

The Honorable Robert S. Lasnik
The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEJANDRO BALTODANO,

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; CAMMILLA WAMSLEY, Seattle
Field Office Director, United States Citizenship
and Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention Facility; and
the UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Respondents.

Case No. 2:25-cv-01958-RSL-MLP

FEDERAL RESPONDENTS'
RETURN

**Noted for Consideration:
December 8, 2025.**

I. INTRODUCTION

This Court should dismiss Petitioner Alejandro Baltodano's Petition for Writ of Habeas Corpus. Baltodano is subject to a reinstated order of removal, he does not have legal status to remain in the United States, he has been granted deferral to his home country of Nicaragua, and U.S. Immigration and Customs Enforcement (ICE) is pursuing third country removal. While the third country removal process is ongoing, Baltodano is detained pursuant to 8 U.S.C. § 1231(a)(6).

1 He has been given a bond hearing and an Immigration Judge determined that ICE established by
2 clear and convincing evidence that he is a danger to the community. He has been given a bond
3 redetermination hearing where another Immigration Judge determined that he had not established
4 changed circumstances that negated his extensive criminal history to allow him to be released
5 during the third country removal process. Thus, his detention, while prolonged, is lawful.

6 **II. BACKGROUND**

7 **A. Legal Background**

8 The Immigration and Nationality Act (INA) governs the detention and release of
9 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
10 U.S. 523, 527 (2021). This includes an expedited process for noncitizens who reenter the United
11 States without authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5)
12 (reinstatement of removal orders).

13 If the Attorney General finds that an alien has reentered the United States illegally after
14 having been removed or having departed voluntarily, under an order of removal, the prior
15 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 Act, and the
alien shall be removed under the prior order at any time after the reentry.

16 *Id.*; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order).

17 While a noncitizen may not seek most discretionary relief from the terms of the reinstated
18 order, a noncitizen may pursue withholding-only relief and protection under the Convention
19 Against Torture to prevent his removal to the country listed in the reinstated removal order.
20 *Johnson*, 594 U.S. at 530-31. The Immigration Judge's decision on the application for withholding
21 of removal or protection under the Convention Against Torture may be appealed to the Board of
22 Immigration Appeals (BIA). 8 C.F.R. § 1208.31(g)(2)(ii). The BIA's decision may be judicially
23 reviewed by the Court of Appeals. *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958-60 (9th Cir. 2012).

1 While withholding only proceedings are pending before the IJ or the BIA, ICE cannot
2 execute a reinstated order of removal. *See id.*, at 957. Detention during this process is pursuant to
3 8 U.S.C. § 1231(a). *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017); *Castaneda v.*
4 *Aitken*, 2015 WL 3882755, *4-5 (N.D. Cal. June 23, 2015).

5 **B. Factual Background**

6 Baltodano is a native and citizen of Nicaragua who had previously been ordered removed
7 from the United States on November 14, 2018, following a determination by an immigration judge
8 that he was ineligible for most forms of relief due to commission of a particularly serious crime.
9 Strzelczyk Decl. ¶ 4; Johnson Decl. Exs. A, B. He was thereafter removed on February 6, 2019.
10 Strzelczyk Decl. ¶ 4. Prior to being ordered removed, he had on several occasions been
11 encountered by immigration officers and allowed to depart the United States voluntarily. *Id.*

12 Baltodano re-entered the United States without inspection or parole at an unknown location
13 on an unknown date but is believed to have entered on or about January 7, 2024. Strzelczyk Decl.
14 ¶ 5; Johnson Decl. Ex. B. He was encountered by a U.S. Border Patrol agent on or about January
15 8, 2024, and was processed for reinstatement of the prior removal order. Strzelczyk Decl. ¶ 6;
16 Johnson Decl. Ex. C. Baltodano claimed fear of return to Nicaragua and was held pending a
17 reasonable fear interview by U.S. Citizenship and Immigration Services (USCIS). Strzelczyk Decl.
18 ¶ 7; Johnson Decl. Exs. B-D.

