

District Judge Kimberly K. Evanson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUVILIALDO HERNANDEZ-MUNOZ,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:26-cv-00964-KKE

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
April 13, 2026.

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Huvilialdo Hernandez-Munoz, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention.

Petitioner alleges that he was detained without individualized justification and asserts that this violates due process and that a balance of his interests favors release. Dkt. 1, pg. 7-10.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Petitioner alleges that, pursuant to *Zadvydas*, his continued detention is unconstitutional because
2 he has a stay of removal in the Ninth Circuit Court of Appeals and he is actively seeking an I-360
3 special immigrant visa. Dkt. 1, pg. 10-12. Petitioner asserts that detention is not reasonably
4 foreseeable due to that stay of removal and he has not received a meaningful custody
5 determination. Dkt. 1, pg. 12-13. Petitioner alleges that detention is punitive and that his medical
6 conditions also make his detention punitive. Dkt. 1, pg. 13-14.

7 Petitioner previously attempted to enter the United States under a different name and was
8 issued an expedited order of removal in the year 2000. Petitioner later entered the United States
9 unlawfully and used his current name to apply for relief from removal. A biometric match
10 revealed the two identities were both Petitioner. In 2017, Petitioner was served with a reinstated
11 order of removal and issued an order of supervision. In September 2025, ICE took Petitioner into
12 custody to complete the expedited process of reinstating a removal order.

13 Petitioner has been processed for a reasonable fear review, which has been denied. He has
14 filed a Petition for Review with the Ninth Circuit and a temporary stay of removal has been
15 granted. *Hernandez Munoz v. Bondi*, No. 25-6766 (9th Cir. Oct. 27, 2025).

16 The habeas petition should be denied.

17 II. FACTUAL AND PROCEDURAL BACKGROUND

18 A. Detention Authorities and Reinstated Removal Orders

19 The INA governs the detention and release of noncitizens during and following their
20 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
21 detention periods are generally referred to as “pre-order” (meaning before the entry of a final
22 order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of
23 removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing
24 post-order detention).

1 If an alien is physically removed from the United States and then returns, he is subject to
 2 an expedited process reinstating his removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530
 3 (2021); 8 U.S.C. § 1231(a)(5). In this process, “the agency obtains the alien's prior order of
 4 removal, confirms the alien's identity, determines whether the alien's reentry was unauthorized,
 5 provides the alien with written notice of its determination, allows the alien to contest that
 6 determination, and then reinstates the order.” *Johnson v. Guzman Chavez*, 594 U.S. at 530
 7 (referencing 8 C.F.R. §§ 241.8(a)-(c), 1241.8(a)-(c)). The removal order itself is final and
 8 insulated from review in this process. *Id.*

9 If an alien expresses fear of removal, then he is referred to an asylum officer for a fear
 10 determination, normally done within 10 days of the referral. *Id.* at 531. If reasonable fear is found,
 11 then the alien is referred for “withholding-only proceedings” on the narrow issue of whether the
 12 alien is eligible for withholding of removal. *Id.* If an alien is subject to a reinstated order of
 13 removal, then the detention provisions of 8 U.S.C. § 1231 apply. *Id.* at 535.

14 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
 15 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
 16 and does not place any temporal limit on the length of detention under that provision:

17 [A noncitizen] ordered removed who is inadmissible under section 1182,
 18 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
 19 who has been determined by the [the Secretary of Homeland Security] to be a risk
 20 to the community or unlikely to comply with the order of removal, *may* be detained
 21 *beyond the removal period* and, if released, shall be subject to the terms of
 22 supervision in paragraph (3).

23 8 U.S.C. § 1231(a)(6) (emphasis added).

24 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
 Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary
 to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S.

678, 689 (2001). The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.*

B. OSUP and Revocation

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed in the reasonably foreseeable future is determined by assessing a series of factors, including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries ... and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question." *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

Section 241.13(i)(3) provides that upon revocation, the alien "will be notified of the reasons for revocation of his or her release" and will receive an "initial informal interview promptly" after being detained, to "afford the alien an opportunity to respond to the reasons for

1 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
2 “may submit any evidence or information that he or she believes shows there is no significant
3 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
4 violated the order of supervision.” *Id.* “The revocation custody review will include an evaluation
5 of any contested facts relevant to the revocation and a determination whether the facts as
6 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
7 release is denied, he or she “may submit a request for review of his or her detention . . . six months
8 after [DHS’s] last denial of release[.]” *Id.* § 241.13(j).

9 **C. Agency Discretion to Execute Removal Orders**

10 Congress has expressly limited federal court jurisdiction over claims that interfere with
11 the execution of a removal order. *See* 8 U.S.C. § 1252(g); *Reno v. Am.-Arab Anti-Discrimination*
12 *Comm.*, 525 U.S. 471, 482 (1999). This includes claims that would delay removal while seeking
13 relief where there is no immigration related stay of removal. For example, the Ninth Circuit has
14 held that district courts may not enjoin removal based on a noncitizen’s pursuit of reopening of
15 removal proceedings. *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022).

