IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04164-RMR

Aldegundo Rodriguez Hernandez

Petitioner,

v.

Kristi Noem, United States Secretary, Department of Homeland Security;
Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement (ICE);
Marcos Charles, Acting Executive Associate Director, ICE Enforcement and Removal Operations;
Kelei Walker, ICE Denver Field Office Director;
Juan Baltasar, Warden, GEO-ICE immigration detention facility in Aurora, CO; and
Pamela Bondi, United States Attorney General.

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE (ECF No. 7)

In accordance with the Court's Order dated December 29, 2025, ECF No. 4, Mr. Aldegundo Rodriguez Hernandez (Rodriguez Hernandez) replies to the Respondents' Response (ECF No. 7).

The Respondents advance arguments to justify their continuing detention of Rodriguez Hernandez based on: 1) 8 U.S.C. 1231; and 2) certain Supreme Court cases. Rodriguez Hernandez utilizes the same to demonstrate that his detention is *ultra vires*.

ARGUMENT

1. Each Supreme Court decision relied upon by the Respondents to justify continuing detention is inapposite or distinguishable.

In *United States v. Texas*, the Supreme Court did not agree that states had standing to sue the federal government to increase immigration enforcement. 599 U.S. 670 (2023). A handful of states urged the Court to direct the United States to arrest non-citizens upon an entry of a final order of removal pursuant to 8 U.S.C. § 1231(a)(2). The Court declined.

The Court held that the federal government retains enforcement discretion over arrests and prosecutions in the immigration context, and whether to remove a noncitizen from the United States in the first place. The Government's plenary authority in immigration matters doesn't authorize *ultra vires* detention or prosecution. Rodriguez Hernandez challenges his detention under the law, not whether the government has general detention or removal capability over noncitizens where authorized by law.

The Respondents rely upon *Johnson v. Guzman Chavez* to "hold aliens under [8 U.S.C. § 1231(a)] when geopolitical or practical problems prevent it from removing an alien within the 90-day period." 594 U.S. 523, 546 (2021). In this case the United States was exercising jurisdiction over a previously deported noncitizen who was concurrently making a first claim for protection pursuant to Convention Against Torture. The Court found that a bond hearing was not applicable due to the previous removal order. This case is distinguishable from Rodriguez Hernandez' facts. He has already been granted withholding of removal, and he has an immigration bond already in place.[1]

The Respondents' reliance on *Nielsen v. Preap* is similarly flawed. 586 U.S. 329 (2019) (internal citation omitted). Here the Court considered mandatory detention for certain non-citizens who had committed crimes pursuant to 8 U.S.C. 1226(c). Rodriguez Hernandez has zero criminal history, and he is not subject to 8 U.S.C. § 1226(c).

In *Johnson v. Arteaga-Martinez*, the Supreme Court held that where the United States carried its burden of proving by clear and convincing evidence that a noncitizen posed a flight risk or a danger to the community, a bond hearing was not required after six months of detention. 596 U.S. 573 (2022).

The Respondents have never carried any burden to prove that Rodriguez Hernandez is either a flight risk or a danger to the community. The fact that he has been granted an immigration bond, an order of supervision by ICE, and a grant of withholding of removal by an

[1] **Exhibit 8-1**, Rodriguez Hernandez' ICE immigration bond (11/23/2011)

Immigration Judge seem to conclusively foreclose such an allegation. In any case, the Respondents have never attempted to prove this allegation, and never fulfilled their burden of proof pursuant to 8 U.S.C. § 1231(a)(6).

The Respondents offer an Affidavit of a local "Deportation Officer" who states: "ICE determined that it would detain Petitioner as he poses a significant risk of flight given his final order and current efforts to remove him."[2] This standalone statement proves only that ICE is trying to remove Rodriguez Hernandez. No evidence is provided to substantiate his "flight risk" and no judge has found that ICE has met its burden by a preponderance of the evidence to prove that he is a flight risk. 8 U.S.C. § 1231(a)(6).

2. 8 U.S.C. § 1231 does not authorize ICE to remove Rodriguez Hernandez to a third country.

The Respondents admit that they are pursuing Rodriguez Hernandez' "removal to a third country pursuant to 8 U.S.C. § 1231," and state that "[i]n recent months, ICE has successfully executed removals to third countries and continues to do so."[3]

The Respondents failed to detain or remove Rodriguez Hernandez as anticipated by the plain language of the statute. He was not detained or removed during the "removal period" of ninety (90) days from the date of the Immigration Judge's order withholding his removal to Mexico (April 17, 2019). 8 U.S.C. §§ 1231(a)(1) and (2). It is uncontested that Rodriguez Hernandez is in compliance with the supervision requirement of 8 U.S.C. § 1231(a)(3).

