

District Judge Lauren King
Magistrate Judge Grady J. Leupold

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARCO ANTONIO BARRAZA ENRIQUEZ,

Petitioner,

v.

KRISTI NOEM, et al.,¹

Respondents.

Case No. 2:25-cv-02352-LK-GJL

FEDERAL RESPONDENTS' RETURN

Noted for Consideration:
January 26, 2026.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations, Laura Hermosillo for Camilla Wamsley; and U.S. Customs and Border Protection Commissioner Rodney S. Scott for Pete Flores.

1 L INTRODUCTION

2 This Court should dismiss Petitioner Marco Antonio Barraza Enriquez's Petition for Writ
3 of Habeas Corpus. Dkt. 1 ("Pet."). There is no dispute that Petitioner is subject to a reinstated
4 order of removal and detained pursuant to 8 U.S.C. § 1231(a), or that he does not have legal status
5 to remain in the United States. Petitioner's detention has not become indefinite, and Petitioner has
6 not met his burden here of providing a good reason to believe that there is no significant likelihood
7 of his removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

8 On September 30, 2024, U.S. Border Patrol Agents arrested Petitioner for being illegally
9 present in the United States. Petitioner's prior order of removal was reinstated pursuant to 8 U.S.C.
10 § 1231(a)(5). Petitioner was subsequently transferred to U.S. Immigration and Customs
11 Enforcement ("ICE") custody at the Northwest ICE Processing Center ("NWIPC") and is currently
12 detained pursuant to 8 U.S.C. § 1231(a)(6).

13 Petitioner challenges his post-order detention at the NWIPC as unconstitutional and
14 unlawful while he awaits removal from the United States. Petitioner's detention is lawful. The
15 reinstatement of his removal order here, and subsequent detention, does not violate due process.
16 *See Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 497–98 (9th Cir. 2007) (reinstatement meets
17 due process); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (detention is a constitutionally permissible
18 aspect of the government's enforcement of the immigration laws).

19 While his Petition discusses removal to a third country, Petitioner presents no evidence of
20 any intention by ICE to do so. Consequently, any third country claim is not ripe for review.

21 Accordingly, Federal Respondents respectfully request that the Court deny the Petition and
22 grant this Motion to Dismiss. This motion is supported by the pleadings and documents on file in
23 this case, and the Declaration of Paul C. Correa ("Correa Decl."), with accompanying exhibits.

24 Federal Respondents do not believe that an evidentiary hearing is necessary.

1 II. BACKGROUND

2 A. Legal Background

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

8 If the Attorney General finds that an alien has reentered the United States illegally
9 after having been removed or having departed voluntarily, under an order of
10 removal, the prior order of removal is reinstated from its original date and is not
11 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.

12 *Id.*; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order). While a
13 noncitizen may not seek most discretionary relief from the terms of the reinstated order, a
14 noncitizen may pursue withholding-only relief and protection under the Convention Against
15 Torture to prevent his or her removal to the country listed in the reinstated removal order. *Johnson*,
16 594 U.S. at 530-31. The Immigration Judge's ("IJ") decision on the application for withholding
17 of removal or protection under the Convention Against Torture may be appealed to the Board of
18 Immigration Appeal ("BIA"). 8 C.F.R. § 1208.31(g)(2)(ii). The BIA's decision may be judicially
19 reviewed by the Court of Appeals. *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958-60 (9th Cir. 2012).
20 While withholding only proceedings are pending before the IJ or the BIA, ICE cannot execute a
21 reinstated order of removal. *See id.*, at 957. Detention during this process is pursuant to 8 U.S.C.
22 § 1231(a). *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017).

1 B. **Petitioner Marco Antonio Barraza Enriquez**

2 Enriquez is a native and citizen of Mexico who first entered the United States without
3 inspection through the Mexico - United States border near Casa Grande, Arizona, on March 23,
4 2012. See Declaration of Deportation Officer Paul Correa ("Correa Decl."), ¶ 4. Petitioner was
5 voluntarily returned to Mexico on March 23, 2012. *Id.* ¶ 4, Exs. 1-2. Petitioner entered the United
6 States a second time on May 9, 2012, and was removed again to Mexico on May 15, 2012. *Id.* ¶ 5,
7 Exs., 1-2.