16 A court must determine whether it has jurisdiction to consider a petitioner’s due process
17 claim. *See Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 430–31 (2007)
18 (“[A] federal court generally may not rule on the merits of a case without first determining that it
19 has jurisdiction.”). In general, a district court may exercise jurisdiction over a § 2241 habeas
20 petition when the petitioner is in custody and alleges that the custody violates the Constitution,
21 laws, or treaties of the United States. 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490
22 (1989). Under the jurisdictional bar set forth in 8 U.S.C. § 1252(g), however, “no court shall have
23 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or
24

1 action by the Attorney General to commence proceedings, adjudicate cases, or execute removal
2 orders against any alien[.]” 8 U.S.C. § 1252(g).

3 This jurisdictional bar applies “notwithstanding any other provision of law,” including §
4 2241. *Id.* The Supreme Court has narrowly construed § 1252(g) to apply only to “a limited subset
5 of deportation claims” arising directly from the three enumerated actions. *Reno*, 525 U.S. at 483.

6 The Ninth Circuit has further clarified that the discretion to execute a removal order
7 includes the discretion to decide when to do so. *Rauda*, 55 F.4th at 777-78; *see e.g., Aleman v.*
8 *Bondi*, No. 2:25-CV-02346-JNW, 2026 WL 102457, at *4 (W.D. Wash. Jan. 14, 2026); *Velasco*
9 *Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465, at *4–6 (W.D. Wash. June 20,
10 2025).

11 **D. Petitioner Huvilialdo Hernandez-Munoz**

12 On or about May 7, 2000, Petitioner was ordered removed and then physically removed
13 from the United States to Mexico, after he attempted to use an alternate identity to gain entry.
14 Declaration of Jordan Steveson (“Steveson Decl.”), Exh. A, 2000 I-213; Exh. B, Removal Order;
15 Declaration of Deportation Officer Gary Ingram (“Ingram Decl.”), ¶ 5. Petitioner utilized a
16 different name at that time, but his two identities have been matched through biometrics. Ingram
17 Decl., ¶ 7.

18 Petitioner subsequently returned to the United States and has filed various applications for
19 relief from removal under his current name. Steveson Decl., Exh. C, 2025 I-213. All of
20 Petitioner’s applications have been closed or denied. *Id.*

21 On August 18, 2017, Petitioner was served with Notice of Intent/Decision to
22 Reinstate Prior Order. Steveson Decl., Exh. D, Reinstatement. Petitioner claimed fear of return to
23 Mexico and was referred to U.S. Citizenship and Immigration Services (“USCIS”). Steveson
24

1 Decl., Exh. C, 2025 I-213. Petitioner was issued an order of supervision (“OSUP”). Steveson
2 Decl., Exh. E, OSUP.

3 On September 22, 2025, ICE determined that Petitioner was amenable to removal.
4 Steveson Decl., Exh. C., Form I-213. Petitioner was detained and referred to USCIS. Steveson
5 Decl., Exh. F, Negative Reasonable Fear Finding. On October 14, 2025, an asylum officer
6 determined that Petitioner had not established reasonable fear of return to Mexico. *Id.* The finding
7 was referred to an immigration judge. *Id.* On October 21, 2025, an immigration judge concurred
8 that Petitioner did not establish reasonable fear of return to Mexico. Steveson Decl., Exh. G, IJ
9 Order.

10 On October 27, 2025, Petitioner filed petition for review at the US Circuit Court of
11 Appeals - Ninth Circuit related to the reasonable fear denial. *Hernandez Munoz v. Bondi*, No. 25-
12 6766 (9th Cir. Oct. 27, 2025). A short time later a temporary stay of removal was issued. *Id.*, Dkt.
13 5.

14 III. ARGUMENT

15 A. ICE is acting to effectuate his reinstated order of removal.

16 Petitioner requests immediate release. However, Petitioner is subject to a reinstated order
17 of removal. An alien that is subject to a prior order of removal “shall be removed under the prior
18 order at any time after reentry.” 8 U.S.C. § 1231(a)(5).

19 B. Petitioner’s claimed fear of return does not change his underlying order of removal 20 or detention status.

21 “In short, the statutory text makes clear that § 1231, not § 1226” governs detention for
22 reinstated removal orders. *Johnson*, 594 U.S. at 542. Congress treats aliens subject to reinstated
23 removal orders differently because they are only eligible for withholding only relief and they have
24 already “demonstrated a willingness to violate the terms of a removal order...” *Id.* at 544. In this

1 instance Petitioner's eligibility for relief is even more tenuous because he has not even made a
2 threshold showing that he is eligible for withholding only proceedings. Steveson Decl., Exh. G,
3 IJ Order.

