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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MARCO ANTONIO MENDOZA,
12 

Petitioner,

13 v.
14

15 TONYA ANDREWS, *et al.*,

16 Respondents.

No. 1:26-CV-05099-DAD-JDP

**MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS AND
MOTION FOR TEMPORARY
RESTRAINING ORDER; RESPONSE TO
ORDER TO SHOW CAUSE**

17 Petitioner is subject to a reinstated removal order. This Court should deny the petition for writ of
18 habeas corpus because Petitioner was properly detained when immigration authorities learned of his two
19 DUI convictions and an arrest for domestic violence. Petitioner's criminal history, going back to 1998,
20 indicates he is a danger to the community. Petitioner's removal has been delayed by his claim that he
21 was entitled to withholding of removal. The Supreme Court holds that detention for noncitizens in
22 withholding-only proceedings following reinstatement is governed by 8 U.S.C. § 1231 and not § 1226.
23 *Johnson v. Guzman-Chavez*, 594 U.S. 523, 533–47 (2021). The Supreme Court vacated the class-wide
24 injunction requiring 180-day bond hearings and recognized that 8 U.S.C. § 1252(f)(1) bars lower courts
25 from restraining § 1231. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 551 (2022). Likewise, 8 U.S.C.
26 § 1252(f)(1) prohibits the *Garro Pinchi* injunction from restraining § 1231. Respondents ask the Court
27 to deny all relief.
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1 This case is substantively and factually distinguishable from the cases cited in the Court's
2 briefing schedule (Dkt. 7) in that unlike the petitioners in the cases cited, Petitioner's criminal history
3 reaches back almost three decades, he is subject to a reinstated removal order, and his detention is the
4 result of his criminal conduct. Respondents do not oppose treating the motion as a motion for a
5 preliminary injunction and do not oppose resolving the petition on the merits on the current record.

6 BACKGROUND

7 Petitioner is a citizen and native of El Salvador. Exhibit A (I-213). In 1998, Petitioner was
8 arrested for receiving known stolen property and later convicted of that crime. Exhibit B (rap sheet).
9 He was sentenced to 15 days in jail and two years of probation. *Id.* Two years later in 2000, Petitioner
10 was arrested for again receiving known stolen property. *Id.* He was convicted of that crime and
11 sentenced to 25 days in jail and two years of probation. A year later, Petitioner was arrested for DUI.
12 *Id.* In 2005, Petitioner was arrested for rape. *Id.*

13 On March 29, 2010, Petitioner was ordered removed. Exhibit C (Notice of Intent/Decision to
14 Reinstate Prior Order). In 2014, Petitioner was again convicted of DUI and sentenced to 36 months'
15 probation, a fine, and a three-day work program. Exhibit B. On May 18, 2016, records indicate that
16 Petitioner was removed. Exhibit C. Between 2025 and 2026, Petitioner was twice convicted of DUI
17 and arrested for domestic violence. Exhibit B. On June 13, 2026, immigration authorities issued
18 Petitioner a Warrant of Removal/Deportation and take him into custody. Exhibits A, D (Warrant of
19 Removal/Deportation). Immigration authorities reinstated the removal order. Exhibit C. Petitioner's
20 next immigration court hearing regarding the reinstated removal order is presently scheduled for July 13,
21 2026, at 8:30 a.m. Exhibit E.

22 ARGUMENT

23 A. Detention is Mandatory Under 8 U.S.C. § 1231(a)(5)

24 Detention of noncitizens with reinstated removal orders is governed by § 1231. *Johnson v.*
25 *Guzman-Chavez*, 594 U.S. at 533–35. That framework forecloses reliance on § 1226 bond procedures
26 and on the vacated class injunction that required 180-day bond hearings. *Garland v. Aleman Gonzalez*,
27 596 U.S. at 551. EOIR's custody regulation confirms this structure: 8 C.F.R. § 1003.19 connects
28 administrative bond review to § 1226 custody, not § 1231 detention, while DHS conducts § 1231 post-

order reviews under § 241.4. Withholding-only status under a reinstated removal order therefore places detention authority within § 1231 and DHS's § 241.4 review process—not under administrative bond jurisdiction. Accordingly, Petitioner is not entitled to a bond hearing.

