

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Suren Ordoian,)	
)	
Petitioner,)	2:26-cv-00207-KWR-SCY
)	
vs.)	
)	
TODD LYONS, <i>in his official capacity as</i>)	
Acting Director, Immigration and Customs)	
Enforcement, U.S. Department of Homeland)	
Security;)	
)	
JOEL GARCIA, <i>in his official capacity as</i>)	
Field Office Director of the ICE El Paso Field)	
Office of Enforcement and Removal)	
Operations, U.S. Immigration and Customs)	
Enforcement, U.S. Department of Homeland)	
Security;)	
)	
KRISTI NOEM, <i>in her official capacity</i>)	
as Secretary, U.S. Department of Homeland)	
Security;)	
)	
PAMELA JO BONDI, <i>in her official capacity</i>)	
as Attorney General of the United States;)	
)	
DORA CASTRO, <i>in her official capacity as</i>)	
Warden of the Otero County Processing Center,)	
)	
Respondents.)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents, the United States Attorney General (“USAG”), Department of Homeland Security (“DHS”), and U.S. Immigration and Customs Enforcement (“ICE”)

(collectively “Respondents”)¹, hereby submit this Response to Petitioner’s amended petition for a writ of habeas corpus and complaint for declaratory and injunctive relief, Doc. 6.

Petitioner is a noncitizen of the United States. According to the amended petition, he presented himself with his family at the San Ysidro Port of Entry in California on December 9, 2022. Doc. 6 at 6. DHS charged him with being an alien without valid immigration and travel documents. *Id.* DHS later paroled Petitioner into the United States “to seek asylum for him and his family.” *Id.* Petitioner filed an asylum application on March 1, 2023. *Id.* at 7.

Petitioner was arrested and transported to a detention facility on or about June 20, 2025. *Id.* at 1-2. He arrived at the Otero County processing center on July 13, 2026, according to official records. An immigration judge denied Petitioner’s asylum application on August 22, 2025. *Id.* at 7, Exhibit B. Petitioner appealed the decision. *Id.* His appeal was denied on January 30, 2026. *Id.*, Exhibit C. A final order of removal was entered on the same date. Petitioner filed a petition for review in the U.S. Court of Appeals for the Tenth Circuit on February 10, 2026. *Id.* He has not sought a stay of removal pending appeal. *Id.*

Nevertheless, Petitioner seeks his immediate release from ICC custody and other relief specified in his prayer for relief appearing on page 12 of the petition. He “does not

¹ The undersigned does not represent the Warden, Otero County Processing Center, as Otero is a private facility, and the Warden is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply equally to the Warden.

seek review of the validity of any removal order.” *Id.* at 3. Rather, he “challenges only the fact of custody and the constitutional adequacy of the process used to (re)detain and continue to detain Petitioner.” *Id.* On this point, Petitioner is referring to his arrest on or about June 20, 2025, while he was on parole and awaiting a decision on his asylum petition and his continued detention by immigration officials thereafter. *Id.* at 7-8.

Respondents request the Court to deny the petition. Petitioner is subject to a final order of removal as of January 31, 2026, and is appropriately detained pursuant to that order. *See* U.S.C. § 1231(a). Petitioner has no valid basis to remain at liberty in the United States and the Secretary of Homeland Security is vested with wide discretion about whether to parole an alien seeking admission to the United States and for how long. *See* 8 U.S.C. § 1182 (d)(5)(A). There is no constitutional violation of due process in this case and Petitioner’s petition for a writ of habeas corpus should be denied.

FACTUAL BACKGROUND

Petitioner remains detained pursuant to 8 U.S.C. § 1231(a). On information and belief, the Petitioner’s removal is imminent.

LEGAL BACKGROUND

A. Removal

When a respondent has filed an appeal, an order of removal becomes final upon the dismissal of that appeal or an order by the BIA. *See* 8 C.F.R. § 1241.1. A removal order may also become final when an alien waives appeal or the allotted time for an appeal has expired. *Id.* A final order of removal triggers a 90-day removal period for DHS to effectuate the order. *See* 8 U.S.C. § 1231(a). The statute also addresses conditions which may extend the removal period. *Id.*

B. Detention

It is well established that detention is a constitutionally valid aspect of the deportation process. *See generally Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

A removable alien may be detained *during* his removal proceedings *and after* he receives an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. “An alien is not adjudged deportable until an order enters concluding that the alien is deportable or ordering deportation, and such an order is not final until affirmed by the Board of Immigration Appeals or until the time expires for seeking review.” *Demore v. Kim*, 538 U.S. 510, 542 (2003) (internal quotation omitted).

Once an alien becomes subject to an administratively final removal order, the authority for his detention shifts to 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021). § 1231(a). That statute provides that with certain exceptions, once an individual is ordered removed, they shall be removed within a period of 90 days (“removal period”). *Id.* § 1231(a)(1)(A). The removal period begins when the order becomes final, the date of the court’s final order where there is a court ordered stay of removal, or when the alien is released from detention or confinement other than detention or confinement for immigration purposes. *Id.* § 1231(a)(1)(B).

In *Zadvydas*, the Supreme Court held that 28 U.S.C. § 1231(a)(6) does not authorize the Attorney General to detain aliens indefinitely beyond the removal period, but “limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 689, 701 (2001). The Court found six months to be presumptively reasonable. *Id.*

On the issue of parole, the Secretary of Homeland Security may, in his or her discretion, parole an alien into the United States “temporarily” and “only on a case-by-case basis” while the alien is “applying for admission to the United States” for “urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182 (d)(5)(A). Such parole “shall not be regarded as an admission of the alien[,]” however, “ and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

A federal district court in California recently declared, “Although in some circumstances the initial decision to detain or release an individual may be within the government's discretion, the government's decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’ *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). According to the California court, “[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause].” *Id.* (quoting *Morrissey*, 408 U.S. at 482). Thus, according to the California court, “even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” *Id.* It should be noted, however, that the case the California court relies on for this principle of law, i.e., *Morrissey*, was not an immigration matter, but rather a matter involving a criminal convict paroled from a state prison after serving a sentence for drawing or uttering bad checks. *Morrissey*, 408 U.S. at 472-73. Parole in this context is obviously quite different as it serves interests such a rehabilitation of felons who will need to reenter society.

C. Habeas Relief

Federal district courts may grant writs of habeas corpus if the petitioner is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

ARGUMENT

A. Section 1231(a)(2) Mandates Detention of Noncitizens Who Are Subject to a Final Order of Removal.

Petitioner's claim does not find support under current law and should be dismissed. Under 8 U.S.C. § 1231(a)(2), during the removal period DHS is required to detain all noncitizens, like Petitioner, who are subject to a final order of removal.

The order of the BIA on January 30, 2026, denied Petitioner's appeal and made the order of removal final. The 90-day removal period will not end until April 8, 2026. The *Zadvydas* post-order presumptive six-month period will not end until April 30, 2026. The Court should therefore deny Petitioner's claim.

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus, Doc. 6, as Petitioner is lawfully detained pending his removal and the removal period has not yet run.

Respectfully submitted,

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Deputy Attorney General

RYAN G. ELLISON
First Assistant United States Attorney



SEAN J. SULLIVAN
Assistant U.S. Attorney