

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-22288-CIV-RUIZ

CRISTOBAL RENE COLON OCHOA,

Petitioner,

v.

PAM BONDI, in her Official Capacity as  
U.S. Attorney General,

Respondent.

---

**RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE AND PETITION**

Respondent hereby responds to Petitioner Cristobal Rene Colon Ochoa ("Petitioner")  
Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition") challenging ICE custody  
[D.E. 1] and this Court's Order to Show Cause [D.E. 7].

**INTRODUCTION**

A native and citizen of Guatemala, Petitioner alleges that his "prolonged" detention violates  
his constitutional rights. [D.E. 1 at p. 7]. Petitioner requests that the Court "grant bond and order  
direct[sic] the immigration judge to hold a further bond hearing to determine a reasonable bond."  
*Id.* at p. 8. On May 23, 2025, this Court entered an Order to Show Cause and required Respondent,  
on or before June 20, 2025, to "show cause why the requested relief should not be granted" and  
"[i]n doing so, the Response must be accompanied by an appendix which shall include copies of  
relevant exhibits." [D.E. 7]. Respondent<sup>1</sup> now timely files a response.

---

<sup>1</sup> A Writ of habeas corpus must "be directed to the person having custody of the person detained."  
28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed  
in *Rumsfield v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory  
official who exercises legal control, is the proper respondent." *Rumsfield v. Padilla*, 542 U.S. 426,

### **PROCEDURAL HISTORY**

Cristobal Colon Ochoa (“Petitioner”) is a native and citizen of Guatemala. *See* Ex. A, Record of Deportable/Inadmissible Alien (“I-213”), Dec. 19, 2017; *see also* Ex. B, Declaration of Officer Kristy Zamir, ¶ 6. Petitioner first entered the United States without inspection near El Paso, Texas on or about April 1, 2003. *See* Ex. A, I-213, Dec. 19, 2017; *see also* Ex. B, Declaration, ¶ 7.

On September 1, 2016, Petitioner pled guilty to Burglary of a Structure or Conveyance, and Dealing in Stolen Property, for which he was sentenced to twenty-four months of probation. *See* Ex. C, Judgment and Conviction; *see also* Ex. B, Declaration, ¶ 8.

On December 19, 2017, Petitioner was encountered by immigration officials during a traffic stop during which he attempted to run over an immigration official. *See* Ex. A, I-213, Dec. 19, 2017; *see also* Ex. B, Declaration, ¶ 9. On the same day, Petitioner was issued a Notice to Appear (“NTA”), charging him with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), as an alien present in the United States without admission or parole. *See* Ex. D, NTA; *see also* Ex. B, Declaration, ¶ 10. Petitioner was taken into U.S. Immigration and Customs Enforcement (“ICE”) custody at the Krome Service Processing Center (“Krome”). *See* Ex. A, I-213, Dec. 19, 2017; *see also* Ex. B, Declaration, ¶ 11.

On January 9, 2018, Petitioner was released on bond. *See* Ex. E, Bond Order; *see also* Ex. F, Order Changing Venue; *see also* Ex. B, Declaration, ¶ 12. On April 13, 2018, Petitioner appeared before the Executive Office for Immigration Review (“EOIR”) Miami with counsel, and the court sustained the charge of removability and reset the case for Petitioner to file applications for relief.

---

436 (2004). Petitioner is currently detained at Krome Service Processing Center, an ICE detention facility in Miami, Florida. His immediate custodian is Acting Field Office Director Charles Parra, Assistant Field Office Director. Accordingly, the proper Respondent in the instant case is AFOD Parra, in his official capacity, and all other Respondents should be dismissed.

*See* Ex. B, Declaration, ¶ 13. On July 25, 2018, Petitioner failed to appear at his immigration hearing and was ordered removed in absentia. *See* Ex. G, July 25, 2018, Removal Order; *see also* Ex. B, Declaration, ¶ 14. On August 29, 2018, the immigration court granted Petitioner's motion to re-open his immigration case. *See* Ex. H, Order Granting Reopening; *see also* Ex. B, Declaration, ¶ 15.

