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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JOSE LUIS UBEDA FLORIAN,  
11 **Petitioner,**  
12 **v.**  
13 **WARDEN, OTAY MESA DETENTION**  
14 **CENTER,**  
15 **Respondents.**

Case No.: 26-cv-00167-TWR-BLM  
**RETURN TO PETITION**

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1 removal to be carried out within the ninety-day period after the removal order becomes  
2 final, often referred to as the “removal period.” 8 U.S.C. § 1231. It further requires that  
3 people subject to final orders of removal be detained during the 90-day removal period.

4 *Id.*

5 Reinstated removal orders are a part of “an expedited process for aliens who  
6 reenter the United States without authorization after having already been removed.”  
7 *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). When faced with a reinstated  
8 removal order, an individual cannot challenge removal but can pursue “withholding-  
9 only relief to prevent DHS from executing his removal to the particular country  
10 designated in his reinstated removal order.” *Johnson*, 594 U.S. at 530. This requires the  
11 individual to express a fear of returning to the designated country, at which point he is  
12 referred to an asylum officer for a reasonable fear determination; if the asylum officer  
13 makes a positive reasonable fear determination, the matter will be referred to an  
14 immigration judge for initiation of withholding-only proceedings. *Id.* at 531. “Those  
15 proceedings are limited to a determination of whether the alien is eligible for  
16 withholding or deferral of removal, and as such, all parties are prohibited from raising  
17 or considering any other issues, including but not limited to issues of admissibility,  
18 deportability, eligibility for waivers, and eligibility for any other form of relief.” *Id.*  
19 (citations omitted).

20 Significantly, the facts presented here closely mirror the scenario addressed by  
21 the Supreme Court in *Johnson*. There, the Department of Homeland Security (DHS)  
22 reinstated the prior removal orders of aliens who, like Petitioner, were removed from  
23 the U.S. and reentered without authorization. Each alien sought to prevent DHS’s  
24 execution of the removal orders based on fear of returning to their home country. While  
25 their withholding-only proceedings were pending, DHS detained the aliens, who sought  
26 release on bond. DHS argued that because the aliens were detained under 8 U.S.C. 1231,  
27 which mandates detention when a removal order is administratively final, not section  
28 1226, which governs detention pending a decision on whether the alien “is to be

1 removed,” they were not entitled to bond hearings. The Fourth Circuit ruled in favor of  
2 the aliens.

3 The Supreme Court reversed, holding that Section 1231, not 1226, governs the  
4 detention of aliens subject to reinstated orders of removal. In *Johnson*, the high court  
5 noted that each alien was “ordered removed” by a valid removal order that was  
6 reinstated from the original date under section 1231(a)(5) and was “administratively  
7 final.” It further recognized that the possibility of a determination that the government  
8 could not remove an alien to the specific country designated in the removal order does  
9 not render the question of whether the alien is to be removed “pending.” If an IJ grants  
10 withholding of removal, the removal order remains in full force; the government would  
11 simply seek to remove the alien to a different authorized country.

12 The Court determined that the Immigration and Nationality Act’s (“INA”)   
13 statutory structure indicated that § 241(a) governs detention during withholding-only  
14 proceedings.<sup>2</sup> It noted that § 241 itself is titled “Detention and removal of aliens ordered  
15 removed,” and that all the provisions relating to reinstatement of removal, withholding  
16 of removal, and the countries to which aliens may be removed are found within § 241.  
17 Based on how the INA’s sections were ordered, the Court determined, INA § 236(a)  
18 applies when an alien is still in formal removal proceedings while § 241(a) applies later,  
19 after an alien is ordered removed. Congress “had obvious reasons to treat these two  
20 groups differently,” the Court opined, because aliens who have not been ordered  
21 removed are less likely to abscond than those ordered removed, particularly those who  
22 reentered unlawfully after removal. Finally, the Court determined that although §  
23 241(a) contemplates a 90-day removal period, the fact that withholding-only  
24 proceedings can take longer than that does not mean that § 241(a)’s detention provisions  
25 do not apply at that stage.

