UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-00756 (ADM/LIB)

NICOLASA SEBASTIAN MATACUA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed this habeas petition to seek release from detention by the U.S. Immigration and Customs Enforcement ("ICE"). The Respondents (collectively the "United States") hereby file this Response requesting denial of the habeas Petition. Petitioner is not entitled to release from detention. 8 U.S.C. § 1231 applies to these circumstances, and provides that when an alien is ordered removed," the Secretary of Homeland Security "shall detain the alien" "[d]uring the removal period.". Petitioner was detained on 27 January 2026, less than a month ago. The statutory removal period under the statute is 90 days. Petitioner's detention, thus, falls within the 90 day mandatory detention period.

Petitioner filed this habeas petition on February 8, 2026. Respondents have attached a Declaration, a Warrant, and I-871 in support of this Response.

BACKGROUND

The Federal Respondents draw the following background from the petition and the Declaration of Seth T. Patrin, Deportation Officer ("Patrin Decl.").

Petitioner is a citizen of Mexico, and a native of Mexico. Balencia Dec. ¶4. United States Border Patrol (USBP) first encountered Petitioner on or about April 4, 2006, at or near Nogales, Arizona, and granted Sebastian a Voluntary Return to Mexico. Petitioner was then processed for expedited removal on January 7, 2016, and removed the next day. Patrin Dec. ¶10 Per Patrin's Declaration, Patrin has entered and departed the US multiple times without proper documentation. Balencia Dec. ¶¶7-11. On January 12, 2024, Petitioner was encountered by ICE in Minnesota during Operation Metro Surge and reinstated his removal order. On January 27, 2026, Petitioner was processed for removal from the United States with a form I-871. ¶13.

ARGUMENT

I. Detention of Petitioner Under 8 U.S.C. § 1231

The Court should deny this petition on the merits. Petitioner is not entitled to release from detention. 8 U.S.C. § 1231 applies to these circumstances, and provides that when an alien is ordered removed," the Secretary of Homeland Security "shall detain the alien" "[d]uring the removal period.".

II. Legal and Statutory Authority for Detention Pending Removal

ICE has the authority to detain Petitioner pending his removal from the United States. For more than two centuries, immigration officials have had the authority to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233 (1960). Through the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See* 8 U.S.C. §§ 1225, 1226, and 1231. Once a noncitizen is subject to a final removal order—as Petitioner is here—his detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

A noncitizen who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days" and "shall detain the alien" during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).[1] The "removal period" is the period during which the Department of Homeland Security begins to take steps to execute the noncitizen's final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of: (1) the "date the order of removal becomes administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court

[1] The Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions from the Attorney General to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

orders a stay of the removal of the alien, the date of the court's final order"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B)(i)-(iii).

Detention during the 90-day removal period can be extended in some circumstances. For example, noncitizens who are removable after being convicted of an aggravated felony may be detained beyond 90 days. *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of removal period when noncitizen fails to make timely application for travel documents or acts to prevent removal). The Department of Homeland Security also conducts periodic post-order custody reviews to determine whether a noncitizen subject to a final removal order should continue to be detained beyond the removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other noncitizens).

After the removal period expires, a noncitizen may be released under an order of supervision. *See* 8 C.F.R. § 241.13. Specifically, a noncitizen held beyond the removal period can seek release from custody by showing that "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Id.* § 241.13(a). However, the Department of Homeland Security can revoke release "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). The procedures for revocation are set out in a federal regulation, which requires that the noncitizen:

> be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons

> for revocation stated in the notification. The alien 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 . . . . The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3). After a noncitizen is re-detained using these procedures, § 241.4 governs his continued detention pending removal. *Id.* § 241.13(i)(2).

III. Petitioner's Zadvydas Challenge

Petitioner contends that his continued detention violates the Due Process Clause. This is better known as a Zadvydas challenge. Although the plain language of § 1231(a)(6) does not impose any limit on how long a noncitizen can be detained pending removal, the Supreme Court in Zadvydas "read an implicit limitation into" the statute. 533 U.S. at 689. Thus, a person subject to a final order of removal cannot be detained indefinitely. Id. at 699-700. Zadvydas established a temporal marker: detention for six months or less is presumptively constitutional. Id. at 701. But continued detention does not automatically become unconstitutional after six months; longer detention still comports with due process if there is a "significant likelihood of removal in the reasonably foreseeable future." Id. As the Supreme Court explained:

> [a]fter this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for

detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id. (emphasis added). The end result is that a habeas petitioner must meet the initial burden of demonstrating no significant likelihood of his removal in the reasonably foreseeable future. Id. If he makes this showing, then the government must rebut it. Id.

1. Premature Challenge

Petitioner's Zadvydas challenge is premature. As noted above, the Supreme Court holds that six months of detention is reasonable and constitutional when ICE is carrying out a removal order. Right away, that rule creates a problem for Petitioner because he was detained for under a month after his removal order was reinstated on 27 January. Dec. ¶ 13. Thus, Petitioner's current detention is presumptively constitutional because it has not lasted more than six months. Petitioner's failure to confront this issue and properly support his petition is reason enough to reject his request for habeas relief as premature. "[D]etainees awaiting removal from the United States may not file anticipatory habeas petitions prior to the six-month period having elapsed just in case their detention goes on for too long; instead, they must wait until the presumptively reasonable six-month period

has passed to seek habeas relief." Brian B. v. Tollefson, 2024 U.S. Dist. LEXIS 158854, at *4 (D. Minn. July 26, 2024), adopted by 2024 U.S. Dist. LEXIS 157487 (D. Minn. Sep. 3, 2024); see also Mehighlovesky v. U.S. Dep't of Homeland Sec., 2012 U.S. Dist. LEXIS 185286, at *6 (D. Minn. Dec. 7, 2012) ("A petition filed before the expiration date of the presumptively reasonable six months of detention prescribed by Zadvydas is properly dismissed as premature." (citations, alterations, and internal quotation marks omitted)). Indeed, earlier this year, this Court denied a Zadvydas petition as premature where the petitioner had been held for three months in 2009 and then a few weeks in December 2025. See Saengnakhone S. v. Noem, No. 25-cv-4775-ECT-LIB, ECF No. 10, at 8 (filed Jan. 6, 2026) ("To the extent he raises a Zadvydas challenge, it is premature, as Saengnakhone was detained only a few days past the 90-day removal period in 2009 and has been detained for only a few weeks since his December 2025 arrest."). The Court should likewise deny Petitioner habeas petition on this basis.

CONCLUSION

The Federal Respondents respectfully request that the Court deny Petitioner';s habeas petition in its entirety. No evidentiary hearing is necessary in this matter because the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the petition. Petitioner is properly detained under 8 U.S.C. § 1231, as the Petitioner is subject to an already existing order of removal, and the 90-day removal period has just commenced.

Dated: February 20, 2026

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