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DETAINED

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**MENDOZA PEREZ, ANTHONY
JOSE**

Case No.: 3:26-cv-02508-DMS-MSB

Petitioner,



vs.

CHRISTOPHER J. LAROSE, et al.,

**PETITIONER'S TRAVERSE IN
SUPPORT OF HIS PETITION FOR
WRIT OF HABEAS CORPUS**

Respondents.

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

Petitioner, Anthony Jose Mendoza Perez, through undersigned counsel,
respectfully submit this Traverse to Respondent's Return and in support of his
Petition for the Writ of Habeas Corpus.

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I. INTRODUCTION

Petitioner, by and through undersigned counsel, respectfully submits this Traverse to Respondents' Return and in further support of his Petition for Writ of Habeas Corpus.

Respondents' Return rests almost entirely on one premise: that because Petitioner's removal order allegedly became administratively final on April 3, 2026, his detention is now governed by 8 U.S.C. § 1231(a), making this petition premature. That argument is incomplete and does not meaningfully respond to the claims raised in the Petition. Respondents bear the burden of establishing a lawful basis for Petitioner's continued detention, yet their Return fails to address Petitioner's core claims. Petitioner has been continuously detained since his redetention on or about April 29, 2025, yet Respondents attempt to artificially reset the detention clock by relying solely on the asserted finality of the removal order rather than any individualized justification for his continued detention.

Petitioner does not merely argue that his post-removal-order detention has become prolonged under *Zadvydas v. Davis*. Rather, Petitioner challenges the legality of the government's conduct leading to and continuing his detention, including his redetention without individualized justification, the deprivation of meaningful process, and the government's use of detention to strip Petitioner of

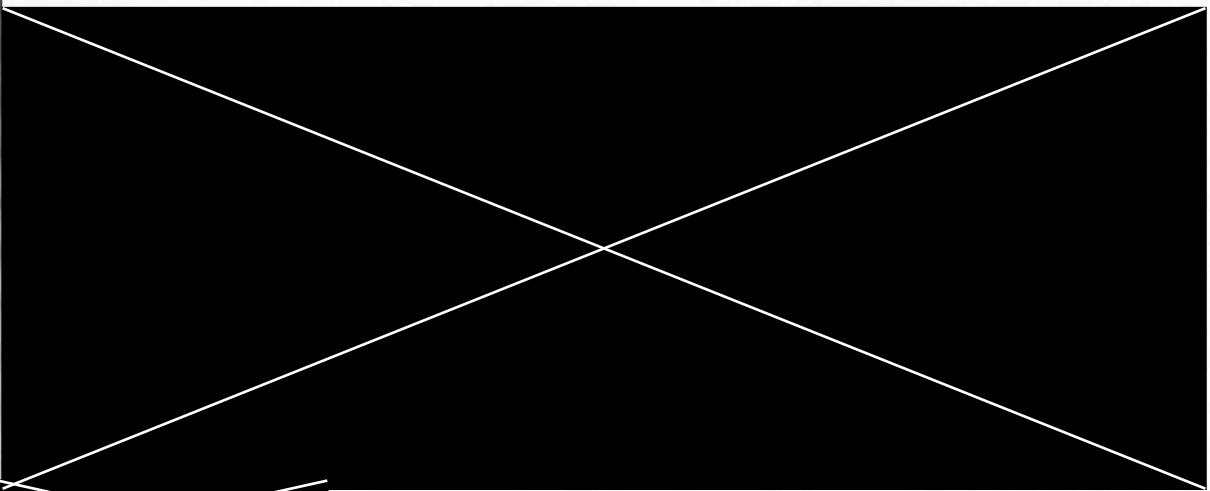
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1 the procedural protections available in regular removal proceedings.

2 Respondents' reliance on § 1231(a) assumes the validity of the process that
3 produced the alleged final order. But that assumption is precisely what Petitioner
4 contests. A statutory label cannot cure an unlawful deprivation of liberty, nor can
5 the government convert allegedly defective proceedings into a shield against
6 habeas review merely by asserting that the removal period has begun.
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9 II. FACTUAL BACKGROUND

10 Petitioner is a native and citizen of Venezuela who fled his country after
11 facing persecution on account of his imputed political opinion and membership in
12 a particular social group consisting of former military officers who refused to
13 support government corruption.
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Petitioner reasonably feared that he would be detained, tortured, or killed if returned to Venezuela, particularly given the treatment of

1 political dissidents and former military personnel in detention facilities.

2 Petitioner fled Venezuela and ultimately entered the United States on or
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4 about September 16, 2023. Upon his entry, he was encountered by immigration
5 authorities and was released on his own recognizance.

6 Following his release, Petitioner complied with all immigration
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8 requirements. He appeared for his immigration court proceedings and actively
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10 pursued relief, including filing an application for asylum, withholding of removal,
11 and protection under the Convention Against Torture.

