The Honorable Michelle L. Peterson

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

VICTOR GOMEZ-VALDOVINOS, Petitioner, v. BRUCE SCOTT, *et al.*,[1] Respondents.	Case No. 2:26-cv-01909-MLP FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: June 22, 2026

I. INTRODUCTION

This Court should deny Petitioner Victor Gomez-Valdovinos' Petition for Writ of Habeas Corpus. Dkt. No. 1. Petitioner is a Mexican national currently detained at the Northwest ICE Processing Center ("NWIPC") in Tacoma. Petitioner is subject to a reinstated final order of removal originally issued by an Immigration Judge in Seattle in 2002. Rather than challenging the lawfulness of his detention, the Petition seeks injunctive relief to prevent his removal from

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

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo.

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the United States while he litigates a motion to reopen before the Tacoma Immigration Court based on asserted changed country conditions in Mexico.

As explained below, the Petition should be denied. Habeas corpus under 28 U.S.C. § 2241 is a remedy for unlawful custody, not a vehicle for enjoining the execution of a reinstated removal order or for securing a judicial stay pending proceedings before the Executive Office for Immigration Review ("EOIR"). The proper forum for Petitioner's motion to reopen and any related stay request is the Tacoma Immigration Court. Petitioner has received all process due under the Fifth Amendment, and he has not demonstrated entitlement to injunctive relief.

Accordingly, Federal Respondents respectfully request the Court deny the Petition without an evidentiary hearing. This return is supported by the pleadings and documents on file in this case, the Declaration of Deportation Officer Gennadiy Baz ("Baz Decl."), and the Declaration of Lawrence Van Daley ("Van Daley Decl."), with accompanying exhibits.

II. BACKGROUND

A. Detention Authority

Petitioner's detention is authorized by 8 U.S.C. § 1231(a). Congress has established a comprehensive post-removal detention scheme that mandates detention once an alien is subject to a final order of removal. Under 8 U.S.C. § 1231(a)(1)(A), "except as otherwise provided in this section, when an alien is ordered removed, the Attorney General[2] shall remove the alien from the

[2] Although the Immigration and Nationality Act ("INA") historically vested certain immigration authority in the Attorney General, Congress transferred the vast majority of the Attorney General's immigration enforcement functions to the Secretary of Homeland Security through the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. *See* 8 U.S.C. § 1103(a)(1) ("The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers."); *see also* 6 U.S.C. §§ 202(3), 271(b), 291; 8 C.F.R. § 2.1. Accordingly, references in the INA to the Attorney General in the context of immigration enforcement are now understood to mean the Secretary of Homeland Security (except as to the limited adjudicatory and legal-determination functions expressly reserved to the Attorney General).

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United States within a period of 90 days." During this removal period, 8 U.S.C. § 1231(a)(2) provides that the Attorney General "shall detain the alien. Under no circumstance shall the Attorney General release an alien" described in this paragraph. The removal period begins on the date the order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i).

Congress enacted a statutory provision that expressly governs this situation: "If the Attorney General finds that 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, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry." 8 U.S.C. § 1231(a)(5). Upon reinstatement, the prior removal order is treated as though it had never been executed for purposes of triggering the removal period. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533-38 (2021). The reinstatement itself renders the order administratively final, and it becomes executable once any applicable fear screening is completed. *Id.*

This detention framework is mandatory rather than discretionary. The statute uses the word "shall" in both 8 U.S.C. § 1231(a)(2) and 8 U.S.C. § 1231(a)(5), leaving no room for release during the removal period except in narrow circumstances not applicable here. The Supreme Court has confirmed the mandatory nature of this detention in the reinstatement context. In *Johnson*, the Court held that aliens subject to reinstated removal orders who are pursuing withholding-only or reasonable-fear proceedings remain detained under 8 U.S.C. § 1231(a), not under the discretionary pre-removal detention provisions of 8 U.S.C. § 1226. *Id.* at 542. The Court explained that the removal period begins when the reinstated order becomes administratively final and continues until the alien is removed, with no conversion to discretionary detention during the pendency of protection claims. *Id.* at 541-43. Because 8 U.S.C. § 1231(a)(2) mandates detention

