

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

SERGIO CRUZ CRUZ,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States, KRISTI NOEM, Secretary, United States Department of Homeland Security, TODD LYONS, Acting Director for New England, U.S. Immigration and Customs Enforcement, and WARDEN, Wyatt Detention Center, Central Falls, RI,

Respondents.

Civil Action No. 25-cv-262-JJM-PAS

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

Pursuant to the Court's June 9, 2025 Order, Pamela Bondi, Attorney General of the United States, Kristi Noem, Secretary, United States Department of Homeland Security ("DHS"), and Todd Lyons, Acting Director for New England, U.S. Immigration and Customs Enforcement ("ICE"), respectfully submits this Opposition to Petitioner's Petition for Writ of Habeas Corpus, and Motion to Dismiss Petition.<sup>1</sup>

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<sup>1</sup> The U.S. Attorney's Office does not represent the Warden of Wyatt Detention Facility.

## I. INTRODUCTION

Petitioner Sergio Cruz Cruz, a native and citizen of Mexico who was previously removed from the United States in 2014, is currently being held in immigration custody at the Wyatt Detention Facility in Central Falls, RI. Petitioner is held pursuant to 8 U.S.C. § 1231, which authorizes detention of individuals subject to a final order of removal from the United States.

Petitioner has been in ICE custody since ICE first encountered and detained him on May 24, 2025. That same day a reinstatement of his prior order of removal was issued. On July 29, 2025, after an Immigration Judge issued a decision in a “Reasonable Fear Review” in Petitioner’s favor, Petitioner was placed in “withholding only” proceedings where he seeks withholding of his removal to Mexico based on a fear of persecution. Those proceedings are currently pending in immigration court. In total, Petitioner has been detained under § 1231 for less than six months as of the date of this filing. *See Zadvydas v. Davis*, 533 U.S. 678, 701. (2001) (post-removal-period detention of less than six months is presumptively reasonable).

While he pursues legal relief in immigration court, Petitioner asks this Court to order Respondents to “justify and explain<sup>2</sup> why he has been detained and why he is being held,” and to order that he be “released from custody.” ECF

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<sup>2</sup> Petitioner’s request for justification and explanation is moot. On June 11, 2025, Respondents informed Petitioner’s counsel that Petitioner had previously been removed from the United States on February 7, 2014, and that his removal order had been reinstated. Additionally, although not required to do so, Respondents provided counsel with documents related to Petitioner’s removal.

1, *Petition for Writ of Habeas Corpus*. Petitioner provides no legal or factual basis in support of his requested relief from this Court, he has not exhausted his administrative remedies, and the bare bones petition filed by Petitioner is premature.

## II. GOVERNING LEGAL STANDARDS

### A. Standard for a Motion to Dismiss Under Rule 12(b)(6).

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal where the complaint fails to state a claim upon which relief can be granted. To withstand a motion to dismiss under Federal Rule 12(b)(6), “the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Cunningham v. Nat’l City Bank*, 588 F.3d 49, 52 (1st Cir. 2009) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). The Court, however, need not credit or accept mere conclusory statements or conclusions of law. *See Iqbal*, 556 U.S. at 678.

In deciding a motion to dismiss under Rule 12(b)(6), the court may consider the challenged pleading, together with any documents incorporated by reference in that pleading and matters subject to judicial notice. This category of documents may be considered without converting the motion to one for summary judgment, and includes documents annexed to the complaint, as well as documents referenced in, or integral to, the pleading. *Trans-Spec Truck Service, Inc. v. Caterpillar, Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) (internal citations omitted).

**B. Standard for a Motion for Summary Judgment Under Rule 56.**

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (quoting Fed. R. Civ. P. 56(c)).<sup>3</sup>

**C. Applicable Provisions of the Immigration and Nationality Act.**

The Immigration and Nationality Act (“INA”) includes several provisions governing ICE’s authority to detain individuals during the pendency of immigration proceedings. 8 U.S.C. § 1231 provides the authority for detention of an individual who has a final order of removal. *See* § 1231(a)(2). In addition, 8 U.S.C. § 1231(a)(5) specifically addresses the situation where someone has been ordered removed, has had the order of removal effectuated, but has illegally reentered the United States. This provision states that if an individual has reentered the United States without authorization after having been removed under an order of removal, the prior order of removal is reinstated, is not subject to being reopened or reviewed, and the individual “is not eligible and may not apply for any relief under this chapter” and “shall be removed under the prior order at any time after the reentry.” § 1231(a)(5); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 542 (2021).