12 Despite Petitioner's compliance and the absence of any evidence suggesting
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14 that he posed a danger to the community or a flight risk, Respondents later
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16 redetained him. The record does not identify any materially changed
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18 circumstances between Petitioner's initial release and his subsequent detention
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20 that would justify this deprivation of liberty. At no point do Respondents identify
any conduct suggesting that Petitioner poses a danger to the community or a risk
of flight, the only permissible bases for civil immigration detention.

21 While in custody, Petitioner continued to pursue relief in immigration court.
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23 DHS filed a motion to pretermite his applications for relief, and on March 3, 2026,
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25 the Immigration Judge granted that motion and ordered Petitioner removed to
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27 Uganda. Respondents now assert that the removal order became administratively
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1 final on April 3, 2026.

2 Respondents rely on that asserted finality to justify Petitioner's continued
3 detention under 8 U.S.C. § 1231(a). However, Petitioner's detention arises from a
4 sequence of events that includes his prior release, his subsequent redetention
5 without individualized justification, and the alleged deprivation of meaningful
6 procedural protections in his immigration proceedings. These facts form the basis
7 of Petitioner's challenge to the legality of his continued detention.
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10 III. ARGUMENT

11 A. Respondents Mischaracterize the Petition and Misapply 8 U.S.C. § 12 1231(a) and *Zadvydas*.

13 Respondents' primary argument, that Petitioner's detention is lawful
14 because he is within the 90-day removal period under 8 U.S.C. § 1231(a), rests on
15 a fundamental mischaracterization of the Petition. Respondents frame this case as
16 a premature prolonged-detention claim governed by *Zadvydas v. Davis*, and argue
17 that Petitioner must remain detained for at least six months before seeking relief.
18 That argument fails because it does not address the claims actually raised.
19 Respondents' argument fails at the outset because it addresses a claim Petitioner
20 did not raise.
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25 Petitioner does not contend that his detention has become unlawful merely
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1 due to its duration. As set forth in the Petition, Petitioner instead challenges the
2 legality of his detention itself, including his redetention without individualized
3 justification, the deprivation of meaningful procedural protections, and the
4 government's reliance on allegedly defective proceedings to justify continued
5 confinement. These claims arise independently of the six-month framework
6 discussed in *Zadvydas*.
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9 While *Zadvydas* recognizes that detention under § 1231(a)(6) becomes
10 presumptively unreasonable after six months if removal is not reasonably
11 foreseeable, it does not hold that all constitutional challenges to detention are
12 barred prior to that point. To the contrary, the Supreme Court emphasized that
13 habeas corpus remains available to test the legality of executive detention. 533
14 U.S. 678, 687, 690 (2001). Accordingly, Respondents' reliance on *Zadvydas* to
15 argue that Petitioner's claims are premature is misplaced.
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18 Respondents likewise err in treating § 1231(a) as dispositive. Although §
19 1231(a)(2) provides that the government "shall detain" a noncitizen during the
20 removal period, that statutory language does not eliminate the Court's obligation
21 to determine whether detention is lawful under the Constitution. Habeas review
22 under 28 U.S.C. § 2241 exists precisely to test the legality of custody, and the
23 government cannot defeat that review by invoking a statutory label while ignoring
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1 the underlying constitutional violations. See *Nettles v. Grounds*, 830 F.3d 922,
2 934 (9th Cir. 2016).

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4 Here, Respondents assume that the existence of a purportedly final removal
5 order resolves the legality of Petitioner's detention. That assumption is incorrect.
6 Respondents do not, and cannot, demonstrate that Petitioner's detention is lawful
7 under the Constitution based on the facts of this case. This case is not about how
8 long Petitioner has been detained; it is about whether he may be detained at all
9 under the Constitution.
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12 **B. Respondents Fail to Address Petitioner's Unlawful Redetention and**
13 **Lack of Individualized Justification.**