19 On March 27, 2024, following a reasonable fear interview, USCIS referred the case to an
20 immigration judge for withholding only proceedings before the Otay Mesa, California immigration
21 court. Strzelczyk Decl. ¶ 8. Baltodano's initial hearing in 2024 occurred on April 4, 2024. *Id.* at ¶
22 9. Because he had been found to be incompetent to represent himself in prior immigration
23 proceedings, the Immigration Judge reset the case for a competency inquiry on April 24, 2024. *Id.*
24 On April 24, 2024, the Immigration Judge found that Baltodano was not competent to represent

1 himself and appointed a Qualified Representative (QR). *Id.* at ¶ 10. Petitioner next appeared in
2 court on May 22, 2024, and his QR requested a continuance. *Id.*

3 Baltodano next appeared before the immigration court on June 12, 2024, and his case was
4 reset to July 18, 2024, to allow him to file any applications for relief. *Id.* at ¶ 11. He next appeared
5 on July 16, 2024, for a bond hearing, where the Immigration Judge found that DHS had shown by
6 clear and convincing evidence that he is a danger. *Id.* at ¶ 12; Johnson Decl. at Exs. E, F. Neither
7 party appealed. *Id.*

8 Baltodano next appeared on June 18, 2024, and requested a continuance to gather evidence
9 on his case. *Id.* at ¶ 13. He next appeared on August 14, 2024, and his case was set for a final
10 hearing on his applications for relief, to be held on September 19, 2024. *Id.* at ¶ 14. This hearing
11 was later moved by the immigration court to September 26, 2024. *Id.*

12 Baltodano was transferred to the Northwest ICE Processing Center (NWIPC) in Tacoma,
13 Washington on or about September 16, 2024. *Id.* at ¶ 15. Baltodano's case remained with the Otay
14 Mesa immigration court. *Id.* at ¶ 16. On September 26, 2024, it appears the Otay Mesa immigration
15 court set the matter over due to video connectivity and mental health problems. *Id.* On October 31,
16 2024, he appeared before the Otay Mesa immigration court via video, and the Immigration Judge
17 set the case over to another master calendar hearing. *Id.* at ¶ 17. The case was set over again on
18 December 4, 2024. *Id.* On January 15, 2024, Baltodano's case was set for a final hearing on
19 February 11, 2025. *Id.* at ¶ 18. He filed a motion to continue the case on January 17, 2025, and the
20 case was continued to February 14, 2025. *Id.* at ¶ 19.

21 On February 14, 2025, the Immigration Judge found that the court was bound by the prior
22 determination that Baltodano had committed a particularly serious crime. *Id.* at ¶ 20. The case was
23 set over for issuance of a decision on Baltodano's applications. *Id.* The Immigration Judge issued
24 a written decision on March 5, 2025, granting deferral of removal to Nicaragua. *Id.* at ¶ 21; Johnson

1 Decl. Ex. G. The parties had thirty days to appeal. Strzelczyk Decl. ¶ 21. Neither party filed an
2 appeal. *Id.*

3 On June 10, 2025, Baltodano filed a motion for bond based on a material change in
4 circumstances. *Id.* at ¶ 22. The court issued a written decision denying bond on June 27, 2025. *Id.*;
5 Johnson Decl. at Ex. F. The Immigration Judge found that Baltodano had already been provided
6 with a bond hearing where DHS proved that he was a danger to the community and he failed to set
7 forth any materially changed circumstances about the determinative factors that led to that initial
8 decision, such as his extensive criminal history. Johnson Decl. at Ex. F. Neither party appealed the
9 Immigration Judge's bond determination. Strzelczyk Decl. ¶ 22.

10 As noted above, the immigration court has twice found Baltodano to be a danger to the
11 community. His extensive and dangerous criminal history includes the following convictions:

- 12 • 06/30/2016 – Robbery
- 13 • 03/19/2010 – Assault
- 14 • 10/19/2016 – Burglary
- 15 • 09/19/2012 – Vehicle Theft
- 16 • 05/11/2005 – Receive Stolen Property
- 17 • 02/25/2009 – Damage Property
- 18 • 02/20/2004 – Dangerous Drugs
- 19 • 01/05/2015 – Cruelty Toward Child
- 20 • 02/23/2007 – Resisting Officer
- 21 • 02/23/2007 – Obstruct Police
- 22 • 02/23/2007 – Obstructing Justice
- 23 • 8/15/2012 – Driving Under Influence Liquor
- 24 • 02/16/2010 – Driving Under Influence Liquor
- 09/27/2010 – Driving Under Influence Liquor
- 12/24/2008 – Driving Under Influence Liquor
- 10/23/2000 – Driving Under Influence Liquor
- 08/15/2012 – Traffic Offense
- 02/16/2010 – Traffic Offense
- 03/19/2010 – Traffic Offense
- 09/27/2010 – Traffic Offense
- 02/25/2009 – Property Crimes
- 03/19/2010 – Battery
- 01/05/2015 – Domestic Violence
- 09/27/2010 – Licensing Violation