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<sup>3</sup> The government frames this motion under Rule 56 in the alternative, given the submission of extrinsic evidence regarding Petitioner’s status.

Under § 1231, once an individual is ordered removed, removal is to take place within 90 days. 8 U.S.C. § 1231(a)(1)(A). During this removal period, under the express terms of the statute, detention is mandatory. *Id.* at § 1231(a)(2) (“During the removal period, the Attorney General shall detain the alien.”).

The statute provides that the removal period may be extended “in at least three circumstances, such that an alien remains detained after 90 days have passed.” *Guzman Chavez*, 594 U.S. at 528. Under § 1231(a)(1)(C), the removal period may be extended if the individual fails to make a timely application for travel documents or acts to prevent removal. Under § 1231(c)(2)(A), ICE may stay the immediate removal if it decides that such removal is not practicable or proper, or if the individual is needed to testify in a pending prosecution. Under § 1231(a)(6), ICE is expressly given the choice to either detain beyond the removal period or release under supervision an individual if he is (1) inadmissible, (2) removable as a result of violations of status requirements, entry conditions, or the criminal law, or for national security or foreign policy reasons, or (3) a risk to the community or unlikely to comply with the removal order. *See also* 8 C.F.R. § 241.4.

An individual subject to a reinstated removal order may seek to prevent removal to a specific country through statutory withholding of removal or relief under the Convention Against Torture (“CAT”). *G.P. v. Garland*, 103 F.4th 898, 900 (1st Cir. 2024); *see Guzman Chavez*, 594 U.S. at 530; § 1231(b)(3)(A). If the request for “withholding” is granted, the individual cannot be removed to the specific

country at issue, but the final order of removal remains in effect, and the individual can be removed to a different country. *See Guzman Chavez*, 594 U.S. at 531-32; *G.P.*, 103 F.4th at 902. During the time when the individual is seeking “withholding only” relief, the individual continues to be detained pursuant to § 1231. *Guzman Chavez*, 594 U.S. at 542.

Importantly, the statute does not specify a time limit on how long ICE may detain an individual during this post-removal period, and unlike other provisions of the INA, it does not provide for a bond hearing regarding a detainee’s potential release while awaiting removal. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022); *G.P.*, 103 F.4th at 900-01. However, DHS regulations provide that the agency conduct periodic post-removal order custody reviews to determine whether an individual subject to a final order of removal should continue to be detained. *See* 8 C.F.R. § 241.4; *G.P.*, 103 F.4th at 901.

### III. RELEVANT FACTUAL BACKGROUND

Petitioner Sergio Cruz Cruz is a native and citizen of Mexico. (ECF 1, *Petition for Writ of Habeas Corpus*, ¶ 4; Exhibit 1 - Declaration of Assistant Field Office Director Keith Chan (the “Chan Decl.”), ¶ 6). On or about February 6, 2014, U.S. Customs and Border Protection (“CBP”) officers encountered and arrested Petitioner at or near San Diego, CA. (Chan Decl., ¶ 7). The next day a Notice and Order of Expedited Removal (the “2014 Expedited Removal Order”) was issued, finding that the Petitioner was inadmissible, and providing that Petitioner be removed from the United States. (Chan Decl., ¶ 8). Petitioner was then removed. (Chan Decl., ¶ 8).

Subsequently, at an unknown place and time, Petitioner reentered the United States after removal. (Chan Decl., ¶ 8). On or about May 24, 2025, CBP officers encountered Petitioner at or near Waltham, MA. (Chan Decl., ¶ 9). Later that day, a Notice of Intent/Decision to Reinstate Prior Order was issued, reinstating the 2014 Expedited Removal Order. (Chan Decl., ¶¶ 9-10). Petitioner was transferred to ICE custody, and subsequently detained at the Wyatt Detention Facility in Central Falls, RI. (Chan Decl., ¶ 9).