14 Respondents' Return is silent as to one of Petitioner's central claims: that he
15 was previously released from custody and subsequently redetained without any
16 materially changed circumstances or individualized justification. As set forth in
17 the Petition, Petitioner was released after entering the United States and later
18 redetained without any individualized determination that detention was necessary.
19 This omission is fatal to Respondents' argument.
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22 Petitioner entered the United States in September 2023 and was released on his
23 own recognizance. As detailed in the Petition, Petitioner complied with all
24 conditions of release and actively pursued relief in immigration court. He
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1 appeared for his proceedings and sought asylum, withholding of removal, and
2 protection under the Convention Against Torture. At no point do Respondents
3 allege that Petitioner failed to appear, attempted to abscond, or engaged in conduct
4 suggesting that he poses a danger to the community. Respondents bear the burden
5 of justifying detention, yet fail to identify any individualized evidence supporting
6 continued custody.
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9 Despite these facts, Respondents later redetained Petitioner. They do not
10 identify, and cannot identify, any materially changed circumstances that would
11 justify this deprivation of liberty. They do not point to new evidence. They do not
12 assert that Petitioner became a flight risk or a danger. Instead, they rely almost
13 exclusively on the existence of the removal order.
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16 That is not sufficient. Civil immigration detention is not punitive and is
17 permissible only to serve legitimate purposes such as ensuring appearance at
18 proceedings or protecting the community. See *Zadvydas v. Davis*, 533 U.S. at 690.
19 Once the government has determined that a noncitizen may be released, any
20 subsequent decision to re-detain that individual must be supported by
21 individualized, fact-based reasoning.
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24 Here, Respondents do not, and cannot, identify any individualized basis for
25 Petitioner's continued detention. Their failure to do so renders his detention
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1 arbitrary and in violation of due process. The government cannot cure that defect
2 by later invoking § 1231(a). Detention that is unlawful at its inception does not
3 become lawful simply because the government assigns it a different statutory
4 label.
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6 **C. The Alleged Finality of the Removal Order Does Not Cure Due Process**
7 **Violations.**
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9 Respondents argue that Petitioner's removal order became administratively
10 final on April 3, 2026, pursuant to 8 C.F.R. § 1241.1(c), because he did not file an
11 appeal to the Board of Immigration Appeals. But administrative finality does not
12 resolve the constitutional issues presented here. Even accepting *arguendo* that the
13 removal order is administratively final, that status does not resolve whether the
14 detention itself is lawful.
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17 Petitioner's claim is not limited to whether a removal order exists. As
18 explained in the Petition, Petitioner challenges the legality of the process that
19 resulted in his detention, including the deprivation of meaningful procedural
20 protections and the absence of individualized custody determinations.
21 Respondents' argument improperly treats administrative finality as dispositive of
22 constitutional legality. That is not the law.
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25 Courts have long recognized that immigration detention remains subject to
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1 judicial review, even in the post-final-order context. See *Zadvydas v. Davis*, 533
2 U.S. at 687. The government cannot insulate unlawful detention from review by
3 asserting that a removal order has become final, particularly where the petitioner
4 challenges the legality of the custody itself.
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6 Here, Respondents do not meaningfully address Petitioner's allegations that
7 his detention results from procedurally defective proceedings and the denial of
8 due process. Instead, they ask this Court to accept the existence of the removal
9 order as sufficient. That is not a complete answer to a habeas petition. The Court
10 must still determine whether the government's custody of Petitioner is lawful
11 under the Constitution.
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14 **D. Respondents' Reliance on *Johnson v. Arteaga-Martinez* Is Misplaced.**

15 Respondents cite *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), to
16 support their position that § 1231 authorizes detention of noncitizens with final
17 removal orders. But *Johnson* does not resolve, and is inapplicable to, the issues
18 presented in this case.
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21 In *Johnson*, the Supreme Court addressed whether § 1231(a)(6) requires the
22 government to provide bond hearings after a certain period of detention as a
23 matter of statutory interpretation. The Court held that the statute does not mandate
24 such hearings. It did not hold that the government may detain individuals in
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1 violation of due process, nor did it limit the availability of habeas review to
2 challenge unlawful custody.

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4 As set forth in the Petition, Petitioner does not seek to impose a statutory
5 bond-hearing requirement under § 1231(a)(6). Instead, he challenges the
6 constitutionality and legality of his detention based on the specific facts of his
7 case, including his redetention without justification and the deprivation of
8 meaningful procedural protections. *Johnson* does not address those claims and
9 therefore does not support Respondents' position.
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11 **IV. CONCLUSION AND PRAYER FOR RELIEF**

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13 Respondents' Return fails to establish a lawful basis for Petitioner's
14 continued detention and instead relies on a mischaracterization of the Petition and
15 an incomplete application of governing law. By mischaracterizing the Petition as a
16 premature *Zadvydas* claim and relying exclusively on 8 U.S.C. § 1231(a),
17 Respondents do not address Petitioner's core allegations of unlawful redetention,
18 lack of individualized justification, and violations of due process.
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21 Petitioner is presently detained and challenges the legality of that detention.
22 He need not wait six months to seek relief from custody that is allegedly
23 unconstitutional from its inception. Respondents bear the burden of justifying that
24 detention and have failed to do so.
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1 Accordingly, the Court should reject Respondents' request to deny the
2 Petition and grant the relief requested. This case is not about the duration of
3 detention, it is about the legality of detention itself.
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6 Respectfully submitted,

7 Dated: May 1, 2026

8 //s// Mario Portugal

9 Mario Portugal

10 Pro Bono Counsel for Petitioner,

11 Anthony Jose Mendoza Perez
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