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under no circumstance shall the alien be released during the removal period, no bond hearing is available. *Id.* at 538

B. Petitioner Victor Gomez-Valdovinos

Petitioner is a citizen and national of Mexico. Baz Decl., ¶ 3. On May 21, 2002, Petitioner was arrested in Pasco, Washington, and convicted of Assault in the Fourth Degree - Domestic Violence. Baz Decl., ¶ 5; Van Daley Decl., Ex. 1, Form I-213. Petitioner received a sentence of 365 days in custody, with 356 days suspended, along with 24 months of supervision and a $75 fine. Baz Decl., ¶ 5; Van Daley Decl., Ex. 1.

On May 30, 2002, an Immigration Judge in Seattle ordered Petitioner removed from the United States. Baz Decl., ¶ 6; Van Daley Decl., Ex. 2, Removal Order. Petitioner was physically removed the following day, May 31, 2002, through the Otay Mesa port of entry in California. Baz Decl., ¶ 7; Van Daley Decl., Ex. 1 at 3. Following his removal, Petitioner unlawfully reentered the United States later that same year by crossing the border without inspection. Baz Decl., ¶ 7.

More than two decades later, on May 22, 2026, Petitioner reported to the Spokane Application Support Center at the Thomas Foley Federal Courthouse. Baz Decl., ¶ 8. Enforcement and Removal Operations ("ERO") officers informed Petitioner that he remained subject to a final order of removal and that no appeals were pending. *Id.* Petitioner was arrested pursuant to a Form I-200 Warrant of Arrest that had been issued on May 12, 2026, and served the same day. Baz Decl., ¶ 8; Van Daley Decl., Ex. 3, Warrant. A Form I-871, Notice of Reinstatement of Removal Order, was issued; Petitioner refused to sign the form and affirmatively checked the box indicating that he did not wish to contest the determination. Van Daley Decl., Ex. 4, Reinstatement Order. Petitioner was then transported to the NWIPC in Tacoma, where he is currently detained. Baz Decl., ¶ 8.

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Petitioner filed a motion to reopen his immigration case on June 2, 2026. Baz Decl., ¶ 9. On June 9, 2026, the immigration judge denied the motion to reopen, noting it was untimely and petitioner had failed to meet any exceptions and had failed to demonstrate changed circumstances in Mexico. Baz Decl., ¶ 10.

III. LEGAL AUTHORITY

This Court has jurisdiction under 28 U.S.C. § 2241 to review claims that a noncitizen's detention violates the Constitution or federal law. Post-REAL ID Act, the Ninth Circuit has held that district courts retain habeas jurisdiction over challenges to detention that are truly independent of challenges to the underlying removal order. *Singh v. Gonzales*, 499 F.3d 969, 977-79 (9th Cir. 2007).

However, the Supreme Court has emphasized that the writ of habeas corpus is fundamentally a remedy for unlawful custody. It does not extend to claims in which the petitioner "does not seek release from custody, but an additional opportunity to obtain asylum" or other relief by preventing removal. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020). When a habeas petition's real objective is to enjoin execution of a removal order or to secure a judicial stay pending EOIR adjudication of a collateral motion, the claim falls outside the traditional scope of the writ and is not cognizable under 28 U.S.C. § 2241.

IV. ARGUMENT

A. The Petition Should Be Denied Because Habeas Is Not the Proper Vehicle.

The writ of habeas corpus is a remedy to test the legality of custody and secure release from unlawful detention. *See Peyton v. Rowe*, 391 U.S. 54, 58–66, (1968); *see also* 28 U.S.C. § 2241. It is not a vehicle for obtaining injunctive relief against the execution of a removal order or for compelling the Government to litigate an administrative motion to reopen on a petitioner's preferred timeline. *See Thuraissigiam*, 591 U.S. at 117. Because Petitioner does not challenge the

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lawfulness of his detention and instead seeks to enjoin his removal while he pursues a collateral motion to reopen, the Petition falls outside the scope of 28 U.S.C. § 2241.

