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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YANDY ERNESTO MACHIN-ROSAL,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,

Respondent.

CASE NO.: 26-cv-02796-RBM-AHG

Traverse

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

1 In his Amended Petition, Mr. Machin argued that under *Zadvydas v. Davis*,
2 533 U.S. 678 (2001), there is no significant likelihood of removal in the foreseeable
3 future to Cuba. *Amended Petition*, ECF 9. He also argued that he should not be
4 removed to a third country without proper protections under due process.

5 In response, the government argues that the petition is premature. It also
6 argues that although Mr. Machin is Cuban and was ordered removed to Cuba, the
7 government's future attempts to remove him to Mexico should not be considered a
8 third country removal. The government's arguments are not persuasive.

9 **I. Mr. Machin was ordered removed more than six months ago and there**
10 **is no significant likelihood of his removal in the reasonably foreseeable**
future.

11 The government does not contest that there is no likelihood of removal of
12 Mr. Machin to Cuba in the reasonable foreseeable future. Instead, it argues that Mr.
13 Machin is currently in the 90-day mandatory detention removal period under 8
14 U.S.C. § 1231(a)(2). *Return*, ECF 9 at 1-2. The government claims that the removal
15 period commenced on the date of the reinstatement on May 16, 2026. *Id.* It goes on
16 to state that Mr. Machin's "removal period began 12 days ago when his removal
17 order became administratively final." *Id.* at 3. The government's argument is
18 contrary to the statute.

19 According to 8 U.S.C. § 1231(a)(1)(B)(i), the "removal period begins" on
20 the "date the order of removal becomes administratively final." Mr. Machin's order
21 of removal became administratively final on November 3, 2025. ECF 11-1 at 7.
22 Under the plain language of the statute, a reinstatement order does not change the
23 date of the original order of removal. Instead, "the prior order of removal is
24 reinstated from its *original* date and is not subject to being reopened or reviewed."
25 8 U.S.C. § 1231(a)(5). As a result, Mr. Machin is no longer within the mandatory
26 90-day detention period. What's more, under *Zadvydas*, because seven months have
27 now passed since the original date, his detention is also no longer presumptively
28 reasonable.

1 The cases cited by the government do not dispute this plain language reading
2 of the statute. *Tumasov* involved a case where the petitioner was ordered removed
3 a month prior to filing his habeas petition. *Tumasov v. Doe 1*, No. 25-CV-2704-
4 AGS-JLB, 2025 WL 3171897, at *1 (S.D. Cal. Nov. 13, 2025). There, the district
5 court denied the petition finding it was within the 90-day removal period. But that
6 case did not involve a reinstatement order. *Id.* The government does not cite case
7 law stating Mr. Machin must be detained for 90 days following the *reinstatement*
8 of his original order of removal.

9 The *Zadvydas* six-month grace period has also passed. That period is for
10 “*six months* after a final order of removal—that is, *three months* after the statutory
11 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
12 Cir. 2001). Here, the immigration judge’s order of removal became final on
13 November 3, 2025. Thus, the *Zadvydas* grace period expired on May 3, 2026.

14 The government provides no evidence that Mr. Machin can be removed to
15 *any* country. Petitioner’s Amended Petition provided good reason to think that he
16 would not be removed in the reasonably foreseeable future, because the evidence
17 showed that he could not be removed to Cuba or Mexico. The government is not
18 even trying to remove Mr. Machin to Cuba. And Mexico will also not accept him
19 without Mr. Machin willingly going. *See Pena-Gil v. Lyons*, No. 25-CV-03268-
20 PAB-NRN, 2025 WL 3268333, at *3 (D. Colo. Nov. 24, 2025) (noting ICE
21 officers “attempted to persuade petitioner to voluntarily go to Mexico” and
22 “transferred petitioner to several [detention] locations during its efforts to
23 convince petitioner to voluntarily go to Mexico.”); *Reinoso Martinez v. Noem*, 26-
24 cv-00138-DMS-SBC, Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds for
25 Cuban national that did not agree to self-deport to Mexico); *Hernandez Blanco v.*
26 *Noem*, 26cv0425-DMS-JLB, Doc. 8 (same); *D.A.M. v. Noem*, 25-cv-02657-JLS-
27 VET, Doc. 28 (granting on *Zadvydas* grounds for Salvadorian national that did
28

1 not agree to self-deport to Mexico).¹

2 Finally, in *RK v. Casey*, Case No. 25cv1926, ECF No. 33, Judge Sabraw
3 found the statement that “ICE may identify alternative third countries that may be
4 willing to accept Petitioner for removal” to be insufficient to satisfy the
5 government’s burden that there is significant likelihood of removal in the
6 reasonably foreseeable future. Like in *RK*, here the government states that it will
7 seek to remove Mr. Machin to Mexico. Like, in *RK*, that is not enough to meet the
8 government burden.

9 Thus, the government has not proved that Petitioner will be removed in the
10 reasonably foreseeable future.

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25 ¹ In the Amended Petition, Mr. Machin raised the fact that Mexico’s acceptance of
26 non-Mexican citizens is contingent on the noncitizen’s consent. Amended Petition,
27 ECF 9 at 11. The government did not address this issue in its Return. The
28 government has have thus waived any argument to the contrary. See *United States*
v. Cabrera, 796 F. Supp. 3d 660, 664 (S.D. Cal. 2025) (recognizing that “a party
waives argument when it fails to respond to an argument made to the court” quoting
United States v. Caceres-Olla, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)).

1 **II. ICE may not remove Mr. Machin to a third country without adequate**
2 **notice and an opportunity to be heard.**

3 The record therefore reflects that Mr. Machin will not be removed to a third
4 country in the reasonably foreseeable future. But ICE would remove him to a third
5 country if it could, and something could unexpectedly change to make that feasible.
6 To protect against that possibility, this Court should require the government to
7 provide the notice set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-
8 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), before removing
9 Mr. Machin to any other third country.

10 The government's only response to this claim is that Mexico is not a third
11 country. Return, ECF 11 at 4. Mexico is a third country. Mr. Machin is not Mexican,
12 he is Cuban. Moreover, the immigration judge's order of removal states that Mr.
13 Machin "was ordered removed to CUBA." ECF 11-1 at 9. There is no order of
14 removal to Mexico. Despite Mr. Machin previously being removed to Mexico
15 against his will and contrary to Mexico's acceptance policy, Mexico remains a third
16 country.

17 Thus, this Court should grant Mr. Machin's petition.

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19 Respectfully submitted,

20 Dated: June 3, 2026

s/ Zandra L. Lopez

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