

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 0:26-cv-00896 (NEB/SGE)

Gastar Bonilla Baroja,

Petitioner,

v.

**FEDERAL RESPONDENTS’  
RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS**

Pamela Bondi, *et al.*,

Respondents.

Petitioner Gastar Bonilla Baroja filed this petition for a writ of habeas corpus because he wants immediate release from detention in relation to his immigration case. Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, and David Easterwood (collectively “the Federal Respondents”) transmit this response to the petition. Respondents, very respectfully, submit to this Court Petitioner is not entitled to release from detention. 8 U.S.C. § 1231 applies to these circumstances, and provides that when an alien is ordered removed,” the Secretary of Homeland Security “shall detain the alien” “[d]uring the removal period.”

**BACKGROUND**

The Federal Respondents draw the following background from the petition and the Declaration of Deportation Officer James Van Der Vaart (“Van Der Vaart Decl.”) and the Petition. *See* (Pet.) Dkt. Doc No. 1.

Petitioner is a citizen and national of Mexico. *See* Pet. at ¶ 30. ICE first encountered Petitioner on or about August 22, 2007, at the Scottsboro City Jail in Scottsboro, AL. *See*

Van Der Vaart Decl. at ¶ 5. During that encounter, Petitioner conveyed he was in the U.S. without proper documentation, and he crossed the U.S. International Boundary at a time and place other than designated by the Attorney General without being inspected by an Immigration Official. *Id.*

On August 24, 2007, Petitioner was remanded to the custody of ICE and served a Notice to Appear, Form I-862, charging removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). *Id.* at ¶ 6. On October 01, 2007, an immigration judge (IJ) at Oakdale, LA ordered Petitioner removed from the U.S. to Mexico. Attached is a true and correct copy of the Immigration Judge's Removal Order. *Id.* at ¶ 7. On October 16, 2007, Petitioner was removed from the U.S. *Id.* at ¶ 8.

On or about April 27, 2008, United States Border Patrol (USBP) encountered Petitioner at or near Sasabe, AZ. Petitioner was served a Notice of Intent/Decision to Reinstate Prior Order, Form I-871 and presented for prosecution under 8 USC 1325/1326. *Id.* at ¶ 9. On April 28, 2008, Petitioner was convicted in the United States District Court, District of Arizona under 8 U.S.C 1325 Illegal Entry into the United States and sentenced to 30 days. *See id.* at 10. On May 24, 2008, Petitioner was removed from the U.S. *See Van Der Vaart Decl.* at ¶ 11.

On January 16, 2022, Petitioner was encountered by ICE at the Madison County Jail in Huntsville, AL. *See id.* at 14. On January 21, 2022, Petitioner was served a Notice of Intent/Decision to Reinstate Prior Order, Form I-871. *See id.* at 15. On February 15, 2022, Petitioner was removed from the U.S. *Id.* at 16. On January 30, 2026, Petitioner was encountered by ICE in Minnesota during Operation Metro Surge. Petitioner is being

processed and is currently housed at the Bishop Henry Whipple Federal Building in Fort Snelling, MN. *Id.* ¶¶ 17-18.

### ARGUMENT

Once an alien has been ordered removed and finally adjudged to lack any right to remain in the United States, his liberty interest is reduced, and the governing legal rules reflect this. For an alien subject to an administratively final removal order, detention is governed by 8 U.S.C. § 1231 (and its implementing regulations at 8 C.F.R. pt. 241). Under § 1231, “when an alien is ordered removed,” the Secretary of Homeland Security “*shall detain the alien*” “[d]uring the *removal period*.” 8 U.S.C. § 1231(a)(1)(A), (a)(2). The “removal period” is the period during which DHS begins to take steps to execute the alien’s final removal order. *See id.* § 1231(a)(1)(A)-(B). The period begins on the latest of three dates: (i) the “date the order of removal becomes administratively final”; (ii) “[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”; or (iii) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* § 1231(a)(1)(B)(i)-(iii).

Beyond these statutory and regulatory mechanisms, the Supreme Court has held that an alien subject to a final removal order can file a habeas petition and seek release if he can show that his detention has become prolonged and that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). As clearly shown by the facts, Petitioner’s detention has not become prolonged since was detained on or around January 30, 2026. Moreover, there is no evidence removal

to Petitioner's country of citizenship is not likely to occur. On the contrary, based on the number of time petitioner have been successfully removed before, it is highly likely removal will occur within the foreseeable future this time as well.