4 Petitioner alleges that his detention September 22, 2025, was without due process. "Due
5 process is flexible and calls for such procedural protections as the particular situation demands."
6 *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private
7 interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of
8 such interest through the procedures used, and probable value, if any, of additional or substitute
9 procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35. Due process does not
10 mandate a pre-detention hearing here.

11 As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty
12 interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-
13 8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). "The recognized liberty interests of
14 U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly
15 endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if
16 applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting
17 *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the
18 exercise of its broad power over naturalization and immigration, Congress regularly makes rules
19 that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).
20 Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings
21 as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Thus,
22 Federal Respondents acknowledge that Petitioner had some liberty interest in his freedom from
23 detention. However, his detention pursuant to 8 U.S.C. § 1231 while his reinstated removal order
24

1 is effectuated and his claim of fear is considered is a constitutionally valid aspect of his removal
2 process.

3 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
4 erroneous deprivation of Petitioner's liberty did not necessitate additional process here. Congress
5 has obvious reasons to treat aliens that have already been ordered removed who then reenter the
6 country illegally differently than other groups of aliens. *Johnson*, 594 at 544. Petitioner was
7 notified years ago that his prior removal order had been discovered and was being reinstated—
8 Petitioner had the opportunity to respond at that time whether he was the individual identified and
9 subject to the removal order. Steveson Decl., Exh. D, Reinstatement. There is little risk of
10 erroneous deprivation of his liberty, because he is already subject to an administratively final
11 order of removal. There is no need for an evidentiary hearing to resolve that point. ICE has the
12 capability and intent to remove him to Mexico, once temporary legal impediments resolve. At
13 that point, the Government can complete the expedited process of reinstating Petitioner's removal
14 order. Although there is now a stay of removal at the Ninth Circuit, the stay of removal was not
15 in place when ICE detained him. Thus far, Petitioner has failed to establish even a reasonable fear
16 of removal to Mexico to the CIS asylum officer or immigration judge.

17 Furthermore, in *Zadvydas*, six months of detention was the earliest point in which
18 detention would raise a constitutional concern under Section 1231(a)(6). *Zadvydas*, 533 U.S. at
19 689. In this case, Petitioner has been detained just over six months. Unlike *Zadvydas*, Petitioner's
20 detention is not indefinite—he is in an expedited process for individuals who have a prior order
21 of removal. Once the stay of removal is lifted, Petitioner can be removed to Mexico.

22 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
23 test and procedural safeguards “must account for the heightened government interest in the
24 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme

1 Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the
2 government clearly has a strong interest in preventing aliens from 'remain[ing]' in the United
3 States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at
4 518). "This is especially true when it comes to determining whether removable aliens must be
5 released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at
6 1208. The government likewise has an interest in protecting execution of a reinstated removal
7 order from unnecessary delay and ensuring that individuals who reenter illegally after previously
8 being removed will be removed on the reinstated order.

9 Accordingly, Petitioner is detained pursuant to Section 1231, and this Court should deny
10 his request for release from immigration custody.

11 **C. Petitioner's detention is not punitive**

12 Petitioner alleges his detention is punitive due to being a care provider for his children
13 and due to medical conditions. Dkt. 1, pg. 13-14. But Petitioner submits no declarations or
14 documentary evidence regarding these issues, and only raises them in argument. Petitioner does
15 not assert whether he has requested any medical appointments during his detention or whether
16 any medical need is not being addressed. *Id.* Rather, Petitioner asserts that he is medically at risk
17 and that his children rely on him, but cites no law or other evidence that indicates that his detention
18 is punitive. He is detained for removal to Mexico.

19 Furthermore, this Court should not consider Petitioner's conditions of confinement
20 claim as part of a 28 U.S.C. § 2241 habeas corpus petition. *See Pinson v. Carvajal*, 69 F.4th 1059
21 (9th Cir. 2023). Petitioner does not allege that detention *at any facility* would be unlawful or
22 unconstitutional. As such, this is a challenge to the conditions of Petitioner's confinement at the
23 Northwest ICE Processing Facility in Tacoma, Washington and not a direct challenge to the
24 legality or duration of his confinement. Thus, "[t]he appropriate remedy for such constitutional

1 violations, if proven, would be a judicially mandated change in conditions and/or an award of
2 damages, but not release from confinement.” *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979);
3 *see also Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (challenges to conditions of confinement
4 are pursued in a civil rights action).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
7 the Petition.

8 Dated this 6th day of April, 2026.

9 Respectfully submitted,

10 s/ Jordan C. Steveson

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20 I certify that this memorandum contains 3,178
21 words, in compliance with the Local Civil Rules.
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