

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. 5:25-cv-02983-JWH-KES

Date: December 23, 2025

Title: MARLON CASTILLO ESPADA v. JOHN DOE, Warden of Adelanto Detention Facility, et al.

PRESENT:

THE HONORABLE KAREN E. SCOTT, U.S. MAGISTRATE JUDGE

Nancy Boehme for
Jazmin Dorado
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PETITIONER:
None Present

ATTORNEYS PRESENT FOR
RESPONDENTS:
None Present

**PROCEEDINGS (IN CHAMBERS): Order Requiring Further Briefing on
Habeas Petition**

On November 6, 2025, Marlon Castillo Espada (“Petitioner”), who is represented by counsel, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition” at Dkt. 1). The Petition alleges that Petitioner is in the custody of the United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) in Adelanto, California, and that he was arrested and is being held in violation of the Constitution and laws of the United States. Specifically, Petitioner contends that his detention violates his Fifth Amendment right to due process and 8 U.S.C. § 1231(a) because his removal is not reasonably foreseeable. See Zadvydas v. Davis, 533 U.S. 678, 699 (2001).

On November 10, 2025, the undersigned issued a scheduling order requiring, *inter alia*, Petitioner to file any application for a temporary restraining order (“TRO”) within three days. (Dkt. 4 at 2 ¶ 4.) Petitioner timely applied for a TRO on November 13, 2025. (Dkt. 6.) After receiving briefing from both parties and holding two hearings on the application, the District Judge¹ denied the TRO application without prejudice on December 19, 2025. (Dkt. 14.)

¹ Under General Order 05-07, this case is referred to the undersigned Magistrate Judge to consider preliminary matters and prepare a report and recommendation regarding the disposition of the case. (Dkt. 3.) However, applications or motions seeking injunctive relief may not be

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Except for the deadlines discussed below, all the provisions of the November 10, 2025 order remain in effect. (Dkt. 4.) In order to facilitate the just, speedy, and inexpensive determination of this action, IT IS HEREBY ORDERED as follows:

1. The parties shall file further briefing in this case by the deadlines set forth below. Both parties' briefing shall address the following issues:
 - a. What is Petitioner's immigration A-Number?
 - b. On November 17, 2025, Respondents filed a declaration from ICE Deportation Officer Enrique Chavez stating, "ICE has initiated the process of requesting travel documents from third countries. ICE is actively attempting to enforce Petitioner's removal. ICE does not anticipate any obstacles to removal once travel documents are issued." (Dkt. 8-1 at 3 ¶¶ 15-16.) On December 12, 2025, Respondents filed a status report stating that they "have no updates or additional information to report." (Dkt. 12 at 2.) What concrete steps have Respondents taken, if any, to remove Petitioner to a third country? Have Respondents identified a third country that will accept Petitioner? If so, have Respondents submitted a request for travel documents to that country? How does Officer Chavez know these facts? Did he initiate the process or is he relying on some written record? If the latter, what record?
 - c. Petitioner states that, on November 14, 2025, his 2009 criminal conviction was vacated under California Penal Code § 1473.7(a)(1) and he has moved the Board of Immigration Appeals ("BIA") to reopen his immigration case on this basis. (Dkt. 13-1 at 1-2 ¶¶ 5-7); see generally Bent v. Garland, 115 F.4th 934 (9th Cir. 2024) (reversing BIA's denial of motion to reopen immigration case based on vacatur of conviction under this statute). Do these developments make it less likely that Petitioner will be removed from the United States? How do they affect the analysis under Zadvydas? What is the status of the motion to reopen (e.g., has the BIA set it for a hearing)? How long does it typically take for the BIA to decide such motions? If the motion is granted, what would likely happen next? What about if the motion is denied?
 - d. Is it Respondents' position that Zadvydas creates a hard-and-fast rule that a non-citizen being detained under § 1231(a)(6) cannot bring a constitutional challenge to his detention unless and until more than six months have elapsed since the removal order became final? If so, how do

referred to a magistrate judge. See 28 U.S.C. § 636(b)(1)(A); General Order 05-07, <https://www.cacd.uscourts.gov/sites/default/files/general-orders/GO-05-07.pdf>.

