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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WILMER ALONZO CARDOZA GARCIA,

Petitioner,

v.

PAMELA BONDI, Attorney General; KRISTI NOEM, Secretary of Homeland Security; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; MICHAEL W. BANKS, Chief, U.S. Border Patrol; CAMMILLA WAMSLEY, Field Office Director, ICE Seattle Field Office; Director, ICE Spokane Field Office; Director, BP Spokane Field Office; ROBERT NORRIS, Sheriff, Kootenai County; BRUCE SCOTT, Warden, Northwest ICE Processing Center,

Respondents.

Case No. 2:26-CV-00069-AKB

RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (Dkt. No. 8)

INTRODUCTION

This case involves the mandatory detention of a noncitizen who has illegally re-entered the United States following a prior removal order. Petitioner Wilmer Alonzo Cardoza Garcia challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"), relying on statutes that govern initial removal proceedings — 8 U.S.C. §§ 1225 and 1226. However, Petitioner is not in initial removal proceedings.

On February 3, 2026, immigration officers encountered Petitioner and identified him as an individual who had been previously removed from the United States in 2017. Accordingly, ICE reinstated his prior removal order pursuant to 8 U.S.C. § 1231(a)(5). As the Supreme Court has explained, detention for individuals subject to reinstated removal orders is governed exclusively by 8 U.S.C. § 1231. Under this statute, detention is mandatory during the removal period to ensure that the Government can effectuate the order.

Because Petitioner is lawfully detained under Section 1231, and because he has been detained less than six months, he has not stated a valid claim for relief. The United States respectfully requests that the Amended Petition be denied.

FACTUAL BACKGROUND

I. Petitioner's immigration history and his latest ICE encounter.

Petitioner is a native and citizen of Honduras. (Declaration of Sheldon Benjamin ("Benjamin Decl.") ¶ 4). Petitioner's immigration history includes a prior encounter that resulted in a removal order issued by an immigration judge on or about December 4, 2017. (*Id.* ¶ 5). At that time, Petitioner gave immigration authorities false information and presented himself to them under the alias "Selvin Gomez-Zambrano." (*Id.* ¶¶ 5, 7). The legal proceedings in 2017 used this alias and Petitioner was physically removed from the United States to Honduras on December 12, 2017. (*Id.*).

Petitioner subsequently re-entered the United States illegally on or about March 21, 2021, near Eagle Pass, Texas. (*Id.* ¶ 6). He had no lawful authority to be within the United States when immigration officers encountered him in Idaho on February 3, 2026. (*Id.* ¶ 7). During processing, the Petitioner admitted to officers that he had been ordered removed in 2017 and acknowledged utilizing another individual's identity during those prior proceedings. (*Id.*). Immigration authorities confirmed Petitioner's true identity using his Honduran identification card, a Washington state driver's license, and Petitioner's statements. (*Id.*).

Based on these facts, ICE processed Petitioner for reinstatement of his prior removal order. (*Id.* ¶¶ 11, 17-18). This action restores the 2017 order to full effect, rendering Petitioner subject to removal.

II. The transfer of custody to Tacoma, Washington.

Following his arrest in Idaho, Petitioner was transferred to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington, this regions hub for removal operations. (*Id.* ¶ 9). Congress explicitly granted the Attorney General discretion to "arrange for appropriate places of detention" for noncitizens. 8 U.S.C. § 1231(g)(1); *Comm. Of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1440 (9th Cir. 1986). This transfer occurred on February 5, 2026, the same day the initial petition was filed. (*Id.* ¶ 10).

As soon as the U.S. Attorney's Office received this Court's order restricting transfer of the Petitioner, it shared the order with Respondents. (*See* Dkt. No. 7). At the time, the Petitioner had already been relocated into the State of Washington. (*Id.*; Benjamin Decl. ¶¶ 9-10.) To ensure transparency, that evening (February 5, 2026), the Respondents filed a "Response to Order," explicitly notifying the Court and Petitioner's counsel that the "United States will preserve the status quo by not removing the Petitioner from the Northwest ICE Processing Center in Tacoma, Washington." (Dkt. No. 7 at 1-2).

LEGAL STANDARD

The writ of habeas corpus under 28 U.S.C. § 2241 provides a remedy for those held in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). In the immigration context, judicial review of detention is limited. Federal courts have jurisdiction to ensure that the statutory framework authorizing detention is applied correctly and constitutionally, but 8 U.S.C. § 1252(g) generally bars judicial review of the Attorney General's discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (holding that § 1252(g) precludes judicial review of these three specific discretionary actions); *see also Rauda v. Jennings*, 55 F.4th 773, 776-777 (9th Cir. 2022) (holding that district courts lack jurisdiction to enjoin the execution of removal orders).

ARGUMENT

Petitioner argues he should be released or granted a bond hearing pursuant to 8 U.S.C. § 1226. (Dkt. No. 8 ("Am. Pet.") at 7-8, 13-14.) But Section 1226 does not apply to Petitioner because he is subject to a reinstated final order of removal.

