MELISSA HOLYOAK, United States Attorney (9832)
ANDREW CHOATE, Assistant United States Attorney (13615)
JOEL A. FERRE, Assistant United States Attorney (7517)
Attorneys for the United States of America
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
(801) 524-5682
andrew.choate@usdoj.gov
joel.ferre@usdoj.gov

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

FEDERICO REYES VASQUEZ, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, et al., Respondents.	**RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO DISMISS WRIT OF HABEAS CORPUS** Case No. 2:25-cv-1146-JNP Chief Judge Jill N. Parrish

Pursuant to the Court's December 22, 2025, Order to Show Cause,[1] Respondents respond to the Verified Petition for Habeas Corpus. The Court should deny Petitioner's habeas petition (Petition) seeking an immediate bond hearing and dismiss the Petition.

[1] ECF No. 4.

INTRODUCTION

Petitioner Federico Reyes Vasquez (Petitioner), a native and citizen of Mexico, has been removed from the United States multiple times. He was recently detained pursuant to a removal order that was reinstated after he was removed and then reentered the United States.

Petitioner, erroneously believing he is subject to 8 U.S.C. § 1226, alleges he is constitutionally entitled to a bond hearing and demands one be provided immediately. But because he is subject to 8 U.S.C. § 1231, instead, and has been detained for less than two weeks, Petitioner is not entitled to a bond hearing. And his short-term detention does not otherwise violate due process.

FACTUAL BACKGROUND

Petitioner alleges he a citizen of Mexico, entered the United States in 2005 without inspection, was arrested by ICE on December 19, 2025, and is currently detained by ICE in West Valley City, Utah.[2] Petitioner provides no more details about his illegal entry into the United States.

But there are more details that tell a far different story. Petitioner's illegal presence in the United States dates back to February 2003, when immigration officers encountered Petitioner after he illegally entered the United States.[3] Petitioner was not admitted or paroled into the United States then.[4] DHS issued Petitioner a Notice to Appear (NTA), initiating immigration

[2] Petition at ¶¶ 1, 15 (ECF No. 2).

[3] Matthew Randall Decl., ¶ 5 (Exhibit A).

[4] *Id.* ¶ 6.

court proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review (EOIR).[5] The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible).[6] Petitioner did not file an application for relief from removal before EOIR.[7]

The Immigration Judge (IJ) ordered Petitioner removed from the United States to Mexico.[8] The IJ's decision became administratively final when Petitioner chose not to appeal.[9] On March 13, 2003, ICE executed the IJ's order and removed Petitioner from the United States to Mexico.[10]

Approximately eighteen months later, ICE officers learned that Petitioner had been arrested in the State of Utah.[11] ICE officers reviewed Petitioner's immigration history and determined that Petitioner was subject to a final order of removal and had been previously removed from the United States, yet Petitioner had not filed a request for consent to reapply for

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[5] *Id.* ¶ 7.

[6] *Id.*

[7] *Id.* ¶ 8.

[8] *Id.* ¶ 9.

[9] *Id.*

[10] *Id.* ¶ 10.

[11] *Id.* ¶ 11.

admission after deportation or removal.[12] ICE reinstated the prior order of removal by issuing a Form I-871, Notice of Intent/Decision to Reinstate Prior Order under 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8.[13]

On January 25, 2005, Petitioner was convicted of Driving Under the Influence in violation of Utah law (Utah Code Ann. § 41-6a-502).[14] He was sentenced to six months in jail (suspended) followed by 12 months of probation.[15]

The next day, after being released from state custody, ICE officers arrested and detained him.[16] ICE removed Petitioner from the United States to Mexico the next day for a second time under a prior order of removal.[17]

Most recently, ICE officers arrested and detained Petitioner in Orem, Utah on December 19, 2025, pursuant to the IJ's final order of removal and under authority of 8 U.S.C. § 1231(a)(5).[18] Petitioner was processed at the SLC ERO then, on the same day, transported to and detained at the Uinta County Detention Center in Wyoming.[19]

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[12] *Id*; *see* 8 U.S.C. § 1182(a)(9) and 8 C.F.R. § 212.2

[13] *Id.*

[14] *Id.* ¶ 12.

[15] *Id.*

[16] *Id.* ¶ 13.

[17] *Id.* ¶ 14.

[18] *Id.* ¶ 15.

[19] *Id.* ¶ 16.