B. DHS May Lawfully Detain Without a “Material Change” Showing Restricting Immigration Judge Reconsideration, but not Detention Under § 1231

Petitioner's reliance on 8 C.F.R. § 1003.19(e) is misplaced. Dkt. 1, ¶ 4. The “material change” requirement governs an immigration judge's ability to revisit a prior bond ruling; it does not limit DHS's statutory detention authority under § 1231 or its review procedures under § 241.4. *See* 8 C.F.R. § 1003.19; 8 C.F.R. § 241.4. BIA precedent recognizes DHS's continuing authority to adjust custody after release. *Matter of Valles-Perez*, 21 I. & N. Dec. 769, 772 (BIA 1997); *Matter of Sugay*, 17 I. & N. Dec. 637, 639–40 (BIA 1981). Here, Petitioner was detained on June 13, 2026, and has not had a bond hearing. Nor was there a bond hearing (in recent history) where Petitioner was determined as neither a danger nor flight risk.

C. Petitioner Cannot Satisfy the *Winter* Standard for a Temporary Restraining Order

Johnson establishes § 1231 as the governing detention authority for withholding-only proceedings after reinstatement. *Aleman Gonzalez* confirms that lower courts lack jurisdiction under § 1252(f)(1) to impose class-wide or systemic injunctions that restrain § 1231's operation. *Johnson v. Guzman-Chavez*, 594 U.S. at 533–35; *Aleman Gonzalez*, 596 U.S. at 551.

DHS has followed § 241.4's post-order review framework—evaluating removal foreseeability, danger, and flight risk and providing ongoing review—as the withholding-only case proceeds toward a final hearing on July 13, 2026. 8 C.F.R. § 241.4; Exhibit E.

The balance of equities and public interest also weigh against relief. Congress recognized danger to the community and risk of non-compliance as proper factors in post-order detention decisions, and the record shows lengthy criminal history, removals, and the imminent final withholding-only hearing.

D. Petitioner's Criminal History Triggers Mandatory Detention Under § 1226(c)

Congress mandates custody for noncitizens inadmissible on grounds of being a criminal alien. 8 U.S.C. § 1226(c). Separate authority exists for mandatory detention of noncitizens arrested for or

1 convicted of certain qualifying crimes. 8 U.S.C. § 1226(c)(1)(A)-(E). The Court need not reach those
2 alternatives because § 1231 controls here, but they underscore that the INA contains multiple detention
3 authorities in cases implicating criminal aliens and dangerousness that subject Petitioner to mandatory
4 detention.

5 **CONCLUSION**

6 Respondents urge the Court to deny all forms of relief. Respondents do not oppose treating the
7 motion for temporary restraining order as a motion for preliminary injunction or resolving the petition
8 on the merits. Detention under § 1231 is lawful in withholding-only status after reinstatement, and
9 DHS's custody decisions are governed by § 241.4—not by the IJ “material change” standard in §
10 1003.19(e). The Petitioner's repeated failures to follow the law prohibiting his reentry into the United
11 States and his complete disrespect for the laws of the United States confirm that the equities and public
12 interest favor denying all forms of relief.

13 Respectfully submitted,

14 Dated: July 9, 2026

ERIC GRANT
United States Attorney

15
16 By: /s/ Elisa M. Rodriguez
17 ELISA M. RODRIGUEZ
18 Assistant United States Attorney
19 Attorneys for Respondents
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. She also certifies that on July 9, 2026, a copy of the MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TREMPORARY RESTRAINING ORDER; RESPONSE TO ORDER TO SHOW CAUSE was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Fresno, California.

Addressee: **Marco Antonio Mendoza**


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/s/ Elisa M. Rodriguez
ELISA M. RODRIGUEZ