

District Judge John H. Chun

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERICK ENRIQUE CABALLERO,

Petitioner,

v.

TODD BLANCHE, *et al.*,

Respondents.¹

Case No. 2:26-cv-00990-JHC

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
April 13, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. 4. Petitioner, a native and citizen of Panama subject to a final in absentia order of removal entered April 11, 2024, challenges his post-removal-order detention at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. Petitioner alleges that his detention violates the Due Process Clause of the Fifth Amendment (including a claim of "indefinite arrest"), the Eighth

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Amendment's prohibition on cruel and unusual punishment, and liberty interests protected by the
2 Fifth, Thirteenth, and Fourteenth Amendments.

3 Petitioner's detention is authorized by 8 U.S.C. § 1231(a) and is neither indefinite nor
4 unconstitutional. As of April 8, 2026, Petitioner has been in continuous post-removal-order
5 custody for approximately six months. During this period, Enforcement and Removal Operations
6 ("ERO") officers have actively pursued Petitioner's removal. Petitioner has repeatedly asserted
7 that a valid Panamanian passport is en route from his family, the Panamanian Consulate has
8 confirmed the mailing, and ERO is prepared to initiate a formal travel-document request. Removal
9 to Panama therefore remains significantly likely in the reasonably foreseeable future. Petitioner's
10 constitutional claims fail as a matter of law. The Petition should be denied.

11 II. FACTUAL AND PROCEDURAL HISTORY

12 A. Petitioner Erick Enrique Caballero

13 Petitioner is a native and citizen of Panama. Declaration of Deportation Officer Adrian
14 Leyba (Leyba Decl.) ¶ 3. On August 4, 2023, he arrived at the Brownsville, Texas port of entry
15 seeking admission to the United States and was personally served with a Notice to Appear (NTA)
16 charging him with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Leyba Decl., ¶¶ 4-5;
17 Declaration of Lawrence Van Daley (Van Daley Decl.) Exhibit (Ex.) 1, Notice to Appear. The
18 NTA ordered Petitioner to appear before an Immigration Judge in Phoenix, Arizona, on April 11,
19 2024, at 8:30 a.m. Van Daley Decl., Ex. 1. Petitioner failed to appear for his immigration hearing.
20 Leyba Decl., ¶ 7. On April 11, 2024, the Immigration Judge ordered Petitioner removed to Panama
21 in absentia. Leyba Decl., ¶ 8; Van Daley Decl., Ex. 2, Removal Order. Petitioner attempted to file
22 an appeal with the Immigration Court; that filing was rejected on July 11, 2024, with instructions
23 that appeals must be filed with the Board of Immigration Appeals. Leyba Decl., ¶ 15; Van Daley
24 Decl., Ex. 3, Rejection Notice. No timely appeal to the BIA was perfected and no motion to re-

1 open proceedings was filed with the immigration court. Leyba Decl., ¶ 15. Thus, Petitioner's
2 removal is final.

3 On September 20, 2025, Alaska State Troopers encountered Petitioner near Anchorage and
4 contacted Homeland Security Investigations ("HSI") officers. Leyba Decl., ¶ 9; Van Daley Decl.,
5 Ex. 4, Form I-213. The HSI officers took custody, and on September 26, 2025, Petitioner was
6 booked into the NWIPC, where he remains detained. Leyba Decl., ¶ 9; Van Daley Decl., Ex. 5,
7 Warrant. On October 17, 2025, ERO officers interviewed Petitioner regarding obtaining travel
8 documents to Panama. Leyba Decl., ¶ 10. Petitioner stated that he possessed a valid Panamanian
9 passport and requested that his family mail it to him at the NWIPC. *Id.* On October 23, 2025, the
10 Panamanian Consulate contacted Removal and International Operations (RIO) to confirm that
11 Petitioner's family was mailing the passport. Leyba Decl., ¶ 11. On November 5, 2025, Petitioner
12 informed ERO that his family had received delivery confirmation for the passport. Leyba Decl., ¶
13 12. However, the only document received at the NWIPC was a Panamanian identification card;
14 the passport has not arrived. *Id.* Petitioner continues to assert that the passport is forthcoming.
15 Leyba Decl., ¶ 13. Notwithstanding Petitioner's representations, ERO has determined to initiate
16 the formal travel-document request process with the Government of Panama to facilitate removal.
17 Leyba Decl., ¶ 14.

