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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 HUGO DIAZ BETANCOURT,

Petitioner,

13
14 v.

15 MARKWAYNE MULLIN, et al.,

16 Respondents.
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Case No.: 26-cv-2640-JAO-MSB

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner requests this Court to order Immigration and Customs Enforcement (ICE) to release him from custody because, he alleges, his detention is unlawful and prolonged. He was ordered removed from the United States on March 4, 2024, and granted withholding of removal to Nicaragua that same day. Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. Although he may not be repatriated to Nicaragua, he may be resettled in a third country. Under 8 U.S.C. § 1231(a), ICE has authority to detain a noncitizen for 90 days to execute removal, and the Supreme Court has held that detention is presumptively reasonable for six months. Here, Petitioner was re-detained on November 18, 2025, and the presumptively reasonable six-month period of post-final order detention has not ended. ICE is actively working to effect Petitioner's removal to a third country. Petitioner has not provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Moreover, Petitioner's second claim that ICE be enjoined from removing him to a third country without adequate notice and an opportunity to be heard is unsupported by the evidence in this case. As such, the Court should deny the petition.

II. BACKGROUND

Petitioner is a native and citizen of Nicaragua. *See* Declaration of Jason Cole. ("Cole Decl.") at ¶ 5. Petitioner was granted withholding of removal from Nicaragua on March 3, 2024, and was released from custody the next day. *See id.* at ¶ 9; *see also* Exhibit 1 (IJ Order); *see also* ECF 1 at 3. On November 21, 2024, Petitioner was arrested by U.S. Marshall Service for violation of supervision conditions from his conviction under 8 U.S.C. § 1326, in which he was sentenced to 24 months. *See* Cole Decl. at ¶ 10. Petitioner was taken into ICE custody on November 18, 2025, pending third country removal. *See* Cole Decl. at ¶ 11; *see also* Exhibit 2 (Notice of Revocation).

On January 2, 2026, an inquiry was sent requesting third country removal. *See* Cole Decl. at ¶ 12. On January 5, 2026, HQ advised the field that SLRRFF exists for

1 third country removal to Mexico through the land border through Sonora, Arizona. *See*
2 *id.* at ¶ 13. On January 7, 2026, ERO spoke to Petitioner pertaining to repatriation to
3 Mexico and Petitioner declined removal option to Mexico. *See id.* at ¶ 14. On February
4 10, 2026, ERO sent another request for status on third country removal. *See id.* at ¶ 15.
5 On February 10, 2026, HQ determined that Mexico still a viable option unless a fear is
6 claimed. *See id.* at ¶ 16. On April 16, 2026, due to low numbers for third country
7 removals to Mexico, Petitioner’s case was not accepted for repatriation. *See id.* at ¶ 17.
8 Petitioner will be nominated for repatriation for the following week. *See id.* On April
9 29, 2026, ERO sent email to HQ soliciting an update on third country removal. *See id.*
10 at ¶ 18. At this time, ERO, continues to diligently work to effectuate removal to Mexico
11 or another third country and believes there is a significant likelihood of removal in the
12 reasonably foreseeable future. *See id.* at ¶ 19.

13 Since Petitioner’s re-detention, ICE has been working as expeditiously as
14 possible to identify a third country where Petitioner may be removed. *See Cole Decl.* at
15 ¶ 19. Once Petitioner became subject to a final order of removal, his detention was
16 mandated pursuant to 8 U.S.C. § 1231(a).

17 III. ARGUMENT

18 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
19 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
20 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
21 (2022). The INA provides that an alien ordered removed must be detained for 90 days
22 pending the government’s efforts to secure the alien’s removal through negotiations
23 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
24 detain” the alien during the 90-day removal period under subsection (a)(1)).

25 Section 1231(a)(6) “authorizes further detention if the Government fails to
26 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
27 Detention authority under this statute, however, is limited to “a period reasonably
28 necessary to bring about the alien’s removal from the United States” and “does not

1 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
 2 period of post-removal detention constitutes a “presumptively reasonable period of
 3 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
 4 period unless “there is no significant likelihood of removal in the reasonably foreseeable
 5 future.” *Id.*

6 If an individual ordered removed “is not removed to his or her country of choice
 7 or citizenship, he or she shall be removed to any of the following countries” listed in 8
 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).
 9 The enumerated countries are:

- 10 (i) The country from which the alien was admitted to the United States
- 11 (ii) The country in which is located the foreign port from which the alien
 12 left for the United States or for a foreign territory contiguous to the United
 States.
- 13 (iii) A country in which the alien resided before the alien entered the
 country from which the alien entered the United States.
- 14 (iv) The country in which the alien was born.
- 15 (v) The country that had sovereignty over the alien's birthplace when the
 alien was born.
- 16 (vi) The country in which the alien’s birthplace is located when the alien
 17 is ordered removed.

18 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
 19 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
 20 country whose government will accept the alien into that country.’” *Id.* (quoting
 21 § 1231(b)(2)(E)(vii)).

22 Here, Petitioner was granted withholding of removal to Nicaragua—his country
 23 of birth and citizenship, as well as the country designated during his removal
 24 proceedings. Petitioner has not designated any other country for removal. Apart from
 25 Nicaragua, there appears to be no other country that would meet the definitions under
 26 subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See*
 27 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal.
 28 Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in

1 violation of the Constitution or laws or treaties of the United States.”) (quoting 28
2 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated
3 countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to
4 a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

5 Recent developments in international relations between the United States and
6 several other countries have made probable ICE’s removal of immigrants, like
7 Petitioner, that it previously was unable to remove to third countries. Against this
8 backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to
9 detain Petitioner for purposes of executing his removal order to a third country. *See*
10 *Cole Decl.* at ¶ 19.