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28 <sup>2</sup> INA Section 241(a) and 8 U.S.C. Section 1231(a) refer to the same body of U.S. immigration law. Section 241 of the INA is found at Section 1231 in the U.S. Code, both governing the detention and removal of removable aliens

1 Accordingly, given the express terms of the statute and the Supreme Court’s  
2 definitive interpretation in *Johnson*, Petitioner is properly detained.<sup>3</sup>

3 **B. Petitioner’s Detention Has Not Been Prolonged.**

4 In in *Zadvydas v. Davis*, the Supreme Court reviewed whether a noncitizen can  
5 be detained indefinitely beyond the 90-day removal period. Holding that detention of  
6 noncitizens with final orders of removal should be limited to the amount of time  
7 reasonably necessary to execute the removal order, the Court held that six months is a  
8 “presumptively reasonable period” of detention. After six months, if an individual  
9 provides good reason to believe that there is no significant likelihood that they will be  
10 removed in the reasonably foreseeable future, the government must rebut that showing  
11 to continue detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

12 Notably, the government was unable to remove the *Zadvydas* petitioners within  
13 the normal 90-day removal period because it could not identify any countries willing to  
14 accept them, *id.* at 684–86, leaving the petitioners in what the Supreme Court later  
15 characterized as a “removable-but-unremovable limbo.” *Jama v. Immigr. & Customs*  
16 *Enft*, 543 U.S. 335, 347 (2005). With nowhere to send them, the government simply  
17 continued to hold the petitioners in detention, with no plans to release them. *Zadvydas*,  
18 533 U.S. at 684–86. This rendered the petitioners’ detention “potentially permanent.”  
19 *Id.* at 691. And it was that specific circumstance -- the possibility of “indefinite and  
20 potentially permanent” civil confinement, *id.* at 696 -- that led the Court to read an  
21 implicit reasonable-time limitation into § 1231.

22 As a threshold matter, “noncitizens in withholding-only proceedings who are  
23 subject to final administrative orders are detained under section 1231(a), and not

24 <sup>3</sup> Following *Johnson*, legal commentators have noted the federal government’s broad  
25 power to detain aliens following issuance of a reinstated removal order. See, e.g.,  
26 Congressional Research Service, Legal Sidebar, *Johnson v. Chavez: Aliens with*  
*Reinstated Removal Orders May Be Detained Without Bond Hearing*,  
[www.congress.gov/crs\\_external\\_products/LSB/PDF/LSB10620/LSB10620.1.pdf](http://www.congress.gov/crs_external_products/LSB/PDF/LSB10620/LSB10620.1.pdf)  
27 and Justicia, *Aliens Subject to Reinstated Orders of Removal are not Entitled to Bond*  
*Hearings while Seeking Withholding of Removal*,  
28 [www.supreme.justia.com/cases/federal/us/594/19-897/](http://www.supreme.justia.com/cases/federal/us/594/19-897/).

1 1226(a).” *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1141 (N.D. Cal. 2018) (citing  
2 *Padilla-Ramirez v. Bible*, 882 F.3d 826, 832 (9th Cir. 2017)); *see also Baltazar-*  
3 *Andrade v. Nielsen*, CV-18-04693-PHX-ROS (ESW), 2019 WL 13214452, at \*4, FN 4  
4 (D. Ariz. March 18, 2019) (“An alien detained pursuant to an administratively final  
5 reinstated order of removal, even if pursuing a withholding-only claim, is detained  
6 pursuant to § 1231(a)”).

7 Moving now to the merits, the Petition should be denied for two independent  
8 reasons: (1) he fails to provide good reason to believe there is no significant likelihood  
9 of removal in the reasonably foreseeable future; and (2) he has caused the delay in his  
10 removal by seeking withholding-only relief.

