

ERIC GRANT
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN JOSE GARCIA LOPEZ,


Petitioner,

v.

WARDEN, CALIFORNIA CITY,

Respondent.

CASE NO. 1:26-CV-05318-DJC-AC

**MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner is subject to an administratively final order of removal and DHS is actively working to remove Petitioner to a third country – Mexico. Until Petitioner is removed, he is detained under 8 U.S.C. § 1231(a). There is no evidence in the record that Petitioner fears removal to Mexico. The only thing preventing Petitioner’s removal is his refusal to cooperate. Accordingly, the petition for writ of habeas corpus should be denied because Petitioner’s immigration detention is lawful.

II. BACKGROUND

Petitioner is a native and citizen of Cuba, with a final order of removal. Exhibit A (I-213); *see also* Declaration of Deportation Officer Noah Kichak (“DO Decl.”), ¶ 6; 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1003.39. On October 27, 1992, an Immigration Judge ordered Petitioner removed to Cuba. DO Decl., ¶ 6. Petitioner last entered the United States at Miami, Florida on May 20, 1975. *Id.*, ¶ 7; Exhibit A at 2. He adjusted his status to Legal Permanent Resident (“LPR”) on November 15, 1977,

1 retroactive to May 20, 1975. *Id.* On October 7, 1986, Petitioner was convicted of possession of cocaine
2 and aggravated battery for which he was sentenced to more than one year in prison. *Id.*, ¶ 8; Exhibit B
3 (rap sheet) at 13. On September 25, 1987, Petitioner was convicted of possession of cocaine with
4 intent to sell, resisting an officer, and making a false report for which he was sentenced to 11 months
5 and 29 days in confinement. *Id.*, ¶ 9; Ex. B at 17. On September 22, 1988, Petitioner was convicted of
6 grand theft, resisting an officer, and possession of cocaine for which he was sentenced to 60 days of
7 confinement. *Id.*, ¶ 10; Ex. B at 24-26. On February 28, 1990, Petitioner was issued an order to show
8 cause, and later ordered deported by an immigration judge on October 27, 1992. *Id.*, ¶ 11. After 1992,
9 Petitioner had been arrested and convicted for multiple offenses including burglary on multiple
10 occasions, carrying a concealed weapon, resisting an officer on multiple occasions, grand theft,
11 possession of controlled substances on multiple occasions, eluding law enforcement at high speed, and
12 possession of drug paraphernalia on multiple occasions. *Id.*, ¶ 12; Exh. B. On February 13, 2008,
13 Petitioner was convicted of second-degree murder and use of a firearm to commit a felony for which he
14 was sentenced to ten years in prison. *Id.*, ¶ 13; Exh. B at 83-84. Most recently, on July 7, 2022,
15 Petitioner was convicted of possession of a firearm by a convicted felon and sentenced to five years in
16 prison. *Id.*, ¶ 14; Exh. B at 90-91. Petitioner was transferred to ICE custody and arrived at Broward
17 Transitional Center on or about January 15, 2026. *Id.*, ¶ 15.

18 In February 2026, ICE served Petitioner a Form I-205, Warrant of Removal/Deportation, which
19 he refused to sign. *Id.*, ¶ 16; Exhibit C (Warrant of Removal/Deportation). ICE also served Petitioner
20 written notice of intent to remove him to Mexico under 8 U.S.C. § 1231(b)(2). *Id.*; Exhibit D (Notice of
21 Removal). The notice was served and read to him. *Id.* Petitioner refused to sign the certificate of
22 service and did not assert fear of removal to Mexico. *Id.* On March 9, 2026, ICE re-served the notice of
23 intent to remove to Mexico, which Petitioner refused to sign. *Id.*, ¶ 17; Exhibit E (Notice of Removal).
24 On April 1, 2026, ICE served Form I-229A (Warning for Failure to Depart), together with an instruction
25 sheet outlining obligations under 8 U.S.C. § 1231(a)(1)(C) (to make timely, good-faith efforts to assist
26 in removal and not act to prevent removal). *Id.*, ¶ 18; Exhibit F (I-229A). Petitioner refused to sign the
27 documents. *Id.* On April 2, 2026, ICE conducted and completed a custody review. *Id.*, ¶ 19; Exhibit G
28 (Notice to Alien of Interview for Review of Custody Status and Notice to Alien of File Custody

Review). The Petitioner indicated he did not want a personal interview. *Id.* On or about June 15, 2026, the Petitioner was transferred to detention in Bakersfield, California. *Id.*, ¶ 20. On June 25, 2026, ICE re-served the notice of intent to remove to Mexico and Form I-229; Petitioner refused to sign the documents. *Id.*, ¶ 21. On July 1, 2026, ICE re-served the notice of intent to remove to Mexico and Form I-229; Petitioner refused to sign the documents. *Id.*, ¶ 22. On July 8, 2026, ICE re-served the notice of intent to remove to Mexico and Form I-229; Petitioner refused to sign the documents. *Id.*, ¶ 23. On July 15, 2026, ICE re-served the notice of intent to remove to Mexico and Form I-229; Petitioner refused to sign the documents. *Id.*, ¶ 24. Petitioner has not expressed fear of removal to Mexico. *Id.*, ¶ 25. ICE has operational pathways to remove certain aliens to Mexico consistent with 8 U.S.C. § 1231(b)(2). *Id.*, ¶ 26. Petitioner is within the category of aliens who can be removed. *Id.* As of July 22, 2026, outside of this Court’s order, ICE is not aware of any judicial or administrative stay preventing removal. *Id.*, ¶ 27. ICE has determined that Petitioner’s failure to cooperate has extended the removal period under 8 U.S.C. § 1231(a)(1)(C). *Id.*, ¶ 28. Documented obstructive acts include refusals on seven separate occasions. *Id.* ICE can complete removal to Mexico within approximately seven days with Petitioner’s cooperation. *Id.*, ¶ 29.