8 Petitioner entered the United States a third time on September 30, 2024, through the
9 Mexico - United States border near Lukeville, Arizona without inspection or being admitted by
10 an immigration officer. *Id.* ¶ 6, Ex. 3. The Custom and Border Patrol ("CBP") reinstated
11 Petitioner's prior removal order under INA § 241(a)(5) against the Petitioner, whereupon
12 Petitioner stated a fear of returning to Mexico. *Id.* ¶ 6, Exs. 3, 5. Petitioner was released on an
13 Order of Supervision on October 1, 2024, and the release was contingent on enrollment in an
14 Alternatives to Detention ("ATD") program. *Id.* ¶ 6, Ex. 4.

15 During a scheduled check-in with ICE on January 28, 2025, the Petitioner was taken into
16 custody and served with his reinstatement of prior order of removal certification and prior removal
17 documents. *Id.* ¶ 7, Ex. 5. Since the Petitioner had expressed a fear of returning to Mexico, on
18 March 19, 2025, a Reasonable Fear Interview was conducted. *Id.* ¶ 8. On April 1, 2025, an asylum
19 officer found that the Petitioner has established the possibility of a reasonable fear upon return to
20 Mexico. *Id.* ¶ 8, Ex. 7. On April 1, 2025, an I-863 Notice of Referral to an Immigration Judge was
21 issued, placing Petitioner in a withholding of removal only hearing. *Id.* ¶ 8, Ex. 6.

22 The Petitioner filed Form I-589, Application for Asylum and Withholding of Removal in
23 the Tacoma, Washington Immigration Court on April 24, 2025, in his withholding of removal only
24 hearing. *Id.* ¶ 9. The application for withholding of removal was denied but withholding of removal

1 under Convention Against Torture (“CAT”) was approved on August 12, 2025. *Id.* ¶ 9, Ex. 8. On
2 August 25, 2025, DHS filed an appeal with the Board of Immigration Appeals (“BIA”) on the
3 grant of withholding of removal under the convention against torture. *Id.* On September 12, 2025,
4 the Petitioner filed an appeal with the BIA on his denial of withholding of removal and cross-
5 appealing DHS’ appeal of Immigration Judge’s grant of withholding of removal under CAT. *Id.*

6 Briefing on the appeal was completed in November 2025, and as of the date of this filing,
7 the BIA has not yet issued a ruling on DHS’ and Petitioner’s appeals. *Id.* ¶ 10. The Petitioner has
8 not been served with a notice of removal to a third country, and ICE does not have an intention to
9 remove Petitioner to a third country at this time. *Id.* ¶ 10. If the BIA affirms the IJ’s grant of
10 withholding of removal, then the issue could become ripe at that point.

11 III. LEGAL STANDARD

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

19 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her
20 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §
21 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. Petitioner's continuing detention does not violate due process.

Petitioner's detention is constitutionally and statutorily lawful. Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6). Petitioner is subject to an administratively final removal order. See *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017) (finding that detention during withholding only proceedings is pursuant to Section 1231 and not Section 1226). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

Since Petitioner cannot claim a statutory entitlement to release, he must establish that his detention has become indefinite as described by the Supreme Court in *Zadvydas*. Here, Petitioner's detention has not become "indefinite" or unconstitutional. Pet., ¶ 16-33. In *Zadvydas*, the Supreme Court found that post-order detention could be potentially indefinite as authorized under the open-ended terms of Section 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme Court clarified that there is a point at which Congress's interest in detaining a noncitizen to facilitate his removal may eventually give way to the noncitizen's liberty interest. This shift occurs when detention becomes potentially indefinite. *Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an [noncitizen] would raise a serious constitutional problem.").

The Supreme Court determined that it is "presumptively reasonable" for DHS to detain a noncitizen for six months following entry of a final removal order while it worked to remove the noncitizen from the United States. *Zadvydas*, 533 U.S. at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain

1 reasonable, as the period of postremoval confinement grows, what counts as the 'reasonably
2 foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly
3 recognized that six months is the *earliest* point at which a noncitizen's detention could raise
4 constitutional issues. *Id.*

5 There is no dispute that the "presumptive period" for Petitioner's detention has ended. He
6 filed this Petition after being detained for approximately eleven months. Yet he fails to demonstrate
7 that there is good reason to believe that there is no significant likelihood of removal in the
8 reasonably foreseeable future.

