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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Jose Sergio TENEZACA-QUIROZ,

Petitioner,

– against –

Tammy MARICH,[1] Acting Director of the Buffalo Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General,

Respondents.

No. 25-cv-1166 (LJV)

PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

Jose Sergio Tenezaca-Quiroz, Petitioner, has filed a petition for a writ of habeas corpus seeking his release from immigration detention. *See* Dkt. No. 1. On November 14, 2025, the Government submitted a letter notifying the Court that Petitioner is subject to a reinstated removal

[1] Earlier pleadings identify "Edward Newman" as the Acting Director of the Buffalo Field Office of Immigration and Customs Enforcement ("ICE"). On information and belief, Edward Newman is in charge of the Buffalo Field Office of United States Citizenship and Immigration Services ("USCIS"). Like ICE, USCIS is a sub-agency of the Department of Homeland Security ("DHS"). But the two are distinct. ICE's Buffalo Field Office is currently overseen by Tammy Marich, who should have been listed as Acting Field Office Director from the outset of this litigation. Undersigned counsel apologizes for the error, and respectfully requests that the Court direct an amendment pursuant to Fed. R. Civ. P. 25(d).

order. *See* Dkt. No. 7. The Court has ordered Petitioner to show cause why his current detention is impermissible under 8 U.S.S. § 1231. *See* Dkt. No. 9. Petitioner hereby concedes that his present detention is governed by section 1231, and not by section 1226 (as had previously been argued). *See* Dkt. No. 7 at 2; *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). He should be ordered released nonetheless.

<u>"Post-Order" Detention under Section 1231</u>

"Once an alien is ordered removed, DHS must physically remove him from the United States within a 90-day 'removal period.'" *Id.* at 528 (quoting 8 U. S. C. § 1231(a)(1)(A)). "The removal period begins on the latest of three dates: (1) the date the order of removal becomes 'administratively final,' (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement." *Id.* (quoting 8 U.S.C. § 1231(a)(1)(B)); *see also Perez Flores v. Bondi*, 25 Civ. 306 (LJV), 2025 WL 1921748, at *3 (W.D.N.Y. Jul. 14, 2025) (observing that "[s]ection 1231(a) . . . . provides for a 'removal period,' which it defines as the 90 days 'following an order of removal . . . . [and] [u]nder the statute's explicit terms, that period begins 'on the latest' of [the] three possible dates" just listed (quoting *Hechevarria v. Sessions*, 891 F.3d 49, 54–55 (2d Cir. 2018))). "During the removal period, detention is mandatory." *Guzman Chavez*, 594 U.S. at 528 (citing 8 U.S.C. § 1231(a)(2)). But unless an "exception applies, an alien who is not removed within the 90-day removal period will be released." *Id.* at 529 (citing 8 U. S. C. § 1231(a)(3); 8 CFR § 241.5).

"Although the statute does not specify a time limit on how long DHS may detain an alien in the post-removal period, th[e] [Supreme] Court has 'read an implicit limitation' into the statute 'in light of the Constitution's demands,' and has held that an alien may be detained only for 'a period reasonably necessary to bring about that alien's removal from the United States.'" *Id.*

(quoting *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)). "And according to the Court, a period reasonably necessary to bring about the alien's removal from the United States is presumptively six months." *Id.* (citing *Zadvydas*, 533 U.S. at 701).[2, 3]

In other words, section 1231 mandates detention during the ninety days following entry of a final removal order, presumptively allows detention in the ninety days after, and then requires the Government to release the detainee unless removal is foreseeable.

Reinstatement of a Prior Removal Order

"DHS's regulations set out the process for reinstating an order of removal. In short, the agency obtains the alien's prior order of removal, confirms the alien's identity, determines whether the alien's reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order." *Guzman Chavez*, 594 U.S. at 530 (citing 8 C.F.R. §§ 241.8(a)–(c), 1241.8(a)–(c)).

An individual whose removal order has been reinstated is subject to detention under section 1231. "First, [such persons] have been 'ordered removed[,]'" in that they were "previously removed pursuant to [] valid order[s] of removal. . . . later reentered the United States without authorization, [and] those prior orders were 'reinstated from [their] original date[s]' under §

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[2] Although *Zadvydas* considered only the situation of "aliens who were admitted to the United States but subsequently ordered removed," 533 U.S. at 682, the Supreme Court subsequently extended its holding "to the category of aliens ordered removed who are inadmissible under § 1182," *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (cleaned up).