**I. The statutory text demonstrates § 1231 governs the detention of aliens in withholding-only proceedings**

By its terms, § 1231 governs the detention of an alien who is subject to a reinstated removal order. Section 1231 applies when “an alien is ordered removed,” 8 U.S.C. § 1231(a)(1)(A), and provides that the government “shall detain the alien” during the period preceding the alien's removal, *id.* § 1231(a)(2). An alien who is subject to a reinstated removal order is, by definition, “an alien” who has been “ordered removed.” *Id.* Section 1231(a)(5) makes this clear. That provision states when “an alien 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.” *Id.* § 1231(a)(5) (emphasis added). So by its plain terms, § 1231 governs the detention of “an alien” who “is ordered removed,” *id.* § 1231(a)—such as an alien subject to a reinstated “prior order of removal,” *id.* § 1231(a)(5).

That reading of § 1231 is reinforced by the text of § 1226. Section 1226(a) provides for the “det[ention]” of an alien, but the provision applies only “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a)(1). For an alien subject to a reinstated removal order, the decision “whether the alien is to be removed” has already been made: the decision to remove the alien was made in the alien's prior (now-reinstated) removal order in the alien's already-concluded removal proceedings

under 8 U.S.C. § 1229a. Proceedings under § 1229a are the “sole and exclusive procedure for determining whether an alien may be . . . removed from the United States.” 8 U.S.C. § 1229a(a)(3); see also 8 C.F.R. § 1208.2(c)(2) (an alien with a “reinstated removal order” in withholding-only proceedings is “not entitled to proceedings under” 8 U.S.C. § 1229a). When an alien is in withholding-only proceedings—that is, the proceedings available to an alien subject to a reinstated removal order following illegal reentry—there is no “pending decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a)(1); see also 8 C.F.R. § 1208.2(c)(3)(i) (limiting jurisdiction in withholding-only proceedings to “whether the alien is eligible for withholding or deferral of removal” and barring consideration of “admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.”). Moreover, withholding-only proceedings are country-specific and govern only whether the execution of a removal order will be withheld to that one particular country for a period of time. *See Mejia*, 866 F.3d at 579 (“[W]ithholding of removal only prevents the removal of an alien to the specific country where she faces persecution—thereby leaving open the possibility of transfer to a third country.”). The question whether an alien is removable is not open for review or redetermination in such proceedings.

For an alien subject to a reinstated removal order, the “decision on whether the alien is to be removed from the United States” is not “pending”—as is necessary for § 1226(a) to apply. 8 U.S.C. § 1226(a). That decision was already made in the alien’s prior removal proceedings that resulted in a final removal order definitively deciding that an alien “is to be removed from the United States.” And that reality does not change just because the alien

is in withholding-only proceedings following removal and illegal reentry. The only question in these proceedings is the “narrow question of to where an alien may be removed”—not “the broader question of whether the alien may be removed.” *Padilla-Ramirez v. Bible*, 882 F.3d 826, 832 (9th Cir. 2018) (emphases in original). Because the latter question has “already . . . been resolved in the affirmative,” § 1226(a) does not apply. Section 1231 does.

If an alien seeks withholding of removal to an alternative country, § 1226 still cannot apply because the “decision in such hypothetical proceedings always will be whether he can be removed to a particular country, which does not implicate section 1226(a).” *Padilla-Ramirez*, 882 F.3d at 832. And the statute provides DHS with broad authority to select alternative countries where the removal order may be executed. *See* 8 U.S.C. § 1231(b)(2)(C). Section 1231(b)(2) sets out a range of alternative countries to which DHS can execute the removal order and DHS may even disregard those countries and select additional countries under § 1231(b)(2)(E) if it determines removal to any of the suggested countries is “impracticable, inadvisable, or impossible.” *Id.*; *see also Jama v. ICE*, 543 U.S. 335, 337 (2005) (“When an alien is found ineligible to remain in the United States, the process for selecting the country to which he will be removed is prescribed by 8 U.S.C. § 1231(b)(2).”)

The regulations state a removal order is reinstated even if an alien pursues withholding-only proceedings and that all aliens with reinstated removal orders are detained under § 1231. *See* 8 C.F.R. § 241.8(e) (describing the process of referring “an alien whose prior order of removal has been reinstated” for an interview with an asylum

officer if he expresses a fear of return to the country designated in that order); *id.* § 241.8(f) (“Execution of the reinstated order of removal and detention of the alien shall be administered in accordance with” § 1231.); *Padilla-Ramirez*, 882 F.3d at 832 (“Withholding-only proceedings do not, however, purport to override section 1231(a)(5)’s prohibition on reopening or reviewing a prior removal order.”).