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Respondents respond to case law reaching the opposite conclusion? See, e.g., Trinh v. Homan, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“Respondents have already raised—and this Court has already rejected—the argument that Zadvydas claims are barred during the first six months of detention. ... Zadvydas established a ‘guide’ for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months.”); see also Sweid v. Cantu, No. 25-cv-03590, 2025 WL 3033655, at *3-4, 2025 U.S. Dist. LEXIS 213969, at *7-10 (D. Ariz. Oct. 30, 2025) (collecting and discussing cases on both sides of this issue)

- e. Petitioner contends that he “has been detained by Respondents years after the six-month period post-removal ran out. ... Petitioner’s removal order became administratively final on January 3, 2013. The removal period began on that day and thus elapsed on July 3, 2013.” (Dkt. 1 at 7 ¶¶ 32-33.) Respondents contend, “On January 9, 2013, the Petitioner was released from IEC custody on an Order of Supervision (OSUP).” (Dkt. 8-1 at 2 ¶ 11 (Chavez Decl.)) How long and on what dates was Petitioner detained by ICE after the order of removal was entered? If Petitioner has not been in ICE custody since 2013, does that time count against the six-month period discussed in Zadvydas?
- f. On what factual grounds was Petitioner granted deferral of removal to Bolivia under the Convention Against Torture? (See Dkt. 8-1 at 2 ¶ 10 (Chavez Decl.)) Would those grounds also apply to some or all third countries to which Respondents are seeking or might seek to remove Petitioner?
- g. Will Petitioner have notice and an opportunity to challenge his removal to a third country after Respondents identify a specific third country that is willing to accept Petitioner? If so, how much notice and in what manner may he challenge that removal? Is Petitioner raising any challenge to the third country removal process?
- h. Are there any factual disputes relevant to whether Petitioner’s removal is reasonably foreseeable that might warrant an evidentiary hearing or discovery?
- i. Is Petitioner a danger to the community or a flight risk, and does this case involve “a high probability of success on the merits of [the] habeas petition or special circumstances that would warrant [Petitioner’s] release on bail” pending resolution of these habeas proceedings? United States v. McCandless, 841 F.3d 819, 822 (9th Cir. 2016).

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2. Respondents shall, within **fourteen (14) days** after the date of this Order, file a response to the Petition and electronically lodge with the Court all relevant documents. The response may be in the form of a Motion to Dismiss or an Answer.

3. **If Respondents file a Motion to Dismiss**, Petitioner shall file an Opposition to the Motion to Dismiss within **seven (7) days** after the date of service thereof. At the time the Opposition is filed, Petitioner shall lodge with the Court any records not lodged by Respondents that Petitioner believes may be relevant to the Court's determination of the Motion to Dismiss. Unless otherwise ordered by the Court, Respondents shall not file a Reply to Petitioner's Opposition to the Motion to Dismiss. If the Motion to Dismiss is denied, the Court will afford Respondents adequate time to respond to Petitioner's claims on the merits.

4. **If Respondents file an Answer**, Petitioner may file a Reply responding to matters raised in the Answer within **seven (7) days** after the date of service thereof. Any Reply filed by Petitioner shall (a) state whether Petitioner admits or denies each allegation of fact contained in the Answer, (b) be limited to facts or arguments responsive to matters raised in the Answer, and (c) not raise new grounds for relief that were not asserted in the Petition. Grounds for relief raised for the first time in the Reply will not be considered, unless the Court grants Petitioner leave to amend the Petition. The Reply shall not exceed 5,000 words in length absent advance leave of Court for good cause shown.

5. Unless otherwise ordered by the Court, this case shall be deemed submitted on the day following the date Petitioner's opposition to a Motion to Dismiss and/or Petitioner's Reply is due.

Initials of Deputy Clerk nb