18 **B. Detention Authority**

19 The INA governs the detention and release of noncitizens during and following their
20 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
21 detention periods are generally referred to as "pre-order" (meaning before the entry of a final order
22 of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal).
23 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order
24 detention).

1 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
2 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
3 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
4 removal and to protect the community from noncitizens who may present a danger, Congress has
5 mandated detention while removal is being effectuated:

6 During the removal period, the [Secretary of Homeland Security]²¹ shall detain the
7 [noncitizen]. Under no circumstance during the removal period shall the [Secretary]
8 release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or
9 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)
10 of this title.

11 8 U.S.C. § 1231(a)(2). During the removal period, ICE is charged with attempting to effect removal
12 of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

13 Section 1231(a)(6) authorizes ICE³ to continue detention of noncitizens after the expiration
14 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
15 and does not place any temporal limit on the length of detention under that provision:

16 [A noncitizen] ordered removed who is inadmissible under section 1182,
17 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
18 who has been determined by the [the Secretary of Homeland Security] to be a risk
19 to the community or unlikely to comply with the order of removal, *may* be detained
20 *beyond the removal period* and, if released, shall be subject to the terms of
21 supervision in paragraph (3).

22 8 U.S.C. § 1231(a)(6) (emphasis added).

23 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
24 Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary

25 ² Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens,
the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this
authority to the Secretary of the Department of Homeland Security (“DHS”), of which ICE is a component. *See also*
6 U.S.C. § 251.

26 ³ Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority
to execute removal orders.

1 to bring about that [noncitizen's] removal from the United States.” *Zadvydas*, 533 U.S. at 689. The
 2 Supreme Court has identified six months as a presumptively reasonable time to bring about a
 3 noncitizen's removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention
 4 grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's
 5 post-order detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-
 6 removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
 7 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the *earliest*
 8 point at which a noncitizen's detention could raise constitutional issues. *Id.*

9 The “reasonably foreseeable future” is evaluated based on concrete evidence of progress,
 10 such as diplomatic communications, travel document requests, or interviews with the home
 11 country. *Zadvydas*, 533 U.S. at 701. The alien bears the initial burden to show “good reason” that
 12 removal is unlikely, after which the government must rebut with evidence of likely removal. *Id.*

13 III. LEGAL AUTHORITY

14 This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) to entertain Petitioner's
 15 constitutional and statutory challenges to the legality and duration of his post-removal-order
 16 immigration detention. *Zadvydas*, 533 U.S. at 688. Review is narrow and does not extend to the
 17 validity of the underlying final order of removal. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Jennings*, 583
 18 U.S. at 294.

19 IV. ARGUMENTS

20 A. Petitioner's Detention Does Not Violate the Fifth Amendment Due Process Clause

21 Petitioner alleges that his detention at the Northwest ICE Processing Center constitutes
 22 “indefinite arrest” in violation of the Due Process Clause of the Fifth Amendment. Dkt. 4, ¶¶ 9-10.
 23 This claim fails as a matter of law under the governing statutory and constitutional framework.
 24

1 The Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or
2 property, without due process of law.” U.S. Const. amend. V. Aliens physically present in the
3 United States are entitled to the protections of the Due Process Clause. *Zadvydas*, 533 U.S. at 693.
4 However, the scope of that protection is significantly limited once a final order of removal has
5 been entered. *Id.* at 690-91. At that point, the Government has already determined through
6 administrative proceedings that the alien is removable from the United States, and the alien’s
7 interest in remaining here is correspondingly diminished. *Id.* Post-removal-order detention under
8 section 241 of the Immigration and Nationality Act is civil and regulatory, not punitive. *Id.* at 690;
9 see also *Demore v. Kim*, 538 U.S. 510, 531 (2003) (reaffirming the civil nature of immigration
10 detention).