On February 13, 2019, Petitioner appeared before EOIR Miami with counsel and the case was reset for a merits hearing. *See* Ex. B, Declaration, ¶ 16. On October 18, 2022, Petitioner failed to appear at his merits hearing and was ordered removed in absentia. *See* Ex. I, Oct. 18, 2022, Removal Order; *see also* Ex. B, Declaration, ¶ 17. On May 8, 2023, an immigration judge denied Petitioner's Motion to Reconsider Removal Order and to Reopen Removal Proceedings. *See* Ex. J, Order Denying Reopening; *see also* Ex. K, May 8, 2023, Corrected Order Denying Reopening<sup>2</sup>; *see also* Ex. B, Declaration, ¶ 18.

On May 12, 2022, Petitioner filed a notice of appeal with the Board of Immigration Appeals (the "Board"). *See* Ex. L, Board Order; *see also* Ex. B, Declaration, ¶ 19. On August 31, 2022, the Board dismissed Petitioner's appeal as untimely. *See* Ex. L, Board Order; *see also* Ex. B, Declaration, ¶ 20.

On May 8, 2023, ICE officials took Petitioner into ICE custody at Krome after conducting surveillance and a traffic stop. *See* Ex. M, I-213, May 10, 2023; *see also* Ex. B, Declaration, ¶ 21. On May 31, 2023, Petitioner was removed to Guatemala. *See* Ex. B, Declaration, ¶ 22.

Petitioner re-entered the United States at an unknown date and time. *See* Ex. B, Declaration, ¶ 23. On October 15, 2024, ICE conducted surveillance on Petitioner's residence and

---

<sup>2</sup> The immigration judge originally issued an order on December 1, 2022, denying re-opening but ordering that the removal order be vacated and a new hearing scheduled. The immigration judge issued a corrected order on May 8, 2023, denying reconsideration and reopening.

took Petitioner into ICE custody following a traffic stop. *See* Ex. N, I-213, Oct. 16, 2024; *see also* Ex. B, Declaration, ¶ 24. On October 16, 2024, ICE reinstated Petitioner's final removal order pursuant to INA Section 241(a)(5), 8 U.S.C. § 1231(a)(5). *See* Ex. O, Form I-871 Notice of Intent to Reinstate Prior Removal Order; *see* Ex. P, Warrant of Removal; *see also* Ex. B, Declaration, ¶ 25. On November 5, 2024, U.S. Citizenship and Immigration Services referred Petitioner's case to the immigration judge for withholding-only proceedings. *See* Ex. Q, Form I-863, Notice of Referral to Immigration Judge, Nov. 5, 2024; *see also* Ex. B, Declaration, ¶ 26.

On November 18, 2024, Petitioner appeared before EOIR at Krome for a master calendar hearing. *See* Ex. B, Declaration, ¶ 27. The immigration court denied bond for lack of jurisdiction and reset the case for Petitioner to obtain counsel. *See* Ex. R, Order Denying Bond; *see also* Ex. B, Declaration, ¶ 28. On December 18, 2024, the immigration judge cancelled her docket. *See* Ex. B, Declaration, ¶ 29. On January 22, 2025, Petitioner appeared before EOIR at Krome with counsel for a master calendar hearing and the court reset the case to another master hearing. *See* Ex. B, Declaration, ¶ 30. On February 6, 2025, Petitioner appeared before EOIR at Krome with counsel for a master calendar hearing and the case was set for a final merits hearing. *See* Ex. B, Declaration, ¶ 31.

On February 8, 2025, ICE conducted a personal interview with Petitioner in connection with a post-order custody review. *See* Ex. S, Record of Personal Interview; *see also* Ex. B, Declaration, ¶ 32. On February 26, 2025, Petitioner was served with the Warning for Failure to Depart and Notice to Alien of File Custody Review. *See* Ex. T, Form I-229(a), Warning for Failure to Depart; *see also* Ex. U, Notice to Alien of File Custody Review; *see also* Ex. B, Declaration, ¶ 33. On March 17, 2025, ICE determined to continue Petitioner's detention based on a significant likelihood of removal in the reasonably foreseeable future, as well as danger to the community,

and served Petitioner with a Decision to Continue Detention letter. *See* Ex. V, Decision to Continue Detention; *see also* Ex. B, Declaration, ¶ 34.