In *Thuraissigiam*, the Supreme Court held that habeas does not extend to claims in which the petitioner does not seek release from custody, but an additional opportunity to obtain relief from removal. *Id.* Petitioner here makes no allegation that his detention at the NWIPC violates *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001), *Jennings v. Rodriguez*, 583 U.S. 281 (2018), or any other limit on detention. He seeks only an order preventing his removal so that he can litigate a motion to reopen from inside the United States. Dkt. No. 1, Prayer for Relief. Under *Thuraissigiam*, 591 U.S. at 117, that claim is not cognizable in habeas.

The Ninth Circuit's decision in *Singh*, does not authorize this use of the writ. *See Singh*, 499 F.3d at 977-79. *Singh* preserved habeas jurisdiction only for challenges to detention that are truly independent of challenges to the removal order. *Id.* The court expressly cautioned against entertaining claims that are "wholly intertwined with the merits of [the] removal order." *Id.* at 979. Petitioner is subject to a reinstated final order of removal under 8 U.S.C. § 1231(a)(5). Reinstatement renders the prior order "not subject to being reopened or reviewed" and generally bars eligibility for most relief. *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 491-94 (9th Cir. 2007). The relief Petitioner requests - an injunction preventing removal while he litigates a motion to reopen - directly interferes with the execution of that reinstated order and with EOIR's authority over motions to reopen and stay requests. Petitioner's claim is therefore intertwined with the removal order and falls outside the narrow category of independent detention claims preserved in *Singh*, 499 F.3d at 979.

Courts in this Circuit have applied these principles to reject habeas petitions who primary purpose is to obtain a stay of removal while awaiting agency adjudication of a motion to reopen. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (quoting *Camarena v. Dir., Immigr. &*

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Customs Enf't, 988 F.3d 1268, 1274 (11th Cir. 2021) "[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order.").

Even if habeas jurisdiction technically existed, principles of comity and primary jurisdiction strongly favor requiring Petitioner to present his motion to reopen and any stay request to the Tacoma Immigration Court in the first instance. *Davel Commc'ns, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1080–81 (9th Cir. 2006). The filing of a motion to reopen does not automatically stay removal. 8 C.F.R. § 1003.2(f). EOIR has established procedures for adjudicating such motions and stay requests. Federal courts routinely decline to enjoin removal through habeas when the noncitizen has an available and effective administrative remedy. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

On May 22, 2026, Petitioner was given notice of the reinstated order and an opportunity to contest the reinstatement determination through Form I-871. Van Daley Decl., Ex. 4. Petitioner affirmatively declined to do so. *Id.* Petitioner now asks this Court to enjoin his removal while he mails a motion to reopen to the Tacoma Immigration Court. See Dkt. No. 1 at ¶ 28-29. The proper forum for that motion and any related stay request is EOIR, not a habeas petition in district court. Allowing habeas to be used in this manner would convert 28 U.S.C. § 2241 into a broad equitable tool for delaying removal and would undermine both the statutory scheme and the primary role of EOIR.

Because the Petition does not present a cognizable habeas claim and because the proper forum for Petitioner's claims is EOIR, the Petition should be denied.

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B. Petitioner Has Received All Process Due Under the Fifth Amendment.

Petitioner received full due process in his 2002 removal proceedings before an Immigration Judge in Seattle. Petitioner was ordered removed after those proceedings and was physically removed from the United States in 2002. More than two decades later, on May 22, 2026, Petitioner was again given notice that he remained subject to a final order of removal and was provided an opportunity to contest the reinstatement determination through Form I-871. Van Daley Decl., Ex. 4. The Fifth Amendment does not guarantee a noncitizen the right to remain in the United States while litigating a collateral motion to reopen, nor does it require the Government to refrain from executing a final removal order while such a motion is pending.

