

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

OLIVER FERNANDO POLANCO ALVARADO,

Petitioner,

v.

No. 1:26-cv-00227-KG-LF

WARDEN, et. al.,

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”), hereby submit this Response to Petitioner’s Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States, who entered the country unlawfully and without inspection, and is currently detained pending removal to Nicaragua pursuant to a final order of removal. Petitioner asks the Court to order immediate release or to order a bond hearing. *See* Doc. 1 at 5.

Respondents request the Court to deny the petition (Doc. 1). Petitioner is subject to a final order of removal as of February 11, 2026, and is appropriately detained pursuant to 8 U.S.C. § 1231(a).

FACTUAL BACKGROUND

Petitioner is a citizen of Nicaragua. On an unknown date and at an unknown location, Petitioner entered the United States without being admitted or paroled. *See* Exhibit A – Notice to Appear. On January 18, 2026, Petitioner was charged with removability pursuant INA § 212(a)(6)(A)(i) and (a)(7)(A)(i)(I). *Id.*, *see also* 8 U.S.C. § 1182(a)(6)(A)(i) and ((a)(7)(A)(i)(I).

Petitioner was detained pursuant to INA § 235(b) pending his removal proceedings. *See* 8 U.S.C. 1225(b)(2)(A).

On February 11, 2026, Petitioner’s application for relief was denied and an Immigration Judge (“IJ”) ordered Petitioner removed to Nicaragua. Exhibit B – Order of Removal. Both parties waived appeal, making the removal order final. *See Id.* at 2; *see also* 8 C.F.R. §1241.1.

Petitioner remains detained pursuant to 8 U.S.C. § 1231(a).

LEGAL BACKGROUND

A. Removal

A removal order may also become final when an alien waives appeal or the allotted time for an appeal has expired. *See* 8 C.F.R. § 1241.1. 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). 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.*

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. Waiver of appeal makes the order of the IJ a final order, which can be executed immediately. See 8 C.F.R. § 1241.1; see also *Juarez v. I.N.S.*, 732 F.2d 58 (1984).

The February 11, 2026, removal order indicates that both parties waived appeal, making the order final, and initiating the removal period. The 90-day removal period will not end until May 12, 2026. The *Zadvydas* post-order presumptive six-month period will not end until August 11, 2026. Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(2) and his detention is not ripe for analysis under *Zadvydas*.

The Court should therefore deny Petitioner's claim.

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioner is lawfully detained pending removal pursuant to 8 U.S.C. § 1231(a)(2), and the removal period has not yet run.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following pro se party to be served by first-class postal mail as more fully reflected on the Notice of Electronic Filing:

Oliver Fernando Polanco
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/s/ Allison Shokes
ALLISON SHOKES
Assistant United States Attorney