1 Strzelczyk Decl. ¶ 23; Johnson Decl. Ex. B; Johnson Supplemental Declaration Ex. B (providing
2 detailed information of Petitioner’s criminal history).¹

3 Given Baltodano’s extensive and violent criminal history, ICE intends to remove him to a
4 third country. Strzelczyk Decl. ¶ 23. On October 21, 2025, Baltodano was served written notice of
5 ERO’s intent to remove him to Honduras. *Id.* at ¶ 24; Johnson Supplemental Decl. at Ex. A
6 (providing documentation of ERO’s removal). Baltodano claimed an inability to speak or
7 communicate in Spanish, and as such was served in English. *Id.* ERO served Baltodano written
8 notice of intent to remove him to Mexico on October 24, 2025. Johnson Supplemental Decl. Ex.
9 A. Baltodano’s QR has previously indicated to ERO that Baltodano will claim fear to any country
10 ICE attempts to remove him to. Strzelczyk Decl. at ¶ 25. If he does fear removal to Honduras or
11 Mexico, Baltodano may file a motion to reopen his immigration case. *Id.* ERO will not attempt to
12 remove him if a motion to reopen is pending. *Id.*

13 III. LEGAL STANDARD

14 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
15 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
16 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
17 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the
18 present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).
19 Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief “within their
20 respective jurisdictions.”

21 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
22 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28

23 _____
24 ¹ The Federal Respondents filed a supplemental declaration on November 7, 2025, following the hearing on
Petitioner’s motion for a preliminary injunction per the Court’s instructions, but it appears it did not come to the
Court’s attention before the order on the preliminary injunction was issued.

1 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

2 **A. Baltodano’s continuing detention does not violate due process.**

3 Baltodano’s detention is constitutionally and statutorily lawful. Baltodano is detained
4 pursuant to 8 U.S.C. § 1231(a)(6). *Padilla-Ramirez*, 882 F.3d at 830-33; *Castaneda*, 2015 WL
5 3882755, at *4-5. “The statutory scheme governing the detention of aliens in removal proceedings
6 is not static; rather, the Attorney General’s authority over an alien’s detention shifts as the alien
7 moves through different phases of administrative and judicial review.” *Castaneda*, 2015 WL
8 3882755, at *4 (quoting *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 945 (9th Cir.
9 2008)). “Where an alien falls within this statutory scheme can affect whether his detention is
10 mandatory or discretionary, as well as the kind of review process available to him if he wishes to
11 contest the necessity of his detention.” *Id.* (quoting *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057
12 (9th Cir. 2008)).

13 Before removal proceedings are completed, the Attorney General has the discretionary
14 authority to detain or release an alien under section 1226(a). *See* 8 U.S.C. § 1226(a)(2). After
15 removal proceedings have been completed, the detention or release of an alien is governed by
16 section 1231(a), which governs “detention, release, and removal of aliens ordered removed.” 8
17 U.S.C. § 1231(a).

18 Section 1231 authorizes detention in only two circumstances. First, “[d]uring the removal
19 period,” the Attorney General “shall” detain the alien. 8 U.S.C. § 1231(a)(2). The “removal period”
20 generally lasts 90 days, and it begins on the latest of the following: (1) the date the order of removal
21 becomes final; (2) if the removal order is judicially reviewed and if a court orders a stay of the
22 removal of the alien, the date of the court’s final order; or (3) if the alien is detained or confined
23 (except under an immigration process), the date the alien is released from detention or
24 confinement. 8 U.S.C. § 1231(a)(1)(B). This 90-day detention period is non-discretionary.

1 *Khotesouvan v. Morones*, 386 F.3d 1298, 1299-1300 (9th Cir. 2004). The removal period may be
2 extended beyond the 90 days if the alien fails or refuses to make a timely application for travel in
3 good faith. 8 U.S.C. § 1231(a)(1)(C).