Petitioner has not indicated to immigration authorities that he has any fear of removal to Mexico. However, now for the first time since February, Petitioner asserts fear. *See* Dkt. 1 at 7. Respondent requests the Court take judicial notice that the government Mexico has a “‘standing agreement’ with the United States to accept Cuban Nationals, [resulting in] over 6,000 successful removals of Cuban Nationals in fiscal years 2025 and 2026.” *Navarro v. Lyons*, No. CV 26-10876-WGY, 2026 WL 816791, at *1 (D. Mass. Mar. 25, 2026); *see also Sanchez v. Bondi*, No. C25-2573-KKE, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026) (recognizing that there is evidence that Mexico accepts Cuban nationals contingent upon the national’s consent). Petitioner’s removal to Mexico is reasonably foreseeable and remains detained under 8 U.S.C. § 1231 until such removal is effectuated. The detention is therefore lawful.

III. LEGAL STANDARD

A habeas petition contests the “legality or duration” of confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). The petitioner must

1 make specific factual allegations that, if true, would entitle him to habeas corpus relief. *O'Brenski v.*
 2 *Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *United States v. Poopola*, 881 F.2d 811, 812 (9th Cir. 1989).
 3 A federal court may only grant a habeas petition if the petitioner shows that “he is in custody in
 4 violation of the Constitution or laws . . . of the United States.” 28 U.S.C. § 2241(c)(3). “[H]abeas is not
 5 available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did
 6 exercise its discretion.” *Gutierrez-Chavez v. INS*, 298 F.3d 824, 828 (9th Cir. 2002). If the petitioner
 7 fails to show that his custody violates the Constitution or federal law, a motion to dismiss the petition is
 8 appropriate. *White v. Lewis*, 874 F.2d 599, 602-03 (9th Cir. 1989); *Schwarz v. Meinberg*, 478 F. App'x
 9 394, 395 (9th Cir. 2012).

10 When ruling on a motion to dismiss, the Court may take judicial notice of “records and reports of
 11 administrative bodies.” *Mack v. S. Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986); *Papai*
 12 *v. Harbor Tug and Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995). It may also take judicial notice of
 13 documents referred to in a petitioner’s pleadings. *See, e.g., United States v. Ritchie*, 342 F.3d 903, 908
 14 (9th Cir. 2003); *Sizemore v. Pac. Gas & Elec. Ret. Plan*, 939 F. Supp. 2d 987, 989 (N.D. Cal. 2013).
 15 And “the court need not accept as true allegations that contradict facts which may be judicially noticed.”
 16 *Westlands Water Dist. v. U.S. Dep’t of Interior*, 850 F. Supp. 1388, 1399 (E.D. Cal. 1994) (citing *Mullis*
 17 *v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987)).

18 IV. ARGUMENT

19 A. Petitioner’s detention under 8 U.S.C. § 1231 remains lawful.

20 Noncitizens subject to final removal orders are subject to detention pursuant to 8 U.S.C. § 1231.
 21 *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021). Here, Petitioner’s only claims are that
 22 removal is not likely to occur in the near future, and his detention has become prolonged. Dkt. 1. Five
 23 months ago, immigration authorities notified Petitioner of their intent to remove him to a third country,
 24 Mexico. Petitioner has not indicated to immigration authorities that he has any fear of removal to
 25 Mexico. However, in his petition he claims fear. Likewise, Petitioner has not indicated in his pleadings
 26 whether he will consent to removal to Mexico. *Id.* However, if Petitioner refuses to cooperate with
 27 removal to Mexico without claiming a fear of removal to Mexico, 8 U.S.C. § 1231(a)(1)(C) authorizes
 28 the continued detention of a removable alien so long as the alien fails to cooperate fully and honestly

1 with officials. *Lema v. I.N.S.*, 341 F.3d 853, 857 (9th Cir. 2003).

2 Furthermore, it is Petitioner's burden to show under *Zadvydas v. Davis*, 533 U.S. 678, 687
3 (2001) that there is good reason to believe that his removal is not reasonably foreseeable. Under the
4 facts of this case, Petitioner has not met that burden and he failed to address that immigration authorities
5 have notified him more than once of their intention to remove him to Mexico. Petitioner also has not
6 indicated that he is cooperating with the government's efforts to remove him to Mexico. Nor has he
7 claimed any fear of removal to Mexico until now. Thus, for the foregoing reasons, Respondent requests
8 that the Court deny habeas relief.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

11 Respectfully submitted,

12 ERIC GRANT
13 United States Attorney

14 Dated: July 22, 2026

15 By: /s/ Elisa M. Rodriguez
16 ELISA M. RODRIGUEZ
17 Assistant United States Attorney
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