[3] As this Court has previously explained, our analysis is tethered to the duration of the "removal period," and not to the length of detention per se. *See Davis v. Garland*, No. 24 Civ. 223 (LJV), 2025 WL 3361799, at *5 (W.D.N.Y. Jul. 10, 2024) ("Once the Third Circuit issued a final decision in his case, Davis's removal order became final, and the removal period under section 1231(a) began to run. Because it has been less than five months since the Third Circuit's decision, Davis's detention during the removal period is well within the time deemed presumptively reasonable—and, indeed, constitutional—by the Supreme Court. . . . The fact that Davis has been detained for more than four and a half years in total—a very long time, to be sure—does not change that analysis." (citation omitted)).

1231(a)(5)." *Id.* at 534 (penultimate and final alterations in *Guzman Chavez*). "Second, [] reinstated removal orders are 'administratively final,'" and will typically "have long been" so, because someone who is subject to a reinstated order "had the opportunity to seek review in the BIA after the initial removal order was entered, and § 1231(a)(5) explicitly prohibits them from seeking review or relief from the order after it is reinstated." *Id.* at 534–35.

As a result, individuals whose removal orders have been reinstated are subject to the same three-phase detention framework summarized in the previous section.

Application to Petitioner

This case likely turns on the question of when, exactly, Petitioner's "removal period" can be said to have begun in earnest. If the removal period began more than six months ago, then Petitioner's ongoing detention under section 1231 is presumptively unlawful. In which case, the Government must prove that Petitioner's removal is reasonably foreseeable in the near term, or else release him until such time as his removal *is* reasonably foreseeable. While *Guzman Chavez* does not precisely answer the question of when the removal period begins in this situation, the decision offers some clues.

We begin with the Supreme Court's textual analysis. "Recall that under § 1231(a)(1)(B), the removal period begins 'on the latest of' three events: (1) '[t]he date the order of removal becomes administratively final'; (2) '[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'; and (3) '[i]f the alien is detained or confined' outside the immigration process, the date of the alien's release." *Guzman Chavez*, 594 U.S. at 534. The statute "further provides that when an alien reenters the country after having already been removed, 'the prior order of removal is reinstated *from its original date* and is not subject to being reopened or reviewed.' In that scenario, 'the alien 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*.'" *Id.* at 533 (quoting 8 U.S.C. § 1231(a)(5)) (emphasis added); *see also Perez-Flores*, 2025 WL 1921748, at *4 ("The 'removal period' under the statute begins when the noncitizen is ready to be removed."). On a literal reading, then, the statute would seem to indicate that Petitioner's removal period began, at the latest, on the date that he reentered the United States, which was approximately January 20, 2015. *See* Dkt. No. 1 at ¶ 2.

But a literal reading of the statute is probably not a reasonable one. Requiring the Government to detain unauthorized reentrants *instantaneously* would hold our Nation's immigration bureaucracy to standards of omniscience and alacrity that Congress is unlikely to have imposed. *See Perez Flores*, 2025 WL 1921748, at *4 (proper analysis must be "based *both* on the 'clear language' of section 1231 *and* on the provision's 'structure and logic'" (quoting *Hechevarria*, *supra*)) (emphasis added).

Luckily, *Guzman Chavez* offers an alternative.

The detainees in *Guzman Chavez*, like Petitioner, were "aliens who were removed from the United States and later reentered without authorization," and the facts of their case offer a logical standard for determining when the removal period can be said to begin in earnest: "When DHS *discovered their presence*, it reinstated their prior removal orders." *Id.* at 532 (emphasis added). Calculating the removal period by reference to the date of discovery—rather than the date of entry—gives as much effect to the statutory language we have just discussed as is possible without producing absurd results. Under this rule, Petitioner's removal period would have begun—at the

latest—on July 7, 2024, when he alerted DHS to his presence in the United States by applying for asylum and withholding of removal with USCIS. *See* Dkt. No. 1 at ¶ 3.[4]

Conclusion

Because the removal period began approximately eighteen months ago—in early July of 2024—Petitioner's current detention is presumptively unreasonable under section 1231. His withholding-only proceedings remain in their earliest stages,[5] such that the Government is unlikely to meet its burden of forecasting Petitioner's removal in the near future. And unless it does so, this Court should issue an order directing immediate release.

Dated: December 9, 2025
Queens, New York

/s/ Reuben S. Kerben
Attorney for Petitioner

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[4] Instead of detaining Petitioner when it discovered his presence, DHS provided him with employment authorization. *See id.* at ¶ 4.

[5] On information and belief, as of December 8, 2025, DHS had yet to schedule Petitioner for a "reasonable fear interview," which is the first step in withholding-only proceedings. *See* 8 C.F.R. §§ 208.31, 1208.31.