On July 7, 2025, an Asylum Officer with U.S. Citizenship and Immigration Services (“USCIS”) conducted a Reasonable Fear Interview of Petitioner. (Chan Decl., ¶ 11). Petitioner claimed a fear of returning to Mexico, but the Asylum Officer issued a negative reasonable fear determination. (Chan Decl., ¶ 11).

Petitioner requested that an Immigration Judge review the Asylum Officer’s decision, and on July 29, 2025, at the conclusion of the Reasonable Fear Review where the Petitioner had the benefit of representation by counsel, the Immigration Judge issued a decision vacating the Asylum Officer’s negative reasonable fear determination. (Chan Decl., ¶ 12-13). That same day, the Chelmsford Immigration Court placed the Petitioner in “withholding-only” proceedings. (Chan Decl., ¶ 14). On August 21, 2025, ICE reviewed Petitioner’s custody status and determined that Petitioner would not be released from custody based upon ICE’s review of Petitioner’s file and the factors for consideration set forth at 8 C.F.R. § 241.4(e), (f), and (g). (Exhibit 2 - Decision to Continue Detention). Petitioner’s “withholding-only” proceedings are currently pending, and the next

hearing is scheduled for October 21, 2025, at 2:30 p.m., in the Chelmsford Immigration Court. (Chan Decl., ¶ 14).

#### IV. ARGUMENT

Petitioner has not alleged a legal or factual basis that would entitle him to habeas relief. As a matter of statutory law, he is not entitled to release or a bond hearing. Moreover, his continued detention does not violate due process under *Zadvydas*. Specifically, he has not exhausted his administrative remedies, and he has failed to show that there is “no significant likelihood of [his] removal in the reasonably foreseeable future.” *G.P.*, 103 F. 4th at 902. Even if he could make such a showing, his petition is premature because six months, the presumptively reasonable detention period under *Zadvydas*, has not elapsed. The Court should dismiss his petition.

##### A. Petitioner is Not Entitled to Release or a Bond Hearing Under 8 U.S.C. § 1231.

Petitioner is not entitled to release or to a bond hearing under § 1231. *See Guzman Chavez*, 594 U.S. at 526 (holding that ICE is authorized to detain individuals seeking withholding of removal under § 1231, and that those seeking this type of relief in immigration court “are not entitled to a bond hearing while they pursue withholding of removal.”); *see also Arteaga-Martinez*, 596 U.S. at 576 (expanding upon the holding in *Guzman-Chavez* and determining that section 1231(a)(6) does not require “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.”).

In *Guzman Chavez*, the Court considered the claims of individuals in precisely the situation presented by the Petitioner in this case: individuals who had been removed from the United States, reentered without authorization, were discovered by ICE, had their prior removal orders reinstated, expressed a fear of returning to their home countries, were referred to an immigration judge for withholding-only proceedings, were detained by ICE, and sought release on bond while their withholding-only proceedings were pending. See 594 U.S. at 532. The Supreme Court rejected the habeas claims of the petitioners, holding that § 1231 provides the authority for the detention of such individuals, and thus no bond hearing was required. *Id.* at 526 (“We conclude that § 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond hearing while they pursue withholding of removal.”).

Importantly, in its analysis, the *Guzman Chavez* Court recognized the different posture of individuals held under other provisions of the INA, prior to a final order of removal, from those held under § 1231. In finding that the statute does not require a bond hearing, the Court wrote:

Respondents’ contrary reading would undermine Congress’s judgment regarding the detention of different groups of aliens who posed different risks of flight; aliens detained under § 1226 before having been ordered removed and those held under § 1231 after already having been ordered removed. Aliens who have not been ordered removed are less likely to abscond because they have a chance of

being found admissible, but aliens who have already been ordered removed are generally inadmissible. The only apparent relief they can hope to obtain is a grant of withholding-only relief, and they would seem to still have a chance to get that relief if they absconded and were again apprehended. In addition, aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order. Congress had obvious reasons to treat these two groups differently.

594 U.S. at 544 (internal citations omitted).

In this case, Petitioner, an inadmissible alien subject to reinstatement of the 2014 Expedited Removal Order, is held pursuant to 8 U.S.C. § 1231. (Chan Decl., ¶¶ 4, 8, 10). ICE's recent custody review and decision to continue Petitioner's detention without a bond hearing does not violate any provision of the INA, either express or implied. Instead, the statute specifically states that Petitioner "may be detained beyond the removal period..." and contains no language regarding a bond hearing. § 1231(a)(6). To hold otherwise and create such a requirement under § 1231 would be to ignore both the statutory language and the Supreme Court's ruling on this precise issue.

