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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ARISDALIA MERINO CORDERO,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary
16 of the Department of Homeland
17 Security, et al.,

18 Respondents.

Case No.: 26-cv-2382-BJC-GC

Traverse

[Civil Immigration Habeas,
28 U.S.C. § 2241]

1 **I. Introduction**

2 In its Return, Respondents incorrectly argue that the habeas
3 must be dismissed because there is a mandatory detention period of 90
4 days that has not passed. That is not true. The law clearly states that
5 the 90 days start from the date of the final order of removal. Here, it is
6 undisputed that the final order of removal happened more than a year
7 ago.

8 Respondents make no other argument in support of continued
9 detention. It does not address whether there is a significant likelihood
10 of removal in the reasonably foreseeable future. As a result, the
11 government has waived this argument. “[W]hen the government does
12 not make an argument that ‘was available at the time it filed its
13 answering brief, it has waived that argument.” *United States v.*
14 *Castillo-Marin*, 684 F.3d 914, 919 (9th Cir. 2012) (quoting *United*
15 *States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011)) (cleaned up).

16 Because the government fails to respond to the merits of
17 Ms. Cordero’s petition, this Court should order immediate release.

18 It is also important to emphasize that Ms. Cordero remains
19 detained because of mistakes made by ICE. She was ordered removed
20 to Cuba over a year ago because ICE sent the notice to appear to the
21 wrong address. Ms. Cordero first learned about this order of removal
22 sometime after she and her husband were detained by ICE on March
23 16, 2026.

24 Regardless of Ms. Cordero’s ability to request a motion to reopen
25 to address the government’s oversight, there has been a final order of
26 removal pending for over 12 months. That means, the government has
27 had that amount of time to attempt Ms. Cordero’s removal to Cuba and
28 has not been able to. Thus, the government cannot meet its burden

1 under *Zadvydas*. See *Hernandez Blanco v. Noem*, 26-cv-00425-DMS-
2 SBC, Doc. 7 (Jan. 23, 2026) (granting on *Zadvydas* grounds for Cuban
3 national with a more than six months old order of removal and
4 detained for less than two months).

5 This Court should grant immediate release.

6 **I. Claim 1: Ms. Cordero's detention violates *Zadvydas* and**
7 **8 U.S.C. § 1231.**

8 Ms. Cordero's continued detention violates 8 U.S.C. § 1231 as
9 interpreted in *Zadvydas*, because there is no significant likelihood of
10 her removal in the reasonably foreseeable future.

11 **A. Ms. Cordero's petition is ripe for review and the sixth**
12 **month presumptive period has long expired.**

13 Respondents requests that the petition should be dismissed
14 because Ms. Cordero has been detained for less than 90 days. Return,
15 ECF No. 14 at 1 ("Petitioner has been in custody for about 9 weeks
16 since her removal order became final."). But as the Respondents state
17 in their return, the 90 days starts from the date of the final order of
18 removal, (in this case April 30, 2025). There is nothing in the statute
19 that states the clock for the 90 days restarts after ICE decides to
20 detain her.

21 Here, it is undisputed that the removal order became final over a
22 year ago, not nine weeks ago. Return, ECF No. 14 at 2. As cited by
23 Respondents, 8 CFR § 1241.1(e) states that "[a]n order of removal
24 made by the immigration judge at the conclusion of proceedings under
25 section 240 of the Act *shall become final* if an immigration judge orders
26 an alien removed in the alien's absence, *immediately upon entry of*
27 *such order*." (Emphasis added). Under 8 U.S.C. § 1231(a)(2), there is a
28 mandatory detention period of 90 days following a final order of
removal.

Respondents implicitly suggest that the 90-day “removal period” under Section 1231(a) did not begin until ICE detained Ms. Cordero on March 16, 2026. But that is inconsistent with the plain language of the statute.¹ The statute states that the “removal period” begins on the “latest of” three possible dates: (1) “the date the order of removal becomes administratively final,” (2) if the removal order is judicially reviewed, the date of the court’s final order, or (3) if the noncitizen is detained (except under an immigration process), the date they are released from detention. 8 U.S.C. § 1231(a)(1)(B)(i)–(iii).

It is undisputed that Ms. Cordero’s order of removal became final on **April 30, 2025**. Return, ECF No. 14 at 2. The removal period thus started that day and concluded 90 days later, on **July 30, 2025**. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 528 (2021); *Diouf v. Mukasey*, 542 F.3d 1222, 1229–30, 1231 n.5 (9th Cir. 2008); *N.Y.F.S. v. Bondi*, No. 2:25-CV-02556-LK, 2026 WL 91889, at *4 (W.D. Wash. Jan. 13, 2026). The *Zadvydas* grace period expired three months after that removal period on **October 30, 2025**. See, e.g., *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.

Because Ms. Cordero has been in the “post-removal period” since July 2025, the statutory provisions governing her detention are 8 U.S.C. § 1231(a)(6) (allowing, but not mandating, detention beyond the removal period) and 8 U.S.C. § 1231(a)(3) (requiring supervision if released). See also *Guzman Chavez*, 594 U.S. at 528–29 (2021). “[T]he

¹ The only citation provided by respondents for this argument is ordered. *Tumasov v. Doe 1*, No. 25-CV-2704-AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). But that case is distinguishable. Unlike here, in that case, the habeas petition was filed less than 90 days after the final order of removal. *Id.* (stating “Tumasov’s removal period only began last month.”).