4 Second, “beyond the removal period,” the Attorney General “may” continue to detain
5 certain aliens as specified in the statute or release them under an order of supervision. 8 U.S.C. §
6 1231(a)(6); *Prieto-Romero*, 534 F.3d at 1059. Specifically, “[a]n alien ordered removed who is
7 inadmissible ... or who has been determined by the Attorney General to be a risk to the community
8 or unlikely to comply with the order of removal, may be detained beyond the removal period.” 8
9 U.S.C. § 1231(a)(6). “Section 1231(a)(6) encompasses ... aliens who have exhausted all direct and
10 collateral review of their removal orders but who, for one reason or another, have not yet been
11 removed from the United States.” *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1085 (9th Cir.
12 2011).

13 The Ninth Circuit has not considered whether a reinstated order of removal is
14 administratively final where there are ongoing withholding of removal proceedings. However,
15 section 1231(a)(5) provides that “the prior order of removal is reinstated from its original date and
16 is not subject to being reopened or reviewed.” 8 U.S.C. § 1231(a)(5). “Thus the reinstated removal
17 order relates back to the date of the original removal order—an administratively final order—and
18 is itself administratively final because it cannot be reopened or reviewed.” *Castaneda*, 2015 WL
19 3882755, at *5 (citing *Acevedo-Rojas v. Clark*, 2014 WL 6908540, at *4 (W.D. Wash. Dec. 8,
20 2014); *Giron-Castro v. Asher*, 2014 WL 8397147, at *2 (W.D.Wash. Oct. 2, 2014)).

21 “[E]ven if an alien is granted withholding of removal, that relief is only country specific
22 and will have no effect on the validity of the reinstated removal order. Although such an alien can
23 no longer be removed to the country specified in the removal order, the alien can still be removed
24 from the United States.” *Id.* (quoting *Acevedo-Rojas*, 2014 WL 6908540, at *4).

1 Thus, because Baltodano’s reinstated removal order was administratively final at the time
2 it was reinstated, his detention is authorized by section 1231(a)(6).

3 Baltodano has been detained for more than 90 days and thus his detention falls under
4 section 1231(a)(6), which entitles the government to detain aliens beyond the 90-day removal
5 period or release them on supervision. Continued detention beyond the end of the removal period
6 is governed by the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 671 (2001). In
7 *Zadvydas*, the Court held that section 1231(a)(6) implicitly limits an alien’s detention to a period
8 reasonably necessary to bring about that alien’s removal from the United States and does not permit
9 “indefinite” detention. *Id.* at 701. Under *Zadvydas*, “[a]n alien is entitled to habeas relief after a
10 presumptively reasonable six-month period of detention under § 1231(a)(6) only upon
11 demonstration that the detention is ‘indefinite’—i.e., that there is ‘good reason to believe that there
12 is no significant likelihood of removal in the reasonably foreseeable future.’” *Diouf v. Mukasey*
13 (“*Diouf I*”), 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701).

14 Here, Baltodano’s 90-day removal period began to run when he entered ICE’s custody on
15 January 8, 2024, and therefore ended on April 8, 2024. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Thus, the
16 six month presumptively reasonable period expired on or about October 8, 2024.²

17 “When detention crosses the six-month threshold and release or removal is not imminent,
18 the private interests at stake are profound. Furthermore, the risk of an erroneous deprivation of
19 liberty in the absence of a hearing before a neutral decision maker is substantial.” *Castaneda*, 2015
20 WL 3882755, at *5 (quoting *Diouf II*, 634 F.3d at 1091-92). The Immigration Judge may still find
21 the detention justifiable, but a hearing provides the detainee with a necessary constitutional
22 safeguard. *Id.*

23
24 ² The government was previously incorrect in representing that the removal period began when the Immigration
Judge granted the application for deferral.

1 There is no dispute that Baltodano has already received a bond hearing and a bond
2 redetermination hearing. Johnson Decl. at Exs. E, F. The first bond hearing, on July 16, 2024, was
3 a civil detention hearing under the *Franco-Gonzalez* litigation and was performed while Baltodano
4 was in withholding only proceedings. *Id.* at Ex. E. Baltodano was represented by a Qualified
5 Representative. *Id.* The Immigration Judge (Partida) found that DHS established by clear and
6 convincing evidence that Baltodano is a danger to the community. *Id.* While Baltodano reserved
7 the right to appeal this decision to the BIA, he never did so. *Id.*; Strzelczyk Decl. ¶ 12.

