

1 ERIC GRANT
United States Attorney
2 ELISA M. RODRIGUEZ
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5 Attorney for Respondent
6
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 GREGORIO HERRERA GONZALEZ,
12 

Petitioner,

13
14 v.

15 WARDEN, CALIFORNIA CITY DETENTION
FACILITY,

16 Respondent.
17

CASE NO. 1:26-CV-05319-TLN-SCR

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

18 **I. INTRODUCTION**

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

24 **II. BACKGROUND**

25 Petitioner is a native and citizen of Cuba, with a final order of removal. Exhibit A (I-213); 8
26 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1003.39. On November 5, 2018, an Immigration Judge ordered
27 Petitioner removed to Cuba. Exhibit B (Order of the Immigration Judge). Petitioner waived appeal. *Id.*
28 On or about September 29, 2025, an ICE officer served Petitioner with a Notice of Revocation of

1 Release, which indicated that Petitioner's release from ICE custody was revoked pursuant to 8 C.F.R. §
2 241.13(i) "based on [his] criminal history, the current availability of detention space, and a significant
3 likelihood of [his] removal taking place in the reasonably foreseeable future..." Exhibit C (Notice of
4 Revocation of Release). Petitioner refused to sign the form. *Id.* That same day, pursuant to a Warrant
5 or Removal/Deportation, Petitioner was lawfully taken into immigration custody. Exhibit D (Warrant of
6 Removal). Petitioner refused to sign the form. *Id.*

7 On December 27, 2025, Petitioner was served with instructions informing him of his
8 requirements to assist in removal and a notice informing him of the consequence for his failure to depart.
9 Exhibit E (Warning to Alien Ordered Removed or Deported) and Exhibit F (Warning for Failure to
10 Depart). Petitioner refused to sign the warning for failure to depart. Exhibit F. On January 6, 2026,
11 ICE served Petitioner with a Notice of Removal informing Petitioner of its intent to remove him to
12 Mexico. Exhibit G (Notice of Removal). Petitioner refused to sign the form. *Id.* On March 18, 2026,
13 ICE served Petitioner with another Form I-229(a) and instructions regarding his requirement to assist in
14 removal. Exhibit H (Warning for Failure to Depart and Instruction Sheet to Detainee Regarding
15 Requirement to Assist in Removal). Petitioner refused to sign either form. *Id.*

16 To date, Petitioner has not indicated to immigration authorities nor in his pleadings that he has
17 any fear of removal to Mexico. *See* Dkt. 1. Indeed, Petitioner failed to inform the Court that he has
18 been aware since at least January 6, 2026, that ICE intends to remove him to Mexico. *Id.*, *see also*
19 Exhibit F. Respondent requests the Court take judicial notice that the government of Mexico has a
20 "standing agreement" with the United States to accept Cuban Nationals, [resulting in] over 6,000
21 successful removals of Cuban Nationals in fiscal years 2025 and 2026." *Navarro v. Lyons*, No. CV 26-
22 10876-WGY, 2026 WL 816791, at *1 (D. Mass. Mar. 25, 2026); *see also Sanchez v. Bondi*, No. C25-
23 2573-KKE, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026) (recognizing that there is evidence that
24 Mexico accepts Cuban nationals contingent upon the national's consent). Petitioner's removal to
25 Mexico is reasonably foreseeable and remains detained under 8 U.S.C. § 1231 until such removal is
26 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 make specific factual allegations that, if true, would entitle him to habeas corpus relief. *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *United States v. Poopola*, 881 F.2d 811, 812 (9th Cir. 1989). A federal court may only grant a habeas petition if the petitioner shows that “he is in custody in violation of the Constitution or laws . . . of the United States.” 28 U.S.C. § 2241(c)(3). “[H]abeas is not available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion.” *Guetierrez-Chavez v. INS*, 298 F.3d 824, 828 (9th Cir. 2002). If the petitioner fails to show that his custody violates the Constitution or federal law, a motion to dismiss the petition is appropriate. *White v. Lewis*, 874 F.2d 599, 602-03 (9th Cir. 1989); *Schwarz v. Meinberg*, 478 F. App’x 394, 395 (9th Cir. 2012).

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

IV. ARGUMENT

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

Noncitizens subject to final removal orders are subject to detention pursuant to 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021). Here, Petitioner’s only claims are that removal is not likely to occur in the near future, and his detention has become prolonged. Dkt. 1. Immigration authorities notified Petitioner of their intent to remove him to a third country, Mexico. Petitioner has not indicated to immigration authorities, nor in his pleadings, that he has any fear of removal to Mexico. *Id.* Likewise, Petitioner has not indicated in his pleadings whether he will consent

1 to removal to Mexico, much less has he informed the Court that he is in the process of being removed to
2 Mexico. *Id.* However, if Petitioner refuses to cooperate with removal to Mexico without claiming a fear
3 of removal to Mexico, 8 U.S.C. § 1231(a)(1)(C) authorizes the continued detention of a removable alien
4 so long as the alien fails to cooperate fully and honestly with officials. *Lema v. I.N.S.*, 341 F.3d 853,
5 857 (9th Cir. 2003).

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

13 **IV. CONCLUSION**

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

15 Respectfully submitted,

16 ERIC GRANT
United States Attorney

17 Dated: July 21, 2026

18 By: /s/ Elisa M. Rodriguez
19 ELISA M. RODRIGUEZ
Assistant United States Attorney
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. She also certifies that on July 21, 2026, a copy of the MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Fresno, California.

Addressee: **Gregorio Herrera Gonzalez**


CALIFORNIA CITY (ICE)
P.O. Box 2513
22844 Virginia Boulevard
California City, CA 93505

/s/ Elisa M. Rodriguez
ELISA M. RODRIGUEZ