Cubans to Mexico, and based on prior efforts to remove Petitioner to Mexico, ICE believes that he will be accepted for removal and can effectuate his removal in the reasonably foreseeable future. *Id.* ICE can effectuate Petitioner removal to Mexico as soon as two days or within approximately a couple of weeks of the Mexican government accepting him for removal. *Id.*

CONCLUSION

As discussed, Petitioner has not met his burden under *Zadvydas* to establish he is entitled to release, particularly in light of the evidence ICE has offered of its ongoing efforts to remove him to Mexico and its belief informed by past experience that such removal can be effectuated in the reasonably foreseeable future. The petition should be denied. In the alternative, Respondents respectfully request that this Court grant them leave to submit a status report within 30 days concerning their ongoing efforts to remove Petitioner to a third country.

Dated: January 27, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 27, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

Mmiller@bullanddavies.Com
Jturner@bullanddavies.Com

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ Timothy Bart Jafek
Timothy Bart Jafek