1 due process analysis attaches in the post-removal period[.]”
2 *Kholesouvan v. Morones*, 386 F.3d 1298, 1301 (9th Cir. 2004). Because
3 Ms. Cordero remained on release following the removal period, she was
4 effectively released under these governing statutory provisions.

5 Thus, the mandatory 90-day detention period has long expired
6 and so has the presumptive six-month period under *Zadvydas*.

7 **B. There is no significant likelihood of removal in the**
8 **reasonably foreseeable future.**

9 Respondents do not attempt to rebut Ms. Cordero’s showing of
10 “good reason to believe that there is no significant likelihood of
11 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
12 701. Petition, ECF 9 at 12–14. She made a showing that there was
13 good reason to believe that there was no significant likelihood of
14 removal and that removal was not in the reasonably foreseeable
15 future. *Id.* Specifically, Ms. Cordero noted that it had been more than a
16 year since the final order of removal and ICE has not been able to
17 remove her. *Id.* Moreover, Cuba is an uncooperative country and the
18 United States has been unable to remove people to that country. *Id.*
19 And finally, there is no indication that ICE will be able to remove
20 Ms. Cordero to a third country. *Id.*

21 The burden then shifted to Respondents can prove a “significant
22 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
23 533 U.S. at 701. Respondents make no effort to meet this burden. As a
24 result, the government has waived this argument. “[W]hen the
25 government does not make an argument that ‘was available at the
26 time it filed its answering brief, it has waived that argument.” *United*
27 *States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir. 2012) (quoting
28 *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011)) (cleaned

up).

II. Claim 2: ICE may not remove Ms. Cordero to a third country without adequate notice and an opportunity to be heard.

The record therefore reflects that Petitioner will not be removed to a third country in the reasonably foreseeable future. But ICE would remove her to a third country if it could, and something could unexpectedly change to make that feasible. To protect against that possibility, this Court should require the government to provide the notice set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), before removing Petitioner to any other third country. The government's three arguments to the contrary are meritless.

First, the Supreme Court's decision in *D.V.D.* does not affect this Court's authority to order injunctive relief in this individual case. In *D.V.D.*, the government sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). But "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Petitioner. *Id.* Thus, the Supreme Court's decision does not override this Court's authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

Second, Petitioner can seek this relief in this habeas petition despite the pending class action. The Ninth Circuit held as much in analogous circumstances in *Pride v. Correa*, which permitted a detained person to individually challenge his own inadequate medical

1 care despite a pending class action challenging medical care at the
2 facility. 719 F.3d 1130, 1137 (9th Cir. 2013). The Ninth Circuit
3 reasoned that “[i]ndividual claims for injunctive relief related to
4 medical treatment are discrete from the claims for systemic reform
5 addressed in” a class action. *Id.* “Consequently, where an inmate
6 brings an independent claim for injunctive relief solely on his own
7 behalf for medical care that relates to him alone, there is no
8 duplication of claims or concurrent litigation.” *Id.* Otherwise,
9 individual plaintiffs “would be powerless to petition the courts for
10 redress of the violation until” a class action, which can take years to
11 finish, “has been fully resolved.” *Id.* The Court therefore rejected the
12 contention that “an individual claim for injunctive relief may be
13 delayed because a pending class action seeks systemic reform relating
14 to the same general subject matter.” *Id.*

15 So too here. Petitioner brings individual claims related to her
16 alone, rather than asking for the systemic reforms sought in *D.V.D.*
17 And per the government’s arguments in *D.V.D.*, these claims must be
18 brought on an individual basis; they cannot be brought in a class
19 action. The government’s position therefore would bar Petitioner from
20 seeking relief individually, even while the government argues in
21 *D.V.D.* that she cannot get that relief as part of a class. This Court
22 should reject that “heads, I win; tails, you lose” reasoning. Under
23 *Plata*, “[t]he class certification order in *D.V.D.* does not prevent this
24 Court from adjudicating Petitioner’s claims regarding third-country
25 removal.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 730 (W.D. Wash.
26 2025).

27 *Third*, 24 hours’ notice is not near enough to satisfy due process.
28 Petitioner may not even have heard of the third country to which ICE

1 intends to deport him, let alone have extensive information about the
2 dangers she could face there. She will need time to research the
3 country conditions before she can make a fair, intelligent decision
4 about whether she fears removal. And if she does fear removal, but
5 ICE does not consider her fear reasonable, she will need time to obtain
6 an attorney and file a motion to reopen. That is why the court in
7 *D.V.D.* laid out a two-step timeline for receiving notice about third
8 countries: Petitioners need 10 days to decide whether to raise a fear-
9 based claim and, if ICE decides that they do not have a reasonable
10 fear, an additional 15 days to move to reopen. *D.V.D. v. U.S. Dep't of*
11 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D.
12 Mass. May 21, 2025). This Court should follow suit.

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14 Respectfully submitted,

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16 Dated: May 19, 2026

s/ Zandra L. Lopez

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18 Attorneys for Petitioner
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