

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ALAN ORTIZ ALVARADO,

Petitioner,

v.

Civil Action No. 1:25-CV-590 MSM

PATRICIA HYDE, Director, Boston Field Office,
U.S. Immigration and Customs Enforcement,
MICHAEL KROL, Special Agent in Charge,
Homeland Security Investigations, TODD LYONS,
Acting Director U.S. Immigration and Customs
Enforcement, and KRISTI NOEM, U.S. Secretary of
Homeland Security, PAMELA BONDI, United
States Attorney General, and MICHAEL
NESSINGER, Warden of the Donald Wyatt
Detention Center, *in their official capacities.*

Respondents.

**RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Pursuant to the Court's November 12, 2025, Order, the United States of America, on behalf of Respondents Patricia Hyde, Michael Krol, Todd Lyons, Kristi Noem, and Pamela Bondi in their official capacities, by and through their attorney, Acting United States Attorney Sara Miron Bloom, respectfully submit this opposition to Petitioner Lopez Hernandez's Petition for Habeas Corpus.

I. FACTUAL BACKGROUND

Petitioner is currently detained at the Wyatt Detention Center pursuant to 8 U.S.C. § 1231 as an alien with an administratively final order of removal. Ex. 3, Chan Decl. ¶¶ 5, 15. He is a native and citizen of Guatemala. Pet. ¶ 1, Ex. 3, Chan Decl. ¶ 6. On or about May 19, 2016, Petitioner entered the United States at a place which was not a port of entry, or another place designated by

the Attorney General. Petitioner was not inspected, admitted, or paroled by an immigration officer upon entry to the United States. The United States Customs and Border Protection (CBP) encountered Petitioner at this time and issued him a Form I-862, Notice to Appear, charging him as an alien present in the United States without admission or parole pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). CBP released Petitioner on an order of recognizance. Ex. 3, Chan Decl. ¶ 7.

On or about November 21, 2016, CBP filed the Notice to Appear with the immigration court. Ex. 3, Chan Decl. ¶ 8. On or about September 1, 2016, Petitioner filed applications for asylum and withholding of removal under section 8 U.S.C. §§ 1158(b)(1)(A) and 1231(B)(3)(A) of the Immigration and Nationality Act (INA) and protection under the regulations implementing the Convention Against Torture (CAT). Ex. 1, BIA Dec., Ex. 3, Chan Decl. ¶ 9. On March 2, 2023, the immigration judge issued an oral decision denying Petitioner's application for relief and protection from removal and ordering him removed from the United States to Guatemala. Petitioner reserved appeal of the immigration judge's decision before the Board of Immigration Appeals (BIA). Ex. 3, Chan. Decl. ¶ 10.

On March 31, 2023, Petitioner filed an appeal of the denial of his application for relief and protection from removal, as well as the underlying removal order. Id. ¶ 11.

On or about August 18, 2025, Petitioner was arrested for driving under the influence, first offense. Ex. 2, Police Report. He was arraigned on August 28, 2025, entered a not guilty plea and released on unsecured bond. Id. The charge remains pending before the Rhode Island Sixth District Court. ICE has not received a writ of habeas corpus from the Rhode Island Sixth District Court requiring Petitioner's presence for a hearing. Ex. 3, Chan Decl. ¶ 12.

On August 28, 2025, ICE encountered Petitioner near the Rhode Island Sixth District Court. ICE administratively arrested Petitioner, as he was in violation of U.S. immigration laws,

and detained Petitioner pursuant to 8 U.S.C. § 1225. ICE issued Petitioner a Form I-200, Warrant for Arrest of Alien. ICE detained Petitioner at its office in Providence, Rhode Island, and transferred him to the Donald W. Wyatt Detention Facility, in Central Falls, Rhode Island. Id. ¶ 13.

On November 6, 2025, Petitioner requested a custody redetermination hearing before the immigration court. Id. ¶ 14.

On November 14, 2025, the BIA affirmed the immigration judge's decision in part and dismissed the Petitioner's appeal of the removal order. At the same time, the BIA remanded for the immigration judge to make relevant findings and conclusions of law with respect to his application for protection from removal. As the BIA affirmed the immigration judge's decision to order Petitioner removed, Petitioner became subject to an administratively final removal order. Petitioner then became detained pursuant to 8 U.S.C. § 1231. Ex. 1, BIA Dec. at 4; Ex. 3, Chan Decl. ¶ 15.

On November 20, 2025, the immigration judge conducted a hearing and determined that Petitioner was statutorily ineligible for a custody redetermination hearing. Petitioner reserved appeal of this decision but has not appealed to the BIA. Ex. 3, Chan Decl. ¶ 16. The immigration court has not scheduled a hearing to issue a decision on Petitioner's application for protection from removal. Id. ¶ 17.

II. ARGUMENT

At the time of the filing of the petition and prior to the BIA's recent decision, Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225. Although the IJ's November 20, 2025, decision found Petitioner subject to mandatory detention under 8 U.S.C. § 1225, because he is now subject to an administratively final order of removal, the authority for

Petitioner's detention is 8 U.S.C. § 1231.¹ *See* § 1231(a)(2). Under this provision, 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.”).

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. 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. An individual held during the post-removal period may seek release by showing that “there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” *Id.* at § 241.13(a).

The Supreme Court, considering due process claims of two individuals whose removals were unlikely to ever occur and were thus facing potentially permanent detention, read a presumptive limit into § 1231's post-removal period for “a period reasonably necessary to bring about that alien's removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *see also Lawrence v. Gonzales*, 446 F.3d 221, 227 (1st Cir. 2006). While finding that six months of detention is presumptively valid under § 1231, the Supreme Court stressed that this presumption does not require an individual's release after six months. *Zadvydas*, 533

¹ It is unclear why the IJ made such a determination, but it is possible that the IJ was not aware that Petitioner was subject to an order of removal. For one, the BIA had issued its decision a mere six days before the bond hearing. In addition, pursuant to 8 C.F.R. § 1003.19(d), custody and/or bond proceedings are separate from removal proceedings and records regarding each are maintained separately.

U.S. at 701. Instead, after six months, the Supreme Court held that in certain circumstances where the individual meets the burden of establishing “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must defend continued detention. *Id.*

In other words, the Court found that while “indefinite, perhaps permanent, detention” would create constitutional concerns, this constitutional concern is not implicated if detention has an anticipated, reasonably foreseeable end point. *Id.* at 699. By reading the limits of § 1231’s statutory authorization for detention to be the same as the constitutional limits on detention in this context, the Supreme Court foreclosed future due process arguments that would further narrow the length of the statute’s detention authorization. Here, where Petitioner has been in custody only since August 28, 2025, prior to that was on release pursuant to a 2016 order of personal recognizance and is now subject to an administratively final order of removal, he is squarely within § 1231 post-removal period. Accordingly, the petition should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 25, 2025, I caused the foregoing Opposition 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/ Dulce Donovan
DULCE DONOVAN
Assistant United States Attorney