The Supreme Court has long recognized that due process in immigration proceedings is flexible and depends on the circumstances. *Landon v. Plasencia*, 459 U.S. 21, 32-34 (1982). While noncitizens are entitled to notice and an opportunity to be heard before removal, they are not entitled to an indefinite stay of removal or to litigate every collateral claim from inside the United States. The statutory right to file one motion to reopen under 8 U.S.C. § 1229a(c)(7)(A), is satisfied by permitting the noncitizen to file the motion. *See Mata v. Lynch*, 576 U.S. 143, 145-46 (2015). It does not create a constitutional right to physical presence in the United States during its adjudication or to a judicial stay of removal.

Petitioner's reliance on *A. A. R. P. v. Trump*, 605 U.S. 91 (2025), is misplaced. That case involved summary removals under the Alien Enemies Act with grossly inadequate notice. Here, Petitioner had full adversarial removal proceedings in 2002, was physically removed, unlawfully reentered, and in 2026 was given fresh notice of the reinstated order along with a clear opportunity to contest the reinstatement. The due process concerns that animated *A.A.R.P.*, are not present in this case.

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Nor does removal permanently deprive Petitioner of the opportunity to be heard. Many motions to reopen are litigated after removal has occurred, and Petitioner can pursue his claims through counsel. To the extent he seeks to raise a fear-based claim regarding return to Mexico, the appropriate administrative channel is a reasonable-fear interview under 8 C.F.R. § 208.31 leading to withholding-only proceedings. That process provides an opportunity to be heard before a neutral decision-maker without requiring this Court to enjoin removal.

Because Petitioner received full process in 2002, received recent notice and an opportunity to contest reinstatement in 2026, and has available administrative avenues to present his claims, he has not demonstrated a violation of the Fifth Amendment. The Petition should be denied.

C. Petitioner Has Not Demonstrated Entitlement to Injunctive Relief.

Petitioner seeks permanent injunctive relief under Federal Rule of Civil Procedure 65 and the All Writs Act to prevent his transfer out of this Court's jurisdiction and to enjoin his removal without an opportunity to litigate his motion to reopen. Dkt. No. 1, Relief Requested at ¶ 3. To obtain such relief, Petitioner must satisfy the four-factor test set forth in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006), and *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Petitioner has not done so.

First, Petitioner has not shown a likelihood of success on the merits. As explained above, the Petition does not present a cognizable habeas claim, Petitioner is subject to a reinstated final order of removal whose execution this Court should not enjoin, and he has received all process due under the Fifth Amendment.

Second, Petitioner has not demonstrated irreparable injury of constitutional dimension. While the deprivation of a constitutional right can constitute irreparable harm in some circumstances, no such deprivation has occurred. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Petitioner has no constitutional right to remain in the United States while litigating

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a collateral motion to reopen, and removal does not permanently foreclose his ability to pursue relief through counsel or from abroad. Any claimed injury is speculative and does not rise to the level of irreparable harm sufficient to justify enjoining the execution of a final removal order.

Third, the balance of hardships and the public interest weigh heavily in favor of the Government. The United States has a strong interest in the prompt and orderly execution of final removal orders, particularly where the noncitizen has a criminal conviction for domestic violence and has illegally reentered the United States after prior removal. *Zadvydas*, 533 U.S. at 690-91. Granting the requested injunction would delay removal, encourage collateral litigation designed to obstruct enforcement of immigration law, and improperly insert this Court into matters that EOIR is equipped and authorized to handle in the first instance. The public interest in the enforcement of immigration laws and the finality of removal orders outweighs Petitioner's interest in litigating his motion to reopen from inside the United States.

Because Petitioner has failed to satisfy any of the requirements for injunctive relief, the Petition should be denied.

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus in its entirety. Petitioner does not challenge the lawfulness of his detention. Instead, he seeks to use habeas corpus as a vehicle to enjoin the execution of a reinstated final order of removal while he litigates a collateral motion to reopen before EOIR. He has received all processes due under the Fifth Amendment, and the proper forum for his motion to reopen and any stay request is the Tacoma Immigration Court. Petitioner has not demonstrated entitlement to injunctive relief.

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DATED this 16th day of June, 2026.

Respectfully submitted,

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I certify that this memorandum contains 3,053 words, in compliance with the Local Civil Rules.