On April 9, 2025, the immigration court postponed Petitioner's merits hearing. *See* Ex. B, Declaration, ¶ 35. On June 13, 2025, after a merits hearing, an immigration judge denied Petitioner's application for relief and ordered Petitioner removed to Guatemala. *See* Ex. W, Removal Order; *see also* Ex. B, Declaration, ¶ 36. Petitioner's deadline for appeal of this removal order is July 14, 2025. *See* Ex. W, Removal Order; Ex. B, Declaration, ¶ 37.

### **STATUTORY AND REGULATORY BACKGROUND**

8 U.S.C. § 1231 of the INA governs the detention of aliens subject to a final order of removal from the United States. "During the removal period, the [Department of Homeland Security ("DHS")] *shall* detain the alien;" that is, while Immigration and Customs Enforcement ("ICE") takes the necessary steps to execute the non-citizen's final removal order and, ultimately, remove the non-citizen from the United States. 8 U.S.C. § 1231(a)(2) (emphasis added). The "removal period" begins on the latest of: (i) "[t]he date the order of removal becomes administratively final"; (ii) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (iii) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B)(i)-(iii). The government is required to remove the non-citizen within ninety days of the date on which the "removal period" begins, *id.* § 1231(a)(1)(A), although that period may be extended under certain circumstances, *id.* § 1231(a)(1)(C), (a)(6).

There is an expedited process for non-citizens, such as Petitioner, who re-enter the United States without authorization after having already been removed. *See id.* § 1231(a)(5); *see also* 8 C.F.R. §§ 241.8(a)-(c), 1241.8(a)-(c). If an alien has reentered the United States illegally after

having been removed under an order of removal, “the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, [and] the alien is not eligible and may not apply for any relief under this chapter.” 8 U.S.C. § 1231(a)(5). 8 U.S.C. § 1231(a)(5) explicitly insulates the removal orders from review, while also “generally foreclos[ing] discretionary relief from the terms of the reinstated order.” *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006). However, an alien may “pursu[e] withholding-only relief to prevent DHS from executing [the non-citizen’s] removal to the particular country designated in his reinstated removal order.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021); *see also* 8 U.S.C. § 1231(b)(3)(A).

Withholding-only proceedings begin once an alien subject to a reinstated removal order expresses a fear to DHS of returning to the country of removal. *See* 8 C.F.R. §§ 208.31(a), 1208.31(a). At that point, DHS refers him to an asylum officer for a reasonable-fear determination. *Id.* §§ 208.31(b), 1208.31(b). If the asylum officer finds that the noncitizen has no reasonable fear and an IJ sustains that finding, the alien will be deemed ineligible for withholding. 8 C.F.R. 208.31(f) and (g)(1). But if the asylum officer or the IJ finds that the alien has a reasonable fear, then the alien is entitled to full withholding-only proceedings before an IJ and an appeal to the BIA. 8 C.F.R. 208.31(e) and (g)(2). If an alien is granted withholding-only relief, DHS may not remove him to the country designated in the removal order. *Id.* §§ 208.22, 1208.22. In other words, “withholding of removal is a form of ‘country specific’ relief” and “nothing prevents DHS ‘from removing [the] alien to a third country other than the country to which removal has been withheld.’” *Guzman Chavez*, 594 U.S. at 531-32 (citations omitted) (alterations in original). Withholding of removal is, thus, not an entitlement to remain in the United States. *See id.* at 536 (distinguishing between asylum, which “permits an alien to remain in the United States,” and

withholding, which “only bars deporting an alien to a particular country or countries.” (citation omitted)).

In *Guzman Chavez*, the Supreme Court held that “§ 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal.” *Id.* at 526. Accordingly, non-citizens, such as Petitioner, “are *not* entitled to a bond hearing while they pursue withholding of removal.” *Id.* (emphasis added); *see also Castaneda v. Perry*, 95 F.4th 750, 753 n.2 (4th Cir. 2024); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2002) (“The issue in this case is whether the text of § 1231(a)(6) requires the Government to offer detained noncitizens bond hearings after six months of detention in which the Government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community. It does not.”); *Martinez v. Larose*, 968 F.3d at 555, 566 (6th Cir. 2020) (“We agree and are reluctant to graft a bond-hearing requirement onto a statute absent language supporting such a requirement.”); *Shaikh v. Meade*, No. 21-cv-23752-BLOOM/Otazo-Reyes, 2022 U.S. Dist. LEXIS 51240, \*15 (S.D. Fla. Mar. 22, 2022) (“noncitizens detained for removal under § 1231 are not entitled to a bond hearing”).