I. 8 U.S.C. § 1231 mandates detention of Petitioner because he is subject to a reinstated final order of removal.

A. The statutory framework for reinstatement.

Congress established a streamlined process for removing individuals who reenter the United States illegally after a prior removal. Under the Immigration and Nationality Act ("INA"), when the Attorney General finds that an alien has reentered illegally after having been removed, "the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed . . . and the alien shall be removed under the prior order at any time

after the reentry." 8 U.S.C. § 1231(a)(5). Once an order is reinstated, the individual is not awaiting a decision on removability — that decision is already administratively final.

B. *Johnson v. Guzman Chavez* controls detention in this case.

The Supreme Court addressed the distinction between these detention statutes in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). The Court definitively held that "§ 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal." *Id.* at 526.

Because a reinstated order is final, the detention falls under the "removal period" defined in § 1231. That statute mandates that "During the removal period, the Attorney General **shall** detain the alien." 8 U.S.C. § 1231(a)(2) (emphasis added). As the Supreme Court noted, a petitioner "cannot go back in time, so to speak, to § 1226" once an order is reinstated. *Guzman Chavez*, 594 U.S. at 544 (internal citation and quotation marks omitted). Because ICE has reinstated Petitioner's 2017 removal order (Benjamin Decl. ¶¶ 11, 17-18), Respondents are mandated by Congress to detain him. *Id.* Respondents are complying with the INA, not violating it. (*See* Am. Pet. at 18.)

II. Petitioner's current detention is lawful and comports with due process, occurring within the presumptively reasonable removal period.

Petitioner suggests that his detention violates due process and is "indefinite." (Am. Pet. at 12, 19.) This characterization is legally incorrect. Petitioner is currently being detained in strict accordance with 8 U.S.C. § 1231(a)(2), which mandates detention during the statutory 90-day removal period.

However, the Government's authority to detain Petitioner does not expire after the 90-day period of mandatory detention. Under 8 U.S.C. § 1231(a)(6), the Government is authorized to continue detention beyond the removal period for aliens who, like Petitioner, have been ordered removed. To avoid constitutional concerns regarding indefinite custody, the Supreme

Court in *Zadvydas v. Davis* interpreted this authority to include a presumptively reasonable period of six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1198 (9th Cir. 2022) (recognizing *Zadvydas's* holding that detention for up to six months is presumptively reasonable.).

Recently, the Supreme Court reaffirmed that detention under § 1231 does not require a bond hearing. Writing for the majority, Justice Sotomayor ruled that "[t]here is no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings" even after they exceed the 90-day period of mandatory detention. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574 (2022).

Petitioner has been in ICE custody for approximately two weeks. (Benjamin Decl. ¶ 7). The Government is operating well within both the 90-day removal period with mandatory detention and the presumptively reasonable six-month window established by the Supreme Court. Far from being indefinite, Petitioner's detention here is the standard and lawful custody required to execute the immigration laws of the United States.

Petitioner's reliance on *Tang v. Bondi*, No. 25-cv-01473 (W.D. Wash. Sept. 11, 2025), is misplaced because that case involved a detention that exceeded the six-month presumptively reasonable period established by the Supreme Court. Petitioner here has been in ICE custody for just over two weeks — well within the mandatory 90-day removal period and nowhere near the six-month *Zadvydas* threshold.[1]

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[1] *Tang* also involved a unique diplomatic issue involving obstacles to the repatriation of a pre-1995 Vietnamese refugee who was "stateless." Petitioner is a citizen of Honduras with no claimed diplomatic concerns.

III. Petitioner's ongoing detention comports with the INA and can include a future asylum claim.

Petitioner argues that removal deprives him of the ability to file a motion to reopen or seek asylum. (Am. Pet. at 2.) The reinstatement statute, however, is clear and Congress intentionally limited available relief. Prior orders of removal are generally "not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5). Indeed, a collateral attack on a removal order is allowed only where a petitioner can show a "gross miscarriage of justice" in the prior proceeding, making judicial intervention "rare and extremely limited." *Lopez v. Garland*, 17 F.4th 1232, 1234 (9th Cir. 2021) (quoting *Vega-Anguiano v. Barr*, 982 F.3d 542, 547-551 (9th Cir. 2019)).

Despite this inflexibility, individuals subject to reinstatement are afforded further review when they express fear of return. *See Hermosillo v. Garland*, 80 F.4th 1127, 1129 (9th Cir. 2023) (citing 8 C.F.R. § 208.31(b)). As Deportation Officer Benjamin attests, if Petitioner claims a fear of removal to Honduras, he will be referred to an officer for a "reasonable fear interview" and can also seek review by an immigration judge. (Benjamin Decl. ¶¶ 12-15).

CONCLUSION

Petitioner is subject to a reinstated final order of removal. Congress has mandated his detention during the removal period pursuant to 8 U.S.C. § 1231(a)(2) ("Under no circumstances during the removal period shall the Attorney General release an alien who has been found inadmissible."). Because Petitioner is lawfully detained, and within the mandatory detention period of the statute, the amended writ should be denied.

Respectfully submitted this 18th day of February, 2026.

BART M. DAVIS
UNITED STATES ATTORNEY
By:

/s/ Michael W. Mitchell
MICHAEL W. MITCHELL
Assistant United States Attorney