Sometime between December 22, 2025, and December 23, 2025, Petitioner was transferred from Wyoming to ICE's staging facility in Florence, Arizona.[20] Petitioner arrived in Florence the morning of December 23, 2025.[21] Within a few hours of arrival, Petitioner was removed from the United States to Mexico pursuant to the reinstated final order of removal.[22] While ICE was made aware of an order preventing removal by e-mail on December 22, 2025 at 4:21 p.m. Mountain Standard Time and again on December 23, 2025 at 10:21 a.m., ICE ERO was not aware of the Court's order before it transferred and removed Petitioner.[23]

PROCEDURAL BACKGROUND

Petitioner filed a Verified Petition for Habeas Corpus on December 19, 2025.[24] In the afternoon of December 22, 2025, this Court issued an Order to Show Cause ordering Respondents to respond to the Petition, prohibiting Petitioners removal from the United States, and prohibiting his transfer outside of Utah.[25] The OSC also directed Petitioner to serve a copy of

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] ECF No. 1. The United States Attorney's Office received an ECF notification on December 22, 2025, that a writ of habeas corpus had been entered on December 19.

[25] ECF No. 4.

the Order by December 23, 2025, at 5:00 p.m.[26] The Court also entered an Order to Show Cause as to why the petition should not be granted.[27]

Petitioner challenges his detention as violating the provisions regarding detention in 8 U.S.C. § 1226(a) and his due process rights. He argues that he has a right to a bond hearing because his detention under 8 U.S.C. § 1225 (which provides for mandatory detention) is improper and that he should instead be detained under 8 U.S.C. § 1226 (which provides for the possibility of release on bond).

LEGAL BACKGROUND

In the Immigration and Naturalization Act (INA), Congress enacted a statutory scheme for civil detention of a noncitizen pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal.[28] Relevant here, 8 U.S.C. § 1231(a)(5) provides for the reinstatement of removal orders against noncitizens who illegally reenter the United States. It provides that if a noncitizen has "reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed."[29]

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[26] *Id.*

[27] ECF No. 3.

[28] *See generally* 8 U.S.C. §§ 1225, 1226, 1231.

[29] 8 U.S.C. § 1231(a)(5).

Once a DHS officer has determined that the noncitizen is the subject of a prior order of removal, has confirmed the identity of the noncitizen, and has determined that the noncitizen reentered the United States unlawfully, the requirements for reinstatement of the previous removal order are met.[30] The noncitizen is to be provided with notice and an opportunity to make a statement.[31] The noncitizen has no right to a hearing before an immigration judge before removal.[32] In such instances, the noncitizen "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."[33] This provision bars relief for adjustment of status, asylum, and other types of relief afforded under the INA, whether the applications were presented before or after the order reinstating the prior removal order.[34]

In addition to providing for removal, 8 U.S.C. § 1231 provides for the detention of noncitizens who are subject to a removal order. Detention pursuant to § 1231 is mandatory.[35]

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[30] 8 C.F.R. § 241.8(c).

[31] *Id.* § 241.8(b).

[32] *See Martinez v. Garland*, 86 F.4th 561, 564–65 (4th Cir. 2023) *vacated on unrelated grounds sub nom.*, *Martinez v. Bondi*, 145 S. Ct. 2836 (2025).

[33] 8 U.S.C. § 1231(a)(5).

[34] *Martinez*, 86 F.4th at 565 ("an illegal reentrant may not challenge a reinstated removal order and may not pursue discretionary relief like asylum"); 8 U.S.C. § 1231(b)(5) (authorizing reinstatement of a prior order of removal and states the noncitizen is "not eligible and may not apply for any relief under this Act").

[35] 8 U.S.C. § 1231(a)(2)(A) ("[d]uring the removal period, the Attorney General shall detain the alien").

Once the initial 90-day removal period is up, DHS may continue to detain noncitizens who are determined to be "a risk to the community or unlikely to comply with the order of removal."[36]

The detention authority in § 1231(a) extends to the detention of noncitizens who are subject to a reinstated removal order.[37] Civil detention serves two important interests: (1) ensuring that noncitizens will appear for hearings and comply with final orders of removal; and (2) protecting the public from noncitizens who present a danger to the community during the removal process.[38] Section 1231 does not provide for bond hearings for noncitizens detained pending removal.[39]

ARGUMENT

I. Because Petitioner's short detention is required by 8 U.S.C. § 1231, he has no right to a bond hearing.

Petitioner alleges a violation of his due process rights, namely, continued detention without a bond hearing. While the Court based its Order to Show Cause on the scant, incomplete allegations in the Petition, Respondents have since been able to gather more information that changes the analysis.

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[36] 31 U.S.C. § 1231(a)(6).

[37] *See Johnson v. Guzman Chavez*, 594 U.S. 523, 535 (2021).

[38] *Demore v. Kim*, 538 U.S. 510, 528 (2003); 8 U.S.C. § 1231(a)(6).

[39] *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022).