11 Since Petitioner was re-detained on November 18, 2025, ICE has worked as
12 expeditiously as possible to effectuate his resettlement in a third country. *See id.* at ¶¶
13 11–19. On January 2, 2026, an inquiry was sent requesting third country removal. *See*
14 *Cole Decl.* at ¶ 12. On January 5, 2026, HQ advised the field that SLRRFF exists for
15 third country removal to Mexico through the land border through Sonora, Arizona. *See*
16 *id.* at ¶ 13. On January 7, 2026, ERO spoke to Petitioner pertaining to repatriation to
17 Mexico and Petitioner declined removal option to Mexico. *See id.* at ¶ 14. On February
18 10, 2026, ERO sent another request for status on third country removal. *See id.* at ¶ 15.
19 On February 10, 2026, HQ determined that Mexico still a viable option unless a fear is
20 claimed. *See id.* at ¶ 16. On April 16, 2026, due to low numbers for third country
21 removals to Mexico, Petitioner’s case was not accepted for repatriation. *See id.* at ¶ 17.
22 Case will be nominated for repatriation for the following week. *See id.* On April 29,
23 2026, ERO sent email to HQ soliciting an update on third country removal. *See id.* at ¶
24 18. Although RIO is still in the process of identifying countries that may accept
25 Petitioner for removal, the record indicates that ICE is working as diligently as possible,
26 and the Executive continues to negotiate with other countries to accept U.S. deportees.¹

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28 ¹ The Supreme Court also noted in *Zadvydas* that “[o]rdinary principles of judicial review in this area recognize Executive Branch primacy in foreign policy matters.” *Id.*

1 *See id.* at ¶¶ 18–19; *see also Zadvydas*, 533 U.S. at 700 (instructing district courts “to
2 listen with care when the Government’s foreign policy judgments, including, for
3 example, the status of repatriation negotiations, are at issue, and to grant the
4 Government appropriate leeway when its judgments rest upon foreign policy
5 expertise.”).

6 Petitioner was re-detained on November 18, 2025. He has been in post-final order
7 detention for less than six months. Petitioner’s detention is still within the six-month
8 period that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533 U.S. at
9 700–01. Instructive here, the Supreme Court established this six-month period of post-
10 final order detention to be presumptively reasonable “for the sake of uniform
11 administration in the federal courts” and “to limit the occasions when courts will need
12 to make” difficult judgments involving foreign policy matters. *See id.* at 700–01. Thus,
13 Petitioner’s claim is not ripe for review, and it would be premature to conclude that
14 there is no significant likelihood of removal in the reasonably foreseeable future before
15 permitting ICE an opportunity to complete its diligent efforts to effect Petitioner’s
16 removal. *See Khalilova v. Smith*, No. 25-cv-2140 JLS-DDL, 2025 WL 3089522, at *4
17 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of presumptive
18 reasonableness has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem*
19 *et al.*, No. 25-cv-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025)
20 (same). Evidence of progress, even slow progress, in negotiating a petitioner’s
21 repatriation will satisfy *Zadvydas* until the petitioner’s detention grows unreasonably
22 lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5
23 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not support a
24 finding that there is no significant likelihood of Petitioner’s removal in the reasonably
25 foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL
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28 at 700. This case touches on such matters because it is part of a centralized resettlement
effort that entails negotiations with and cooperation by foreign governments.

1 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because “Respondents have
2 set forth evidence that demonstrates progress and the reasons for the delay in
3 Petitioner’s removal”).

4 Should the Court decline to dismiss the petition at this time, the burden is on
5 Petitioner to show a “good reason to believe that there is no significant likelihood of
6 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. As explained
7 above, given the Executive’s negotiations with other countries for third country
8 resettlement and ERO’s pending request for such resettlement for Petitioner, he cannot
9 meet his burden, and even if he did, the government has presented evidence sufficient
10 to rebut the showing.

11 Petitioner also suggests that once a third country is identified, ICE will
12 immediately deport him there without being given adequate notice and an opportunity
13 to be heard. *See* ECF No. 1 at 12. ICE attests, however, that once a third country is
14 identified, it “will provide Petitioner with written notice, and if Petitioner claims a fear
15 of removal to the identified country, he will be referred to an asylum officer for
16 processing of the fear-based claims.” Cole Decl. at ¶ 21. The evidence further shows
17 that ICE will generally wait at least 24 hours following the notice of third country
18 removal before executing it, and under no circumstances would removal be executed in
19 less time than that without the noncitizen being provided “reasonable means and
20 opportunity to speak with an attorney prior to removal.” *Id.* at ¶ 20. Thus, Petitioner’s
21 concern that he will not receive adequate notice and an opportunity to be heard prior to
22 his third country removal is not borne out by the evidence in this case.

23 Moreover, Petitioner’s challenge to the July 9, 2025 ICE memo is subject to
24 ongoing litigation, with the Supreme Court staying an injunction imposed by a district
25 court ordering the government to provide notice and an opportunity to be heard like that
26 requested here. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given
27 the Supreme Court’s reversal of that injunction, Respondents’ position is that
28 imposition of a similar injunction would be reversed here.

1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 deny the habeas petition.

4 DATED: May 5, 2026

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8 Attorneys for Respondents
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