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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 OBDULIO NOE LOPEZ,

Petitioner,

12
13 v.

14 WARDEN OF IMPERIAL DETENTION
FACILITY, et al.,

15 Respondents.
16

Case No. 26-cv-02746-JES-AHG

**PETITIONER'S
SUPPLEMENTAL BRIEFING**

17
18 **I. INTRODUCTION**

19 Respondents provide the following supplemental filing pursuant to the Court's
20 Order on May 21, 2026 (ECF No. 11). For the reasons below, Respondents ask the
21 Court to deny Petitioner's habeas petition and request for interim relief.

22 **II. FACTUAL BACKGROUND**

23 Petitioner is a native and citizen of Guatemala. *See* Declaration of Jose Guardado
24 ("Guardado Decl.") at ¶ 4. On November 6, 2006, Petitioner was issued a Notice to
25 Appear charging him with inadmissibility under the Immigration and Nationality Act
26 (INA) § 212(a)(6)(A)(i). *See id.* at ¶ 5. On October 19, 2011, an Immigration Judge (IJ)
27 found Petitioner removable as charged and denied his application for asylum and related
28 relief. *See id.* at ¶ 6. The IJ granted Petitioner the privilege of voluntary departure. *See*

1 *id.* Petitioner filed an appeal from the IJ’s decision with the Board of Immigration
2 Appeals (BIA). *See id.*

3 On May 21, 2013, the BIA dismissed Petitioner’s appeal. *See Guardado Decl.* at
4 ¶ 7. The BIA did not reinstate the voluntary departure and ordered Petitioner removed
5 to Guatemala. *See id.* Petitioner filed a petition for review of the BIA’s decision. *See id.*
6 On November 24, 2015, the United States Court of Appeals for the Ninth Circuit denied
7 the petition for review. *See id.* at ¶ 8. The Court issued its mandate on January 20, 2016.
8 *See id.* 9. On November 18, 2025, Petitioner was issued a Notice to Appear charging
9 him with inadmissibility under INA § 212(a)(6)(A)(i). *See id.* at ¶ 9. On April 13, 2026,
10 an IJ terminated proceedings because there was an outstanding removal order from the
11 previous removal proceedings initiated by the NTA issued in 2006. *See id.* at ¶ 10.
12 Neither DHS nor Petitioner filed an appeal from the IJ’s decision. *See id.* The IJ’s
13 decision terminating proceedings became administratively final on May 13, 2026. *See*
14 *id.*

15 ICE is not seeking to remove Petitioner to a third country. *See Guardado Decl.* at
16 ¶ 11. ICE has worked diligently to effectuate Petitioner’s removal to Guatemala. *See id.*
17 at ¶ 12. Guatemalans do not require travel documents to travel to Guatemala. *See id.* at
18 ¶ 13. Removal efforts remain ongoing. *See id.* at ¶ 14. ICE is in the process of
19 identifying a removal flight for Petitioner. *See id.* Once ICE identifies and schedules a
20 flight for Petitioner, his removal can be effectuated promptly. *See id.*

21 Under these circumstances, ICE believes “there is a significant likelihood of
22 Petitioner’s removal to Guatemala in the reasonably foreseeable future.”

23 III. ARGUMENT

24 A. Petitioner’s Claim Fails Because the Government Has Rebutted Any 25 Showing that There is No Significant Likelihood of Removal to 26 Guatemala in the Reasonably Foreseeable Future.

27 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
28 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered

1 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
2 (2022). The INA provides that an alien ordered removed must be detained for 90 days
3 pending the government’s efforts to secure the alien’s removal through negotiations
4 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
5 detain” the alien during the 90-day removal period under subsection (a)(1)).

6 Section 1231(a)(6) “authorizes further detention if the Government fails to
7 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
8 The statute, however, is limited to “a period reasonably necessary to bring about the
9 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*
10 at 689. The Supreme Court has held that a six-month period of post-removal detention
11 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
12 mandated after the expiration of the six-month period unless “there is no significant
13 likelihood of removal in the reasonably foreseeable future.” *Id.*

14 Release is not mandated after the expiration of the six-month period unless “there
15 is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
16 533 U.S. at 701; *see also Clark*, 543 U.S. at 377. The Supreme Court limited the statute,
17 allowing “post-removal-period detention to a period reasonably necessary to bring
18 about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. “[O]nce
19 removal is no longer reasonably foreseeable, continued detention is no longer
20 authorized by statute.” *Id.* at 699. Ultimately, “an alien may be held in confinement until
21 it has been determined that there is no significant likelihood of removal in the
22 reasonably foreseeable future.” *Id.* at 701.

23 The record does not support a finding that “there is no significant likelihood of
24 removal in the reasonably foreseeable future.” *Id.* ICE Does not need a travel document
25 to Guatemala. Once a flight is identified for Petitioner, his Petitioner’s removal can be
26 effectuated promptly.

27 That ICE has re-detained Petitioner without a specific removal date is not
28 dispositive. *Zadvydas* does not require the government to pre-arrange a noncitizen’s

1 removal before arresting them; this would be extremely difficult, if not impossible, in
2 most cases, as “[t]he risk of a detainee absconding . . . inevitably escalates as the time
3 for removal becomes more imminent.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189,
4 1208–09 (9th Cir. 2022); *see Zadvydas*, 533 U.S. at 699 (emphasizing that § 1231(a)’s
5 basic purpose is “assuring the alien’s presence at the moment of removal.”). Moreover,
6 the constitutional standard is whether there is “a significant likelihood of removal in the
7 reasonably foreseeable future”—not whether a removal will occur imminently.
8 *Zadvydas*, 533 U.S. at 701. The Supreme Court was clear that the Constitution prevents
9 only “indefinite” or “potentially permanent” detention. *Id.* at 696, 699.

10 As it stands, it would be premature to conclude that there is no significant
11 likelihood of removal in the reasonably foreseeable future before permitting ICE an
12 opportunity to complete the diligent efforts it has taken to effect Petitioner’s removal.
13 ICE has taken the exact steps it needs to take to ensure their removal efforts bear fruit.
14 Evidence of progress, even slow progress, in negotiating a petitioner’s repatriation will
15 satisfy *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See Kim*
16 *v. Ashcroft*, Case No. 02cv1524-J (LAB), ECF No. 25 at 8 (S.D. Cal. June 2, 2003)
17 (finding that petitioner’s one year and four-month detention does not violate *Zadvydas*
18 given respondent’s production of evidence showing governments’ negotiations are in
19 progress and there is reason to believe that removal is likely in the foreseeable future);
20 *see Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug.
21 15, 2019) (“the record at this stage in the litigation does not support a finding that there
22 is no significant likelihood of Petitioner’s removal in the reasonably foreseeable
23 future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3
24 (denying petition because “Respondents have set forth evidence that demonstrates
25 progress and the reasons for the delay in Petitioner’s removal”). Given ICE’s
26 demonstrated ability to execute removal orders to Guatemala, the circumstances of
27 Petitioner’s case at this point do not support a finding that his case would be stuck in
28 limbo such that his detention would be unreasonably lengthy—let alone indefinite.

1 **III. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request the Court to deny
3 the habeas petition and motion for temporary restraining order.

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5 DATED: May 27, 2026

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6
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9 Attorneys for Respondents

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