As a noncitizen subject to an order of removal, Petitioner is subject to mandatory detention under 8 U.S.C. § 1231.[40] Because Petitioner's removal order was reinstated, the INA requires his detention without a bond hearing and permits his removal at any time.[41]

Petitioner offers no valid reason why he should not be removed immediately, much less why he is entitled to a bond hearing. Petitioner was the subject of a prior removal order, and he subsequently reentered the United States in violation of that order. Given these simple, undisputed facts, Petitioner is not entitled to a bond hearing and his due process rights have otherwise not been violated.

II. Petitioner's short-term detention in no way violates due process.

Petitioner's detention for less than two weeks raises no due-process concerns. And even under the standard governing constitutional challenges to detention, no violation exists.

The general standard used for challenges to detention under § 1231 was defined by the Supreme Court in *Zadvydas v. Davis*: whether there is "significant likelihood of removal in the reasonably foreseeable future."[42] This standard, and *Zadvydas* itself, only applied to detention beyond 6 months.[43] But even if *Zadvydas'* standard did apply, Petitioner's detention has a

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[40] 8 U.S.C. § 1231(a)(1)-(2) (ICE "shall detain" a noncitizen during a 90-day "removal period" that begins once a removal order becomes final).

[41] *Id.* § 1231(a)(5).

[42] 533 U.S. 678, 701 (2001). *Zadvydas* does not apply here, but because Petitioner invokes it, Respondents address it.

[43] *See Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 937 (D. Colo. 2025) (the mere fact that no one can predict the date on when exception to removal claims will come to a definitive end "alone is enough to bring [petititioner's] detention outside the auspices of *Zadvydas*").

definitive termination point that is clearly foreseeable. When proceedings have a definitive termination point, the situation is "readily distinguishable from *Zadvydas*."[44]

The standard from *Zadvydas* "provides the sole recourse available to a § 1231 detainee challenging his detention on due process grounds."[45] Put simply, "*the Zadvydas* standard *is* due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation."[46]

In *Zadvydas*, the Supreme Court addressed the standards that govern the constitutionality of a noncitizen's detention under § 1231. There, two detained noncitizens had been ordered removed but had not been removed during the removal period because one was not a recognized citizen of any country and the other could not be removed to the proposed country of removal due to the lack of a repatriation treaty with that country.[47] Thus, each noncitizen remained detained with no prospect of being removed at any point in the future. The Court indicated that "a serious constitutional problem" would arise under the Fifth Amendment's Due Process Clause if § 1231 permitted "indefinite detention of an alien."[48] To avoid that due-process problem for detentions under § 1231, the Court held that, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by" § 1231.[49] It "applied the canon of constitutional

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[44] *G.P. v. Garland*, 103 F.4th 898, 901 (1st Cir. 2024).

[45] *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024).

[46] *Id.* at 760 (emphasis in original).

[47] 533 U.S. at 684-86.

[48] *Id.* at 690.

[49] *Id.* at 699.

avoidance" to interpret § 1231 so that continued detentions under § 1231 satisfied due process.[50] In reading § 1231 to avoid a due process problem, the Court in *Zadvydas* "offered [courts] a standard through which to judge indefinite-detention cases" under § 1231.[51]

The Tenth Circuit has explained, when an alien's detention is "directly associated with a judicial review process that has a definite and evidently impending termination point," the detention "is clearly neither indefinite nor potentially permanent like the detention held improper in *Zadvydas*."[52] The absence of a specific date when proceedings will end does not show, for this purpose, that the proceedings are indefinite.[53]

Under § 1231(a), ICE "shall detain" an alien during a 90-day "removal period" that begins once a removal order becomes final.[54] Once the 90-day removal period ends, ICE may continue to detain a noncitizen under § 1231(a)(6) consistent with *Zadvydas*. Because Petitioner remains within the 90-day removal period, he sought no relief that would bar his immediate removal, and ICE has processed the removal order and taken steps to effectuate it, there is a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*.

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[50] *Arteaga-Martinez*, 596 U.S. at 579.

[51] *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020).

[52] *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004).

[53] *Cf. Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012) ("Although a precise end-date to his removal cannot be pinpointed, that is because his removal proceedings continue, not because the government cannot remove him").

[54] 8 U.S.C. § 1231(a)(1)-(2).

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition.

WORD COUNT CERTIFICATION

Pursuant to D. Utah Civ. R. 7-1(a)(4)(D), the undersigned certifies that this Response contains 2499 words, which does not exceed the 3,100 word limit.

Dated December 29, 2025.

MELISSA HOLYOAK
United States Attorney

/s/ Joel A. Ferre
JOEL A. FERRE
ANDREW CHOATE
Assistant United States Attorneys