**B. A Bond Hearing<sup>4</sup> is Not Constitutionally Required.**

The Constitutional limitations on § 1231 detention are set forth in *Zadvydas*. In that case, the Supreme Court "read an implicit limitation into

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<sup>4</sup> In his petition, Petitioner has asked the Court to order his release; however, if the Court were to find that Petitioner merits habeas relief, the Court nonetheless should deny Petitioner's request that he be ordered released immediately. The remedy for unreasonably prolonged detention is for the Court to issue an order directing the immigration court to conduct a bond hearing, rather than an order that the detainee be released.

the statute . . . in light of the Constitution's demands" and held that detention under § 1231 is constitutionally appropriate for the period of time that is reasonably necessary to bring about removal from the United States. See *Zadvydas*, 533 U.S. at 689; see also *Lawrence v. Gonzales*, 446 F.3d 221, 227 (1st Cir. 2006). In *Zadvydas*, where the unusual circumstances of the petitioners caused them to face "indefinite, perhaps permanent detention," the Court read a presumptive limit to § 1231 detention at the point when a detainee is able to provide good reason to believe that there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Only when the petitioners met this burden did the Supreme Court shift the burden to the government to show why detention should continue. *Id.*

With respect to individuals detained while "withholding only" proceedings are still pending, the First Circuit Court of Appeals, and other circuit courts to consider analogous circumstances, have concluded that detention pursuant to § 1231 beyond six months does not warrant habeas relief under *Zadvydas*. *G.P.*, 103 F.4th at 902 (denying G.P. habeas relief while his "withholding only" proceedings were pending and surveying cases from other circuit courts). In such a situation, the First Circuit found that Petitioner had not exhausted his administrative remedies, and without more, failed to show that there was "no significant likelihood of [his] removal in the reasonably foreseeable future." *Id.* The First Circuit, finding the reasoning of the Fourth Circuit persuasive, recognized that "withholding-only proceedings are finite." And because they "have a definite

ending point, then so too must the detention pending the resolution of those proceedings.” *Id.* at 903 (citations omitted). Thus, detention during “withholding only” proceedings was “not the type of indefinite and potentially permanent detention at issue in *Zadvydas*.” *Id.* at 902. In reaching this conclusion, the First Circuit also noted that G.P. was “unable to provide any decision where a court ordered a noncitizen to be released under *Zadvydas* while removal or withholding-only proceedings remained pending before the agency.” *Id.* at 903.

In this case, Petitioner has been detained for approximately three months while his “withholding only” proceedings are progressing. His petition is premature at best. The length of his detention is well within the *Zadvydas* presumptively reasonable six-month window. Moreover, even if he had been detained for six months at the time he filed the petition, he cannot meet his burden under *Zadvydas* under the facts of his case. His case is moving through immigration court without undue delay. And, as in *G.P.*, there is no way at this juncture for the Court to predict how Petitioner’s “withholding only” proceedings will be resolved. 103 F.4th at 905. If the proceedings are not resolved in his favor, then he will be removed to Mexico. If they are resolved in his favor, then ICE may pursue removal of Petitioner to another country. Either way there is an end-date to the process, and Petitioner has not, and cannot, show at this time, that removal is not in his reasonably foreseeable future. In sum, he cannot meet his burden under *Zadvydas*.

## V. CONCLUSION

The government does not in any way challenge Petitioner's right to pursue his withholding claim before the immigration court. However, while other provisions within the INA provide for bond hearings during immigration proceedings, there is no such entitlement for individuals being held due to a reinstated final order of removal when removal can occur after the immigration court process has been exhausted. To the extent that Petitioner seeks to litigate the merits of his immigration case or ICE's custody determinations, this Court lacks jurisdiction to consider challenges to either. *See* 8 U.S.C. §§ 1252, 1231(a)(5). As a result, his request for habeas relief in this Court should be denied, and his petition should be dismissed.

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

I hereby certify that, on September 5, 2025, I caused the foregoing document to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

/s/ Sandra R. Hebert  
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