9 Even though Petitioner has been detained longer than six months, the six-month
10 presumption "does not mean that every alien not removed must be released after six months. To
11 the contrary, [a noncitizen] may be held in confinement until it has been determined that there is
12 no significant likelihood of removal in the reasonably foreseeable future." *Id.* If Petitioner's
13 withholding of removal is denied, ICE anticipates that there will be no obstacles to effectuating
14 his removal to Mexico once it is permitted to do so. Correa Decl., ¶ 11. Thus, the relief Petitioner
15 seeks is premature while his appeal and DHS's appeal at the BIA is pending. *Id.* ¶ 7-10; Pet., ¶ 34.

16 **B. Petitioner Lacks Standing to Challenge Hypothetical Removal to a Third Country,
17 and His Claim Is Speculative and Not Ripe for Review**

18 Petitioner purports to assert constitutional claims based on the possibility that he might be
19 removed to a third country, alleging a potential violation of the Fifth Amendment. Pet. ¶¶ 63-64.
20 These claims rest entirely on a hypothetical scenario and are therefore speculative and not ripe for
21 judicial review. Petitioner offers no evidence that Respondents intend to remove him to a country
22 other than Mexico. To the contrary, Petitioner concedes that "there has been no notice to Plaintiff
23 of concrete plans of a potential third country removal." *Id.* ¶ 35. His own prayer for relief further
24

1 underscores the speculative nature of the claim, referring only to a “possibly flawed third country
2 removal.” *Id.*, pg. 22 (Prayer for Relief - Count III) (emphasis added).

3 The record confirms that ICE does not presently intend to remove Petitioner to a third
4 country. Correa Decl. ¶ 11. Rather, ICE has previously removed Petitioner to Mexico on two
5 occasions. *Id.* ¶¶ 4–5. Absent any concrete plan or indication of third-country removal, Petitioner
6 cannot establish an actual or imminent injury sufficient to confer standing and no case or
7 controversy exists because there is no concrete indication that removal to a third country will occur.

8 At least one court in this district has held that such speculative claims are not properly
9 raised in an immigration habeas petition, particularly where, as here, there is no evidence that
10 federal respondents seek removal to a third country. *See Tran v. Bondi*, No. 25-cv-01897-JLR,
11 2025 WL 3140462, at *4 (citing *Zadvydas*, 533 U.S. at 688). ICE does not intend to seek
12 Petitioner’s removal to any country other than Mexico at this time. Correa Decl. ¶ 9. Accordingly,
13 this is improper relief in the immigration habeas context.

14 Finally, Petitioner’s requests concerning notice prior to any potential third-country removal
15 should also be denied as unripe and as an improper subject for an immigration habeas petition.
16 Even if the Court were inclined to consider these requests, the existing regulatory framework
17 governing notice prior to third-country removal provides adequate constitutional protections.
18 Petitioner identifies no factual basis warranting individualized or heightened notice requirements
19 beyond those provided by regulation, nor does he allege that the regulations themselves are
20 constitutionally deficient.

21 Even if ICE were seeking to remove Petitioner to a third country, this Court could still not
22 issue the relief sought because—in that scenario—Petitioner would be a member of the plaintiff
23 class in *D.V.D. v. Dep’t of Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass.). The plaintiff class in
24 *D.V.D.* sought and received an injunction barring ICE from removing members of the class to third

1 countries and providing particularized notice requirements for class members. That injunction was
2 stayed by two orders of the Supreme Court. Petitioner cannot end-run the Supreme Court's stay of
3 an injunction (or retain additional notice beyond that provided to class members in *D.V.D.*) by
4 seeking that relief in a different court.

5 Thus, Petitioner's requests for an order providing him with extraordinary notice regarding
6 hypothetical removal to a third country should be denied.

7 **CONCLUSION**

8 For the foregoing reasons, this Court should deny Petitioner's request for a writ of habeas
9 corpus.

10 DATED this 29th day of December, 2025.

11 Respectfully submitted,

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I certify that this memorandum contains 2,343 words, in compliance with the Local Civil Rules.