---

[2] ECF 7-1 at #11

[3] *Id.* at #13

The Respondents' sole stated ground for detention is 8 U.S.C. § 1231(a)(6), declaring that he is a "risk to the community or unlikely to comply with the order of removal." Only such noncitizens "may be detained beyond the removal period..." *Id.* Not only have the Respondents failed to prove that Rodriguez Hernandez is a risk to the community or unlikely to comply, but their detention is in direct contravention of the statute. The removal period was ninety days after the order of removal, withholding removal to Mexico, entered on April 17, 2019. The statute contemplates that he could have been detained more than 90 days beginning on April 17, 2019, to effectuate a physical removal of him.

The statute neither contemplates, nor permits, a removal (or detention) period to include almost seven years after the initial 90-day period. Indeed, such a requirement would be prohibited generally. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001) (prohibition against indefinite detention).

3. Rodriguez Hernandez is not an "applicant for admission" and he is not subject to an admissibility review.

The Respondents claim that Section 1231(a)(6) permits detention of "inadmissible" noncitizens, and they include Rodriguez Hernandez in that classification.

First, admissibility is not at issue in this detention, because Rodriguez Hernandez is not seeking admission to the United States. *See, e.g.,* 8 U.S.C. § 1181 (visa and document requirements for lawful entry); 8 U.S.C. § 1182 (listing grounds that make individuals ineligible for admission, e.g., criminal or security grounds); 8 U.S.C. § 1184 (admission of

nonimmigrants). He is not an "arriving alien." 8 U.S.C. § 1225 (seeking entry into the United States).

Second, the issue of inadmissibility was disposed of when the Immigration Judge granted CAT withholding of removal to Rodriguez Hernandez in 2019. The Government's allegation of his inadmissibility, in the original immigration charging document, the Notice to Appear (NTA) (11/23/2011), was resolved when he was granted withholding of removal.

It is no longer a ground under which he can be charged with, since the disposition of that NTA is final. The Government would have to reopen removal proceedings, issue a new NTA, and renew its allegations of inadmissibility to claim this ground at issue.

The inadmissibility is no longer at issue as the CAT-withholding grant in April 2019 waived it, and the Government did not appeal that decision. Failing to appeal an issue is a waiver of the issue. 8 C.F.R. § 1003.39 ("Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or expiration of the time to appeal if no appeal is taken whichever occurs first.").

4. The Government has failed to divest Rodriguez Hernandez of his grant of CAT-withholding of removal, making his detention unconstitutional.

8 U.S.C. § 1231(b)(3)(A) prohibits removal when the "alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." Thus, if the Respondents want to deport Rodriguez Hernandez to a third country, they must allow him "due process of law," including notice and

an opportunity to be heard, in any future proceedings. to prove whether his life or freedom would be threatened in the third country. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

The Respondents made no response to Rodriguez Hernandez' arguments that he must be provided with notice of intent to terminate his withholding of removal grant, in conjunction with reopened removal proceedings. 8 C.F.R. § 1208.24(f).

The Respondents have not proven to an Immigration Judge in reopened removal proceedings by a preponderance of the evidence that Rodriguez Hernandez does not merit a grant of withholding of removal. They have not provided him with an opportunity to challenge whether his life or freedom would be threatened in a third country. The Respondents have failed to follow any process for Rodriguez Hernandez' detention or attempted removal to a third country, rendering the entire attempt unconstitutional.

5. Rodriguez Hernandez challenges the legality of his detention, not its duration.

Rodriguez Hernandez does not have to prove extenuated detention standards as set forth in *Zadvydas*, *supra*, and 8 C.F.R. § 241.13. He is challenging the very legality of his detention, not its duration to date.

Rodriguez Hernandez is in isolation at the GEO Detention Facility in Aurora, Colorado, because he is connected to an oxygen machine. This detention is extracting punishment from him in the form of solitary confinement. The Respondents are violating his rights, many times over.

Contrary to the Respondents' assertions, 8 U.S.C. § 1231(b)(1)(C) does not authorize the United States to remove Rodriguez Hernandez to a third country. That section defers to 8 U.S.C. § 1231(b)(3) which specifically prohibits removal to countries where the person's life or freedom would be threatened. Thus, a predicate to removal to a third country would be reopened removal proceedings to determine whether the third country was a safe third country for the noncitizen. Having not bothered to make any attempt to reopen his removal proceedings or to divest him of his grant of withholding of removal, the Respondents' actions are unlawful, arbitrary and capricious.

CONCLUSION

The Respondents fail to identify one case or one legal citation where a person granted withholding of removal almost seven years prior, without any criminal convictions, without any rescission of the grant of withholding of removal, could be detained or removed to any country. Because the Defendants' actions are *ultra vires*, arbitrary and capricious, Mr. Rodriguez Hernandez seeks immediate release from detention.

January 13, 2026.

Respectfully,
/s/ Catherine A. Chan
Catherine A. Chan
Chan Law Firm, PC
1737 Gaylord St.
Denver, CO 80206
Phone: (303) 586-5555
Fax: (303) 586-5727
cchan@chanimmigration.com
Attorney for Mr. Aldegundo Rodriguez Hernandez

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Catherine A. Chan
Catherine A. Chan
Attorney for Mr. Aldegundo Rodriguez Hernandez