## II. Petitioner is Subject to Mandatory Detention

Petitioner presents six arguments as to why he should not be detained. *See Pet.* at ¶¶ 7 – 13. None of these arguments are effective.

First, in what is perhaps his strongest argument Petitioner makes a due-process claim. However, the facts Petitioner uses to support his claim are inaccurate. Specifically, Petitioner represents he was released in 2022. *See Pet.* at ¶ 7. Further reading in the same paragraph heavily implies Petitioner remained in the country uninterrupted to this day. That is inaccurate. In fact, the Agency has represented “[o]n January 21, 2022, Petitioner was served a Notice of Intent/Decision to Reinstate Prior Order, Form I-871.” *See Van Der Vaart Decl.* at ¶ 15. About three weeks later, on or around “February 15, 2022, Petitioner was removed from the U.S.” *See id.* at ¶ 16. Since the facts Petitioner uses to support his due-process claim are simply inaccurate, the government does not have to prove any chance in circumstances to overcome Petitioner’s due process argument.

Second, Petitioner argues the government does not have a legitimate reason to detain Petitioner. *See Pet.* at ¶ 8. On the contrary, the government has a valid interest, making sure removal is completed as soon as possible.

Third, Petitioner argues he was “arrested without changed circumstances, without a warrant, and without probable cause that he was a flight risk, under unlawful enforcement procedures that multiple courts across the country have declared illegal.” *Pet.* at ¶ 9. Those arguments are simply not applicable to this case. As stated above, for an alien subject to a reinstated removal order, the decision “whether the alien is to be removed” has already been made: the decision to remove the alien was made in the alien’s prior (now-reinstated) removal order in the alien’s already-concluded removal proceedings under 8 U.S.C. § 1229a. This is what is happening here. Petitioner is subject to a reinstatement for a Final Order of Removal. Petitioner is not entitled to a new process.

Four, Petitioner argues he is a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, (C.D. Cal.). *Pet.* ¶ 10. However, Petitioner himself acknowledges this Class does not protect those detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. *See Pet.* ¶ 10c. As the facts clearly show, Petitioner is detained under § 1231. As such, Petitioner is not a member of the Bond Eligible Class.

Five, Petitioner argues Petitioner's “detention is not governed by 8 U.S.C. § 1225(b)(2)(A), as he entered the United States without inspection, was previously detained and released from detention, and has since lived in the United States for approximately four years.” *Pet.* ¶ 12. The government is not arguing Petitioner is subject to detention under § 1225.

Petitioner’s sixth, and last argument seems to be an attempt to preempt a jurisdictional challenge. The Agency has represented to the undersigned counsel Petitioner

is currently in Minnesota. As such, the government does not have any objection to the Petition being filed in this Court.

## **II. Remedy**

Petitioner is not entitled to release from detention. As set forth in the Declaration of ICE Detention and Deportation Officer Van Der Vaart, the United States removed Petitioner multiple times before. There is no indication the United States will not be able to remove Petitioner this time as well.

As set forth above, § 1231 applies, and that section provides that “when an alien is ordered removed,” the Secretary of Homeland Security “shall detain the alien” “[d]uring the removal period.” 8 U.S.C. § 1231(a)(1)(A), (a)(2). The removal period is the period during which DHS begins to take steps to execute the alien’s final removal order. *See id.* § 1231(a)(1)(A)-(B). That period is still pending here.

Challenges to detention under § 1231 are governed by the framework set out in *Zadvydas*. *Zadvydas*, 533 U.S. at 678. Under *Zadvydas*, final-order detention is presumptively reasonable for a period of six months and DHS may continue to detain an alien “until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. Petitioner bears the burden of making this showing. *Id.* Here, Petitioner has been detained for less than a week at the time of this filing hence any claim his detention violates the Court’s ruling in *Zadvydas* is simply premature at this time. Notwithstanding that, there is no indication removal will not be likely within the foreseeable future nor has petitioner shown otherwise.

In light of the plain language of § 1231 and the *Zadvydas* standard, this Court should deny the petition.

### **III. Evidentiary Hearing**

While some facts in this case may be under dispute, the Federal Respondents believe that the Court can rule on this petition without holding an evidentiary hearing since Respondent has provided enough support for the facts as presented in this Response. As such, the only issues before the Court are ones of legal interpretation that are capable of resolution on the parties' submissions.

### **CONCLUSION**

For the reasons discussed above, the Federal Respondents respectfully request that the Court deny this habeas petition.

Dated: February 1, 2026

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