11 *First*, in contrast to the affected parties in *Zadvydas*, Petitioner here cannot show  
12 he faces an “indefinite and potentially permanent” detention. On the contrary, the  
13 Government has successfully deported him to Mexico before, *see* Exhibit 1, and but for  
14 Petitioner’s decision to seek withholding-only relief, there’s no allegation or evidence  
15 that the Government could not have accomplished the same in the reasonably  
16 foreseeable future. If Petitioner fails to obtain withholding-only relief, the Government  
17 will promptly carry out Petitioner’s removal to Mexico (a second time), which it  
18 routinely does for repatriations to Mexico. *See* ICE Annual Report Fiscal Year 2024, at  
19 p. 100, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last visited  
20 January 22, 2026) (reporting that removals to Mexico ranged from 33,832 through  
21 127,429 per fiscal year during FY 2019–2024).

22 *Second*, Petitioner overlooks an important fact: Petitioner, who is subject to a  
23 final removal order, is being detained pending the completion of withholding-only  
24 proceedings and a petition for relief that *he voluntarily initiated*. These proceedings are  
25 finite, as they will continue only for such time as required the IJ to determine the legality  
26 of removing Petitioner to his native country. In other words, there is no risk of  
27 “indefinite” detention here.

28 *Kumar v. Gonzales*, 555 F. Supp. 2d 1061 (N.D. Cal. 2008), is instructive. There,

1 the petitioner was ordered removed and had “been held in ICE custody for nearly a  
2 year[.]” *Id.* at 1062. While in ICE custody, he filed a petition with the Ninth Circuit to  
3 review his unsuccessful appeal before the BIA concerning his final order of removal.  
4 *Id.* The Ninth Circuit issued a stay of removal while it considered the petition. *Id.* The  
5 petitioner then separately filed a habeas petition in district court challenging ICE’s  
6 decision to continue detaining him while his appeal remained pending. *Id.*

7 The *Kumar* court denied the petition. It reasoned that petitioner failed to carry his  
8 burden because, in part, “it is very likely that Petitioner will be removed (or else he will  
9 be released) once the Ninth Circuit rules on his petition for judicial review”; and (ii)  
10 ICE “would have removed him already had it not been for the stay of removal Petitioner  
11 obtained from the court of appeals”; and (iii) “the delay in Petitioner’s removal is of his  
12 own making.” *Id.* at 1065.

13 The court relied on the Ninth Circuit’s decision in *Pelich v. INS*, 329 F.3d 1057  
14 (9th Cir. 2003), concluding that a petitioner “cannot simultaneously take steps to  
15 prevent his removal while seeking a writ of habeas corpus on the basis that he has not  
16 yet been removed.” *Id.* at 1065 (quoting *Pelich*, 329 F.3d at 1060). Indeed, according  
17 to the Ninth Circuit, “[t]he risk of indefinite detention that motivated the Supreme  
18 Court’s statutory interpretation in *Zadvydas* does not exist when an alien is the cause of  
19 his own detention.” *Pelich*, 329 F.3d at 1060.

20 This reasoning applies with equal force here. The only reason Petitioner has  
21 remained in ICE custody (and not removed) is because he requested withholding-only  
22 relief. This cuts against him. *See Alfaro-Mejia v. Holder*, No. 13-795-JAK (AJW), 2013  
23 WL 599876, at \*1 (C.D. California Feb. 15, 2013) (“Petitioner cannot simultaneously  
24 thwart [his] removal and seek a writ of habeas corpus on the ground that [he] has not  
25 yet been removed.”).

26 If Petitioner prevails in his withholding-only proceedings, the Government will  
27 seek to remove him to another country. Because the withholding-only proceedings have  
28 a definite ending point, Petitioner’s ongoing withholding-only proceedings do not

1 present the same risk of “indefinite and potentially permanent” detention at issue in  
2 *Zadvydas*.

3 **IV. CONCLUSION**

4 Given the mandatory nature of his detention pursuant to the reinstated removal  
5 order, the petition lacks merit.

6 DATED: January 26, 2026

7 Respectfully submitted,

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