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

10 RAFAEL RENDEON RODRIGUEZ,
11
12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, et al.,
15
16 Respondents.

Case No.: 26-CV-2998-AGS-DDL

RETURN TO PETITION

1 **I. INTRODUCTION**

2 As an alien who has been detained pursuant to a reinstated and final removal
3 order, Petitioner is not entitled to release or a bond hearing. The governing statute, 8
4 U.S.C. § 1231, provides for *mandatory* detention of noncitizens with final removal
5 orders. While a constitutional challenge to detention exists where removal obstacles
6 cause detention to be prolonged and indefinite, that is not the case here. For the reasons
7 more fully set forth below, the petition should be denied.

8 **II. FACTUAL BACKGROUND¹**

9 On March 4, 1999, Petitioner was ordered removed from the United States to
10 Mexico. Exh. 1 (Notice of Intent/Decision to Reinstate Prior Order). On April 14, 2011,
11 Petitioner was removed to Mexico. *See* Exh. 2, at 3 (I-213).

12 On March 10, 2026, Petitioner was arrested by the Department of Homeland
13 Security (DHS). *Id.* at 2-3. On April 14, 2026, Petitioner was served with a notice of
14 intent to reinstate the prior removal order. *Id.*; Ex. 2 (Notice of Intent/Decision to
15 Reinstate Prior Order). These actions essentially reactivated the removal order in effect
16 on March 4, 1999.

17 Based on Petitioner's claim of reasonable fear of returning to Mexico, however,
18 the agency conducted a reasonable fear interview. The asylum officer made a negative
19 fear finding, and Petitioner sought review of that finding by an immigration judge (IJ).
20 After a hearing on May 1, 2026, the IJ found that Petitioner had established a reasonable
21 possible that Petitioner would be persecuted on the basis of a protected ground. Exh. 3
22 (IJ decision). Petitioner is currently in "withholding only" proceedings. Petitioner's next
23 hearing is scheduled for May 28, 2026.

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28 ¹ The attached exhibits are copies of true documents obtained from ICE counsel.

III. LEGAL ANALYSIS

A. The Statute Requires Mandatory Detention of Noncitizens Subject to Final Removal Orders.

Petitioner is subject to a final removal order, and thus detained under 8 U.S.C. § 1231. Exh. 1. The relevant statute, 8 U.S.C. § 1231, provides for mandatory detention of noncitizens with final removal orders, including aliens subject to reinstatement of removal and those in withholding-only proceedings. The statute directs a final order of removal to be carried out within the ninety-day period after the removal order becomes final, often referred to as the “removal period.” 8 U.S.C. § 1231. It further requires that people subject to final orders of removal be detained during the 90-day removal period. *Id.*

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

Significantly, the facts presented here closely mirror the scenario addressed by the Supreme Court in *Johnson*. There, the Department of Homeland Security (DHS) reinstated the prior removal orders of aliens who, like Petitioner, were removed from

1 the U.S. and reentered without authorization. Each alien sought to prevent DHS's
2 execution of the removal orders based on fear of returning to their home country. While
3 their withholding-only proceedings were pending, DHS detained the aliens, who sought
4 release on bond. DHS argued that because the aliens were detained under 8 U.S.C. 1231,
5 which mandates detention when a removal order is administratively final, not section
6 1226, which governs detention pending a decision on whether the alien "is to be
7 removed," they were not entitled to bond hearings. The Fourth Circuit ruled in favor of
8 the aliens.

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

18 The Court determined that the Immigration and Nationality Act's ("INA")
19 statutory structure indicated that § 241(a) governs detention during withholding-only
20 proceedings.² It noted that § 241 itself is titled "Detention and removal of aliens ordered
21 removed," and that all the provisions relating to reinstatement of removal, withholding
22 of removal, and the countries to which aliens may be removed are found within § 241.
23 Based on how the INA's sections were ordered, the Court determined, INA § 236(a)
24 applies when an alien is still in formal removal proceedings while § 241(a) applies later,
25 after an alien is ordered removed. Congress "had obvious reasons to treat these two
26 groups differently," the Court opined, because aliens who have not been ordered

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28 ² 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 removed are less likely to abscond than those ordered removed, particularly those who
 2 reentered unlawfully after removal. Finally, the Court determined that although § 241(a)
 3 contemplates a 90-day removal period, the fact that withholding-only proceedings can
 4 take longer than that does not mean that § 241(a)'s detention provisions do not apply at
 5 that stage.

6 Accordingly, given the express terms of the statute and the Supreme Court's
 7 definitive interpretation in *Johnson*, Petitioner is properly detained.³

8 **B. Petitioner's Detention Has Not Been Prolonged.**

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

17 Notably, the government was unable to remove the *Zadvydas* petitioners within
 18 the normal 90-day removal period because it could not identify any countries willing to
 19 accept them, *id.* at 684–86, leaving the petitioners in what the Supreme Court later
 20 characterized as a "removable-but-unremovable limbo." *Jama v. Immigr. & Customs*
 21 *Enft*, 543 U.S. 335, 347 (2005). With nowhere to send them, the government simply
 22 continued to hold the petitioners in detention, with no plans to release them. *Zadvydas*,
 23 533 U.S. at 684–86. This rendered the petitioners' detention "potentially permanent."

24 ³ Following *Johnson*, legal commentators have noted the federal government's
 25 broad 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

27 and Justia, *Aliens Subject to Reinstated Orders of Removal are not Entitled to Bond*
 28 *Hearings while Seeking Withholding of Removal*,
www.supreme.justia.com/cases/federal/us/594/19-897/.

1 *Id.* at 691. And it was that specific circumstance -- the possibility of “indefinite and
2 potentially permanent” civil confinement, *id.* at 696 -- that led the Court to read an
3 implicit reasonable-time limitation into § 1231.

4 Here, in contrast to the affected parties in *Zadvydas*, Petitioner cannot show he
5 faces an “indefinite and potentially permanent” detention. Rather, he is being detained
6 pending a determination of his claim of credible fear. These proceedings are finite, as
7 they will continue only for such time as required for the IJ to make a final determination.
8 The mere fact that this determination is pending, however, should not favor granting
9 bond or release. *See Doe v. Andrews*, No. 1:25-cv-00333-JLT-HBK (HC), 2025 WL
10 3280777, at *11 (E.D. Cal. Nov. 25, 2025) (“While Petitioner certainly has the right to
11 pursue all available avenues to combat his removal, post-*Jennings*, he does not have the
12 right to parlay the resulting delay into a bond hearing.”) (cleaned up) *see also Prieto-*
13 *Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (denying habeas relief when “two
14 of [petitioner’s] three years of federal custody have passed while he has been awaiting”
15 judicial review because, “although his removal has certainly been delayed by his pursuit
16 of judicial review of his administratively final removal order, he is not stuck in a
17 ‘removable-but-not removable limbo,’ as the petitioners in *Zadvydas* were[.]”)

18 Because these proceedings have a definite ending point, Petitioner’s ongoing
19 proceedings do not present the same risk of “indefinite and potentially permanent”
20 detention at issue in *Zadvydas*.

21 IV. CONCLUSION

22 Given the mandatory nature of Petitioner’s detention pursuant to the reinstated
23 removal order and the likelihood of a final resolution of his request for review of the
24 credible fear determination, the petition lacks merit.

25 DATED: May 21, 2026

26 Respectfully submitted,

27 ADAM GORDON
28 United States Attorney

s/ Laura C. Sambataro
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Assistant United States Attorney
Attorney for Respondents

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