11 Congress has authorized the Attorney General to detain aliens subject to final removal
12 orders. 8 U.S.C. § 1231(a). Specifically, once a removal order becomes administratively final, “the
13 Attorney General shall remove the alien from the United States within a period of 90 days.” 8
14 U.S.C. § 1231(a)(1)(A). During this 90-day “removal period,” detention is mandatory. 8 U.S.C. §
15 1231(a)(2). If the alien is not removed within the removal period, continued detention is authorized
16 under 8 U.S.C. § 1231(a)(6) “pending a decision on whether the alien is to be removed” or until
17 removal can be effected.

18 To avoid serious constitutional concerns that would arise from indefinite detention, the
19 Supreme Court in *Zadvydas*, construed 8 U.S.C. § 1231(a)(6) to contain an implicit “reasonable
20 time” limitation. *Zadvydas*, 533 U.S. at 689. The Court held that detention is presumptively
21 reasonable for six months, the 90-day removal period plus an additional 90 days. *Id.* at 701. After
22 six months, “an alien may be held in confinement until it has been determined that there is no
23 significant likelihood of removal in the reasonably foreseeable future.” *Id.* The burden-shifting
24 framework is clear and places the initial burden squarely on the alien: the alien must first provide

1 “good reason to believe that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Id.* Only then does the burden shift to the Government to rebut that showing
3 with evidence. *Id.* The “reasonably foreseeable future” inquiry is necessarily fact-specific and
4 flexible; as the length of prior post-removal confinement grows, the period that counts as
5 “reasonably foreseeable” shrinks. *Id.*

6 The Supreme Court reaffirmed this framework for post-removal-order detention in
7 *Jennings*, 583 U.S. at 299 (expressly preserving *Zadvydas* as the governing standard for 8 U.S.C.
8 § 1231(a) claims).

9 Here, Petitioner has been in continuous post-removal-order custody since September 26,
10 2025. As of the date of this filing, detention has lasted approximately six months. This period falls
11 at the outer edge of, or just beyond, the six-month period that *Zadvydas* deemed presumptively
12 reasonable. *Zadvydas*, 533 U.S. at 701. Even assuming that the presumption has been triggered,
13 Petitioner cannot satisfy his initial burden of showing “good reason to believe that there is no
14 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

15 To the contrary, the record affirmatively demonstrates that removal to Panama remains
16 significantly likely in the reasonably foreseeable future. On October 17, 2025, ERO officers
17 interviewed Petitioner specifically regarding travel documents. Leyba Decl., ¶ 10. Petitioner stated
18 that he possessed a valid Panamanian passport and directed that his family mail it to him at the
19 Northwest ICE Processing Center. *Id.* On October 23, 2025, the Panamanian Consulate contacted
20 Removal and International Operations to confirm that Petitioner’s family was in the process of
21 mailing the passport. Leyba Decl., ¶ 11. On November 5, 2025, Petitioner himself informed ERO
22 officers that his family had received delivery confirmation for the passport. Leyba Decl., ¶ 12.
23 Although the passport has not yet arrived at the facility (only a Panamanian identification card was
24 received), Petitioner continues to assert that the document is forthcoming. Leyba Decl., ¶ 13. In

1 light of these representations, ERO has determined to initiate the formal travel-document request
2 process with the Government of Panama to ensure removal can be effected without further delay.
3 Leyba Decl., ¶ 14.

4 These facts, Petitioner's repeated affirmations of cooperation, the Consulate's direct
5 engagement, and ERO's active pursuit of both the expected passport and formal travel documents,
6 establish a significant likelihood of removal. Petitioner has not identified any refusal by Panama
7 to issue documents, any diplomatic impasse, or any other barrier that would render removal
8 unforeseeable. Mere length of detention, without more, is insufficient to trigger release. *See*
9 *Zadvydas*, 533 U.S. at 701 (the six-month period "does not mean that every alien not removed
10 must be released after six months"). Because Petitioner has failed to meet his threshold burden,
11 the Petition must be denied. Even if the burden were deemed to have shifted, the Government has
12 already rebutted any such showing through the ongoing, concrete removal efforts described above.

13 Petitioner's generalized assertion of "indefinite" detention therefore lacks both factual and
14 legal support. His Fifth Amendment claim should be rejected in full.