The Supreme Court held in *Zadvydas* that an alien subject to a final removal order may be detained for “a period reasonably necessary to secure removal.” 533 U.S. at 699. Such detention is “presumptively reasonable” for six months. *Id.* at 701. However, “[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months.” *Id.* Rather, a non-citizen, such as Petitioner, “may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit held that in order to state a claim under *Zadvydas*, “the [non-citizen] not only must show post removal order detention in excess of six months, but also must provide evidence of a good reason to believe that

there is no significant likelihood of removal in the reasonably foreseeable future.” 287 F.3d at 1052. Where a non-citizen cannot meet his burden of establishing that the evidence shows that there is no significant likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App’x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

Noncitizens detained under 8 U.S.C. § 1231(a)(6) have their custody reviewed under applicable regulations. 8 C.F.R. §§ 241.4, 241.13. One set of regulations, operative at the time of *Zadvydas*, *see* 533 U.S. at 683-84, governs ICE’s discretionary decisions to continue detention beyond the removal period. An ICE field office conducts a custody review before the conclusion of the removal period, and a review panel at ICE headquarters conducts a further review at six months of detention. 8 C.F.R. §§ 241.4(k)(1), (2). Thereafter, the review panel conducts a further review each year if there has been “a material change in circumstances since the last annual review.” *Id.* § 241.4(k)(2)(iii). While ICE initiates an annual custody review, the noncitizen may request a custody review once every 90 days “based on a proper showing of a material change in circumstances since the last annual review.” *Id.* In effect, if the noncitizen makes timely requests, ICE is required to review a noncitizen’s custody every 90 days.

A second set of DHS regulations implements *Zadvydas*’s holding. *See* 8 C.F.R. § 241.13. If a noncitizen who has been detained for more than six months provides good reason to believe that “there is no significant likelihood that [he] will be removed in the reasonably foreseeable future,” adjudicators at ICE headquarters review the noncitizen’s case. 8 C.F.R. § 241.13(d)(1). The alien has the right to submit evidence, to respond to the government’s evidence, to be represented by an attorney, and ultimately, to receive a “written decision based on the administrative record.” 8 C.F.R. § 241.13(g); *Id.* §§ 241.13(d), (e).

Lastly, a noncitizen may also seek review of his continued detention in federal district court through a habeas petition under 28 U.S.C. § 2241.

### **ARGUMENT**

**A. Petitioner's detention is authorized under 8 U.S.C. § 1231, as interpreted by *Zadvydas*, as his detention assures his removal during his finite withholding-only proceedings.**

The Supreme Court has held that 8 U.S.C. § 1231 applies to detained aliens with reinstated orders of removal. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021). In *Chavez*, the Court held that aliens in the same position as Petitioner are not entitled to bond hearings. *Id.* (“We conclude that § 1231, not § 1226, govern the detention of aliens subject to reinstated orders of removal, meaning these aliens are not entitled to a bond hearing while they pursue withholding of removal.”); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2002). Thus, 8 U.S.C. § 1231 governs the detention and removal of Petitioner, and grants the Attorney General the authority to hold him in detention both during and after the “removal period.” 8 U.S.C. § 1231(a)(1)(A)(2012); *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003).

To the extent the Petitioner may suggest that his detention violates *Zadvydas*, he would be incorrect. The plain text of 8 U.S.C. § 1231(a)(6) authorizes Petitioner's detention beyond the removal period. 8 U.S.C. § 1231(a)(6) (a noncitizen “may be detained beyond the removal period”); *see also* (a)(3). Nonetheless, in *Zadvydas*, the Supreme Court held that Section 1231 authorizes detention for a period reasonably necessary to accomplish a noncitizen's removal and determined that ICE maintains the authority to continue detention where it fairly aids the government in its legitimate efforts to remove individuals with final orders of removal. *Id.* at 701. The Supreme Court determined that six months is a presumptively reasonable period to allow the government to remove a noncitizen after the removal period has commenced. *Id.* Once the six-

month period has lapsed, and “the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, [then] the Government must respond with evidence sufficient to rebut that showing.” *Id.*; see also *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.4 (11th Cir. 2002) (noncitizen must show “post-removal order detention in excess of six months” and “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future”).