8 Baltodano requested and received a bond redetermination hearing before a second
9 Immigration Judge (Sameit) on June 27, 2025, after his he was granted deferral to Nicaragua.
10 Johnson Decl. at Ex. F. He was again represented by counsel. *Id.* He made the same arguments to
11 the Immigration Judge that he makes in this habeas corpus proceeding about why he should be
12 released. *Id.* For example, he claimed that he is not a danger or flight risk because (1) he has
13 declining health, (2) his criminal sentences were minor and not recent, and (3) he has been
14 rehabilitated. *Id.* The Immigration Judge found that Baltodano failed to present any materially
15 changed circumstances about the determinative factors that led to the Immigration Judge's initial
16 custody redetermination decision, such as his extensive criminal history. *Id.* Baltodano's criminal
17 history is set forth in detail in the 19-page rap sheet, the California criminal history reports, as well
18 as some of his sentencing documents from California. Johnson Supplemental Declaration Ex. B.
19 Baltodano did not appeal this decision. Strzelczyk Decl. ¶ 22.

20 Not only did Baltodano not appeal either bond decision to the BIA, he does not challenge
21 these bond decisions through his habeas petition. He does not argue that he was not given sufficient
22 due process or that the bond hearings were somehow inadequate. And he is not seeking another
23 bond hearing. Rather, he simply argues that he should be released because his detention is
24 prolonged. But even though his detention is prolonged, it is lawful, because he has been given all

1 the due process he is entitled to, and the government has proven by clear and convincing evidence
2 that he is a danger to the community.

3 **B. The Government is providing Baltodano with notice and an opportunity to be**
4 **heard during its third country removal efforts.**

5 Baltodano argues that ICE's third country removal policy fails to provide sufficient notice
6 and an opportunity to be heard and is punitive in nature. But Baltodano cannot show that *he* is not
7 being provided notice and an opportunity to be heard, or that anyone has acted punitively towards
8 him in deciding to pursue third country removal.

9 On October 21, 2025, Baltodano was served written notice of ERO's intent to remove him
10 to Honduras. Johnson Supplemental Decl. at Ex. A. Baltodano claimed an inability to speak or
11 communicate in Spanish, and as such was served in English. Strzelczyk Decl. ¶ 24. ERO served
12 Baltodano written notice of intent to remove him to Mexico on October 24, 2025. Johnson
13 Supplemental Decl. Ex. A. Baltodano's QR has previously indicated to ERO that Baltodano will
14 claim fear to any country ICE attempts to remove him to. Strzelczyk Decl. at ¶ 25. If he does fear
15 removal to Honduras or Mexico, Baltodano may file a motion to reopen his immigration case. *Id.*
16 ERO will not attempt to remove him if a motion to reopen is pending. *Id.*

17 After Baltodano was granted deferral to Nicaragua, DHS made the determination to seek
18 third country removal rather than release him into the community. As discussed above, both DHS
19 and two Immigration Judges have found that Baltodano is a danger to the community. There is no
20 evidence DHS is seeking third country removal for any punitive reasons. Rather the government
21 is seeking third country removal to protect the public rather than to release a dangerous noncitizen
22 back into the community where he has already committed numerous offenses including Driving
23 Under the Influence (x5), Cruelty Toward child, Domestic Violence, Dangerous Drugs, and
24 Assault. *See* Strzelczyk Decl. at ¶ 23; Johnson Decl. Ex. D; Johnson Supplemental Decl. Ex. B.

1 There is no evidence the government's decision to pursue third country removal is punitive toward
2 Baltodano.³

3 **VI. CONCLUSION**

4 Baltodano's habeas petition should be denied and dismissed without an evidentiary
5 hearing.

6
7 DATED this 10th day of November, 2025.

8 Respectfully submitted,

9 CHARLES NEIL FLOYD
10 United States Attorney

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20 *Attorneys for Federal Respondents*

21 I certify that this memorandum contains 3,495 words,
22 in compliance with the Local Civil Rules.

23 ³ The Federal Respondents also object to Baltodano's general arguments about the government's third country
24 removal process as set forth twice in their opposition to the motion for a temporary restraining order (Dkt. 12) and
opposition to the motion for a preliminary injunction (Dkt. 16), and incorporates those arguments herein rather than
repeating them for a third time.