15 **B. The Eighth Amendment Does Not Apply to Petitioner's Civil Immigration Detention**

16 Petitioner's claim that his detention violates the Eighth Amendment's prohibition on cruel
17 and unusual punishment likewise fails. Dkt. 4, ¶¶ 9-10. The Eighth Amendment applies only to
18 punishment imposed after a criminal conviction. *See* U.S. Const. amend. VIII ("Excessive bail
19 shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.");
20 *see also Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (distinguishing pretrial or civil detention
21 from criminal punishment and noting that the Eighth Amendment has no application to conditions
22 of civil confinement).

23 Immigration detention, including post-removal-order detention under 8 U.S.C. § 1231(a),
24 is a civil regulatory measure designed to effectuate removal, not punishment. *Zadvydas*, 533 U.S.

1 at 690 (“[D]etention during deportation proceedings [is] ‘a purely civil action’”); *Demore*, 538
2 U.S. at 531 (reaffirming civil nature of immigration detention). The Supreme Court has repeatedly
3 emphasized that the purpose of such detention is to secure the alien’s presence for removal, not to
4 impose punitive sanctions. *Id.*; see also *Jennings*, 583 U.S. at 306 (describing immigration
5 detention as distinct from criminal incarceration).

6 Because Petitioner’s detention is civil rather than criminal, the Eighth Amendment
7 provides no basis for relief. This Court has expressly recognized that the Eighth Amendment does
8 not apply to civil immigration confinement. See *Delgado v. Bondi*, 2:26-CV-00407-JHC, 2026
9 WL 523280, at *2 (W.D. Wash. Feb. 25, 2026) (noting that “the Eighth Amendment does not
10 apply to civil confinement, and the Court need not discuss it here”). Petitioner does not allege any
11 conditions of confinement that could independently state an Eighth Amendment claim even if the
12 Amendment applied, nor does he contend that his detention has crossed into punitive territory.
13 Mere continued detention pending removal efforts, where removal remains foreseeable as shown
14 above, does not constitute cruel and unusual punishment.

15 **C. Petitioner’s Claims Under the Thirteenth and Fourteenth Amendments Fail as a**
16 **Matter of Law**

17 Petitioner asserts liberty-interest violations under the Thirteenth and Fourteenth
18 Amendments. Dkt. 4, ¶¶ 9-10. These claims are legally untenable.

19 The Thirteenth Amendment prohibits slavery and involuntary servitude “except as a
20 punishment for crime whereof the party shall have been duly convicted.” U.S. Const. amend. XIII,
21 § 1. Civil immigration detention under 8 U.S.C. § 1231(a) does not constitute involuntary servitude
22 within the meaning of the Thirteenth Amendment. The Amendment targets the historical evils of
23 chattel slavery and forced labor as punishment; it does not reach regulatory civil detention imposed
24 to facilitate removal from the United States. Courts have consistently rejected Thirteenth

Amendment challenges to immigration detention on this basis, recognizing that such detention is not “servitude”, but a temporary measure tied directly to the execution of a final removal order. Petitioner identifies no forced labor or analogous condition that could implicate the Amendment. His generalized liberty-interest claim under the Thirteenth Amendment therefore fails.

The Fourteenth Amendment’s Due Process and Equal Protection Clauses apply exclusively to actions by the States, not the federal government. U.S. Const. amend. XIV, § 1 (“No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .”); *see Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (holding that federal due-process claims arise under the Fifth Amendment, not the Fourteenth). Petitioner is detained by federal immigration authorities pursuant to federal statute. His claims under the Fourteenth Amendment are therefore not cognizable in this habeas action challenging federal custody.

V. CONCLUSION

For the reasons stated above, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus.

DATED this 8th day of April, 2026.

Respectfully submitted,

s/ Lawrence Van Daley

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Attorney for Federal Respondent

I certify that this memorandum contains 2,769 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing and following supporting declarations and exhibits with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant, via Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Erick Enrique Caballero, *Pro Se* Petitioner
A# 
NW Detention Center
1623 E. J Street, Suite 5
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DATED this 8th day of April, 2026.

s/ Albert Kidd

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