Even if the Court applied the *Zadvydas* standard to Petitioner’s detention, Petitioner’s claim would fail because he remains significantly likely to be removed. As an initial matter, Petitioner has failed to establish (or even allege) that ICE will be unable to effectuate his removal in the reasonably foreseeable future. See generally D.E. 1. However, as discussed above, ICE has successfully removed Petitioner from the United States to Guatemala once before, and there is no allegation that ICE cannot do so again. Because Petitioner has failed to show that there is no significant likelihood that he will be removed in the reasonably foreseeable future, the Court should deny the Petition.

**B. Section 1231(a)(6) satisfies Due Process.**

Looking to Petitioner’s constitutional claim, the Supreme Court has explained that detention is “a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); see, e.g., *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Detention under § 1231(a)(6) helps ensure the removal of noncitizens who have not been lawfully admitted into the United States and, in fact, have already been “ordered removed” from the country. 8 U.S.C. § 1231(a)(6).

Section 1231(a)(6), as implemented by the existing regulations, does not violate the procedural component of the Due Process Clause “[w]hen detention crosses the six-month threshold” either. *Diouf*, 634 F.3d at 1091; see *Guerrero-Sanchez*, 905 F.3d at 225. The Supreme Court has upheld detention in connection with removal without any individualized hearings or individualized findings at all. For example, in *Carlson*, the Court held that the Due Process Clause permitted the government to detain certain deportable aliens without bail or any findings of flight risk or dangerousness. 342 U.S. at 537-42; see *Demore v. Kim*, 538 U.S. 510 at 525 (2003) (explaining that “[t]here was no ‘individualized finding’” in *Carlson* (brackets omitted)). And in *Demore*, the Court rejected a facial challenge to a statute providing for the mandatory detention of criminal aliens, including lawful permanent residents, during the pendency of their removal proceedings, despite the lack of findings of flight risk or dangerousness. 538 U.S. at 523–31. Here, ICE has provided Petitioner with multiple Post Order Custody Reviews pursuant to the statute and implementing regulations. That process is constitutionally sufficient because his detention is consistent with the statute’s purpose and, as explained, Petitioner’s removal is reasonably foreseeable.

**i. Applying the *Mathews* Analysis, Petitioner’s multiple custody reviews confirm constitutionally adequate process.**

Applying the three-factor balancing framework under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts must “weigh heavily” the fact “that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Courts also must consider that Congress “emphatic[ally]” intended the government’s discretionary decisions regarding detention to be “presumptively correct and unassailable except for abuse.” *Carlson v. Landon*, 342 U.S. 524, 540 (1952). And as a final consideration, “[t]he Supreme Court has stated over and over that ‘[i]n the exercise of its

broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Miranda*, 34 F.4th at 359 (quoting *Demore v. Kim*, 538 U.S. 510, 521 (2003)). The *Mathews* analysis “requires consideration of three distinct factors”: (1) the private liberty interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interests through the procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Mathews*, 424 U.S. at 335.

With respect to the first factor—the private interest at stake—it is true as a general matter that freedom from physical restraint “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. At the same time, however, *Miranda* confirms that it is not the same liberty interest as a U.S. citizen has. *Miranda v. Garland*, 34 F.4th 338 at 359 (4<sup>th</sup> Cir. 2022). Indeed, “detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process.” *Demore*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake must therefore account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *Carlson*, 342 U.S. at 538. Further, consideration of the private interest also must account for the fact that a noncitizen without lawful status in the United States is not simply asserting a right to be at liberty, but rather a right to be at liberty *in the United States*. *Cf. Reno v. Flores*, 507 U.S. 282, 306 (1993).

Petitioner is subject to a reinstated removal order, and as such, he has a reduced liberty interest in remaining in the United States. The purpose of these withholding proceedings is to determine if he may be removed to Guatemala. *Guzman Chavez*, 141 S. Ct. at 2281; *Nasrallah v. Barr*, 140 S. Ct. 1683, 1691 (2020). Even if withholding is ultimately granted, he may be removed

elsewhere. *Nasrallah*, 140 S. Ct. at 1691. As the question of removability has been resolved, Petitioner thus stands on a different legal footing from those noncitizens in ordinary removal proceedings where the question of removability is unresolved. *See Guzman Chavez*, 141 S. Ct. at 2281. *Cf. Landon*, 459 U.S. at 32 (observing that the “constitutional status” of noncitizens changes according to their ties with the United States *and* whether ordered removed). Thus, Petitioner’s precise liberty interest is even lower than the aliens at issue in *Miranda*, where this Court held that aliens detained during removal proceedings “are due less process . . . than an ordinary citizen would have” in other civil proceedings. *Miranda*, 34 F.4th at 361; *see also DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1982-83 (2020) (assessing liberty interest of alien seeking initial entry into the United States).

As to the second *Mathews* factor, the procedures provided to and used by Petitioner supplied adequate and extensive safeguards to prevent an erroneous deprivation of his liberty interest. Those remedies included multiple custody reviews.

Regarding the third *Mathews* factor—the government’s interest in the current procedures—the Supreme Court has observed that “[t]here is always a public interest in prompt execution of removal orders. The continued presence of [a noncitizen] lawfully deemed removable undermines the streamlined removal proceedings [the immigration laws] established, and permit[s] and prolong[s] a continuing violation of United States law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009) (citation omitted); *Landon*, 459 U.S. at 34 (observing enforcement of immigration laws is a “weighty” interest).

### C. Petitioner is not Eligible for Asylum

Petitioner claims in his Petition that he has “a valid claim for asylum with a positive finding of credible fear.” [D.E. 1 at p. 7]. However, Petitioner is ineligible for asylum under 8 U.S.C. § 1231(a)(5). The full text of § 1231(a)(5) is as follows:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, *the alien is not eligible and may not apply for any relief under this chapter*, and the alien shall be removed under the prior order at any time after the reentry.

(emphasis added). The Eleventh Circuit has held that this statute provides that an alien whose order of removal is reinstated is not eligible for asylum. *See Jimenez-Morales v. U.S. Atty. Gen.*, 821 F.3d 1307 (11<sup>th</sup> Cir. 2016). As Petitioner in this case has a prior removal order that was reinstated, he is not eligible for asylum and thus, any assertion that he has a valid asylum claim is factually and legally inaccurate.

Finally, to the extent Petitioner claims he is entitled to asylum under the Supreme Court decision of *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 n. 4, 126 S. Ct. 2422, 165 L.Ed.2d. 323 (2006), the Eleventh Circuit has addressed this. As addressed in *Jimenez-Morales*, the language in *Fernandez-Vargas* does not mean that asylum is available to someone like Petitioner, rather, it deals only with withholding of removal, not asylum. *See Jimenez-Morales*, 821 F.3d at 1310 (11<sup>th</sup> Cir. 2016). As discussed above, even if Petitioner were granted withholding of removal<sup>3</sup>, such relief does not preclude DHS from removing Petitioner to a third country, it simple precludes removal to the country at issue in the withholding proceedings. *See Guzman Chavez*,

---

<sup>3</sup> Importantly, an Immigration Judge has fully considered Petitioner’s withholding only claim at a merits hearing and denied all relief requested by Petitioner. *See Exhibit W*.

594 U.S. at 531-32 (citations omitted) (alterations in original). As Petitioner is clearly not eligible for asylum, his Petition should be denied and dismissed.

**CONCLUSION**

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

HAYDEN P. O'BYRNE  
UNITED STATES ATTORNEY

By: Kelsi R. Romero  
KELSI R. ROMERO  
ASSISTANT U.S. ATTORNEY  
United States Attorney's Office  
Southern District of Florida  
Special Bar No. A5502758  
500 East Broward Boulevard, Suite 700  
Fort Lauderdale, Florida 33394  
Tel: (954) 660-5694  
Email: [Kelsi.Romero@usdoj.gov](mailto:Kelsi.Romero@usdoj.gov)